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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

YUNG-CHENG TSAI,  
  
Petitioner.

NO. 43118-1-II

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should an untimely personal restraint petition (PRP) be dismissed when petitioner has failed to demonstrate that the exception under RCW 10.73.100(6), regarding a significant change in the law, applies to his petition?

2. Should the petition be dismissed when petitioner has failed to make a sufficient showing that his counsel was deficient or that he suffered any resulting prejudice?

B. STATUS OF PETITIONER:

On July 27, 2006, the petitioner, Yung-Chen Tsai, pleaded guilty to the original information charging him with unlawful possession of a controlled substance (marijuana) with intent to deliver in Pierce County Cause No. 06- 1-00782-6; his sentencing occurred

1 on August 29, 2006. Appendices A and B. Petitioner was sentenced to 11 months in the  
2 county jail to be followed by 12 months of community supervision. Appendix A.  
3 Petitioner did not appeal from entry of his judgment. On November 1, 2007, the  
4 Department of Corrections indicated that petitioner did not meet the statutory criteria for  
5 supervision and terminated supervision, thereby ending any restraint by the State of  
6 Washington pursuant to this conviction. Appendix C.

7  
8 On July 21, 2008, petitioner, with the assistance of counsel, filed a motion to  
9 withdraw his guilty plea alleging that he had received ineffective assistance of counsel  
10 because he was misadvised as to the immigration consequences if he pleaded guilty to the  
11 original information. Appendix D. Eric Bauer represented petitioner on his drug charges,  
12 but he was not present the day of the plea; the entry of the plea was handled by an  
13 associate. *See* Appendix E, at Exhibit C. Petitioner's motion to withdraw asserted that the  
14 misinformation came from this associate. *See* Appendix D at p 6-7 ("Mr. Tsai asked the  
15 criminal defense attorney who was present at the plea to confirm that there were no  
16 immigration implications to pleading as charged in the original information. Only after  
17 receiving the attorney's assurances did Mr. Tsai go through with the plea." and "Mr. Tsai  
18 did not make a knowing intelligent plea because although the language in the plea warned  
19 of jeopardizing immigration status, the defense attorney at the plea hearing made  
20 representations contrary to that warning"). This aspect of the motion was supported by a  
21 declaration from petitioner which stated:

22  
23 At the time of the plea, Mr. Bauer sent one of his associates to handle the  
24 guilty plea. ...I spoke to the associate about my concern that the plea may  
25 impact my immigration status and inquired whether this had been discussed  
with Mr. Bauer. The associate indicated that to plead as charged should not  
jeopardize my immigration status. I signed the guilty plea form on July 27,  
2006.

1  
2 See, Appendix D, *see* Attachment D – Declaration of Yung-Cheng Tsai. Also attached to  
3 the motion was a declaration from an immigration attorney with whom petitioner had  
4 consulted after being charged, but prior to his plea. In her declaration she states:

5 Mr. Tsai ...told me that he was charged with possession of marijuana with  
6 intent to deliver. I told him that if he plead guilty or were found guilty of  
7 this charge, I believed it would constitute an aggravated felony under the  
8 immigration law. I further told Mr. Tsai that if he were convicted of an  
9 aggravated felony, he would be deportable and ineligible to apply for  
10 discretionary relief from deportation.

11 ...

12 On April 28, 2006, I spoke to Mr. Tsai's attorney Eric Bauer. I told Mr.  
13 Bauer essentially the same thing I had told Mr. Tsai. In particular, I told  
14 him that a conviction for possession of marijuana with the intent to deliver  
15 is an aggravated felony that would bar Mr. Tsai from any form of  
16 discretionary relief from deportation.

17 Appendix D, at Attachment C – Declaration of Vicky Dobrin. In his post judgment  
18 motion, petitioner asked the court to apply equitable tolling principles so as to hear his  
19 untimely motion to withdraw.

20 The State's response to this motion included the transcript of the plea hearing.  
21 Appendix E, at Exhibit C. The transcript showed that in his colloquy with the court at the  
22 time of the plea, petitioner represented that: 1) he read and wrote in the English language;  
23 2) he had gone over the plea form with his attorney; 3) he understood the contents of the  
24 form; and 4) he had no questions. *Id.* Perhaps most importantly, when the court asked him  
25 whether anyone has made him any promise in order to induce him to plead guilty "other  
than what the State may have agreed to do or recommend", the petitioner responded in the  
negative. *Id.* at p. 7. Petitioner's plea was then accepted by the court. *Id.* at 7-8. The State  
also provided a transcript of the sentencing hearing in its response to the motion to  
withdraw. Appendix E at Exhibit D. At sentencing, petitioner's counsel noted that  
petitioner was not a citizen:

1 Mr. Tsai is actually a native of Taiwan and so there's probably going to be  
2 some immigration issues later on, anyway. The 11 months is pretty  
3 important, and immigration law gives absolutely no guarantees. That was  
4 why we hit on that number. That gives him a slightly better argument in  
5 immigration issues later on.

6 Appendix E, Exhibit D at p. 2-3. Petitioner does not react to this statement as it being  
7 different from what he has been told previously. When asked by the court whether there  
8 was anything he wanted to say - petitioner stated that he knew what he did was wrong and  
9 was sorry for it. *Id.* In its response to the motion to withdraw, the State argued that the  
10 motion should be denied as time-barred and that petitioner's request for equitable tolling of  
11 the one year time bar should be rejected. Appendix E.

12 In its ruling on the motion to withdraw guilty plea, the trial court found that the  
13 motion was time barred, - the motion was untimely filed and petitioner had not established  
14 that equitable tolling applied. Appendix F. Petitioner did not appeal this ruling.

15 On May 18, 2011, petitioner, again with the assistance of (new) counsel, filed  
16 another CrR 7.8 motion to withdraw his guilty plea in the Pierce County Superior Court.  
17 Appendix G. Again, petitioner alleged that he had been given incorrect information about  
18 the effect of his conviction on his immigration status and that he was facing deportation.  
19 This time petitioner alleged in his declaration that the faulty information came from his  
20 attorney, Mr. Bauer, rather than the associate who handled the plea.

21 Prior to my plea hearing, I was advised by Atty. Bauer that he was able to  
22 negotiate a plea with a sentence of less than one-year. Thus, by pleading  
23 guilty and receiving a sentence of less than one-year, I would avoid any  
24 danger of removal. I relied on Atty. Bauer's assurance that when he and  
25 Atty Dobrin spoke, this was the alternative they had both agreed would  
avoid my removal from this country.

Appendix G, *see* Exhibit D – Affidavit of Yung-Cheng Tsai. Petitioner submitted the  
same sworn statement from the immigration attorney that had been submitted three years

1 earlier. *Compare* Appendix D, at Attachment C – Declaration of Vicky Dobrin with  
2 Appendix G, at Exhibit C – Declaration of Vicky Dobrin. Again it stated that she advised  
3 Mr. Tsai that a plea to possession of marijuana with intent to deliver would render him  
4 deportable. *Id.* Petitioner argued that *Padillia v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473,  
5 176 L.Ed.2d 284 (2010), represented a significant change in the law that provided an  
6 exception to the one year time bar for bringing collateral attacks.

7 The trial court directed a response from the State. Appendix L. In its response, the  
8 State again provided the court with transcripts of the plea hearing and the sentencing, but  
9 this time also presented an affidavit from petitioner’s trial attorney, Erik Bauer. Appendix  
10 H. In his declaration, Mr. Bauer stated:

11 I spoke with Ms. Dobrin at Mr. Tsai’s request and explained Mr. Tsai’s  
12 criminal case to her. Ms. Dobrin indicated she would advise Mr. Tsai as to  
the immigration consequences of his plea.

13 Any advice I gave Mr. Tsai regarding immigration was consistent with that  
14 provided by his immigration attorney, Ms. Dobrin. Essentially I deferred to  
the immigration attorney with respect to her field of expertise.

15  
16 Appendix H, *see* Exhibit C- declaration of Erik Bauer. In a supplemental response the  
17 State argued that *Padilla* did not represent a change in the law in Washington. Appendix  
18 N.

19 The trial court found that *Padilla* did not represent a “significant change in the law  
20 that is material to the conviction” under RCW 10.73.100(6) based upon the law in  
21 Washington at the time of the plea, including *State v. Littlefair*, 112 Wn. App. 749769  
22 (2002) and RCW 10.40.200(a), which required that a criminal defendant be correctly  
23 informed of the deportation consequences that might result from his guilty plea. Appendix  
24 I. Additionally, the trial court found persuasive certain federal decisions holding that  
25 *Padilla* was not to be retroactively applied. *Id.* The court denied the motion to withdraw.

1 *Id.* Petitioner<sup>1</sup> filed a notice of appeal from entry of this order. Appendix J. A short time  
2 later, however, petitioner sought to vacate the court's order, arguing that the trial court did  
3 not have the authority to deny an untimely collateral attack. Appendix K. The court  
4 granted the motion to vacate its order of October 18, 2011, and instead transferred the  
5 untimely collateral attack to the Court of Appeals. Appendix M.

6 The Court of Appeals dismissed the direct appeal of the October order which had  
7 been vacated – COA Case No. 42834-2- II- and opened a personal restraint petition file  
8 under the above- captioned case number based upon petitioner's pleadings in the superior  
9 court.

10 The State has no information to dispute petitioner's claim of indigency.

11 ARGUMENT:

12 1. THIS PETITION IS BARRED AS UNTIMELY.

13 a. The time-bar under RCW 10.73.090.

14 No petition or motion for collateral attack on a judgment and sentence in a criminal  
15 case may be filed more than one year after the judgment becomes final if the judgment and  
16 sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW  
17 10.73.090. The petitioner has the burden to demonstrate that his PRP is timely under the  
18 statute. *See In re Personal Restraint of Quinn*, 154 Wn. App. 816, 226 P.3d 208 (2010).  
19 Petitioner's judgment was not appealed, and so was final when it was entered on August  
20 29, 2006. *See* RCW 10.73.090(3).

21 The petitioner does not challenge the facial validity of the judgment or suggest that  
22 the court lacked jurisdiction, but argues that there has been a significant change in the law  
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<sup>1</sup> Petitioner's counsel on the CrR7.8 motion withdrew as the attorney of record shortly after the court issued its order denying the motion.

1 due to *Padilla v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010),  
2 which falls into the exception to the time bar in RCW 10.73.100(6).

3  
4 b. *Padilla* Is Not A Significant Change In The Law In  
Washington When Petitioner Raises A Claim Of Misadvice  
As To Immigration Consequences.

6 RCW 10.73.100(6) sets out an exception to the statutory time limit:

7 The time limit specified in RCW 10.73.090 does not apply to a petition or  
8 motion that is based solely on one or more of the following grounds:

9 . . .

10 (6) There has been a significant change in the law, whether substantive or  
11 procedural, which is material to the conviction . . . , and . . . a court, in  
12 interpreting a change in the law that lacks express legislative intent  
13 regarding retroactive application, determines that sufficient reasons exist to  
14 require retroactive application of the changed legal standard.

15 A “significant change in the law” occurs when “an intervening opinion has  
16 effectively overturned a prior appellate decision that was originally determinative of a  
17 material issue.” *In re Domingo*, 155 Wn.2d 356, 366 27, 119 P.3d 816 (2005). This  
18 reflects the principle that litigants have a duty to raise available arguments in a timely  
19 fashion, but “they should not be penalized for having omitted arguments that were  
20 essentially unavailable at the time.” *In re Greening*, 141 Wn.2d 687, 697, 9 P.3d 206  
21 (2000). The petitioner asserts that a “significant change in the law” resulted from *Padilla*  
22 *v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010). Prior to *Padilla*,  
23 courts did not require lawyers in criminal cases to advise their clients of immigration  
24 consequences of guilty pleas as this was considered a collateral consequence. The courts  
25 reasoned that counsel’s duty did not extend to “collateral consequences.” *State v. Holley*,  
75 Wn. App. 191, 197, 876 P.2d 973 (1994). *Padilla* holds that counsel must advise of  
immigration consequences, whether or not they are considered “collateral.” Because of

1 this, Division I of the Court of Appeals has held that *Padilla* is a significant change in the  
2 law with respect to the duty to advise. *In re Jagana*, 170 Wn. App. 32, 43, 282  
3 P.3d 1153 (2012).

4         There is, however, a significant difference between a *lack* of advice about  
5 immigration consequences and *misadvice* concerning those consequences. Prior to  
6 *Padilla*, Washington courts did not entertain ineffectiveness claim relating to non-advice  
7 about collateral consequences. The courts did, however, entertain claims relating to  
8 misadvice concerning immigration and other collateral consequences.

9         This distinction was explained in *State v. Stowe*, 71 Wn. App. 182, 858 P.2d 267  
10 (1993). Stowe was a soldier in the United States Army. His lawyer advised him that a  
11 guilty plea would not prevent him from continuing his military career. In fact, the Army  
12 discharged Stowe immediately after he entered his plea. The court held that this supported  
13 a claim of ineffective assistance, even though the discharge was a collateral consequence:

14             The State argues that defense counsel does not have an obligation to inform  
15 his client of all possible collateral consequences of a guilty plea. Although  
16 this is a correct statement of the law, the question here is not whether  
17 counsel failed to inform defendant of collateral consequences, but rather  
18 whether counsel's performance fell below the objective standard of  
19 reasonableness when he affirmatively misinformed Stowe of the collateral  
20 consequences of a guilty plea. . . Different considerations may arise when  
21 counsel affirmatively misinforms the defendant of the collateral  
22 consequences of a guilty plea.

23 *Id.* at 187 (citations omitted). The court in *Stowe* cited a case in which “counsel’s  
24 erroneous misrepresentation that guilty plea would not affect defendant’s immigrant status  
25 was ineffective assistance and rendered guilty plea involuntary.” *Id.*, citing *People v.*  
*Correa*, 108 Ill.2d 541, 485 N.E.2d 307 (1985).

1           **Holley** applied the same analysis. In that case, defense counsel skipped over the  
2 paragraph dealing with immigration consequences when reviewing the plea statement with  
3 his client. The court distinguished this failure to advise situation from that in **Stowe**:

4           In **Stowe** we stated that provision of erroneous advice about a matter  
5 collateral to the conviction can constitute constitutionally deficient  
6 performance. However, this case differs from **Stowe**. Heath Stowe was  
7 particularly concerned about the consequences of a guilty plea on his  
8 military career and so advised his counsel. Stowe's counsel responded by  
9 telling Stowe that the plea would not jeopardize his military career. This  
10 advice was incorrect. Stowe was immediately and dishonorably discharged  
11 from the Army. Here, it appears that Holley and his lawyer never discussed  
12 the critical issue-the deportation consequences of his pleas. The affidavits  
13 merely suggest that counsel may have told Holley he could skip over [the  
14 portion of the plea agreement dealing with immigration consequences]. This  
15 obviously was faulty advice. However, it differs from the type of  
16 affirmative misinformation at issue in **Stowe**. Holley has failed to show that  
17 his counsel's comment rose to the level of ineffective assistance of counsel.

18           **Holley**, 75 Wn. App. at 198-99. Thus, **Holley** recognizes that misadvice about  
19 immigration consequences can constitute ineffective assistance of counsel, while failure to  
20 advise about collateral consequences will not. **Jagana** recognizes this distinction as well.  
21 The case says that prior to **Padilla**, “anything short of affirmative misadvice by counsel  
22 was not sufficient to set aside a plea.” **Jagana**, 170 Wn. App. at 43.

23           The present case involves a claim of misadvice, not non-advice. Depending on  
24 which of petitioner’s two declarations is consulted, he claims that he was misadvised by  
25 Mr. Bauer prior to the plea date *or* that he was misadvised by Mr. Bauer’s associate on the  
plea date itself. *See* Appendix G, *see* Exhibit D – Affidavit of Yung-Cheng Tsai;  
Appendix D, *see* Attachment D – Declaration of Yung-Cheng Tsai. Prior to **Padilla**,  
petitioner in the present case could have raised a challenge to his guilty plea based on then-  
existing law. He could have claimed that his counsel acted ineffectively in misadvising  
him that he had a possibility of avoiding deportation, when in fact his conviction rendered

1 deportation essentially certain. Both *Stowe* (decided in 1993) and *Holley* (decided in  
2 1994) expressly recognized the validity of such a claim. *See also, State v. Littlefair*, 112  
3 Wn. App. 749, 51 P.3d 116 (2002), *review denied*, 149 Wn.2d 1020 (2003) (defense  
4 attorney crossing out the paragraph of the plea statement that warned of possible  
5 immigration consequences violated the statutory directive of RCW 10.40.200 that a  
6 defendant receive this notification). Such a claim was therefore available when petitioner  
7 was sentenced in 2006.

8  
9 Since the petitioner's claim is based on misadvice and he could have raised this  
10 claim based upon Washington law that was available prior to *Padilla*, this means that  
11 *Padilla* is not a "significant change in the law" with respect to this petitioner's claim. A  
12 "significant change in the law" occurs when "an intervening opinion has effectively  
13 overturned a prior appellate decision that was originally determinative of a material issue."  
14 *In re Domingo*, 155 Wn.2d at 366. Since petitioner's claim is consistent with law that  
15 existed at the time of his conviction, there has been no "significant change in the law that  
16 is material to that claim. Consequently, petitioner does not fall within the exception to the  
17 time limit set out in RCW 10.73.100(6). His untimely petition should be dismissed.

18 c. Petitioner has failed to show that *Padilla* is retroactive  
19 which he must to fall within the exception of RCW  
20 10.73.100(6).

21 The fall within the exception to the time limit in RCW 10.73.100(6), it is not  
22 enough that there be a "significant change in the law." The petitioner must also show that  
23 "sufficient reasons exist to require retroactive application of the changed legal standard." A  
24 new rule will not be given retroactive application to cases on collateral review except  
25 where either: (a) the new rule places certain kinds of primary, private individual conduct

1 beyond the power of the state to proscribe, or (b) the rule requires the “observance of  
2 procedures implicit in the concept of ordered liberty.” *State v. Evans*, 154 Wn.2d 438,  
3 444, 114 P.3d 627 (2005). The first exception is inapplicable here. *Padilla* has nothing to  
4 do with the State’s ability to proscribe the drug crime of which petitioner was convicted.

5 The second exception has a high standard: it only applies to “watershed rules of  
6 criminal procedure.” See *Schriro v. Summerlin*, 542 U.S. 348, 352, 124 S. Ct. 2519, 159  
7 L. Ed. 2d 442(2004); *State v. Evans*, 154 Wn.2d 438, 447, 114 P.3d 627 (2005). To qualify  
8 under this exception, a rule must “alter our understanding of the *bedrock procedural*  
9 *elements* essential to the fairness of a proceeding.” *Evans*, at 445 (court’s emphasis). As  
10 *Evans* indicates, retroactivity analysis only applies to a “new rule.” A “new rule” is one  
11 that was not “dictated by precedent existing at the time the defendant’s conviction became  
12 final.” *Id.*, at 444.

14 The retroactive application of a decision to collateral attacks where the judgment  
15 was already final is extremely limited. In *In re Personal Restraint of Markel*, 154 Wn.2d  
16 262, 111 P. 3d 249 (2005), the Supreme Court concisely summarized these limited  
17 circumstances:

18 The United States Supreme Court has recently described the *Teague* [*v.*  
19 *Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)] analysis as  
20 “giv[ing] retroactive effect to only a small set of “watershed rules of  
21 criminal procedure” implicating the fundamental fairness and accuracy of  
22 the criminal proceeding.” *Schriro v. Summerlin*, 542 U.S. 348, 124 S.Ct.  
23 2519, 2523, 159 L.Ed.2d 442 (2004) (quoting *Saffle v. Parks*, 494 U.S. 484,  
24 495, 110 S.Ct. 1257, 108 L.Ed.2d 415 (1990) (quoting *Teague*, 489 U.S. at  
25 311, 109 S.Ct. 1060)). Further, “the rule must be one ‘without which the  
likelihood of an accurate conviction is seriously diminished.’” *Id.* (quoting  
*Teague*, 489 U.S. at 313, 109 S.Ct. 1060). Finally, the Court has noted that  
“[t]his class of rules is extremely narrow, and ‘it is unlikely that any ...  
“ha[s] yet to emerge.”” *Id.* (alteration in original) (quoting *Tyler v. Cain*,  
533 U.S. 656, 667 n. 7, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001) (quoting

1           **Sawyer v. Smith**, 497 U.S. 227, 243, 110 S.Ct. 2822, 111 L.Ed.2d 193  
2           (1990)).

3           **Id.**, at 269-270 (emphasis added). The Court also acknowledged that the rule was so  
4           limited that the United States Supreme Court had never held that any rule had fallen within  
5           the “watershed rules of criminal procedure” exception described in **Teague. Id.**, at 270, n.

6           2. The narrow nature of this exception was recently re-emphasized in **In re Personal**  
7           **Restraint of Rhome**, 172 Wn.2d 654, 666-667, 260 P. 3d 874 (2011).

8           The Washington Supreme Court has considered the retroactivity of a number of  
9           cases involving constitutional issues; such as the right to jury determination of facts,  
10           confrontation of witnesses, and the right of self-representation. Many of the decisions were  
11           landmark ones. However, the Court has yet to find that any of these are “watershed rules of  
12           criminal procedure implicating the fundamental fairness and accuracy of the criminal  
13           proceeding.” See **In re Personal Restraint of Jackson**, -Wn.2d-, 283 P.3d 1089 (2012)  
14           (regarding holdings in **State v. Recuenco**, 154 Wn.2d 156, 110 P.3d 188 (2005) (**Recuenco**  
15           **I**) and **State v. Recuenco**, 163 Wn.2d 428, 180 P.3d 1276 (2008) (**Recuenco III**)); **In re**  
16           **Personal Restraint of Scott**, 173 Wn.2d 911, 918, 217 P. 3d 218 (2012)(**Recuenco**  
17           holdings); **Rhyme, supra** (mental competence of criminal defendant who wishes to  
18           proceed pro se); **Evans, supra** (application of **Blakely v. Washington**, 542 U.S. 296, 124 S.  
19           Ct. 2531, 159 L. Ed. 2d 403 (2004)); **Merkel, supra** (application of **Crawford v.**  
20           **Washington**, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)). See also **In re**  
21           **Personal Restraint of Haghghi**, 167 Wn. App. 712, 720-721, 276 P.3d 311 (2012)  
22           (application of **State v. Winterstein**, 167 Wn.2d 620, 220 P.3d 1226 (2009)).

23           Whether **Padilla** is retroactive is unsettled. See **U.S. v. Orocio**, 645 F.3d 630 (3d  
24           Cir.2011) (**Padilla** is not a “new” rule); **Chaidez v. U.S.**, 655 F.3d 684 (7th Cir.2011)  
25

1 (*Padilla* is a “new” rule), *cert. granted*, — U.S. —, 132 S. Ct. 2101, 182 L. Ed. 2d 867  
2 (2012); *U.S. v. Chang Hong*, 671 F.3d 1147 (10th Cir.2011) (*Padilla* is a “new” rule);  
3 *U.S. v. Amer*, 681 F.3d 211 (5th Cir.2012) (*Padilla* is a “new” rule); *U.S. v. Mathur*, 685  
4 F.3d 396 (4th Cir.2012) (*Padilla* is a “new” rule); *Commonwealth v. Clarke*, 460 Mass.  
5 30, 949 N.E.2d 892 (2011) (*Padilla* is not a “new” rule); *Campos v. State*, 816 N.W.2d  
6 480 (Minn.2012) (*Padilla* is a “new” rule); *Denisyuk v. State*, 422 Md. 462, 30 A.3d 914  
7 (2011) (*Padilla* is not a “new” rule); *State v. Gaitan*, 209 N.J. 339, 37 A.3d 1089 (2012)  
8 (*Padilla* is a “new” rule); *In re Personal Restraint of Jagana*, \_\_\_ Wn. App. \_\_\_, 282  
9 P.3d 1153 (2012); *see also State v. Cervantes*, \_\_\_ Wn. App. \_\_\_, 282 P.3d 98 (2012)  
10 (Division III noting that issue of retroactivity is unsettled and declining to reach issue as  
11 petitioner failed to support his claim with sufficient proof.).

12  
13 A significant change in the law exists when an argument was “essentially  
14 unavailable at the time.” *In re Personal Restraint of Greening*, 141 Wn.2d 687, 698, 9 P.  
15 3d 206 (2000). While *Padilla* is an important case, it does not require “observance of  
16 procedures implicit in the concept of ordered liberty,” as our Supreme Court described it in  
17 *Evans*, at 444. “The mere fact the right was important did not make it a watershed rule of  
18 criminal procedure under *Teague*.” *Evans*, at 447.

19  
20 The petitioner has the burden of showing that *Padilla* is to be applied retroactively  
21 and that the exception to the time bar applies. Under our State Supreme Court’s analysis in  
22 *Evans*, the decision in *Padilla*, like the one in *Blakely* before it, is an important case, but,  
23 like *Blakely*, is not retroactive.

24 Because petitioner has not shown an applicable exception to the time bar, the  
25 petition should be dismissed as untimely.

1  
2 3. THE PETITIONER HAS NOT MADE A SUBSTANTIAL SHOWING  
3 THAT HE IS ENTITLED TO RELIEF.

4 Even if the petition were not time barred, the defendant has not made a sufficient  
5 showing to warrant relief. Ineffective assistance claims are governed by the standard set  
6 out in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).  
7 Under that standard, the defendant must establish that (1) his attorney's performance was  
8 deficient, and (2) the deficient performance prejudiced the defense. *Id.* at 687.

9 The record before this Court does not establish misadvice. The record shows that at  
10 the time of petitioner's plea, the plea form told him that as he was not a citizen of the  
11 United States that "a plea of guilty to an offense punishable as a crime under the state law  
12 is grounds for deportation, exclusion from admission to the United States, or denial of a  
13 naturalization pursuant to the laws of the United States." Appendix B at p. 5(i). The  
14 declaration of petitioner's immigration attorney states that prior to his plea she informed  
15 him that if he were convicted of possession of marijuana with intent to deliver - an  
16 aggravated felony - that he would be deportable and ineligible to apply for discretionary  
17 relief from deportation. Appendix D, at Attachment C - Declaration of Vicky Dobrin;  
18 Appendix G, at Exhibit C - Declaration of Vicky Dobrin. The affidavit from his criminal  
19 attorney Erik Bauer states that his advice was consistent with that provided by his  
20 immigration attorney, Ms. Dobrin. Thus, neither the immigration attorney nor his criminal  
21 defense attorney state that they gave petitioner incorrect advice, rather their declarations  
22 show that he was correctly advised. In contrast to this evidence, petitioner's  
23 representations about who gave him the incorrect advice and when it occurred have  
24 changed over time. Compare Appendix G, *see* Exhibit D - Affidavit of Yung-Cheng Tsai  
25

1 with Appendix D, *see* Attachment D – Declaration of Yung-Cheng Tsai. Petitioner’s  
2 failure to remain consistent on who gave him the misadvice renders both of his  
3 declarations suspect as to accuracy. Moreover, it is clear from his attorney’s statements at  
4 the sentencing hearing that his attorney was expecting petitioner to have immigration  
5 consequences as a result of his guilty plea. Appendix E, Exhibit D at p. 2-3. His attorney  
6 stated that there were “no guarantees” and that it was hoped that the negotiated length of  
7 sentence would give petitioner “a slightly better argument in immigration issues later on.”  
8 *Id.* These statements are completely inconsistent with petitioner’s claims that his attorney  
9 told him there would be no consequences. Petitioner did not react with either surprise or  
10 outrage when these comments were made but simply apologized for his behavior. *Id.*  
11 Since the sentencing hearing, petitioner was on notice that his attorney expected him to  
12 have immigration consequences as a result of his guilty plea, yet petitioner did not  
13 complain at the hearing that this was different from what he had been told, nor move in a  
14 timely manner to withdraw his guilty plea. Petitioner’s first challenge to his guilty plea  
15 occurred nearly two years later. The declarations from the attorneys indicate that petitioner  
16 was correctly advised as to the negative impact a plea to the original charge would have on  
17 his immigration status. The plea form and the plea colloquy reflect that he was properly  
18 advised as to the negative immigration consequences. In his colloquy, petitioner denied  
19 that any other promises had been made to him regarding his plea. The State disputes that  
20 petitioner received misadvice. As the only evidence that petitioner has presented to  
21 support his claim of misadvice has been inconsistent and contradictory, this Court should  
22 find that petitioner has presented insufficient evidence to support his claim that his  
23 attorney’s advice was deficient.  
24  
25

1           Moreover, in satisfying the prejudice prong of the *Strickland* standard, a petitioner  
2 challenging a guilty plea must show that there is a reasonable probability that, but for  
3 counsel's errors, he would not have pleaded guilty and would have insisted on going to  
4 trial. A "reasonable probability" exists if the defendant convinces the court that a decision  
5 to reject the plea bargain would have been rational under the circumstances. *Sandoval*, 171  
6 Wn.2d at 174-75 19 (citations omitted). Thus, the test does not turn on the defendant's  
7 hindsight subjective judgment. Rather, the court must objectively determine whether there  
8 was another rational course of action.  
9

10           Here, there is no such showing. A declaration from the trial deputy assigned to  
11 handle Mr. Tsai's case indicates that the evidence against Mr. Tsai was strong and that she  
12 was never willing to reduce the charges filed against him. Appendix O. The evidence of  
13 petitioner's guilt was found during the search done pursuant to a warrant and that ledgers,  
14 scales, and marijuana found in his bedroom was evidence of marijuana distribution. *Id.*  
15 Petitioner was one of four people charged as a result of this search, and in none of the  
16 prosecutions was there ever a challenge to the warrant. *Id.* Petitioner has not suggested  
17 that he had any viable defense to the charge of possessing a controlled substance with  
18 intent to deliver. At most, petitioner suggests that if he had known, he would have tried to  
19 resolve the case at something other than the original charges. But it is clear that the  
20 prosecution was unwilling to reduce the charges. *Id.* Petitioner had the option of pleading  
21 guilty and trying to reduce the time spent in confinement or proceeding to trial- perhaps on  
22 increased charges. Petitioner fails to show that he was likely to avoid conviction of  
23 possession of marijuana with intent to deliver by taking his case to trial.  
24  
25

1 Of these alternatives, petitioner took the one that he considered to be in his best  
2 interest – accepting the plea trying to minimize the time of his incarceration. In short, the  
3 petitioner has not shown that he had any way to avoid a conviction that would lead to  
4 deportation. He has not shown that he had any rational alternative to a guilty plea.  
5 Consequently, petitioner has not met his burden of establishing prejudice.

6 Defense counsel was not deficient in this case, nor was the petitioner prejudiced.  
7 The petition fails on the merits.

8  
9 C. CONCLUSION:

10 The State respectfully requests that the petition be dismissed- either as time-barred  
11 or on the merits.

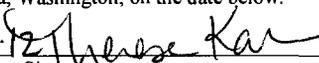
12 DATED: November 28, 2012

13 MARK LINDQUIST  
14 Pierce County  
15 Prosecuting Attorney

16   
17 KATHLEEN PROCTOR  
18 Deputy Prosecuting Attorney  
19 WSB # 14811

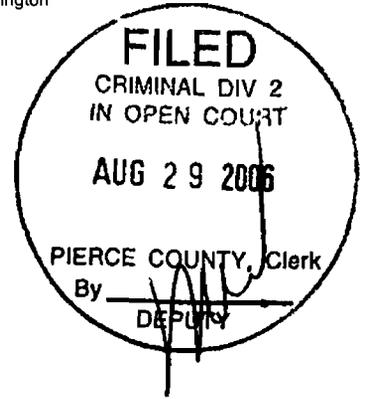
20 Certificate of Service:

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

26 11.28.12   
27 Date Signature

# **APPENDIX “A”**

*Judgment and Sentence*



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 06-1-00782-6

vs.

YUNG-CHENG TSAI,

Defendant.

WARRANT OF COMMITMENT

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

AUG 29 2006

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

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

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

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

06-1-00782-6

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

Dated: 8-29-06

By direction of the Honorable  
*[Signature]*  
JUDGE SERGIO ARMIJO

KEVIN STOCK  
CLERK  
By: *[Signature]*  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF  
AUG 29 2006  
Date By *[Signature]* Deputy

STATE OF WASHINGTON

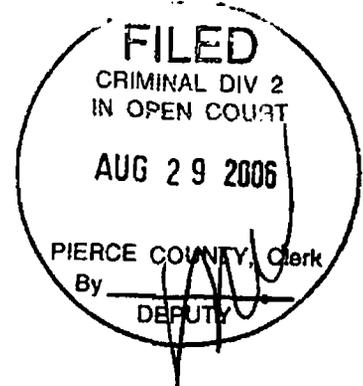
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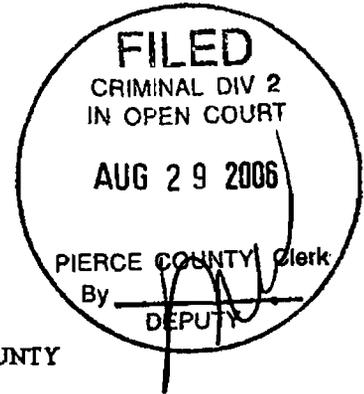
County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

KEVIN STOCK, Clerk  
By: \_\_\_\_\_ Deputy

JP





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

JUDGMENT AND SENTENCE (JS)

YUNG-CHENG TSAI

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

AUG 29 2006

SID: 20513465  
DOB: 12/16/80

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 02/27/06 7-27-06 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	UPCS W/ID (J75) Marijuana - Schedule I	69.50.401(1)(2)(e)	NONE	02/15/06	060460362 TPD

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Original Information

The court finds that the offender has a chemical dependency that has contributed to the offense(s).  
RCW 9.94A.

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

06-9-10034-5

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	VEHIC HOMICIDE	05/29/02	Pierce County, WA	06/24/01	A	FEL
2	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL
3	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	I	6+ - 18 MOS	NONE	6+ - 18 MOS	5 YRS

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts \_\_\_\_\_ [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).  
 PCV \$ 500.00 Crime Victim assessment  
 DNA \$ 100.00 DNA Database Fee  
 PUB \$ \_\_\_\_\_ Court-Appointed Attorney Fees and Defense Costs  
 FRC \$ 200.00 Criminal Filing Fee  
 FCM \$ 1000.00 Fine  
 CLF \$ \_\_\_\_\_ Crime Lab Fee [ ] deferred due to indigency  
 CDF/DFA-DFZ \$ 250.00 Drug Investigation Fund for Tacoma PD (agency)  
 WFR \$ \_\_\_\_\_ Witness Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ 2050.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing. per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:  
 [ ] shall be set by the prosecutor.  
 [ ] is scheduled for \_\_\_\_\_  
 [ ] defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_  
 [ ] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

See Appendix E
forfeit car and in property room

4.11 BOND IS HEREBY EXONERATED

4.12 JAIL ONE YEAR OR LESS. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

11 days/months on Count I days/months on Count \_\_\_\_\_  
days/months on Count \_\_\_\_\_ days/months on Count \_\_\_\_\_

Actual number of months of total confinement ordered is: 11 months

[X] CONSECUTIVE/CONCURRENT SENTENCES: RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [ ] the sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

[ ] PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: \_\_\_\_\_

[ ] Work Crew RCW 9.94A.135 [ ] Home Detention RCW 9.94A.180, .190

[ ] Work Release RCW 9.94A.180

[ ] CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

[ ] BTC Facility

[ ] ALTERNATIVE CONVERSION. RCW 9.94A.680. \_\_\_\_\_ days of total confinement ordered above are hereby converted to \_\_\_\_\_ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than \_\_\_\_\_ hours per month.

[ ] Alternatives to total confinement were not used because of: \_\_\_\_\_

[ ] criminal history [ ] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

21 days

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4.13 **COMMUNITY [ ] SUPERVISION ~~X~~ CUSTODY.** RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in [ ] community supervision (Offense Pre 7/1/00) or ~~X~~ community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

Remain in prescribed geographic boundaries specified by the community corrections officer  Notify the community corrections officer of any change in defendant's address or employment

[ ] Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

Other conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

4.14 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**V. NOTICES AND SIGNATURES**

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

5.8 **OTHER:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 8-29-06

JUDGE

Print name

Sergio Armijo  
SERGIO ARMIJO

Deputy Prosecuting Attorney

Print name:

Jennifer Sievers

WSB #

35536

Attorney for Defendant

Print name:

Earl Fawcett

WSB #

17937

Defendant

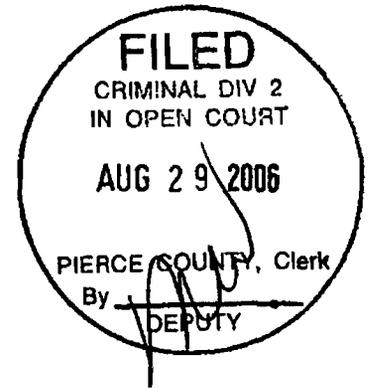
Print name:

Yung-Heng Tsai

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:

[Handwritten Signature]



Case Number: 06-1-00782-6 Date: November 28  
SerialID: 48837FFD-F20D-AA3E-5FEEF71E81210791  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

06-1-00782-6

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 06-1-00782-6

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**CARLA HIGGINS**

\_\_\_\_\_  
Court Reporter

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**APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE**

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall:

- \_\_\_ FTO 1) Refrain from committing new offenses;
- \_\_\_ FTO 2) Devote time to a specific employment or occupation;
- \_\_\_ FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- \_\_\_ FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall:

- 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- 2) Report as directed to the court and a community corrections officer;
- \_\_\_ 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- 4) Not purchase, possess, or use any controlled substances without a prescription from a licensed physician. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- 5) Refrain from associating with drug users or drug sellers;
- \_\_\_ 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;
- OTHER: Drug treatment as set by CCO.

Case Number: 06-1-00782-6 Date: November 28,  
SerialID: 48837FFD-F20D-AA3E-5FEEF71E81210791  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

06-1-00782-6

**IDENTIFICATION OF DEFENDANT**

SID No. 20513465  
(If no SID take fingerprint card for State Patrol)

Date of Birth 12/16/80

FBI No. 736963NB6

Local ID No. UNKNOWN

PCN No. UNKNOWN

Other

Alias name, SSN, DOB: \_\_\_\_\_

<b>Race:</b>	<input checked="" type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<b>Ethnicity:</b>	<input type="checkbox"/> Hispanic	<b>Sex:</b>	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other :		<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/>	<input type="checkbox"/>	Female

**FINGERPRINTS**

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Mitchell Weiss Dated: 8-29-06

DEFENDANT'S SIGNATURE: \_\_\_\_\_

DEFENDANT'S ADDRESS: \_\_\_\_\_

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48837FFD-F20D-AA3E-5FEEF71E81210791 containing 13 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

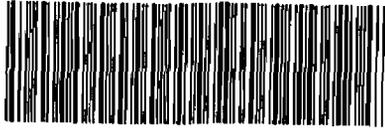
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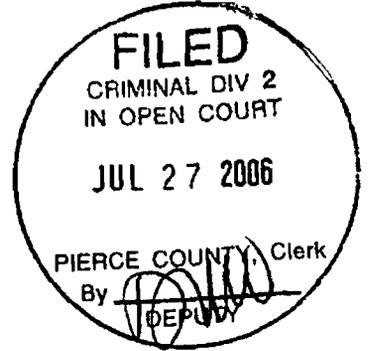
**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48837FFD-F20D-AA3E-5FEEF71E81210791. The copy associated with this number will be displayed by the Court.

## **APPENDIX “B”**

*Statement of Defendant on Guilty Plea*



06-1-00782-6 25872428 STTDFG 07-27-06



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,  
 Plaintiff,  
 vs.  
Yung Cheng Tsai Defendant.

Cause No. 06-1-00782-6

STATEMENT OF DEFENDANT ON  
 PLEA OF GUILTY  
 USE FOR NON-VIOLENT CRIMES  
 COMMITTED AFTER 7-1-00

1. My true name is: Yung Cheng Tsai
2. My age is: 25, DOB: 12/16/80.
3. I went through the 12th 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: Erik Bayer WSBA#: 14937

(b) I have received a copy of and I am charged in original Information with the crime(s) of:  
 Count I: Unlawful possession of a controlled substance, with intent to deliver  
 Elements: In the State of WA, unlawfully, knowingly, and knowingly possess, with intent to deliver to another, a controlled substance, classified under schedule I of the uniform controlled substance Act, contrary to RCW 69.50.401(1)(2)(c)

Count II: \_\_\_\_\_  
 Elements: In the State of WA, \_\_\_\_\_

(c) \_\_\_\_\_ Additional counts are addressed in Attachment 4(d).

5. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
  - (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE	MAXIMUM TERM AND FINE
1	3	6+ - 18	—	6+ - 18	0 - 12	\$4,100
2						

\* (V) VUCSA in protected zone, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes other current offenses, prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.  The parties stipulate the standard range is correct and may be relied upon.
- (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 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 prior to being sentenced.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, even if the result is a mandatory sentence of life imprisonment without the possibility of parole.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 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 amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, the costs of incarceration, and other legal financial obligations.
- (f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 (formerly RCW 9.94A.150) is longer, that will be the term of my community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Crimes Against Persons as defined by RCW 9.94A.411 (formerly 4A0(2))	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.505 (formerly 120(6)))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge;  The State and the defendant will jointly make this recommendation. 11 months in custody, \$200.00 rest, \$500.00 CVPA, \$250.00 Agency drug fund, \$100.00 DNA fee, \$1000.00 fine, Drug treatment per fto, 12 months community custody, no use or possession of controlled substances, no association with drug users or sellers, forfeit any items in property except earrings, keys and cell phone.

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

(i) 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. I am  am not  a United States citizen.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

(k) Public assistance will be suspended during any period of imprisonment.

(l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be assessed a \$100 DNA collection fee.

**NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS**

**DO NOT APPLY, THEY SHOULD BE STRICKEN.**

(m) The judge may sentence me as a **first-time offender** instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years of community custody, plus all of the conditions described in paragraph 5(f). 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.

(n) If this is a crime of **domestic violence** and I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(o) 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.

(p) The judge may sentence me under the special **drug offender sentencing alternative (DOSA)** if I qualify under RCW 9.94A.660, formerly RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 5(f). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. For offenses committed on or after June 8, 2000, if an offender receives a DOSA sentence and then fails to complete the drug offender sentencing alternative program or is administratively reclassified by the department of corrections, the offender shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall then be subject to a range of community custody and early release as specified in section 5(f) of the plea form.

(q) If the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

(r) If this crime involves the manufacture, delivery, or unlawful possession with the intent to deliver methamphetamine or amphetamine or unlawful possession of pseudoephedrine or anhydrous ammonia with intent to manufacture methamphetamine, a **mandatory methamphetamine clean-up fine of \$3,000.00** will be assessed. RCW 69.50.401(a)(1)(ii) or RCW 69.50.440.

(s) If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

(t) I understand that the offense(s) I am pleading guilty to include a **deadly weapon or firearm enhancement**. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

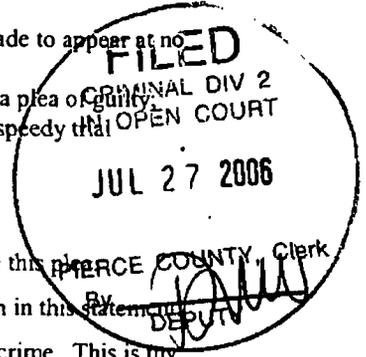
(u) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for **unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm**. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(v) I understand that if I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 826a.

6. I 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 the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.



7. I make this plea freely and voluntarily.

8. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

On February 15, 2006, in Pierce County, I knowingly possessed a unlabelled substance, marijuana, with the intent to deliver that marijuana to another person. I understand this was wrong and I am sorry.

If my statement is a Newton or Alfred Plea, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12.  I was given a copy and I read this plea statement.  My lawyer read this plea statement to me. Also, my lawyer has explained to me, and we have fully discussed, all of the above paragraphs. If I have any more questions about it, I understand I can and need to ask the judge when I enter my plea of guilty.

Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Defendant's Lawyer, WSBA# 21851

Approved for entry:

Jennifer Sievers  
Prosecuting Attorney, WSBA# 3536

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The court finds:

- (a)  The defendant had previously read the entire statement above and the defendant understood it in full; or
- (b)  The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (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 27 day of July, 2006.

Bryan E. Chushcoff  
Judge

BRYAN E. CHUSHCOFF

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838155-F20D-AA3E-5E06A9C3485BD5AF containing 4 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

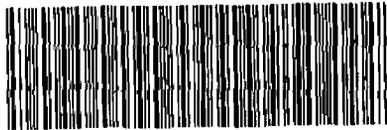
Dated: Nov 28, 2012 11:35 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48838155-F20D-AA3E-5E06A9C3485BD5AF. The copy associated with this number will be displayed by the Court.

# **APPENDIX “C”**

*Report DOC Closure*



06-1-00782-6 28547314 DOCC 11-01-07

FILED  
IN COUNTY CLERK'S OFFICE

A.M. NOV 1 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

COURT - SPECIAL  
5990/5256 SUPERVISION CLOSURE

<b>REPORT TO:</b>	The Honorable Sergio Armijo Pierce County Superior Court	<b>DATE:</b>	10/29/2007
<b>OFFENDER NAME:</b>	TSAI, Yungcheng	<b>DOC NUMBER:</b>	821442
<b>AKA:</b>	Tsai, Yung Cheng Tsai, Yung Cheng	<b>DOB:</b>	12/16/1980
<b>CRIME:</b>	Drugs-Mfg,Deliver,Poss.	<b>COUNTY CAUSE:</b>	06-1-00782-6 (AC)
<b>CONVICTION:</b>	Felony		
<b>SENTENCE:</b>	12 months supervision	<b>DATE OF SENTENCE:</b>	08/29/06
<b>LAST KNOWN ADDRESS</b>	11101 Se 208Th St Apt 18-32, C/O Shanel Mendigorin Kent, WA 98031	<b>TERMINATION DATE:</b>	10/29/2007
		<b>STATUS:</b>	Closed
<b>MAILING ADDRESS:</b>	10842 Se 208Th, Pmb 141 Kent, WA 98031	<b>CLASSIFICATION:</b>	OMB

Per RCW 9.94A and /or RCW 9.95.210, the offender does not meet the criteria for continued supervision by the Department of Corrections. Therefore, we have closed supervision interest in this cause.

The following information reflects the offender's compliance with the indicated Court ordered requirements.

If the Court schedules a hearing in this matter, a Community Corrections Officer will not be present for the hearing.

Case Number: 06-1-00782-6 Date: November 28, 2012  
 SerialID: 48837E86-F20D-AA3E-50559F980FBF874D  
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

Re: TSAI, Yungcheng  
 DOC #: 821442  
 10/29/2007 - Page 2 of 4

I. FINANCIAL	Amount Ordered	Amount Paid	Date of Last Payment	Amount Owed
Court Costs	\$200.00			
Victim Compensation	\$500.00			
Restitution	\$0.00			
Fine	\$1,000.00			
Attorney Fees	\$0.00			
Other	\$350.00			
Modified	\$0.00			
Interest				\$189.14
<b>Total</b>	<b>\$2,050.00</b>	<b>\$1,600.00</b>	<b>09/27/07</b>	<b>\$639.14</b>

DOC initiated Wage Garnishment, Notice of Payroll Deduction or Order to Withhold and Deliver:  Yes  No

**Comments:** The Department of Corrections will cease sending financial billing statements to the above listed offender as of the date the case is closed to the County Clerk for collections. The County Clerk will assume all collection responsibilities.

#### II. COMMUNITY SERVICE HOURS

1. Number of Hours Ordered: 0
2. Satisfactory Completion Date:  
Date of Last Contribution: 08/29/06
3. Number of Hours Completed: 0

**Comments:** The Department of Corrections will no longer be providing industrial insurance coverage through the Department of Labor and Industries at the community service work site for the above listed offender.

#### III. WARRANT STATUS

- An active bench warrant exists.  
 It is requested the Court quash the warrant due to case closure.

#### IV. COMMENTS

Case Number: 06-1-00782-6 Date: November 28, 2012  
 SerialID: 48837E86-F20D-AA3E-50559F980FBF874D  
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

Re: TSAI, Yungcheng  
 DOC #: 821442  
 10/29/2007 - Page 3 of 4

**TREATMENT TRACKING**

Treatment	Start Date	End Date	Completion
SUB ABUSE TREATMENT	06/05/07	10/29/07	SUPERVISION ENDS

**STIPULATED AGREEMENTS**

None
------

**SRA VIOLATIONS WITH COURT SANCTIONS**

Violation Report Date	Violation Type(s) with Guilty Finding(s)	Sanction Date	Sanction to Jail?
None			

**COMMUNITY CUSTODY INMATE/PRISON AND INDETERMINATE SENTENCING REVIEW BOARD VIOLATIONS**

Violation Date	Conditions Violated	Hearing Group	Hearing Date	Sanctions	Days Ordered/ Suspended	Sanction Start Date
None						

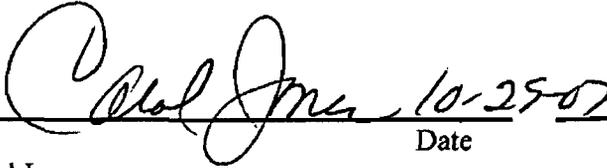
**COURT ORDERED CONDITIONS**

Order Type	Condition	Effective Date	End Date
COURT ORDR	COMPLY AFFIRM ACTS	08/29/06	
COURT ORDR	PAY LFO FEES	08/29/06	
COURT ORDR	CHANGE OF EMPLOYMENT	08/29/06	
COURT ORDR	OBHEY/COMPLY DOC INST	08/29/06	
COURT ORDR	OBHEY ALL LAWS	08/29/06	
COURT ORDR	DNA TESTING	08/29/06	
COURT ORDR	CCO REPORT	08/29/06	
COURT ORDR	CONTROLLED SUB USE	08/29/06	
COURT ORDR	DRUG PARAPHENALIA	08/29/06	
COURT ORDR	FIREARMS/DEADLY WEAP	08/29/06	
COURT ORDR	URINALYSIS	08/29/06	
COURT ORDR	GEOGRAPHIC BOUNDARY	08/29/06	
COURT ORDR	DRUG POSSESS	08/29/06	
COURT ORDR	ASSOC W/DRUG USERS	08/29/06	
COURT ORDR	SUB ABUSE TREATMENT	08/29/06	

Re: TSAI, Yungcheng  
DOC #: 821442  
10/29/2007 - Page 4 of 4

*I certify or declare under penalty of perjury of the laws of the state of Washington that the foregoing statements are true and correct to the best of my knowledge and belief based on the information available to me contained in the Judgement & Sentence and Department of Corrections file material as of the date this report was submitted.*

**Submitted By:**

  
Date

Carol Jones  
Community Corrections Officer / Records Staff  
Kent Field Office  
606 W Gowe ST  
Kent WA 98032-5744  
Telephone: (253)372-6440

lz / LKZ / 10/29/2007 Wizard

Distribution: ORIGINAL - Court

**COPY :**

- Prosecuting Attorney
- Clerks Office
- DOC Regional Correctional Records Manager for imaging
- Central File/Field File

*The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.17 and RCW 40.14.*

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48837E86-F20D-AA3E-50559F980FBF874D containing 4 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48837E86-F20D-AA3E-50559F980FBF874D. The copy associated with this number will be displayed by the Court.

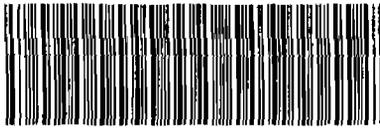
## **APPENDIX “D”**

*Motion to Withdraw*

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 488384C0-F20D-AA3E-5A20B76102D82636  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

**ORIGINAL**

Dept. 4  
Judge Chushcoff



06-1-00782-6 30175508 MTWP 07-22-08

FILED  
IN COUNTY CLERK'S OFFICE

JUL 21 2008 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

YUNG-CHENG TSAI,

Defendant.

CASE NO: 06-1-00782-6

**DEFENDANT'S MOTION TO  
WITHDRAW GUILTY PLEA**

TO: Clerk of the Court  
AND TO: Prosecuting Attorney, Appeals Division

This motion is based upon the attachments enclosed and the anticipated testimony of Yung-Cheng Tsai.

**I. PROCEDURAL HISTORY**

On February 16, 2006, Yung-Cheng Tsai was charged in Pierce County Superior Court with one count of Unlawful Possession of Controlled Substance With Intent to Deliver - Marijuana in #06-1-00782-6.

See Attachment A. On February 21, 2006, Erik Bauer of Bauer and Balerud Law Firm filed a Notice Of Appearance on the criminal case. See Attachment B. On April 24, 2006, Mr. Tsai contacted immigration attorney Vicky Dobrin, who had represented him in an earlier immigration proceeding. See Attachment C.

Mr. Tsai hired Ms. Dobrin to consult with Mr. Bauer due to Mr. Tsai's concerns regarding his immigration status. See Attachment D. On April 28, 2006, Ms. Dobrin advised Mr. Baer that a conviction for Unlawful

**STIRBIS & STIRBIS, L.L.C.**

4119 Sixth Avenue  
Tacoma, WA 98406 (253)573-9111

Possession of a Controlled Substance With Intent to Deliver is an aggravated felony that would bar Mr. Tsai from any form of discretionary relief from deportation. See Attachment C.

On the July 27, 2006 plea date, Mr. Bauer sent an associate from his firm to handle the guilty plea. See Attachments E,D. According to the guilty plea paperwork, the court checked the sentence indicating that the defendant's attorney had read the statement to him. Paragraph i of page 2 of the guilty plea form indicated that Mr. Tsai is not a United States citizen. See Attachment E. That paragraph also contained the language regarding deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Mr. Tsai spoke with the associate about his "concern that the plea may impact...[his] immigration status and inquired whether this had been discussed. The associate indicated that to plead as charged should not jeopardize...[his] immigration status." See Attachment D, paragraph 6. Based on the associate's assurances, Mr. Tsai plead guilty as originally charged to Unlawful Possession of a Controlled Substance With Intent to Deliver - Marijuana. See Attachments A, E.

On August 29, 2006, Mr. Tsai was sentenced to 11 months in custody, a middle range sentence with his standard range being 6+ to 18 months. See Attachment F. Mr. Bauer represented Mr. Tsai at the sentencing hearing.

On October 30, 2007, a Notice To Appear advising Mr. Tsai of the charges against him was issued by the INS. See Attachment G. Between October 30, 2007 and November 3, 2007, the Notice to Appear was served on Mr. Tsai. Mr. Tsai contacted Immigration Attorney Kaaren Barr on November 3, 2007 regarding the INS issue. Id. On November 30, 2007, Mr. Tsai hired Stirbis & Stirbis law firm to file this motion. See Attachment G.

## II. QUESTIONS PRESENTED

- A. **WHETHER THE COURT SHOULD GRANT MR. TSAI'S MOTION TO WITHDRAW HIS GUILTY PLEA UNDER THE DOCTRINE OF EQUITABLE TOLLING OF RCW 10.73.090 WHEN MR. TSAI ACTED DILIGENTLY IN ATTEMPTING TO WITHDRAW HIS GUILTY PLEA BY SEEKING COUNSEL A MONTH AFTER BEING ADVISED THAT DEPORTATION PROCEDURES WERE BEING INSTIGATED DUE TO SAID GUILTY PLEA? YES.**

**STIRBIS & STIRBIS, L.L.C.**

4119 Sixth Avenue  
 Tacoma, WA 98406 (253)573-9111

MOTION TO WITHDRAW GUILTY PLEA -2

**B. WHETHER THE COURT SHOULD GRANT MR. TSAI'S MOTION TO WITHDRAW HIS GUILTY PLEA WHEN HE PLEAD GUILTY ONLY AFTER BEING REASSURED BY HIS CRIMINAL DEFENSE ATTORNEY THAT A PLEA TO UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER- MARIJUANA WOULD NOT JEOPARDIZE HIS IMMIGRATION STATUS? YES.**

**C. WHETHER THE COURT SHOULD GRANT MR. TSAI'S MOTION TO WITHDRAW HIS GUILTY PLEA WHEN HIS ATTORNEY'S INCORRECT ANSWER TO MR. TSAI'S QUESTION ABOUT DEPORTATION DENIED MR. TSAI DUE PROCESS AND NEGATED THE VOLUNTARINESS OF THE PLEA? YES.**

1  
3 **III. LAW AND ARGUMENT**

5 Under RCW 10.73.090 (1) No petition or motion for collateral attack on a judgment and sentence  
7 in a criminal case may be filed more than one year after the judgment becomes final if the judgment and  
9 sentence is valid on its face and was rendered by a court of competent jurisdiction. "Collateral attack"  
11 means any form of post conviction relief other than a direct appeal and includes a motion to withdraw a  
13 guilty plea. The doctrine of equitable tolling permits a court to allow an action to proceed when justice  
15 requires it, even though a statutory time period has nominally elapsed. *State v. Duvall*, 86 Wash.App. 871,  
17 874, 940 P.2d 671, (1997), review denied, 134 Wash.2d 1012, 954 P.2d 276 (1998). "Appropriate  
19 circumstances generally include 'bad faith, deception, or false assurances by the defendant, and the exercise  
21 of diligence by the plaintiff.'" *Id.* at 875, 940 P.2d 671 (quoting *Finkelstein v. Sec. Props., Inc.*, 76  
23 *Wash.App.* 733, 739-40, 888 P.2d 161 (1995)).

25 **A. MR. TSAI'S MOTION TO WITHDRAW HIS GUILTY PLEA IS TIMELY BASED ON EQUITABLE TOLLING OF THE TIME LIMIT ON COLLATERAL ATTACKS.**

27 The principle of equitable tolling was originally applied in civil cases, but at least four criminal cases  
29 have also applied it. *State v. Littlefair*, 112 Wash.App. 749, 51 P.3d 116 (Div. II 2002), *In re Hoisington*,  
31 99 Wash.App. 423, 993 P.2d 296, *See Generally Duvall*.

33 In *Littlefair*, the defendant pled guilty to Unlawful Manufacturing of Marijuana after his attorney  
35 placed XXX's in front of the paragraph warnings of possible deportation as a consequence of a plea.  
37 Reasonably, Littlefair did not think that the stricken sections applied to him. Until the Immigration and  
39

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Tacoma, WA 98406 (253)573-9111

Naturalization Service ("INS") notified him that he was subject to deportation, Littlefair was unaware that deportation was a consequence of his plea.

The court found that the one-year time period in RCW 10.73.090 should be equitably tolled from the date of Littlefair's plea to the date on which he first discovered that deportation was a consequence of his plea (over 2 years had elapsed). The court held that Littlefair's motion to withdraw his plea was not time-barred. In the case at bar, it is true that Mr. Tsai's criminal defense attorney did mark an X next to 'not a United States citizen' and the warning language regarding immigration and deportation. But when Mr. Tsai asked the criminal defense attorney representing him at the plea date if Mr. Tsai's immigration status would be jeopardized, the attorney replied, 'no.' Mr. Tsai had specifically hired immigration attorney Ms. Dobrin, to research this issue and confer with Mr. Bauer. Ms. Dobrin had advised Mr. Bauer of alternate pleas that would give Mr. Tsai the chance to avoid certain deportation. See Attachment C.

Therefore, similar to *Littlefair*, the one-year time period should be equitably tolled from the date of Mr. Tsai's plea on July 27, 2006 to the date that the INS notified him of the deportation consequences of the plea (approximately November 1, 2007 but no later than November 3, 2007). As the motion to withdraw the guilty plea was filed approximately eight months later, it was well within the one-year window.

Clearly Mr. Tsai acted diligently in consulting an immigration attorney within four days of finding out the deportation consequences of his plea. He also hired a criminal defense attorney to move to withdraw his guilty plea within a month of finding out the deportation consequences. The motion to withdraw Mr. Tsai's guilty plea was filed timely when taking into account the equitable tolling principle. Given that the motion is not time-barred, and because Mr. Tsai was significantly prejudiced by the misrepresentation of his criminal defense attorney, the court should grant the motion to withdraw the guilty plea.

#### **B. INEFFECTIVE ASSISTANCE OF COUNSEL**

A defendant bears the burden of showing he or she did not receive effective assistance of counsel. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). Ineffective assistance of counsel can be established by meeting a two-part test. First, a defendant must prove that his counsel's performance fell

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MOTION TO WITHDRAW GUILTY PLEA -4

below an objective standard of reasonableness. Second, the defendant must prove that the deficiency in his counsel's performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 688, 692, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), *US v. Kwan*, 407 F.3d 1005, 1014-1015 (9<sup>th</sup> Cir. 2005). If a defendant can establish that he was prejudiced by his attorney's deficient performance, a violation of a defendant's Sixth Amendment rights can be shown. The determinative question is whether there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Specifically, a defendant meets that burden by showing that his counsel affirmatively misadvised him about even a collateral consequence of pleading guilty, and that he would not have pled guilty if he had received correct advice. *State v. Stowe*, 71 Wn.App. 182, 187-88, 858 P.2d 267 (1993); See also *Holley*, 75 Wn.App. at 198.

### 1. Deficient Performance

An attorney's failure to advise a client of the immigration consequences of a conviction, without more, does not constitute ineffective assistance of counsel under *Strickland*. *United States v. Fry*, 322 F.3d 1198, 1200 (9<sup>th</sup> Cir.2003). However, when an attorney does not merely refrain from advising a client regarding the immigration consequences of a conviction, but, instead, responds to specific inquiries regarding the immigration consequences, an affirmative representation is being made. If that attorney's responses are false, then an affirmative misrepresentation has been made.

In *United States v. Kwan*, the Ninth Circuit followed the Second Circuit's lead in determining that when an attorney misleads his or her client about the immigration consequences of a conviction, counsel performance is objectively unreasonable under contemporary standards for attorney competence. *Kwan* at 1015, 1016. That counsel may have misled a client out of ignorance is no excuse. *Id.* It is a basic rule of professional conduct that a lawyer must maintain competence by keeping abreast of changes in the law and its practice. See, e.g., ABA Model Rules of Professional Conduct, Rule 1.1[6]. In the *Kwan* case, the attorney was a criminal defense attorney and not an immigration attorney. However, the court found that because he told his client that he had knowledge and experience regarding the immigration consequences of criminal convictions, he had a professional responsibility to inform himself and his client of significant

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MOTION TO WITHDRAW GUILTY PLEA -5

changes in the law that drastically affected the immigration consequences of his client's plea.

Mr. Tsai placed particular emphasis on immigration consequences in deciding whether or not to plead guilty. This can be shown by the fact that he hired an immigration attorney to research the consequences of a plea. That immigration attorney advised Mr. Tsai's criminal defense attorney of her opinions regarding a conviction as charged. See Attachment C. Mr. Tsai asked the criminal defense attorney who was present at the plea to confirm that there were no immigration implications to pleading as charged in the original information. Only after receiving the attorney's assurances did Mr. Tsai go through with the plea. Consequently, had Mr. Tsai been aware of the deportation consequences of his conviction, he would have explored the option of renegotiating his plea agreement.

## 2. Prejudice

In the *Strickland* prejudice analysis, the determinative question is whether there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Glover v. United States*, 531 U.S. 198, 202-03, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001). To demonstrate this, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." *Strickland* at 693. In the present case, but for defense counsel's deficient performance, the proceeding would have had a different result. Had the defense attorney at the plea correctly answered Mr. Tsai's question regarding the immigration implications, Mr. Tsai would have explored the option of renegotiating his plea agreement. Consequently, the second prong of *Strickland* has been met in this case. Taken together, these facts establish that but for counsel's deficient performance, there is a reasonable probability that Mr. Tsai would not have gone through with his guilty plea.

## C. DUE PROCESS VIOLATION

Due process requires that a defendant's guilty plea be knowing, voluntary, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *In Re the Matter of the Personal Restraint of Isadore*, 151 Wn.2d 294, 297, 88 P.3d 390 (2004). CrR 4.2 provides further safeguards for guilty pleas. "The court shall not accept a plea of guilty, without first determining that it is made voluntarily,

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Tacoma, WA 98406 (253)573-9111

MOTION TO WITHDRAW GUILTY PLEA -6

competently, and with an understanding of the nature of the charge and the consequences of the plea.” CrR 4.2(d). A defendant does not knowingly make a guilty plea when he bases that plea on misinformation regarding sentencing consequences. *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). CrR 7.8 governs post-judgment motions to withdraw a guilty plea and allows the trial court to relieve a party from a final judgment if “[t]he judgement is void” or for “[a]ny other reason justifying relief from operation of the judgement. CrR 7.8(b)(4)-(5).

1 In this case, Mr. Tsai did not make a knowing, intelligent plea because although the language in the  
3 plea warned of jeopardizing immigration status, the defense attorney at the plea hearing made  
5 representations contrary to that warning. Additionally, as Mr. Tsai had hired an immigration attorney to  
7 explore implications of a criminal conviction, it was reasonable for him to rely on his criminal defense  
9 attorney’s assertions. As the attached declaration shows, Mr. Tsai’s immigration attorney did advise his  
11 criminal defense attorney of the implications to a plea to the original information. See Attachment C.

13 As a common sense argument, Mr. Tsai would have explored other alternatives to a plea to his  
15 original charge had not been misinformed by his criminal defense attorney. The judgment and sentence  
17 shows that Mr. Tsai did not receive a lenient period of imprisonment; he was sentenced to the middle of his  
19 standard range. See Attachment F. No charges were dismissed in exchange for his plea, nor was the charge  
21 amended down, as often occurs in plea negotiations when a defendant agrees to plead guilty and relieve the  
23 State of the burden of bringing a case to jury trial.

#### 25 CONCLUSION

27 Mr. Tsai’s motion to withdraw his guilty plea should not be time-barred by RCW 10.73.090(1),  
29 because his circumstances warrant equitable tolling of the statute from the date of the sentencing on August  
31 29, 2006 to the date that he first discovered the deportation consequences of his plea (between October 30,  
33 2007 and November 3, 2007). Therefore, the court should accept the motion to withdraw his guilty plea as  
35 timely.

37 Mr. Tsai has satisfied the two-part Strickland test for ineffective assistance of counsel. Mr. Tsai

39 **STIRBIS & STIRBIS, L.L.C.**

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41 MOTION TO WITHDRAW GUILTY PLEA -7

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1 asked the criminal defense attorney who was present at the plea to confirm that there were no immigration  
2 implications to pleading as charged in the original information. The associate indicated that to plead as  
3 charged should not jeopardize his immigration status. Only after receiving the attorney's assurances did Mr.  
4 Tsai go through with the plea. The deficient performance prong was met due to the misrepresentation by  
5 defense counsel as to the immigration consequences. The prejudice prong was also met, because if the  
6 defense attorney at the plea correctly answered Mr. Tsai's question regarding the immigration implications,  
7 Mr. Tsai would have explored the option of renegotiating his plea agreement. Based on ineffective  
8 assistance of counsel, Mr. Tsai's Sixth Amendment rights were violated. Therefore, the court should permit  
9 him to withdraw his guilty plea.

10 Finally, the court should allow Mr. Tsai to withdraw his guilty plea based on a violation of his due  
11 process rights. His plea was not made intelligently or knowingly because he was misinformed as to the  
12 consequences of the plea to the original information.

13 Defense respectfully requests that the court grant the motion to withdraw Mr. Tsai's guilty plea.

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17 Respectfully submitted on this 19<sup>th</sup> day of July, 2008.

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21 **STIRBIS & STIRBIS, L.L.C.**

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24 Maria Stirbis WSBA #26048  
25 Attorney for Defendant  
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40 **STIRBIS & STIRBIS, L.L.C.**

41 4119 Sixth Avenue  
42 Tacoma, WA 98406 (253)573-9111

43 MOTION TO WITHDRAW GUILTY PLEA -8  
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FILED  
IN COUNTY CLERK'S OFFICE

ATTACHMENT A

A.M. FEB 16 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK County Clerk  
BY [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG-CHENG TSAI,

INFORMATION

Defendant.

496 48961

DOB: 12/16/1980  
PCN#: 538678139

SEX : MALE  
SID#: 20513465

RACE: ASIAN/PACIFIC ISLAND  
DOL#: WA TSAI\*Y\*202RW

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse YUNG-CHENG TSAI of the crime of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, committed as follows:

That YUNG-CHENG TSAI, in the State of Washington, on or about the 15th day of February, 2006, did unlawfully, feloniously, and knowingly possess, with intent to deliver to another, a controlled substance, to-wit: Marijuana, classified under Schedule I of the Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(c), and against the peace and dignity of the State of Washington.

DATED this 16th day of February, 2006.

TACOMA POLICE DEPARTMENT  
WA02703

GERALD A. HORNE  
Pierce County Prosecuting Attorney

cto

By:

[Signature]  
CORT T. O'CONNOR  
Deputy Prosecuting Attorney  
WSB#: 23439

INFORMATION- 1

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

1 NO. 06-1-00782-6  
2 DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

3 CORT T. O'CONNOR, declares under penalty of perjury:

4 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police  
5 report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number  
6 060460362;

6 That the police report and/or investigation provided me the following information;

7 That in Pierce County, Washington, on or about the 15th day of February, 2006, the defendant,  
8 YUNG-CHENG TSAI, did commit the following acts:

9 On February 15, 2006, Lakewood Police Officers executed a search warrant on a drug house  
10 located at 1302 106<sup>th</sup> Street Court East in Parkland. During the search, officers found marijuana in every  
11 room except the bathroom. There were numerous marijuana buds, roaches, and smoking devices in plain  
12 sight throughout the residence. There was a vehicle in the garage that contained three large bags of  
13 marijuana with an estimated weight of over one pound each. Samples of the marijuana found throughout  
14 the residence field tested positive for marijuana.

15 In TSAI'S bedroom, officers found a lock box that contained evidence of distribution of  
16 marijuana including a ledger with names and amounts owed, a digital scale, and marijuana. \$469 in cash  
17 was found on TSAI'S person at the time of arrest.

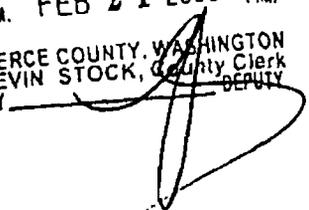
18 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
19 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

20 DATED: February 16, 2006  
21 PLACE: TACOMA, WA

22   
23 \_\_\_\_\_  
24 CORT T. O'CONNOR, WSB# 23439

FILED  
IN COUNTY CLERK'S OFFICE

A.M. FEB 21 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTY

ATTACHMENT B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, )  
Plaintiff, )  
v. )  
YUNG-CHENG TSAI, )  
Defendant. )

NO. 06-1-00782-6

NOTICE OF APPEARANCE;  
REQUEST FOR DISCOVERY

TO: PROSECUTING ATTORNEY'S OFFICE;

AND TO: CLERK OF THE COURT:

PLEASE TAKE NOTICE that ERIK BAUER of the Law Offices of Bauer & Balerud, Attorneys at Law, hereby appears as Counsel for the defendant, YUNG-CHENG TSAI, hereby requests discovery pursuant to CrR 4.7.

DATED this 21<sup>st</sup> day of February, 2006.

 #36844 for Bauer  
ERIK BAUER  
WSB #14937  
Attorney for Defendant

ORIGINAL

THE LAW OFFICES OF  
BAUER & BALERUD  
215 Tacoma Avenue South  
Tacoma, Washington 98402  
(253) 383-2000 or (360) 895-1500  
FAX (253) 383-0154

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 488384C0-F20D-AA3E-5A20B76102D82636  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

ATTACHMENT C

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

STATE OF WASHINGTON,

Plaintiff,

v.

YUNG-CHENG TSAI,

Defendant.

CASE NO.: 06-1-00782-6

DECLARATION OF VICKY  
DOBRIN

I, Vicky Dobrin, am over the age of eighteen and competent to testify in this matter.

1. I am an immigration attorney in private practice at Dobrin & Han, PC in Seattle, Washington. I am admitted to practice by the Washington State Bar, and my state bar number is 28554. My business address is 705 Second Avenue, Suite 610, Seattle, Washington 98104.

2. Mr. Tsai was placed in removal proceedings in 2005, as a result of a prior criminal conviction. I represented him in those removal proceedings. On April 22, 2005, those proceedings were terminated by an immigration judge, who determined that Mr. Tsai was not subject to deportation. Because I represented Mr. Tsai in his prior removal proceedings, I am familiar with his immigration history.

3. I spoke to Mr. Tsai on April 24, 2006, after my representation of him had ceased. He told me that he was charged with possession of marijuana with the intent to deliver. I told Mr. Tsai that if he pled guilty or were found guilty of this charge, I believed it would constitute an aggravated felony under the immigration law. I further told Mr. Tsai that if he were convicted of an aggravated felony, he would be deportable and ineligible to apply for discretionary relief from deportation. During that meeting, we also discussed possible alternate pleas that would allow him to either avoid deportation or at least be eligible for discretionary relief from deportation.

Declaration of Vicky Dobrin

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 488384C0-F20D-AA3E-5A20B76102D82636  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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4. On April 28, 2006, I spoke to Mr. Tsai's attorney Eric Bauer. I told Mr. Bauer essentially the same thing I had told Mr. Tsai. In particular, I told him that a conviction for possession of marijuana with the intent to deliver is an aggravated felony that would bar Mr. Tsai from any form of discretionary relief from deportation. I also spoke to Mr. Bauer about alternate pleas that would give Mr. Tsai the chance to avoid certain deportation.

Dated: March 6, 2008

  
Vicky Dobrin

Declaration of Vicky Dobrin

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile



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5. At the time of the plea, Mr. Bauer sent one of his associates to handle the guilty plea.

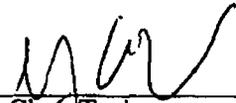
6. I spoke to the associate about my concern that the plea may impact my immigration status and inquired whether this had been discussed with Mr. Bauer. The associate indicated that to plead as charged should not jeopardize my immigration status. I signed the guilty plea form on July 27, 2006.

7. On August 29, 2006, I was sentenced on 06-1-00782-6.

8. After I was sentenced, I was notified that my conviction for Unlawful Possession of a Controlled Substance With Intent to Deliver subjected me to deportation.

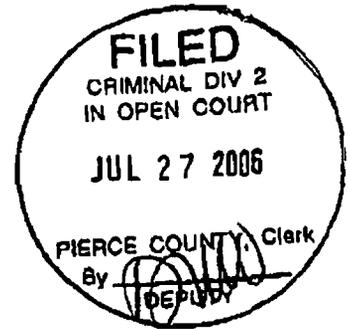
I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge.

DATED this 3<sup>rd</sup> day of March, at Seattle, 2008.

  
\_\_\_\_\_  
Yung Chen Tsai

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimil

**ATTACHMENT E**



**IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff,

Cause No. 06-1-00782-6

vs.

**STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
USE FOR NON-VIOLENT CRIMES  
COMMITTED AFTER 7-1-00**

Yung Chang Tsai Defendant.

1. My true name is: Yung Chang Tsai

2. My age is: 25 DOB: 12/16/80

3. I went through the 12th 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: Ent Bever WSBA#: 14937

(b) I have received a copy of and I am charged in original information with the crime(s) of:

Count I: Unlawful possession of a controlled substance with intent to deliver  
Elements: In the State of WA, unlawfully, knowingly, and knowingly possess, with intent to deliver to another, a controlled substance, classified under schedule I of the uniform controlled substance Act, including RLW 69.50.401(4)(2)(a)

Count II:

Elements: In the State of WA.

(c) Additional counts are addressed in Attachment 4(d).

5. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including credit/corrections)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE	MAXIMUM TERM AND FINE
1	3	6+ - 18	—	6+ - 18	0 - 12	\$y / 1ok
2						

\* (V) VUCSA in protected zone. (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes other current offenses, prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.  The parties stipulate the standard range is correct and may be relied upon.
- (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 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 prior to being sentenced.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, even if the result is a mandatory sentence of life imprisonment without the possibility of parole.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 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 amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, the costs of incarceration, and other legal financial obligations.
- (f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 (formerly RCW 9.94A.150) is longer, that will be the term of my community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Crimes Against Person as defined by RCW 9.94A.411 (formerly .440(2))	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 9A.50 or 9A.52 RCW (Not sentenced under RCW 9.94A.303 (formerly .1206))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge:  The State and the defendant will jointly make this recommendation. 11 months of custody, \$250.00 state, \$500.00 C.V.P.A., \$250.00 Agency drug fund, \$100.00 DNA fee, \$1000.00 fine, Drug treatment per file, 12 month community custody, no use or possession of controlled substance, no association with drug users or sellers, prohibit any items in property except D earrings, keys and cell phone.

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

(i) 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. I am  am not  a United States citizen.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

(k) Public assistance will be suspended during any period of imprisonment.

(l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be assessed a \$100 DNA collection fee.

**NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS**

STATEMENT OF DEFENDANT ON PLEA OF GUILTY  
(NON-VIOLENT CRIMES AFTER 7-1-00)

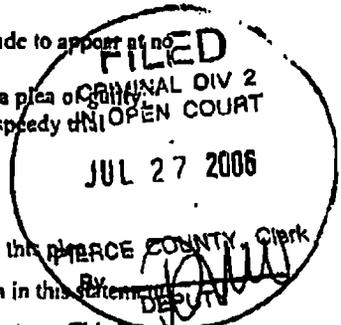
**DO NOT APPLY, THEY SHOULD BE STRICKEN.**

- (m) The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years of community custody, plus all of the conditions described in paragraph 5(f). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a proscribed course of study or occupational training.
- (n) If this is a crime of domestic violence and I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- (o) 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.
- (p) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660, formerly RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 5(f). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. For offenses committed on or after June 8, 2000, if an offender receives a DOSA sentence and then fails to complete the drug offender sentencing alternative program or is administratively reclassified by the department of corrections, the offender shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall then be subject to a range of community custody and early release as specified in section 5(f) of the plea form.
- (q) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (r) If this crime involves the manufacture, delivery, or unlawful possession with the intent to deliver methamphetamine, or amphetamine or unlawful possession of pseudoephedrine or anhydrous ammonia with intent to manufacture methamphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii) or RCW 69.50.440.
- (s) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- (t) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.
- (u) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- (v) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected, 20 U.S.C. §1091(r) and 21 U.S.C. § 826a.

6. I 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 the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.



7. I make this plea freely and voluntarily.

8. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: On February 15, 2006 in Pierce County I knowingly possessed a controlled substance, marijuana, with the intent to deliver that marijuana to another person. I understand this was wrong and I am sorry.

If my statement is a Newton or Alfred Plea, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12.  I was given a copy and I read this plea statement.  My lawyer read this plea statement to me. Also, my lawyer has explained to me, and we have fully discussed, all of the above paragraphs. If I have any more questions about it, I understand I can and need to ask the judge when I enter my plea of guilty.

[Signature]  
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]  
Defendant's Lawyer, WSBA# 24861

Approved for entry:

Jennifer Sievers  
Prosecuting Attorney, WSBA# 3536

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The court finds:

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

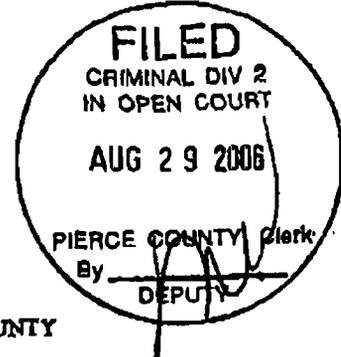
Dated this 27 day of July, 2006.

[Signature]  
Judge

BRYAN E. CHUSHCOFF

ATTACHMENT F

06-1-00782-6



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

JUDGMENT AND SENTENCE (JS)

YUNG-CHENG TSAI

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

AUG 29 2006

SID: 20513465  
DOB: 12/16/80

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 06-9-10034-5 7-27-06  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	UPCS W/ID (J75) Marijuana - Schedule I	69.50.401(1)(2)(e)	NONE	02/15/06	060460362 TPD

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Original Information

- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

06-9-10034-5

06-1-00782-6

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A.G.J ADULT JUV	TYPE OF CRIME
1	VEHIC HOMICIDE	05/29/02	Pierce County, WA	06/24/01	A	FEL
2	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL
3	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
[ ]	3	I	6+ - 18 MOS	NONE	6+ - 18 MOS	5 YRS

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.  
[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts \_\_\_\_\_ [ ] The defendant is found NOT GUILTY of Counts \_\_\_\_\_

06-1-00782-6

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTR/RN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 100.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ \_\_\_\_\_ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ 1000.00 Fine

CLF \$ \_\_\_\_\_ Crime Lab Fee [ ] deferred due to indigency

CDF/DFA-DFZ \$ 250.00 Drug Investigation Fund for Tacoma PD (agency)

WFR \$ \_\_\_\_\_ Witness Costs

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
 \$ 2050.00 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing per CCO RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:  
 [ ] shall be set by the prosecutor.  
 [ ] is scheduled for \_\_\_\_\_  
 [ ] defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_  
 [ ] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

06-1-00782-6

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.7 [ ] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

See Appendix E
forfeit confinement in property room

4.11 BOND IS HEREBY EXONERATED

06-1-00782-6

4.12 **JAIL ONE YEAR OR LESS.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

<u>11</u> days/months on Court	<u>I</u> days/months on Court	_____
_____ days/months on Court	_____ days/months on Court	_____

Actual number of months of total confinement ordered is: 11 months

**CONSECUTIVE/CONCURRENT SENTENCES:** RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

\_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.  the sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

\_\_\_\_\_

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

**PARTIAL CONFINEMENT.** Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: \_\_\_\_\_

- Work Crew RCW 9.94A.135
- Home Detention RCW 9.94A.180, 190
- Work Release RCW 9.94A.180

**CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

BTC Facility

**ALTERNATIVE CONVERSION.** RCW 9.94A.680. \_\_\_\_\_ days of total confinement ordered above are hereby converted to \_\_\_\_\_ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than \_\_\_\_\_ hours per month.

Alternatives to total confinement were not used because of: \_\_\_\_\_

criminal history  failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

21 days

06-1-00782-6

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4.13 **COMMUNITY**  **SUPERVISION**  **BY CUSTODY**. RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in  community supervision (Offense Pre 7/1/00) or  community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody, and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- Remain in prescribed geographic boundaries specified by the community corrections officer
- Notify the community corrections officer of any change in defendant's address or employment
- Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

Other conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589. The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here:

4.14 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

06-1-00782-6

**V. NOTICES AND SIGNATURES**

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A

5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

5.8 **OTHER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

06-1-00782-6

DONE in Open Court and in the presence of the defendant this date: 8-29-06

JUDGE

Print name

Sergio Armijo  
SERGIO ARMILJO

Jennifer Sievers  
Deputy Prosecuting Attorney

Print name: Jennifer Sievers

WSB # 35536

[Signature]  
Attorney for Defendant

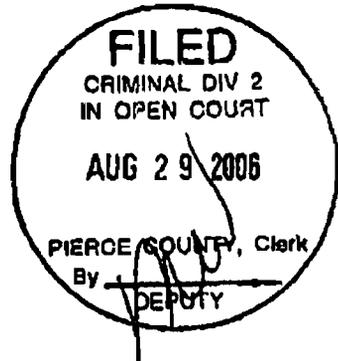
Print name: [Signature]

WSB # 17937

[Signature]  
Defendant  
Print name: Yung-Leng Tsai

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]



06-1-00782-6

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 06-1-00782-6

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**CARLA HIGGINS**

Court Reporter

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**APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE**

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall:

- FTO 1) Refrain from committing new offenses;
- FTO 2) Devote time to a specific employment or occupation;
- FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall:

- 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- 2) Report as directed to the court and a community corrections officer;
- 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- 4) Not purchase, possess, or use any controlled substances without a prescription from a licensed physician. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- 5) Refrain from associating with drug users or drug sellers;
- 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;
- OTHER: Drug treatment as set by CCO.



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I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge.

DATED this 20<sup>th</sup> day of June, at Tacoma,  
2008.

  
Maria Stirbis

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 488384C0-F20D-AA3E-5A20B76102D82636 containing 31 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM

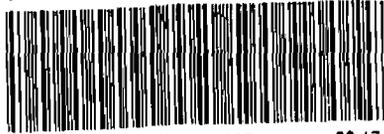


**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 488384C0-F20D-AA3E-5A20B76102D82636. The copy associated with this number will be displayed by the Court.

# **APPENDIX “E”**

*State’s Response*

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-F20F-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



06-1-00782-6 30537512 SRSP 09-17-08

**FILED**  
**IN COUNTY CLERK'S OFFICE**

**A.M. SEP 16 2008 P.M.**

**PIERCE COUNTY, WASHINGTON**  
**KEVIN STOCK, County Clerk**  
**BY \_\_\_\_\_ DEPUTY**

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG-CHENG TSAI,

STATE'S RESPONSE TO  
DEFENDANT'S MOTION TO  
WITHDRAW GUILTY PLEA

Defendant.

COMES NOW, the State of Washington, by and through the undersigned deputy prosecuting attorney and submits the following response to defendant's motion to withdraw guilty plea.

**I. QUESTIONS PRESENTED**

- A. Did the defendant meet his burden in establishing that the plea was not valid?
- B. Is the defendant time-barred from bringing a motion to vacate the judgment?
- C. Did the defendant receive ineffective assistance of counsel, where the defendant agreed to the plea after being informed by his attorney and the court that the consequences of pleading guilty could lead to deportation?
- D. Should the defendant's motion be transferred to the Court of Appeals for consideration as a personal restraint petition?

## II. ANSWERS

- 1  
2 A. No, the defendant cannot meet his burden to establish that the plea was not  
3 valid.  
4  
5 B. Yes, the defendant is time-barred from bringing a motion to vacate the  
6 judgment nearly two years after the judgment and sentence was imposed.  
7  
8 C. No, the defendant did not receive ineffective assistance of counsel when  
9 the defendant understood the possible immigration consequences  
10 associated with pleading guilty to Unlawful Possession of Controlled  
11 Substance With Intent to Deliver, Marijuana, and that the 11 month  
12 sentence was not an absolute guarantee under immigration law.  
13  
14 D. Yes, in the alternative, the defendant's motion to vacate the judgment  
15 should be transferred to the Court of Appeals for consideration as a  
16 personal restraint petition.  
17

## III. FACTS

11 On February 16, 2006, Yung-Cheng Tsai (hereinafter, Defendant) was charged in Pierce  
12 County with one count of Unlawful Possession of Controlled Substance With Intent to Deliver  
13 Marijuana (UPCS With Intent to Deliver, Marijuana). (Exhibit A).  
14

15 On July 27, 2006, the defendant pleaded guilty to UPCS With Intent to Deliver,  
16 Marijuana. (Exhibit B). The plea paperwork in Paragraph (i) included a warning regarding  
17 immigration consequences:

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

21 (Exhibit B, pg. 2).

22 The defendant marked the appropriate box with an "X" to designate he is not a United States  
23 citizen. (Exhibit B, pg. 2). Additionally, the defendant was informed by Mr. Moriarty, an  
24 attorney covering for Erik Bauer, the elements of the charges, the defendant's constitutional  
25

1 rights, and the sentencing options presented in the Statement of Defendant on Plea of Guilty.  
2 (Exhibit C, pgs. 4-5).

3 Further, the court questioned the defendant if the defendant knew how to read and write  
4 the English language, whether the defendant had gone over the Statement of Defendant on Plea  
5 of Guilty with Mr. Moriarty or Mr. Bauer, and that the defendant understood the Statement of  
6 Defendant on Plea of Guilty. (Exhibit C, pg. 5). After answering in the affirmative to each of  
7 the above-listed inquiries, the defendant told the court that he did not have any questions about  
8 the plea paperwork. (Exhibit C, pgs. 5-6). The defendant understood the nature of the charges  
9 and made a knowing, voluntary, and intelligent plea of guilty to UPCS With Intent to Deliver,  
10 Marijuana. (Exhibit C, pg. 8).

11 On August 29, 2006, the defendant was sentenced to 11 months for UPCS With Intent to  
12 Deliver, Marijuana. (Exhibit D). At the defendant's sentencing, Erik L. Bauer (attorney for the  
13 defendant) recognized on the record the defendant's immigration concerns, and the defendant  
14 knowingly agreed to the sentence:  
15

16 Mr. Bauer: ... Mr. Tsai is actually a native of Taiwan and so there's  
17 probably going to be some immigration issues later on, anyway.  
18 The 11 months is pretty important, and immigration law gives  
19 absolutely no guarantees. That was why we hit on that number.  
20 That gives him a slightly better argument in immigration issues  
21 later on.

22 The Court: Anything you want to say?

23 The Defendant: Yes. I know what I did was wrong and I'm sorry.

24 The Court: I'll follow the recommendation.

25 Mr. Bauer: Thank you, Your Honor.

(Exhibit D, pgs. 2-3).

1 The defendant has been contacted by the United States Immigration and Customs  
2 Enforcement, which is seeking to deport him as a result of this conviction. On July 21, 2008, the  
3 defendant filed a Criminal Rule 7.8(b)(4) motion to vacate his judgment. This motion is based  
4 on the defendant's claim, that at the time the judgment was entered, he had ineffective assistance  
5 of counsel.

#### 6 IV. LAW AND ARGUMENT

##### 7 **A. The defendant cannot meet his burden to establish that the plea was** 8 **not valid.**

9 A motion to vacate a judgment almost two years after the plea and sentence is a collateral  
10 attack on the judgment. Criminal Rule 7.8. Ordinarily a collateral attack on a judgment and  
11 sentence occurs in the form of a personal restraint petition and the petitioner has the burden to  
12 establish the facts by a preponderance of the evidence. State v. Davis, 25 Wn. App. 134, 138,  
13 605 P.2d 359 (1980). Further, RCW 10.40.200 has a presumption of validity regarding the  
14 notice of immigration consequences to the defendant where the plea form contains the  
15 advisement paragraph. The defendant may attempt to rebut that presumption, but he bears the  
16 burden of doing so by a preponderance of the evidence. State v. Holley, 75 Wn. App. 191, 200  
17 n.4, 876 P.2d 973 (1994). When the court has inquired on the record regarding the defendant's  
18 advisement of the terms to the plea agreement, the presumption of voluntariness has been met.  
19 State v. Perez, 33 Wn. App. 258, 261, 654 P.2d 708 (1982).

20  
21 In the present case, the court properly inquired on the record regarding the defendant's  
22 advisement of the terms to his plea agreement. See id; RCW 10.40.200. Specifically, the court  
23 questioned the defendant if the defendant knew how to read and write the English language,  
24 whether the defendant had gone over the Statement of Defendant on Plea of Guilty with Mr.  
25 Moriarty or Mr. Bauer, and that the defendant understood the Statement of Defendant on Plea of

1 Guilty. (Exhibit C, pg. 5). Additionally, the court asked the defendant if he understood the  
2 elements of the offense as set forth in Paragraph 4(b) of the Statement of Defendant on Plea of  
3 Guilty, as well as the rights the defendant was giving up as set forth in Paragraph 6. (Exhibit C,  
4 pg. 6).

5 In short, the defendant understood the terms of his plea agreement, the consequences  
6 associated with it, and voluntarily plead guilty to UPCS With Intent to Deliver, Marijuana. As  
7 such, the defendant has failed to establish his burden that the plea was not valid.

8 **B. The defendant is time barred from bringing a motion to vacate the**  
9 **judgment nearly two years after the judgment and sentence was**  
10 **imposed.**

11 Under Criminal Rule 7.8(b), a motion "shall be made. . . not more than one year after the  
12 judgment was entered. . . and is further subject to RCW 10.73.090, .100, .130 and .140."

13 Similarly, RCW 10.73.090 provides a one-year time limit on collateral attack in criminal cases.

14 The defendant's reliance on State v. Littlefair, is readily distinguishable from the present  
15 facts. The Littlefair court held that the one-year time period in RCW 10.73.090 should be  
16 equitably tolled from the date of his plea (October 17, 1996) to the date on which he first  
17 discovered that deportation was a consequence of his plea (November 2, 1998)." State v.  
18 Littlefair, 112 Wn. App. 749, 763, 51 P.3d 116 (2002). The court vacated the plea and sentence  
19 based on the fact that Littlefair was *never notified* that deportation was a possible consequence of  
20 his plea. State v. Littlefair, 112 Wn. App. at 765-769 (emphasis added). The court further  
21 reasoned that "RCW 10.40.200 gave Littlefair a statutory right, independent of any constitutional  
22 right, to be advised of the deportation consequences [of] his plea." Id at 769.

23 Additionally, the Littlefair court held that the collateral attack statute was more like a  
24 statute of limitations than a jurisdictional statute and that the civil doctrine of equitable tolling  
25

1 could therefore be applied to the criminal collateral attack statute, in a proper case. Id at 759.  
2 Equitable tolling is generally used only sparingly, when the plaintiff exercises due diligence and  
3 there is no evidence of bad faith, deception or false assurances by the defendant. State v.  
4 Carlstad, 150 Wn.2d 583, 593, 80 P.3d 587 (2003)

5 Presently, the defendant seeks relief from the judgment and sentence on the basis of  
6 Criminal Rule 7.8(b)(1) and (5), which provides relief from a final judgment for mistake or  
7 irregularity in obtaining an order, or for any other reason justifying relief from the operation of  
8 the judgment. However, the defendant's motion is brought nearly two years after the judgment  
9 and sentence were imposed, clearly beyond the one year time limit set forth in CrR 7.8.

10 In direct contrast to Littlefair, the present defendant understood that deportation was a  
11 possible consequence of his plea, and he still plead guilty. The defendant was aware that  
12 "immigration law [gave] absolutely no guarantees ... [and that 11 months would give the  
13 defendant] a slightly better argument in immigration issues later on." (Exhibit D, pg. 3).  
14 Further, the defendant made a knowing, voluntary, and intelligent plea of guilty to UPCS With  
15 Intent to Deliver, Marijuana, for a reduced sentence. As such, the defendant should be time  
16 barred from bringing a CrR 7.8(b) motion to vacate judgment and sentence nearly two years  
17 later.  
18

19 **C. The defendant did not receive ineffective assistance of counsel when**  
20 **the defendant understood the possible immigration consequences**  
21 **associated with pleading guilty to Unlawful Possession of Controlled**  
22 **Substance With Intent to Deliver, Marijuana, and that the 11 month**  
23 **sentence was not an absolute guarantee under immigration law.**

24 The denial of effective assistance of counsel in entering a guilty plea results in a manifest  
25 injustice, requiring the grant of permission to withdraw the plea. State v. Taylor, 83 Wn.2d 594,  
597, 521 P.2d 699 (1974); RCW 10.73.090. The defendant bears the burden of showing he or

1 she did not receive effective assistance of counsel. State v. McFarland, 127 Wn.2d 322, 335, 899  
2 P.2d 1251 (1995). A two-part test must be met to establish ineffective assistance of counsel: "(1)  
3 defense counsel's performance [fell] below an objective standard of reasonableness, and (2)  
4 whether this deficiency prejudice[d] the defendant." State v. Stowe, 71 Wn.App 182, 186, 858  
5 P.2d 267 (1993); Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 80 L. Ed.  
6 2d 674 (1984).

7 In the present case, the defendant plead guilty after being advised by Mr. Moriarty, an  
8 attorney covering for Erik Bauer, about the elements of the charges, the defendant's  
9 constitutional rights, and the sentencing options presented in the Statement of Defendant on Plea  
10 of Guilty. (Exhibit C, pgs. 4-5). Additionally, the court, on the record, inquired about the  
11 defendant's understanding of the plea paperwork and specifically asked the defendant if knew  
12 how to read and write the English language, whether the defendant had gone over the Statement  
13 of Defendant on Plea of Guilty with Mr. Moriarty or Mr. Bauer, the constitutional rights the  
14 defendant was giving up, the elements of the offense, and whether the defendant understood the  
15 Statement of Defendant on Plea of Guilty. (Exhibit C, pgs. 6-7). Also, the defendant was given  
16 the opportunity to address the court at his sentencing. (Exhibit D, pg. 3).

18 In direct contrast to the defendant's argument, there is no evidence that either Mr.  
19 Moriarty or Mr. Bauer ever advised the defendant that they had knowledge or experience  
20 regarding immigration consequences of criminal convictions. Rather, Mr. Bauer clearly stated  
21 on the record that the defendant was aware that "immigration law [gave] absolutely no  
22 guarantees ... [and that 11 months would give the defendant] a slightly better argument in  
23 immigration issues later on." (Exhibit D, pg. 3). The defendant was present at both the plea and  
24 the sentencing and was given the opportunity to ask for clarification or to inquire further about  
25

1 his immigration issues but failed to do so. Instead, the defendant agreed to the reduced sentence  
2 after being advised by both his counsel and the court about the plea paperwork. Additionally,  
3 there is nothing to suggest that either Mr. Moriarty or Mr. Bauer were deficient in representing  
4 the defendant, which may have prejudiced the defendant.

5 Thus, the defendant did not receive ineffective assistance of counsel and his judgment  
6 and sentence should be upheld.

7 **D. In the alternative, the defendant's motion to vacate judgment and**  
8 **sentence should be transferred to the Court of Appeals for**  
9 **consideration as a personal restraint petition.**

10 Under Criminal Rule 7.8(c)(2):

11 The court shall transfer a motion filed by a defendant to the Court  
12 of Appeals for consideration as a personal restraint petition unless  
13 the court determines that the motion is not barred by RCW  
14 10.73.090 and either (i) the defendant has made a substantial  
15 showing that he or she is entitled to relief or (ii) resolution of the  
16 motion will require a factual hearing.

17 CrR 7.8(c)(2).

18 Presently, the defendant's motion is time barred by RCW 10.73.090, based on the fact  
19 that the motion is brought nearly two years after the judgment and sentence were entered.

20 However, if the court finds that the motion is not barred by RCW 10.73.090 and either Criminal  
21 Rule 7.8(c)(2)(i) or (ii) is met, then the court may rule on the merits of the case. Otherwise, the  
22 court should transfer defendant's motion to vacate the judgment and sentence to the Court of  
23 Appeals for consideration as a personal restraint petition.  
24  
25

**V. CONCLUSION**

1  
2 For the foregoing reasons, the defense motion to vacate judgment and sentence should be  
3 denied.

4 RESPECTFULLY SUBMITTED this 15 day of September, 2008.

5 GERALD A. HORNE  
6 Prosecuting Attorney

7 By:   
8 SCOTT PETERS  
9 Deputy Prosecuting Attorney  
10 WSB #35469

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Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-F20F-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

# Exhibit A

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PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG-CHENG TSAI,

INFORMATION

Defendant.

496 48961

DOB: 12/16/1980  
PCN#: 538678139

SEX : MALE  
SID#: 20513465

RACE: ASIAN/PACIFIC ISLAND  
DOL#: WA TSAI\*Y\*202RW

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse YUNG-CHENG TSAI of the crime of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, committed as follows:

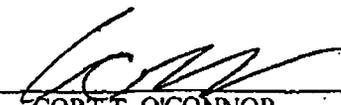
That YUNG-CHENG TSAI, in the State of Washington, on or about the 15th day of February, 2006, did unlawfully, feloniously, and knowingly possess, with intent to deliver to another, a controlled substance, to-wit: Marijuana, classified under Schedule I of the Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(c), and against the peace and dignity of the State of Washington.

DATED this 16th day of February, 2006.

TACOMA POLICE DEPARTMENT  
WA02703

GERALD A. HORNE  
Pierce County Prosecuting Attorney

cto

By:   
CORT T. O'CONNOR  
Deputy Prosecuting Attorney  
WSB#: 23439

INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

NO. 06-1-00782-6  
DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

CORT T. O'CONNOR, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 060460362;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 15th day of February, 2006, the defendant, YUNG-CHENG TSAI, did commit the following acts:

On February 15, 2006, Lakewood Police Officers executed a search warrant on a drug house located at 1302 106<sup>th</sup> Street Court East in Parkland. During the search, officers found marijuana in every room except the bathroom. There were numerous marijuana buds, roaches, and smoking devices in plain sight throughout the residence. There was a vehicle in the garage that contained three large bags of marijuana with an estimated weight of over one pound each. Samples of the marijuana found throughout the residence field tested positive for marijuana.

In TSAI'S bedroom, officers found a lock box that contained evidence of distribution of marijuana including a ledger with names and amounts owed, a digital scale, and marijuana. \$469 in cash was found on TSAI'S person at the time of arrest.

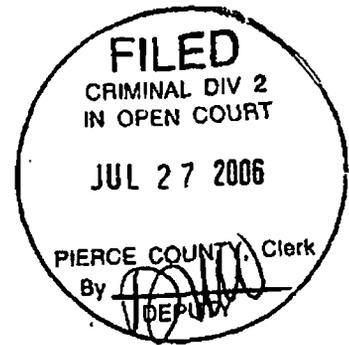
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: February 16, 2006  
PLACE: TACOMA, WA

  
CORT T. O'CONNOR, WSB# 23439

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-F20F-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

# Exhibit B



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
Yung Chung Tsai Defendant.

Cause No. 06-1-00782-6  
STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY  
USE FOR NON-VIOLENT CRIMES  
COMMITTED AFTER 7-1-00

- 1. My true name is: Yung Chung Tsai
- 2. My age is: 25, DOB: 12/16/80
- 3. I went through the 12th 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: Erik Bayer WSBA#: 14937

(b) I have received a copy of and I am charged in original information with the crime(s) of:  
 Count I: Unlawful possession of a controlled substance, with intent to deliver  
 Elements: In the State of WA, unlawfully, knowingly, and knowingly possess, with intent to deliver to another, a controlled substance, classified under schedule I of the Washington Controlled Substance Act, including PLU 69.50.401(4)(2)(c)  
 Count II: \_\_\_\_\_  
 Elements: In the State of WA.

(c) \_\_\_\_\_ Additional counts are addressed in Attachment 4(d).

- 5. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
  - (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE	MAXIMUM TERM AND FINE
1	3	6+ - 18	—	6+ - 18	0 - 12	\$4,100
2						

\* (V) VUCSA in protected zone, (JP) Juvenile present

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes other current offenses, prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.  The parties stipulate the standard range is correct and may be relied upon.
- (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 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 prior to being sentenced.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, even if the result is a mandatory sentence of life imprisonment without the possibility of parole.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 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 amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, the costs of incarceration, and other legal financial obligations.
- (f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 (formerly RCW 9.94A.150) is longer, that will be the term of my community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Crimes Against Persons as defined by RCW 9.94A.411 (formerly .410(2))	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.505 (formerly .120(6)))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge;  The State and the defendant will jointly make this recommendation. 11 months in custody, \$200.00 costs, \$500.00 CVPA, \$250.00 Agency drug fund, \$100.00 DNA fee, \$1000.00 drug, drug treatment per GCO, 12 months community custody, no visit or possession of controlled substances, no association with drug users or sellers, forfeit any items in property except D earrings, keys and cell phone.

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

(i) 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. I am  am not  a United States citizen.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

(k) Public assistance will be suspended during any period of imprisonment.

(l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be assessed a \$100 DNA collection fee.

**NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS**

**DO NOT APPLY, THEY SHOULD BE STRICKEN.**

- (m) The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years of community custody, plus all of the conditions described in paragraph 5(f). 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.
- (n) If this is a crime of domestic violence and I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- (o) 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.
- (p) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660, formerly RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 5(f). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. For offenses committed on or after June 8, 2000, if an offender receives a DOSA sentence and then fails to complete the drug offender sentencing alternative program or is administratively reclassified by the department of corrections, the offender shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall then be subject to a range of community custody and early release as specified in section 5(f) of the plea form.
- (q) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (r) If this crime involves the manufacture, delivery, or unlawful possession with the intent to deliver methamphetamine or amphetamine or unlawful possession of pseudoephedrine or anhydrous ammonia with intent to manufacture methamphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii) or RCW 69.50.440.
- (s) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- (t) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.
- (u) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- (v) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.



Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-F20F-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

# Exhibit C

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GERALD A. HORNE  
PIERCE COUNTY PROSECUTING ATTORNEY

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 06-1-00782-6
	)	
YUNG-CHENG TSAI,	)	
	)	
Defendant.	)	

 **COPY**

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 27th day of July, 2006, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-E20E-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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APPEARANCES

On Behalf of Plaintiff(s): JENNIFER SIEVERS  
Deputy Prosecuting Attorney

On Behalf of Defendant(s): SCOTT MORIARITY  
Attorney at Law

Case Number: 06-1-00782-6 Date: November 28, 2012

SerialID: 48838322-F20F-6452-D356DBD77308FE33

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INDEX

PAGE

Plea

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1 MS. SIEVERS: Jennifer Sievers for the State.  
2 This is State v. Yung-Cheng Tsai. Cause number is  
3 06-1-00782-6.

4 Mr. Tsai is present. He is out of custody and  
5 represented by counsel.

6 This matter comes before the court for a plea to  
7 the original Information. We are asking that  
8 sentencing be set over until August 15th, 2006.

9 MR. MORIARITY: Good morning, Your Honor. For the  
10 record, Scott Moriarity present with Mr. Tsai. I'm  
11 covering for the attorney of record on this matter,  
12 Erik Bauer, who is unable to be here today.

13 I did have a chance to go through the Statement of  
14 Defendant on Plea of Guilty with Mr. Tsai. I explained  
15 to him the charges that he is facing. I explained to  
16 him the elements of that charge and what the State must  
17 prove. I also went through his constitutional rights  
18 with him and explained it to him. He chose to plead  
19 guilty this morning. He would be waiving those  
20 constitutional rights.

21 I then went through the court sentencing options  
22 with him including the maximum penalty, his standard  
23 range based on his criminal history that everyone is  
24 agreeing to, and the State's recommendation. I  
25 explained to him that the Court need not follow that

1 recommendation. He then signed the Statement of the  
2 Defendant on Plea of Guilty in my presence. He's  
3 entering -- I believe that he is entering this  
4 knowingly, intelligently, and voluntarily. I would ask  
5 the Court to accept his plea of guilty this morning.

6 THE COURT: You've indicated that you have read  
7 this to him?

8 MR. MORIARITY: I have, Your Honor, this morning  
9 with him.

10 THE COURT: So although this says that Mr. Bauer  
11 did all of that, in fact, you did, Mr. Moriarity?

12 MR. MORIARITY: That's correct, Your Honor.

13 THE COURT: Sir, for the record, is your name  
14 Yung-Cheng Tsai?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Mr. Tsai, do you read and write the  
17 English language?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Have you gone over a Statement of  
20 Defendant on Plea of Guilty, this document, with  
21 Mr. Moriarity or Mr. Bauer?

22 THE DEFENDANT: Yes.

23 THE COURT: And so you feel that you understand  
24 the Statement of Defendant on Plea of Guilty?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Do you have any questions about it?

2 THE DEFENDANT: No, I don't.

3 THE COURT: So you understand that you are now  
4 charged in the original Information with the crime of  
5 Unlawful Possession of a Controlled Substance with  
6 Intent to Deliver. This has a maximum penalty of five  
7 years in prison and a 10,000-dollar fine. A standard  
8 range in your case of six months and a day to 18 months  
9 and a community custody range of up to one year.

10 If you go to prison, it would actually be nine to  
11 18 months, I believe, or 9 to 12 months, rather, or the  
12 period of earned release, whichever is greater. Do you  
13 understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: In Paragraph 4(b) of the document,  
16 right here, sets forth the elements of the offense.  
17 These are the things that the State has to prove in  
18 order to convict you of this charge. Do you understand  
19 what the State needs to prove here?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Paragraph 6 of the document sets forth  
22 the various important rights that you give up when you  
23 agree to plea guilty. Do you understand each and every  
24 one of these rights that you are giving up?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Paragraph 11 is a statement. Is this  
2 your statement to me as to what you did to get yourself  
3 in trouble?

4 THE DEFENDANT: Yes, it is.

5 THE COURT: Are these your initials after that  
6 statement?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: Is this your signature at Paragraph 12  
9 of the document?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Tsai, has anyone made any threat  
12 or promise to you in order to force you or induce you  
13 to plea guilty here other than what the State may have  
14 agreed to do or to recommend?

15 THE DEFENDANT: No.

16 THE COURT: Do you understand that the Court is  
17 not bound to follow the recommendations of either the  
18 State or the defense in determining your sentence?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Finally, do you understand that upon  
21 entry of a finding of guilt in this matter, you may no  
22 longer own, possess, or have under your control any  
23 firearm unless your right to do so is restored by a  
24 court and that you must immediately surrender any  
25 concealed pistol license that you might own. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: To the charge of Unlawful Possession  
4 of a Controlled Substance with Intent to Deliver as set  
5 forth in the original Information, what is your plea,  
6 guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: A plea of guilty will be entered. The  
9 Court finds that the factual basis for the plea. The  
10 defendant understands the nature of the charge and the  
11 consequences of the plea and that it is a knowing,  
12 voluntary, and intelligent plea.

13 MR. MORIARITY: Your Honor, the parties -- it is  
14 my understanding that Ms. Ludlow for the State and  
15 Mr. Bauer had agreed to set sentencing over for this  
16 matter. We have checked with the Court's Judicial  
17 Assistant, and it looks like the 15th of August, here,  
18 in CD 2 looks like a good date.

19 To accommodate that, the State did want evidence  
20 that Mr. Tsai had obtained a rider from his bail bonds  
21 company. We have proof of that. I have shown it to  
22 counsel, if I could hand that forward.

23 MS. SIEVERS: The State is not seeking any change  
24 in conditions, just maintaining the previous conditions  
25 pending sentencing.

1 THE COURT: \$15,000.

2 MR. MORIARITY: Yes.

3 MS. SIEVERS: Yes.

4 THE COURT: You still want BTC as a condition?

5 MS. SIEVERS: Your Honor, I, actually, don't know.  
6 That wasn't contemplated.

7 MR. MORIARITY: Your Honor, it is my understanding  
8 that, actually, BTC was a condition, but Mr. Tsai lives  
9 outside the county. When he went there, they didn't  
10 want him the first time. He still lives out of county.

11 THE COURT: He lives in Federal Way, I guess.

12 I have signed the sentencing order -- scheduling  
13 order for sentencing, rather, and the order  
14 establishing release conditions. I have not included  
15 BTC. The rider should be put into the court's file. I  
16 wish you all luck.

17 MR. MORIARITY: Thank you very much, Your Honor.

18 (Proceedings Concluded.)

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\*\*\*\*\*CERTIFICATE\*\*\*\*\*

I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, July 27th, 2006, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 12th day of September 2008.



KATRINA A. SMITH/SM-IT-HK-302N9

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838322-F20F-6452-D356DBD77308FE33  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

# Exhibit D

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IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 YUNG-CHENG TSAI, )  
 )  
 Defendant. )

No. 06-1-00782-6

 COPY

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VERBATIM REPORT OF PROCEEDINGS  
-----

BE IT REMEMBERED that on the 29th day of August, 2006, the above-mentioned cause came on duly for hearing before the HONORABLE SERGIO ARMIJO, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF: JENNIFER SIEVERS  
Deputy Prosecutor

FOR THE DEFENDANT: ERIK L. BAUER  
Attorney at Law

Reported by,  
Carla J. Higgins, CSR

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AUGUST 29, 2008

SENTENCING

MS. SIEVERS: This is cause 06-1-00782-6. Mr. Tsai is present. He's out of custody and represented by counsel. This matter comes before the Court for sentencing. Mr. Tsai pled guilty on July 27, 2006.

THE COURT: Defense ready?

MS. BAUER: Yes, we are, Your Honor. Good morning.

THE COURT: Go ahead, State.

MS. SIEVERS: The recommendation is for 11 months in custody with credit for 21 days already served, a filing fee of \$200, a crime victim penalty assessment of \$500, agency drug fund of \$250, a DNA sample and the \$100 fee associated with it, a \$1,000 drug fine, drug treatment as set by the community corrections officer, community custody for 12 months, no use or possession of controlled substances, no association with drug users or seller, and forfeit any contraband in the property room.

THE COURT: Defense?

MR. BAUER: Your Honor, that was an agreed recommendation before the Court. It is essentially a mid-range recommendation. We would ask the Court to follow the recommendation. Mr. Tsai is actually a native of Taiwan and so there's probably going to be some

1 immigration issues later on, anyway. The 11 months is  
2 pretty important, and immigration law gives absolutely no  
3 guarantees. That was why we hit on that number. That  
4 gives him a slightly better argument in immigration issues  
5 later on.

6 THE COURT: Anything you want to say?

7 THE DEFENDANT: Yes. I know what I did was  
8 wrong and I'm sorry.

9 THE COURT: I'll follow the recommendation.

10 MR. BAUER: Thank you, Your Honor.

11 (Adjourned.)  
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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF PIERCE

DEPARTMENT NO. 9 HON. SERGIO ARMIJO, JUDGE

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 YUNG-CHENG TSAI, )  
 )  
 Defendant. )

No. 06-1-00782-6

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF PIERCE )

I, Carla J. Higgins, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing comprises a true and correct transcript of the proceedings held in the above-entitled matter.

Dated this 14<sup>th</sup> day of Aug 2008.

*Carla J. Higgins*  
Carla J. Higgins, CSR  
Official Reporter

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
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Kevin Stock, Pierce County Clerk

By /S/, Deputy.

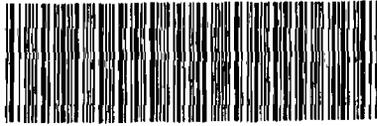
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# **APPENDIX “F”**

*Order Denying*



06-1-00782-6 30604924 ORDY 09-28-08



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
YUNG-CHEN TSAI,  
  
Defendant.

CAUSE NO. 06-1-00782-6  
  
ORDER ON MOTION FOR RELIEF  
FROM JUDGMENT (CrR 7.8)  
  
Clerk's Action Required

THIS MATTER came on before the undersigned judge of the Pierce County Superior Court based upon the written motion for relief from judgment filed by the defendant. The motion is in the form of a "Defendant's Motion To Withdraw Guilty Plea" to the court dated July 19, 2008 (filed July 21, 2008) and brought to this court's attention September 2008. The court reviewed the pleadings submitted by the defendant and reviewed the file. Therefore, being duly advised in all matters, the court hereby enters the following order:

IT IS HEREBY ORDERED that the defendant's motion for relief from judgment is denied based upon the written material submitted. Defendant's motion is time barred by RCW 10.73.090. Defendant has failed to show any exception to the time bar applicable to defendant's motion.

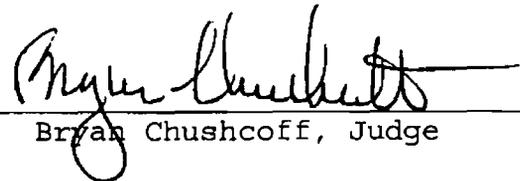
[a]n examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151, 104 S.Ct. 1723, 1725, 80 L.Ed.2d 196 (1984). Because the time limits imposed by Congress in a suit against the Government involve a waiver of sovereign immunity, it is evident that no more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants.

*Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 453, 457 - 458 (1990) cited favorably in *State v. Duvall*, 86 Wn. App. 871, 875 (1997).

So Defendant's invocation of the doctrine of equitable tolling does not apply to the facts of this matter. Assuming, *arguendo*, that defendant's counsel provided incorrect information on July 27, 2006, nonetheless: a) the defendant was informed by immigration counsel on April 24, 2006 - prior to entering into the plea on July 27, 2006 -

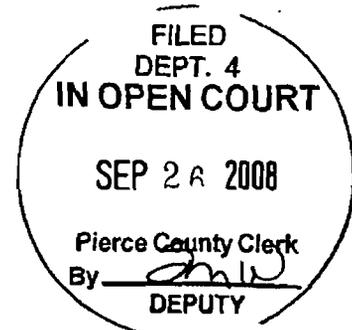
that if he were found guilty of the crime of Unlawful Possession of Marihuana With Intent to Deliver that he would be deportable and ineligible to apply for discretionary relief from deportation; b) that at the sentencing hearing of August 29, 2006, he was present when his counsel stated that defendant "is actually a native of Taiwan and so there's probably going to be some deportation issues later on, anyway. The 11 months is pretty important, and immigration law gives absolutely no guarantees. That was why we hit on that number. That gives him a slightly better argument in immigration issues later on;" and, c) that defendant's untimely application was not a product of a failed timely application. In such circumstances defendant fails to establish the doctrine of equitable tolling.

ORDER signed this 25<sup>th</sup> day of September, 2008.

  
 Bryan Chushcoff, Judge

cc: Scott Peters  
 Deputy Prosecuting Attorney

Maria Stirbis WSBA #26048  
 Stirbis & Stirbis  
 Attorney for Defendant  
 4119 Sixth Avenue  
 Tacoma, WA 98406



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
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certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

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# **APPENDIX “G”**

*Motion for Relief*

May 18 2011 4:03 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 06-1-00782-6

The Honorable Bryan E. Chushcoff

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

THE STATE OF WASHINGTON,

Plaintiff,

vs.

YUNG-CHENG TSAI,

Defendant.

No. 06-1-00782-6

MOTION FOR RELIEF FROM  
JUDGMENT

**CLERK'S ACTION REQUIRED**

MOTION

COMES NOW Defendant, YUNG-CHENG TSAI, by and through undersigned counsel, Christopher Black, and moves this Court for relief from the judgment previously entered in the above-noted matter. Specifically, Defendant moves the Court to withdraw his plea of guilty and vacate the judgment and sentence in this matter. This motion is based on CrR 7.8(b)(4); RCW 10.73.100(6); State v. Ross, 129 Wn.2d 279 (1996); State v. Olivera-Avila, 89 Wn.App. 313 (1997); Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010); State v. Sandoval, 2011 Wash. LEXIS 247 (Wash. Mar. 17, 2011); the following Memorandum of Law; and the attached Declarations of Yung-Cheng Tsai and Vicky Dobrin. A proposed order accompanies this motion.

1  
2 MEMORANDUM

3 **I. Factual and Procedural Background**

4 On February 16, 2006, Yung-Cheng Tsai was charged in Pierce County Superior Court  
5 with one count of Unlawful Possession of a Controlled Substance with Intent to Deliver –  
6 Marijuana. See attachment A. On February 21, 2006, Erik Bauer of Bauer and Balerud Law  
7 Firm filed a Notice of Appearance on the criminal case. See attachment B. On April 24, 2006,  
8 Mr. Tsai contacted immigration attorney Vicky Dobrin, who had represented him in an earlier  
9 immigration proceeding. See attachment C. Mr. Tsai hired Ms. Dobrin to consult with Mr.  
10 Bauer about possible immigration consequences of the charge against him. On April 28, 2006,  
11 Ms. Dobrin advised Mr. Bauer that a conviction for Unlawful Possession of a Controlled  
12 Substance with Intent to Deliver would be an aggravated felony that would bar Mr. Tsai from  
13 any form of discretionary relief from deportation. See attachment C.

14  
15 On the July 27, 2006 plea date, Mr. Bauer sent an associate from his firm to handle the  
16 guilty plea. See attachment E. In the Statement of Defendant on Plea of Guilty, the court  
17 checked the sentence indicating that the attorney had read the statement to Mr. Tsai. Paragraph i  
18 of page 2 of the guilty plea form indicated that Mr. Tsai is not a United States citizen. See  
19 attachment E. That paragraph also contained the language regarding deportation, exclusion  
20 from admission to the United States, or denial of naturalization, pursuant to the laws of the  
21 United States. Prior to the plea, Mr. Tsai had spoken to Mr. Bauer regarding his concerns about  
22 his immigration status. See attachment D. Mr. Bauer had informed Mr. Tsai that “by pleading  
23 guilty and receiving a sentence of less than one-year, [he] would avoid any danger of removal.”  
24 See attachment D. Mr. Tsai relied on this assurance when he pleaded guilty as originally  
25

1 charged to Unlawful Possession of a Controlled Substance with Intent to Deliver – Marijuana.  
2 See attachment E. On August 29, 2006, Mr. Tsai was sentenced to 11 months in custody. See  
3 attachment F. Mr. Bauer represented Mr. Tsai at the sentencing hearing.

4 On October 30, 2007, a Notice to Appear advising Mr. Tsai of the charges against him  
5 was issued by the Department of Homeland Security. See attachment G. Between October 30,  
6 2007 and November 3, 2007, the Notice to Appear was served on Mr. Tsai. See attachment G.  
7 Mr. Tsai remains in deportation proceedings based on the conviction in this case. See  
8 attachment H. On July 21, 2008, Maria Stirbis filed a motion to withdraw his plea of guilty to  
9 Possession of Marijuana with Intent to Deliver, reasoning that the plea was involuntary due to  
10 ineffective assistance of counsel. On September 25, 2008, the Court denied this motion on  
11 grounds that it was time barred by RCW 10.73.090 and that equitable tolling did not apply to the  
12 facts at that time. See attachment I. The Court observed that it would also have denied the  
13 ineffective assistance of counsel claim based on the facts presented. See attachment I.

14  
15 On March 18, 2011, Mr. Tsai engaged attorney Christopher Black to again challenge this  
16 judgment based on significant changes in the law since 2008 regarding ineffective assistance of  
17 counsel and immigration consequences of criminal convictions. See attachment H.

18 **II. Argument**

19 When Mr. Tsai entered his plea of guilty, he was not informed that doing so would cause  
20 him to lose his immigration status and make him eligible for deportation. Prior to the United  
21 States Supreme Court's recent decision in Padilla v. Kentucky, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1473, 176  
22 L.Ed.2d 284 (2010), and the Washington State Supreme Court's according decision in State v.  
23 Sandoval, 2011 Wash. LEXIS 247 (Wash. Mar. 17, 2011), the rule in Washington was that  
24 immigration consequences were collateral to a guilty plea. Therefore a person could enter a  
25

1 voluntary guilty plea without being advised of immigration consequences. However, the Padilla  
2 Court significantly changed the law by holding that immigration consequences are not collateral  
3 to a guilty plea. Because Mr. Tsai was not informed of the immigration consequences of  
4 pleading guilty plea prior to entering his plea, the plea was not knowing and voluntary and the  
5 resulting judgment and sentence is void. Mr. Tsai should be relieved from that judgment  
6 pursuant to CrR 7.8(b)(4). This motion is timely made due to the significant change in the law  
7 under Padilla and Sandoval, which should be applied retroactively for the reasons discussed  
8 below.

9 **A. Mr. Tsai did not enter his plea of guilty knowingly and voluntarily.**

10 Due process requires an affirmative showing that a defendant entered a guilty plea  
11 intelligently and voluntarily. State v. Ross, 129 Wn.2d 279, 284 (1996); State v. Barton, 93  
12 Wn.2d 301, 304 (1980) (citing Boykin v. Alabama, 395 U.S. 238 (1969)). Where a defendant is  
13 not informed of the direct consequences of a guilty plea, the plea is not voluntary. Ross, 129  
14 Wn.2d at 284. Mr. Tsai was wrongly advised that his plea of guilty would not make him  
15 eligible for deportation from the United States. Because of this erroneous advice, his plea in this  
16 case was not voluntary.

17  
18 The state bears the burden of proving the validity of a guilty plea. Ross, 129 Wn.2d at  
19 287; Wood v. Morris, 87 Wn.2d 501, 507 (1976). Knowledge of the direct consequences of a  
20 guilty plea may be satisfied from the record of the plea hearing or clear and convincing extrinsic  
21 evidence. Ross, 129 Wn.2d at 287; Wood, 87 Wn.2d at 511. A defendant need not be informed  
22 of all possible consequences of a plea but rather only direct consequences. Ross, 129 Wn.2d at  
23 284; Barton, 93 Wn.2d at 305. The court has distinguished direct from collateral consequences  
24  
25

1 by whether the result represents a definite, immediate, and largely automatic effect on the range  
2 of the defendant's punishment. Id. (internal quotation and citations omitted).

3 In Padilla v. Kentucky, \_\_ U.S. \_\_, 130 S. Ct. 1473, 176 L.Ed.2d 284 (2010), the United  
4 States Supreme Court significantly changed the status of the law regarding the relationship of  
5 immigration consequences to criminal convictions. In that case, the Kentucky Supreme Court  
6 denied Mr. Padilla post-conviction relief holding that the Sixth Amendment's guarantee of  
7 effective assistance of counsel does not protect a criminal defendant from erroneous advice  
8 about deportation, reasoning that it is merely a "collateral" consequence of his conviction. Id. at  
9 1476. The United States Supreme Court overturned the Kentucky court's ruling and found that,  
10 because criminal conviction and deportation are so uniquely enmeshed, deportation cannot be  
11 dismissed as merely a collateral consequence of conviction. Id. at 1481-82.

12 The Court in Padilla explained:

13 The landscape of federal immigration law has changed dramatically over the last 90  
14 years. While once there was only a narrow class of deportable offenses and judges  
15 wielded broad discretionary authority to prevent deportation, immigration reforms  
16 over time have expanded the class of deportable offenses and limited the authority of  
17 judges to alleviate the harsh consequences of deportation. The drastic measure of  
deportation or removal, is now virtually inevitable for a vast number of noncitizens  
convicted of crimes.

18 Id. at 1478 (internal quotation and citation deleted). The Court further noted that these changes  
19 in immigration law have dramatically raised the stakes of a noncitizen's criminal conviction,  
20 which confirmed their view that, "as a matter of federal law, deportation is an integral part—  
21 indeed, sometimes the most important part of the penalty that may be imposed on noncitizen  
22 defendants who plead guilty to specified crimes." Id. at 1480. The Court recognized that  
23 deportation is a particularly severe "penalty," and noted that even though it is not strictly a  
24 criminal sanction, it is intimately related to the criminal process. Id. at 1481 (internal citations  
25

1 omitted). The Court also noted that, “importantly, recent changes in our immigration law have  
2 made removal nearly an automatic result for a broad class of noncitizen offenders.” Id. The  
3 Court found that it was “most difficult” to divorce the penalty from the conviction in the  
4 deportation context. Id. The Court therefore held that immigration consequences cannot be  
5 considered as collateral to a criminal proceeding and that noncitizen defendants are entitled to  
6 advice from their counsel regarding those consequences. Id. at 1482.

7 In Sandoval, the Washington State Supreme Court affirmed Padilla and clarified the type  
8 of legal advice that an attorney must give to an immigrant criminal defendant. “If the applicable  
9 immigration law is truly clear that an offense is deportable, the defense attorney must correctly  
10 advise the defendant that pleading guilty to a particular charge would lead to deportation. If the  
11 law is not succinct and straightforward, counsel must provide only a general warning that  
12 pending criminal charges may carry a risk of adverse immigration consequences.” Sandoval at  
13 \*7 (internal quotation and citation deleted).

14  
15 In Padilla, pleading guilty to transporting a significant amount of marijuana was an  
16 offense whose immigration consequences were “truly clear.” Simply by reading the applicable  
17 statute, Padilla’s attorney could have discovered and advised him that pleading guilty to this  
18 offense would make him deportable. Instead, the attorney erroneously advised Padilla that he  
19 would not be subject to deportation. Because the law in this area is straightforward, a  
20 constitutionally competent attorney is required to correctly advise, or seek consultation to  
21 correctly advise, a criminal defendant of the deportation consequences of a plea. Padilla, 130 S.  
22 Ct. 1473; Sandoval, 2011 Wash. LEXIS 247.

23 Mr. Tsai is not a United States citizen. His conviction for unlawful possession of  
24 marijuana with intent to deliver makes him deportable. See 8 U.S.C. § 1101(a)(43); 8 U.S.C. §  
25

1 1227(a)(2). As in Padilla, Mr. Tsai was erroneously informed that his plea would not affect his  
2 immigration status. In fact, it was “truly clear” that Mr. Tsai would be deportable under 8  
3 U.S.C. § 1227(a)(2)(B)(i), which states, “[a]ny alien who at any time after admission has been  
4 convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of ...  
5 relating to a controlled substance ... , other than a single offense involving possession for one's  
6 own use of 30 grams or less of marijuana, is deportable.” 8 U.S.C. § 1227(a)(2)(B)(i); Padilla,  
7 130 S. Ct. at 1483. In addition, Mr. Tsai is not eligible for discretionary relief in immigration  
8 court because he is classified as an aggravated felon. He is classified as an aggravated felon  
9 because he pleaded guilty to having the intent to deliver a controlled substance. 8 U.S.C. §  
10 1101(a)(43); 8 U.S.C. § 1227(a)(2).

11 The immigration consequences of Mr. Tsai’s plea were “truly clear.” Therefore, Mr.  
12 Tsai’s attorney had a duty to correctly inform him that pleading guilty to possession of  
13 marijuana with intent to deliver rendered him deportable. Instead, Mr. Tsai’s attorney  
14 misinformed him that he was not in danger of deportation because he would be sentenced to less  
15 than one year of imprisonment. The fact that Mr. Tsai’s attorney had previously sought advice  
16 on this matter from an immigration expert does not mitigate his ineffectiveness under Padilla  
17 and Sandoval. Mr. Tsai’s defense attorney disregarded the advice of Mr. Tsai’s immigration  
18 attorney that Mr. Tsai would be deported if he pleaded guilty to possession of marijuana with  
19 intent to distribute.  
20

21 The fact that Mr. Tsai received the immigration advisement in his plea agreement  
22 pursuant to RCW 10.40.200 does not affect this analysis. Such a general advisement about  
23 possible immigration consequences is insufficient under Padilla and Sandoval. “RCW  
24 10.40.200 and other such warnings do not excuse defense attorneys from providing the requisite  
25

1 warnings.” Sandoval at \*13. The warning contained within Mr. Tsai’s plea agreement does not  
2 diminish his attorney’s responsibility to provide accurate legal advice about the immigration  
3 consequences of the plea agreement. Mr. Tsai’s attorney failed to provide accurate advice  
4 about a direct consequence of a criminal conviction, so Mr. Tsai’s guilty plea was not voluntary.

5 The immigration consequences of pleading guilty cannot be considered “collateral” to  
6 the criminal conviction in this case. Padilla, 130 S. Ct. at 1482; Sandoval, 2011 Wash. LEXIS  
7 247. Therefore, the fact that Mr. Tsai was misadvised of the immigration consequences prior to  
8 entry of his plea renders that plea involuntary. Sandoval, 2011 Wash. LEXIS 247; Ross, 129  
9 Wn.2d at 284.

10 **B. An involuntary plea results in a void judgment that is subject to collateral attack**  
11 **pursuant to CrR 7.8(b)(4).**

12 CrR 7.8(b) allows a court to relieve a party from a final judgment for the following  
13 reasons:

- 14 (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a  
15 judgment or order;  
16 (2) Newly discovered evidence which by due diligence could not have been  
17 discovered in time to move for a new trial under rule 7.5;  
18 (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation,  
19 or other misconduct of an adverse party;  
20 (4) The judgment is void; or  
21 (5) Any other reason justifying relief from the operation of the judgment.

22 A plea that is involuntary violates due process. Ross, 129 Wn.2d at 284; Barton, 93  
23 Wn.2d at 304. Such a plea results in a void judgment that is subject to collateral attack pursuant  
24 to CrR 7.8(b)(4). State v. Olivera-Avila, 89 Wn.App. 313, 319 (1997). In this case, because  
25 Mr. Tsai’s plea was involuntary, as outlined above, the resulting judgment and sentence is void  
and he may be relieved from that judgment pursuant to CrR 7.8(b)(4). Id. at 319.

1 **C. This motion is timely because there has been a significant change in the law since**  
2 **the time of the conviction that is material to the conviction and because sufficient**  
3 **reasons exist to require retroactive application of the changed legal standard.**

4 RCW 10.73.090 establishes a time limit of one year from the date a judgment becomes  
5 final to file a motion for relief from judgment under CrR 7.8(b)(4). See CrR 7.8(b); RCW  
6 10.73.090(1). However, the one-year time limit is not applicable if, among other grounds,  
7 “there has been a significant change in the law that is material to the conviction.” State v. King,  
8 130 Wn.2d 517, 531 (1996). The Washington Supreme Court has repeatedly found that  
9 appellate decisions can effect such a change. See In re Pers. Restraint of David Greening, 141  
10 Wn.2d 687, 696 (2000). Where an intervening opinion has effectively overturned a prior  
11 appellate decision that was determinative of a material issue, the intervening opinion constitutes  
12 a “significant change in the law” for purposes of exemption from procedural bars. Id. RCW  
13 10.73.100 provides that the time limit specified in RCW 10.73.090 does not apply to a petition  
14 or motion that is based solely on the fact that:

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

22 RCW 10.73.100(6). For the reasons discussed below, Padilla constitutes a significant change in  
23 the law that is material to Mr. Tsai’s conviction, and should be applied retroactively. Therefore,  
24 Mr. Tsai’s motion is exempt from the one-year time limit.

25 1. The rule from *Padilla* constitutes a significant, material change in the law.

Prior to Padilla and Sandoval, the rule in Washington was that immigration  
consequences were collateral to a guilty plea. A person could enter a voluntary guilty plea

1 without being advised of any such consequences. The Padilla Court held that immigration  
2 consequences are not collateral to a guilty plea. This holding constitutes a significant change in  
3 the law. Where an intervening opinion has effectively overturned a prior appellate decision that  
4 was originally determinative of a material issue, the intervening opinion constitutes a  
5 "significant change in the law" for purposes of exemption from procedural bars. In re Pers.  
6 Restraint of David Greening, 141 Wn.2d at 697.

7 The rule from Padilla, that immigration consequences cannot be considered as collateral  
8 to a criminal proceeding, constitutes a significant, material change in the law. Although the law  
9 is well-settled that a guilty plea cannot be accepted until the defendant had been informed of all  
10 direct consequences of the plea, State v. Barton, 93 Wn.2d 301, 305 (1980), prior to Padilla,  
11 immigration consequences were not recognized as direct consequences of a guilty plea. See  
12 State v. Martinez-Lazo, 100 Wn.App. 869, 876 (2000) (noting acknowledgement that the  
13 general rule in Washington was that deportation is a collateral consequence); In re Yim, 139  
14 Wn.2d 581, 588 (1999) ("A deportation proceeding that occurs subsequent to the entry of a  
15 guilty plea is merely a collateral consequence of that plea."); State v. Holley, 75 Wn.App. 191,  
16 197 (1994). In Washington, Padilla and Sandoval constituted a significant change in the law.  
17 "Padilla has superseded Yim's analysis of how counsel's advice about deportation consequences  
18 (or lack thereof) affects the validity of a guilty plea." Sandoval at \*7-8. Prior to that ruling, not  
19 knowing the immigration consequences of plea did not render it involuntary. Under Padilla and  
20 Sandoval, a plea is involuntary if an attorney does not advise an defendant of the clear  
21 immigration consequences of the plea. This is a significant, material change in the law.

22  
23 Even though Padilla and Sandoval did not couch their holdings in terms of "direct" or  
24 "collateral" consequences, both necessarily held that immigration consequences are not  
25

1 collateral to criminal convictions. The Padilla court overturned the Kentucky Supreme Court's  
2 holding that immigration consequences of guilty pleas are collateral. Therefore, the Supreme  
3 Court necessarily held that immigration consequences are not collateral to criminal convictions.  
4 The fact that the Court declined to explicitly use the framework of "direct" versus "collateral"  
5 consequences does not change the analysis.

6 The fact that Padilla was based on a Sixth Amendment ineffective assistance of counsel  
7 claim, rather than a due process argument, is irrelevant. It still represents a significant and  
8 material change in the law. Questions regarding ineffective assistance often depend on  
9 underlying due process issues. In State v. Martinez-Lazo, the defendant claimed that he had  
10 received ineffective assistance because his counsel did not warn him of the deportation  
11 consequences of his guilty plea. Martinez-Lazo, 100 Wn.App. at 876. The court, after  
12 discussing the requirements for a voluntary guilty plea, held that the claim failed because  
13 immigration proceedings were then considered collateral. Id. at 876-78. Padilla and Sandoval  
14 resolved the issue of whether a "constitutionally competent" attorney must advise a client on  
15 immigration consequences of a criminal conviction in the context of the Sixth Amendment. See  
16 Sandoval. The issue is identical in the context of due process. It follows that due process  
17 requirements for a voluntary plea are consistent with Sixth Amendment requirements.

18  
19 Padilla and Sandoval effectively overturned a prior appellate decision that determined  
20 the material issue of whether immigration consequences are collateral to guilty pleas. Id. 876-  
21 78. The law is well-settled that a guilty plea cannot be accepted as voluntary until the defendant  
22 had been informed of all direct consequences of the plea. State v. Barton, 93 Wn.2d 301, 305  
23 (1980). Because Padilla and Sandoval are a significant and material change in the law, Mr.  
24 Tsai's motion should be exempt from the one-year time limit.  
25

2. The rule from *Padilla* should be applied retroactively.

The Supreme Court signaled that it understood that its holding in *Padilla* would apply retroactively by giving “serious consideration” to the argument that its ruling would open the “floodgates” to new litigation challenging prior guilty pleas. *Padilla*, 130 S. Ct. at 1484-85. Most courts to reach the issue have held that *Padilla* can be applied retroactively, and all have acknowledged that this is a close question. The only courts to decide this issue in the Ninth Circuit have been the Eastern and Southern Districts of California, which have applied *Padilla* retroactively. See *United States v. Chaidez*, 2009 U.S. Dist. LEXIS 116229 (S.D. Cal. Dec. 10, 2009); *United States v. Hubenig*, 2010 U.S. Dist. LEXIS 80179 (E.D. Cal. July 1, 2010); *Luna v. United States*, 2010 U.S. Dist. LEXIS 124113 (S.D. Cal. Nov. 23, 2010).

The holding of *Padilla* can be applied retroactively if it is not a new rule of criminal procedure, or if it meets one of two exceptions. The Supreme Court has declared that, going forward, the issue of retroactivity should be decided as a threshold question on collateral review, before addressing any constitutional claim. See *Teague v. Lane*, 489 U.S. 288, 305, 109 S. Ct. 1060, 103 L.Ed.2d 334 (1989). Although *Padilla* did make significant changes to the law as it existed in Washington State, it is not a “new rule” for the purpose of a retroactivity analysis under *Teague*. The *Teague* Court acknowledged that it is “often difficult to determine when a case announces a new rule.” *Id.* at 301. “[A] case announces a new rule when it breaks new ground or imposes a new obligation on the states or the Federal Government. To put it differently, a case announces a new rule if the result is not *dictated* by precedent existing at the time the defendant’s conviction became final.” *Id.* Moreover, “the mere existence of conflicting authority does not necessarily mean a rule is new.” *Williams v. Taylor*, 529 U.S. 362, 410, 120 S. Ct. 1495 (2000).

1 Generally, when a well-established rule of law is applied in a new way based on the  
2 specific facts of a particular case, it does not establish a “new rule.” See Stringer v. Black, 503  
3 U.S. 222, 228-29, 112 S. Ct. 1130, 117 L.Ed.2d 367 (1992). In Hubenig, supra, the court held  
4 that Padilla should be applied retroactively because it did not establish a “new rule.” The  
5 Hubenig Court noted that counsel is already urged by professional standards to advise on  
6 immigration consequences due to the importance a defendant might place on deportation.  
7 Hubenig at \*7. The requirement that defendants be informed of the direct consequences of a  
8 guilty plea is well-established, and Padilla simply reclassifies deportation as a direct  
9 consequence. By recognizing that immigration consequences are among the direct  
10 consequences of a guilty plea, the Padilla court did not impose a new obligation on the State.  
11 Thus, the rule is not “new” even though the Supreme Court’s recognition of removal as a  
12 sufficiently important consequence *is* a significant change in the law.

13  
14 Even if Padilla established a “new rule,” it should still be given retroactive application.  
15 The Washington Supreme Court, in the case of In re Personal Restraint of St. Pierre, 118 Wn.2d  
16 321 (1992), set forth standards for deciding whether a new rule should be applied retroactively.  
17 See Olivera-Avila, 89 Wn.App. at 321. A new rule will be given retroactive application to cases  
18 on collateral review if “(a) the new rule places certain kinds of primary, private individual  
19 conduct beyond the power of the state to proscribe, or (b) the rule requires the observance of  
20 procedures implicit in the concept of ordered liberty.” St. Pierre, 118 Wn.2d at 326; Olivera-  
21 Avila, 89 Wn.App. at 321. Olivera-Avila involved a motion to withdraw a plea based its  
22 involuntary nature due to the defendant not having been informed of the direct consequences of  
23 the plea. Olivera-Avila at 315-17. Although the court ultimately found that Mr. Olivera-Avila  
24 was not entitled to relief, it did hold that the rule requiring that a defendant be informed of all  
25

1 the direct consequences of a guilty plea was a rule that was implicit in due process, which  
2 should therefore be applied retroactively. Id. at 321.

3 The rule from Padilla, that immigration consequences cannot be considered as collateral  
4 to a criminal proceeding, should also be applied retroactively because it requires the observance  
5 of procedures implicit in the concept of ordered liberty. The rule that immigration consequences  
6 are not collateral to criminal proceedings implicates, in the context of the voluntariness of pleas,  
7 due process rights. Like Padilla, the rule in Ross, 129 Wn.2d at 284, requires the observance of  
8 a procedure – communication of all direct consequences of a guilty plea – that is implicit in due  
9 process. Olivera-Avila, 89 Wn.App. at 321. A rule requiring observance of this procedure is to  
10 be applied retroactively even on collateral review. Id. at 321.

11 CONCLUSION

12 For the foregoing reasons, the Court should grant Mr. Tsai’s motion for relief from the  
13 judgment in this matter.

14  
15  
16 DATED this 18<sup>th</sup> day of May, 2011.

17 Respectfully submitted,

18 LAW OFFICE OF CHRISTOPHER BLACK, PLLC

19  
20 *s/ Christopher Black*  
21 Christopher Black, WSBA No. 31744  
22 Attorney for Defendant  
23 Law Office of Christopher Black, PLLC  
24 119 First Avenue South, Suite 320  
25 Seattle, WA 98104  
Phone: 206.623.1604  
Fax: 206.622.6636  
Email: [crb@crblack.com](mailto:crb@crblack.com)

CERTIFICATE OF SERVICE

1  
2 I hereby certify that a copy of the foregoing, and attachments, was served on May 18,  
3 2011, via U.S. Mail, upon the parties required to be served in this action:

4 Pierce County Prosecuting Attorney  
5 County-City Building  
6 930 Tacoma Avenue South, Room 946  
7 Tacoma WA 98402-2171

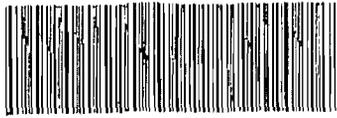
8 DATED this 18<sup>th</sup> day of May, 2011.

9 Respectfully submitted,

10 LAW OFFICE OF CHRISTOPHER BLACK, PLLC

11  
12 *s/ Christopher Black*  
13 Christopher Black, WSBA No. 31744  
14 Attorney for Defendant  
15 Law Office of Christopher Black, PLLC  
16 119 First Avenue South, Suite 320  
17 Seattle, WA 98104  
18 Phone: 206.623.1604  
19 Fax: 206.622.6636  
20 Email: [crb@crblack.com](mailto:crb@crblack.com)

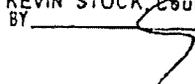
# Exhibit A



06-1-00782-6 24875737 INFO 02-16-06

FILED  
IN COUNTY CLERK'S OFFICE

A.M. FEB 16 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG-CHENG TSAI,

INFORMATION

Defendant.

496 48961

DOB: 12/16/1980

SEX : MALE

RACE: ASIAN/PACIFIC ISLAND

PCN#: 538678139

SID#: 20513465

DOL#: WA TSAI\*Y\*202RW

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse YUNG-CHENG TSAI of the crime of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER, committed as follows:

That YUNG-CHENG TSAI, in the State of Washington, on or about the 15th day of February, 2006, did unlawfully, feloniously, and knowingly possess, with intent to deliver to another, a controlled substance, to-wit: Marijuana, classified under Schedule I of the Uniform Controlled Substance Act, contrary to RCW 69.50.401(1)(2)(c), and against the peace and dignity of the State of Washington.

DATED this 16th day of February, 2006.

TACOMA POLICE DEPARTMENT  
WA02703

GERALD A. HORNE  
Pierce County Prosecuting Attorney

cto

By:

CORT T. O'CONNOR  
Deputy Prosecuting Attorney  
WSB#: 23439

INFORMATION- 1

ORIGINAL

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

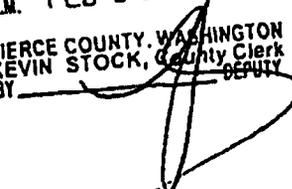
# Exhibit B

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PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTY

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

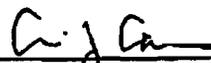
STATE OF WASHINGTON, )  
Plaintiff, )  
v. )  
YUNG-CHENG TSAI, )  
Defendant. )

NO. 06-1-00782-6  
NOTICE OF APPEARANCE;  
REQUEST FOR DISCOVERY

TO: PROSECUTING ATTORNEY'S OFFICE;  
AND TO: CLERK OF THE COURT:

PLEASE TAKE NOTICE that ERIK BAUER of the Law Offices of Bauer & Balerud, Attorneys at Law, hereby appears as Counsel for the defendant, YUNG-CHENG TSAI, hereby requests discovery pursuant to CrR 4.7.

DATED this 21<sup>st</sup> day of February, 2006.

 #36844 for Bauer  
ERIK BAUER  
WSB #14937  
Attorney for Defendant

ORIGINAL

THE LAW OFFICES OF  
BAUER & BALERUD  
215 Tacoma Avenue South  
Tacoma, Washington 98402  
(253) 383-2000 or (360) 895-1500  
FAX (253) 383-0154

# Exhibit C

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

STATE OF WASHINGTON,

Plaintiff,

v.

YUNG-CHENG TSAI,

Defendant.

CASE NO.: 06-1-00782-6

DECLARATION OF VICKY  
DOBRIN

I, Vicky Dobrin, am over the age of eighteen and competent to testify in this matter.

1. I am an immigration attorney in private practice at Dobrin & Han, PC in Seattle, Washington. I am admitted to practice by the Washington State Bar, and my state bar number is 28554. My business address is 705 Second Avenue, Suite 610, Seattle, Washington 98104.

2. Mr. Tsai was placed in removal proceedings in 2005, as a result of a prior criminal conviction. I represented him in those removal proceedings. On April 22, 2005, those proceedings were terminated by an immigration judge, who determined that Mr. Tsai was not subject to deportation. Because I represented Mr. Tsai in his prior removal proceedings, I am familiar with his immigration history.

3. I spoke to Mr. Tsai on April 24, 2006, after my representation of him had ceased. He told me that he was charged with possession of marijuana with the intent to deliver. I told Mr. Tsai that if he pled guilty or were found guilty of this charge, I believed it would constitute an aggravated felony under the immigration law. I further told Mr. Tsai that if he were convicted of an aggravated felony, he would be deportable and ineligible to apply for discretionary relief from deportation. During that meeting, we also discussed possible alternate pleas that would allow him to either avoid deportation or at least be eligible for discretionary relief from deportation.

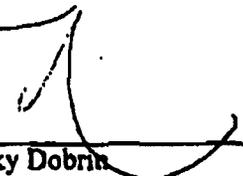
Declaration of Vicky Dobrin

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile

1           4.     On April 28, 2006, I spoke to Mr. Tsai's attorney Eric Bauer. I told Mr. Bauer  
 2 essentially the same thing I had told Mr. Tsai. In particular, I told him that a conviction for  
 3 possession of marijuana with the intent to deliver is an aggravated felony that would bar Mr. Tsai  
 4 from any form of discretionary relief from deportation. I also spoke to Mr. Bauer about alternate  
 5 pleas that would give Mr. Tsai the chance to avoid certain deportation.

6  
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Dated: March 6, 2008



Vicky Dobrin

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Declaration of Vicky Dobrin

**STIRBIS & STIRBIS**  
 4119 Sixth Avenue  
 Tacoma, WA 98406  
 253-573-9111  
 253-272-8318 Facsimile

# Exhibit D



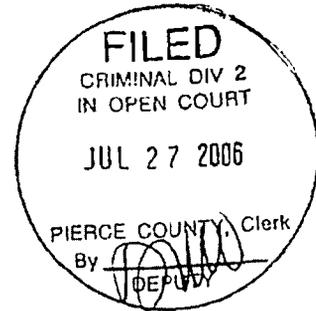


# Exhibit E

4523 7/28/2006 88014



06-1-00782-6 25872429 STDFG 07-27-06



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,  
 Plaintiff,  
 vs.  
Yung Chung Tsai Defendant.

Cause No. 06-1-00782-6  
 STATEMENT OF DEFENDANT ON  
 PLEA OF GUILTY  
 USE FOR NON-VIOLENT CRIMES  
 COMMITTED AFTER 7-1-00

1. My true name is: Yung Chung Tsai
2. My age is: 25 . DOB: 12/16/80
3. I went through the 12th 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: Erik Bayer WSBA#: 14937
  - (b) I have received a copy of and I am charged in original Information with the crime(s) of:  
 Count I: Unlawful possession of a controlled substance, with intent to deliver  
 Elements: In the State of WA, unlawfully, feloniously, and knowingly possess, with intent to deliver to another, a controlled substance, classified under schedule I of the uniform Controlled substance Act, subject to RCW 69.50.401(1)(2)(c)  
 Count II: \_\_\_\_\_  
 Elements: In the State of WA,
- (c) \_\_\_\_\_ Additional counts are addressed in Attachment 4(d).

5. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:  
 (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE	MAXIMUM TERM AND FINE
1	3	6+ - 18	—	6+ - 18	0 - 12	\$4,100
2						

\* (V) VUCSA in protected zone, (JP) Juvenile present

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes other current offenses, prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.  The parties stipulate the standard range is correct and may be relied upon.

(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 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 prior to being sentenced.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase, even if the result is a mandatory sentence of life imprisonment without the possibility of parole.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 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 amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, the costs of incarceration, and other legal financial obligations.

(f) In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 (formerly RCW 9.94A.150) is longer, that will be the term of my community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Crimes Against Persons as defined by RCW 9.94A.411 (formerly 4A0(2))	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.505 (formerly .120(6)))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendation to the judge;  The State and the defendant will jointly make this recommendation. 11 months in custody, \$200.00 costs, \$500.00 CVPA, \$250.00 Agency drug fund, \$100.00 DNA fee, \$100.00 fine, Drug treatment per fee, 12 month community custody, no use or possession of unlabelled substance, no association with drug users or sellers, forfeit any items in property except car, keys and cell phone.

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

(i) 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. I am  am not  a United States citizen

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

(k) Public assistance will be suspended during any period of imprisonment.

(l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be assessed a \$100 DNA collection fee.

**NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS**

4623 7/28/2006 00016

**DO NOT APPLY, THEY SHOULD BE STRICKEN.**

(m) The judge may sentence me as a ~~first-time offender~~ instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years of community custody, plus all of the conditions described in paragraph 5(f). 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.

(n) If this is a crime of ~~domestic violence~~ and I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(o) 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~~.

(p) The judge may sentence me under the special ~~drug offender sentencing alternative (DOSA)~~ if I qualify under RCW 9.94A.660, formerly RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 5(f). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. For offenses committed on or after June 8, 2000, if an offender receives a DOSA sentence and then fails to complete the drug offender sentencing alternative program or is administratively reclassified by the department of corrections, the offender shall be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall then be subject to a range of community custody and early release as specified in section 5(f) of the plea form.

(q) If the judge finds that I have a ~~chemical dependency~~ that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

(r) If this crime involves the manufacture, delivery, or unlawful possession with the intent to deliver ~~methamphetamine or amphetamine or unlawful possession of pseudoephedrine or anhydrous ammonia~~ with intent to manufacture methamphetamine, a mandatory ~~methamphetamine clean-up~~ fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii) or RCW 69.50.440.

(s) If this crime involves a ~~motor vehicle~~, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

(t) I understand that the offense(s) I am pleading guilty to include a ~~deadly weapon or firearm~~ enhancement. ~~Deadly weapon or firearm~~ enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other ~~deadly weapon or firearm~~ enhancements.

(u) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for ~~unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm~~. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each ~~firearm~~ unlawfully possessed.

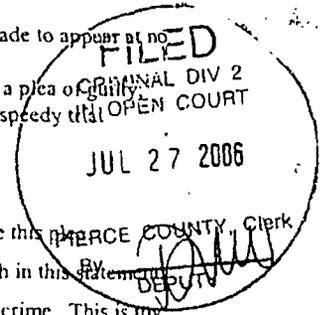
(v) I understand that if I am pleading guilty to the crime of ~~unlawful practices in obtaining assistance~~ as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

1623 7/28/2006 05017

(w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. §1091(r) and 21 U.S.C. § 826a.

6. I 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 the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.



7. I make this plea freely and voluntarily.

8. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: On February 15, 2006 in Pierce County I knowingly possessed a controlled substance, marijuana, with the intent to deliver that marijuana to another person. I understand this was wrong and I am sorry.

If my statement is a Newton or Alfred Plea, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12.  I was given a copy and I read this plea statement.  My lawyer read this plea statement to me. Also, my lawyer has explained to me, and we have fully discussed, all of the above paragraphs. If I have any more questions about it, I understand I can and need to ask the judge when I enter my plea of guilty.

[Signature]  
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]  
Defendant's Lawyer, WSBA# 24861

Approved for entry:

Jennifer Sievers  
Prosecuting Attorney, WSBA# 35536

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The court finds:

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

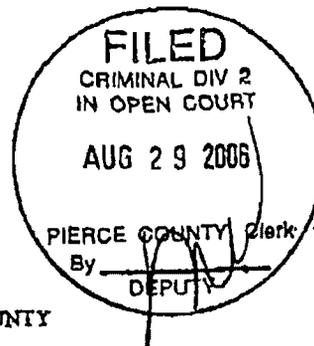
Dated this 27 day of July, 2006.

[Signature]  
Judge

BRYAN E. CHUSHCOFF

# Exhibit F

06-1-00782-6



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 06-1-00782-6

vs.

JUDGMENT AND SENTENCE (JS)

YUNG-CHENG TSAI

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

AUG 29 2006

SID: 20613465  
 DOB: 12/16/80

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 06-9-10034-5 7-27-06 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	UPCS W/ID (J75) Marijuana - Schedule I	69.50.401(1)(2)(e)	NONE	02/15/06	060460362 TPD

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Original Information

The court finds that the offender has a chemical dependency that has contributed to the offense(s).  
 RCW 9.94A.

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

06-9-10034-5

06-1-00782-6

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A.G.J ADULT JUV	TYPE OF CRIME
1	VEHIC HOMICIDE	05/29/02	Pierce County, WA	06/24/01	A	FEL
2	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL
3	VEHIC ASLT	05/29/02	Pierce County, WA	06/24/01	A	FEL

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3	I	6+ - 18 MOS	NONE	6+ - 18 MOS	5 YRS

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney  did  did not recommend a smaller sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  attached  as follows: N/A

III. JUDGMENT

3.1 The defendant is GUILTY of the Courts and Charges listed in Paragraph 2.1.

3.2  The court DISMISSES Courts \_\_\_\_\_  The defendant is found NOT GUILTY of Courts \_\_\_\_\_

06-1-00782-6

**IV. SENTENCE AND ORDER**

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNR/N	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address-address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ _____	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ 1000. <sup>00</sup>	Fine
CLF	\$ _____	Crime Lab Fee [ ] deferred due to indigency
CDI/DFA-DFZ	\$ 250. <sup>00</sup>	Drug Investigation Fund for <u>Tacoma PD</u> (agency)
WFR	\$ _____	Witness Costs

**OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)**

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 2050.<sup>00</sup> TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ per CCO per month commencing. per CCO RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

**4.2 RESTITUTION**

[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

[ ] defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

[ ] RESTITUTION. Order Attached

**4.3 COSTS OF INCARCERATION**

[ ] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 1A.01.160.

**4.4 COLLECTION COSTS**

**JUDGMENT AND SENTENCE (JS)**  
(Felony) (6/19/2003) Page 3 of 12

Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

06-1-00782-6

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 **INTEREST**

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 **COSTS ON APPEAL**

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.7 **[ ] HIV TESTING**

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 **[X] DNA TESTING**

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 **NO CONTACT**

The defendant shall not have contact with \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 **OTHER:**

See Appendix E
forfeit contained in property room

4.11 **BOND IS HEREBY EXONERATED**

06-1-00782-6

4.12 **JAIL ONE YEAR OR LESS.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

11 days/months on Court I days/months on Court  
\_\_\_\_\_ days/months on Court \_\_\_\_\_ days/months on Court

Actual number of months of total confinement ordered is: 11 months

**CONSECUTIVE/CONCURRENT SENTENCES:** RCW 9.94A.589

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.  the sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

**PARTIAL CONFINEMENT.** Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: \_\_\_\_\_

- Work Crew RCW 9.94A.135  Home Detention RCW 9.94A.180, 190
- Work Release RCW 9.94A.180

**CONVERSION OF JAIL CONFINEMENT (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

BTC Facility

**ALTERNATIVE CONVERSION.** RCW 9.94A.680. \_\_\_\_\_ days of total confinement ordered above are hereby converted to \_\_\_\_\_ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than \_\_\_\_\_ hours per month.

Alternatives to total confinement were not used because of: \_\_\_\_\_

criminal history  failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.503. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

21 days

06-1-00782-6

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4.13 **COMMUNITY [ ] SUPERVISION  CUSTODY.** RCW 9.94A.505. Defendant shall serve 12 months (up to 12 months) in [ ] community supervision (Offense Pre 7/1/00) or  community custody (Offense Post 6/30/00). Defendant shall report to DOC, 755 Tacoma Ave South, Tacoma, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence or other conditions imposed by the court or DOC during community custody. The defendant shall:

- Remain in prescribed geographic boundaries specified by the community corrections officer
- Notify the community corrections officer of any change in defendant's address or employment
- [ ] Cooperate with and successfully complete the program known as Breaking The Cycle (BTC)

Other conditions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.509. The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

4.14 **OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020.** The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

06-1-00782-6

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200 N/A

5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

5.8 **OTHER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

06-1-00782-6

DONE in Open Court and in the presence of the defendant this date: 8-29-06

JUDGE  
Print name

*[Signature]*  
SERGIO ARMILIO

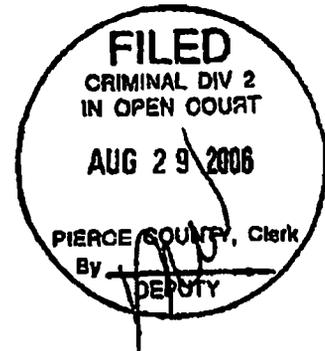
Jennifer Sievers  
Deputy Prosecuting Attorney  
Print name: Jennifer Sievers  
WSB # 35536

*[Signature]*  
Attorney for Defendant  
Print name: *[Signature]*  
WSB # 17937

*[Signature]*  
Defendant  
Print name: Yung-Cheng Tsai

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *[Signature]*



06-1-00782-6

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3 **CERTIFICATE OF CLERK**

4 **CAUSE NUMBER** of this case: 06-1-00782-6

5 I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

6 WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

7 Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

8  
9 **IDENTIFICATION OF COURT REPORTER**

10 **CARLA HIGGINS**

11 Court Reporter

06-1-00782-6

APPENDIX "E" - ADDITIONAL CONDITIONS OF RELEASE

It is further ordered that the defendant, as a condition of his/her community supervision, as a first-time offender, shall:

- FTO 1) Refrain from committing new offenses;
- FTO 2) Devote time to a specific employment or occupation;
- FTO 3) Enter and successfully complete Breaking the Cycle (BTC) or other available outpatient treatment for up to two years, or inpatient treatment as designated by Community Corrections Officer;
- FTO 4) Pursue a prescribed, secular course of study or vocational training;

It is further ordered that the defendant, as a condition of his/her community supervision, shall:

- 1) Remain within prescribed geographical boundaries. Notify the court or the community corrections officer prior to any change in the defendant's address or employment;
- 2) Report as directed to the court and a community corrections officer;
- 3) (NARC order) Refrain from entering certain geographical boundaries (designated by attachment);
- 4) Not purchase, possess, or use any controlled substances without a prescription from a licensed physician. Provide a written prescription for controlled substances to the Community Corrections Officer within 24 hours of receipt. Submit to urinalysis as directed by the Community Corrections Officer;
- 5) Refrain from associating with drug users or drug sellers;
- 6) Comply with Breaking the Cycle (BTC) Program requirements, including participation in BTC recommended chemical dependency treatment;
- OTHER: Drug treatment as set by C.O.

APPENDIX E

Office of Prosecuting Attorney  
946 County-City Building  
Tucson, Washington 98402-1171  
Telephone: (253) 795-7400

# Exhibit G

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

STATE OF WASHINGTON,

Plaintiff,

vs.

YUNG-CHENG TSAI

Defendants.

CASE NO.:06-1-00782-6

DECLARATION OF  
MARIA STIRBIS

I, Maria Stirbis, am over the age of eighteen and competent to testify in this matter.

1. On November 30, 2007, Mike Tsai retained my firm's services to research and file a motion to withdraw a guilty plea in the above-referenced matter.

2. On June 12, 2008, I spoke with Kaaren Barr, immigration attorney whom Mr. Tsai hired to help him fight INS deportation proceedings.

3. Ms. Barr advised me that on October 30, 2007, the INS issued Mr. Tsai a Notice to Appear, which stated that he was subject to deportation because he had been convicted of an aggravated felony.

4. Ms. Barr also related that on November 3, 2007, Mr. Tsai contacted her about challenging his deportation.

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tucoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile

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I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge.

DATED this 20<sup>th</sup> day of June, at Tacoma,  
2008.

  
Maria Stirbis

**STIRBIS & STIRBIS**  
4119 Sixth Avenue  
Tacoma, WA 98406  
253-573-9111  
253-272-8318 Facsimile

# Exhibit H

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

THE STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
YUNG-CHENG TSAI,  
  
Defendant.

No. 06-1-00782-6

DECLARATION OF CHRISTOPHER  
BLACK

I, Christopher Black, am over the age of 18 and competent to testify in this matter.

1. On February 16, 2011, I spoke with Matt Adams, an immigration attorney representing Mr. Tsai in immigration proceedings.

2. Mr. Adams informed me that Mr. Tsai was currently in deportation proceedings on the basis of his conviction in this case being an aggravated felony.

3. On March 18, 2011, Yung-Cheng Tsai engaged my firm's services to research and file a motion to withdraw a guilty plea in the above-referenced matter.

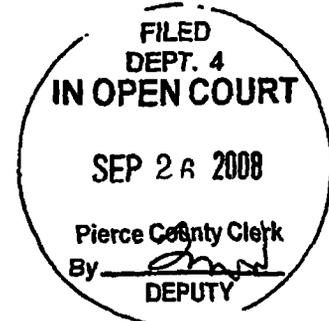
I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct to the best of my knowledge.

DATED this 17<sup>th</sup> day of May at Seattle, Washington.



Christopher Black

# Exhibit I



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
YUNG-CHEN TSAI,  
  
Defendant.

CAUSE NO. 06-1-00782-6  
  
ORDER ON MOTION FOR RELIEF  
FROM JUDGMENT (CrR 7.8)  
  
Clerk's Action Required

THIS MATTER came on before the undersigned judge of the Pierce County Superior Court based upon the written motion for relief from judgment filed by the defendant. The motion is in the form of a "Defendant's Motion To Withdraw Guilty Plea" to the court dated July 19, 2008 (filed July 21, 2008) and brought to this court's attention September 2008. The court reviewed the pleadings submitted by the defendant and reviewed the file. Therefore, being duly advised in all matters, the court hereby enters the following order:

IT IS HEREBY ORDERED that the defendant's motion for relief from judgment is denied based upon the written material submitted. Defendant's motion is time barred by RCW 10.73.090. Defendant has failed to show any exception to the time bar applicable to defendant's motion.

[a]n examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 151, 104 S.Ct. 1723, 1725, 80 L.Ed.2d 196 (1984). Because the time limits imposed by Congress in a suit against the Government involve a waiver of sovereign immunity, it is evident that no more favorable tolling doctrine may be employed against the Government than is employed in suits between private litigants.

*Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 453, 457 - 458 (1990) cited favorably in *State v. Duvall*, 86 Wn. App. 871, 875 (1997).

So Defendant's invocation of the doctrine of equitable tolling does not apply to the facts of this matter. Assuming, *arguendo*, that defendant's counsel provided incorrect information on July 27, 2006, nonetheless: a) the defendant was informed by immigration counsel on April 24, 2006 - prior to entering into the plea on July 27, 2006 -

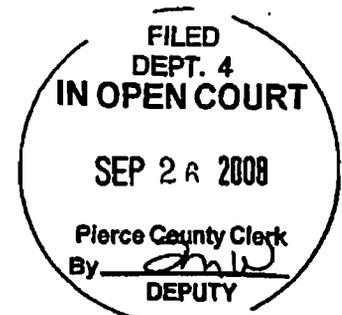
that if he were found guilty of the crime of Unlawful Possession of Marihuana With Intent to Deliver that he would be deportable and ineligible to apply for discretionary relief from deportation; b) that at the sentencing hearing of August 29, 2006, he was present when his counsel stated that defendant "is actually a native of Taiwan and so there's probably going to be some deportation issues later on, anyway. The 11 months is pretty important, and immigration law gives absolutely no guarantees. That was why we hit on that number. That gives him a slightly better argument in immigration issues later on;" and, c) that defendant's untimely application was not a product of a failed timely application. In such circumstances defendant fails to establish the doctrine of equitable tolling.

ORDER signed this 25<sup>th</sup> day of September, 2008.

  
Bryan Chushcoff, Judge

cc: Scott Peters  
Deputy Prosecuting Attorney

Maria Stirbis WSBA #26048  
Stirbis & Stirbis  
Attorney for Defendant  
4119 Sixth Avenue  
Tacoma, WA 98406



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

THE STATE OF WASHINGTON,

Plaintiff,

v.

YUNG-CHENG TSAI,

Defendant.

No. 06-1-00782-6

ORDER GRANTING MOTION FOR  
RELIEF FROM JUDGMENT

[PROPOSED]

Good cause having been shown, Defendant's motion for relief from the judgment previously entered in the above-noted matter is GRANTED.

The Court hereby orders the following specific relief:

Defendant's plea of guilty is withdrawn and the judgment and sentence are hereby voided.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
The Honorable Bryan E. Chushcoff  
Pierce County Superior Court Judge

Presented by:

\_\_\_\_\_  
Christopher Black, WSBA #31744  
Attorney for Yung-Cheng Tsai

ORDER GRANTING MOTION FOR RELIEF FROM  
JUDGMENT - 1

LAW OFFICE OF CHRISTOPHER BLACK, PLLC  
119 First Avenue South, Suite 320  
Seattle, WA 98104  
206.623.1604 | Fax: 206.622.6636

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838A07-F20F-6452-D386DB5ABEF0A782 containing 51 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48838A07-F20F-6452-D386DB5ABEF0A782. The copy associated with this number will be displayed by the Court.

# **APPENDIX “H”**

*State’s Response*



06-1-00782-6 37191470 SRSP 09-28-11

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CLERK'S OFFICE

A.M. SEP 26 2011 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY *[Signature]* DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG CHENG TSAI,

STATE'S RESPONSE TO  
DEFENDANT'S MOTION FOR RELIEF  
FROM JUDGMENT

Defendant.

The State respectfully requests the Court to deny defendant's motion for relief from judgment. Defendant's criminal and immigration counsel advised him of the consequences of pleading guilty to Unlawful Possession of a Controlled Substance With Intent to Deliver (UPCSWID) in accordance with the requirements of *Padilla v. Kentucky*, \_\_U.S.\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), and *State v. Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011).

I. FACTS

The State charged defendant with one count of UPCSWID in Pierce County on February 16, 2006. (Defendant's Exhibit A, Information.) Defendant pled guilty to that charge on July 27, 2006. (Defendant's Exhibit E, Statement of Defendant on Plea of Guilty.) His plea paperwork in Paragraph 5 (i) stated a warning regarding immigration consequences:

ORIGINAL

1 If I am not a citizen of the United States, a plea of guilty to an offense punishable  
2 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.

3 *Id.* at 2. Defendant marked the appropriate box with an "X" to designate he is not a United  
4 States citizen. *Id.*

5 Scott Moriarty, the attorney covering for Erik Bauer, defendant's criminal counsel,  
6 informed defendant the elements of the charges, defendant's constitutional rights, and the  
7 sentencing options presented in his Statement of Defendant on Plea of Guilty. (State's Exhibit A  
8 at 4-5, Verbatim Report of Proceedings.) Further, the Court asked defendant if he knew how to  
9 read and write the English language, whether he had gone over the Statement of Defendant on  
10 Plea of Guilty with Mr. Moriarty or Mr. Bauer, and whether he understood the Statement of  
11 Defendant on Plea of Guilty. (*Id.* at 5-6.) Defendant answered in the affirmative to each of the  
12 Court's questions, and he told the court that he did not have any questions about the plea  
13 paperwork. (*Id.*) The Court found that defendant understood the nature of the charges and made  
14 a knowing, voluntary, and intelligent plea of guilty to UPCSWID. (*Id.* at 8.)

15  
16 The Court sentenced defendant to 11 months for UPCSWID on August 29, 2006.  
17 (Defendant's Exhibit F, Judgment and Sentence.) At the defendant's sentencing hearing, Erik L.  
18 Bauer, defendant's attorney, told the Court about defendant's immigration concerns, and that  
19 defendant knowingly agreed to the sentence:

20 **Mr. Bauer:** ... Mr. Tsai is actually a native of Taiwan and so there's probably  
21 going to be some immigration issues later on, anyway. The 11 months is pretty  
22 important, and immigration law gives absolutely no guarantees. That was why we  
hit on that number. That gives him a slightly better argument in immigration  
issues later on.

23 **The Court:** Anything you want to say?

24 **The Defendant:** Yes. I know what I did was wrong and I'm sorry.

25 **The Court:** I follow the recommendation.

**Mr. Bauer:** Thank you, Your Honor.

1 (State's Exhibit B at 2-3, Verbatim Report of Proceedings.)

2 The United States Immigration and Customs Enforcement Agency subsequently initiated  
3 deportation proceedings against defendant as a result of his conviction in this matter. Defendant  
4 filed a Criminal Rule 7.8(b)(4) motion to vacate his judgment on July 21, 2008, claiming that at  
5 the time the Court entered its judgment, he had ineffective assistance of counsel with regards to  
6 the deportation consequences resulting from his guilty plea.

7 The Court denied defendant's motion pursuant to RCW 10.73.090. (Defendant's Exhibit  
8 I at 3, Order on Motion for Relief from Judgment.) In its Order, the Court recognized that

9 ...the defendant was informed by immigration counsel on April 24, 2006 - prior  
10 to entering into the plea on July 27, 2006 that if he were found guilty of the crime  
11 of unlawful Possession of Marihuana With Intent to Deliver that he would be  
deportable and ineligible to apply for discretionary relief from deportation....

12 *Id.* Here, defendant is seeking relief under CrR 7.8 (b)(4) and RCW 10.73.100 (6), based on a  
13 material change in law following the decisions *Padilla v. Kentucky*, \_\_U.S.\_\_, 130 S.Ct. 1473,  
14 176 L.Ed.2d 284 (2010), and *State v. Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011).

## 15 II. LAW AND ARGUMENT

16 When the deportation consequences of a defendant's guilty plea are "truly clear", *Padilla*  
17 holds that: "... counsel must inform her client whether his plea carries a risk of deportation."  
18 *Padilla*, at 130 S.Ct. at 1486. The Washington State Supreme Court applied *Padilla's* holding  
19 in *Sandoval*, requiring counsel "to correctly advise, or seek consultation to correctly advise"  
20 their clients of deportation consequences from a guilty plea to an offense listed in 8 USC § 1227  
21 (a)(2). *Sandoval*, 171 Wn.2d at 172.

22 In *Padilla*, the defendant was misadvised that he "did not have to worry about his  
23 immigration status since he had been in the country for so long." *Padilla*, 130 S.Ct. at 1478. The  
24 defense attorney in *Sandoval* failed to tell the defendant that the crime to which the Defendant  
25

1 would enter a plea was deportable, and then recommended that defendant accept the plea  
2 agreement because it gave him time to find an immigration attorney, who would assist him with  
3 any immigration issues. *State v. Sandoval*, 171 Wn.2d at 167. In both *Sandoval* and *Padilla*, the  
4 appellants did not have knowledge that a plea would result in certain eligibility for deportation.  
5 Both courts found that the incorrect assurances “nullified the constitutionally required advice  
6 about deportation consequence of pleading guilty.” *Id.* at 174.

7 Defendant claims that he did not enter his plea knowingly and voluntarily because “he  
8 was not informed that doing so would cause him to lose his immigration status and make his  
9 eligible for deportation.” (Defendant’s Motion for Relief from Judgment at 3.) But defendant’s  
10 exhibits in support of his claim for relief show that he consulted a specialized immigration  
11 attorney, who advised him that a plea to UPCSVID would result in certain eligibility for  
12 deportation. (Defendant’s Exhibit C at 1-2, Declaration of Vicky Dobrin.) Further, the  
13 documentation defendant provides shows that he entered his plea with the express intent to  
14 secure an 11 month sentence, which would aid his argument in deportation proceedings.  
15 (Defendant’s Exhibit I at 3, Order on Motion for Relief from Judgment.)

16 Eligibility for deportation under 8 U.S.C. § 1227 (a) does not guarantee deportation. *See*  
17 8 U.S.C. § 1227(a). Under *Padilla* and *Sandoval*, an attorney may provide mitigation advice.  
18 *State v. Sandoval*, 171 Wn.2d 163, 173, 249 P.3d 1015 (2011). However, an attorney may not  
19 incorrectly assure the defendant that he or she would not be deported or that deportation was a  
20 remote possibility when the offense is a deportable offense. *Id.* (citing *Padilla*, 130 S.Ct. at  
21 1478.)  
22

23 Unlike the defendants in *Padilla*, and *Sandoval*, defendant was advised of the deportation  
24 consequences of his plea. He consulted with an immigration attorney, Ms. Dobrin, prior to  
25

1 entering his plea; and, by defendant's own admission, Ms. Dobrin advised him that UPCSVID  
2 was an aggravated felony and deportable offense. (Defendant's Exhibits C and D.)

3 Ms. Dobrin spoke with defendant's criminal counsel prior to the plea regarding  
4 defendant's deportation concerns and options. (Defendant's Exhibit C at 1-2, Declaration of  
5 Vicky Dobrin). Defendant's criminal defense counsel indicated that the plea was entered to  
6 secure an eleven month sentence, which would hopefully make defendant's argument more  
7 attractive to the administrative judge adjudicating his deportation case. (Defendant's Exhibit I at  
8 3, Order on Motion for Relief from Judgment.) At the sentencing hearing on August 29, 2006,  
9 defendant's criminal defense counsel stated that:

10 [D]efendant is actually a native of Taiwan and so there's probably going to be  
11 some deportation issues later on anyway. The 11 months is pretty important, and  
12 immigration law gives absolutely no guarantees. That is why we hit on that  
13 number. That gives him a slightly better argument in immigration issues later on.

(State's Exhibit B at 2-3, Verbatim Report of Proceedings.)

14 Unlike the defendant in *Sandoval*, Defendant Tsai's attorney explicitly made no  
15 guarantees and indicated that the plea was made to improve defendant's position in the  
16 deportation hearing. This is mitigation advice, and is explicitly *not* precluded by the holding in  
17 *Padilla* or *Sandoval*. *Sandoval*, 171 Wn.2d at 173. Defendant was advised that a plea to  
18 UPCSVID would have rendered him deportable. He entered the plea knowingly and voluntarily  
19 in order to aid his deportation case.

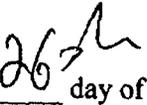
20 Here, defendant's criminal counsel informed him that his plea carried a risk of  
21 deportation, complying with *Padilla's* requirement. *Padilla*, at 130 S.Ct. at 1486; (State's  
22 Exhibit C, Declaration of Erik Bauer); (Defendant's Exhibit I at 3, Order on Motion for Relief  
23 from Judgment). Defendant's immigration counsel provided consultation in very certain terms  
24 to both defendant and his criminal counsel on the risks of deportation resulting from defendant's  
25

1 guilty plea, which comports with the court's directive in *Sandoval*, 171 Wn.2d at 172;  
2 (Defendant's Exhibit C at 1-2, Declaration of Vicky Dobrin).

3 **III. CONCLUSION**

4 Based on the foregoing, the State respectfully requests the Court to deny Defendant's  
5 Motion for Relief from Judgment.

6 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of September, 2011.

7  
8   
9 \_\_\_\_\_  
10 JOHN MACK JUNAS  
11 Deputy Prosecuting Attorney  
12 WSB# 37443

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15 CHRISTINE CHIN  
16 Rule 9 Intern  
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9/27/2011 15167 400229

Case Number: 06-1-00782-6 Date: November 28, 2012

SerialID: 48838748-F20F-6452-DC37DC990ABBD506

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

EXHIBIT A

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

STATE OF WASHINGTON,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 06-1-00782-6
	)	
YUNG-CHENG TSAI,	)	
	)	
Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 27th day of July, 2006, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

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APPEARANCES

On Behalf of Plaintiff(s): JENNIFER SIEVERS  
Deputy Prosecuting Attorney

On Behalf of Defendant(s): SCOTT MORIARITY  
Attorney at Law

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INDEX

PAGE

Plea

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1 MS. SIEVERS: Jennifer Sievers for the State.  
2 This is State v. Yung-Cheng Tsai. Cause number is  
3 06-1-00782-6.

4 Mr. Tsai is present. He is out of custody and  
5 represented by counsel.

6 This matter comes before the court for a plea to  
7 the original Information. We are asking that  
8 sentencing be set over until August 15th, 2006.

9 MR. MORIARITY: Good morning, Your Honor. For the  
10 record, Scott Moriarity present with Mr. Tsai. I'm  
11 covering for the attorney of record on this matter,  
12 Erik Bauer, who is unable to be here today.

13 I did have a chance to go through the Statement of  
14 Defendant on Plea of Guilty with Mr. Tsai. I explained  
15 to him the charges that he is facing. I explained to  
16 him the elements of that charge and what the State must  
17 prove. I also went through his constitutional rights  
18 with him and explained it to him. He chose to plead  
19 guilty this morning. He would be waiving those  
20 constitutional rights.

21 I then went through the court sentencing options  
22 with him including the maximum penalty, his standard  
23 range based on his criminal history that everyone is  
24 agreeing to, and the State's recommendation. I  
25 explained to him that the Court need not follow that

1 recommendation. He then signed the Statement of the  
2 Defendant on Plea of Guilty in my presence. He's  
3 entering -- I believe that he is entering this  
4 knowingly, intelligently, and voluntarily. I would ask  
5 the Court to accept his plea of guilty this morning.

6 THE COURT: You've indicated that you have read  
7 this to him?

8 MR. MORIARITY: I have, Your Honor, this morning  
9 with him.

10 THE COURT: So although this says that Mr. Bauer  
11 did all of that, in fact, you did, Mr. Moriarity?

12 MR. MORIARITY: That's correct, Your Honor.

13 THE COURT: Sir, for the record, is your name  
14 Yung-Cheng Tsai?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Mr. Tsai, do you read and write the  
17 English language?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Have you gone over a Statement of  
20 Defendant on Plea of Guilty, this document, with  
21 Mr. Moriarity or Mr. Bauer?

22 THE DEFENDANT: Yes.

23 THE COURT: And so you feel that you understand  
24 the Statement of Defendant on Plea of Guilty?

25 THE DEFENDANT: Yes, I do.

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THE COURT: Do you have any questions about it?

THE DEFENDANT: No, I don't.

THE COURT: So you understand that you are now charged in the original Information with the crime of Unlawful Possession of a Controlled Substance with Intent to Deliver. This has a maximum penalty of five years in prison and a 10,000-dollar fine. A standard range in your case of six months and a day to 18 months and a community custody range of up to one year.

If you go to prison, it would actually be nine to 18 months, I believe, or 9 to 12 months, rather, or the period of earned release, whichever is greater. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: In Paragraph 4(b) of the document, right here, sets forth the elements of the offense. These are the things that the State has to prove in order to convict you of this charge. Do you understand what the State needs to prove here?

THE DEFENDANT: Yes, I do.

THE COURT: Paragraph 6 of the document sets forth the various important rights that you give up when you agree to plea guilty. Do you understand each and every one of these rights that you are giving up?

THE DEFENDANT: Yes, I do.

1 THE COURT: Paragraph 11 is a statement. Is this  
2 your statement to me as to what you did to get yourself  
3 in trouble?

4 THE DEFENDANT: Yes, it is.

5 THE COURT: Are these your initials after that  
6 statement?

7 THE DEFENDANT: Yes, it is.

8 THE COURT: Is this your signature at Paragraph 12  
9 of the document?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Tsai, has anyone made any threat  
12 or promise to you in order to force you or induce you  
13 to plea guilty here other than what the State may have  
14 agreed to do or to recommend?

15 THE DEFENDANT: No.

16 THE COURT: Do you understand that the Court is  
17 not bound to follow the recommendations of either the  
18 State or the defense in determining your sentence?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Finally, do you understand that upon  
21 entry of a finding of guilt in this matter, you may no  
22 longer own, possess, or have under your control any  
23 firearm unless your right to do so is restored by a  
24 court and that you must immediately surrender any  
25 concealed pistol license that you might own. Do you

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understand that?

THE DEFENDANT: Yes, sir.

THE COURT: To the charge of Unlawful Possession of a Controlled Substance with Intent to Deliver as set forth in the original Information, what is your plea, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: A plea of guilty will be entered. The Court finds that the factual basis for the plea. The defendant understands the nature of the charge and the consequences of the plea and that it is a knowing, voluntary, and intelligent plea.

MR. MORIARITY: Your Honor, the parties -- it is my understanding that Ms. Ludlow for the State and Mr. Bauer had agreed to set sentencing over for this matter. We have checked with the Court's Judicial Assistant, and it looks like the 15th of August, here, in CD 2 looks like a good date.

To accommodate that, the State did want evidence that Mr. Tsai had obtained a rider from his bail bonds company. We have proof of that. I have shown it to counsel, if I could hand that forward.

MS. SIEVERS: The State is not seeking any change in conditions, just maintaining the previous conditions pending sentencing.

1 THE COURT: \$15,000.

2 MR. MORIARITY: Yes.

3 MS. SIEVERS: Yes.

4 THE COURT: You still want BTC as a condition?

5 MS. SIEVERS: Your Honor, I, actually, don't know.

6 That wasn't contemplated.

7 MR. MORIARITY: Your Honor, it is my understanding  
8 that, actually, BTC was a condition, but Mr. Tsai lives  
9 outside the county. When he went there, they didn't  
10 want him the first time. He still lives out of county.

11 THE COURT: He lives in Federal Way, I guess.

12 I have signed the sentencing order -- scheduling  
13 order for sentencing, rather, and the order  
14 establishing release conditions. I have not included  
15 BTC. The rider should be put into the court's file. I  
16 wish you all luck.

17 MR. MORIARITY: Thank you very much, Your Honor.

18 (Proceedings Concluded.)

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\*\*\*\*\*CERTIFICATE\*\*\*\*\*

I, Katrina A. Smith, do hereby certify that the foregoing transcript entitled Verbatim Report of Proceedings, July 27th, 2006, was taken by me stenographically and reduced to the foregoing, and that the same is true and correct as transcribed.

DATED at Tacoma this 12th day of September 2008.

\_\_\_\_\_  
KATRINA A. SMITH/SM-IT-HK-302N9

9/27/2011 15:16:40

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838748-F20F-6452-DC37DC990ABBD506  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

EXHIBIT B

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

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 06-1-00782-6  
 )  
 YUNG-CHENG TSAI, )  
 )  
 Defendant. )

 COPY

-----  
VERBATIM REPORT OF PROCEEDINGS  
-----

BE IT REMEMBERED that on the 29th day of  
August, 2006, the above-mentioned cause came on duly for  
hearing before the HONORABLE SERGIO ARMIJO, Superior Court  
Judge in and for the County of Pierce, State of  
Washington; the following proceedings were had, to-wit:

APPEARANCES

FOR THE PLAINTIFF: JENNIFER SIEVERS  
Deputy Prosecutor

FOR THE DEFENDANT: ERIK L. BAUER  
Attorney at Law

Reported by,  
Carla J. Higgins, CSR

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AUGUST 29, 2008

SENTENCING

MS. SIEVERS: This is cause 06-1-00782-6. Mr. Tsai is present. He's out of custody and represented by counsel. This matter comes before the Court for sentencing. Mr. Tsai pled guilty on July 27, 2006.

THE COURT: Defense ready?

MS. BAUER: Yes, we are, Your Honor. Good morning.

THE COURT: Go ahead, State.

MS. SIEVERS: The recommendation is for 11 months in custody with credit for 21 days already served, a filing fee of \$200, a crime victim penalty assessment of \$500, agency drug fund of \$250, a DNA sample and the \$100 fee associated with it, a \$1,000 drug fine, drug treatment as set by the community corrections officer, community custody for 12 months, no use or possession of controlled substances, no association with drug users or seller, and forfeit any contraband in the property room.

THE COURT: Defense?

MR. BAUER: Your Honor, that was an agreed recommendation before the Court. It is essentially a mid-range recommendation. We would ask the Court to follow the recommendation. Mr. Tsai is actually a native of Taiwan and so there's probably going to be some

1 immigration issues later on, anyway. The 11 months is  
2 pretty important, and immigration law gives absolutely no  
3 guarantees. That was why we hit on that number. That  
4 gives him a slightly better argument in immigration issues  
5 later on.

6 THE COURT: Anything you want to say?

7 THE DEFENDANT: Yes. I know what I did was  
8 wrong and I'm sorry.

9 THE COURT: I'll follow the recommendation.

10 MR. BAUER: Thank you, Your Honor.

11 (Adjourned.)

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

DEPARTMENT NO. 9 HON. SERGIO ARMIJO, JUDGE

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 06-1-00782-6  
 )  
 YUNG-CHENG TSAI, )  
 )  
 Defendant. )  
 )

STATE OF WASHINGTON )  
 ) ss  
 COUNTY OF PIERCE )

I, Carla J. Higgins, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing comprises a true and correct transcript of the proceedings held in the above-entitled matter.

Dated this 14<sup>th</sup> day of Aug 2008.

*Carla J. Higgins*  
Carla J. Higgins, CSR  
Official Reporter

9/27/2011 15157 498245

Case Number: 06-1-00782-6 Date: November 28, 2012

SerialID: 48838748-F20F-6452-DC37DC990ABBD506

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

EXHIBIT C

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,	Plaintiff,	CAUSE NO. 06-1-00782-6
vs.		
YUNG CHENG TSAI,	Defendant.	DECLARATION OF ERIK BAUER

I, Erk L. Bauer, am over the age of eighteen and competent to testify in this matter.

1. I am a criminal defense attorney in private practice in Tacoma, Washington. I am admitted to practice law by the Washington State Bar, and my state bar number is 14937. My business address is 215 Tacoma Avenue South, Tacoma, Washington, 98402.

2. I represented Mr. Tsai from the pre-trial proceedings through his plea of guilty to UPCSVID and subsequent sentencing in this matter.

3. I knew that Mr. Tsai was not a citizen of the United States, and Mr. Tsai informed me of his concerns regarding deportation following a conviction in this matter.

4. Mr. Tsai had an immigration attorney, Vicky Dobrin, who was giving him advice with respect to the potential immigration consequences resulting from his criminal case.

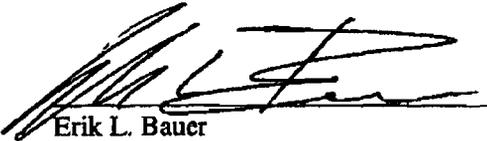
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5. I spoke with Ms. Dobrin at Mr. Tsai's request and explained Mr. Tsai's criminal case to her. Ms. Dobrin indicated she would advise Mr. Tsai as to the immigration consequences of his plea.

6. Any advice I gave Mr. Tsai regarding immigration was consistent with that provided by his immigration attorney, Ms. Dobrin. Essentially, I deferred to the immigration attorney with respect to her field of expertise.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this 26<sup>th</sup> day of September, 2011 at Tacoma, Washington.



Erik L. Bauer  
WSBA # 14937

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838748-F20F-6452-DC37DC990ABBD506 containing 25 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48838748-F20F-6452-DC37DC990ABBD506. The copy associated with this number will be displayed by the Court.

# **APPENDIX “I”**

*Court's Order*



06-1-00782-6 37338182 CRMT 10-19-11



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs  
  
YUNG-CHEN TSAI,  
  
Defendant.

CAUSE NO. 06-1-00782-6  
  
ORDER ON MOTION FOR RELIEF FROM  
JUDGMENT (CrR 7.8)

**THIS MATTER** came on before the undersigned judge of the Pierce County Superior Court based upon the written motion denominated a "Motion for Relief from Judgment" pursuant to CrR 7.8(b)(4) to the court dated May 18, 2011 (and efiled May 18, 2011) and brought to this court's attention in late August 2011. This court issued an order on August 31, 2011 directing the state to file a response on or before September 30, 2011. The defendant thereafter filed a reply to the state's response and the state has filed a supplemental response

**1. Analysis.**

**A.**

RCW 10.73.090 imposes a one-year time limit on petitions or motions for collateral attack, including motions to vacate judgment and motions to withdraw guilty pleas. RCW 10.73.090(1) states: "No petition or motion for collateral attack

on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." This time limitation "is a mandatory rule that acts as a bar to appellate court consideration" of collateral attacks, unless the petitioner shows that an exception under RCW 10.73.100 applies. *Shumway v Payne*, 136 Wash.2d 383, 397-98 (1998).

RCW 10.73.100 enumerates exceptions to the one-year time limit if the motion alleges (1) newly discovered evidence; (2) a statute that is unconstitutional on its face or as applied to the defendant; (3) double jeopardy; (4) insufficiency of the evidence; (5) a sentence in excess of the court's jurisdiction; or (6) a significant change in the law that is material to the conviction, sentence, or other order. In light of these explicit statutory exceptions, our Supreme Court has cautioned that a reviewing court should not look behind the judgment of a court of competent jurisdiction unless expressly permitted to do so by the Legislature. *See In re Personal Restraint of Runyan*, 121 Wash.2d 432, 442-44, 853 P.2d 424 (1993).

*State v Robinson*, 104 Wash.App 657, 662 (2001)

Understanding this and that his motion would otherwise be untimely, defendant Tsai proceeds in his CrR 7.8 motion under subparagraph 6, the exception for a significant change in the law. In this case it is the law relating to the need to provide a defendant with accurate information about the immigration consequences of pleading guilty and, specifically, the case of *Padilla v Kentucky*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). The defendant argues further that the change, while significant, should not be considered a "new rule" of criminal procedure and that it therefore meets the test to be applied retroactively set forth by the U.S. Supreme Court in *Teague v Lane*. 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)

The state maintains that at the time of his plea in 2006, defendant Tsai already had a right to be so informed by reason of state law, to-wit: RCW 10.40.200(a) and *State v Littlefair*, 112 Wn. App. 749, 769 (2002). It therefore asserts that the *Padilla* ruling is not a significant change in the law of Washington State (or as the state puts it, it is not "new law") and, therefore, the exception to the one-year time limit codified in RCW 10.73.100(6) does not apply.

The defendant correctly points out that the warnings of RCW 10.40.200 do not excuse a defense attorney's responsibility to provide appropriate warnings and accurate legal advice about the legal consequences of a plea. *State v Sandoval*, 171 Wn.2d 163 (2011). Defendant's Motion for Relief from Judgment, pp 7-8. One notes that the timeliness of Sandoval's application was not an issue in his case.

Assuming *arguendo* that the advice given Mr. Tsai was erroneous, it nonetheless affects this court's consideration of the *timeliness* of defendant's present application that the change in law in Washington state is not substantial and material for purposes of RCW 10 73.100(6). Mr. Tsai's counsel's obligations in 2006 when Mr. Tsai entered into his plea were the same as they would be now, post-*Padilla*, *i e* to provide accurate legal advice about the immigration consequences of a plea.<sup>1</sup> See, *State v Littlefair*, 112 Wn. App. 749, 769 (2002)(dissenting opinion). Thus, it cannot be said that there has been a "significant change in the law that is material to the conviction, sentence, or other order" affecting Mr. Tsai. *No other exception to RCW 10 73 090 being available to defendant under RCW 10 73 100, defendant's motion is time barred by RCW 10 73 090.*

#### B.

The defense motion at p. 12 states "[m]ost courts to reach this issue have held that *Padilla* can be applied retroactively " Defendant's Motion for Relief from Judgment, p. 12 Contrast this with the view of Federal District Court Judge Laurie Smith Camp (who decided the rule was not retroactive):

Courts that have addressed the issue have reached different conclusions *The weight of authority appears to favor nonretroactivity* See, *e g*, *United States v Chang Hong*, — F.3d —, 2011 WL 3805763, at \* \*2-9 (10th Cir. Aug. 30, 2011); *Chaidez v United States*, — F.3d —, 2011 WL 3705173, at \* \*4-8 (7th Cir Aug. 23, 2011); *United States v Hernandez-Monreal*, 404 Fed. App'x 714, 715 n\* (4th Cir. 2010). A few courts, however, have decided that *Padilla* is retroactive in a collateral review context. *United States v Orocio*, 645 F.3d 630,

<sup>1</sup> This case is not a typical pre-*Padilla* (or pre-*Littlefair*) failure of a lawyer to provide any warning about immigration consequences because it was "only" a "collateral" consequence of the plea The undisputed fact in this case is that the immigration consequences of the plea *were specifically discussed* but that erroneous information allegedly was provided defendant by his lawyer

633 (3d Cir. 2011); *United States v Dass*, 2011 WL 2746181, at \*4 (D.Minn. July 14, 2011).

(Emphasis added.) *US v Abraham*, 2011 WL 3882290, at 2 (D.Neb., September 1, 2011) Also finding the rule not to be retroactive is *US v Cervantes-Martinez*, 2011 WL 4434861, at 3 (S D Cal., September 23, 2011). I will not repeat the analysis; suffice to say I agree with those courts that have so held. The rule announced in *Padilla* is *not* retroactive under *Teague*.

**2. Order.**

The court has reviewed the pleadings/materials submitted by the defendant and by the plaintiff as well as having reviewed the court's file. Therefore, being duly advised in all matters, the court hereby enters the following order.

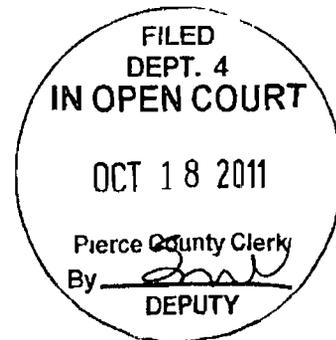
**IT IS HEREBY ORDERED** that the defendant's motion for relief from judgment is denied based upon the written material submitted.

**ORDER** signed this 18<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
Bryan Chushcoff, Judge

cc: John Macejunas  
Deputy Prosecuting Attorney

Christopher Black  
Attorney at Law  
119 First Avenue So. #320  
Seattle, WA 98104



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838675-F20D-AA3E-597FF133552066B5 containing 4 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

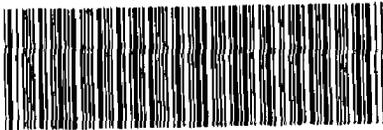
Dated: Nov 28, 2012 11:35 AM



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# **APPENDIX “J”**

*Notice of Appeal*



06-1-00782-6 37546892 NACA 11-23-11

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 488385A2-F20F-6452-D1371EDFE3DF3162  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

FILED  
IN COUNTY CLERK'S OFFICE

A.M. NOV 10 2011 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

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

<u>STATE OF WASHINGTON,</u>	)	No. <u>06-1-00782-6</u>
	)	
Plaintiff,	)	
v.	)	NOTICE OF APPEAL
	)	(RAP 5.3)
<u>YUNG-CHENG TSAI,</u>	)	
	)	
Defendant.	)	

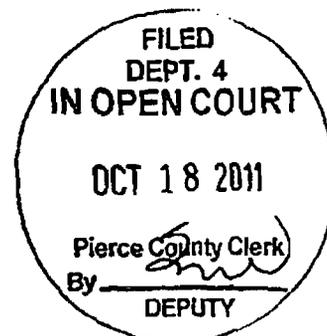
I, Yung-Cheng TSAI, appearing pro se, seek review by the designated appellate court of the: ORDER ON MOTION FOR RELIEF  
FROM JUDGMENT (CrR 7.8), pursuant RAP 2.2(a)(10) and  
RAP 5.2

entered on the 18<sup>th</sup> day of October, 2011.

A copy of the decision is attached to this notice.

DATED THIS 8<sup>th</sup> (YCT) day of November, 2011, in the City of Aberdeen, Grays Harbor County, State of Washington.

Y C T S A I  
Signature  
Yung-Cheng TSAI  
Printed Name  
DOC# 821442, Unit FSB22  
191 Constantine Way  
Aberdeen, WA 98520-9504



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

STATE OF WASHINGTON,

Plaintiff,

vs.

YUNG-CHEN TSAI,

Defendant.

CAUSE NO. 06-1-00782-6

ORDER ON MOTION FOR RELIEF FROM  
 JUDGMENT (CrR 7.8)

**THIS MATTER** came on before the undersigned judge of the Pierce County Superior Court based upon the written motion denominated a "Motion for Relief from Judgment" pursuant to CrR 7.8(b)(4) to the court dated May 18, 2011 (and efiled May 18, 2011) and brought to this court's attention in late August 2011. This court issued an order on August 31, 2011 directing the state to file a response on or before September 30, 2011. The defendant thereafter filed a reply to the state's response and the state has filed a supplemental response.

**I. Analysis.**

**A.**

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on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." This time limitation "is a mandatory rule that acts as a bar to appellate court consideration" of collateral attacks, unless the petitioner shows that an exception under RCW 10.73.100 applies. *Shumway v. Payne*, 136 Wash.2d 383, 397-98 (1998).

RCW 10.73.100 enumerates exceptions to the one-year time limit if the motion alleges (1) newly discovered evidence; (2) a statute that is unconstitutional on its face or as applied to the defendant; (3) double jeopardy; (4) insufficiency of the evidence; (5) a sentence in excess of the court's jurisdiction; or (6) a significant change in the law that is material to the conviction, sentence, or other order. In light of these explicit statutory exceptions, our Supreme Court has cautioned that a reviewing court should not look behind the judgment of a court of competent jurisdiction unless expressly permitted to do so by the Legislature. See *In re Personal Restraint of Rumyan*, 121 Wash.2d 432, 442-44, 853 P.2d 424 (1993).

*State v. Robinson*, 104 Wash.App. 657, 662 (2001).

Understanding this and that his motion would otherwise be untimely, defendant Tsai proceeds in his CrR 7.8 motion under subparagraph 6, the exception for a significant change in the law. In this case it is the law relating to the need to provide a defendant with accurate information about the immigration consequences of pleading guilty and, specifically, the case of *Padilla v. Kentucky*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010). The defendant argues further that the change, while significant, should not be considered a "new rule" of criminal procedure and that it therefore meets the test to be applied retroactively set forth by the U.S. Supreme Court in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989).

The state maintains that at the time of his plea in 2006, defendant Tsai already had a right to be so informed by reason of state law, to-wit: RCW 10.40.200(a) and *State v. Littlefair*, 112 Wn. App. 749, 769 (2002). It therefore asserts that the *Padilla* ruling is not a significant change in the law of Washington State (or as the state puts it, it is not "new law") and, therefore, the exception to the one-year time limit codified in RCW 10.73.100(6) does not apply.

The defendant correctly points out that the warnings of RCW 10.40.200 do not excuse a defense attorney's responsibility to provide appropriate warnings and accurate legal advice about the legal consequences of a plea. *State v. Sandoval*, 171 Wn.2d 163 (2011). Defendant's Motion for Relief from Judgment, pp. 7-8. One notes that the timeliness of Sandoval's application was not an issue in his case.

Assuming *arguendo* that the advice given Mr. Tsai was erroneous, it nonetheless affects this court's consideration of the *timeliness* of defendant's present application that the change in law in Washington state is not substantial and material for purposes of RCW 10.73.100(6). Mr. Tsai's counsel's obligations in 2006 when Mr. Tsai entered into his plea were the same as they would be now, post-*Padilla*, *i.e.* to provide accurate legal advice about the immigration consequences of a plea.<sup>1</sup> See, *State v. Littlefair*, 112 Wn. App. 749, 769 (2002)(dissenting opinion). Thus, it cannot be said that there has been a "significant change in the law that is material to the conviction, sentence, or other order" affecting Mr. Tsai. *No other exception to RCW 10.73.090 being available to defendant under RCW 10.73.100, defendant's motion is time barred by RCW 10.73.090.*

#### B.

The defense motion at p. 12 states "[m]ost courts to reach this issue have held that *Padilla* can be applied retroactively. . ." Defendant's Motion for Relief from Judgment, p. 12. Contrast this with the view of Federal District Court Judge Laurie Smith Camp (who decided the rule was not retroactive):

Courts that have addressed the issue have reached different conclusions. *The weight of authority appears to favor nonretroactivity. See, e.g., United States v. Chang Hong*, — F.3d —, 2011 WL 3805763, at \* \*2-9 (10th Cir. Aug. 30, 2011); *Chaidez v. United States*, — F.3d —, 2011 WL 3705173, at \* \*4-8 (7th Cir. Aug. 23, 2011); *United States v. Hernandez-Monreal*, 404 Fed. App'x 714, 715 n\* (4th Cir. 2010). A few courts, however, have decided that *Padilla* is retroactive in a collateral review context. *United States v. Orocio*, 645 F.3d 630,

<sup>1</sup> This case is not a typical pre-*Padilla* (or pre-*Littlefair*) failure of a lawyer to provide any warning about immigration consequences because it was "only" a "collateral" consequence of the plea. The undisputed fact in this case is that the immigration consequences of the plea *were specifically discussed* but that erroneous information allegedly was provided defendant by his lawyer.

633 (3d Cir. 2011); *United States v. Dass*, 2011 WL 2746181, at \*4 (D.Minn. July 14, 2011).

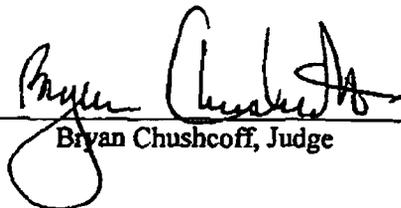
(Emphasis added.) *U.S. v. Abraham*, 2011 WL 3882290, at 2 (D.Neb., September 1, 2011). Also finding the rule not to be retroactive is *U.S. v. Cervantes-Martinez*, 2011 WL 4434861, at 3 (S.D.Cal., September 23, 2011). I will not repeat the analysis; suffice to say I agree with those courts that have so held. The rule announced in *Padilla* is *not* retroactive under *Teague*.

**2. Order.**

The court has reviewed the pleadings/materials submitted by the defendant and by the plaintiff as well as having reviewed the court's file. Therefore, being duly advised in all matters, the court hereby enters the following order:

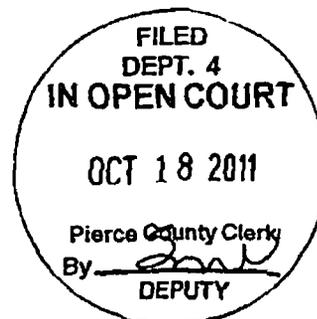
**IT IS HEREBY ORDERED** that the defendant's motion for relief from judgment is denied based upon the written material submitted.

ORDER signed this 18<sup>th</sup> day of October, 2011.

  
Bryan Chushcoff, Judge

cc: John Macejunas  
Deputy Prosecuting Attorney

Christopher Black  
Attorney at Law  
119 First Avenue So. #320  
Seattle, WA 98104



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 488385A2-F20F-6452-D1371EDFE3DF3162 containing 5 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



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# **APPENDIX “K”**

*Motion to Vacate*



06-1-00782-6 37546821 MTV 11-23-11

FILED  
IN COUNTY CLERK'S OFFICE

NOV 23 2011  
A.M. PM

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY *[Signature]* DEPUTY

The Honorable Bryan E. Chushcoff

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

STATE OF WASHINGTON,

Plaintiff,

vs.

YUNG-CHENG TSAI,

Defendant.

No. 06-1-00782-6

MOTION FOR VACATE  
OF ORDER (CR 60(b)(1), (11))

CLERK'S ACTION REQUIRED

MOTION

COMES NOW Defendant, YUNG-CHENG TSAI, appearing pro se, hereby submits  
this motion for vacate of order entered by this court on Motion For Relief  
From Judgment in the above-noted matter. Specifically, Defendant moves this  
Court to vacate the orders entered on August 31, 2011 and October 18, 2011 in  
this matter. This motion is based on CR 60(b)(1), (11); CR 7.8(c)(2); ~~CR 7.8(c)(2)~~  
State v. Smith, 144 Wn. App. 860, 184 P3d 666 (2008) and the following  
Memorandum of Law.

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MOTION FOR VACATE OF ORDER -1

MEMORANDUM

I. Factual and Procedural Background

On May 18<sup>th</sup>, 2011, Defendant represented by attorney Christopher Black moved this Court for relief from judgment pursuant to CrR 7.8(b)(4). Upon reviewing the pleadings/materials submitted by the Defendant and reviewing the court file, this Court entered an order on August 31, 2011, (August Order), to retain consideration of the motion. The Court entered its order based on:

- ▷ the petition may or may not be barred by the one year time bar in RCW 10.73.090 and either:
  - (X) The defendant has made a substantial showing that he or she is entitled to relief; or
  - (X) the resolution of the motion will require a factual hearing.

August Order, pg 2

The Court further ordered the State to file a response by September 30, 2011 and "After reviewing the response the court will determine whether this case will be transferred to the Court of Appeals, or if a hearing shall be scheduled," Id.

Upon review of pleadings/materials submitted by the defendant and by the plaintiff; as well as review of the court file, the Court entered an order on October 18, 2011, (October Order), denying the Defendant's motion for relief from judgment. In its analysis, the Court found "No other exception to RCW 10.73.090 being available to defendant under RCW 10.73.100, defendant's motion is time barred by RCW 10.73.090." see October Order at pg 3,

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MOTION FOR VACATE OF ORDER -2

## II. Argument.

This Court does not have authority to deny a CrR 7.8 motion if it is untimely under RCW 10.73.090.

CrR 7.8 sets forth the criteria for seeking relief from judgment and the procedure this Court must follow in addressing such motions. These procedures limit this Court's discretion. On September 1, 2007, the rule was amended and the pertinent following provides:

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

CrR 7.8 (c) (2). See *State v. Smith*, 144 Wn. App. 860, 862-63, 184 P.3d 666 (2008)

The amended rule provides mandatory procedures and criteria for determining when to transfer the motion to the Court of Appeals and when to retain the motion; and, if retained, what further procedures the trial court must employ. Restated, the rule directs this Court to transfer the motion to the Court of Appeals unless this Court first determines that (1) the motion is timely (i.e. not barred by RCW 10.73.090) and (2) either the motion is meritorious or it raises a question the resolution of which requires a factual hearing. Under the current rule, this Court can only retain a CrR 7.8 (b) motion if it first makes the enumerated determinations. CrR 7.8 (c) (2).

Here, in response to Defendant's CrR 7.8 (b) motion, this Court retained consideration of the motion in its August Order and ordered the State to respond. See August Order at 2. This Court further ordered: "After reviewing the response, the Court will determine whether this case will be transferred to the

MOTION FOR VACATE OF ORDER -3

Court of Appeals, or if a hearing shall be scheduled." *Id.* However, upon review of the pleadings from the State and the Defendant, this Court held in its analysis that: "No other exception to RCW 10.73.090 being available to defendant under RCW 10.73.100, defendant's motion is time barred by RCW 10.73.090." See October Order at 2. This Court then denied the Defendant's CrR 7.8(b) motion as untimely in the October Order, *Id.* at 4.

Under the amended CrR 7.8(c), this Court does not have authority to dismiss the Defendant's CrR 7.8(b) motion if it is untimely under RCW 10.73.090, *Smith* at 863. Instead, this Court must transfer the Defendant's CrR 7.8(b) motion to the Court of Appeals for consideration as a personal restraint petition.

Based on the error by this Court in its August order retaining the CrR 7.8(b) motion for consideration and its October order denying the CrR 7.8(b) motion as untimely, pursuant CR 60(b)(1), (2) and in the interest of justice and judicial economy, the Defendant hereby respectfully moves this Court to vacate both orders and transfer the CrR 7.8(b) motion filed by attorney Christopher Black on May 18, 2011, to the Court of Appeals as a personal restraint petition for consideration on its merits. CrR 7.8(c)(2). *Smith* at 864.

### III. Conclusion.

For the foregoing reasons, this Court should grant Mr. Tsai's motion for vacate of order in this matter.

DATED this 8<sup>th</sup> day of November, 2011

Respectfully Submitted,

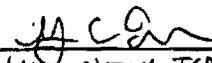
  
YUNG-CHENG TSAI  
Pro Se Litigant  
DOCH 821442 FSB22  
SCCC 191 Constantine Way  
Aberdeen, WA 98520

MOTION FOR VACATE OF ORDER -4

DECLARATION

I, YUNG-CHENG TSAI, declare that I have examined this motion and to the best of knowledge and belief it is true and correct.

DATED this 8<sup>th</sup> day of November, 2011.

Signed by:   
YUNG-CHENG TSAI Doc# 821442

CERTIFICATE OF SERVICE

I certify that on the 8<sup>th</sup> day of November, 2011, I deposited a true and correct copy of the foregoing in the Stafford Creek Corrections Center Legal Mail system by First Class mail pre-paid postage, upon the parties required to be served in this action!

Pierce County Prosecuting Attorney

County-City Building

930 Tacoma Ave S., Room 946

Tacoma, WA 98402-2171

DATED this 8<sup>th</sup> day of November, 2011.

Respectfully submitted,

  
YUNG-CHENG TSAI  
DOC# 821442 FSB22  
SCCC 191 Constantine Way  
Aberdeen, WA 98520

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MOTION FOR VACATE OF ORDER -5

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838ADA-F20D-AA3E-539FC12403EF5337 containing 5 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

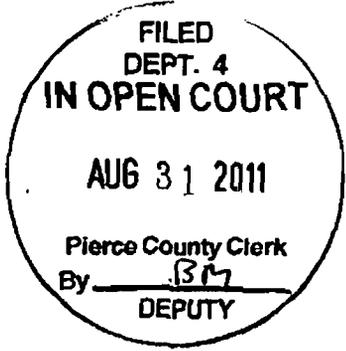
Dated: Nov 28, 2012 11:35 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted electronically by the Court, sign on to: <https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>, enter SerialID: 48838ADA-F20D-AA3E-539FC12403EF5337. The copy associated with this number will be displayed by the Court.

# **APPENDIX “L”**

*Court Order*



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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
YUNG CHENG TSAI,  
  
Defendant.

CAUSE NO. 06-1-00782-6

ORDER:

- ON MOTION FOR RELIEF FROM JUDGMENT
- ✓ Clerk's Action Required

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**THIS MATTER** came on before the undersigned judge of the Pierce County Superior Court based upon the written motion denominated a "Motion for Relief from Judgment" pursuant to CrR 7.8(b)(4) to the court dated May 18, 2011 (and efiled May 18, 2011) and brought to this court's attention in late August 2011. The court reviewed the pleadings/materials submitted by the defendant and reviewed the file. Therefore, being duly advised in all matters, the court hereby enters the following order (check all that apply):

27           ( ) **A**. **IT IS HEREBY ORDERED** that this petition/motion is transferred to the Court of  
 28 Appeals, Division II, to be considered as a personal restraint petition. The petition is being transferred  
 29 because:

30           ( ) it appears to be time-barred under RCW 10.73.090; or

31           ( ) it is not time-barred under RCW 10.73.090 but it is untimely under CrR 7.8(a) and therefore  
 32 would be denied as an untimely motion in the trial court; or

33           ( ) is not time-barred but does not meet the criteria under CrR 7.8(c)(2) to allow the court to  
 34 retain jurisdiction on the merits.  
 35

36           If box "**A**" above is checked the Pierce County Superior Court Clerk shall forward a copy  
 37 of this order as well as the defendant's pleadings identified above, to the Court of Appeals,  
 38 Division II.  
 39

40           ( x ) **B**. **IT IS HEREBY ORDERED** that this court will retain consideration of the motion  
 41 because the following conditions have been met: 1) the petition ~~is not~~ may or may not be barred by the  
 42 one year time bar in RCW 10.73.090 and either:

43           ( x ) The defendant has made a substantial showing that he or she is entitled to relief; or

44           ( x ) the resolution of the motion will require a factual hearing.  
 45

46           **IT IS FURTHER ORDERED** that the defendant's motion shall be heard on its merits. The  
 47 State is directed to:

48           ( x ) file a response by **September 30, 2011**. After reviewing the response, the Court will  
 49 determine whether this case will be transferred to the Court of Appeals, or if a hearing shall be  
 50 scheduled.

51           ( ) appear and show cause why the defendant's motion should not be granted. That hearing shall  
 52 be held on \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

53           ( ) As the defendant is in custody at the Department of Corrections, the State is further directed  
 54 to arrange for defendant's transport at that hearing.

55

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If box "B" above is checked the Pierce County Superior Court Clerk shall forward a copy of this order to the Appellate Division of the Pierce County Prosecutor's Office.

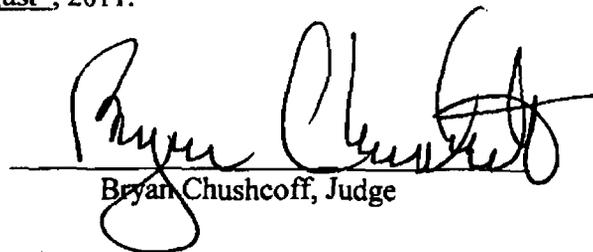
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ORDER signed this 31<sup>ST</sup> day of August, 2011.

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Bryan Chushcoff, Judge

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cc: April McComb, Department #4 sentencing deputy  
Pierce County Prosecutor

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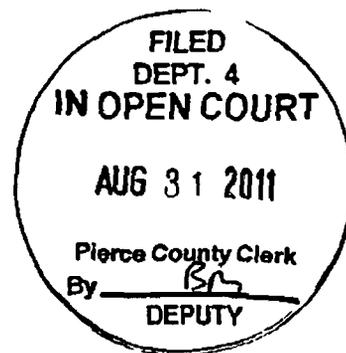
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Christopher Black  
Attorney at Law  
119 First Avenue So. #320  
Seattle, WA 98104

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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838C78-F20F-6452-DE288663F23105F5 containing 3 pages plus  
this sheet, is a true and correct copy of the original that is of record in my office  
and that this image of the original has been transmitted pursuant to statutory  
authority under RCW 5.52.050. In Testimony whereof, I have electronically  
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM

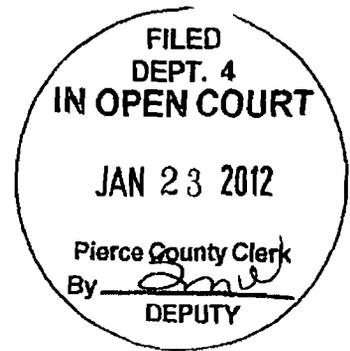
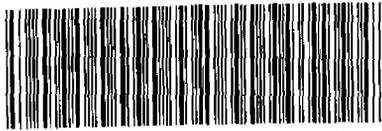


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# **APPENDIX “M”**

*Court Order*

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
YUNG-CHEN TSAI,  
  
Defendant.

CAUSE NO. 06-1-00782-6  
  
ORDER ON MOTION TO VACATE and  
ON RELIEF FROM JUDGMENT  
  
 Clerk's Action Required

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**THIS MATTER** came on before the undersigned judge of the Pierce County Superior Court based upon the written motion denominated a "Motion for Vacate" pursuant to CR 60(b) to the court dated November 8, 2011 (and filed November 23, 2011) seeking to have the court vacate its orders of: 1) August 31, 2011 (directing the state to file a response on or before September 30, 2011); and, 2) October 18, 2011 denying the defendant's motion for relief from judgment pursuant to CrR 7.8.

Defendant's argument is that pursuant CrR 7.8(c)(2) if the superior court finds defendant's motion to be untimely by RCW 10.73.090 (as this court did), it should transfer the matter to the Court of Appeals rather than deny the motion. This does not affect the validity of the order of August 31, 2011 and the motion to vacate that order should be denied. Whether the superior court should consider

1 the matter on its merits or transfer the matter to the Court of Appeals, depends upon whether the motion  
2 is timely. In this Order the court restates its analysis and modifies its conclusion.

3  
4 **1. Analysis.**

5 **A.**

6 RCW 10.73.090 imposes a one-year time limit on petitions or motions for  
7 collateral attack, including motions to vacate judgment and motions to withdraw  
8 guilty pleas. RCW 10.73.090(1) states: "No petition or motion for collateral attack  
9 on a judgment and sentence in a criminal case may be filed more than one year  
10 after the judgment becomes final if the judgment and sentence is valid on its face  
11 and was rendered by a court of competent jurisdiction." This time limitation "is a  
12 mandatory rule that acts as a bar to appellate court consideration" of collateral  
13 attacks, unless the petitioner shows that an exception under RCW 10.73.100  
14 applies. *Shumway v Payne*, 136 Wash.2d 383, 397-98 (1998).

15 RCW 10.73.100 enumerates exceptions to the one-year time limit if the  
16 motion alleges (1) newly discovered evidence; (2) a statute that is unconstitutional  
17 on its face or as applied to the defendant; (3) double jeopardy; (4) insufficiency of  
18 the evidence; (5) a sentence in excess of the court's jurisdiction; or (6) a  
19 significant change in the law that is material to the conviction, sentence, or other  
20 order. In light of these explicit statutory exceptions, our Supreme Court has  
21 cautioned that a reviewing court should not look behind the judgment of a court of  
22 competent jurisdiction unless expressly permitted to do so by the Legislature. *See*  
23 *In re Personal Restraint of Runyan*, 121 Wash.2d 432, 442-44, 853 P.2d 424  
24 (1993).

25  
26 *State v. Robinson*, 104 Wash App. 657, 662 (2001).

27 Understanding this and that his motion would otherwise be untimely, defendant Tsai proceeds in  
28 his CrR 7.8 motion under subparagraph 6, the exception for a significant change in the law. In this case  
29 it is the law relating to the need to provide a defendant with accurate information about the immigration  
30 consequences of pleading guilty and, specifically, the case of *Padilla v Kentucky*, \_\_\_ U.S. \_\_\_, 130  
31 S.Ct. 1473, 176 L.Ed.2d 284 (2010). The defendant argues further that the change, while significant,  
32 should not be considered a "new rule" of criminal procedure and that it therefore meets the test to be  
33 applied retroactively set forth by the U.S. Supreme Court in *Teague v. Lane*, 489 U.S. 288, 109 S.Ct.  
34 1060, 103 L.Ed.2d 334 (1989).

1 The state maintains that at the time of his plea in 2006, defendant Tsai already had a right to be  
2 so informed by reason of state law, to-wit: RCW 10.40.200(a) and *State v Littlefair*, 112 Wn. App. 749,  
3 769 (2002). It therefore asserts that the *Padilla* ruling is not a significant change in the law of  
4 Washington State (or as the state puts it, it is not “new law”) and, therefore, the exception to the one-  
5 year time limit codified in RCW 10.73.100(6) does not apply.

6 The defendant correctly points out that the warnings of RCW 10.40.200 do not excuse a defense  
7 attorney’s responsibility to provide appropriate warnings and accurate legal advice about the legal  
8 consequences of a plea. *State v Sandoval*, 171 Wn.2d 163 (2011). Defendant’s Motion for Relief from  
9 Judgment, pp. 7-8. One notes that the timeliness of Sandoval’s application was not an issue in his case.

10 Assuming *arguendo* that the advice given Mr. Tsai was erroneous, it nonetheless affects this  
11 court’s consideration of the *timeliness* of defendant’s present application that the change in law in  
12 Washington state is not substantial and material for purposes of RCW 10.73.100(6). Mr. Tsai’s  
13 counsel’s obligations in 2006 when Mr. Tsai entered into his plea were the same as they would be now,  
14 post-*Padilla*, *i e* to provide accurate legal advice about the immigration consequences of a plea.<sup>1</sup> See,  
15 *State v Littlefair*, 112 Wn. App. 749, 769 (2002)(dissenting opinion). Thus, it cannot be said that there  
16 has been a “significant change in the law that is material to the conviction, sentence, or other order”  
17 affecting Mr. Tsai. *No other exception to RCW 10 73.090 being available to defendant under RCW*  
18 *10.73 100, it appears defendant’s motion is time barred by RCW 10.73.090.*

19  
20 **B.**

21 The defense motion at p. 12 states “[m]ost courts to reach this issue have held that *Padilla* can be  
22 applied retroactively . . .” Defendant’s Motion for Relief from Judgment, p. 12. Contrast this with the  
23 view of Federal District Court Judge Laurie Smith Camp (who decided the rule was not retroactive):  
24

---

<sup>1</sup> This case is not a typical pre-*Padilla* (or pre-*Littlefair*) failure of a lawyer to provide any warning about immigration consequences because it was “only” a “collateral” consequence of the plea. The undisputed fact in this case is that the immigration consequences of the plea were specifically discussed but that erroneous information allegedly was provided defendant by his lawyer

1 Courts that have addressed the issue have reached different conclusions. *The*  
2 *weight of authority appears to favor nonretroactivity*. See, e.g., *United States v.*  
3 *Chang Hong*, — F.3d —, 2011 WL 3805763, at \* \*2–9 (10th Cir. Aug. 30,  
4 2011); *Chaidez v. United States*, — F.3d —, 2011 WL 3705173, at \* \*4–8  
5 (7th Cir. Aug. 23, 2011); *United States v. Hernandez–Monreal*, 404 Fed. App'x  
6 714, 715 n\* (4th Cir. 2010). A few courts, however, have decided that Padilla is  
7 retroactive in a collateral review context. *United States v Orocio*, 645 F.3d 630,  
8 633 (3d Cir. 2011); *United States v Dass*, 2011 WL 2746181, at \*4 (D.Minn. July  
9 14, 2011).

10  
11 (Emphasis added.) *U.S v Abraham*, 2011 WL 3882290, at 2 (D.Neb., September 1, 2011). Also finding  
12 the rule not to be retroactive is *U.S. v Cervantes-Martinez*, 2011 WL 4434861, at 3 (S.D.Cal.,  
13 September 23, 2011). I will not repeat the analysis, suffice to say I agree with those courts that have so  
14 held. The rule announced in *Padilla* is *not* retroactive under *Teague*.

15  
16 **2. Order.**

17 The court has reviewed the pleadings/materials submitted by the defendant and by the plaintiff as  
18 well as having reviewed the court's file. Because the court has determined that defendant's motion  
19 APPEARS TO BE BARRED by RCW 10.73.090, the court should, therefore, transfer the matter to the  
20 Court of Appeals. Denying the motion rather than transferring the matter to the Court of Appeals is an  
21 irregularity justifying relief to the Defendant under CR 60(b)(1). Therefore, being duly advised in all  
22 matters, the court hereby enters the following order:

23 **IT IS HEREBY ORDERED** that the defendant's motion is GRANTED in part and the order  
24 denying defendant's motion for relief from judgment entered October 18, 2011 be and it is hereby  
25 vacated and amended by this order. It is further,

26 **ORDERED, ADJUDGED and DECREED** that defendant's motion to vacate the order the  
27 entered August 31, 2011 is DENIED.

28 **ORDERED, ADJUDGED and DECREED** that defendant's petition/motion is transferred to  
29 the Court of Appeals, Division II, to be considered as a personal restraint petition. The petition is being  
30 transferred because it appears to be time-barred under RCW 10.73.090. It is further,

1           **ORDERED, ADJUDGED and DECREED** that the Pierce County Superior Court Clerk shall  
2 forward a copy of this order as well as the defendant's pleadings identified above, to the Court of  
3 Appeals, Division II.

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6           **ORDER** signed this 23<sup>rd</sup> day of January, 2012.

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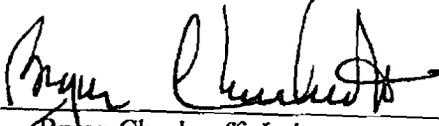
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cc: John Macejunas  
Deputy Prosecuting Attorney  
  
Yung-Cheng Tsai  
DOC #821442  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

  
Bryan Chushcoff, Judge

FILED  
DEPT. 4  
IN OPEN COURT  
  
JAN 23 2012  
  
Pierce County Clerk  
By   
DEPUTY

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838DA9-F20D-AA3E-5E988ED347E45C3C containing 5 pages  
plus this sheet, is a true and correct copy of the original that is of record in my  
office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



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# **APPENDIX “N”**

*State’s Supp. Response*

Case Number: 06-1-00782-6 Date: November 28, 2012  
SerialID: 48838E84-F20D-AA3E-5C0B1E2D92AA8BBC  
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



06-1-00782-8 37313882 SRSP 10-14-11

FILED  
IN COUNTY CLERK'S OFFICE

A.M. OCT 14 2011 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-00782-6

vs.

YUNG CHENG TSAI,

Defendant.

STATE'S SUPPLEMENTAL RESPONSE  
TO DEFENDANT'S MOTION FOR  
RELIEF FROM JUDGMENT

The State respectfully requests the Court to deny defendant's motion for relief from judgment. Defendant litigated this issue in 2008. The Court found that defendant was properly advised that he was deportable and ineligible for discretionary deportation review, which is in accordance with *Padilla v. Kentucky*, \_\_U.S.\_\_, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), and *State v. Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011), and forecloses the materiality of the *Padilla* and *Sandoval* holdings.

I. LAW AND ARGUMENT

A. Defendant's Motion Seeks To Relitigate Issues Already Decided In His First Motion To Vacate.

While neither *Padilla* nor *Sandoval* had established the constitutional right to be advised of deportability and ineligibility for discretionary relief when defendant filed his first motion to vacate judgment, the right was statutorily recognized in Washington State. See RCW

ORIGINAL

1 10.40.200(a); See Also, *State v. Littlefair*, 112 Wn App. 749, 769, 51 P.3d 116 (2002). On July  
2 21, 2008, defendant filed a motion to vacate his judgment pursuant to Criminal Rule 7.8(b)(4),  
3 claiming that at the time the Court entered its judgment, he had ineffective assistance of counsel  
4 with regards to the deportation consequences resulting from his guilty plea.

5 In his motion, defendant relied on *State v. Littlefair*, which held in part that, under  
6 Washington law, a non-citizen defendant has a statutory right to be advised of the specific  
7 deportation consequences of his guilty plea. *State v. Littlefair*, 112 Wn. App. 749, 769, 51 P.3d  
8 116 (2002). The *Littlefair* court relied on RCW 10.40.200(a), which provides a non-citizen  
9 defendant the right to an appropriate warning of the *special consequences* that may result from a  
10 guilty plea *when the offense is grounds for deportation. Id.* at 766. The *Littlefair* court explained  
11 that its conclusion was not affected by whether or not Littlefair had or lacked a constitutional  
12 right to be advised of deportation consequences because the legislature can create a statutory  
13 right not found in the constitution. *Id.*

14 This Court denied defendant's motion, finding that defendant had been properly advised  
15 that he would be deportable and ineligible for discretionary relief from deportation if he pleaded  
16 guilty. (Defendant's Exhibit I at 3, Order on Motion for Relief from Judgment.) In its Order,  
17 the Court recognized that  
18

19 . . . the defendant was informed by immigration counsel on April 24, 2006 - prior  
20 to entering into the plea on July 27, 2006 that if he were found guilty of the crime  
21 of unlawful Possession of Marihuana With Intent to Deliver that he would be  
*deportable and ineligible to apply for discretionary relief from deportation....*

22 *Id.* (Emphasis added.) As such, defendant's motion was barred by the 1-year statute of  
23 limitations under RCW 10.73.090(a). *Id.* The issue of whether defendant was properly advised  
24 has already been litigated in this court. Defendant is now asking the Court to reconsider its  
25 previous factual findings.

1 B. Defendant's Motion Is Still Barred By A 1-Year Statute of Limitations Because  
2 Defendant's Case Law Does Not Provide New Law That Would Materially Affect  
3 The Court's 2008 Order.

4 Defendant seeks relief under CrR 7.8 (b)(4). The law bars relief sought more than 1-year  
5 after the judgment is final. RCW 10.73.090(1) and CrR 7.8(b)(5). Defendant's conviction  
6 became final in 2006 and is thus barred. *Id.* Defendant attempts to circumvent the statute of  
7 limitations by way of RCW 10.73.100(6), which provides exception where there has been a  
8 material change in law. Defendant asserts that the decisions in *Padilla* and *Sandoval*, constitute a  
9 material change in the law under 10.73.100(6).

10 While the holdings in *Padilla* and *Sandoval* are certainly relevant, they do not change  
11 this Court's previous findings, which comport with the *Padilla* and *Sandoval* requirements.<sup>1</sup> This  
12 Court found that defendant was correctly advised that he would be deportable and ineligible to  
13 apply for discretionary relief from deportation, which comports with the constitutional  
14 requirements established in *Padilla* and *Sandoval*.<sup>2</sup>

15 The mere fact that *Padilla* and *Sandoval* acknowledged defendant's constitutional right  
16 after defendant originally moved to vacate the judgment does not render the 2008 findings  
17 inadequate when those facts satisfy the new requirements. *Padilla* and *Sandoval* do not provide  
18 new law that would materially change the original 2008 order of the Court. Thus, the exception  
19 to the 1-year time limitation under RCW 10.73.100(6) is not applicable and defendant's current  
20 motion is barred by the 1-year statute of limitations

21  
22  
23 <sup>1</sup> When the deportation consequences of a defendant's guilty plea are "truly clear," *Padilla* holds that. " counsel  
24 must inform her client whether his plea carries a risk of deportation " *Padilla*, at 130 S Ct. at 1486. The  
Washington State Supreme Court applied *Padilla's* holding in *Sandoval*, requiring counsel "to correctly advise, or  
25 seek consultation to correctly advise" their clients of deportation consequences from a guilty plea to an offense listed  
in 8 USC § 1227 (a)(2) *Sandoval*, 171 Wn 2d at 172

<sup>2</sup> To reinforce the adequacy of defendant's advisement, the State has attached the affidavit of Eric Bauer to its  
original response (See Exhibit C to State's Response, Declaration of Erick Bauer)

1 The fact that *Padilla* and *Sandoval* acknowledge the defendant's right in a constitutional  
2 context does not change the fact that defendant was properly advised. Defendant's motion is  
3 barred under the 1-year statute of limitations and should be denied. RCW 10.73.090(1) and CrR  
4 7.8(b)(5).

5 **II. CONCLUSION**

6 Based on the foregoing, the State respectfully requests the Court to deny Defendant's  
7 Motion for Relief from Judgment.

8 RESPECTFULLY SUBMITTED this 14th day of October, 2011.

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11   
12 \_\_\_\_\_  
13 JOHN MACEJUNAS  
14 Deputy Prosecuting Attorney  
15 WSB# 37443

16   
17 \_\_\_\_\_  
18 CHRISTINE CHIN  
19 Rule 9 Intern  
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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that the document  
SerialID: 48838E84-F20D-AA3E-5C0B1E2D92AA8BBC containing 4 pages  
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office and that this image of the original has been transmitted pursuant to  
statutory authority under RCW 5.52.050. In Testimony whereof, I have  
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/, Deputy.

Dated: Nov 28, 2012 11:35 AM



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# **APPENDIX “O”**

*Declaration*

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

NO. 43118-1

DECLARATION OF DIONE HAUGER

YUNG-CHENG TSAI,

Petitioner.

I, Dione Hauger, declare under penalty of perjury under the laws of the State of Washington, the following is true and correct:

1. I am a deputy prosecuting attorney for the Pierce County Prosecutor's Office. I was the trial deputy assigned to handle the charges filed against Yung-Cheng Tsai in Pierce County Cause No. 06-1-00782-6. His charges arose out of the service of a search warrant on a home where Mr. Tsai resided with other people. Three other people faced charges stemming from the execution of this search warrant: John Nauta in Pierce County Cause No. 06-1-01282-0, Monica Ramos in Pierce County Cause No. 06-1-01284-6., and Yi Un Ortega in Pierce County Cause No. 06-1-01283-8. I handled those cases as well.

1           2.       When I negotiate cases, I do not make offers to reduce felonies with strong  
2 evidence to assist defendants in avoiding possible immigration consequences. I cannot  
3 justify treating non-citizens differently than I would U.S. citizens simply to accommodate  
4 them in avoiding immigration consequences for their behavior. I feel there are strong  
5 equal protection and ethical reasons supporting my position.

6           3.       Prior to this file coming to me it was handled by Deputy Prosecuting  
7 Attorney Bill Hurney, who is part of the negotiation team in the drug unit. The file  
8 contained a written plea offer from Mr. Hurney that if Mr. Tsai pleaded guilty to the  
9 original information charging him with unlawful possession of a controlled substance  
10 (marijuana) with the intent to deliver (“UPCSWID”), the State would agree to recommend  
11 a mid-range sentence of 11 months based upon an offender score of 3. Mr. Tsai failed to  
12 appear for the pre-trial conference when this offer would have been distributed. When Mr.  
13 Tsai was brought back before the court, the file was assigned to me.

14           4.       The search of Mr. Tsai’s residence found a large quantity of marijuana in  
15 the house; it was found in every room in the house except for one of the bathrooms.  
16 Marijuana was found in a safe (lock box) in Tsai’s bedroom, along with a ledger containing  
17 names and amounts of monies owed. A digital scale was also found inside Tsai’s bedroom.  
18 There was at least 3-4 pounds of marijuana found in a vehicle in the garage alone, along  
19 with a substantial amount of hydrocodone pills packaged for sale.

20           5.       The three other co-defendants took their cases to trial. None of them  
21 challenged the search warrant used to search the residence. The evidence recovered in the  
22 search showed that John Nauta was extremely involved in the sale of the controlled  
23 substances. He was convicted as charged of UPCSWID - hydrocodone and UPCSWID –  
24  
25



# PIERCE COUNTY PROSECUTOR

**November 28, 2012 - 3:13 PM**

## Transmittal Letter

Document Uploaded: prp2-431181-Response.pdf

Case Name: IN RE: THE PRP OF TSAI

Court of Appeals Case Number: 43118-1

**Is this a Personal Restraint Petition?**  Yes  No

### The document being Filed is:

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_
- Answer/Reply to Motion: \_\_\_\_
- Brief: \_\_\_\_
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: [tnichol@co.pierce.wa.us](mailto:tnichol@co.pierce.wa.us)