

 Filed
Washington State Supreme Court

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NO. 88770-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re the Personal Restraint Petition of:

YUNG-CHEN TSAI and MUHAMMADOU JAGANA,

BRIEF OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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ORIGINAL

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I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. Those persons are also responsible by law for responding to collateral attacks upon criminal convictions that are filed in state courts. *See* RAP 16.6(b).

WAPA is interested in cases, such as this, which have wide-ranging impact on the prosecution system. Recognition of the limited nature of the jurisdiction that has been conferred upon the courts by the legislature with regard to collateral attacks upon criminal convictions will foster respect for the courts by ensuring the finality of judgments.

II. ISSUES PRESENTED

1. Whether claims of ineffective assistance of counsel should be exempted from the one-year limitation contained in RCW 10.73.090?
2. Whether the petitioners have established that the current test for the retroactive application of a new decision is both incorrect and harmful?

III. STATEMENT OF FACTS

Yung-Chen Tsai and Muhammadou Jagana both pled guilty to felony drug charges. Both Tsai and Jagana were advised by the trial court at the

time of their guilty pleas that their convictions could have an impact upon their ability to remain in the United States. Both Tsai and Jagana were advised by the trial court that there was a one-year time limit on the filing of collateral attacks.

During the one-year period for filing collateral attacks that was available to both Tsai and Jagana,¹ Washington courts were prepared to grant relief where no notice of immigration consequences were given to a defendant prior to entry of a guilty plea. *See* RCW 10.40.200(2) (applicable to all guilty pleas entered on or after Sept. 1, 1983). Washington courts were also disposed to grant relief where a defendant was affirmatively misadvised about the “collateral consequences” of a guilty plea. *See In re Pers. Restraint of Yim*, 139 Wn.2d 581, 588, 989 P.2d 512 (1999) (affirmative misrepresentation regarding possibility of deportation will provide a basis for relief); *State v. Stowe*, 71 Wn. App. 182, 858 P.2d 267 (1993) (misinformation about conviction’s effect on military career is basis for relief).

Long after the expiration of the one-year window for collaterally attacking a facially valid judgment and sentence, both Tsai and Jagana

¹Tsai’s judgment and sentence was filed on August 29, 2006. Tsai had until August 29, 2007, to file a timely collateral attack. Jagana’s judgment and sentence was filed on June 9, 2006. Jagana had until June 9, 2007, to file a timely collateral attack. *See* RCW 10.73.090(3)(a) (conviction for which no appeal is taken is final on date the judgement is filed with the clerk).

sought to withdraw their guilty pleas. Both Tsai and Jagana argued that a recent United States Supreme Court decision, *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010), should apply retroactively to their cases. Both seek the withdrawal of their guilty pleas, an action that may reward them with complete freedom from prosecution.

IV. ARGUMENT

A. Ineffective Assistance of Counsel Claims Penalize the State for an Act over Which it Has No Control

Claims of ineffective assistance of counsel (IAC) are unique in constitutional criminal procedure. For all other claims of constitutional error, an overturning of a conviction is triggered by some error committed by the state or its agents, such as passing a vague law, *see Connally v. General Constr. Co.*, 269 U. S. 385, 393, 46 S. Ct. 126, 70 L. Ed. 322 (1926), coercing a confession, *see Brown v. Mississippi*, 297 U. S. 278, 286, 56 S. Ct. 461, 80 L. Ed. 682 (1936), or withholding exculpatory evidence, *see Brady v. Maryland*, 373 U. S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963). In the context of ineffective assistance of counsel, however, “[t]he government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence.” *Strickland v. Washington*, 466 U.S. 668, 693, 104 S. Ct. 2068, 80 L. Ed. 2d 674 (1984).

While the United States Supreme Court has held that this seemingly counterintuitive result is dictated by the Sixth Amendment,² this expansion of the Sixth Amendment right to counsel should be stretched no further than necessary to protect the core purpose of the constitutional right. That purpose is to ensure that counsel's representation does not "so undermine[] the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U. S., at 686. The integrity of the criminal justice system is threatened when the state is forced to defend its convictions against conduct over which it has no control, and such threats should be minimized.

The remedy for a successful IAC claim is drastic, especially in light of the state's passive role. Reversing a conviction, particularly in collateral proceedings where these claims are usually litigated, is contrary to the "profound importance of finality in criminal proceedings." *Strickland*, 466 U. S., at 693-694. Such intrusions into this finality both "undermine[] confidence in the integrity of our procedures, and . . . inevitably delay[] and impair[] the orderly administration of justice." *Hill v. Lockhart*, 474 U. S. 52, 58, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985) (internal quotation marks omitted).

² See *Murray v. Carrier*, 477 U. S. 478, 488, 106 S. Ct. 2639, 91 L. Ed. 2d 397 (1986).

A successful IAC claim penalizes the state for an act over which it has no control. Not only is the state an innocent bystander throughout the process, but it is also difficult for the state to spot most instances of incompetent assistance until it is too late. "Many aspects of [defense] counsel's performance either occur outside the trial court's notice or reasonably appear to be, though they are not in fact, competent. Thus, the existence of incompetence does not necessarily imply fault on the part of the state." S. Giles, *Effective Assistance of Counsel: The Sixth Amendment and the Fair Trial Guarantee*, 50 U. Chi. L. Rev. 1380, 1397 (1983). Imputing counsel's error to the state forces the state to stand as an insurer against a criminal defendant's risk of incompetent counsel, thereby spreading the risk from defendants to the people through reversed convictions.

But criminal convictions are not accidents to be insured against, and the Sixth Amendment is not an insurance policy. While some attorney error may reasonably lead to a reversed conviction, the state cannot be required to assure an ideal trial. If counsel's error does not undermine confidence in the result, the error should not be a ground for reversal. Review of counsel's performance should not be a tool to free the guilty, but an assurance of the fundamental justice of our legal system.

When a review of defense counsel's performance is delayed by many years, a guilty party may obtain immunity from further prosecution. *See*,

e.g. *Summerville v. Warden*, 229 Conn. 397, 641 A.2d 1356, 1371 (1994) (noting that “in many cases an order for a new trial may in reality reward the accused with complete freedom from prosecution because of the debilitating effect of the passage of time on the state's evidence”). This is particularly true in cases in which the defendant originally pled guilty. When no trial originally took place, the death or incapacity of a forensic witness, a police officer, or the victim of the crime can present insurmountable confrontation clause issues. *See, e.g., State v. Koslowski*, 166 Wn.2d 409, 209 P.3d 479 (2009) (victim died prior to trial and confrontation clause barred victim’s out-of-court statements as the defendant did not have a prior opportunity to cross examine).³ When a defendant enters a guilty plea, forensic tests may not be conducted on the suspected drugs. When a defendant enters a guilty plea, the physical evidence will be destroyed in a relatively short time period. *See generally* GR 15(i) (“trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders”); RCW 36.23.070 (county clerk may apply to the superior court for an order authorizing the destruction of exhibits after six years).

³Even when a suppression hearing was heard prior to the entry of the defendant’s guilty plea, the reporter’s notes from superior court cases may be destroyed after 15 years. *See* RCW 36.23.070. District court electronic recordings of court proceedings may be destroyed as soon as the appeal period has expired. *See generally* Washington State Archives, Officer of the Secretary of State, District and Municipal Court Records Retention Schedule Version 6.0, at 19 (March 2009) (Available at http://www.sos.wa.gov/_assets/archives/District%20and%20Municipal%20Court%20RRS%20ver%206.0%20rev.pdf (Last visited Sep. 3, 2014)).

Even when witnesses and evidence remain available, a trial conducted years after the commission of the crime will be less reliable than a trial conducted earlier in time. *Herrera v. Collins*, 506 U.S. 390, 403, 113 S. Ct. 853, 122 L. Ed. 2d 203 (1993) (“the passage of time only diminishes the reliability of criminal adjudications”); *McCleskey v. Zant*, 499 U.S. 467, 491, 111 S. Ct. 1454, 113 L. Ed. 2d 517(1991) (“When a habeas petitioner succeeds in obtaining a new trial, the ‘erosion of memory and dispersion of witnesses that occur with the passage of time’ prejudice the government and diminish the chances of a reliable criminal adjudication”) (*quoting Kuhlmann v. Wilson*, 477 U.S. 436, 453, 106 S. Ct. 2616, 91 L. Ed. 2d 364 (1986) (plurality opinion) (internal quotation marks omitted; citation omitted)).⁴ This principle led the Washington Legislature to enact a statute of limitations on the filing of collateral attacks.

B. Ineffective Assistance of Counsel Claims Are Subject to the Same Statute of Limitations As All Other Constitutional Claims Asserted in a Collateral Attack

A court’s authority to reopen a judgment in a criminal case arises from either a statute or the constitution. The constitutional authority, which is contained in article 1, § 13, is very narrow and does not permit challenges

⁴In Washington, the state faces an additional hurdle not present in federal prosecutions or those in many other states. Because Washington does not recognize the “good faith exception” to the exclusionary rule, evidence that was lawfully collected at the time of the crime may not be available at a long-delayed trial. *See State v. Adams*, 169 Wn.2d 487, 238 P.3d 459 (2010).

that go beyond the face of a final judgment of a court of competent jurisdiction. *In re Runyan*, 121 Wn.2d 432, 441-42, 853 P.2d 424 (1993). Between 1855 and 1947, statutes similarly limited a court's authority to open a final judgment to issues of facial invalidity. Laws of 1854, p. 213, §445 (codified as Remington's Revised Statutes § 1075).⁵ This restriction foreclosed the consideration of the deficient performance of defense counsel, as such conduct would not be visible on the face of the judgment. *See generally In re Grieve*, 22 Wn.2d 902, 911-12, 158 P.2d 73 (1945) (listing a variety of claims that cannot be reviewed when the judgment and sentence is fair on its face”).

In 1947, the Legislature authorized courts, for the first time, to examine constitutional claims asserted in a collateral attack even when the judgment is fair on its face. Laws of 1947, ch. 256, § 3.⁶ “[T]hese statutory

⁵Laws of 1854, p. 213, §445 (codified as Remington's Revised Statutes § 1075), provided that:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of confinement has not expired, in either of the cases following:

1. Upon any process issued on any final judgment of a court of competent jurisdiction. . .

This Court upheld the constitutionality of R.R.S. § 1075 in *In re Lybarger*, 2 Wash. 131, 25 P. 1075 (1891).

⁶In 1947, the legislature added the following language to R.R.S. § 1075:

No court or judge shall inquire into the legality of any judgment or process whereby the party is in custody, or discharge him when the term of commitment has not expired, in either of the cases following:



changes have never affected, nor could they affect, the core constitutional inquiry protected by our state suspension clause.” *Runyan*, 121 Wn.2d at 443.

In the 1970’s, this Court created personal restraint petitions as the procedural mechanism for carrying out the Legislature’s grant of jurisdiction at the appellate court level. *See generally* RAP 16.1(c); *Toliver v. Olsen*, 109 Wn.2d 607, 746 P.2d 809 (1987). These procedural rules, however, did not override or alter the restrictions placed upon the courts’ review of collateral attacks by the Legislature. *See In re Rafferty*, 1 Wash. 382, 25 P. 465 (1890).⁷

In 1989, the Legislature, concerned that their expansion of the collateral attacks had undermined finality and public safety, restored some finality to criminal judgments by limiting the authority it had previously granted to courts to look behind the face of a judgment and sentence.

(1) Upon any process issued on any final judgment of court of competent jurisdiction except when it is alleged in the petition that rights guaranteed the petitioner by the Constitution of the State of Washington or of the United States have been violated.

Laws of 1947, chapter 256, § 3.

⁷Once the legislature acted to expand jurisdiction beyond that preserved by Const. art. I, § 13, Const. article 4, § 4 permits the court to adopt procedural rules for dealing with the legislatively expanded scope of jurisdiction. *Holt v. Morris*, 84 Wn.2d 841, 529 P.2d 1081 (1974), *overruled on other grounds*, *Wright v. Morris*, 85 Wn.2d 899, 540 P.2d 893 (1975). To the extent any procedural rules regarding collateral attacks conflict with the legislature’s substantive grant of authority, the statute controls. *See, e.g., In re Personal Restraint of Johnson*, 131 Wn.2d 558, 563-65, 933 P.2d 1019 (1997).

Specifically, the Legislature restricted the length of time a prisoner could wait before bringing a petition. *See* RCW 10.73.090; RCW 10.73.100. The constitutionality of this law was established in *In re Runyan*.

The Legislature created some exceptions to its one-year time limit. The majority of the exceptions, if present, would be an absolute bar to a retrial. *See* RCW 10.73.100(2), (3) and (4) (unconstitutional statute, double jeopardy, insufficient evidence). Another exception, RCW 10.73.100(5), only relates to the sentence that was imposed.

Of the two remaining exceptions, one serves as a safety valve for the innocent person, allowing a court to consider “newly discovered evidence.” *See* RCW 10.73.100(1); *In re Pers. Restraint of Brown*, 143 Wn.2d 431, 453, 21 P.3d 687 (2001) (exception requires the petitioner to establish that the new evidence will probably change the result of the trial). The last exception, is for “significant change[s] in the law . . . and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application.” RCW 10.73.100(6).

The Legislature did not include an IAC exception to the one year time limit. This has resulted in numerous IAC claims being dismissed as time-barred. *See, e.g., In re Pers. Restraint of Adams*, 178 Wn.2d 417, 427, 309 P.3d 451 (2013) (dismissing IAC claim as time-barred); *In re Pers. Restraint*

of Haghighi, 178 Wn.2d 435, 445-49, 309 P.3d 459 (2013) (same); *In re Pers. Restraint of Weber*, 175 Wn.2d 247, 284 P.3d 734 (2012) (dismissing collateral attack that asserted an IAC claim as time-barred); *Shumway v. Payne*, 136 Wn.2d 383, 400, 964 P.2d 349 (1998) (prohibiting the filing of an IAC claim beyond the 1-year period authorized by RCW 10.73.090); *Runyan*, 121 Wn.2d at 436 (dismissing as time-barred petitioner Runyan's collateral attack that asserted a claim of ineffective assistance of counsel). In doing so, some petitioners lost the ability to significantly reduce the length of their sentences or the suppression of evidence that could result in the dismissal of all charges. *See, e.g., In re Pers. Restraint of Adams, supra* (petitioner serving sentence for first degree murder claimed that trial counsel did not advise petitioner of plea offer of second degree murder foreclosed by RCW 10.73.090); *In re Pers. Restraint of Haghighi, supra* (petitioner claimed that primary evidence of guilt was inadmissible due to a constitutional violation).

C. The Current Retroactivity Framework is Neither Incorrect Nor Harmful

Prior to 1947, the retroactive application of any new rule to an already final judgment and sentence was not an issue as relief could not be granted if the judgment and sentence was facially valid. In fact, retroactivity of new constitutional rules did not become an issue in Washington until

Linkletter v. Walker, 381 U.S. 618, 85 S. Ct. 1731, 14 L. Ed. 2d 601(1965). In *Linkletter*, the Supreme Court recognized that the Constitution neither prohibits nor requires new federal constitutional rules to be retroactive. Accordingly, the Court held that many new rules should only apply prospectively. *Linkletter*, 381 U.S. at 629.

Since *Linkletter*, the federal retroactivity analysis underwent numerous iterations. See *In re St. Pierre*, 118 Wn.2d 321, 324-26, 823 P.2d 492 (1992). Washington, from the outset, has stayed in step with federal retroactivity analysis. *Id.* at 324.

Currently, this Court applies the retroactivity analysis of *Teague v. Lane*, 489 U.S. 288, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). *Haghighi*, 178 Wn.2d at 441. Under this test, Tsai and Janaga are not entitled to the retroactive application of *Padilla*. *Chaidez v. United States*, ___ U.S. ___, 133 S. Ct. 1103, 185 L. Ed. 2d 149 (2013). Tsai and Janaga urge this Court to abandon *Teague* in favor of “redressability.” Supplemental Opening Brief of Petitioners, at 18. Tsai and Janaga, however, provide no test for when “redressability” should carry the day over finality.⁸ Nor was “redressability” a factor in any of this Court’s pre-*Teague* retroactivity tests.

⁸This Court has previously expressed disdain for result-oriented judicial decisions that are “all sail, no anchor.” *State v. Gunwall*, 106 Wn.2d 54, 59, 720 P.2d 808 (1986). Accord *Haghighi*, 178 Wn.2d at 442 (refusing a request to abandon *Teague* where the petitioner provided no specific alternative).

See In re Sauve, 103 Wn.2d 322, 326, 692 P.2d 818 (1985) (factors to be balanced in determining whether a new rule should be applied retroactively are: “(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards.”) (quoting *Stovall v. Denno*, 388 U.S. 293, 297, 87 S. Ct. 1967, 18 L. Ed. 2d 1199 (1967)). The pre-*Teague* retroactivity test left many “wronged” persons without a remedy. *See, e.g., In re Taylor*, 105 Wn.2d 683, 717 P.2d 755 (1986), *overruled by In re Personal Restraint of Nichols*, 171 Wn.2d 370, 375-76, 256 P.3d 1131 (2011)⁹ (person convicted based upon evidence that was unlawfully obtained without a warrant under the new rule were not entitled to a remedy).

Undaunted, Tsai and Janaga contend that because finality is of lesser concern to state courts than to federal courts the *Teague* test should be relaxed to give them relief. *See* Supplemental Opening Brief of Petitioner, at 9. This contention is belied by the legislature’s adoption of RCW 10.73.090, RCW 10.73.100, and RCW 10.73.140 in 1989. Washington’s statute of limitations on collateral attacks pre-dated the federal statute by seven years. *Compare* Laws of 1989, ch. 395, § 2 *with* Public Law 104-132,

⁹*Nichols* recognized that the retroactivity balancing test utilized in *Taylor* was superseded by the *Teague* test.

Title I, § 105 (Apr. 24, 1996), codified at 28 U.S.C. § 2255. This contention is also belied by the numerous Washington judicial opinions that recognize the importance of the finality of criminal convictions. *See, e.g. In re Pers. Restraint of Cook*, 114 Wn.2d 802, 809, 792 P.2d 506 (1990) (observing that collateral relief “undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders. . . .” ; quoting *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 86, 660 P.2d 263 (1983)).

Tsai and Jagana’s claim that *Teague* should be abandoned because “[u]nlike federal courts, state courts must be concerned with error correction,” Supplemental Opening Brief of Petitioner, at 9, ignores the fact that “the writ of habeas corpus cannot be used as a medium to review trial errors.” *In re Grieve*, 22 Wn.2d at 904. Instead, collateral attacks always seek to achieve a balance between the interest in error-free trials and the interest in the finality of judgments. *In re Hagler*, 97 Wn.2d 818, 826-827, 650 P.2d 1103 (1982). The interest in the finality of judgments has resulted in a number of collateral attack rules that leave errors uncorrected. *See, e.g., In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 597-98, 316 P.3d 1007 (2014) (petitioner must demonstrate actual prejudice in a collateral attack, even for claims that are presumed to be prejudicial in a direct appeal). The interest in finality led the legislature to conclude that a significant change in

the law is not, by itself, sufficient to justify an exception to the time limit. Rather, the significant change must also satisfy the *Teague* retroactivity test. See RCW 10.73.100(6) (“There has been a significant change in the law . . . *and* either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard” [emphasis added]).

Essentially, Tsai and Janaga’s argument is that any statute of limitations upon obtaining relief is inherently unjust. This Court rejected this premise decades ago. As Justice Hale noted in 1969:

There is nothing inherently unjust about a statute of limitations. Limitations on the time in which one may sue also limit the time in which another may be sued. If one cannot bring an action, by the same token he cannot compel another to defend it. Statutes of limitation, although having their origins in legislative proceedings -- aside from equitable principles of laches and estoppel -- thus contemplate that a qualified freedom from unending harrassment of judicial process is one of the hallmarks of justice. No civilized society could lay claim to an enlightened judicial system which puts no limits on the time in which a person can be compelled to defend against claims brought in good faith, much less whatever stale, illusory, false, fraudulent or malicious accusations of civil wrong might be leveled against him.

In applying the statutes of limitation, the courts have made many assumptions. Stale claims, from their very nature, are more apt to be spurious than fresh; old evidence is more

likely to be untrustworthy than new. Time dissipates and erodes the memory of witnesses and their abilities to accurately describe the material events. In time witnesses die or disappear, and the longer the time the more likely this will happen. With the passing of time, minor grievances may fade away, but they may grow to outlandish proportions, too. Finally, and not to be ignored, is the basic philosophy underlying the idea that society itself benefits, except in capital cases, when there comes a time to everyone, be it long or short, that one is freed from the fears and burdens of threatened litigation.

While it has been a long cherished ambition of the common law to provide a legal remedy for every genuine wrong, it is also a traditional view that compelling one to answer stale claims in the courts is in itself a substantial wrong. After all, when an adult person has a justiciable grievance, he usually knows it and the law affords him ample opportunity to assert it in the courts. Consequently, as a matter of basic justice, the courts usually have a cogent reason to give limitation statutes a literal and rigid reading, and to declare that the right to sue begins with the wrongful acts and ends with the statutory period unless earlier terminated by laches or estoppel.

Ruth v. Dight, 75 Wn.2d 660, 664-665, 453 P.2d 631 (1969).

This is not to say that the legislature always strikes the proper balance between the right to redress and the concern that time will prevent a reliable decision. The determination of where the clear line should be drawn, however, rests with the legislature. *Ruth*, 75 Wn.2d at 666. That body has been quick to act to adjust the statute of limitations when dissatisfied with the results engendered by its own acts. For instance, after this Court ruled in *Tyson v. Tyson*, 107 Wn.2d 72, 76-77, 727 P.2d 226 (1986), that a tort action filed by the victim, who had blocked the childhood sexual abuse from

her conscious mind until after the statute of limitations period ran, could not proceed, the legislature adopted a statute that extended the statute of limitations for future actions based on childhood sexual abuse. *See* Laws of 1988, ch. 144, § 1, codified at RCW 4.16.340.

Here, the legislature has not amended RCW 10.73.100(6) in the 22 years since this Court adopted the *Teague* test in *In re Pers. Restraint of St. Pierre*. Its failure to do so is an indication that it is satisfied with the *Teague* test of retroactivity. *See, e.g., City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) (“This court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision.”). With respect to new rules related to immigration consequences, the legislature long ago stated that such rules should not undo already final convictions. *See* RCW 10.40.020(3) (“With respect to pleas accepted prior to September 1, 1983, it is not the intent of the legislature that a defendant's failure to receive the advisement [regarding a conviction's effect on a non-citizen's ability to remain in the United States] should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid.”).

V. CONCLUSION

WAPA respectfully requests that this Court deny Tsai and Janaga's untimely collateral attacks and that the Court reaffirm its adherence to the *Teague* test.

Respectfully submitted this 5th day of September, 2014.

A handwritten signature in cursive script that reads "Pamela B. Loginsky".

Pamela B. Loginsky, WSBA 18096
Staff Attorney