

RECEIVED  
MAR 05 2018

No. 94591-8

Washington State  
Supreme Court

THE SUPREME COURT OF WASHINGTON

---

---

In re the Personal Restraint Petition of

WILLIAM CRAIG SCHORR,

Petitioner,

---

---

SUPPLEMENTAL BRIEF  
OF PETITIONER

---

---

Respectfully submitted by

Sir Reginald Bell, Sr.,

Inmate Legal Advisor

WILLIAM CRAIG SCHORR  
Coyote Ridge Correction Center  
P.O. Box 769  
Connell, WA. 99326

TABLE OF CONTENTS

	Page
I. INTRODUCTION . . . . .	1
II. ARGUMENT AND AUTHORITY . . . . .	1
A. <u>Standards Governing PRPs</u> . . . . .	1
B. <u>Standards Governing Sentencing Error</u> . . . . .	3
CONCLUSION . . . . .	5

TABLE OF AUTHORITIES

<u>In re Cashaw,</u> 123 Wn.2d 138, 866 P.2d 8 (1994) . . . . .	2
<u>In re Cook,</u> 174 Wn.2d 802, 792 P.2d 506 (1990) . . . . .	2
<u>In re Francis,</u> 170 Wn.2d 517, 522 N.2, 242 P.3d 866 (2010) . . . . .	4
<u>In re Gentry,</u> 170 Wash.2d 711, 714-15, 245 P.3d 766 (2010) . . . . .	2
<u>In re Goodman,</u> 146 Wn.2d 851, 50 P.3d 618 (2002) . . . . .	3
<u>In re Hews,</u> 99 Wn.2d 80, 660 P.2d 263 (1983) . . . . .	3
<u>In re Lopez,</u> 126 Wn.App 891, 110 P.3d 764 (2005) . . . . .	2
<u>State v. Murray,</u> 118 Wn.App 518, 77 P.3d 1185 (2003) . . . . .	3
<u>In re Monschke,</u> 160 Wn.App. 479, 488, 251 P.3d 884 (2010) . . . . .	1

Cont	Page
<u>In re Pierce,</u> 173 Wn.2d 372, 268 P.3d 907, (2011) . . . . .	2
<u>In re Turner,</u> 74 Wn.App 596, 875 P.2d 1219, 1221 (1994) . . . . .	2
<u>In re West,</u> 154 Wn.2d 204, 110 P.3d 1122 (2005) . . . . .	3
<u>In re Yates,</u> 177 Wn.2d 1, 296 P.3d 907 (2011) . . . . .	3

COURT RULES AND STATUTES

RAP 16.4(a)-(c) . . . . .	1,2,5
RAP 16.7(a)(2)(i) . . . . .	3
RAP 16.11(b)(3) . . . . .	3
RCW 10.73.100(3) . . . . .	5

## I. INTRODUCTION

William Craig Schorr argues that he is entitled to have both his first degree robbery and theft convictions vacated, as well as the, 5 year enhanced penalty attached to the robbery conviction because the convictions violate the prohibition against multiple punishments for the offense.

In this supplemental brief, Mr. Schorr shows that because of the double jeopardy error present in his case is one that is considered per se prejudicial, he need not prove by a preponderance of the evidence he was actually and substantially prejudiced by the trial Courts error.

## II. ARGUMENT AND AUTHORITY

### A. Standards Governing PRPs

A petitioner may request relief through a PRP when he is under an unlawful restraint. In re Monschke, 160 Wn.App. 479, 488, 251 P.3d 884, 890 (2010) (citing RAP 16.4(a)-(c)). "Generally, in a PRP, the petitioner must demonstrate by a preponderance of the evidence that a constitutional error resulted in actual and substantial prejudice or a nonconstitutional error resulted in a complete miscarriage of justice." Id.

But when a petitioner raises issues that were afforded no previous opportunity for judicial review . . . the petitioner need not make the threshold showing of actual prejudice or complete miscarriage of justice." Pierce, 173 Wn.2d 372, 268 P.3d 907 (2011) (quoting In re Gentry, 170 Wash.2d 711, 715-14, 245 P.3d 766 (2010)). "It is enough if the petitioner can demonstrate unlawful restraint under RAP 16.4." Id. (citing Gentry, 170 Wash.2d at 715).

"Unlawful restraint includes restraint accomplished in violation of State laws or administrative regulations." Turner, 74 Wn.App. 596, 875 P.2d 1219, 1221 (1994) (citing Cashaw, 123 Wn.2d 138, 866 P.2d 8 (1994)). Under RAP 16.4 rule, the inmate is entitled to relief if he can show that a decision was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington. Lopez, 126 Wn.App. 891, 110 P.3d 764 (2005) (quoting RAP 16.4(c)(2)). Additionally, to receive collateral review of a conviction on nonconstitutional grounds, a petitioner must establish that the claimed error constitutes a fundamental defect which inherently results in a complete miscarriage of justice. In re Cook, 114 Wn.2d 802, 792 P.2d 506 (1990).

However, the petitioner must support the petition with facts or evidence and may not rely solely on conclusory allegations. Monschke, 160 Wn.App. at 483 (citing RAP 16.7(a)(2)(i)). "A hearing is appropriate when the petitioner makes the prima facie showing but the merits of the contentions cannot be determined solely on the record. In re Yates, 177 Wn.2d 1, 296 P.3d 872 (2013). (quoting In re Hews, 99 Wn.2d 80, 660 P.2d 263 (1983) citing RAP 16.11(b)). "Granting the petition is appropriate if the petitioner has proved actual prejudice or a fundamental defect resulting in a complete miscarriage of justice." Yates, 177 Wn.2d 1 at 18.

**B. Standards Governing Sentencing Error**

Appellate Courts review de novo a sentencing error constituting an illegal sentence. State v. Murray, 118 Wn.App. 518, 77 P.3d 1188 (2003). Sentencing errors are evaluated based on the principles that (1) a sentence in excess of statutory authority is subject to collateral attack, and (2) a defendant cannot agree to a punishment in excess of statutory authority. In re Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002). In pleading guilty, defendant's do not waive their right to challenge the sentence on grounds of legal error. In re West, 154 Wn.2d 204, 110 P.3d 1122 (2005).

Mr. Schorr contends that his particular double jeopardy violation is considered per se prejudicial on collateral review. In fact, this Court has already determined that this category of double jeopardy violation is considered per se prejudicial on collateral review under *In re Pers restraint of Francis*, 170 Wn.2d 517, 522 n.2, 242 P.3d 866 (2010). A per se prejudice rule is appropriate where it is certain that the defendant suffered multiple punishments for the same act, as where the State charged and the defendant was convicted of more than one crime based on only one action. 1. Such an error is properly subject to a per se prejudice rule because there is no possibility that the trial court used different actions as the basis for the conviction. See e.g. *Francis*, (holding that the defendant's convictions violate double jeopardy and vacating the conviction on the lesser offense without discussion of actual prejudice). In such a case, the mere fact of conviction constitutes a showing of prejudice sufficient to warrant relief. The error is inherently prejudicial.

---

1 Two types of double jeopardy violations may arise where the State charges the defendant with multiple crimes based upon the same action. "Unit of Prosecution" violations occur where a defendant is twice convicted for the same offense, e.g., two counts of robbery for the same action; "same offense" violation occur where a defendant is convicted, like here, of two offenses that require merger upon conviction, e.g., a count of felony murder and a count on the underlying robbery for the same action. *In re Frances*, 170 Wn.2d 517, 242 P.3d 866 (2010).

Because the constitutional error present in Mr. Schorr's trial is one that is considered per se prejudicial, Mr. Schorr need not prove by a preponderance of the evidence that he was actually and substantially prejudiced by the constitutional error. . . It is enough that he has demonstrated unlawful restraint under RAP 16.4(c)(2).

#### IV. CONCLUSION

The trial courts error is inherently prejudicial because Mr. Schorr has been thrice convicted for the same offense. This Court should hold that Mr. Schorr petition is timely under RCW 10.73.100(3) because the legislature did not intend multiple punishments for a count of felony murder and a count on the underlying robbery for the same action.

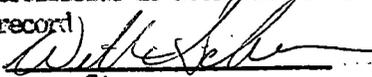
Dated this 13th day of January, 2018.

Respectfully Submitted:

  
\_\_\_\_\_  
William C. Schorr  
Coyote Ridge Correction Center  
P.O. Box 769  
Connell, WA. 99326

#### CERTIFICATE OF SERVICE

The undersigned certifies that on the date below I caused a true and correct copy of the document to which this certificate is attached to be mailed to respondent attorney of record)

3-1-18   
Date Signature

2 " Mr. Schorr has not had an opportunity to appeal this issue.