

FILED
SUPREME COURT
STATE OF WASHINGTON
7/19/2018 3:57 PM
BY SUSAN L. CARLSON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PERSONAL)
RESTRAINT OF)
) No. 95578-6
)
) STATE'S RESPONSE TO
) PERSONAL RESTRAINT
) PETITION
SAID OMER ALI,)
)
)
) Petitioner.)
)
)
)
)
)

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Petitioner Said Omer Ali is restrained pursuant to the Judgment and Sentence in King County Superior Court Cause No. 08-1-05113-3 SEA. Appendix 1-10.

B. ISSUES PRESENTED.

1. Whether Ali is entitled to an order correcting his date of birth on the judgment and sentence where recently-enacted RCW 9.94A.730 gives him an opportunity for release after serving 20 years.

2. Whether Ali is entitled not to entitled to resentencing because the opportunity for release provided by RCW 9.94A.730 provides an adequate remedy for any arguable violation of the Eighth Amendment.

3. Whether Ali is not entitled to resentencing because State v. O'Dell is not a significant change in the law in that it adhered to and did not effectively overturn State v. Ha'mim.

C. STATEMENT OF THE CASE.

Said Ali was found guilty by a jury in 2009 of five counts of robbery in the first degree, one count of assault in the first degree, and two counts of attempted robbery in the first degree. Appendix 1. His standard range on the assault charge, which was the most serious offense, was 240 to 318 months. Appendix 2, 8. The jury also found that Ali was armed with a deadly weapon for three of the offenses, resulting in mandatory weapon enhancements of 24 months each. Appendix 2, 4. At sentencing, the State recommended a high end sentence of 390 months, consisting of 318 months plus 72 months for the firearm enhancements. RP 3/27/09 1416. The defense requested an exceptional sentence. RP 3/27/09 1418-23. The court imposed a low end standard range sentence of 240 months plus the 72 months of mandatory firearm enhancements for a total sentence of 312 months (26 years). RP 3/27/09 1432. The trial court found that there was no basis for an exceptional sentence down. RP 3/27/09 1431-32.

Ali's conviction was affirmed on appeal, and mandate issued

in 2011. Appendix 12. Three prior personal restraint petitions have been dismissed. Appendix 29-41.

In regard to Ali's age at the time of the crimes, he was charged as an adult because his birthdate was identified as 1/1/1989 on his driver's license.¹ At trial, Ali's mother testified that he was the youngest of her six children, and was born in 1992 in Mogadishu, Somalia. RP 1/27/09 1100-1103. Ali came to the United States with his mother and four of his sisters in 2004. RP 1/27/09 1103-04. His mother testified that there was an error in Ali's date of birth in the sponsorship papers when they came to the United States. RP 1/27/09 1110-1111. That error allowed Ali to obtain a driver's license before he was 16 years old. RP 1/28/09 1119, 1142, 1229, 1315. At the time of the crimes, Ali was enrolled in 10th grade at Ingraham High School. RP 1/27/09 1106-07. Ali testified that he was born in 1992 and was 17 years old at the time of trial. RP 1/28/09 1225. At sentencing the court noted that Ali's age was not conclusively established. RP 3/27/09 1432.

¹ Ali was properly charged in adult court whether he was 16 or older at time of the crimes pursuant to RCW 13.40.030(e)(v) because he was charged with assault in the first degree, a serious violent offense pursuant to RCW 9.94A.030(46).

D. ARGUMENT.

1. THIS MATTER SHOULD BE REMANDED FOR ENTRY OF AN ORDER CORRECTING THE PETITIONER'S AGE ON THE JUDGMENT AND SENTENCE.

The State concedes that the evidence presented at trial indicates that Ali's true year of birth was likely 1992, and the State has no ability to prove otherwise. If his judgment and sentence reflects a date of birth of January 1, 1992, Ali will be eligible to petition for release after 20 years pursuant to RCW 9.94A.730. This matter should be remanded to the trial court for entry of an order correcting Ali's date of birth on the judgment and sentence.

Ali's petition is untimely, as it was filed more than one year after his conviction became final in 2011. However, RCW 10.73.100(6) provides an exception to the time bar when there has been a significant change in the law that applies retroactively. The enactment of RCW 9.94A.730 in 2014 constitutes a significant change in the law that applies retroactively. RCW 9.94A.730 provides that any person convicted of crimes committed before the person's eighteenth birthday may petition the ISRB for early release after serving 20 years of total confinement. There is no question that the statute applies retroactively to offenders convicted prior to 2014.

Because RCW 9.94A.730 is a significant change in the law the renders the error in Ali's date of birth legally significant and prejudicial, Ali is entitled to relief: an order correcting the judgment and sentence to reflect a date of birth of January 1, 1992. With this order, Ali will become eligible to petition for release pursuant to RCW 9.94A.730 after serving 20 years.

2. THE OPPORTUNITY FOR RELEASE IS AN ADEQUATE REMEDY FOR ANY ARGUABLE EIGHTH AMENDMENT VIOLATION.

Ali argues that his 26-year sentence violates the Eighth Amendment. This claim should be rejected. With entry of an order correcting the date of birth, Ali will have the opportunity to petition for release pursuant to RCW 9.94A.730. This Court held in State v. Scott, ___ Wn.2d ___, 416 P.3d 1182 (2018), that RCW 9.94A.730 is an adequate remedy that comports with the Eighth Amendment.

Beginning in 2005, a series of United States Supreme Court cases altered the analysis of sentences imposed on juvenile offenders under the Eighth Amendment. Taken together, these four cases require the State to give all but the worst juvenile offenders a meaningful opportunity for release from prison within their natural lifetimes.

The first of those cases was Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). In Roper, the Court barred capital punishment for juvenile offenders. In so holding, the Court identified general differences between juveniles under the age of 18 and adults relevant to culpability. Id. at 569.

The Court next barred sentences of life imprisonment without parole for juvenile offenders who had not committed homicides in Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). The Court agreed that Graham “deserved to be separated from society for some time,” but concluded that juvenile offenders who had not committed homicide deserve “a chance to demonstrate growth and maturity.” Id. at 73. The Court held that the State must “give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Id. at 75.

In Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Court expanded its holding in Graham to bar the imposition of mandatory sentences of life imprisonment without parole for juvenile homicide offenders. The Court concluded that mandatory sentencing schemes prevent the sentencer from taking into account the attributes of youth. Id. at 474. The Court refused

to impose a categorical bar on sentencing a juvenile homicide offender to life in prison without parole, but opined that such sentences should be uncommon. Id. at 479.

Finally, in Montgomery v. Alabama, ___ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), the Court held that Miller applies retroactively. However, with regard to cases on collateral review, the states are not required to relitigate sentences, even where a juvenile offender received a life sentence for murder. Id. at 736. “A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” Id.

In Scott, this Court held that RCW 9.94A.730 provides the opportunity for release approved of in Montgomery. Thus, even where the juvenile offender has received a de facto life sentence, as in Scott, the opportunity for early release provided by RCW 9.94A.730 is an adequate remedy and remand for resentencing is not required. 416 P.3d at 1187. RCW 9.94A.730 provides the meaningful opportunity for release required by the Eighth Amendment, pursuant to Scott.

State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017), does not require a different result. The holding of Houston-

Sconiers is based on the Eighth Amendment. Id. at 21. Houston-Sconiers was a direct appeal, and this Court recognized that RCW 9.94A.730 could provide an adequate remedy for cases on collateral review, a holding reinforced by Scott. Houston-Sconiers does not require resentencing in this case.

Resentencing is not required, but remand for an order correcting the date of birth is appropriate, so that Ali may take advantage of RCW 9.94A.730.

3. STATE v. O'DELL IS NOT A SIGNIFICANT CHANGE IN THE LAW THAT REQUIRES RESENTENCING.

Ali argues that State v. O'Dell, 183 Wn.2d 680, 358 P.3d 359 (2015), is a significant change in the law that entitles him to resentencing. This Court has defined the scope of the exception contained in RCW 10.73.100(6) and what constitutes a significant change in the law for purposes of that exception:

We hold that where an intervening opinion has **effectively overturned** a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a "significant change in the law" for purposes of exemption from procedural bars.

In re Personal Restraint of Greening, 141 Wn.2d 687, 697, 9 P.3d 206 (2000) (emphasis added). A decision that settles a point of law without overturning precedent does not constitute a significant

change in the law. State v. Miller, 185 Wn.2d 111, 114-15, 371 P.3d 528 (2016); In re Personal Restraint of Domingo, 155 Wn.2d 356, 368, 119 P.3d 816 (2005); In re Personal Restraint of Turay, 150 Wn.2d 71, 83, 74 P.3d 1194 (2003).

O'Dell is not a significant change. In O'Dell, this Court reaffirmed what it had said previously in State v. Ha'mim, 132 Wn.2d 834, 846, 132 P.2d 633 (1997): an exceptional sentence below the standard range may not be imposed on youth alone, but a defendant's youth may be considered as to whether the defendant lacked the capacity to appreciate the wrongfulness of his conduct or the ability to conform his conduct to the law, as provided in RCW 9.94A.535(1)(e). 183 Wn.2d at 689. This statutory mitigating factor has existed since the enactment of the SRA, and trial courts have never been barred from considering a defendant's youth as affecting capacity pursuant to RCW 9.94A.535(1)(e) at sentencing. Id. See Former RCW 9.94A.390(1)(e). See also State v. Ramos, 189 Wn. App. 431, 447, 357 P.3d 680 (2015), affirmed, 187 Wn. 2d 420, 387 P.3d 650 (2017) (stating "'Age alone' was found to be an improper mitigating factor in Ha'mim, but as we explained in Ramos IV, the decision in Ha'mim anticipated that age

would be a relevant mitigating factor if the attributes of youth were relevant to culpability for a crime”).

This case well illustrates this point. Ali asked for an exceptional sentence down, and cited his youth as a factor to be considered. However, Ali failed to explain how his youth affected his ability to appreciate the wrongfulness of his conduct, or conform his conduct to the law. RCW 9.94A.535. The trial court correctly stated that youth alone is not a mitigating factor.

Recently, in In re PRP of Light-Roth, 200 Wn. App. 149, 401 P.3d 459, review granted, (2017), the Court of Appeals held that O'Dell is a significant change in the law. This Court accepted review in Light-Roth, and argument was held on March 20. The decision in Light-Roth will likely determine Ali's claim that O'Dell is a significant change in the law that entitles him to resentencing.

E. CONCLUSION.

Ali is not entitled to resentencing, but he is entitled to an order correcting the judgment and sentence to reflect a date of birth of January 1, 1992.

DATED this 19th day of July, 2018.

Respectfully Submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
Ann M. Summers, WSBA # 21509
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 296-9000 FAX (206) 296-0955

FILED
2009 MAR 30 AM 11:21
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED COPY TO COURT FILE MAR 30 2009

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,) No. 08-1-05113-3-SEA
)
 Vs.) JUDGMENT AND SENTENCE
) FELONY
 SAID OMER ALI)
)
 Defendant,)

I. HEARING

I.1 The defendant, the defendant's lawyer, MIKE NANCE, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: members of the Somali and other communities including four of whom = police

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 02/02/2009 by jury verdict of:

Count No.: I Crime: ROBBERY IN THE FIRST DEGREE
RCW 9A.56.200(1)(a)(iii) AND 9A.56.190 Crime Code: 02908
Date of Crime: 04/23/2008 Incident No. _____

Count No.: II Crime: ROBBERY IN THE FIRST DEGREE
RCW 9A.56.200(1)(a)(iii) AND 9A.56.190 Crime Code: 02908
Date of Crime: 04/23/2008 Incident No. _____

Count No.: III Crime: ASSAULT IN THE FIRST DEGREE
RCW 9A.36.011(1)(a) Crime Code: 01010
Date of Crime: 04/23/2008 Incident No. _____

Count No.: IV Crime: ATTEMPTED ROBBERY IN THE FIRST DEGREE
RCW 9A.28.020, 9A.56.200(1)(a)(i) AND 9A.56.190 Crime Code: 12908
Date of Crime: 04/30/2008 Incident No. _____

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) I, II AND III RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):
 Criminal history is attached in **Appendix B**.
 One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	14	IX	129 TO 171	+ 72 MONTHS	201 TO 243 MONTHS	LIFE AND/OR \$50,000
Count II	14	IX	129 TO 171	+72 MONTHS	201 TO 243 MONTHS	LIFE AND/OR \$50,000
Count III	14	XII	240 TO 318	+72 MONTHS	312 TO 390 MONTHS	LIFE AND/OR \$50,000
Count IV	14	IX	129 TO 171	75% OF STANDARD	96.75 TO 128.25 MONTHS	10 YEARS AND/OR \$20,000

Additional current offense sentencing data is attached in **Appendix C**.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.
 The Court **DISMISSES** Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

- \$600 plus restitution*
- 4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ _____. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.
- Court Clerk's trust fees are waived.
 - Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____, m.

129 months/days on count I; 240 months/days on count II; 129 months/days on count V
129 months/days on count IV; 96.75 months/days on count V; 96.75 months/days on count VI

The above terms for counts cls I-VIII are consecutive / concurrent. 129 months on count VII
129 months on count VIII

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 24 months each on counts I, II, & III

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 312 months.

Credit is given for [] _____ days served days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with Stephanie Walker, Carl Halliburton, Coleen Walker, Joshua Longshank, Kathryn Teptota and for 10 years with Jonathan Douglas & Macherzie Miller

4.6 DNA TESTING: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.
[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for _____ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H** for Community Custody conditions is attached and incorporated herein.
- APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 3/27/09

Laura C. Travee
 JUDGE
 Print Name: Laura C. Travee

Presented by:
Carl Bohm
 Deputy Prosecuting Attorney, WSBA#
 Print Name: Bohm 10223

Approved as to form
Michael Nawa
 Attorney for Defendant, WSBA # 93893
 Print Name: Michael Nawa

FINGERPRINTS

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: _____
DEFENDANT'S ADDRESS: _____

SAID OMER ALI

DATED: 3/27/89

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

BY: _____
DEPUTY CLERK

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. _____
DOB: JANUARY 1, 1989
SEX: M
RACE: B

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SAID OMER ALI

Defendant,

No. 08-1-05113-3-SEA

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX A
ADDITIONAL CURRENT OFFENSES

2.1 The defendant is also convicted of these additional current offenses:

Count No.: V Crime: ROBBERY IN THE FIRST DEGREE
RCW 9A.56.200(1)(a)(i) AND 9A.56.190 Crime Code 02908
Date Of Crime 04/30/2008 Incident No. _____

Count No.: VI Crime: ATTEMPTED ROBBERY IN THE FIRST DEGREE
RCW 9A.28.020, 9A.56.200(1)(a)(i) AND 9A.56.190 Crime Code 12908
Date Of Crime 04/30/2008 Incident No. _____

Count No.: VII Crime: ROBBERY IN THE FIRST DEGREE
RCW 9A.56.200(1)(a)(iii) AND 9A.56.190 Crime Code 02908
Date Of Crime 05/01/2008 Incident No. _____

Count No.: VIII Crime: ROBBERY IN THE FIRST DEGREE
RCW 9A.56.200(1)(a)(iii) AND 9A.56.190 Crime Code 02908
Date Of Crime 05/27/2008 Incident No. _____

Date: 3/27/09

Jenna Shaw
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SAID OMER ALI

Defendant,

No. 08-1-05113-3-SEA

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX C,
ADDITIONAL CURRENT OFFENSE(S)
SENTENCING DATA

2.3 SENTENCING DATA: Additional current offense(s) sentencing information is as follows:

Count	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
V	14	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000
VI	14	IX	129 TO 171	75% OF STANDARD	96.75 TO 128.25 MONTHS	10 YEARS AND/OR \$10,000
VII	14	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000
VIII	14	IX	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR \$50,000

[] The following real and material facts were considered by the court pursuant to RCW 9.94A.530(2):

Date: 3/27/09



Judge, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SAID OMER ALI

Defendant,

No. 08-1-05113-3-SEA

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

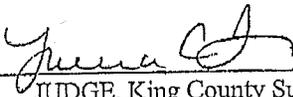
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 3/27/09



JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SAID OMER ALI

Defendant,

No. 08-1-05113-3-SEA

JUDGMENT AND SENTENCE
APPENDIX H
COMMUNITY PLACEMENT OR
COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with: see judgment & sentence
- Defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall comply with the following crime-related prohibitions: _____
- _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 3/27/07

[Signature]
JUDGE

COMMITMENT ISSUED APR 22 2011

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

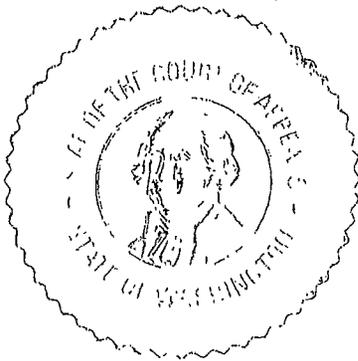
STATE OF WASHINGTON,	)	No. 63253-1-I	FILED
	)		KING COUNTY, WASHINGTON
Respondent,	)		APR 22 2011
	)	MANDATE	
v.	)	King County	SUPERIOR COURT CLERK
SAID ALI,)		
	)	Superior Court No. 08-1-05113-3.SEA	
Appellant.)		

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on September 20, 2010, became the decision terminating review of this court in the above entitled case on April 20, 2011. An order denying a motion for reconsideration was entered on October 25, 2010. An order denying a petition for review was entered in the Supreme Court on March 29, 2011. This case is mandated to the Superior Court from which the appeal was taken, for further proceedings in accordance with the attached true copy of the decision.

Pursuant to RAP 14.4, costs in the amount of \$4,579.86 are awarded against judgment debtor SAID ALI as follows: costs in the amount of \$4,541.28 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE, INDIGENT DEFENSE FUND and costs in the amount of \$38.58 are awarded in favor of judgment creditor KING COUNTY PROSECUTOR'S OFFICE.

c: Jason Saunders, Kimberly Gordon
James Bible
Michael Pellicciotti
Hon. Laura Inveen



IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the seal of said Court at Seattle, this 20th day
of April, 2011.


RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

Ali's claim that his trial counsel was ineffective for not seeking severance, and his challenge to the sufficiency of the evidence on counts 2, 3, and 4. We affirm.

FACTS

Ali was charged by amended information with five counts of robbery in the first degree, two counts of attempted robbery in the first degree, and one count of assault in the first degree for his role in a series of attacks and robberies in North Seattle in April and May 2008.

The acts underlying count 1, robbery in the first degree, occurred in the early morning hours of April 23, 2008. At 1:48 a.m., five men in a car drove by Stephanie Martin and yelled or made a "cat call." Shortly thereafter, she heard the sound of car doors closing. Three individuals approached her, two from behind. She became frightened. The man in front of her pointed a knife at her. Martin had the opportunity to get a good look at the individual's face because he was in front of her and talking to her. She described him as black, 5'7" or 5'8" in height, and wearing a hooded sweatshirt and hat. She later identified this man as Ali. He took her cell phone, then shoved her into the bushes. She screamed. The men ran away.

Shortly thereafter the acts underlying count 2, robbery in the first degree, count 3, assault in the first degree and count 4, attempted robbery in the first degree, occurred. At 1:55 a.m., a green car carrying several men pulled

alongside Carl Halliburton and Jonathan Douglass, who were on the sidewalk. Halliburton saw a group of people further north, and decided to head in their direction for safety. But the green car and a black car pulled into a parking lot, and approximately 11 men got out and encircled Halliburton and Douglass. The men demanded money.

Some of the men kicked and punched Halliburton, trying to knock him to the ground. Others attacked Douglass. Halliburton realized he had been stabbed, and was bleeding. He grabbed a metal bar from a truck bed, and began swinging it. The attackers tried to rob Douglass, and also tried to stab him with a knife. One of the attackers pulled out a pistol and pointed it towards Halliburton and Douglass. The attackers fled when police cars approached.

Halliburton and Douglass later identified Ali as one of the men in the group. Halliburton testified that Ali "was definitely one of the lead combatants in the confrontation," and he "stood out the most because he was directly in front of me the whole time. That would be kind of like the ring leader, if you will." He also testified he was "a hundred percent positive he was directly involved in the confrontation of me getting assaulted." Douglass also testified that Ali was one of four men who initially approached him, then assaulted and robbed him.

The attackers stole Halliburton's two cell phones, his coat, and his house keys. Halliburton was later taken to a hospital and underwent surgery for two

stab wounds to his stomach. He suffered a lacerated liver and a broken nose, and remained in the hospital for five days.

Halliburton found a cell phone that one of the attackers had dropped. Police later determined that it belonged to Daniel Melancu, Ali's acquaintance. Later that night, an unidentified person called Melancu's cell phone from Halliburton's stolen cell phone. Halliburton answered, and heard a man with a Middle-Eastern or African accent. Martin's stolen cell phone also called Melancu's dropped cell phone.

The acts underlying count 5, robbery in the first degree and count 6, attempted robbery in the first degree, occurred just before midnight on April 30, 2008. Joshua Longbrake and Mackenzie Rollins were walking together at Green Lake when they were approached by three men wearing dark clothing. One was armed with what appeared to be a handgun. The suspect with the gun, who Longbrake later identified as Ali, pointed it toward Longbrake's head and said, "This isn't a game," and instructed them to lie down on the ground. Longbrake and Rollins complied. The men searched their pockets, taking Longbrake's wallet containing cash and credit cards, and his cell phone and jacket. Ali struck Longbrake in the head with the gun.

The acts underlying count 7, robbery in the first degree, occurred shortly thereafter, at 12:57 a.m. in a University of Washington parking lot. Two men approached Katherine Terpstra and stole her purse. The men got into a car.

Terpstra screamed that she had been robbed and chased her assailants' car. She was able to recall a partial license plate number. University Police officers heard her shouting, and saw a blue car stop to pick up a man in a light-colored sweater. When police stopped the car, three men were inside. The driver was Ali's acquaintance Abel Chane. The front passenger was Ali. The rear passenger provided a false name. Officers found Terpstra's purse under a pillow behind the driver's seat. They also found a black BB gun that looked like a semi-automatic pistol under the front passenger seat where Ali was seated, along with a bloody paper towel. Officers lined up the vehicle's occupants, and Terpstra looked at the men through a camera equipped with zoom lens, in an effort to identify them. Terpstra identified Ali as the man who robbed her. Ali was arrested.

After his arrest, Ali gave a statement to police that was audio and video recorded, in which he acknowledged being present during some of the robberies and the assault. Regarding Terpstra's robbery, Ali claimed he was in the car with Chane and a man he called Sharmaki, but stepped out of the car and did not see what happened. When asked about the assault on Halliburton and Douglass, Ali acknowledged he was present, but denied involvement. He blamed the stabbing on Melancu.

Officers subsequently interviewed Ali a second time. Ali again confirmed he was present during the attacks on Halliburton and Douglass. He repeated

that Melancu was cut on his hand, and blamed the earlier robbery of Martin on men he called Siyad and Abdirzak. He later denied being present during the attack on Halliburton and Douglass. He was thereafter released.

The acts underlying count 8, robbery in the first degree, occurred on May 27, 2008, at approximately 12:20 a.m. Colin Walker was walking on Fremont Avenue when two men approached him. A man Walker later identified as Ali asked to borrow his cell phone. Walker agreed. While Walker was watching Ali, the other man hit Walker in the head and knocked him to the ground. The men beat him until he was unconscious. They stole his backpack, computer, and cell phone. Walker was taken to the hospital and treated for his injuries, which included a concussion. On June 4, 2008, Walker identified Ali in a photomontage. Cell phone records from Walker's stolen phone revealed that calls were placed to Ali's associates following the theft.

On June 5, 2008, Seattle Police Robbery Unit detectives arrested Ali. On June 11, officers arranged a lineup procedure, during which Ali and five other men were shown to a group of victims, including Martin, Halliburton, Douglass, and Longbrake. All four identified Ali as one of their assailants. Halliburton subsequently identified Ali in a photomontage as well.

Prior to trial, Ali brought a CrR 3.6 motion to suppress evidence of the witnesses' lineup, show-up, and photomontage identifications. The trial court

denied Ali's motion to suppress and entered oral and written findings of fact and conclusions of law.

Ali also objected to the State's motion to consolidate count 8 with the remaining counts. The trial court allowed consolidation, and entered related findings and conclusions.

A jury convicted Ali as charged on all counts, and found by special verdict that he or an accomplice was armed with a deadly weapon during two robberies and the assault. The trial court imposed a standard range sentence. Ali appeals.

DISCUSSION

Lineup Identification Procedure

Ali first asserts that the lineup identification procedure was suggestive and created a very substantial likelihood of irreparable misidentification. Ali's argument is not persuasive.

An identification procedure violates due process if it is so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. Simmons v. United States, 390 U.S. 377, 384, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968); State v. Vickers, 148 Wn.2d 91, 118, 59 P.3d 58 (2002) (citing State v. Linares, 98 Wn. App. 397, 401, 989 P.2d 591 (1999)). A defendant must first establish that the identification procedure was suggestive. Vickers, 148 Wn.2d at 118; Linares, 98 Wn. App. at 401. If the identification procedure was suggestive, we additionally inquire whether that fact gave rise to a

substantial likelihood of irreparable misidentification. State v. Maupin, 63 Wn. App. 887, 896-97, 822 P.2d 355 (1992).

Specifically, Ali argues that the lineup was impermissibly suggestive, because he was the shortest, youngest, and thinnest man, and was one of only two men with an accent.¹ We disagree.²

The trial court identified the following facts as undisputed:

4. On June 11, 2008 Seattle Police Detective Craig and Sgt. Aratani prepared a lineup in furtherance of their investigation of other robbery charges that are part of these consolidated charges. The defendant was the suspect. Det. Craig solicited incarcerated volunteers from the King County jail to join Ali in this lineup. They were all black men. Their identifying information and lineup positions are evidenced in State's exhibit 7, which is incorporated herein by reference.
5. Participant Bazen Kassahum had an African type foreign accent, as did Ali. [Participant Timothy Ewald] may have had a Spanish accent. Other participants had different sounding dialects, although American.
6. Victim Halliburton described his assailant as having an East African accent. Douglas [sic] and Martin indicated some of their assailants spoke with a foreign accent. Victim Rollins recalled an African accent. Victim Longbrake described a typical American accent.

¹ The men in the lineup were asked to say the phrases "Do you have the time," and "This isn't a game."

² Neither Ali nor the State assert the applicable standard of review. Division Three of this court has held that appellate courts review the admissibility of identification procedures for an abuse of discretion. State v. Kinard, 109 Wn. App. 428, 432, 36 P.3d 573 (2001). Other cases have held that the standard of review for police identification procedures is de novo. State v. Rogers, 44 Wn. App. 510, 515, 722 P.2d 1349 (1986); see also State v. Taylor, 50 Wn. App. 481, 485, 749 P.2d 181 (1988). We find admission of the evidence proper under either standard.

7. The physical description of the perpetrator ranged from 5'7-6'1", 150-180 lbs. All described the perpetrator as black.
...
10. Sgt. Aratani gave the directions at the lineup. He has participated in hundreds of lineups and has been the robbery sergeant for 15 years. Observers were asked to make their own decisions, and not to consult with anyone when making their determination.
11. [A public defender] was assigned to represent Mr. Ali in the lineup process He noted no difficulty speaking or communicating with Mr. Ali, but noted him to have an accent that was not European or Asian, but rather African or Arabic. He noted nothing irregular visually. When he heard the lineup participants speak the two assigned phrases, he noted #1 and #2 both spoke with noticeable accents, and the other four appeared to be native born speakers. He took note of his observations. Other than the notation of accents of #1 and #2, he did not note anything else, including anything noteworthy about physical descriptions. He has participated in 20-30 lineups over the 30 some years he has been a criminal defense attorney.
12. Photographs were taken of the line-up, admitted in exhibits 8, 9 and 10.³ No video was taken of the procedure. The court reviewed and considered the Line-up Information Sheet, which the court incorporates by reference.
...
22. The lineup observers were interviewed about the impact if any of the speech upon their selection. None indicated that their choice was based on the words spoken and the fact of any accent.

³ These exhibits are not part of the appellate record.

The trial court made the following findings as to the disputed facts:

3. To the extent Ali had an accent, it is not strong. The variance in the lineup participants' speech had little, if any impact on the observers, given the variety of initial descriptions of their speech and their post-selection interviews.
4. [N]othing was done by anyone in law enforcement to indicate to the observer which individual was the suspect.

Based on these facts, the trial court concluded that the lineup was not impermissibly suggestive, and comported with due process requirements. The court admitted the evidence of the victims' identifications of Ali.

Substantial evidence supports the trial court's findings. Where substantial evidence in the record supports challenged facts, those facts are binding on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994); State v. Neeley, 113 Wn. App. 100, 104-105, 52 P.3d 539 (2002). The Line-Up Information Sheet provides substantial evidence that Ali's physical appearance did not create a suggestible lineup. While Ali was the youngest man in the lineup, two were less than one year older than he was, one was less than two years older, and one was less than three years older. Although Ali weighed the least, two others outweighed him by 10 pounds or less, and two outweighed him by only 20 pounds. And while Ali claims he was the shortest man, he was not. One man was shorter than he was, two were only an inch taller, and one was three inches taller.

Substantial evidence also supports the trial court's finding that Ali's accent did not result in a suggestible lineup. The witnesses' statements reveal that they identified Ali based on his physical features and not his accent. Martin testified that her identification of Ali was based on his appearance, not on his voice. Douglass testified that he recognized Ali's face as soon as Ali entered the room. Longbrake testified that when Ali entered the room he immediately remembered his face. Halliburton similarly recognized Ali as soon as he entered, based on his height and his face. When asked whether Ali's voice impacted his identification, Halliburton answered "No. He was well identified prior to speaking."

The trial court's finding that the lineup procedure was not suggestive is supported by substantial evidence.⁴ Ali's claim to the contrary is unavailing.⁵

Ineffective Assistance of Counsel

Ali next claims that he was prejudiced by his trial counsel's failure to move to sever the charges against him for separate trials. We disagree.

⁴ Because the procedures were not suggestive, there was no substantial likelihood of misidentification. Maupin, 63 Wn. App. at 897.

⁵ Ali argues that every show-up, photomontage, and in-court identification should have been suppressed, but failed to adequately raise these claims of error. Ali does not provide any argument other than his claim that the lineup was suggestive, which we conclude is unsupported. Passing treatment of an issue or lack of reasoned argument is insufficient to allow for meaningful review by appellate court. RAP 10.3(a)(5) and (6); State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). Ali did not identify these issues in his assignments of error or issue statements. We will not review a claimed error not included in an assignment of error or associated issue statement. RAP 10.3(g).

Moreover, the trial court found that these identifications were not suggestive. Ali did not challenge this finding. Unchallenged findings are verities binding on appeal. Hill, 123 Wn.2d at 647; Neeley, 113 Wn. App. at 105.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance (1) was deficient and (2) prejudiced the defense.

Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). It is unnecessary for us to address both prongs of the Strickland test if the defendant makes an inadequate showing as to either prong. State v. Stahdifer, 48 Wn. App. 121, 126, 737 P.2d 1308 (1987) (citing Strickland, 466 U.S. at 697). Deficient performance is that which falls below an objective standard of reasonableness. In the Matter of the Det. of Moore, 167 Wn.2d 113, 122, 216 P.3d 1015 (2009) (citing State v. Stenson, 132 Wn.2d 668, 705-06, 940 P.2d 1239 (1997)). Prejudice occurs where there is a reasonable probability that, but for the deficient performance, the outcome of the proceedings would have been different. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

We conclude that Ali's counsel's performance did not fall below an objective standard of reasonable competence. Ali's counsel specifically objected to the court's joinder of separate counts before trial, but the court ruled that such joinder was proper, and entered the following written findings:

Joinder . . . is appropriate because the offenses are based on a series of acts connected together or constituting parts of a single scheme or plan.

Severance is not necessary to promote a fair determination of the defendant's guilt or innocence of each offense.

Given counsel's timely objection and the trial court's ruling, Ali fails to demonstrate that his counsel was ineffective for failing to move to sever.

Moreover, Ali does not demonstrate prejudice. To establish prejudice from counsel's failure to move to sever, Ali must demonstrate that the motion would have been granted and that the outcome of the proceeding would have been different. State v. Sutherby, 165 Wn.2d 870, 884, 204 P.3d 916 (2009); Standifer, 48 Wn. App. at 125-26. Ali demonstrates neither.

The motion to sever would not have been successful. The facts of this case do not support severance, because the crimes were of the same or similar character, and joinder was not manifestly prejudicial. See, e.g., State v. Markle, 118 Wn.2d 424, 439, 823 P.2d 1101 (1992) (counts of sexual abuse of one victim need not be severed from counts involving a second victim because acts were of similar character); State v. Mitchell, 30 Wn. App. 49, 55, 631 P.2d 1043 (1981) (six burglaries were properly joined because they were of same or similar character). Ali's series of strong-arm robberies, attempted robberies, and assault in conjunction with a robbery were, likewise, of a similar character. Because the trial court would have rejected a motion to sever, Ali also fails to demonstrate that the results of the proceeding would have been different had counsel moved to sever.

Ali has not demonstrated either unreasonable performance by his trial counsel, or prejudice. His claim of ineffective assistance of counsel fails.

Sufficiency of the Evidence

Ali next contends that there was insufficient evidence to support his convictions for the first degree robbery⁶ and first degree assault⁷ of Halliburton (counts 2 and 3), and the attempted first degree robbery⁸ of Douglass (count 4). We disagree.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable in determining the sufficiency of the evidence. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

⁶ A person is guilty of robbery in the first degree if in the commission of a robbery or of immediate flight therefrom, he or she is armed with a deadly weapon, or displays what appears to be a firearm or other deadly weapon; or inflicts bodily injury. RCW 9A.56.200. RCW 9A.56.190 defines "robbery," in pertinent part, as follows:

A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

⁷ A person is guilty of assault in the first degree if he or she assaults another with any deadly weapon, with intent to inflict great bodily harm. RCW 9A.36.011.

⁸ "A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime." RCW 9A.28.020(1).

The trial court instructed the jury on accomplice liability, and the prosecutor argued that Ali could be convicted as an accomplice for his role in the crimes against Douglass and Halliburton. To convict Ali as an accomplice, the evidence only needed to show that Ali solicited, commanded, encouraged or requested another individual to commit the charged crimes, or aided or agreed to aid in planning or committing the crime. State v. Berube, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003) (citing RCW 9A.08.020(3)(a)).

The evidence, viewed in the light most favorable to the State, would allow a reasonable juror to find Ali guilty of counts 2, 3, and 4 beyond a reasonable doubt. Halliburton and Douglass both testified that they were approached and encircled by a group of men, including Ali, who attacked them. Halliburton testified that Ali was the "ring leader," and one of the "lead combatants" who initiated the confrontation and that he was "a hundred percent positive he was directly involved in the confrontation of me getting assaulted." Douglass also testified that Ali was one of four men who assaulted him and tried to rob him.

Circumstantial evidence also supports Ali's convictions. Martin testified that Ali robbed her earlier that evening, wielding a knife. This evidence allows the inference that Ali possessed a knife that evening. In addition, Douglass testified that when he regained consciousness after the attack, he saw a man holding what appeared to be a semiautomatic pistol. Police later found a similar-looking gun under the car seat where Ali was seated.

This evidence supports a reasonable inference that Ali acted as a principal or an accomplice in the crimes against Halliburton and Douglass. Ali's challenge to the sufficiency of the evidence fails.

We affirm.

Speck, J.

WE CONCUR:

Dyer, C. J.

Becker, J.

COPY TO COUNTY JAIL AUG - 7 2013

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON **FILED**
DIVISION I KING COUNTY, WASHINGTON

AUG 6 2013

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

SAID OMER ALI,

Petitioner.

No. 68498-1-1

SUPERIOR COURT CLERK

CERTIFICATE OF FINALITY

King County

Superior Court No. 08-1-05113-3 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in
and for King County.

This is to certify that the order of the Court of Appeals of the State of Washington,
Division I, filed on September 25, 2012, became final on August 2, 2013. A ruling
denying a motion for discretionary review was entered in the Supreme Court on April 1,
2013. An order denying a motion to modify was entered on July 10, 2013.

c: Said Omer Ali
Andrea Vitalich



IN TESTIMONY WHEREOF, I
have hereunto set my hand
and affixed the seal of
said Court at Seattle, this 2nd
day of August, 2013.

Richard D. Johnson
Court Administrator/Clerk of the
Court of Appeals, State of
Washington Division I

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

In the Matter of the Personal)	
Restraint of:	)	No. 68498-1-1
)	
SAID OMER ALI,	)	ORDER OF DISMISSAL
)	
Petitioner.)	
_____)	

Said Omer Ali filed a personal restraint petition challenging his conviction for two counts of robbery in the first degree with a deadly weapon, three counts of robbery in the first degree, two counts of attempted robbery in the first degree, and one count of assault in the first degree with a deadly weapon. He seeks a new trial, claiming government misconduct regarding the evidence produced at trial and insufficient evidence for the first degree robbery against Colin Walker.

In order to obtain collateral relief by means of a personal restraint petition, Ali must demonstrate either an error of constitutional magnitude that gives rise to actual prejudice or a nonconstitutional error that inherently results in a "complete miscarriage of justice." In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Bare assertions and conclusory allegations do not warrant relief in a personal restraint proceeding. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (competent, admissible evidence, such as affidavits, required to establish facts entitling petitioner to relief). Ali makes no showing that he can satisfy this threshold burden. Accordingly, the petition is dismissed.

Ali claims that the State committed misconduct by failing to introduce the knife used to commit some of the robberies into evidence, mischaracterizing the BB gun

No. 68498-1-1

recovered on Ali's arrest as a "firearm," and "lying" about Ali giving a taped statement to police. These claims are without merit. Ali does not explain why failure to introduce a piece of evidence constitutes misconduct, and does not offer evidence that the State improperly described Ali's weapon or alleged his statement to police had been recorded.¹

Ali also claims there is insufficient evidence to support the conviction for the robbery against Colin Walker. He argues that no physical evidence linked him to the crime and that Walker was not able to sufficiently identify him as the perpetrator. Ali's allegations involve credibility assessments, which are reserved for the trier of fact. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000) (an appellate court defers to the trier of fact on issues of credibility, conflicting testimony, and the persuasiveness of the evidence). And such allegations do not, in any event, undermine the legal sufficiency of the State's evidence, which is viewed in the light most favorable to the State. See State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628

¹ In undisputed findings entered after a CrR 3.5 hearing, the trial court found that:

7. Ali was transported to the UW Police Department. At approximately 3:15 a.m., he was interviewed by SPD detective Jerome (Brad) Craig and Sgt. Aratani, and UWPD Officer Beard. This occurred in an interview room. Miranda rights were not re-advised. At that time, Ali agreed to speak with the officers. He provided oral statements about the evening's incident, as well as about several incidents that had occurred previously in the city of Seattle. He declined to have his statements tape-recorded.

8. After the officers had spoken to other suspects, they reconvened with the defendant at approximately 6:30 a.m. to re-interview him. Miranda rights were not re-read. Ali gave an additional oral statement at that time.

10. On 5/24/08, Detective Craig and Sgt. Aratani contacted the defendant at his home at 11:25 a.m. They asked his mother to retrieve him, which she did. He may have been sleeping. The officers transported Ali in handcuffs to the Seattle Police headquarters where they met with him in a police interview room.... The officers asked Ali if he would agree to be audiotaped. He declined, but agreed to give the officers an oral statement, which he did. They spoke for approximately 2 hours, and then he was transported home.

No. 68498-1-I

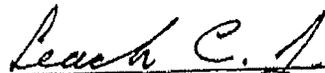
(1980). "The elements of a crime may be established by either direct or circumstantial evidence, and one type is no more valuable than the other." State v. Gray, 124 Wn. App. 322, 324, 102 P.3d 814 (2004). Here, Walker correctly described to police Ali's general appearance, age and size, accent and ethnicity. Walker identified Ali as the perpetrator both in a photo montage of different suspects and in the courtroom. Walker did not have to testify to 100 percent certainty for the jury to credit his identification of Ali.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP

16.11(b).

Done this 25th day of September, 2012.



Acting Chief Judge

FILED
COURT OF APPEALS
DIVISION ONE
SEP 25 2012

No. 71279-9-I

10.73.100 applies.¹ Though Ali's claims could arguably fall under the exceptions in RCW 10.73.100(3) and RCW 10.73.100(4), Ali fails to address or even acknowledge the time bar in his petition.

In addition, a petitioner may not renew issues that were considered and rejected on direct appeal unless the interests of justice require relitigation of those issues. In re Pers. Restraint of Lord, 123 Wn.2d 296, 303, 868 P.2d 835 (1994). Nor may a petitioner simply revise a previously rejected argument by alleging different facts or by asserting different legal theories. Lord, 123 Wn.2d at 329. "The interests of justice are served by reexamining an issue if there has been an intervening change in the law or some other justification for having failed to raise a crucial point or argument in the prior application." In re Pers. Restraint of Davis, 152 Wn.2d 647, 671 n. 15, 101 P.3d 1 (2004).

¹ "The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
- (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
- (5) The sentence imposed was in excess of the court's jurisdiction; or
- (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, 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."

RCW 10.73.100.

No. 71279-9-I

On direct appeal, this court rejected Ali's challenge to the sufficiency of the evidence regarding the robbery and assault of Halliburton and Douglass. Ali claims he is entitled to relitigate this claim because Halliburton's testimony at trial was vague and "the issues were not fully developed on appeal." This is insufficient to compel this court to reexamine the issue.

Finally, Ali has previously filed a personal restraint petition challenging these convictions, No. 68498-1, in which he argued that the State committed misconduct regarding the evidence produced at trial and the evidence regarding the robbery of Colin Walker was insufficient to convict him. But Ali neglects to explain, as required by RCW 10.73.140, why the grounds he seeks to raise here were not addressed in his earlier petition. If the petitioner fails to show good cause why the ground was not raised earlier, this court "shall dismiss the petition on its own motion." RCW 10.73.140.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 9th day of June, 2014.



Acting Chief Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN -9 PM 12:02

COPY TO COUNTY JAIL FEB - 4 2015 ✓

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

FILED
KING COUNTY, WASHINGTON
FEB 3 2015
SUPERIOR COURT CLERK

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

SAID OMER ALI,

Petitioner.

No. 72684-6-1

CERTIFICATE OF FINALITY

King County

Superior Court No. 08-1-05113-3 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in
and for King County.

This is to certify that the order of the Court of Appeals of the State of Washington,
Division I, filed on December 15, 2014, became final on January 30, 2015.

c: Mitch Harrison



IN TESTIMONY WHEREOF, I
have hereunto set my hand
and affixed the seal of
said Court at Seattle, this 30th
day of January, 2015.

[Handwritten Signature]
Richard D. Johnson
Court Administrator/Clerk of the
Court of Appeals, State of
Washington Division I

No. 72684-6-I

applies. Although Ali's claims fall within exceptions to the time bar, RCW 10.73.100(3) and RCW 10.73.100(4), he fails to demonstrate grounds for relief.

This court explicitly addressed and rejected Ali's claim on direct appeal that the evidence was insufficient to support his convictions for counts 2, 3, and 4, the counts involving victims Halliburton and Douglass. A petitioner may not renew issues that were considered and rejected on direct appeal unless the interests of justice require relitigation of those issues. In re Pers. Restraint of Lord, 123 Wn.2d 296, 303, 868 P.2d 835 (1994). Nor may a petitioner simply revise a previously rejected argument by alleging different facts or by asserting different legal theories. Lord, 123 Wn.2d at 329.

Ali argues that the interests of justice warrant relitigation of the sufficiency of the evidence because the testimony of the victims was speculative, uncertain, and included impermissible opinions on his guilt.¹ In essence, Ali contends that the jury should have discredited the testimony of both victims about his direct and prominent involvement in the group attack. "A petitioner can show that the interests of justice require relitigation of an issue by showing either that there has been an intervening change in the law or there is some other justification for having failed to raise a crucial point or argument in the prior application." In re Pers. Restraint of Cross, 180 Wn.2d 664, 730, 327 P.3d 660 (2014) (quoting In re Pers. Restraint of Gentry, 137 Wn.2d 378, 388, 972 P.2d 1250 (internal quotation marks omitted). Ali

¹ Ali argues that Halliburton's testimony that Ali was "directly involved in the confrontation of me getting assaulted" cannot support the jury's determination of guilt.

No. 72684-6-1

fails to make this showing. He alleges no circumstances that compel this court to reexamine the issue.

All acknowledges that he failed to raise his double jeopardy claim on direct appeal or in his initial personal restraint petition. And he does not assert good cause for the failure to raise the issue earlier. See RCW 10.73.140. He points out, however, that RCW 10.73.140 does not prohibit the Washington Supreme Court from addressing the issue. But RCW 10.73.140 also provides that "[u]pon receipt of a first or subsequent petition, the court of appeals shall, whenever possible, review the petition and determine if the petition is based on frivolous grounds. If frivolous, the court of appeals shall dismiss the petition on its own motion[.]" Ali's double jeopardy claim has no merit in light of the Supreme Court's determination that convictions for first degree robbery and first degree assault do not merge since "the legislature specifically did not intend that first degree assault merge into first degree robbery" due to "the hard fact that the sentence for the putatively lesser crime of assault is significantly greater than the sentence for the putatively greater crime of robbery." State v. Freeman, 153 Wn.2d 765, 778, 108 P.3d 753 (2005); see also State v. Kier, 164 Wn.2d 798, 807, 194 P.3d 212 (2008).

Accordingly, Ali's successive petition must be dismissed. See In re Pers. Restraint of Becker, 143 Wn.2d 491, 20 P.3d 409 (2001) (successive collateral

He does not argue error in the admission of the evidence, and such an argument would be time-barred in any event.

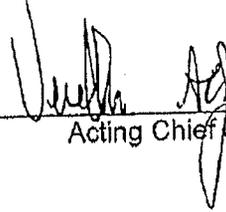
No. 72684-6-I

attack may be dismissed as frivolous under RCW 10.73.140 if it does not contain "at least one significant legal issue not previously raised and adjudicated").

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 15th day of December, 2014.



Acting Chief Judge

2014 DEC 15 PM 1:37
CLERK OF SUPERIOR COURT
STATE OF WASHINGTON

KING COUNTY PROSECUTOR'S OFFICE - APPELLATE UNIT

July 19, 2018 - 3:57 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95578-6
Appellate Court Case Title: Personal Restraint Petition of Said Omer Ali
Superior Court Case Number: 08-1-05113-3

The following documents have been uploaded:

- 955786_Answer_Reply_20180719155512SC705458_8040.pdf
This File Contains:
Answer/Reply - Response to PRP
The Original File Name was 95578-6 - States Response to Personal Restraint Petition.pdf

A copy of the uploaded files will be sent to:

- corey@coreyevanparkerlaw.com
- paoappellateunitmail@kingcounty.gov

Comments:

Sender Name: Wynne Brame - Email: wynne.brame@kingcounty.gov

Filing on Behalf of: Ann Marie Summers - Email: ann.summers@kingcounty.gov (Alternate Email:)

Address:

King County Prosecutor's Office - Appellate Unit
W554 King County Courthouse, 516 Third Avenue
Seattle, WA, 98104
Phone: (206) 477-9497

Note: The Filing Id is 20180719155512SC705458