

NO. 60180-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE THE PERSONAL RESTRAINT OF
CHRISTOPHER QUINN

PETITIONER'S SUPPLEMENTAL BRIEF

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FILED
COURT OF APPEALS
STATE OF WASHINGTON

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A. ISSUES PRESENTED

1. The statute of limitations is an affirmative defense that may be waived by the responding party if not promptly raised. The State opined in its response to Mr. Quinn's personal restraint petition that the petition appeared to be timely and participated in a reference hearing in superior court without mentioning the timeliness of the petition. Did the State waive this argument by not presenting it until after the reference court entered findings favorable to Mr. Quinn and returned the case to this Court?

2. Failure to comply with the statute of limitations is an affirmative defense that the respondent has the burden of proving. The court rules governing personal restraint petitions do not address the burden of proving timeliness, but the burden is on the government in federal habeas corpus actions. Should the burden of proving Mr. Quinn's personal restraint petition was not timely filed rest upon the State?

3. The trial court filed Mr. Quinn's motion to withdraw his guilty plea, declaration of service on the prosecutor, and note for the docket on June 7, the same day the court filed an order transferring the matter to this Court for treatment as a personal

restraint petition. Where (1) Mr. Quinn's affidavit shows he placed the motion on the prison mail on April 12, (2) Mr. Quinn attempted to docket the motion for April 27, and (3) the prison mail log shows Mr. Quinn placed mail to the trial court judge on April 13 and to the King County Superior Court and the King County Prosecutor on April 17, does the record reflect Mr. Quinn's motion to withdraw his guilty plea was timely filed pursuant to GR 3.1?

4. Under State v. Mendoza, 165 Wn.2d 934 (2009), a defendant who is misinformed of the sentencing consequences of his guilty plea waives his right to challenge the plea if (1) the correct penalty is less severe than the penalty provided in the guilty plea documents, (2) the defendant is informed of the error prior to sentencing, and (3) the defendant has the opportunity to withdraw his plea prior to sentencing but does not do so. Did Mr. Quinn waive his right to challenge his involuntary guilty plea where (1) the actual penalty he faced was more severe than the penalty he was informed of and (2) he tried to alert the court to the issue prior to sentencing but his attorney failed to make the motion?

5. Mendoza provides that a defendant may waive his right to challenge an involuntary guilty plea in limited circumstances. Where the State did not raise this issue in its response to Mr.

Quinn's personal restraint petition or at the court-ordered reference hearing, did the State waive the waiver argument by not presenting it until after the reference court entered findings favorable to Mr. Quinn and returned the case to this Court?

B. STATEMENT OF THE CASE

In 2007 Christopher Quinn filed a motion in King County Superior Court to withdraw his guilty plea to one count of child molestation in the first degree because he had been misadvised of the sentencing consequences of his plea. The superior court transferred the motion to this Court for treatment as a personal restraint petition. Order on Transfer dated June 5, 2007 and attached Motion and Memorandum of Law to Withdraw Plea. Mr. Quinn explained that prior to entering his guilty plea, his attorney had misadvised him that the prosecutor was recommending a term of 36 to 48 months of community custody and the guilty plea form he reviewed was later altered to reflect a recommendation of lifetime community custody without his knowledge. As a result, Mr. Quinn did not understand that life on community custody was a mandatory consequence of his plea. Motion and Memorandum of Law to Withdraw Guilty Plea; Petitioner's Reply Brief.

The State did not challenge the timeliness of Mr. Quinn's motion to withdraw his guilty plea. State's Response to Personal Restraint Petition at 2 (hereafter State's Response) ("the State assumes that this petition was timely filed pursuant to GR 3.1"). Instead, the State argued Mr. Quinn had not demonstrated he was misadvised of the sentencing consequences of his plea, pointing to the written guilty plea statement. *Id.* at 2-4.

After review of Mr. Quinn's motion to withdraw his guilty plea and the State's response, this Court remanded the matter to King County Superior Court for a reference hearing to resolve the factual issues. This Court asked the superior court to decide if Mr. Quinn was affirmatively misinformed about the length of community custody he would receive as part of a sentence and if the misinformation was corrected prior to the entry of his guilty plea.¹ Order of Transfer, November 13, 2007; Order on Reference Hearing Findings of Fact, August 19, 2008, at 1.

The reference hearing was heard by the Honorable Mary Yu in July 2008. 7/28/08RP (1 and 2); 7/31/08RP.² The court

¹ Counsel does not have a copy of the order on transfer; it was not filed in Mr. Quinn's superior court file.

² The verbatim report of proceedings of the reference hearing is found in three volumes. The hearing on July 28 is in two volumes as it was reported by two separate court reporters. The July 31 hearing is in one volume.

appointed counsel for Mr. Quinn and also appointed a special master to review the Public Defender Association's file materials to protect confidential information. Order Appointing Counsel for Reference Hearing date January 23, 2008 (attached as Appendix F); Order Directing Office of Public Defense to Pay Special Master dated August 4, 2008 (attached as Appendix G); 7/28/071RP 112-14, 118-19; 7/31/08RP 3-4. The State did not argue that Mr. Quinn's motion to withdraw his guilty plea was untimely or that he had waived the issue.

After hearing the testimony of five witnesses and reviewing 13 exhibits, the trial court entered detailed findings of fact. Order on Reference Hearing. The court concluded that Mr. Quinn's public defender affirmatively misadvised him about the length of community custody when she reviewed the guilty plea form with him prior to entry of the plea. Id. at 8-9 (Conclusions 1-2). According to the form Mr. Quinn reviewed, the State agreed to recommend 36-48 months' community custody, and Mr. Quinn assumed the recommendation was a legal one. Id. The information was not corrected before Mr. Quinn pled guilty. Id. at 9 (Conclusion 3). Moreover, at the time Mr. Quinn entered his plea, he was unaware a deputy prosecuting attorney had changed the

plea form so that the State's recommendation reflected the correct term of community placement. Id.

This Court received the trial court's written findings and conclusions and asked the State to provide supplemental briefing addressing the effect of the findings on Mr. Quinn's personal restraint petition. Order Appointing Counsel and Referring Petition to Panel of Judges, January 21, 2009, at 2 (hereafter Order Appointing Counsel). The State did not challenge any of the trial court's findings or conclusions or argue that Mr. Quinn did not demonstrate he was misadvised of the sentencing consequences of the plea. Id. Instead, for the first time in the litigation, the State raised two procedural bars to Mr. Quinn's claim. First, the State claimed Mr. Quinn failed to prove he placed his motion to withdraw his guilty plea into the prison mail system within one year of the entry of his Judgment and Sentence. Second, the State argued Mr. Quinn waived his constitutional issue by not moving to withdraw his plea on this basis prior to his sentencing hearing. State's Supplemental Response to Personal Restraint Petition (hereafter Supplemental Response).

After receiving Mr. Quinn's supplemental reply brief, this Court appointed counsel to address four specific issues: (1)

whether Mr. Quinn waived his ability to challenge his invalid guilty plea, (2) which party bears the burden of demonstrating a timely filing of a motion to withdraw a guilty plea, (3) whether the record or a supplemented record will demonstrate if Mr. Quinn complied with GR 3.1 in filing his post-conviction motion, and (4) whether the State waived any objection to the timeliness of Mr. Quinn's motion. Order Appointing Counsel at 3.

C. ARGUMENT

1. THE STATE WAIVED ITS ARGUMENT THAT QUINN'S MOTION TO WITHDRAW HIS GUILTY PLEA WAS NOT TIMELY FILED

A respondent to litigation may waive a defense by not raising it at the appropriate stage of the proceedings. Lybbert v. Grant County, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000) (defense of insufficient service of process); Skagit Surveyors & Engineers, LLC v. Friends of Skagit County, 135 Wn.2d 542, 556, 958 P.2d 962 (1998) (1998) (lack of personal jurisdiction); Hunter v. United States, 160 F.3d 1109, 1113 (6th Cir. 1998) (waiver of right to appeal). Here, the State responded in August 2007 that Mr. Quinn's motion to withdraw his guilty plea appeared to be timely. State's Response at 2. The State did not change its position before or during the superior court reference hearing in July 2008. The

State has waived the timeliness argument it did not raise until October 2008.

The one-year time limit of RCW 10.73.090 is a statute of limitation, not a jurisdictional statute. In re Personal Restraint of Bonds, 165 Wn.2d 135, 140, 196 P.3d 672 (2008). A party waives the affirmative defense that the action is not within the statute of limitations by not raising it in the answer. Boyle v. Clark, 47 Wn.2d 418, 424, 287 P.2d 1006 (1955); In re Estate of Palmer, 145 Wn.App. 249, 258-59, 187 P.3d 758 (2008); CR 8(c).

The statute of limitations is a defense, not a bar, to an action. It is a defense, moreover, that may be waived, and a defendant does waive it when he defaults, or when he appears and fails to interpose it as a defense.

Boyle, 47 Wn.2d at 424.

Here, the State affirmatively waived any argument that Mr. Quinn's personal restraint petition was untimely by assuming it was timely in its formal response to the petition. The State wrote:

This petition was originally filed with the clerk of the trial court as a motion to withdraw plea. Although the Superior Court Clerk stamp is dated June 7, 2007, the motion is dated April 6, 2007. Records from the Airway Heights mail system indicate that Quinn deposited legal mail to the King County Superior Court or to Judge Washington on April 13, April 17, May 2, May 7, and May 8. Thus, the State assumes that his petition was timely filed pursuant to GR 3.1.

State's Response at 2. Now, utilizing the same records obtained in 2007, the State argues the motion was not timely filed. State's Supplemental Response at 5-8, Appendix E.

The doctrine of waiver should be applied here as the State was dilatory in raising the timeliness defense. As explained by the Washington Supreme Court, the doctrine of waiver is sensible and consistent with modern procedural rules, which are designed to foster the expeditious resolution of cases. Lybbert, 141 Wn.2d at 39 (quoting CR 1).

We believe the doctrine of waiver is sensible and consistent with the policy and spirit behind our modern day procedural rules, which exist to foster and promote "the just, speedy, and inexpensive determination of every action." If litigants are at liberty to act in an inconsistent fashion or employ delaying tactics, the purpose behind the procedural rules may be compromised. We note, also, that the common law doctrine of waiver enjoys a healthy existence in courts throughout the country, with numerous federal and states courts having embraced it. . . .

Our holding today merely underscores the importance of preventing the litigation process from being inhibited by inconsistent or dilatory conduct on the part of the litigants.

Id. at 39-40 (internal citations omitted). The waiver doctrine thus discourages "the 'trial by ambush' style of advocacy." Id. at 40.

The waiver doctrine is thus an established part of civil litigation in this State. See Haywood v. Aranda, 143 Wn.2d 231, 239-40, 19 P.3d 406 (2001) (waiver when plaintiffs proceeded to jury trial de novo even though they knew or should have known defendant had failed to file proof of service as required by MAR 7.1(a)); Dyson v. King County, 61 Wn.App. 243, 245-46, 809 P.2d 769 (city may not file answer, defend the case, and then wait until applicable statute of limitations had run to raise defense of plaintiff's failure to comply with municipal claim-filing ordinance), rev. denied, 117 Wn.2d 1020 (1991).

The court rules and statutes governing personal restraint petitions are also designed to promote the prompt resolution of petitions on the merits. Bonds, 165 Wn.2d at 676; In re Personal Restraint of Runyon, 121 Wn.2d 432, 440, 853 P.2d 424 (1993); RAP 1.2(a). The Runyon Court pointed out that post-conviction collateral review was not intended to permit petitioners to "institute appeal upon appeal and review upon review in forum after forum ad infinitum." 121 Wn.2d at 453 (quoting Holt v. Morris, 84 Wn.2d 841, 852, 529 P.2d 1081 (1974) (Hale, C.J., concurring), overruled on other grounds, Wright v. Morris, 85 Wn.2d 899, 540 P.2d 893 (1975)). Thus, the one-year time limit is a reasonable method "for

ensuring that collateral review does not degenerate into such a procedural merry-go-round.” Id. at 454.

Here, any procedural merry-go-round was caused by the State. Instead of raising a time-bar issue in its initial response to Mr. Quinn’s petition, the State “assumed” it was timely. The State waited while this Court remanded the case to superior court, the superior court held a reference hearing, and the superior court entered findings and conclusions contrary to the State’s position before raising the potential RCW 10.73.090 problem.

As this Court is no doubt aware, the King County Superior Court is busy and crowded with criminal cases. The reference hearing took two court days as well as the time needed by the superior court judge to prepare for the hearing, enter discovery orders, review exhibits, and prepare the findings. Discovery Order, June 26, 2008; Order Regarding *In Camera* Review of Documents, July 1, 2008; Order Regarding Documents Selected by Special Master and the Court’s *In Camera* Review, August 4, 2008 (attached as Appendix I). The witnesses included four busy attorneys - one deputy prosecuting and three public defenders, one traveling from Snohomish County and another testifying by telephone from Pennsylvania. 7/28/081RP 4, 7-9, 70-71, 90-91;

7/31/08RP 34, 64-65. In addition, an attorney from the Public Defender Association appeared to protect the confidentiality of Mr. Quinn's file. 7/28/081RP 91-92, 95, 98-120.

The court appointed counsel for Mr. Quinn at public expense, and the Office of Public Defense paid for a special master to review the Public Defender Association's file in camera. Appendixes F, G. In addition, the court paid to prepare the verbatim report of proceedings of Mr. Quinn's motion to withdraw his guilty plea in superior court and his sentencing hearing. Order Authorizing Defendant to Seek Review [sic] at Public Expense, January 23, 2008 (attached as Appendix H). Thus, considerable public resources were expended in order to provide Mr. Quinn with the reference hearing ordered by this Court. If the State had a good-faith defense under RCW 10.73.090, it should have raised it earlier instead of waiting for an adverse result at the reference hearing.

As with Washington personal restraint petitioners, the federal habeas statutes place time limits and other procedural bars on state prisoners seeking relief through habeas corpus petitions. 28 U.S.C. § 2244(d). The Antiterrorism and Effective Death Penalty Act (AEDPA) thereby promotes judicial efficiency and safeguards

the accuracy of state court judgments by requiring the resolution of constitutional issues in state court while the record is still fresh.

Day v. McDonough, 547 U.S. 198, 205-06, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006) (quoting Acosta v. Artuz, 221 F.3d 117, 123 (2nd Cir. 2000)).

In federal court, the government waives a time-bar defense to a habeas corpus petition by failing to raise the issue in its response to the petition. Day, 547 U.S. at 201; Chaker v. Crogan, 428 F.3d 1215, 1120 (9th Cir. 2005), cert. denied, 547 U.S. 1128 (2006). Only a narrow exception to this general rule exists to permit the district court to sua sponte address the timeliness of a prisoner's petition absent a "deliberate waiver" by the government. Day, 547 U.S. at 206, 210. Thus, the Day Court upheld a sua sponte dismissal by a district court where the record revealed the State had made a mistake in calculating the tolled period, the State had not "strategically" withheld the defense, and the court promptly gave the petitioner ample opportunity to address the timeliness issue. Id. at 201-02, 210-11.

The evidence here shows a deliberate waiver by the State. When responding to Mr. Quinn's personal restraint petition in 2007, the prosecutor obtained information from the Airway Heights

Correction Center mail room. Response at 2; State's Supplemental Response to Personal Restraint Petition at Appendix E (email to attorney general and prosecutor from Department of Corrections dated July 31, 2007). The prosecutor thus reviewed the information from the mail room, which showed that Mr. Quinn placed material in the legal mail box at the prison before the May 15, 2007 deadline. The State thus deliberately waived any argument that Mr. Quinn's personal restraint petition was not filed within the time deadline of RCW 10.73.090.

2. RCW 10.73.090 IS A STATUTE OF LIMITATIONS. NONCOMPLIANCE IS THUS AN AFFIRMATIVE DEFENSE, AND THE BURDEN OF PROVING NONCOMPLIANCE IS ON THE GOVERNMENT; THE STATE CANNOT MEET ITS BURDEN GIVEN THE CURRENTLY-AVAILABLE INFORMATION

This Court asked counsel to address whether the petitioner or the government bears the burden of proving compliance with RCW 10.73.090 and whether, in light of the properly allocated burden of proof, the existing record demonstrates compliance or whether compliance could be demonstrated by a supplemented record. Order Appointing Counsel at 2.

a. The one-year time limit of RCW 10.73.090 is a statute of limitation and therefore an affirmative defense that must be proven by the government. The rules governing personal restraint petitions are silent as to which party has the burden of proving or disproving the timeliness of a petition. RAP 16.7 sets forth the contents of the petition. The rule requires the petitioner to identify the judgment under which he is in custody, any appeals from that judgment, and any other petitions or collateral attack previously filed concerning the judgment. RAP 16.7(a)(1). There is, however, no other requirement that the petitioner plead timeliness. RAP 16.7(a).

The court, however, may dismiss the petition for failing to comply with RCW 10.73.090 if the non-compliance is clear from the petition. RAP 16.9. Otherwise, the government is required to file a response to the petition which must include the authority for the petitioner's restraint, answer all allegations in the petition, and identify all material disputed questions of fact. Id.

As pointed out above in Argument 1, the one-year time limit imposed by RCW 10.73.090 is a statute of limitation. Bonds, 165 Wn.2d at 140. As such, it is an affirmative defense that must be pled and proven by the State. Rivas v. Overlake Medical Center, 164 Wn.2d 261, 267, 189 P.3d 753 (2008); Haslund v. City of

Seattle, 86 Wn.2d 607, 620-21, 547 P.2d 1221 (1976). The petitioner then bears the burden of proof if he alleges the statute of limitations was tolled. Id. The burden of proving a failure to comply with RCW 10.73.090 should thus be placed on the State.

Placing the burden of proving the affirmative defense that a personal restraint petition is outside the statute of limitations on the respondent is also in keeping with the requirements of AEDPA, which requires the government to address the timeliness of a habeas petition in its answer. Day, 547 U.S. at 202. The statute does not place the burden of proving timeliness on the petitioner. Kilgore v. Attorney General of Colorado, 519 F.3d 1084 (10th Cir. 2008). In Kilgore, the federal appellate court explained that requiring the petitioner to prove the timeliness of his petition would be inconsistent with other aspects of the statute, which recognize the practical difficulties prisoners face in bringing their claims and obtaining accurate information from the courts. Kilgore, 519 F.3d at 1088.

As with the federal scheme, Washington personal restraint petitions are drafted in recognition of the problems prisoners face in raising their claims. Few prisoners have the financial resources to file personal restraint petitions with the benefit of counsel. As

prisoners, they have limited access to resources like computers, telephones and copy machines to establish procedural facts. The State, on the other hand, is represented by experienced counsel with the resources to address the issue.

Placing the burden on the State to prove a personal restraint petition is not timely is consistent with the rule in civil cases that the statute of limitations is an affirmative defense and the rules governing personal restraint petitions. This Court should rule that the State has the burden of proving a personal restraint petitioner did not comply with the requirements of RCW 10.73.090.

b. The currently available information concerning the timeliness of Mr. Quinn's petition demonstrates it was filed before the expiration of the one-year deadline. Here, the State waited two years before raising the statute of limitations issue, thus making it more difficult to provide this Court with the necessary documentation. A review of the superior court file and the exhibit addressing Mr. Quinn's use of prison legal mail system, however, demonstrates Mr. Quinn complied with RCW 10.73.090 by mailing his motion to withdraw his guilty plea within one year of his May 15, 2006, Judgment and Sentence.

Mr. Quinn remembers placing his motion to withdraw his guilty plea in the Airway Heights legal mail system prior to the May 16, 2007, deadline. He addressed the original to the superior court clerk, with copies to the prosecutor and his sentencing judge.³

The superior court file contains an affidavit of service from Mr. Quinn stating he served the King County Prosecutor with a copy of the Motion to Withdraw Guilty Plea by placing it in the prison mailbox on April 12, 2007. Declaration of Service by Mail (attached as Appendix A). Similarly, Mr. Quinn filed a document setting the hearing on the motion for April 27, 2007. Motion to Docket (attached as Appendix B). Logically, Mr. Quinn would be unlikely to set a hearing on his motion for April 27 and if he had not filed the motion prior to that date. These two documents, however, were both filed in the superior court on June 7, 2007, the same date as the Motion was filed. They support Mr. Quinn's position that mailed these documents along with the Motion to Withdraw Guilty Plea, on April 12, 2007, prior to the one-year deadline but that the trial court judge did not file the documents until he transferred to motion to the Court of Appeals on June 7.

³ Counsel will provide this Court with a affidavit from Mr. Quinn.

Also found in the superior court file are documents filed in the superior court on May 10, 2007. These include two copies of Mr. Quinn's Notice of Appearance Pro Se, one filed at the King County Courthouse and one at the Regional Justice Center. Notice of Appearance Pro Se (Attached as Appendixes C and D).

Accompanying the Notice filed in the Regional Justice Center is a declaration of service upon the King County Prosecutor by placing the Notice of Appearance in the prison legal mail system on May 4. Certificate of Service (attached as Appendix E). These documents appear to be those listed in the DOC email as logged into the outgoing legal mail system on May 2 and May 7. Mr. Quinn placed these in the legal mail after he mailed the motion to clarify that he intended to represent himself.

While it appears that Mr. Quinn's motion to withdraw his guilty plea should have been filed significantly earlier than June 7, the superior court filing system is not perfect. This Court's order transferring the case to superior court for a reference hearing, for example, is not found in the superior court file. In this case, it appears the motion, notice of hearing, and declaration of service were not filed until after Judge Washington reviewed them and transferred the case to this Court for treatment as a personal

restraint petition. The motion, for example, is dated April 6, 2007, Mr. Quinn served the State by placing the motion in the mail on April 12, and he attempted to set the case for hearing on April 27. Motion to Withdraw Guilty Plea at 9; Appendix A-B. The information this Court has at the current date shows that Mr. Quinn's motion to withdraw his guilty plea was placed in the legal mail system addressed to Judge Washington prior to May 15, 2007, and is thus timely.

It is an affirmative defense that an action is not within the statute of limitations, and the burden of proof is on the responding party. The State therefore bears the burden of demonstrating a personal restraint petition was not filed within the one-year statutory deadline. The petitioner should then be responsible for proving any tolled periods.

Here, the State was not diligent in raising the issue that Mr. Quinn's personal restraint petition was time-barred and waived the issue by not raising it in its response or before the court-ordered reference hearing. If, however, this Court finds Mr. Quinn has the burden because the face of motion shows it was filed on June 6, the currently-available information demonstrates Mr. Quinn placed

his motion in the prison legal mail system prior to the one-year deadline.

3. MR. QUINN'S MOTION TO WITHDRAW HIS GUILTY PLEA IS NOT CONTROLLED BY MENDOZA AND THE STATE WAIVED THIS ARGUMENT BY NOT RAISING IT IN ITS RESPONSE TO MR. QUINN'S PETITION

The reference hearing judge determined that Mr. Quinn's court-appointed counsel affirmatively misadvised him concerning the mandatory community custody period that was a direct consequence of his guilty plea and that the misunderstanding was not corrected before Mr. Quinn entered his plea. Order on Reference Hearing at 8-9. Mr. Quinn's guilty plea was thus involuntary, and this Court should grant his personal restraint petition and permit him to withdraw his guilty plea. In re Personal Restraint of Bradley, 165 Wn.2d 934, 939-40, 944, 205 P.3d 123 (2009).

The State does not challenge the reference court's findings, but instead argues Mr. Quinn waived this argument by not raising it at his sentencing hearing. Supplemental Response at 3-5, citing State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006). This Court should reject the State's argument because (1) Mr. Quinn's case is not controlled by Mendoza and (2) the State waived this argument

by not addressing it in its 2007 response to Mr. Quinn's personal restraint petition or prior to the 2008 reference hearing.

a. Mendoza does not apply when the defendant is misinformed that his guilty plea will result in a less severe sentence than legally required. In Mendoza, the Washington Supreme Court addressed a case where the offender's standard sentence range was actually lower than he had been advised at the time of the entry of his guilty plea. Mendoza, 157 Wn.2d at 584-85. Noting that the length of the sentence is a direct consequence of a guilty plea, the Mendoza Court found that the defendant was misadvised of the sentencing consequences of his plea. Id. at 590-91. The court, however, decided that when the defendant is informed of a correct, lower sentencing range before his sentencing hearing and is sentenced within the lower standard range, he waives the right to challenge the validity of his plea by not doing so before sentencing. Id. at 591-92.

The court's conclusion clearly limits the holding to cases where the error is in the defendant's favor:

When a guilty plea is based on misinformation, including a miscalculated offender score that resulted in an incorrect standard range, the defendant may move to withdraw the plea based upon involuntariness. However, if the defendant was

clearly informed before the sentencing that the correctly calculated offender score rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea.

Id. at 592 (emphasis added). This limitation can be seen in State v. Codiga, 162 Wn.2d 912, 925, 175 P.3d 1082 (2008). In that case the court separately discussed Mendoza, where mutual mistake ultimately results in a lower offender score than that anticipated at the time of the entry of the guilty plea, and State v. Walsh, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001), which holds a plea is involuntary and may be withdrawn when the actual sentence range is higher than that mentioned in the plea form. Codiga, 162 Wn.2d at 925.

This Court similarly interpreted Mendoza in State v. Blanks, 139 Wn.App. 543, 161 P.3d 455 (2007), rev. denied, 163 Wn.2d 1046 (2008). The Blanks Court found a defendant waives his right to challenge the validity of his guilty plea based upon incorrect sentencing information when three criteria are met. Blanks, 139 Wn.App. at 549. First, the miscalculation must result in a “less onerous penalty than written in the plea agreement.” Id. Second, the defendant must be informed of the error prior to sentencing,

and third, the defendant must be given the opportunity to withdraw his guilty plea before sentencing. Id.

Mr. Quinn did not waive his right to withdraw his guilty plea because the first and third requirements for waiver are not present in his case. First, Mr. Quinn was misinformed that he faced a 36 to 48 term of community custody rather than the correct term of life. Thus, his actual penalty was more onerous than written in the guilty plea statement.

Additionally, Mr. Quinn tried to withdraw his guilty plea on this basis prior to sentencing, but his new counsel, Joe Chalverus, refused to raise the issue. Instead, Mr. Chalverus moved to withdraw Mr. Quinn's guilty plea on a different and arguably frivolous ground. 5/5/06RP; 7/31/08RP 31-32, 60-61. Mr. Quinn attempted to tell the court he had been misadvised of the sentencing consequences of his plea, and he told the judge that the guilty plea form had been altered after he reviewed it and he had not been informed of the changes. 5/5/06RP 11.

The prosecutor -- who admitted at the later reference hearing that he did alter the form and did not know if he informed defense counsel of the changes -- objected that the issue was not before the court because it was not brought through counsel.

5/5/06RP 11-12; 7/31/08RP 42-44, 49-50, 52. The superior court judge opined an altered plea form was an important issue that should be cleared up, but refused to address the issue unless it was brought by Mr. Quinn's attorney. 5/5/06RP 11-13. Mr. Chalverus apparently did not listen to Mr. Quinn or look at the guilty plea statement in the court file to see that information concerning the correct term of community custody was in a different handwriting than seen in other portions of the form and appeared to have been written over a term that had been "whited-out." Mr. Quinn cannot be found to have waived the issue because he was represented by ineffective counsel who failed to make the valid argument Mr. Quinn requested.

Mr. Quinn's guilty plea was not voluntary because he was incorrectly advised that he faced a lower term of community custody than the correct term. Mr. Quinn did not waive his right to withdraw his involuntary plea because the incorrect advice was not to his advantage and because his counsel provided ineffective assistance by failing to raise the issue when Mr. Quinn sought to withdraw his guilt plea before sentencing.

b. Even if *Mendoza* applied to Mr. Quinn's case, the State waived the argument by not raising it earlier. As can be seen, the State's argument that Mr. Quinn waived his right to withdraw his involuntary guilty plea is baseless. This Court, however, need not address the issue because the State waived its *Mendoza* argument by failing to raise it in its response to Mr. Quinn's personal restraint petition.

A party may waive a waiver argument. When, for example, a defendant waives his right to appeal as part of a plea agreement, the government may waive the appeal waiver argument by failing to raise it. *United States v. Boudreau*, 564 F.3d 431, 435 (6th Cir. 2009); *Hunter*, 160 F.3d at 1113-14. When the government does not raise the appeal waiver but instead addresses the substantive issues, its acquiescence constitutes "a waiver of the waiver." *United States v. Metzger*, 3 F.3d 756, 757 (4th Cir. 1993) (and cases cited therein).

In *Boudreau*, the government argued for the first time on appeal that the defendant waived his right to appeal the government's filing of an information to enhance his sentence after

the case was remanded for resentencing in light of Booker.⁴ Boudreau, 564 F.3d at 432-33. The court, however, agreed with the defendant that the government had waived the waiver argument. Id. at 435. The court pointed out that, instead of noting its objection, the government “remained silent and participated in an extensive hearing that included calling witnesses and multiple rounds of cross-examination.” Id.

Here, too, the State did not raise the Mendoza waiver argument in its response to Mr. Quinn’s personal restraint petition. Instead, the State remained silent and participated in a reference hearing involving several witnesses, extensive cross-examination, the introduction of several exhibits, and the use of a special master. Had the State raised the Mendoza issue, it too could have been addressed at the reference hearing by questioning Mr. Quinn and calling Mr. Chalverus as a witness.

This Court should find the State waived any argument that Mr. Quinn waived his right to challenge his involuntary guilty plea. Additionally, the Mendoza rule is inapplicable to Mr. Quinn’s case. Mr. Quinn was misinformed prior to pleading guilty that his sentence could be less severe than legally required, and he tried to

⁴ United States v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).

convince his attorney to move to withdraw his guilty plea on this basis. Thus, this Court cannot find Mr. Quinn waived his right to challenge his guilty plea under the rule of Mendoza.

D. CONCLUSION

In its response to Mr. Quinn's personal restraint petition, the State agreed the petition was timely filed and did not argue that Mr. Quinn waived his right to withdraw his guilty plea because he did not do so at his sentencing hearing. When this Court referred Mr. Quinn's case to superior court for a reference hear, the State participated in the hearing and did not raise either of these arguments.

The State waived these arguments by failing to raise them until after the superior court found Mr. Quinn was affirmatively misinformed about the sentencing consequences of his guilty plea. Mr. Quinn's personal restraint petition must be granted. Bradley, 165 Wn.2d at 944.

In the alternative, Mr. Quinn did not waive his right to challenge his unconstitutional guilty plea under Mendoza because the misinformation concerning the sentencing consequences of his plea were not to his advantage and because he tried to raise the issue prior to sentencing. Also, the State bears the burden of

proving Mr. Quinn's motion to withdraw his guilty plea was not timely and cannot meet that burden given the evidence now before this Court.

DATED this 8th day of July 2009.

Respectfully submitted,



Elaine L. Winters – WSBA #7780
Washington Appellate Project
Attorneys for Petitioner

APPENDIX A

DECLARATION OF SERVICE BY MAILING

**Dated April 12, 2007
Filed June 7, 2007**

FILED
KING COUNTY, WASHINGTON

JUN 07 2007

SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON
Plaintiff)
_____))
v.)
CHRISTOPHER A. QUINN
Defendant)

No: 04-1-12352-2 KNT

**DECLARATION OF SERVICE
BY MAILING**

I, CHRISTOPHER A. QUINN, _____, in the above entitled cause, do hereby declare that I have served the following documents;
MOTION TO WITHDRAW PLEA GUILTY AND SUPPORTING DOCUMENTS.

Upon:

DPA. ZACHARY WAGNILD
516 THIRD AVE. W-554
KING COUNTY COURTHOUSE

SEATTLE WA 98104
I deposited with the R-Unit Officer Station, by processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2109,
Airway Heights, WA 99001- 2109

On this 12 day of APRIL, 2007.

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

Respectfully Submitted,


Petitioner

DECLARATION OF SERVICE BY MAILING

APPENDIX B

**MOTION TO DOCKET
(Setting Hearing on April 27, 2008)**

Filed June 7, 2008

FILED
KING COUNTY, WASHINGTON

JUN 07 2007

SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

STATE OF WASHINGTON
Plaintiff

No. 04-1-12352-2 KNT

V

MOTION TO DOCKET
(Criminal)

CHRISTOPHER A. QUINN
Defendant.

To: The state of Washington, and KING County
Prosecutor, Attorney for the Plaintiff, and the Clerk of Superior Court.

PLEASE TAKE NOTICE that the defendant, CHRISTOPHER A. QUINN
Pro Se, will move the above court on the 27 day of APRIL 2007, at the hour
of 9:00, for a (an) Hearing to MOTION TO WITHDRAW PLEA OF GUILTY and the
clerk of the court is requested to note the same at the date and time on the Criminal
Motions Calendar.


Signature

CHRISTOPHER A. QUINN
Printed Name

APPENDIX C

NOTICE OF PRO SE APPEARANCE

Filed May 10, 2007 (Seattle)

FILED
KING COUNTY, WASHINGTON

MAY 10 2007

SUPERIOR COURT CLERK

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

STATE OF WASHINGTON,
Plaintiff,
v.
CHRISTOPHER A. QUINN,
Defendant.

CAUSE NO. 04-1-12352-2 KNT
NOTICE OF APPEARANCE
PRO SE

TO: CLERK, King County Superior Court

TO: NORMAN K. MALENG, WSBA No. 1290
King County Courthouse
516 Third Avenue, Room E-609
Seattle, WA 98104
Phone No. (206) 296-9000

PLEASE TAKE NOTICE, that the Defendant Christopher A.
Quinn, acting Pro Se, hereby appears in the above cause

and requests that all further papers and pleadings herein,
except original process, be served upon the Defendant
Christopher A. Quinn at the address stated below.

CHRISTOPHER A. QUINN, DEFENDANT

NOTICE OF APPEARANCE
PRO SE

CHRISTOPHER A. QUINN, #889745
AIRWAY HEIGHTS CORRECTIONS CENTER
POST OFFICE BOX 2109, RA-32-L
AIRWAY HEIGHTS, WA 99001-2109

PAGE 01 OF 01

APPENDIX D

NOTICE OF PRO SE APPEARANCE

Filed May 10, 2007 (Kent)

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KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

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

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER A. QUINN,

Defendant.

CAUSE NO. 04-1-12352-2 KNT

NOTICE OF APPEARANCE
PRO SE

TO: CLERK, King County Superior Court

TO: NORMAN K. MALENG, WSBA No. 1290
King County Courthouse
516 Third Avenue, Room E-609
Seattle, WA 98104
Phone No. (206) 296-9000

PLEASE TAKE NOTICE, that the Defendant Christopher A. Quinn, acting Pro Se, hereby appears in the above cause and requests that all further papers and pleadings herein, except original process, be served upon the Defendant Christopher A. Quinn at the address stated below.


CHRISTOPHER A. QUINN, DEFENDANT

NOTICE OF APPEARANCE
PRO SE

CHRISTOPHER A. QUINN, #889745
AIRWAY HEIGHTS CORRECTIONS CENTER
POST OFFICE BOX 2109, RA-32-L
AIRWAY HEIGHTS, WA 99001-2109

PAGE 01 OF 01

123

APPENDIX E

CERTIFICATE OF SERVICE

Placed in Mail May 4, 2007

Filed May 10, 2007 (Kent)

FILED
07 MAY 10 PM 3:41
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

IN THE COUNTY OF KING

THE SUPERIOR COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
Respondent,)
)
v.)
)
CHRISTOPHER A. QUINN)
Petitioner.)

No: 04-1-12352-2 KNT

CERTIFICATE OF SERVICE

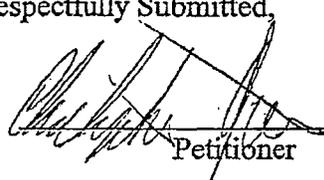
I, CHRISTOPHER A. QUINN, Petitioner in the above entitled cause,
under the penalty of perjury, do hereby certify that on the date noted below, I sent copies
of: NOTICE OF APPEARANCE PRO SE

To:
NORMAN K. MALENG, WSBA No. 1290
KING COUNTY COURTHOUSE
516 THIRD AVE. ROOM E-609
SEATTLE WA 98104

Phone No. (206) 296-9000
By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway
Heights Correction Center, P.O. Box 2109, Airway Heights, WA 99001-2109.

Dated this 04 day of MAY, 2007.

Respectfully Submitted,



Petitioner

CERTIFICATE OF SERVICE

124

APPENDIX F

ORDER APPOINTING COUNSEL FOR REFERENCE HEARING

Filed January 23, 2008

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FILED
KING COUNTY, WASHINGTON

(JAN 23 2008)

SUPERIOR COURT CLERK
ANGIE VILLALOVOS
DEPUTY.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER A. QUINN,

Defendant.

No. 04-1-12352-2 KNT

ORDER APPOINTING COUNSEL FOR
REFERENCE HEARING

THIS MATTER came before the undersigned judge through reassignment from the Presiding Judge on December 4, 2007 after the Court of Appeals transferred the matter to the King County Superior Court for a reference hearing.

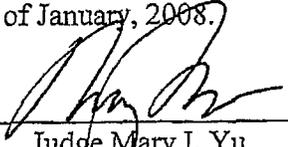
THIS MATTER also came before the court pursuant to Defendant Christopher Quinn's Motion for an Order Authorizing Verbatim Proceedings at Public Expense filed *pro se*. Having reviewed the order of transfer from the Court of Appeals and the Motion filed by Mr. Quinn, and having been duly advised on the premises, the court finds Mr. Quinn indigent.

(36)

1 IT IS HEREBY ORDERED that the King County Office of Public Defense shall appoint
2 counsel for Mr. Quinn for purposes of representing him at the reference hearing. Once
3 appointed, counsel shall advise the court of his/her appointment and contact the prosecuting
4 attorney assigned to this matter in order to schedule the reference hearing.
5

6 IT IS FURTHER ORDERED that Mr. Quinn is entitled to a verbatim transcript of the
7 sentencing proceedings as outlined in the attached order.
8

9 IT IS SO ORDERED this 22nd day of January, 2008.

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12 _____
13 Judge Mary I. Yu
14 KING COUNTY SUPERIOR COURT
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APPENDIX G

**ORDER DIRECTING OFFICE OF PUBLIC DEFENSE TO PAY
SPECIAL MASTER**

Filed August 4, 2008

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FILED
KING COUNTY, WASHINGTON

AUG 04 2009

SUPERIOR COURT CLERK
ANGIE VILLALOVOS
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER A. QUINN,

Defendant.

No. 04-1-12352-2 KNT

ORDER DIRECTING OFFICE OF PUBLIC
DEFENSE TO PAY SPECIAL MASTER

THIS MATTER came before the undersigned judge for a reference hearing (fact finding hearing) pursuant to a Court of Appeals order. The matter was assigned to this Department.

Ms. Sabrina Housand was appointed by the Office of Public Defense to represent Mr. Quinn at the hearing since Mr. Quinn was determined to be indigent.

Once the reference hearing was underway, several issues arose regarding the records of counsel who had previously represented Mr. Quinn. Mr. Quinn was a client of The Defender Association (TDA) during the time in question for this reference hearing. TDA attorneys who

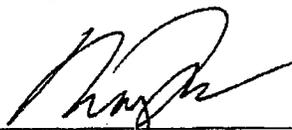
1 represented Mr. Quinn at various points during the pendency of his case shared a common case
2 file. As a result of testimony that was offered during the reference hearing, it was the court's
3 determination that there may be documents in the case file that could be relevant to the reference
4 hearing.
5

6 TDA was in possession of the case file and the court made a finding that it would be
7 improper for any person to review the entire TDA file because of the potential claims of
8 ineffective assistance of counsel and attorney/client privileges not relevant to this hearing. The
9 court ordered an *in camera* review of documents from the case file and found it necessary to
10 appoint a Special Master. After discussing the appointment with counsel, the court appointed
11 Retired Judge George Finkle as Special Master to review the entire case file. Judge Finkle
12 agreed to undertake the appointment at ½ his normal fee. Judge Finkle subsequently reviewed
13 the file on an expedited basis and provided them to the undersigned judge for a determination of
14 actual relevance.
15
16

17 The reference hearing has now concluded and the court now orders that the Special
18 Master be paid.
19

20 IT IS HEREBY ORDERED that the Special Master shall be paid \$500.00 by the Office
21 of Public Defense as billed in the attached invoice.
22

23 IT IS SO ORDERED this 4th day of August, 2008.
24

25 
26 _____
27 Judge Mary I. Yu
28 KING COUNTY SUPERIOR COURT
29

RECEIVED

AUG 01 2008

JUDGE MARY I. YU
DEPARTMENT 15

REGISTRATION

Judicial Dispute Resolution, LLC

Tax I.D. Number: 91-1825903

King County Superior Court
Regional Justice Center
401 Fourth Avenue North, Courtroom 4D
Kent, WA 98032-4429

Charles S. Burdell, Jr.
JoAnne L. Tompkins
Terrence A. Carroll
Rosselle Pekelis
George Finkle
Larry Jordan
Steve Scott
Michael S. Spearman

Invoice Number 8343 23181
Invoice Date 07/30/2008

Regarding:
State of Washington v. Quinn

Panelist:
George Finkle

DESCRIPTION	HOURS	RATE	AMOUNT
Work of the Special Master in the matter of State of Washington v. Quinn; No. 04-1-12352-2 KNT"	2.50	200.00	500.00
Total Billed			500.00
YOUR PORTION		100.00%	\$500.00

Return Remittance

Please return this portion with your payment - Thank you!

King County Superior Court
State of Washington v. Quinn

Invoice Number: 8343 23181

Balance Due: \$500.00

Amount Enclosed: _____

1421 Fourth Avenue, Suite 200
Seattle, WA 98101
Phone: (206) 223-1669
Fax: (206) 223-0450
www.jdrllc.com

APPENDIX H

**ORDER AUTHORIZING DEFENDANT
TO SEEK REVIEW AT PUBLIC EXPENSE**

Filed January 23, 2008

JAN 23 2008

SUPERIOR COURT CLERK
ANGIE VILLALOVOS
DEPUTY

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

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER QUINN,

Defendant,

No. 04-1-12352-2KNT

C.O.A. No. 60180-6-I

ORDER AUTHORIZING DEFENDANT
TO SEEK REVIEW AT PUBLIC
EXPENSE.

(PROPOSED)

THIS MATTER having come on regularly before the undersigned Judge upon the motion of the defendant for an order authorizing the defendant to seek review at public expense and the Court having considered the record and files herein, now therefore.

IT IS HEREBY ORDERED that the defendant shall be allowed (X) The cost of preparation of the statement of facts which shall contain the verbatim report of the following proceedings, all of which are necessary for review:

HEARING(S)	JUDGE	COURT REPORTER
MAY 05, 2006	Hon Christopher Washington	Velma Haynes
MAY 12, 2006	Hon Christopher Washington	Velma Haynes

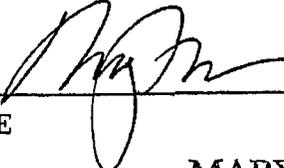
2.) Cost of preparation of clerks' papers

ORDER AUTHORIZING THE DEFENDANT
TO SEEK REVIEW AT PUBLIC EXPENSE

1
2 3.) Cost of a copy of the above records and mailing to the
3 prosecuting attorney.
4

5 IT IS FURTHER ORDERED that the court reporter and clerk
6 certify all verbatim reports and clerks' papers and copies
7 as required by R.C.W 5. 44.060.
8

9
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12 DONE IN OPEN COURT THIS 22 day of January, 2008
13

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16 
17 JUDGE

MARY I. YU
18

19 Presented by:

20
21 
22 CHRISTOPHER QUINN D.O.C. # 889745
23 AIRWAY HEIGHTS CORRECTION CENTER
24 PO BOX 2109 UNIT R A 32U
25 AIRWAY HEIGHTS, WA 99001-2109
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ORDER AUTHORIZING THE DEFENDANT
TO SEEK REVIEW AT PUBLIC EXPENSE

APPENDIX I

**DISCOVERY ORDER
June 26, 2008**

**ORDER REGARDING *IN CAMERA* REVIEW OF DOCUMENTS
July 1, 2008**

**ORDER REGARDING DOCUMENTS SELECTED BY SPECIAL
MASTER AND THE COURT'S *IN CAMERA* REVIEW
August 4, 2008**

FILED

08 JUN 26 AM 11:26

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 04-1-12352-2 KNT

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
	)	No. 04-1-12352-2 KNT
vs.)	
	)	DISCOVERY ORDER
CHRISTOPHER QUINN,)	
)	
	)	Defendant.
)	
)	
)	

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff, for an order in the above entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The Defender Association (TDA) shall provide the Court with a copy of the Statement of Defendant on Plea of Guilty and attached documents that Ms. Ellerby used to discuss the contents of the plea document with the defendant for *in camera* review. The Court will review these and determine if these documents shall be provided to the State in full, in redacted form or not provided to the State. The Court will seal and file the documents for potential appellate review.
2. TDA shall provide the Court with a copy of the Case Scheduling Cover Sheet authored by Ms. Ellerby and provided to Ms. Baskin for *in camera* review. The Court will review these and determine if this document shall be provided to the State in full, in redacted form or not provided to the State. The Court will seal and file the document for potential appellate review.
3. TDA shall provide the Court with a copy of the notes authored by Ms. Baskin and directed to Ms. Ellerby after the 12/15/08 plea hearing for *in camera* review. The Court will review and determine if the notes shall be provided to the State in full, in redacted

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

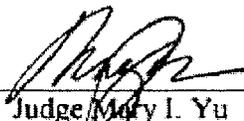
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1 form or not provided to the State. The Court will seal and file the document for potential
2 appellate review.

- 3 4. The Court reserves ruling on whether to allow an interview of Ms. Ellerby with regard to
4 the reason for the defendant deciding not to plead guilty on 12/13/05.
- 5 5. The Defender Association (TDA) shall provide Mr. Wackerman an opportunity to review
6 the file if requested by Mr. Wackerman
- 7 6. The Court does not order TDA to provide the State with copies of communications
8 contained in the file between the State and Mr. Wackerman or Ms. Ellerby.
- 9 7. TDA shall provide the State with a copy of the note found in TDA's file that contained
10 the language: "C.C. 36-48 months or life, whichever is longer."
- 11 8. The prosecutor may interview Mr. Wackerman regarding his discussions with the State
12 and Mr. Quinn relating to the consequences of the plea. Discussion into the general
13 consequences is relevant - inquiry should not be limited to merely whether there was a
14 discussion of community custody. Mr. Wackerman should submit to that interview as
15 soon as possible to allow for a hearing to occur on July 3, 2008. The Attorney client
16 privilege is waived to the extent necessary to discuss that topic. Ms. Housand will be
17 present for that interview.
- 18 9. The prosecutor may interview Ms. Baskin regarding her discussions with the defendant
19 relating to the consequences of the plea. The Attorney client privilege is waived to the
20 extent necessary to discuss that topic. Ms. Housand will be present for that interview.

21 The Court incorporates by reference the oral findings made at the June 20, 2008 hearing.

22 DONE IN OPEN COURT this 26th day of June, 2008.

23 

Judge Mary I. Yu
KING COUNTY SUPERIOR COURT

Presented by:

19 Matt Anderson, WSBA #27793
20 Deputy Prosecuting Attorney

21 Approved for entry:

22 Attorney for Defendant

Case Number: 04-1-12352-2
Case Title: STATE OF WASHINGTON VS QUINN, CHRISTOPHER ANTHONY
Document Title: ORDER
User's Name: Mary Yu
Filed Date: 6/26/2008 11:26:43 AM

Judge Signed

Signed By Judge: Mary Yu
WSBA #: 23280
Date: 6/26/2008 11:26:17 AM
Reason: I am a judicial officer and am signing this order
Certificate hash: 8C572ECD76D01E7FC50B8745EA1AF47E7318DC40
Certificate effective date: 6/26/2007 8:57:42 AM
Certificate expiry date: 7/18/2008 8:57:42 AM
Certificate issued by: C=US, O=State of Washington PKI, OU=State of
Washington CA, CN=Washington State CA B1

FILED
KING COUNTY, WASHINGTON

JUL 01 2008

SUPERIOR COURT CLERK
ANGIE VILLALOVOS
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
	)	No. 04-1-12352-2 KNT
vs.)	
	)	ORDER REGARDING <i>IN CAMERA</i>
CHRISTOPHER QUINN,	)	REVIEW OF DOCUMENTS
)	
	)	Defendant.
	)	[CLERKS ACTION REQUIRED
	)	FOR SEALING]
)	
)	

THIS MATTER came before the undersigned judge pursuant to a motion from the State of Washington for a discovery order compelling the production of certain documents and interviews with specific individuals.

The court entered a Discovery Order on June 26, 2008 and in accordance with that order reviewed *in camera* two documents: the Statement of Defendant on Plea of Guilty with Plea Agreement attached; and a copy of the Case Scheduling Cover Sheet authored by Ms. Ellerby and provided to Ms. Baskin.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that

1. The Defender Association (TDA) shall provide the State with a copy of the Statement of

149A

1 Defendant on Plea of Guilty and the Felony Plea Agreement (which were stapled
2 together and totals 16 pages) used by Ms. Ellerby to discuss the contents of the plea
3 document with the defendant. There were no other attached documents to this Statement
4 or Plea. TDA shall permit inspection of the original document if requested by the State.
5 The State shall not copy, publish, or redistribute the document in any manner or file the
6 document in the court file. Such document may only be utilized for the scheduled
7 reference hearing in this court.

8 2. TDA shall provide the State with a copy of the front page of the Case Scheduling Cover
9 Sheet authored by Ms. Ellerby and provided to Ms. Baskin. The back side of the
10 document with a date in the left had corner shall not be produced since the court does not
11 find the information on this side of the document relevant to the defined subject of the
12 reference hearing. This back side of the document may be "the notes" authored by Ms.
13 Beskin referred to in par. 3 of the prior court order.

14 3. The Court directs the Clerk to file a copy of the referenced documents under seal in order
15 to protect the record for appellate review. The documents are of the type that ordinarily
16 is not available for public inspection since they are attorney /client communications and
17 attorney work product. The court finds that defendant has waived such privilege for a
18 limited purpose which is the only reason why the court has ordered production of the
19 documents to the State. Notwithstanding such findings, it is possible that upon review an
20 appellate court could disagree with this court's determination and find that such
21 documents should not have been produced. Therefore, in order to protect the privileged
22 documents and to preserve the record for review, the Court Orders the documents
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reviewed *in camera* to be filed under seal and not be subject to public inspection or review.

IT IS SO ORDERED THIS 26th day of June, 2008.



Judge Mary F. Yu
KING COUNTY SUPERIOR COURT

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FILED
KING COUNTY, WASHINGTON

AUG 04 2008

SUPERIOR COURT
ANGIE VILLALOVOS
DePUTY

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

STATE OF WASHINGTON,
Plaintiff,

v.

CHRISTOPHER A. QUINN,
Defendant.

No. 04-1-12352-2 KNT

ORDER REGARDING DOCUMENTS
SELECTED BY SPECIAL MASTER AND
THE COURT'S *IN CAMERA* REVIEW

**[CLERK'S ACTION REQUIRED FOR
SEALING]**

THIS MATTER came before the undersigned judge pursuant to a motion from the State of Washington for production of documents from the case file belonging to The Defenders Association ("TDA") regarding its representation of Mr. Quinn.

The court appointed Judge Finkle (Ret.) as Special Master to review the entire case file and determine if there were any documents related to the following:

- 1) Defendant's desire to withdraw his plea;

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

IN RE THE PERSONAL RESTRAINT PETITION OF)		
)	
CHRISTOPHER QUINN,	)	NO. 60180-6-I
)	
Petitioner.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8TH DAY OF JULY, 2009, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ANN MARIE SUMMERS KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] CHRISTOPHER QUINN 889745 WASHINGTON CORRECTIONS CENTER PO BOX 900 SHELTON, WA 98584	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 8TH DAY OF JULY, 2009.

X _____ 

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COURT OF APPEALS
STATE OF WASHINGTON
2009 JUL - 8 PM 4:51

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
☎(206) 587-2711