

67356-4

67356-4

NO. 67356-4-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

RODNEY ALBERT SCHREIB, JR.,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Michael E. Rickert, Judge
The Honorable David R. Needy, Judge

RESPONDENT’S BRIEF

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I. SUMMARY OF ARGUMENT

Rodney Schreib appeals from the trial court's denial of a motion to withdraw his guilty plea after entry of the judgment and sentence. Schreib contends the trial court erred in finding the motion was untimely under CrR 7.8 and the trial court should have transferred the case to the Court of Appeals for consideration as a personal restraint petition. The State agrees the matter should have been transferred to the Court of Appeals for consideration as a personal restraint petition since it was both untimely and Schreib failed to establish the need for a reference hearing. This Court should convert the appeal of the motion to withdraw the guilty plea to a personal restraint petition.

Schreib also contends that his waiver of counsel for the motion to withdraw guilty plea was inadequate. However, as a post-judgment motion under CrR 7.8 Schreib was not entitled to appointed counsel and further he was adamant that he wished to represent himself.

Schreib correctly points that there was an error in the order amending judgment and sentence establishing an incorrect community custody term which the State agrees must be corrected.

II. ISSUES

1. Is a person seventeen years of age and younger at the time of the offense subject to a determinate plus sentence?
2. Is the remedy for an erroneous community custody term in an order amending the judgment and sentence correction of the error?
3. Does an error in an order amending the judgment and sentence result in a prior judgment and sentence being facially invalid allowing untimely claims other than the error?
4. Is a defendant entitled to counsel as of right on a post-judgment motion to withdraw a guilty plea?
5. Did the defendant assert the right to represent himself on a post-judgment motion to withdraw a guilty plea?
6. Where the trial court found a motion to withdraw the guilty plea was untimely, did the trial court err in denying the motion rather than transferring the case to the Court of Appeals for consideration as a personal restraint petition?
7. If the trial court erred in denying the motion to withdraw the guilty plea, should the remedy be to remand the case to the trial court, or retain the motion for consideration as a personal restraint petition?

III. STATEMENT OF THE CASE

On October 15, 2008, Rodney Schreib was charged with four counts of Child Molestation in the First Degree alleged to have occurred between May 1, 2007, and August 31, 2007. CP 1-2. Schreib was alleged to have a date of birth of October 10, 1990, and thus the offenses were alleged to have occurred when Schreib was sixteen years old. CP 1.

On March 26, 2009, Schreib pled guilty to three counts of Child Molestation in the First Degree. CP 4-12. The State agreed to dismiss count four in exchange to the pleas to the first three counts. CP 7. The State agreed to recommend a Special Sexual Offender Sentencing Alternative (SSOSA) sentence if approved by the Department of Corrections. CP 7. The guilty plea properly advised Schreib that his community custody range was 36 to 48 months since a determinate plus sentence with confinement and community custody for up to life was only available if he was at least age 18 when the offense was committed. CP 7.

On May 14, 2009, Schreib was sentenced to 98 months, but he was granted a SSOSA and the sentence was suspended. CP 17. The terms of the suspended sentence required him to comply with the terms of his sex offender treatment plan. CP 18. No term of community custody was set should the suspended sentence be revoked. CP 17-8.

On December 7, 2009, the State filed a motion to revoke the SSOSA alleging that Schreib failed to maintain residence, participate in treatment, obtain employment, and abide by DOC conditions of supervision. CP 30.

On March 4, 2010, Schreib entered a stipulated agreement which included a sanction of the confinement time served which consisted of three months confinement. CP 38-9.

On October 2, 2010, the State filed a second motion to revoke the SOSSA alleging failure to participate in treatment, abide by the treatment contract and leaving the county without permission of the community corrections officer. CP 51.

On December 1, 2010, the Court denied revocation of the SSOSA and instead entered an order modifying the judgment and sentence to sanction Schreib to four months of confinement plus additional conditions. 12/10 RP 40,¹ CP 52.

On March 14, 2011, the State again filed a motion to revoke the SSOSA alleging that Schreib had become transient, had unapproved contact

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

3/26/09 RP	Guilty plea hearing
10/7/10 RP	Hearing on motion to revoke SSOSA
12/1/10 RP	Hearing on motion to revoke SSOSA
4/20/11 RP	Hearing on waiver of counsel
5/11/11 RP	Motion for Dismissal and counsel on withdrawal of plea
5/20/11 RP	Hearing on issue of counsel for withdrawal of guilty plea
6/1/11 RP	Motions to Withdraw Guilty Plea and revoke SSOSA
6/15/11 RP	Hearing on appropriate guidelines.

with minors, stayed overnight at a residence where minors were present, failed to take prescribed medications and failed to disclose contact with minors with the Department of Corrections or his treatment provider. CP 54-6.

On March 24, 2011, and April 8, 2011, the Department of Corrections filed reports detailing the violations. CP 61-68.

On April 19, 2011, and April 20, 2011, Schreib filed a motion to act pro se and have stand-by counsel. CP 69, 70.

On April 20, 2011, the trial court conducted a hearing at which Schreib sought to represent himself for the revocation proceeding. 4/20/11 RP 2-3. The trial court conducted a colloquy with Schreib in which he said he understood that he was giving up his right to an attorney, that he could request to have the stand-by counsel appointed at any time. 4/20/10 RP 4-9. Schreib said he had a ninth grade education, no GED and no legal classes and was cautioned by the trial court that there may be defenses that Schreib may not be able to recognize due to lack of legal training. 4/20/10 RP 10-12. Schreib indicated that he might later change his mind and the trial court indicated that he could be appointed an attorney at that time. 4/20/10 RP 12-3. Schreib was questioned whether someone in the jail had given him the idea, and Schreib said it was his own idea. 4/20/10 RP 13. Schreib was cautioned that he would be given materials and access to the law library by

way of four books at a time. 4/20/10 RP 14. When the prosecutor brought up that it appeared that Schreib only wanted access to law books, but then to rely on stand-by counsel, the court addressed that concern with Schreib. 4/20/10 RP 15-6. After hearing a concern about the proposed stand-by counsel conflict, the court again confirmed with Schreib that he wanted to represent himself. 4/20/10 RP 19. The court approved the waiver of counsel, and appointed stand-by counsel. 4/20/10 RP 21-3.

On May 3, 2011, Schreib filed a Motion for Courtroom Ruling 8.3(b) Dismissal. CP 74-5. The motion sought dismissal based upon the limited time Schreib was permitted to have his pro se materials at the jail. CP 74.

On May 11, 2011, Schreib sought to have a motion to dismiss heard. 5/11/11 RP 2. Schreib also filed a motion to remove his handcuffs in court which was granted. 5/11/11 RP 2. Schreib sought dismissal of the charges based upon a violation as a disabled person under the Americans with Disabilities Act (ADA). 5/11/11 RP 3-6. The trial court noted that Schreib was apparently contesting the validity of his confession and seeking withdrawal of his guilty plea. 5/11/11 RP 8. The trial court found there was no basis to dismiss the guilty plea. 5/11/11 RP 11, CP 76. Schreib had not filed a written motion to withdraw the guilty plea. 5/11/11 RP 10-11. The trial court went over the time limitations on withdrawal of a guilty plea under CrR 4.2, CrR 7.8 and RCW 10.73.100 noting that a motion to withdraw the

guilty plea appeared to be untimely. 5/11/11 RP 13. But the trial court noted that Schreib should prepare a motion to be heard. 5/11/11 RP 13-4, 28. Schreib's stand-by counsel expressed concern that a motion to withdraw guilty plea could be based upon a claim of ineffective assistance of counsel of another attorney in his office resulting in a conflict of interest. 5/11/11 RP 16-8. The trial court indicated separate stand-by counsel could be provided for the motion to withdraw guilty plea. 5/11/11 RP 21-2.

At the close of the hearing, his stand-by counsel for the revocation indicated Schreib wanted counsel to represent him for the revocation but not the motion to dismiss. 5/11/11 RP 23, 25. The trial court allowed Schreib to maintain his access to legal materials at the jail in order to pursue his motion to withdraw the guilty plea. 5/11/11 RP 27-9.

On May 20, 2011, Schreib's stand-by counsel on the motion to withdraw guilty plea filed Schreib's request to remain pro se on withdrawal of the guilty plea. CP 81-3. That counsel provided an attached certification that affirmed that Schreib did not want her to represent him on the motion to withdraw the guilty plea. CP 82.

On May 25, 2011, Schreib filed the motion to withdraw his guilty plea citing numerous cases and court rules. CP 84-9. Schreib alleged he was sixteen at the time of the offense and believed this resulted in him being brought under the automatic jurisdiction of juvenile court. CP 86. Schreib

alleged his counsel was ineffective for failing to investigate such issues. CP 86. Schreib also alleged his former counsel inadequately evaluated his claimed mental disabilities. CP 86-7. Schreib also made comments that the corpus delicti rule applied and that no hearing was held pertaining to his confession. CP 87-8. Schreib claimed the state had failed to show there was sexual contact. CP 88.

On May 25, 2011, a hearing was held before a different judge of the trial court. 5/25/11 RP 2-3. Schreib maintained his request to represent himself. 5/25/11 RP 5-6. The trial court permitted Schreib to have stand-by counsel on the motion to withdraw guilty plea. 5/25/11 RP 7. After further discussions, the trial court noted Schreib should be required to make a preliminary showing in a motion before counsel would be appointed. 5/25/11 RP 9. The judge noted the prior judge had ordered stand-by counsel on the motion to withdraw guilty plea before the motion was even filed. 5/25/11 RP 10. But the judge noted he would not undo the prior judge's order. 5/25/11 RP 10

On June 1, 2011, the initial judge heard both the pro se motion to withdraw guilty plea and the motion to revoke the SSOSA. 6/1/11 RP 2-3. The trial court first heard the motion to withdraw the guilty plea. 6/1/11 RP 4-17. Schreib maintained he wanted to represent himself on that motion. 6/1/11 RP 4-5. Schreib sought to withdraw his guilty plea based upon a

violation of the ADA, failure to follow due process and effective assistance of counsel. 6/1/11 RP 7. Schreib claimed the disability resulted in a coerced statement to officers and that his counsel failed to adequately evaluate his disability. 6/1/11 RP 8-9. Schreib contended he was sentenced under the wrong guidelines. 6/1/11 RP 10-11. Schreib contended his case should have been heard in juvenile court and he should have been entitled to a decline hearing. 6/1/11 RP 11-2. Schreib contended that his counsel failed to apply the corpus delicti rule to prevent use of his confession. 6/1/11 RP 12. Schreib contended his counsel failed to have a hearing on his confession under CrR 3.5. 6/1/11 RP 13. Finally, Schreib contended the State had failed to adequately prove there was sexual gratification. 6/1/11 RP 13-4.

The State contended Schreib had failed to provide any affidavits supporting his motion and failed to establish a basis for an evidentiary hearing under CrR 7.8. 6/1/11 RP 14. Schreib twice noted CrR 7.8 provided that if the motion was untimely or he had not made a showing for an evidentiary hearing, the matter had to be transferred to the Court of Appeals for consideration as a personal restraint petition. 6/1/11 RP 15, 17. The trial court found there was both insufficient basis for an evidentiary hearing and the motion was untimely. 6/1/11 RP 16-7.

The trial court then heard the SSOSA revocation. 6/1/11 RP 18-68. The State called Schreib's treatment provider, the person who saw Schreib

stay at a house where minor children were present, and Schreib's community corrections officer. 6/1/11 RP 19-25, 25-34, 35-46 (respectively). Schreib testified on his own behalf. 6/1/11 RP 46.53. The trial court found Schreib had unapproved contact with minors, remained overnight at a residence where minors resided and failed to disclose the contact with minors to his treatment provider or the Department of Corrections. 6/1/11 RP 63-4. The trial court also found Schreib had failed to make adequate progress in treatment. 6/1/11 RP 65. As a result the trial court revoked the SSOSA. 6/1/11 RP 66. Schreib contended he had been sentenced based upon the wrong guidelines, so the case was continued to address those claims. 6/1/11 RP 67.

On June 15, 2011, the case was back before the court and Schreib's counsel indicated it appeared that Schreib had been sentenced on the proper guidelines. 6/15/11 RP 3-4. The trial court entered an order modifying the judgment and sentence to revoke the SSOSA. 6/15/11 RP 5.

The order modifying the SSOSA provided Schreib's term of community custody was "for life pursuant to RCW 9.94A.507 (former RCW 9.94A.712)." CP 92.

On July 5, 2011, Schreib timely filed a notice of appeal from the revocation of the SSOSA, the denial of his motion to withdraw his guilty

plea, denial of his motion to dismiss and denials of his motion for pro se legal access. CP 95.

Schreib's Appellant's Opening Brief contends the trial court erred in finding his motion to withdraw the guilty plea was time barred, imposed a judgment exceeding trial court's authority and he did not adequately waive his right to appointed counsel on post-judgment motions.

IV. ARGUMENT

1. The error in the order modifying the judgment and sentence does not render the judgment and sentence facially invalid.

i. Schrieb was under seventeen years at the time of the offense and a determinate plus sentence was unavailable.

Schreib contends on appeal that the trial court erred in entering an order modifying the judgment and sentence to require community custody for life pursuant to RCW 9.94A.507.

Schreib is correct. Schrieb was under the age of seventeen at the time of the offenses to which he plead guilty. His date of birth is October 10, 1990. CP 1. The offenses were alleged to have occurred between May 1, 2007, and August 31, 2007. CP 1-2. Schrieb's guilty plea and judgment and sentence provided those time frames. CP 4-5, 11, 13. The guilty plea properly advised Schrieb that his community custody range was 36 to 48 months since a determinate plus sentence with confinement and community

custody for up to life was only available if was at least age 18 when the offense was committed. CP 7.

On May 14, 2009, Schreib was sentenced to 98 months, but he was granted a SSOSA and the sentence was suspended. CP 17. The terms of the suspended sentence required him to comply with the terms of his sex offender treatment plan. CP 18. No term of community custody was set should the suspended sentence be revoked. CP 17-8.

Following the revocation of the SSOSA, the order modifying judgment and sentence was entered which imposed the 98 months sentence and provided for community custody as follows:

Community Custody is hereby imposed for life pursuant to RCW 9.94A.507 (former RCW 9.94A.712).

CP 92. This portion of the order was in error. The determinate plus sentence statute specifically provides that it is not available for someone under age eighteen at the time of the offense:

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

RCW 9.94A.507(2).

Therefore, this portion of the order amending the judgment and sentence is in error and must be corrected.

Since correction of this error in an issue raised in the Court of Appeals, it is inappropriate to pursue the correction of the error since it might affect the issues being addressed. RAP 7.2(e). Since Schreib will still be confined for a period of years, correction of the order is not urgent and the State requests that as a part of any decision herein this Court require the trial court to correct the error.

ii. The error in the order amending the judgment and sentence does not render the judgment and sentence facially invalid.

Schreib contends that the error in the order modifying the judgment and sentence renders the judgment and sentence facially invalid. Appellant's Opening Brief at page 18. However, prior to entry of the order modifying the judgment and sentence, there was no claimed invalidity on the face of the judgment and sentence. Where there is an error rendering a judgment and sentence facially invalid, that error does not permit wholesale attack on the conviction.

Not every error renders a judgment and sentence "invalid." *See, e.g., McKiernan*, 165 Wn.2d at 783, 203 P.3d 375. Mere typographical errors easily corrected would not render a judgment invalid. Similarly, errors in fact such as a date or place would not necessarily render a judgment invalid. *Id.* But, argues Coats, any error of law such as an error concerning the maximum sentence converts an otherwise valid judgment into an invalid one.

However, a careful review of our cases reveals that we have only found errors rendering a judgment invalid under RCW 10.73.090 where a court has in fact exceeded its statutory authority in entering the judgment or sentence. For example, we have found judgment and sentences invalid when the trial judge has imposed an unlawful sentence. We found invalidity when the offender has been given a longer sentence than the statutory maximum authorized by law. In re Pers. Restraint of Tobin, 165 Wn.2d 172, 176, 196 P.3d 670 (2008) (sentence exceeded statutory maximum; remanded for resentencing within the standard range). We found facial invalidity on the judgment and sentences of offenders convicted of nonexistent crimes in Hinton, 152 Wn.2d at 857, 100 P.3d 801. Accord Thompson, 141 Wn.2d at 719, 10 P.3d 380 (judgment and sentence invalid when defendant pleaded guilty to “an offense which was not criminal at the time he committed it”).

In re Pers. Restraint of Coats, 173 Wn.2d 123, ___, 267 P.3d 324, 330-1 (2011).

In Coats, the judgment and sentence misstated the maximum possible sentence, but the defendant was sentenced within the standard range. Thus, the trial court was held not to have exceeded its statutory authority and the judgment and sentence was not facially invalid. The remedy however was to correct the error.

But not every defect renders a judgment and sentence invalid. When squarely presented, we have only found errors that result from a judge exceeding the judge's authority to render a judgment and sentence facially invalid. The court did not exceed its authority. **Further, the “not valid on its face” limitation of RCW 10.73.090 is not a device to make an end run around the one-year time bar for most errors, including errors at trial that affect a fair trial.** We will examine limited documents to determine if an error in a

judgment and sentence is “on its face” but those documents must reflect an error on the judgment and sentence. An error in the judgment and sentence does not render a plea involuntary.

Coats's judgment and sentence is valid on its face. Although not an error rendering the judgment and sentence “not valid on its face,” **there was an error in Coats's judgment and sentence and we remand to the trial court to correct the error under CrR 7.8(a).**

In re Pers. Restraint of Coats, 173 Wn.2d 123, ___, 267 P.3d 324, 335 (2011) (emphasis adde). In the language of Coats, the error in the order modifying the judgment and sentence here should not be used as a device to make an end run round the time bar. The remedy is to correct the error.

2. Schrieb was not entitled to counsel on the motion to withdraw guilty plea and in addition expressed a strong desire to represent himself.²

Schreib also contends the trial court erred in allowing him to represent himself and the appointment of stand-by counsel for the motion to withdraw the guilty plea and allowing a waiver of right to counsel. Appellant's Opening Brief at page 22-3.

The State contends Schrieb was not entitled to counsel as of right on the motion to withdraw the guilty plea since his motion was made after sentencing. A defendant is entitled to appointment of counsel on a motion to withdraw a guilty plea prior to sentencing. CrR 4.2(f), State v. Davis, 125

² Schrieb did have appointed counsel represent him for the SSOSA revocation proceeding.

Wn. App. 59, 63-64, 104 P.3d 11 (2004). However, “a criminal defendant has no constitutional right to counsel in post-conviction proceedings other than the first direct appeal.” State v. Forest, 125 Wn. App. 702, 707, 105 P.3d 1045 (2005) (holding trial court did not violate the defendant’s right to counsel in denying counsel for a motion to withdraw a guilty plea under CrR 4.2(f) and CrR 7.8) *citing*, Pa. v. Finley, 481 U.S. 551, 555, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987); State v. Winston, 105 Wn. App. 318, 321, 19 P.3d 495 (2001).

Therefore, since he was not entitled to counsel as of right for the collateral attack, Schreib cannot complain of the adequacy of a waiver of the right to counsel on the post-conviction motion to withdraw the guilty plea.

The Appellant’s Opening Brief fails to address the fact the motion to withdraw the guilty plea was made post-judgment and therefore Schreib was not entitled to counsel as of right.

In addition, to the extent that it makes a difference in this Court’s analysis, Schreib repeatedly expressed to the trial court both on his own and through stand-by counsel that he wished to represent himself on the motion to withdraw the guilty plea. 4/20/11 RP 4-23, 5/11/11 RP 81-3, 5/25/11 RP 5-6.

3. The motion to withdraw guilty plea was untimely.

- i. The defendant was given notice of his right to collateral attack by the copy of the judgment and sentence provided by the Department of Corrections.**

Schreib contends on appeal that his motion to withdraw guilty plea should not be time-barred because he did not receive the advisement of the court pursuant to CrR 7.8 of notice of the right to appeal and of the time bars under RCW 10.73.090 and RCW 10.73.100. Appellant's Opening Brief at page 14-5.

Schreib did not address the timeliness of the motion to withdraw his guilty plea in the trial court. CP 84-5 (see attached Appendix A). The motion simply referred to CrR 4.2 and CrR 7.8 without claims as to timeliness. For the first time on appeal, Schreib contends that his motion to withdraw guilty plea should be considered timely because he was not given advisement under CrR 7.8(b). The language of that court rule provides as follows:

(b) Procedure at Time of Sentencing. The court shall, immediately after sentencing, advise the defendant: (1) of the right to appeal the conviction; (2) of the right to appeal a sentence outside the standard sentence range; (3) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right to appeal is irrevocably waived; (4) that the superior court clerk will, if requested by the defendant appearing without counsel, supply a notice of appeal form and file it upon completion by the defendant; (5) of the right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public

expense for an appeal; and (6) of the time limits on the right to collateral attack imposed by RCW 10.73.090 and .100. These proceedings shall be made a part of the record.

CrR 7.2(b). The State contends that portions (1) and (2) of this advisement would have been inappropriate for Schreib given he pled guilty giving up the right to appeal his conviction and that he was sentenced within the standard range. CP 5, CP 15, 17, 21. Since provisions (1) and (2) are inappropriate, provisions (3) through (5) dealing with how to pursue the appeal would have likewise been inappropriate. Finally, provision (6) deals with the ability to pursue a collateral attack under RCW 10.73.090 and RCW 10.73.100.

Schreib was advised of this provision by receiving a copy of his judgment and sentence which includes the time-bar provisions of RCW 10.73.090 and RCW 10.73.100. CP 19, CP ___ (Sub. No. 165, Cover Page for Conditions, Requirement and Instructions of Supervision, Filed February 24, 2012, Supplemental Designation of Clerk's Paper's Pending see attached Appendix B).³

³ I recently obtained the cited document from the local Department of Corrections office, and filed the copy attached in the trial court. The State recognizes this was not of record before the trial court at the time the trial court determined the motion was untimely. However, Schreib failed to make the claim he had not received a copy of the judgment and sentence and was not advised of the period of collateral attack in the trial court. In the absence of such claim, this has not been addressed in the trial court. If this Court believes this issue is determinative of the timeliness of appeal, the State would not oppose to remand for a hearing to address whether Schrieb had received a copy of the judgment and sentence.

Page 6 of the judgment and sentence contains the standard sentence language which mirrors the advisement of CrR 7.2(b). CP 19. That language reads:

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

CP 19. Since Schreib received a copy of the judgment and sentence with the collateral relief language his time to file the collateral attack should not be extended. In re Pers. Restraint of Carter, 154 Wn. App. 907, 914, 230 P.3d 181 (2010), as amended (Aug. 24, 2010), *rev'd and remanded on other grounds*, 172 Wn. 2d 917, 263 P.3d 1241 (2011) (receipt of judgment and sentence containing one year time bar language constitutes notice).

ii. The defendant's guilty plea and sentence waiving appeal and sentence within the standard range did not merit appeal as of right.

In addition, the State contends that Schreib was not entitled to appeal as of right, since he pled guilty and was sentenced within the standard range. The length of a criminal sentence imposed by a superior court is not subject to appellate review, so long as the punishment falls within the correct standard sentencing range established by the Sentencing Reform

Act. RCW 9.94A.585(1) reads: “A sentence within the standard sentence range for the offense shall not be appealed.” Since Schrieb was sentenced within the standard range available he was not entitled to appeal as of right of his initial sentence. Therefore, his time to challenge his initial judgment and sentence by direct appeal should not be extended.

iii. If this Court determines that the motion was not untimely, the remedy should be to remand to the trial court to determine whether a reference hearing is required or to retain the motion and convert to a personal restraint petition under CrR 7.8.

The State does concede that since Schrieb’s motion to withdraw guilty plea was untimely, his motion should have been transferred to the Court of Appeals for consideration as a personal restraint petition pursuant to CrR 7.8.⁴ Schrieb contends that the case should be remanded to the trial court for consideration of the motion to withdraw guilty plea. Appellant’s Opening Brief at page 21. However, given the lack of substance in the motion and the trial court’s prior determination that the motion is untimely which the State contends was correct, this Court would be better served in converting the present appeal to a personal restraint petition on the motion to withdraw guilty plea.

⁴ By virtue of the denial of the motion to withdraw the guilty plea, Schrieb has actually benefitted from having counsel appointed for appeal of that denial. However, counsel has not addressed the substantive claims of the motion to withdraw the guilty plea.

4. Schreib has not contended the trial court erred in revocation of the SSOSA.

Although Schreib appealed from the denial of the revocation of the SSOSA sentence, Schreib fails to raise any issue contending the trial court erred in the revocation. CP 95. Therefore, the trial court's revocation of the SSOSA sentence must stand.

V. CONCLUSION

For the foregoing reasons the State respectfully requests the Court to remand the case for correction of the erroneous term of community custody in the order amending judgment and sentence. Given the trial court properly determined the motion to withdraw guilty plea was untimely but the trial court improperly denied the motion rather than transferring the motion to the Court of Appeals for consideration as a personal restraint petition, the State asks this Court to consider the appeal as a personal restraint petition.

DATED this 2nd day of March, 2012

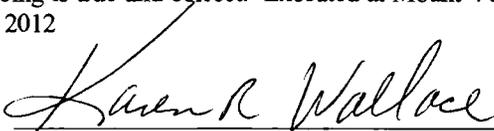
SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Oliver Davis, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101 . I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 2nd day of March, 2012


KAREN R. WALLACE, DECLARANT

APPENDIX A

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY WA
2009 MAY 26 AM 9:56

State of Washington
Plaintiff,
V.
Rodney A. Schreib JR
Defendant,

Na 08-1-00784-
Motion to Withdrawal of Plea
Change to Not guilty or
Dismiss Conviction with
Prejudice CrR 7.8

Comes Now Defendant, Rodney A. Schreib JR, as To

Pro Se with Standby Counsel Sharon Fields, and Moves

the Court to Withdraw guilty plea made on May

10

19, 2009 and thus enter Plea of Not guilty, or

at Courts discretion to Dismiss Conviction

With Prejudice CrR 7.8. This Motion is

Subjoined by a Memorandum Made by Pro Se For

- all to take Special interest in.

MENORADOM

I certify (or declare) under penalty of

perjury under the laws of the State of

Washington that the following information

is true and correct to be the best of

My knowledge. BCW 9A.72.085.

(1.) ISSUE:

- Failing to Uphold the 14th Admendment of The United States Constitution along with Washington State's Laws thus inturn discriminating and prejudicing defendants rights, especially being Mentally disabled.
- Violating Constitution
- Violating due process
- Violating ADA
- Ineffective Counsel
- Manifest injustice

(2.) Rules:

- RCW 9.94A.345
- Corpus Delicti
- RCW 9.94A.015
- CR 3.5
- RCW 10.58.035
- CR 4.2

(2.7 U.S.F.L. Rev. 385 Sanfransico (1993))

(In re Tsodera 151 Wash. 2d 294, 88 P.3d 2004)

(In re Farsec 132 Wash. App 464, 132 P.3d 2006)

(Melanda V. Arizona 384 US 426, 120 S.Ct 2326 (Ed 405) (2000))

(State V. Lopez - Maria 132 Wash. App 1029 (2005))

(State V. Perice 94 Wn. 2d 345 618 P.2d (1980))

(State V. Fumih 131 Wash. App 908, 731 P.3d 318 (2006))

(State V. Roy 130 Wash. 2d 673, 926 P.2d 904 (1996))

(State V. Perez 33 Wash. App 258, 654 P.2d 708 (1982))

(State V. Stevens 155 Wash. 2d 1024, 126 P.3d 820 (2005))

(State V. Petrich 101 Wash. 2d 566, 683 P.3d 173 (1984))

(U.S. V. Dickerson 530 US 428, 120 S.Ct 2326 (2000))

(State V. TEH, 91 Wash. App 908, P.2d 441 (1998))

(3.) Analyses:

- (turn to Next Page)

3.1. Courts Using 8/2008 Laws at Sentencing
 Not Follow due process of RCW 9A.345
 Which States to Use the Law in effect when the
 Current offense was committed. The Commission of
 the crime was between May 1, 2007 and Aug 31, 2007.
 That being the case with a dramatic change in
 the Laws' July 1, 2007 thus requiring a hearing
 to determine which Laws' were to be used, The
 Laws' before July 1, 2007 or after July 1, 2007.
State V. Mendoza (2009) States: "The rule of
 lenity dictates that courts interpret a criminal statute
 in favor of the defendant where legislative intent
 is ambiguous."

3.2. Defendant being 16 years old at the time of
 Commission thus Making the Plea of guilty
 Unknowing, Unintelligent, and involuntary because
 defendant's Age brought him under the automatic
 Jurisdiction of the Juvenile Court thus requiring
 a decline hearing before being transferred to
 Adult Court, defendant's plea statement set forth
 ONLY to persons 18 years of age or older at
 time of the offense. Counsel Failing to investigate
 such issues gravely Prejudicing Defendants Rights.
(State V. Lopez-Maria 132 Wash App. 1029 (2006)) Also
 an Involuntary plea produces a Manifest injustice
 Court must allow a defendant to withdraw guilty
 plea. (In re T. Sadara 151 Wash 2d 294, 82 P.3d (2004))
(In re Farsyca 132 Wash App. 464, 132 P.3d (2006))

3.3. Defendant being Mentally Impaired being unable
 to Independently analyze, weigh alternatives,
 solve problems, and make decisions and having

Counsel that was full aware of such disabilities and knowing that defendant responds to environmental stimuli, thus failing to investigate how the confession was obtained, and also enforcing the Corpus Delicti Rule. With defendant's mental state being unstable because of not being properly medicated and detectives having father leave the room leaving defendant defenceless and unprotected coercing defendant into making a statement against himself, thus discriminating the defendant and thus failing to follow the "ADA" which is in place "to invoke the sweep of Congressional authority, including the power to enforce the Fourteenth Amendment and to regulate Commerce, in order to address the major areas of discrimination faced day to day by people with disabilities." With the defendant being mentally unstable could at no time sign any agreement and or plea thus rendering the plea of guilty unknowing, unintelligent, and involuntarily made thus making a huge manifest justice. (State v. Perica, 94 Wn2d 345, 618 P2d (1982))
 (Melendo v. Arizona, 384 US 426, 120 S.Ct 2326, L.Ed 465 (2000))
 (U.S. v. Dickerson, 530 US 428, 120 S.Ct 2326 (2000))
 (State v. Fuenalia, 131 Wash. App. 908, 131 P.3d 318 (2006))
 (In re Isadora, 151 Wash. 2d 294, 88 P.3d (2004))
 (In re Farsaca, 132 Wash. App. 464, 132 P.3d (2006))
 (42 U.S.C. 12101-12162 (1990-2008))
 (27 U.S. Fl. Rev. 385 San Francisco (1993))

3.4. State relying solely on confession failed to show substantial independent evidence supporting the confession if it was admissible, thus not following the Corpus delicti Rule.

(State V. Roy 130 Wash.2d 673, 926 P.2d 904 (1996))
 (27 U.S.F.L. Rev. 385 San Francisco (1992))
 (RCW 10.58.035)

3.5 No hearing was administered to see if Confession was to be admissible as evidence or not.
 (State V. Perez 33 Wash. App 258, 654 P.2d 708 (1982))
 (CR. 3.5)

3.6 State Failed to Show any type of evidence showing that there was "Sexual Contact" and thus not showing intent.
 (RCW 9.94A.015)
 (State V. Stulen, 155 Wash. 2d 1024, 126 P.3d 80 (2005))
 (Stat V. TEH, 91 Wash. App 908, P.2d 44; ... (1998))

4. Conclusion:

• AS Shown the defendants rights Under The United States Constitution, Fourteenth Amendment giving All the right of Due process, was Violated on a broad Scale, also Violating the purpose of the Americans With disabilities Act to protect those whom are disabled From people taking advantage of these, and giving them inferior power of the Fourteenth amendment. With Ineffective Counsel Not enforcing the laws and protecting the defendants rights thus not giving a "Signal Chance" to a fair trial.

Because of the above mentioned the One-year time bar (RCW 10.73.090) has No affect

on Motion but is in fact governed by RCW 10.73.100⁶
where the time bar is NOT applicable.

Defendant humbly Moves this Court to Withdraw
the Plea of guilty Made on May 14, 2009 and
thus change it to a Plea of Not Guilty or
Under discretion of this Court to Dismiss
Conviction in the Furtherance of Justice due
to Constitutional Violations that have severely
prejudice the defendant and his rights.

Dated this 23 day of May, 2011

X *Palmer Schubert*
Defendant / In Pro Se

APPENDIX B

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2012 FEB 24 PM 3:29

1
2
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4
5 SUPERIOR COURT OF WASHINGTON

6 COUNTY OF SKAGIT

8 STATE OF WASHINGTON,
Plaintiff,

NO. 08-1-00784-6

9 v.

10 RODNEY SCHREIB, JR.
11 Defendant.

**COVER PAGE FOR CONDITIONS
REQUIREMENT AND INSTRUCTIONS
OF SUPERVISION**

12 Attached hereto is a copy of the Conditions, Requirements and Instructions of
13 supervision by the Department of Corrections for Rodney Schreib, Jr, including his
14 acknowledgment of receiving a copy of the judgment and sentence on page 4.

15
16
17 Filed this 24th day of February, 2012

18
19 

20 Erik Pedersen, WSBA#20015
21 Senior Deputy Prosecutor

ORIGINAL



Offender Rodney Schreib Jr.	DOC # 329376	FOS#	County/Cause # 08-1-00784-6 Skagit
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State:

Interstate Compact Supervision Type: Parole Probation Special: _____

I understand that under the provisions of RCW 9.94A or 9.95 or 9.95.270 or 10.77, I am subject to all conditions and requirements the court/Indeterminate Sentence Review Board/Department of Corrections (DOC) has imposed and that the terms of supervision can be revoked, modified, or changed at any time during the course of supervision. Furthermore, I understand that I am under the supervision of the Department of Corrections and that I must comply with the instructions of the Department herein. Should I violate any of these conditions, requirements, or instructions, I understand that I may be brought before the court/Indeterminate Sentence Review Board/DOC Hearing Officer for a hearing and/or imposition of additional sanctions.

STANDARD CONDITIONS:

- Secure written permission from the Community Corrections Officer (CCO) before leaving Washington State.
- Remain within a geographic area as directed by the DOC as follows:
- Obtain written permission from the CCO before traveling outside the county in which you reside, unless advised in writing by the CCO that it is not necessary to do so. Rodney may travel to report to his assigned CCO in Oak Harbor without a travel permit.
- Notify the CCO before changing residence or employment.
- If your sex offense was committed on or after 6/6/96, with a minor child victim, you must avoid contact with victim or minor children of similar age or close proximity where minors congregate, UNLESS authorized by the CCO.
- Abide by written or verbal instructions issued by the CCO.
- **CCI and OAA Only:** Abide by any DOC imposed conditions:

Offenders from out of state (FOS), who are being supervised by DOC, and who have been designated as being "victim sensitive" by the sending state, must secure written permission from their community corrections officer prior to changing address, returning to the sending state, or obtaining a travel permit. CCOs will notify the Washington Interstate Compact Office of the change or request.

COURT ORDERED CONDITIONS/REQUIREMENTS:

1. Have no direct or indirect contact with C.J.
2. Pay the cost of crime related counseling and medical treatment required by C.J.
3. Do not initiate or prolong contact with minor children under the age of 18 without the presence of an adult who is knowledgeable of the offense and has been approved by the treating therapist and supervising Community Corrections Officer (CCO).
4. Do not seek employment or volunteer positions, which place you in contact or control over minor children.
5. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer.
6. Do not possess or access pornographic material, as directed by the treating therapist and supervising CCO.
7. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.
8. Do not date women or form relationships with families who have minor children, as directed by treating therapist and CCO.
9. Do not remain overnight in a residence where minor children live or are spending the night.
10. Participate in sex offender treatment as directed by assigned Community Corrections Officer and abide by all

treatment recommendations

- 11. Participate in all offense related counseling programs, to include DOC sponsored offender groups, as directed by assigned CCO.
- 12. Participate in polygraph and plethysmograph examinations as directed by assigned CCO.
- 13. You must consent to home visits to monitor your compliance with supervision. Home visits include access for the purpose of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.
- 14. Do not use or possess controlled substances without a legal prescription.
- 15. Do not use or possess alcohol.
- 16. Do not frequent business where alcohol is the chief commodity of sale.
- 17. Do not access any computer without the express consent of both sexual deviancy therapist and CCO

FINANCIAL OBLIGATIONS: (NOT APPLICABLE TO FOS CASES)

- The court has ordered me to pay Legal Financial Obligations (LFOs), including accrued interest. I am required to make payments under the following cause numbers and in the amounts listed:

Restitution:.....	Court Costs:.....	Attorney Fees:
Fine:.....	Victim's Compensation:	Other:
Drug Fund:.....	Lab Fee:.....	DRUG Enforcement Fund

I agree to pay not less than \$50.00 per month beginning 06/01/09 to the Clerk of Skagit County, located at Skagit County Clerk Courthouse until my financial obligation is paid in full.

COMMUNITY SERVICE HOURS:

Complete _____ hours of community service at a rate of _____ hours per week month as directed by the DOC.
Report as directed to the DOC.

REPORTING INSTRUCTIONS:

- I am required to report and be available for contact with the assigned CCO as directed until instructed to no longer report, or a court order is issued closing the case.
- Failure to report and/or provide a valid address may result in the filing of escape charges if on community custody status.

[Handwritten Signature]
Sign with initials

Report to: Richard a. Burton

Address: 707 South 2nd Street, Mount Vernon, WA, 98273

Telephone: 360-428-1040

Reporting Instructions: In person on the day(s) listed below, or as otherwise directed by my CCO.

- 1st 2nd MONDAY TUESDAY
 3rd 4th WEDNESDAY THURSDAY FRIDAY

Other: Report as directed by assigned CCO or designee.

Also Report in person to assigned CCO or designee within 1 working day of release from custody

COST OF SUPERVISION:

- Unless waived by the court or DOC, I will be assessed a Cost of Supervision (COS) fee of \$20 to \$40 monthly while on active supervision. The amount charged will vary depending on my supervision status and classification level. I will be sent a billing statement detailing my Cost of Supervision and the amount I am required to pay. **Beginning 06/01/09 I will mail my Cost of Supervision fee payments only in the form of a cashier's check or money order, made payable to: Department of Corrections, PO Box 9700, Olympia WA 98507-9700. I will put my name and DOC number on every cashier's check or money order.**

NOTICES:

- **Firearms:** I have been advised and understand that if I have been convicted of a crime in category listed below I am prohibited by law from owning, possessing, receiving, shipping, or transporting a firearm, ammunition, or explosives. I understand the prohibition extends to every sort of gun, rifle, or explosive device or similar device, including the frame or receiver of firearms. I understand that this may also be a violation of my supervision per RCW 9.94A.120(16).

- Any Felony Offense

- Misdemeanant Offense (RCW 9.41.040, 10.99.020):

Includes the following misdemeanor offenses, when committed by one family or household member against another, committed on or after July 1, 1993:

- Stalking* (RCW 9A.46.110)
- Assault 4 (RCW 9A.36.041)
- Reckless Endangerment 2 (RCW 9A.36.050)
- Coercion (RCW 9A.36.070)
- Violation of a Protective Order-No Contact (RCW 10.99.040)*, (RCW 26.50.060, 070, 130)

*Can also be a felony offense.

I further understand that I should seek legal advice if I wish to possess a firearm after I am discharged from supervision.

- **Debt:** I have been advised and understand that failure to make payments toward my legal financial obligations as scheduled can result in an increase in my monthly payment rate and/or referral of my case to the County Clerk's Office for collection. Should I fall behind in my monthly payment in an amount equal or greater than the amount payable for one month, the Department of Corrections may issue a Notice of Payroll Deduction. Without further notice, my employment earnings are subject to a Notice of Payroll Deduction and my earnings or property, or both, are subject to an Order to Withhold and Deliver. Any net proceeds obtained through either a Notice of Payroll Deduction or an Order to Withhold and Deliver will be applied to my court ordered financial obligations. (Not Applicable to FOS Cases)

