

69309-3

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STATE OF WASHINGTON  
COURT OF APPEALS DIVISION I

STATE OF WASHINGTON,	)	
	)	No. 69309-3-I
RESPONDENT,	)	
	)	
V.	)	STATEMENT OF ADDITIONAL
	)	
GARRIDAN A. NELSON,	)	GROUND FOR REVIEW
	)	
APPELLANT,	)	

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FILED  
 COURT OF APPEALS DIV I  
 STATE OF WASHINGTON  
 2013 MAR 20 PM 4:56

I, Garridan A. Nelson, have received and reviewed the opening brief by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief.

I understand the Court will review this Statement Of Additional grounds for review when my appeal is considered on the merits. A summary of the Additional Ground can be found herein.

Petitioner's Statement of  
Additional Grounds

ADDITIONAL GROUNDS / ASSIGNMENT OF ERROR

The Superior Court Committed An Abuse Of Discretion  
When Denying Petitioner The Ability To Motion The  
Court During An Initial Hearing To Stay The Proceedings  
Due to Other Constitutional Claims Petitioner Wished To  
Raise And Brief Regarding The Erroneous Judgment And  
Sentence.

STATEMENT OF CASE

Petitioner appeals the Snohomish County Superior Court ORDER issued in his case on August 23, 2012.

Petitioner filed a 7.8 motion citing section (b)(4)&(5) as grounds for his sentence to be vacated,<sup>1</sup> and to be heard at the initial hearing on August 23, 2012.

Snohomish County Superior Court in agreement with prosecution acknowledged at the initial hearing that Petitioner's Judgment and Sentence is invalid, due to an erroneous Statute prohibiting Petitioner from obtaining good time on the mandatory minimum portion of his sentence. However, Even though the Court ruled

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1. See attachment A Motion for Docket initial hearing

Petitioner's sentence is invalid on its face at the initial hearing, the Court chose a ministerial correction not a full resentencing, and chose to impose that correction at the initial hearing.

Petitioner was not afforded counsel at the initial hearing or prior notification of the change of the initial hearing to a ministerial correction hearing. Further, Petitioner was not permitted to address the Court to object to the ministerial correction,<sup>2</sup> or motion the Court to stay proceedings so Petitioner could further brief issues of Constitutional magnitude regarding the erroneous Judgment and sentence.

#### ARGUMENT

Did The Superior Court's Discretion Violate The  
Petitioner's Vested Constitutional Right To  
Motion The Court During The Initial Hearing To  
Stay The Proceeding And Allow Petitioner To  
Further Amend And Brief Other Constitutional  
Claims Regarding The Judgment And Sentence?

Although Petitioner is entitled to a full resentencing hearing due to an erroneous sentence pursuant to In Re Williams, 111 Wn 2d 353 (1988), Whether the Court was only considering a

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2. See VRP at ( page 3 Line 12 ) Attachment B

ministerial correction is not the issue at hand. Petitioner scheduled the initial hearing for his 7.8 to be heard on the merits. During the initial hearing the Superior Court forbid the Petitioner from addressing, or motioning the Court to stay the proceedings and allow Petitioner to amend his argument to include other constitutional claims. One of which is to withdraw his plea due to misinformation by the State, which lead to an involuntary plea by petitioner.

The discretion of the Superior Court to deny Petitioner the right to address the Court to amend his 7.8 argument to include other issues at the initial hearing, but also to change an initial hearing to a ministerial correction hearing without notification deprives Petitioner the right to due process to present his case and violates his 5th and 14th amendment rights. Petitioner feels no need to brief the magnitude of this constitutional violation as this Court is fully aware of the impact of the error on Petitioner's rights.

Both the Superior Court and Prosecution agree the judgment and sentence is invalid due to misinformation regarding applicable good time. It is apparent Petitioner's plea was not voluntary and so petitioner should be given the right to withdraw his plea. See State v. Skiggin 58 Wash App 831 (1990); State v. Hurt 107 Wash App 816 (2001).

Petitioner's Statement of  
Additional Grounds

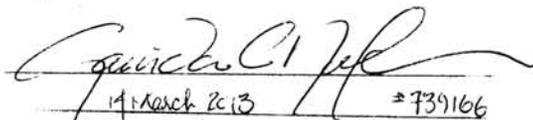
For purposes of CrR 4.2 (f). provides that a guilty plea maybe withdrawn if it is necessary to correct a manifest injustice. An involuntary plea constitutes a "manifest injustice" Id Hurt @ 816.

Here, Petitioner was misinformed about eligble good time a direct consequence of his plea and therefore the plea cannot be taken as voluntary and must be deemed a manifest injustice. Whether Petitioner will prevail on the claim should not dicate this Court's decision. What must dictate this Court's decision is if Petitioner was afforded the right to present his claim to the Superior Court and if Petitioner presents a claim with merit.

CONCLUSION / RELIEF REQUESTED

Petitioner as for this Court to repeal the ministerial correction and allow Petitioner to return to the Superior Court to present all of his claims.

Respectfully submitted,

  
19 March 2013 #739166  
A.H.C.C. / P.O. Box 2049 / KA-47-L  
AIRWAY HEIGHTS, WA 99001-2049

Petitioner's Statement of  
Additional Grounds

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

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STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 95-1-00351-1  
 )  
 GARRIDAN A. NELSON, )  
 )  
 Defendant. )

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VERBATIM REPORT OF PROCEEDINGS

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Heard before the Honorable Eric Z. Lucas  
 Snohomish County Courthouse  
 3000 Rockefeller Avenue, C304  
 Everett, Washington

APPEARANCES:

LAURA TWITCHELL, representing the State;  
GARRIDAN A. NELSON, pro se (appearing telephonically)

DATE REPORTED: AUGUST 23, 2012

REPORTED BY: JOANN BOWEN, RPR, CRR, CCP, CCR# 2695

1 EVERETT, WASHINGTON; THURSDAY, AUGUST 23, 2012

2 10:00 A.M.

3 -o0o-

4 THE COURT: Okay. So then, Ms. Twitchell,  
5 let's do ahead and do Nelson.

6 FEMALE SPEAKER: I will put him on the phone.

7 THE DEFENDANT: Good morning.

8 THE COURT: Good morning, Mr. Nelson. This  
9 is Judge Lucas at Snohomish County Superior Court.

10 THE DEFENDANT: Good morning.

11 THE COURT: And we've just called your  
12 matter; State versus Nelson. We have Ms. Twitchell here  
13 representing the State. Ms. Twitchell.

14 MS. TWITCHELL: Yes, Your Honor. This is a  
15 defense motion to modify his Judgment and Sentence. The  
16 State is not objecting to that and, in fact, has handed  
17 forward a proposed order.

18 THE COURT: Mr. Nelson, were you aware of the  
19 State's position?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: So, I've got a proposed order  
22 here amending the Judgment and Sentence basically  
23 granting you the relief that was requested in terms of  
24 earned early release on each count. I'm going to  
25 execute that order. And I think that concludes this

1 matter. Any questions?

2 THE DEFENDANT: Am I not being remanded for  
3 resentencing?

4 THE COURT: No. That's not required. The  
5 order -- hang on a second. The order caption is Order  
6 Amending Judgment and Sentence. That's all we have to  
7 do. We don't have to resentence you. Any other  
8 questions?

9 THE DEFENDANT: Well, there were issues that  
10 I would like to have been able to bring up at a  
11 sentencing hearing.

12 THE COURT: Well, I am sure that's true from  
13 your point of view. But the only issue that I see is  
14 that this relief that you have requested in terms of  
15 early release needs to be granted. The process that you  
16 outlined is not necessary. All we have to do is amend  
17 the Judgment and Sentence. And that's what I intend to  
18 do this morning. I will send you a copy of the order.  
19 If you have any other issues or any further need for a  
20 motion, you can always make those motions. Anything  
21 else?

22 THE DEFENDANT: I guess not.

23 THE COURT: All right. Thank you. So I'm  
24 signing the order, and that should conclude this matter.  
25 Have a good day.

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MS. TWITCHELL: Thank you, Your Honor.

THE DEFENDANT: Thank you.

THE COURT: Bye-bye.

THE DEFENDANT: Thank you, Your Honor.