

NO. 46514-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOEL P. REESMAN,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF CLARK COUNTY

The Honorable David E. Gregerson, Judge

OPENING BRIEF OF APPELLANT

Peter B. Tiller, WSBA No. 20835
Of Attorneys for Appellant

The Tiller Law Firm
Corner of Rock and Pine
P. O. Box 58
Centralia, WA 98531
(360) 736-9301

TABLE OF CONTENTS

	<u>Page</u>
A. ASSIGNMENT OF ERROR	1
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR	1
C. STATEMENT OF THE CASE	1
D. ARGUMENT	2
1. The order denying motion to withdraw guilty plea should be vacated and the case remanded because the trial court failed to comply with CrR 7.8.	2
E. CONCLUSION	5

TABLE OF AUTHORITIES

WASHINGTON CASES **Page**

State v. Codiga, 162 Wn.2d 912, 175 P.3d 1082 (2008)2

State v. Gomez-Florencio, 88 Wn. App. 254, 945 P.2d 228 (1997)3

State v. Neal, 144 Wn.2d 600, 30 P.3d 1255 (2001).....3

State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008)3,4

REVISED CODE OF WASHINGTON **Page**

RCW 10.73.0904

COURT RULE **Page**

CrR 7.83, 4, 5

CrR 7.8(c)1, 3

CrR 7.8(c)(2).....1, 2

CrR 7.8(c)(3).....2

A. ASSIGNMENT OF ERROR

1. The trial court erred when it failed to comply with CrR 7.8(c) when it dismissed the appellant's request to withdraw his guilty plea.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. Where CrR 7.8(c)(2) required the transfer of appellant's motion to this Court as a personal restraint petition (PRP), should this Court vacate the order dismissing the motion with prejudice and remand for proper consideration under CrR 7.8(c)(2)? Assignment of Error No. 1.

C. STATEMENT OF THE CASE

On March 20, 2008, appellant Joel Reesman pleaded guilty to possession of methamphetamine in Clark County cause no. 07-1-01092-1. Clerk's Papers (CP)13; Report of Proceedings (RP) at 127.¹ Mr. Reesman waived his right to a jury in Clark County cause no. 07-1-00090-9 on March 12, 2008. RP at 61-66. Following conviction in the latter case, he was sentenced to life in prison under the Persistent Offender Accountability Act. CP 18. On December 22, 2013 he filed a *pro se* motion in the Washington Supreme Court to withdraw his plea, evidently referring to cause no. 07-1-01092-1. CP 54-56. Mr. Reesman generally asserted that his attorney

¹The record of proceedings consists of the following hearings: June 18, 2007, July 2, 2007, July 6, 2007, August 23, 2007, August 30, 2007, December 11, 2007, January 3, 2008, March 12, 2008 (cause no. 07-1-00090-9), and March 20, 2008 (cause no. 07-1-

threatened to “shoot him” if he did not sign a jury waiver at a hearing on March 12, 2007 in cause no. 07-1-00090-9. CP 55; RP at 65. On March 17, 2014 the Supreme Court ordered that the matter be heard by the superior court and counsel was appointed. CP 54. On June 18, 2014 defense counsel submitted an email to the trial court noting that the claimed threat to shoot Mr. Reesman occurred in cause no. 07-1-00090-9, and that the motion to withdraw his plea pertained to cause no. 07-1-01092-1. CP 62.

The superior court, characterizing the motion as a personal restraint petition, filed an order dismissing the “petition” on the merits on June 25, 2014 without conducting a hearing under CrR 7.8(c)(2) or (3). CP 61. This appeal followed. CP 65.

D. ARGUMENT

1. The order denying motion to withdraw guilty plea should be vacated and the case remanded because the trial court failed to comply with CrR 7.8.

Mr. Reesman's motion sought to withdraw his plea after sentencing. If made after judgment, a motion for withdrawal of a guilty plea is governed by CrR 7.8. *State v. Codiga*, 162 Wn.2d 912, 923 n.3, 175 P.3d 1082 (2008).

This Court reviews a ruling on a CrR 7.8 motion for abuse of discretion. *State v. Gomez-Florencio*, 88 Wn. App. 254, 258, 945 P.2d 228

(1997). A trial court abuses its discretion when it exercises discretion in a manner that is manifestly unreasonable or based upon untenable grounds. *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001). In this case, the trial court inexplicably treated the motion for withdrawal of the guilty plea as a personal restraint petition. The motion should have been addressed pursuant to CrR 7.8.

Under CrR 7.8(c), the Supreme Court has set out a specific procedure for the initial consideration of Motions for Relief from Judgment. CrR 7.8(c)(2) provides that a superior court may only rule on the merits of a motion when the motion is timely filed and either (a) the defendant makes a substantial showing that he is entitled to relief or (b) the motion cannot be resolved without a factual hearing. *State v. Smith*, 144 Wn. App. 860, 863, 184 P.3d 666 (2008). The rule provides in relevant part:

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

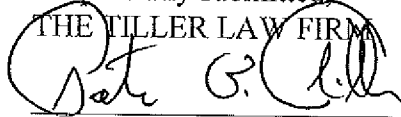
(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

Under the rule, a superior court does not have authority to dismiss a CrR 7.8 motion if it is untimely under RCW 10.73.090. Instead, the superior court must transfer the motion to the appellate court for consideration as a personal restraint petition. *Smith*, 144 Wn. App. at 863. Here, the trial court did not transfer Mr. Reesman's motion to this Court, nor did it hold a hearing. Instead the court summarily dismissed the motion based on Mr. Reesman's attorney's email to the court. CP 62. In conflict with the rule, the court failed to require any showing by the State that Mr. Reesman's claims did not warrant granting the relief requested. This was error that requires reversal. *Smith*, 144 Wn. App. at 864. As noted *supra*, under CrR 7.8, the trial court had only two options; (1) transfer the motion to the Court of Appeals for consideration as a personal restraint petition; or (2) set a time and place for a hearing at which the State had to show cause why Mr. Reesman's motion should not be granted. *Smith*, 144 Wn. App. at 863. The superior court abused its discretion by ruling on the merits and by dismissing Mr. Reesman's motion without compliance with the requirements of CrR 7.8.

E. CONCLUSION

By summarily denying Mr. Reesman's motion to withdraw his plea without a hearing, the trial court violated the procedure under CrR 7.8 for consideration of post-conviction motions for relief. The order must be vacated and the matter remanded to the superior court for consideration.

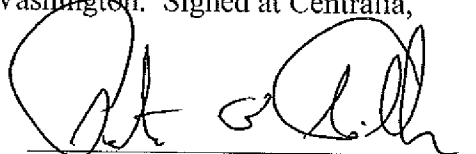
DATED: January 8, 2015.

Respectfully submitted,
THE TILLER LAW FIRM

PETER B. TILLER-WSBA 20835
Of Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on January 8, 2015, that this Opening Brief was sent by JIS link, to the Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, and true and correct copies were mailed by first class mail, postage prepaid Ms. Anne Crusier, Deputy Prosecuting Attorney, Clark County Prosecutor's Office, PO Box 5000, Vancouver, WA 98666 and to the appellant, Mr. Joel Reesman, DOC #316821, Clallam Bay Corr. Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326 **LEGAL MAIL/SPECIAL MAIL.**

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on January 8, 2014.


PETER B. TILLER

TILLER LAW OFFICE

January 08, 2015 - 1:25 PM

Transmittal Letter

Document Uploaded: 1-465141-Appellant's Brief.pdf

Case Name: State v. Joel P. Reesman

Court of Appeals Case Number: 46514-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Shirleen K Long - Email: slong@tillerlaw.com