

# Personal Restraint Petitions: *An Overview for the Public*

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# First, the Small Print

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# What is a PRP Anyway?

Personal Restraint Petition is *Not An Appeal*.

Common law origins as a form of writ.

Remedy when appeal was not available.

Issue was whether judgment was valid or not.

Expanded to other criminal law matters.

Original action in appellate court.

Procedures governed by Title 16 RAP.

Replaces petition for writ of habeas corpus in Washington appellate courts. RAP 16.3(b)

# There are a lot of them

	<u>Div I</u>	<u>Div II</u>	<u>Div III</u>	<u>Total</u>
2016	444	391	223	1,058
2017	395	448	209	1,052
2018	375	515	185	1,075
2019	301	337	153	791
2020	333	335	183	851

# WA Supreme Court's Original Jurisdiction

The Supreme Court has original jurisdiction over writs of habeas corpus under Article IV, section 4 of Washington Constitution.

PRP rules supersede former habeas corpus rules in Supreme Court and Court of Appeals. RAP 16.3(b).

# Superior Court Jurisdiction

Superior courts have “power” to issue writs of habeas corpus under Article IV, section 6 of Washington Constitution.

Habeas and certain other forms of post-conviction relief remain in superior courts, with rulings subject to appeal.  
Chapter 7.26 RCW; CrR 7.8

# Postconviction Motions in Superior Court

Governed by CrR 7.8.

Mistakes, inadvertence, surprise, excusable neglect.

Newly discovered evidence.

Fraud, misrepresentation, and other misconduct.

Void judgment.

Any other reason justifying relief.

# Timeliness of CrR 7.8 Motions

Must be filed within one year for fraud, mistake, etc., or for newly discovered evidence.

Within reasonable time for other claims.

Also subject to one-year time limit and exemptions applicable to collateral challenges generally under RCW 10.73.090 and .100.

CrR 7.8(b) motion does not affect finality of judgment and sentence.



# Transfer of Postconviction Motions

Postconviction motion must be transferred to Court of Appeals unless motion is timely and:

Defendant makes substantial showing of merit, *or*

Resolution will require factual hearing.

CrR 7.8(c)(2)

If CrR 7.8 motion improperly transferred from superior court, COA will transfer back. RAP 16.8.1(c).

# Even More About CrR 7.8 Motions

## Form of Motion:

Statement of grounds upon which relief sought, and Affidavit setting forth concise statement of facts or errors upon which motion is based.

A superior court order granting or denying a CrR 7.8 motion on the merits is appealable as a matter of right. RAP 2.2(a) (9), (10), (13).

# Preliminary Procedures for PRPs

Should be filed directly in COA. RAP 16.5(a)

County of conviction governs COA division if petitioner still incarcerated; if not, in division where petitioner is located. RAP 16.8(b).

# Transfers of PRPs

PRP initially filed in Supreme Court is transferred to COA.  
RAP 16.3(c); RAP 16.5(b).

If COA lacks jurisdiction over the petition because it's successive, timely, and potentially nonfrivolous, it's transferred back to this court.

Transfer order cannot be challenged.

# Initial Consideration of PRP

If petition “clearly frivolous” or “clearly” procedurally barred, court will dismiss it without asking for response. RAP 16.8.1(b).

Court will dismiss “frivolous” or untimely PRP. RAP 16.11(b).

Chief Judge or Acting Chief Judge of COA will issue dismissal order.

If PRP transferred to Supreme Court, Commissioner or Deputy Commissioner may dismiss it as frivolous or procedurally barred or refer it to a department of the court.

# What is a Frivolous PRP Anyway?

PRP is frivolous under RAP 16.11(b) when there is no arguable basis for collateral relief either in law or fact, given the constraints of PRP procedures.

*Pers. Restraint of Khan*, 184 Wn.2d 679, 686-87, 363 P.3d 577 (2015).

# And if a PRP is Not Frivolous?

Nonfrivolous PRP referred to panel of judges for decision on merits (grant or deny).

Reference hearing in superior court.

# Reference Hearings

Appellate court may refer PRP to superior court to resolve factual issues. RAP 16.11(b).

Chief Judge then considers PRP in light of superior court's findings, dismissing PRP or referring it to a panel for a decision on the merits. RAP 16.13.

Appellate court may refer PRP to superior court for factual findings and decision on merits, which is appealable. RAP 16.14(b).



# Grounds for Relief

Petitioner “restrained.” RAP 16.4(a), (b).

Restraint is “unlawful.” RAP 16.4(a), (c).

# What is Restraint?

Limited freedom because of civil or criminal court decision.

Confinement.

Imminent confinement.

Other “disability” resulting from judgment and sentence in criminal case.

RAP 16.4(b).

# When is Restraint Unlawful?

- (1) Lack of court jurisdiction.
- (2) Conviction or sentence in violation of federal or state constitution or state law.
- (3) Newly discovered facts and evidence.
- (4) Significant change in law.
- (5) Other grounds for collateral attack on judgment and sentence.
- (6) Conditions or manner of restraint violate federal or state constitution or state law.
- (7) Other grounds exist to challenge legality of restraint.

RAP 16.4(c).

# But . . .

No relief by PRP if other adequate remedies are available.  
RAP 16.4(d).

Other remedies could include statutory relief or civil rights actions filed under 42 U.S.C. § 1983.

# Standards of Review

When challenging trial court error:

Actual and substantial prejudice from  
constitutional error, or

Fundamental defect of nonconstitutional nature  
inherently causing complete miscarriage of justice.

# The Other Standard of Review

Post-trial issues not otherwise reviewable.

No heightened standard of review.

Must show that restraint is unlawful under RAP 16.4(c).

Examples:

- Indeterminate minimum terms.

- Prison discipline.

- Other prison-related actions.

- Community supervision actions.

- Conditions of confinement.

# Factual and Evidentiary Standards

Petitioner must allege facts and evidence available.

Facts must be alleged with particularity.

Bald assertions and conclusory allegations won't cut it.

Discovery rarely ordered.

# Responding to Factual Allegations

State must respond directly to factual allegations; provide supporting materials.

After time for response passed, court may direct State to admit or deny specific allegations. RAP 16.9(b).



# Grounds Raised on Direct Appeal

Grounds raised on direct appeal and rejected on the merits will not be considered unless required by the ends of justice.

“New ground” is distinctly different basis for relief, not rehash of old theory.

Ground not made “new” by asserting different legal theory or different facts.

# OK, That's New

Intervening change of law or newly discovered evidence may permit reconsideration of ground raised and rejected on direct appeal.

# Successive Petitions

COA may not consider successive PRP if based on “similar grounds” or if new grounds asserted and no showing of good cause. RCW 10.73.140.

RCW 10.73.140 does not apply to this court.

Abuse of writ in Supreme Court as to new grounds.

# What Happens to Successive Petitions?

Successive PRP in Supreme Court on similar grounds dismissible under RAP 16.4(d).

All successive petitions filed in Supreme Court transferred to COA to determine jurisdiction.

Then, there may be timeliness problems . . .

# PRP Statute of Limitations

One year from date judgment and sentence becomes final.

RCW 10.73.090(1).

Final when:

Filed with clerk of superior court.

Direct appeal mandated.

U.S. Supreme Court denies writ of certiorari.

# Undoing Finality

Remand for resentencing may undo finality, but not remand to make nondiscretionary correction.

# Statutory Exemptions to the Time Bar

## RCW 10.73.090(1):

Facially invalid judgment and sentence.  
Judgment and sentence entered without  
competent jurisdiction.

## RCW 10.73.100:

List of six exemptions.

# “Mixed” Petitions

Petitioner’s grounds for relief include grounds not exempt under RCW 10.73.100.

Procedurally dismissed.

Petitioner may file new PRP that is not mixed.

Claims based on RCW 10.73.090(1) (facial invalidity or lack of jurisdiction) not subject to “mixed petition” rule.



# What is this Facial Invalidity Thing?

Fatal defect in judgment or sentence.

Trial court exercised power it did not have (erroneous sentence).

Not technical misstatement with no effect.

Face of judgment and sentence may include other documents.

# Are there Remedies for Facial Invalidity?

If judgment facially invalid,  
petitioner still must show complete miscarriage of justice or  
actual and substantial prejudice.

The only remedy for sentencing error is correction of sentence;  
no “super exception.”

# The Six RCW 10.73.100 Exemptions

- (1) Newly discovered evidence.
- (2) Unconstitutional statute of conviction.
- (3) Double jeopardy.
- (4) Insufficient evidence (not guilty plea).
- (5) Sentence exceeding jurisdiction.
- (6) Significant material change in law that is retroactively applicable.

# Newly Discovered Evidence Exemption

RCW 10.73.100(1).

Would probably change result of trial.

Discovered since trial.

Not discoverable before trial by due diligence.

Material.

Not merely cumulative or impeaching.

# Unconstitutional Statute Exemption

RCW 10.73.100(2).

Exemption applies to statute of conviction.

Probably doesn't apply to sentencing statute.

Facial or as-applied.

# Sentencing Jurisdiction Exemption

RCW 10.73.100(5).

Personal and subject matter jurisdiction.

Offender score miscalculation not jurisdictional defect.

Often overlaps facially invalid sentence.

# Significant Change in Law Exemption

RCW 10.73.100(6).

Must be material in that it . . .

Overturns precedent that effectively made argument unavailable before change in law.

Not merely clarification of law or application of established law to new facts.

# Significant Change & Retroactivity

Significant change must apply retroactively.

Judgment and sentence final before change in law issued.

Federal *Teague* retroactivity analysis applies.

But . . .



# The *Meippen* Approach

Whether significant change in law applies does not matter if petitioner cannot show actual and substantial prejudice.

Analytical approach that runs counter to usual timeliness inquiry.

“Not required.”

# Equitable Tolling of One-Year Limit

Possible because statutory time limit is not jurisdictional.

Extraordinary circumstances where justice requires it; where untimeliness is due to bad faith, deception, or false assurances.

# Equitable Tolling: *News Flash!*

Recent adoption of federal equitable tolling standard:

Petitioner diligently pursued their rights, and  
Extraordinary circumstance prevented timely filing.

# The “Actual Innocence” Exemption

A type of equitable exemption.

Only “gateway” claim currently allowed.

Factual innocence, not legal error.

Avoidance principle (similar to exhaustion).

# Inherent Power to Waive Time Limits

Supreme Court has inherent power to waive statutory time limits.

Such power flows from Supreme Court's original jurisdiction under article IV, section 4 of Washington Constitution.

Supreme Court may exercise its inherent power to consider otherwise untimely collateral attack.

# A Time Bar in Prison Disciplinary Cases?

PRP is a type of civil and remedial action subject to two-year general statute of limitations under RCW 4.16.130.

*Pers. Restraint of Heck*, 14 Wn. App. 2d 335, 470 P.3d 539 (2020), *review denied*, 196 Wn.2d 1047 (2021).

State has argued laches but no decisions on that theory.

# Discretionary Review in Supreme Court

Motion for discretionary review. RAP 13.5A; RAP 16.4(c).

Same criteria as petition for review RAP 13.4(b):

Conflict with Washington Supreme Court decision.

Conflict with published COA decision.

Significant constitutional question.

Issue of substantial public interest.

# Motions for Discretionary Review

2016	306
2017	285
2018	277
2019	288
2020	316



# Discretionary Review in Supreme Court

Commissioner may deny or grant review.

RAP 13.5A(c); RAP 13.5(c); RAP 17.6(a).

Commissioner's rulings subject to motion to modify.

RAP 17.7.

Close or potentially meritorious motions referred to a department. RAP 17.2.

# If Supreme Court Grants Review

The Court will affirm or reverse COA decision or take other action, such as remand for reconsideration in light of controlling authority.

Supreme Court may decide “no brainer” single-issue case by per curiam opinion.

# Appointed Counsel

Generally no constitutional right to appointed counsel in postconviction proceedings.

Statutory right to appointed counsel in non-frivolous PRP, and in discretionary review in Supreme Court if court accepts review. RCW 10.73.150.

No statutory right to appointed counsel in second or subsequent PRP.

Court may provide for other expenses. RAP 16.15(h).