NO. 51481-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ALLIXZANDER D. HARRIS,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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ASSIGNMENT OF ERROR

Assignment of Error

Petitioner is entitled to relief from restraint under RAP 16.4 because trial counsel's failure to argue a motion to suppress critical evidence denied petitioner effective assistance of counsel.

Issue Pertaining to Assignment of Error

In a case charging multiple counts of promoting commercial sexual abuse of a minor where the majority of the evidence linking the petitioner to the commission of the offenses was obtained from a phone and a laptop seized from a vehicle the petitioner was driving after the police illegally stopped and illegally detained that vehicle, does trial counsel's failure to move to suppress all of the evidence obtained as a direct result of that illegal stop and illegal detention deny the petitioner effective assistance of counsel?

STATEMENT OF THE CASE

Factual History

In 2012 and 2013, Bremerton Police Department Detective Sergeant Randy Plumb was working as part of the Kitsap County "Special Operations Unit" investigating the "commercial sexual abuse of minors". RP 1191. While working in this position he came to suspect that the petitioner Allixzander Harris might be involved in promoting underage prostitution via a website called Backpage.com. RP 1183; Inklebarger to Schneph e-mail, attachments to PRP, page 13. As part of his investigation he wanted to find the defendant and interview him. *Id.* RP He also wanted to get possession of the defendant's cell phone and computer and search them for evidence proving that the petitioner was involved in promoting underage prostitution. RP 1184-1185,

Based upon his suspicions, on December 31, 2012, Detective Plumb contacted members of the Bremerton Police Department, gave them the make, model and license of the vehicle he believed was associated with the petitioner, gave them a description of the petitioner, and asked them to immediately call him if they could find the vehicle and find a reason to pull it over. RP 1183-1185; Inklebarger to Schneph e-mail, attachments to PRP, page 13. In fact, Bremerton Sergeant Endicott later testified that during

the evening of December 31, 2013, he was involved in a "conversation" with Detective Plumb, who told Sergeant Endicott that he had an "ongoing investigation" on the petitioner and that if Sergeant Endicott or any of his officers had contact with the petitioner and could stop him they were supposed to contact Detective Plumb immediately. RP 1183; Inklebarger to Schneph e-mail, attachments to PRP, page 13.

Later that evening Bremerton Officer Inklebarger called Officer Meador to report that he had found the vehicle Detective Plumb identified sitting in a parking lot. RP 1098-1099. According to Officer Meador, Officer Inklebarger told him the vehicle had "expired tabs," although he didn't know if the driver was suspended. *Id.* In fact, the windows were darkly tinted and the officers could not tell who was driving when it left the lot. RP 1098-1099. Once Officer Meador got to the scene he found the vehicle driving on the road and pulled it over, ostensibly for expired tabs. CP 74 (portion of Officer Meador narrative report attached to State's Memorandum Opposing Defendant's Written Motion to Suppress). In fact, the defendant later disputed this factual claim in court, stating that the tabs were current. RP 1240.

Once Officer Meador got the vehicle stopped he approached and found that Petitioner Allixzander Harris was driving. RP 1099. He also saw a

teenage or early twenties female in the front passenger seat. *Id.* During this "traffic" stop, Officer Meardor informed Sergeant Endicott that they had found the vehicle Detective Plumb had asked them to stop if they found it, and that the defendant was the driver and was currently detained. RP 1098-1100. For his part Sargent Endicott called Detective Plumb with this information. RP 1184-1185. Detective Plumb then told Sergeant Endicott to have the vehicle impounded and to see if the defendant had a cell phone and a laptop with him. *Id.* Upon Detective Plumb's instructions Sergeant Endicott went to the scene of the stop, saw that there was a cell phone on the dashboard, asked and obtained the petitioner's permission to seize it, and ordered Officer Meador to have the vehicle impounded. RP 1185, 1099. Officer Meador then had the vehicle towed to a secure police lot. RP 1099-1100.

Detective Plumb later obtained a warrant authorizing him to search the vehicle, seize any cell phones or laptops, and then search them for evidence of a crime. RP 1210. During the execution of this warrant Detective Plumb seized both a cell phone and a laptop. *Id.* A forensic examination of these items verified Detective Plumb's initial suspicion that the petitioner was involved in promoting underage prostitution. RP 1491, 1499-1501.

Procedural History

By information filed January 23, 2013, and subsequently twice amended, the Kitsap County Prosecutor charged the petitioner Allixzander Harris with 6 counts of Promoting Commercial Sexual Abuse of a Minor, one count of Tampering with a Witness, one count of Second Degree Promoting Prostitution, and one count of Possession of Depictions of Minors Engaged in Sexually Explicit Conduct. CP 1-15, 48-59, 196-205. The petitioner's assigned defense attorney later filed a motion to suppress all evidence seized following the stop of the vehicle the defendant was driving, arguing in essence that the traffic stop was a pretext. CP 45-47. Specifically, the defense alleged the following facts as part of counsel's affirmation in support of the motion:

> Testimony at a hearing would elicit evidence that an Officer Inklebarger radioed dispatch to state that defendant, not an unknown subject, but specifically the defendant - had passed his location driving a certain automobile with a suspended driver's license and that dispatch relayed this information to other officers who actually made the traffic stop that led to the defendant's arrest and seizure of the challenged evidence.
>
> Testimony would also elicit that it would have been impossible for Officer Inklebarger to tie defendant in any way to the vehicle in question, that in fact the officers who seized defendant via the traffic stop did so on suspicion of the crimes that plaintiff has charged him with in the case and that the traffic stop itself was a pretext.

CP 45-46.

The state responded by claiming that the stop was justified because Officer Meador had a reasonably articulable suspicion based upon objective facts via the information supplied by Officer Inklebarger that the vehicle had expired tabs and that the driver was suspended. CP 68-77. The state's memorandum did not address or make any claim concerning the alleged pretextual nature of the officers' actions. *Id.* In support of its argument that the stop in this case was based upon traffic violations, the prosecutor attached the following report from Officer Meador to its memorandum opposing the motion:

> On 12/31/12 I was called by Officer Inklebarger to the area of Arsenal Way and Oyster Bay to stand by for a vehicle [that] had expired tabs and a suspended driver possibly behind the wheel. The driver was identified as Allixzander Harris.
>
> The description of the vehicle was a blue Chevy Geo Metro, Was ACJ8054,
>
> At approx. 1921 hrs, I observed the vehicle pass by me turning EB onto Arsenal Way. I had my headlights on however couldn't see through the tinted windows of the vehicle as it passed by me to see who the driver was. I turned around and followed the vehicle until I found a safe place to stop it.
>
> As we approached Arsenal Way and Loxie Eagan's I activated my emergency lights and stopped the vehicle. Other units arrived on scene.
>
> I contacted the driver and explained the reason for the stop. I asked the driver for his driver' license, registration and insurance. The driver told me without prompting that he was suspended 3rd degree.

> I had the driver exit the vehicle where he was detained. The driver identified himself as Allixzander Harris. The driver was run via Cencom, he came back DWLS 3rd degree for unpaid tickets.
>
> During the contact I found out that the vehicle was sold in October of 2012 and hadn't been registered in the new owner's name. Harris stated that he hadn't gotten around to registering the vehicle yet. This was confirmed through DOL.
>
> Disposition: Officer Inklebarger took custody of Harris and transported to the Kitsap County Jail and booked him for DWLS 3rd degree, Bail $5000. Refer charges for rail to transfer title over 45 days.
>
> The vehicle was impounded and secured into evidence per Sgt Endicott's direction. Reference case $B120012534,

CP 74.

At no place in the response to the Motion to Suppress did the prosecutor inform the court that earlier that evening Detective Plumb had asked Sergeant Endicott to have all of his patrol officers find the defendant and the vehicle associated with him and stop it for whatever violation they could see and then immediately contact him so he could question the defendant and hopefully search his cell phone and computer as part of his investigation on the commercial sexual abuse of minors. CP 74. After the state filed its reply, the defendant's attorney abandoned the Motion to Suppress upon his conclusion that Officer Meador had stopped the vehicle the defendant was driving based upon his reasonable belief that the vehicle registration was expired. RP 7/11/14 1-6.

This case was subsequently tried to a jury, who returned verdicts of guilty on the first 8 counts, as well as special verdicts on a number of alleged aggravating circumstances. CP 304-318, 324-326. The court had previously dismissed the final count. CP 327-328. The court later imposed concurrent exceptional sentences of 486 months on Counts I to VI, and concurrent standard range sentences on Counts VII and VIII. CP 439-449. Following imposition of sentence the defendant filed timely notice of appeal. CP 452. By unpublished decision filed June 1, 2016, this court affirmed the defendant's conviction but remanded the case to the trial court to conduct an individualized inquiry on petitioner's ability to pay discretionary LFOs. *State v. Harris*, 194 Wn.App. 1017, *review denied*, 186 Wash. 2d 1021, 383 P.3d 1016 (2016).

On October 30, 2017, following a new sentencing hearing addressing discretionary LFOs, Petitioner filed the current Personal Restraint Petition, alleging ineffective assistance based upon trial counsel's failure to proceed with the motion to suppress and to argue that all of the evidence the police obtained in this case following the stop of the vehicle his was driving should be suppressed. *See* PRP. By order entered July 24, 2018, this court referred the Petition to a panel of three judges for consideration, appointed counsel, and set a briefing schedule. *See* Order Referring Petition to Panel.

ARGUMENT

PETITIONER IS ENTITLED TO RELIEF FROM RESTRAINT UNDER RAP 16.4 BECAUSE TRIAL COUNSEL'S FAILURE TO ARGUE A MOTION TO SUPPRESS CRITICAL EVIDENCE DENIED PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL.

In order to obtain relief in a personal restraint petition under RCW 16.4, a petitioner has the burden of showing by a preponderance of the evidence that he was actually and substantially prejudiced by a violation of his constitutional rights. *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 94 P.3d 952 (2004). In order to obtain relief on a non-constitutional claim, a petitioner has the burden of showing by a preponderance of the evidence that the non-constitutional error caused a "fundamental defect resulting in a complete miscarriage of justice." *In re Cook*, 114 Wn.2d 802, 810-13, 792 P.2d 506 (1990). In addition, under RCW 10.73.090(1) "[n]o petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction."

In this case the petitioner makes the former constitutional claim, arguing that trial counsel's failure to argue a motion to suppress critical evidence the police seized in violation of the defendant's right to privacy

under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, caused actual and substantial prejudice. In this case, petitioner's judgement became "final" for the purposes of RCW 10.73.090(1) when the mandate issued, which was on November 14, 2016. *See* Mandate. A little over 11 months later on October 30, 2017, petitioner filed this Personal Restraint Petition. *See* Personal Restraint Petition. Thus, under RCW 10.73.090 the petition is timely, and as the following argument on ineffective assistance demonstrates, he is entitled to relief from restraint.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is "whether counsel's conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel's assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel's performance fell below that required of a reasonably competent defense

attorney. Second, the convicted defendant must then go on to show that counsel's conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is "whether there is a reasonable probability that, but for counsel's errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel's ineffective assistance must have caused prejudice to client).

In the case at bar, petitioner claims ineffective assistance based upon trial counsel's failure to argue the suppression motion filed in the case. Specifically, petitioner argues that given the discovery in this case and petitioner's statements on the facts surrounding the Bremerton Police Officers' actions in stopping him on a pretext at Detective Plumb's request, no reasonable attorney would have failed to follow through and set the suppression motion for hearing. Thus, this failure fell below the standard of a reasonably prudent attorney. Petitioner also claims that had the

evidence available on the pretextual nature of the officers' actions been presented at a hearing, the trial court would have granted the motion and suppressed the majority of the state's evidence, particularly the evidence flowing from the examination of the defendant's cell phone and laptop computer. The following sets out this argument in detail.

Under Washington Constitution, Article 1, § 7 and United States Constitution, Fourth Amendment warrantless searches are per se unreasonable. *State v. Simpson*, 95 Wn.2d 170, 622 P.2d 1199 (1980). As such, the courts of this state will suppress the evidence seized as a fruit of that warrantless detention unless the prosecution meets its burden of proving that the search falls within one of the various "jealously and carefully drawn" exceptions to the warrant requirement. R. Utter, *Survey of Washington Search and Seizure Law: 1988 Update*, 11 U.P.S. Law Review 411, 529 (1988). These exceptions "fall into several broad categories: consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view, and *Terry* investigative stops." *State v. Hendrickson*, 129 Wn.2d 61, 917 P.2d 563 (1996) (footnote omitted). Under these exceptions to the Fourth Amendment warrant requirement, a police officer may stop a vehicle for any number of minor, civilly enforced, traffic infractions. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660

(1979).

A traffic stop made upon an observation of an infraction committed by the driver or a passenger violates a defendant's privacy rights under Washington Constitution, Article 1, § 7, if it is used as a pretext to investigate a police officer's suspicion of other criminal activity. *State v. Michaels*, 60 Wn.2d 638, 374 P.2d 989 (1962). For example, in *State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999), a police officer saw the defendant riding with a person suspected of gang and drug activity. In order to speak with the defendant and the driver about his suspicions, the officer followed the vehicle and eventually pulled it over for having license tabs that had expired five days previous. He then determined that the driver had a suspended license and arrested him. During a search of the vehicle incident to the arrest of the driver, the officers found a gun, several baggies of marijuana, and $600.00 cash in the defendant's jacket. The officer then arrested the defendant.

After being charged, the defendant moved to suppress all of the evidence seized on the basis that the police obtained it following a pretext stop of the vehicle in which he was riding. Following a hearing, the court granted the defendant's motion. The state appealed, and the Court of Appeals reversed. The defendant then obtained review from the

Washington Supreme Court, arguing that his initial detention was pretextual, and as such violated his right to privacy under Washington Constitution, Article 1, § 7. The Supreme Court stated the following as to whether or not pretext stops violate the state constitution:

> We conclude the citizens of Washington have held, and are entitled to hold, a constitutionally protected interest against warrantless traffic stops or seizures on a mere pretext to dispense with the warrant when the true reason for the seizure is not exempt from the warrant requirement. We therefore hold pretextual traffic stops violate Article I, Section 7, because they are seizures absent the "authority of law" which a warrant would bring.

State v. Ladson, 138 Wn.2d at 842.

The court then went on to state the following concerning what constitutes a pretextual stop and what standard should be used in determining what constitutes a pretextual stop.

> When determining whether a given stop is pretextual, the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior. *Cf. State v. Angelos*, 86 Wn.App. 253, 256, 936 P.2d 52 (1997) ("When the use of the emergency exception is challenged on appeal, the reviewing court must satisfy itself that the claimed emergency was not simply a pretext for conducting an evidentiary search. To satisfy the exception, the State must show that the officer, both subjectively and objectively, 'is actually motivated by a perceived need to render aid or assistance.'") (citations omitted) (quoting *State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982)). We recognize the Court of Appeals has held that the test for pretext is objective only. *See State v. Chapin*, 75 Wn.App. 460, 464, 879 P.2d 300 (1994). But an objective test may not fully answer the critical inquiry: Was the officer conducting a pretextual traffic stop or not? (FN11) We

> cannot agree with *Chapin* and disapprove it to the extent it limits the query to objective factors alone.
>
> (FN11) "Pretext is, by definition, a false reason used to disguise a real motive. Thus, what is needed is a test that tests real motives. Motives are, by definition, subjective." Patricia Leary & Stephanie Rae Williams, Toward a State Constitutional Check on Police Discretion to Patrol the Fourth Amendment's Outer Frontier: A Subjective Test for Pretextual Seizures, 69 Temp.L.Rev. 1007, 1038 (1996).

State v. Ladson, 138 Wn.2d at 843.

Following its statement on the standard to apply for determining pretextual stops, the court reversed the Court of Appeals and reinstated the trial court's suppression order, holding as follows: "Here, the initial stop, which is a seizure for constitutional purposes, was without authority of law because the reason for the stop (investigation) was not exempt from the warrant requirement." *State v. Ladson*, 138 Wn.2d at 843.

In addition, a criminal defendant is denied effective assistance of counsel under both Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, where no legitimate strategic or tactical explanation can be found for a particular trial decision by defense counsel, and where that decision causes prejudice. *State v. Rainey*, 107 Wn.App. 129, 28 P.3d 10 (2001) (citing *State v. McFarland*, 127 Wn.2d 322, 899 P.2d 1251 (1995)). The failure to bring "a plausible motion to suppress potentially unlawfully obtained evidence is one such decision." *State v.*

Meckelson, 133 Wn.App. 431, 135 P.3d 991 (2006) (citing *State v. Rainey*, 133 Wn.APp. at 136).

For example, in *State v. Meckelson, supra*, a police officer began following two vehicles based upon his belief that the driver of the first vehicle had looked at him and appeared overly nervous. As the officer pulled behind the first vehicle, the second car turned abruptly without signaling, which also aroused the officer's suspicions. The officer then decided to stop the second vehicle on the infraction, which he did. The defendant was a passenger in the second vehicle, and as the officer approached, he ordered the defendant out based upon his furtive movements as he appeared to be trying to either get something out from underneath the seat or put something there. When the defendant exited, the officer saw two baggies of drugs and arrested the defendant. The defendant was later charged with possession of those drugs with intent to deliver.

Following arraignment, the defendant's counsel filed a motion to suppress and submitted the motion to the court for decision based upon the officer's reports only. Counsel did so upon the mistaken belief that if the court found that the officer had a reasonable belief that the driver had committed the infraction, his motive in making the stop was irrelevant. The

court denied the motion and a jury later found the defendant guilty of the lesser included offense of possession. On appeal, the defendant argued that trial counsel's failure to argue to the court that the officer had stopped his vehicle on a pretext denied the defendant effective assistance of counsel.

In addressing the defendant's claims, the court first noted that counsel's failure to present the pretext argument and request an evidentiary hearing fell below the standard of a reasonable prudent attorney. The court stated as follows on this issue:

> Whether a vehicle stop is pretextual is a factually nuanced question. The court must consider the totality of the circumstances. The relevant circumstances include the subjective intent of the officer as well as the objective reasonableness of the stop. This necessarily involves an inquiry into the officer's subjective intent. So the necessary inquiry here was: Was the officer's stop solely for the driver's failure to signal, or was the officer's purpose (as he candidly suggests) to look for evidence of another crime? It is not enough for the State to show that there was a traffic violation. The question is whether the traffic violation was the real reason for the stop.
>
> Mr. Meckelson's lawyer walked away from this inquiry:

State v. Meckelson, 133 Wn.App. at 436-437 (citations omitted).

Having found the first prong on a claim of ineffective assistance, the court then went on to address the issue of prejudice. The court stated:

> Defense counsel's job here was to represent Mr. Meckelson's interests, and that included challenging the officer's subjective reason

> for the stop. Sergeant Thoma was never given the opportunity to testify whether he would have stopped this car but for his inchoate and legally unsupportable suspicions. And, even if the officer had testified that he would have stopped the car for failure to signal, it would have been up to the judge to believe or disbelieve that testimony.
>
> The suppression ruling stands and falls on its own merits, based upon the evidence before the suppression judge, not what is later developed at trial. The possession of methamphetamine charge would have been dismissed without the drug evidence. Counsel's ineffective assistance here was, then, prejudicial.

State v. Meckelson, 133 Wn.App. at 438 (citations omitted).

In the case at bar, the evidence presented at trial strongly supported an argument that Officer Meador's actions in stopping the petitioner's vehicle ostensibly based upon the commission of a traffic infraction was a pretext. Defense counsel initially recognized this fact and appropriately filed a written suppression motion seeking to exclude all of the evidence that the police obtained from the illegal pretext stop. Thus, trial counsel's failure to note the motion for hearing fell below the standard of a reasonably prudent attorney.

Similarly, in the case at bar, as in *Meckelson*, trial counsel's failure also caused prejudice. Had the motion to suppress been successful, the state's case would have been significantly weakened, given all of the critical evidence the police obtained from their illegal actions. This evidence

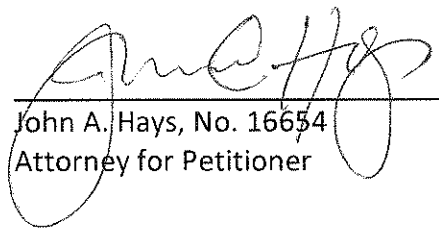
includes the identity of the petitioner on that day, the identity and evidence of the woman with him, and all of the information from his cell phone and laptop. This latter evidence was critical because it connected the petitioner to the prostitution crimes Officer Plumb was investigating. Absent this evidence, the state's case would have been significantly weakened. Thus, there is a high likelihood that had counsel timely argued the motion already filed, the jury would have entered verdicts of acquittal. Consequently, the petitioner has also proved prejudice, and this court should either reverse the petitioner's convictions and remand for a new trial, or refer this case to the trial court for a fact finding hearing on a properly argued motion to suppress.

CONCLUSION

The evidence given in support of the personal restraint petition strongly supports the argument that the majority of the evidence the officers obtained against the petitioner in this case was the fruit of the officers' illegal pretextual stop of the petitioner. Consequently, this court should either reverse the petitioner's convictions and remand for a new trial, or in the alternative refer this case to the trial court for a fact finding hearing on the issue of the pretextual nature of the officers' actions in this case.

DATED this 21st day of September, 2003.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Petitioner

APPENDIX

WASHINGTON CONSTITUTION
ARTICLE 1, § 7

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

WASHINGTON CONSTITUTION
ARTICLE 1, § 22

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

UNITED STATES CONSTITUTION,
SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

RAP 16.4

(a) Generally. Except as restricted by section (d), the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b) and the petitioner's restraint is unlawful for one or more of the reasons defined in section (c).

(b) Restraint. A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.

(c) Unlawful Nature of Restraint. The restraint must be unlawful for one or more of the following reasons:

(1) The decision in a civil or criminal proceeding was entered without jurisdiction over the person of the petitioner or the subject matter; or

(2) The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(3) Material facts exist which have not been previously presented and heard, which in the interest of justice require vacation of the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government; or

(4) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government, and sufficient reasons exist to require retroactive application of the changed legal standard; or

(5) Other grounds exist for a collateral attack upon a judgment in a criminal proceeding or civil proceeding instituted by the state or local government; or

(6) The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington; or

(7) Other grounds exist to challenge the legality of the restraint of petitioner.

(d) Restrictions. The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 or .100. No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON, **Respondent,**	**NO. 51481-8-II**
vs.	**AFFIRMATION OF SERVICE**
ALLIXZANDER D. HARRIS, **Petitioner.**	

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Supplemental Brief of Petitioner with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Ms Tina R. Robinson
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   Connell, WA 99326

Dated this 21st day of September, 2018, at Longview, WA.

Diane C. Hays