

APPENDIX A

IN THE MATTER OF THE) PERSONAL
RESTRAINT OF:)) WILLIAM ELMER
ROBEY,)) Petitioner.))

**ORDER DISMISSING
PERSONAL RESTRAINT
PETITION**

RCW 10.73.140 provides that Ty a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds,

No. 77704-1-1/2

and shows good cause why the petitioner did not raise the new grounds in the previous petition." Robey does not address or even acknowledge his burden to distinguish his prior petition and thus his petition is successive.

RCW 10.73.140 applies only to the Court of Appeals, and RCW 2.06.030 compels this court to transfer a successive petition that raises new grounds, and that is not time-barred, to the Washington Supreme Court. In re Pers. Restraint of Bell, 187 Wn.2d 558, 562, 387 P.3d 719 (2017). However, if a petition is both successive and untimely, this court must dismiss rather than transfer it. In re Pers.

Restraint of Turay, 150 Wn.2d 71, 87, 74 P.3d 1194 (2003).

As a general rule, personal restraint petitions must be filed within one year after the judgment and sentence becomes final, unless the petitioner can show that:

(1) his judgment and sentence is facially invalid or was not entered by a court of competent jurisdiction, or (2) an exception under RCW 10.73.100 applies.' RCW

' RCW 10.73.100 provides an exception to the time bar based on the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;**
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;**
- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;**
- (4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;**
- (5) The sentence imposed was in excess of the court's jurisdiction; or**
- (6) 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 or civil proceeding instituted by the state or local**

government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

No. 77704-1-1/3

90. A petitioner bears the burden of showing that his petition was timely filed.

In re Pers. Restraint of Quinn, 154 Wn. App. 816, 833, 226 P.3d 208 (2010).

Robey did not appeal and his judgment and sentence became final on February 10, 1989, the date that it was entered. Robey filed the motion forming the basis for this petition on September 18, 2017, well after the one-year time limit. It does not appear that any of Robey's claims would fall under any of the exceptions to the one-year time limit.² As such, Robey has not met his burden to establish that his petition is timely.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP

16.11(b).

Done this ^{1,0} day of klittiair , 2018.

Trickey

Acting Chief Judge

FILED
COURT OF APPEALS DIV
STATE OF WASHINGTON
2018 FEB -2 PM 1:42

APPENDIX B

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7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 THE STATE OF WASHINGTON,)

Plaintiff,)

No. 88-1-05878-1 SEA

9 v.)

10 WILLIAM ELMER ROBEY,
11 AKA WILLIAM MCKOBY, WILLIAM PAUL
MCKOBY)

ORDER TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT TO
COURT OF APPEALS

12 Defendant.)

[Clerk's Action Required]

13
14 The defendant's motion for relief from judgment has come before the undersigned judge
15 of the above-entitled court pursuant to CrR 7.8(c) for initial consideration. The court has
considered the motion and hereby concludes and orders as follows:

16 **I. DETERMINATION REQUIRED BY CrR 7.8(c)(2)**

17 ☒ The defendant's motion is time-barred by RCW 10.73.090;

18 OR

19 ☐ The defendant's motion is not time-barred by RCW 10.73.090, but has not made a substantial
20 showing that he or she is entitled to relief; and resolution of the defendant's motion will not
21 require a factual hearing.

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24 ORDER TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT TO
COURT OF APPEALS - 1

Daniel T. Satterberg, Prosecuting Attorney
CRIMINAL DIVISION
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2385
(206) 296-9000 FAX (206) 296-0955

1 **II. ORDER**

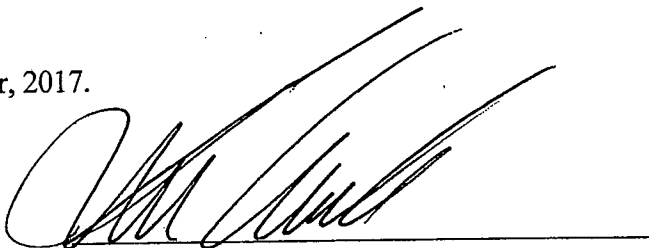
- 2 1. Pursuant to CrR 7.8(c)(2), the defendant's Motion for Relief from Judgment is transferred
3 to the Court of Appeals for consideration as a personal restraint petition.
- 4 2. ☐ (a) Attached to this order are all documents relevant to the defendant's motion,
5 including (i) the defendant's motion and any supporting affidavits or memoranda; (ii) any
6 responsive pleadings by the State and any attachments thereto; and (iii) any additional
7 documents filed in this Court that the Court of Appeals will likely need in order to
8 evaluate the merits of the defendant's motion. The clerk of this court shall transmit a
9 copy of this order and all attachments to the Court of Appeals.

10 OR

11 ☒ (b) The clerk of this court shall transmit copies of the following to the Court of
12 Appeals:

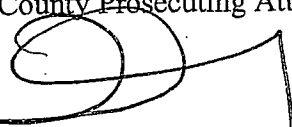
- 13 i. This order;
- 14 ii. The Defendant's motion, together with any supporting affidavits or memoranda
15 (sub number(s) 73);
- 16 iii. Any responsive pleadings by the State, together with any attachments thereto (sub
17 number(s) _____);
- 18 iv. Other: State's letter, attached

19 Entered this 29 day of November, 2017.

20 
21 JUDGE

22 Presented by:
23 DANIEL T. SATTERBERG
24 King County Prosecuting Attorney

Sean P. O'Donnell

25 By: 
26 Laura Petregal, WSBA #26016
27 Senior Deputy Prosecuting Attorney

28 ORDER TRANSFERRING MOTION
29 FOR RELIEF FROM JUDGMENT TO
30 COURT OF APPEALS - 2

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APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

No. 9 5 6 2 6 - 0

WILLIAM ELMER ROBEY,

Court of Appeals No. 77704-1-I

Petitioner.

RULING DENYING REVIEW

William Robey pled guilty to second degree assault in 1989. In 2017, he filed a CrR 7.8 motion in superior court challenging the judgment and sentence. The court transferred the motion to Division One of the Court of Appeals for treatment as a personal restraint petition. CrR 7.8(c)(2). The acting chief judge dismissed the petition as untimely and successive. *In re Pers. Restraint of Tiray*, 150 Wn.2d 71, 87, 74 P.3d 1 194 (2003). Mr. Robey timely filed a motion for reconsideration, but the court clerk informed him that the only means to challenge such a ruling is by motion for discretionary review in this court. RAP 13.5A. Mr. Robey then filed a motion for discretionary review and a motion for extension of time. RAP 16.14(c). The motion for extension of time is granted given that the motion for reconsideration was timely filed.'

To obtain review in this court, Mr. Robey must demonstrate that the Court of Appeals decision conflicts with a decision of this court or with a published Court of

I Ordinarily, the Court of Appeals forwards any motion for reconsideration to this court for treatment as a motion for discretionary review.

Appeals decision, or that he is raising a significant constitutional question or an issue of substantial public interest. RAP 13.4(b); RAP 13.5A(a)(1), (b). And because Mr. Robey filed his current collateral challenge more than one year after his judgment and sentence became final, the challenge is untimely unless Mr. Robey demonstrates that the judgment and sentence is facially invalid or was entered without competent jurisdiction under RCW 10.73.090(1), or unless he asserts solely grounds for relief exempt from the one-year limit under RCW 10.73.100. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 422, 309 P.3d 451 (2013).

Mr. Robey's collateral challenge is obviously untimely, coming decades after the plea was entered, unless some exemption applies. But in support of his collateral challenge he argues numerous grounds for relief, including that the warrant for his arrest was unlawful, the charging document was inadequate, and the judge, the prosecutor, and defense counsel engaged in a conspiracy against him. These claims do not fall within any exemption. In his motion for discretionary review, Mr. Robey does not address the acting chief judge's ruling but instead argues that review should be accepted because he has a disability and only recently learned that the State violated his rights in pursuing the 1989 conviction. This conclusory and unsupported claim provides no basis for review. The acting chief judge properly dismissed the personal restraint petition.

The motion for discretionary review is denied.

COMMISSIONER

June -12018