IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of: GRANT THOMAS McADAMS, Petitioner.	No. 96396-7 Court of Appeals No. 36198-5-III RULING DENYING REVIEW

A jury found Grant McAdams guilty of first degree assault and first degree robbery. Division Three of the Court of Appeals affirmed the judgment and sentence and issued its mandate in January 2015. In July 2018 Mr. McAdams filed a fourth personal restraint petition in the Court of Appeals arguing that the evidence was insufficient as to the robbery conviction because it failed to show that he intended to deprive the victim of his property. The acting chief judge dismissed the petition as untimely, and Mr. McAdams now seeks this court's discretionary review. RAP 16.14(c).

To obtain review in this court, Mr. McAdams must demonstrate that the Court of Appeals decision conflicts with a decision of this court or with a published Court of 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. McAdams filed his current collateral challenge more than one year after his judgment and sentence became final, the challenge is untimely unless Mr. McAdams

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).

An argument that the State failed to prove its case beyond a reasonable doubt potentially falls within a statutory exemption to the one-year time bar. RCW 10.73.100(4). To prove robbery, the State must show that the offender unlawfully took personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. RCW 9A.56.190. The State must also prove that the offender intended to deprive the victim of the property. *State v. McCorkle*, 88 Wn. App. 485, 501, 945 P.2d 736 (1997). To prove *first degree* robbery, the State must show that in the commission of a robbery or of immediate flight therefrom, the offender was armed with a deadly weapon, displayed what appeared to be a deadly weapon, or inflicted bodily injury. RCW 9A.56.200.

Viewing the facts in a light most favorable to the prosecution, the State provided evidence that Emad Mohammed Salih picked up a hitchhiker, Mr. McAdams. Mr. McAdams told Mr. Salih to stop the vehicle, then took a wrench from the vehicle and used it to beat Mr. Salih. Mr. McAdams dragged Mr. Salih out of the vehicle, beat him with the wrench, then returned to the vehicle and left. Mr. McAdams contends there is no evidence he intended to take the vehicle at the time of the assault. But the State presented multiple eyewitness accounts of the assault, and a reasonable juror could conclude from these facts that Mr. McAdams beat Mr. Salih in order to take the vehicle. The vehicle was found the next day 11 blocks away from the scene, so the facts do not

suggest that Mr. McAdams immediately relinquished control of the vehicle at the scene of the assault.

Mr. McAdams cites to facts favorable to a jury finding that he did not act with an intent to steal. He claims that there was no evidence any gas was missing from the vehicle, the vehicle was not running well and was found only a few blocks away, and he only formed an intent to use the vehicle to get away from the scene of the assault after onlookers became hostile. But this argument requires viewing the evidence in the light most favorable to the offender, which is not the standard for a sufficiency of the evidence claim. *In re Pers. Restraint of Bell*, 187 Wn.2d 558, 565-66, 387 P.3d 719 (2017). Because the State presented sufficient evidence to support the robbery conviction, the acting chief judge properly dismissed the personal restraint petition as untimely. *Id.* at 566

The motion for discretionary review is denied.

Michael E Johnston
COMMISSIONER

January 18th, 2019

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THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of	)	No. 96396-7
	)	
GRANT THOMAS MCADAMS,	)	**ORDER**
	)	
Petitioner.	)	Court of Appeals
	)	No. 36198-5-III
	)	

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its April 2, 2019, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Commissioner's ruling is denied.

DATED at Olympia, Washington, this 3rd day of April, 2019.

For the Court

Fairhurst, CJ.
CHIEF JUSTICE

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Personal Restraint of:	**No. 36198-5-III**
GRANT THOMAS MCADAMS,	**ORDER DISMISSING PERSONAL RESTRAINT PETITION**
Petitioner.	

Grant Thomas McAdams seeks relief from personal restraint imposed in his 2012 Spokane County convictions of first degree assault and first degree robbery. This court affirmed his judgment and sentence in *State v. McAdams*, unpub. op'n no. 31035-3-III (Wa. Ct. App. 2014). His case was final on the date of its mandate: January 7, 2015. RCW 10.73.090(3)(b). Mr. McAdams filed three previous personal restraint petitions. The first two were consolidated for review and dismissed as frivolous. *See In re Pers. Restraint of McAdams*, no 33319-1-III, consol. with no. 33917-3-III (WA. Ct. App. 2017). The third petition was dismissed as untimely. *See In re Pers. Restraint of McAdams*, no. 35904-2-III (Wa. Ct. App. 2018). On July 23, 2018, Mr. McAdams filed

this fourth petition claiming the State presented insufficient evidence that he intended to deprive the victim of his property.

Since Mr. McAdams filed this petition more than one year after the judgment and sentence became final, his petition is barred as untimely under RCW 10.73.090(1) unless the judgment and sentence is invalid on its face, the trial court lacked jurisdiction, or the petition is based solely on one or more of the exceptions set forth in RCW 10.73.100(1) – (6). He may not rely on conclusory allegations, but must show with a preponderance of competent, admissible evidence that the error caused him prejudice. *In re Pers. Restraint of Ruiz-Sanabria*, 184 Wn.2d 632, 636, 362 P.3d 758 (2015); *In re Pers. Restraint of Lord*, 152 Wn.2d 182, 188, 94 P.2d 952 (2004). Mr. McAdams contends his petition is not time-barred under the exception in RCW 10.73.100(4): "[t]he defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction." He claims the State failed to establish that he intended to commit theft of the victim's property, a required element of first degree robbery.[1] He also claims his petition is timely pursuant to RCW 10.73.100(2), because the application of RCW 94.56.200 is unconstitutional as applied to him.

When a petitioner challenges the sufficiency of the evidence, this Court views the

[1] Mr. McAdams also contends his petition is not time barred pursuant to RCW 10.73.100(2) because RCW 94.56.200 is unconstitutional as applied to him where the jury made an improper presumption of intent to steal simply because the vehicle was taken after the assault, based on a faulty instruction, and therefore wrongfully convicted Mr. McAdams of robbery where he did not have the requisite intent. This claim turns on whether there was sufficient

evidence in the light most favorable to the State and determines whether any trier of fact could have found guilt beyond a reasonable doubt. *In re Pers. Restraint of Bell*, 1878 Wn.2d 558, 566, 387 P.3d 719 (2017). Reasonable inferences arising from the evidence are drawn in favor of the State and interpreted most strongly against the defendant. *Id.* Circumstantial evidence is as reliable as direct evidence. *State v. Castillo*, 144 Wn. App. 584, 588, 183 P.3d 355 (2008) (citing *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996)). Evidence is sufficient if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Rempel*, 114 Wn.2d 77, 82-83, 785 P.2d 1134 (1990).

The State charged Mr. McAdams with first degree robbery, which requires proof that in the commission of a robbery or of immediate flight therefrom, he was armed with a deadly weapon, displayed what appeared to be a deadly weapon, or inflicted bodily injury. RCW 9A.56.200. RCW 9A.56.190 defines robbery in part as: "unlawfully tak[ing] personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone." The intent to commit theft is an implied, essential element to robbery. *See e.g., State v. Kjorsvik*, 117 Wn.2d 93, 98, 812 P.2d 86 (1991). "The intent required to prove robbery in the first degree is intent to deprive the victim of the property." *State v. McCorkle*, 88 Wn. App.

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evidence for a jury to infer the necessary intent, so the Court will not address it separately.

485, 501, 945 P.2d 736 (1997). Criminal intent may be inferred from all the facts and circumstances. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

According to the victim, Emad Mohammed Salih, he gave a ride to Mr. McAdams, who was hitchhiking. After driving a short distance, Mr. McAdams instructed Mr. Salih to stop the vehicle. Mr. McAdams took a wrench from the vehicle and used it to beat Mr. Salih. He dragged Mr. Salih from the vehicle and pursued him on foot for a short distance while continuing to beat him with the wrench. Mr. McAdams then returned to the vehicle and drove off. Three eyewitnesses and Mr. Salih identified Mr. McAdams as the assailant. One of the eyewitnesses testified that the incident occurred near her residence in the 2100 block of North Cincinnati Street in Spokane, Washington. Police recovered the car 24 hours later in the 3000 block of North Standard, approximately 11 blocks away.

Defense counsel argued the case on a theory of alibi, presenting a witness who stated Mr. McAdams had been working 15 blocks from where Mr. Salih picked up the hitchhiker. Defense counsel argued Mr. McAdams could not have covered that distance in the time between when his shift ended and when the hitchhiker met Mr. Salih. Defense counsel also argued that the evidence showed there was no robbery because the assailant's intent had been to assault Mr. Salih rather than take the vehicle, and the use of force preceded the taking of the property. Mr. McAdams did not testify.

Mr. McAdams contends there is no evidence he intended to take the vehicle at the

time of the assault. He claims the jury could not properly presume intent to permanently deprive Mr. Salih of the vehicle where Mr. McAdams abandoned the vehicle while chasing Mr. Salih, only used the vehicle to escape the scene of the assault, and left the vehicle only several blocks away from where it was taken. He requests that the robbery conviction be vacated with prejudice, or vacated and reduced to second degree taking a motor vehicle without permission.

A reasonable jury could find that Mr. McAdams assaulted Mr. Salih with the intention of taking Mr. Salih's vehicle. Contrary to Mr. McAdams' arguments, this is not a case of peaceably-taken property being abandoned at the time of the assault, as in *State v. Johnson*, 15 Wn.2d 609, 121 P.3d 91 (2005) (vacating robbery conviction where defendant abandoned shop-lifted property in parking lot and assaulted security guard while trying to escape, and no force was used to take or retain property). Instead, Mr. McAdams assaulted Mr. Salih and took Mr. Salih's property immediately following the assault. While Mr. McAdams could (and did) argue that the act of pursuing Mr. Salih away from the vehicle evidenced a lack of intent to take the vehicle, there was sufficient evidence in the record for a rational trier of fact to infer that Mr. McAdams possessed the necessary intent.

As to Mr. McAdams' claim that there was no evidence he intended to permanently deprive Mr. Salih, the intent to "permanently" deprive the victim of his property is not an element of the theft statute. *State v. Komok*, 113 Wn.2d 810, 816-17, 783 P.2d 1061

(1989). Except in cases involving intellectual property, "deprive" is given its common meaning. *Id.* at 814-15 (citing former RCW 9A.56.010(5) (1998)); *see also* RCW 9A.56.010(6) (defining "deprive" for purposes of theft and robbery). Our Supreme Court has defined the common meaning of "deprive" as "[t]o take something away from"; "[t]o keep from having or enjoying"; or "[t]o take." *Komok* at 815 n. 4 (citing Webster's II New Riverside University Dictionary 365 (1984); Black's Law Dictionary 529 94th ed. 1968)). Thus, the issue is whether Mr. McAdams intended to take the vehicle, not whether he intended to keep the vehicle. Where Mr. McAdams drove away in the vehicle immediately after assaulting Mr. Salih, the jury could reasonably infer that Mr. McAdams intended to take Mr. Salih's vehicle, regardless of where the vehicle was ultimately found.[2]

Mr. McAdams' assertions that the evidence introduced at trial was insufficient to

[2] Mr. McAdams appears to argue that under *State v. Walker*, 75 Wn.App. 101, 879 P.2d 957 (1994), the "intent to deprive" implies the deprivation be of a greater duration than that required for taking a motor vehicle without permission, and he did not use the vehicle for a sufficient duration to establish intent to deprive. In *Walker*, the court discussed duration differences between first degree theft and taking a motor vehicle without permission ("joyriding") when deciding whether the offenses were concurrent, concluding that "the joyriding statute proscribes the *initial* unauthorized use of an automobile, while the theft statute proscribes the *continued* or *permanent* unauthorized use of an automobile." *Id.* at 108. However, *Walker* does not help Mr. McAdams. Under *Walker*, proof that an item has been taken for a substantial period of time may help to establish the intent element, but proof of duration is not required as an element. Moreover, no evidence established when the vehicle was abandoned, and accordingly there was no evidence as to how long the vehicle was actually used after being stolen, only that it was recovered 24 hours after being stolen. Mr. McAdams has failed to demonstrate that the vehicle was used for an insufficient duration to demonstrate an intent to deprive.

support the conviction and that RCW 94.56.200 is unconstitutional as applied to him are without merit, and his petition therefore does not escape the time bar set forth in RCW 10.73.090.[3] His petition is dismissed as untimely. RCW 10.73.090(1). The court waives the filing fee for this petition based upon his indigence. RAP 16.8(a). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 n.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

REBECCA L. PENNELL
ACTING CHIEF JUDGE

[3] Given the untimeliness of Mr. McAdams' petition, this opinion does not address the successive nature of the petition. *In re Pers. Restraint of Bell*, 187 Wn.2d 558, 564, 387 P.3d 719 (2017).

Additional material from this filing is available in the Clerk's Office.