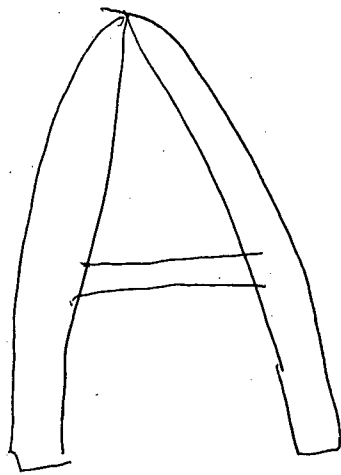


EXHIBIT



- ① OPINION EXHIBIT OF THE SUPREME COURT
2 PAGES
- ② The Newly discovered Evidence From Client File Indicated
CRIMINAL CASE IN STATE COURT
- ③ The Charges Started With BEFORE I WENT TO
TRIAL AND THE STATE AMEND THE CHARGES UP BECAUSE
TAKEN ADVANTAGE AGAINST ME

THE SUPREME COURT OF WASHINGTON

In the Matter of the Personal Restraint of:)

No. 100876-7

KIRK LAMAR WILLIAMS,)

ORDER

Petitioner.)

Court of Appeals

No. 83751-6-I

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu and Whitener (Justice Gordon McCloud sat for Justice Yu, and Justice Johnson sat for Justice Whitener), considered this matter at its March 7, 2023, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's motion to modify the Deputy Commissioner's ruling and motion for appointment of counsel are both denied.

DATED at Olympia, Washington, this 8th day of March, 2023.

For the Court


CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint of:

KIRK LAMAR WILLIAMS,

Petitioner.

No. 1 0 0 8 7 6 - 7

Court of Appeals No. 83751-6-I
RULING DENYING REVIEW

Kirk Williams was convicted of first degree burglary, second degree rape, third and fourth degree assault, and violating a court order. Williams's judgment and sentence became final in 2014. He filed a personal restraint petition in Division One of the Court of Appeals in March 2022, and finding the petition untimely and improperly successive, the chief judge dismissed it. Williams now seeks this court's discretionary review. RAP 16.14(c).

Because Williams filed this personal restraint petition more than one year after the judgment and sentence became final, the petition is untimely unless the judgment and sentence is facially invalid or was entered without competent jurisdiction, or unless Williams asserts solely grounds for relief exempt from the time limit under RCW 10.73.100. RCW 10.73.090; *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 348-49, 5 P.3d 1240 (2000). Williams argues that the prosecuting attorney and defense counsel "fabricated[,], lied[,], and misled" the trial court to deny Williams's pro se motion to interview the witnesses and victims before trial, the effect of which was to

deprive Williams of effective assistance of counsel.¹ Standing alone, these grounds for relief are not exempt from the time limit, but Williams urges they are supported by newly discovered evidence, making the petition exempt under RCW 10.73.100(1). But as the chief judge correctly observed, Williams fails to satisfy one of the essential elements of a newly discovered evidence claim: that the new evidence would probably change the result of the trial. *See In re Pers. Restraint of Brown*, 143 Wn.2d 431, 453, 21 P.3d 687 (2001). Even if some misconduct led the trial court to deny Williams's motion to interview witnesses and victims, Williams does not show that, had the motion been granted, the result of the trial probably would have been different.

Williams also argues he was denied his right to be present at arraignment, that the trial court failed to address his speedy trial motions, and that defense counsel suffered from a conflict of interest. But these are not exempt grounds for relief.

The motion for discretionary review is denied.


DEPUTY COMMISSIONER

August 15, 2022

¹ The purported "lie" apparently was that the prosecutor and counsel had already interviewed the victims and witnesses.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

IN THE MATTER OF THE)	
PERSONAL RESTRAINT OF:)	No. 83751-6-I
)	
KIRK LAMAR WILLIAMS,)	ORDER DISMISSING
)	PERSONAL RESTRAINT
Petitioner.)	PETITION
_____)	

Several years after his convictions became final, Kirk Williams filed this personal restraint petition, his eighth collateral attack. He challenges his convictions of first degree burglary, second degree rape, third degree assault, fourth degree assault, and violation of a court order in King County Superior Court Cause No. 09-1-07479-4 SEA. Because his petition is untimely and successive, it must be dismissed.

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.¹ RCW 10.73.090. A petitioner bears the burden of showing that his

¹ RCW 10.73.100 provides an exception to the time bar for a petition based solely on one or more of the following grounds:

petition was timely filed. In re Pers. Restraint of Quinn, 154 Wn. App. 816, 833, 226 P.3d 208 (2010). Williams's judgment and sentence became final on June 23, 2014, when the United States Supreme Court denied his petition for a writ of certiorari. RCW 10.73.090(3)(c). He filed this petition on or about March 1, 2022, well after the limitations period expired.

While difficult to follow, Williams appears to allege misconduct and ethical violations by the prosecuting attorney and defense counsel in connection with the denial of a pro se pretrial motion to interview witnesses and victims and related to trial continuances and scheduling orders. He also claims he was deprived of the effective assistance of counsel due to a conflict of interest and alleges a Brady² violation. None of the issues Williams raises implicate facial invalidity or fall within any exemptions from the one-year time limit. To the extent Williams suggests his petition is based on newly discovered evidence, and therefore not

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- (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.

² Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

subject to the time bar under RCW 10.73.100(1), he claims only to have uncovered evidence that may have affected the court's decision on his motion to interview witnesses. He fails to identify any evidence that would probably change the result of trial. See In re Pers. Restraint of Brown, 143 Wn.2d 431, 453, 21 P.3d 687 (2001) (newly discovered evidence must (1) probably change the result of the trial, (2) be discovered since the trial, (3) not have been able to be discovered before the trial through the exercise of due diligence, (4) be material, and (5) not be merely cumulative or impeaching; the absence of any factor is grounds for denial).

And, as noted, Williams has filed several prior personal restraint petitions challenging these convictions. RCW 10.73.140 bars this court's review of a personal restraint petition where the petitioner has filed a previous petition.

If 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, and shows good cause why the petitioner did not raise the new grounds in the previous petition...If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition.

RCW 10.73.140. "[T]he proper procedure for the Court of Appeals, when it receives a personal restraint petition it may not consider under the terms of RCW 10.73.140, is either to dismiss it, or to transfer it to this Court if it determines RAP 16.4(d) might apply." In re Pers. Restraint of Bell, 187 Wn.2d 558, 563, 387 P.3d 719 (2017) (quoting In re Pers. Restraint of Johnson, 131 Wn.2d 558, 566, 933

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P.2d 1019 (1997)). Where, as here, a petition is both successive and untimely, this court must dismiss it. In re Pers. Restraint of Turay, 150 Wn.2d 71, 87, 74 P.3d 1194 (2003).

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.8.1(b).

Andrus, C.J.
Chief Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

IN THE MATTER OF THE
PERSONAL RESTRAINT OF:

KIRK LAMAR WILLIAMS,

Petitioner.

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No. 83751-6-I

CERTIFICATE OF FINALITY

King County

Superior Court No. 09-1-07479-4 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in
and for King County.

This is to certify that the order of the Court of Appeals of the State of Washington,
Division I, filed on April 6, 2022, became final on April 10, 2023. A ruling denying a
motion for discretionary review was entered in the Supreme Court on August 15, 2022.
An order denying a motion to modify was entered on March 8, 2023.

c: Kirk Lamar Williams



IN TESTIMONY WHEREOF, I
have hereunto set my hand
and affixed the seal of
said Court at Seattle, this 10th
day of April, 2023.

Lea Ennis
Court Administrator/Clerk of the
Court of Appeals, State of
Washington Division I

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