

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

IN THE MATTER OF THE)	No. 60786-3-I
PERSONAL RESTRAINT OF)	
SCOTT SMITH,)	ORDER OF DISMISSAL
)	
_____ Petitioner.)	

Scott Smith was linked to an armed robbery at a tavern in which three individuals died of either gunshot wounds or strangulation, and two others were left with electrical cords tied around their necks. During the 1980 investigation, Smith gave an inculpatory statement to police, and led them to the gun used in the robbery and the money taken from the tavern. Smith was convicted by a jury of three counts of felony murder in the first degree and two counts of assault in the first degree in King County No. 80-1-02459-7 SEA. Smith unsuccessfully appealed his convictions to this court in State v. Smith, No. 10837-9-I.¹ The case was mandated on September 20, 1983.

Smith now files this personal restraint petition contending his convictions should be set aside in light of the Ninth Circuit's recent decision in Sarausad v. Porter, 479 F.3d 671 (9th Cir. 2007). Relying on Sarausad, Smith argues that the accomplice liability instructions given at his trial were ambiguous and violated his due process rights. In that case, the court held that jury instructions that tracked the exact language of Washington's accomplice liability statute, RCW 9A.08.020, were constitutionally infirm. Smith urges this court to follow the reasoning in Sarausad. While the appellate courts of Washington will give careful consideration to Ninth Circuit Court of Appeals decisions, they are not bound to follow them. In re Pers. Restraint of Benn, 134 Wn.2d 868, 937,

¹ This court, in No. 10837-9-I, also denied three personal restraint petitions filed by Smith which had been consolidated with his direct appeal.

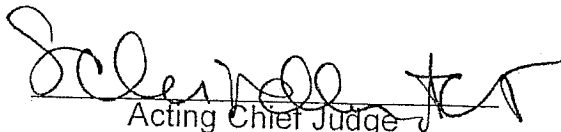
952 P.2d 1116, (1998); In re Pers. Restraint of Parmelee, 115 Wn. App. 273, 283, 63 P.3d 800 (2003) (Ninth Circuit holdings are not binding on Washington's appellate courts). Smith does not dispute that accomplice liability instructions virtually identical to the ones given at his trial have been expressly approved by our appellate courts in In re Pers. Restraint of Sarausad, 109 Wn. App. 824, 838-39, 39 P.3d 308 (2001), State v. O'Neal, 126 Wn. App. 395, 418-19, 109 P.3d 429 (2005), State v. Moran, 119 Wn. App. 197, 210, 81 P.3d 122 (2003), State v. Roberts, 142 Wn.2d 471, 509-13, 14 P.3d 713 (2000), and State v. Cronin, 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000). This court is bound by the decisions of the Washington State Supreme Court, State v. Hairston, 133 Wn.2d 534, 539, 946 P.2d 397 (1997). Under the circumstances, Sarausad is not a significant change in the law that is material to Smith's convictions.

Smith fails to establish that his claim of instructional error falls within any of the recognized exceptions to the one-year statute of limitations under RCW 10.73.090. Therefore, Smith's challenge to his murder and assault convictions is time-barred.

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed under RAP 16.11(b).

Done this 7th day of December, 2007.


Acting Chief Judge

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STATE OF WASHINGTON
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