

**FILED**  
**Dec 27, 2021**  
Court of Appeals  
Division III  
State of Washington

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

<b>In the Matter of the Personal Restraint</b>	)	<b>No. 37953-1-III</b>
<b>of:</b>	)	
	)	
<b>DOUGLAS D. SCYPHERS,</b>	)	<b>ORDER DISMISSING PERSONAL</b>
	)	<b>RESTRAINT PETITION</b>
	)	
<b>Petitioner.</b>	)	

In 2017, a Spokane County jury found Douglas Scyphers guilty of multiple child sex offenses and felony bail jumping. This court affirmed his judgment on appeal. *State v. Scyphers*, No. 35851-8-III (Unpublished Op., March 31, 2020). His case became final upon issuance of the mandate on July 8, 2020. RCW 10.73.090(3)(b). In December 2020, Mr. Scyphers filed a timely first personal restraint petition, which this court dismissed as frivolous. *See In re Pers. Restraint of Scyphers*, order no. 37909-4-III (Wa. Ct. App. 2021). During the pendency of that first petition, Mr. Scyphers filed this second timely personal restraint petition challenging his judgment and sentence. A third petition, challenging DOC action, was recently filed and dismissed in case number 38531-1-III.

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This court now dismisses this second petition as frivolous and successive.

In this second personal restraint petition, Mr. Scyphers raises several grounds for relief that fit within two categories: (1) does Mr. Scyphers have a constitutional right to indictment by grand jury that may only be abridged by a knowing and voluntary waiver and (2) is Mr. Scyphers's consecutive sentence on counts V, VI, and VII, unlawful? In an attached memorandum of authorities, Mr. Scyphers raises a third claim: that the trial court lacked subject matter jurisdiction because the statutes he was convicted of violating lacked "enacting clauses."

Mr. Scyphers's first issue fails to merit consideration due to his failure to present any relevant authorities. Furthermore, the argument is without merit. Since 1884, the law has been firmly settled that there is no federal constitutional right to indictment by grand jury at the state level. *Hurtado v. California*, 110 U.S. 516, 4 S.Ct. 292, 28 L.Ed. 232 (1884). The United States Supreme Court reiterated this rule, specifically as it relates to Washington State, in *Beck v. Washington*, 369 U.S. 541, 545, 82 S.Ct. 955, 8 L.Ed.2d 98 (1962). The Washington State Supreme Court noted the same in *State v. Jefferson*, 79 Wn.2d 345, 348, 485 P.2d 77 (1971).

Regarding his consecutive sentence, Mr. Scyphers first cites 18 U.S.C. § 3584. This statute only applies to individuals convicted of federal offenses in a federal court. 18 U.S.C. § 3551(a). Mr. Scyphers was convicted of state offenses, in state court, and sentenced pursuant to chapter 9.94A, RCW. Mr. Scyphers next claims that his

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consecutive sentence, premised on the existence of aggravating factors, violated *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). *Apprendi* only bars enhanced sentences based on aggravators that were not submitted to a jury. *Apprendi*, 530 U.S. at 490. Mr. Scyphers's aggravator was found beyond a reasonable doubt by the jury at his trial on the underlying offenses. Accordingly, *Apprendi* does not apply.

Mr. Scyphers's third argument fails because each of the laws he was convicted of violating contained valid enacting clauses.

- The crime of sexual exploitation of a minor is codified in RCW 9.68A.040. This section codifies LAWS of 1989, c 32 § 2. The first clause of LAWS of 1989, c 32, states: "Be it enacted by the Legislature of the State of Washington."
- The crime of rape of a child in the third degree is codified in RCW 9A.44.079. This section codifies LAWS of 1988, c 145 §4. The first clause of LAWS of 1988, c 145, states: "Be it enacted by the Legislature of the State of Washington."
- The crime of child molestation in the third degree is codified in RCW 9A.44.089. This section codifies LAWS of 1994, c 271 § 305. The first clause of LAWS of 1994, c 271, states: "Be it enacted by the Legislature of the State of Washington."
- The crime of incest is codified in RCW 9A.64.020. This section codifies LAWS of 2003, c 53 § 80. The first clause of LAWS of 2003, c 53, states: "Be it enacted by the Legislature of the State of Washington."
- The crime of possession of depictions of a minor engaged in sexually explicit conduct is codified in RCW 9.68A.070. This section codifies LAWS of 2006, c 139 § 3. The first clause of LAWS of 2006, c 139, states: "Be it enacted by the Legislature of the State of Washington."
- The crime of bail jumping is codified in RCW 9A.76.170. This section codifies LAWS of 2001, c 264 § 3. The first clause of LAWS of 2001, c 264, states: "Be it

enacted by the Legislature of the State of Washington.”

Accordingly, Mr. Scyphers’s third argument fails to merit relief.<sup>1</sup>

As a final matter, RCW 10.73.140 prohibits petitioners from filing more than one 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.” Mr. Scyphers does not address this statute and the record before this court does not demonstrate good cause for not raising these issues in the first petition. Accordingly, Mr. Scyphers’s petition is further barred as successive.

#### Pending Motions

Mr. Scyphers filed several motions in this case. For the following reasons each of the motions is denied:

- April 19, 2021, “Motion to Compel Production”: the authorities cited by Mr. Scyphers do not apply to personal restraint petitions. *See* RAP 16.17 and 16.15 (specifying what court rules apply to PRPs). Additionally, the documents supplied by Mr. Scyphers indicate that he had already received his client file from his former trial counsel. It is not clear what additional documents this court could compel the State or defense counsel to supply that he did not already receive.
- April 21, 2021, “Motion to Compel and Contempt”: Mr. Scyphers does not offer any authority that would permit this court to hold the Supreme Court or its Clerk in contempt or any authority granting Mr. Scyphers the authority to unilaterally

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<sup>1</sup> Mr. Scyphers also appears to make a single subject, subject in title argument. While Mr. Scyphers quotes from a number of cases, this portion of his memorandum lacks any substantive analysis tied to the crimes he was convicted of violating. *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (“[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.”).


issue and serve subpoenas.

- April 26, 2021, “Motion for Contempt”: denied for the same reason as the April 21st motion.
- May 13, 2021, “Motion to Amend”: the attachments to the motion, consisting primarily of legal argument, would cause the petition as a whole to exceed the page limit specified in former RAP 16.7, current RAP 18.17(c)(15). The petitioner has not concurrently filed a motion to exceed the page limits and no basis exists in the record that would justify filing of an overlength petition.
- June 21, 2021, “Motion for Emergency Preliminary Injunction”: while the Department has not given Mr. Scyphers access to the prison law library and related services on the terms demanded by Mr. Scyphers, the record in this petition and Mr. Scyphers’s other petitions demonstrates with abundant clarity that Mr. Scyphers has ample access to the prison law library and related services. The record is devoid of any evidence that would amount to a violation of Mr. Scyphers’s constitutional or statutory rights to access the law library and related services.
- June 28, 2021, “Motion to Vacate, Set Aside, and Dismiss All Charges”: the motion is brought under CrR 7.8(b)(1), which does not apply to personal restraint petitions in the court of appeals. *See* RAP 16.17 and 16.15 (specifying what court rules apply to PRPs). In substance, the motion is a mislabeled supplement to the personal restraint petition, acceptance of which would exceed the page limits for personal restraint petitions.
- June 29, 2021, “Motion to Supplement Motion to Vacate and Dismiss Charges”: denied for the same reasons as the June 28th motion.
- December 2, 2021, “Motion to Modify”: the motion fails to comply with the formatting requirements of RAP 17.3(b) and this court cannot determine what ruling the petitioner seeks to modify. To the extent the petitioner seeks to modify the ruling of the Supreme Court’s Clerk, this court lacks the authority to do so.
- December 6, 2021, “Motion for Permission to Supplement and Add to the Record”: the motion appears related to the June 21st “Motion for Emergency Preliminary Injunction” but fails to state with particularity the additional evidence the petitioner seeks to submit. Because the court cannot determine the relevance

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of the documents the petitioner seeks to add, the motion is denied.

The court summarily dismisses the petition as frivolous and successive. RAP 16.8.1(b); RCW 10.73.140. The court waives the filing fee based on Mr. Scyphers's indigence. RAP 16.8(a). Mr. Scyphers's request for appointment of counsel is also denied. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150(4).

  
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**LAUREL SIDDOWAY**  
**ACTING CHIEF JUDGE**