

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS

DIVISION II

09 SEP 25 AM 11:12

STATE OF WASHINGTON

BY ZOR  
DEPUTY

In re the  
Personal Restraint Petition of:

No. 37227-4-II

DAVID ALLEN TROUPE, JR.,

ORDER DISMISSING PETITION

Petitioner.

David Troupe, Jr. seeks relief from personal restraint imposed following his 2005 resentencing for convictions of first degree robbery, first degree unlawful possession of a firearm, possession of an unlawful firearm and second degree robbery.<sup>1</sup> In his initial sentencing, which followed his *Alford*<sup>2</sup> plea, the trial court included three juvenile adjudications in his offender score. Through a personal restraint petition, Troupe successfully challenged the inclusion of those adjudications in his offender score. This court remanded for resentencing. At resentencing, the State sought to include a 1999 conviction, which had not existed at the time of the first sentencing, in Troupe's offender score. Troupe objected, but the trial court included the 1999 conviction in Troupe's offender score. This court affirmed the calculation of Troupe's offender score. Ruling Affirming Sentence, No. 33826-2-II, September 22, 2006.

<sup>1</sup> The mandate of Troupe's direct appeal from his resentencing did not issue until January 3, 2007, making his December 3, 2007 petition timely.

<sup>2</sup> *North Carolina v. Alford*, 400 U.S.25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970).

Sealed  
Cause #  
not in cm  
State Strike only  
not Fed.  
9th ✓  
4-29-15 ✓

First, Troupe argues that he received ineffective assistance of counsel because his attorney at his resentencing did not move to withdraw his plea, as he requested. To demonstrate ineffective assistance of counsel, Troupe must show that his trial counsel performed below an objective standard of reasonableness and that without such deficient performance, the result of his trial probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 325, 899 P.2d 1251 (1995). He shows neither deficient performance nor resulting prejudice. Troupe had no valid ground for moving to withdraw his plea. The trial court was required to include the 1999 conviction in Troupe's offender score at resentencing. *State v. Clark*, 123 Wn. App. 515, 519, 94 P.3d 335 (2004). And his statement on plea of guilty, Troupe acknowledged that "if any additional criminal history is discovered . . . my plea of guilty is binding on me." Because there were no grounds upon which Troupe could have withdrawn his plea, his counsel at resentencing was not ineffective when he did not move to withdraw Troupe's plea.

Second, Troupe argues that the trial court denied him due process when it did not advise him at his resentencing that he had the right to withdraw his plea. But the trial court is only required to inform a defendant of his right to withdraw his plea if the plea agreement "is not consistent with (1) the interests of justice or (2) the prosecuting standards set forth in RCW 9.94A.430-.460." CrR 4.2(f); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). Neither the trial court nor this court, in remanding Troupe for resentencing, made such a finding of inconsistency with the interests of justice or the prosecuting standards. The trial court was not required to advise Troupe that he had a right to withdraw his plea.

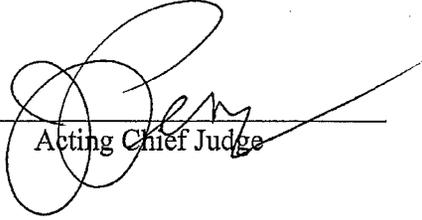
Third, Troupe argues that the trial court erred in resentencing him "without changing the unlawful and inaccurate plea agreement documents from March 5, 1999." Troupe does not make clear what changes should have been made to those documents. The trial court did correct the judgment and sentence to delete the improperly included juvenile adjudications from Troupe's criminal history and offender score. To the extent Troupe is arguing that the inclusion of the 1999 conviction in his criminal history and offender score made his plea involuntary, he is mistaken for the reasons set out above.

Troupe fails to demonstrate any grounds for relief. Accordingly, it is hereby

ORDERED that Troupe's petition is dismissed as frivolous under RAP 16.11(b).

His motion for appointment of counsel is denied.

DATED this 25<sup>th</sup> day of September, 2008.

  
Acting Chief Judge

cc: David A. Troupe, Jr.  
Lewis County Clerk  
County Cause No. 99-1-00045-0  
Lori Smith

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED  
MAR 16 P 1:31  
CLERK

In re the Personal Restraint of  
DAVID ALLEN TROUPE, JR.,  
Petitioner.

NO. 82324-3  
RULING DENYING REVIEW

David Troupe was sentenced in 1999 after pleading guilty to first degree robbery, first degree unlawful possession of a firearm, possession of an unlawful firearm, and second degree robbery. He was resentenced in 2005 after the Court of Appeals granted his personal restraint petition. As directed, the sentencing court removed juvenile adjudications from Mr. Troupe's offender score. Over Mr. Troupe's objection, the sentencing court included in his offender score a 1999 conviction that did not exist at the time of his first sentencing. The Court of Appeals affirmed the new sentence on direct appeal. Mr. Troupe now seeks discretionary review of an order of the acting chief judge of Division One of the Court of Appeals dismissing his latest personal restraint petition. RAP 16.14(c); RAP 13.5A(a)(1).

Mr. Troupe's challenge rests on the proposition that including in his offender score a conviction entered after his original sentencing rendered his guilty plea involuntary, justifying withdrawal of the plea for a manifest injustice. *See* CrR 4.2(f). But it is well settled that a conviction entered after the original sentencing but before resentencing is a prior conviction for purposes of determining the defendant's

offender score at resentencing. *State v. Collicott*, 118 Wn.2d 649, 665, 827 P.2d 263 (1992); *State v. Clark*, 123 Wn. App. 515, 519, 94 P.3d 335 (2004). Mr. Troupe understood from his plea agreement that the plea was binding even if additional criminal history was discovered. *See State v. Codiga*, 162 Wn.2d 912, 930, 175 P.3d 1082 (2008) (defendant assumes risk additional criminal history will be discovered). That provision applied when Mr. Troupe was resentenced after committing another crime. Mr. Troupe fails to demonstrate any persuasive basis for challenging the validity of his guilty plea. And because the claimed invalidity of the plea forms the basis for Mr. Troupe's claims of ineffective assistance of counsel and failure of the trial court to inform him that he could withdraw his plea, those claims also necessarily fail.

The motion for discretionary review is denied.

  
COMMISSIONER

March 16, 2009

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

**DIVISION II**

In re the Personal Restraint Petition of:

David Allen Troupe, Jr.,

Petitioner.

No. 37227-4-II

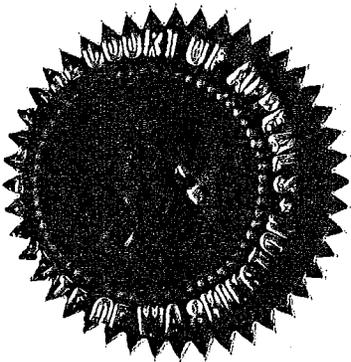
CERTIFICATE OF FINALITY

Lewis County

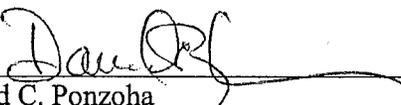
Superior Court No. 99-1-00045-0

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

This is to certify that the decision of the Court of Appeals of the State of Washington, Division II, filed on September 25, 2008, became final on April 16, 2009.



**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 21st day of May, 2009.

  
David C. Ponzoha  
Clerk of the Court of Appeals,  
State of Washington, Division II

Lori Ellen Smith  
Lewis Co. Prosecuting Atty. Office  
345 W Main St Fl 2  
Chehalis, WA, 98532-4802

David Allen Troupe, Jr.  
#765714 / Hospital  
Washington Corr. Ctr.  
P.O. Box 900  
Shelton, WA, 98584

## Hoyt, Trina (ATG)

---

**From:** Bushaw, Tina (ATG)  
**Sent:** Friday, April 24, 2015 11:31 AM  
**To:** Hoyt, Trina (ATG)  
**Cc:** vanRoojen, Cassie (ATG); Ronning, Kate (ATG)  
**Subject:** Troupe, David - 3 state court strikes RAP 16.11(b)

FYI:



Troupe-OrderDi... Troupe-OrderDi... Troupe-OrderDi...

*Tina Bushaw*

Paralegal 2  
Corrections Division  
PO Box 40116  
Olympia, WA 98504-0116  
Phone: (360) 586-5147  
Fax: (360) 586-1319  
Mailstop: 40116