

Ross G. Jackson #173988
Arizona State Prison Complex-Tucson
Echo Unit
P.O. Box 24402
Tucson, Az 85734-4402

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JUN 25 2007	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	S. DEPUTY

IN Pro-Se

original

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ross Garret Jackson
Petitioner

Case No. CV07-931-PHX-EHC(DKD)

vs.

Motion for Relief
Under Rule 27
General Application

Dora Schirino

Respondent ET-AL

Judge Earl H. Carroll

Opening Brief

Table of Federal Rules

Title 28 U.S.C.

§ 2254

§ 2241(c)(3)

Table of Constitutional Amendments

Sixth Amendment

Due Process

Article VI

Table of Federal Rules of Appellate Procedure

Rule 23.(b)(3)

Rule 27.(a)(1)

Table of Citations

Blakely v. Washington NO.-02-1632 (2004)

Preiser v. Rodriguez supra 411 U.S. at 484

Petitioner calls this honorable court's attention to Title VII of Federal Rules of Appellate Procedure

Rule 27(a)(1) General Application for Relief:

Ross G. Jackson prays this honorable court to find merit in his motion, and support his relief requested within the essence and color of the law. Mr. Jackson is before this court within the boundaries of United States

District Court of Arizona under 28 U.S.C. § 2254 and seeks a determination that his custody is in violation of the United States Supreme Court ruling under Blakely v. Washington NO-02-11632; decided on June 24, 2004.

Mr. Jackson signed his plea to the presumptive of 3.5 years on Oct. 27, 2004; in turn, sentencing on January 18, 2005. The Honorable James Kepple took it upon himself to aggravate the sentence an additional 1.5 years, by the so-called preponderance of evidence. For the record, there is no factual basis for this sentence. And shows a violation of the constitutional right under the Sixth Amendment set forth by the Framers they derive from, thus supported by the Act of 1789, organizing the United States Supreme Court and establishing the system of federal courts of inferior jurisdiction. Therefore, with the correct intendment of the Constitution; Article VI; declaring

the judges of the state courts to be bound by the Constitution and the laws and treaties of the United States. The state courts are governed by the decision of the Supreme Court, and their decisions are subject to review. Thus within the essence of the great writ of habeas corpus, creating the proper cornerstone for the building and structure of this motion.

To show cause why Mr. Jackson should be released and supported by Preiser v. Rodriguez supra, 411 U.S. at 484 states, "the traditional function of the writ is to secure release from illegal custody."

When we calculate time from sentencing and with 207 days detained in the inhumane jail system of Maricopa County; we will show the true release date of 3.5 years at 85%.

$3.5 \text{ years} = 1277.5 \text{ days} \times .15\% \text{ (the lesser of } 85\%) = 191$, plus 207 days of back time = 398.5 - that number from 1277.5 equals 879 - the time from sentencing of Jan. 18, 2005 to June 16th, 2007; showing the exact number of 879 days.

June 16, 2007; is the correct E.R.C. date on 3.5 years Mr. Jackson signed for. Thus bringing forth Title

28 USC § 2241(c)(3); and states, "he is in custody in violation of the Constitution, or laws or treaties of the United States.

In light of Federal Rules of Appellate Procedure, Mr. Jackson seeks relief from custody under Rule 23(b)(3); release of a prisoner in a Habeas Corpus proceeding.

Conclusion and Relief

The Federal question is: Is Mr. Jackson being held in violation of the Constitution?

The United States Constitution is the instrument which fixed the boundaries of the fundamental rights and privileges of the private individual.

The Bill of Rights is a series of declarations setting forth certain fundamental and inalienable civil rights of citizens. It imposes upon the government, a prohibition against interfering with the enjoyment of such rights, or defines the mode of procedure to be followed by government when it undertakes to deprive an individual of his life, liberty or property, as state courts intended.

Also, it contains declarations guaranteeing the right of petition, and of the writ of habeas corpus, and various other guarantees, which collectively constitute the "Rule of Due Process of Law in Judicial Procedure. It was intended by the Framers of the Constitution to furnish guarantees on behalf of individual liberty.

Therefore, Mr. Jackson prays this honorable court to uphold the relief requested, and entertain this motion supported by his application for a writ of habeas corpus on behalf that he is in custody pursuant to the judgement of a state court, only on the ground that he is in custody in violation of the Constitution, or treaties of the United States.

Respectfully submitted this 15 day of June, 2007.
By: Ross G. Jackson
R G J

IISO008 RQSTR:

TIME COMPUTATION

DATE 03/21/07

NAME: JACKSON, ROSS G.

ADC NO.: 173988

*RECORD AUDITED 04/22/2005

LOCATION: ASPC-T ECHO UNIT

YOU HAVE BEEN COMMITTED TO THE ADOC TO SERVE THE FOLLOWING SENTENCES.
THE TENTATIVE RELEASE DATES LISTED BELOW ARE ONLY A PROJECTION AND
REFLECT TOTAL GOOD TIME CREDITS; 31-251 AND 31-252, OLD CODE;
41-1604.07, NEW CODE; WHICH CAN BE EARNED, EXCEPT FOR CERTAIN STAT-
UTES WHICH REQUIRE THE SERVICE OF FLAT TIME. IF ALL THE PROJECTED
CREDITS ARE NOT EARNED, THESE TENTATIVE RELEASE DATES WILL CHANGE.

COUNTY CAUSE NO.	COUNT NO. CC CS	OFFENSE DATE	FELONY CL.TYPE	SENTENCE BEGAN	SENTENCE LENGTH	PAROLE RELEASE DATE	ELIG.
MARICOPA 2004037728001S	B-01	01/21/98	3 ND/NR	06/25/04 207 JAIL	5.000YR	10/20/2008	
MARICOPA 2003035748001S	C-02 B	11/22/02	3 ND/NR	06/25/04 207 JAIL	5.000YR	10/20/2008 NOT APPL	

FINAL DATES:

ERCD WITHOUT TR DTE 10/07/2008

COMM.SUPERVISN.BEGIN-07/22/2008

COMM.SUPERVISN.END- 07/21/2009

*RECORD AUDITED 04/22/2005

LOCATION: ASPC-T ECHO UNIT

June 16 2007 = ERC

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.)
)
ROSS GARRET JACKSON)
)
Defendant)

NO. CR 2003-035748-001SE
PLEA AGREEMENT

FILED
10-27-04 9:52am
MICHAEL K. JEANES, Clerk
By [Signature]
Deputy

The State of Arizona and the Defendant hereby agree to the following disposition of the case:

Plea: The Defendant agrees to plead guilty to:

Count 2: Trafficking in Stolen Property in the Second Degree, a class 3 felony, in violation of A.R.S. §§ 13-2301, 13-2307, 13-701, 13-702, 13-702.01, 13-801, 13-610 committed on November 22, 2002.

This is a nondangerous, nonrepetitive offense under the criminal code.

THIS OFFER EXPIRES AND IS REVOKED IF NOT ENTERED IN COURT BY May 11, 2004.

Terms: On the following understandings, terms and conditions:

1. This crime carries a presumptive sentence of 3.5 years; a minimum sentence of 2.5 years (2.0 years if the Court makes exceptional circumstances finding); and a maximum sentence of 7.0 years (8.75 years if the trial court makes exceptional circumstances finding). Probation is available. Restitution of economic loss to the victim and a waiver of extradition for probation revocation proceedings are required. The maximum fine that can be imposed is \$150,000 plus an 80% surcharge plus \$5. If the Defendant is sentenced to prison, the Defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served consecutively to the actual period of imprisonment. If the Defendant fails to abide by the conditions of community supervision, the Defendant can be required to serve the remaining term of community supervision in prison. Special conditions regarding sentence imposed by statute (if any) are: Pursuant to ARS 13-610, the defendant shall submit to Deoxyribonucleic Acid (DNA) testing for law enforcement identification purposes.

2. The parties stipulate to the following additional terms, subject to court approval at the time of sentencing as set forth in paragraph 7.) The defendant shall be sentenced to the Arizona Department of Corrections for a term no less than the presumptive. This sentence shall run concurrent with sentences in Maricopa County Superior Court CR2004-036320-001SE and CR2004-037728-001SE.

3. The defendant shall pay restitution to all victims, even victims of dismissed counts, for all economic loss arising out of Mesa Police DR2002-3260619, in an amount not to exceed \$2000.00.

4. The following charges are dismissed or, if not yet filed, shall not be brought against the Defendant:
Count 1: Allegation of one historical prior; Allegation that defendant was on probation; Allegation of ARS 13-702.02.

5. This agreement serves to amend the complaint or information, to charge the offense to which the Defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea are automatically reinstated.

6. If the Defendant is charged with a felony, he hereby waives and gives up his rights to a preliminary hearing or other probable cause determination on the charges to which he pleads. The Defendant agrees that this agreement shall not be binding on the State should the Defendant be charged with or commit a crime between the time of this agreement and the time of sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the Defendant and his attorney, to-wit: The defendant had one prior felony conviction at the time of the offense. The defendant was on probation in Maricopa County Superior Court CR9990745 but was not on parole or release for any other felony offense at the time of commission of this offense. If the Defendant fails to appear for sentencing, the court may disregard the stipulated sentence and impose any lawful sentence which is the same as or exceeds the stipulated sentence in the plea agreement. In the event the court rejects the plea, or either the State or the Defendant withdraws the plea, the Defendant hereby waives and gives up his right to a preliminary hearing or other probable cause determination on the original charges.