IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JOHNATHAN PAUL QUINATA, Appellant.	No. 42415-1-II UNPUBLISED OPINION

Armstrong, J. — Johnathan Quinata appeals from the trial court's order transferring his motion to modify his judgment and sentence to this court to be considered as a personal restraint petition. We conclude that the transfer order is not appealable as a matter of right.[1]

The underlying facts are not relevant to our decision. The State charged Quinata with second degree assault, while armed with a firearm (count 1); harassment, while armed with a firearm (count 2); second degree unlawful possession of a firearm (count 3); and unlawful imprisonment, while armed with a firearm. As part of a plea agreement, the State amended its information in counts 1 and 2 to change the allegations from being armed with a firearm to being armed with a deadly weapon and in count 4 to delete the allegation of being armed with a firearm. Those amendments reduced Quinata's standard sentence range from 85 to 89 months of

[1] A commissioner of this court initially considered Quinata's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

confinement to 31 to 35 months of confinement. Quinata signed a statement on plea of guilty indicating that he wished to enter a *Newton*[2] plea of guilty to accept the State's offer. On July 11, 2011, the trial court accepted Quinata's plea, found him guilty as charged in the amended information and sentenced him to 33 months of confinement.

On July 28, 2011, Quinata filed a motion to modify his judgment and sentence under CrR 7.8, arguing that his offender score was miscalculated and that his trial counsel coerced him into entering his plea. The trial court entered the following order:

> [T]he Court:
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> . . . .
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> Having determined that the motion is not barred by RCW 10.73.090 (motion was filed within one year of date judgment and sentence became final or judgment and sentence is invalid on its face), but having determined that the Defendant has not made a substantial showing that s/he is entitled to relief or that an evidentiary hearing will be necessary to resolve the motion on the merits, hereby transfers this matter to the Court of Appeals for its consideration as a personal restraint petition.

Clerk's Papers at 71.

Upon receiving the order transferring Quinata's motion, we concluded that the transfer was proper and opened the motion as a personal restraint petition under cause number 42867-9-II. That petition is stayed pending this appeal.

Quinata appeals from the order transferring his CrR 7.8 motion. CrR 7.8(c)(2) provides that the trial court

> shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

[2] *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976); *see also North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Quinata argues that the trial court erred in transferring his CrR 7.8 motion because resolution of that motion required a factual hearing on his claims of a miscalculated offender score and of coercion. The State responds that the order transferring Quinata's CrR 7.8 motion is not appealable as a matter of right because it does not fall within RAP 2.2(a).

We agree with the State. Because we will address his CrR 7.8 motion as a personal restraint petition, the order transferring the CrR 7.8 motion is not a final order and does not fall within any of the other orders made appealable as a matter of right under RAP 2.2(a). Therefore, the order transferring Quinata's CrR 7.8 motion is not appealable as a matter of right.

An order transferring a CrR 7.8 motion could be subject to discretionary review under RAP 2.3(b). Under that rule, we may review a trial court order if the moving party demonstrates that:

> (1) The superior court has committed an obvious error which would render further proceedings useless;
> (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
> (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or
> (4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b).

Quinata does not show that discretionary review of the order transferring his CrR 7.8 motion would be warranted. He stipulated to the offender score in his statement on plea of guilty and so waived his opportunity to argue that counts 1 and 2 were parts of the same criminal

conduct under RCW 9.94A.589(1)(a). And he denied having been coerced in both his statement of plea of guilty and during his plea colloquy.

We dismiss Quinata's appeal from the order transferring his CrR 7.8 motion to this court. We deny discretionary review of that order as well.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Penoyar, C.J.

Johanson, J.