

September 23, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the
Personal Restraint Petition of:

No.58523-5-II

MICHAEL GREGORY RAMSEY,

PART PUBLISHED OPINION

Petitioner.

MAXA, J. – Michael Ramsey challenges his conviction for second degree rape. He filed a timely personal restraint petition (PRP) asserting several claims. He also asserted two new claims in supplemental briefing filed more than one year after his judgment and sentence became final.

We hold that the new claims raised in Ramsey’s supplemental briefing must be dismissed as time barred because they were raised for the first time in untimely briefs and no exception to the one year time bar applies. However, we hold that the remaining claims are not time barred because the mixed petition rule does not apply in this situation. In the unpublished portion of this opinion, we reject Ramsey’s timely claims. Accordingly, we deny Ramsey’s PRP.

FACTS

In December 2019, a jury convicted Ramsey of second degree rape. On appeal, this court affirmed the conviction but granted relief regarding several community custody conditions and the imposition of community custody supervision fees. *State v. Ramsey*, No. 54638-8-II, slip op.

at 1-2 (Wash. Ct. App. Mar. 22, 2022) (unpublished),

<http://www.courts.wa.gov/opinions/pdf/D2%2054638-8-II%20Unpublished%20Opinion.pdf>.

The direct appeal mandated August 16, 2022. On August 15, 2023, the trial court entered an order striking several community custody conditions and the community custody supervision fees from Appendix H of the judgment and sentence.

On August 9, 2023, Ramsey filed a timely PRP that asserted three claims. A commissioner of this court granted Ramsey's request for an extension of time in which to file a supplemental PRP. In the ruling, the commissioner cautioned Ramsey that any new issues or grounds raised for the first time in the supplemental filing were subject to the one year time bar under RCW 10.73.090.

Ramsey filed a brief in support of his PRP on January 11, 2024. In February 2024, this court appointed counsel and referred the PRP to a panel. Ramsey's counsel filed a supplemental brief on December 4, 2024.

ANALYSIS

In his PRP brief, Ramsey asserts a new claim. In counsel's supplemental brief, he asserts another new claim. Both briefs were filed more than one year after Ramsey's judgment became final. Neither claim was raised in Ramsey's timely PRP. We hold that these two new claims are time barred, but we will consider the other claims asserted in the timely PRP because the mixed petition rule is inapplicable.

A. DATE TIME BAR BEGAN TO RUN

Under RCW 10.73.090(1), a defendant may not collaterally attack their judgment and sentence "more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction" unless one of the

exceptions in RCW 10.73.100 applies. Under RAP 16.8(e), the appellate court may allow a petitioner to amend their petition. However, “[a]ll amendments raising new grounds are subject to the time limitation provided in RCW 10.73.090 and 10.73.100.” RAP 16.8(e); *see also In re Pers. Restraint of Haghighi*, 178 Wn.2d 435, 446-47, 309 P.3d 459 (2013) (holding that an amended PRP does not “relate back” to the original filing and any new claim must be timely raised); *In re Pers. Restraint of Tricomo*, 13 Wn. App. 2d 223, 242, 463 P.3d 760 (2020) (new claim in an untimely amended petition does not “relate back” to the timely filed petition).

RCW 10.73.090(3) defines when a judgment becomes final for purposes of RCW 10.73.090, including “the date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction.” RCW 10.73.090(3)(b).

Where an appellate court decision remands a case to the trial court for further action, when a judgment becomes final for purposes of RCW 10.73.090 depends on whether the appellate court requires the trial court to exercise independent judgment and whether any appealable issue would remain following the trial court’s post-appeal action. *In re Pers. Restraint of Sorenson*, 200 Wn. App. 692, 699-700, 403 P.3d 109 (2017). If the trial court does not exercise its independent judgment, then RCW 10.73.090(3)(b) applies and the mandate of the direct appeal is the relevant date for purposes of RCW 10.73.090. *Id.* at 700.

Here, this court remanded the case for the trial court to strike specific community custody provisions and community custody supervision fees from Ramsey’s judgment and sentence. *Ramsey*, No. 54638-8-II, slip op. at 2. The remand did not require the trial court to exercise its discretion. Therefore, the one-year time bar began running when the direct appeal mandated on August 16, 2022.

Ramsey timely filed his original PRP on August 9, 2023. But Ramsey filed his brief in support of his PRP in January 2024 and his counsel filed his brief in December 2024, both well after the one-year time bar expired in August 2023. Accordingly, any new issues raised in these filings are time barred unless they implicate the facial validity of the judgment and sentence or the court's competent jurisdiction, or each of the issues fall under an exception to the time bar enumerated in RCW 10.73.100.

B. ISSUES RAISED IN UNTIMELY SUPPLEMENTAL BRIEFING

In his brief in support of his PRP and in his counsel's supplemental brief, Ramsey argues for the first time that (1) Woods's *initial* entry onto Ramsey's property was unlawful, and (2) his defense counsel was ineffective because he failed to elicit express testimony from Ramsey that he denied raping SB. Neither of these claims implicate the facial validity of the judgment and sentence or the trial court's jurisdiction. Nor do they fall under any of the enumerated exceptions in RCW 10.73.100. Accordingly, these claims are dismissed as time barred.

C. MIXED PETITION RULE IS INAPPLICABLE

If an untimely PRP raises one or more claims that fall within one of the statutory exceptions in RCW 10.73.100 but also raises one or more claims that are time barred, the PRP is a "mixed petition" that must be dismissed. *In re Pers. Restraint of Young*, 21 Wn. App. 2d 826, 830, 508 P.3d 687 (2022). This rule derives from RCW 10.73.100, which states that the one-year time limit in RCW 10.73.090 does not apply only if the PRP is based "solely" on one or more of the listed exceptions. *In re Pers. Restraint of Thomas*, 180 Wn.2d 951, 953, 330 P.3d 158 (2014); *see also In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 699-700, 72 P.3d 703 (2003). "A petition which relies upon RCW 10.73.100 to overcome the one-year time bar in

RCW 10.73.090 cannot be based upon any grounds other than the . . . grounds in RCW 10.73.100.” *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003).

This mixed petition rule applies only when a PRP is filed beyond the one-year time limit, but not all of the claims fall under one of the RCW 10.73.100 exceptions to the time bar. *See In re Pers. Restraint of Williams*, 200 Wn.2d 622, 632, 520 P.3d 933 (2022) (“This court has held that if a personal restraint petition with multiple claims is *filed after the one-year period expires* and the court determines that at least one of the claims is time barred, the petition must be dismissed.”) (emphasis added); *Hankerson*, 149 Wn.2d at 702 (“[I]f a personal restraint petition claiming multiple grounds for relief is *filed after the one-year period of RCW 10.73.090 expires*, and the court determines that at least one of the claims is time barred, the petition must be dismissed.” (Emphasis added)).

However, the mixed petition rule does not apply to claims filed beyond the one-year time limit that are not subject to the time bar under RCW 10.73.090(1) because they involve a judgment and sentence that is invalid on its face. *Williams*, 200 Wn.2d at 632. This is because those claims do not rely on one of the RCW 10.73.100 exceptions and therefore are not subject to the “solely” restriction in that statute. *Id.*; *see also Hankerson*, 149 Wn.2d at 700. As the court in *Williams* stated, “Because Williams asserts one claim under RCW 10.73.100(6) and a second claim under RCW 10.73.090, the mixed petition rule does not apply to Williams’ claim that his [judgment and sentence] was invalid on its face.” 200 Wn.2d at 632.

This “exception” to the mixed petition rule necessarily applies to claims asserted in a PRP that is filed within the one year time period stated in RCW 10.73.090(1) when additional untimely claims are raised in supplemental briefing. As with claims involving facial invalidity, claims that are timely filed under RCW 10.73.090(1) do not rely on RCW 10.73.100 and

therefore are not subject to the “solely” restriction. *See In re Pers. Restraint of Quintero*, 29 Wn. App. 2d 254, 308-09, 541 P.3d 1007, *review denied*, 3 Wn.3d 1018 (2024) (holding that the mixed petition rule did not apply when the petitioner raised an untimely claim in a supplemental brief because the petitioner filed a timely PRP and did not rely on RCW 10.73.100 to overcome the one-year time bar); *see also Haghighi*, 178 Wn.2d at 440-41, 441-49 (addressing the merits of a claim in a PRP filed before the one-year time limit expired but dismissing as time barred a claim raised in an untimely amended PRP).

Here, unlike in the “typical” mixed petition case, Ramsey filed his PRP within the one-year time limit stated in RCW 10.73.090(1). Only later did he raise additional claims that were time barred. Therefore, the mixed petition rule as stated in *Williams* and *Hankerson* does not apply to the timely-filed claims. We conclude that the claims asserted in the original, timely PRP are not subject to the mixed petition rule.

This court reached the opposite conclusion in *In re Personal Restraint of Racus*, 26 Wn. App. 2d 447, 455-56, 527 P.3d 833 (2023). In that case, the petitioner filed a timely PRP but then filed a supplemental PRP raising a new issue after the one-year limit had expired. *Id.* at 451. After concluding that the new issue did not fall under the exception to the time bar in RCW 10.73.100(6), the court without much analysis dismissed the PRP under the mixed petition rule. *Id.* at 455-56. The court recognized that the mixed petition rule did not apply to a “claim of error arising under RCW 10.73.090(1) – to wit, that the judgment and sentence contains a facial invalidity or that the judgement and sentence was not rendered by a court of competent jurisdiction.” *Id.* at 455 n.6. The court applied the mixed petition rule because none of the petitioner’s claims involved facial invalidity or lack of jurisdiction. *Id.*

We decline to follow *Racus* because the court failed to recognize that claims asserted in a timely filed PRP are claims of error arising under RCW 10.73.090(1) that do not rely on RCW 10.73.100 to avoid the time bar. Like claims involving facial invalidity or lack of jurisdiction, claims filed within the one year limit are not timed barred. Therefore, they are not subject to the mixed petition rule.

We will consider the claims raised in Ramsey's timely PRP despite the fact that he raised time barred claims in supplemental briefing. In the unpublished portion of this opinion, we reject those timely claims.

CONCLUSION

After considering Ramsey's timely-raised claims, we deny Ramsey's PRP.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

UNPUBLISHED PORTION

In his PRP, Ramsey argues that (1) evidence and testimony should have been suppressed at trial because a deputy sheriff used a ruse to enter into his house and speak with him, (2) he received ineffective assistance of counsel on multiple grounds, and (3) his term of community custody imposed under the indeterminate sentencing scheme should be reversed because the term "statutory maximum" in RCW 9.94A.507(3)(b) is unconstitutionally vague.

We hold that (1) Ramsey fails to establish that suppression was appropriate because his trial testimony and affidavit in support of his PRP contradict his assertion that the deputy used a ruse or pretext to enter his house, (2) his ineffective assistance of counsel claims fail, and (3)

Ramsey fails to demonstrate that the term “statutory maximum” as used in RCW

9.94A.507(3)(b) is vague. Accordingly, we deny Ramsey’s PRP.

ADDITIONAL FACTS

Background

In his direct appeal, this court described the events that led to Ramsey’s arrest as follows:

Ramsey and the victim, SB, worked together at a store in Tumwater, and would take breaks together. They discussed Ramsey’s relationship with his ex-wife and daughter, and SB’s relationship with her ex-boyfriend and his family. Although they communicated via Facebook and Snapchat social media applications, Ramsey and SB did not communicate or associate regularly outside of work.

In July 2019, SB sent a Snapchat message to multiple people, asking if anyone wanted to get dinner together. Ramsey responded, and the two agreed to meet at a restaurant in Olympia at around 3:00 PM. During the meal, Ramsey asked SB if she had plans for the rest of the day and invited her to visit his farm in Centralia. SB agreed to visit Ramsey’s farm, but told him she had to be home by 7:00 PM for a study session. There was no study session; SB wanted to set a time because she did not want to be with Ramsey for too long.

They left from the restaurant and Ramsey drove SB in his car to his farm. Once at the farm, Ramsey led SB around the property. When they reached an orchard, Ramsey placed a coat on the ground and asked SB to sit on it with him, and she did. Ramsey tried to kiss SB, but she leaned away and said she wanted to go home. SB repeatedly told Ramsey, “No, stop, I want to go home,” but Ramsey pinned her down. 1 Verbatim Report of Proceedings (VRP) at 170. SB tried to push Ramsey away but he forcefully raped her. He eventually stopped and they walked to Ramsey’s house.

Later, Ramsey agreed that SB could leave. SB insisted on driving Ramsey’s car back because she did not trust Ramsey to take her back to Olympia. They returned to the restaurant, and SB got in her car and drove to her friend’s house. SB’s friend took her to the hospital where they conducted a sexual assault exam. The following day, SB called the police.

Lewis County Sheriff Deputy Emmett Woods was assigned to investigate the case. After interviewing SB, he went to Ramsey’s farm. There, Deputy Woods interviewed Ramsey and asked to be taken around the farm. Ramsey did not allow Deputy Woods to photograph the property. Deputy Woods arrested Ramsey and returned later to the farm with a warrant and photographed the property.

....

The State charged Ramsey with second degree rape. The case proceeded to a jury trial in December 2019. At trial, witnesses testified to the facts stated above. Ramsey asserted a consent defense.

Ramsey, No. 54638-8-II, slip op. at 2-3.

Trial Testimony

In addition to the testimony described above, Ramsey's brother James Ramsey testified that a few days after SB visited the property, a deputy sheriff arrived at Ramsey's residence and asked to speak to Ramsey. James¹ asked the deputy if this was related to some illegal dumping that Ramsey had reported. The deputy responded "that and other things." Rep. of Proc. (RP) at 500. James also stated that the deputy "mentioned that there had been an incident, [and] he had given [S's] name." RP at 501.

James further testified that he did not know what the deputy was talking about. But he knew that the deputy wanted to talk to Ramsey about an "incident that happened" regarding a woman that had been at the farm. RP at 507. The deputy left a business card and James immediately attempted to contact Ramsey to tell him that the deputy wanted to speak with him. James stated that the deputy came by again and had talked to their brother Joseph Ramsey about trying to contact Ramsey. The brothers eventually contacted Ramsey and he came home. The brothers gave Ramsey the business card so he could call the deputy.

Ramsey testified that that when he first became aware that Woods wanted to talk to him, he initially thought Woods wanted to talk to him about "unwanted activity at the end of the road." RP at 545. But before his contact with Woods, Ramsey realized "that it was involving [SB]." RP at 545-46. Ramsey stated that because he was unaware of why Woods wanted to talk

¹ Because Ramsey and James Ramsey share the same last name, we refer to James by his first name for clarity.

to him about SB, Ramsey attempted to contact her “to make sure she was all right to kind of see what was going on.” RP at 545. He was unable to reach her. Ramsey left a message letting Woods know “it was good if he wanted to come by.” RP at 547.

Ramsey testified that when he eventually talked to Woods, Woods did not clarify what had happened with SB. He just asked Ramsey if he was “aware of an incident that happened the other day,” and then mentioned SB. RP at 547. Ramsey testified that he told Woods that they had “made out, and everything else is personal.” RP at 548.

Verdict and Sentencing

The jury convicted Ramsey of second degree rape. At sentencing, the trial court addressed the effect of Ramsey’s testimony on the jury’s verdict:

I heard the testimony of Mr. Ramsey, and his obliviousness to the boundaries of what is acceptable behavior in our society and almost his joy on the stand in talking about his behavior and why he chose the behavior that he chose was very difficult to hear and I think was the thing that convinced the jury of his guilt, was his complete lack of understanding of what those boundaries were and what [SB] was going through during this.

RP at 658-69.

The trial court sentenced Ramsey to a minimum term of confinement of 102 months and lifetime community custody under the indeterminate sentencing scheme, RCW 9.94A.607.

ANALYSIS

A. PRP PRINCIPLES

To prevail in a PRP, the petitioner must establish by a preponderance of the evidence (1) a constitutional error that resulted in actual and substantial prejudice or (2) a fundamental defect of a nonconstitutional nature that inherently resulted in a complete miscarriage of justice. *In re Pers. Restraint of Meredith*, 191 Wn.2d 300, 306, 422 P.3d 458 (2018). Establishing “actual and substantial prejudice” means more than merely showing the possibility of prejudice; the

petitioner must establish that if the alleged error had not occurred, the outcome more likely than not would have been different. *In re Pers. Restraint of Meippen*, 193 Wn.2d 310, 315-16, 440 P.3d 978 (2019).

RAP 16.7(a)(2) requires a petitioner to specifically identify the evidence available to support the factual allegations in the PRP. *In re Pers. Restraint of Wolf*, 196 Wn. App. 496, 503, 384 P.3d 591 (2016). Conclusory allegations are insufficient. *Id.* Any factual allegations must be based on more than speculation and conjecture. *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 18, 296 P.3d 872 (2013). The petitioner must show that he has competent, admissible evidence to establish facts that would entitle him to relief. *Id.* And “if the ‘evidence is based on knowledge in the possession of others,’ ” the petitioner must present their affidavits with admissible statements or other corroborative evidence. *Id.* (quoting *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992)).

B. WOODS’S ENTRY INTO RAMSEY’S RESIDENCE

Ramsey argues that Woods’s warrantless entry into Ramsey’s residence was unlawful because any consent was vitiated by the fact Woods did not disclose the true reason for his presence. He also claims that any consent was coerced because Woods “seized” him when Woods entered his residence. We disagree.

Ramsey’s trial testimony and his affidavit do not support his argument that Woods misrepresented his reason for wanting to talk to Ramsey. In both his trial testimony and his PRP affidavit, Ramsey stated that although he initially thought that Woods was trying to contact him about illegal dumping, he also knew that Woods wanted to talk to him about an incident with a girl. Ramsey stated that he attempted to contact SB before he talked with Woods to find out what was going on.

Even assuming, but not deciding, that Woods was required to disclose the true purpose of his contact, the record does not show that Ramsey was unaware that Woods's purpose was, at least in part, to talk about an incident involving SB. Accordingly, Ramsey has not demonstrated that Woods's entry into his residence was unlawful.

C. INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

Ramsey argues that he received ineffective assistance of counsel based on defense counsel's failure to (1) move to suppress statements and evidence Woods obtained after entering his residence, (2) impeach SB with medical and police reports, (3) interview his brother Joseph Ramsey, (4) convey plea offers or discuss sentencing consequences, (5) prepare him to testify at trial, and (6) share discovery with him. Ramsey also argues that the cumulative effect of defense counsel's ineffective assistance was prejudicial. We reject these claims.

1. Legal Principles

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee criminal defendants the right to effective assistance of counsel. *State v. Vazquez*, 198 Wn.2d 239, 247, 494 P.3d 424 (2021). To prevail on an ineffective assistance of counsel claim, a petitioner must show both that defense counsel's performance was deficient and that the deficient performance was prejudicial. *Id.* at 247-48.

Counsel's representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Id.* To rebut the strong presumption that counsel's performance was effective, a petitioner bears the burden of establishing the absence of any legitimate strategic or tactical reason explaining counsel's conduct. *Id.* at 248. Prejudice exists if there is a reasonable probability that except for counsel's errors, the result of the proceeding would have been different. *Id.*

A petitioner who successfully demonstrates prejudice in an ineffective assistance of counsel claim necessarily has shown actual and substantial prejudice sufficient to obtain collateral relief. *State v. K.A.B.*, 14 Wn. App. 2d 677, 707-08, 475 P.3d 216 (2020).

2. Failure to Move to Suppress

Ramsey argues that defense counsel provided ineffective assistance of counsel by failing to move to suppress the evidence and statements obtained as a result of Woods's illegal entry into his residence. We disagree.

As discussed above, Ramsey fails to demonstrate that Woods's entry into his house was unlawful. Because of this, Ramsey also fails to demonstrate that defense counsel's performance was deficient for failing to move to suppress the evidence related to Woods's entry. Further, to establish actual and substantial prejudice based on defense counsel's failure to move to suppress, Ramsey must show that the trial court would have granted the motion. *State v. Scabbyrobe*, 16 Wn. App. 2d 870, 874, 482 P.3d 301 (2021). Ramsey fails to show that Woods's entry was unlawful, so it is unlikely that the court would have granted a motion to suppress had defense counsel made such a motion. Accordingly, we conclude that Ramsey fails to establish ineffective assistance of counsel on this basis.

3. Failure to Impeach SB

Ramsey argues that defense counsel was ineffective because he failed to impeach the State's star witness with medical and police reports that contradict the witness's version of events or to impeach the witness with their prior inconsistent statements. Ramsey does not identify this witness, but we assume the reference is to SB. We disagree.

Although Ramsey states that the medical report and police reports would contradict SB's testimony, he does not state what portions of SB's testimony were inconsistent with this

evidence. Without additional information, this claim of ineffective assistance of counsel is too vague to permit review. Accordingly, we conclude that Ramsey fails to establish ineffective assistance of counsel on this basis.

4. Failure to Interview Joseph Ramsey

Ramsey argues that defense counsel provided ineffective assistance of counsel because he failed to interview his brother Joseph.² We disagree.

Ramsey does not identify what additional information could have been acquired if defense counsel had interviewed Joseph. And although Ramsey provides an affidavit from Joseph, the affidavit does not appear to contain any information that Ramsey himself could not have shared with defense counsel. Because Ramsey does not establish that any additional evidence that Joseph could have provided, Ramsey does not show that defense counsel's failure to interview Joseph amounted to deficient performance or resulted in prejudice. Accordingly, we conclude that Ramsey fails to establish ineffective assistance of counsel on this basis.

5. Failure to Convey Plea Offer or Discuss Sentencing Consequences

Ramsey argues that defense counsel was ineffective because he failed to convey a plea offer to or discuss the sentencing consequences with Ramsey so Ramsey could make an informed decision regarding whether to go to trial. We disagree.

Nothing that Ramsey has provided to this court demonstrates that he has competent evidence to establish that the State made or intended to make a plea offer. Ramsey therefore fails to demonstrate that he has competent, admissible evidence to support this claim.

² Because Ramsey and Joseph Ramsey share the same last name, we refer to Joseph by his first name for clarity.

Accordingly, we conclude that Ramsey fails to establish ineffective assistance of counsel on this basis.

6. Failure to Prepare Ramsey to Testify at Trial

Ramsey argues that defense counsel provided ineffective assistance by failing to prepare him³ to testify at trial. We conclude that even if defense counsel was ineffective in this regard, Ramsey fails to establish that more preparation would have changed the result of the trial.

a. Background

“It is the duty of every trial advocate to prepare witnesses for trial. The preparation will vary depending upon the nature of the trial, the issue, and the type of witness.” *State v. Montgomery*, 163 Wn.2d 577, 592, 183 P.3d 267 (2008) (internal citation and footnote omitted).

Ramsey claims that he met with defense counsel only twice, for less than one hour combined, before trial. And he asserts that defense counsel never discussed his testimony, including what his testimony would be. He also states that he was on medication that affected his demeanor at trial, and defense counsel never interviewed him to assess whether he should discontinue the medication before trial. Ramsey contends that if he had been prepared to testify, his testimony and demeanor could have been vastly better. Ramsey also argues that the trial court’s comments at sentencing regarding the effect of Ramsey’s testimony and demeanor on the jury’s verdict establish actual and substantial prejudice.

In an affidavit supporting his PRP brief, Ramsey directs us to eight portions of his testimony and posits how this testimony would have been different if he had been properly advised. He asserts that if he had been properly advised, (1) he could have explained the word

³ In his original PRP, Ramsey refers to “witnesses” without identifying who these witnesses were. In his PRP brief, Ramsey clarifies that the witness was himself.

“bich” in a text message to SB, (2) he could have better articulated why he reached out to SB after being contacted by Woods, (3) several of his answers would have been shorter, and (4) he would not have elaborated as much.

b. Analysis

A review of the record shows that although Ramsey points to several instances where he arguably could have improved his testimony, the testimony involved was of little significance. Ramsey’s testimony filled 69 pages of the transcript, and overall his testimony was consistent with his consent defense. There is no indication that the result of the trial would have been different if Ramsey had given better answers to the questions he identifies.

Further, Ramsey was warned by the trial court to provide more direct responses, and four of the instances in which he asserts he would have provided more direct answers if he had been properly advised occurred after the trial court’s direction. This suggests that even if counsel had better prepared Ramsey, his testimony would not have significantly changed.

Ramsey fails to establish that more preparation for his testimony would have changed the result of his trial. Accordingly, we conclude that Ramsey’s ineffective assistance of counsel claim on this basis fails.

7. Failure to Share Discovery with Ramsey

Ramsey argues that defense counsel provided ineffective assistance of counsel because he failed to share discovery with Ramsey. We disagree.

Ramsey does not identify the content of the discovery or how knowledge of this discovery would have changed the results of the case. Without this information, he cannot establish that he was prejudiced by defense counsel’s alleged failure to share the discovery.

Accordingly, we conclude that Ramsey fails to establish ineffective assistance of counsel on this basis.

8. Cumulative Prejudice

Ramsey argues that the cumulative effect of defense counsel's deficient performance was prejudicial. We disagree.

The cumulative effect of multiple instances of deficient performance can satisfy the prejudice requirement of an ineffective assistance of counsel claim. *Vasquez*, 198 Wn.2d at 268-69. Here, for five of Ramsey's claims we do not conclude that defense counsel was ineffective. And on the remaining claim we conclude that Ramsey cannot show prejudice even if defense counsel was ineffective without addressing whether defense counsel in fact was ineffective. Accordingly, Ramsey's cumulative prejudice argument fails.

D. TERM OF COMMUNITY CUSTODY

Ramsey argues that his community custody term is unconstitutionally vague because it uses the ambiguous term "statutory max." He asserts that the term statutory maximum is ambiguous because the term has two different meanings under Washington case law. We disagree.

Ramsey refers to two cases without citations: *State v. Hughes* and *State v. Evans*. Given Ramsey's argument, it appears that Ramsey is citing to *State v. Hughes*, 154 Wn.2d 118, 131-32, 110 P.3d 192 (2005), *abrogated on other grounds by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006), and *State v. Evans*, 154 Wn.2d 438, 441, 114 P.3d 627 (2005). Both of these cases discuss the statutory definition of statutory maximum and the definition of statutory maximum in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L.

Ed. 2d 403 (2004), and *Apprendi v. New Jersey*, 530 U.S 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

RCW 9.94A.507 provides for the indeterminate sentencing of certain sex offenders. RCW 9.94A.507(3)(b) states, “The maximum term shall consist of the statutory maximum sentence for the offense.” Ramsey appears to be arguing that the term “statutory maximum” as used in RCW 9.94A.507(3)(b) is ambiguous because the statutory definition and the *Blakely/Apprendi* definition are different. But the definition of statutory maximum in *Blakely* and *Apprendi* is limited to determinate sentences. *Blakely*, 542 U.S. at 308-09 (distinguishing determinate and indeterminate sentencing). Here, Ramsey was sentenced to an indeterminate sentence under RCW 9.94A.507, so there is no ambiguity because the only definition that applies is the statutory definition. Accordingly, we conclude that this argument fails.


CONCLUSION

We deny Ramsey’s PRP.



MAXA, J.

We concur:



VELJACIC, A.C.J.



CHE, J.