

## **Address Retroactive Application**

### **By: Brett A. Purtzer; Jan 2005**

As many of you recall, the Washington State Supreme Court, in In Re Address, 147 Wn.2d 602, 56 P.3d 981 (2002), held that assault could not be a predicate felony for second degree felony murder. The question arising from Address was whether it would be applied retroactively. The Supreme Court answered that question in a unanimous decision in In Re Hinton, filed November 18, 2004.

Hinton, a consolidation of numerous cases, reviewed the propriety of continued incarceration for second degree felony murder convictions based upon assault as the predicate felony. The seminal question the court answered was whether the petitioners' PRPs were time barred by RCW 10.73.090(1) which states that, "No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face..." The court quickly disposed of such inquiry stating that because the convictions under RCW 9A.32.050, which relied upon assault as the predicate felony, were not convictions of a crime at all, the convictions were facially invalid because the defendants were being held on convictions of a non-existent crime. Further, the court found both actual and substantial prejudice established by the petitioners because of the wrongful convictions.

The court also addresses the 2003 statutory amendment that added assault to the category of felonies that can serve as predicate felonies for second degree felony murder and held that the statute could not be applied retroactively. Such application would violate the ex post facto clause of the state and federal constitutions, which prohibit laws being applied retroactively if they impose punishment for an act that was not punishable when committed. Accordingly, the court held that the petitioners were entitled to the relief requested and remanded the cases for further proceedings.

The retroactive effect of Address has been long awaited. This decision may also foreshadow the court's pending decision regarding retroactive application of Blakely v. Washington, where the court will determine whether exceptional sentences above the standard range that were decided prior to Blakely are valid.

End