

## WASHINGTON SUPREME COURT

# In re the Personal Restraint of Nichols, 171 Wash. 2d 370

256 P.3d 1202 (2011) · Decided April 28, 2011

### SUMMARY

The Washington Supreme Court considers whether Glenn Nichols could raise a state constitutional challenge to a warrantless examination of a motel registry for the first time in a personal restraint petition. The court holds that the claim could be raised in the petition and that the relevant constitutional rule applied retroactively, but concludes that the registry examination did not violate article I, section 7 because police had individualized suspicion of drug activity. The court affirms the denial of Nichols's personal restraint petition and rejects his ineffective assistance claims.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Washington Supreme Court                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Alexander, J.; Chambers, J.; Fairhurst, J.; Johnson, J.; Madsen, J.; Owens, J.; Sanders, J.; Stephens, J.                                                                                                                                                                                                |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                               |
| DECIDED               | April 28, 2011                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Review of the Court of Appeals' denial of Nichols's personal restraint petition challenging his convictions for possession of cocaine with intent to deliver and possession of marijuana.                                                                                                                |
| STANDARD OF REVIEW    | On personal restraint review, the petitioner must establish a constitutional violation resulting in actual prejudice or a nonconstitutional error constituting a fundamental defect that inherently results in a complete miscarriage of justice, and must show an unlawful restraint under RAP 16.4(c). |
| PRECEDENTIAL VALUE    | Published Washington Supreme Court opinion; binding state precedent.                                                                                                                                                                                                                                     |
| PARTIES               | Glenn Nichols v. State of Washington                                                                                                                                                                                                                                                                     |

### TOPICS

[post-conviction relief](#)[search and seizure](#)[criminal procedure](#)[ineffective assistance](#)[appellate procedure](#)

## PRACTICE AREAS

criminal procedure

post-conviction relief

constitutional law

appellate procedure

## QUESTIONS PRESENTED

1. Whether Nichols could raise an article I, section 7 search-and-seizure claim for the first time in a personal restraint petition.
2. Whether the Washington Supreme Court's decision in *State v. Jorden* applied retroactively to Nichols's collateral attack.
3. Whether the officers' warrantless examination of the motel registry violated article I, section 7 of the Washington Constitution.
4. Whether trial and appellate counsel were ineffective for failing to challenge the motel-registry examination.

## HOLDINGS

1. A petitioner may raise an article I, section 7 claim for the first time in a personal restraint petition, provided the petitioner satisfies the established requirements for a timely petition, including actual prejudice from a constitutional violation.
2. *Jorden* applies retroactively to cases that were not final when *Jorden* was decided.
3. The officers' examination of the Travelodge motel registry did not violate article I, section 7 because it was prompted by individualized and particularized suspicion that drug-selling activity had occurred in room 56, rather than being random or suspicionless.
4. Nichols failed to establish ineffective assistance of counsel because the motel-registry examination was lawful under article I, section 7, and therefore he could not show deficient performance or prejudice under *Strickland*.

## KEY QUOTATIONS

*“In a PRP, however, the petitioner and State are both allowed to present affidavits with relevant evidence outside the existing record.”* (at 375)

*“A random, suspicionless search is a fishing expedition, and we have indicated displeasure with such practices on many occasions.”* (at 377)

*“In sum, we conclude that because the questioning of the desk clerk at the Travelodge was not random and was conducted only because the police officers had individualized suspicion that drug selling activity had taken place in room 56 of that motel, the examination of the registry that took place shortly thereafter did not violate article I, section 7 of our state constitution.”* (at 379)

## FACTUAL BACKGROUND

A police informant observed Toreka Ativalu enter room 56 at a Seattle Travelodge and return with cocaine after stating that she was obtaining it from her supplier. About two hours later, Seattle police asked the motel desk

clerk who was registered in room 56; the clerk voluntarily provided a registration form and a photocopy of Glenn Nichols's driver's license. The officers learned that Nichols's license was suspended, arrested him when he arrived at the motel for driving with a suspended license, and found cocaine, marijuana, and prerecorded police buy money during a search incident to the arrest.

## PROCEDURAL HISTORY

Nichols was convicted following a bench trial after the trial court denied his motion to suppress evidence seized during a search incident to his arrest. He appealed, but did not raise the motel-registry issue on direct appeal. While the direct appeal was stayed, he filed a personal restraint petition challenging the warrantless examination of the motel registry. The Court of Appeals denied the petition, and the Washington Supreme Court granted review and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- In re Pers. Restraint of Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004)
- In re Pers. Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990)
- In re Personal Restraint of Hews, 99 Wn.2d 80, 660 P.2d 263 (1983)
- In re Pers. Restraint of Market, 154 Wn.2d 262, 111 P.3d 249 (2005)
- In re Pers. Restraint of Davis, 152 Wn.2d 647, 101 P.3d 1 (2004)
- State v. Robinson, 171 Wn.2d 292, 253 P.3d 84 (2011)
- State v. Millan, No. 83613-2
- In re Pers. Restraint of Rice, 118 Wn.2d 876, 885, 828 P.2d 1086 (1992)
- State v. Chenoweth, 160 Wn.2d 454, 472 n.14, 158 P.3d 595 (2007)
- In re Pers. Restraint of St. Pierre, 118 Wn.2d 321, 823 P.2d 492 (1992)
- In re Personal Restraint of Taylor, 105 Wn.2d 683, 717 P.2d 755 (1986)
- State v. Jorden, 160 Wn.2d 121, 127-130, 156 P.3d 893 (2007)
- City of Seattle v. Mesiani, 110 Wn.2d 454, 755 P.2d 775 (1988)
- York v. Wahkiakum School District No. 200, 163 Wn.2d 297, 178 P.3d 995 (2008)
- Strickland v. Washington, 466 U.S. 668, 687-695, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Thomas, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987)
- State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)