

FILED
Court of Appeals
Division II
State of Washington
5/27/2020 4:39 PM

IN COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,	)	No. [REDACTED]
Respondent,)	
v.	)	EMERGENCY
[REDACTED]	)	MOTION TO STAY
Appellant.	)	SENTENCE UNDER RCW
	)	9.94A.585(3) AND FOR
	)	REVIEW OF TRIAL
	)	COURT'S DENIAL OF
	)	STAY UNDER RAP 8.2(b)
)	

I. IDENTITY OF MOVING PARTY AND RELIEF SOUGHT

[REDACTED] the appellant, moves for this Court to exercise its authority under RCW 9.94A.585(3) and order [REDACTED] placed on conditional release or bond. Alternatively, he asks that this Court overrule the trial court's denial of a stay and instruct that [REDACTED] request be granted, or at least reconsidered. RAP 8.2(b). [REDACTED] also requests expedited consideration of this emergency motion pursuant to RAP 17.4(b).

II. GROUND FOR RELIEF AND ARGUMENT

a. Background on appeal and trial court's denial of an appeal bond.

Following a jury trial in Pierce County, [REDACTED] was convicted of one count of first degree theft and two counts of second degree theft.

Based on aggravating factors, the court imposed an exceptional sentence upward on count one for a total sentence length of ten years. Trial counsel did not seek an appeal bond.

Appellate counsel filed a motion in the trial court seeking an appeal bond. App. I. [REDACTED] argued an appeal bond was appropriate primarily for three reasons. First, [REDACTED] was not a danger to the community. He is appealing convictions for theft, a non-violent offense, and his criminal history consists of non-violent offenses. Second, [REDACTED] who is incarcerated at the Monroe Correctional Complex, is at an increased risk of death or serious illness from COVID-19 due to his health condition, age, and status as an African-American. Inmates and staff at the facility have tested positive for COVID-19. Third, [REDACTED] has a home to reside at and a supportive wife, where he could social distance and stay safe.

The prosecution opposed [REDACTED] request, contending that an appeal bond should be completely denied. App. II.

[REDACTED] filed a reply. App. III. He also filed additional evidence to further substantiate his position that COVID-19 posed a significant risk of death or serious illness to him. App. IV.

Notwithstanding that counsel's communication with [REDACTED] had been hampered by the pandemic, the prosecution moved to strike the additional evidence submitted by [REDACTED] App. V.

Without holding a hearing or hearing oral argument from the parties, the trial court denied [REDACTED] request to set an appeal bond. App. VI. The trial court found that an appeal bond was inappropriate, concluding that (1) [REDACTED] posed a serious risk to the safety of members of the community if he were released; and (2) a stay of the sentence would create significant delay and this delay will unduly diminish the deterrent effect of the punishment. App. VI. at 1-2. As for [REDACTED] argument that an appeal bond was appropriate given the unique circumstances created by the pandemic to [REDACTED] health, the trial court concluded this did not matter. App. VI at 3. Recharacterizing [REDACTED] argument, the trial court concluded that [REDACTED] had not proved that Washington State was failing in its constitutional duty to provide for [REDACTED] safety and welfare. App. VI. at 3.

In a separate order, the trial court denied the State's motion to strike the additional evidence showing that the Department of Corrections considered COVID-19 to present an elevated risk to [REDACTED] health. App. VII.

b. *As a 53-year-old African male with high blood pressure and other health conditions, ██████████ is at an increased risk of death or serious illness from COVID-19. His incarceration at the Monroe Correctional Complex creates a significant risk that he will become infected.*

Washington is in throes of a pandemic from COVID-19. Nearly 100,000 lives across the country have been lost.¹ While Washington is in the process of slowly reopening its economy and society,² COVID-19 will not disappear anytime soon. And a second wave may occur in the fall.³

██████████ is incarcerated at the Monroe Correction Complex-WA State Reformatory. Due to his incarceration, ██████████ risk of contracting COVID-19 is substantially increased. As of submission, nine staff members and 18 incarcerated individuals at the Monroe Correctional Complex have tested positive for COVID-19.⁴ Given this fact, other incarcerated individuals at Monroe have certainly been quarantined or

¹ <https://www.nytimes.com/interactive/2020/05/24/us/us-coronavirus-deaths-100000.html?action=click&module=Top%20Stories&pgtype=Homepage>

² Washington is implementing a four-phased approach to recovery. https://www.governor.wa.gov/sites/default/files/SafeStartWA_4May20_1pm.pdf?utm_medium=email&utm_source=govdelivery.

³ <https://www.cnn.com/2020/05/02/health/coronavirus-second-wave-fall-season/index.html>.

⁴ <https://www.doc.wa.gov/news/covid-19.htm>.

placed in isolation.⁵ Tragically, a corrections officer at the Monroe Correctional Complex recently died from COVID-19.⁶

Healthcare staff from the Department of Corrections have identified [REDACTED] as being at an increased risk from COVID-19. App. IV, VIII.⁷ [REDACTED] is a 53-year-old African American male. App. VIII. African-Americans have suffered disproportionately from COVID-19.⁸ He suffers from high blood pressure and takes medications to address this condition. App. VIII. Having high blood pressure increases the odds of having worse symptoms or dying from COVID-19.⁹ [REDACTED] has medical complications from past injuries and suffers from joint pain and severe foot problems. App. VIII. He has extensive dental care and eye-

⁵ <https://www.doc.wa.gov/news/covid-19.htm> (recounting that, as of May 26, 2020, that systemwide 51 incarcerated individuals are in isolation and 366 incarcerated individuals are in quarantine).

⁶ <https://www.kiro7.com/news/local/departments-corrections-officer-dies-covid-19/S62PL3YXURERRL4XUIVZU3473Q/>.

⁷ Appendix VIII contains an unsigned declaration that counsel has sent to [REDACTED] to review and sign. Based on his conversation with [REDACTED] counsel expects [REDACTED] to sign the declaration. The declaration will be filed as soon as it is returned to appellate counsel.

⁸ <https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter>.

⁹ <https://www.webmd.com/lung/coronavirus-high-blood-pressure#1>

care needs. App. VIII. Among other medications, he takes pain medications. App. VIII. In sum, [REDACTED] health, age, and status as an African-American place him at a greater risk from COVID-19.

[REDACTED] conditions of confinement increase the risk of him contracting COVID-19. App. VIII. It is overcrowded and there is virtually no social distancing. App. VIII.

If granted an appeal bond, [REDACTED] declares he would abide by any conditions of release. App. VIII. He is married to a supportive wife who lives in Pierce County, where he could also reside if released. App. VIII. The risk of COVID-19 to [REDACTED] would be significantly mitigated if he were at home rather than imprisoned at a facility where COVID-19 has spread.

c. This Court should exercise its authority under RCW 9.94A.585(3) and order that a stay be grant while [REDACTED] appeal is pending.

“Pending review of the sentence, the sentencing court or the court of appeals may order the defendant confined or placed on conditional release, including bond.” RCW 9.94A.585(3) (emphasis added). By its plain language, this provision grants this Court authority to order [REDACTED] [REDACTED] release pending review. State v. Portomene, No. 81264-5-I, 2020

WL 2114633, at *3 (Wash. Ct. App. Apr. 29, 2020) (unpublished)¹⁰; see RAP 8.2(a) (“The conditions under which a defendant in a criminal case or a juvenile in a juvenile offense proceeding may be released pending review, or may obtain a stay of execution of sentence, are set forth in the criminal rules, juvenile court rules, and in statutes.”) (emphasis added).

This Court should exercise this authority for two reasons. First, due to [REDACTED] health and incarceration, he is placed at an unnecessary and increased risk of death or serious illness from COVID-19. Second, he is not a flight risk and does not pose a danger to the community.

It is appropriate take into account the risk to [REDACTED] from COVID-19 in consideration of a stay. As the Massachusetts Supreme Court has reasoned, “[i]n these extraordinary times, a judge deciding whether to grant a stay should consider not only the risk to others if the defendant were to be released and reoffend, but also the health risk to the defendant if the defendant were to remain in custody.” Christie v. Commonwealth, 484 Mass. 397, 401, 142 N.E.3d 55 (2020). “In evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and

¹⁰ Cited for persuasive authority. GR 14.1.

the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus.” Id. at 401-02.

Here, [REDACTED] is at high risk of serious illness. COVID-19 has already infected staff members and inmates at the Monroe Correctional Complex. [REDACTED] is not a danger to anyone’s safety. The convictions he is appealing, along with his criminal history, are non-violent. He has a place to stay with his wife in Pierce County. He would be monitored. If he disobeys a condition of release, he would again be confined.

Further, while appellate counsel has not been able to review the record in [REDACTED] appeal yet, there are likely issues of merit to present in his appeal. In his seven years as an appellate public defender, counsel has never filed an Anders¹¹ brief. A skim of the record shows there appears to be potential issues concerning the sufficiency of the evidence and error concerning the admission of prior bad acts evidence under ER 404(b). Regardless, even if unsuccessful, [REDACTED] will have avoided the increased risk of exposure to COVID-19 at this time. Conditions may improve significantly by the time his appeal is resolved.

¹¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

For these reasons, this Court should order that [REDACTED] be released on personal recognizance or granted an appeal bond. Prior to being found guilty, bail was set at \$150,000 with conditions. App. I (App. C). [REDACTED] submits bond up to this amount would be appropriate. [REDACTED] is amenable to standard conditions of release. The sentence should be stayed until the appellate mandate is issued.

c. Alternatively, this Court should reverse the trial court's order refusing to stay the sentence or grant an appeal bond.

A trial court has authority to stay a sentence, including granting an appeal bond. RAP 7.2(f); CrR 3.2(h). Whether to grant a stay is discretionary. State v. Johnson, 105 Wn.2d 92, 96, 711 P.2d 1017 (1986). A statute, however, requires a trial court to deny a stay if the prosecution shows by a preponderance of the evidence any one of four grounds:

Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

- (a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or
- (b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or
- (c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

RCW 9.95.062(1); State v. Cole, 90 Wn. App. 445, 447, 949 P.2d 841

(1998). A party can object to a denial of a stay by motion in the appellate court. RAP 8.2(b).

In this case, the trial court found that the prosecution had met its burden to prove by a preponderance grounds (a) and (b). App. VI at 2. On ground (a), the trial court found that [REDACTED] “poses a serious risk to the safety of members of the community within the meaning of RCW 9.95.062(1)(a) if he were to be released on bond or on his own recognizance.” App. VI at 2 (emphasis added). The trial court erred. The standard is not a “serious risk,” it is whether the evidence shows by a preponderance that it is “likely” (meaning more probable than not) that [REDACTED] poses a danger to the safety of the community. RCW 9.95.062(1)(a). A serious risk (e.g., infection from COVID-19 in prison) may exist but still not be likely to come to fruition. See State v. Rich, 184 Wn.2d 897, 904, 365 P.3d 746 (2016) (“A “risk,” of course, is not a certainty.”). Regardless, the prosecution did not prove that [REDACTED] would not obey conditions of release that would mitigate any risk to the community.

As for ground (b), the trial court also erred in determining that a stay would “create significant delay and this delay will unduly diminish the deterrent effect of the punishment.” App. VI at 2. Again, the trial court erred. The standard requires that the deterrent effect be “unduly” (i.e. excessively) diminished by a stay. RCW 9.95.062(1)(b). The evidence did not show this by a preponderance. Indeed, a conditional release would have a deterrent effect against unlawful behavior because if [REDACTED] violates the conditions of release, the stay may be revoked. Moreover, [REDACTED] is not a young man for whom punishment might ordinarily need to be immediately imposed for it to have a deterrent effect. [REDACTED] has already served part of his sentence. This punishment has a deterrent effect even if the appeal delays him from serving the full sentence (assuming he is unsuccessful in his appeal).

The trial court’s decision on RCW 9.95.062(1) was manifestly unreasonable and not supported by the evidence. Washington State Physicians Ins. Exch. & Ass’n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.”).

Further, the trial court erred by reading RCW 9.95.062 in a vacuum and in a world where COVID-19 does not endanger [REDACTED] (along with others, including corrections officers, from overcrowding in

prisons). The Massachusetts Supreme Court recognized this reality and instructed its lower courts to consider not merely the risk that the defendant poses from release, but the health risk to the defendant if he remains in prison. Christie, 484 Mass. at 401-02. RCW 9.95.062 should likewise be read in a flexible manner. The trial court's failure to do so was error.

Rather, the court appears to have placed the burden on [REDACTED] to prove by a preponderance of the evidence that his conditions of confinement violated either the state or federal constitutions. App. VI. at 3. But the question is not whether "the Department of Corrections is continuing to use all appropriate and reasonable means to protect all person committed to its custody and care." App. VI. at 3. The question is whether the significant risk to [REDACTED] health from COVID-19 weighs in favor of an appeal bond, and whether this risk outweighs any risk of harm to others by releasing [REDACTED] Christie, 484 Mass. at 401-02. The trial court's failure to apply the correct standard was an abuse of discretion. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342, 344 (2008) ("the trial court based its ruling on an erroneous view of the law and therefore abused its discretion.").

Accordingly, this Court should reverse and order that [REDACTED] be granted an appeal bond. Alternatively, the Court should remand for hearing with instruction to the trial court to apply the correct standard.

d. This motion should be heard on an expedited basis in light of the significant risk to [REDACTED] health from COVID-19.

A party may seek “expedited consideration” on a motion in an emergency. RAP 17.4(b). In seeking an expedited consideration of a motion on an emergency basis, the moving party must show “(1) that adequate relief cannot be given if the motion is considered in the normal course, and (2) the movant has taken reasonable steps under the circumstances to give notice to persons who would be affected by the ruling sought.” RAP 17.4.

Here, time is of the essence because [REDACTED] may become infected with COVID-19. There are reported cases of staff and inmates at Monroe Correction Facility contracting the virus. A corrections officer at the facility has died from COVID-19. Everyday [REDACTED] is incarcerated at Monroe increases his risk from COVID-19. If [REDACTED] is infected, he could become seriously ill or die. Under these circumstances, adequate relief cannot be given if the motion is not heard on an expedited basis. Additionally, counsel has given notice to the Pierce County Prosecuting Attorney’s Office and the assigned prosecutor, Kristie Barham. App. IX

(declaration of counsel). Accordingly, expedited consideration of this motion is appropriate. RAP 17.4(b).

III. CONCLUSION

The Court should exercise its authority under RCW 9.94A.585(3) and grant [REDACTED] request for a stay of his sentence by an appeal bond. Alternatively, the trial court's refusal to order a stay should be reversed. If not, remand for a new hearing is appropriate.

Respectfully submitted this 27th day of May, 2020.

A handwritten signature in blue ink, appearing to read "Richard Lechich".

Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Appellant

Appendix I

1
2
3
4
5
6
7 THE SUPERIOR COURT FOR THE STATE
8 OF WASHINGTON FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

10 Plaintiff/Respondent,

11 v.

12 [REDACTED]
13 Defendant/Appellant.
14

) Case No. [REDACTED]

) (CoA No. [REDACTED])

) MOTION AND ORDER FOR RELEASE
) AND TO STAY SENTENCE PENDING
) RESOLUTION OF APPEAL
)
)
)

15 MOTION.

16 [REDACTED] moves this court for an order staying his sentence and releasing him from
17 custody pending the resolution of his appeal.

18 This motion is based upon the record and file herein, including the following:

19 1. Following a jury trial, [REDACTED] was convicted of one count of first degree theft and
20 two counts of second degree theft. Based on aggravating factors, the court imposed an
21 exceptional sentence upward on count one for a total sentence length of ten years. App.
22 A (judgment and sentence).

23 2. [REDACTED] is exercising his state constitutional right to appeal under article I, section 22
24 of the Washington Constitution. Appellate counsel is awaiting copies of the transcripts.

25 Based on a partial review of the filings in the trial court, appellate counsel believes there

will be issues of merit to raise in the appeal. Without the benefit of the transcripts, there appears to be potential issues concerning the sufficiency of the evidence and the admission of prior bad acts evidence under ER 404(b).

3. An appeal bond has not been set in this case.
4. Washington State is in the throes of a pandemic from COVID-19, also known as the coronavirus. As the Washington Supreme Court recognized in its order addressing the pandemic on March 20, 2020, we are in a state of emergency and measures are necessary to mitigate crisis. IN THE MATTER OF THE STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY. Available at <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf>.
5. COVID-19 can cause serious illness and death. Older adults or persons with underlying medical conditions are at a greater risk.
6. [REDACTED] who was born on [REDACTED], is 53 years old. As recounted by his trial counsel in the defense sentencing brief, [REDACTED] “physical health is likely to rapidly decline as he approaches age 60.” App. B (defense sentencing brief), p. 12. Thus, the danger of COVID-19 to his health is significant. And even people who are younger or in good health are at risk of serious illness or death from COVID-19.
7. [REDACTED] is currently housed at the Monroe Correctional Complex-WA State Reformatory.
8. Several staff members and inmates at the Monroe Correctional Complex have tested positive for COVID-19. <https://www.doc.wa.gov/news/2020/04072020p.htm>; <https://www.doc.wa.gov/news/covid-19.htm>. On April 8, 2020, due to the conditions and the news about the positive tests, over 100 inmates at the minimum security unit at

Monroe engaged in a demonstration that caused a disturbance.

<https://www.doc.wa.gov/news/2020/04082020p.htm>;

<https://www.king5.com/article/news/crime/coronavirus-disturbance-at-monroe-corrections-complex/281-d41aff45-3a6c-409e-aca6-fc35160d7b62>

9. To mitigate the risk of illness or death due to COVID-19, [REDACTED] is asking this Court to stay his sentence pending resolution of his appeal. This Court has authority to do so.

RAP 7.2(f); CrR 3.2(h).

10. As recognized recently by the Massachusetts Supreme Court, in considering a stay of a sentence pending appeal, “a judge must give careful consideration not only to the risks posed by releasing the defendant -- flight, danger to others or to the community, and likelihood of further criminal acts -- but also, during this pandemic, to the risk that the defendant might die or become seriously ill if kept in custody.” Christie v. Commonwealth, SJC-12927, 2020 WL 1545877, at *1 (Mass. Apr. 1, 2020).

11. In this case, [REDACTED] was convicted of theft, a non-violent offense. His criminal history consists of non-violent offenses. App. A (judgment and sentence).

12. [REDACTED] has a supportive wife and place to reside.

13. The risk to the community or of flight is minimal and does not justify denial of an appeal bond.

14. To mitigate the risk of death or serious illness to [REDACTED] a stay of his sentence is appropriate while [REDACTED] exercises his state constitutional right to appeal.

15. Given the unique circumstances, [REDACTED] contends that personal recognizance is appropriate. Standard conditions are appropriate and reasonable.

16. Alternatively, bail in an amount between \$0 and \$150,000 is appropriate. Prior to being found guilty, bail was set at \$150,000 with conditions. App. C.

1 DATED this 10th day of April, 2020.

2 WASHINGTON APPELLATE PROJECT

3
4 /s/

5 Richard Lechich (WSBA 43296)
6 Counsel for Appellant [REDACTED]
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE SUPERIOR COURT FOR THE STATE
2 OF WASHINGTON FOR PIERCE COUNTY

3 STATE OF WASHINGTON,)

4 Plaintiff/Respondent,)

5 v.)

Case No. [REDACTED]

(CoA No. [REDACTED])

6) CONDITIONS OF RELEASE PENDING
7) APPEAL

8 Defendant/Appellant.)
9

10 THIS MATTER having come on regularly before the above entitled Court, upon application
11 of the defendant for an order approving his release pursuant to RAP 7.2(f) and CrR 3.2(h) on bail
12 pending appeal, therefore,

13 IT IS HEREBY ORDERED that the above-named defendant/appellant **may/may not** be
14 released from custody upon satisfactory posting of bail in the amount of \$ _____, and

15 IT IS FURTHER ORDERED the defendant comply with the following terms and
16 conditions of his release

17 _____
18 _____
19 _____

20 by previous order of this Court, and the same is hereby confirmed.
21
22
23
24
25

1 DONE IN OPEN COURT this ____ day of April, 2020.

2
3
4 Honorable Jerry T. Costello
Pierce County Superior Court Judge

5 Presented by:

6 /s/

7 Richard Lechich (WSBA 43296)
8 Attorney for [REDACTED]

9 Approved as to form:

10
11 Kristie Barham (WSBA 32764)
12 Pierce County Deputy Prosecuting Attorney

Appendix A



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: [REDACTED]

vs.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
2) ☒ Dept. of Corrections
3) ☐ Other Custody

Defendant.

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF COMMITMENT -1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 12-20-19



By direction of the Honorable

Jerry Costello
JUDGE

JERRY T. COSTELLO KEVIN STOCK

CLERK

By: Dorothy Reyes
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date DEC 23 2019 By Dorothy Reyes Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

_____ day of _____, _____.

KEVIN STOCK, Clerk

By: _____ Deputy

mkr





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

JUDGMENT AND SENTENCE (JS)

Defendant.

☒ Prison
☐ RCW 9.94A.712/9.94A.507 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☐ Alternative to Confinement (ATC)
☐ Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on

11-14-19
by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
1	THEFT IN THE FIRST DEGREE (JJ92)	9A.56.020(1)(c) 9A.56.030(1)(a) 9.94A.535(3)(d)	NONE	05/01/2018 - 05/31/2018	TACOMA PD [REDACTED]
2	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a) 9.94A.535(3)(d)	NONE	06/01/2018 - 06/30/2018	TACOMA PD [REDACTED]
3	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a) 9.94A.535(3)(d)	NONE	07/01/2018 - 07/31/2018	TACOMA PD [REDACTED]

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the ORIGINAL Information

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FTC		DISTRICT COURT 1 (TACOMA)	11-17-1989	A	MISD
2	FTC		DISTRICT COURT 1 (TACOMA)	11-29-1989	A	MISD
3	FTC		DISTRICT COURT 1 (TACOMA)	02-13-1990	A	MISD
4	FTC		DISTRICT COURT 1 (TACOMA)	04-18-1990	A	MISD
5	FTAS		DISTRICT COURT 1 (TACOMA)	11-26-1990	A	MISD
6	NVOL		DISTRICT COURT 1 (TACOMA)	01-10-1991	A	MISD
7	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-16-1991	A	MISD
8	DWLS/FTAS		DISTRICT COURT 1 (TACOMA)	08-10-1991	A	MISD
9	DWLS/FTAS		TACOMA MUNICIPAL COURT	10-22-1991	A	MISD
10	NVOL		DISTRICT COURT 1 (TACOMA)	02-22-1992	A	MISD
11	DWLS/FTAS		TACOMA MUNICIPAL COURT	06-12-1992	A	MISD
12	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-24-1992	A	MISD
13	THEFT 3		DISTRICT COURT 1 (TACOMA)	09-16-1992	A	MISD
14	DWLS		TACOMA MUNICIPAL COURT	08-28-1993	A	MISD
15	DWLS		DISTRICT COURT 1 (TACOMA)	11-18-1993	A	MISD
16	DWLS		DISTRICT COURT 1 (TACOMA)	11-22-1993	A	MISD
17	DWLS		DISTRICT COURT 1 (TACOMA)	11-29-1993	A	MISD
18	DWLS		TACOMA MUNICIPAL COURT	12-01-1993	A	MISD
19	DWLS		DISTRICT COURT 1 (TACOMA)	12-21-1993	A	MISD
20	DWLS		DISTRICT COURT 1 (TACOMA)	07-28-1994	A	MISD
21	CITY LIC VIO		MICREST MUNICIPAL COURT	11-20-1995	A	MISD
22	THEFT 3		DISTRICT COURT 1 (TACOMA)	03-27-1996	A	MISD
23	THEFT 3		DISTRICT COURT 1 (TACOMA)	03-27-1996	A	MISD
24	THEFT		DISTRICT COURT 1 (TACOMA)	04-02-1996	A	MISD

25	DWLS		DISTRICT COURT 1 (TACOMA)	04-05-1996	A	MISD
26	DWLS		TACOMA MUNICIPAL COURT	06-13-1996	A	MISD
27	DWLS		TACOMA MUNICIPAL COURT	07-23-1996	A	MISD
28	DWLS		TACOMA MUNICIPAL COURT	08-04-1996	A	MISD
29	THEFT 3		LAKEWOOD MUNI COURT	09-15-1996	A	MISD
30	DWLS		DISTRICT COURT 1 (TACOMA)	09-23-1996	A	MISD
31	DWLS		LAKEWOOD MUNI COURT	10-24-1996	A	MISD
32	DWLS		TACOMA MUNICIPAL COURT	08-25-1997	A	MISD
33	THEFT 3		DISTRICT COURT 1 (TACOMA)	12-05-1997	A	MISD
34	DWLS/FALSE STATEMENTS		DISTRICT COURT 1 (TACOMA)	12-07-1997	A	MISD
35	DWLS		DISTRICT COURT 1 (TACOMA)	12-26-1998	A	MISD
36	THEFT 3		LAKEWOOD MUNI COURT	02-12-1999	A	MISD
37	DWLS 3		LAKEWOOD MUNI COURT	12-01-1999	A	MISD
38	DWLS 3		LAKEWOOD MUNI COURT	12-14-1999	A	MISD
39	DWLS 3		LAKEWOOD MUNI COURT	02-21-2000	A	MISD
40	THEFT 3		LAKEWOOD MUNI COURT	06-30-2001	A	MISD
41	THEFT 3		LAKEWOOD MUNI COURT	12-15-2004	A	MISD
42	THEFT 3		LAKEWOOD MUNI COURT	06-28-2005	A	MISD
43	CRIM TRSP 1		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
44	FAILURE TO OBTAIN BUSINESS LIC		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
45	THEFT IN THE SECOND DEGREE	07-22-1993	SUPERIOR CT - PIERCE CTY	02-10-1993	A	NV
46	THEFT IN THE SECOND DEGREE	09-16-1993	SUPERIOR CT - PIERCE CTY	08-19-1993	A	NV
47	THEFT IN THE SECOND DEGREE	07-08-1999	SUPERIOR CT - PIERCE CTY	11-26-1997	A	NV
48	UDCS COCAINE	04-06-2000	SUPERIOR CT - PIERCE CTY	02-11-2000	A	NV
49	CONSP UDCS (COCAINE) W/SCHOOL ENHANCEMENT	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
50	ESCAPE 2	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
51	UPCS COCAINE	02-22-2007	SUPERIOR CT - PIERCE CTY	06-26-2005	A	NV
52	THEFT 1	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
53	ORGANIZED CRIME - LEADING	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
54	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
55	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
56	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
57	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV

58	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
59	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
60	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
61	UPCS	02-04-2011	SUPERIOR CT - PIERCE CTY	04-21-2010	A	NV
62	UPCS		SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV
63	UPCS	10-26-2015	SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV
64	THEFT 2		SUPERIOR CT - PIERCE CTY	03-05-2018	A	NV
65	THEFT 2		SUPERIOR CT - PIERCE CTY	03-06-2018	A	NV

[] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9+	II	43-57 MONTHS	NONE	43-57 MONTHS	10 YEARS
2	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YEARS
3	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YEARS

2.4 [] **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

[] within [] below the standard range for Count(s) _____

[X] above the standard range for Count(s) I, II, III

[] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[X] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [X] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [X] Jury's special interrogatory is attached. The Prosecuting Attorney [X] did [] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

[X] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

Defendant is indigent.

2.6 [] **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

[] The court considered the following factors:

[] the defendant's criminal history.

[] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

[] evidence of the defendant's propensity for violence that would likely endanger persons.

[] other: _____

[] The court decided the defendant [] should [] should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$ 11,829.68	Restitution to: <u>Melvin Mesick</u>
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee <u>Waived</u>
PUB	\$ _____	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee <u>Waived</u>
FCM	\$ _____	Fine
JFR	\$ _____	Jury Fee

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 12,329.68 TOTAL

[] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

☒ RESTITUTION. Order Attached

[] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$_____ per month commencing _____. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. No interest shall accrue on non-restitution obligations imposed in this judgment. RCW 10.82.090.

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$_____.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**
The defendant shall not have contact with Melvin Mesick 7-23-43 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

120 months on Count 1 months on Count _____
60 months on Count 2 months on Count _____
60 months on Count 3 months on Count _____

Cts II, III Concurrent w/ each other & Concurrent w/ Count I
Actual number of months of total confinement ordered is: 120 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Consecutive to 18-1-01156-R basis

Served now.

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) Credit for Time Served. The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served. No time served on this act. Defendant serves a

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows: Sentence on

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses
Count(s) _____ 18 months for Violent Offenses
Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

- ☐ consume no alcohol.
- ☐ have no contact with: _____
- ☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____
- ☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age
- ☐ participate in the following crime-related treatment or counseling services: _____
- ☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse
☐ mental health ☐ anger management and fully comply with all recommended treatment
- ☐ comply with the following crime-related prohibitions: _____
- ☐ Other conditions: _____
- ☐ For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

- 4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

- 4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____
- _____
- _____
- _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
- ☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____

DONE IN OPEN COURT and in the presence of the defendant this date: 12-20-19

JUDGE

Print name

JERRY T. COSTELLO

[Signature]
Deputy Prosecuting Attorney

Print name: Sven Nelson

WSB # 24235

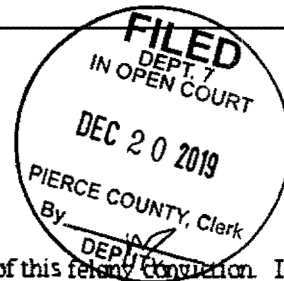
[Signature]
Attorney for Defendant

Print name: Chris Van Vechten

WSB # 47320

[Signature]
Defendant

Print name: _____



Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: [Signature]

1
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: [REDACTED]

4 I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and
5 Sentence in the above-entitled action now on record in this office.

6 WITNESS my hand and seal of the said Superior Court affixed this date: _____

7 Clerk of said County and State, by: _____, Deputy Clerk

8
9 **IDENTIFICATION OF COURT REPORTER**

10 **KARLA THOMAS**

11 Court Reporter

IDENTIFICATION OF DEFENDANT



Alias name, SSN, DOB: [REDACTED]

Race: ☐ Asian/Pacific Islander ☒ Black/African-American ☐ Caucasian ☐ Native American ☐ Other: : Ethnicity: ☐ Hispanic ☒ Non-Hispanic Sex: ☒ Male ☐ Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, *[Signature]*

Dated: 12-20-19

DEFENDANT'S SIGNATURE: *[Signature]*

DEFENDANT'S ADDRESS: _____

Appendix B

December 16 2019 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: [REDACTED]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

Case No.: [REDACTED]

SENTENCING BRIEF

[REDACTED]
Defendant

To: Pierce County Superior Court Clerk
And: Pierce County Prosecuting Attorney

COMES NOW the Defendant, [REDACTED], by and through the undersigned attorney of record, and submits the following sentencing brief in the afore-captioned case which was put to a jury on November 4, 2019. Said jury convicted [REDACTED] of one count of Theft in the first degree and two counts of theft in the second degree on November 14, 2019. Furthermore, the jury found that these crimes were perpetrated against a victim who was "particularly vulnerable" and that they constituted "major economic offenses."

The Defense requests that the Court give [REDACTED] an exceptional up concurrent sentence of 60 months on counts two and three. The Defense further requests a consecutive prison-based DOSA sentence of 25/25 on count one. Collectively, this would be a sentence of 85 months in custody followed by 25 months of community custody.

In the alternative, the Defense requests the Court sentence [REDACTED] to 120 months on count 1, concurrent with all other counts.

SENTENCING BRIEF - 1

LAW OFFICE OF CHRIS VAN VECHTEN
705 S 9th St., Space 206,
Tacoma, WA, 98405
(253) 666-8987 Chris@soundlawyering.com

1 In support of this brief, counsel submits the following declaration.

2 DATED this 15 day of December, 2019

3
4
5 

6 Chris Van Vechten, Attorney for Defendant
7 WSBA # 47320

8 **FACTS AND DECLARATION OF COUNSEL**

9 I, Chris Van Vechten, hereby certify and declare as follows:

10 **Summary of Jury Trial & the relevant Procedural Posture.**

11 The State accused [REDACTED] of stealing \$14,679.68 from Melvin Mesick between May
12 11, 2018 and July 19, 2018. The total sum was divided into three counts by month: one count of
13 theft in the first degree and two counts of theft in the second degree. The State presented dual
14 theories for how [REDACTED] perpetrated these crimes that were both first challenged via
15 Knapstad motion on June 3, 2019, before the Honorable Frank Cuthbertson, and subsequently
16 via jury trial which began November 4, 2019, before the Honorable Jerry Costello. The State's
17 principal theory was that [REDACTED] had committed theft by deception via a landscaping scheme.
18 The secondary theory the State presented was that [REDACTED] was guilty of theft under the prong
19 of "wrongful taking of property" prefaced on the fact that, per orders from the Department of
20 Corrections and the Pierce County Superior Court, he was not permitted to be operating a
21 landscaping business without prior approval. Therefore, any proceeds from said business were
22 wrongfully obtained. Both theories were challenged before Judge Cuthbertson on June 3, 2019,
23 per the Knapstad motion. Both theories were allowed to proceed to trial.

24 At trial, Judge Costello granted the State's motion to admit evidence and the testimony of
25 a minor witness to a previous conviction from 2005 via Gerald Buettner over the Defense's
26

1 objection. This ultimately resulted in the admission of 9 detailed theft convictions, followed by a
2 tenth to further impeach [REDACTED]'s credibility upon taking the witness stand.

3 Gerald Buettner's testimony was largely consistent with his previous testimony against
4 [REDACTED] as expressed in written statements he prepared in 2006 and testimony he gave in
5 2012, except that for the first time he claimed that [REDACTED] had told him he had mailed him a
6 reimbursement check for \$5,000 and that it must have been lost in the mail. Previously, Mr.
7 Buettner had testified that [REDACTED] had agreed to send him a certified check in the mail and
8 never done so, but Mr. Buettner never testified that [REDACTED] had in fact claimed to have done
9 so in either 2006 or 2012. At least, if he did, Defense Counsel has not found it in the transcripts
10 or sworn statements. Nevertheless, Defense Counsel elected not to attempt impeachment by
11 citing the omission from Mr. Buettner's previous sworn testimony out of fear that doing so
12 would likely invite Mr. Buettner to comment on the 2012 case in a context that the Court's
13 pretrial rulings had made extremely problematic.

14 Specifically, Judge Costello had denied the Defense's efforts to admit evidence that the
15 DOC condition preventing [REDACTED] from engaging in the business of landscaping came in the
16 wake of an acquittal in 2012, fearing such evidence would invite the jury to engage in improper
17 speculation per ER 403. The Defense argued that such evidence was admissible primarily to (1)
18 better explain [REDACTED]'s relationship with DOC and his actions in response to their
19 supervision; (2) counter the assertion – which Officer Garrison subsequently testified to – that
20 conditions of probation reflect “offender cycles” and that DOC was reasonably willing to work
21 with and assist [REDACTED] in his transition to the community; and (3) reinforce the overall theory
22 of the Defense that [REDACTED] was being set up to fail by law enforcement.

1 This issue was revisited during the trial when Deputy Prosecutor Sven Nelson cross
2 examined Defense witness Stephen Morrison concerning the loan for legal expenses he had
3 made to [REDACTED]. Inquiring as to what [REDACTED] had told him to procure the loan, Mr.
4 Morrison testified that [REDACTED] had said he had been accused of this thing before and
5 acquitted. Mr. Nelson seized on the acquittal statement, implying through his questioning that
6 Mr. Morrison had been duped. The Defense moved again for the admission of evidence of the
7 acquittal, arguing that Mr. Nelson's question and subsequent comment had surely opened the
8 door on this issue. The motion was again denied.
9

10 Subsequently, during cross examination of [REDACTED], Mr. Nelson asked approximately
11 when he had been released from prison following the Buettner case. [REDACTED] answered in
12 2010. Mr. Nelson then asked when the DOC condition preventing him from engaging in
13 landscaping had been put into place. The purpose of this question was to set up the argument
14 Mr. Nelson later delivered in closing that [REDACTED]'s previous convictions were not affected by
15 the interference of law enforcement but were rather a reflection of [REDACTED]'s conduct. The
16 correct answer to Mr. Nelson's question was 2015, but [REDACTED] – later explaining that he
17 believed the question could not be honestly answered otherwise – responded “well, I had just
18 come off an acquittal...” Defense Counsel objected and the jury was removed. Judge Costello
19 reprimanded [REDACTED] for violating his clear instructions regarding this topic and invited both
20 sides to move for a mistrial. Neither side felt that mistrial was in their best interest and the trial
21 continued to verdict.
22
23
24

25 Aside from [REDACTED]'s intent, the primary issue at trial was the value of the damage he
26 caused Mr. Mesick. During trial Mr. Mesick himself finally acknowledged – for the first time –
27
28

1 that he had wrongly assigned a \$1550 cash withdrawal on July 2, 2018 to [REDACTED] But it was
2 those sums in count 1 which were of primary importance.

3 At trial, Mr. Mesick testified that he had given [REDACTED] \$6398 for the month of May.
4 According to Detective Schieferdecker, in October of 2018, he had admitted [REDACTED] had
5 earned \$1600 of that via landscaping services. During his interview with Defense Counsel in
6 January of 2019, Mr. Mesick had actually claimed [REDACTED] had earned “nothing,” though
7 private investigator Jeremy Pawloski thought this might have been a statement of dissatisfaction
8 rather than an actual estimate of value. Regardless, at trial, Mr. Mesick again reassessed the
9 value of [REDACTED]’s work and determined that [REDACTED] had earned only \$1200. For his part,
10 [REDACTED] testified that he felt he had earned at least \$1600. Michael Booker – a witness for the
11 Defense – testified that he estimated the value of the work that he personally did over the course
12 of two days was “about a thousand” for which he was paid \$100 by [REDACTED] as a favor.

13 The difference in estimates was significant because \$6398 minus \$1200 equals \$5198: a
14 theft in the first degree; whilst \$6398 minus \$1600 equals \$4798: a theft in the second degree.

15 Additionally, [REDACTED] disputed the claim that he had somehow benefited from a \$30
16 stop payment fee on a check that Mr. Mesick had given him that was incurred on May 14, 2018.
17 The State seemed willing to concede to that in their closing argument. Also, [REDACTED] did not
18 feel responsible for the \$400 Mr. Mesick gave to Mr. Wilson on an unspecified date in May that
19 promptly resulted – by all accounts – in the termination of said person from [REDACTED] crew.
20 Speaking with those jurors who remained following verdict about this issue, Defense Counsel
21 was informed that it was the opinion of the jury that – but for [REDACTED], Mr. Wilson would not
22 have even been there – and thus [REDACTED] was responsible for any thefts committed by Mr.
23 Wilson. Without evidence that Mr. Wilson was operating as part of a criminal conspiracy under
24

1 [REDACTED]s direction, Defense Counsel disputes the validity of this conclusion by the jury. In
2 hindsight, it was perhaps error to even admit this \$400 sum into evidence given that Mr. Wilson
3 was not called as a witness and his statements to Mr. Mesick were surely hearsay. Defense
4 Counsel does not recall whether he objected or – if he did not – why he did not. Had this been
5 admitted into evidence, [REDACTED] could not have been convicted of theft 1 unless the jury
6 believed that by working he was also committing a theft because the work was unauthorized.
7

8 Finally, [REDACTED] testified that he never received an \$800 in branch withdrawal from Mr.
9 Mesick on May 21, 2019. Presumably, the jury just did not believe him.
10

11 Defense Counsel was unable to determine how the jury concluded there was proof
12 beyond reasonable doubt with regard to the shifting value of Mr. Mesick's estimate of [REDACTED]
13 [REDACTED]s work. This was by far the most important issue in terms of assigning the value to this
14 count. Regardless, the sum ultimately argued by the state was only barely above the \$5,000
15 threshold required in count one.
16

17 [REDACTED]'S CRIMINAL HISTORY & OFFENDER SCORE

18 [REDACTED]s criminal history is inexcusably long and – strangely enough – has been
19 entirely confined to conduct in Pierce County. By Defense Counsel's calculations, [REDACTED]
20 has been convicted of 23 felonies, all in Pierce County Superior Court, since 1993. Of these, 16
21 have been felony theft counts. Of these 16 theft convictions, 14 have concerned fact patterns
22 similar to the case at bar. Of these 14, eight are derived from the Buettner case that was brought
23 into evidence at trial under ER 404(B); two were derived from the Grimes case – for which [REDACTED]
24 [REDACTED] has been imprisoned throughout the entire procedural posture of this case; and three
25 counts are before the Court for sentencing.
26
27
28

1 [REDACTED] has also been convicted of five separate felony drug possession offenses
2 between 2000 and 2015. Defense Counsel represented [REDACTED] in the unlawful possession of
3 a controlled substance case that was filed under cause number [REDACTED] and has represented
4 him three times since in Pierce County Superior Court.
5

6 His offender score appears to be 23.

7 [REDACTED] **HIMSELF**

8 It would be fair to say that the bulk of [REDACTED]'s life has been defined by his
9 experience in the criminal justice system. While generally considered a pleasant, nonviolent
10 offender, [REDACTED] has had legal spats with CCOs and guards from time to time. In 2003, he
11 was a plaintiff in a lawsuit brought via his then attorney Thomas Olmstead concerning an injury
12 he sustained when he was hit by a car while working for a Cedar Creek Corrections work crew.
13 According to the complaint, [REDACTED] requested medical assistance following the collision but
14 after a cursory check was denied treatment. See [REDACTED] Pierce County
15 Superior Court [REDACTED] [REDACTED] has frequently complained of pain to jail staff, CCOs,
16 and attorneys ever since.
17
18

19 Multiple people who have spent extensive time with [REDACTED] have questioned his
20 ability to fully appreciate the consequences of his actions or to distinguish between his ambitions
21 and reality. This includes several of his victims, his family members, his friends and his lawyers.
22 His most recent prior lawyer – Michael J Underwood – actually filed a 10.77 competency
23 evaluation in this case.
24

25 Defense Counsel has never questioned [REDACTED]'s competency, but like many of his
26 previous attorneys he has been concerned about [REDACTED]'s ability to accurately interpret the
27 world around him and the effect of his actions. Additionally, there is obvious obsessive
28

1 compulsivity surrounding [REDACTED] that probably distracts and limits his ability to function
2 with others. If nothing else, it makes him very difficult to work with and often causes him to get
3 distracted from the bigger picture. Defense Counsel could easily imagine [REDACTED] failing to
4 achieve tasks or satisfy expectations because of getting sidetracked by day-to-day issues like
5 cleanliness and minor legal or technical procedures.
6

7 Furthermore, Defense Counsel believes these problems have been compounded by
8 persistent drug usage. During his 10.77 evaluation, [REDACTED] self-reported consuming alcohol
9 starting at the age of 8 and marijuana at the age of 9. He first started experimenting with cocaine
10 at the age of 10, and became a compulsive user by the age of 21. All five of his drug convictions
11 have been centered around cocaine, but [REDACTED] has also been punished for methamphetamine
12 use while on DOC supervision, and has self-reported also using Adderall and Percocet. Mr.
13 Mesick commented at several points during the investigation that he suspected [REDACTED] was
14 using drugs during their relationship.
15

16 [REDACTED] has been married three times, and has five children, four of whom he
17 maintains relationships with as adults. [REDACTED] is 53 years old, and – by DOC’s admission –
18 has the benefit of a stable home life with a committed wife who has a solid legitimate source of
19 income and no prior criminal history. It is astounding to the parties involved why [REDACTED] has
20 felt the need to engage in the business of landscaping: legitimately or otherwise. There is no
21 essential need for money, housing, transportation, or anything else motivating his actions.
22

23 [REDACTED] testified at trial that the purpose of the loans he received from Mr. Mesick and
24 others was to pay legal expenses, including bail and attorney fees, in addition to stuff related to
25 the landscaping business he was running. Mr. Morrison corroborated some of that by testifying
26 to the nature of the loan he gave [REDACTED]. Mr. Mesick was actually present for some of the
27
28

1 purchases he made with Mr. Mesick's money and it was exclusively related to the landscaping
2 business. By the State's own admission, there is no evidence that [REDACTED] used the money he
3 borrowed for anything other than what he said he needed it for. It is very unlikely that much, if
4 any, of the money [REDACTED] procured from Mr. Mesick went to drugs.
5

6 Nevertheless, it is the opinion of Defense Counsel based on his years of experience
7 working with [REDACTED] that drug use and long-term drug damage has played a significant role
8 in [REDACTED]'s perceptions of reality.
9

10 It has long been the hope of his family that [REDACTED] would be directed to mental health
11 treatment at some point during his lengthy history with the criminal justice system. The
12 professional who reviewed him for 10.77 purposes on November 30, 2018, diagnosed [REDACTED]
13 with Narcissistic Personality Disorder. This is a condition that is primarily treated via
14 psychotherapy rather than a medication regimen, which is something the criminal justice system
15 is not presently well equipped to serve. Defense Counsel is including statements from the Mayo
16 Clinic regarding this condition with his brief in hopes that they might be useful to some future
17 professional responsible for the monitoring and supervision of [REDACTED]
18

19 [REDACTED] has a committed group of supporters in his immediate family and church
20 community. However, many of them are reluctant to speak before the Court, as they have very
21 strong feelings about what has happened to [REDACTED] over the years. This is especially true of
22 his wife – who despite never having even been accused of a crime before – has had to live like an
23 offender just by virtue of being married to [REDACTED]. This has included being forced out of her
24 own home at late hours of the night during surprise raids for evidence of illegal landscaping. It
25 included being forced to sit by the side of the road when [REDACTED] got pulled over, just for
26
27
28

1 driving a vehicle assigned to someone else – as referenced by Mr. Mesick in this case. It has
2 included watching her husband get acquitted at trial – just to have his sentence revoked anyway.

3 Yet, it is Defense Counsel's belief that this trial has been good for all the parties
4 concerned, in that – despite the exclusion of evidence [REDACTED] believes the jury should have
5 considered; and the failure of Defense Counsel to better challenge the actual sums of money lost
6 vs money earned – [REDACTED]'s story was largely told. And after it was told, for the first time in
7 his long history, a jury found him guilty of theft.
8

9 Throughout Defense Counsel's representation of [REDACTED] he has denied any intent to
10 steal from any of his customers and viewed his failures primarily as a function of bad luck and
11 state interference. At times, [REDACTED] has not even been able to understand how anyone could
12 even believe he was guilty of these things. And his belief in his own innocence had previously
13 been reinforced by a series of jury acquittals and amendments by the State to non-theft charges in
14 the 9 years prior to the Grimes case in 2018. The resolution of the Grimes case – 18-1-01156-8 –
15 which was concluded without even interviewing the complaining witness until after the plea,
16 solidified [REDACTED]'s belief in his own innocence and that he was the victim of a police/DOC
17 conspiracy.
18

19 But no matter how [REDACTED] came to sincerely believe this – and it is sincere –
20 regardless of whether it is the result of damage caused by narcotics, or a mental health issue, or
21 simply by virtue of having repeated it to himself so many times before – the fact that a jury has
22 now heard his case and convicted him as charged of theft, has been therapeutic in the sense that
23 it has deprived him of a belief that Defense Counsel suspects has motivated [REDACTED]'s
24 conduct. It is Defense Counsel's belief that now, in the wake of total defeat, [REDACTED] is at a
25
26
27

1 place where he can examine his complicated history from the perspective of someone other than
2 himself, and that Court should take advantage of that for the benefit of the community.

3 **ARGUMENT FOR CONSECUTIVE SENTENCE WITH DOSA**

4
5 Generally, when the Court sentences an offender for two or more offenses within the
6 same cause number, the sentences are to be served concurrently pursuant to RCW
7 9.94.589(1)(a). The Court may, however, impose consecutive sentences under the exceptional
8 sentence provision of RCW 9.94A.535. Because the jury found that Mr. Mesick was particularly
9 vulnerable by virtue of the fact that he periodically used a cane, and that the theft constituted a
10 “major economic offense,” the Court has the authority to impose consecutive sentences on the
11 three counts.
12

13 RCW 9.94A.660 outlines the requirements and exclusions for a prison-based DOSA
14 sentence. [REDACTED] meets all these pre-requisites, having never having been convicted (or even
15 charged) with a violent or sex offense, nor a crime involving a weapons enhancement. He was
16 granted a DOSA following conviction in February of 2007 on the Buettner case, but it appears
17 that within 7 months of his release in 2009, he was facing drug possession charges again. *See*
18 [REDACTED] [REDACTED] was 42 at the time. He is 53 today.
19

20 The Defense recommends the Court sentence [REDACTED] to 60 months in custody on
21 counts 2 and 3, to be served concurrent to each other. The Defense asks the Court to then
22 impose a consecutive 25/25 prison based DOSA on count 1. This would calculate to 85 months
23 in custody, followed by 25 months of community supervision.
24

25 With virtually no credit for any time thus served on this cause number, the proposed
26 sentences invites the Court to consider what [REDACTED] will be at the conclusion of the
27 envisioned sentence, instead of what he presently is and has been.
28

VECHTEN

705 S 9th St., Space 206,
Tacoma, WA, 98405
(253) 666-8987 Chris@soundlawyering.com

1 First, from the community's perspective, we are considering the fate of a 53 year-old-
2 man. While the average annual cost to housing an individual inmate in 2018 in Washington
3 State ranged from more than \$31,000 to more \$44,000 per year depending on the institution, the
4 cost of housing and providing healthcare to inmates over the age of 50 is more than twice as high
5 as those below. See, "This isn't what prisons were designed for: State struggles with gaining
6 inmates" K5 News, July 11, 2019. [https://www.king5.com/article/news/local/this-isnt-what-](https://www.king5.com/article/news/local/this-isnt-what-prisons-were-designed-for-state-struggles-with-aging-inmates/281-14c3ad99-3ca9-4634-844d-00c64f0a9182)
7 [prisons-were-designed-for-state-struggles-with-aging-inmates/281-14c3ad99-3ca9-4634-844d-](https://www.king5.com/article/news/local/this-isnt-what-prisons-were-designed-for-state-struggles-with-aging-inmates/281-14c3ad99-3ca9-4634-844d-00c64f0a9182)
8 [00c64f0a9182](https://www.king5.com/article/news/local/this-isnt-what-prisons-were-designed-for-state-struggles-with-aging-inmates/281-14c3ad99-3ca9-4634-844d-00c64f0a9182). See also <https://www.doc.wa.gov/docs/publications/reports/200-AR001.pdf>.

9
10 With a proposed sentence of 85 months in custody, [REDACTED] would not transition to
11 community custody until well into age 58. Given a lifetime of poor health choices, poor genetics
12 (many of his siblings have already passed away) multiple car accidents, and a lifetime of
13 working with his hands, [REDACTED]'s physical health is likely to rapidly decline as he approaches
14 age 60. Simultaneously, the cost to the State of housing and caring for him will become
15 unjustifiably high for a nonviolent offender.

16
17 Although [REDACTED] has been convicted of theft multiple times, most cases have
18 concerned sums of significantly less value than the case at bar. **In fact, most of [REDACTED]'s**
19 **cases concern theft convictions from a time when theft in the second degree was that which**
20 **was in excess of only \$250. At least 8 of his 14 felony theft convictions would be considered**
21 **misdemeanor theft 3s today. Of those remaining 6, two are from the Grimes case currently**
22 **on appeal, one is for Charlotte Buettner (from 2005) and the remaining 3 are before the**
23 **Court.** Therefore, the scale of [REDACTED]'s damage can easily become deceptive. Defense
24 counsel does not believe that the cumulative non-interest value of all of [REDACTED]'s theft
25 convictions is in excess of the cost of just 24 months of incarceration.

1 Second, by sentencing [REDACTED] on count 1 to DOSA, the court would be placing [REDACTED]
2 [REDACTED] back under the supervision of the Department of Corrections, who have demonstrated a
3 willingness and ability to aggressively monitor him. They could force him to seek mental health
4 counseling in addition to drug treatment and easily revoke his probation should he fail to comply.
5 Defense counsel is skeptical that, even if [REDACTED] wanted to return to the landscaping
6 business, he would physically be able to do so by the time he approaches age 60. Though [REDACTED]
7 [REDACTED] and his family are not fond of the Department of Corrections, basic economics combined
8 with [REDACTED]'s track record, suggests that it is in the community's interest that [REDACTED] be
9 supervised. Again, while Defense Counsel is skeptical [REDACTED] will return to landscaping
10 given his most recent blow, it would be nice if someone forced him into therapy.

13 ARGUMENT & SENTENCE IN THE ALTERNATIVE

14 Defense Counsel does not consider DOSAs to be "gifts" as some attorneys do. Rather,
15 they reflect the Legislature's belief that criminal behavior is often not the result of a moral failing
16 but rather a chemical/mental impediment that is treatable and correctable. Defense Counsel is
17 one of many people who views [REDACTED] as such a person. Defense struggles with the
18 knowledge that [REDACTED] has never, in any of his cases from 1995 going forward, ever denied
19 any of the essential claims against him. Nor has he ever been accused of offering false names,
20 nor attempting to run when accused or confronted, nor anything else that is typical of thieves
21 Defense Counsel has previously represented. Having represented [REDACTED] since 2015 in four
22 cases now, Defense Counsel is of the opinion that [REDACTED]'s moral failing is that he believes
23 himself to be innocent, and he cannot understand why other people do not.
24

26 Such is apparently typical of someone with a narcissistic personality disorder. But this
27 condition can be treated and controlled if efforts are made to do so.

28
VECHTEN

705 S 9th St., Space 206,
Tacoma, WA, 98405
(253) 666-8987 Chris@soundlawyering.com

1 [REDACTED] is capable of empathizing with the pain of others. At one time in his life, he
2 was either inspired or confused enough to join the military. This suggests that, at one time in his
3 life, he wanted to be more than what he ultimately became. He has always attracted decent
4 people around him who were willing to overlook his past to be his friend, and often his support.
5

6 But should the Court feel that DOSA is inappropriate for someone with this record, after
7 having been convicted at trial on all counts, with all enhancements, then the Defense requests a
8 sentence of 120 months or less in custody. This presumes a statutory maximum on count 1
9 concurrent to all other counts. Anything beyond that – even with [REDACTED]'s record – would be
10 unjustifiably harsh.
11

12 Again, [REDACTED] was convicted of theft in the first degree because the State alleged he
13 received \$5168 (excluding the cancellation fee and the value of his labor) in the month of May.
14 This is only \$168 above the threshold for conviction on a Theft in the first degree. Defense
15 Counsel is confident that, with a different defendant, or without so much damaging evidence
16 from previous cases admitted into evidence, Mr. Mesick's shifting estimate alone for the value of
17 [REDACTED]'s work would have been too much for the State to overcome to prove the requisite
18 value for a theft in the first degree.
19

20 Again, while his history is lengthy, it largely reflects a time when our statutes were
21 woefully out of touch with the realities of inflation. In fact, three of the restitution claims for his
22 theft in the second-degree convictions from 2007 are for sums of less than \$250. Less than 2
23 years later, \$750 became the minimum sum to prosecute a theft 2. *See* Senate Bill 6167 (2009
24 Session). Again, 8 of his former felony theft convictions would qualify as misdemeanors today.
25
26
27


1 Again, [REDACTED] is non-violent. He told the truth as he sincerely views it at trial, and he
2 went to trial fully aware that the jury would be exposed to an uncommonly transparent view of
3 his criminal history.

4 While Defense Counsel recognizes the Court has the authority to impose more than 120
5 months in this case by running count 1 consecutively to other counts, Defense Counsel believes
6 anything more would be unjust for the individual and the community at large.
7

8 **CONCLUSION**

9 For these reasons, the Defense asks the Court to impose one of the two aforementioned
10 suggested sentences.

11 Respectfully submitted this 15 day of December, 2019.

12
13 
14 Christopher Van Vechten
15 WSBA # 47320
16 Attorney for Defendant
17
18
19
20
21
22
23
24
25
26
27

10 3B64



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS

514 South 13th Street
Tacoma, Washington, 98402-2159
Phone 253.207.4700 Fax 253.593.2159

DATE: 11/28/19

TO:

- ☒ Pierce County Clerk's office 253.798.3428
- ☒ Pierce County DAC's Office 253.798.6715
- ☒ Defense Attorney of Record Chris Van Vechten

RE: DOSA Screening for Superior Court Cause [REDACTED]
Cause [REDACTED]
Cause [REDACTED]

Name: [REDACTED]
Date R: [REDACTED] Hearing Date: 12/20/19

Number of pages 06

This email may contain confidential information intended for the individual or entity to whom it is addressed. DO NOT READ, COPY, OR DISSEMINATE this information unless you are the addressee or person responsible for delivering it. If you have received this communication in error, please call us immediately at 253.207.4700.



1RB The office of the Prosecuting Attorney of Pierce County.

JRB Chemical Dependency screening and diagnosis
JRB Court-ordered examinations
JRB Attendance and cooperation with the treatment program
JRB Prognosis and recommendations for additional treatment
JRB Other pertinent treatment information requested, as it relates to the DOSA sentence
JRB Monthly progress reports
JRB Drug/Alcohol test results

I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination or revocation of my release from confinement, probation, parole, community supervision, or other proceeding under which I was mandated into treatment, OR

Signature of witness: *[Signature]* Date: *11/28/19*

The records contained herein are protected by the Federal Confidentiality Regulations 42 CFR Part 2. The Federal Rules prohibit further disclosure of this information to parties outside of the Department of Corrections unless such disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CR Part 2.



CHEMICAL DEPENDENCY DRUG DEPENDENCE SCREEN

Screening Outcome Indicators: ~~X~~CD ~~UN~~CD

Instructions for administering the Drug Dependence Screen

The screen may be administered by a CCO or Designee and may be done in the following manner:

1. Provide the offender with a copy and ask that it be completed, in the presence of DOC/CD staff, and turn upon completion, or
2. Read the screen to the offender and circle the appropriate answers for them.

The CCO/Designee who administers the screen is responsible to complete the scoring. Do not provide the offender with a copy of the Scoring Guidelines.

During the last 12 months or before being incarcerated (if applicable):

NO YES

1. Did you use larger amounts of drugs (including alcohol) or use them for a longer time than you had planned or intended? ☐ ☒
2. Did you try to cut down on your drugs/alcohol use and were unable to do it? ☐ ☒
3. Did you spend a lot of time getting drugs/alcohol, using them, or recovering from their use? ☐ ☒
4. Did you get so high or sick from drugs/alcohol that it:
 - a. Kept you from doing work, going to school, or caring for children? ☐ ☒
 - b. Caused an accident or put you or others in danger? ☐ ☒
5. Did you spend less time at work, school, or with friend so that you could use drugs? ☐ ☒
6. In the last 6 months before incarceration, did your drug/alcohol use cause:
 - a. Emotional or psychological problems? ☐ ☒
 - b. Problems with family, friends, work, or police? ☐ ☒
 - c. Physical health or medical problems? ☐ ☒
7. Did you increase the amount of a drug/alcohol you were taking so that you could get the same effects as before? ☐ ☒
8. Did you ever keep taking a drug/alcohol to avoid withdrawal or keep from getting sick? ☒ ☐
9. Did you get sick or have withdrawal when you quit or missed taking a drug/alcohol? ☐ ☒

DOC#/Target Agency#

Date

11/28/19

10. Which drugs/alcohol cause you the MOST serious problems?

- | | | |
|-------------------------------|---------------------|---------------------|
| 0. None | 1. Alcohol | 2. Inhalants |
| 3. Marijuana | 4. Cocaine or crack | 5. Other stimulants |
| 6. Tranquilizers or sedatives | 7. Hallucinogens | 8. Opiates |

Worst Drug #	<u>Alcohol</u>
Next Drug #	<u>Cocaine</u>
Next Drug #	<u>meth</u>
Next Drug #	<u>Cocaine / crack</u>
Next Drug #	<u>Marijuana</u>

11. How often did you use each type of drug during the last 12 months or before incarceration?

- A. Alcohol and other drugs.....
- B. Marijuana/Hashish.....
- C. Hallucinogens/LSD/Psychedelics/PCP/Mushrooms/Peyote.....
- D. Crack Freebase.....
- E. Heroin and Cocaine (mixed together as speedball).....
- F. Cocaine (by itself).....
- G. Heroin (by itself).....
- H. Street Methadone (non-prescription).....
- I. Other Opiates/Opium/Morphine/Demerol.....
- J. Methamphetamine/Speed/Ice/Other Uppers.....
- K. Tranquilizers/Barbiturates/Sedatives (downers).....
- L. Others (specify).....

NEVER ONLY A FEW TIMES 1-3 TIMES A MONTH 1-5 TIMES A MONTH DAILY

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. In the last 12 months or before entering prison, how often did you inject drugs with a needle?

Not at all Slightly Moderately Considerably Extremely

13. How serious do you think your drug/alcohol problems are?

☐ ☐ ☐ ☐ ☒

Never 1 Time 2 Times 3 Times 4 or More

14. How many times before now have you been in a drug or alcohol treatment program (DO NOT INCLUDE AA/NA/CA MEETINGS)

☐ ☐ ☒ ☐ ☐

Not at all Slightly Moderately Considerably Extremely

15. How important is it for you to get drug/alcohol treatment?

☐ ☐ ☐ ☐ ☒



27345081 ORSR 04-18-07



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

ORDER SETTING RESTITUTION AND
DISBURSEMENT

Defendant.

THIS MATTER having come on before the undersigned judge of the above entitled court and restitution having been ordered pursuant to a criminal conviction and RCW 9.94A.753 which provides in part that restitution be ordered for easily ascertainable damage for injury or loss of property and actual expenses incurred for treatment for injury to persons and lost wages resulting from injury, but that the amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime, and the files of the Prosecuting Attorney having reflected that the following persons or entities should receive restitution; Now, Therefore, IT IS HEREBY

ORDERED that restitution in the above entitled matter be, and the same is hereby set in the sum of \$31,297.00 and the Clerk of the above entitled Court is hereby directed to disburse said funds as they are received in the manner following:

ANNABELLE TESSMAN	\$500.00
CHARLOTTE BUETTNER	\$25,000.00
ANN WERNER	\$2,000.00
CHRISTINA RAFFINE	\$675.00
HELGA DARWIN	\$1,200.00
JEAN NEWMILLER	\$260.00
ARNE JOHANSEN	\$142.00
NORMAN BARRINGHAM	\$220.00
MARY STALEY	\$1,150.00
WILMA THOMPSON	\$150.00

DONE IN OPEN COURT this 13th day of April, 2007.

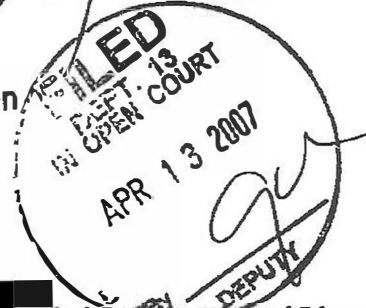
JUDGE

Presented by:

Kathryn J. Nelson

KAREN D. PLATT

Deputy Prosecuting Attorney
WSB # 17290



I, [REDACTED] being fully advised I have a right to be brought before the Court for a full Restitution Hearing, and to have an attorney present to represent me, and that the Court will appoint an attorney if I cannot afford one, hereby waive these rights and agree to entry of this order.

4-13-07
Date

Signature of Defendant

Signature Witness or Attorney for Defendant



Narcissistic personality disorder

Overview

Narcissistic personality disorder — one of several types of personality disorders — is a mental condition in which people have an inflated sense of their own importance, a deep need for excessive attention and admiration, troubled relationships, and a lack of empathy for others. But behind this mask of extreme confidence lies a fragile self-esteem that's vulnerable to the slightest criticism.

A narcissistic personality disorder causes problems in many areas of life, such as relationships, work, school or financial affairs. People with narcissistic personality disorder may be generally unhappy and disappointed when they're not given the special favors or admiration they believe they deserve. They may find their relationships unfulfilling, and others may not enjoy being around them.

Treatment for narcissistic personality disorder centers around talk therapy (psychotherapy).

Symptoms

Signs and symptoms of narcissistic personality disorder and the severity of symptoms vary. People with the disorder can:

- Have an exaggerated sense of self-importance
- Have a sense of entitlement and require constant, excessive admiration
- Expect to be recognized as superior even without achievements that warrant it
- Exaggerate achievements and talents
- Be preoccupied with fantasies about success, power, brilliance, beauty or the perfect mate
- Believe they are superior and can only associate with equally special people
- Monopolize conversations and belittle or look down on people they perceive as inferior
- Expect special favors and unquestioning compliance with their expectations
- Take advantage of others to get what they want
- Have an inability or unwillingness to recognize the needs and feelings of others
- Be envious of others and believe others envy them

- Behave in an arrogant or haughty manner, coming across as conceited, boastful and pretentious
- Insist on having the best of everything — for instance, the best car or office

At the same time, people with narcissistic personality disorder have trouble handling anything they perceive as criticism, and they can:

- Become impatient or angry when they don't receive special treatment
- Have significant interpersonal problems and easily feel slighted
- React with rage or contempt and try to belittle the other person to make themselves appear superior
- Have difficulty regulating emotions and behavior
- Experience major problems dealing with stress and adapting to change
- Feel depressed and moody because they fall short of perfection
- Have secret feelings of insecurity, shame, vulnerability and humiliation

When to see a doctor

People with narcissistic personality disorder may not want to think that anything could be wrong, so they may be unlikely to seek treatment. If they do seek treatment, it's more likely to be for symptoms of depression, drug or alcohol use, or another mental health problem. But perceived insults to self-esteem may make it difficult to accept and follow through with treatment.

If you recognize aspects of your personality that are common to narcissistic personality disorder or you're feeling overwhelmed by sadness, consider reaching out to a trusted doctor or mental health provider. Getting the right treatment can help make your life more rewarding and enjoyable.

Causes

It's not known what causes narcissistic personality disorder. As with personality development and with other mental health disorders, the cause of narcissistic personality disorder is likely complex. Narcissistic personality disorder may be linked to:

- **Environment** — mismatches in parent-child relationships with either excessive adoration or excessive criticism that is poorly attuned to the child's experience
- **Genetics** — inherited characteristics
- **Neurobiology** — the connection between the brain and behavior and thinking

Risk factors

Narcissistic personality disorder affects more males than females, and it often begins in the teens or early adulthood. Keep in mind that, although some children may show traits of narcissism, this may simply be typical of their age and doesn't mean they'll go on to develop narcissistic personality disorder.

Although the cause of narcissistic personality disorder isn't known, some researchers think that in biologically vulnerable children, parenting styles that are overprotective or neglectful may have an impact. Genetics and neurobiology also may play a role in development of narcissistic personality disorder.

Complications

Complications of narcissistic personality disorder, and other conditions that can occur along with it, can include:

- Relationship difficulties
- Problems at work or school
- Depression and anxiety
- Physical health problems
- Drug or alcohol misuse
- Suicidal thoughts or behavior

Prevention

Because the cause of narcissistic personality disorder is unknown, there's no known way to prevent the condition. However, it may help to:

- Get treatment as soon as possible for childhood mental health problems
- Participate in family therapy to learn healthy ways to communicate or to cope with conflicts or emotional distress
- Attend parenting classes and seek guidance from therapists or social workers if needed

By Mayo Clinic Staff

Any use of this site constitutes your agreement to the Terms and Conditions and Privacy Policy linked below.

[Terms and Conditions](#)

[Privacy Policy](#)

[Notice of Privacy Practices](#)

[Notice of Nondiscrimination](#)

Mayo Clinic is a nonprofit organization and proceeds from Web advertising help support our mission. Mayo Clinic does not endorse any of the third party products and services advertised.

[Advertising and sponsorship policy](#)

[Advertising and sponsorship opportunities](#)

A single copy of these materials may be reprinted for noncommercial personal use only. "Mayo," "Mayo Clinic," "MayoClinic.org," "Mayo Clinic Healthy Living," and the triple-shield Mayo Clinic logo are trademarks of Mayo Foundation for Medical Education and Research.

© 1998-2019 Mayo Foundation for Medical Education and Research (MFMER). All rights reserved.



Narcissistic personality disorder

Diagnosis

Some features of narcissistic personality disorder are similar to those of other personality disorders. Also, it's possible to be diagnosed with more than one personality disorder at the same time. This can make diagnosis of narcissistic personality disorder more challenging.

Diagnosis of narcissistic personality disorder typically is based on:

- Signs and symptoms
- A physical exam to make sure you don't have a physical problem causing your symptoms
- A thorough psychological evaluation that may include filling out questionnaires
- Criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association

Treatment

Treatment for narcissistic personality disorder is talk therapy (psychotherapy). Medications may be included in your treatment if you have other mental health conditions.

Psychotherapy

Narcissistic personality disorder treatment is centered around talk therapy, also called psychotherapy. Psychotherapy can help you:

- Learn to relate better with others so your relationships are more intimate, enjoyable and rewarding
- Understand the causes of your emotions and what drives you to compete, to distrust others, and perhaps to despise yourself and others

Areas of change are directed at helping you accept responsibility and learning to:

- Accept and maintain real personal relationships and collaboration with co-workers
- Recognize and accept your actual competence and potential so you can tolerate criticisms or failures
- Increase your ability to understand and regulate your feelings

- Understand and tolerate the impact of issues related to your self-esteem
- Release your desire for unattainable goals and ideal conditions and gain an acceptance of what's attainable and what you can accomplish

Therapy can be short term to help you manage during times of stress or crisis, or can be provided on an ongoing basis to help you achieve and maintain your goals. Often, including family members or significant others in therapy can be helpful.

Medications

There are no medications specifically used to treat narcissistic personality disorder. However, if you have symptoms of depression, anxiety or other conditions, medications such as antidepressants or anti-anxiety drugs may be helpful.

Lifestyle and home remedies

You may feel defensive about treatment or think it's unnecessary. The nature of narcissistic personality disorder can also leave you feeling that therapy is not worth your time and attention, and you may be tempted to quit. But it's important to:

- **Keep an open mind.** Focus on the rewards of treatment.
- **Stick to your treatment plan.** Attend scheduled therapy sessions and take any medications as directed. Remember, it can be hard work and you may have occasional setbacks.
- **Get treatment for alcohol or drug misuse or other mental health problems.** Your addictions, depression, anxiety and stress can feed off each other, leading to a cycle of emotional pain and unhealthy behavior.
- **Stay focused on your goal.** Stay motivated by keeping your goals in mind and reminding yourself that you can work to repair damaged relationships and become more content with your life.

Preparing for your appointment

You may start by seeing your doctor, or your doctor may refer you to a mental health provider, such as a psychiatrist or psychologist.

What you can do

Before your appointment, make a list of:

- **Any symptoms you're experiencing and for how long**, to help determine what kinds of events are likely to make you feel angry or upset
- **Key personal information**, including traumatic events in your past and any current major stressors
- **Your medical information**, including other physical or mental health conditions with which you've been diagnosed

- **Any medications**, vitamins, herbs or other supplements you're taking, and the dosages
- **Questions to ask your mental health provider** so that you can make the most of your appointment

Take a trusted family member or friend along, if possible, to help remember the details. In addition, someone who has known you for a long time may be able to ask helpful questions or share important information.

Some basic questions to ask your mental health provider include:

- What type of disorder do you think I have?
- Could I have other mental health conditions?
- What is the goal of treatment?
- What treatments are most likely to be effective for me?
- How much do you expect my quality of life may improve with treatment?
- How often will I need therapy sessions, and for how long?
- Would family or group therapy be helpful in my case?
- Are there medications that can help my symptoms?
- I have these other health conditions. How can I best manage them together?
- Are there any brochures or other printed materials that I can have? What websites do you recommend?

Don't hesitate to ask any other questions during your appointment.

What to expect from your mental health provider

To better understand your symptoms and how they're affecting your life, your mental health provider may ask:

- What are your symptoms?
- When do these symptoms occur, and how long do they last?
- How do your symptoms affect your life, including school, work and personal relationships?
- How do you feel — and act — when others seem to criticize or reject you?
- Do you have any close personal relationships? If not, why do you think that is?
- What are your major accomplishments?
- What are your major goals for the future?
- How do you feel when someone needs your help?
- How do you feel when someone expresses difficult feelings, such as fear or sadness, to you?
- How would you describe your childhood, including your relationship with your parents?
- Have any of your close relatives been diagnosed with a mental health disorder, such as a personality disorder?

- Have you been treated for any other mental health problems? If yes, what treatments were most effective?
- Do you use alcohol or street drugs? How often?
- Are you currently being treated for any other medical conditions?

By Mayo Clinic Staff

Any use of this site constitutes your agreement to the Terms and Conditions and Privacy Policy linked below.

[Terms and Conditions](#)

[Privacy Policy](#)

[Notice of Privacy Practices](#)

[Notice of Nondiscrimination](#)

Mayo Clinic is a nonprofit organization and proceeds from Web advertising help support our mission. Mayo Clinic does not endorse any of the third party products and services advertised.

[Advertising and sponsorship policy](#)

[Advertising and sponsorship opportunities](#)

A single copy of these materials may be reprinted for noncommercial personal use only. "Mayo," "Mayo Clinic," "MayoClinic.org," "Mayo Clinic Healthy Living," and the triple-shield Mayo Clinic logo are trademarks of Mayo Foundation for Medical Education and Research.

© 1998-2019 Mayo Foundation for Medical Education and Research (MFMER). All rights reserved.

Appendix C

December 03 2018 2:58 PM

Pierce County Clerk

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff

No. [REDACTED]

vs.

Defendant

**ORDER ESTABLISHING CONDITIONS OF
RELEASE PENDING PURSUANT TO CrR 3.2
(orecrp)**

Arresting Agency : TACOMA POLICE DEPARTMENT

Incident Number : [REDACTED]

Charges

- THEFT IN THE FIRST DEGREE
- THEFT IN THE SECOND DEGREE
- THEFT IN THE SECOND DEGREE

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release Conditions:

- ☒ Defendant shall be released upon execution of a surety bond in the amount of \$150,000.00 or posting cash in the amount of \$150,000.00.

*****NEW BAIL*****

- ☒ Bail issue reserved.

Conditions that take effect upon release from custody:

- ☒ Defendant is to reside/stay only at this address [REDACTED]
- ☒ Travel is restricted to the following counties **Pierce, King, Thurston, and Kitsap Counties.**
- ☒ The defendant is not to drive a motor vehicle without a valid license and insurance.

Conditions that take effect immediately:

- ☒ Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.
- ☒ That the Defendant have no contact with the alleged victim(s), witness(es), co-defendant(s). and/or **Melvin Mesick and his residence.**
This includes any attempt to contact, directly or indirectly, by telephone and/or letter at their residence or place of work.
- ☒ Defendant shall not possess weapons or firearms.
- ☒ Defendant shall not consume or possess alcohol, marijuana, nonprescription drugs or knowingly associate with any known drug users or sellers, except in treatment
- ☒ Remain in contact with the defense attorney.
- ☒ Other: **Prohibited from doing yard work or to offer landscaping services unless he is an employee of a licensed business and is authorized by the business to conduct the work.**

[REDACTED] - [REDACTED]

☒ The said defendant is hereby committed to the custody of the arresting law enforcement agency to be detained by the same until the above-stated conditions of release have been met.

Dated : December 3, 2018.

Electronically Signed By
/s/STEPHANIE A AREND
JUDGE/COMMISSIONER

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney and the office of the Prosecuting Attorney informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE OR BAIL IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000 OR BOTH (RCW 10.19).

Address: , **WA USA**

Phone: [REDACTED]


[REDACTED] _____
Defendant

Appendix II

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

████████████████████ ██████████

Defendant.

NO. ██████████

STATE'S RESPONSE TO MOTION FOR
RELEASE AND TO STAY SENTENCE
PENDING RESOLUTION OF APPEAL

COMES NOW the State of Washington, by and through Kristie Barham, Deputy Prosecuting Attorney, and hereby responds to ██████████ "Motion and Order for Release and to Stay Sentence Pending Resolution of Appeal" (hereafter, Motion). In December 2019, this Court sentenced ██████████ to an exceptional sentence of 120 months in prison based on the aggravating circumstances of committing a major economic crime against an elderly, vulnerable victim. ██████████ now seeks a stay of his sentence and release from prison either on personal recognizance or an appeal bond based on COVID-19.

First, RCW 9.95.062(1) precludes his release. The community—particularly the elderly, vulnerable members of the Pierce County community—will be at risk if ██████████ is released. Second, ██████████ does not show a high probability of success on appeal to justify a stay of his sentence. Third, ██████████ has not shown that he is in a category of people who are

at higher risk for complications from COVID-19. And the Washington State Department of Corrections (DOC) is taking all necessary steps to protect incarcerated individuals from COVID-19. Finally, Governor Inslee recently issued a new emergency proclamation and commutation order in response to COVID-19 that gives the Governor and DOC greater authority to more quickly and expeditiously release incarcerated individuals from DOC facilities in a manner that not only takes individual circumstances into account but also does not jeopardize public safety. [REDACTED] fails to show that a stay of his sentence and release to the community are appropriate. This Court should deny [REDACTED] motion for release pending appeal.

I. FACTS RELEVANT TO MOTION

A. Conviction and Sentencing

On November 14, 2019, a jury convicted [REDACTED] of theft in the first degree and two counts of theft in the second degree. Appendix (App.) A (Verdict Forms).¹ The jury returned special verdict forms finding the following aggravating factors on all three counts: (1) that the defendant knew, or should have known, that the victim was particularly vulnerable or incapable of resistance; and (2) that the crime was a major economic offense or series of offenses. App. A. The victim testified at trial about his health issues and the difficulty he had ambulating. App. B at 4 (State's Sentencing Memorandum); *see also* App. C (Information/Declaration of Probable Cause). The crimes involved a complicated scheme where [REDACTED] built up the victim's trust over time and repeatedly solicited more money. App. B at 4. There were more than forty transactions over a two-month period. *Id.* at 4-5. After [REDACTED] was found guilty at trial, this Court entered an order for a no-bail hold pending sentencing. App. D (Order Establishing Conditions Pending Sentencing).²

¹ All appendices refer to the Appendix attached to this response unless otherwise noted.

² This revoked the former condition of release allowing [REDACTED] to remain in the community on a \$150,000 bond. *See* Motion, App. C. The State has no information on whether [REDACTED] previously requested an appeal

██████ has a lengthy criminal history dating back more than thirty years. *See* Motion, App. A (Judgment and Sentence). Prior to the convictions for these current offenses, ██████ had nineteen felony convictions and forty-four misdemeanor convictions. *Id.* One of these convictions was for felony escape in the second degree. *Id.*

At sentencing, ██████ had an offender score of 9+ with a standard range sentence of 43-57 months on Count I (theft in the first degree), and 22-29 months for Counts II and III (theft in the second degree). *Id.* On December 20, 2019, this Court sentenced ██████ to an exceptional sentence above the standard range based on the aggravating factors found by the jury. *Id.* The Court sentenced ██████ to 120 months on Count I, 60 months on Count II, and 60 months on Count III, all concurrent, for a total of 120 months in prison. *Id.* The Court ran the 120-month sentence consecutive to the sentence in Pierce County Superior Court Cause No. ██████, which ██████ was serving at the time of sentencing in this case. *Id.*

The facts and procedural history of Pierce County Cause No. ██████ are worth mentioning as they are relevant to ██████ motion. On September 6, 2018, ██████ pled guilty to two counts of theft in the second degree in exchange for the State's recommendation of a 22-month sentence. App. E (Declaration of Probable Cause/Plea of Guilty/Judgment and Sentence, Cause No. ██████). The State agreed to set over sentencing, and ██████'s prior bail bond in the amount of \$75,000 was deemed a continuing bond. *See id.*; App. F (Bail and Bench Warrant Documents, Cause No. ██████). ██████ was released to the community pending sentencing. On September 19, 2018, less than two weeks after his release pending sentencing, ██████ committed two additional thefts and was subsequently charged in Lakewood Municipal Court for two counts of theft in the third degree. App. E, F. A bench warrant was issued for his arrest. App. F. On October 15, 2018, the court placed ██████ on a no-bail hold pending sentencing. *Id.* On January 4, 2019, the court sentenced

bond on this case as the State has not received any transcripts from the trial or sentencing. *See* Motion at 1 ("Appellate counsel is awaiting copies of the transcripts.").

██████ to 22 months in prison for these offenses. App. E. Despite pleading guilty, he is currently appealing these convictions.

B. Motion for Appeal Bond

██████ argues that this Court should release him on his personal recognizance and that “[s]tandard conditions are appropriate and reasonable.” Motion at 3. In the alternative, he argues that bail in an amount between \$0 and \$150,000 is appropriate. *Id.* ██████ motion is based on the COVID-19 pandemic. He argues that the virus can cause serious illness and death and that “[o]lder adults or persons with underlying medical conditions are at greater risk.” *Id.* at 2. ██████ argues that the danger of COVID-19 to his health is significant because he is 53 years old and his “physical health is likely to rapidly decline as he approaches age 60.” *Id.* He asserts that he is housed at Monroe Correctional Complex (MCC) where several staff members and inmates have tested positive for COVID-19. *Id.* To mitigate the risk of illness or death due to COVID-19, ██████ asks this Court to stay his sentence pending resolution of his appeal. *Id.* at 2-3.

██████ has not shown that he is in a category of people who are at higher risk for more severe complications from COVID-19. He is not in the category of “older adults” as identified by the Centers for Disease Control (CDC), and he has not identified *any* underlying health condition that places him at higher risk.

II. ARGUMENT

A. RCW 9.95.062(1) limits the Court’s discretion to grant a stay and precludes release pending appeal in ██████ case.

██████ argues that this Court may stay his sentence pending resolution of the appeal pursuant to RAP 7.2(f) and CrR 3.2(h). Motion at 3. But application of these rules to the facts of his case demonstrates that his sentence should not be stayed.

“A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released.” RCW 10.64.025(1). Here, after [REDACTED] was convicted of three felonies, this Court imposed a no-bail hold pending sentencing and revoked his conditional release. App. D.

“There is no right to release pending appeal.” *State v. Cole*, 90 Wn. App. 445, 447, 949 P.2d 841 (1998); *State v. Blilie*, 132 Wn.2d 484, 493, 939 P.2d 691 (1997); *State v. Smith*, 84 Wn.2d 498, 499, 527 P.2d 674 (1974) (a convicted felon does not have a constitutional right to bail pending appeal). Rather, the right to release pending appeal is controlled by statutes that have been incorporated into various court rules. *See, e.g.*, CrR 3.2.(h), RAP 7.2(f); RCW 9.95.062; RCW 9.95.064. Trial courts have broad discretion in deciding whether to release a defendant pending appeal. *Cole*, 90 Wn. App. at 447.

The right to bail after verdict and pending appeal is governed by CrR 3.2(h), which provides:

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

CrR 3.2(h). After review is accepted by an appellate court, the trial court maintains the authority, subject to RCW 9.95.062 and .064, to fix conditions of release. RAP 7.2(f).

RCW 9.95.062 limits a court’s discretion to grant a stay by precluding a stay when certain circumstances are present. RCW 9.95.062 provides that notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall *not* stay the execution of the judgment of conviction if the court determines the following by a preponderance of the evidence:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations under the judgment or has not posted an adequate performance bond to assure payment.

RCW 9.95.062(1). Thus, this statute *precludes* release if *any* of the above factors are found by the trial court. *Cole*, 90 Wn. App. at 447. Moreover, there is no authority requiring a trial court to grant a stay whenever the requirements of RCW 9.95.062(1) are not met. However, at least two of the factors in RCW 9.95.062(1) are present in this case.

██████ is likely to flee or pose a danger to the safety of the community if the judgment is stayed and he is released. First, ██████ has a prior 2002 felony conviction for escape in the second degree. Motion, App. A. ██████ knowingly escaped from custody while on electronic home detention and subsequently pled guilty to this crime. App. G (Amended Information/Judgment and Sentence, Cause No. ██████). And he has failed to appear for court on criminal cases on more than forty occasions. *See* App. H (Case History).

Second, he is likely to pose a danger to the community if released. ██████ has been repeatedly and consistently committing crimes since 1989—for thirty years. *See* Motion, App. A. He has twenty-three felony convictions and forty-four misdemeanor convictions. *Id.* Of these convictions, ten are misdemeanor thefts and sixteen are felony thefts. *Id.* Thus, he has a lengthy history of committing crimes against members of the community and poses a danger to the community. And his most recent crimes demonstrate that he preys on vulnerable, elderly victims. He also has numerous convictions for both possession and delivery of controlled substances and appears to support his drug addiction by committing crimes against the community. *See id.*

Further, ██████ conceded the following at sentencing: (1) that his criminal history is “inexcusably long and—strangely enough—has been confined to conduct in Pierce County”; (2) that “there is obvious obsessive compulsivity surrounding ██████ that probably distracts and limits his ability to function with others”; (3) that he has “been punished for methamphetamine use while on DOC supervision”; and (4) that “five of his drug convictions have been centered around cocaine.” Motion, App. B at 6-8 (██████ Sentencing Brief). These statements reveal the danger ██████ poses to the community if released. His “inexcusably long” criminal history has been committed against the citizens of Pierce County, and this is the community that will be at risk if he is released back into the community. And he has a lengthy and persistent history of drug use that has not abated even while on DOC supervision. *Id.* at 8. The victim of the current crimes suspected that ██████ was using drugs during their encounters. *Id.* In light of ██████ persistent criminal history for the past thirty years, including his willingness to continue to violate the law even while under supervision from the State, there is simply no reason to believe that the community will be safe if he is released.

At sentencing, ██████ conceded that fourteen of his sixteen felony theft convictions involved similar fact patterns to this case. *Id.* at 6. The victim in this case, Melvin Mesick, was 75 years old and used a cane to walk due to a knee injury. App. C.³ ██████ offered to do lawn work at Mr. Mesick’s residence and defrauded him out of more than \$14,000 over a three-month period. *Id.* Further, at the time ██████ committed some of the thefts against Mr. Mesick, he was on community custody for a similar crime involving an 81-year-old victim. *Id.* One of ██████ community custody conditions prohibited him from doing yard work or offering services to anyone unless he was employed by a licensed business. *Id.* He was not so employed when he committed the crimes against Mr. Mesick. *Id.*

³ The State is relying on the probable cause declaration for a brief summary of the facts of this case because it has not yet received copies of the trial transcripts for the appeal.

█████ 2018 convictions for two counts of theft in the second degree committed in Pierce County Cause No. 18-1-01156-8 reveal a similar fact pattern against another vulnerable victim—90-year-old Mrs. Grimes. *See* App. E. █████ offered to do yard work for Mrs. Grimes and subsequently defrauded her out of \$3,650—draining her bank account and leaving her unable to pay her bills. *Id.* At the time █████ committed this offense, he was on probation with DOC and prohibited from doing any work or employment in landscaping or maintenance without the prior authorization of his Community Corrections Officer. *Id.*

Thus, █████ has a recent history of not only preying on vulnerable, elderly victims in Pierce County but also of committing crimes while on DOC supervision. Further, when the trial court released █████ in 2018 pending sentencing on another case, he committed additional crimes within just two weeks of his release. App. E, F. █████ poses a serious risk to the safety of the community if his judgment is stayed and he is released to prey upon more victims. RCW 9.95.062(1)(a) precludes his release, and this Court should not stay execution of the judgment.

RCW 9.95.062(1)(b) also precludes █████ release because the delay resulting from the stay will unduly diminish the deterrent effect of the punishment. In light of █████ repeated failure to comply with DOC conditions when he committed the most recent crimes, including the crimes for which he is currently incarcerated, appellate release will diminish the deterrent effect of the sentence and will jeopardize the public's interest in a safe community. Further, the longer punishment is deferred, the weaker the link between the offense and the punishment and, hence, the weaker the deterrent effect. RCW 9.95.062(1)(b) provides another reason that this Court should not stay execution of the judgment.

Moreover, █████ has not shown that he has a high probability of success on appeal. An order of release pending appeal is designed “to protect an appealing defendant who claims to have been erroneously convicted from serving a possibly undeserved sentence.”

State v. Perry, 10 Wn. App. 159, 169, 516 P.2d 1104 (1973), *review denied*, 83 Wn.2d 1011 (1974). [REDACTED] has not shown that he was erroneously convicted and is serving an undeserved sentence. He claims only that he anticipates, without reading any of the transcripts, that there will be “issues of merit to raise in the appeal.” Motion at 1-2. His only elaboration on this speculative claim is that there appear to be “*potential* issues concerning the sufficiency of the evidence and the admission of prior bad actions evidence under ER 404(b).” *Id.* at 2 (emphasis added). But this amounts to mere speculation. And without any indication of what issues will be raised on appeal, it is unclear whether any challenges will impact his guilt or alter the length of his sentence. There is no basis to stay [REDACTED]’s sentence where he has not shown a high probability of success on appeal.

B. DOC is taking all necessary steps to protect inmates from COVID-19.

For many weeks now, DOC leadership, emergency operations managers, and health services staff have focused intensely on implementing measures to mitigate the risk COVID-19 poses to the incarcerated population. Following Washington Department of Health and CDC guidance, DOC has implemented COVID-19 screening for incarcerated individuals and staff; developed testing protocols, obtained test kits, and administered tests to incarcerated individuals; isolated individuals with COVID-19 symptoms and quarantined asymptomatic individuals who may have been exposed to COVID-19; suspended visitation; put in place special precautions for vulnerable populations; imposed extra sanitation and hygiene requirements; worked on implementing social distancing guidelines; and taken numerous other steps to address the evolving situation. In the last several months, DOC has updated policies so frequently that it is difficult to describe every single step taken in this

unprecedented effort.⁴ DOC created a page on its public website to share these planning documents, daily updates, and COVID-19 resources.⁵

Within a few days of the announcement of the first case of COVID-19 in the United States, DOC and its Communicable Disease and Infection Prevention Program began working diligently to prepare for and manage the risk of COVID-19 to incarcerated individuals and staff. According to DOC's website, in early February, DOC began supporting the Department of Health (DOH) response to COVID-19 by providing members of the agency Department Incident Management Team. An advanced contingency planning team launched in late February to support the agency response. And on March 2, 2020, DOC officially opened its Emergency Operations Center in response to COVID-19, which includes representatives from health services staff. *Id.*

Incarcerated individuals have been largely sheltered from the pandemic and its ripple effect. While the virus raged on for months in Washington State, due to the up-to-date protocols implemented by DOC, including quarantine, testing, and distribution of hygiene supplies, there were no cases of COVID-19 in the prison population until the recent cases in a single facility. As of the writing of this brief, five staff members and ten inmates at MCC have tested positive for COVID-19. The incidence of the virus inside DOC facilities (0.039%) is significantly less than the incidence in Washington State as a whole (0.14%). *Id.*⁶

As of March 13, 2020, visitation at all correctional facilities has been suspended to protect the health and safety of all employees, incarcerated individuals, and the public. DOC

⁴ DOC recently documented these efforts in a 153-page report to the Washington State Supreme Court in *Colvin, et al. v. Inslee*, No. 98317-8. <http://www.courts.wa.gov/content/Briefs/A08/983178%20Report.pdf>

⁵ See <https://www.doc.wa.gov/news/covid-19.htm>

⁶ As of April 13, 2020, DOC had eight incarcerated individuals out of its population of approximately 18,000 who have tested positive, or 0.039% of its overall population; in comparison, approximately 0.14% of the total population of Washington State have tested positive. As of April 11, 2020, there have been 10,411 positive cases in Washington, which has an estimated population of 7.6 million people.

has implemented enhanced screening protocols for all employees, contract staff, incarcerated individuals, and others entering DOC facilities and field offices consistent with recommendations from DOH and the CDC. Pursuant to DOC Health Services guidance, incarcerated individuals who show symptoms are directed to wear a surgical mask to immediately prevent potential spread of the virus and placed in isolation. Their cellmates are immediately quarantined until they can be evaluated by a medical provider. And anyone testing positive or who is suspicious for the virus are required to remain in isolation until symptom-free for fourteen days. *Id.*

All DOC locations have instituted intensive cleaning protocol focusing on sanitizing high touch surfaces, increased personal hygiene, and posting of DOH COVID-19 and hygiene related materials in public areas and areas visible to the incarcerated population. Hand sanitizer was authorized in prison facilities for use by employees and contract staff and are placed in areas where soap and water are not readily available. Incarcerated individuals also have access to hand sanitizer in supervised locations. DOC is also providing free access to sanitation products for individuals inside prisons. *Id.* Thus, DOC is taking all necessary steps to protect inmates from the virus.

██████ who is 53 years old, appears to portray himself as a person in the category of people more susceptible to the virus. But ██████ provides no support for implying that he falls into the category of “older adults” who may be at higher risk for more severe complications from COVID-19. The CDC guidelines identify the higher risk individuals as those over the age of 65.⁷ ██████ at age 53, does not fall into this risk group.

The CDC also indicates that people with “serious underlying medical conditions” may be at higher risk.⁸ The CDC has identified these serious medical conditions as including chronic lung disease, severe asthma, serious heart condition, severe obesity, diabetes,

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

⁸ *Id.*

chronic kidney disease with dialysis, liver disease, and immunocompromised conditions such as cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications.⁹ [REDACTED] does not fall into this risk group either. In fact, [REDACTED] has not presented any information regarding a qualifying “serious underlying medical condition”—or *any* current medical condition. *See* Motion. Instead, he presents an argument made by his trial attorney at sentencing, which speculates without any medical documentation that his physical health may decline as he approaches age 60. *See* Motion at 2. At sentencing, [REDACTED] attorney argued in the sentencing brief:

Given a lifetime of poor health choices, poor genetics (many of his siblings have already passed away) multiple car accidents, and a lifetime of working with his hands, [REDACTED] physical health is likely to rapidly decline as he approaches age 60.

Motion, App. B at 12. First, this former opinion by [REDACTED] attorney was not supported by any medical documentation or other supporting facts and amounts to mere speculation. Second, this opinion expressed by his attorney does not identify any underlying medical condition that would place [REDACTED] in a high-risk group. [REDACTED] has provided no information to show that his particular circumstances place him at higher risk for complications from the virus. And DOC is taking all necessary steps to protect incarcerated individuals from the virus.

C. The Governor has issued an emergency proclamation and commutation order allowing the expeditious release of certain incarcerated individuals to further protect the health of the inmate population.

On February 29, 2020, Governor Inslee declared a State of Emergency and subsequently issued numerous orders to reduce the spread of COVID-19 in Washington State. *See e.g.* Proclamations 20-05, 20-6, 20-7, 20-8, 20-14, 20-25, 20-25.1.¹⁰ The Governor

⁹ *Id.*

¹⁰ <https://www.governor.wa.gov/office-governor/official-actions/proclamations>

has been recently evaluating options to exercise his discretionary emergency power and constitutional clemency authority to further mitigate the COVID-19 risk to incarcerated individuals and is doing so in a manner that does not jeopardize public safety.¹¹

On April 15, 2020, the Governor issued an emergency proclamation focused on reducing the prison population in light of COVID-19. App. I (Proclamation 20-50).¹² The Governor also directed DOC “to continue to explore actions to identify other incarcerated individuals for potential release through Rapid Reentry, furlough, commutation, or emergency medical release, as eligible and needed.” *Id.* The proclamation gives the Governor and DOC greater authority to more quickly and expeditiously release individuals from DOC facilities. Thus, the State has taken additional steps to protect the health of incarcerated individuals by focusing on the early release of certain vulnerable populations, including nonviolent offenders who are due to be released in the coming months.¹³

III. CONCLUSION

For the foregoing reasons, this Court should deny [REDACTED] motion for release on bail pending resolution of the appeal.

RESPECTFULLY SUBMITTED this 16th day of April, 2020.

MARY E. ROBNETT
Pierce County Prosecuting Attorney

s/ Kristie Barham
KRISTIE BARHAM, WSB #32764
Deputy Prosecuting Attorney
Pierce County Prosecutor’s Office
930 Tacoma Ave. S., Rm 946
Tacoma, WA 98402-2171
Telephone: (253) 495-8506
kristie.barham@piercecountywa.gov

¹¹ DOC has limited authority to release an incarcerated individual prior to the expiration of a sentence. The power to release inmates for medical reasons rests with the Governor and the Secretary of DOC. *See* RCW 9.94A.728.

¹² <https://www.governor.wa.gov/office-governor/official-actions/proclamations>

¹³ <https://www.governor.wa.gov/news-media/inslee-issues-new-orders-reduce-prison-populations-during-covid-19-outbreak>

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to the attorney of record for the defendant/appellant true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

4-16-20 S/ Therese Kahn
Date Signature

APPENDIX A

0316

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

VERDICT FORM I

Defendant.

We, the jury, find the defendant, [REDACTED]

Guilty

(Write in

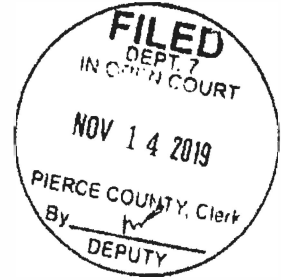
"Not Guilty" or "Guilty") of the crime of Theft in the First Degree as charged in Count I.


PRESIDING JUROR

0319

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

[Redacted]

Defendant.

CAUSE NO. [Redacted]

VERDICT FORM II

We, the jury, find the defendant, [Redacted] Guilty (Write in
"Not Guilty" or "Guilty") of the crime of Theft in the Second Degree as charged in Count II.

[Signature]
PRESIDING JUROR

0321

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

VERDICT FORM III

Defendant.

We, the jury, find the defendant, [REDACTED]

Guilty

(Write in

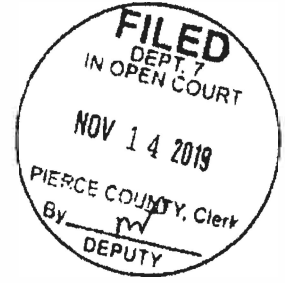
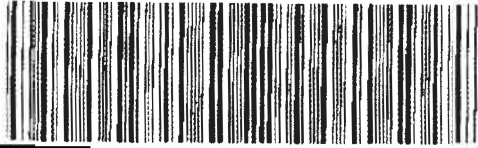
"Not Guilty" or "Guilty") of the crime of Theft in the Second Degree as charged in Count III.

[Signature]
PRESIDING JUROR

0318

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

SPECIAL VERDICT FORM COUNT I

[REDACTED] Defendant.

We, the jury, having found the defendant guilty of Theft in the First Degree or the lesser included charge of Theft in the Second Degree, return a special verdict by answering as follows:

QUESTION 1:

Did the defendant know, or should the defendant have known, that the victim was particularly vulnerable or incapable of resistance?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2:

Was the crime a major economic offense or series of offenses?

ANSWER: Yes (Write "yes" or "no")

11/14/19
DATE

[Signature]
Presiding Juror

0320

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

SPECIAL VERDICT FORM COUNT II

[REDACTED] Defendant.

We, the jury, having found the defendant guilty of Theft in the Second Degree,
return a special verdict by answering as follows:

QUESTION 1:

Did the defendant know, or should the defendant have known, that the victim was
particularly vulnerable or incapable of resistance?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2:

Was the crime a major economic offense or series of offenses?

ANSWER: Yes (Write "yes" or "no")

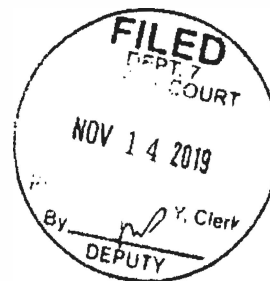
11/14/19
DATE

[Signature]
Presiding Juror

0322

309

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

SPECIAL VERDICT FORM COUNT III

Defendant.

We, the jury, having found the defendant guilty of Theft in the Second Degree, return a special verdict by answering as follows:

QUESTION 1:

Did the defendant know, or should the defendant have known, that the victim was particularly vulnerable or incapable of resistance?

ANSWER: Yes (Write "yes" or "no")

QUESTION 2:

Was the crime a major economic offense or series of offenses?

ANSWER: Yes (Write "yes" or "no")

DATE

11/14/19

Presiding Juror

[Signature]

APPENDIX B



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

STATE'S SENTENCING
MEMORANDUM

Defendant.

COMES NOW THE STATE OF WASHINGTON, by and through Deputy
Prosecuting Attorney Sven K. Nelson, and hereby submits this sentencing memorandum.

I. PROCEDURAL FACTS

The defendant was charged on October 25, 2018 with one count of Theft in the First Degree and 2 counts of Theft in the Second Degree. All three counts are charged with multiple aggravators alleging that the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance and/or the current offense was a major economic offense or series of offenses. An Amended Information was entered as trial commenced that added the alternative means of "color or aid of deception" to each of the three counts of theft.

Jury selection in this matter began on November 4, 2019. On November 14, 2019 the jury found the defendant guilty as charged. On each count the jury also returned a finding as to both aggravating circumstances, concluding that the defendant knew or

1 ORIGINAL

should have known that the victim was particularly vulnerable or incapable of resistance and that the current offense was a major economic offense or series of offenses.

II. REQUEST FOR EXCEPTIONAL SENTENCE AND ARGUMENT:

The defendant has a lengthy criminal history dating back thirty years:

JURISDICTION	CRIME	OFFENSE DATE	SENTENCING DATE
Pierce Co. District	FTC	11-17-89	
Pierce Co. District	FTC	11-29-89	
Pierce Co. District	FTC	2-13-90	
Pierce Co. District	FTC	4-18-90	
Pierce Co. District	FTAS	11-26-90	
Pierce Co. District	NVOL	1-10-91	
Tacoma Muni. Ct.	DWLS/FTAS	7-16-91	
Pierce Co. District	DWLS/FTAS	8-10-91	
Tacoma Muni. Ct.	DWLS/FTAS	10-22-91	
Pierce Co. District	NVOL	2-22-92	
Tacoma Muni. Ct.	DWLS/FTAS	6-12-92	
Tacoma Muni. Ct.	DWLS/FTAS	7-24-92	
Pierce Co. District	Theft 3	9-16-92	
Tacoma Muni. Ct.	DWLS	8-28-93	
Pierce Co. District	DWLS	11-18-93	
Pierce Co. District	DWLS	11-22-93	
Pierce Co. District	DWLS	11-29-93	
Tacoma Muni. Ct.	DWLS	12-1-93	
Pierce Co. District	DWLS	12-21-93	
Pierce Co. District	DWLS	7-28-94	
Fircrest Muni.	City License Violation	11-20-95	
Pierce Co. District	Theft 3 (2x)	3-27-96	
Pierce Co. District	Theft	4-2-96	
Pierce Co. District	DWLS	4-5-96	
Tacoma Muni. Ct.	DWLS	6-13-96	
Tacoma Muni. Ct.	DWLS	7-23-96	
Tacoma Muni Ct.	DWLS	8-4-96	
Lakewood Muni.	Theft 3	9-15-96	
Pierce Co. District	DWLS	9-23-96	
Lakewood Muni.	DWLS	10-24-96	
Tacoma Muni.	DWLS	8-25-97	
Pierce Co. District	Theft 3	12-5-97	
Pierce Co. District	DWLS/False Statement	12-7-97	

[REDACTED]

JURISDICTION	CRIME	OFFENSE DATE	SENTENCING DATE
Pierce Co. District	DWLS	12-26-98	
Lakewood Muni.	Theft 3	2-12-99	
Lakewood Muni	DWLS	12-1-99	
Lakewood Muni	DWLS 3	12-14-99	
Lakewood Muni	DWLS 3	2-21-00	
Lakewood Muni	Theft 3	6-30-01	
Lakewood Muni	Theft 3	12-15-04	
Lakewood Muni	Theft 3	6-28-05	
Pierce County Superior	Crim. Trespass 1	5-27-16	
Pierce Co Sup.	Failure to obtain business License	5-27-16	
Pierce Co. Sup.	Theft 2	2-10-93	7-22-93
Pierce Co. Sup.	Theft 2	8-19-93	9-16-93
Pierce Co. Sup.	Theft 2	11-26-97	7-8-99
Pierce Co. Sup.	UDCS Cocaine	2-11-00	4-6-00
Pierce Co. Sup.	Consp UDCS Cocaine w/ school enhancement	9-19-01	3-8-02
Pierce Co. Sup.	Escape 2	9-19-01	3-8-02
Pierce Co. Sup.	UPCS Cocaine	6-26-05	2-22-07
Pierce Co. Sup.	Theft 1	9-27-05	2-20-07
Pierce Co. Sup.	Inciting Criminal Profiteering	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	Theft 2	9-27-05	2-20-07
Pierce Co. Sup.	UPCS	4-21-10	2-4-11
Pierce Co. Sup.	UPCS	8-19-15	10-26-15
Pierce Co. Sup.	Theft 2	3-5-18	1-4-19
Pierce Co. Sup.	Theft 2	3-6-18	1-4-19

RCW 9.94A.535 permits the State to request, and this Court to impose, a sentence above the standard sentencing range based on any one, or both of the aggravating circumstances found by the jury. Both aggravating circumstances are set forth in subsection (3) of RCW 9.94A.535, which require the jury to find that said circumstances are present, as they did in this case. An exceptional sentence above the standard range based on aggravating circumstances found by the jury is permitted if there are reasons that justify the sentence in the record. *State v. Baird*, 83 Wash.App. 477, 486, 922 P.2d 157 (1996).

In our case, victim Mr. Melvin Mesick was found by the jury to be particularly vulnerable or incapable of resistance. During the trial, he testified about his health history and the difficulty that he had ambulating. His health issues were the reason that he sought landscaping help in the first place. Mr. Mesick also testified in detail about the difficulty that he had getting in and out of the defendant's vehicles on numerous excursions (related to these crimes) due to these same health issues. The jury was also able to observe Mr. Mesick's demeanor and physical vulnerabilities while testifying and found that Mr. Mesick was more vulnerable to the commission of the crimes of Theft in the First and Second Degree than a typical victim of these crimes.

The jury also found that each of the counts were major economic offenses. This finding is also justified by the record in the trial. These crimes involved a complicated scheme in which the defendant built up trust with his victim and then constantly came to his residence soliciting more and more money. There were in excess of forty (40) transactions over an approximately sixty (60) day period and during this time the defendant

0117
858
12/24/2019

1 was gone for a three week stretch making this victimization almost daily experience for
2 Mr. Mesick.

3 In addition to the aggravating factors found by the jury, the Court has the option of
4 imposing an exceptional sentence based on the fact that the defendants prior unscored
5 misdemeanor history results in a sentence that is clearly too lenient, RCW 9.94A.535(2)(b)
6 and/or because the defendant has committed multiple current offenses and his high
7 offender score results in some of the current offenses going unpunished RCW
8 9.94A.535(2)(c). Both of these aggravators are applicable in our case.

9 The defendant has forty-six (46) misdemeanor convictions including ten (10)
10 convictions for theft. Unlike some domestic violence or felony driving offenses –
11 misdemeanor convictions for theft (or other misdemeanors) are not reflected in the
12 offender score for felony theft convictions. Additionally, because the defendant had
13 twenty (20) felony convictions before this case was filed – if an exceptional sentence is not
14 granted here – there will be no punishment for anything but his first count (leaving counts
15 II and III unpunished as they will all score as a “9”).

16 The defendant’s standard sentencing range for Count I (Theft in the First Degree)
17 with an offender score of 9+ is 43-57 months in the Department of Corrections. His
18 sentencing range for Counts II and III (Theft in the Second Degree) is 22-29 months on
19 each count.
20

21 The facts of this case as revealed during trial and the defendant’s voluminous
22 criminal history justify an exceptional sentence well above the standard range of 43 to 57
23 months. The State respectfully requests that this Court sentence the defendant to a term of
24
25

Ten years (120 months) in the Department of Corrections by sentencing the defendant as follows:

Count I – 60 months consecutive with Count II and concurrent with Count III;

Count II – 60 months consecutive with Count I and concurrent with Count III;

Count III – 60 months concurrent with Counts I and II.

Other conditions: \$500 CVPA, \$200 Costs, \$100 DNA, Restitution, No Contact with Melvin Mesick for a period of 10 years.

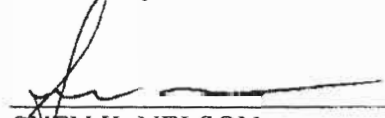
The State asks that the Court make a finding that each of the aggravating factors are valid and that the Court would sentence the defendant to the same sentence if each of the factors were the only factor present.

III. CONCLUSION:

For the aforementioned reasons, the State respectfully requests that this court sentence this defendant to an exceptional sentence of 120 months in the Department of Corrections.

DATED: December 19, 2019.

MARY ROBNETT
Pierce County
Prosecuting Attorney


SVEN K. NELSON
Deputy Prosecuting Attorney
WSB # 24235

APPENDIX C

October 25 2018 8:31 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

INFORMATION

(INF)

AKA

Defendant.

[REDACTED]
Sex: MALE
Race: BLACK

DOL#: WA - [REDACTED]
PCN#:
SID#: [REDACTED]

COUNT 1

I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse [REDACTED] of the crime of THEFT IN THE FIRST DEGREE, committed as follows:

That [REDACTED] in the State of Washington, on or between the 1st day of May, 2018 and the 31st day of May, 2018, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over property and/or services other than a firearm or a motor vehicle, belonging to another, of a value exceeding \$5,000, with intent to deprive said owner of such property and/or services, contrary to RCW 9A.56.020(1)(c) and 9A.56.030(1)(a), , and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, pursuant to RCW 9.94A.535(3)(d), The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors: (i) The current offense involved multiple victims or multiple incidents per victim; (ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense; (iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or (iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense, and against the peace and dignity of the State of Washington.

COUNT 2

And I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse [REDACTED] of the crime of THEFT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That [REDACTED] in the State of Washington, on or between the 1st day of June, 2018 and the 30th day of June, 2018, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over property and/or services other than a firearm or a motor vehicle, belonging to another, of a value exceeding \$750, but that does not exceed \$5,000, with intent to deprive said owner of such property and/or services, contrary to RCW 9A.56.020(1)(a) and 9A.56.040(1)(a), , and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, pursuant to RCW 9.94A.535(3)(d), The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:(i) The current offense involved multiple victims or multiple incidents per victim; (ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense; (iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or (iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense, and against the peace and dignity of the State of Washington.

COUNT 3

And I, Mark Lindquist, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse [REDACTED] of the crime of THEFT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That [REDACTED] in the State of Washington, on or between the 1st day of July, 2018 and the 31st day of July, 2018, did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over property and/or services other than a firearm or a motor vehicle, belonging to another, of a value exceeding \$750, but that does not exceed \$5,000, with intent to deprive said owner of such property and/or services, contrary to RCW 9A.56.020(1)(a) and 9A.56.040(1)(a), , and the crime was aggravated by the following circumstances: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, pursuant to RCW 9.94A.535(3)(d),

1
2 The current offense was a major economic offense or series of offenses, so identified by a consideration of any
3 of the following factors:(i) The current offense involved multiple victims or multiple incidents per victim; (ii) The
4 current offense involved attempted or actual monetary loss substantially greater than typical for the offense; (iii)
5 The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of
6 time; or (iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the
7 commission of the current offense, and against the peace and dignity of the State of Washington.

8 DATED: October 25, 2018

MARK LINDQUIST
Pierce County Prosecuting Attorney

9 PLACE: TACOMA, WA
10 TACOMA POLICE DEPARTMENT
11 2703

/s/ SVEN NELSON
SVEN NELSON, WSB# 24235
Deputy Prosecuting Attorney

October 25 2018 8:31 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE
(ADPC)

AKA

Defendant.

DOB: [REDACTED]

SVEN NELSON declares under penalty of perjury:

That in Pierce County, Washington, during the period between the 1st day of May, 2018 and the 31st day of July, 2018, the defendant, [REDACTED] did commit the crimes of Theft in the First Degree and Theft in the Second Degree (2 counts). Additionally all counts are aggravated in that the victim was particularly vulnerable or incapable of resistance and that these were major economic offenses or a series of offenses.

On 10-16-18, Tacoma Police were contacted by Melvin Mesick regarding elder abuse lawn care fraud. Mesick was first contacted back on May 11, 2018 by [REDACTED] who offered to do some lawn work at Mesick's residence. Mesick (age 75) had always done his own yard work and hedge/tree trimming, but he had injured his knee and was currently using a cane to walk so he decided it was a good idea to hire someone. Eventually, Mesick ended up giving [REDACTED] over \$14,000 between May and July 2018. Mesick constantly told law enforcement officers how embarrassed he was and how he could not believe that he let this happen. He also did not want his family to ever find out that he had been scammed in this fashion. Even deducting the work that was partially completed - the amount of Mesick's loss was in excess of \$13,000.

Initially, they agreed on a price of \$600 to trim the front hedge on the south side of his property. [REDACTED] was also going to cut 5 very tall trees down to 10 feet so that Mesick could maintain them. The price for tree trimming was \$1,000. Lastly, Mesick wanted [REDACTED] to trim some trees and bushes on the North side of the property that overhung his neighbors yard and agreed to pay him \$800 more for that job.

Two men showed up later to trim the front hedge. They worked hard when they were there but never finished the job. Two different men came to trim two of the trees but never finished that job either. One of the men demanded \$400 from Mesick who told them he had already paid [REDACTED] but the man insisted that he needed to pay and [REDACTED] would refund Mesick the \$400. When Mesick later asked [REDACTED] about his \$400 - [REDACTED] became angry never did reimburse him. [REDACTED] never did any of the work on the North side of the property.

From the beginning, [REDACTED] was constantly asking Mesick for extra money for things like tabs for his truck, gas, vehicle parts, etc... Everything Mesick gave him was supposed to be a loan. [REDACTED] told him that he had money coming up in from other jobs and he would pay him back. At one point [REDACTED] showed Mesick a bag of checks and said as soon as he could cash them - he could pay Mesick back. But he never did.

[REDACTED] would often get on the phone (when he was with Mesick) and talk to other people about jobs - leading Mesick to think that [REDACTED] was getting paid for other jobs soon. One time, [REDACTED] handed Mesick a \$300 check supposedly from another client and said that he ([REDACTED]) could not cash it until the next day, [REDACTED] then asked Mesick to give him \$300 in cash and he could keep the check as collateral. Mesick gave him cash and the next day [REDACTED] returned and took the check back.

Between May and July, [REDACTED] took Mesick to the bank and ATM multiple times to get cash. One time, [REDACTED] told Mesick that he had to pay insurance for all of his trucks or the police were going to impound them. [REDACTED] then took Mesick to the bank and Mesick withdrew \$1,550 and gave it to [REDACTED]

During the month of May 2018, Mesick gave the following amounts to [REDACTED] Checks totaling \$3208, cash from ATM withdrawals totaling \$2360 and \$800 in cash from an in branch withdrawal for a grand total of \$6,368. Deducting \$800 for the work that was partially completed - the total loss in May was \$5,568 (Theft in the First Degree - Count I).

In the month of June, Mesick's total loss was \$4,025 - which includes checks totaling \$3,725 and ATM withdrawals of \$300 (Theft in the Second Degree - Count II). In July, there were checks in the amount of \$1,225, ATM withdrawals in the amount of \$1,060 and cash from a branch withdrawal of \$1,550. Additionally, [REDACTED] took Mesick to an O'Reilly's Auto Part store where he had Mesick buy \$355.23 worth of merchandise and another time where [REDACTED] had Mesick pay for \$66.45 worth of gas at Fred Meyer. Mesick's total loss in July was \$4,256.68 (Theft in the Second Degree - Count III).

Several times [REDACTED] made reference to June 5, 2018 as the date when everything would be different but he never explained what he meant. Interestingly, [REDACTED] was on community custody through June 5th for a similar scam involving an 81 year old victim. One of the conditions of his community custody prohibited [REDACTED] from doing yard work or to offer services unless he was an employee of a licensed business and was authorized by the business to conduct the work. Detective Schieferdecker checked with the Washington State Department of Revenue and noted that [REDACTED] did have a business license back in 2005 - but the business is closed. There was nothing on file with the Secretary of State's office.

1
2
3 Around July 19, 2018, Mesick started to panic because his bank account balance was so low. He
4 told [REDACTED] that he was not giving him any additional money. [REDACTED] returned two or three times
5 after that but Mesick would not give him any more money. [REDACTED] finally stopped coming by the
6 residence. [REDACTED] never completed any of the work and never repaid any of the money.

7 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
8 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

9 DATED: October 25, 2018.

10 PLACE: TACOMA, WA

11 /s/ SVEN NELSON

12 SVEN NELSON, WSB# 24235

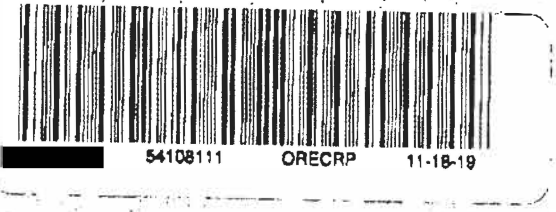
13 Deputy Prosecuting Attorney
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

APPENDIX D

0324

308

11/18/2019



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

[REDACTED]

Defendant.

ORDER ESTABLISHING CONDITIONS
PENDING TRIAL PURSUANT TO CrR 3.2
Sentencing

Theft 1, Theft 2 x 2

accept Defendant, as verdict

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending *Sentencing* trial in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release conditions:

- ☒ Defendant is to be held in custody without bail (no bail hold).
- ☐ Defendant is to be released on personal recognizance.
- ☐ Defendant is to be released upon execution of a surety bond in the amount of \$ _____ or posting of cash in the amount of \$ _____.

Conditions that take effect upon release from custody:

- ☐ Defendant is released to the supervision of _____.
- ☐ Defendant is to reside/stay only at this address _____.
- ☐ Travel is restricted to Pierce, King, Thurston, and Kitsap Counties.
- ☐ Defendant is not to drive a motor vehicle without a valid license and insurance.
- ☐ Defendant is to keep in contact with defense attorney.

Conditions that take effect immediately:

- ☐ Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.

0324
11/18/2019 303
[] Defendant is to have no contact with the victim(s) or witness(es), to wit:

This includes any attempt to contact, directly or indirectly, by telephone and/or letter.

[] Pierce County jail shall monitor phone calls made by the defendant to insure compliance with this directive.

[] Defendant is to have no contact with minor children (under age 18) and is not to be on school grounds or playgrounds, except for:

[] Defendant is to report to the Pierce County jail by _____ for administrative booking procedure.

[] Defendant shall not possess weapons or firearms.

[] Defendant shall not consume or possess alcohol or non-prescription drugs, or associate with any known drug users or sellers.

[] Additional conditions of release are included in an attachment:

[] BTC [] Protective Order [] Other _____

[] Other _____

[] Defendant is hereby committed to the custody of the arresting law enforcement agency to be detained by the same until the above stated conditions of release have been met.

DATED this 14 day of November, 2019

JUDGE

Jerry Costello
JERRY T. COSTELLO



I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below or upon notice to my attorney. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney or, if I am representing myself, the Office of the Prosecuting Attorney-informed of any change of either my address or my telephone number.

I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE OR BAIL IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000, OR BOTH (RCW 10.19).

Address: _____ Phone: _____

Notary
DEFENDANT

DATE _____

APPENDIX E

March 23 2018 1:32 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE
(ADPC)

Defendant.

DOB: [REDACTED]

SVEN NELSON declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the LAKEWOOD POLICE DEPARTMENT, incident number [REDACTED];

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, during the period between the 3rd day of March, 2018 and the 8th day of March, 2018, the defendant, [REDACTED] did commit the crime of Theft in the Second Degree (3 Counts) and each count is aggravated in that the defendant knew or should have known that the victim was particularly vulnerable or incapable of resistance.

On 3-3-18, [REDACTED] (defendant) contacted Mrs. Grimes (age 90) by knocking on the front door of her residence. He offered to clean her gutters and do some yard work as her yard had overgrown trees and shrubs and her gutters were full of leaves and needles. As they walked around the yard - the defendant told Mrs. Grimes that he had done some work for her neighbors. The defendant said that he would trim her trees and bushes, rake all the leaves and needles, cut out a large tree stump, clean the gutters and get rid of the junk from her driveway - for \$900. Mrs. Grimes agreed on the price and the defendant also offered to remove a big bucket of nails from her property and left with the nails - promising to return in a day or two to do the work.

One or two days later (approximately 3-5-18) the defendant returned to the Grimes residence about 3:30 p.m. and told her that he had about 10 minutes to get to the bank before it closed. The defendant asked Mrs. Grimes to pay the \$900 upfront. He was in a hurry and told her to leave the pay to order blank as he would fill it in. Mrs. Grimes wrote out a check for \$900. The defendant returned later that day (or possibly the next day) and indicated that he needed a 2nd check for \$900 as he locked the check and his keys in his vehicle. The defendant told Mrs. Grimes that he needed to get the \$900 immediately so that he could get insurance for working in her yard. He indicated that if she gave him a second check for \$900 he would not cash the first one.

Over the next several days, the defendant later obtained two additional checks (one for \$900 and one for \$950). Mrs. Grimes could not recall how the defendant convinced her to write the checks but remembered him standing very close

1
2
3 to her (in an intimidating fashion) and at least one time getting down on his knee and staring at her intently as she wrote a
4 check. She said that she felt almost hypnotized into giving him the money he demanded. The defendant never did any work
5 for Mrs. Grimes and she eventually realized that he was not going to complete the work.

6 Mrs. Grimes went to her bank and learned that four checks had been cashed. Checks Number #3152 and #3153 were
7 cashed for \$900 a piece on 3-5-18 (Theft in the Second Degree - Count 1). Check # 3155 also for \$900 was cashed on
8 3-6-18 (Theft in the Second Degree - Count 2). Check #3159 for \$950 was cashed on 3-8-18 (Theft in the Second Degree -
9 Count 3).

10 The defendant cashed checks that totaled \$3,650 - which drained Mrs. Grimes account and left her unable to pay her other
11 bills. Mrs. Grimes and her son - identified the defendant from a recent booking photo.

12 The defendant is on probation with the Department of Corrections and one of the conditions is a prohibition on doing any
13 work or employment in landscaping or maintenance without prior authorization from his Community Corrections Officer.

14 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT
15 THE FOREGOING IS TRUE AND CORRECT.

16 DATED: March 23, 2018.

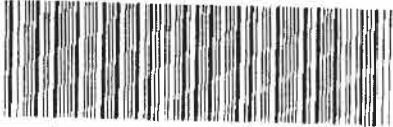
17 PLACE: TACOMA, WA

18 /s/ SVEN NELSON

19 SVEN NELSON, WSB# 24235

20 Deputy Prosecuting Attorney

57800031
9/7/2018



51980847 STTDFG 09-07-18

FILED
DEPT 18
IN OPEN COURT

SEP -6 2018

PIERCE COUNTY, Clerk
By DEPUTY

**Superior Court of Washington
For Pierce County**

State of Washington

Plaintiff

vs.

[REDACTED]

Defendant

No. [REDACTED]

**Statement of Defendant on Plea of
Guilty to Non-Sex Offense
(STTDFG)**

1. My true name is: [REDACTED]
2. My age is: 51
3. The last level of education I completed was 12
4. **I Have Been Informed and Fully Understand That:**

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Hershman
- (b) I am charged with the crime(s) of: Theft Second Degree (2 Counts)

as set out in the Amended Information, dated, 9. 6. 18, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer.

[Signature]
(Defendant's initials)

The elements of ☐ this crime ☐ these crimes are as set out in the Amended Information, dated 9. 6. 18, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer.

[Signature]
(Defendant's initials)

N/A Additional counts are addressed in Attachment "B"

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

57800032

9/7/2018

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	9+	22 to 29 months	0	0	5yrs/\$10K
2	9+	22 to 29 months	0	0	5yrs/\$10K
3					

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Vehicular Homicide, see RCW 46.61.520, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months

Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge:
 State recommends Low end of 22 months. \$500/cvpa, \$200/Costs.
 NCO with complaining witness. State will agree that Defendant can enter his plea and set over sentencing.
 Restitution paid up front (\$3,650.00)

SPB

☐ The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
 - (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing

Reform Act.

- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen of the United States**, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) **I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition**, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.
- (k) **Loss of voting rights –Acknowledgment, RCW 10.64.140:** After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520, after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by (i) a certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637; (ii) a court order issued by the sentencing court restoring the right, as provided in RCA 9.92.066; (iii) a final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or (iv) a certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Voting before the right is either provisionally or fully restored is a class C felony under RCW 29A.84.660.

- (l) **Government assistance may be suspended** during any period of confinement.
- (m) **I will be required to have a biological sample collected** for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge

shall initial all paragraphs that DO APPLY.

____ (n) ~~This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~

== (o) ~~The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~

== (p) ~~The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.~~

____ (q) ~~If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.~~

== (r) ~~If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~

== (s) ~~If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.~~

____ (t) **The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.**

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will

also impose a term of community custody of one-half of the midpoint of the standard range. If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of **three to six months**, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

X

(u)

If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

~~(v) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).~~

~~(w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. - 20 U.S.C. - § 1091(f) and 21 U.S.C. - § 862a.~~

~~(x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.~~

~~(y) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).~~

(z) If I am pleading guilty to ~~felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control~~ of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.

(aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.

(cc) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].

(dd) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(ee) The offense(s) I am pleading guilty to include(s) a ~~Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present~~ in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

(ff) The offense(s) I am pleading guilty to include(s) a ~~deadly weapon, firearm, or sexual motivation enhancement~~. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

(gg) I am pleading guilty to (1) ~~unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm~~. I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to ~~unlawful possession of more than one firearm~~, I must serve each of the sentences for unlawful possession consecutively to each other.

(hh) I may be required to register as a felony firearm offender under RCW 9A.41.330 and RCW 9A.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

(ii) If I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.334, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(jj) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9A.4A.690

7. I plead guilty to count(s) 1 as charged in the Amended Information, dated _____. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement

In Pierce County, Wa., on/about 3.5.18, 3.6.18, ~~3.10.18~~, I feloniously and wrongfully obtained control over property/money belonging to another, in a value exceeding \$750.00 but less than \$5,000.00, with the intent to deprive the owner of the same.

☐ Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" and/or "Felony Firearm Offender Registration" Attachment, if applicable. I understand and acknowledge them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions


9/7/2018 57800040

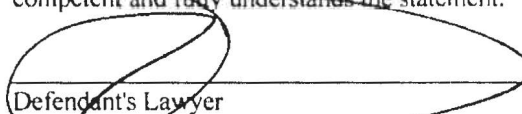
FILED
DEPT 18
IN OPEN COURT

SEP - 6 2018

PIERCE COUNTY, Clerk
By DEPUTY

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.


Prosecuting Attorney
Sven Nelson
Print Name
24235
WSBA No.


Defendant's Lawyer
Bryan G. Hershman
Print Name
14380
WSBA No.

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- ☒ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- ☒ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- ☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

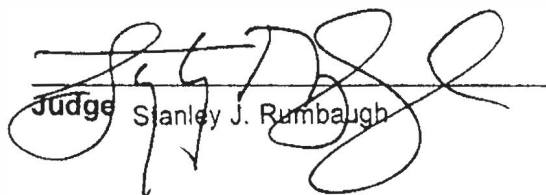
Signed at (city) _____, (state) _____, on (date) _____.

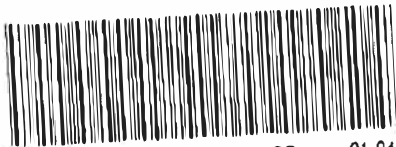
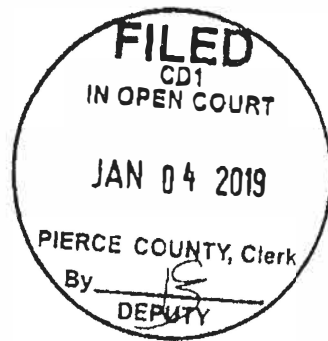
Interpreter

Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: September 6, 2018


Judge Stanley J. Rumbaugh



52615803 JDSWCD 01-04-19

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: [REDACTED]

vs.

Defendant.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
2) ☒ Dept. of Corrections
3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

WARRANT OF COMMITMENT -1

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

STANLEY J. ROMBAUGH

Dated: 1/4/19

By direction of the Honorable

[Signature]

JUDGE

KEVIN STOCK
CLERK

[Signature]
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF
JAN 04 2019 By *[Signature]* Deputy

STATE OF WASHINGTON

ss:

County of Pierce

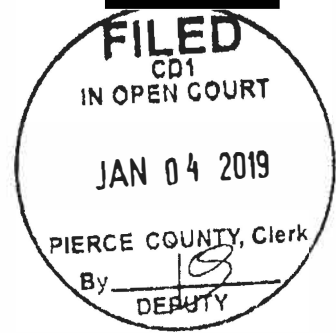
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____

KEVIN STOCK, Clerk

By: _____ Deputy

KW





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

Defendant.

JUDGMENT AND SENTENCE (FJS)

- ☒ Prison
☐ RCW 9.94A.712/9.94A.507 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ Special Sexual Offender Sentencing Alternative
☐ Special Drug Offender Sentencing Alternative
☐ Alternative to Confinement (ATC)
☐ Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 9/6/18, 2018 by ☒ plea ☐ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a)	NONE	03/05/18	LAKEWOOD PD 1806801125
II	THEFT IN THE SECOND DEGREE (JJ93)	9A.56.020(1)(a) 9A.56.040(1)(a)	NONE	03/06/18	LAKEWOOD PD 1806801125

- * (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	FTC		DISTRICT COURT 1 (TACOMA)	11-17-1989	A	MISD
2	FTC		DISTRICT COURT 1 (TACOMA)	11-29-1989	A	MISD
3	FTC		DISTRICT COURT 1 (TACOMA)	02-13-1990	A	MISD
4	FTC		DISTRICT COURT 1 (TACOMA)	04-18-1990	A	MISD
5	FTAS		DISTRICT COURT 1 (TACOMA)	11-26-1990	A	MISD
6	NVOL		DISTRICT COURT 1 (TACOMA)	01-10-1991	A	MISD
7	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-16-1991	A	MISD
8	DWLS/FTAS		DISTRICT COURT 1 (TACOMA)	08-10-1991	A	MISD
9	DWLS/FTAS		TACOMA MUNICIPAL COURT	10-22-1991	A	MISD
10	NVOL		DISTRICT COURT 1 (TACOMA)	02-22-1992	A	MISD
11	DWLS/FTAS		TACOMA MUNICIPAL COURT	06-12-1992	A	MISD
12	DWLS/FTAS		TACOMA MUNICIPAL COURT	07-24-1992	A	MISD
13	THEFT 3		DISTRICT COURT 1 (TACOMA)	09-16-1992	A	MISD
14	DWLS		TACOMA MUNICIPAL COURT	08-28-1993	A	MISD
15	DWLS		DISTRICT COURT 1 (TACOMA)	11-18-1993	A	MISD
16	DWLS		DISTRICT COURT 1 (TACOMA)	11-22-1993	A	MISD
17	DWLS		DISTRICT COURT 1 (TACOMA)	11-29-1993	A	MISD
18	DWLS		TACOMA MUNICIPAL COURT	12-01-1993	A	MISD
19	DWLS		DISTRICT COURT 1 (TACOMA)	12-21-1993	A	MISD
20	DWLS		DISTRICT COURT 1 (TACOMA)	07-28-1994	A	MISD
21	CITY LIC VIO		FIRCREST MUNICIPAL COURT	11-20-1995	A	MISD
22	THEFT 3 (2X)		DISTRICT COURT 1 (TACOMA)	03-27-1996	A	MISD

23	THEFT		DISTRICT COURT 1 (TACOMA)	04-02-1996	A	MISD
24	DWLS		DISTRICT COURT 1 (TACOMA)	04-05-1996	A	MISD
25	DWLS		TACOMA MUNICIPAL COURT	06-13-1996	A	MISD
26	DWLS		TACOMA MUNICIPAL COURT	07-23-1996	A	MISD
27	DWLS		TACOMA MUNICIPAL COURT	08-04-1996	A	MISD
28	THEFT 3		LAKEWOOD MUNI COURT	09-15-1996	A	MISD
29	DWLS		DISTRICT COURT 1 (TACOMA)	09-23-1996	A	MISD
30	DWLS		LAKEWOOD MUNI COURT	10-24-1996	A	MISD
31	DWLS		TACOMA MUNICIPAL COURT	08-25-1997	A	MISD
32	THEFT 3		DISTRICT COURT 1 (TACOMA)	12-05-1997	A	MISD
33	DWLS/FALSE STATEMENTS		DISTRICT COURT 1 (TACOMA)	12-07-1997	A	MISD
34	DWLS		DISTRICT COURT 1 (TACOMA)	12-26-1998	A	MISD
35	THEFT 3		LAKEWOOD MUNI COURT	02-12-1999	A	MISD
36	DWLS 3		LAKEWOOD MUNI COURT	12-01-1999	A	MISD
37	DWLS 3		LAKEWOOD MUNI COURT	12-14-1999	A	MISD
38	DWLS 3		LAKEWOOD MUNI COURT	02-21-2000	A	MISD
39	THEFT 3		LAKEWOOD MUNI COURT	06-30-2001	A	MISD
40	THEFT 3		LAKEWOOD MUNI COURT	12-15-2004	A	MISD
41	THEFT 3		LAKEWOOD MUNI COURT	06-28-2005	A	MISD
42	CRIM TRSP 1		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
43	FAILURE TO OBTAIN BUSINESS LIC		SUPERIOR CT - PIERCE CTY	05-27-2016	A	MISD
44	THEFT IN THE SECOND DEGREE	07-22-1993	SUPERIOR CT - PIERCE CTY	02-10-1993	A	NV
45	THEFT IN THE SECOND DEGREE	09-16-1993	SUPERIOR CT - PIERCE CTY	08-19-1993	A	NV
46	THEFT IN THE SECOND DEGREE	07-08-1999	SUPERIOR CT - PIERCE CTY	11-26-1997	A	NV
47	UDCS COCAINE	04-06-2000	SUPERIOR CT - PIERCE CTY	02-11-2000	A	NV
48	CONSP UDCS (COCAINE) W/SCHOOL ENHANCEMENT	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
49	ESCAPE 2	03-08-2002	SUPERIOR CT - PIERCE CTY	09-19-2001	A	NV
50	UPCS COCAINE	02-22-2007	SUPERIOR CT - PIERCE CTY	06-26-2005	A	NV
51	THEFT 1	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
52	ORGANIZED CRIME - LEADING	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV

53	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
54	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
55	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
56	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
57	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
58	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
59	THEFT 2	02-20-2007	SUPERIOR CT - PIERCE CTY	09-27-2005	A	NV
60	UPCS	02-04-2011	SUPERIOR CT - PIERCE CTY	04-21-2010	A	NV
61	UPCS		SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV
62	UPCS	10-26-2015	SUPERIOR CT - PIERCE CTY	08-19-2015	A	NV

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YRS/ \$10,000
II	9+	I	22-29 MONTHS	NONE	22-29 MONTHS	5 YRS/ \$10,000

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____

☐ above the standard range for Count(s) _____

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

1
2 ☒ The following extraordinary circumstances exist that make payment of nonmandatory legal financial
3 obligations inappropriate:

4 Defendant indigent

5 2.6 ☐ **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm
6 offense as defined in RCW 9A.010.

7 ☐ The court considered the following factors:

8 ☐ the defendant's criminal history.

9 ☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in
10 this state or elsewhere.

11 ☐ evidence of the defendant's propensity for violence that would likely endanger persons.

12 ☐ other: _____

13 ☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

14 **III. JUDGMENT**

15 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

16 3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts
17 _____

18 **IV. SENTENCE AND ORDER**

19 IT IS ORDERED:

20 4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

21 JASS CODE

22 RTNRN \$ 3650. Restitution to: Betty Grimes
23 \$ _____ Restitution to: _____
24 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
25 PCV \$ 500.00 Crime Victim assessment
26 DNA \$ ~~100.00~~ DNA Database Fee
27 PUB \$ _____ Court-Appointed Attorney Fees and Defense Costs
28 FRC \$ ~~200.00~~ Criminal Filing Fee
FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
\$ _____ Other Costs for: _____
\$ 4150.00 TOTAL

☐ The above total does not include all restitution which may be set by later order of the court. An agreed
restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

[] is scheduled for _____

RESTITUTION. Order Attached *Previously paid*

[] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[] **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 [X] **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[] **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT**

The defendant shall not have contact with Betty Grimes (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

[] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

1
2
3

4 4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the
5 rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by
6 agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may
7 be disposed of according to law.

8 4.4b BOND IS HEREBY EXONERATED

9 4.5 CONFINEMENT OVER ONE YEAR The defendant is sentenced as follows:

10 (a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total
11 confinement in the custody of the Department of Corrections (DOC):

12 22 months on Count I _____ months on Count _____
13 22 months on Count II _____ months on Count _____
14 _____ months on Count _____ months on Count _____

15 Actual number of months of total confinement ordered is: 22 months

16 (Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to
17 other counts, see Section 2.3, Sentencing Data, above).

18 [] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

19 CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served
20 concurrently, except for the portion of those counts for which there is a special finding of a firearm, other
21 deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with
22 juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served
23 consecutively: _____

24 The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to
25 the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony
26 sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for
27 the following cause numbers. RCW 9.94A.589: _____

28 Confinement shall commence immediately unless otherwise set forth here: _____

(c) Credit for Time Served. The defendant shall receive credit for eligible time served prior to
sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall
compute time served.

86 days subject to DOC
recalculation & minus sanctions, if any

4.6 ☐ **COMMUNITY PLACEMENT** (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

☐ **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol.

☐ have no contact with: _____

☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

☐ participate in the following crime-related treatment or counseling services: _____

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment

☐ comply with the following crime-related prohibitions: _____

☐ Other conditions: _____

[] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW

9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING.

☒ Defendant waives any right to be present at any restitution hearing (sign initials): JRB

5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____

DONE IN OPEN COURT and in the presence of the defendant this date: 1/4/19

JUDGE

Print name

STANLEY J. RUMBAUGH

Deputy Prosecuting Attorney

Print name: Sven Nelson

WSB # 2425

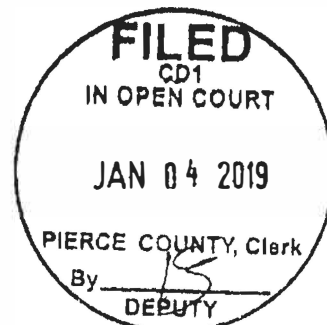
Attorney for Defendant

Print name: Jessica Ritzmann

WSB # 30588

Defendant


Print name



1
2 **Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am
3 registered to vote, my voter registration will be cancelled.

4 My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of
5 confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-
6 register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal
7 financial obligations or an agreement for the payment of legal financial obligations

8 My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of
9 discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring
10 the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW
11 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored
12 is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW
13 29A.84.140.

14
15 Defendant's signature: 

1
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: [REDACTED]

4 I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and
5 Sentence in the above-entitled action now on record in this office.

6 WITNESS my hand and seal of the said Superior Court affixed this date: _____

7 Clerk of said County and State, by: _____, Deputy Clerk

8
9 **IDENTIFICATION OF COURT REPORTER**

10 **CourtSmart**

11 _____
12 Court Reporter
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10140

8699

1/7/2013

view

print

view

print

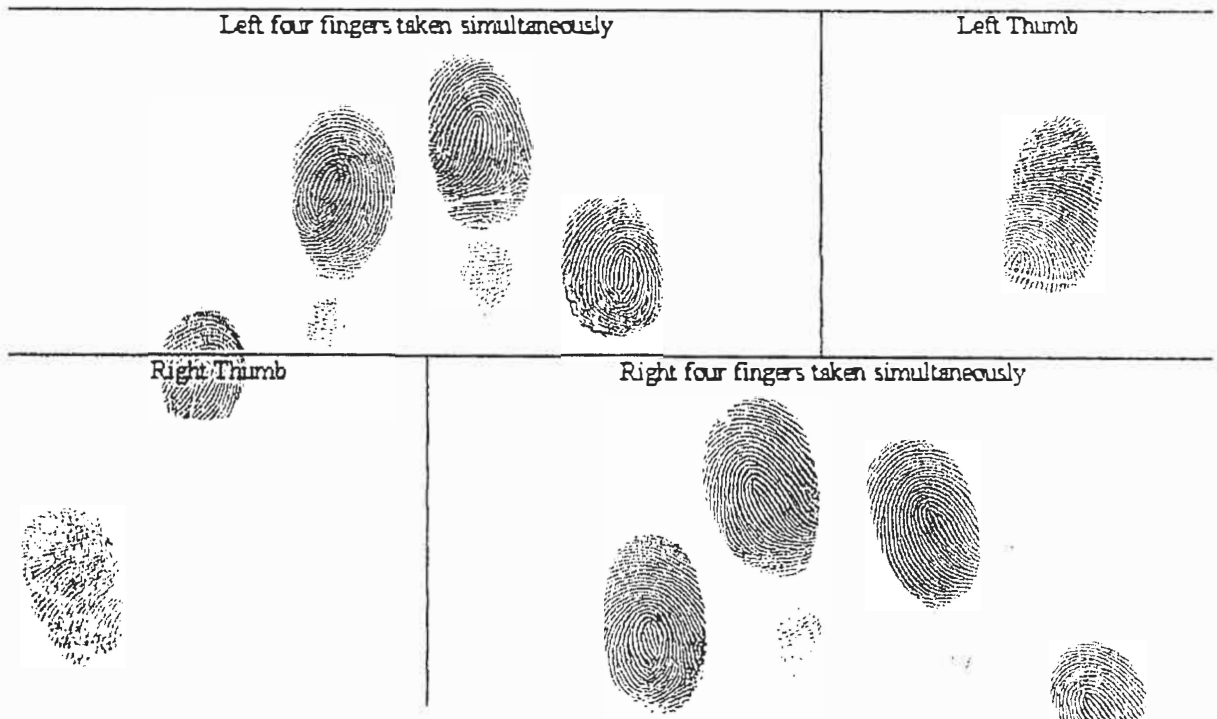
IDENTIFICATION OF DEFENDANT



Alias name, SSN, DOB: _____

Race: ☐ Asian/Pacific Islander ☒ Black/African-American ☐ Caucasian ☐ Native American ☐ Other: _____ Ethnicity: ☐ Hispanic ☒ Non-Hispanic Sex: ☒ Male ☐ Female

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, [Signature] Dated: 1/4/19

DEFENDANT'S SIGNATURE: [Redacted]

DEFENDANT'S ADDRESS: Pierce County Jail

APPENDIX F



51980842 BLB 09-07-18



FILED
DEPT 18
IN OPEN COURT

SEP - 6 - 2018

PIERCE COUNTY, Clerk
By _____
DEPUTY

Case No. [REDACTED]

WHEREAS THE UNDERSIGNED Surety has heretofore posted appearance bail bond
No. AC100-7072261 on 04/13/2018 GUARANTEEING THE PRESENCE of the Defendant
[REDACTED] in The Superior Court of the State of Washington for Pierce in Cause
No. 18-1-01156-8 pending in said Court.

AND WHEREAS the aforesaid Defendant has accepted a plea of guilty of the charge or
charges against him (THEFT 2) in said Cause and that bail was established and remains for
Defendant in said Cause in the sum of **Seventy Five Thousand Dollars, \$75,000.00.**

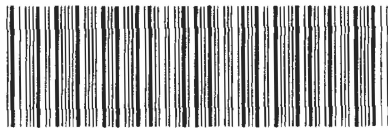
IT IS NOW THEREFORE AGREED that the aforesaid bail bond shall be deemed a
Continuing Bond that the terms and conditions thereof are hereby amended by said Surety to
guarantee and insure the presence of the Defendant, and to require said Defendant to be and
appear in the aforesaid Superior Court, at all such time or times as shall be required by said Court,
from the date of conviction through the date of sentencing and returned to custody if so ordered.
no later than

AMERICAN CONTRACTORS INDEMNITY COMPANY

Presented By:

Shawn Cross
Aladdin Bail Bonds
Direct: 253-572-1700

755 Tacoma Ave S Ste#1 TACOMA WA 98402
Phone: (253) 572-1700 Fax: (253) 572-4144



52181598 BW 10-11-18

FILED
IN COUNTY CLERK'S OFFICE

OCT 11 2018

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY ma DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. [REDACTED]

vs.

BENCH WARRANT

CHRI NUMBER: [REDACTED]

Defendant.

SID NUMBER: [REDACTED]

[REDACTED]
BAIL BOND AGENCY: NONE

TO ALL PEACE OFFICERS IN THE STATE OF WASHINGTON, GREETINGS:

WHEREAS, an order of court has been entered directing the Clerk of the above entitled court to issue a warrant for the arrest of the above named defendant [REDACTED];

SEX MALE; RACE BLACK; EYES BROWN; WEIGHT 245; HEIGHT 5'11"; [REDACTED]; POLICE AGENCY: [REDACTED]; DATE OF CRIME 03/05/18; POLICE AGENCY CASE NO. [REDACTED];

You are hereby commanded to forthwith arrest the said [REDACTED] for the crime(s) of THEFT IN THE SECOND DEGREE; THEFT IN THE SECOND DEGREE, said defendant having entered a plea of guilty to these charges and being released on conditions of release that ordered him to maintain law abiding behavior but he violated such condition when he was charged in Lakewood Municipal Court with two counts of Theft in the Third degree from incidents that occurred on 09-19-18. The defendant's arraignment date is 10-16-18 in Lakewood. Bring said defendant into court to be dealt with according to law. BAIL IS TO BE SET IN OPEN COURT.

WITNESS THE HONORABLE Stephanie J. Arnes
Judge/Commissioner of the said court and seal thereof affixedThis 11 day of OCTOBER, 2018.KEVIN STOCK
Clerk of the Superior CourtBy ma
Deputy

This is to certify that I received the within bench warrant on the _____ day of _____, I arrested the within named defendant, and now have defendant in full custody.

Extradition: ☐ Washington Only ☒ Shuttle States Only ☐ Nationwide
Warrant Service Fee \$15/Return Fee \$5/Mileage \$_____/TOTAL \$_____
PEACE OFFICER _____

bs

BENCH WARRANT -1
bwfta.dot

ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Main Office: (253) 798-7400

October 15 2018 1:50 PM

Pierce County Clerk

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff

No. [REDACTED]

vs.

[REDACTED]

Defendant

**ORDER ESTABLISHING CONDITIONS OF
RELEASE PENDING PURSUANT TO CrR 3.2
(orecrp)**

Arresting Agency : LAKEWOOD POLICE DEPARTMENT

Incident Number : [REDACTED]

Charges

- THEFT IN THE SECOND DEGREE
- THEFT IN THE SECOND DEGREE

THE COURT HAVING found probable cause, establishes the following conditions that shall apply pending in this cause number or until entry of a later order; IT IS HEREBY ORDERED

Release Conditions:

- ☒ The defendant is to be held in custody without bail (no bail hold).
- ☒ Bail issue reserved.

Conditions that take effect upon release from custody:

Conditions that take effect immediately:

- ☒ Defendant is to have no violations of the criminal laws of this state, any other state, any political subdivision of this state or any other state, or the United States, during the period of his/her release.
- ☒ Remain in contact with the defense attorney.

Dated : October 15, 2018.

Electronically Signed By
/s/STEPHANIE A AREND
JUDGE/COMMISSIONER

I agree and promise to appear before this court or any other place as this court may order upon notice delivered to me at my address stated below. I agree to appear for any court date set by my attorney and I give my attorney full authority to set such dates. I understand that my failure to appear for any type of court appearance will be a breach of these conditions of release and a bench warrant may be issued for my arrest. I further agree and promise to keep my attorney and the office of the Prosecuting Attorney informed of any change of either my address or my telephone number.

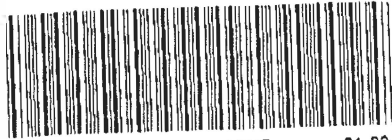
I have read the above conditions of release and any other conditions of release that may be attached. I agree to follow said conditions and understand that a violation will lead to my arrest. FAILURE TO APPEAR AFTER HAVING BEEN RELEASED ON PERSONAL RECOGNIZANCE OR BAIL IS AN INDEPENDENT CRIME, PUNISHABLE BY 5 YEARS IMPRISONMENT OR \$10,000 OR BOTH (RCW 10.19).

Address: [REDACTED]

Phone: [REDACTED]

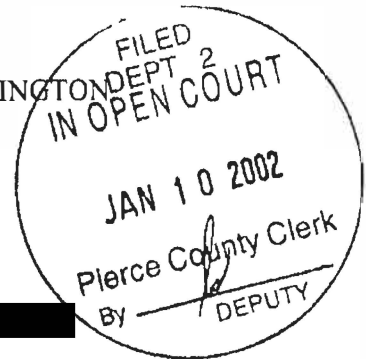
Defendant Refused to Sign.

APPENDIX G



15888135 AMINF 01-22-02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO [REDACTED]

vs

AMENDED INFORMATION

JAN 11 2002

[REDACTED]

Defendant

ORIGINAL

DOB [REDACTED]
SS#: [REDACTED]

SEX. MALE
SID# [REDACTED]

RACE BLACK
DOL# UNKNOWN

I, GERALD A HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse [REDACTED] of the crime of CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, committed as follows

That [REDACTED] in Pierce County, on or about the 19th day of September, 2001, did unlawfully and feloniously, with intent to deliver to another a controlled substance, to-wit COCAINE, a narcotic, classified under Schedule II of the Uniform Controlled Substance Act, agree with another to deliver to another a controlled substance, to-wit COCAINE, a narcotic, classified under Schedule II of the Uniform Controlled Substance Act, and any one of them did perform a substantial step pursuant to such agreement, contrary to RCW 69 50 407 and RCW 69.50 401(a)(1)(i), and against the peace and dignity of the State of Washington

COUNT II

AMENDED INFORMATION - 1

1
2 And I, GERALD A HORNE, Prosecuting Attorney aforesaid, do accuse [REDACTED]
3 [REDACTED] of the crime of ESCAPE IN THE SECOND DEGREE, a crime of the same
4 or similar character, and/or a crime based on the same conduct or on a series of acts connected
5 together or constituting parts of a single scheme or plan, and/or so closely connected in respect to
6 time, place and occasion that it would be difficult to separate proof of one charge from proof of the
7 others, committed as follows

8 That [REDACTED] in Pierce County, on or about the 19th day of
9 September, 2001, did unlawfully and feloniously, having been charged with a felony or an equivalent
10 juvenile offense, knowingly escape from custody of electronic home detention, contrary to RCW
11 9A 76 120(1)(b), and against the peace and dignity of the State of Washington

12 DATED this 10th day of January, 2002

13 PIERCE CTY SHERIFF CASE
14 WA02700

15 pjh

GERALD A HORNE
Prosecuting Attorney in and for said County
and State.

16 By 

17 PATRICK HAMMOND
18 Deputy Prosecuting Attorney
19 WSB# 23090
20
21
22
23
24
25
26
27
28

AMENDED INFORMATION - 2



16301035 JDSWCD 03-11-02



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

CAUSE NO. [REDACTED]

WARRANT OF COMMITMENT

- 1) ☐ County Jail
 2) ☒ Dept. of Corrections
 3) ☐ Other - Custody

MAR 11 2002

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF
 PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the
 Superior Court of the State of Washington for the County of Pierce,
 that the defendant be punished as specified in the Judgment and
 Sentence/Order Modifying/Revoking Probation/Community Supervision, a
 full and correct copy of which is attached hereto.

☐ 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the
 defendant for classification, confinement and
 placement as ordered in the Judgment and Sentence.
 (Sentence of confinement in Pierce County Jail).

☒ 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver
 the defendant to the proper officers of the
 Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF
 CORRECTIONS, ARE COMMANDED to receive the defendant
 for classification, confinement and placement as
 ordered in the Judgment and Sentence. (Sentence of
 confinement in Department of Corrections custody).

WARRANT OF COMMITMENT - 1

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 3-8-02

By direction of the Honorable

JUDGE
BOB SAN SOUCIE
COUNTY CLERK

INTERIM CLERK

By: Chun Anderson
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

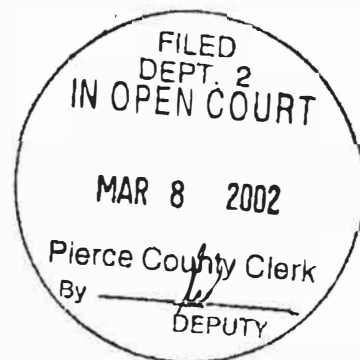
Da ~~MAR 11 2002~~ By Chun Anderson Deputy

STATE OF WASHINGTON,)
County of Pierce) ss:

I, Bob San Soucie, Interim Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court.
DATED: _____

BOB SAN SOUCIE, Interim Clerk
By: _____ Deputy



WARRANT OF COMMITMENT - 2



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

Defendant.

DOB: [REDACTED]
SID NO.: [REDACTED]

CAUSE NO. [REDACTED]

JUDGMENT AND SENTENCE (JS)

- ☒ Prison
☐ Jail One year or less
☐ First Time Offender
☐ Special Sexual Offender
 Sentencing Alternative
☐ Special Drug Offender
 Sentencing Alternative
☐ Breaking The Cycle (BTC)

MAR 11 2002

I. HEARING

1.1 A sentencing hearing in this case was held on 3-8-02 and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1-10-02 by

[X] plea [] jury-verdict [] bench trial of:

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

1 of 14

ENTERED
JUDGMENT # [REDACTED]

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Count No.: I
Crime: CONSPIRACY TO DELIVER A CONTROLLED SUBSTANCE, Charge
Code: (J4-C) COCAINE, SCHEDULE II
RCW: 69.50.407 AND 69.50.401(a)(1)(i)
Date of Crime: 09/19/01
Incident No.: [REDACTED]

Count No.: II
Crime: ESCAPE IN THE SECOND DEGREE, Charge Code: (DD6)
RCW: 9A.76.120(1)(b)
Date of Crime: 09/19/01
Incident No.: [REDACTED]

as charged in the Amended Information.

- [] A special verdict/finding for use of a firearm was returned on Count(s) _____. RCW 9.94A.125, .310.
- [] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.125, .310.
- [] A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.127.
- [] A special verdict/finding for violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, or within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local government authority as a drug-free zone.
- [] A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- [] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- [] This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- [] The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.129.
- [] The crime charged in Count(s) _____ involve(s) domestic violence.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

2 of 14

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

<u>Crime</u>	<u>Date of Sentence</u>	<u>Sentencing Court (County & State)</u>	<u>Date of Crime</u>	<u>Adult or Juv.</u>	<u>Crime Type</u>
THEFT 2	07/22/93	PIERCE	02/10/93	ADULT	NV
THEFT 2	09/16/93	PIERCE	08/19/93	ADULT	NV
THEFT 2	07/08/99	PIERCE	11/26/97	ADULT	NV
UDCS COCAINE	04/06/00	PIERCE	02/11/00	ADULT	NV

DEFENDANT IS ON COMMUNITY PLACEMENT

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[] the court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

[] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

<u>Count</u>	<u>Offender Score</u>	<u>Serious Level</u>	<u>Standard Range (w/o enhancement)</u>	<u>Plus Enhancement*</u>	<u>Total Standard Range</u>	<u>Maximum Term</u>
I	8	UNRANKED	0-12 MOS.	NONE	0-12 MOS.	20 YRS.
II	6	III	22-29 MOS.	NONE	22-29 MOS.	5 YRS.

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present.

2.4 [] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence [] above [] below the standard range for Count(s) _____. Findings of fact and

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

3 of 14

conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142.

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The Court DISMISSES Count(s) _____. [] The defendant is found NOT GUILTY of Count(s) _____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402):

\$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address-address may be withheld and provided confidentially to Clerk's Office).

JUDGMENT AND SENTENCE (JS)
 (Felony)(6/2000)

4 of 14

1
2
3 \$ 500⁰⁰ Victim assessment RCW 7.68.035
4 \$ 110⁰⁰ Court costs, including RCW 9.94A.030, 9.94A.120,
5 10.01.160, 10.46.190
6 Criminal filing fee \$ _____
7 Witness costs \$ _____
8 Sheriff service fees \$ _____
9 Jury demand fee \$ _____
10 Other \$ _____
11 \$ 200⁰⁰ Fees for court appointed attorney RCW 9.94A.030
12 \$ _____ Court appointed defense expert and other defense
13 costs RCW 9.94A.030
14 \$ _____ Fine RCW 9A.20.021 [] VUCSA additional fine waived
15 due to indigency RCW 69.50.430
16 \$ _____ Drug enforcement fund of _____
17 RCW 9.94A.030
18 \$ _____ Crime Lab fee [] deferred due to indigency
19 RCW 43.43.690
20 \$ _____ Extradition costs RCW 9.94A.120
21 \$ _____ Emergency response costs (Vehicular Assault, Vehicular
22 Homicide only, \$1000 maximum) RCW 38.52.430
23 \$ _____ Other costs for: _____
24 \$ 810⁰⁰ TOTAL RCW 9.94A.145

25 [] The above total does not include all restitution or other legal
26 financial obligations, which may be set by later order of the
27 court. An agreed order may be entered. RCW 9.94A.142. A
28 restitution hearing:
[] shall be set by the prosecutor
[] is scheduled for _____
[] RESTITUTION. See attached order.
[] Restitution ordered above shall be paid jointly and severally with:

26 NAME OF OTHER DEFENDANT CAUSE NUMBER VICTIM NAME AMOUNT-\$
27
28 JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

- [] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010.
- [X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$_____ per month commencing _____. RCW 9.94A.145.
- [] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145.
- [] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.
- [X] The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.
- 4.2 [] HIV TESTING. The health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.
- [] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.
- 4.3 The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).
- [] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.4(a) Bond is hereby exonerated.

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

6 of 14

4.5 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

26 months on Count No. I _____ months on Count No. _____
12 months on Count No. II _____ months on Count No. _____

Actual number of months of total confinement ordered is _____.
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) ~~CONSECUTIVE~~ CONCURRENT SENTENCES. RCW 9.94A.400. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

JUDGMENT AND SENTENCE (JS)
 (Felony)(6/2000)

7 of 14

CREDIT FOR ANY TIME THAT DEFENDANT DID NOT ALREADY
GET CREDIT FOR IN OTHER CAUSES (INCLUDING MUNI &
DISTRICT COURT)

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

☒ COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:

Count 5 for a range from 9 to 12 months;

Count _____ for a range from _____ to _____ months;

Count _____ for a range from _____ to _____ months;

or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120 for community placement/custody offenses--serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.

[] Defendant shall have no contact with: _____

[] Defendant shall remain [] within [] outside of a specified

geographical boundary, to-wit: _____

☒ The defendant shall participate in the following crime-related treatment or counseling services: DRUG TREATMENT & FOLLOW-UP

JUDGMENT AND SENTENCE (JS)
 (Felony)(6/2000)

9 of 14

[] The defendant shall undergo an evaluation for treatment for [] domestic violence ☒ substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

[] The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.7 [] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated in Section 4.6.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

\\

\\

\\

\\

\\

\\

\\

\\

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

9 of 14

V. NOTICES AND SIGNATURES

5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4. RESTITUTION HEARING.

[] Defendant waives any right to be present at any restitution hearing (defendant's initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

10 of 14

degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of the Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

11 of 14

level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date:

3/8/2

JUDGE Print Name: _____

Deputy Prosecuting Attorney
Print Name: _____

WSB# 23090

Attorney for Defendant
Print name: _____

WSB# 27681

Defendant
Print name: _____

FILED
DEPT. 2
IN OPEN COURT

MAR 8 2002
Pierce County Clerk
By [Signature] DEPUTY

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

12 of 14

1
2
3 CERTIFICATE OF INTERPRETER4 Interpreter signature/Print name: _____
5 I am a certified interpreter of, or the court has found me otherwise
6 qualified to interpret, the _____ language, which
7 the defendant understands. I translated this Judgment and Sentence for
8 the defendant into that language.

9 CERTIFICATE OF CLERK

10 CAUSE NUMBER of this case: [REDACTED]

11 I, Bob San Soucie, Interim Clerk of this Court, certify that the
12 foregoing is a full, true and correct copy of the judgment and sentence
13 in the above-entitled action now on record in this office.14 WITNESS my hand and seal of the said Superior Court affixed on this
15 date: _____16 Clerk of said County and State, by: _____, Deputy
17 Clerk

18 IDENTIFICATION OF DEFENDANT

19 SID No.: WA16351576 Date of Birth: 09/24/1966
20 (If no SID take fingerprint card for WSP)

21 FBI No. 951924RA1 Local ID No. _____

22 PCN No. _____ Other _____

23 Alias name, SSN, DOB: _____

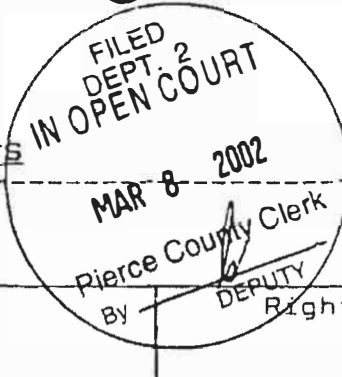
24 Race: Ethnicity: Sex:
25 [] Asian/Pacific Islander [] Hispanic [X] Male
26 [X] Black/African-American [] Non-Hispanic [] Female
27 [] Caucasian
28 [] Native American
[] Other: _____

tjb

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

13 of 14

FINGERPRINTS



Right four fingers taken simultaneously

Left four fingers taken simultaneously

Left thumb

I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Interim Clerk of the Court, BOB SAN SOUCIE:

[Signature], Deputy Clerk.

Dated: 3-8-02

DEFENDANT'S SIGNATURE: [Redacted]DEFENDANT'S ADDRESS: [Redacted]DEFENDANT'S PHONE#:

FINGERPRINTS

14 of 14

APPENDIX H

Confidential--Not for Release			Defendant Case History										Confidential--Not for Release			
Logon	Search	Person Search Results											Logoff	Help		
True Name:			86 Cases										ICH	DCH	PDCH	
AKA	Party	Case Number	Crt	Date	Short Title	DV	Jg	DR	O	CD	W	F	C	BAL		
	DEF		LKM	09/19/2018	THEFT 3	N	D	D		CL						
				09/19/2018	THEFT 3	N	D	D								
	DEF		PD1	09/13/2018	FL RENEW EXPIRED REG > 2 MTHS	N	D	1A		CL						
				09/13/2018	IMPROPER LANE USAGE	N	D	1A								
				09/13/2018	IMPROPER PASSING ON RIGHT SIDE	N	D	1A								
	DEF		PD1	09/13/2018	FAIL TO TRANSFER TITLE W/145 DAYS	N	AM			CL	N		A			
				09/13/2018	UNLAWFUL OPERATION OF MOTOR VEHICLE	N	C									
	DEF		LKM	09/08/2018	SPEEDING 14 MPH OVER LIMIT (40 OR U	N	C					I	A	\$218.00		
	DEF		LKM	08/28/2018	OP MOT VEH W/OUT INSURANCE	N	C					I	A	\$726.00		
				08/28/2018	AVOIDANCE OF INTERSECTION	N	C									
	DEF		PD1	06/10/2018	SPEEDING 29 MPH OVER LIMIT (OVER 40	N	C			CL			A			
				06/10/2018	FAIL TO WEAR SAFETY BELT	N	D	D								
	DEF		FRM	05/15/2018	SPEEDING 17 MPH OVER LIMIT (40 OR U	N	C			CL			A			
				05/15/2018	OP MOT VEH W/OUT INSURANCE	N	C									
	DEF		LKM	03/03/2018	OP MOT VEH W/OUT INSURANCE	N	C					I	A	\$707.00		
				03/03/2018	IMPROPER LANE USAGE	N	C									
	DEF		PD1	01/28/2018	SPEEDING 30 MPH OVER LIMIT (OVER 40	N	AM			CL			A			
				01/28/2018	SPEEDING 15 MPH OVER LIMIT (OVER 40	N	C									
				01/28/2018	FAIL TO WEAR SAFETY BELT	N	NC									
	DEF		TMC	12/01/2017	FAIL TO OBEY TRAFFIC CONTROL DEVICE	N	C			CL			A			
	DEF		PD1	08/10/2016	NEGLIGENT DRIVING 2ND DEGREE	N	C			CL						
	DEF		PD1	05/30/2016	OP MOT VEH W/OUT INSURANCE	N	C			CL						
	DEF		PD1	05/18/2016	SPEEDING 15 MPH OVER LIMIT (40 OR U	N	CD			CL			A			
	DEF		PD1	04/28/2016	SPEEDING 20 MPH OVER LIMIT (40 OR U	N	C			CL						
				04/28/2016	OP MOT VEH W/OUT INSURANCE	N	C									
	DEF		LKM	03/15/2016	OP MOT VEH W/OUT INSURANCE	N	C			CL						
				03/15/2016	INATTENTIVE DRIVING	N	C									
	DEF		LKM	03/15/2016	DWLS 3RD DEGREE	N	AM			CL			N			
				03/15/2016	NO DRIVER'S LICENSE ON PERSON	N	C									
	DEF		PD1	03/18/2015	SPEEDING 10 MPH OVER LIMIT (40 OR U	N	C			CL						
				03/18/2015	NO VALID OPER LICENSE WITH VALID ID	N	C									
	DEF		TMC	11/12/2010	FAIL TO OBEY TRAFFIC CONTROL DEVICE	N	C			CL			A			
				11/12/2010	FL RENEW EXPIRED REG <= 2 MTHS	N	C									
				11/12/2010	OP MOT VEH W/OUT INSURANCE	N	C									
	DEF		LKM	08/17/2010	DWLS 3RD DEGREE	N	AM			CL			A			
				08/17/2010	NO DRIVER'S LICENSE ON PERSON	N	C									
				08/17/2010	FAIL TO TRANSFER TITLE-45 DAYS	N	AM									
				08/17/2010	FL RENEW EXPIRED REG <= 2 MTHS	N	C									
	DEF		TMC	05/23/2010	NEGLIGENT DRIVING 2ND DEGREE	N	AM			CL			A			
				05/23/2010	EXCEED MAX SPEED SCH/PLGD ZN/XWLK	N	D	CE								
				05/23/2010	SPEEDING 11 MPH OVER LIMIT (OVER 40	N	C									
	DEF		LKM	04/11/2006	SPEEDING 16 MPH OVER LIMIT (40 OR U	N	C			CL			A			
				04/11/2006	OP MOT VEH W/OUT INS	N	C									
	DEF		LKM	06/28/2005	THEFT 3	N	G			CL	N					
	DEF		LKM	05/25/2005	NO VALID OPER LICENSE WITH VALID ID	N	C			CL			A			
	DEF		LKM	05/06/2005	SPEEDING 16 MPH OVER LIMIT (40 OR U	N	C			CL			A			
				05/06/2005	NO VALID OPER LICENSE WITH VALID ID	N	C									
	DEF		LKM	03/01/2005	NO VALID OPER LICENSE WITH VALID ID	N	C			CL			A			
				03/01/2005	OP MOT VEH W/OUT INS	N	C									
				03/01/2005	FAIL TO OBEY TRAFFIC CONTROL DEVICE	N	C									
	DEF		LKM	02/11/2005		N	C			CL			A			

AKA Party	Case Number	Crt	Date	Short Title	DV	Jg	DR	O	CD	W	F	C	BAL
				FAIL TO OBEY TRAFFIC CONTROL LEGEND									
			02/11/2005	NO VALID OPER LICENSE WITH VALID ID	N	C							
DEF			02/11/2005	OP MOT VEH W/OUT INS	N	C							
		LKM	01/05/2005	OP MOT VEH W/OUT INS	N	C			CL		A		
			01/05/2005	NO VALID OPER LICENSE WITH VALID ID	N	C							
DEF		PD1	12/21/2004	FAIL TO SECURE LOAD	N	C			CL		N		
DEF		LKM	12/15/2004	THEFT 3	N	GD			CL	N			
DEF		LKM	12/10/2004	NO VALID OPER LICENSE WITH VALID ID	N	C			CL		A		
			12/10/2004	OP MOT VEH W/OUT INS	N	C							
DEF		LKM	11/11/2004	IMPROPER USE/SWITCH ALTERED PLATES	N	C			CL		A		
			11/11/2004	NO VALID OPER LICENSE WITH VALID ID	N	C							
			11/11/2004	OP MOT VEH W/OUT INS	N	C							
DEF		LKM	09/24/2004	FAIL TO WEAR SAFETY BELT	N	C			CL		A		
			09/24/2004	OP MOT VEH W/OUT INS	N	C							
DEF		LKM	06/30/2001	THEFT THIRD DEGREE	N	G			CL	N			
DEF		LKM	02/21/2000	DWLS 3RD DEGREE	N	G			CL		A		
DEF		LKM	12/14/1999	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		LKM	12/01/1999	DWLS 3RD DEGREE	N	G			CL		A		
DEF		LKM	02/12/1999	THEFT THIRD DEGREE	N	G			CL				
			02/12/1999	GENERAL BUSINESS LICENSE VIOLATION	N	DW	XO						
DEF		PD1	12/26/1998	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		PD1	12/07/1997	MAKE FALSE STTMENT TO PUB SERVANT	N	G			CL				
DEF		PD1	12/07/1997	DWLS 3RD DEGREE	N	G			CL				
DEF		LKM	12/05/1997	THEFT THIRD DEGREE	N	G			CL	N			
DEF		TMC	08/25/1997	DWLS 3RD DEGREE	N	G			CL	N	N		
DEF		LKM	10/24/1996	DWLS 3RD DEGREE		G			CL	N	A		
DEF		PD1	09/23/1996	DWLS 3RD DEGREE		G			CL	N	A		
DEF		LKM	09/15/1996	THEFT THIRD DEGREE		G			CL	N			
			09/15/1996	THEFT THIRD DEGREE		G							
DEF		TMC	08/04/1996	DWLS 3RD DEGREE	N	G			CL				
DEF		TMC	07/23/1996	DWLS 3RD DEGREE	N	G			CL	N	N		
DEF		TMC	06/13/1996	DWLS 3RD DEGREE		G			CL				
DEF		PD1	04/05/1996	DWLS 3RD DEGREE		G			CL	N	A		
DEF		PD1	04/02/1996	THEFT THIRD DEGREE		G			CL	N			
			04/02/1996	THEFT THIRD DEGREE		D	SO						
			04/02/1996	THEFT THIRD DEGREE		D	SO						
			04/02/1996	THEFT THIRD DEGREE		D	SO						
DEF		PD1	03/27/1996	THEFT THIRD DEGREE		G			CL	N			
			03/27/1996	THEFT THIRD DEGREE		G							
DEF		FRM	11/20/1995	THEFT THIRD DEGREE	N	D	D		CL	N			
			11/20/1995	CITY LICENSE VIOLATION	N	G							
DEF		PD1	07/28/1994	DWLS 3RD DEGREE	N	G			CL	N	N		
DEF		PD1	12/21/1993	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		PD1	12/01/1993	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		TMC	12/01/1993	DWLS 3RD DEGREE		G			CL	N	A		
DEF		PD1	11/29/1993	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		PD1	11/22/1993	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		PD1	11/18/1993	DWLS 3RD DEGREE	N	G			CL	N	A		
DEF		TMC	08/28/1993	DWLS 1ST DEGREE		G			CL		A		
DEF		PD1	09/16/1992	THEFT THIRD DEGREE		G			CL	N			
DEF		TMC	07/24/1992	DRIVE W/LIC SUSP/REVOKED-3RD DEGREE		G			CL	N	N		
			07/24/1992	FTR/FTA/FTP-TWO OR MORE VIOLATIONS		G							
DEF		TMC	06/12/1992	DRIVE W/LIC SUSP/REVOKED-1ST DEGREE		G			CL	N	N		
			06/12/1992	FTR/FTA/FTP-TWO OR MORE VIOLATIONS		G							
DEF		PD1	02/22/1992	NO VALID DRIVERS LICENSE	N	BF			CL	N	N		
DEF		TMC	10/22/1991	DRIVE W/LIC SUSP/REVOKED-3RD DEGREE		G			CL				
			10/22/1991	FTR/FTA/FTP-TWO OR MORE VIOLATIONS		G							
DEF		PD1	08/10/1991	DWLS 2ND DEGREE	N	AM			CL	N	N		
			08/10/1991	DWLS 3RD DEGREE	N	G							
			08/10/1991	FTR AFTER WRITTEN PROMISE TO APP	N	G							

AKA Party	Case Number	Crt	Date	Short Title	DV	Jg	DR	O	CD	W	F	C	BAL
DEF		TMC	07/16/1991	FTR/FTA/FTP-TWO OR MORE VIOLATIONS		G			CL		A		
			07/16/1991	DRIVE WHILE LIC SUSPENDED/REVOKED		G							
DEF		PD1	01/10/1991	NO VALID DRIVERS LICENSE	N	BF			CL	N	N		
			01/10/1991	FTR AFTER WRITTEN PROMISE TO APP	N	D							
DEF		PD1	11/26/1990	FTR AFTER WRITTEN PROMISE TO APP	N	BF			CL	N	N		
DEF		PD1	05/18/1990	FAIL TO COMPLY - 2 OR MORE FTAS	N	BF			CL	N	N		
DEF		PD1	02/13/1990	FAIL TO COMPLY - 2 OR MORE FTAS	N	G			CL	N	N		
DEF		PD1	11/29/1989	FAIL TO COMPLY - 2 OR MORE FTAS	N	G			CL	N	N		
DEF		PD1	11/17/1989	FAIL TO COMPLY - 2 OR MORE FTAS	N	G			CL	N	N		
DEF		S27	05/01/2018	THEFT-1 OVER \$5K (NOT FIREARM) THEFT LOST MISDLVRD PROPERTY EXC SENTENCE-VCT VUL/INCAP RESISTNC EXC SENTENCE-MAJOR ECON OFFENSE	N	G		A	CM				\$12,729.31
			06/01/2018	THEFT-2 \$750-\$5000 NOT FIREARM/VEH THEFT-OBTAIN CONTROL OF PROPERTY EXC SENTENCE-VCT VUL/INCAP RESISTNC EXC SENTENCE-MAJOR ECON OFFENSE	N	G							
			07/01/2018	THEFT-2 \$750-\$5000 NOT FIREARM/VEH THEFT-OBTAIN CONTROL OF PROPERTY EXC SENTENCE-VCT VUL/INCAP RESISTNC EXC SENTENCE-MAJOR ECON OFFENSE	N	G							
DEF		S27	03/05/2018	THEFT-2 \$750-\$5000 NOT FIREARM/VEH THEFT-OBTAIN CONTROL OF PROPERTY	N	G		A	CM	N		L	\$4,837.30
			03/06/2018	THEFT-2 \$750-\$5000 NOT FIREARM/VEH THEFT-OBTAIN CONTROL OF PROPERTY	N	G							
DEF		S27	05/27/2016	OTHER NON-CHARGE	N	G		E	CM			A	\$905.36
			05/27/2016	CRIMINAL TRESPASS FIRST DEGREE	N	G							
DEF		S27	08/19/2015	CONT SUB-POSSESS NO PRESCRIPTION	N	G			CM	N		A	\$1,056.49
DEF		S27	04/21/2010	CONT SUB-POSSESS NO PRESCRIPTION	N	G			CM			A	\$10,744.47
DEF		S27	01/01/2010	THEFT-1 OVER \$5K (NOT FIREARM) THEFT-DEFINITION/DEFENSE EXCEPTIONAL SENTENCE GUIDELINES	N	NG			CM	N			
DEF		S27	09/27/2005	THEFT-1 OVER \$1500 (NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G			CM			A	\$82,083.75
			07/19/2004	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			08/19/2004	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			09/07/2004	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			12/22/2004	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			02/15/2005	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			08/13/2005	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			08/15/2005	THEFT-2 \$250-\$1500(NOT FIREARM) THEFT-DEFINITION/DEFENSE	N	G							
			07/07/2005	ORGANIZED CRIME-LEADING	N	G							
DEF		S27	06/26/2005	CONT SUB-POSSESS NO PRESCRIPTION OFFENDER SCORE-UNDER COMM PLCMENT	N	G			CM	N		A	\$2,663.89
DEF		S27	09/19/2001	CONT SUBST VIOL - SECTION (A) CONSPIRE TO VIOLATE CONT SUBS	N	G			CM			A	\$2,186.15

AKA Party	Case Number	Crt	Date	Short Title	DV	Jg	DR	O	CD	W	F	C	BAL
			09/19/2001	ESCAPE 2ND DEGREE	N	G							
DEF		S27	02/09/2000	CONT SUBST VIOL - SECTION (A)	N	G			CM			A	\$1,638.98
DEF		S27	11/26/1997	THEFT-2 (NOT FIREARM)	N	G			CM	N		A	\$4,359.39
				THEFT-DEFINITION/DEFENSE									
DEF		S27	08/19/1993	THEFT-2 (NOT FIREARM)		G			CM	N		A	\$1,132.58
				THEFT-DEFINITION/DEFENSE									
DEF		S27	02/10/1993	THEFT-2 (NOT FIREARM)		G			CM	N			\$2,086.24
				THEFT-DEFINITION/DEFENSE									

[Logon](#)[Search](#)[Person Search Results](#)[Logoff](#)[Help](#)

Person Warrants Tab¹

The **Warrants** tab displays the current warrant status and prior warrant activity **for an individual**.

Warrant Status Codes

The Warrant Code for a case appears under the **W** column in the **Individual Case History**.

A	FTA Adjudicated
I	Issued
O	Ordered
M	Warrant activity on Superior Court case with multiple defendants
N	Past Activity (includes FTA canceled; warrant recalled, quashed, expired, served, or canceled before issuance).
*	Archived Case (does NOT indicate past FTA or warrant activity on archived case).
#	Imported from Non-JIS Court
Blank	No FTA activity

Superior Court Cases

Warrant information is extracted from the SCOMIS case **Docket** based on warrant Docket Codes.

The message **No Warrants Found** displays if the selected case has no warrant Docket Codes entered in SCOMIS.

Courts of Limited Jurisdiction Cases

The message **No Warrants Found** displays if the selected case has:

- No warrant activity.
- Been archived.
- Been imported from a non-JIS court (e.g., Seattle Municipal).

¹ <https://jabstraininglink.courts.wa.gov/JabsWeb/helpPages/whnjs.htm>

Case FTAs Tab²

The **Case FTAs** tab (Failure to Appear or Respond) displays current FTA status and prior FTA activity **for the case** selected in the top frame (highlighted in yellow).

The **Case FTA** tab applies only to cases filed in courts of limited jurisdiction. The **Case FTA** tab does not display when a superior court case is selected.

The message **No FTAs found for this case** displays if the case has:

- No FTA activity.
- Been archived.
- Been imported from a non-JIS court (e.g., Seattle Municipal).

FTA Status Codes

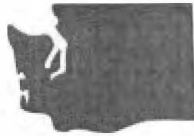
The FTA Status Code for a case appears under the **F** column in the **Individual Case History**.

A	FTA Adjudicated
I	Issued
O	Ordered
M	Warrant activity on Superior Court case with multiple defendants
N	Past Activity (includes FTA canceled; quashed, expired, served, or canceled before issuance).
*	Archived Case (does NOT indicate past FTA activity on archived case).
#	Imported from Non-JIS Court
Blank	No FTA activity

² <https://jabstraininglink.courts.wa.gov/JabsWeb/helpPages/whnjs.htm>

APPENDIX I

JAY INSLEE
Governor



STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05**

20-50

Reducing Prison Population

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued amendatory Proclamations 20-06 through 20-49, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, has broadly spread throughout Washington State, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, the COVID-19 pandemic has resulted in the requirement to practice safe distancing as described by the Centers for Disease Control and Prevention and the Washington State Department of Health to avoid contracting the virus; and

WHEREAS, although the Department of Corrections has taken aggressive action to mitigate the risk of COVID-19, current statutory barriers limit the Department's ability to respond swiftly to the COVID-19 emergency, including the ability to achieve safe distancing for individuals incarcerated in correctional facilities, by quickly reducing, where possible, the current population of incarcerated individuals at Washington State correctional facilities, a barrier that has become more challenging because there are currently correctional facility staff and incarcerated individuals who have become infected with COVID-19; and

WHEREAS, on March 30, 2020, to reduce the incarcerated population in Washington, I issued Emergency Proclamation 20-35, which removes a requirement to arrest and incarcerate certain individuals who have violated the terms of their community supervision. The Department of Corrections is also now using its administrative authority to release individuals incarcerated on past violations.

WHEREAS, the Centers for Disease Control and Prevention reports that groups at higher risk of severe illness or death from COVID-19 are those over 65 years of age, and people of any age who have certain chronic underlying health conditions; and

WHEREAS, the worldwide COVID-19 pandemic and its progression in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamation 20-05 is amended to waive or suspend specified statutes that prevent, hinder or delay necessary action in coping with the unprecedented demands being placed on our health care system by the COVID-19 pandemic and to prohibit certain activities to assist in relieving these demands on our health care system, and to help preserve and maintain life, health, property or the public peace by granting the governor greater authority to more broadly and efficiently wield his clemency authority to reduce the prison population.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(2)(g), I also find that strict compliance with the following statutory and regulatory obligations or limitations will risk reducing the availability of essential services and prevent, hinder, or delay the response to the COVID-19 pandemic State of Emergency under Proclamation 20-05, and that the portion or language of each statutory and regulatory provision specified below is hereby waived and suspended, except as otherwise provided herein, until 11:59 PM on May 15, 2020:

1. RCW 10.01.120 – only the following: “, upon the petition of the person convicted,”
2. RCW 9.94A.565(1) – only the following: “on an individual case-by-case basis”
3. RCW 9.94A.728(1)(d) – only the following: “, upon recommendation from the clemency and pardons board,”
4. RCW 72.09.710(1)
5. RCW 72.09.712(1), (2)
6. RCW 9.94A.729(5)(b) – only the following: “that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community”
7. RCW 9.94A.729(5)(c) – only the following: “, including proposed residence location”
8. RCW 9.94A.733(1) – the following only: “No more than the final six months of” and “However, an offender may not participate in the graduated reentry program under this section unless he or she has served at least twelve months in total confinement in a state correctional facility.”
9. RCW 9.94A.733(2) – the following only: “and must assist the offender's transition from confinement to the community.”
10. RCW 9.94A.734(4)(a)
11. RCW 9.94A.736(2)(c) – the following only: “through in-person contact”
12. RCW 9.94A.728(1)(c)(iii)
13. RCW 9.94A.728(1)(e) – the following only: “No more than the final twelve months of”
14. RCW 9.94A.728(1)(f) – the following only: “No more than the final six months of”
15. RCW 72.66.036
16. RCW 72.09.270(8)(a), (b), (c)

FURTHERMORE, though this emergency proclamation waives certain statutory notification requirement provisions, for individuals whose releases otherwise would have required the Department of Corrections to provide community or victim/witness notifications, the Department of Corrections must still make reasonable efforts to provide notification to the relevant parties at least 48 hours in advance of the individual's release from custody.

FURTHERMORE, I direct the Department of Corrections to continue to explore actions to identify other incarcerated individuals for potential release through Rapid Reentry, furlough, commutation, or emergency medical release, as eligible and needed.

Nothing in this proclamation is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

Violators of this of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 15th day of April, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State

Appendix III

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,)	
	)	No. [REDACTED]
Plaintiff/Respondent,	)	(CoA No. [REDACTED]
)	
v.	)	REPLY IN MOTION
	)	FOR RELEASE TO STAY
[REDACTED]	)	SENTENCE PENDING
	)	RESOLUTION OF APPEAL
Defendant/Appellant.)	
)	

I. ARGUMENT IN REPLY TO PROSECUTION’S OPPOSITION TO
RELEASE ON BOND OR PERSONAL RECOGNIZANCE AND
STAY OF SENTENCE PENDING APPEAL

[REDACTED] convictions for theft should not be a death sentence. But if he is infected with COVID-19 while incarcerated, that may very well be the result. Due to the nature of the virus and [REDACTED] health, [REDACTED] is at a high risk of serious illness or death from the virus. And while he is incarcerated, his risk of infection is substantial. About a dozen inmates and several staff members at the Monroe Correctional Complex where [REDACTED] is housed have tested positive for the virus.¹ Given these circumstances, and because conditions of release are adequate to ensure the safety of the community, this Court should

¹ <https://www.doc.wa.gov/news/covid-19.htm#status> (last accessed April 20, 2020).

order his sentence stayed while he exercises his state constitutional right to appeal.

The prosecution opposes [REDACTED] request. The prosecution incorrectly contends that [REDACTED] is not at a high risk of death or serious illness from COVID-19. [REDACTED] is in his mid-50s. He suffers from high blood pressure and takes medication for this condition. He is also an African American, and black Americans have suffered disproportionately from COVID-19.² In a letter, the Department of Corrections has acknowledged that [REDACTED] is in the high risk category.³

The prosecution opposes [REDACTED] motion, contending that a preponderance of the evidence shows that [REDACTED] “is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed.” RCW 9.95.062(1)

The evidence does not show this. Any risk of flight is minimal. [REDACTED] [REDACTED] has a supportive wife and a place to stay. His ties are in Washington State. That [REDACTED] has a nearly *20-year-old conviction* for

² <https://www.npr.org/sections/health-shots/2020/04/18/835563340/whos-hit-hardest-by-covid-19-why-obesity-stress-and-race-all-matter>.

³ [REDACTED] is sending counsel a copy of this letter. Counsel will file a copy of this letter once he receives it.

escape in the second degree under RCW 9A.76.120 does not establish that he is likely to flee if released.

The prosecution also does not show that [REDACTED] is such a risk to the community that bond or personal recognizance should be denied. His criminal history is one of non-violent offenses. That [REDACTED] has convictions for theft and drug possession does not establish he poses a risk of danger to the safety of the community. Any risk is properly mitigated with conditions of release. If [REDACTED] violates these conditions, his release can be revoked.

The prosecution also contends that the “delay resulting from the stay will unduly diminish the deterrent effect of the punishment.” RCW 9.95.062(1)(b). If a stay is granted and [REDACTED] is unsuccessful in his appeal, he will have to serve the remainder of his sentence. He has already served a portion of that sentence. This has a deterrent effect. Release pending appeal will not unduly diminish the deterrent effect. Indeed, a conditional release will have a deterrent effect against unlawful behavior because if [REDACTED] violates the conditions of release, the stay may be revoked. The prosecution has not shown by a preponderance of the evidence that RCW 9.95.062(1)(b) applies.

Further, the statutory criteria cannot be read in a vacuum. As the Massachusetts Supreme Court has reasoned, “[i]n these extraordinary

times, a judge deciding whether to grant a stay should consider not only the risk to others if the defendant were to be released and reoffend, but also the health risk to the defendant if the defendant were to remain in custody.” Christie v. Commonwealth, 484 Mass. 397, ___, 2020 WL 154877 at *3 (2020). “In evaluating this risk, a judge should consider both the general risk associated with preventing COVID-19 transmission and minimizing its spread in correctional institutions to inmates and prison staff and the specific risk to the defendant, in view of his or her age and existing medical conditions, that would heighten the chance of death or serious illness if the defendant were to contract the virus.” Id.

As explained, [REDACTED] is at a substantial risk of serious illness or death from COVID-19. The prosecution complains that [REDACTED] was unable to provide details in his original motion, but communication between appellate counsel and his incarcerated clients have been complicated due to the pandemic. Counsel has been working remotely. There have been quarantines and lockdowns in Department of Corrections’ facilities due to COVID-19, making communication even more difficult. Counsel was only recently able to get in touch again with [REDACTED]

As for the risk of the virus spreading in the Department of Corrections’ facilities, efforts to halt the spread of the virus have already

failed in Monroe, where [REDACTED] is housed. To be sure, efforts are being taken by the Department of Corrections to mitigate the risk of transmission. But a significant risk remains. Were it otherwise, the Washington Supreme Court would not have ordered the Governor and the Department of Corrections to explain what measures are being taken.⁴ And the governor would not have issued its emergency order that is leading to the release of some individuals in custody.⁵

Misusing statistics, the prosecution implies that the incarcerated are actually safer than the general population from being infected by COVID-19. State's Response at 10. This is misleading given that there has not been adequate testing. Further, the proper inquiry is whether the risk of infection would decrease if [REDACTED] is at home rather than in custody. At home, [REDACTED] interaction with other people would be minimal. In prison, social distancing is impossible. While incarcerated, [REDACTED] must interact with staff and other inmates in confined spaces. And staff members and inmates at the facility where [REDACTED] is housed have been infected.

4

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/983178%20Public%20Order%20Motion%20041020.pdf>

⁵ https://www.governor.wa.gov/sites/default/files/COVID-19%20-%20Commutation%20Order%204.15.20%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery.

For these reasons, a stay is warranted while [REDACTED] litigates his appeal. If successful in his appeal, [REDACTED] will not have unnecessarily served his sentence. Even if unsuccessful, the risk from COVID-19 in prisons will likely be greatly diminished once the appeal is resolved. [REDACTED] could then serve the remainder of his sentence without an undue risk of death or serious illness from COVID-19.

II. CONCLUSION

[REDACTED] asks that this Court stay his sentence and grant his release on personal recognizance or bond with the necessary conditions.

Respectfully submitted this 20th day of April, 2020.



Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for [REDACTED]

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached was filed in the **Pierce County Superior Court Clerk's Office**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Kristie Barham, Pierce County Prosecuting Attorney
[PCpatcecf@co.pierce.wa.us]

☐ appellant

☐ other party



MARIA ANA ARRANZA RILEY, Legal Assistant

Date: April 20, 2020

Appendix IV

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,)	
	)	No. [REDACTED]
Plaintiff/Respondent,	)	(CoA No. [REDACTED]
)	
v.	)	EVIDENCE IN SUPPORT
	)	OF MOTION FOR APPEAL
[REDACTED]	)	BOND
)	
Defendant/Appellant.)	
)	

As represented in his reply in support of setting an appeal bond, attached is a copy of the document from the Department of Corrections, dated April 4, 2020, showing that [REDACTED] has “been identified as someone at increased risk for getting Covid 19.”

Respectfully submitted this 28th day of April, 2020.



Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for [REDACTED]

Attn: Rich Lechich

Thanks For working on my situation. You are appreciated.
Stay safe and healthy.

RECEIVED

APR 28 2020



HEALTH SERVICES KITE

WASHINGTON APPELLATE
PROBATION
SCANNED

This fill and print form is for healthcare staff to initiate communication with patients.
Patient offenders are to use the 3-part NCR form to communicate with staff.

HEALTH SERVICES RESPONSE/ENCOUNTER

This form must be filed if any information is entered below except for: simple prescription refills, finance, non-medical work/bunk change, religious diets, shoes, classification, non-health services issues

TYPE OF RESPONSE

- ☒ MEDICAL ☐ DENTAL ☐ MENTAL HEALTH
☐ OPTOMETRY ☐ OTHER: _____

☐ Schedule within _____ days/weeks/months ☐ Next available sick call ☐ No visit required

★ You have been identified as someone at increased risk for getting Covid 19. It is recommended that you consider the following:

- A) Encourage self-quarantine in cell
- B) Wear a surgical mask if leaving cell
- C) Perform frequent hand hygiene
- D) Perform frequent cleaning of cell throughout the day
- ☐ highly discourage the use of bleach as this can exacerbate conditions for those patients with underlying lung disease
- E) Avoid contact of high-touch surfaces
- F) Limit movement in the facility
- G) Social distancing (stay at least 6 feet from others) should be maintained during Day Room, Yard, Gym, Dining Halls, Religious Services, Pill Line, and other areas where the incarcerated population congregates.

Medical only has enough masks to issue to EXTREMELY high risk patient at this time. You are not one of those patients. If medical gets more masks, they will be distributed with an HSR, as supply allows.
Please kite me, if you have any further questions.

RESPONDER typed name and signature

Jennifer Ross PA-C

DATE

04/09/2020

PRESCRIPTIONS MUST BE WRITTEN ON DOC 13-435 PRIMARY ENCOUNTER REPORT (PER) OR IN CIPS

Distribution: ORIGINAL – Health Record, COPY – Offender

State law (RCW 70.02) and/or federal regulations (42 CFR Part 2) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached was filed in the **Pierce County Superior Court Clerk's Office**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Kristie Barham, Pierce County Prosecuting Attorney
[PCpatcecf@co.pierce.wa.us]

☐ appellant

☐ other party



MARIA ANA ARRANZA RILEY, Legal Assistant

Date: April 28, 2020

Maria Riley

From: SUPERIOR COURT <PCCLKLINX@piercecountywa.gov>
Sent: Tuesday, April 28, 2020 4:16 PM
To: Maria Riley; SUPERIOR COURT
Subject: Filing Notification

Thank you. Your documents have been submitted to the Pierce County Clerks Office.

Case: [REDACTED]

STATE OF WASHINGTON vs [REDACTED] [REDACTED]

The date and time of this submission was 04/28/2020 4:15 PM

The following Filing(s) were successfully submitted:

[REDACTED] - Motion

THIS E-MAIL IS PRIVILEGED AND/OR CONFIDENTIAL AND INTENDED ONLY FOR THE LISTED RECIPIENT. IF YOU RECEIVED THIS E-MAIL IN ERROR OR THROUGH UNAUTHORIZED INTERCEPT, PLEASE REPLY TO THIS EMAIL, AND THEN DELETE THIS E-MAIL.

Appendix V

1
2
3
4
5
6 IN THE SUPERIOR COURT
7 OF THE STATE OF WASHINGTON
8 IN AND FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 NO. [REDACTED]

13 STATE'S MOTION TO STRIKE
14 EVIDENCE IMPROPERLY RAISED
15 FOR THE FIRST TIME IN THE REPLY

16 [REDACTED]
17 Defendant.

18 COMES NOW the State of Washington, by and through Kristie Barham, Deputy
19 Prosecuting Attorney, and hereby requests this Court strike the evidence improperly
20 submitted by the Defendant for the first time in his reply. This motion is brought pursuant
21 to CrR 8.2 and CR 7(b).

22 I. ARGUMENT

23 CrR 8.2 provides that CR 7(b) shall govern motions in criminal cases. Every motion
24 must specify the grounds and relief sought "with particularity." CR 7(b)(1); *Orsi v. Aetna*
25 *Ins. Co.*, 41 Wn. App. 233, 247, 703 P.2d 1053 (1985). CR 7(b)(1) provides that an
application to the court for an order shall be made by motion and "shall state with
particularity the grounds therefore, and shall set forth the relief or order sought." Courts may
not consider grounds not stated in the motion. *Orsi*, 41 Wn. App. at 247. Declarations and

1 other supporting papers and information relied on must be identified in the body of the
2 motion and served with the motion:

3 *Identification of Evidence.* When a motion is supported by affidavits or other
4 papers, it shall specify the papers to be used by the moving party.

5 CR 7(b)(4); *see* CR 6(d) (when a motion is supported by affidavit, the affidavit shall be
6 served with the motion).

7 A reply brief should be limited to issues contained within the response brief. *See*
8 Pierce County Superior Court Local Rule (PCLR) 7(a)(6) (referring to a reply brief as papers
9 in “strict reply”). “An issue raised and argued for the first time in a reply brief is too late to
10 warrant consideration.” *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828
11 P.2d 549 (1992). A reply brief is not the forum to raise new issues because there is no
12 opportunity for the opposing party to respond. *See Dykstra v. County of Skagit*, 97 Wn. App.
13 670, 676, 985 P.2d 424 (1999).

14 The Defendant’s motion did not include any facts regarding his medical condition.
15 *See* Motion and Order for Release (filed April 10, 2020). The motion included only vague
16 references to risks, in general, for older individuals and for individuals with underlying
17 medical conditions. The motion included no information specific to the Defendant’s
18 individual circumstances. The State filed its response—the only opportunity under the court
19 rules for responding to the motion—based on the facts and arguments relied on by the
20 Defendant in his motion. *See* PCLR 7(a)(5).

21 Now, for the first time in his reply, the Defendant claims that he suffers from high
22 blood pressure and takes medication for this condition and that the Department of
23 Corrections (DOC) has acknowledged in a letter that he is in a “high risk category.” Reply
24
25

1 in Motion for Release at 2 (filed April 20, 2020).¹ Although the Defendant raised these
2 claims for the first time in his reply brief, he still did not provide any affidavits or other
3 supporting documentation. Rather, the Defendant indicated that he would subsequently file
4 this DOC letter once it was received. Reply at 2, n.3. Eight days after the reply was filed, the
5 Defendant submitted a pleading titled “Evidence in Support of Motion for Appeal Bond,”
6 which included the DOC letter referenced in his reply. Not only does the Defendant continue
7 to provide no supporting evidence of any documented medical condition, including his
8 allegation that he suffers from high blood pressure, but DOC does not indicate that he is at
9 “high” risk as the Defendant previously asserted. Rather, the letter indicates that he is at an
10 “increased risk” and includes specific recommendations to deal with that risk.

11 The Defendant is attempting to add new facts and new arguments that he failed to
12 properly raise in his motion and that the State has no opportunity in which to respond. A
13 defendant cannot remain silent as to facts and evidence that support a motion, wait for the
14 State to file a response, and then assert the true basis for the motion for the first time in the
15 reply. This is improper. Under CR 7(b) and *Orsi*, this Court should not consider grounds not
16 stated in the Defendant’s motion. *See Orsi*, 41 Wn. App. at 247. The Defendant has impinged
17 on the State’s ability to respond to his claims, and the only fair remedy is to strike the new
18 evidence that is improperly submitted to this Court and not consider it.

19
20
21
22
23
24
25

¹ Although the Defendant’s reply was filed on April 20, 2020, the State was not served with a copy of the reply and only learned of the reply when the Defendant electronically served the State with a copy of the evidence in support of the reply, which was filed on April 28, 2020. Although the declaration of service references an email address for electronic filing, the State was not served with the reply electronically, or by email, and was informed on April 30th that the reply was mailed to our office. To date, our office has not received this reply in the mail. The information in this footnote is included only to explain the timing of the State’s filing of this motion to strike.

1
2 **II. CONCLUSION**

3 For the foregoing reasons, the State respectfully requests that this Court strike the
4 evidence improperly raised by the Defendant for the first time in the reply as there is no
5 opportunity under the court rules for the State to respond.

6 RESPECTFULLY SUBMITTED this 30th day of April, 2020.

7 MARY E. ROBNETT
8 Pierce County Prosecuting Attorney

9 s/ Kristie Barham
10 KRISTIE BARHAM, WSB #32764
11 OID 91121
12 Deputy Prosecuting Attorney
13 Pierce County Prosecutor's Office
14 930 Tacoma Ave. S., Rm 946
15 Tacoma, WA 98402-2171
16 Telephone: (253) 798-6746
17 kristie.barham@piercecountywa.gov

18 Certificate of Service:
19 The undersigned certifies that on this day she delivered by E-file to the
20 attorney of record for the defendant/appellant true and correct copies of
21 the document to which this certificate is attached. This statement is certified
22 to be true and correct under penalty of perjury of the laws of the State of
23 Washington. Signed at Tacoma, Washington on the date below.

24 4/30/20 S/ Therese Kahn
25 Date Signature

Appendix VI

1
2
3
4
5 **IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

6 STATE OF WASHINGTON,

7 Plaintiff,

8 vs.

9 [REDACTED]
10 Defendant.

Cause No: [REDACTED]

**ORDER DENYING MOTION FOR A STAY OF
SENTENCE AND FOR RELEASE**

11 The Court has considered Defendant's motion, the State's response and Defendant's reply and
12 all attachments to these documents. The Court has considered all authorities submitted, including
13 Defendant's additional authority, State v. Portomene. The Court has also considered the evidence
14 presented at trial and at Defendant's sentencing hearing.

15 The undersigned Judge has been ordered by the Presiding Judge of Pierce County Superior
16 Court to remain away from the Courthouse and to only work remotely, in an effort to ensure availability of
17 judicial officers who are free of infection from COVID 19 in the event that any judicial officers working at
18 the courthouse become infected. For this reason, and because the Court considers itself fully advised by
19 the thorough briefing of the parties, the Court now waives oral argument on Defendant's motion under
20 PCLR 7(a)(10).

21 The Court has focused on RCW 9.95.062(1), as urged by both parties. After considering the
22 evidence described above, the Court now FINDS by a preponderance of the evidence:

23 1. Defendant poses a serious risk to the safety of members of the community within the meaning
24 of RCW 9.95.062(1)(a) if he were to be released on bond or on his own recognizance.
25

1 Defendant committed felonies that caused demonstrable and substantial financial and emotional
2 harm in the present case, despite specific and direct orders from his supervising Community Corrections
3 Officer that he stay away from any landscaping "work." Defendant made concerted efforts to hide his
4 activities from his Community Corrections Officer.

5 For many years Defendant has repeatedly ignored court orders and directives of Department of
6 Corrections authorities when he is not physically incarcerated.

7 The Court has no confidence whatsoever that Defendant would follow and obey conditions of a
8 sentencing stay and conditions of release. The Court has ample grounds to believe and does believe that
9 Defendant would, at his earliest opportunity, again prey upon an elderly and vulnerable member of the
10 community. Defendant has repeatedly shown that if he is not physically incapacitated, he is pursuing
11 criminal schemes and designs.

12 2. A Stay of sentence will create significant delay and this delay will unduly diminish the deterrent
13 effect of the punishment, within the meaning of RCW 9.95.062(1)(b).

14 The evidence before the Court demonstrates that the only way to deter Defendant from
15 committing crimes is physical incarceration. Staying Defendant's sentence would deliver a message to
16 Defendant exactly opposite of what this Court intended by its judgment and sentence. An order releasing
17 Defendant would be perceived by Defendant as an acknowledgement that his convictions at trial were
18 probably without due process of law and/or his crimes were less serious than this Court tried to express
19 by its judgment and sentence.

20 Incarceration specifically deters this Defendant from continuing his criminal career. Restoring
21 Defendant's freedom, for whatever reason, will only serve to embolden Defendant to believe that he is
22 free to resume the criminal lifestyle he has continuously pursued except when he is incarcerated. Simply
23 put, Defendant has no respect for the law and for the rights of others.

1 The Court further FINDS:

2 3. Defendant has failed to prove by a preponderance of the evidence that the State of
3 Washington has failed in its constitutional duty to appropriately provide for Defendant's safety and
4 welfare. This Court is satisfied that the Department of Corrections is continuing to use all appropriate and
5 reasonable means to protect all persons committed to its custody and care. The Defendant has not
6 proved otherwise and is not entitled to any remedy.

7 Accordingly, because Defendant has failed in his proof and because of the findings made under
8 RCW 9.95.062(1), the Court now DENIES Defendant's motion. IT IS SO ORDERED.

9
10 Dated this 1st day of May, 2020.

11 
12 _____
13 Judge Jerry Costello
14
15
16
17
18
19
20
21
22
23
24
25


Appendix VII


1
2
3
4
5 **IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE**

6 STATE OF WASHINGTON,

7 Plaintiff,

8 vs.

9 
Defendant.

Cause No: 

ORDER DENYING MOTION TO STRIKE

10
11 The Court has considered the State's motion asking the Court to strike those portions of
12 Defendant's reply brief which introduce material and evidence not raised in Defendant's initial motion.

13 The Court will not require a response from Defendant and waives oral argument under
14 PCLR 7(a)(10). The motion to strike is DENIED.

15
16 DATED this 1st day of May, 2020.

17 

18 Judge Jerry Costello
19
20
21
22
23
24
25

Appendix VIII

STATE OF WASHINGTON,)

Plaintiff/Respondent,)

v.)

)

Defendant/Appellant.)

Trial No. [REDACTED]

CoA No. [REDACTED]

Declaration of

[REDACTED]

[REDACTED] declares the following and that if called as a witness he would testify that:

1. I am a 53-year-old African American male. My date of birth is [REDACTED]
2. I am incarcerated at the Monroe Correctional Complex-WA State Reformatory. I am appealing my convictions.
3. Among my health conditions, I suffer from high blood pressure and take medication to address this condition.
4. I also have medical complications from past injuries and currently suffer joint pain and severe foot problems. I have extensive dental-care and eye-care needs. Among other medications, I take pain medications.
5. Healthcare staff from the Department of Corrections have identified me as being at an increased risk from COVID-19.
6. My conditions of confinement increase my risk. It is overcrowded and there is virtually no social distancing.
7. If granted an appeal bond, I would abide by any conditions of release during the pendency of my appeal.
8. I am married and have a supportive wife who lives in Pierce County. If released, I would reside with her.

The foregoing is true and correct to the best of my knowledge

DATED this ____ day of _____, 2020

[REDACTED]

Appendix IX

STATE OF WASHINGTON,)

Respondent,)

v.)

Appellant.)

No. [REDACTED]

DECLARATION OF
RICHARD LECHICH,
COUNSEL FOR
[REDACTED]

Richard Lechich, counsel for [REDACTED] declares that on May 26, 2020, he emailed the Pierce County Prosecuting Attorney's Office and the assigned appellate prosecutor attorney, Kristie Barham, to notify them of [REDACTED] intent to file an emergency motion in the Court of Appeals seeking a stay of his sentence and for review of the trial court's denial of a stay of his sentence or appeal bond. A copy of that email is attached.

Respectfully submitted this 27th day of May, 2020.



Richard W. Lechich – WSBA #43296
Washington Appellate Project – #91052
Attorney for Appellant

From: [Richard Lechich](#)
To: [Kristie Barham](#)
Subject: [REDACTED]
Date: Tuesday, May 26, 2020 5:28:37 PM

Ms. Barham,

Per RAP 17.4(b), I am writing to provide notice to the Pierce County Prosecutor's Office that [REDACTED] intends to file an emergency motion in the Court of Appeals seeking a stay of his sentence and for review of the trial court's denial of a stay of his sentence or appeal bond. I intend to file the motion tomorrow, May 27, 2020.

Respectfully,

Richard Lechich
Washington Appellate Project
206-587-2711

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No.** [REDACTED] and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered by other court-approved means to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

☒ respondent Kristie Barham, DPA
[PCpatcecf@co.pierce.wa.us]
[kristie.barham@piercecountywa.gov]
Pierce County Prosecutor's Office

☐ Attorney for other party

☐ appellant



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: May 27, 2020

WASHINGTON APPELLATE PROJECT

May 27, 2020 - 4:39 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: [REDACTED]
Appellate Court Case Title: State of Washington, Respondent v. [REDACTED] Appellant
Superior Court Case Number: [REDACTED]

The following documents have been uploaded:

- [REDACTED]
This File Contains:
Motion 1 - Other
The Original File Name was washapp [REDACTED]

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- kristie.barham@piercecountywa.gov

Comments:

***EMERGENCY MOTION

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Richard Wayne Lechich - Email: richard@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20200527163820D2312589