67513-3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. SERGIO R. PERALTA, Appellant.	No. 67513-3-I STATEMENT OF ADDITIONAL GROUNDS (SAG) FOR REVIEW PURSUANT TO RAP 10.10

I, Sergio R. Peralta, have received and reviewed appellate counsel's motion to withdraw and Anders brief. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

SAG #I: OBJECTION TO THE VERBATIM REPORT OF PROCEEDINGS (VRP) AND OBJECTION TO COUNSEL'S MOTION TO WITHDRAW
MR. PERALTA HAS A RIGHT TO AN ACCURATE VRP FOR REVIEW

The power of the government is awesome and no "dream team" will ever have the resources to match the international network of law enforcement officials, computers and resources available at the hands of even local prosecutors. What gives any accused person a chance against this system is the commitment of his or her criminal defense lawyer to stand up for the client no matter what it takes. Standing up for the dignity of, and respect for the

criminally accused involves investigating and re-investigating every case thoroughly, poring over the reports and documents, re-testing the scientific evidence and rethinking the prosecution's theory of the case.

"To stand up for the rights of the guilty is to secure the rights of the innocent."

The defendant requires the guiding hand of counsel at every step in the proceedings against him. See, e.g., Powell v. Alabama, 287 U.S. 45, 68-69 (1932).

A. Mr. Peralta strongly [objects] to the VRP produce by Mr. Thomas Marshman on February 13, 2012, And to Counsel's Motion to Withdraw.

B. Mr. Peralta asserts that appellate counsel failed to recognize arguable merits due to a conflict of interest regarding his request to file an objection to the prejudicial alterations and inconsistencies on the VRP produce by Mr. Marshman.

APPELLATE COUNSEL FAILED TO RECOGNIZE THE FOLLOWING ISSUES:

1. The Agreed Order on page one entered on February 18, 2009, [does not] recite a sexual motivation finding on Count I. Kidnapping in the First Degree, And furthermore, the Agreed Order on page two clearly states: "He shall be resentenced in accordance with this order." (See Agreed Order as Exhibit- A)

2. The Judgment and Sentence (J&S) also executed on February 18, 2009, supports the Agreed Order agreement entered by the parties. Page two of the

J&S 2009, contained a box to note with sexual motivation, it was left unchecked And was not a clerical error. (See J&S 2009 as Exhibit- B)

3. The Declaration from Mr. Theodore C. Rogge, Mr. Peralta's previous counsel dated November 16, 2011, clearly states: "when the resentencing occurred that finding was left out." (See Declaration of Mr. Rogge as Exhibit- C)

4. That the above three legal documents are in harmony with each other they do not stand alone and corroborate Mr. Peralta's assertions that promises were made to him in exchange for his waiver and guilty plea.

5. Mr. Peralta on February 18, 2009, was misinformed of the direct consequences of his sentence, his waiver, and his guilty plea, which rendered the Agreed Order and J&S 2009 void.

6. On February 18, 2009, Mr. Peralta received ineffective assistance of counsel.

7. The short colloquy between Mr. Peralta and the trial court failed to established on the record a legitimate and valid voluntary waiver and guilty plea. (See VRP)

8. On July 1, 2009, the State breached the Agreed Order by amending Count I. Kidnapping in the First Degree: "to have been committed with sexual motivation." Without any notice to Mr. Peralta. (See Order Amending J&S Count I. as Exhibit- D)

A. FACTS RELEVANT TO THE OBJECTIONS AND THE VRP BY MR. MARSHMAN AND APPELLATE COUNSEL'S CONFLICT OF INTERESTS

1. Supporting document's and facts relevant to the VRP are set forth in

Mr. Peralta's pro se objection to the VRP filed on March 21, 2012. Motion denied on March 29, 2012, quote "The Appellant is represented by counsel. The motion is denied. Any objection to the verbatim report of proceedings must be filed by counsel in accordance with RAP 9.5(c).

2. Counsel's request to withdraw comes as a direct result of Mr. Peralta having asked counsel to file and objection to the VRP produce by Mr. Marshman, immediately right after Mr. Peralta's objection to the VRP was denied.

3. Supporting document's and facts relevant to the conflict of interests between counsel and Mr. Peralta are set forth in Mr. Peralta's pro se objection to counsel's motion to withdraw filed on May 31, 2012.

4. Being that Mr. Eric J. Neilsen, from Neilsen, Broman & Koch (NBK) is the one who hired and paid Mr. Marshman to produce the challenged VRP, a clear conflict of interest is demonstrated. A VRP that Mr. Peralta, the client of NBK is now questioning the legitimacy of, in which, the outcome of the proceedings may hinge and will cause prejudice to Mr. Peralta's future petitions.

5. Counsel's refusal to file an objection to the VRP and subsequent motion to withdraw and Anders brief reasonably demonstrates a conflict of interest and prejudice, in which counsel must either: A. Serve the interests of the law firm for who she works for; or B. Serve Mr. Peralta's best interests as appointed counsel and provide zealous advocacy. Here counsel either has to admit to the deficiencies of the VRP produce by Mr. Marshman and expose her law firm to liability or abandon Mr. Peralta to advocate for himself claiming there are no arguable merits.

6. On June 12, 2009, before Mr. Neilsen requested Mr. Peralta's VRP resentencing hearing from Mr. Marshman, Mr. Peralta made his own request from

Ms. Carrie Ann Perez, a certified court reporter to transcribed and produce the VRP of Mr. Peralta's resentencing hearing that took place on February 18, 2009. The VRP produced by Mr. Marshman on page 18 states: "Notary Public" and not a certified court reporter. (See VRP by Mr. Marshman as Exhibit- E)

7. On February 9, 2010, a copy of the VRP produced by Ms. Perez was provided to this court in Mr. Peralta's Personal Restraint Petition reply brief to the State under case No. 64115-8-I. The State made no objections to the VRP produced by Ms. Perez. Mr. Peralta believes that once this VRP was accepted by the State and this court made reference to it on their "ORDER OF DISMISSAL" on May 7, 2010 it undoubtedly became part of Mr. Peralta's record, and should be the one used on his direct appeal. (See OREDER OF DISMISSAL as Exhibit- F)

8. The VRP produced by Ms. Perez on June 12, 2009 on page 13 lines 24-25, states the following:

line 24] MR. ROGGE: He does have a right to appeal the
line 25] sentencing on the new charges -- on the new charges.

(See VRP by Ms. Perez as Exhibit- G).

9. The VRP produced by Mr. Marshman on February 13, 2012 on page 15 lines 4-5, states following:

line 4] MR. ROGGE: He doesn't have a right to appeal the -- the
line 5] sentencing on the newer -- on the new charges.

(See VRP by Mr. Marshman as Exhibit- E)

10. These are just some of the seriousness of inconsistencies on the VRP produced by Mr. Marshman that will prejudice Mr. Peralta in future petitions. To review the series of inconsistencies see Declaration of Sergio Peralta at No. 7. dated March 19 2012. (See Declaration of Peralta as Exhibit- H)

11. To see the full picture of the seriousness of the matter at hand Mr. Peralta respectfully requests of this court to take in consideration his two objections previously filed in this court and review them in conjunction with SAG #I, in the interest of justice. For they are key evidence in support to Mr. Peralta's right to an accurate VRP and the reason why Mr. Peralta believes a conflict of interests does exists. Considering that the VRP by Ms. Perez says that Mr. Peralta: "does have a right to appeal the sentencing on the new charges." And the other VRP by Mr. Marshman says that Mr. Peralta: "doesn't have a right to appeal the -- the sentencing on the newer -- on the new charges." This two VRP's are in conflict with each other. Which one are we to believe?

B. ARGUMENT AND AUTHORITY

Mr. Peralta has a Constitutional right to the effective assistance of counsel. See, e.g., State v. McDonald, 143 Wn.2d 506 (2001).

> "The Sixth Amendment to the United States Constitution give a criminal defendant the right to the effective assistance of counsel. In re Personal Restraint of Brett, 142 Wn.2d 868... (2001). Effective assistance includes a duty of loyalty and a duty to avoid conflict of interest. Strickland v. Washington, 466 U.S. 668... (1984)."

See, also e.g., Frazer v. United States, 18 Fed 778 (9th Cir. 1994)("Culyler v. Sullivan, 466 U.S. 335, 349-50... (1980)('[A] defendant who shows that a conflict of interest actually effected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.'); Holloway v. Arkansas, 435 U.S. 475, 490-97... (1978)").

This Sixth Amendment right applies to: "all critical stages of a criminal proceeding, including sentencing and additionally on first appeal of right when states provide a right of appeal." State v. Robinson, 153 Wn.2d 689, 694 (2005)(internal citations omitted). See, also Hovey v. Ayers, 458 F.3d 892 (9th Cir. 2006)(collecting United States Supreme Court holings on critical stages).

IT ALSO EXTENDS TO APPELLATE PROCEEDINGS

See, e.g., In re Pers. Restraint of Dalluge, 152 Wn.2d 772 (2004) ("The United States Supreme Court has recognized that a criminal defendant has a right to have effective assistance of counsel on this first appeal of right. Evitta v. Lucey, 469 U.S. 387... (1987)").

MR. PERALTA HAS A CONSTITUTIONAL RIGHT TO AN ACCURATE VERBATIM REPORT OF PROCEEDING FOR APPELLATE REVIEW UNDER THE COURT REPORTERS ACT

See, e.g., United States v. Carrillo, 902 F.2d 1405 (9th Cir. 1990)

> "A criminal defendant has a right to a record on appeal which includes a complete transcript of the proceedings at trail. Herdy v. United States, 375 U.S. 277, 279-83... (1964). Nevertheless, while court reporters are required by the Court Reporters Act, 28 USC § 753(b)(1)(1982), to record verbatim all proceedings in open court, their failure to do so does not require a per se rule of reversal. United States v. Doyle, 786 F.2d 1440, 1442 (9th Cir.), cert. denied, 479 U.S. 984... (1986) (citations omitted). Rather some prejudice must occur before reversal will be contemplated. Id."

See, also e.g., United States v. Harber, 251 F.3d 881 (2001)(colleciting federal circuit cases).

BY LOGICAL EXTENSION MR. PERALTA DESERVES AN ACCURATE TRANSCRIPT OF THE RECORD

See, e.g., Devereaux v. Abby, 263 F.3d 1070 (9th Cir. 2001)

"'[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action has [not] previously been held unlawful, (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)(alteration in original); see also, Giebel v. Sylvester, 244 F.3d 1162, 1189 (9th Cir. 2001) ("Precedent directly on point in not necessary to demonstrate that a right is clearly established. Rather, if the unlawfulness is apparent in light of pre-existing law, then the analogous case law a right can be clearly established on the basis of common sense.' (emendations and iternal quotation marks ommitted))."

MR. PERALTA'S CONSTITUTIONAL RIGHTS TO EFFECTIVE ASSISTANCE & ACCURATE TRANSCRIPT HAVE COME INTO COLLISION WITH COUNSEL'S PERSONAL INTERESTS

It is clear that Mr. Peraltal has a right under the United States Constitution to both an accurate transcription of the record on appeal as well as the effective assistance of counsel for that appeal. Given the discrepancies between the two VRP's, it becomes incumbent on the court to make a determination which one is the most accurate. Given the wrong advise by counsel to Mr. Peralta to file the objection to the VRP on his own accord considering the inherent conflict of interest involved. This court should in the interest of justice reinstate Mr. Peralta's objection to the VRP and enter a ruling on it. Additionally, this court should reject counsel's motion to withdraw and Anders

brief and appoint Mr. Peralta new counsel from another firm in the interest of justice.

C. Mr. Peralta has a right to an accurate transcript of the record for review. He has demonstrated prejudicial discrepancies between two transcripts. Since Mr. Peralta in essence has been without appellate counsel due to a conflict of interests, this court in the interest of justice:

1. Reinstate Mr. Peralta's pro se objection to the VRP produce by Mr. Marshman and make a ruling on it because it will prejudice Mr. Peralta's future petitions.

2. Have an evidentiary hearing to determine which of the two VRP's is the most accurate prior to allowing any other proceedings to go forward.

D. Mr. Peralta's appellate counsel has demonstrated a conflict of interest which has cause extreme prejudice to Mr. Peralta and have violated his Due Process Right of the Fourteenth Amendment of the Constitution of the United States, for which this court in the interest of justice:

1. Reject Counsel's Motion to Withdraw and Anders brief.

2. Appoint Mr. Peralta new appellate counsel from a different firm to secure his right to counsel during his direct appeal of right under the Sixth Amendment of the Constitution of the United States.

SAG #2: <u>THE AGREED ORDER VIOLATES DUE PROCESS AND SHOULD BE VOID UNDER THE XIV AMEND.</u>

Mr. Peralta asserts that he did not entered into a voluntary valid

guilty plea "Ageed Order" with the State. When a defendant pleads guilty he, of course, forgoes not only a fair trial, but also other accompanying constitutional guarantees. Boykin v. Alabama, 395 U.S. 238, 243 (1969)(pleading guilty implicates the Fifth Amendmend privilege against self-incrimination, the Six Amendmend right to confront one's accusers, and the Six Amendmend right to trial by jury). Given the seriousness of the matter, the Constitution insists, among other things, that the defendant enter guilty plea that is "voluntary" and that defendant must make related waivers "knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. 742, 748 (1970); see also Boykin, supra, at 242.

I. FACTS RELEVANT TO DUE PROCESS VIOLATIONS ON THE AGREED ORDER AND CASE LAW AUTHORITY

1.) The Agreed Order failed to set forth any of the above constitutional right being waived except for the right to appeal. (See Agreed Order as Exhibit- A)

2.) The State, the trial, and Mr. Rogge failed to acquire a written authorization personally signed by Mr. Peralta voluntarily waiving his rights, which the State failed to set forth on the Agreed Order, prior to resentencing as evinced by the lack of Mr. Peralta's signature on the Agreed Order. Further, the Agreed Order provides no place for Mr. Peralta's signature.

3.) Mr. Peralta was never presented a copy of the Agreed Order prior to resentencing nor was there any plea hearing ever conducted by the State.

4.) A plea he hearing prior to resentencing would have given Mr. Peralta the requisite knowledge of the State's proposal and the full contents of the Agreed Order. A written waiver would have been required from Mr. Peralta acknowledging the relinquishment of his rights.

5.) The record shows the trial court [did not] conduct a proper inquiry to ensure Mr. Peralta understood his rights, a valid waiver of them and the consequences of the guilty plea and contents of the Agreed Order. Boykin established that the State must demonstrate the defendant's knowing waiver of the three constitutional rights there enumerated. "We cannot presume a waiver of these three important federal right s from a silent record." See Boykin, supra, at 242.

> "For this waivers to be valid under the Due Process Clause, it must be an intentional relinquishment or abandonment of a known right or privilege.' Johns v. Zerbst, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." Boykin, supra, at 249.

6.) Mr. Peralta was never question on the record by the trial court to inquire if any threats or promises were made to him in exchange for his waiver and guilty plea. When in fact promises were made to him by the State and his defense counsel. The best evidence of a defendant's understanding when pleading is the colloquy closest to the moment he enters the plea. Appellate court's presume a voluntary plea when the defendant engages in a colloquy with the court where the defendant acknowledges the truth of the plea and that he understands its contents and completes a written statement. See State v. Perez, 33 Wn.App. 261-62, 654 P.2d 708 (1982)(emphasizing that a defendant's plea under these

circumstances is 'well nigh irrefutable' and 'prima facie verification of the plea's voluntariness').(citation omitted); see alse State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996)(defendant's signature on the plea is 'strong evidence' of valid plea). [A] signature requirement is reflected in CrR 4.2 which sets out the following:

> "CrR 4.2(d) prevents a court from accepting a plea of guilty until it has ascertained that it was made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. A trial court is not permitted to enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.
>
> CrR 4.2(e) provides that if a plea of guilty is based upon an agreement between the defendant and the prosecuting attorney such agreement must be made a part of the record at the time the plea was entered. In addition, the trial judge must inform the defendant that an agreement cannot be made that attempts to control exercise of the judge's discretion.
>
> Finally CrR(g) requires the defendant to file, with his plea of guilty a detailed written statement which not only itemizes his basic constitutional rights, but sets forth the requirments of CrR 4.2(d) and (e) and specifies that the statement has been read by or read to the defendant. The statement must be signed by the defendant in the presence of his attorney, the prosecuting attorney, and the judge."

The State, the trial court and defense counsel Mr. Rogge failed to comply with CrR 4.2 or any other Constitutional rule which "safeguards" the defendant at the critical time of pleading. See Washington v. Taylor, 83 Wash.2d 594, 521 P.2d 699 (Wa. 04/11/1974).

> "Under the federal rules, the "manifest injustice" requirement has been recognized as a "demanding standard." 2 Wright, Federal Practice & Procedure § 539 (1969). The federal courts have found

> the demanding standard met where it is established that a defendant has failed to understand the consequences of his plea. (Carter v. United States, 306 F.2d 283 (D.C. Cir 1962)); or, where a defendant was denied effective assistance of counsel. (Kadwell v. United States, 315 F.2d 667 (9th Cir. 1963)); or, where the plea was induced by threats or promises. (Semet v. United States, 369 F.2d 90 (10th Cir. 1966))."

"A plea of guilty entered by a defendant who is fully aware of its direct consequences must stand unless induced by threats, promises, or misrepresentations by the prosecutor." See United States v. Mathews, 833 F.2d 161, 165 (9th Cir. 1987); see also State v. Cameron, 30 Wn.App. 229, 633 P.2d 901 (1981) In which the Washington Supreme Court followed federal precedent and recognized that "special care should be taken in reviewing guilty pleas entered in exchange for a prosecutor's promise." It is a violation of due process to accept a guilty plea without an affirmative showing that the plea was made intelligently and voluntarily. Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S. Ct. 1709 (1969). Moreover, in addition to the minimum requirements imposed by the constitution, criminal pleas are governed by rules of court. CrR 4.2, modeled after rule 11 of the Federal Rules of Criminal Procedure, 18 U.S.C., app. at 1416-17 (1977), establishes requirements beyond the constitutional minimum. The record of a plea hearing or clear and convincing extrinsic evidence must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea. Wood v. Morris, 87 Wash.2d 501 554 P.2d 1032 (1976).

II. INVOLUNTARY RIGHT TO APPEAL WAIVER

Mr. Peralta asserts that on February 18, 2009, he did not voluntarily waive his right to appeal. When the waiver involves important rights and carries with it serious consequences, the trial court is required to accept the waiver with extreme caution and to ensure that the defendant understands the nature and consequences of the waiver. Waiver of trial right in trial type situation, and to guilty pleas, which the United States Supreme Court said must be "carefully scrutinized" to determine whether the accused knew and understood all the rights to which he would be entitled at trail. See, e.g., McCarthy v. United States, 394 U.S. 459 (1969); Boykin v. Alabama, 395 U.S. 238 (1969).

THE COURT MUST ENGAGE THE DEFENDANT IN A COLLOQUY

Mr. Peralta asserts that the trial court failed to carry out its burden allocated to it during Mr. Peralta's resentencing hearing. The colloquy between Mr. Peralta and the Court exhibits the following:

Page 13 lines 16-28 on VRP by Ms. Perez (See Exhibit- G)

16] THE COURT: And I know that, Mr. Rogge, that you did
17] go over this agreed order at length with your client.
18] MR. ROGGE: Yes. We discussed that at length.
19] THE COURT: (Inaudible.)
20] And he understands that there's --
21] THE COURT: And you can't -- you don't have a right
22] to appeal this?
23] MR. PERALTA: Yeah.
24] MR. ROGGE: He does have a right to appeal the
25] sentencing on the new charges -- on the new charges.
26] And he understands he's already exhausted those appeals.
27] There was an appeal. He did ask for a reconsideration
28] on that appeal, which was denied as well, so...

Here the trial court delegated their obligation to defense counsel to advise the defendant of all the direct consequences of his waiver and guilty plea, neglecting their obligation to properly engage in a colloquy with the defendant regarding his waiver and guilty plea and to inquire if any threats or promises were made before accepting the Agreed Order. The trial court erred by assuming that Mr. Peralta was properly informed of all the direct consequences.

Promises were made to Mr. Peralta which the trial court failed to inquire about. Mr. Peralta likewise assume that the trial court was aware of all the promises made to him in exchange for his waiver and guilty plea.

Mr. Peralta was then prejudice by the trial court when it went as far as telling him that he possessed no "right to appeal." See line 21 supra. Assuming the Agreed Order is Constitutional valid then Mr. Peralta would have no right to appeal it, but if it was obtained in violation of due process Mr. Peralta has every right to appeal the Agreed Order.

Not only is the judge's statement confusing, it conflicts with Washington's Constitution article I, § 22 which guarantees a "right to appeal in all cases." Moreover, Mr. Rogge's statement to the court, Appellant's previous counsel, confuses the issue even more. See line 24-25 supra. "The court must engage the defendant in a colloquy regarding the lack of factual basis for the amended charge in order to have a valid plea. See In re Personal Restraint of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000); see also State v. Madsen, 229P.3d 714, 168 Wash.2d 496 (2010)

> "the court cannot stack the deck against a defendant by not conducting a proper colloquy to determine whether the requirements for waiver are sufficiently met."

The trial court had an obligation to Mr. Peralta to established if the promises made to him were true or not in exchange for his waiver and plea. "It is the responsibility of the trial judge when accepting a stipulation or waiver to assure that it is voluntarily made." See United States v. Terrack, 515 F.2d 558, 560 (9th Cir. 1975).

Most states have so interpreted Boykin as constitutional minimum. The record here fails to satisfy even this minimum standard. Boykin, since its own Supreme Court has held that a trial judge must advise the defendant of his right to be proved guilty beyond a reasonable doubt before accepting a guilty plea. Yet the record here fails even to meet this standard. See Boykin, supra, at 242. "[We] cannot presume a waiver... form a silent record."

Immediately after sentencing, trial court is required to advise a defendant of his right to appeal his convicton, and that unless a notice of of appeal is filed within 30 days after the entry of judgment, the right to appeal is irrevocably waived. CrR 7.2(b) At the time judgment and sentence is pronounced is a criminal case, the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100. The time limit of RCW 10.73.090(1) is conditioned on compliance with RCW 10.73.110, requiring notice of its terms. In re Pers. Restraint of Vega, 118 Wn.2d 449, 451, 823 P.2d 1111 (1992)(when notice is required by statute, failure to comply creates an exemption to the time restriction, and a petition for collateral review must be treated as timely).

The trial court failed to advise Mr. Peralta of his right to appeal and the one year statute of limitations (See Clerk's Minutes on page 3 under FURTHER: the box was left unchecked as Exhibit- I); see also VRP. Prejudice arises out of the judge's failure to mention a right that a defendant does not know he has.

Mr. Peralta was never advise on the record that he had any rights. Mr. Peralta asserts that the 'irregularities' that took place during his resentencing hearing on February 18, 2009, alone render the Agreed Order and void, because the Agreed Order fails to comply with constitutional mandates enumerated by correct case law. See State v. Olivera-Avila, 89 Wn.App. 313 319, 949 P.2d 824 (1997)(judgment void where guilty plea were obtained in violation of due process).

Thus, a sentence will be reversed only if it is "manifesly unreasonable" such that "no reasonable man would take the view adopted by the trial court" See State v. Blight, 89 Wash.2d 38, 41, 569 P.2d 1129 (1977).

III. BREACH OF THE AGREED ORDER

"In order to satisfy the statue, the documents must embody all of the essential and material parts of the agreement with sufficient clarity and certainty to show that the minds of the parties have met on all material terms with no material matter left for future agreement or negotiation." See, Wash. Prac. Vol. 25 §3:10 at 83-84 (DeWolf and Allen 1996).

On July 1, 2009, without any notice to Mr. Peralta, the State amended Mr. Peralta's J&S 2009, on Count I. Kidnapping in the First Degree: "to have been committed with sexual motivation." (See Amended Order as Exhibit-D). The Agreed Order <u>does not</u> recite the language of the Amended Order. Therefore, the State breach the Agreed entered by the parties and now renders the J&S 2009 void, because is in direct conflict with the law and with: "the parties have met on all material terms with no material matter left for future agreement or

negotiation." Id. Wash. Prac., supra. See Santobello, v. New York, 404 U.S. 262 (1971). "When a plea rest in any significant degree on a promise or agreement of the prosecutor so that it can be said to be part of the inducement or consideration such promises must be fulfilled. On this record, petitioner "bargained" and negotiated for a particular plea in order to secure dismissal of more serious charges."

The law is clear that a defendant can waive his or her right of appeal in exchange for the dismissal of certain charges or favorable sentencing recommendation by the prosecutor, or both. State v. Perkins, 108 Wn.2d 212, 215, 737 P.2d 250 (1987). Accord State v. Lee, 132 Wn.2d 498, 505-06, 939 P.2d (1997). Prosecutor have broad discretion to charge a crime or enter into a plea bargain. State v. Michielli, 132 Wn.2d 229, 245, 937 P.2d 587 (1997). RCW 9.94A.421 specifically provides the prosecutor with the authority to amend charges against a defendant, to move for dismissal of the charges, and to recommend a particular sentence as part of a plea agreement. Plea agreements are contracts. and the law imposes upon the State an implied promise to act in good faith. State v. sledge, 133 Wash.2d 828, 839, 947 P.2d 1199 (1997).

A plea bargain is a binding agreement between the defendant and the State which is subject to the approval of the court. When the prosecutor breaks the plea bargain, he undercuts the basis for the waiver of constitutional rights implicit in the plea." See State v. Schaupp, 757 P.2d 970 111 Wn.2d 34 (1988).

To support Mr. Peralta's assertions of the promises made to him the Wash. Prac. Vol. 25 §5.2 at 110 (DeWolf and Allen 1996), says:

> "In addition, if there is more than one document and they have been executed together, they must then be read together to reach the correct interpretation."

The J&S 2009 was executed together with the Agreed Order. The J&S on page two contained a box to not with sexual motivation, it was left unchecked supporting the Agreed Order. It was [not] a clerical error. (See J&S 2009 as Exhibit- B) The Declaration of Mr. Rogge defense counsel also corroborates Mr. Peralta's assertions that promises were made to him in exchange for his waiver and guily plea. Mr. Rogge's declaration states: "when the resentencing occurred that finding was left out." (See Declaration of Mr. Rogge as Exhibit-C). Furthermore, the Agreed Order on page two recites the following:

"He shall be resentence in accordance with this order"

1. The Agreed Order does not recite a sexual motivation finding.
2. The J&S 2009 does not note a sexual motivation finding.
3. The Declaration of Mr. Rogge states: that finding was left out.

All three documents are in one accord in harmony with each other they corroborate Mr. Peralta's assertion that promises were made to him and not kept. The Agreed Order now in question was drafted by the State. The trial court did as the State requested.

> "Another widely recognized rule is that a contract is generally construed against the drafter. The party who drafts the contract or who hires and attorney to draft it has the benefit of experience or expertise. The drafter is also in a better position to prevent mistakes or ambiguities..." "Courts are somewhat limited when construing a contract because they cannot impose obligation between parties that never existed, nor can they expunge lawful provisions agreed to and negotiated by the parties. The courts are not permitted to create a contract for the parties which they did not make for themselves." See Wash. Prac. Vol 25 §5.3 at 113-15 (DeWolf and Allen 1996).

In Santobello v. New York, supra, at 263. The United States Supreme Court noted that there are two alternative forms of relief available to the defendant under these circumstances the court can permit the accused to withdraw his plea and be tried anew on the original charges, or grant specific performance of the the agreement on the plea.

The trial court erred when it accepted the Agreed Order considering all the irregularities that took place during the courts proceedings. The trial court appears to have abused its discretion, prejudice Mr. Peralta, failed to safeguard his rights to due process, and equal protection under the law of the United States Constitution Amendment XIV.

Mr. Peralta petitions this Court See The True v. The false; and to The Right v. The wrong. And allow him to withdraw his agreement with the State and reverse Count IV and V with prejudice.

SAG #3: INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Pealta asserts that on February 18, 2009, during his resentencing he was ineffectively assisted by his defense counsel Mr. Theodore C. Rogge.

FACTS RELEVANT TO MISREPRESENTATION

1. On February 18, 2009, Mr. Rogge made false promises to Mr. Peralta regarding the reduction of his sentence if accepted to plea guilt. On the first page of the Agreed Order Mr. Rogge mathematically personally wrote on

- 11.5 years and circled it. (See Mr. Rogge's writing on the Agreed Order on page one as Exhibit- J)

2. Mr. Rogge has continued to insist that Mr. Pealta did in fact recieve over 11 years off his sentence. This includes assertions he has made to the Washington State Bar Association during proceedings against him regarding his representation of Mr. Peralta. (See Mr. Rogge's reply to the WSBA in which he states: "The amount of his sentence reduction was in fact more than 11 years gross." as Exhibit- K).

3. Mr. Peralta's original sentence was 284 months.

4. Mr. Peralta's resentencing was for 250 months.

5. The reduction in Mr. Peralta's sentence was only 34 months not 11.5.

6. Mr. Rogge on April 22, 2009, wrote Mr. Peralta after he had been terminated by Mr. Peralta prior to falsely representing Mr. Peralta on the Order Amending Count I entered by the State on July 1, 2009. Mr. Rogge wrote: "In summary, your sentence was reduced by 134 months not the 86 months "best case scenario" that your appellate attorney thought you could receive." (See Letter from Mr. Rogge as Exhibit- L)

7. Mr. Rogge was found by the WSBA to have participated in affirmative misconduct during the course of this proceedings and representation of Mr. Peralta resulting in sanctions against Mr. Rogge. Including his having to return money to Mr. Peralta's family and participate in a diversion program. (See Washington State Bar Association order to return money to Mr. Peralta dated December 2, 2009 as Exhibit- M),(See WSBA resolving this matter by diversion dated March 26, 2010, as Exhibit- N), and also (See WSBA letter of Mr. Rogge's completion of diversion dated May 4, 2011, as Exhibit- O).

II. ARGUMENT AND AUTHORITY

Mr Perlata Had A Constitutional Right To The Effective Assistance Of Counsel During This Critical Stage of Proceedings

See e.g., Everybodytalksaboutit 161 Wn2d 702 (2007)(en banc)

> "The Sixth Amendment guarantee of assistance of counsel attaches when the State initiates adversarial proceedings against a defendant. Brewer v Williams 430 US 387, 401... (1977). The right to assistance of counsel is specific to a particular offense and protects the accused throughout a criminal prosecution and following a conviction. McNeil v Wisconsin 501 US 171, 175... (1991). It applies to every 'critical stage' of the proceedings. State v Tinkham 74 WnApp 102, 109... (1994)(quoting United States v Wade 388 US 218, 224-27... (1967)."

See also, Cf., McNeal v Adams 623 F3d 1283 (9th Cir 2010)(Holding: "Petitioner was deprived of counsel at a 'critical stage' in the proceedings and his conviction must be overturned without inquiry into prejudice."). See also, Bell v Cone 535 US 685, 696 (2002)(defining a critical stage as a "step of a criminal proceeding, such as arraignment, that [holds] significant consequences for the accused.").

There is no doubt that the hearing in question was a critical stage of proceedings. During this critical stage Mr Peralta's attorney Mr Rogee was required to provide him effective assistance. Otherwise not only would Mr Peralta's Sixth Amendment right to counsel be violated but his Fourteenth Amendment rights to Due Process and Equal Protection are also implicated. See cf., Lawerence v Texas 539 US 558 (2003)("The Equal Protection Clause of the Fourteenth Amendment 'is essentially a direction that all persons similarly situated should be treated alike.' Cleburn v Cleburn Living Cntr Inc 473 US 432, 439 (1985); see also Plyler v Doe 457 US 202, 216 (1982).").

To Be Considered Effective Counsel Must Be More Than Just Present At The Hearing

See e.g. Frazer v United States 18 F3d 778 (9th Cir 1994)

> "The right to counsel guaranteed by the Constitution, however, means more than just the opportunity to be physically accompanied by a person privlleged to practice law. See Strickland v Washington 46 US 668, 685 (1984)("That a person who happens to be a lawyer is present at the trial alongside the accused... is not enough to satisfy the constitutional command.'); Powell v Alabama 287 US at 58 (indigent deendants provided with unprepared and pro forma lawyers 'were not accorded the right to counsel in any substantial sense.')."

See also Evitts v Lucy 469 US 387 (1985); Wainwright v Torna 455 US 596 (1982)(per curiam). See also Penson v Ohio 488 US 75, 85 (1988).

While Mr Rogee showed up to stand beside Mr Peralta he had not prepared nor sufficiently aware of the facts of the case to meet the Sixth Amendment requirement of effective assistance. See e.g. United States v Myers 892 F2d 642 (7th Cir 1990)("A failure to read documents... is a sure sign of professional incompetence."). This incompetence is demonstrated by Mr Rogee's assertions that Mr Perlata recieved a reduction in his sentence by over 11½ years when in fact he only recieved a 34 month reduction.

Mr Rogee Was Also Conflicted During This Representation Denying Mr Peralta The Effective Assistance of Counsel

Mr Peralta had a Sixth Amendment right to have counsel who was free from any conflicts. See e.g., State v Dhaliwal 150 Wn2d 559, 566 (2003).

"The Sixth Amendment to the United States Constitution provides that '[i]n all criminal prosecutions, the accused shall enjoy the right... to the assistance of counsel... This right includes the right to the assistance of counsel of an attorney who is free from any conflict of interest in the case. Wood v Georgia 450 US 261, 271... (1981); State v Davis 141 Wn2d 798, 860... (2000)."

In this case the attorney, Mr Rogee was burdened by a conflict centered around his own financial interests. He was in fact defrauding Mr Peralta and his family during this representation. Subsequently Mr Peralta took action and filed a bar complaint with the Washington Bar Association. The result in the matter was that Mr Rogee had to return a significant amount of money to Mr Peralta's family. (See Exhibit- L). He also recieved sanctions for this affirmative misconduct. (See Exhibit- M).

Because Mr Peralta Was Misinformed Of The Direct Sentencing Consequences By Counsel His Agreed Order Is Void Because It Was Not Voluntary And Is Subject To Withdrawl

See e.g., In re Pers. Rest. of Bradley 165 Wn2d 934 (2009)(en banc)

"'Due process requires that a defendant's guilty plea be knowing, voluntary and intelligent.' In re Pers. Rest. of Isadore 151 Wn2d 294, 297... (2004)(citing Boykin v Alabama 395 US 283, 242... (1969)). If a defendant is not aporaised of a direct consequence of his plea, the plea is considered involuntary. State v Ross 129 Wn2d 279, 284... (1996). A direct consequence is one that has a 'definate, immediate, and largely direct consequence of a guilty plea. State v Mendoza 157 Wn2d 582, 590... (2006); State v Moon 108 WnApp 59, 63... (2001). Therefore misinformation about the length of the sentence renders a plea involuntary... This court does not require a defendant to show that misinformation was material to the plea. Isadore 151 Wn2d at 302."

See also State v A.N.J 168 Wn2d 91 (2010).

III. CONCLUSION

Mr. Peralta's VI Amendment right to counsel and his XIV Amendment right to Due Process and Equal Protection were violated during the proceeding because:

1. Mr. Rogge misinformed Mr. Peralta of the direct sentence consequences of his plea agreement. Mr. Peralta did in fact only receive 34 months of his sentence not 11.5 years which Mr. Rogge insists he did. This misinformation renders the plea and proceedings void because the plea becomes involuntary.
2. Mr. Rogge constructively denied Mr. Peralta counsel during these proceedings because of actual conflict. This is demonstrated by his receiving sanctions by the Washington State Bar Association.
3. Mr. Rogge was ineffective during the proceeding and was not adequately informed as to the facts of the case rendering the proceedings void.
4. The State breach the Agreed Order rendering it void.
5. The trial court violated Mr. Peralta's due process of law rendering the J&S 2009 void.

IV. RELIEF SOUGHT

Mr. Peralta respectfully request of this court to review the entire record in the interest of justice and to prevent a gross miscarriage of justice. Mr. Peralta respectfully petitions this court to vacate the Agreed Order and J&S 2009, and reverse Count IV and V and the sexual motivation finding on Count I with prejudice. In the interest of justice.

I declare under threat of perjur, under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Respectfully Submitted, this 13 day of July, 2012.

Sergio R. Peralta

EXHIBIT A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. SERGIO PERALTA, Defendant.	No. 05-1-12344-0 SEA AGREED ORDER ENTERING JUDGMENT ON THE JURY'S FINDING OF GUILTY ON THE LESSER INCLUDED OFFENSE OF RAPE IN THE SECOND DEGREE.

THIS MATTER has come on regularly before the undersigned judge of the above-entitled court upon the motion of both parties. The State of Washington, plaintiff, is represented by Senior Deputy Prosecuting Attorney Zachary C. Wagnild. The defendant, was present and represented by his attorney, Theodore C. Rogge. The court being fully advised in the premises; has been presented with the following agreed facts and information:

On October 29, 2006 the defendant was found guilty by a jury of the following: Ct. I- Kidnapping in the First Degree; Ct. II- Indecent Liberties with Forcible Compulsion; Ct. III- Criminal Impersonation in the First Degree (Gross Misdemeanor); Ct. IV- Kidnapping in the First Degree; Ct. V- Rape in the First Degree; Ct. VI- Criminal Impersonation in the First Degree (Gross Misdemeanor); Ct. VII- Rape in the Third Degree, and Ct. VIII- Criminal Impersonation in the First Degree (Gross Misdemeanor). He was sentenced on February 16, 2007. At that time the court ruled that Ct. IV (Kidnapping in the First Degree) merged with the charge of Rape in the First Degree. Consequently, the court did not sentence the defendant on that count nor was that count used in determining his offender score and standard range.

The defendant subsequently appealed his conviction and the Court of Appeals reversed his conviction on Ct. V, the charge of Rape in the First Degree, due to the fact that the Information charged only one means of committing the offense (Kidnapping) but the jury was instructed on alternative means of committing it (Kidnapping and Deadly Weapon). The Court of Appeals remanded the case for further proceedings as to Ct. V.

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King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000 FAX (206) 296-0955

The parties agree that, regardless of the alternative means issue on the charge of Rape in the First Degree, the jury necessarily found the defendant guilty of the lesser included offense of Rape in the Second Degree. They are, therefore, in agreement with the court entering judgment on that finding of guilty on one count of Rape in the Second Degree. The parties further agree that Count IV, the count of Kidnapping in the First Degree that was merged due to the conviction on the reversed count of Rape in the First Degree, will not be "revived" and the defendant will not be sentenced on this charge nor will it be used to determine his offender score on any of the other charges..

The defendant has been fully advised of his rights at this stage of the proceedings and is in agreement with this order. He is aware that he will need to be resentenced on this case. He is further aware that his minimum indeterminate standard range is now 210-280 months and his maximum is life in prison. The defendant knowingly, intelligently, and voluntarily waives his right to appeal or collaterally attack the judgment and sentence based on a conviction for Rape in the Second Degree . This agreement is intended to bring finality to this litigation for all parties.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the defendant is not guilty of the crime of Rape in the First Degree but is guilty of the lesser included offense of Rape in the Second Degree. He shall be resentenced in accordance with this order. The charge of Kidnapping in the First Degree that was merged with the charge of Rape in the First Degree at his previous sentencing hearing shall not be revived and will not be scored in determining his new sentence. The defendant's waiver of the right to appeal or collaterally attack this order and his subsequent resentencing is knowing, intellingent, and voluntary.

DONE IN OPEN COURT this 18 day of ~~January~~ February 2009.

B Mack
JUDGE

Presented by:

Zachary C. Wagnild, WSBA #27640
Deputy Prosecuting Attorney

Approved for entry:

Theodore Rogge, WSBA #
Attorney for Defendant

Daniel T. Satterberg
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000 FAX (206) 296-0955

EXHIBIT B

SPECIAL VERDICT or FINDING(S):

(a) [ ] While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
(b) [ ] While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
(c) [ ] With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
(d) [ ] A V.U.C.S.A offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
(e) [ ] **Vehicular homicide** [ ]Violent traffic offense [ ]DUI [ ] Reckless [ ]Disregard.
(f) [ ] **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
(g) [ ] **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
(h) [ ] **Domestic violence** offense as defined in RCW 10.99.020 for count(s)_____.
(i) [ ] Current offenses **encompassing the same criminal conduct** in this cause are count(s)_____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S)**: Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

_____

2.3 **CRIMINAL HISTORY**: Prior convictions constituting criminal history for purposes of calculating the offender score are *(RCW 9.94A.525)*:
[ ] Criminal history is attached in **Appendix B.**
[ ] One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	9	X	149 TO 198		149 TO 198 MONTHS	LIFE AND/OR $50,000
Count II	9	X	149 TO 198		149 TO 198 MONTHS	LIFE AND/OR $50,000
Count V	9	XI	210 TO 280		210 TO 280 MONTHS	LIFE AND/OR $50,000
Count VII	9	V	60 MONTHS		60 MONTHS	5 YRS AND/OR $10,000

[ ] Additional current offense sentencing data is attached in **Appendix C.**

2.5 **EXCEPTIONAL SENTENCE** (RCW 9.94A.535):
[ ] Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D.** The State [ ] did [ ] did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A.**
[ ] The Court DISMISSES Count(s) _____.

EXHIBIT C

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

State of Washington,
Respondent,
vs.
Sergio Peralta,
Appellant.

COA No. 67513-3-I

DECLARATION OF THEODORE C. ROGGE

I, Theodore Rogge, am eighteen years of age or older, am competent to testify before the Court, and make the following Declaration to the Court:

1. I was the attorney of Record for Sergio Peralta in 2009. In February 2009, following reversal of Mr. Peralta's conviction on count V of the information for Rape in the First Degree and remand to the Superior Court, that conviction was replaced with a conviction for Rape of a Child in the Second Degree, and Mr. Peralta was resentenced accordingly. Mr. Peralta was present for that resentencing.
2. On July 2, 2009, the deputy prosecuting attorney and I agreed to entry of an order amending count I (Kidnapping in the First Degree) to reflect the jury's finding that the crime was

committed with sexual motivation. As I recall, the July 2 order was never seen by or signed by Mr. Peralta. I do not recall that he was ever advised of his right to appeal that order as it merely clarified the jury's verdict on that count, and when the resentencing occurred that finding was left out.

I declare under penalty of perjury under the law of the State of Washington that the forgoing is true and correct.

Signed this 16th day of Nov., 2011 at Tacoma, Washington.

Theodore Rogge, WSBA # 20317
Previous counsel for Mr. Peralta

EXHIBIT D

FILED

2009 JUL -2 AM 9:40

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED COPY TO COUNTY JAIL JUL 02 2009

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. SERGIO RAUL PERALTA, Defendant.	No. 05-1-12344-0 SEA ORDER AMENDING JUDGMENT AND SENTENCE (COUNT I ONLY)

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff, for an order Amending the Judgment and Sentence to reflect the jury's finding that Count I - Kidnapping in the First Degree was done with a Sexual Motivation in the above entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Judgment and Sentence shall be amended to reflect that Count I, Kidnapping in the First Degree, was found to have been committed with a sexual motivation. The Judgment and Sentence entered on February 18, 2009 is otherwise accurate.

DONE IN OPEN COURT this 1 day of ~~May~~ July, 2009.

B Mack

JUDGE BARBARA MACK

ORIGINAL

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Presented by:

Zachary C. Wagnild, WSBA #27640
Deputy Prosecuting Attorney

Approved for entry:

Theodore Rogge, WSBA #
Attorney for Defendant

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

EXHIBIT E

Firearm, Loss of Right to Vote, as well as the Appendix J, his requirement that he register as a sex offender.

MR. ROGGE: We acknowledge receipt, your Honor. I guess my only question -- because Mr. Peralta's been back here since November --

THE DEFENDANT: I've been here since November -- no, the last month of October -- the last day of October, which was the --

MR. ROGGE: October 31st?

THE DEFENDANT: Yeah, 31st.

MR. ROGGE: October 31st through today's date. And I don't know whether we need to include -- give him credit for time served in the King County jail once again on the --

THE COURT: He'll get credit for all time he's served on this case.

MR. WAGNILD: Your Honor, I've checked the box to be -- as to be determined by the King County jail. I know that's what they prefer, and --

THE COURT: It is.

MR. WAGNILD: -- if we all sit down and try to work it out we'll come up with three different numbers.

THE COURT: That works.

MR. ROGGE: That works. Okay.

THE COURT: And I -- I know, Mr. Rogge, that did you go over this order at length with your client?

MR. ROGGE: Yes, we discussed that as length. And he

understands that there's --

THE COURT: You can't -- you don't have a right to appeal this?

THE DEFENDANT: Yeah.

MR. ROGGE: He doesn't have a right to appeal the -- the sentencing on the newer -- on the new charges. He understands he's already exhausted those appeals. There was an appeal, he did ask for a reconsideration on that appeal, which was denied, as well. So --

THE COURT: Okay.

THE DEFENDANT: Your Honor, I wanted to ask a question, I hear that you get a day per day when you spend in King County, going to trial, you know, my last trial I spent about a year and two months going through trial. But I don't know how much good time I got off of that.

THE COURT: Well, the jail has its ways of calculating your time and they include all sorts of things, including the prior criminal history, as I understand it. So, the Court cannot calculate --

THE DEFENDANT: Okay.

THE COURT: -- credit for time served because of that.

THE DEFENDANT: Okay. Thank-you.

THE COURT: Under the community custody section, I assume that should be checked under sex offense?

MR. WAGNILD: Yes, your Honor. I think that the confusion in that is there was also the life, that it was under indeterminate?

C E R T I F I C A T E

I, Thomas Marshman, do hereby certify:

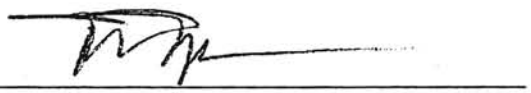
That For the Record -- is a court-approved transcription company for the state of Washington, county of King;

That the annexed and foregoing transcript of electronically recorded proceedings was transcribed by me to the best of my ability;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or outcome thereof;

I further certify that the transcript is a true and correct record of all audible portions of the taped testimony, including questions and answers, and all objections, motions and exceptions of counsel made at the time of the foregoing proceedings. Areas of the tape(s) or CD(s) that were not decipherable for any reason are noted as [INAUDIBLE].

Dated this 13th day of February 2012



Thomas Marshman
For the Record --
9801 116th St. NE
Arlington, WA 98223
(206) 714-4578

THOMAS W MARSHMAN
Notary Public
State of Washington
My Commission Expires
May 21, 2015

Notary Public in and for the
State of Washington,
Residing at Arlington.

My commission expires 5/21/2015

EXHIBIT F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Personal Restraint of:	)	No. 64115-8-I
SERGIO PERALTA,	)	ORDER OF DISMISSAL
Petitioner.	)	

Petitioner Sergio Peralta filed a motion to vacate his judgment and sentence for rape in the second degree in King County Superior Court Case No. 05-1-12344-0 SEA. The superior court transferred the matter to this court for consideration as a personal restraint petition under CrR 7.8(c)(2). Peralta objects to the transfer, arguing that because the trial court requested a response and indicated that it would rule on the motion after the responses were received, the trial court had already determined that the motion was timely and had merit. Contrary to Peralta's arguments, the mere fact that the trial court requested the State's response to Peralta's motion does not demonstrate or imply that the trial court had yet made any determination under CrR 7.8(c)(2). Nothing in CrR 7.8(c)(2) limits the trial court's authority to request responses before considering a transfer or requires the trial court to make findings explaining its decision to do so. The transfer here was proper and authorized under CrR 7.8(c)(2), and is entirely consistent with the holding in State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008).

In order to obtain collateral relief by means of a personal restraint petition, Peralta must demonstrate either an error of constitutional magnitude that gives rise to

actual prejudice or a nonconstitutional error that inherently results in a "complete miscarriage of justice." In re Pers. Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). Because Peralta has not made any showing that he can satisfy this threshold burden, the petition is dismissed.

Peralta was convicted of numerous crimes, including a first degree kidnapping and first degree rape involving the same victim. At sentencing, the State conceded that the two counts merged and the court accepted the concession, crossed out the kidnapping count on the judgment and sentence, and dismissed it. On appeal, this court reversed the first degree rape for erroneous jury instructions but declined to consider arguments limiting the sentencing court's actions on remand, stating, "This issue is not ripe because the State has identified several options it may pursue on remand, i.e. a sentence for the lesser included offense of second degree rape, a revival of, and sentence for, the kidnapping conviction, or a retrial for first degree rape." State v. Peralta, noted at 146 Wn. App. 1021, 2008 WL 2955883, at *2.

Upon remand, Peralta was present and represented by counsel at a hearing on February 18, 2009. The State presented an "Agreed Order Entering Judgment on the Jury's Finding of Guilty on the Lesser Included Offense of Rape in the Second Degree." The order indicates that the parties agreed to entry of judgment for second degree rape and states:

> The defendant has been fully advised of his rights at this stage of the proceeding and is in agreement with this order. He is aware that he will need to be resentenced on this case. He is further aware that his minimum indeterminate standard range is now 210-280 months and his maximum is life in prison. The defendant knowingly, intelligently, and voluntarily waives his right to appeal or collaterally attack the judgment and sentence based on a

> conviction for Rape in the Second Degree. This agreement is intended to bring finality to this litigation for all parties.

The trial court signed the order and sentenced Peralta as the State recommended. In July 2009, Peralta filed a motion to vacate the agreed order claiming that he was improperly denied his right to appeal and that the agreed order lacks the required factual basis.

Peralta argues that he did not waive his right to appeal because he did not sign the agreed order presented by the State and "Approved for entry" by his attorney. While it may have been a better practice to have a waiver signed by the defendant, Peralta provides no citation to any statute or court rule or other authority limiting a finding of waiver to such circumstances. In fact, no statute or court rule requires any specific form of waiver. And here, the record indicates the following exchange:

THE COURT:	And I know that, [defense counsel], that you did go over this agreed order at length with your client.
[DEFENSE COUNSEL]:	Yes. We discussed that at length.
...	
THE COURT:	And you can't -- you don't have a right to appeal this?
MR. PERALTA:	Yeah.

Nothing in the record indicates that Peralta was confused or had questions about waiving his right to appeal the agreed order at the time of the hearing. Peralta's mere contradiction of the record does not raise a material issue of fact as to waiver. See, e.g., State v. Osborne, 102 Wn.2d 87, 97, 684 P.2d 683 (1984) (bare allegation of involuntariness insufficient to overcome repeated statements in record that plea was voluntary).

Peralta's additional arguments are based on his claim that the agreed order here is akin to a guilty plea. But Peralta did not plead guilty. The trial court instructed the jury on first degree rape and the lesser included offense of second degree rape. The jury found him guilty of first degree rape. The jury's finding of guilt on first degree rape necessarily included all the elements of second degree rape as described in the instructions. After the reversal of the first degree rape conviction, *the State* had the option of seeking entry of judgment on second degree rape or some other remedy, such as a new trial on the first degree rape charge, without reference to Peralta's wishes. The mere fact that the State agreed to pursue less than the ultimate sentence possible in exchange for Peralta's waiver of his right to appeal does not convert the agreed order into a guilty plea. Peralta's unsupported and conclusory descriptions of the proceedings do not provide a basis for relief. In re Pers. Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992) (bare assertions and conclusory allegations are not sufficient to command judicial consideration and discussion in a personal restraint proceeding). Peralta's claims are clearly frivolous.

Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Done this 7th day of May, 2010.

Acting Chief Judge

MR. ROGGE: October 31st to today's date. So I don't know whether we need to include again credit for time served in the King County Jail once again on the --

THE COURT: You'll get credit for all time he served on this case.

MR. WAGNILD: Your Honor, I've checked the box "2B" as to be determined by the King County Jail. I know that's what they prefer and --

THE COURT: It is.

MR. WAGNILD: -- if we all sit down and try to work it out, we'll come up with three different numbers.

THE COURT: It never works.

MR. ROGGE: It never works, okay.

UNIDENTIFIED FEMALE: (Inaudible.)

MR. WAGNILD: That's what I think, yeah.

THE COURT: And I know that, Mr. Rogge, that you did go over this agreed order at length with your client.

MR. ROGGE: Yes. We discussed that at length.

THE COURT: (Inaudible.)

MR. ROGGE: And he understands that there's --

THE COURT: And you can't -- you don't have a right to appeal this?

MR. PERALTA: Yeah.

MR. ROGGE: He does have a right to appeal the sentencing on the new charges -- on the new charges. And he understands he's already exhausted those appeals. There was an appeal. He did ask for a reconsideration on that appeal, which was denied as well, so...

REPORTER'S CERTIFICATE ORIGINAL

I, CARRIE ANN PEREZ, C.S.R. No. 12979, do hereby certify:

That the foregoing proceedings were audio-recorded on the date therein set forth and was thereafter taken down by me from the audio-recording in shorthand and transcribed into typewriting under my direction and supervision;

That the foregoing is a true and correct transcript, to the best of my ability, of the audio-recorded proceedings;

I further certify that I am not a relative nor an employee of any attorney of the parties, nor in any way financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 12th day of June, 2009.

CARRIE ANN PEREZ, C.S.R. No. 12979

EXHIBIT H

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, vs. SERGIO PERALTA, Appellant.	NO. 67513-3-I DECLARATION OF SERGIO PERALTA IN SUPPORT OF MOTION OBJECTING TO THE VERBATIM REPORT OF PROCEEDINGS DATED FEBRUARY 13, 2012, BY THOMAS MARSHMAN PURSUANT TO RAP 9.5(c)

I, Sergio Peralta, am eighteen year of age or older, am competent to testify before the Court, and make the following Declarations to the Court:

1. On February 18, 2009, I was re-sentence in King County Superior Court following an Unpublished Opinion filed: August 4, 2008, by Division One Court of Appeals, No. 59642-0-I.

2. At my request the re-sentencing hearing on February 18, 2009, was transcribed by Carrie Ann Perez, on June 12, 2009, and was filed on my PRP replied brief on February 9, 2010, in Division One Court of Appeals under No. 64115-8-I.

3. On February 13, 2012, a second transcript of the re-sentencing hearing on February 18, 2009, was transcribed and produce by Thomas Marshman, at appellant's attorney's request.

4. I honestly believe that the reason we now have two transcript's of the re-sentencing hearing on February 18, 2009, is because appellat attonery didn't know one already existed.

5. On March 9, 2012, I received a copy of the re-sentencing Hearing on February 18, 2009, transcribed and dated February 13, 2012, by Thomas Marshman from my attorney, for my review.

6. Upon receipt of the transcript, I carefully reviewed Mr. Marshman's and Ms. Perez's transcript's of the re-sentencing hearing on February 18, 2009. After comparing them together side by side, I found a lot of inconsistencies on Mr. Marshman's transcript which are very disturbing, damaging, and prejudicial to the appellant. For instance See the following translations:

7. On Perez at 3, line 25, "aiming to this we're aming to".
On Marshman at 4, line 21, "entering into this we're entering into".
On Perez at 10, line 22, "I will prevent restitution not to presented".
On Marshman at 11, line 21, "I will permit restitution to be presented".
On Perez at 13, line 12-13, "It never works. It never works, okay".
On Marshman at 14, line 21-22, "That works. That works. Okay".
On Perez at 13, line 24-25, "He does have a right to appeal the sentencing on the new charges — on the new charges".
On Marshman at 15, line 4-5, "He doesn't have a right to appeal the — the sentencing on the newer — on the new charges".
On Perez at 14, line 16-17, "Here's a community custody section that should be checked (inaudible).
On Marshman at 15, line 22-23, "Under the community custody section, I assume should be checked under sex offense?".

On Perez at 14, line 18-20, "I think the confusion in that is that (more than one vioce speaking) — the court will see that indeterminate.

On Marshman at 15, line 24-25, "I think that the confusion in that is there was also the life, that it was under indeterminate?".

On Perez at 14, line 22-23, "(Attorney and defendant are talking amongst themselves in private during proceedings.)".

On Marshman at 16, line 3 "PAUSE IN PROCEEDINGS".

On Perez at 14, line 24-27, "The court actually mentioned — I think that might have — yea. This is the kind of thing that we'll get back and get confused because they get confused. I'd rather just get it back to you".

On Marshman at 16, line 4-8, "The Court actually mentioned that maybe we should check that box, I think that I might have put an X on the — THE COURT: Did you check part — MR. WAGNILD: Yeah, this is the kind of thing we'll get back from DOC because the get confused. I'd rather just—".

8. These were just a few of the inconsistencies and alterations I found on the Verbatim Report of Proceeding prepared by Mr. Marshman.

I declare under penalty of perjury under the law of the State of Washington that the forging is true and correct.

Signed this 19 day of March, 2012, at Aberdeen, Washington.

Sergio Peralta, Appellant
DOC 899693
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

EXHIBIT I

CLERK'S MINUTES

SCOMIS CODE: MTHRG

Judge:	Barbara A. Mack	Dept. 37
Bailiff:	Kelly Mangiaracina	Date: 2/18/2009
Court Clerk:	Paige DeLay	
Digital Record:	FTR 921	
Start:	8:46:51	
Stop:	9:11:34	

KING COUNTY CAUSE NO.: 05-1-12344-0 SEA

State of Washington v Sergio Peralta

Appearances:

The State is represented by Zach Wagnild
The Defendant is present, in custody, and represented by Theodore Rogge

MINUTE ENTRY

This matter having come on for Agreed Sentencing

Joint Motion for Finding of Guilt to Lesser Charge of Rape in 2nd Degree is GRANTED

The Order is signed and parties proceed to sentencing

State of Washington vs. Sergio Peralta
King County Cause No. 05-1-12344-0 SEA

- ☐ not frequent establishments where alcohol is the primary commodity for sale;
- ☐ obtain alcohol abuse evaluation and follow recommendations therein;
- ☒ obtain sexual deviancy evaluation and follow treatment recommendations;
- ☐ Enter and successfully complete programs for the following treatment as directed by C.C.O.:
  - ☐ mental health; ☐ domestic violence; ☐ substance abuse;
  - ☐ sexual deviancy; ☐ anger management; ☐ alcohol abuse;
- ☐ submit to urinalysis as directed by C.C.O.;
- ☒ submit to DNA testing;
- ☐ submit to random searches of person, residence, and vehicles;
- ☒ register as a sex offender;
- ☒ have no contact with Victims;
- ☒ have no further law violations;
- ☐
- ☐
- ☐

and comply with all other conditions required by the Judgment and Sentence.

FURTHER:

- ☐ The Court advises Defendant of his/her rights on collateral attack. Certificate of Compliance is executed.
- ☐ Defendant's driver's license is invalidated.
- ☐ Affidavit Re Driver's License is executed.
- ☒ Defendant is fingerprinted.
- ☐ Review hearing(s) set for:
- ☐
- ☐
- ☐
- ☐

THE COURT SIGNS:

- ☒ Judgment and Sentences
- ☐ Order Setting Restitution
- ☐ Notice to King County Jail / Release of Defendant
- ☒ Order Prohibiting Contact
- ☒ Notification of Ineligibility re Firearms / Right to Vote
- ☐ Order Remanding Defendant to Dept. of Adult Detention
- ☐ Order Exonerating Bond
- ☐ Conditions of Conduct Re: WER
- ☒ Appendix J
- ☐

CLERK'S MINUTES - Felony and Misdemeanor Sentencing Hearing

SCOMIS CODE: SNTHRG

Judge: Barbara A. Mack
Bailiff: Kelly Mangiaracina
Court Clerk: Paige DeLay
Digital Record: DJA-S-W921FTR
Start: 8:46:51
Stop: 9:11:34

Dept. 37
Date: 2/20/2009

KING COUNTY CAUSE NO.: 05-1-12344-0 SEA

State of Washington vs. Sergio Peralta

Appearances:

State is represented by DPA Zach Wagnild
Defendant is present, and represented by counsel Theodore Rogge

MINUTE ENTRY

Joint Motion for Finding of Guilt to Lesser Charge of Rape 2
and proceed to sentencing. Motion is filed under separate mintue entry

THE COURT:

☐ makes findings for an exceptional sentence above the standard range on .

As to Misdemeanor Count(s) 3, 6, 8:

☐ defers imposition of sentence for .

☐ sentences Defendant to serve in King County Jail, suspended.

☒ sentences Defendant to serve a term of confinement as follows: 12 months each count

☐ to begin immediately; ☐ to begin .

☒ in King County Jail, with credit for time served: TBD by King County Jail.

☐ with hours of community restitution.

☐ with days converted to hours of community restitution.

☐ on Work/Education Release.

As to Felony Count(s) :

☐ grants prison-based DOSA.

☒ sentences Defendant to serve a term of confinement as follows: 250 months.

☐ to begin immediately; ☐ to begin .

☒ in King County Jail, with credit for time served: TBD by King County Jail.

☐ with hours of community restitution.

☐ with days converted to hours of community restitution.

☐ on Work/Education Release.

☒ Counts 1, 2, 5, 7 are concurrent. with Misdemeanor

☐ Sentence shall run concurrently with the sentence(s) in Cause .

☒ Defendant shall be on community custody for LIFE on Count 1, 2, 5, 7 and on community custody for

☒ Community Custody is for lifetime

FINANCIAL OBLIGATIONS:

☒ Defendant shall pay restitution in an amount to be determined. Restitution hearing is to be set.

☒ Defendant waives right to be present at restitution hearing(s).

☒ Mandatory Victim Penalty Assessment to be paid.
☒ Court costs are waived.
☐ Recoupment of attorney's fees is waived.
☒ All other non-mandatory fines and fees are waived.
☐ Court Clerk's trust account fees are waived.
☐ All interest is waived except with respect to restitution.
☒ DNA Collection fee to be paid.
☐

Defendant shall pay all other costs and fees as ordered in the Judgment and Sentence.

Defendant shall make payments to the King County Superior Court Clerk:
☐ of not less than $ per month;
☐ on a schedule to be established.

THE COURT FURTHER ORDERS THAT DEFENDANT:

☐ not associate with known drug users or sellers;
☐ not frequent or loiter in areas of known drug activity, as defined by C.C.O.;
☐ not purchase, possess, or use controlled substances without valid prescription;
☐ not purchase, possess, or consume alcoholic beverages;

EXHIBIT J

11.5 year

Currently 171 + 216 = 387 250 137

New range 210 - 280 - 283

14 years 8.916

11.5 years

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. SERGIO PERALTA, Defendant.	No. 05-1-12344-0 SEA AGREED ORDER ENTERING JUDGMENT ON THE JURY'S FINDING OF GUILTY ON THE LESSER INCLUDED OFFENSE OF RAPE IN THE SECOND DEGREE.

THIS MATTER has come on regularly before the undersigned judge of the above-entitled court upon the motion of both parties. The State of Washington, plaintiff, is represented by Senior Deputy Prosecuting Attorney Zachary C. Wagnild. The defendant, was present and represented by his attorney, Theodore C. Rogge. The court being fully advised in the premises; has been presented with the following agreed facts and information:

On October 29, 2006 the defendant was found guilty by a jury of the following: Ct. I- Kidnapping in the First Degree; Ct. II- Indecent Liberties with Forcible Compulsion; Ct. III- Criminal Impersonation in the First Degree (Gross Misdemeanor); Ct. IV- Kidnapping in the First Degree; Ct. V- Rape in the First Degree; Ct. VI- Criminal Impersonation in the First Degree (Gross Misdemeanor); Ct. VII- Rape in the Third Degree, and Ct. VIII- Criminal Impersonation in the First Degree (Gross Misdemeanor). He was sentenced on February 16, 2007. At that time the court ruled that Ct. IV (Kidnapping in the First Degree) merged with the charge of Rape in the First Degree. Consequently, the court did not sentence the defendant on that count nor was that count used in determining his offender score and standard range.

The defendant subsequently appealed his conviction and the Court of Appeals reversed his conviction on Ct. V, the charge of Rape in the First Degree, due to the fact that the Information charged only one means of committing the offense (Kidnapping) but the jury was instructed on alternative means of committing it (Kidnapping and Deadly Weapon). The Court of Appeals remanded the case for further proceedings as to Ct. V.

Daniel T. Satterberg
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue

EXHIBIT K

Rogge Law Offices

Theodore C. Rogge
Attorney at Law
3211 6th Avenue
Tacoma, WA 98406
Office (253) 272-0503
Fax (253) 272-1432

December 1, 2009

Leslie Ching Allen
Disciplinary Counsel
WSBA 1325 4th Ave., Suite 600
Seattle, Washington 98101-2539

Re: Grievance of Reyna Peralta
WSBA file No. 09-01439

Dear Counsel,

In follow-up to the materials provided to me in the letter dated November 18. 2009. I would like to reiterate a few items that continue to be bothersome. First, Ms Peralta was never my client, she was my client's family member contact for the purposes of payment of fees.

Second. I had never seen the alleged Power of Attorney until after Mr. Peralta attempted (on his own) to set aside the ultimate re-sentence in his criminal case. There is no way that Ms. Peralta gave me that document, or ever referred to it because it is dated after my meeting with her. In fact, it is allegedly executed on October 9, 2009. the day I met Mr. Peralta at Clallam Bay Corrections Center (CBCC). If Mr. Peralta wanted such a document drafted, or had given it to me, I could have notarized it. It just makes no sense.

Third. the sentencing document noted as exhibit "D" from the November 18 letter is only as to counts I and V which ran consecutive to all the other counts not scored. on that document. The amount of his sentence reduction was in fact more than 11 years gross.

Fourth, and finally, I never had a lump sum contract with Mr. Peralta. While at CBCC, Mr. Peralta decided to hire me. I told him I would send my standard fee agreement. He insisted that I draft something right there by hand. All **retainer** quotes were based on an estimated number of hours to complete each task. In fact the $25.000 quoted for trial retainer was just that. a retainer. not the cost of trial. Mr. Peralta was well are that I was charging by the hour. In fact, Ms. Peralta and I arrived at the $1000.00 fee for my visit to CBCC by figuring one day of trial was approximately that much based on an hourly fee of $150.00

I have numerous concerns with the production of various alleged letters and documents in this matter that are just plain made-up after the fact.

Sincerely,

Theodore C. Rogge

EXHIBIT L

Rogge Law Offices

Theodore C. Rogge
Attorney at Law
3211 6th Avenue
Tacoma, WA 98406
Office (253) 272-0503
Fax (253) 272-1432

April 22, 2009

Sergio Peralta
DOC # 899693
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326-9724

Dear Mr. Peralta,

I apologize for not getting back with you sooner, but I have been busy with other matters. My assistant took a week off and I have been working on Felony matters in three different counties. Also, I needed time to organize my thoughts when writing to you. To be honest, I was more than a little shocked that you would even consider attempting to withdraw your plea. I tried to explain this all to your sister, and thought she had a pretty good grasp of how well you did in this negotiated agreement.

First, some of the things you write in your letter are just not possible. It is my opinion that any attempt to withdraw your plea would not only be extremely difficult (if possible at all), but also dangerous to your interests. I don't think you quite understand the breadth of the prior Court of Appeals Decision. As outlined in the letter to you from your previous attorney, the Court of Appeals only stated that the trial court screwed up by not giving the instruction on alternative means to commit Rape 1. It did not say you couldn't be retried on that charge. Additionally, they said that the court's dismissal of the kidnapping charge, after the jury found you guilty, was an error.

Thus, your prior attorney noted the different options the trial court/prosecutors' office had in retrying/resentencing you. Specifically, it was assumed that you would face the kidnapping one charge on retrial or resentencing. The only question they had was whether the prosecutor's office would retry you on the Rape 1 or just sentence you on the underlying Rape 2. Understand that possibility was the sole decision of the prosecutor's office, not yours. So, not only did I avoid you having to face the Rape 1 charge over again, my arguments and legal research with the threat of another appeal, convinced them to abandon the kidnapping charge.

In summary, your sentence was reduced by 137 months not the 86 months "best case scenario" that your appellate attorney thought you could receive.

Assuming that they had to retry you to get the Kidnapping and Rape 1 conviction again (a huge assumption), you had the possibility of facing the original sentence of 171 months being increased to the high end, plus the first degree rape of 216 months, plus 130 months for the kidnapping - if not found to be the same criminal conduct for both the rape and the kidnapping. If you further want to play the game of what if, then understand if you had not agreed to the deal we made, you would have faced the sentenced outlined above (517 months +, more than double your current sentence) on the mere gamble that they had to try you again (not so certain myself) and that the victim wouldn't show up.

Now, all of your sentences run concurrently for 250 months. Your case was a win – win and I thought you would be ecstatic with the outcome of 11.5 years off your sentence.

If you still wish all your papers returned please advise me. I have spent more hours on your case than the monies I received, but have advised your sister I would call it even due to a lot of travel time being necessary. Further, I explained that I would give you a thousand dollar credit if you decided to pursue more relief by way of personal restraint petition. Good luck to you and congratulations on your sentence reduction. If you have any questions let me know.

Sincerely,

Theodore C. Rogge
Attorney at Law

EXHIBIT M

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Leslie Ching Allen
Disciplinary Counsel

direct line: (206) 733-5906
fax: (206) 727-8325

December 2, 2009

Reyna Peralta
39514 Chantilly Ln
Palmdale, CA 93551

Theodore C. Rogge
Rogge Law Office
3211 6th Ave
Tacoma, WA 98406-5901

Re: Grievance of Reyna Peralta against lawyer Theodore C. Rogge
WSBA File No. 09-01439

Dear Ms. Peralta and Mr. Rogge:

Enclosed for Ms. Peralta is a copy of correspondence dated December 1, 2009 which Mr. Rogge has submitted regarding this grievance. Any response to this additional information should be received within two weeks of the date of this letter. If we have not received a response by that time, we may analyze this matter based on the information in the file.

In addition, this letter confirms my December 2, 2009 telephone conversation with Mr. Rogge in which I cited Rule of Professional Conduct 1.15A(g) and suggested that in order to comply with said rule, we believed Mr. Rogge should return $9,000 of the disputed fees to his trust account and take immediate steps to resolve his fee dispute with Sergio Peralta and the Peralta family. Mr. Rogge was receptive to my suggestion and advised that he would be able to deposit the $9,000 into his trust account by the following week or so. Mr. Rogge also agreed to send me a letter confirming his deposit of the disputed funds and advising the steps he had taken to resolve the fee dispute.

Sincerely,

Leslie Ching Allen
Disciplinary Counsel

EXHIBIT N

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Leslie Ching Allen
Disciplinary Counsel

direct line: (206) 733-5906
fax: (206) 727-8325

March 26, 2010

Reyna Peralta
39514 Chantilly Ln
Palmdale, CA 93551

Re: Grievance of Reyna Peralta against Theodore C. Rogge
WSBA File No. 09-01439

Dear Ms. Peralta:

We anticipate resolving this matter by diversion. We divert a lawyer when we believe that the lawyer has committed less serious misconduct for which a public sanction is unnecessary and under circumstances that suggest the lawyer could be rehabilitated. Requirements of diversion may include ethics education, therapy, law office management training, or probationary conditions, all at the lawyer's own expense over a two-year period.

I write to you now because the Rules for Enforcement of Lawyer Conduct (ELC) require notice to the grievant when this office proposes diversion. ELC 5.1(c)(7), 6.4. The ELC also provide that the grievant has the right to be given a reasonable opportunity to submit written comments to disciplinary counsel. If you wish to comment, please do so within ten days of the date of this letter. If this time period presents a hardship, please let me know.

Sincerely,

Leslie Ching Allen
Disciplinary Counsel

Enclosure: Diversion Information Sheet

EXHIBIT O

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Leslie Ching Allen
Disciplinary Counsel

direct line: (206) 733-5906
fax: 206-727-8325

May 4, 2011

Reyna Peralta
39514 Chantilly Ln
Palmdale, CA 93551

Re: Grievance of Reyna Peralta against lawyer Theodore C. Rogge
WSBA File No. 09-01439

Dear Ms. Peralta:

This letter is to inform you that your grievance against Theodore C. Rogge is being dismissed based on his completion of diversion.

Thank you for bringing this matter to our attention.

Sincerely,

Leslie Ching Allen
Disciplinary Counsel

cc: Theodore C. Rogge
Dr. Dan Crystal