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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

ROBERT TROY WHEELER,

Petitioner.

NO. 45029-1-II

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUE PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Whether Petitioner's claim of pre-accusatorial delay should be dismissed as time barred under RCW 10.73.090, where Petitioner failed to act with reasonable diligence in discovering the evidence upon which that claim is based or in filing the present petition.

B. STATUS OF PETITIONER:

Robert Troy Wheeler, hereinafter referred to as "Petitioner," was born on March 29, 1987. Appendix A (information and declaration for determination of probable cause). Between December 6, 2000 and December 5, 2001, he committed the crime of first degree child rape against his step-sister, R.L.B., and the crime of first degree child molestation

1 against his step-sister, K.A.B. Appendix A. On January 25, 2005, Petitioner told Pierce  
2 County Sheriff's Deputy Nicholson that he had placed "his hand down their panties and  
3 rubbed their vaginal areas; he stated that he placed his finger inside R.L.B.'s vagina."

4 Appendix A.

5 His step-sisters, who were twins, were both six to seven years old at the time.

6 Appendix A.

7 Although Petitioner committed these crimes when he was 13 to 14 years old, they  
8 were not reported until November 1, 2004, when he was over 17.5 years old.<sup>1</sup> Appendix A.

9 On May 4, 2005, he was charged by information with first degree child rape in  
10 count I and first degree child molestation in count II. Appendix A. However, the  
11 information itself appears to have been originally dated March 26, 2005, three days before  
12 Petitioner's eighteenth birthday. Appendix A. Similarly, the declaration for determination  
13 of probable cause appears to have been originally dated March 22, 2005, seven days before  
14 Petitioner's eighteenth birthday. Appendix A. Both of these dates were crossed out and the  
15 date of May 4, 2005, the date of filing, was inserted in their place on each document.  
16

17 Appendix A.

18 Petitioner does not appear to have raised any issue with respect to the date of filing  
19 of the information in the superior court.

20 Rather, he pleaded guilty as charged to first-degree rape of a child in count I and  
21 first-degree child molestation in count II on April 17, 2006. Appendix B (Statement of  
22 Defendant on Plea of Guilty). Paragraph 4 of the statement of defendant on plea of guilty  
23 indicated that the maximum sentence for both counts was life in confinement and that the  
24

25  

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<sup>1</sup> Petitioner's date of birth is 03/29/1987; that of K.A.B. and R.L.B. is 12/06/1994. Appendix A.

1 maximum fine was \$20,000.00. Appendix B, p. 1-2. In paragraph 6, it stated that the  
2 maximum sentence is 20 years for both counts, and that the maximum fine is \$50,000.00.  
3 Appendix B, p. 2.

4 The court's written judgment and sentence indicated in paragraph 2.3 that the  
5 maximum term for first-degree child rape is 20 years and that the maximum fine is  
6 \$50,000.00. Appendix C (warrant of commitment and judgment and sentence). It stated  
7 that the maximums for first-degree child molestation are 10 years and \$20,000.00. *Id.*

8 However, the court imposed the special sex offender sentencing alternative  
9 (SSOSA) and ordered 131.75 months in total confinement with all but two months  
10 suspended on various conditions, including successful completion of a sex offender  
11 treatment program with Allen Traywick, Ph.D. Appendix C, p.5.

12 On February 20, 2008, Petitioner stipulated that he violated the terms of his SSOSA  
13 by drinking alcohol and failing "to obey all laws by driving a vehicle after drinking on or  
14 about 11/07/07." Appendix D (notice of violations / stipulated agreement). He agreed to  
15 sanctions that included reporting weekly for seven weeks, reading a book, and preparing a  
16 one-page paper regarding that book. Appendix D.

17 On September 11, 2009, the sentencing court conducted a violation hearing  
18 regarding subsequent violations. Appendix E (verbatim transcript of proceedings of  
19 09/11/2009). It opened that hearing with the following exchange:  
20

21 THE COURT: Yeah. ***I remember this case, Mr. Wheeler, because I***  
22 ***remember the State had waited until you were an adult to charge you. I***  
23 ***don't think that was necessarily the fairest way to treat a 13-year old.***  
24 ***Although maybe this didn't come to light. I think it still came to light when***  
25 ***you were a minor.***

***THE DEFENDANT: Yes.***  
***THE COURT: They still waited.***

Appendix E (emphasis added).

The court went on to find that Petitioner had failed to complete sex-offender treatment, “left town” on a ski trip to Lake Tahoe with a minor with whom he was in “a relationship,” consumed alcohol, and “violated these [SSOSA] agreements just about every way you can, short of formally re-offending.” Appendix E. The court therefore revoked the SSOSA on September 11, 2009, and imposed the previously-suspended time in total confinement. Appendix E; Appendix F (Order Revoking Sentence).

After the SSOSA was revoked and approximately four years after his judgment and sentence was filed with the clerk of the trial court, Petitioner filed his first personal restraint petition in which he argued “that he [wa]s entitled to withdraw his plea because that judgment and sentence misstate[d] the maximum sentences for both offenses.” Appendix G (order granting petition in part). Petitioner did not raise any issue relating to a delay in filing charges that resulted in a loss of juvenile court jurisdiction. *See* Appendix G.

On July 3, 2012, this Court considered this petition and held that, while Petitioner’s judgment and sentence misstated the maximum sentences of his offenses, it was not facially invalid because the trial court did not exceed its statutory authority in actually sentencing the petitioner. Appendix G. It therefore held that Petitioner was not entitled to withdraw his plea, but remanded “to the trial court for correction of the maximum sentences set forth in [Petitioner]’s judgment and sentence.” Appendix G.

On August 22, 2012, Petitioner filed a motion to amend the judgment and sentence in the superior court, asking that court to remove any prohibition on his family members

1 having contact with him and to remove “all prohibitions against contact with minor  
2 males.” Appendix H.

3 On October 12, 2012, the sentencing court signed a motion and order correcting the  
4 judgment and sentence, by which it corrected the statement of the maximum sentences set  
5 forth in that document. Appendix C.

6 On November 6, 2012, Petitioner filed a notice of appeal. Appendix I.

7 He then filed a direct appeal, dated April 29, 2012, in this Court in Case Number  
8 44141-1-II, in which he again argues that his “guilty plea was involuntary because he was  
9 misinformed about the maximum punishment,” and that, in the alternative, his “trial  
10 counsel was ineffective for failing to request the sentencing court exercise its discretion to  
11 consider the involuntariness of [his] guilty plea.” Appellant’s Opening Brief (AOB), p. 1.  
12 *But See* State’s Brief of Respondent. As in his previous personal restraint petition,  
13 Petitioner did not raise any issue relating to a delay in filing charges that resulted in a loss  
14 of juvenile court jurisdiction. *See* AOB, p. 1-11.

15 On June 19, 2013, Petitioner filed another personal restraint petition, the present  
16 petition, in which he argues for the first time, based on what he terms “newly discovered  
17 evidence,” that the State violated due process by delaying filing charges until after the  
18 juvenile court lost jurisdiction. Personal Restraint Petition (PRP), p. 1-5.  
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1 C. ARGUMENT:

2 1. PETITIONER'S CLAIM OF PRE-ACCUSATORIAL DELAY  
3 SHOULD BE DISMISSED AS TIME-BARRED UNDER RCW  
4 10.73.090 BECAUSE PETITIONER FAILED TO ACT WITH  
5 REASONABLE DILLIGENCE IN DISCOVERING THE EVIDENCE  
6 UPON WHICH THAT CLAIM IS BASED OR IN FILING THE  
7 PRESENT PETITION.

8 There is a time limit in which to file a personal restraint petition:

9 No petition or motion for collateral attack on a judgment and sentence in a  
10 criminal case may be filed more than one year after the judgment becomes  
11 final if the judgment and sentence is valid on its face and was rendered by  
12 a court of competent jurisdiction.

13 RCW 10.73.090(1).

14 The time limit set forth in RCW 10.73.090(1) is a mandatory rule that bars  
15 appellate consideration of personal restraint petitions filed after the limitation period has  
16 passed, unless the petitioner demonstrates (A) that the petition falls within an exemption to  
17 this time limit for facial invalidity or lack of jurisdiction or (B) that it is based solely on  
18 one or more of the following grounds:

- 19 ***(1) Newly discovered evidence, if the defendant acted with reasonable***  
20 ***diligence in discovering the evidence and filing the petition or motion;***  
21 (2) The statute that the defendant was convicted of violating was  
22 unconstitutional on its face or as applied to the defendant's conduct;  
23 (3) The conviction was barred by double jeopardy under Amendment V of  
24 the United States Constitution or Article I, section 9 of the State  
25 Constitution;  
(4) The defendant pled not guilty and the evidence introduced at trial was  
insufficient to support the conviction;  
(5) The sentence imposed was in excess of the court's jurisdiction; or  
(6) There has been a significant change in the law, whether substantive or  
procedural, which is material to the conviction, sentence, or other order  
entered in a criminal or civil proceeding instituted by the state or local  
government, and either the legislature has expressly provided that the  
change in the law is to be applied retroactively, or a court, in

1 interpreting a change in the law that lacks express legislative intent  
2 regarding retroactive application, determines that sufficient reasons exist  
to require retroactive application of the changed legal standard.

3 RCW 10.73.100 (emphasis added).

4 “‘Solely’ in RCW 10.73.100 requires that a petition or motion which would make  
5 use of this section cannot be based on any grounds other than one or more of the six  
6 grounds in RCW 10.73.100.” *In Re Personal Restraint of Stoudmire*, 141 Wn.2d 342,  
7 348-49, 5 P.3d 1240 (2000).

8 Invalid on its face, within the context of RCW 10.73.090(1), “means the judgment  
9 and sentence evidences the invalidity without further elaboration.” *In re Personal*  
10 *Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002) (citing, *inter alia*, *In re*  
11 *Personal Restraint of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002)). “A personal  
12 restraint petitioner has the burden of demonstrating his judgment and sentence is facially  
13 invalid.” *In the Matter of the Personal Restraint of McKiernan*, 165 Wn.2d 777, 203  
14 P.3d 365 (2009).

15  
16 In the present case, this Court has already found that Petitioner’s “judgment  
17 became final... when the trial court filed it in 2006. RCW 10.73.090(3)(a); *see State v.*  
18 *Lilioispoulos*, 165 Wn. 197, 199 (1931) (suspended sentence is final judgment); *State v.*  
19 *Collins*, 6 Wn. App. 922, 924 (1972) (fact that sentence is suspended does not affect its  
20 finality)).” Appendix G, p. 1-2. Specifically, it became final on April 17, 2006, “[t]he date  
21 it [wa]s filed with the clerk of the trial court.” RCW 10.73.090(3)(a); Appendix C.

22 However, the present petition challenging that judgment and sentence was not filed  
23 until June 19, 2013, more than seven years later. PRP, p. 1. It was, therefore, filed after the  
24 one-year time bar of RCW 10.73.090(1) and should be dismissed unless Petitioner can  
25

1 show either (1) that it was facially invalid or (2) that one of the exceptions to RCW  
2 10.73.090(1) found in RCW 10.73.100 applies.

3 Petitioner does not contend, in the present petition, that his judgment was facially  
4 invalid. *See* PRP, p. 1-5. More important, this Court has already found that Petitioner’s  
5 judgment was *not* invalid on its face. Appendix G. Hence, unless Petitioner has established  
6 that one of the RCW 10.73.100 exceptions applies, his petition must be dismissed under  
7 RCW 10.73.090(1).

8 Here, Petitioner argues that his “claim is based on newly discovered evidence of the  
9 State’s delay –the product of a public disclosure request.” PRP, p. 3.

10 While it is true that “[t]he time limit specified in RCW 10.73.090 does not apply to  
11 a petition or motion that is based solely on... [n]ewly discovered evidence, if the defendant  
12 acted with reasonable diligence in discovering the evidence and filing the petition or  
13 motion,” RCW 10.73.100(1). Petitioner here did not act with reasonable diligence in  
14 discovering the evidence or filing the petition.  
15

16 A petitioner may not be granted “a new trial based upon new evidence unless he  
17 establishes ‘that the evidence (1) will probably change the result of the trial, (2) was  
18 discovered since the trial, **(3) could not have been discovered before the trial by the**  
19 ***exercise of due diligence***; (4) is material; and (5) is not merely cumulative or  
20 impeaching.’” *State v. Scott*, 150 Wn. App. 281, 294, 207 P.3d 495 (2009) (*quoting In re*  
21 *the Personal Restraint of Brown*, 143 Wn.2d 431, 453, 21 P.3d 687 (2001) (*quoting State*  
22 *v. Williams*, 96 Wn.2d 215, 222-23, 634 P.2d 868 (1981))) (emphasis added); *State v.*  
23 *Larson*, 160 Wn. App. 577, 586, 249 P.3d 669 (2011). “A new trial may be denied if any  
24  
25



1 one of these factors is absent.” *State v. Macon*, 128 Wn.2d 784, 804, 911 P.2d 1004  
2 (1996).

3 Here, the “newly discovered evidence of the State’s delay” seems to consist of an  
4 information which was drafted before Petitioner’s 18<sup>th</sup> birthday, but not filed, and of  
5 prosecutor’s office notes which did not reference an ongoing investigation from March 7 to  
6 May 4, 2005. PRP, p. 2.

7 Petitioner, however, already had evidence that the State had drafted an information  
8 before his eighteenth birthday but failed to file it until after that birthday. The information  
9 which was filed in this case was originally dated three days before Petitioner’s eighteenth  
10 birthday, but was not filed until 36 days after that birthday. Appendix A. This fact was  
11 obvious on the face of the information itself, which was filed with the superior court.  
12 Appendix A. Moreover, the fact that this information was originally dated before  
13 Petitioner’s eighteenth birthday, but not filed until after that birthday, should have made  
14 Petitioner aware of a delay in filing that information until after that birthday. *See* Appendix  
15 A.  
16

17 Indeed, Petitioner later indicated that he did in fact understand that there was a  
18 delay in filing the information until after his eighteenth birthday. Appendix E. When the  
19 superior court stated that it remembered his case because it “remembered [that] the State  
20 had waited until you were an adult to charge you,” even though the facts of the case “came  
21 to light when you were a minor,” the defendant responded, “yes.” Appendix E.

22 Had this been a delay with which Petitioner was concerned, due diligence would  
23 have dictated that he either further investigate that delay through such tools as a public  
24 records request or file a motion based on the evidence of delay already evident in the  
25

1 record. A public records request would have revealed the prior drafted, but un-filed  
2 information, and the prosecutor's office notes pertaining to March 7 to May 4, 2005, on  
3 which Petitioner now bases his present petition. Moreover, it would have revealed that  
4 information well before Petitioner pleaded guilty on April 17, 2006.

5 Hence, the information that Petitioner claims is "newly discovered evidence" could  
6 have been discovered before he pleaded guilty by the exercise of due diligence, and  
7 Petitioner could have brought a motion based on such evidence before he pleaded guilty  
8 over six years ago. Because Petitioner did not act with reasonable diligence in discovering  
9 this evidence or filing a petition or motion, he has failed to show an exception to the time  
10 bar of RCW 10.73.090(1) found in RCW 10.73.100.


11 Therefore, his petition should be dismissed as time barred.

12  
13 D. CONCLUSION:

14 Petitioner's claim of pre-accusatorial delay should be dismissed as time barred  
15 under RCW 10.73.090 because Petitioner failed to act with reasonable diligence in  
16 discovering the evidence upon which that claim is based or in filing the present petition.

17  
18 DATED: September 23, 2013.

19 MARK LINDQUIST  
20 Pierce County  
21 Prosecuting Attorney

22   
23 BRIAN WASANKARI  
24 Deputy Prosecuting Attorney  
25 WSB #28945

1 Certificate of Service:

*upfiled w/O.C.*

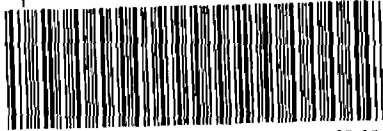
2 The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or  
3 ABC-LMI delivery to the petitioner true and correct copies of the document to  
4 which this certificate is attached. This statement is certified to be true and  
correct under penalty of perjury of the laws of the State of Washington. Signed  
at Tacoma, Washington, on the date below.

4 9/23/13 [Signature]  
Date Signature

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## **APPENDIX A**

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEC1822-110A-9BE2-A9B7E27290661E66  
Certified By: Kevin Stock Pierce County Clerk, Washington



05-1-02167-7 22891110 INFO 05-05-05

IN COUNTY FILED  
CLERK'S OFFICE  
A.M. MAY 04 2005 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY *[Signature]* DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02167-7

vs.

ROBERT T WHEELER,

INFORMATION

Defendant.

194 33282

DOB: 3/29/1987

SEX : MALE

RACE: WHITE

PCN#:

SID#: UNKNOWN

DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT T WHEELER of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That ROBERT T WHEELER, in the State of Washington, during the period between the 6th day of December, 2000 and the 5th day of December, 2001, did unlawfully and feloniously being at least 24 months older than R.L.B., engage in sexual intercourse with R.L.B., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse ROBERT T WHEELER of the crime of CHILD MOLESTATION IN THE FIRST 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 ROBERT T WHEELER, in the State of Washington, during the period between the 6th day of December, 2000 and the 5th day of December, 2001, did unlawfully and feloniously, being at least 36

INFORMATION- 1

**ORIGINAL**

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

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEC1822-110A-9BE2-A9B7E27290661E66  
Certified By: Kevin Stock Pierce County, Washington

05-1-02167-7

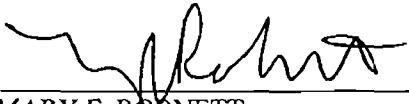
1 months older than K.A.B., have sexual contact with K.A.B., who is less than 12 years old and not married  
2 to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of  
3 Washington.

4 DATED this <sup>4th</sup> ~~26th~~ day of <sup>May</sup> ~~March~~, 2005.

5 PIERCE COUNTY SHERIFF  
WA02700

GERALD A. HORNE  
Pierce County Prosecuting Attorney

6  
7 mer

8 By:   
MARY E. ROBNETT  
Deputy Prosecuting Attorney  
WSB#: 21129

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEC1822-110A-9BE2-A9B7E27290661E66  
Certified By: Kevin Stock Pierce County Clerk, Washington

NO. *05-1-02167-7*  
DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

MARY E. ROBNETT, 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 PIERCE COUNTY SHERIFF, incident number 043070671;

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

That in Pierce County, Washington, on or about the period between the 6<sup>th</sup> day of December 2000 and the 5<sup>th</sup> day of December 2001, the defendant, ROBERT T WHEELER, did commit the crimes of **Rape of a Child in the First Degree and Child Molestation in the First Degree.**

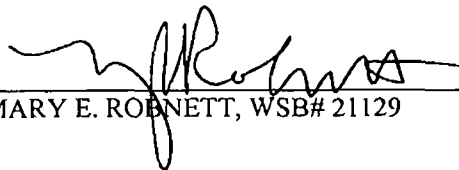
On November 1, 2004, Pierce County Sheriff's Deputy Larsen contacted a parent who reported that her twin daughters had disclosed that they had been sexually molested by the defendant, Robert T. Wheeler. The parents identified the girls as K.A.B. born 12-06-94 and R.L.B. born 12-06-94. The parent said the defendant is her stepson and is stepbrother to the twins. The parent said this happened when the twins were between 6 and 7 years old; the parent said she and her husband confronted the defendant and he admitted and apologized.

On January 3, 2005, the twins were interviewed by a forensic child interviewer. R.L.B. disclosed that she saw the defendant touch her sister on the front private area with his hand and that the defendant had done the same thing to her. K.A.B. disclosed that the defendant had touched her vaginal area with his hand.

On January 25, 2005, Deputy Nicholson contacted the defendant. The defendant told her that about 3-4 years earlier, he had touched R.L.B. and K.A.B.; he said he put his hand down their panties and rubbed their vaginal areas; he stated that he placed his finger inside R.L.B.'s vagina.

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

*MAY 4<sup>th</sup>*  
DATED: ~~March 22~~, 2005  
PLACE: TACOMA, WA

  
MARY E. ROBNETT, WSB# 21129

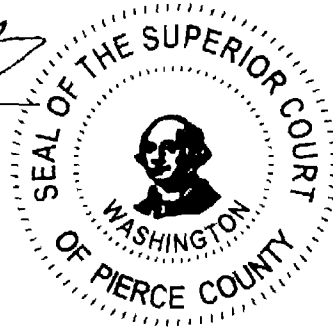
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: 4BEC1822-110A-9BE2-A9B7E27290661E66.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

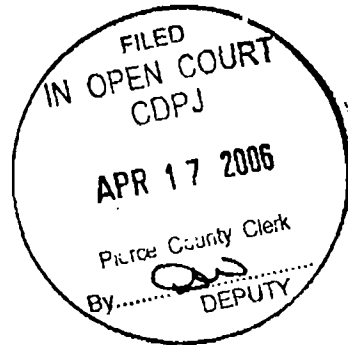


## **APPENDIX B**

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B  
Certified By: Kevin Stock Pierce County Clerk, Washington



05-1-02167-7 25311568 STTDFG 04-18-06



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

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02167-7

Robert Cheeky

vs.

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY

APR 18 2006

Defendant.

- 1. My true name is: Robert Cheeky
- 2. My age is: 19
- 3. I went through the 12<sup>th</sup> grade.

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 Ray Law

(b) I am charged with the crime(s) of:

Count I: Rape Child 10

The elements are: The defendant unlawfully, being at least 24 years older than the victim, engaged in sexual intercourse with her, who was less than 12 years old and not married to the defendant.

This crime carries a maximum sentence of Life years imprisonment and a \$20,000 fine. The standard range is from 120 months to 160 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [ ] Serious Violent [ ] Violent [ ] Non-Violent [ ] Sex [ ] Drug [ ] Traffic [ ] Check all that apply.

Count II: Child Molestation 10

Elements: The defendant unlawfully, being at least 16 years older than the victim, had sexual contact with her, who was less than 12 years old and not married to the defendant.

Case Number: 05-1-02167-7 Date: September 23, 2013  
 SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B  
 Certified By: Kevin Stock Pierce County Clerk, Washington

This crime carries a maximum sentence of Life years imprisonment and a \$ 2400 fine. The standard range is from 67-89 months to 89 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[ ] Non-Violent[ ] Sex[ ]  Drug[ ] Traffic[ ] (check all that apply)

(c) \_\_\_\_\_ Additional counts are addressed in Attachment "B".

5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been 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) I am presumed innocent unless the charge is proven 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 speedy 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.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	120-160 mos	—	120-160 mos	36-48 mos	20 \$ 50,000 (w)
2	67-89 mos	—	67-89 mos	36-48 mos	20 / 50,000 (w)

\_\_\_\_\_ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT  
 ON PLEA OF GUILTY - 2

- (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 agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. 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 upon 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. 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 supervision if the total period of confinement ordered is less than 12 months. 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 placement. 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 placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

**For Crimes Committed On or After July 1, 2000:**

For crimes committed on or after 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 less than 12 months. 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 community custody range 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.150 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 range will be based on the offense type that dictates the

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY - 3

Case Number: 05-1-02167-7 Date: September 23, 2013  
 SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B  
 Certified By: Kevin Stock Pierce County Clerk, Washington

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. 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.

(g) The prosecuting attorney will make the following recommendation to the judge: ~~State Bar~~  
*See attached recommendation, APPENDIX C*

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one 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 understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

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NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

- (k) 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. In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes 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.
- (l) ~~The judge may sentence me as a first-time offender instead of giving me 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 two years community supervision if the crime was committed prior to July 1, 2000, or two years of community custody if the crime was committed on or after July 1, 2000, 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.~~
- (m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.
- (n) Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.
- (o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.
- (p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

STATEMENT OF DEFENDANT  
 ON PLEA OF GUILTY - 5

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 Certified By: Kevin Stock Pierce County Clerk, Washington

- (q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.
- (r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.
- (s) If 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.
- (t) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).
- (u) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.
- (v) 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(8).
- (w) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. 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(k).
- (x) 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.
- (y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm 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 or firearm enhancements.
- (z) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The

STATEMENT OF DEFENDANT  
 ON PLEA OF GUILTY - 6

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sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count I + II in the \_\_\_\_\_ Information. I have received a copy of that information.

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: Between December 2000 and December 2001 I had sexual intercourse (I + I) and sexual contact (I + II) with RL13 + KFB who were less than 12 years old and not married to me, and while I was at least 36 months older than them.

[ ] 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. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Robert J. Wheeler  
Defendant

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

[Signature]  
Defendant's Lawyer  
WSBA # \_\_\_\_\_

Approved for entry:

[Signature]  
Prosecuting Attorney  
WSBA# 26945

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY - 7



Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B  
Certified By: Kevin Stock Pierce County Clerk, Washington

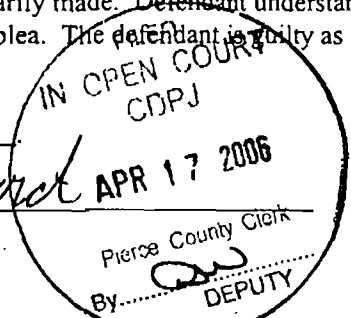
The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check the appropriate box]:

- (a)  The defendant had previously read the entire statement above and the defendant understood it in full; or
- (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.

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 this 17 day of April, 2006.

Wendy Worswick  
Judge



**\*INTERPRETER'S DECLARATION**

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated \_\_\_\_\_ for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Interpreter

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**STATEMENT ON PLEA OF GUILTY ADDENDUM TO ATTACHMENT "A"**  
**(Applicable to sex offenses or kidnapping offenses involving a minor)**

In addition to the registration requirements in Attachment A, you are subject to the following additional requirement:

If I gain employment at a public or private institution of higher education, I shall, within 10 days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff of the county of my residence of my employment by the institution. If my enrollment or employment at a public or private institution of higher education is terminated, I shall, within 10 days of such termination, notify the sheriff of the county of my residence of my termination or enrollment or employment at the institution.

CASE NAME: STATE OF WASHINGTON V. ROBERT J. WHEELER Cause No: 05-1-02167-7

ATTACHMENT "S": See paragraph 6(f) and 6(o) of Statement on Plea of Guilty. (Required attachment to Statement of Defendant on Plea of Guilty for plea to any sex offense.)

**Paragraph 6(f) For sex 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 supervision if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release period, whichever is longer. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).~~

**For sex crimes committed on or after July 1, 2000, but prior to Sept. 1, 2001:**

Unless I am being sentenced under RCW 9.94A.670 (SSOSA) (formerly RCW 9.94A.120(8)), 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 period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. 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.

**For sex crimes committed on or after September 1, 2001:**

(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentencing Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for the statutory maximum sentence for that offense. The statutory maximum sentence for this offense is [ ] ten years [ ] life. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities and I may be required to participate in rehabilitative programs or other affirmative conduct. 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.

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SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B  
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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02167-7

vs.

ROBERT T. WHEELER,

APPENDIX C - RECOMMENDATION  
OF STATE - STATEMENT OF  
DEFENDANT ON PLEA OF GUILTY

Defendant.

The defendant's sexual deviancy evaluation and treatment program must be from a treatment provider approved by the deputy prosecutor. The evaluation must state that the defendant has a fair or better prognosis in treatment and is safe to be at large in the community. Prior to sentencing, the defendant must also take and pass a polygraph relating to sexual history and evaluation. The defendant agrees to provide copies of both the evaluation and the polygraph reports to the deputy prosecutor prior to the plea. THE DEFENDANT MUST ALSO DISCLOSE ALL PRIOR POLYGRAPH EVALUATIONS AND EVALUATIONS GERMANE TO THIS CASE OR STATE THAT NONE EXIST. FAILURE TO DO SO WILL RESULT IN THE STATE NOT RECOMMENDING SSOSA. IN THE EVENT THAT THE DEFENDANT HAS BEEN PREVIOUSLY EVALUATED AND/OR POLYGRAPHED, THE STATE MAY NOT RECOMMEND SSOSA IF, IN THE DISCRETION OF THE DPA, IT APPEARS THAT THE DEFENDANT MAY HAVE BEEN DECEPTIVE OR MAY NOT BE SAFE TO BE IN THE COMMUNITY OR MAY NOT BE AMENDABLE TO TREATMENT

The defendant shall serve six months in the Pierce County Jail. The defendant shall be taken into custody on the plea date and receive credit for this time and any other he has served prior to sentencing. For the following term of ~~12.5~~ 7.5 months, the defendant shall be on community supervision or custody, depending on the date of offense. During the first 36 months of that period, the defendant shall attend and make successful progress in sexual deviancy treatment and shall be subject to these conditions:

1. The defendant shall submit to quarterly polygraphs and plethysmographs and/or as requested by the treatment provider or Community Corrections Officer (CCO);
2. The defendant shall not change treatment providers without prior approval of the Court;
3. The defendant shall pay restitution, if any;
4. The Defendant shall submit to a blood draw for DNA purposes and to an HIV test;
5. The defendant shall immediately register as a sex offender and continue to register according to the sex offender registration statute;
6. The defendant shall not have any contact with the victim(s) or any member of the victim's family, either direct or indirect, or any minor child without prior written authorization from the treatment provider and community corrections officer; then said contact shall be in the presence of a pre-approved adult supervisor;

*\* ON COUNT I,  
83 MONTHS ON  
COUNT II.*

Case Number: 05-1-02167-7 Date: September 23, 2013

SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B

Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02993-7

7. The defendant shall pay legal financial obligations in the following amounts: \$110.00 court costs, \$500.00 crime victim penalty assessment, \$400.00 DAC recoupment, & \$100 DNA sample fee;

8. The defendant shall not possess or peruse pornography, shall not possess any firearm or ammunition, shall not consume any alcohol, shall not possess or use any controlled substance without a valid prescription, and shall agree to consent to CCO searches of his home for such items;

9. The defendant shall abide by any other conditions as placed on him by the community corrections officer or treatment provider and by the conditions recommended in Appendix H, produced by the Department of Corrections.

If the defendant is not "eligible" for SSOSA as set out above, or if the defendant uses an evaluator not approved in advance by the DPA, the State will recommend a sentence within the applicable standard range, with two years of community placement or three years of community custody, depending on the date of offense, to include the above enumerated conditions.

RTW

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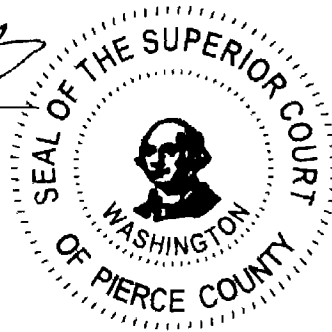
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

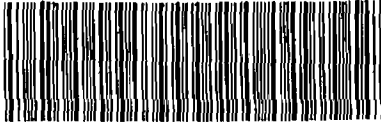
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 4BEAD0DD-F20F-6452-DF56183BFD978E9B**.

This document contains 12 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX C**

Case Number: 05-1-02167-7 Date: September 2, 2013  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington



FILED  
IN COUNTY CLERK'S OFFICE  
A.M. APR 17 2006 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY [Signature] Deputy

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 05-1-02167-7

vs.

ROBERT T. WHEELER,

Defendant.

WARRANT OF COMMITMENT

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

APR 18 2006

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).



Case Number: 05-1-02167-7 Date: September 2, 2003  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7

[ ] 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).

By direction of the Honorable

Dated: 4/17/06

Kevin Stock  
JUDGE  
KEVIN STOCK  
CLERK

By: Chris Stutton  
DEPUTY CLERK

Jail  
CERTIFIED COPY DELIVERED TO SHERIFF

APR 18 2006  
Date By Chris Stutton

IN COUNTY FILED  
CLERK'S OFFICE  
A.M. APR 17 2006 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY [Signature] DEPUTY

STATE OF WASHINGTON

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 \_\_\_\_\_.

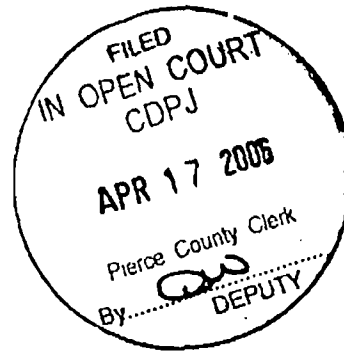
KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

cf

Case Number: 05-1-02167-7 Date: September 2, 2013  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 05-1-02167-7

vs.

JUDGMENT AND SENTENCE (JS)

ROBERT T. WHEELER

Defendant, [ ] Prison  
[ ] Jail One Year or Less  
[ ] First-Time Offender  
 SSOSA  
[ ] DOSA  
[ ] Breaking The Cycle (BTC)

SID: UNKNOWN  
DOB: 03/29/1987

APR 18 2006

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 APRIL 17, 2006 by [ X ] plea [ ] jury-verdict [ ] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: I36	9A.44.073	N/A	12/06/00 - 12/05/01	PCSO 043070671
II	CHILD MOLESTATION IN THE FIRST DEGREE, Charge Code: I39	9A.44.083	N/A	12/06/00- 12/05/01	PCSO 043070671

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.320, (JP) Juvenile present.

as charged in the Amended Information

JUDGMENT AND SENTENCE (JS)  
(Felony) (6/19/2003) Page 1 of 1

06-9-04696-1

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

Case Number: 05-1-02167-7 Date: September 2003  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): *NONE*
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): *NONE*

2.2 CRIMINAL HISTORY (RCW 9.94A.525): NONE KNOWN OR CLAIMED

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	<i>± 3</i>	XII	<i>102-136 Months 120-160</i>	N/A	<i>102-136 Months 120-160</i>	20yrs/ \$50,000
II	<i>± 3</i>	X	<i>57-75 Months 67-89</i>	N/A	<i>57-75 Months 67-89</i>	10yrs/ \$20,000

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

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

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

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 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

R/TN/R/JN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

1  
2 PCV \$ 500.00 Crime Victim assessment  
3 DNA \$ 100.00 DNA Database Fee  
4 PUB \$ \_\_\_\_\_ Court-Appointed Attorney Fees and Defense Costs  
5 FRC \$ 110.00 ~~500.00~~ Criminal Filing Fee  
6 FCM \$ \_\_\_\_\_ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

7 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
8 \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_  
9 \$ 710.00 TOTAL

10 [X] All payments shall be made in accordance with the policies of the clerk, commencing immediately,  
11 unless the court specifically sets forth the rate herein: Not less than \$ 9<sup>00</sup> per month  
12 commencing 9<sup>00</sup> RCW 9.94.760. If the court does not set the rate herein, the  
13 defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to  
14 set up a payment plan.

*\* AS DIRECTED BY COMMUNITY CORRECTIONS OFFICER (C.C.O.)*

4.2 RESTITUTION

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 6/16/06 AT 1:30 PM IN CPAI.

defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

RESTITUTION. Order Attached

4.3 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.

4.4 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.

4.5 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

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

4.7 [ ] 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.

4.8 [X] DNA TESTING

JUDGMENT AND SENTENCE (JS)

(Felony) (6/19/2003) Page 3 of \_\_\_\_\_

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

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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.

4.9 NO CONTACT

The defendant shall not have contact with R.L.B., 12/6/94; K.A.B., 12/6/94 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 20 years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

ALL CONDITIONS LISTED IN APPENDIX H.

4.11 BOND IS HEREBY EXONERATED

4.12 SPECIAL SEX OFFENDER SENTENCING-ALTERNATIVE. RCW 9.94A. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

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

131.75 months on Count I  
89 months on Count II

Actual number of months of total confinement ordered is: 131.75

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively: 131.75

The sentence herein shall run consecutively to all 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 onsecutively to the felony sentence in cause number(s) \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) 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: 0 DAYS

(c) SUSPENSION OF SENTENCE. The execution of this sentence is suspended; and the defendant is placed on community custody under the charge of DOC for the length of the suspended sentence or three years, whichever is greater, and shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. Community custody may be extended for up to the statutory maximum term of the sentence. Violation of community custody may result in additional confinement. The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community service work and be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody:

Undergo and successfully complete an  outpatient [ ] inpatient sex offender treatment program with

ALLEN TRAYWICK, Ph.D.  
for a period of 36 MONTHS MINIMUM UNTIL THE COURT TERMINATES.

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

\*  Serve 2 day/months of total confinement. Work Crew and Electronic Home Detention are not authorized. RCW 9.94A.030.

[ ] Obtain and maintain employment.

[ ] Work release is authorized, if eligible and approved. RCW 9.94A.180.

[ ] Defendant shall perform hours of community service as approved by defendant's community corrections officer to be completed:

[ ] as follows: \_\_\_\_\_

[ ] on a schedule established by the defendant's community corrections officer. RCW 9.94A.

Other conditions: ALL CONDITIONS LISTED IN APPENDIX A TO PSI AND APPENDIX G.

The conditions of community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

4.13 **REVOCATION OF SUSPENDED SENTENCE.** The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence, with credit for any confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.

4.14 **TERMINATION HEARING.** A treatment termination hearing is scheduled for 1/9/2009  
AT 1:30 P.M. IN DEPT. 16  
(three months prior to anticipated date for completion of treatment) RCW 9.94A.

4.12 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):

_____ months on Count	_____	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

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, Sentencing Data, above)

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 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 prior to the commission of the crime(s) being sentenced. \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. 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: \_\_\_\_\_

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

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 36 to 48 Months;

Count II for a range from: 36 to 48 Months;

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months;



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.

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

5.4 **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.

5.5 **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, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 **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 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 this state's 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.

DEFENDANT'S INITIALS

Case Number: 05-1-02167-7 Date: September 2, 2003  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7

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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 48 hours excluding weekends and holidays 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 weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

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.

5.7 OTHER: COMPLY WITH NCOs, APPENDIX H & G,  
AND REGISTRATION REQUIREMENTS

DONE in Open Court and in the presence of the defendant this date: 4/17/06

JUDGE Lisa Worswick  
Print name: LISA WORSWICK

Brian Wasankari  
Deputy Prosecuting Attorney  
Print name: BRIAN WASANKARI  
WSB # 28945

Gary Clower  
Attorney for Defendant  
Print name: GARY CLOWER  
WSB # 13720

Robert Wheeler  
Defendant  
Print name: ROBERT WHEELER

FILED IN OPEN COURT CDPJ  
APR 17 2006  
Pierce County Clerk  
BY: [Signature] DEPUTY

Case Number: 05-1-02167-7 Date: September 25, 2013  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 05-1-02167-7

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

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**SUZANNE TRIMBLE**

\_\_\_\_\_  
Court Reporter

Case Number: 05-1-02167-7 Date: September 23, 2003  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

05-1-02167-7

IDENTIFICATION OF DEFENDANT

SID No. UNKNOWN Date of Birth 03/29/1987  
(If no SID take fingerprint card for State Patrol)

FBI No. UNKNOWN Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB: \_\_\_\_\_

Race:		Ethnicity:		Sex:	
<input type="checkbox"/>	Asian/Pacific Islander	<input type="checkbox"/>	Black/African-American	<input checked="" type="checkbox"/>	Caucasian
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other :	<input checked="" type="checkbox"/>	Non-Hispanic
				<input checked="" type="checkbox"/>	Male
				<input type="checkbox"/>	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, Dea Waga

Dated: 4/17/06

DEFENDANT'S SIGNATURE: Robert T Wheeler

DEFENDANT'S ADDRESS: \_\_\_\_\_

APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

I. The defendant shall attend and complete sexual deviancy treatment with:

ALLEN ~~TRAY~~ TRAYWICK, Ph.D.

1. The defendant shall follow all rules set forth by the treatment provider,
2. The defendant shall submit to quarterly polygraph examinations to monitor compliance with treatment conditions,
3. The defendant shall submit to periodic plethysmograph examinations,
4. The defendant shall not peruse pornography, which shall be defined by the treatment provider.
5. \_\_\_\_\_

II. The defendant shall not have any contact with the victim(s) K.A.B., 12/6/1994, R.L.B., 12/6/1994 or any minor child (without prior written authorization from the treatment provider and community corrections officer). The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, \_\_\_\_\_

III. The defendant's living arrangements shall be approved in advance by the community corrections officer.

IV. The defendant shall work at Department of Corrections approved education or employment.

V. The defendant shall not consume alcohol.

VI. The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.

VII. The defendant shall remain within geographical boundaries prescribed by the community corrections officer.

VIII. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

STATE OF WASHINGTON	]	Cause No.: 05-1-02167-7
	]	
Plaintiff	]	<b>JUDGEMENT AND SENTENCE (FELONY)</b>
v.	]	<b>APPENDIX H</b>
Robert Wheeler	]	<b>COMMUNITY PLACEMENT / CUSTODY</b>
	]	
Defendant	]	
	]	
DOC No. 893003	]	

The court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

**COMMUNITY PLACEMENT/CUSTODY:** Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

**(a) MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during

the term of community placement/custody:

- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
- (2) Work at Department of Corrections' approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
- (8) Notify community corrections officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set fourth in writing by the Community Corrections Officer.

**WAIVER:** The following above-listed mandatory conditions are waived by the Court: None

(b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:

10. Reside at a residence and under living arrangements approved of in advance by your community corrections officer. You shall not change your residence without first obtaining the authorization of you community corrections officer.
11. Enter and complete a state approved sexual deviancy treatment program through a certified sexual deviancy counselor. You are to sign all necessary releases to insure your community corrections officer will be able to monitor your progress in treatment.
12. You shall not change sexual deviancy treatment providers without prior approval from the Court and your community corrections officer.
13. You shall not possess or consume any mind or mood altering substances, to include alcohol, or any controlled substances without a valid prescription from a licensed physician.
14. Have no contact with the victims or their family for life. This includes but is not limited to personal, verbal, written or contact through a third party.
15. Do not possess or peruse pornographic materials. Your community corrections officer will define pornographic material.
16. Hold no position of authority or trust involving children under the age of 18.
17. Do not initiate or prolong physical contact with children under the age of 18 for any reason.
18. Inform your community corrections officer of any romantic relationships to verify there are no victim-age children involved.
19. Submit to polygraph and plethysmograph testing upon direction of your community corrections officer or therapist at your expense.
20. Register as a sex offender in your county of residence.
21. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington

22. Submit to a blood draw for DNA purposes and for an HIV test.
23. Follow all conditions imposed by your sexual deviancy treatment provider.
24. Obey all laws.
25. You shall not have access to the internet unless the computer has child blocks in place and active.
26. While on supervision by the Department of Corrections you will allow non-scheduled visits to your home, place of business or other places as deemed appropriate. During these visits visual inspections may be made to insure your compliance to conditions of supervision.

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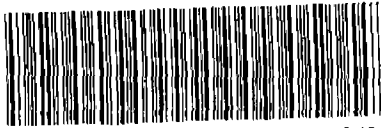
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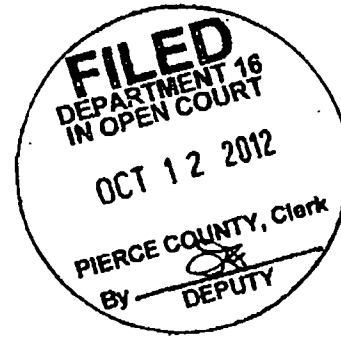
JUDGE, PIERCE COUNTY SUPERIOR COURT



Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15  
Certified By: Kevin Stock Pierce County Clerk, Washington



05-1-02167-7 39351050 ORCJS 10-15-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-02167-7

vs.

ROBERT TROY WHEELER,

MOTION AND ORDER CORRECTING  
JUDGMENT AND SENTENCE

Defendant.

**CLERKS ACTION REQUIRED**

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on 04/17/06, pursuant to defendant's plea of guilty to the charge(s) of RAPE OF A CHILD IN THE FIRST DEGREE; CHILD MOLESTATION IN THE FIRST DEGREE, as follows:

1) That Page 2 of the Judgment and Sentence, Section 2.3 reflects the maximum term as 20 years/\$50,000 for Count I and 10 years/\$20,000 for Count II and should note a maximum term of Life/\$50,000 for Count I and Life/\$50,000 for Count II;

2) That all other terms and conditions of the Judgment and Sentence are to remain in full force and effect as if set forth in full herein; and the court being in all things duly advised, Now,

Therefore, It is hereby

ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on 04/17/06, be and the same is hereby corrected as follows:

1) Page 2 of the Judgment and Sentence, Section 2.3 is corrected as follows:

a) the maximum term as 20 years/\$50,000 for Count I and 10 years/\$20,000 for  
Count II is deleted; and

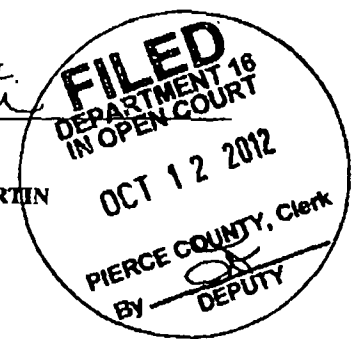
b) a maximum term of Life/\$50,000 for Count I and Life/\$50,000 for Count II' is  
inserted in its stead.

2) All other terms and conditions of the original Judgment and Sentence shall remain in  
full force and effect as if set forth in full herein. IT IS FURTHER

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment  
filed on 04/17/06 so that any one obtaining a certified copy of the judgment will also obtain a  
copy of this order.

DONE IN OPEN COURT this 12<sup>th</sup> day October, 2012. NUNC PRO TUNC to  
04/17/06.

*Elizabeth P. Martin*  
JUDGE  
ELIZABETH P. MARTIN



Presented by:  
*M. Hyer*  
MICHELLE HYER  
Deputy Prosecuting Attorney  
WSB# 32724

Approved as to form and Notice  
Of Presentation Waived:  
*G. Clower*  
GARY M. CLOWER  
Attorney for Defendant  
WSB# 13720

mld



404893-11

199 (1931) (suspended sentence is final judgment); *State v. Collins*, 6 Wn. App. 922, 924 (1972) (fact that sentence is suspended does not affect its finality). We note further that Wheeler's petition challenges a notation in his original judgment and sentence and not any aspect of the SSOSA revocation.

Wheeler argues in the alternative that his judgment and sentence is invalid on its face because of the misstated maximum sentences. If he is correct in his facial invalidity claim, the one-year time limit does not apply to his petition. RCW 10.73.090(1).

Wheeler pleaded guilty to two class A felonies. See RCW 9A.44.073(2); RCW 9A.44.083(2). His judgment and sentence lists the maximum sentence for the rape count as 20 years and/or a fine of \$50,000, and the maximum for the molestation count as 10 years and/or a fine of \$20,000. The maximum sentence for class A felonies, however, is life in prison and/or a fine of \$50,000. RCW 9A.20.021(1)(a). Wheeler contends that the misstated maximum sentences render his judgment and sentence invalid and entitle him to withdraw his guilty plea.

Our Supreme Court recently considered a similar argument in *In re Pers. Restraint of Coats*, 173 Wn.2d 123 (2011). In *Coats*, the petitioner argued that his judgment and sentence was facially invalid because it misstated the maximum sentence, even though the trial court imposed a sentence well below that maximum. 173 Wn.2d at 125-27. The relief he sought was the withdrawal of his plea. *In re Coats*, 173 Wn.2d at 125. The Supreme Court held that a judgment and sentence is facially invalid under RCW 10.73.090(1) where the trial court has exceeded its authority and imposed an unlawful sentence. *In re Coats*, 173 Wn.2d at 135. Because the trial court did not exceed its statutory authority in sentencing the petitioner, despite its error in setting forth the

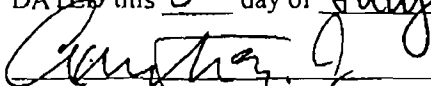
404893-II

maximum sentence, his judgment and sentence was not facially invalid. *In re Coats*, 173 Wn.2d at 143. Consequently, he was not entitled to withdraw his plea, and the only relief available was a remand for correction of the error under CrR 7.8(a). *In re Coats*, 173 Wn.2d at 144.

Recognizing that *Coats* controls the outcome here, Wheeler asserts that it was wrongly decided. We are bound by the decision in *Coats*, however, and we therefore grant this petition only for the purpose of remanding to the trial court for correction of the maximum sentences set forth in Wheeler's judgment and sentence. *See State v. Gore*, 101 Wn.2d 481, 486-87 (1984) (Court of Appeals is bound by decisions of Washington Supreme Court). Accordingly, it is hereby

ORDERED that this petition is granted in part, and the matter is remanded to the trial court for correction of the judgment and sentence.

DATED this 3<sup>rd</sup> day of July, 2012.

  
\_\_\_\_\_  
H.T. J.  
\_\_\_\_\_  
Van Doren, J.

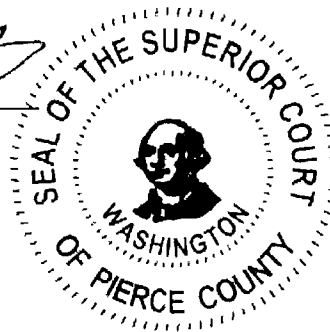
cc: Robert T. Wheeler  
Pierce County Clerk  
County Cause No. 05-1-02167-7  
Mark Lindquist, Pierce County Prosecuting Attorney  
Brian Wasankari, Deputy Prosecuting Attorney  
Jeffrey E. Ellis

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned 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 herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.  
Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter SerialID: 4BEAD021-F20F-6452-D22C54C6E133FE15.

This document contains 22 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX D**





Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEC1A84-110A-9BE2-A96ED09D286C84B1  
Certified By: Kevin Stock Pierce County Clerk, Washington

I further understand that if I fail to comply with these sanctions that I may be subject to additional sanctions by the court or the Department of Corrections for the violations listed above as well as failure to comply with these sanctions.

Robert Wheeler  
OFFENDER'S SIGNATURE

2-20-08  
DATE

DEFENSE ATTORNEY (Required when offender is in custody)

DATE

[Signature]  
COMMUNITY CORRECTIONS OFFICER

2/19/08  
DATE

[Signature]  
COMMUNITY CORRECTIONS SUPERVISOR

2/19/08  
DATE

[Signature]  
DEPUTY / PROSECUTING ATTORNEY 28945

03/03/2008  
DATE

[Signature]  
PRESIDING JUDGE (Required when confinement ordered/modified)

3/3/08  
DATE

Distribution: SRA, PRS, SSOSA ORIGINAL - Court

FOS ORIGINAL - Compact Administrator in the sending State  
COPY - Offender, CRM, File  
Per local practice: Court, Prosecuting Attorney, Office of Assigned Counsel

WHEELER, ROBERT T.  
893003  
05-1-02167-7

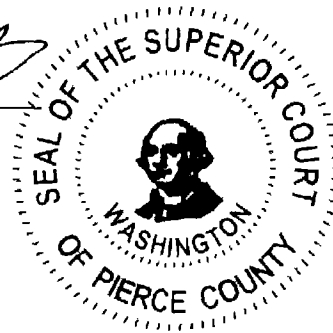
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



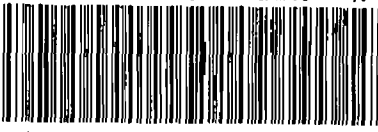
**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 4BEC1A84-110A-9BE2-A96ED09D286C84B1**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX E**



05-1-02167-7 33392490 VRPTCF 12-18-09

FILED  
IN COUNTY CLERK'S OFFICE

A.M. DEC 18 2009 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY *W* Deputy

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

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	Superior Court
	)	No. 05-1-02167-7
v.	)	
	)	EXCERPT OF
ROBERT T. WHEELER,	)	JUDGE'S ORAL
	)	DECISION
Defendant.	)	
	)	

VERBATIM TRANSCRIPT OF PROCEEDINGS

September 11, 2009  
Pierce County Courthouse  
Tacoma, Washington  
Before the  
Honorable Lisa Worswick

Suzanne L. Trimble, CCR, RPR  
Official Court Reporter  
Department 16 Superior Court  
(253) 798-6632

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A P P E A R A N C E S

For the State of Washington: BRIAN WASANKARI  
Pierce County Prosecutor's Office  
930 Tacoma Avenue South, Rm. 946  
Tacoma, Washington 98402-2171  
253.798.7400

For the Defendant: GARY CLOWER  
Attorney at Law  
1105 Tacoma Avenue South  
Tacoma, Washington 98402  
253.383.5346

T A B L E O F C O N T E N T S

<u>PROCEEDINGS</u>		<u>PAGE</u>
	September 11, 2009	
<u>TESTIMONY</u>		
	(No witnesses heard.)	
<u>OTHER</u>		
	Judge's Oral Decision.....	3

E X H I B I T

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>MARKED/ADMITTED</u>	<u>PAGE</u>
	(No exhibits marked or admitted.)		

1 BE IT REMEMBERED that on Friday, September 11, 2009,  
2 the above-captioned cause came on duly for hearing before the  
3 **HONORABLE LISA WORSWICK**, Judge of the Superior Court in and  
4 for the County of Pierce, State of Washington; the following  
5 proceedings were had, to wit:

6  
7 <<<<<< >>>>>>

8  
9 THE COURT: Yeah. I remember this case,  
10 Mr. Wheeler, because I remember the State had waited until  
11 you were an adult to charge you. I didn't think that was  
12 necessarily the fairest way to treat a 13-year old. Although  
13 maybe this didn't come to light. I think it still came to  
14 light when you were a minor.

15 THE DEFENDANT: Yes.

16 THE COURT: They still waited.

17 MR. WASANKARI: It was 17, Your Honor.

18 THE COURT: I remember this case. I was willing to  
19 give you some leeway. But, you know, you were in front of me  
20 in January because you hadn't completed treatment. You were  
21 supposed to get back to your treatment provider and complete  
22 treatment. By February we've got you in Tahoe skiing with  
23 somebody who you're having a relationship with. You haven't  
24 given that information to your treatment provider. It may  
25 well be that you didn't realize she was a minor, but, in

1 fact, she was. Had you done what you were supposed to have  
2 done, which was give information to your treatment provider  
3 as to who you intend to have a relationship with, then they  
4 will keep you in the clear with regard to that. You didn't  
5 do that.

6 You're drinking. You've left town. Really, you've  
7 violated these agreements just about every way you can, short  
8 of formally re-offending, and that's it. I'm going to revoke  
9 the SSOSA. I realize that you're sorry now, but to some  
10 extent, I have a responsibility to the community, and  
11 judicial supervision would be a joke if I let people who do  
12 these kinds of things remain on the SSOSA plan.

13 MR. WASANKARI: Your Honor, I have the paperwork  
14 prepared, with the exception of credit for time served, which  
15 I haven't done any calculation.

16 THE COURT: I think we need to talk about  
17 sentencing.

18 MR. WASANKARI: I believe that the sentence would be  
19 131.75 months, less credit for time served, which would be  
20 the imposition of the original sentence.

21 THE COURT: I'll let you step back and calculate  
22 those. Date of sentencing, you need to calculate that date,  
23 which is April 17, 2006.

24 THE CLERK: From April 17, 2006, it's 1,243 days.

25 (Judge's oral decision concluded.)

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


STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 ) Superior Court  
 v. ) No. 05-1-02167-7  
 )  
 ROBERT T. WHEELER, )  
 )  
 Defendant. )

REPORTER'S CERTIFICATE

STATE OF WASHINGTON )  
 ) ss  
 COUNTY OF PIERCE )

I, Suzanne L. Trimble, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 18th day of December, 2009.

  
SUZANNE L. TRIMBLE, CCR  
Official Court Reporter  
CCR #2173



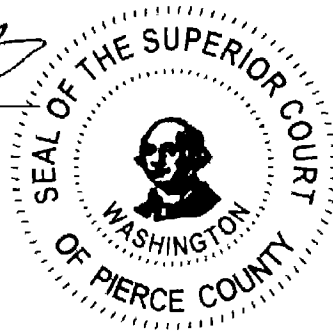
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

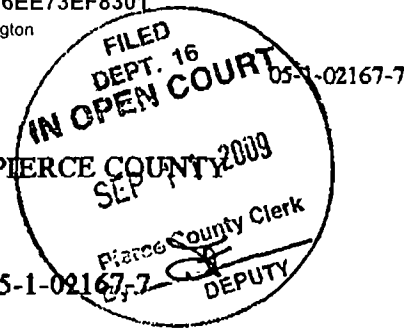
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter SerialID: 4BEACDFF-F20F-6452-D5922246E3B0B535.

This document contains 5 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

## **APPENDIX F**



05-1-02167-7 32813846 ORRSS 09-11-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,  
Plaintiff,  
vs.  
ROBERT TROY WHEELER,  
Defendant.

CAUSE NO. 05-1-02167-7  
ORDER REVOKING SENTENCE SEP 11 2009

THIS MATTER coming on regularly for hearing before the above entitled court on the petition of GRANT E. BLINN, Deputy Prosecuting Attorney for Pierce County, Washington, for an order revoking sentence heretofore granted the above named defendant on April 17, 2006, pursuant to defendant's plea of guilty to/trial conviction for the charge(s) of RAPE OF A CHILD IN THE FIRST DEGREE; CHILD MOLESTATION IN THE FIRST DEGREE, the defendant appearing in person and being represented by GARY CLOWER, defendant's attorney, and the State of Washington being represented by BRIAN WASANKARI, Deputy Prosecuting Attorney for Pierce County, Washington, the court having examined the files and records herein, having read said petition, and hearing testimony in support thereof/defendant having stipulated to the violation(s), and it appearing therefrom that the defendant has, by various acts and deeds, violated the terms and conditions of said sentence and the court being in all things duly advised, Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the suspended standard range sentence be revoked pursuant to RCW 9.94A.670 and 9.94A.505, and the defendant committed to the Department of Corrections for a period of 131.75 months.

The Defendant is additionally sentenced to a term of 36 to 48 MONTHS COMMUNITY ~~year(s) community~~ placement, see Appendix F attached hereto and incorporated by reference.

IT IS FURTHER ORDERED:

THE DEFENDANT SHALL RECEIVE CREDIT FOR TIME SERVED OF 1243 DAYS.

DOC # 893003

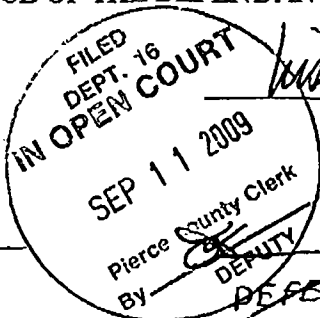
05-1-02167-7

DONE IN OPEN COURT this 11TH day of SEPTEMBER, 2009.

SIGNED IN THE PRESENCE OF THE DEFENDANT.

Presented by:

Grante E. Blinn  
~~GRANTE E. BLINN~~  
Deputy Prosecuting Attorney  
WSB # ~~25570~~ 28145



Kevin W. Warrick  
JUDGE

wji

Calvin #13720  
Atty for Defendant

Robert W. Shaker  
DEFENDANT

DOC # 893003

05-1-02167-7

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary:  
AS SET BY COMMUNITY CORRECTIONS OFFICER (CCO)

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: MINORS (UNDER <sup>AGE</sup> 18) AND AS PER CCO.

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol;

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: AS PER CCO.

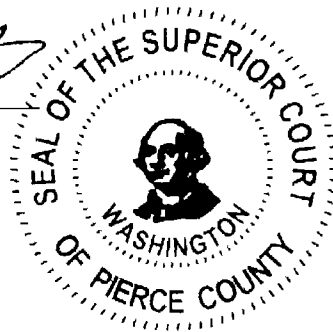
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter SerialID: 4BEC1EAA-110A-9BE2-A9E6C6EE73EF8301.

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## **APPENDIX G**



Case Number: 05-1-02167-7 Date: September 23, 2013  
Serial ID: 4BEAD283-F20F-6452-D03654652491899C  
Created By: Kevin Stock Pierce County Clerk, Washington

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FILED  
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DIVISION II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

2012 JUL -3 PM 2:36  
STATE OF WASHINGTON

DIVISION II

BY K  
DEPUTY

In re the  
Personal Restraint Petition of  
  
ROBERT T. WHEELER,  
  
Petitioner.

05-1-02167-7  
No. 40489-3-II  
  
ORDER GRANTING PETITION  
IN PART

Robert T. Wheeler seeks relief from personal restraint imposed after he pleaded guilty in 2006 to first degree rape of a child and first degree child molestation. Wheeler contends that he is entitled to withdraw his plea because his judgment and sentence misstates the maximum sentences for both offenses.

Personal restraint petitions challenging a judgment and sentence generally must be filed within one year after the judgment becomes final. RCW 10.73.090(1). The trial court sentenced Wheeler under the Special Sex Offender Sentencing Alternative (SSOSA) in 2006, and in doing so suspended most of his standard range sentences (131.75 months for the rape and 89 months for the molestation) See RCW 9.94A.760. The trial court revoked the SSOSA in 2009 and imposed the previously suspended time in total confinement.

Wheeler argues initially that his petition is timely because he filed it within one year after the SSOSA revocation. Wheeler's judgment became final, however, when the trial court filed it in 2006. RCW 10.73.090(3)(a); see *State v. Lilioupoulos*, 165 Wn. 197,



404893-II

199 (1931) (suspended sentence is final judgment); *State v Collins*, 6 Wn. App. 922, 924 (1972) (fact that sentence is suspended does not affect its finality). We note further that Wheeler's petition challenges a notation in his original judgment and sentence and not any aspect of the SSOSA revocation.

Wheeler argues in the alternative that his judgment and sentence is invalid on its face because of the misstated maximum sentences. If he is correct in his facial invalidity claim, the one-year time limit does not apply to his petition. RCW 10.73.090(1).

Wheeler pleaded guilty to two class A felonies. See RCW 9A 44.073(2); RCW 9A.44 083(2). His judgment and sentence lists the maximum sentence for the rape count as 20 years and/or a fine of \$50,000, and the maximum for the molestation count as 10 years and/or a fine of \$20,000. The maximum sentence for class A felonies, however, is life in prison and/or a fine of \$50,000. RCW 9A.20.021(1)(a). Wheeler contends that the misstated maximum sentences render his judgment and sentence invalid and entitle him to withdraw his guilty plea.

Our Supreme Court recently considered a similar argument in *In re Pers. Restraint of Coats*, 173 Wn.2d 123 (2011). In *Coats*, the petitioner argued that his judgment and sentence was facially invalid because it misstated the maximum sentence, even though the trial court imposed a sentence well below that maximum. 173 Wn 2d at 125-27. The relief he sought was the withdrawal of his plea. *In re Coats*, 173 Wn.2d at 125. The Supreme Court held that a judgment and sentence is facially invalid under RCW 10.73.090(1) where the trial court has exceeded its authority and imposed an unlawful sentence. *In re Coats*, 173 Wn.2d at 135. Because the trial court did not exceed its statutory authority in sentencing the petitioner, despite its error in setting forth the


404893-II

maximum sentence, his judgment and sentence was not facially invalid. *In re Coats*, 173 Wn.2d at 143. Consequently, he was not entitled to withdraw his plea, and the only relief available was a remand for correction of the error under CrR 7.8(a). *In re Coats*, 173 Wn.2d at 144.

Recognizing that *Coats* controls the outcome here, Wheeler asserts that it was wrongly decided. We are bound by the decision in *Coats*, however, and we therefore grant this petition only for the purpose of remanding to the trial court for correction of the maximum sentences set forth in Wheeler's judgment and sentence. *See State v Gore*, 101 Wn.2d 481, 486-87 (1984) (Court of Appeals is bound by decisions of Washington Supreme Court). Accordingly, it is hereby

ORDERED that this petition is granted in part, and the matter is remanded to the trial court for correction of the judgment and sentence.

DATED this 3<sup>rd</sup> day of July, 2012.

  
\_\_\_\_\_  
HT J  
VanDehan, J.

- cc. Robert T. Wheeler  
Pierce County Clerk  
County Cause No. 05-1-02167-7  
Mark Lindquist, Pierce County Prosecuting Attorney  
Brian Wasankari, Deputy Prosecuting Attorney  
Jeffrey E. Ellis

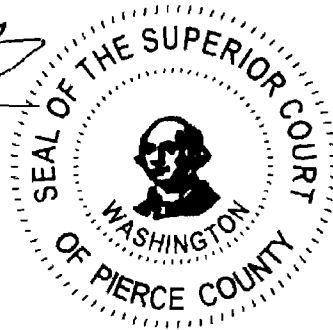
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 4BEAD283-F20F-6452-D03654652491899C**.

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## **APPENDIX H**

Case Number: 05-1-02167-7 Date: September 23, 2013  
SerialID: 4BEC1D04-110A-9BE2-A9E29B2DB81E1394  
Certified By: Kevin Stock Pierce County Clerk, Washington



05-1-02187-7 39084510 MTAM 08-22-12

POOR QUALITY ORIGINAL

POOR QUALITY ORIGINAL

FILED  
IN COUNTY CLERK'S OFFICE  
A.M. AUG 22 2012 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
By \_\_\_\_\_ DEPUTY

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

STATE OF WASHINGTON,  
Plaintiff,  
  
v.  
  
Robert T. Wheeler,  
Defendant.

) COURT NO. 05-1-02167-7  
)  
)  
) MOTION TO AMEND AND CORRECT COURT-IMPOSED  
) CONDITIONS WITHIN DEFENDANT'S CRIMINAL  
) JUDGMENT AND SENTENCE.  
)  
)  
)

1. IDENTITY OF PETITIONER

CORES NOW, Defendant, Robert T. Wheeler, petitions this court for an ORDER providing for all the relief requested within Part II of this pleading. Please note that Mr. Wheeler is a layman of the law, with no formal training as a lawyer, and please take that into consideration while reviewing and considering this motion, holding his pleadings to less-stringent standards than formal pleadings drafted by lawyers. Maines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

1F. STATEMENT OF RELIEF SOUGHT

Defendant seeks an Order from this Court, providing Amendment and Correction to the court-imposed conditions within his Judgment and Sentence, so that (1) all of his family members, including minor-aged relatives, that want to visit and have contact with him, while he is an

incarcerated prisoner within the Washington Department of Corrections, within a safe and monitored setting, will be able to become approved visitors upon Defendant's prison approved visitor list and allowed to visit Defendant during the prison's visiting hours, and (2) removing all prohibitions against contact with minor males.

III. GROUNDS FOR RELIEF

This Motion is properly presented before this Court, pursuant to:

-RCW 9.94A.505(2) Crime-related prohibitions.

-RCW 9.94A.020(12) Legal definition of "crime-related."

-CrP 7.8(b), (1) and (5):

(5) Mistakes; Inadvertance; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, ...excusable neglect...; (5) Any other reason justifying relief from the operation of the judgement.

-RAP 7.2(e)--The trial court has authority to hear and determine (1) post-judgment motions authorized by the civil rules, the criminal

rules,

or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter.

-CrR 1.2--These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, effective justice, and the elimination of unjustifiable expense and delay.

-Manifest Error--Affecting a Constitutionally protected Fundamental Right and a protected Liberty interest.

The U.S. Constitutional 1st, 5th, and 14th Amendments protect an individuals God given Parental and Familial Relationship rights, which are deemed to be a "fundamental liberty interest" right.

WA State caselaw decisions in Stat: v. Letourneau, 100 Wn. App. 424, 441-42, 997 P.2d 436 (2000) (and all the subsequent case cites that follow the principles and holding within this case.)

IV. STATEMENT OF FACTS AND ARGUMENT

Defendant pled guilty in 2006, to one count of 1st degree rape of a

child, and one count of 1st degree child molestation (RCW 9A.44.073, RCW 9A.44.083). The date of the crimes was December 2000 through December 2001. Defendant's victims were two under 12-year old female sisters, that were step-sisters to the Petitioner.

At Defendant's Sentencing hearing, the Judge imposed conditions upon him, including the prohibition of contact with all minors.

Defendant's crimes occurred over ten years ago, while the Defendant was still a minor himself, under the age of fifteen years-old, and as time has passed, not the Defendant, and more importantly, the Defendant's family member, now seek and want the ability to have full contact and visitation with and between Defendant and all his family members that wish to do so.

Without this Court taking the appropriate and statutory action, of amending and correcting Defendant's imposed conditions/prohibitions contained within his Judgment and Sentence (EXHIBIT 1), Defendant and Defendant's family will be unjustly kept from contact and visitation that establishes and builds strong positive family bonds, with each family being able to visit with their respective complete family, including minor-aged members, because the Washington Department of Corrections will refuse to approve and place upon Defendant's prison visiting list, any submitted visiting forms containing a minor-aged member, including those that have no relation to Defendant's crimes.

Currently, Defendant's biological sister, Amanda Wheeler, gave birth to a son, Alex Pashall, on May 15, 2012 (EXHIBIT 2), and she and the father of Alex, Seth Pashall, want to bring their son, Alex, with them when they visit the Defendant in prison, as a family gathering. Amanda Wheeler has provided a notarized Affidavit, affirming that she wants Alex Pashall to have contact and visitation with the Defendant (EXHIBIT 3), and likewise, Seth Pashall has also provided a notarized Affidavit stating the same (EXHIBIT 4). It serves no purpose to restrict this contact.

Defendant's Judgment and Sentence should be amended to reflect imposed conditions of prohibited contact as follows: (1) Defendant shall have no restrictions imposed, relating to minor-aged males, due to no crime relation; (2) Defendant is restricted from having contact with minor-aged males, EXCEPT for those who are a core of Defendant's "immediate family"

and whose parent or parents have specifically acknowledged their understanding of Defendant's conviction and still want to allow contact between their daughter and the Defendant, where there is a responsible adult to supervise the visitation.

For the above reasons and statements, this action is now before this Court.

Washington courts have the authority to impose restrictions and conditions upon Defendants, that are "crime related" and "reasonably necessary and narrowly drawn" to accomplish the essential needs of the state and public order. State v. Piley, 121 Wn.2d 22, 37-39, 846 P.2d 1365 (1993); Malone v. United States, 502 P.2d 554, 556 (9 Cir 1974); RCW 9A.41.505(8) and 9A.41.030(12). The court-imposed condition as worded now, "all minor," does not conform with these rulings, resulting in an abuse of discretion and a sentence that is not statutorily authorized.

A crime-related prohibition may only prohibit conduct directly related to the crime for which the offender has been convicted. RCW 9.94A.505(8); State v. Julian, 102 Wn.App. 296, 304, 9 P.3d 251 (2000). Specifically, the harm to be prevented by an order of no-contact with children must be the sort of harm inherent in the crime being punished. See, e.g., Incira, 107 Wn.App. at 553-54; Letourneau, 100 Wn.App. at 430.

Under State v. Letourneau, 100 Wn.App. 424, 441-42, 997 P.2d 436 (2000), the trial court does not have:

"the authority to place restrictions upon an offender's contact with his or her biological children who are not of similar age or circumstances as a previous victim, where the restriction is neither a crime-related prohibition within the meaning of that statutory term nor otherwise necessary to protect the offender's biological children from the harm of sexual molestation. The general observation that many offenders who molest children unrelated to them later molest their own biological children, without more, is an insufficient basis for State interference with fundamental parenting rights. There must be an affirmative showing that the offender is a pedophile or that the offender otherwise poses the danger of sexual molestation of his or her own biological children to justify such State intervention."

As a parallel comparison to Defendant's situation, while his nephew, Alex Puchall is not his own biological child, he is the biological child of Defendant's own biological sibling.

The Washington state Supreme Court has recognized a parent's right to



raise his/her children without state interference as a constitutionally protected fundamental liberty interest in In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998). Within Defendant's instant case before this Court, the current language of the Judgment and Sentence interferes with the parental rights of Defendant's own biological sibling to allow contact between her minor-aged child and their biological immediate-family member.

Again, within the Washington appellate courts, Division I, the Court ruled that it was not reasonable, though, to order even a sex offender not to have contact with a class of individuals who share no relationship to the offender's crime, in State v. Holston, 1997 WL 20392 (May 27, 1997). Minor trials are a class of individuals that share no relation to the Defendant's crime.

The purposes of prison sentences is to provide punishment, but also to provide and facilitate rehabilitation. Part of the rehabilitation process includes having a strong support system, that will assist an inmate prior to release, and during probation, to assist in the transition back into society as a productive member. The larger the base of support, of individuals that are aware of a Defendant's crime and the situation and circumstances that preceded, the safer the community and public interest will be.

Defendant's family members should be allowed to bring their complete family, including minors, into the prison to visit with the Defendant. The prohibition against contact with all minors, is overbroad, requiring modification, especially for those family members identified within the attached Affidavits of Amanda Meier and Beth Pashall (EXHIBITS 3 and 4), as evidence that they want to have visits with the Defendant while their son, Alex Pashall, is present.

#### V. CONCLUSION

For the reasons and arguments stated within this pleading, coupled together with the authority cited to and provided within the text of this pleading, coupled together with the supporting documents/affidavits in support of this motion as exhibits, and the argument asserted by the court-appointed counsel to represent Defendant on this motion, if needed, the Defendant asks this Court to provide an ORDER to: (1) Amend Defendant's

existing J&S to allow contact with minor female family members, and (2) ~~TRIKE~~ any prohibition against contact with minor males, correcting Appendix G, condition II and Appendix "(b)", #16 and #17, amending "child" and "children" to reflect "females."

I declare under penalty of perjury that the content of this is true and correct to the best of my knowledge and belief. Done on this 19<sup>th</sup> day of August, 2012.

Robert Wheeler  
Signed

Respectfully submitted this 19<sup>th</sup> day of August, 2012.

Robert Wheeler #893003  
Signature  
Robert Wheeler  
FCC/TRU C-618  
P.O. BOX 888  
Monroe, WA 99272

CERTIFICATE OF MAILING

I, Robert T. Wheeler, certify under the penalties of perjury of the state of Washington, that I mailed a true and correct copy of this pleading, upon the Court and the Respondent Prosecuting Attorney's office, by utilizing the prison's internal "legal mail" system and sending the copy to the Respondent's address of record, on the 19<sup>th</sup> of August, 2012.

SIGNED: Robert Wheeler

8/23/2012 10579 370134

Case Number: 05-1-02167-7 Date: September 23, 2013

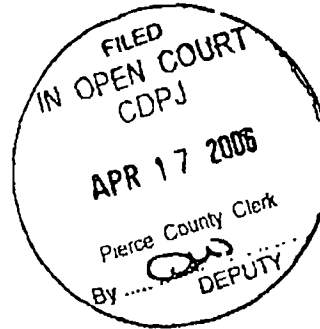
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Certified By: Kevin Stock Pierce County Clerk, Washington

Exhibit 1

Exhibit 1

05-1-02167-7



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 05-1-02167-7

vs.

JUDGMENT AND SENTENCE (JS)

ROBERT T. WHEELER

Defendant

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

APR 18 2006

SID: UNKNOWN  
DOB 03/29/1987

I. HEARING

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

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 APRIL 17, 2006  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	RAPE OF A CHILD IN THE FIRST DEGREE, Charge Code: 136	9A.44 073	N/A	12/06/00 - 12/05/01	PCSO 043070671
II	CHILD MOLESTATION IN THE FIRST DEGREE, Charge Code: 139	9A.44 083	N/A	12/06/00- 12/05/01	PCSO 043070671

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61 520, (JP) Juvenile present.

as charged in the Amended Information

JUDGMENT AND SENTENCE (JS)  
(Felony) (6/19/2003) Page 1 of 1

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- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 99A.589). *NONE*
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number). *NONE*

2.2 CRIMINAL HISTORY (RCW 99A.525): NONE KNOWN OR CLAIMED

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	<i>± 3</i>	XII	<i>102-136 Months 120-160</i>	N/A	<i>102-136 Months 120-160</i>	<i>20yrs/ \$50,000</i>
II	<i>± 3</i>	X	<i>57-75 Months 67-89</i>	N/A	<i>57-75 Months 67-89</i>	<i>10yrs/ \$20,000</i>

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

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW Chapter 379, Section 22, Laws of 2003

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

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate.

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 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

RTR/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

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1  
2 PCV \$ 500.00 Crime Victim assessment  
3 DNA \$ 100.00 DNA Database Fee  
4 PUB \$ Court-Appointed Attorney Fees and Defense Costs  
5 FRC \$ ~~200.00~~<sup>110.00</sup> Criminal Filing Fee  
6 FCM \$ Fine

7 OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

8 \$ Other Costs for \_\_\_\_\_  
9 \$ Other Costs for \_\_\_\_\_  
10 \$ 710.00 TOTAL

11 [X] All payments shall be made in accordance with the policies of the clerk, commencing immediately,  
12 unless the court specifically sets forth the rate herein: Not less than \$ ~~50~~<sup>92</sup> per month  
13 commencing 92 RCW 9.94.760. If the court does not set the rate herein, the  
14 defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to  
15 set up a payment plan. *\* AS DIRECTED BY COMMUNITY  
CORRECTIONS OFFICER (C.C.O.)*

16 4.2 RESTITUTION

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

19 [ ] shall be set by the prosecutor

20 [X] is scheduled for 6/16/06 AT 1:30 PM IN CPRV

21 [ ] defendant waives any right to be present at any restitution hearing (defendant's initials) \_\_\_\_\_

22 [ ] RESTITUTION Order Attached

23 4.3 COSTS OF INCARCERATION

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

27 4.4 COLLECTION COSTS

28 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

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations.  
RCW 10.73.

4.7 [ ] 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.

4.8 [X] DNA TESTING

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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

4.9 NO CONTACT

The defendant shall not have contact with R.L.B., 12/6/94; K.A.B., 12/6/94 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 20 years (not to exceed the maximum statutory sentence)

Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence

4.10 OTHER

ALL CONDITIONS LISTED IN APPENDIX H.

4.11 BOND IS HEREBY EXONERATED

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4 12 SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE RCW 9.94A. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

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

131.75 months on Court I
89 months on Court II

Actual number of months of total confinement ordered is: 131.75

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively.

The sentence herein shall run consecutively to all 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 onsecutively to the felony sentence in cause number(s)

Confinement shall commence immediately unless otherwise set forth here

(b) 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: 0 DAYS

(c) SUSPENSION OF SENTENCE. The execution of this sentence is suspended; and the defendant is placed on community custody under the charge of DOC for the length of the suspended sentence or three years, whichever is greater, and shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. Community custody may be extended for up to the statutory maximum term of the sentence. Violation of community custody may result in additional confinement. The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community service work and be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody

Undergo and successfully complete an [X] outpatient [ ] inpatient sex offender treatment program with

ALLEN TRAYWICK, Ph.D.

for a period of 36 MONTHS MINIMUM UNTIL THE COURT TERMINATES.

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

[X] Serve 2 days/months of total confinement. Work Crew and Electronic Home Detention are not authorized. RCW 9.94A.030

[ ] Obtain and maintain employment.

[ ] Work release is authorized, if eligible and approved. RCW 9.94A.180.



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Defendant shall perform hours of community service as approved by defendant's community corrections officer to be completed.

as follows: \_\_\_\_\_

on a schedule established by the defendant's community corrections officer. RCW 9.94A.

Other conditions: ALL CONDITIONS LISTED IN APPENDIX  
A TO PSI AND APPENDIX G.

The conditions of community custody shall begin immediately unless otherwise set forth here. \_\_\_\_\_

4.13 **REVOCATION OF SUSPENDED SENTENCE** The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence, with credit for any confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.

4.14 **TERMINATION HEARING.** A treatment termination hearing is scheduled for 1/9/2009  
AT 1:30 P.M. IN DEPT. 16  
(three months prior to anticipated date for completion of treatment) RCW 9.94A.

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4 12 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)

\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

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, Sentencing Data, above)

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 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 prior to the commission of the crime(s) being sentenced. \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. 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: \_\_\_\_\_

4 13 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 36 to 48 Months;

Count II for a range from: 36 to 48 Months;

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months;

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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.

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

5.4 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.

5.5 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.

5.6 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 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 this state's 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.

OPEN  
PART 5  
INITIALS

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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 48 hours excluding weekends and holidays 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 weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

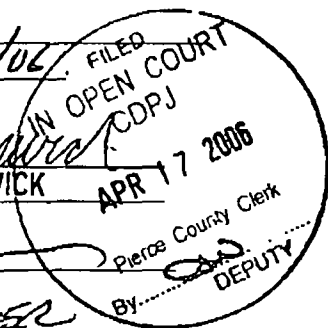
If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new 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.

57 OTHER. COMPLY WITH NCOs, APPENDIX H & G,  
AND REGISTRATION REQUIREMENTS

DONE in Open Court and in the presence of the defendant this date 4/17/06

JUDGE  
Print name

Lisa Worswick  
LISA WORSWICK



[Signature]

Deputy Prosecuting Attorney  
Print name: BRIAN WASANKARI  
WSB # 28945

Attorney for Defendant  
Print name: GARY CLOWER  
WSB # 17720

[Signature]

Defendant  
Print name: ROBERT WHEELER

05-1-02167-7

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 05-1-02167-7

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

WITNESS my hand and seal of the said Superior Court affixed this date \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

**SUZANNE TRIMBLE**

Court Reporter

05-1-02167-7

IDENTIFICATION OF DEFENDANT

SID No UNKNOWN Date of Birth 03/29/1987  
(If no SID take fingerprint card for State Patrol)

FBI No UNKNOWN Local ID No UNKNOWN

PCN No UNKNOWN Other

Alias name, SSN, DOB: \_\_\_\_\_

Race					Ethnicity	Sex			
<input type="checkbox"/>	Asian/Pacific Islander	<input type="checkbox"/>	Black/African- American	<input checked="" type="checkbox"/>	Caucasian	<input type="checkbox"/>	Hispanic	<input checked="" type="checkbox"/>	Male
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other: .	<input checked="" type="checkbox"/>	Non- Hispanic	<input type="checkbox"/>			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 Don Waga Dated: 4/17/09

DEFENDANT'S SIGNATURE: Robert J Wheeler

DEFENDANT'S ADDRESS: \_\_\_\_\_

05-1-02167-7

APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

I The defendant shall attend and complete sexual deviancy treatment with:

ALLEN ~~TRAY~~ TRAYWICK, Ph.D.

- 1 The defendant shall follow all rules set forth by the treatment provider,
- 2 The defendant shall submit to quarterly polygraph examinations to monitor compliance with treatment conditions,
- 3 The defendant shall submit to periodic plethysmograph examinations,
- 4 The defendant shall not peruse pornography, which shall be defined by the treatment provider
- 5.

II. The defendant shall not have any contact with the victim(s) K.A.B., 12/6/1994, R.L.B., 12/6/1994 or any minor child (without prior written authorization from the treatment provider and community corrections officer) The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades,

III The defendant's living arrangements shall be approved in advance by the community corrections officer

IV The defendant shall work at Department of Corrections approved education or employment.

V The defendant shall not consume alcohol

VI The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions

VII The defendant shall remain within geographical boundaries prescribed by the community corrections officer.

VIII

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

STATE OF WASHINGTON	]	Cause No.: 05-1-02167-7
	]	
Plaintiff	]	JUDGEMENT AND SENTENCE (FELONY)
v.	]	APPENDIX H
Robert Wheeler	]	COMMUNITY PLACEMENT / CUSTODY
	]	
Defendant	]	
	]	
DOC No 893003	]	

The court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

**COMMUNITY PLACEMENT/CUSTODY:** Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to community placement/custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer; and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community placement/custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during



the term of community placement/custody:

- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
- (2) Work at Department of Corrections' approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances,
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
- (8) Notify community corrections officer of any change in address or employment, and
- (9) Remain within geographic boundary, as set fourth in writing by the Community Corrections Officer.

**WAIVER:** The following above-listed mandatory conditions are waived by the Court: None

(b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody

10. Reside at a residence and under living arrangements approved of in advance by your community corrections officer. You shall not change your residence without first obtaining the authorization of you community corrections officer.
11. Enter and complete a state approved sexual deviancy treatment program through a certified sexual deviancy counselor. You are to sign all necessary releases to insure your community corrections officer will be able to monitor your progress in treatment.
12. You shall not change sexual deviancy treatment providers without prior approval from the Court and your community corrections officer.
13. You shall not possess or consume any mind or mood altering substances, to include alcohol, or any controlled substances without a valid prescription from a licensed physician.
14. Have no contact with the victims or their family for life. This includes but is not limited to personal, verbal, written or contact through a third party.
15. Do not possess or peruse pornographic materials. Your community corrections officer will define pornographic material.
16. Hold no position of authority or trust involving children under the age of 18.
17. Do not initiate or prolong physical contact with children under the age of 18 for any reason.
18. Inform your community corrections officer of any romantic relationships to venfy there are no victim-age children involved.
19. Submut to polygraph and plethysmograph testing upon direction of your community corrections officer or therapist at your expense.
20. Register as a sex offender in your county of residence.
21. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)

22. Submit to a blood draw for DNA purposes and for an HIV test.
23. Follow all conditions imposed by your sexual deviancy treatment provider
24. Obey all laws.
25. You shall not have access to the internet unless the computer has child blocks in place and active.
26. While on supervision by the Department of Corrections you will allow non-scheduled visits to your home, place of business or other places as deemed appropriate. During these visits visual inspections may be made to insure your compliance to conditions of supervision

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE, PIERCE COUNTY SUPERIOR COURT

8/23/2012 18579 378150

Case Number: 05-1-02167-7 Date: September 23, 2013

SerialID: 4BEC1D04-110A-9BE2-A9E29B2DB81E1394

Certified By: Kevin Stock Pierce County Clerk, Washington

Exhibit 2

Exhibit 2

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

CERTIFICATE OF LIVE BIRTH

CERTIFICATE NUMBER: 146-2012-031123

DATE ISSUED: 06/06/2012

GIVEN NAMES: ALEX JACOB\*\*\*\*\*

LAST NAME: PARSHALL\*\*\*\*\*

DATE OF BIRTH: MAY 15, 2012\*\*\*\*\*

FACILITY: TACOMA GENERAL HOSPITAL

PLACE OF BIRTH: TACOMA, PIERCE COUNTY, WASHINGTON

TIME OF BIRTH: 03:39 P.M.

SEX: MALE

MOTHER'S MAIDEN NAME: AMANDA ROCHELLE WHEELER

PLACE OF BIRTH: WASHINGTON

DATE OF BIRTH: 03/18/1986

FATHER'S NAME: SETH MICHAEL PARSHALL

PLACE OF BIRTH: WASHINGTON

DATE OF BIRTH: 08/20/1990

FILING DATE: 05/23/2012

FEE NUMBER: 2712



8/23/2012 18579 370152

Case Number: 05-1-02167-7 Date: September 23, 2013

SerialID: 4BEC1D04-110A-9BE2-A9E29B2DB81E1394

Certified By: Kevin Stock Pierce County Clerk, Washington

Exhibit 3

Exhibit 3



0/23/2012 18579 378154

Case Number: 05-1-02167-7 Date: September 23, 2013

SerialID: 4BEC1D04-110A-9BE2-A9E29B2DB81E1394

Certified By: Kevin Stock Pierce County Clerk, Washington

Exhibit 4

Exhibit 4





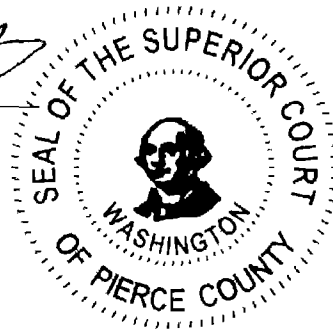
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 23 day of September, 2013



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Sep 23, 2013 10:42 AM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter SerialID: 4BEC1D04-110A-9BE2-A9E29B2DB81E1394.

This document contains 28 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

# PIERCE COUNTY PROSECUTOR

September 23, 2013 - 1:23 PM

## Transmittal Letter

Document Uploaded: prp2-450291-Response.pdf

Case Name: In re the PRP of: Robert Wheeler

Court of Appeals Case Number: 45029-1

Is this a Personal Restraint Petition?  Yes  No

### The document being Filed is:

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: [hjohns2@co.pierce.wa.us](mailto:hjohns2@co.pierce.wa.us)

A copy of this document has been emailed to the following addresses:

[jeffreyerwinellis@gmail.com](mailto:jeffreyerwinellis@gmail.com)