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Washington State
Supreme Court

Supreme Court No. 96472-6
Court of Appeals No. 50442-1-11

IN THE SUPREME COURT OF THE WASHINGTON STATE

STATE OF WASHINGTON
RESPONDENT

VS.

RAMON TREVINO HERNANDEZ
APPELLANT

ON APPEAL FROM SUPERIOR COURT
FOR THE COUNTY OF CLARK
THE HONORABLE JOHN F. NICHOLS
THE HONORABLE DEREK VANDERWOOD

MOTION FOR DISCRETIONARY REVIEW

RAMON TREVINO HERNANDEZ
AIRWAY HEIGHTS CORRECTION CENTER
POST OFFICE BOX 2049
AIRWAY HEIGHTS WASHINGTON 99001
Pro se

TABLE OF CASES

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United states V. Carter, 454 F.2d 426, 428
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STATE CASES

State V. Angulo 148 Wn. App 642 (2009) (6)

In Re Pers Restraint of carrier,
173 Wn. 2d 791, 818, 272 P.3d 209 (2012) (5)

State V. McFarland, 127 Wn. 2d 322, 333
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In Re the Personal Restraint of Ramon Trevino Hernandez
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The trial court erred by providing petitioner with a defective counsel consequently, petitioner's Constitutional right to allocation was suppressed and/or denied at re-sentencing, where Attorney refused to confer with petitioner before the date of the hearing and it was until the very moment of said hearing when petitioner was allowed to talk to the attorney outside the courtroom? (1)

Does it amounts Double Jeopardy infringement to the FIFTH AMENDMENT, when petitioner was charged doubly violation to Statute RCW 9A.44.073 and doubly violation to Statute RCW 9A.44.083, when there was same victim, same statutes, and same criminal conduct? (4)

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(I).

IDENTITY OF PETITIONER

Petitioner RAMON TREVINO HERNANDEZ respectfully asks this court to accept review of the court of appeals decision terminating review designed in part (II) of this petition.

(II).

COURT OF APPEALS DECISION

Petitioner seeks review of the Washington court of appeals ruling filed date October 16, 2018, where only issue regarding LFOs was conceded, and <SAG> 10.10 (c) was rejected because "Arguments outside scope of direct appeal".

Copy of Wa. court of appeals ruling is attached as <Exhibit (1)>.

(III).

ISSUES PRESENTED FOR REVIEW

(1) Was Petitioner's Constitutional right to allocution denied, when he was not allow to confer with appointed counsel before re-sentencing hearing date, and it was until May 19, 2017 the day of said hearing, when he could finally talk with lawyer for a few minutes outside the courtroom transcripts of re-sentencing at 4, 5-9, whereupon (Mr. Rucker) refused to read a piece of paper on which the petitioner had wrote a request for counsel to address the trial court its errors of Constitutional dimension which had resulted in a manifest miscarriage of justice that had worked to the disadvantage of petitioner when he was convicted to rape of a child in the first and second degree. Even though there was not penetration performed on present matter and therefore, statutes RCW 9A.44.073 and RCW 9A.44.076, were not violated?

See pre-sentence investigation report at 2. <Exhibit (2)>

(2) Is on case at the stage, court of appeals in error by its denial of SAG 10.10. (c). When Mr. Rucker has not give petitioner any chance to express his disadvantage of being suffering from diminish capacity which is preventing him from speak directly to any person having considerable authority at any court hearing including trial, Sentencing, and Re sentencing, where basically all what petitioner has been able to say is, thank you your

honor. Consequently, order from Supreme Court was not observed? See re-sentencing documents C P 2.3, and Transcripts at 8, 17-18. <Exhibit (2)>.

(3) Did Mr. Rucker here, put in peril the Rule of Law and Sovereignty of U S Sixth Amendment, when he refused for a long decade to communicate with petitioner in a explicit way and by not showing-up to meetings with petitioner before the date of any court hearing session. Beginning from (2007) which was the year when Judicial Proceedings on present matter begun, and thence those two meetings which petitioner and Mr. Rucker had in-between September 20, (2007) and January 04, (2008), where Interpreter was not present? See SAG 10.10 GROUND# 5, 12-13; and transcripts at 3. 8-10. Attached as <Exhibit (2)>.

Moreover, at re-sentencing held at clark county on May 19, 2017.

Still Mr. Rucker failed short on his Ethics and fiduciary responsibilities because he did not show-up before the date of re-sentencing hearing. Hence, working relationship in-between attorney-client here, was never establish and in consequence, petitioner suffered prejudice where at re-sentencing his right to allocation was suppressed and/or denied?

See Transcripts at 4, 5-9. And SAG 10.10. Ground #5 at 12,13. And CP at 2,3. Attached as <Exhibit (2)>.

(IV)

STATEMENT OF THE CASE

On January -08, 2008 petitioner plead guilty under a second amendment information to six counts of sexual offences to his minor Daughter, including counts (1 and 3) then, on March 14, 2008 petitioner was sentenced to serve 318 months to life in prison pursuant to RCW 9.94A.712 and petitioner appealed. However, because he was not advised about the time frame to appeal, he was late on filing notice of appeal. However, he could file a "MOTION TO FILE A LATE NOTICE OF APPEAL" and the same was denied by the court of appeals as of September 03, 2008. See <Exhibit (1)>.

Afterwards, petitioner filed a timely P.R.P arguing that his plea was not knowingly and not intelligently entered because his trial attorney deceived or mislead him, however, this petition was dismissed on July 02, 2009. Certificate of finality was stamped on January 05, 2010. <See Exhibit (1)>.

Then, Petitioner filed a second P.R.P. arguing that his restraint was unlawful because his plea was coerced and he was denied his right to effective assistance of counsel, and that the evidence was insufficient to support conviction. Court denies said petition as untimely Copy of this petition is included as <Exhibit (1)>.

Petitioner subsequently filed a third P.R.P. where he asserted the judgment and sentence in counts (1 and 3) were invalid on its face because he was sentenced on six counts according to RCW 9.94A.712 (3), and said statute apply only to crimes occurred on or after September 1, 2001 thus, because crimes on (counts one and three) allegedly occurred before the effective date of statute RCW 9.94A.712, therefore, counts (1 and 3) were factually invalid on its face. Said petition was granted by the Washington state Supreme Court, and was remanded as to the validity of sentencing on counts (1 and 3) on the eight day of March (2017). Order is attached as <Exhibit (2)>.

(V).

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The consideration governing decision to grant review on this petition is established in RAP 13.4 (b); Petitioner have the belief this court should concede review of issues on present petition since the decision of court of appeals is in conflict with other decisions of this court and decisions of court of appeals itself. RAP 13. 4 (b)(1) and (2). Furthermore, it implicates a significant question of Law under the U.S. Constitution, and under the Washington state constitution RAP 13 4 (b) (3) besides, it involves issues of substantial public

interest that should be determined by the Supreme court RAP 13.4.
(b) (4).

On this case, has state court of appeals erred, where it granted only LFO's statement on direct appeal, and denied <SAG> 10.10 (c) because "arguments outside scope of direct appeal" nonetheless, trial court restraint and/or denied allocution to defendant and thence it committed infringement to the U.S. FIFTH Amendment's DOUBLE JEOPARDY by the restatement of counts (1 and 3) right after been VACATED by same court?

See Court of appeals decision at 8. (B). And Transcripts at 3. 8-10, 5. 24-25 and 6. 1-6. Attached as <Exhibit (1)>.

On case at the stage, Statutes RCW 9A.44.073 and RCW 9A.44.083, on counts (2 and 4). as well as RCW 9A.44.073 and RCW 9A.44.083. On counts (1 and 3) which statutes allegedly petitioner violated, are absolutely the same; same victim, same statute, same conduct;

TEXT ON COUNT (1)

A.T.Y. who was less than twelve years old and not married to the defendant and the defendant was at least twenty four months older than the victim; Contrary to revised code of Washington 9A.44.073

TEXT ON COUNT (2)

A.T.Y. who was less than twelve years old and not married to the defendant and the defendant was at least twenty four months older than the victim; Contrary to revised code of Washington 9A.44.073

See "information" documents. <Exhibit (2)>

texts above, realistically amounts a violation to Double Jeopardy clause of the U.S. 5TH Amendment. Citing State V. Sanchez 146 Wn. 2d 339 (2001) which states; "Merits. when a defendant claims

Constitutional error the court previews the merits of the claimed error to determine whether the argument is likely to succeed. State V. WWJ. Corp., 138 Wn 2d. 595, 603 980 P.2d 1257 (1999). The error is considered "manifest" Under RAP 2.5 (a)(3) if the facts necessary to review the claim are in record and the defendant shows actual prejudice State V. McFarland, 127 Wn. 2d 322, 333, 899 P.2d 1251 (1995). In both cases all relevant facts are in record"

Furthermore, by denying petitioner's (SAG) 10.10 (c), court of appeals is automatically allowing trial court to remain in error pertaining Order from Supreme court; Citing In Re the Personal Restraint of Ramon Trevino Hernandez No. 93922-5 (2017), "Trevino Hernandez should have been sentenced to determinate standard range sentence terms on counts (one and three) since such terms are determinate and not subject to increase as are indeterminate minimum terms, and since the applicable community custody terms for those crimes is the longer of a specified range or the period of earned early release, not life, see In Re Pers. Restraint of carrier, 173 Wn.2d 791, 818, 272 P.3d 209 (2012).

See Order from Supreme Court, and re-sentencing C P 2.3 which has been attached as <Exhibit (2)>

According to legal arguments above, petitioner was prejudiced, by been; (i) denied right to allocution. And (ii) inflicted with double Jeopardy:

In addition, order from Supreme Court has not been yet observed by trial court. Consequently here, adjudication on judgment and sentence regarding entire case, is null and/or void. Citing court of United States V. Carter, 454 F.2d 426, 428 (4th Cir. (1972), which states; "fairness is mandate to ensure public confidence in the administration of our Justice system"

therefore here, petitioner demands to be relieved from manifest miscarriage of justice, by trial court be observant to order from Supreme Court where present case was remanded, as to the validity

of sentencing on counts (1 and 3) only. Hence, in order to be in harmony with contract on present matter, and with Supreme Court, the trial court must dismiss associated counts (2,4,5,6.).

On this case state may argue as usual, that petitioner confessed, and that he signed the plea. However, these arguments must fail because (a) at witness stand, petitioner confessed the truth of the matter which amounts "molestation only", for have been kissed A.T.Y. And (b) he was literally compelled to sign the unlawful plea. And (c) because "confession not corroborated by independent evidence of corpus delicti, is not sufficient to support a conviction of a crime." Citing State V. Angulo 148 Wn. app. 642 (2009).

(VI).

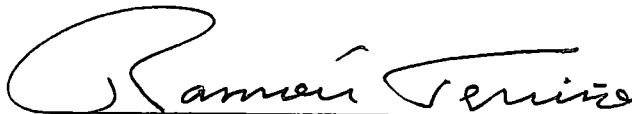
CONCLUSION

By undeniable facts stated above, petitioner respectfully asks this court to reverse the court of appeals decision, dismiss counts (2,4,5,6.) and keep active counts (1 and 3) with a definite sentence stipulated on the same; or to consider petitioner being tried ANEW on all counts (1,2,3,4,5,6).

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Dated this 14th day of November, 2018

RESPECTFULLY SUBMITTED BY:



RAMON TREVINO HERNANDEZ# 314712

AHCC P.O. BOX 2049 K-A-51-L

AIRWAY HEIGHTS WASHINGTON 99001

Pro se

DECLARATION OF MAILING

I RAMON TREVINO HERNANDEZ, declare that on the FOURTEENTH day of NOVEMBER, 2018, I placed the foregoing documents;

- (1) Petition for discretionary review.
- (2) EXHIBIT (1).
- (3) EXHIBIT (2).

Or copy thereof, in the internal legal mail system of the AIRWAY HEIGHTS CORRECTIONS CENTER, with appropriate postage, addressed to;

1. MR. ERIN L. LENNON DEPUTY CLERK

WASHINGTON STATE SUPREME COURT TEMPLE OF JUSTICE

P.O. BOX 40929 OLYMPIA WASHINGTON 98504-0929

2. MR. DEREK BYRNE, CLERK

WASHINGTON STATE COURT OF APPEALS DIVISION TWO

950 BROADWAY SUITE 300 TACOMA WASHINGTON 98402

3. MR TONY GOLIK

CLARK COUNTY PROSECUTING ATTORNEY

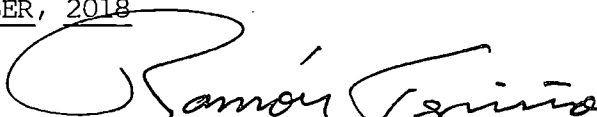
1013 FRANKLIN STREET

VANCOUVER WASHINGTON 98666-5000

I SWEAR IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Dated this 14th day of NOVEMBER, 2018

RESPECTFULLY SUBMITTED BY;



RAMON TREVINO HERNANDEZ

AHCC P.O. BOX 2049 K-A- 51-L

AIRWAY HEIGHTS WASHINGTON 99001

Pro se

EXHIBIT 1

October 16, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RAMON TREVINO-HERNANDEZ,

Appellant.

No. 50442-1-II

UNPUBLISHED OPINION

WORSWICK, J. — Ramon Trevino-Hernandez was resentenced on two of six convictions involving the rape and molestation of a child. He appeals his sentence, arguing that the trial court erred when it entered findings that he would be able to pay legal financial obligations (LFOs) in the future and allowed for later entry of LFOs because the court (1) exceeded its authority under the remand order and (2) failed to make an individualized inquiry regarding Trevino-Hernandez's ability to pay. The State concedes both arguments.

In addition, Trevino-Hernandez raises several issues in a statement of additional grounds (SAG) for review.

We reject the State's concession on the first issue but accept the State's concession on the second issue. Thus, we hold that the trial court possessed authority to address LFOs, but that the trial court erred by entering a finding that Trevino-Hernandez would be able to pay LFOs without inquiring into Trevino-Hernandez's individual ability to pay. We also determine that Trevino-Hernandez raises no issues requiring reversal in his SAG. Consequently, we strike the

finding that Trevino-Hernandez would be able to pay LFOs, and we remand to the trial court for further proceedings consistent with this opinion.

FACTS

In 2008, Ramon Trevino-Hernandez was charged with six counts relating to the rape and molestation of a child.¹ He pleaded guilty to all counts, and was sentenced under former RCW 9.94A.712(2001). Trevino-Hernandez was sentenced to indeterminate sentences for all six counts.

Trevino-Hernandez filed a PRP (personal restraint petition) that this court transferred to the Washington Supreme Court.² The Supreme Court held that Trevino-Hernandez was entitled to a correction of his sentence regarding counts 1 and 3 because former RCW 9.94A.712, which authorized indeterminate sentences for certain crimes, applied only to criminal acts occurring on or after September 1, 2001. Former RCW 9.94A.712(1).³ Because the underlying acts for counts 1 and 3 occurred before the effective date of the indeterminate sentencing statute, the Supreme Court granted Trevino-Hernandez's PRP "as to the validity of the sentencing on counts

¹ These counts were as follows: counts 1 and 2, first degree child rape; counts 3 and 4, first degree child molestation; count 5, second degree rape of a child; and count 6, second degree child molestation.

² This court determined that Trevino-Hernandez's PRP was successive.

³ Conduct relating to count 1 occurred between September 1, 1996 and August 21, 2001. Conduct relating to count 3 occurred between September 1, 1996 and August 31, 2001.

[1 and 3], and . . . remanded to the Superior Court for resentencing on these counts.”⁴ Clerk’s Papers (CP) at 54.

On remand, the trial court vacated Trevino-Hernandez’s sentence as to counts 1 and 3, and conducted a resentencing hearing on those counts. The trial court confirmed that Trevino-Hernandez’s counsel met with Trevino-Hernandez before the resentencing hearing. Counsel raised Trevino-Hernandez’s concerns and arguments to the court.

The trial court twice invited Trevino-Hernandez to speak during the resentencing hearing.

In both instances, Trevino-Hernandez said that counsel’s argument reflected all he had to say.

After considering argument and the original sentence imposed, the trial court resentedenced Trevino-Hernandez to the high end of the sentencing range for each count.

The trial court then entered a judgment and sentence for counts 1 and 3. The trial court checked a box in the findings section of the document, finding that “the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.” CP at 75. The court also checked the boxes indicating that restitution or other legal financial obligations can be determined at a later date and that the prosecutor shall set the restitution hearing. The resentencing hearing record does not reflect any discussion of, or individualized inquiry into, Trevino-Hernandez’s current or future financial ability.

Trevino-Hernandez appeals.

⁴ Because this was a facial sentencing error, the court held that the claim was exempt from the PRP time limitation. The court did not review Trevino-Hernandez’s PRP claim that his guilty plea was involuntary because those claims were untimely under *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014).

ANALYSIS

I. LEGAL FINANCIAL OBLIGATIONS IMPOSED AT THE RESENTENCING HEARING

Trevino-Hernandez argues that the trial court erred when it entered a finding of fact stating he was ““anticipated to be able to pay financial obligations in the future”” and when it allowed for a new restitution hearing. Br. of Appellant at 8 (quoting CP at 75). Specifically, he contends that the Washington Supreme Court did not authorize the trial court to revisit his LFOs during this resentencing proceeding. He also contends that the trial court erred because it did not make an individualized inquiry into his ability to pay before finding that he can or could pay in the future. The State concedes that the remand order did not allow the trial court to enter any findings regarding legal financial obligations. The State also concedes that no individual inquiry was made on the record into Trevino-Hernandez’s ability to pay before the imposition of legal financial obligations. Accordingly, both parties request this court remand the case to the trial court to strike the findings regarding legal financial obligations from the judgment and sentence.

A. *Remand Order*

Without citation to law, Trevino-Hernandez contends that the remand order limited the trial court to resentencing under the proper statute and did not allow for consideration of legal financial obligations. The State concedes this issue. We disagree with Trevino-Hernandez and, thus, reject the State’s concession.

An appellate court mandate can limit the scope of a trial court’s discretion to resentence on remand. *State v. Kilgore*, 167 Wn.2d 28, 42, 216 P.3d 393 (2009). A decision made by an appellate court is “binding on the parties to the review and governs all subsequent proceedings.”

RAP 12.2. In *State v. Toney*, we held that the trial court properly exercised its discretion by conducting a full, adversarial resentencing proceeding when this court's opinion and remand unequivocally "remand[ed] for resentencing." 149 Wn. App. 787, 792-93, 205 P.3d 944 (2009) (alteration in original) (quoting *State v. Toney*, noted at 95 Wn. App. 1031, 1999 WL 294615, at *1). During a full sentencing proceeding, a trial court may impose discretionary LFOs in accordance with RCW 10.01.160(3). See *State v. Blazina*, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015).

Here, the remand order stated that Trevino-Hernandez's petition was granted "as to the invalidity of the sentencing on Counts [1 and 3], and is remanded to the Superior Court for resentencing on these counts." CP at 54 (emphasis added). Like *Toney*, the language of this remand for resentencing was not limited to a ministerial correction, but rather entitled the defendant to a full resentencing hearing on counts 1 and 3 without restraints from a specific mandate.

Because the remand order did not limit the trial court, it was entitled to conduct a full sentencing proceeding on counts 1 and 3, which included the ability to address LFOs on those counts. This is exactly what the trial court did. First, the trial court vacated the sentence as to counts 1 and 3. Then, the trial court heard argument from Trevino-Hernandez and the State regarding the amount of time to be imposed for counts 1 and 3. The trial court then imposed sentences at the high end of the standard range. The trial court was entitled to, and did indeed, conduct a full sentencing hearing regarding counts 1 and 3. Because the resentencing was a full sentencing hearing, the trial court had authority to address LFOs in accordance with RCW

10.01.160(3). We hold that the trial court operated within its authority on remand to conduct a full sentencing hearing on counts 1 and 3, which included making findings on Trevino-Hernandez's ability to pay LFOs.

B. *Entry of LFO Findings without Individualized Inquiry*

Trevino-Hernandez also argues that the trial court erred when it entered the finding of Trevino-Hernandez's future ability to pay because it failed to make an individualized inquiry into his ability to pay before entering the finding. The State concedes this issue. We agree with Trevino-Hernandez and accept the State's concession.

The adequacy of a sentencing court's inquiry into a defendant's ability to pay discretionary LFOs is a mixed question of law and fact we review de novo. *State v. Ramirez*, No. 95249-3, 2018 WL 4499761, at *4 (Wash. Sept. 20, 2018). Our Supreme Court has made clear that under RCW 10.01.160(3), the sentencing court "must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." *Blazina*, 182 Wn.2d at 838. In this case-by-case analysis, each judge must take into consideration important factors such as incarceration and the defendant's other debts. *Ramirez*, 2018 WL 4499761, at *4. The record on appeal must show that the trial court made an individualized inquiry into the defendant's current and future ability to pay. *Blazina*, 182 Wn.2d at 838.

Here, the record shows that the sentencing court did not make any such inquiry into any factors comprising Trevino-Hernandez's financial ability to pay LFOs. Without this inquiry, the trial court erred by finding that Trevino-Hernandez "is presently indigent but is anticipated to be able to pay financial obligations in the future." Accordingly, we strike these findings and

remand this case for the trial court to either properly consider Trevino-Hernandez's ability to pay discretionary LFOs or strike them.⁵

II. STATEMENT OF ADDITIONAL GROUNDS

In his SAG, Trevino-Hernandez raises several additional issues to challenge his conviction and sentence. Trevino-Hernandez argues that all six convictions must be dismissed, or alternatively, that he be allowed to withdraw his guilty plea. We hold that these arguments are untimely. To the extent that Trevino-Hernandez argues that he was denied his rights to counsel and to allocute at his resentencing hearing, and that the trial court did not adhere to the remand order (SAG at 5-6), we disagree.

A. *SAG Principles*

A SAG must adequately inform the court of the nature and occurrence of alleged errors. *State v. Calvin*, 176 Wn. App. 1, 26, 302 P.3d 509, 316 P.3d 96 (2013). We consider only arguments not already adequately addressed as raised by the defendant's appellate counsel. *State v. Thompson*, 169 Wn. App. 436, 493, 290 P.3d 996 (2012). We do not consider matters outside the scope of the direct appeal. *State v. Barberio*, 121 Wn.2d 48, 50-51, 846 P.2d 519 (1993). We do not review matters outside the record on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995). Issues involving facts outside of the record are properly raised

⁵ After the briefing in this case was completed, Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783), amended two statutes at issue and now prohibits the imposition of certain LFOs on indigent defendants. LAWS OF 2018, ch. 269, §§ 6, 17. House Bill 1783 applies prospectively. *Ramirez*, 2018 WL 4499761, at *6. Because it was not briefed, we leave for the sentencing court the determination of House Bill 1783's effect on Trevino-Hernandez's case.

in a PRP, rather than a SAG. *Calvin*, 176 Wn. App. at 26. And we are “not obligated to search the record in support of claims made in a [SAG].” RAP 10.10(c).

B. *SAG Arguments Outside Scope of Direct Appeal*

As an initial matter, Trevino-Hernandez’s request for relief states only that he requests dismissal of all six convictions or, alternatively, a withdrawal of his guilty plea and a new trial. Trevino-Hernandez’s requested relief is outside the scope of the direct appeal.

Although Trevino-Hernandez requests relief beyond the scope of this appeal, he alleges errors arising from his resentencing hearing. Specifically, he alleges that his rights to counsel and to allocution were violated and that the trial court did not comply with the remand order.

We exercise our discretion to consider these arguments to determine only whether Trevino Hernandez is entitled to a new resentencing hearing. We hold that he is not.

C. *Sixth Amendment Right To Communicate with Counsel*

Trevino-Hernandez appears to claim that he was deprived of meaningful communication with his trial counsel for the resentencing hearing. We disagree.

A defendant’s constitutional right to the assistance of counsel includes the right to confer privately with his or her attorney. *State v. Peña Fuentes*, 179 Wn.2d 808, 818, 318 P.3d 257 (2014). We review the denial of a constitutional right de novo. *State v. Stone*, 165 Wn. App. 796, 810, 268 P.3d 226 (2012).

Trevino-Hernandez claims that he was unable to meaningfully communicate with his attorney, but the record on appeal shows that counsel met with Trevino-Hernandez before the hearing. The trial court verified on the record that Trevino-Hernandez was able to confer with

his attorney before the hearing. Based on the record on appeal, we hold that Trevino-Hernandez had an adequate opportunity to meet and discuss his case with his attorney before resentencing.

D. *Right to Allocation*

Trevino-Hernandez also claims his right to allocation at the resentencing hearing was violated. We disagree.

Washington recognizes a defendant's statutory right to allocation, which requires a court to consider any argument by the defendant as to the sentence being imposed. RCW 9.94A.500(1); *State v. Canfield*, 154 Wn.2d 698, 703-04, 116 P.3d 391 (2005).

Here, the record on appeal shows Trevino-Hernandez was twice given the opportunity to speak and twice declined to do so. In both instances, the trial court addressed Trevino-Hernandez directly and invited him to make any statements after counsel argued on his behalf. In both instances, Trevino-Hernandez said that his counsel's argument reflected all he had to say. We hold that Trevino-Hernandez was provided the opportunity to speak at his resentencing hearing. Accordingly, Trevino-Hernandez's right to allocation was not violated.

E. *Compliance with the Remand Order*

Trevino-Hernandez claims the trial court did not follow the remand order. Specifically, Trevino-Hernandez says the "trial court still needs to complete order of Supreme [C]ourt by correcting judgment and sentence from miscarriage of justice accordingly [sic]." Trevino-Hernandez appears to seek resentencing on all counts. SAG at 6. This claim fails.

As discussed above, the trial court complied with the Supreme Court's remand order by resentencing Trevino-Hernandez to counts 1 and 3 under the proper statute. The remand order

addressed only this resentencing issue and did not reach the merits of Trevino-Hernandez's other PRP claims. As a result, the trial court properly complied with the order by not addressing counts 2, 4, 5, or 6 at the resentencing hearing. Because the trial court complied with the remand order of resentencing counts 1 and 3, except for the LFOs as discussed above, Trevino-Hernandez is not entitled to relief on this ground.

F. *Too Vague To Address, Additional Ground 1*

A-SAG must inform the court of the nature and occurrence of the alleged error. RAP 10.10(c). In additional ground 1, Trevino-Hernandez provides factual background of his life and raising his daughter, the victim of his crimes. Trevino-Hernandez mentions evidentiary failings, but it is impossible to tell what his argument is. To the extent he makes legal arguments in additional ground 1, these assertions of error are too vague to allow us to identify the issues. As such, we are unable to reach them.

G. *Grounds Outside the Record*

Trevino-Hernandez also asserts a number of other claims that are outside the record on direct appeal to this court. Although he pleaded guilty, Trevino-Hernandez claims a variety of trial errors, in addition to sentencing errors, an involuntary guilty plea, and his overall factual innocence regarding his convictions. We can address only facts and issues within the record of the direct appeal.

In additional grounds 2, 4, and 5, Trevino-Hernandez denies certain facts pertaining to his crimes or certain reports made during the investigation into his crimes. He maintains his innocence and insists that some investigatory materials support his position.

In additional grounds 3, 4, and 5, Trevino-Hernandez claims ineffective assistance by his trial counsel and that he had a right to speak at his initial sentencing hearing. He asserts that trial counsel failed to object to certain remarks from the prosecutor, failed to file a motion in limine to restrict the State's ability to attack his character, and that counsel's performance overall fell below the standard of objective reasonableness.

In additional ground 4, Trevino-Hernandez claims a number of errors by the prosecutor which prevented him from receiving a fair trial as required by due process. He claims the prosecutor committed misconduct by labeling him a "criminal" in its opening statement. SAG at 9. He also asserts a *Brady*⁶ violation for what he believes was a withholding of an exculpatory report. Further, he contends that there were no jury instructions for lesser included offenses provided. Last, Trevino-Hernandez contends his current incarceration is cruel and unusual punishment because he is innocent of the crimes for which he has been convicted.

In additional grounds 4 and 5, Trevino-Hernandez claims his plea was not made voluntarily or knowingly. In additional ground 5, Trevino-Hernandez claims he was not given the opportunity to meet with his counsel before his initial sentencing hearing.

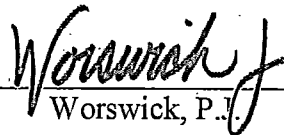
These assertions are all dependent on matters outside the record of the resentencing issue on appeal. As such, we are unable to address these issues in this appeal. *McFarland*, 127 Wn.2d at 338. Accordingly, all of Trevino-Hernandez's SAG claims fail.

In conclusion, we strike the trial court's findings regarding Trevino-Hernandez's ability to pay LFOs and remand to the trial court for further proceedings consistent with this opinion.

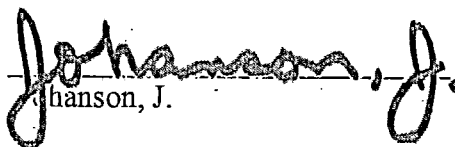
⁶ *Brady v Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

No. 50442-1-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:


Johnson, J.


Melnick, J.

FILED
Court of Appeals
Division II
State of Washington
2/6/2018 3:29 PM

NO. 50442-1-II

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

STATE OF WASHINGTON, Respondent

v.

RAMON TREVINO-HERNANDEZ, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.06-1-01930-0

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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I. The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court’s remand order..... 1

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court's remand order.**

STATEMENT OF THE CASE

Pursuant to RAP 10.3(b), and for the purposes of this responsive brief only, the State is satisfied with Mr. Trevino-Hernandez's statement of the case.

ARGUMENT

- I. **The State concedes that the trial court erred when it entered findings regarding legal financial obligations because the record did not support the findings and the findings were outside the scope of the Washington Supreme Court's remand order.**

Mr. Trevino-Hernandez filed a personal restraint petition alleging, amongst other claims, that two of his sentences were facially invalid because he should have been sentenced to determinate standard range terms. The State conceded on that issue and the Washington Supreme Court agreed that Mr. Trevino-Hernandez was improperly sentenced. CP 53-54. As a result, the Supreme Court granted Mr. Trevino-Hernandez's petition and remanded "to the Superior Court for resentencing on these

counts.” CP 54. The remand order did not instruct the trial court to make any findings regarding legal financial obligations. CP 53-54.

Accordingly, in order to satisfy the remand order the Superior court only needed to impose determinate standard range sentences for the relevant counts and the associated, required terms of community custody. Legal financial obligations had already been determined at the previous sentencing. CP 28-32, 78. ~~Nonetheless~~, as noted by Mr. Trevino-Hernandez, the trial court checked boxes finding “[t]hat the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future” and “[t]he above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. . . . A restitution hearing: . . . shall be set by the prosecutor.” CP 75, 78. These findings were made without “an individualized inquiry into the defendant’s current and future ability to pay” as the record is clear that legal financial obligations were not discussed. *State v. Blazina*, 182 Wn.2d 827, 837-38, 344 P.3d 680 (2015); RCW 10.01.160(3); RP 3-10. Thus, the record did not support the findings and the findings were outside the scope of the remand order. As a result, this Court should remand this case to the trial court for the purposes of striking the above discussed findings regarding legal financial obligations from the Judgment and Sentence.

CONCLUSION

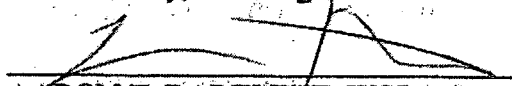
For the reasons argued above, this Court should remand this case to the trial court for the purposes of striking the above discussed findings regarding legal financial obligations from the Judgment and Sentence.

DATED this 6th day of Feb, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney
OID# 91127

NO. 50442-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RAMON TREVINO-HERNANDEZ,

Appellant.

BRIEF OF APPELLANT

**John A. Hays, No. 16654
Attorney for Appellant**

**1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084**

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ASSIGNMENT OF ERROR

Assignment of Error

The trial court erred when it resentenced the defendant on counts I and III and then entered findings that the defendant was “anticipated to be able to pay financial obligations in the future” and when it allowed for later entry of legal financial obligations including restitution

Issues Pertaining to Assignment of Error

1. In a case in which a 57-year-old indigent defendant is serving an indeterminate sentence of 318 months to life, does a trial court err if, without discussion or review of the facts, it enters a finding that the defendant “is presently indigent but is anticipated to be able to pay financial obligations in the future”?

2. In a case in which an appellate court has ordered a trial court to resentence a defendant from an indeterminate term to a determinate term, may the trial court also order future potential legal financial obligations to include restitution?

STATEMENT OF THE CASE

On January 8, 2008, Appellant Ramon Trevino-Hernandez pled guilty under a second amended information to the following six offenses, admitted to have been committed within the listed time periods:

Count	Offense	Time Period
I.	1 st Degree Rape of a Child	9/1/96 to 8/31/01
II.	1 st Degree Rape of a Child	9/2/01 to 6/28/03
III.	1 st Degree Child Molestation	9/1/96 to 8/31/01
IV.	1 st Degree Child Molestation	9/2/01 to 6/28/03
V.	2 nd Degree Rape of a Child	6/26/03 to 6/1/05
VI.	2 nd Degree Child Molestation	6/26/03 to 6/1/05

CP 12-27.

The court later sentenced the defendant to life in prison on each count under RCW 9.94A.713, with the longest minimum mandatory term of 318 months before the defendant could first appear before the Indeterminate Sentencing Review Board for consideration of release. CP 12-27.

Within a year after entry of the sentence the defendant filed a Personal Restraint Petition arguing that his pleas were not knowingly entered because his trial attorney misinformed him of the correct standard ranges for each offense. CP 43-45. By order filed July 2, 2009, this court

denied the defendant's request and dismissed the Petition. *Id.* The certificate of finality issued on this decision was effective January 5, 2010. CP 42. This court also denied the defendant's request to file a late notice of appeal from entry of the sentence. CP 46-48. The defendant thereafter filed a second Personal Restraint Petition over a year after the judgement and sentence was filed arguing that his restraint was unlawful because his pleas were coerced, he was denied his right to effective assistance of counsel, and insufficient evidence supported the charges. CP 50. This court denied that Petition as untimely. CP 49-51.

The defendant thereafter filed a third Personal Restraint Petition arguing in part that the sentences in Counts I and III were facially invalid and should be reversed. CP 52-55. Specifically, the defendant argued that the trial court had sentenced him in Counts I and III to an indeterminate sentence with lifetime community custody under a statute that did not go into effect until after the last date upon which he might have committed the two offenses. *Id.* The state conceded the argument and by order entered March 8, 2017, the Washington State Supreme Court remanded this case to the trial court for resentencing on Counts I and III. *Id.* However, the court rejected the defendant's other arguments from his most recent PRP, holding as follows:

But a facial sentencing error does not exempt from the time limit a claim that a guilty plea was involuntary due to misinformation as to sentencing consequences. *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). Nor does a facial sentencing error permit the assertion of an otherwise untimely claim of ineffective assistance of counsel. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 426-27, 309 P.3d 451 (2013). Thus, Trevino-Hernandez's sole remedy is correction of the sentence. *Snively*, 180 Wn.2d at 32.

CP 54.

Based upon this holding the Washington Supreme Court ordered the defendant's sentences on Counts I and III vacated and remanded the case for imposition of standard range sentences on those two counts. CP 54.

On May 19, 2017, the defendant appeared before the Clark County Superior Court in this case, at which time the trial court entered an "Order Vacating Sentence for Counts 1 and 3 in Judgment and Sentence filed on March 14, 2008." CP 57. The court then sentenced the defendant to 318 months on Count I and 198 months on Count III as well as 36 months community custody on each count. CP 72-86. Without any discussion about the facts that the defendant was indigent, had spent the previous 10 years in prison, and had another 16 years to serve before he would first become eligible for release, the trial court entered the following finding as a part of Judgment and Sentence on Counts I and III:

That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.752.

CP 75.

Although the court did not enter further legal-financial obligations, it did enter the following order:

The above total does not include all restitution or other legal financial obligations, 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.

CP 78.

Following imposition of the new judgment and sentence as to Counts I and III, the defendant filed timely notice of appeal. CP 60-61.

ARGUMENT

THE TRIAL COURT ERRED WHEN IT RESENTENCED THE DEFENDANT ON COUNTS I AND III AND THEN ENTERED FINDINGS THAT THE DEFENDANT WAS "ANTICIPATED TO BE ABLE TO PAY FINANCIAL OBLIGATIONS IN THE FUTURE" AND WHEN IT ALLOWED FOR LATER ENTRY OF LEGAL FINANCIAL OBLIGATIONS INCLUDING RESTITUTION.

A trial court's authority to impose legal financial obligations as part of a judgment and sentence in the State of Washington is limited by RCW 10.01.160. Section three of this statute states as follows:

(3) The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3).

Although the court need not enter written findings and conclusions in regards to a defendant's current or future ability to pay costs, the court must consider this issue and find either a current or future ability before it has authority to impose costs. *State v. Eisenman*, 62 Wn.App. 640, 810 P.2d 55, 817 P.2d 867 (1991). In addition, in order to pass constitutional muster, the imposition of legal financial obligations and any punishment for willful failure to pay must meet the following requirements:

1. Repayment must not be mandatory;
2. Repayment may be imposed only on convicted defendants;

3. Repayments may only be ordered if the defendant is or will be able to pay;

4. The financial resources of the defendant must be taken into account;

5. A repayment obligation may not be imposed if it appears there is no likelihood the defendant's indigency will end;

6. The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion; and

7. The convicted person cannot be held in contempt for failure to repay if the default was not attributable to an intentional refusal to obey the court order or a failure to make a good faith effort to make repayment.

State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992).

The imposition of costs under a scheme that does not meet with these requirements, or the imposition of a penalty for a failure to pay absent proof that the defendant had the ability to pay, violates the defendant's right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment.

Fuller v. Oregon, 417 U.S. 40, 40 L.Ed.2d 642, 94 S.Ct. 2116 (1974).

In the case at bar the trial court originally imposed discretionary legal financial obligations in the form of court costs. Although the court did not increase those costs during the new sentencing hearing on Counts I and III, it did enter a new finding of fact that the defendant, while indigent, was

“anticipated to be able to pay financial obligations in the future.” The court entered this finding even though (1) the defendant is currently 56-years-old, (2) the defendant is indigent, (3) the defendant had already been in prison over 10 years, and (4) the defendant has approximately 16 more years to serve before he first becomes eligible for release. Since the trial court did not engage in any meaningful discussion concerning the defendant’s future ability to pay legal-financial obligations, the court erred by entering the finding that he had the future ability to pay. Thus, the trial court violated RCW 10.01.160(3), as well as the defendant’s right to equal protection under Washington Constitution, Article 1, § 12, and United States Constitution, Fourteenth Amendment. As a result, this court should reverse the trial court’s new finding concerning the defendant’s future ability to pay legal-financial obligations.

In this case the state may argue that this court should not address this issue because the defendant did not sufficiently preserve this statutory error at the trial level and the argument does not constitute a manifest error of constitutional magnitude as is defined under RAP 2.5(a). However, in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Washington Supreme Court took the opportunity to review the pervasive nature of trial courts’ failures to consider each defendant’s ability to pay in conjunction

with the unfair penalties that indigent defendant's experience based upon this failure. The court then decided to deviate from this general rule precluding review. The court held:

At sentencing, judges ordered *Blazina* and *Paige-Colter* to pay LFOs under RCW 10.01.160(3). The records, however, do not show that the trial judges considered either defendant's ability to pay before imposing the LFOs. The defendants did not object at sentencing. Instead, they raised the issue for the first time on appeal. Although appellate courts will normally decline to hear unpreserved claims of error, we take this occasion to emphasize the trial court's obligation to consider the defendant's ability to pay.

We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay. Because the records in this case do not show that the sentencing judges made this inquiry into either defendant's ability to pay, we remand the cases to the trial courts for new sentence hearings.

State v. Blazina, at 11-12.

In the case at bar the record reveals that the trial court did not make "an individualized inquiry in to the defendant's current and future ability to pay" before entering its finding on the defendant's future ability to pay legal-financial obligations. As a result, this court should reverse this finding and remand for an adequate consideration of this issue.

In this case the state may also claim that this issue is moot because

the trial court did not enter any new legal financial obligations. However, any such argument should fail because the trial court specifically reserved the right to enter further legal financial obligations. In the new Judgment and Sentence the court held:

The above total does not include all restitution or other legal financial obligations, 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.

CP 78.

The finding that the defendant has the future ability to pay continues to be relevant in two ways. First, it will affect the trial court's disposition of "other legal financial obligations" which the court has reserved the right to enter. Second, it will potentially affect the enforcement of the current legal financial obligations from the original judgment and sentence.

Finally, the trial court's finding on the ability to pay and the trial court's decision to provide for a new restitution hearing at the state's discretion suffers from a more fundamental error. That error is that the Washington Supreme Court did not grant the trial court the authority to again rule on these issues. Rather, the Court's decision only addressed the length and type of the sentence. That order required that the trial court (1)

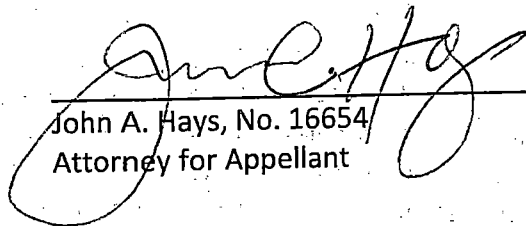
vacate the indeterminate sentence and the requirement of lifetime community custody, and (2) then impose sentences within the standard ranges on Counts I and II although with 36 months community custody on each count. The Supreme Court did not give the trial court either a mandate or the discretion to take any further actions.

CONCLUSION

This court should order the trial court to strike those portions of the new judgment and sentence that set out the ability to pay, allow for a new restitution hearing, and grant the trial court the authority to impose new legal financial obligations.

DATED this 12th day of December, 2017.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 12**

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

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APR 17 2017

Scott G. Weber, Clerk, Clark Co.

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FILED

APR 13 2017
WASHINGTON STATE
SUPREME COURT

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint Petition of

RAMON TREVINO-HERNANDEZ,

Petitioner.

CERTIFICATE OF FINALITY

No. 93922-5

Court of Appeals No.
48914-7-II

Clark County No.
06-1-01930-0

This is to certify that on March 8, 2017, the Washington State Supreme Court entered an Order granting the personal restraint petition as to the validity of the sentencing on Counts I and III and remanding the matter to the trial court with directions for resentencing on these counts.

The matter is now final.

No costs bills having been timely filed, pursuant to RAP 14.4, costs are deemed waived.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this Court at Olympia, Washington, this 13th day of April, 2017.

Susan L. Carlson

SUSAN L. CARLSON
Clerk of the Supreme Court
State of Washington

cc: Hon. John F. Nichols, Judge
Clerk, Clark County Superior Court
Ramon Trevino-Hernandez (by U.S. mail)
Anne Mowry Crusier
Reporter of Decisions

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APR 17 2017

Scott G. Weber, Clerk, Clark Co.

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FILED

APR 13 2017
WASHINGTON STATE
SUPREME COURT

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint Petition of

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SUSAN L. CARLSON
Clerk of the Supreme Court
State of Washington

cc: Hon. John F. Nichols, Judge
Clerk, Clark County Superior Court
Ramon Trevino-Hernandez (by U.S. mail)
Anne Mowry Cruser
Reporter of Decisions

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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DIVISION II
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STATE OF WASHINGTON
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In re the
Personal Restraint Petition of

RAMON TREVINO-HERNANDEZ,

Petitioner.

No. 45863-2-II

ORDER DISMISSING PETITION

Ramon Trevino-Hernandez seeks relief from personal restraint imposed following his 2008 convictions of first degree child rape (2 counts), first degree child molestation (2 counts), second degree child rape, and second degree child molestation. He claims that his restraint is unlawful because his pleas were coerced, he was denied his right to effective assistance of counsel, and insufficient evidence supported the charges.

Without reaching the merits of this petition, it must be dismissed. RCW 10.73.090(1) provides:

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

A personal restraint petition is a collateral attack on a judgment. RCW 10.73.090(2).

Petitioner's judgment and sentence became final on January 24, 2011, when this court issued its mandate from petitioner's direct appeal, No. 38060-9-II. See RCW

10.73.090(3). Accordingly, when petitioner filed the present petition in superior court on April 17, 2013, more than one year had elapsed. Nor does petitioner invoke any of the

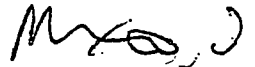
45863-2-II

exceptions to this time limit set out in RCW 10.73.100. Thus, consideration of this petition is time barred.¹ Accordingly, it is hereby

ORDERED that petitioner's motion to transfer the record from his direct appeal is denied. It is further

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 17 day of July, 2014.



Acting Chief Judge

cc: Ramon Trevino-Hernandez
Clark County Clerk
County Cause No(s). 06-1-01930-0
Anthony F. Golik, Clark County Prosecuting Attorney

¹ This petition is also successive under RCW 10.73.140. *See Order Dismissing Petition of Trevino-Hernandez*, No. 38802-2-II, filed January 29, 2009).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON
BY AD
CLERK

In re the
Personal Restraint Petition of

RAMON TREVINO-HERNÁNDEZ,

Petitioner.

No. 38802-2-II

ORDER DISMISSING PETITION

Ramon Trevino-Hernandez seeks relief from personal restraint imposed following his 2008 convictions of first degree child rape (2 counts), first degree child molestation (2 counts), second degree child rape, and second degree child molestation. He claims that his restraint is unlawful because trial counsel never explained to him the consequences of his guilty pleas, believing that he was going to serve one year and a day, not 318 months to life as the court imposed.

The test for effective assistance of counsel is whether, upon reviewing the entire record, petitioner received effective representation and a fair and impartial hearing. *State v. Ermert*, 94 Wn.2d 839, 849, 621 P.2d 121 (1980). "In a plea bargain context, 'effective assistance of counsel' merely requires that counsel 'actually and substantially [assist] his client in deciding whether to plead guilty.'" *State v. Osborne*, 102 Wn.2d 87,

99, 684 P.2d 683 (1984) (quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d 901, review denied, 96 Wn.2d 1023 (1981)).

The constitutional right to counsel includes the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (adopted in *State v. Jeffries*, 105 Wn.2d 398, 418, 717 P.2d 722 (1986)). A criminal defendant bears the burden of establishing a violation of that right by showing both deficient performance and resulting prejudice. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Deficient performance is established by proof that defense counsel's representation "fell below an objective standard of reasonableness based on consideration of all the circumstances." *Id.* Prejudice is established where "there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 335. "Courts engage in a strong presumption counsel's representation was effective." *Id.* The actions of counsel about which a client complains do not amount to ineffective assistance if they go to the theory of the case or to trial tactics. *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994).

In re Personal Restraint of Brown, 143 Wn.2d 431, 446, 21 P.3d 687 (2001). Petitioner fails to show with any competent evidence that counsel's performance was deficient and prejudiced him as a result. The record before this court shows that counsel negotiated a plea bargain after petitioner testified and, apparently, made incriminating statements during his direct and cross-examination.

Further, the record shows that petitioner's plea was knowing, intelligent, and freely given. The record shows that the State was pursuing exceptional sentence based on multiple aggravating factors and that as part of the plea negotiations, the court imposed standard range sentences. Under these demonstrated circumstance, the record shows that counsel actually and substantially assisted petitioner in his decision to plead guilty. Petitioner's claim that counsel told him he would get a year and a day incarceration is incredulous when considering that petitioner faced potential lengthy exceptional sentences.

Petitioner simply fails to show unlawful restraint. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 2nd day of July, 2009.



Acting Chief Judge

cc: Ramon Trevino-Hernandez
Clark County Clerk
County Cause No(s). 06-1-01930-0
Michael C. Kinnie

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FILED

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Scott G. Weber, Clerk, Clark Co.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RAMON TREVINO-HERNANDEZ,

Appellant.

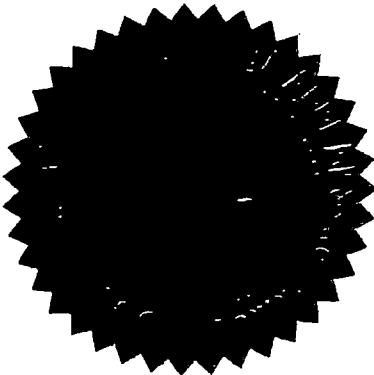
No. 38060-9-II

MANDATE

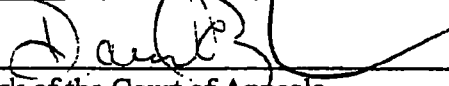
Clark County Cause No.
06-1-01930-0

The State of Washington to: The Superior Court of the State of Washington
in and for Clark County

This is to certify that the Court of Appeals of the State of Washington, Division II, entered a Order Denying Appellant's Motion to File Late Notice of Appeal in the above entitled case on September 3, 2008. This ruling became the final decision terminating review of this court on October 5, 2008. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the determination of that court.



IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
seal of said Court at Tacoma, this
24th day of February, 2010.


Clerk of the Court of Appeals,
State of Washington, Div. II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED

In re the
Personal Restraint Petition of:

Ramon Trevino-Hernandez,

Petitioner.

No. 38802-2-II

MAR 08 2010

12:35pm
Sherry W. Parker, Clerk, Clark Co.

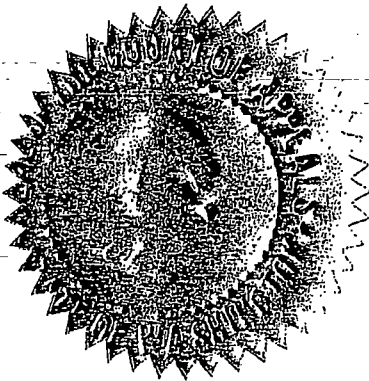
CERTIFICATE OF FINALITY

Clark County
Superior Court No. 06-1-01930-0

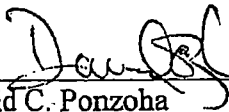
THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and
for Clark County.

This is to certify that the decision of the Court of Appeals of the State of Washington,

Division II, filed on July 2, 2009, became final on January 5, 2010.



IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said Court at Tacoma, this
26th day of February, 2010.



David C. Ponzoha
Clerk of the Court of Appeals,
State of Washington, Division II

Michael C. Kinnie
Attorney at Law
1200 Franklin St
PO Box 5000
Vancouver, WA, 98666-5000

Ramon Trevino-Hernandez
#314712 / K-A-32-U
Airway Heights Corr. Ctr.
P.O. Box 2049
Airway Heights, WA, 99001-2049

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RAMON TREVINO-
HERNANDEZ,

Appellant.

No. 38060-9-II

**ORDER DENYING APPELLANT'S MOTION
TO FILE A LATE NOTICE OF APPEAL**

FILED
COURT OF APPEALS
DIVISION II
08 SEP -3 PM 2:58
STATE OF WASHINGTON
BY DEPUTY

APPELLANT moves for permission to file a notice of appeal in the above-referenced matter after the deadline set forth in RAP 5.2. Upon consideration, the court has decided the motion has no merit. Accordingly, it is

ORDERED that the motion for late appeal is denied.

DATED this 3rd day of September, 2008.

PANEL: Jj. Bridgewater, Quinn-Brintnall, Penoyar

FOR THE COURT:


ACTING CHIEF JUDGE

Michael C. Kinnie
Clark County Pros Atty Ofc.
1200 Franklin
P O Box 5000
Vancouver, WA, 98666-5000

Ramon Trevino-Hernandez
#314712 WCC R4-G5-L
P O Box 900
Shelton, WA, 98584

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

STATE OF WASHINGTON, vs. RAMON TREVINO-HERNANDEZ, Plaintiff, Defendant.	NO. 06-1-01930-0 ORDER CORRECTING JUDGMENT AND SENTENCE
---	---

THIS MATTER having come before the Court on remand from the Court of Appeals and both parties being in agreement and the Court having reviewed the file and being in all matters fully advised, now hereby ORDERS that paragraph 4.3a of the Judgment and Sentence entered on May 19, 2017, and paragraph 4.1a of the Judgment and Sentence entered on March 14, 2008, hereby are amended to strike the following legal financial obligations:

Jury demand fee	\$250.00	JFR		
PUB	\$ 2,250.00		Fees for court appointed attorney	RCW 9.94A.760
	\$ 1,000.00		Trial per diem, if applicable	
WFR	\$300.00		Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$500.00		Fine RCW 9A.20.021	

Done this ____ day of _____, 2018.

JUDGE Derek Vanderwood

Agreed; approved for ex parte entry:

Agreed; approved for ex parte entry
without notice of presentation:

Colin P. Hayes, WSBA# 35387
Sr. Deputy Prosecuting Attorney

_____, WSBA#
Attorney for Defendant

EXHIBIT 2

FILED
OCT 13 2006

JoAnna McBride, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,
v.

RAMON TREVINO-HERNANDEZ

Defendant.

INFORMATION

No. 06-1-01930-0
(CCSO 06-10550)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - RAPE OF A CHILD IN THE FIRST DEGREE - 9A.44.073

That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington, between September 1, 2006 and June 25, 2003, on an occasion separate from counts 2, 3, and 4, did have sexual intercourse with A.Y.T., who was less than twelve years old and not married to the defendant and the defendant was at least twenty-four months older than the victim; contrary to Revised Code of Washington 9A.44.073.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

3(n) Use of Trust - RCW 9.94A.535(3)(n).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The defendant used his position of trust to facilitate the commission of the current offense. RCW 9.94A.535(3)(n).

3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time RCW 9.94A.535(3)(g).

1 **COUNT 02 - RAPE OF A CHILD IN THE FIRST DEGREE - 9A.44.073**

2 That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington,
3 between September 1, 2006 and June 25, 2003, on an occasion separate from counts 1, 3, and
4 4, did have sexual intercourse with A.Y.T., who was less than twelve years old and not married
to the defendant and the defendant was at least twenty-four months older than the victim;
contrary to Revised Code of Washington 9A.44.073.

5 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
6 (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

7 **3(n) Use of Trust - RCW 9.94A.535(3)(n).**

8 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

9 The defendant used his position of trust to facilitate the commission of the current offense. RCW
10 9.94A.535(3)(n).

11 **3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).**

12 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

13 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
14 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

15 **COUNT 03 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083**

16 That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington,
17 between September 1, 2006 and June 25, 2003, on an occasion separate from counts 1, 2, and
18 4, did have sexual contact with A.Y.T., who was less than twelve years old and not married to
the defendant and the defendant was at least thirty-six months older than the victim; contrary to
Revised Code of Washington 9A.44.083.

19 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
20 (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

21 **3(n) Use of Trust - RCW 9.94A.535(3)(n).**

22 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

23 The defendant used his position of trust to facilitate the commission of the current offense. RCW
24 9.94A.535(3)(n).

25 **3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).**

26 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

27 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
28 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

1 **COUNT 04 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083**

2 That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington,
3 between September 1, 2006 and June 25, 2003, on an occasion separate from counts 1, 2, and
4 3, did have sexual contact with A.Y.T., who was less than twelve years old and not married to
the defendant and the defendant was at least thirty-six months older than the victim; contrary to
Revised Code of Washington 9A.44.083.

5 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
6 (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

7 **3(n) Use of Trust - RCW 9.94A.535(3)(n).**

8 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

9 The defendant used his position of trust to facilitate the commission of the current offense. RCW
10 9.94A.535(3)(n).

11 **3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).**

12 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

13 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
14 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

15 **COUNT 05 - RAPE OF A CHILD IN THE SECOND DEGREE - 9A.44.076**

16 That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington,
17 between June 26, 2003 and June 1, 2005, on an occasion separate from count 6, did have
sexual intercourse with A.Y.T., who was at least twelve years old but less than fourteen years
18 old and not married to the defendant and the defendant was at least thirty-six months older than
the victim; contrary to Revised Code of Washington 9A.44.076.

19 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
20 (RCW 9.94A.030(28), RCW 9.94A.030(32), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

21 **3(n) Use of Trust - RCW 9.94A.535(3)(n).**

22 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

23 The defendant used his position of trust to facilitate the commission of the current offense. RCW
24 9.94A.535(3)(n).

25 **3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).**

26 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

27 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
28 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

1 **COUNT 06 - CHILD MOLESTATION IN THE SECOND DEGREE - 9A.44:086**

2 That he, RAMON TREVINO-HERNANDEZ, in the County of Clark, State of Washington,
3 between June 26, 2003 and June 1, 2005, on an occasion separate from count 5, did have
4 sexual contact with A.Y.T., who was at least twelve (12) years old but less than fourteen (14)
5 years old, and not married to the defendant and the defendant was at least thirty-six months
6 older than the victim; contrary to Revised Code of Washington 9A.44.086.

7 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
8 (RCW 9.94A.030(28), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

9 **3(n) Use of Trust - RCW 9.94A.535(3)(n).**

10 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
11 standard sentencing range based upon the following aggravating circumstance(s):

12 The defendant used his position of trust to facilitate the commission of the current offense. RCW
13 9.94A.535(3)(n).

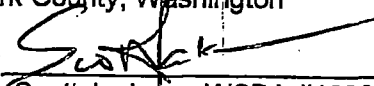
14 **3(g) Pattern of sexual abuse of Child - RCW 9.94A.535(3)(g).**

15 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
16 standard sentencing range based upon the following aggravating circumstance(s):

17 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
18 eighteen years manifested by multiple incidents over a prolonged period of time RCW
19 9.94A.535(3)(g).

20 ARTHUR D. CURTIS
21 Prosecuting Attorney in and for
22 Clark County, Washington

23 Date: October 11, 2006

24 BY: 
25 Scott Jackson, WSBA #16330
26 Deputy Prosecuting Attorney

DEFENDANT: RAMON TREVINO-HERNANDEZ			
RACE: W	SEX: M	DOB: 9/28/1960	
DOL: TREVIR*40408 WA		SID: WA21586951	
HGT: 510	WGT: 170	EYES: BRO	HAIR: BRO
WA DOC:		FBI: 262792AC6	
LAST KNOWN ADDRESS(ES):			
H - 6811 NE 121ST AV #K88, VANCOUVER WA 98682			

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of)	No. 93922-5
)	
RAMON TREVINO-HERNANDEZ,)	ORDER
)	
Petitioner.)	Court of Appeals
)	No. 48914-7-II
)	

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its March 7, 2017, Motion Calendar. The Department unanimously agreed that the Petitioner's sentence is facially invalid as to counts one and three because the underlying criminal acts occurred before former RCW 9.94A.712 went into effect, thus making the Petitioner's claim of facial sentencing error exempt from the one-year time limit on collateral relief. RCW 9.94A.090(1); *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135-36, 267 P.3d 324 (2011). Under that statute, the sentencing scheme for several sex offenses (including those in this case) was altered so as to require the trial court to impose an indeterminate minimum term within the standard range (or outside the standard range if reasons exist for imposing an exceptional sentence) and a maximum sentence at the statutory maximum for the crime. Former RCW 9.94A.712(3) (2001). Further, whenever an offender was released from his minimum term, he was subject to community custody for the length of the maximum sentence. Former RCW 9.94A.712(5) (2001). The statute by its terms applied only to crimes committed on or after September 1, 2001. Former RCW 9.94A.712(1) (2001). Here, the

charging period during which the crimes in counts one and three were allegedly committed ended before that date. Thus, as the State acknowledges, Trevino-Hernandez should have been sentenced to determinate standard range terms on counts one and three. Since such terms are determinate and not subject to increase as are indeterminate minimum terms, and since the applicable community custody terms for those crimes is the longer of a specified range or the period of earned early release, not life, see former RCW 9A715(1) (2001), Trevino-Hernandez is entitled to sentencing relief on those convictions. See *In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 818, 272 P.3d 209 (2012).

But a facial sentencing error does not exempt from the time limit a claim that a guilty plea was involuntary due to misinformation as to sentencing consequences. *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). Nor does a facial sentencing error permit the assertion of an otherwise untimely claim of ineffective assistance of counsel. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 426-27, 309 P.3d 451 (2013). Thus, Trevino-Hernandez's sole remedy is correction of the sentence. *Snively*, 180 Wn.2d at 32.

IT IS ORDERED:

That the Petitioner's Personal Restraint Petition is granted only as to the validity of the sentencing on Counts I and III, and is remanded to the Superior Court for resentencing on these counts.

DATED at Olympia, Washington, this 8th day of March, 2017.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE

No. 50442-1-11

Superior court No. 06-1-01930-0

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

STATE OF WASHINGTON Respondent,

Vs.

RAMON TREVINO HERNANDEZ Appellant.

ADDITIONAL GROUNDS FOR REVIEW (SAG)
PURSUANT TO R.A.P. 10:10

RAMON TREVINO HERNANDEZ# 314712
APPELLANT PRO SE

AHCC POST OFFICE BOX 2049 K-A- 51L
AIRWAY HEIGHTS CORRECTIONS CENTER
AIRWAY HEIGHTS WASHINGTON 99001

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(E) <u>ADDITIONAL GROUND NUMBER FOUR</u>	(6)
(F) ADDITIONAL GROUND NUMBER FIVE	(12)

(G) ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS

(1) Was Constitutional right to Allocution virtually denied to me, when trial counsel (Mr. Rucker) factually refused to convey about court errors of Constitutional dimensions that put in peril my dignity, reputation and freedom, when said errors furnished conviction to a crime on present matter even though crime never occur and ultimately those legal arguments were mute at Sentencing and at Re-sentencing...

(2) Was mixed Constitutional error when ineffective assistance and prosecutorial misconduct were clearly manifested at Clark county courthouse pertained to present matter at the Trial...thus failing short on their ethical duties with respect to fairness and Justice on court proceedings and thence by denial allocution at Sentencing and at Re-sentencing... (5) (6) (7) (8) (9) (12)

(H) REQUESTED RELIEF (13)

(I) DECLARATION OF MAILING (13)(a)

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<u>State V. Corey 181 Wn. App. 272 (2004)</u>	(8)
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<u>Presentence Investigation Report (03-05-(2008)</u>	(4)(5)
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON
Respondent,

No. 50442-1-11
Superior court No. 06-1-01930-0

V.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (SAG)

RAMON TREVINO HERNANDEZ
Appellant.

PURSUANT TO R.A.P. 10.10

Comes now appellant RAMON TREVINO HERNANDEZ, and upon all files, records and proceedings respectfully moves the court to take in consideration present statement of additional grounds for review, pursuant to R.A.P. 10.10

ADDITIONAL GROUND NUMBER ONE

I RAMON TREVINO HERNANDEZ Appellant certify here, that arrived to Washington state on 1987 then, on October started to go School to learn E.S.L. and in the same month I met thereat my future wife (Sarina). From the very first moment I saw her, I felt in love with her. I was amazed with her beauty, her smile, and the way she would carry herself. Then, the next month we had our first date. We went to a nearby restaurant and eat something sample. She did the talking because I did not speak English and some times it was embarrassing, however, Sarina with her smile will shine up everything around. I tried to learn English fast to communicate better with her but I couldn't because I was working long hours so had not enough time to study. Suddenly, she just quit from School so could not see her for the following few weeks. I felt so upset. I wanted to ask her if she want to be my girlfriend and that I was in love with her. I began driving around by the entire county, so street by street looked for her. I had to tell her how much I loved her and how much I missed her. Finally, one Saturday morning I spotted her station wagon, parked in front of a nice house which had a huge yard. Because it was time for I go to work, I decided to coming back on the next morning of the day which will be my day off from the chinesse restaurant at which I was working full time six days per week. Then, the next day I drove to that place where I had seen her vehicle parked. When I arrived there, Sarina was mowing the yard. Then, I walked towards the fence to meet her, and as soon as she saw me, she turned off the mower machine and headed towards me with her beautiful smile. I felt like mute because could not speak and just smiled back waving my hand. Now I could see her perfect teeth and the beauty of her smile. Then, she invited me into her house.

and I accepted, Then, we were drinking a cup of coffee for some time. Then, I asked her using body Language, if she would allowed me to do the yard for her, She happily say okay, and I walked toward the back of the house passing close to her three sons room where I heard their voices playing video-games. I knew Sarina was divorced and got three sons because while in the E.S.L. room she was telling all of that and some of my friends had translated it for me in Spanish. I started to mowed the yard and it took me a couple of hours to finished it. Then, Sarina asked me if I wanted to eat a special dish that she had prepared for me. I said yes, and she started to put a lot of food on the table, since I had a big appetite after mowing all the yard, eat whatever she put on the table for me. Then, we chat for some time, where she was the talker and I was the listener and could say only yes, and okay. Then, she asked me if I wanted to go shopping with her to a gigantic shopping center. I say yes, then we and the kids got in the station wagon and took off. When we arrived there, she begun to tried on some clothes however didn't buy them instead she bought a big plant which was attached to a contained apparently plastic made which was for the roots of the same. It was about five feet high and I had to carried it for hours while Sarina was doing her shopping. Finally, she said that it was time to go home. then I placed the plant on my shoulder, and we walked to the wagon, then I put the plant on the wagon and on the rack of the same, then tied well so it wont fall. As soon as we arrived to her house, she put the plant in a corner of the kitchen. Then, The youngest of her sons David, who was seven years old at that time, asked her, "is this your new boyfriend?" and she shouted to him "go back to your room" then he went to joined his brothers who were playing video games again. I thought Sarina acted like that because the kids had to go School early on the next day and therefore had to sleep well. Sarina and I will continue trying to communicate in English and watching T.V. That was the very first night in which my wife and I had sexual intercourse all night and upon which we sworn everlasting love to each other and from that day on, we begun to walk through life together therefore building a promising future united. For me, all of that was surreal. It was like if I was living an incredible dream, from which i did not want to wake-up. Even though Sarina was from another country (thailand) and therefore she had different customs, habits, beliefs, tradition, culture and Religion.

on the other hand I was a poor Mexican who could say had find a nice and beautiful queen, because she loved to dress well, was strong and lean therefore it was very difficult to figure out about her age because she would looks like twenty three when she was thirty three. Sarina seemed like a model coming out from a beauty contest. Then, the fruit of our love was born in June 26, 1991. I was working full time in a brush company and Sarina will continue doing house-wife up until our Daughter was six years old. Because then Sarina will start to work full time as well. I will continue teaching good habits to our kids, however, my step-sons were rebellious all the way, so they would not listen to my advises and continued missing School very often. They will hung-out with their friends and were making lots of troubles, therefore, many times they went to jail. Every one of them will have his own friends and some of those friends were drug addicts. thus, I became very angered when I learned that my step-sons wanted my Daughter to hung-out with them and with their friends, because she could become one of them. I begun to protect my Daughter and tried all along doing my very best to restraint my step-sons from taking my Daughter with them so she won't be a drug addict. Maybe I over protected her, however, at the end I could accomplished my goal, which was my Daughter to continue with her Education while I was providing for her care, guidance, love and attention all along. Then, Sarina begun to work overtime. Apparently she wanted to stay away from home and therefore away from problems my step-sons were making along with their friends. This time my step-son David, went to prison for stealing cars. He went to coyote ridge booth camp and he got out when he was eighteen, and I think that was the last time he was booked. My Daughter was twelve at that time. Then, a year latter we moved to a duplex in which my step-sons could not stay with us anymore because the landlord of said duplex did not allow us to live together in the same place because there were only two bedrooms in said duplex, so one bedroom for my Daughter and the other for my wife and I. Therefore, there was no other choice for my step-sons but to look for some other place to live. My wife was disappointed with said decision. In spite of that , we resided in that place for one year. My Daughter was now fourteenth years old and very often she will hung-out with her friends, will do School-homework on time, and was very happy.

In fact, she was progressing academically beyond average and successfully gaining skills during the time she was under my care and supervision going throughout Academy learning showing no trauma nor abuse of any kind. therefore I never thought of being charged with a crime of sexual nature because that in between my Daughter and I, it never occur whatsoever. Citing Presentence investigation report (P.I) 03-05-2008, page (1) second paragraph, line (7) where she "did not recall digital penetration" Quoting State V. Land 172 Wn App. 593 (2012) "however reape of a child requires proof of sexual intercourse"

ADDITIONAL GROUND NUMBER TWO

I have the belief here, that it is normal to joke around with your own kids occasionally and hereby I clarify that I joked around with my Daughter A.T.Y. sporadically with the hope that she may perpetuate on progress and therefore on the road which leads to success thus she could accomplish sooner her master degree in medicine which was her main goal, and she was proudly and academically, one year ahead. Citing yearly W.A.S.O.L: And I certainly assure you that the mentioned joking around it was only that. Occasionally and fully clothed playing around the house. Citing Presentence Investigation Report P.I. (2008) pages (1) and (2), where A.T.Y.'s ability to detail material fact as required by Law, it was virtually inconsistent. when she was exceedingly suggestive while responding to questions and she will change her version a number of times depending of the questions and who was questioning her. Although she (A.T.Y.), remarkable remembered the year (2005) because she was factually mentioning said year for as long as the interviewing continued and even at trial session, A.T.Y. will continue stating that there was not penetration and that I never reaped her. Citing (P.I.) (2008) page (2) paragraph (8) lines (2) and (3), where A.T.Y firmly declared that she did not get reape, and that her father never put anything into her privates... Citing RCW 9A.44.010 (a) where by its plain and ordinary meaning expresses "it must be some kind of penetration in order to charge a person with sexual intercourse" Now, going back to (P.I.) page (2) paragraph (5) A.T.Y. said she was made look at the penis, while her breasts and buttocks were fondled, then a hand ran across her vagina and the year (2005) she mentioned again... Thereinafter, the pages (1) and (2) were flipped back and forth, while uncommonly the same were filed with a number of whimsical allegations.

Yet, those imaginary allegations equaled molestation, in contrast to Judgment and Sentence where I was arbitrarily charged with 3 counts of reape of a child in the first and second degree (two 9A.44.073) and (one 9A.44.076) then, on the top of that I was charged with 3 counts of child molestation (two 9A.44.083) and (one 9A.44.086).

Although on re-sentencing of May 19th (2017) counts (1) and (3), were VOIDED by the court, and only the following counts will remained active;

COUNT (2) which was allegedly committed between September 02, (2001) and June 25, (2003).

COUNT (4) which was allegedly committed between September 02, (2001) and June 25, (2003).

COUNT (5) which was allegedly committed between June 26, (2003) and June 01, (2005).

COUNT (6) which was allegedly committed between June 26, (2003) and June 01, (2005);

Nonetheless, Investigation Report (P.I.) page (1) upper left corner shows "date of offense was from June 01, (2005) to September 01, (2006)" consequently, (P.I.) report 03 05 (2008), is virtually contradicting Judgment and Sentence because on July (2006) I went to Texas for to begin working in the Truck Industry.

ADDITIONAL GROUND NUMBER THREE

- (1) Was misconduct from appointed counsel (Mr. Rucker) where he refused to CONVEY regarding Constitutional violations which harmed my character my dignity and myself including the loss of my Liberty, before sentencing and when Mr. Rucker allowed prosecution unlawfully withheld exculpatory evidence from declarations of plaintiff from formal interviews regarding present matter (07-16-2006) (07-19-2006) (07-20-2006) and (08-21-2006) which is reflected on (P.I.) Report (2008); And thence at Re-sentencing where Mr. Rucker committed similar Constitutional violations, same as at the beginning of Judicial proceedings on present matter when he refused to meeting with me before the date of the court hearing?
- (2) Was my inalienable right to ALLOCUTION denied at sentencing?
- (3) Was my inalienable right to ALLOCUTION denied at Re-sentencing?

By the facts above, I believe this is a total miscarriage of justice which must be cured by this court, since Judgment and Sentence still remains in error. See decision of Washington state Supreme Court on present matter;

RCW 9.94A.090 (1); In Re Pers. Restraint of Coats, 173 Wn. 2d 123, 135-36, 267 P.3d 324 (2011) "under that statute, the sentencing scheme for several sex offenses (including those in this case) was altered so as to require the trial court to impose an indeterminate minimum term within the standard range (or outside the standard range if reasons exist for imposing an exceptional sentence) and a maximum sentence at the statutory maximum for the crime. Former RCW 9.94A.712 (3) (2001). Further, whenever an offender was released from his minimum term, he was subject to community custody for the length of the maximum sentence. Former RCW 9.94A.712 (5) (2001). The statute by its terms applied only to crimes committed on or after September 1, 2001; Former RCW 9.94A.712 (1) (2001) here, the charging period during which the crimes in counts one and three were allegedly committed ended that date" (Order from Washington state supreme Court)

Therefore, and as it is clearly stipulated above "sentencing scheme for several sex offenses (included those in this case) was altered" consequently was remanded to Clark county Courthouse to being re-sentenced and thus, to be cured from factual miscarriage of Justice. However, trial court still needs to complete order of Supreme court by correcting judgment and sentence from miscarriage of justice accordingly.

ADDITIONAL GROUND NUMBER FOUR

(A) Trial attorney (Mr. Rucker) acted with callous indifference regarding my case, where he had plenty of time to professionally advice on the same however, he made the incomprehensible decision to refusing provide me with professional assistance. Consequently I was denied Constitutional right to ALLOCUTION repeatedly. First at sentencing, and second at re-sentencing by Mr. Rucker's refusal to met me prior to both hearings therefore, Legal Arguments could not be presented there at the Re-sentencing court hearing. In fact, I suffered ineffective assistance of counsel on a number of issues from the beginning of Judicial proceedings pertained to my case, when Mr. Rucker's performance fell below the objective standards of reasonableness in the light of all circumstances whereas any rational person could infer that in the absence of Mr. Rucker's deficient performance, there is a reasonable probability that the result of said court proceeding regarding present matter, could have been totally different when...

(b) At the beginning of the trial and during the opening statement, the prosecutor firmly and adamantly declared the "lack of evidence to convict the accused" State Vs. Campbell, 103 Wn. 2d 1, (1984) states that;

"prosecutor's opening statement should be confined to a brief statement of issues of the case, an outline of the anticipated material evidence, then reasonable inference to be drawn therefrom"

"the trial court has a wide discretion in determining the good faith of the prosecutor, then burden of showing bad faith is upon the defendant"

Here, Mr. Rucker should have motion for dismissal on all charges or for mistrial, on the grounds that bad faith was clearly manifested from prosecution where she admitted did not have any evidence to convict, then why was the misconduct to place me at risk of my dignity, reputation, and freedom, if no evidence was available? Mc Guire Vs. United states 152 F. 2d 577 (8th cir 1945) well established Law stated;

"where the opening statement of the prosecution in a criminal case, and after a full opportunity for the correction of any ambiguity, error, or omission in the statement, a fact is clearly and deliberately admitted which must necessarily prevent a conviction that require an acquittal.

Then the court may upon its own motion or that by counsel, close the case by directing a verdict for the accused"

It is manifested then that the combination error of ineffective counsel and misconduct from prosecution, virtually denied me a fair and an impartial Jury trial. Consequently, I was placed at risk of my Liberty been revoked, when dismissal on all counts is what was needed.

Here, the ineffective representation it is clearly evident. For throughout my trial, Mr. Rucker's performance failed below an objective standard of reasonableness as stated in Strickland V. Washington, 466 U.S. 668, 687, 104 S. ct. 2052, 80 L.Ed 2d 674 (1984). Because during the opening statement, the prosecution was in possession of exculpatory evidence on my behalf, by which I could prove that only an inferior offense was commit, and that being the official documents from statements of plaintiff (A.T.) where she declared that I had never put anything into her body ever.

State V. Knutson 121 Wash. 2d. 766 (1993) Rule states - The Due Process analysis of a discovery issue starts from the premise that due process affords a criminal defendant a right of access to evidence that is- "both favorable for the accused and material to guilt or punishment" at least where the court or prosecution is in possession of the evidence, quoting Ritchie, 480 U.S. at 57, 107 S. ct. at 1001 (citing United States V. Argus, 427 U.S. 96, 97, S. ct. 2392, 49 L.Ed. 2d 432 (1976) Bradly V. Maryland 373 U.S. 83, 87, 83, S. ct. 1194 1196-97, 10 L.Ed. 2d 215 (1963))

Consequently here, evidence pertained to my innocence of charges of sexual nature on present case, it is blatantly plain. Because when I was wrestling and dancing with (A.T.) I was just joking around and nothing else.

In Apprendi V. New Jersey 530 U.S. 466-490 120 S. ct. 2348, 147 L. Ed. 2d 433 (2000). Expresses "under Due Process clause of the Fifth Amendment and the notice and jury trial guarantees of the sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt"

Then in State v. Tili-148 Wash. 368 (2003). It expresses the purposes of the S.R.A. "(1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history. (2) Promote respect for the Law by providing punishment which is just. (3) Be commensurate with the punishment imposed on others committing similar offenses and (4) Protect the public" RCW 9.94A.010.

Here, and according to embedded trial record I was arbitrarily convicted by trial court to sexual intercourse with my minor Daughter (A.T.) although (A.T.) at a number of interviews with different specialists and even at Trial, she declared that I had never put anything into her body. And even though the statute RCW 9A.44.010 (1)(a) by its plain Language expresses that there must be some kind of penetration in order to convict a person of such a crime. Then is the legislature here failing to accomplish its main goal with respect to a fair and impartial retribution pertained to Law and fair justice? Rule of State V. Corey 181 Wn App. 272 (2004) states "the trial court should give a requested Jury instruction on a lesser-degree offense if evidence would permit a jury to rationally find a defendant guilty of the lesser offense and acquit him of the greater"

CRIMINAL DEFENSE TECHNIQUES VOLUME 1, (a) Ch & 22.02 THE PRIMARY EFFECT

"Scholars have studied the impact of the first thing seen or heard on humans recalls and decision making. Uniformly, the conclusion have seen and heard first, is remembered the longest and it shapes the perception of what is heard latter" Mr. Rucker should have objected to the prosecutorial misconduct during opening statement. Because nothing could have emphasized the misconduct of the prosecutor worse than leveling me as a "criminal", just at the commencement of the Trial.

Essentially the prosecutor gives the first opening of the trial, therefore Prejudicial effects on the jury by means of casting defamatory aspersions to my good character could affect the entire trial thereupon. thus, appointed counsel failing to object hard-hitting words without foundation upon the state's opening statement it is a real prove of his ineptitude, where by his callously indifference he was putting in peril my good character and furnishing prosecution violating my right to Presumption of Innocence.

Moreover, Mr. Rucker failed to petition the court for a "motion in limine" by which he could had preclude prosecutor from mentioning matters which were questionable and seek an advance ruling from trial court to restrict, or forbid prosecutor from addressing any character, reputation or prior wrongs or acts as specified in evidence rule ER 404 (3) (b) from being used.

At this point on time, the prejudicial effects on the jury were catastrophic. For I am a first time offender who had no criminal record and therefore, at the commencement of the trial, prosecution had no legal reason to treat me as a "criminal" because then, she was leading jury to believe this trial was another offense for which I have being tried on.

"the prospective value of a prosecutor's opening statement tend to led the view of the jurors where there are types of crimes has happened before."
"CRIMINAL DEFENSE TECHNIQUES VOLUME 1, (a) CHAPTER & 22.02 THE PRIMARY EFFECTS"

Citing further into the criminal defense techniques chapter & 22.02.
"since the opening statement carries with it the force of a lasting first impression, be vivid, lucid and direct while using simple terms the jurors will remember" Then, prosecution leveling me as a "criminal" at the beginning of trial, carried a force of a lasting permanent impression on the jury. Then, refusal from Mr. Rucker to object upon this derogatory remark,

was a clear violation to his Ethical duties since any trial attorney should know the value, purpose, and the primary crucial effects opening statement has on the jury. Consequently, failure to object or motion for mistrial, or to file for dismissal on all charges thereupon, denied me the needed effective assistance of counsel due to the fact that without objection by the defense attorney the court record fails to be preserved then, "appellant court will not consider the same on appeal." Citing In Re personal restraint of Lui 2017 Wash. Lexus 639 02-02 (2017). Yet, the drafters of our State Constitution not only granted the right to a fair an impartial jury Trial, State Constitution Article 1 & 22 (3) they expressly declared it shall... remain inviolate.³ Wash. Constitution Art. 1 & 21.

Additionally Washington has adopted Strickland Vs. Washington two prog test for evaluating whether a defendant has Constitutionally sufficient representation. Under Strickland, the defendant must show both;

- (1) Deficient performance. And
- (2) Resulting prejudice to prevail in an ineffective assistance claim.

"Performance is deficient if it fails below an objective standard of reasonableness based on consideration of all circumstances. Prejudice exist if there is a reasonable probability that but for the counsel's deficient performance, the outcome of the proceedings would have been different"

Yet, Mr. Rucker incomprehensibly did not object when at opening statement the prosecutor informed jury panel that I was a "criminal" therefore, and by failing to object thereupon, Mr. Rucker demonstrated without doubt, his lack of professionalism, because he was inappropriately here, putting in peril beyond doubt the outcome of the entire trial, while misconduct from prosecution was violating thereat my Constitutional rights from RULE OF EVIDENCE 404 where at subsection (a) REPUTATION CHARACTER or a trait of character is not admissible for the purpose of providing action in conformity therewith on a particular occasion except;

- (1) CHARACTER OF ACCUSED. Evidence of a pertinent trail of his character offered by an accused or prosecution to rebut the same.

Then, prosecutorial misconduct at opening statement tainted and highly prejudiced jury panel by leveling me as a "criminal" furthermore, by this defamatory remarks, prosecution was steering outcome of the trial, away from fairness and justice.

By the fact that in every criminal case, an accused is presumed to be innocent throughout the trial and the burden resides with the state to overcome said presumption by evidence and prove beyond a reasonable doubt, the contrary.

Rule of State v. Tello Gonzalez, 129, Wn App 895, 120 P.3d 645 states "in every criminal case a defendant is presumed to be innocent through the trial and the burden resides with the state to overcome that presumption by evidence that is convincing beyond a reasonable doubt"

The presumption of innocence guarantees every criminal defendant all physical indicia of innocence including that of being brought before the court with the appearance dignity and self-respect of a free and innocent man U.S. Constitution Fourteenth Amendment.

Yet, an opening statement is little discussed in legal academic literature thus it is not often long remembered in the course of a criminal trial, although the opening statement argument is the first opportunity to present the most important aspect on any jury trial for example, what the case will be truly about.

Here, Mr. Rucker's performance of duties at trial failed below standards of reasonableness, where he allowed prosecutor to spoil the jury by leveling me as a "criminal" therefore biasing and prejudicing jury panel by persuaded it maliciously with her baseless judgment as the Trial by Jury session began. Consequently, and after the prosecutor had leveled me as a criminal, nothing could be said that could cure the atrocious prejudice on the jury, therefore, chances thereat, for I being acquitted by jury, were very slim, because the psychological influence on the jury, must not be underestimated and thus it is an important lesson to be aware of, by a defense attorney. Here, Mr. Rucker's professional duties failed below acceptable and/or reasonable standards since no strategic theory could possibly be conceived and justify him from objecting...

The jury trial will continue and precisely on the very first day, January 07-(2008) @ 1:56 PM, plaintiff (A.T.) was called so to give her sworn statement and she raised at five feet three inches, 140Lbs. and walked confident toward the witness stand where she was questioned for exactly one hour and five minutes by the prosecution and by the appointed counsel from direct examination and all the way to re-cross examination, and where (A.T.) asserted that only brushing, caress and patting had been occur.

And even though she did not mention all of that light-touching occurred while joking around, she (A.T.) comprehensible declared thereat (same as upon all officials interviews she had prior to trial), that I had never put anything into her privates area. Consequently and according to said declarations from key witness (A.T.), I am not guilty to any count of sexual intercourse regarding the entire case, by the fact that; "in general terms, sexual intercourse is sexual touching that includes penetration" RCW 9A.44.010 (1)(a) quoting State V. Mc Night, 54 Wn App. 521 (1989). In addition and pertained to molestation charges, and taking on count that brush-past and patting occur while I was joking around with my Daughter (A.T.) and therefore inadvertently, thence, I should not be subject to criminal liability for the same, because then, it results in a cruel and unusual punishment by which the Washington Judicial System is not accomplishing any goals towards retribution and fairness because for being just joking around, none of the above should apply. Furthermore, my plea on all counts, was totally involuntary and/or illegal for I did not have the knowledge nor the counsel advice pertained to critical elements to alleged counts of sexual nature. Consequently, I signed the deceptive plea without knowing and thus, said plea is virtually invalid.

ADDITIONAL GROUND NUMBER FIVE

(a) My inalienable right to ALLOCUTION was literally and repeatedly denied by the clark County's Judicial System.

FIRST: at Sentencing held on 03-14-(2008), when I was not allow to met with appointed counsel (Mr. Rucker) prior to said hearing consequently I had no idea how to ask the court to correct manifest Constitutional errors which occurred even before trial. And thence at trial as declared on additional ground number four (b).

SECOND at Re-sentencing held on May 19th (2017) where I was denied access and/or meaningful and effective communication opportunity with Mr. Rucker and thus, could not confer with him prior to Re-sentencing. Consequently, solutions to court violations which were committed at clark county courthouse even from the beginning of Judicial proceedings on present matter and thence at sentencing, could not be properly addressed at Re-sentencing.

Consequently here, manifest Constitutional errors above harmed my dignity, reputation, good character and intrinsic rights, when my freedom was taken away by erroneous Judgment and sentence by the following;

- (I) I was incompletely and/or erroneously advised pertained disastrous consequences of the plea.
- (II) Counsel's deficient advise virtually impaired my judgment pertaining to when and where do plea guilty. And what the deal was about.

Whence any reasonable person may conclude that; (i) I am here in prison by whimsical allegations, paying for a crime that never occur whatsoever. And (ii) That I had no chance to convey with attorney about plea offer prior to trial. Therefore, could not make a fully informed decision on my future in contrast to many other people non-Hispanics and/or non in poverty, whose successfully communicate with their attorneys in their own Language and before trail. Consequently, all those persons favorably obtain informed and asserted resolutions on plea bargains and subsequently, get knowledgeable decisions and take pleas at the precise stage of Judicial Proceedings.

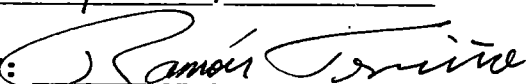
U.S. CONSTITUTION FOURTEENTH AND SIXTH AMENDMENTS

REQUESTED RELIEF

By all legal argumants stated above, and referring to the fact that I was misled by counsel pertained to allegations of sexual nature, when I was literally compelled to take an unlawful plea by mixture error from ineffective counsel and/or misconduct from prosecution and then by being denied my Constitutional right to Allocution, I hereby respectfully ask the court for dismissal on counts 1,2,3,4,5, and 6. pertaining to my entire case, or permit the withdrawal of plea on all counts therefore to be tried ANEW on original charges, hence the ends of Justice might be served accordingly.

UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF WASHINGTON I DECLARE THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Dated this First day of February, 2018

RESPECTFULLY SUBMITTED BY: 

RAMON TREVINO HERNANDEZ# 314712
AHCC P.O.BOX 2049 K-A- 51L
AIRWAY HEIGHTS WASHINGTON, 99001
Pro se

15
GM

Steven Rucker

S3



FILED

MAY 19 2017

Scott G. Weber, Clerk, Clark Co.

4:30

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

RAMON TREVINO-HERNANDEZ,
Defendant.

SID: WA21586951

If no SID, use DOB: 9/28/1960

No. 06-1-01930-0

**Felony Judgment and Sentence (as to Counts
1 and 3 only) -- Prison**

RCW 9.94A.507 Prison Confinement

(Sex Offense and Kidnapping of a Minor)

(FJS)

08-9-01784-1

Clerk's Action Required, para 2,1, 4.1, 4.3a,
4.3b, 5.2, 5.3, 5.5 and 5.7

Defendant Used Motor Vehicle

Juvenile Decline Mandatory Discretionary

I. Hearing

1.1 Upon remand from the Court of Appeals, the court conducted a re-sentencing hearing this date as to Counts 1 and 3 only; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses (as to counts 1 and 3 only), based upon guilty plea 1/8/2008 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	9/1/1996 to 8/31/2001
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	9/1/1996 to 8/31/2001

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.507.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV For crime(s) charged in Count _____ domestic violence was pled and proved. RCW 10.99.020.

The defendant used a **firearm** in the commission of the offense in Count _____, RCW 9.94A.825, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____, RCW 9.94A.825, 9.94A.533.

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (07/2015))*

Page 1 of 13

- Count _____, is aggravated murder in the first degree committed while the defendant was under 16 years of age 16 or 17 years of age when the offense was committed.
- Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.
- In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A._____.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle; or public transit-stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY** In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080

- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes
1.			

*DV: Domestic Violence was pled and proved

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1 (none known)						

*DV: Domestic Violence was pled and proved

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	15	XII	240 MONTHS to 318 MONTHS		240 MONTHS to 318 MONTHS	LIFE
03	15	X	149 MONTHS to 198 MONTHS		149 MONTHS to 198 MONTHS	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

- Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) _____.
- above the standard range for Count(s) _____.

- The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
 - Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.
 - within the standard range for Count(s) _____ but served consecutively to Count(s) _____.
- Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.
- In the case of more than one aggravating factor, the Court finds that the same sentence would be imposed if any one of the aggravating factors is not upheld on appeal.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

- That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.
- That the defendant is indigent and disabled and is not anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.
- Other: _____ . RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate. (RCW 9.94A.753):

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 Felony Firearm Offender Registration. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

- The court considered the following factors:
 - the defendant's criminal history.
 - whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
 - evidence of the defendant's propensity for violence that would likely endanger persons.
 - other: _____
- The court decided the defendant should should not register as a felony firearm offender.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

318 months on Count 01

198 months on Count 03

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

The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered on Counts 1 and 3 is: _____.

All counts (1, 2, 3, 4, 5, and 6) shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____.

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____.

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

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count	minimum term	maximum term	Statutory Maximum
Count _____	_____	_____	_____
Count _____	_____	_____	_____

(c) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count _____ minimum term: _____ maximum term: _____

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

(e) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) 1, 3, 36 months for sex Offenses

Count(s) _____, 18 months for Violent Offenses

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

Count(s) _____, _____ months. RCW 9.94A.701(9)

(Sex offenses, only) For count(s) _____, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

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

not possess or consume alcohol.

have no contact with: _____

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

not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

participate in an education program about the negative costs of prostitution.

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

undergo an evaluation for treatment for domestic violence chemical dependency mental health anger management, and fully comply with all recommended treatment. _____

comply with the following crime-related prohibitions: _____

Other conditions: _____

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

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

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

(i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of a crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.

(ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.

(iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court the amounts previously ordered in the Judgment and Sentence entered on March 14, 2008.

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PCV	\$ _____	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
	\$ _____	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
FRC	\$ _____	Criminal filing fee, RCW 10.46.190	
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Witness costs \$ _____ WFR	
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF	
		Jury demand fee \$ _____ JFR	
		Extradition costs \$ _____ EXT	
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/FCD NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ _____	DNA collection fee	RCW 43.43.7541
FPV	\$ _____	Specialized forest products	RCW 76.48.140
PPI	\$ _____	Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.) RCW 9A.40.100, 9A.88.120, 9.68A.105	
	\$ _____	Fee for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (\$1,000 fee for each separate conviction)	RCW 9.68A.070
	\$ _____	Other fines or costs for: _____	
DEF	\$ _____	Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012)	RCW 38.52.430
		Agency: _____	
RTN/RJN	\$ _____	Restitution to: (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
	\$ _____	Total	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, 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 _____ (date).

The defendant waives any right to be present at any restitution hearing (sign initials): _____

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount-\$

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

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$_____ per month commencing _____. RCW 9.94A.760.

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

The court orders the defendant to pay costs of incarceration at the rate of \$_____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760: (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$_____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

The defendant shall not have contact with A.Y.T. (female, DOB 6/26/1991) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

A.Y.T. (female, DOB 6/26/1991) (name of protected person(s))'s

home/ residence work place school .

(other location(s)) person

other location _____

for life (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

4.7 **Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 **Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions. Unit, if not on Community Custody for supervision.

V. Notices and Signatures

5.1 **Collateral Attack on Judgment.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **Community Custody Violation.**

- (a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).
- (b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

5.5a **Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court 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 and RCW 9.41.047.

5.5b **Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 **Sex and Kidnapping Offender Registration** Laws of 2010, ch. 367 § 1, 10.01.200.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the

agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county 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 within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. 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 on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: 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 three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business 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. Travel Outside the United States: If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling In or Employed by a Public or Private

Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

- i) before arriving at a school or institution of higher education to attend classes;
- ii) before starting work at an institution of higher education; or
- iii) after any termination of enrollment or employment at a school or institution of higher education.

7. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days 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. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering 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. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. 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.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

- 5.7. Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**
- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
 - No BAC test result.
 - BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
 - Drug Related. The defendant was under the influence of or affected by any drug.
 - THC level was _____ within two hours after driving.
 - Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: Commercial Veh.; 16 Passenger Veh.; Hazmat Veh.

5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 1, 3 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) 1, 3 is/are one of the listed offenses in RCW 9.94A.030.(37)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 5/19/17
[Signature]
Judge/Print Name

35678 [Signature] [Signature]
FOR: Deputy Prosecuting Attorney Attorney for Defendant Defendant
WSBA No. 35387 WSBA No. 20407 Print Name:
Print Name: Colin P. Hayes Print Name: Steven J. Rucker RAMON TREVINO-HERNANDEZ

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.
My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.
My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9A.84.660. Registering to vote before the right is restored is a class C felony, RCW 9A.84.140.
Defendant's signature: [Signature]

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington on (date): _____

Interpreter Print Name

I, Scott G. Weber, 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 the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

RAMON TREVINO-HERNANDEZ

06-1-01930-0

SID No: WA21586951
(If no SID take fingerprint card for State Patrol)

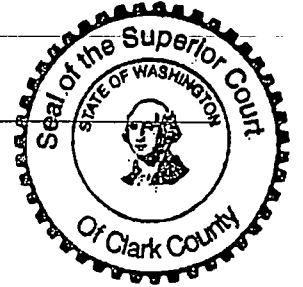
Date of Birth: 9/28/1960

FBI No. 262792AC6

Local ID No. 168595

PCN No. _____

Other _____



Alias name, DOB:

Race: W

Ethnicity:

Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, Jim Mares

Dated: 5-19-17

The defendant's signature:

Ramon Trevino

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



FILED
10/30/2017 10:28 AM
Court of Appeals
Division II

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THE SUPERIOR State of Washington OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,)
Plaintiff,)
vs.) Cause No. 06-1-01930-0
RAMON TREVINO-HERNANDEZ,) Appeal No. 50442-1-II
Defendant.)

SENTENCING
The Honorable Derek J. Vanderwood Presiding
May 19, 2017

Transcribed by: Reed Jackson Watkins
Court-Certified Transcription
206.624.3005

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A P P E A R A N C E S

On Behalf of ERIN CULVER
Plaintiff: Clark County Prosecutor's Office
1013 Franklin Street

P.O. Box 5000
Vancouver, Washington 98666

On Behalf of
Defendant: STEVEN RUCKER
Attorney at Law
207 E 19th Street
Vancouver, Washington 98663

Korrine Wells, Washington State Court
Certified Spanish Interpreter

1 -o0o-

2 May 19, 2017

3 MS. CULVER: We're just waiting a few moments for the
4 interpreter to confer with Mr. Trevino-Hernandez.

5 THE COURT: Is that the last one?

6 MS. CULVER: It is the last one.

7 (Off-the-record discussion)

8 MR. RUCKER: Thank you, Your Honor, for the
9 opportunity to meet with Mr. Trevino-Hernandez. We
10 have always met without an interpreter, but in court he
11 has had interpretation, and Ms. Wells was available and
12 had come to court.

13 THE COURT: Thank you. And I'll let her identify
14 herself for the record.

15 MS. WELLS: Korrine Wells, Washington State Court
16 Certified Interpreter.

17 THE COURT: Very good. I'll let Ms. Culver then do
18 the identification of defendant.

19 MS. CULVER: Thank you. Could you please state your
20 name for the Court's records, sir?

21 THE DEFENDANT: Ramon Trevino-Hernandez.

22 MS. CULVER: And, Your Honor, this is Cause No.
23 06-1-019300, and it's on today to enter felony judgment
24 and sentence as to Counts 1 and 3. We are also asking
25 or presenting an order indicating the modifications

1 being made today, or vacation of the former sentencing
2 paperwork for counsel (inaudible) but maintaining
3 intact the sentence that was imposed on the other
4 counts at the time of the original sentence.

5 THE COURT: All right. And, Mr. Rucker, I just want
6 to clarify, you did have a chance with Ms. Wells to
7 visit with Mr. Trevino-Hernandez this afternoon,
8 correct?

9 MR. RUCKER: I did, your Honor.

10 THE COURT: Thank you. Anything that you wanted to
11 add at this point?

12 MR. RUCKER: It is the request of
13 Mr. Trevino-Hernandez to have Counts 1 and 3 vacated,
14 and it was subject from the Court of Appeals.

15 THE COURT: All right. Anything further, Ms. Culver?

16 THE DEFENDANT: May I say something?

17 THE COURT: Yeah, just a minute.

18 Anything else that you had, Ms. Culver?

19 MS. CULVER: No, Your Honor, we're merely asking to
20 enter a new felony judgment and sentence as to those
21 counts today, but there is no argument to be made as to
22 the amount of time or any conditions or anything on
23 those lines, this is merely a procedural paperwork
24 matter.

25 THE COURT: I have reviewed the file, including the

1 Court of Appeals decision. It does appear that the
2 order vacating the sentence is an appropriate approach.
3 It's been reviewed and signed by the parties. So I
4 will sign it, and it will be entered at this time.

5 MR. RUCKER: May I comment, Your Honor?

6 THE COURT: Yes.

7 MR. RUCKER: Of course, Mr. Trevino-Hernandez would
8 like to address all issues and have an appeal before
9 this Court on remaining counts, but that is not before
10 this Court at this time. We've advised him to be in
11 contact with his appellate attorney, if he has such.

12 But our responsibility today is before the Court as to
13 Counts 1 and 3.

14 THE COURT: With that, I know Mr. Trevino-Hernandez
15 did want to say something and, if so, sir, I'll hear
16 what you have to say.

17 THE DEFENDANT: Your Honor, that's all I wanted to
18 talk about was what my attorney said.

19 THE COURT: Thank you. You have a good attorney that
20 does a good job representing your interests, as
21 indicated.

22 All right. Ms. Culver, anything else?

23 THE DEFENDANT: Thank you, Your Honor.

24 MS. CULVER: Your Honor, the standard sentencing
25 range basically in question in these two counts is as

1 to Count 1, 240 months to 318 months. As to Count 3,
2 149 months to 198 months. It's my understanding that
3 the -- that other counts that were sentenced at the
4 high end of that range of 318 months we are asking for
5 that as to Count 1, the 318-month sentence be imposed.
6 As to Count 3, sentence of 198 months to be imposed.
7 For the attendant periods of community custody, 36
8 months, and all conditions issues of victim input,
9 restitution, were all addressed at the time of the
10 original sentencing back in March of 2008, so there is
11 nothing more before the Court with respect to those
12 matters today.

13 The defendant has, as of today, 3,566 days of credit
14 for time served. Obviously, we would expect the
15 Department of Corrections would calculate the balance
16 of 318 months. We are just asking the Court to impose
17 that sentence.

18 The Court's aware from its review of the file that
19 the issue was that, essentially, the crimes -- the
20 charging periods for the crimes in Counts 1 and 3
21 predated the period of lifetime community custody that
22 that can be imposed at this time, so we're just,
23 essentially, treating this as if it were being
24 sentenced the regular classic (inaudible) --

25 THE COURT: So the original sentence as to Count 1

1 was a minimum term of 318 with a maximum term of life
2 as an indeterminate sentence. And to Count 3, it was a
3 minimum of 198 with, again, a maximum of life
4 indeterminate sentence. But the range for the conduct
5 was actually outside the scope of the statute dealing
6 with the indeterminate sentence.

7 So the State, just so I'm clear, is asking as to
8 Count 1 a sentence of 318 months, and for Count 3, 198
9 months.

10 MS. CULVER: That's correct, the high end of the
11 standard sentencing range without any regard for the
12 indeterminate sentencing review board because that does
13 not apply here.

14 THE COURT: Thank you. Anything else, Ms. Culver?

15 MS. CULVER: No, Your Honor.

16 THE COURT: All right. Mr. Rucker?

17 MR. RUCKER: Thank you, Your Honor.

18 THE DEFENDANT: May I make a comment?

19 THE COURT: Well, as we've mentioned, you have an
20 attorney that does a good job representing you. I'll
21 give you a chance to comment. What I would like to do
22 is hear from your attorney first, and then if you feel
23 like you still need to comment, we can talk about that.
24 All right, sir?

25 Go ahead, Mr. Rucker.

1 MR. RUCKER: Thank you, Your Honor.

2 Mr. Trevino-Hernandez maintains his innocence. He is
3 opposed to any time. He feels he's been unjustly
4 convicted, and but he's been subject to follow through
5 by the Court of Appeals. The Court of Appeals has
6 reviewed and has made this determination that there
7 needs to be a correction to the paperwork that will not
8 change the amount of time that he is serving, although
9 he would like it to, but we are asking that the Court
10 recognize that he maintains his innocence, he's opposed
11 to time being sanctioned against him, but this matter
12 is a matter of following through with what the Court of
13 Appeals has asked this Court, the trial court, to do.

14 Thank you, Your Honor.

15 THE COURT: Thank you. Sir, is there anything you
16 would like to say?

17 THE DEFENDANT: Yes, it was the same thing that the
18 attorney said. Thank you very much.

19 THE COURT: All right. I have taken a look at the
20 decision, as I mentioned, the Supreme Court indicates
21 that the personal restraint petition was granted only
22 as to the validity of the sentencing on Counts 1 and 3.
23 And the validity was based on the issues we've already
24 discussed as far as the indeterminate sentence
25 component of that.

1 And I reviewed the information regarding this trial
2 and this case and heard from the parties. I do think
3 that the appropriate sentence for Counts 1 and 3 is at
4 the high end of the range, as had been identified
5 previously by the sentencing court, although that will
6 be the sentence on both Counts 1 and 3, 318 months for
7 Count 1, 198 months for Count 3 will now be a minimum
8 sentence as to those two counts.

9 The community custody period will be adjusted
10 accordingly to comply with the provisions as would be
11 applicable as well. All right?

12 Any other questions regarding the sentence?

13 MR. RUCKER: No, Your Honor, we'll step over and look
14 at the documents.

15 THE COURT: Thank you.

16 (Off-the-record discussion)

17 MS. CULVER: And, Your Honor, I'm also handing
18 forward a notice of ineligibility for firearms as well
19 as an order for counseling and testing and the sex
20 kidnapping offender registration notice. I'll be
21 presenting to Mr. Trevino-Hernandez since this is now
22 the sentencing on the Counts 1 and 3.

23 THE COURT: Thank you.

24 MS. CULVER: I'll also provide a copy of reporting
25 instructions for legal financial obligations and

1 community custody.

2 (Off-the-record discussion)

3 (Hearing concluded)

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION

TO: The Honorable John F. Nichols
Clark County Superior Court

NAME: TREVINO HERNANDEZ, Ramon

ALIAS(ES):

CRIME(S): Rape of a Child in the First Degree - 02 Counts
Child Molestation in the First Degree - 02 Counts
Child Molestation in the Second Degree- 01 Count
Rape of a Child in the Second Degree- 01 Count

DATE OF OFFENSE: 06/01/2005 to 09/01/2006

PRESENT ADDRESS: Clark County Jail

DATE OF REPORT: 03/05/2008

DOC NUMBER: 314712

COUNTY: Clark

CAUSE #: 06-1-01930-0

SENTENCING DATE: 03/14/2008

DEFENSE ATTORNEY: Steven Rucker

I. OFFICIAL VERSION OF OFFENSE:

On **1/22/2008**, a pre-sentence assignment was received for sentencing on 02/29/2008. Information for this report was provided by: Clark County Sheriffs Office (06-10550), Children's Protective Services (1737115) and (1737115), Children's Justice Center Information and Filings. No psychosexual evaluation was ordered.

On **07/19/2006**, Child Protective Services received a report from the Clark County Sheriff, of sexual abuse of a child. The report was received from a relative of the victim. The victim, A.Y.T. (DOB:06/26/91) had disclosed that she had run away from home on 07/05/2006, due to sexual abuse by her father, Ramon Trevino-Hernandez (DOB: 09/28/60). She reported "It's been going on for as long as I can remember." Touching consisted of kissing, fondling, and causing the victim to touch and masturbate his penis. She did not recall digital penetration. In May of 2005 the assaults stopped. The victim was not comfortable around Hernandez and moved to another residence. She informed her mother of the offense, but received no support at the time.

On **07/20/2006**, Child Protective Services received a report from the brother of victim, A.Y.T. stating he was not able to bring her in to be interviewed. Case worker, Renata Rhodes attempted to contact the victim at both her brother's and parents home. She was given a phone number to contact her and arrangements

were made for a face to face interview. A.Y.T. presented for interview along with her mother, Sarina Trevino. The victim was interviewed alone and said her father was her primary care giver, due to her mother's work schedule and she felt guilty reporting his offense. She was concerned that he would get into trouble, but finally felt she must do something.

The victim's mother Sarina Trevino told Ms. Rhodes that she believed her daughter, but had not confronted her husband as he might leave for Mexico. A plan was made to request he move out once law enforcement met with him, in order that the victim could live at home.

On 07/16/2006, Officer Bob Latter, Clark County Sheriffs Office (06-10550) was dispatched to follow up on the sexual abuse of A.Y.T. The victim's half brother Sophanara was contacted as he had reported the offense. Officer Latter was able to locate and speak with the victim, who said she had been abused for several years. She clarified her statement by saying, "It's been going on for as long as I can remember." The last time in the middle of May 2005.

After running away from home on 07/05/2006, A.Y.T. called her mother on 07/15/2006 to advise her that she was safe. In answer to why she had left, she told her mother that she had been molested for a long time.

A.Y.T. described the incidents with her father as his causing her to masturbate him, kissing her on the mouth, and making her look at his penis. He fondled her, touching her breasts, buttocks and running his hand across her vagina. The assault stopped in May of 2005. She left in July of 2006 as she was not comfortable living in the same residence.

On 08/21/2006, Officer Evelyn Oman interviewed the victim at the Children's Justice Center (formerly CIAC). The victim remembered first molestation began when she was in kindergarten. Her father would fondle her, perform oral sex on her, and cause her to masturbate him. He would also lay on top of her and "hump" her. She recalled he would kiss her chest before she had breasts and that he sucked on her nipples after she got breasts.

The victim stated that her father would have her touch his penis and buttocks. He would have her massage his penis, but he did not have her put his penis in her mouth. She did not witness him ejaculate.

According to the victim, abuse began on a random basis, progressing to "every time I was alone with him." A.Y.T. said he had never "raped" her. She explained that he did not put anything into her private area. He did perform oral sex by putting his tongue into her private area until the abuse ceased in 2005.

The victim said that when she was very young she did not realize her father should not be touching her sexually. Later, she became resentful and as time went on, more angry which resulted in her leaving the home in July.

Officer Oman attempted to contact Hernandez by phone to no avail. She was given his working cell phone number, but received no response. Officer Oman

requested an extraditable warrant be issued. The defendant was located in Florida and returned to the State of Washington for prosecution.

Count 01 – Rape of a Child in the First Degree – 9A.44.073

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between September 1, 1996 and August 31, 2001, on an occasion separate from count 3, did have sexual intercourse with A.Y.T., who was less than twelve years old and not married to the defendant and the defendant was at least twenty-four months older than the victim.

Count 02 – Rape of a Child in the First Degree – 9A.44.073

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between September 2, 2001 and June 25, 2003, on an occasion separate from count 4, did have sexual intercourse with A.Y.T., who was less than twelve years old and not married to the defendant and the defendant was at least twenty-four months older than the victim.

Count 03- Child Molestation in the First Degree – 9A.44.083

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between September 1, 1996 and August 31, 2001, on an occasion separate from count 1, did have sexual contact with A.Y.T., who was less than twelve years old and not married to the defendant and the defendant, was at least thirty-six months older than the victim.

Count 04 – Child Molestation in the First Degree – 9A.44.083

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between September 2, 2001 and June 25, 2003, on an occasion separate from count 2, did have sexual contact with A.Y.T., who was less than twelve years old and not married to the defendant and the defendant, was at least thirty-six months older than the victim.

Count 05 -Rape of a Child in the Second Degree – 9A.44.076

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between June 26, 2003 and June 1, 2005, on an occasion separate from count 5, did have sexual contact with A.Y.T., who was at least twelve years old but less than fourteen years old, and not married to the defendant and the defendant was at least thirty-six months older than the victim.

Count 06 – Child Molestation in the Second Degree – 9A.44.086

That he, Ramon Trevino-Hernandez, in the County of Clark, State of Washington, between June 26, 2003 and June 1, 2005, on an occasion separate from count 5, did have sexual contact with A.Y.T., who was at least twelve years old but less than fourteen years old, and not married to the defendant and the defendant was at least thirty-six months older than the victim.

II. VICTIM CONCERNS:

On 03/04/2008, a meeting took place at the YW with a Victim Advocate present. The mother of the victim was present and expressed her desire for the defendant to receive a low end of sentence range. She felt that although she wanted to see