

FILED
SUPREME COURT
STATE OF WASHINGTON
9/5/2023
BY ERIN L. LENNON
CLERK

NO. 102312-0
COA No. 39220-1-III
Superior Court No. 22-2-50371-11

**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON
v.
JOHN PATRICK BLACKMON

[[CORRECTED]]

MOTION FOR DISCRETIONARY REVIEW

[TREATED AS A CORRECTED PETITION FOR REVIEW](#)

John Patrick Blackmon, pro se

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A. IDENTITY OF THE PETITIONER

I, John Patrick Blackmon, Petitioner, pro se, asks the court accept review of the decision designated in Part-B of this motion.

B DECISION

The ruling of the Court of Appeals Division III causing improper conversion and denying review of a Writ of Habeas Corpus filed in Superior Court under provisions of RCW 7.36 statutes.

C ISSUES PRESENTED FOR REVIEW

1. Did Trial Court Error Transferring to Division III Court of Appeals a Writ of Habeas Corpus? Pg. 3
2. Did Court of Appeals Division Three Abuse Discretion in Failing to Transfer the Writ of Habeas Corpus to Court of Appeals Division One as a PRP? Pg. 5
3. Did Court of Appeals Division Three Abuse Discretion in Converting the Petitioner's "Writ of Habeas Corpus" to a "Writ of Mandamus" without Authority of Law? Pg. 9

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D STATEMENT OF THE CASE

In 2013 a judgment was entered against Petitioner in the Superior Court of Snohomish County confining Petitioner to the Department of Corrections. An appeal was taken from this judgment with additional PRP document filed over the years following conviction. The last decision in the action was entered in 2021 when LFO challenges were denied. The Writ of Habeas Corpus was filed thereafter in Franklin County Superior Court where Petitioner was confined by the Department of Corrections in 2022. The Superior Court found Petitioner indigent then transferred the matter to the Court of Appeals Division Three for proper consideration of the merits. The Court of Appeals forwarded the action to the Washington Supreme Court for a second indigent determination which was denied and returned to the Court of Appeals Division Three for more action. On April 12, 2023 Court of Appeals denied Petitioner's indigent pleading for failure to pay filing fee. On

June 12, 2023 Petitioner moved for reconsideration of commissioner's ruling as commissioner improperly converted Petitioners Writ of Habeas Corpus pleading to a Writ of Mandamus then stated an improper belief of a lacked jurisdiction over Writs of Mandamus in his ruling. On August 2, 2023 the Court of Appeals Division Three determined the motion to reconsider commissioner's ruling is denied resulting in the request for discretionary review here filed. The Petitioner was denied his 14th Amendment Constitutional right when his action was converted from a Writ of Habeas Corpus to a Writ of Mandamus without authority of law allowing such conversion.

SEE ATTACHMENT-D

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Did Trial Court Error Transferring to Division Three Court of Appeals a Writ of Habeas Corpus?

The federal courts have established the trial courts must determine first if the party is indigent, which trial court did in the present action, finding petitioner indigent. See Terminate
MOTION FOR DISCRETIONARY REVIEW - 3 of 14

Control Corp. v. Horowitz, 28 F.3d 1335, 1341 (2d Cir. 1994)

The trial court made proper determination of indigent status, whereby, Petitioner at all time relevant was confined as a prisoner in the State of Washington with no funds to pay court fees on his institutional account at the time of filing the pleading. The records established the Petitioner was indigent for an extensive period of time prior to seeking review at public expense for his Writ of Habeas Corpus in Superior Court. The trial court transferred the Writ of Habeas Corpus to Court of Appeals Division Three for consideration when the Petitioner's originating criminal case was established in the Snohomish County Superior Court which required transfer of the Writ of Habeas Corpus to the Court of Appeals Division One for consideration as a Personal Restraint Petition from the Superior Court. Therefore, the trial court's error in the transfer to Court of Appeals Division Three was improper in violation of Petitioner's 14th Amendment Constitutional right to proper

procedural due process which required the pleadings properly transferred to the required Court of Appeals Division I for consideration of the merits as a Personal Restraint Petition.

2. Did Court of Appeals Division Three Abuse Discretion in Failing to Transfer the Writ of Habeas Corpus to Court of Appeals Division One as a Personal Restraint Petition?

“An abuse of discretion is found if the court relies on unsupported facts, takes a view no reasonable person would take, applies the wrong legal standard, or basis it's ruling on an erroneous view of the law.” “A court abuses discretion when it's decision is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 630 (2003)(quoting State v. Lewis, 115 Wn.2d 294, 298-99, 794 P.2d 1141 (1990)); State v. Dye, 178 Wn.2d 541, 548, 309 P.3d 1192 (2013). In the present matter Petitioner filed a “Writ of Habeas Corpus” under Revised Code of Washington chapter 7.36 statutes in the Superior Court of Franklin County which was transferred to the Court of Appeals

Division Three for consideration. The “Writ of Habeas Corpus” addressed the validity of an underlying criminal judgment in relation to a warrant-less arrest that resulted in a warrant-less search and seizure of items used during a criminal trial in violation of the Fourth Amendment Constitutional protections against warrant-less arrest and searches. The Fourth Amendment of the Federal Constitution protects all persons from the “intrusion of a home” When intrusion occurs we must be open to more than first blood rights. The “right is absolute” regarding home intrusions by governmental officials without a warrant. The actions of police violating the sanctity of Petitioner's home to make a warrant-less arrest of Petitioner during initial contact in their investigation process offends the very provisions of the Fourth Amendment Constitutional protections against governmental intrusions. There was no active crime in progress upon police arrival at Petitioner's home to justify the warrant-less arrest whereby a warrant likely could

be obtained in minutes with a brief phone conversation while police kept Petitioner and his residence under surveillance until the physical warrant arrived. Anything coming from the warrant-less arrest and pursuing search of Petitioner's home is fruit of the tainted tree in all future proceedings including all pretrial and trial proceedings in the criminal action. The Court of Appeals Division Three on review of Petitioner's pleading could very clearly see Petitioner's pleading is titled as a "Writ of Habeas Corpus" challenging the Petitioner's criminal conviction requiring transfer to Court of Appeals Division One for consideration as a Personal Restraint Petition. The nature of the constitutional right alleged violated brings to light a review as a "Personal Restraint Petition" in Court of Appeals Division One as the proper vessel. The wording in the findings of fact stated in the Court of Appeals Division Three rulings dismissing the action shows the Court of Appeals Division Three applied the wrong legal standards when addressing the

“Writ of Habeas Corpus” when it failed to properly consider the matter as a Personal Restraint Petition and when it failed to properly transfer the matter to Court of Appeals Division One. “Judgments rendered without authority of law may be attacked by habeas corpus even through court had jurisdiction over subject matter and person.” Horner V. Webb, 19 Wn.2d 51, 141 P.2d 151 Wash. 1943); In Re Clark, 24 Wn.2d 105, 163 P.2d 577 (Wash. 1945). Where a petition raises factual questions concerning violations of Constitutional rights a hearing will be had and petition will not be dismissed by motion. Nahl v. Delmore, 49 Wn.2d 318, 301 P.2d 161 (1956). The Court of Appeals Division Three was required to treat the Petitioner's pleading as a Personal Restraint Petition as a matter of law which did not occur given the commissioner's decision in the wording of the dismissal document entered in the Court of Appeals in this action. The abuse of discretion exists on the face of the record with Court of Appeal's own failure to treat the

“Writ of Habeas Corpus” as a “Personal Restraint Petition” as requires as a matter of law, thereby, discretionary review should be granted with the matter remanded to the trial court with direction to hold the necessary factual hearing with regards to the Fourth Amendment Constitutional violation raised in the pleadings.

3. Did Court of Appeals Division Three Abuse Discretion in Converting the Petitioner's “Writ of Habeas Corpus” to a “Writ of Mandamus” without Authority of Law?

In review of the Court of Appeals Division Three Commissioner's Ruling terminating Petitioner's Writ of Habeas Corpus actions we find in the wording the Court of Appeal's commissioner both held an improper view of the law and applied the wrong legal standards to Petitioner's action when the Court of Appeals commissioner established his belief he was addressing a “Writ of Mandamus” document transferred from the Superior Court. The documents filed by Petitioner that the Superior Court transferred to the Court of Appeals are each

clearly titled a “Writ of Habeas Corpus” under chapter 7.36 RCW which establishes without any doubt the Court of Appeals commissioner applied the wrong legal standards when denying Petitioner's pleadings. The Court of Appeals clearly stated the belief that Petitioner “*did not file a habeas corpus petition pursuant to chapter 7.36 RCW but instead filed a writ of mandamus pursuant to chapter 7.16 RCW.*” see **Attachment-A at page 5 paragraph-1**. The commissioner's ruling goes forth to state “*The superior court lacks authority to transfer Mr. Blackmon's petition for writ of mandamus to this court because this court lacks original jurisdiction over such actions.*” **Attachment-A Page-5**. The wording in the commissioner's ruling establishes the commissioner at the Court of Appeals held a clearly erroneous belief when he applied the wrong legal standards to the Writ of Habeas Corpus, that he held a clear erroneous view of the law with respect to the action transferred from the Superior Court. Thereby, it is beyond any contestation

that based on the commissioner's ruling of April 12, 2023, that the commissioner did no actual review of the documents in the record and/or failed to even identify the proper legal process, proper authority of law, and physical documentation that the Petitioner Blackmon initiated in the Superior Court, whom transferred the documentation to the Court of Appeals for consideration as a Personal Restraint Petition. The commissioner's ruling establishes a clear abuse of discretion at the Court of Appeals when the commissioner converted the "Writ of Habeas Corpus" into a "Writ of Mandamus" then entered a finding the Court of Appeals lacked jurisdiction over the "Writ of Mandamus" which actually never existed in the pleadings of Petitioner.

On August 29, 2022 the Attorney General's Office through attorney Kelly Fitzgerald WSBA# 26203 improperly filed a document titled as "Response to Writ of Mandamus" under Petitioner's Superior Court Cause 22-2-50371-11 which

is the “Writ of Habeas Corpus” Superior Court cause number.

Attachment-C. The cause number is the same as seen on all of Petitioner's “Writ of Habeas Corpus” documents filed in the superior court which were transferred to the Court of appeals for consideration as a Personal Restraint Petition. **Attachment-B.** The Supreme Court determined under In Re Personal Restraint Petition of Golden, 178 Wn.2d 1001, 308 P.3d 642 (2013) that a habeas corpus filed in Superior Court is transferred to Court of Appeals to be treated as a Personal Restraint Petition. In Petitioner's habeas corpus action the Court of Appeals by the commissioner's own ruling clearly treated Petitioner's habeas corpus action improperly as a writ of mandamus after transfer to the court of appeals denying him actual due process of law which should now be corrected through remand to the Court of Appeals Division One for consideration as a Personal Restraint Petition. In Sibron v. New York, 392 US 40, 88 S.Ct. 1889 (1968), the court held that

“criminal case does not become moot upon expiration of the sentence imposed. We note 'the obvious fact of life that most criminal convictions do in fact entail adverse collateral legal consequences.' We concluded that the mere possibility of such collateral consequences was enough to give the case 'impact of actuality' which is necessary to make a justifiable case or controversy.” The criminal judgment carries many collateral consequences including future registration requirements for Petitioner that will effectually stop finality under Petitioner's criminal action as various jurisdiction in the United States increase, decrease or require additional punishments that increases or decrease Petitioner's sentence consequences during registration including what information must be provided, placing signs in his front yard and other various increases in punishment Petitioner must face so long as the conviction based upon the Fourth Amendment illegal warrant-less arrested inside his home and illegal search of his home stands on Petitioner in

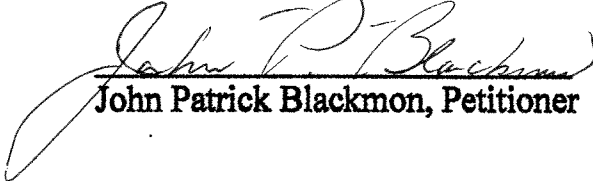
the criminal case record without relief.

F. CONCLUSIONS

For the reasons set forth above the petition for discretionary review should be granted and the matter remanded for proper proceedings, unless the Supreme Court to the Superior Court for a factual hearing on the 4th Amendment claim.

DATED This 05th day of September, 2023.

Respectfully Submitted,

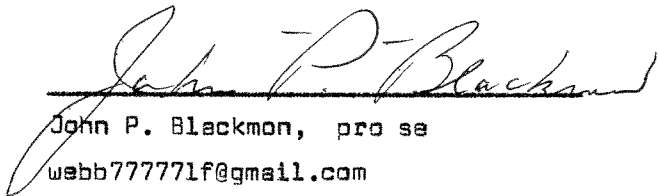

John Patrick Blackmon, Petitioner

CERTIFICATION OF COMPLIANCE

This Appellant certifies stating that petition pleading, this page is compliant having a word count approximate 2300 words, (14) fourteen pages, and was created using copier and on a prison typewriter with only font size available for the said. This CORRECTED PETITION FOR DISCRETIONARY REVIEW, due September 02,2023; September 05,2023 DAYS END due to Labor Day, to eFILE DISCRETIONARY REVIEW PETITION, includes Attachments-A, through -D, is also timely; pursuant to Wash. R. App. P. 18.17; pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright, 626 F.2d 1184 (1980); Pursuant to 9A.72.085.

DATED, PROCLAIMED, and served on The CLERK of THE WASHINGTON STATE SUPREME COURT, The COURT, and Respondent parties by WASHINGTON STATE COURT's eFile Portal

This 05th day of September, 2023. after noon, EST.


John P. Blackmon, pro se

webb777771f@gmail.com

18103 Old Braddock Trl SE

Oldtown, MD. 21555

ATTACHMENT

A

The Court of Appeals
of the
State of Washington
Division III

FILED
Apr 12, 2023
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

JOHN PATRICK BLACKMON,)

Appellant,)

v.)

MELISSA ANDREWJESKI and)
WASHINGTON STATE)
DEPARTMENT OF CORRECTIONS,)

Respondent.)

No. 39220-1-III

COMMISSIONER'S RULING

John Patrick Blackmon seeks review of the Franklin County Superior Court's Order Granting Respondents' Motion to Dismiss Mr. Blackmon's petition for a writ of mandamus. This matter is set on the court's motion to dismiss for failure to pay the filing fee.

Background

On November 9, this court notified Mr. Blackmon by letter that where he had not paid the filing fee or obtained an order for expenditure of public funds pursuant to RAP 15.2(c)(2), the court had set the matter on the commissioner's docket on the court's motion to dismiss.

Mr. Blackmon subsequently filed an affidavit of indigency and a motion for findings of indigency with the superior court, asking the court for an order to transmit findings of indigency

No. 39220-1-III

to the Supreme Court. His motion indicated that this was a habeas corpus proceeding. He obtained findings of indigency from the superior court, which were transmitted to the Supreme Court for consideration. Accordingly, this court struck the motion to dismiss given the pending motion in the Supreme Court.

On February 9, the Supreme Court denied Mr. Blackmon's motion for expenditure of public funds. This court reset the court's motion to dismiss based on Mr. Blackmon's failure to pay the filing fee.

Mr. Blackmon filed a motion for indigency, asking this court to grant his motion for indigency on the basis that the superior court erred by dismissing his petition for writ of habeas corpus instead of transferring it to this court where it found that his "mandamus" was untimely. Motion for Indigency at 2. Specifically, he argues that under *Toliver v. Olsen*, 109 Wn.2d 607, 746 P.2d 809 (1987), the Supreme Court, Court of Appeals, and Superior Court have concurrent original jurisdiction of habeas corpus proceedings seeking post-conviction relief, and the superior court abused its discretion by dismissing his petition rather than transferring it. Accordingly, he asks this court to waive the filing fee based on his indigency.

Respondents Melissa Andrewjeski and the Department of Corrections (DOC) (hereinafter collectively "Respondents") submitted a response to Mr. Blackmon's motion at this court's request and provided more context regarding the underlying action. Respondents note that Mr. Blackmon was originally convicted of his underlying crimes and sentenced in Snohomish County Superior Court in 2013, that he appealed to Division One of this Court, and subsequently pursued several unsuccessful personal restraint petitions (PRPs) in Division One. In the

underlying action on appeal here. Mr. Blackmon did not file a writ for habeas corpus as he alleges, but instead filed a writ of mandamus, asking the superior court to order DOC to release him because he was being unlawfully restrained. It appears he argued his restraint was unlawful because his judgment and sentence is facially void. The superior court granted DOC's motion to dismiss Mr. Blackmon's action, finding that: (i) the petition was a collateral attack on Mr. Blackmon's judgment and sentence that was untimely pursuant to RCW 10.73.090, and (ii) the petition failed to state a claim upon which relief could be granted.

Respondents ask the court to deny Mr. Blackmon's motion, noting that the Supreme Court already found that Mr. Blackmon was not entitled to expenditure of public funds and that Mr. Blackmon fails to address why the Supreme Court's ruling was in error. They also note that to the extent Mr. Blackmon wishes to challenge the validity of his sentence, he may do so by filing a PRP that names the State as respondent, as he has done previously.

Analysis

Upon filing a notice of appeal, an appellant must either pay a statutory filing fee or, if seeking review at public expense, obtain an order of indigency. RAP 5.1(b); RAP 15.2. An appeal may be dismissed on 10 days' notice when a party fails to comply with the appellate rules, including the filing fee and indigency rules (RAP 5.1(b) and RAP 15.2). RAP 18.9(a).

RAP 15.2 governs the determination of indigency and rights of an indigent party on appeal. RAP 15.2(b) directs the trial court to grant a motion for an order of indigency if "the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review" of certain enumerated cases, including "orders denying petitions for writ of

No. 39220-1-III

habeas corpus under chapter 7.36 RCW." RAP 15.2(b)(E).

RAP 15.2(c) provides that in cases not governed by RAP 15.2(b), the trial court shall determine indigency in written findings, and the moving party must demonstrate that the issues the party wants reviewed have probable merit and that he or she has a constitutional or statutory right to review partially or wholly at public expense, both of which will be determined by the Supreme Court pursuant to RAP 15.2(d). In the event the trial court enters findings of indigency pursuant to RAP 15.2(c), the court transmits the findings to the Supreme Court, which then determines whether the trial court should enter an order of indigency.

Mr. Blackmon correctly notes that the Supreme Court, Court of Appeals, and superior court have concurrent jurisdiction in habeas corpus proceedings wherein postconviction relief is sought. *Toliver v. Olsen*, 109 Wn.2d 607, 609, 768 P.2d 809 (1987). The superior court is required to transfer post-conviction motions for relief from judgment or sentence to this court for consideration as a PRP unless the court determines the motion is timely under RCW 10.73.090 and either the defendant has made a substantial showing that they are entitled to relief or resolution of the motion will require a factual hearing. CrR 7.8(c)(2).

Mr. Blackmon argues that where the superior court found his petition was an untimely post-conviction attack on his judgment and sentence, the court erred by denying his petition rather than transferring it in accordance with CrR 7.8. Accordingly, he contends that this court should waive the filing fee under these circumstances rather than requiring him to obtain an

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order for expenditure of funds from the Supreme Court pursuant to RAP 15.2(d).¹

The limited record before this court indicates that Mr. Blackmon did not file a habeas corpus petition pursuant to chapter 7.36 RCW but instead filed a writ of mandamus pursuant to chapter 7.16 RCW. A superior court or the Washington Supreme Court may issue a writ of mandamus to compel a state official to perform an act the law clearly requires as part of the official's duties. RAP 16.2(a); *Wash. State Council of County & City Employees, Council 2 v. Hahn*, 151 Wn.2d 163, 166-67, 86 P.3d 774 (2004). The superior court lacked authority to transfer Mr. Blackmon's petition for a writ of mandamus to this court because this court lacks original jurisdiction over such actions. RAP 16.2(a); *see e.g., State v. Davis*, 5 Wn. App.2d 1016, 2018 WL 4462655 (2018) (unpublished)² (noting court of appeals rejected trial court's transfer of defendant's motion for resentencing where defendant was seeking to enforce a purported directive from the Supreme Court to resentence him, and further noting that to the extent the defendant's motion was a request for a writ of mandamus to compel the superior court to act, the Court of Appeals lacked jurisdiction over such writs).³

On this record, Mr. Blackmon fails to demonstrate that this court should apply RAP 16.8,

¹ RAP 16.8, governing filing and service of PRPs in this court, provides that a petition will be filed by the clerk only if the filing fee is paid, unless the appellate court determines the petitioner is indigent. It appears that Mr. Blackmon is asking this court to waive the filing fee pursuant to RAP 16.8 because his matter should have been transferred to this court for consideration as a PRP and the superior court found him indigent.

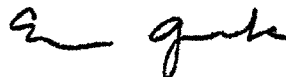
² GR 14.1 (Court of Appeals unpublished decision can be cited as persuasive authority).

³ Although the superior court apparently found that the petition for writ of mandamus was effectively an untimely collateral attack on Mr. Blackmon's judgment and sentence, Mr. Blackmon cites no authority that would allow the superior court to transfer a petition for writ of mandamus to this court.

No. 39220-1-III

or that the court may otherwise waive the filing fee despite the Supreme Court's order denying the expenditure of public funds. He also fails to demonstrate that it is in the interest of justice for this court to waive the filing fee pursuant to RAP 1.2(c). To the extent Mr. Blackmon wishes to challenge the facial validity of his judgment and sentence, he may do so by filing a personal restraint petition directly with the Court of Appeals.⁴

Accordingly, IT IS ORDERED, where the Supreme Court denied Mr. Blackmon's motion for expenditure of public funds and he did not pay the filing fee, the court's motion to dismiss is granted. Mr. Blackmon's motion for indigency is denied.



Erin Geske
Commissioner

⁴ This court observes that if Mr. Blackmon wishes to challenge the validity of his judgment and sentence, which was entered in Snohomish County superior court, he must file his PRP with Division One as he has done in the past.

ATTACHMENT

B

ORIGINAL FILED

JUN 06 2022

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON — COUNTY OF FRANKLIN

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,
vs.
MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

CASE # 22 250371 11
WRIT OF HABEAS CORPUS

STATE OF WASHINGTON TO: WASH. DEPT. OF CORRECTIONS

Name: MELISSA ANDREWJESKI

Address (Street) 1301 N. EPHRATA AVE.
(City, State, Zip) CONNELL, WA, 99326

YOU ARE COMMANDED to bring: JOHN BLACKMON

and this writ before the following judge/court commissioner of the Superior Court:

Honorable: _____

On: (Date) _____ (Time) _____

At: _____ Court, Room/Department: _____

Address: (Street) _____
(City, State, Zip) _____

in order that the court may rule on the legality of the detention.

YOU ARE FURTHER COMMANDED to file immediately a "Return and Response to a Writ of Habeas Corpus" pursuant to Chap. 7.36. RCW.

Dated: _____

By direction of the Honorable:

Judge/Court Commissioner

Clerk

By _____
Deputy Clerk

SUPERIOR COURT OF WASHINGTON — COUNTY OF

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,

vs.
MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

CASE # 22-2-50371-11

PETITION FOR WRIT OF HABEAS CORPUS

I. PETITION

The undersigned states that:

1.1 SEE PETITION, Page 2 of 2 is being restrained or withheld from

legal care provider

by: _____

at: _____ County, Washington.

1.2 The cause or pretense of the restraint is.

1.3 The restraint is illegal in that

It violates a decree/order entered on _____ a copy of which is attached to this petition.

The undersigned petitions the court to issue a Writ of Habeas Corpus to inquire into the legality of the restraint and to deliver the person restrained therefrom.

Dated: _____

Petitioner

II. VERIFICATION

STATE OF WASHINGTON)
)
COUNTY OF)

The undersigned on oath states that:

2.1 I am the petitioner; and

2.2 I have read the above petition and believe it to be true

Signature

Sworn and Subscribed on:

Date: _____

Notary Public in and for Washington

Residing at _____

My commission expires _____

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SUPERIOR COURT OF WASHINGTON — COUNTY OF FRANKLIN

JOHN BLACKMON,
Petitioner,
vs.
WASH. DEPT. OF CORRECTIONS,
Respondents.

CASE # 22-2-50371-11

PETITION FOR WRIT OF HABEAS CORPUS

I. PETITION

The undersigned states that:

1.1 Mr. JOHN BLACKMON is being restrained or withheld from
legal care provider

by: MELISSA ANDREW JESKI
at: CRCC, FRANKLIN County, Washington.

1.2 The cause or pretense of the restraint is:

The Judgment is VOID ON IT'S FACE -
due to illegal arrest. Guffey v.
State, 103 Wn.2d 144; 690 P.2d 1163 (1984)

1.3 The restraint is illegal in that:

It violates a decree/order entered on N/A a copy of which is attached to this petition.
Without probable cause, and without a-
warrant, police arrested petitioner
while he stood inside door of his home.

The undersigned petitions the court to issue a Writ of Habeas Corpus to inquire into the legality of the restraint and to deliver the person restrained therefrom.

Dated: January 11, 2022

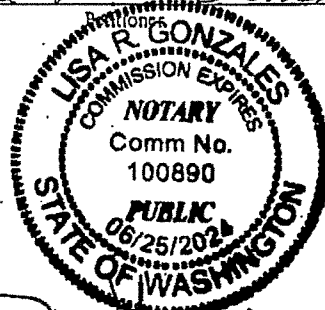
II. VERIFICATION

STATE OF WASHINGTON)
COUNTY OF FRANKLIN)

The undersigned on oath states that:

- 2.1 I am the petitioner; and
- 2.2 I have read the above petition and believe it to be true

John P. Blackmon



Lisa R. Gonzales
Signature

Sworn and Subscribed on:

Date: 1-11-22

Lisa R. Gonzales
Notary Public in and for Washington

Residing at Connell, WA

My commission expires 6-25-24

SUPERIOR COURT OF WASHINGTON
FOR FRANKLIN COUNTY

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,

vs.

MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

No. 22-2-50371-11

APPLICATION FOR:

PETITION FOR WRIT
OF HABEAS CORPUS,
RCW 7.36, et seq.

EVIDENTIARY-
HEARING REQUESTED

COMES NOW the PLAINTIFF-
PETITIONER, pursuant to the Washington-
State Constitution, Art. 1, Sec. 13, and
hereby petitions this Court in FRANKLIN-
COUNTY, for an issuance of a writ of
Habeas Corpus, directed to RESPONDENT.

APPLICATION FOR WRIT-1

SUPERINTENDENT, MELISSA ANDREW JESKI,
of COYOTE RIDGE CORRECTION CENTER,
commanding respondents to appear, and
explain the authority, and legality
under which respondent is restraining
petitioner, and if no legal authority
then be shown by respondent, as to
the restraint of petitioner, to immediately
release, and discharge petitioner from
such unlawful restraint.

IN support of this Application,
petitioner states with confidence that
he is presently unlawful restrained by
respondents, and the whereabouts of
petitioner are: COYOTE RIDGE -
CORRECTION CENTER, 1301 NORTH EPHRATA -
AVE., CONNELL, WASHINGTON, in this
APPLICATION FOR WRIT-2

COUNTY.

Specifically, John Blackman - asserts that he is restrained unlawfully because the Judgment is void on its face, as delineated in the attached "Affidavit Supporting Issuance of Petitioners' Writ of Habeas Corpus."

VENUE is proper based on RCW 4.12.020(2).

I. APPLICATION FOR WRIT

This Petition For Writ of Habeas Corpus ad Subjiciendum, a Writ directed to Respondents, is a well known remedy for deliverance from illegal confinement. RCW 7.36.100(1)-(3). This writ should be granted without delay. RCW 7.36.040. Mr. Blackman -

APPLICATION FOR WRIT - 3

humbly asks this Court to proceed in a summary way, to hear and determine the cause of his restraint. RCW 7.36.120. APPENDIX-C.

II. TIME LIMITATIONS

This Application is civil in nature. Honore v. Board of Prison Terms and Parole, 77 WN.2d 660, 663-64, 466 P.2d 485 (1970). The primary purpose of this petition is to test the legality of his current detention. see Walker v. Wainwright, 390 U.S. 335, 336 (1968). Illegally detained persons have a liberty interest in their freedom. Weiss v. Thompson, 120 WN. APP. 402, 407, 85 P.3d 944 (2004). These writs have time limitations. RCW 7.36.1130; RCW 10.73.090(U).

APPLICATION FOR WRIT-H

IN the instant case Mr. Blackman submits that this Application is exempt from time limitations because (1) without a warrant, and without consent, during a "knock-and-talk," police officers reached inside of petitioners' residence, to grab him and placed him under arrest; (2) exhausting administrative remedies, this application is timely because the U.S. Supreme Court denied his Petition For Writ of Certiorari on October 12, 2021 APPENDIX-B

III. STATEMENT OF FACTS

ON JANUARY 11, 2012, Police went to petitioners' residence, for a -
APPLICATION FOR WRIT-5

"Knock-and-talk." APPENDIX-A, VRP 851.

He was napping in his residence when police arrived, and his wife answered the door. Police asked if he was home. When she affirmed that he was, she was asked to get him - without being told that she did not have to do so. Id. When petitioner volunteered to come to the doorway, but did not exit his residence, police committed an assault when reaching in to grab petitioner by the arm, and placed him under warrantless arrest. He was taken into custody. Id. at 852.

Secondly, the empty record was in fact, created by ineffectiveness.

APPLICATION FOR WRIT-6

of trial counsel.

Specifically, counsel failed to move to suppress evidence seized following Mr. Blackmon's illegal arrest. Consequently, counsel's performance was deficient, and this deficient performance resulted in prejudice.

IV. ARGUMENT I:

THE JUDGMENT IS VOID ON IT'S FACE DUE TO UNLAWFUL ARREST

"No person shall be disturbed in his private affairs or his home invaded, without authority of law." WASH. CONST., Art. 1, Sec. 7.

It has been clearly established that the U.S. Constitutional amendment provides a minimum level of protection-

APPLICATION FOR WRIT-7

against searches and seizures, and that Article I, Section 7 generally provides greater protection than the Fourth Amendment. State v. Walker, 157 Wn.2d 307, 313, 138 P.3d 113 (2006).

The "authority of law" requirement is satisfied by a valid warrant, subject to a few jealously guarded exceptions. State v. Afana, 169 Wn.2d 169, 179-84, 233 P.3d 879 (2010).

The state has the burden of establishing that any exception applies. There is no "good faith" exception to Article I, Section 7's exclusionary rule. Id., [citing, State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009)].

APPLICATION FOR WRIT-8

IN the instant case, Police - did not have a warrant to seize - Mr. Blackmon. Unless it can be - shown that the seizure in question fell within one of the carefully drawn - exceptions to the warrant requirement, it must be concluded that the arrest was made without "authority of law."

Simply put, warrantless searches and seizures incident thereto, are - per se UNREASONABLE, thus violative of - constitutional protections. State v. Leach, 113 WN.2d 735, 738, 782 P.2d - 1035 (1989), Citino, State v. Houser, 95 WN.2d 143, 149, 622 P.2d 1218 (1980)).

APPLICATION FOR WRIT-9

Here, Blackman further asserts that if the state claims "consent" of his wife as an exception, in an attempt to vitiate the warrant-requirement, it would have to be properly obtained by the state. See State v. Walker, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998), State v. Ferrier, 136 Wn.2d 103, 111, 960 P.2d 927- (1998), (quoting, State v. Hendrickson, 129 Wn.2d 61, 72, 917 P.2d 563 (1996), (quoting, State v. Bradley, 105 Wn.2d 898, 902, 719 P.2d 546 (1986))).

Proof of consent occurs only upon an affirmative showing of three factors: (1) consent is voluntarily given, (2) the-

APPLICATION FOR WRIT-10

person who consented to the search had authority to do so, and (3) the search does not exceed the scope of the consent.

State v. Walker, 136 Wn.2d 672, 682, 965 P.2d 1079 (1998).

In the instant case, Blackmon submits that the first factor has not been met.

Generally, when two or more persons contemporaneously occupy a home, consent binds the other, and the police may lawfully search the premises so long as the nonconsenting party or co-occupant is absent from the scene. United States v. Matlock, 415 U.S. 164, 170, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974); Leach, 113 Wn.2d-

APPLICATION FOR WRIT-11

supra, at 744.

However, our Supreme Court held in Leach, that when more than one occupant is present and able to object to another's consent, the state must attain consent from each and every co-occupant present in the residence in order to escape the warrant requirement. Id.

For instance, in Leach, the defendant owned and operated a travel agency at which his live-in girlfriend worked. Id. at 737. Suspicious that Leach had engaged in several earlier burglaries, the girlfriend escorted police to the agency, unlocked the door, and

APPLICATION FOR WRIT-12

granted police consent to search the-
the premises. Id. Though Leach was-
present when police arrived, police did-
not ask for his consent to search the-
office. Leach, Id. at 737-38.

The Supreme Court held that the-
girlfriend's consent to search was
insufficient to escape the presumption
of unreasonableness, stating:

"Where the police have obtained
consent to search from an-
individual possessing, at best,
equal control over the premises,
that consent remains valid-
against a co-habitant who-
also possesses equal control-
only while the co-habitant-
is absent. However, should-

APPLICATION FOR WRIT-13

-the cohabitant be present and able to object, the police must also obtain the cohabitant's consent. ANY - other rule exhibits [sic] - expediency over an individual's - Fourth Amendment guaranties. Accordingly, we refuse to beat a path to the door of - exceptions."

Id. at 744.

Without a doubt, the consent - given by Leach's girlfriend would have been sufficient had Leach, the other - co-occupant, been absent when the search was conducted. Matlock, 415 U.S. 481, supra - at 171; Leach, Id. at 739.

However, Leach's presence at the scene invalidated the warrantless search, and seizure immediately after, because police failed to obtain his consent.

APPLICATION FOR WRIT-14

Leach, Id. at 744.

Hence, when confronted with Leach's presence, not having a warrant, the officer should have requested Leach's consent as well.

Similarly, in Walker, the court of appeals upheld the trial court's suppression of evidence obtained in a search executed through consent given by the defendants' wife.

Walker, 86 Wn. App. 857, 863, 941 P.2d 1 (1997), rev. on other grounds, 136 Wn.2d 678, 965 P.2d 1079 (1998)).

Here, it is undisputed that Mr. Blackmon was present at the residence when his wife answered the front door of the home. Under Leach,

APPLICATION FOR WRIT - 15

and Ferrier, supra, Blackmon's presence at the scene required police to obtain his consent before warrantless entry, seizure, and search thereafter.

"Where the police have ample opportunity to obtain a warrant, we do not look kindly on their failure to do so." Leach, Id., (quoting United States v. Impink, 728 F.2d 1228, 1231 (9th Cir. - 1984)). As it is an exception to the to the warrant requirement, the state bears the burden of proving voluntary consent when it obtains consent through a procedure known as a "knock and talk." State v. Khourilhai, 149 Wn.2d 557, 561, 69 P.3d 862 (2003); when officers conduct a knock and talk, they must give the resident a prescribed set of warnings, informing the-

APPLICATION FOR WRIT - 16

resident of his or her constitutional rights. State v. Ruem, 179 Wn.2d 195, 206, 313 P.3d 1156 (2013)

IN the instant case, based solely on the record, police failed to inform the Blackmons "Ferrier warnings." Ferrier, 136 Wn.2d, supra at 118.

The failure to give these warnings, prior to entering the Blackmon home, "vitiates any consent given thereafter." Id. at 118-19.

Thus, as to the illegal arrest of Blackmon, in this state, absent exigent circumstances, the police are prohibited from arresting a suspect when he or she is standing in the doorway of his residence. State v. Holeman, 103 Wn.2d. 426, 429, 693-

APPLICATION FOR WRIT-17

P.2d 89 (1985).

Here, like Holeman, police officers made a warrantless arrest, absent probable cause, when a officer reached inside Petitioners' home to grab him, without consent. Like Holeman, petitioner was arrested inside his home. Id.

An assault occurs when there is an illegal arrest. Guffey v. State, 103 WN:2d 144, 149, 690 P.2d 1163 (1984)

In the instant case, no evidence relied upon by the state justified the entry into Blackmon's home, as the officers crossed the threshold of Petitioner's residence. It was only after Blackmon's illegal arrest that evidence was obtained by the -

APPLICATION FOR WRIT-18

Blackmons. Based on the record alone, the warrantless arrest, lacking probable cause, and search thereafter, violated constitutional rights of privacy within the home. Ferrier, 136 Wn.2d, at 116. An absence of a finding that warnings were given before entry is tantamount to a finding they were not given. The absence on the record of a finding on a material issue is presumptively a negative finding entered against the Respondent who has the burden of proof. Golberg v. Sanglier, 96 Wn.2d 874, 880, 639 P.2d 1347 (1982); Pilling v. E & P. Enters. - Trust, 41 Wn. App. 158, 165, 702 P.2d -

APPLICATION FOR WRIT - 19

1232 (1985).

IN CONCLUSION, the Police-
utterly failed to take the necessary
steps in seeking advance approval-
from a judicial officer before
grabbing Blackmon by the arm at
the threshold of his home, and-
seizing him. The detective had-
audacity to come into a courtroom
and "testifie" that Blackmon was-
arrested "outside" of his home.

This illegal arrest tainted-
any search of the Blackmon home,
and any evidence derived there-
after, afforded by the Fourth-
Amendment, and Washington-

APPLICATION FOR WRIT-20

State Constitution, Article 1, Sec. 7. This warrant requirement, absent consent, may have been an inconvenience to the state in this case, but it is necessary, and constitutionally required "inconvenience" that the judiciary must fervently protect, as affirmed by the Supreme Court over 30-years ago:

"It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

Coolidge v. New Hampshire, 403 U.S. 443, 454, 91 S.Ct. 2022, 29 L. Ed. 2d 564 (1971), (quoting Boyd v. United

APPLICATION FOR WRIT-21

States, 116 U.S. 616, 635, 6 S.Ct. 524,
29 L. Ed. 746 (1886)).

ARGUMENT II:

PETITIONER RECEIVED
INEFFECTIVE ASSISTANCE
OF COUNSEL FOR COUNSEL'S
FAILURE TO MOVE TO-
SUPPRESS EVIDENCE-
SEIZED FOLLOWING-
BLACKMON'S ILLEGAL-
ARREST

There appears to be a fly in-
this soup — Blackmon's trial-
counsel disregarded the lack of-
probable cause to arrest him,
and the fact that petitioner -
was arrested when he came to-
threshold of his home.

"There are two ways to break-
APPLICATION FOR WRIT- 22

the vicious cycle of an empty record-
created by ineffective counsel..."

State v. JURY, 19 WN. APP. 256, 265-
N.2; 576 P.2d 1302 (1978).

Here, the pertinent way is
that "evidence dehors the record"
can be submitted in a petition for
writ of habeas corpus. Id., (citing
RCW 7.36)).

IN order to establish that
counsel was ineffective, a defendant
must show that counsel's conduct was
deficient, and that the deficient
performance resulted in prejudice.
Strickland v. Washington, 466 U.S. 668,
687, 104 S.Ct. 2052, 80 L.Ed 2d 674-

APPLICATION FOR WRIT-23

(1984); State v. Reichenbach, 153-
WN.2d 126, 130, 101 P.3d 80 (2004)

Here, Petitioner submits -
that defense counsel's waiver of his -
Constitutional right to privacy in his -
home, fell below an objective -
standard of reasonableness, and -
that there is a reasonable -
possibility that, but for this deficient -
performance, the outcome of the -
proceeding would have been different.
Reichenbach, Id. at 130, (citing, -
State v. Thomas, 109 WN.2d 222,
225-26, 743 P.2d 816 (1987)).

The Supreme Court in Reichenbach -
stated that "[t]here is a strong
presumption that defense counsel's -
APPLICATION FOR WRIT - 24

conduct is not deficient." Id., Citings-
State v. McFarland, 127 Wn.2d 322, 335,
899 P.2d 1251 (1995)).

Although legitimate trial-
strategy or tactics cannot be the-
basis for an ineffectiveness of-
counsel claim, State v. Garnett, 124-
Wn.2d 504, 520, 881 P.2d 185 (1994),
unless there is no conceivable -
legitimate tactic explaining counsel's -
performance, State v. Aho, 137 Wn.2d -
736, 745-46, 975 P.2d 512 (1999).

Here, petitioner was arrested-
without probable cause, and without -
a warrant, yet trial counsel did not-
challenge the admissibility of evidence,
the warrant allegedly obtained after -
APPLICATION FOR WRIT-25

his illegal arrest, was invalid at the time of its execution, because information from his wife and daughter, acquired after the warrant was issued, negated probable cause.

This argument was available to trial counsel, and counsel's failure to challenge the illegal arrest resulted in deficient performance.

See Reichenbach, 153 Wn.2d at 131.

As to the prejudice prong of Strickland, warrantless searches and seizures are per se unreasonable, supra. All evidence that is the product of an illegal arrest is suppressed.

State v. Gaines, 154 Wn.2d 711, 716, -

APPLICATION FOR WRIT-26

116 P.3d 993 (2005).

Blackmon hammers home that when police grab his arm as he is standing at the door of his home, and place him under arrest, without probable cause or warrant, all evidence discovered after the illegal arrest must be suppressed. See State v. Ladsen, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). The police certainly did not obtain petitioner's consent after failing to give Ferrier-Wannings during the knock and-talk. Thus trial counsel's deficient performance resulted in prejudice. Reichenbach, 153 Wn.2d at 136.

APPLICATION FOR WRIT-27

V. IMMEDIATE RELEASE
IS WARRANTED IN
THIS APPLICATION

Based solely on the record and files herein, Petitioner respectfully request his immediate release from unlawful restraint of his liberty.

VI. CONCLUSION

Based on the foregoing reasons, PLAINTIFF-PETITIONER, JOHN-BLACKMON, respectfully request that this Court hold that he was illegally arrested, in violation of Article 1, Section 7, of the Washington-State Constitution. RCW 7.36.120

WHEREFORE,

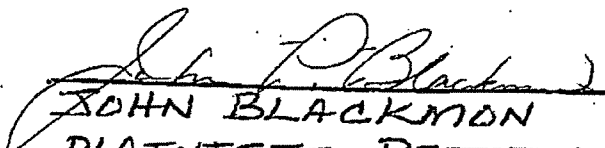
APPLICATION FOR WRIT-28

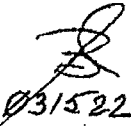
Petitioner prays that the Court issue the following orders:

1. AN ORDER directing RESPONDENT TO RETURN ITS RESPONSE, RCW-7.36.120;
2. IF Respondent does not concede, AN ORDER scheduling an Evidentiary hearing to determine ANY Factual issues, RCW-7.36.090;
3. AN ORDER releasing Petitioner from Unlawful confinement;
4. ANY other Relief that this Court deems appropriate, and just.

Petitioner Further Saveth Naught...

DATED: 15th March 2022.


JOHN BLACKMON
PLAINTIFF - PETITIONER

 031522
COYOTE RIDGE CORRIG-
CENTER, 1301 NORTH-
EPHRAATA AVE.,
CONNELL, WA, 99326

APPLICATION FOR -
WRIT - 29 of 29

} ss.

No. 22-2-50371-11

AFFIDAVIT SUPPORTING
ISSUANCE OF WRIT OF
HABEAS CORPUS

I JOHN BLACKMON, the
PLAINTIFF-PETITIONER, and Affiant,
deposes, and says:

1. I am the petitioner in
the above civil action, over the age
of majority, and competent to testify
in these matters of police misconduct.

2. ON JANUARY 11, 2012, (a)
Police officer(s) arrived at my home.
I was napping when they knocked
on the door. My wife, who answered
the door, was not given any Ferrier
Warnings. She indicated to police-

AFFIDAVIT OF BLACKMON-1

that I was sleep, and (a) Police requested that she awaken me;

3. My wife indicated that Police were at our door, and I walked to the front door, whereas I observed several Police officers;

4. When I asked the officers if I could assist them without Ferrier warnings, one of the officer's reached in my home and grabbed right arm; a plain-clothed officer shouted "wait" to the officer, who then stated "You are under arrest." The officer that was inside my home handcuffed me, and walked me to-

AFFIDAVIT OF BLACKMON-2

a patrol vehicle; I was taken into custody on a warrantless arrest, and without probable cause.

5. IN reference to paragraph No. 4, based upon personal belief, when the plain-clothed officer shouted "wait!" to the police officer, he knew that the police officer had violated my right to privacy.

6. My trial counsel knew of the facts stated in paragraph's 1-5, but disregarded or waived my constitutional rights under Article 1, Sec. 7, of the Washington-state Constitution.

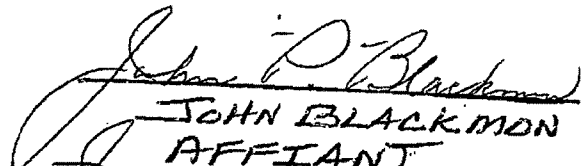
7. I have exhausted all-administrative remedies prior to-

AFFIDAVIT OF BLACKMON-3

filing the application for writ of habeas corpus. I have read the application in its entirety, know of its contents to be true, and correct.

8. All documents, including the APPENDIX, are true, and correct copies of the originals filed in the FRANKLIN COUNTY SUPERIOR COURT, RCW 9A.72.085.

DATED THIS 11th day of January 2022, in the COUNTY OF FRANKLIN, WASHINGTON.


JOHN BLACKMON
AFFIANT
§ IN PROPRIA-
PERSONA.

AFFIDAVIT OF BLACKMON - 4 of 4

APPENDIX

A

APPENDIX

SHACKLETON - Direct

1 A Yes.

2 Q Did you tell Jenifer who you are and why you were
3 there?

4 A Um, when we went, I think myself and two other
5 officers went up to the door, and we just asked for
6 John Blackmon.

7 Q At some point, though, during your time at the house
8 did you have a chance to talk to Jenifer about why
9 you were there?

10 A Yes.

11 Q What if anything do you remember about her demeanor
12 as you were talking to her?

13 A Initially she was really upset.

14 Q What do you remember seeing or hearing that made you
15 think she was upset?

16 A Can I say what she said?

17 Q No. Just tell us about what you remember your
18 observations, or the tone she was using, that kind
19 of thing.

20 A Her tone was angry, she was upset, she was asking
21 questions. And then John was taken away in a patrol
22 car, and she invited me in the house and we talked
23 for a little bit.

24 Q How long was your conversation with Jenifer on that
25 date?

- 1 A It wasn't very long. I could probably tell by the
2 CAD printout, but she had to leave to pick Ivy up,
3 so it was cut short.
- 4 Q During that conversation with her did you ask her
5 some questions about Ivy's relationship with the
6 defendant?
- 7 A Yes.
- 8 Q What was the next -- well, strike that. Did you
9 have a chance to talk to Jenifer again at more
10 length about your investigation?
- 11 A I did. She came to the office the following day on
12 the 12th.
- 13 Q Detective, I'm going to show you what's been marked
14 but not yet admitted State's Exhibit No. 2. Do you
15 recognize that?
- 16 A Yes, I do.
- 17 Q What is it?
- 18 A It is a condom.
- 19 Q Can you tell by the object itself, or by the marks
20 on the outer packaging whether or not that's related
21 to this investigation?
- 22 A I can.
- 23 Q What specifically are you referring to to make that
24 link?
- 25 A It's labeled by me what it is and the date I

1 collected it and the case number, and it's sealed by
2 me. It was sealed by me.

3 Q Tell us about that. How did you collect it? Where
4 did you get it?

5 A Jenifer brought it on January 12 when she came to
6 see me.

7 MR. BALDOCK: I'll move to admit State's Exhibit
8 2 at this point.

9 THE COURT: Any objection?

10 MR. BROWNE: No objection.

11 THE COURT: 2 is admitted.

12 (Plaintiff's Exhibit No. 2 for
13 identification was admitted into
evidence.)

14 Q And the jury will have a chance to inspect it more
15 closely later, but can you give us a description of
16 the object. You can remove it if you want, with the
17 court's permission, of course.

18 THE COURT: It's admitted.

19 A It's a LifeStyle Skyn lubricated nonlatex condom.

20 Q The color of the packaging of the condom wrapper?

21 A Gold.

22 Q Thank you. Detective, did you at some later point
23 have an opportunity to interview Ivy again?

24 A Yes, I did.

25 Q When did that happen?

- 1 A January 17th, I believe.
- 2 Q And where?
- 3 A At the police department.
- 4 Q Topic of conversation that day, I'm assuming, was
5 the same or similar to what you talked to her about
6 previously?
- 7 A Well, I had scheduled an interview with Bleighn, and
8 Jenifer brought Ivy and said Ivy had remembered some
9 additional things.
- 10 MR. BROWNE: Objection, objection, objection.
- 11 THE COURT: What's the objection?
- 12 MR. BROWNE: Hearsay.
- 13 THE COURT: Overruled.
- 14 Q You can finish your answer.
- 15 A That Ivy had remembered --
- 16 THE COURT: Just generally, not the specifics.
- 17 Q Right.
- 18 A That there was some additional things that she had
19 not told me.
- 20 Q So this was not a planned interview of Ivy that you
21 had arranged; is that correct?
- 22 A I hadn't planned the interview, but Jenifer may have
23 told me before the interview that she was going to
24 bring Ivy. I can't remember.
- 25 Q Okay. Did you in fact have a chance to talk to Ivy?

APPENDIX

B

APPENDIX-B

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 12, 2021

Clerk
United States Court of Appeals for the Ninth
Circuit
95 Seventh Street
San Francisco, CA 94103-1526

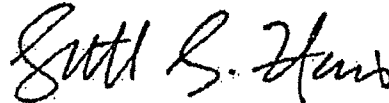
Re: John Patrick Blackmon
v. Jeffrey A. Uttecht, Warden
No. 21-5488
(Your No. 19-35883)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

APPENDIX

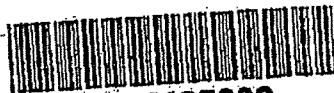
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APPENDIX-C

FILED

2016 JAN 26 PM 4:20

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.



CL17485202

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

THE STATE OF WASHINGTON,
Plaintiff,

v.

BLACKMON, JOHN PATRICK
Defendant.

SID: WA13872084
If no SID, use DOB:

No: 12-1-00219-8
2nd AMENDED
JUDGMENT AND SENTENCE
 Prison
 RCW 9A.44.507 Prison Confinement
 (Sex Offense and Kidnapping of a Minor)
 (FJS)
 First Time Offender
 Special Drug Offender Sentencing Alternative
 Sex Offender Sentencing Alternative
 Clerk's action required, firearm rights
 revoked, ¶ 5.5a
 Clerk's action required, ¶¶ 2.1, 4.1, 4.3, 4.5; 5.2, 5.3
 Clerk's action required, ¶ 5.6 (Use of motor vehicle)
 Restitution Hearing set, ¶ 4.3
 Juvenile Decline Mandatory Discretionary

SCSO NCO # 3094

I. HEARING

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

II. FINDINGS

2.1 CURRENT OFFENSE(S). The defendant was found guilty on July 15, 2013 by jury verdict of:

| COUNT | CRIME | RCW | CLASS | INCIDENT # | DATE OF CRIME |
|-------|--|-----------|-------|-------------|-----------------|
| I | Child Molestation in the Second Degree | 9A.44.086 | B | MAR 1200251 | 9/1/07-8/16/08 |
| II | Child Molestation in the Second Degree | 9A.44.086 | B | | 9/1/07-3/12/09 |
| III | Rape of a Child in the Third Degree | 9A.44.079 | C | | 3/13/09-3/12/11 |
| IV | Child Molestation in the Third Degree | 9A.44.089 | C | | 3/14/09-3/12/11 |
| V | Child Molestation in the Third Degree | 9A.44.089 | C | | 3/13/09-3/12/11 |

0
1
B
3092

as charged in the Fifth Amended Information.

The defendant is a sex offender subject to indeterminate sentencing under RCW 9A.44.507.

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

JAN 07 2016

Inco already in JIS 45 of 62

227

- GV** For the crime charged in Count(s) _____, domestic violence was pled and proved. RCW 10.99.020.
- The defendant used a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.41.010, 9.94A.533.
- The defendant used a deadly weapon other than a firearm in the commission of the offense(s) in Count(s) _____, RCW 9.94A.825, 9.94A.533.
- Count _____ was committed when 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(s) _____, 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, 101, 102, 106.
- The offense was predatory as to Count(s) _____, RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count(s) _____ (applies to crimes of rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, and kidnapping in the first degree with sexual motivation). 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(s) _____, RCW 9.94A.838; 9A.44.010.
- The defendant committed the offense in Count(s) _____ with sexual motivation. RCW 9.94A.835.
- Count(s) _____ involve(s) kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant has a chemical dependency that has contributed to the offense(s) in Count(s) _____, RCW 9.94A.607.
- In Count(s) _____, assault in the first degree (RCW 9A.36.011) or assault of a child in the first 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.
- The offense in Count(s) _____ was (were) committed in a county jail or state correctional facility. RCW 9.94A.533(5).
- 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.
- See ¶ 4.1 regarding findings in relation to Drug Offender Sentencing Alternative or Sex Offender Sentencing Alternative.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.689.
- Count(s) _____ and _____ merge. (See ¶ 3.2 for dismissal of specific count.)
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.2 CRIMINAL HISTORY. Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

| CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | A or J (Adult or Juvenile) | TYPE OF CRIME |
|-------|------------------|-----------------------------------|----------------------------|---------------|
| NONE | | | | |

- The defendant committed Count(s) _____ while on community custody (adds one point to score). RCW 9.94A.525.
- The court finds the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.81.520:

2.3 SENTENCING DATA.

| COUNT NO. | OFFENDER SCORE | SRA LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-----------|---|-------------------|---|--------------|
| I | 12 | VII | 87-116 MONTHS | | 87-116 MONTHS | 10 YEARS |
| II | 12 | VII | 87-116 MONTHS | | 87-116 MONTHS | 10 YEARS |
| III | 12 | VI | 60 MONTHS | | 60 MONTHS | 5 YEARS |
| IV | 12 | VI | 60 MONTHS | | 60 MONTHS | 5 YEARS |
| V | 12 | V | 60 MONTHS | | 60 MONTHS | 5 YEARS |

* (F) Firearm; (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom., See RCW 46.81.520, (JP) Juvenile Present, (SM) Sexual Motivation, RCW 9.94A.533(B), (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 18.

2.4 **EXCEPTIONAL SENTENCE [For Determinate Sentence].** Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____ or within the standard range for Count(s) I - IV but served consecutively to Count(s) V.

The defendant and State stipulate that justice is best served by imposition of an exceptional sentence above the standard range and the court finds that exceptional sentence furthers and is consistent with the interests of justice and the purpose of the Sentencing Reform Act.

Aggravating factors were stipulated by the defendant, found by the court ^{BASED ON MULTIPLE COUNTS} after the defendant AND OFFENDER waived jury trial, found by jury by special interrogatory. Findings of fact and conclusions of law ^{SCORE} are attached in Appendix 2.4; The jury's interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

EXCEPTIONAL MINIMUM TERM [For Maximum and Minimum Term Sentence]. Substantial and compelling reasons exist which justify an exceptional minimum term above below the standard range for Count(s) _____ or within the standard range for Count(s) _____ but served consecutively to Count(s) _____ RCW 9.94A.507(3); 9.94A.535. Findings of fact and conclusions of law are attached in Appendix 2.4. The prosecuting attorney did did not recommend a similar sentence.

2.5 **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. (RCW 10.01.160). The court finds that the defendant is an adult and is not disabled and therefore the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753(6)):

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; and
 other _____

The court decided the defendant should should not register as a felony firearm offender. (If required to register, see §5.5b.)

2.7 **PROSECUTOR'S RECOMMENDATION.** The prosecutor's recommendation was as follows:

| | |
|-------------------------------|------------------------------|
| <u>116</u> months on Count I | <u>60</u> months on Count IV |
| <u>116</u> months on Count II | <u>60</u> months on Count V |
| <u>60</u> months on Count III | _____ months on Count VI |

Terms on each count to run: CT. V
 concurrently with consecutively to each other's
 concurrently with or consecutively to the terms imposed in Cause No(s).

III. JUDGMENT

3.1 The defendant is GUILTY of the counts and charges listed in Paragraph 2.1.

3.2 [] The court DISMISSES Count(s) _____

3.3 [] The defendant was found NOT GUILTY of Count(s) _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 CONFINEMENT OVER ONE YEAR. The court sentences the defendant to total confinement as follows:

CONFINEMENT [Determinate Sentences], RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

116 months on Count I 60 months on Count IV
116 months on Count II 40 months on Count V
60 months on Count III _____ months on Count VI

- [] The confinement time on Count(s) _____ 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
[] Other: _____

Actual term of total confinement ordered is 176 months.

CONFINEMENT [Maximum Term and Minimum Term]. A term of total confinement as follows: the maximum and minimum terms of confinement shall be served in a facility or institution operated, or utilized under contract, by the State of Washington. RCW 9.94A.507.

Count _____ minimum term of _____ months AND maximum term of _____ months
Count _____ minimum term of _____ months AND maximum term of _____ months
Count _____ minimum term of _____ months AND maximum term of _____ months
Count _____ minimum term of _____ months AND maximum term of _____ months

- [] The confinement time on Count(s) _____ 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
[] Other: _____

The minimum term of actual total confinement ordered on all counts cumulatively is _____ months.

The maximum term of actual total confinement ordered on all counts cumulatively is _____ months.

FURTHER PROVISIONS APPLICABLE TO ALL SENTENCES:

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at ¶2.3, and the following counts which shall be served consecutively:

COUNT V

The sentence herein shall run consecutively to the sentence in cause number(s) _____

and consecutive to any sentence which was imposed before the date of violation for the offenses in this cause number. The sentence shall run concurrently to the sentence in cause numbers _____, RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

CREDIT FOR TIME SERVED. The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number, RCW 9.94A.505(6). The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4:2

COMMUNITY CUSTODY, RCW 9.94A.701. The defendant shall serve the following term of community custody (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; 18 months for violent offenses; and 36 months for serious violent offenses & sex offenses not sentenced pursuant to RCW 9.94A.507 or .670):

| | |
|---|--|
| Count I for a period of <u>4</u> months | Count IV for a period of <u>0</u> months |
| Count II for a period of <u>4</u> months | Count V for a period of <u>0</u> months |
| Count III for a period of <u>0</u> months | Count VI for a period of _____ months |

and the conditions ordered are set forth below. The combined term of community custody and confinement shall not exceed the statutory maximum.

COMMUNITY CUSTODY [For Maximum and Minimum Term Sentences] (Sex Offenses Only), RCW 9.94A.507, .709. For each count sentenced under RCW 9.94A.507, the defendant shall serve a term of community custody under the supervision of the Department of Corrections (DOC) and the authority of the Indeterminate Sentence Review Board for any period of time that the defendant is released from total confinement before expiration of the maximum sentence. In addition to other conditions, the defendant shall comply with any conditions imposed by the Indeterminate Sentence Review Board, including electronic monitoring if DOC so recommends. In an emergency, DOC may impose other conditions for a period not to exceed seven working days. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence.

CONDITIONS APPLICABLE TO ALL COMMUNITY CUSTODY TERMS. The defendant shall report to a DOC office located in the county where the defendant is released not later than 72 hours after release from custody.

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; (3) notify DOC of any change in the 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 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 .708. The 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 term of community custody begins immediately upon release from confinement or at the time of sentencing if no confinement is ordered. The defendant is subject to the conditions of community custody as of the date of sentencing unless otherwise ordered here: _____, RCW 9.94A.707.

The court orders that during the period of supervision:

The defendant shall not consume any alcohol.

The defendant shall not possess or consume controlled substances, including marijuana, without a valid prescription.

The defendant shall have no contact with I.O. 18 (DOB: 3/13/95). See ¶ 4:5.

The defendant shall remain within outside of a specific geographical boundary, to wit:

The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(6), 507, 703(1)(c).

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

The defendant shall register as a sex offender as required by law.

The defendant shall participate in the following crime-related treatment or counseling services:

The defendant shall participate in the following: State certified domestic violence treatment program chemical dependency evaluation mental health evaluation anger management program sexual deviancy evaluation, and fully comply with all recommended treatment.

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

The defendant, having been convicted of assault of a child in the first degree, shall not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age. RCW 9.94A.703.

The defendant shall comply with Additional Conditions of Community Custody as set forth in Appendix 4.2.

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.

If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement (RCW 10.95.030):

(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 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.

4.3 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the clerk of the court:

| | | | |
|----------------------------|---|--|---|
| PVC | <input checked="" type="checkbox"/> \$500 | Victim assessment | RCW 7.68.035 |
| CRC | \$ <u>1,793.82</u> <input type="checkbox"/> waived | Court costs, including | RCW 9.94A.760, .505; 10.01.160, 10.46.190 |
| | | Criminal filing fee \$ _____ FRC | |
| | | Witness costs \$ _____ WFR | |
| | | Sheriff service fees \$ _____ SFR/SFS/SPW/WRF | |
| | | Jury demand fee \$ _____ JFR | RCW 10.46.180 |
| | | Other \$ _____ | |
| PUB | <input type="checkbox"/> \$982 <input type="checkbox"/> waived | Fees for court appointed attorney | RCW 9.94A.760 |
| WFR | \$ _____ | Court appointed defense expert and other costs | RCW 9.94A.760 |
| FCM | <input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 | Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency | RCW 69.50.430 |
| COFA/DV FCO/NTF/SAD/SOI | \$ _____ | Drug enforcement fund of \$ _____ | RCW 9.94A.760 |
| CLF | <input type="checkbox"/> \$100 | Crime lab fee <input type="checkbox"/> suspended due to indigency | RCW 43.43.690 |
| | <input type="checkbox"/> \$100 | Clerk's LFO Collection Fee <input type="checkbox"/> not imposed due to indigency | RCW 38.18.190 |
| EXT | \$ _____ | Extradition costs | RCW 9.94A.505 |
| | \$ _____ | Fee for possession of depictions of minor engaged in sexually explicit conduct (\$1,000 for each separate conviction) | RCW 9.68.070 |
| | <input checked="" type="checkbox"/> \$100 | Biological Sample Fee (Mandatory for offenses committed after 7/1/02; cannot be waived) | RCW 43.43.7541 |
| PDV | <input type="checkbox"/> \$100 | Domestic Violence Penalty (for offenses committed after 6/4/04 - maximum \$100) | RCW 10.99.080 |
| | <input type="checkbox"/> \$15 | Violation of DV Protection Order (\$15 mandatory fine) | RCW 26.50.110 |
| PPJ | \$ <u>2</u> | 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 |
| | \$ _____ | Other costs/ fines for _____ | |
| | \$ <u>2,393.82</u> | TOTAL | RCW 9.94A.760 |

RESTITUTION. 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.763.

- A restitution hearing shall be set for _____
- Defendant waives any right to be present at any restitution hearing and waives any right to be present at the presentation of an agreed restitution order (sign initials): _____
- Defendant waives any right to a restitution hearing within 6 months. RCW 9.94A.750.

- A separate Restitution Order is being entered contemporaneously with this Judgment and Sentence.
- 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 and on a schedule established by the Department of Corrections or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here of not less than: \$ 60.00 per month commencing

30 DAYS AFTER RELEASE RCW 9.94A.760.
All payments shall be made within 48 months of release of confinement;
 entry of judgment; other: _____

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

[] The court also finds the defendant has the means to pay for the cost of incarceration and the defendant is hereby ordered to pay for the cost of incarceration at \$100.00 per day (not to exceed \$100 per day) unless another rate is specified here: _____ RCW 9A.760(2). (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.

4.4 **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. RCW 43.43.754.

[] **DNA TESTING NOT REQUIRED.** The Washington State Patrol-Crime Laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

[] **HIV TESTING:** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 106, Everett, Washington 98201 within one (1) business day of entry of this order to arrange for the test. RCW 70.24.340.

4.5 **NO CONTACT.**

The defendant shall not have contact with E. J. (DOB: 3/13/95) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until 9/09/2023 (date) (not to exceed the maximum statutory sentence). **EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.**

A separate post-conviction Domestic Violence No Contact Order, Anti-Harassment No Contact Order, Stalking No Contact Order, or Sexual Assault Protection Order [] was filed at the time of entry of the plea of guilty/guilty verdict. *It is filed contemporaneously with this Judgment and Sentence. (Entry of a separate order makes a violation of this no contact sentencing provision also punishable as a separate criminal offense, and the order will be entered into the law enforcement database.)*

WAS FILED WITH ENTRY OF PREVIOUS JUDGMENT - 9/09/13

[] The pre-trial Domestic Violence No Contact Order, Anti-Harassment No Contact Order, Stalking No Contact Order, or Sexual Assault Protection Order entered on _____ is hereby terminated.

4.6 **OTHER.** _____

4.7 **OFF-LIMITS ORDER.** (Known drug trafficker). RCW 10.68.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 **SENTENCE CONDITIONS PENDING APPEAL.** Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100; RCW 10.73.090.
- 5.2 LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over you for the purposes of your compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.753(4); 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-WITHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections or the clerk of 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.7608.
- 5.4 VIOLATION OF JUDGMENT AND SENTENCE/COMMUNITY CUSTODY VIOLATION.**
- (a) Any violation of a condition or requirement of sentence is punishable by up to 60 days confinement for each violation. RCW 9.94A.633.
- (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.
- 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, identification card, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- (Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court.)*
- The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency). RCW 9.41.088.
- 5.5b FELONY FIREARM OFFENDER REGISTRATION.** If the court decided that you are required to register as a felony firearm offender, the specific requirements are in the "Felony Firearm Offender Registration" attachment.
- 5.6 MOTOR VEHICLE.** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 45.20.285.
- 5.7 CERTIFICATE OF DISCHARGE.**
- (a) If you are under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received notice from Department of Corrections and clerk's office that you have completed all requirements of the sentence and satisfied all legal financial obligations. RCW 9.94A.637.
- (b) If you are not under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received verification from you that you have completed all sentence

conditions other than payment of legal financial obligations and the clerk's office that you have satisfied all legal financial obligations.

- 5.8 Sex and Kidnapping Offender Registration. RCW 9A.44.128, RCW 9A.44.130, 10.01.200.**
- 1. General Applicability and Requirements:** Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.128, I will be required to register.

If I am a resident of Washington, I must register with the sheriff of the county of the State of Washington where I reside. I must register within three (3) business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me. I must also register within three (3) business days of my release with the sheriff of the county of the State of Washington where I will be residing.

While in custody, if I am approved for partial confinement, I must register when I transfer to partial confinement with the person designated by the agency that has jurisdiction over me. I must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where I reside.

If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register within three business days of being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has jurisdiction over me. I must also register within three business days of my release with the sheriff of the county of my school, where I am employed, or where I carry on a vocation.
 - 2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents:** If I move to Washington or if I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If I am visiting and intend to reside or be present 10 or more days in Washington, then I must register the location where I plan to stay or my temporary address with the sheriff of each county where I will be staying within three business days of my arrival.
 - 3. Change of Residence Within State:** If I change my residence within a county, I must provide, by certified mail, with return receipt requested or in-person, signed written notice of my change of residence to the sheriff within three business days of moving. If I change my residence to a new county within this State, I must register with the sheriff of the new county within three (3) business days of moving. Also within three (3) business days, I must provide, by certified mail, with return receipt requested or in-person, signed written notice of my change of address to the sheriff of the county where I last registered.
 - 4. Leaving the State or Moving to Another State:** If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If I move out of state, I must also send written notice within three (3) business days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.
 - 5. Travel Outside the United States:** If I intend to travel outside the United States, I must provide signed written notice of the details of my plan to travel out of the country with the sheriff of the county where I am registered. Notice must be provided at least 21 days before I travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

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

If I travel routinely across international borders for work, or if I must travel unexpectedly due to a family or work emergency, I must personally notify the sheriff at least 24 hours before I travel. I must explain to the sheriff in writing why it is impractical for me 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):** I must give notice to the sheriff of the county where I am registered within three business days:

 - 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 I do not have a fixed residence, I am required to register. Registration must occur within three business days of release in the county where I am being supervised. If I do not have a residence at the time of my release from custody, within three business days after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last resided. If I enter a different county and stay there for more than 24 hours, I will be required to register with the sheriff of the new county not more than three business days after entering the new county. I must also report weekly in person to the sheriff of the county where I am registered. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I must keep an accurate accounting of where I 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 me subject to disclosure of information to the public at large pursuant to RCW 4.24.550.
8. **Application for a Name Change:** If I apply for a name change, I must submit a copy of the application to the county sheriff of the county of my residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If I receive an order changing my name, I must submit a copy of the order to the county sheriff of the county of my residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).
9. **Failure to Register:** I am required to register pursuant to the above obligations and if I knowingly fail to do so, or if I change my name without notifying the county sheriff and the state patrol, I may be charged and convicted of a crime.

5.9 **RIGHT TO APPEAL.** If you plead not guilty, you have a right to appeal this conviction. If the sentence imposed was outside of the standard sentencing range, you also have a right to appeal the sentence. You may also have the right to appeal in other circumstances.

This right must be exercised by filing a notice of appeal with the clerk of this court within 30 days from today. If a notice of appeal is not filed within this time, the right to appeal is IRREVOCABLY WAIVED.

If you are without counsel, the clerk will supply you with an appeal form on your request, and will file the form when you complete it.

If you are unable to pay the costs of the appeal, the court will appoint counsel to represent you, and the portions of the record necessary for the appeal will be prepared at public expense.

6.10 **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 9.92.068; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

5.11 OTHER _____

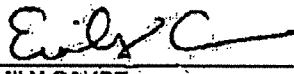
DONE in Open Court and in the presence of the defendant this date: JANUARY 6, 2016



JUDGE: MICHAEL I. DOWNES
Print name:



MATTHEW D. BALDOCK
WSBA 30882
Deputy Prosecuting Attorney



EMILY GAUSE
WSBA #44446
Attorney for Defendant

DEFENDANT PRESENT REFUSED TO SIGN
JOHN PATRICK BLACKMON
Defendant



Interpreter signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language. Cause No. of this case: 12-1-00219-8.

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

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

Clerk of said County and State, _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID Number: WA13872084
(If no SID, take fingerprint card for State Patrol)

Date of Birth: 05/16/1984

FBI Number: 546603ND9

Local ID Number: _____

PCN Number: _____

DOC Number: 367781

Alias name, SSN, DOB:

Race: White

Ethnicity:

- Hispanic
- Non-hispanic

Sex: M

Height: 509

Weight: 185

Hair: Brown

Eyes: Blue

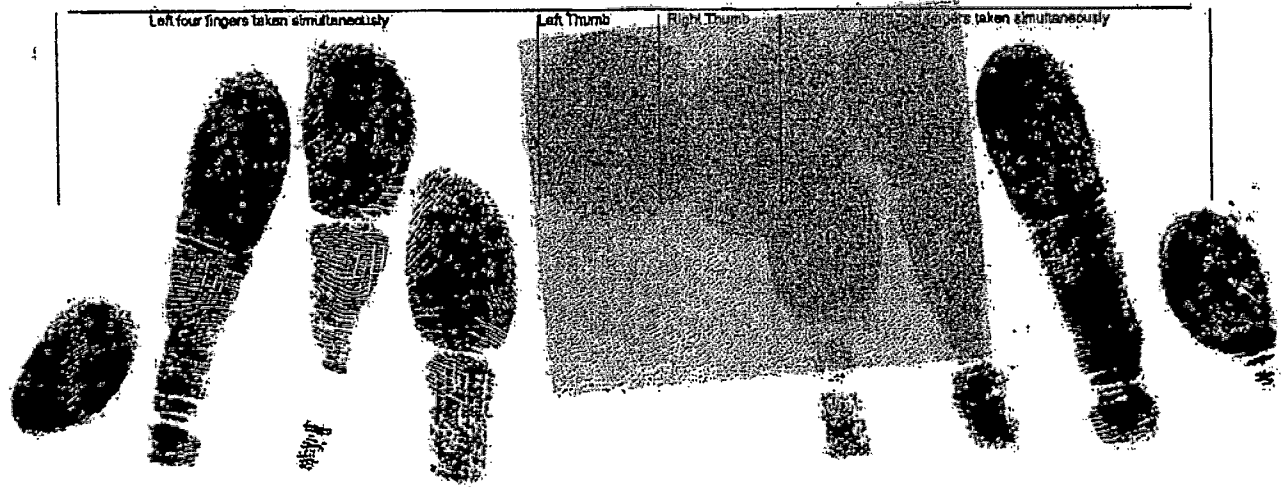
FINGERPRINTS: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court: [Signature] Deputy Clerk.

Dated: 1/16/16

DEFENDANT'S SIGNATURE: DEFENDANT PRESENT, REFERRED TO SIGN

[Handwritten initials]

ADDRESS: _____



ORDER OF COMMITMENT

THE STATE OF WASHINGTON to the Sheriff of the County of Snohomish; State of Washington, and to the Secretary of the Department of Corrections, and the Superintendent of the Washington Corrections Center of the State of Washington:

WHEREAS, JOHN PATRICK BLACKMON has been duly convicted of the crime(s) of Ct 1: Child Molestation in the Second Degree; Ct 2: Child Molestation in the Second Degree; Ct 3: Rape of a Child in the Third Degree; Ct 4: Child Molestation in the Third Degree; Ct 5: Child Molestation in the Third Degree as charged in the Fifth Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term(s) as provided in the judgment which is incorporated by reference, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof; Now, Therefore,

THIS IS TO COMMAND YOU, the said Sheriff; to detain the said defendant until called for by the officer authorized to transfer to the custody of the Superintendent for the Washington State Department of Corrections or his designee for transport to either the Washington Corrections Center at Shelton, Washington or Washington Corrections Center for Women at Purdy, Washington and this is to command you, the said Superintendent and Officers in charge of said Washington Corrections Center to receive from the said officers the said defendant for confinement, classification, and placement in such corrections facilities under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections;

And these presence shall be authority for the same. HEREIN FAIL NOT.

WITNESS the Honorable MICHAEL T. DOWNS Judge of the said Superior Court and the seal thereof, this 6 day of January, 2015.

Sonya Kraski
CLERK OF THE SUPERIOR COURT

By: [Signature]
Deputy Clerk

FILED

A3

1-6-2016

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

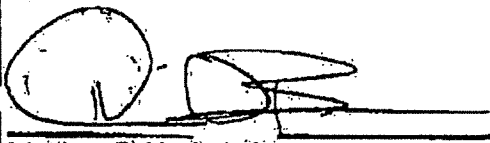
STATE OF WASHINGTON,
Plaintiff,
vs.
JOHN PATRICK BLACKMON,
Defendant.

NO. 12-1-00219-8

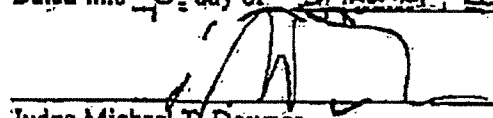
Appendix 2.4
Findings of Fact and Conclusions of Law
For Exceptional Sentence

Substantial and compelling reasons exist to impose an exceptional sentence in this case because the imposition of a standard range sentence on all counts would result in no punishment being imposed for one of them. A failure to impose punishment on each count in this case would be unjust. An exceptional sentence is imposed pursuant to RCW 9.94A.535(2)(c). Count V shall be served consecutive to counts I, II, III, and IV.

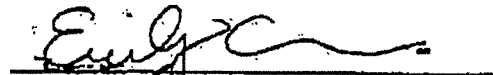
Dated this 6 day of JANUARY, 2016



Matthew Baldock, #30892

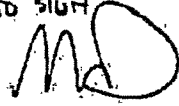


Judge Michael T. Downes



Emily Gause, #44446

DEFENDANT PRESENT, DECLINED TO SIGN
John Patrick Blackmon, Defendant



FILED

1-6-2016
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

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

THE STATE OF WASHINGTON,

Plaintiff,

v.

BLACKMON, JOHN PATRICK;

Defendant.

No. 12-1-00219-8

APPENDIX 4.2
ADDITIONAL CONDITIONS OF
COMMUNITY CUSTODY


ADDITIONAL CONDITIONS OF COMMUNITY CUSTODY:



1. Have no direct or indirect contact with ^{I.J.} LB. (DOB: 03-13-1995).
2. Pay all restitution and legal financial obligations.
3. Obey all municipal, county, state, tribal and federal laws.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved by the supervising Community Corrections Officer.
5. Do not seek employment or volunteer positions, which place you in contact with or control over minor children.
6. Do not frequent areas where minor children are known to congregate, as defined by the supervising Community Corrections Officer. ^{HE KNOWS, OR A REASONABLE PERSON WOULD KNOW,}
7. Do not possess or access depictions of minors engaged in sexually explicit conduct, as defined by RCW 9A.08.011.
8. Do not date women or form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
9. Do not remain overnight in a residence where minor children live or are spending the night.
10. Do not hold employment without first notifying your employer of this conviction.
11. ~~Hold employment only in a position where you always receive direct supervision.~~
12. ~~Do not consume alcohol.~~


Handwritten initials: NAD, MSB

- ~~13. Do not possess or consume controlled substances unless you have a legally issued prescription.~~
- 14. Find and maintain fulltime employment and/or a fulltime educational program during the period of supervision, as directed by the supervising Community Corrections Officer.
- 15. Participate in a sexual deviancy evaluation with a certified provider and make progress in any recommended course of treatment. Follow all conditions outlined in your treatment contract. Do not change therapists without advance permission of the supervising Community Corrections Officer.
- 16. Participate in offense related counseling programs, to include Department of Corrections sponsored offender groups, as directed by the supervising Community Corrections Officer.
- ~~17. Participate in substance abuse treatment as directed by the supervising Community Corrections Officer.~~
- 18. Participate in urinalysis, Breathalyzer, and polygraph examinations as directed by the supervising Community Corrections Officer, to monitor compliance with conditions of community custody.
- 19. Submit to plathymograph testing, as directed by a certified sexual deviancy treatment provider.
- 20. Your residence, living arrangements and employment must be approved by the supervising Community Corrections Officer.
- 21. You must consent to DOC home visits to monitor your compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of the residence in which you live or have exclusive/joint control/access.
- 22. Register as a sex offender with the county of your residence for the period provided by law.

Dated this 6 day of JANUARY, 2016


 MATTHEW D. BALDOCK, #30892
 Deputy Prosecuting Attorney


 JUDGE MICHAEL T. DOWNES

~~EMILY M. GRUSEC, #44446~~ 44446
 Attorney for Defendant
 Emily M. Grusec

~~DEFENDANT PRECHS~~ DECLINED TO SIGN
 JOHN PATRICK BLACKMON
 Defendant


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

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,

CASE No.# 22 250371 11

vs.

MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

RETURN OF SERVICE
RESPONSE, ACTION REQUIRED.

_____, SHERIFF and or Other
Service of Process Authority (D•SOPA), DECLARANT herein, DECLARES;

1. DECLARANT is over the age of 18 years, and DECLARANT is not a party
to this action.

2. DECLARANT served to WASH. ST. DEPT. OF CORRECTIONS Superintendent,
Melissa Andrewjeski, the following documents:

- [] Plaintiff-Petitioner SUMMONS / a copy which is attached.
- [] Plaintiff-Petitioner Application and Petition, in this action.
- [] Return and Response to RCW 7.36 STATE WRIT of Habeas Corpus
- [] COURT TRANSCRIPTS, APPENDIX A
- [] Other: APPENDIX B and C, ref. in APPLICATION FOR: PETITION.

3. The Date, Time, and Place of service were:

DATE: _____, TIME: _____,
a.m. / p.m.

Address: _____

4. Service was made:

- By delivery to the persons named in paragraph 2 above.
- By COURT Order authorizing
 - Service by mail or email by attorney general mandate.
 - Service by SHERIFF.
 - Service by Other Service of Process Authority (O•SOPA).

DECLARANT affirms and declares under the penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct, pursuant to RCW 9A.72.085.

SIGNED at _____ [City], _____ [State], on
_____ [Date].

 FRANKLIN COUNTY SHERIFF / O•SOPA

Address: _____

Fees: _____

Service: _____

Mileage: _____

TOTAL: _____

SUPERIOR COURT OF WASHINGTON - COUNTY OF FRANKLIN

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,
vs.
MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

Case No. 22 250371 11

RETURN AND RESPONSE TO
WRIT OF HABEAS CORPUS

I. RESPONSE

_____ responds to the Writ of Habeas
Corpus in this case follows:

- The authority or cause of the restraint is:
- The authority is in writing; a copy is attached.
- The person restrained has been transferred:
On:
To:
Address:

Respondent
By: _____
Respondent's Attorney

II. VERIFICATION

STATE OF WASHINGTON)
) ss.
COUNTY OF)

The undersigned on oath states that:

2.1 I am the respondent; and

2.2 I have read the above return and believe it to be true.

Sworn and subscribed on:

Signature

Date_____

Notary Public in and for the State of Washington

Residing at:_____

JUN 06 2022

~~K41~~ MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON — COUNTY OF FRANKLIN

JOHN PATRICK BLACKMON,
Plaintiff-Petitioner,
vs.
MELISSA ANDREWJESKI, WASH. ST. DEPT.
OF CORRECTIONS, SUPERINTENDENT,
Defendant-Respondent.

CASE # 22 250371 11

ORDER DIRECTING ISSUANCE OF WRIT
OF HABEAS CORPUS (CLERK'S ACTION REQUIRED)

I. BASIS

- 1.1 A Petition for Writ of Habeas Corpus was filed on: _____ pursuant to Chap. 7.36 RCW:
- 1.2 JOHN BLACKMON is being restrained or withheld from legal care provider by: MELISSA ANDREWJESKI at: CRCC, FRANKLIN County, Washington:

1.3 The cause or pretense of the restraint is:

The Judgment is void on its face due to illegal arrest. Guffey v. State, 103 Wn.2d 144, 690 P.2d 1163 (1984)

1.4 The restraint is alleged to be illegal in that:

It violates a decree/order which entered on N/A
Without probable cause, and without a warrant, police arrested petitioner while he stood inside door of his home.

II. FINDINGS

The court finds that:

- 2.1 It has jurisdiction in the matter;
- 2.2 The above allegations are adopted and an order should enter.

III. ORDER

IT IS ORDERED That:

- 3.1 The clerk of court issue a Writ of Habeas Corpus to: _____ directing that the person restrained be brought before this court
On: _____
At: _____ Court, Room/Department: _____
Address: (Street) _____
(City, State, Zip) _____
- 3.2 The clerk deliver the Writ without delay to: _____ to be served upon: _____
- 3.3 Law enforcement is authorized to break and enter any place in order to seize _____

Dated: _____

ATTACHMENT

C

AUG 29 2022

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

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STATE OF WASHINGTON
FRANKLIN COUNTY SUPERIOR COURT

JOHN PATRICK BLACKMON,

Plaintiff-Petitioner,

NO. 22-2-50371-11

RESPONSE TO PETITION FOR WRIT
OF MANDAMUS

v.

MELISSA ANDREWJESKI and
WASHINGTON STATE DEPARTMENT
OF CORRECTIONS,

Defendants-Respondents.

The Defendants-Respondents, MELISSA ANDREWJESKI and WASHINGTON STATE DEPARTMENT OF CORRECTIONS, by and through their attorneys, Robert W. Ferguson, Attorney General, and Kelly A. Fitzgerald, respond to Buzzard's petition for a writ of mandamus. For the reasons set forth below, Melissa Andrewjeski and DOC respectfully request that the Court deny the petition.

I. STATEMENT OF THE CASE

On July 15, 2013, Blackmon was found guilty by a jury of two counts of child molestation in the second degree, one count of rape of a child in the third degree, and two counts of child molestation in the third degree. Blackmon was initially sentenced in Snohomish County Superior

1 Court on September 9, 2013. Exhibit, 1 Declaration of Kelly Fitzgerald, Attachment A, *State v.*
2 *Blackmon*, Judgment and Sentence, Snohomish County Superior Court Cause No. 12-1-00219-
3 8. Blackmon directly appealed his conviction to the Court of Appeals Division One. Blackmon's
4 conviction was affirmed and the matter was returned for re-sentencing. Ex. 1, Att. B., Mandate,
5 Court of Appeals Cause No. 70955-1-I. Blackmon was resentenced on January 6, 2016. Ex. 1,
6 Att. C, *State v. Blackmon*, Second Amended Judgment and Sentence, Snohomish County
7 Superior Court Cause No. 12-1-00219-6. Blackmon then filed a Personal Restraint Petition
8 (PRP), which was dismissed on January 17, 2018. Ex. 1, Att. D, Order of Dismissal, Court of
9 Appeals Cause No. 75925-6-I. The case was certified final on October 28, 2018. Ex. 1, Att. E,
10 Certificate of Finality, Court of Appeals Cause No. 75925-6-I.

11 Blackmon next challenged the imposition of legal financial obligations. His PRP was
12 unsuccessful and the court issued a second certificate of finality on April 22, 2020. Ex. 1, Att. F,
13 Certificate of Finality, Court of Appeals Cause No. 79451-5-I.

14 On January 6, 2022, Blackmon filed the pending petition for writ of mandamus asserting
15 he was being unlawfully restrained because his judgement and sentence was void on its face.
16 Petition at 6. He alleges that he was unlawfully arrested and searched. He further alleges his
17 counsel was ineffective by failing to move to suppress evidence seized during the search. Petition
18 at 9.

19 II. ARGUMENT

20 A. Collateral Attack Is Time Barred

21 Blackmon is asking this court for a writ of mandamus. Blackmon's petition amounts to
22 a collateral attack on a judgment and sentence that was first imposed in 2013. It is untimely and
23 should therefore be dismissed.

24 RCW 10.73.090(1) prohibits collateral attacks against criminal judgments and sentences
25 if not brought within one year after the judgement and sentence becomes final. The purpose
26 underlying the statute is to promote finality and manage the flow of post-conviction relief

1 petitions. *In re Bonds*, 165 Wn.2d 135, 196 P.3d 672 (2008). The one-year time bar is a
2 mandatory rule and the Court does not have discretion to waive its application. *State v. Schwab*,
3 141 Wn. App. 85, 167 P.3d 1225 (2007), *review denied* 164 Wn.2d 1009, 195 P.3d 86 (2008).
4 The grant of relief in a collateral attack proceeding is conditioned upon a timely filed petition.
5 *In re Quinn*, 154 Wn. App. 816, 226 P.3d 208 (2010). Absent a timely filing, relief is barred. *Id.*

6 **B. Blackmon Is Not Entitled to Extraordinary Mandamus Relief Because He Does Not**
7 **Show the Department Failed to Perform a Mandatory Duty**

8 “Mandamus is an extraordinary writ, the issuance of which is not mandatory, even in
9 response to allegations of constitutional violations.” *Staples v. Benton County*, 151 Wn.2d 460,
10 464, 89 P.3d 706 (2004) (citing *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)).
11 A “writ of mandamus” is a rare and extraordinary remedy because it allows courts to command
12 another branch of government to take a specific action, something the separation of powers
13 typically forbids. *Colvin v. Inslee*, 195 Wn. 2d 879, 467 P.3d 953 (2020). When mandamus is
14 directed to an equal branch of government, “the judiciary should be especially careful not to
15 infringe on the historical and constitutional rights of that branch.” *Walker*, 124 Wn.2d at 407.
16 The Court has recognized that the jurisdiction “to issue writs of mandamus to state officers,
17 does not authorize [the Court] to assume general control or direction of official acts.” *Id.*
18 (quoting *State ex rel. Taylor v. Lawler*, 2 Wn.2d 488, 490, 98 P.2d 658 (1940)). The Court “will
19 not usurp the authority of the coordinate branches of government.” *Walker*, 124 Wn.2d at 410.

20 The Court will not direct the writ of mandamus to compel a discretionary act or to direct
21 state officers to generally perform their duties. *Walker*, 124 Wn.2d at 407 and 410. Mandamus
22 is appropriate only “where there is a specific, existing duty which a state officer has violated and
23 continues to violate...” *Id.* at 408. There must be a clear duty to act existing at the time the writ
24 is sought. *Id.* at 409; *Gerberding v. Munro*, 134 Wn.2d 188, 195, 949 P.2d 1366 (1998); *In re*
25 *Dyer*, 143 Wn.2d 384, 398, 20 P.3d 907 (2001). The Court will not issue a writ unless the duty
26 exists at the time the writ is sought. *Walker*, 124 Wn.2d at 409.

1 “Doubtful plaintiff rights do not justify a writ of mandamus.” *Eugster v. City of Spokane*,
2 118 Wn. App. 383, 404, 76 P.3d 741 (2003) (citing *United States ex rel. Arant v. Lane*, 249 U.S.
3 367, 371, 39 S. Ct. 293, 63 L. Ed. 650 (1919); *Life & Fire Ins. Co. of New York v. Wilson’s*
4 *Heirs*, 33 U.S. 291, 302-03, 8 L. Ed. 949 (1834)). Whether an agency has a specific duty that
5 must be performed is a question of law. *River Park Square, L.L.C. v. Miggins*, 143 Wn.2d 68,
6 76, 17 P.3d 1178 (2001). While the writ may direct an agency to exercise a mandatory
7 discretionary duty, it cannot direct the manner in which the agency exercises that discretion.
8 *Peterson v. Dep’t of Ecology*, 92 Wn.2d 306, 314, 596 P.2d 285 (1979). “Mandamus will not lie
9 to compel the performance of acts or duties which call for the exercise of discretion.” *Vangor v.*
10 *Munro*, 115 Wn.2d 536, 543, 798 P.2d 1151 (1990). A clear abuse of discretion must be found
11 amounting to a failure to exercise discretion. *Id.* “Once officials have exercised their discretion,
12 mandamus does not lie to force them to act in a particular manner.” *National Electrical*
13 *Contractors Assoc. v. Riveland*, 138 Wn.2d 9, 32, 978 P.2d 481 (1999) (quoting *Aripa v. Dept.*
14 *of Soc. & Health Servs.*, 91 Wn.2d 135, 140, 588 P.2d 185 (1978)).

15 The Department has the duty to carry out the imposed sentence. Unless authorized by
16 statute, it is not the role of the Department to decide the length of the sentence that an offender
17 should be subjected to. *Dress v. Washington State Dep’t of Corr.*, 168 Wn. App. 319, 337, 279
18 P.3d 875 (2012) (noting that “Washington courts have consistently prohibited DOC from
19 ‘correcting’ a trial court’s judgment and sentence, even if DOC believes the sentence is legally
20 incorrect.”). The Department correctly followed the court’s judgment and sentence and is
21 currently restraining Blackmon based upon the sentence imposed. Blackmon’s petition fails
22 because he is unable to demonstrate that the Department has failed to perform a mandatory duty.

23 **C. A Writ of Mandamus May Not Issue Where the Petitioner Has a Plain, Speedy, and**
24 **Adequate Remedy at Law**

25 Relief by mandamus is not available when there is a “plain, speedy and adequate remedy
26 in the ordinary course of law.” RCW 7.16.170; *Miggins*, 143 Wn.2d at 76. A remedy is not

1 inadequate “merely because it is attended with delay, expense, annoyance, or even some
2 hardship. There must be something in the nature of the action that makes it apparent that the
3 rights of the litigants will not be protected or full redress will not be afforded without the writ.”
4 *City of Kirkland v. Ellis*, 82 Wn. App. 819, 827, 920 P.2d 206 (1996) (citing *State ex rel. O'Brien*
5 *v. Police Court*, 14 Wn.2d 340, 347-48, 128 P.2d 332 (1942)). Whether there is a plain, speedy,
6 and adequate remedy in the ordinary course of the law is a question left to the discretion of the
7 court in which the proceeding is instituted. *Miggins*, 143 Wn.2d at 76. The applicant has the
8 burden of proving that adequate alternative remedies do not exist. *Zapotocky v. Dalton*, 166
9 Wn. App. 697, 702, 271 P.3d 326 (2012).

10 Blackmon has not demonstrated that he does not have adequate alternative remedies to
11 raise his claims – indeed, his claims could *only* be brought via an alternative action because they
12 do not state a cause of action for relief via mandamus. A personal restraint petition (PRP) brought
13 pursuant to RAP Title 16 is a commonly-used vehicle to contest a sentence and ineffective
14 assistance of counsel. Both issues are not only properly addressed in that forum, the respondent
15 is not the Department but instead the State as they are the party to in original proceedings. To
16 obtain relief via PRP, a petitioner must demonstrate unlawful restraint. RAP 16.4(a). Here, the
17 gravamen of Blackmon’s complaint is that he is restrained as a result of an allegedly unlawful
18 judgment and sentence that is the result of an unlawful search and ineffective assistance of
19 counsel. Such contentions are routinely litigated via a PRP and are more properly argued in that
20 context with the State as the respondent as opposed to the Department.

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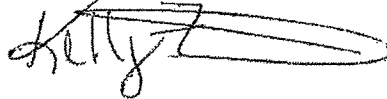
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III. CONCLUSION

This Court should dismiss the petition for being untimely. Blackmon's petition has failed to state a claim upon which relief can be granted because he has failed to demonstrate that the Respondents have failed to perform a mandatory ministerial duty required by law. Therefore it should be dismissed. Blackmon has a plain, speedy and adequate remedy at law to litigate his claims in the form of a PRP the court should therefore should dismiss this petition.

RESPECTFULLY SUBMITTED this 24th day of August, 2022.

ROBERT W. FERGUSON
Attorney General



KELLY A. FITZGERALD, WSBA #26203
Assistant Attorney General
Corrections Division

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing Response to Petition for Writ of Mandamus to be filed with the Clerk of the Court, and I certify that I served all parties, or their counsel of record, a true and correct copy of this document by United States Mail, postage prepaid, at the following addresses:

JOHN BLACKMON, DOC #367781
COYOTE RIDGE CORRECTIONS CENTER
PO BOX 769
CONNELL, WA 99326-0769

I certify under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of August, 2022, at Spokane, Washington.



KELLY A. FITZGERALD, WSBA #26203
Assistant Attorney General
Corrections Division

ATTACHMENT

D

ORIGINAL FILED

JUN 06 2022

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

X41

| |
|--|
| Court of Washington |
| For _____ |
| JOHN PATRICK BLACKMON, Petitioner/Plaintiff, |
| vs. |
| MELISSA ANDREWJESKI, WASH. ST. DEPT. OF CORRECTIONS, SUPERINTENDENT, Defendant-Respondent. |

No. 22 250371 11

Order Re Waiver of Civil Fees and Surcharges

- Granted (ORPRFP)**
- Denied (ORDYMT)**
- Clerk's Action Required 3.1**

I. Basis

The court received the motion to waive fees and surcharges filed by or on behalf of the
 petitioner/plaintiff respondent/defendant.

II. Findings

The Court reviewed the motion and supporting declaration(s). Based on the declaration(s) and any relevant records and files, the Court finds:

- 2.1 The moving party is indigent based on the following: He or she:
- is represented by a qualified legal aid provider that screened and found the applicant eligible for free civil legal aid services; and/or
 - receives benefits from one or more needs-based, means-tested assistance programs; and/or
 - has household income at or below 125% of the federal poverty guideline; and/or
 - has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or
 - other: _____

has household income above 125% of the federal poverty guideline but cannot meet basic household living expenses and pay the fees and/or surcharges; and/or

2.2 The moving party is not indigent.

III. Order

Based on the findings the court orders:

3.1 The motion is granted, and

All filing fees and surcharges, the payment of which is a condition precedent to the moving party's ability to secure access to judicial relief, are waived.

The parenting class fee shall be waived.

The parenting class fee shall be paid on the sliding fee scale.

Shall be reviewed at the time of entry of final decree herein.

Other: _____

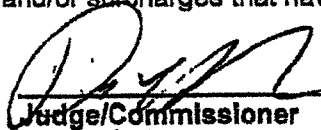
3.2 The motion is denied and all appropriate filing fees shall be paid when the case is filed.

The motion is denied and all appropriate filing fees shall be paid with monthly payments of \$ _____ starting _____, 201__.

3.3 If there is a material change in financial circumstances, the ruling can be revisited by the court or the moving party.

If the motion was granted and the court, upon review, later finds that either the petitioner or another responsible party to this proceeding has sufficient resources to pay the waived filing fees or surcharges, the Court may modify this order and require the moving party or another party to pay the filing fees and/or surcharges that have been waived by this order.

Dated: 6/6/22



Judge/Commissioner
DAVID L. PETERSEN

Presented by:



Signature of Party or Lawyer/WSBA No.

John Patrick Blackman 05/31/2022
Print or Type Name Date

FILED
SUPREME COURT
STATE OF WASHINGTON
9/5/2023 10:16 AM
BY ERIN L. LENNON
CLERK

THE WASHINGTON STATE SUPREME COURT
IN AND FOR THE STATE OF WASHINGTON

In Re:
Appellant,
JOHN PATRICK BLACKMON,

AND Respondents,

MELISSA ANDREWJESKI, et al
WASH. ST. DEPT. OF CORR.
SUPERINTENDENT.

WA.ST.SUPR. CT #102312-0

COA DIV.III # 39220-1-III
F.Cty.Sup.CT. # 22-2-50371-11

PROOF OF PERSONAL SERVICE
(AFSR)

(CLERK ACTION REQUIRED)

PROOF OF PERSONAL SERVICE

Server declares:

1. My name is John Patrick Blackmon, Appellant herein, pro se, a layperson and principal in the above cause, of the age of consent (18 or older).
2. Personal Service: Through and by Washington State COURT's eFiling Portal, Appellant served court documents for the appeal of this case, on and to The CLERK of THE WASHINGTON STATE SUPREME COURT, THE COURT, and on and to ALL Respondent parties, their Representation, AAG Kelly Ann FITZGERALD (ATT. C) pursuant to and result of eFile Portal instruction and procedure.
3. Date, time, and eFile of Service for THE WASHINGTON STATE SUPREME COURT CLERK, THE COURT, and parties by way of THE eFiling Portal.

Date: Tuesday, September 05, 2023 Time: after noon EST.

Address: The WASHINGTON STATE eFILING Portal In and For THE
WASHINGTON STATE SUPREME COURT.

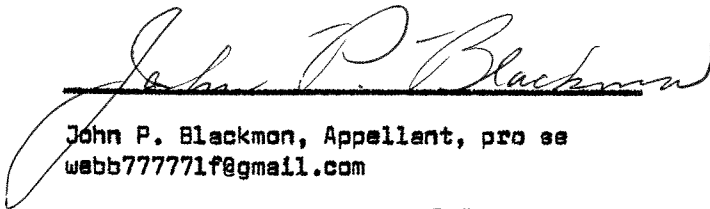
4. List of Documents served: (97 Pgs Total)

- This PROOF OF PERSONAL SERVICE (02 Pgs),
- [[CORRECTED]] MOTION FOR DISCRETIONARY REVIEW (08 Pgs),
- CERTIFICATION OF COMPLIANCE, (01 Pgs),
- ATT. A, COMMISSIONER'S RULING April 12, 2023, (07 Pgs);
- ATT. B, PLAINTIFF'S WASHINGTON STATE WRIT OF HABEAS CORPUS,
PURS. RCW 7.36 (ch), (69 Pgs);
- ATT. C, RESPONSE TO PETITION FOR WRIT OF MANDAMUS, (08 Pgs);
- ATT. D, FRANKLIN COUNTY SUPERIOR COURT CASE #22-2-50371-11,
ORDER OF INDIGENCY, (02 Pgs).

5. No associated additional fees apply to Appellant's knowledge.

I declare and affirm under the penalty of perjury under the
laws of the State of Washington that the statements on this form
are true and correct, has full force of law not requiring
verification by Notary Republic. Appellant declaration and
affirmation are pursuant to 28 U.S.C. 1746, Dickerson v.
Wainwright 526 F.2d 1184 (1980); Pursuant to RCW 9A.72.085.

DATED, PROCLAIMED, and served This 05th day of September, 2023
around noon, EST.



John P. Blackmon, Appellant, pro se
webb777771f@gmail.com

JOHN BLACKMON - FILING PRO SE

September 05, 2023 - 10:16 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,312-0
Appellate Court Case Title: John Patrick Blackmon v. Melissa Andrewjeski et al.
Superior Court Case Number: 22-2-50371-1

The following documents have been uploaded:

- 1023120_Other_20230905101152SC401544_2796.pdf
This File Contains:
Other - Due to holiday, still timely CORRECTED
The Original File Name was Disc090523.pdf

A copy of the uploaded files will be sent to:

- Kelly.Fitzgerald@atg.wa.gov
- kafitzgerald@spokanecoumty.org

Comments:

CORRECTED Discretionary Review Petition

Sender Name: John Blackmon - Email: webb77777lf@gmail.com

Address:

-

Oldtown, MD, 21555

Phone: (301) 478-5106

Note: The Filing Id is 20230905101152SC401544