S.Ct. No. 89841-3
COA No. 68849-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

JASON MATHISON,
PETITIONER,

V.

STATE OF WASHINGTON,
RESPONDENT.

ON REVIEW FROM THE COURT OF APPEALS,
STATE OF WASHINGTON, DIVISION ONE

AND

THE HONORABLE PATRICK OISHI
&
THE HONORABLE MICHAEL J. FOX

PETITION FOR REVIEW,
BRIEF OF PETITIONER.

JASON MATHISON
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FEDERAL LAW:

A. IDENTITY OF PETITIONER

Petitioner, Jason Mathison, the appellant, asks this Honorable Court to review the Court of Appeals decision referred below in section B.

B. COURT OF APPEALS DECISION

Jason Mathison requests review of the Court of Appeals decision that was decided on November 21, 2013 and amended due to errors on January 21, 2014. See Appendix A & B of denial of direct appeal.

C. ISSUES PRESENTED FOR REVIEW

1. WHAT IS THE DURATION OF COURT-ORDERED TREATMENT REQUIRED AS A SSOSA CONDITION; AND CAN SSOSA BE LAWFULLY REVOKED WHEN THE COURT AND TREATMENT PROVIDER FAILED TO FULFILL THEIR OBLIGATIONS, AS MANDATED BY STATE STATUTE, WHICH IS THE ONLY WAY THIS CONDITION COULD BE MET?

2. DOES FAILURE TO CONDUCT APPROPRIATE INVESTIGATIONS, ARGUE RELEVANT ISSUES, AND PROTECT DEFENDANT'S RIGHT TO ALLOCUTION, CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?

3. DOES "EQUAL PROTECTION" REQUIRE THAT A SSOSA RECIPIENT BE GRANTED CREDIT AGAINST IMPOSED SENTENCE FOR TIME SPENT IN A COURT-ORDERED TREATMENT PROGRAM?

D. STATEMENT OF THE CASE

Mathison appeals the revocation hearing decision.

As there are abundant issues raised herein, but RAP 13.4 (f) limits petition to twenty pages; Mathison will recite the facts as necessary in the various subjects of section E. This will be done in this fashion to try to limit redundancy. The Motion To Reconsider, the Opening Brief from direct appeal, and the pro se Statement of Additional Grounds - correctly set forth the facts relevant to this petition.

E. ARGUMENT, WHY REVIEW SHOULD BE ACCEPTED

1. WHAT IS THE DURATION OF COURT-ORDERED TREATMENT REQUIRED AS A SSOSA CONDITION; AND CAN SSOSA BE LAWFULLY REVOKED WHEN THE COURT AND TREATMENT PROVIDER FAILED TO FULFILL THEIR OBLIGATIONS, AS MANDATED BY STATE STATUTE, WHICH IS THE ONLY WAY THIS CONDITION COULD BE MET?

THE RULING OF DIVISION ONE IN MATHISON'S CASE HAS OPENED THE DOOR FOR COURTS TO BE FREE FROM AN OBLIGATION OR DUTY TO HONOR PLEA AGREEMENTS AND ADHERE TO STATE STATUTE - THUS VIOLATING DUE PROCESS OF THE U.S. & WASH. CONST.

This issue consists of the following four matters: (i) Completion of Treatment, (ii) Statutory Conflict, (iii) Rule of Lenity, and (vi) Conflict of Interest. These matters each meet the tests stated in RAP 13.4 (b) by presenting "...a significant question of law under the constitution of the State of Washington or of the United States..." and "...involves an issue of substantial public interest that

should be determined by the Supreme Court." In considering these matters, the questions that the petitioner seeks answer to are: Can the duration of court-ordered treatment be extended without the procedural due process to do so (i.e progress reports, review hearings, and notification?) Are the court, CCO, and Treatment Provider legally obligated to perform their duties as mandated by state statute? What remedy should be applied when they have failed to do so? What was the purpose for legislation to include a limit to the required duration of treatment in the RCW?

(i) Completion of Treatment

Mathison contends that RCW 9.94A.670 cannot function as a statute when some parties shirk the obligations that are included therein. It should be noted that while there have been multiple changes to this RCW since it was initially codified, the points made in this argument apply to all instances of the RCW, unless specified otherwise.

As intended by legislature, RCW 9.94A.670 was written in a fashion that mandates participation of not only the offender, but also the court, CCO, and the Treatment Provider. Specifically, RCW 9.94A.670 requires that the court hold one or more review hearings to determine if treatment completion has been reached. It also requires that the treatment provider submit quarterly reports on the

offender's progress while participating in their program. Together, these review hearings and progress reports would be the only way treatment completion could be determined. Presumably, to protect the offender from any failure of the court or treatment provider to perform their part in this statute, legislation limited the duration that this condition could be imposed upon that offender. For Mathison this limit was three years.[1]

As previously stated in Mathison's Statement of Additional Grounds; during the six years he had been participating in treatment; the court failed to ever hold any sort of review hearing to determine if he had completed the condition. Also, the court-ordered treatment provider, Northwest Treatment and Associates (NWTA), had not bothered to submit to the court any reports on his progress in their program for almost six years at the time of his revocation. These failures of both the court and treatment provider were a direct violation of the intent of RCW 9.94A.670. Furthermore, the CCO in charge of Mathison's community custody was aware that these failures were occurring, and made no effort to correct the situation. Instead, at the first opportunity possible, the CCO recommended revocation of Mathison's SSOSA. The trial court then used "failure to complete treatment" as a reason for revocation.

1. SEE EXHIBIT 1 (CLERKS PAPERS AT PAGE 31); EXHIBIT 2 (CLERKS PAPERS AT PAGE 40); AND FORMER RCW 9.94A.670 (4)(b) (2004)

Contrary to the court's, CCO's, and NWTA's failure to follow RCW 9.94A.670; Mathison was the sole participant that had been complying to this statute, and to the Plea Agreement contract. Mathison complied in this manner for six years (three years extra to the mandated court order of only three years). During the six years that Mathison attended treatment, he achieved the following:

* payed all fines
* maintained employment
* received a degree from a community college
* apparently did well in treatment for six years - since there was no negative reports on his participation
* attended three extra years of treatment on his own volition
* payed for six years of treatment out of his earned income at the substantial cost of more than $37,000
* had remained free of infractions for six years

Because RCW 9.94A.670 mandates for all parties to participate in a SSOSA judgment, this Honorable Court should rule and assert the legislature intent, which is: RCW 9.94A.670 applies to all parties - not just Mathison. To leave this matter as it is; courts, CCOs, and treatment providers will continue to violate SSOSA recipients' Due Process with impunity.

The neglect that occurred in Mathison's SSOSA sentence, violates his procedural and substantial due process rights

that are guaranteed under the Wash. Const. art. 1 § 3, and U.S. Const. amends. V & XIV.

The negligent behavior of the court, CCO, and NWTA provider affected Mathison's SSOSA sentence - which created a liberty interest under Hicks v. Oklahoma, 100 S.Ct. 2227, 447 U.S. 343 (U.S. Okla. 1980). In Hicks, an Oklahoma court was aware that the statute that was being applied on Hicks was unconstitutional, and the court knew if they properly instructed the jury on the correct statute - Hicks would have received 30 years less on his sentence. Thus, the court arbitrarily deprived Hicks' liberty interest of the XIV amendment. The similarity here in Mathison is that RCW 9.94A.670 criteria mandate was arbitrarily denied by three parties (court, CCO, and NWTA who knew their participation was required to benefit Mahtison). Their participation was essential as stated and mandated by RCW 9.94A.670 - intentionally ignoring to apply RCW 9.94A.670 prejudiced Mathison in his revocation hearing. At the revocation hearing - the court, CCO, and NWTA did not face up to their failed obligations in order to avoid taking responsibility. Instead, they wholly lay the burden on Mathison and implied that RCW 9.94A.670 applied solely to him - and not the other parties. The result of this was that each of the three parties gave a negative review which

resulted in revoking SSOSA. If all three parties had been held accountable to RCW 9.94A.670 - Mathsion's issues could have been addressed or identified to prevent revocation. Furthermore, Mathison's behavior would at most have merited sanction time (an amount of days in jail), and not a SSOSA revocation.

This matter should also be entertained pursuant to RAP 13.4 (4) - "a substantial public interest..". This Temple of Justice should insure to the public that RCWs, such as the SSOSA RCW 9.94A.670 statute, must be adhered to by the offenders and the state officials who execute the law. As argued in this matter - the court, CCO, and NWTA shirked on participating in RCW 9.94A.670, this Honorable Court should send a message that neglect of law will not be tolerated. This insures to the public that their governmental law branches can be trusted when they pass, and execute, laws. Ruling contrary will fester distrust in the Judicial system. Furthermore, defendants who agree to partake in a SSOSA sentence need to be taken seriously, as RCW 9.94A.670 mandates. The defendants must be aware that all parties are taking the mandates of RCW 9.94A.670 seriously, and therefore he or she will take the SSOSA program seriously. If there is any dereliction of duties in a SSOSA sentence - then this will create an abuse of public trust.

For these reasons, Mathison should be remanded for a new revocation hearing, and the court rule that he be sanctioned - rather than a revocation of his SSOSA sentence.

(ii) Statutory Conflict

In it's Unpublished Opinion by Verellen, J., the Appellate court presents an instance of statutory conflict. Specifically, page One of the Unpublished Opinion claims that while on SSOSA, Mathison was under two separate conditions: one being that he complete three years of treatment, and the other that he participate in more than three years of treatment. Each of these conditions come from a different state statute and appear to be in opposition. Therefore, this matter requires this Honorable Court to interpret a conflict of statue pursuant to RAP 13.4 (b) (3) - "...significant question of law...". Under Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wash.2d 9, 19, 978 P.2d 481 (1999) states that, "On question of statutory interpretation the Supreme Court is the final arbiter." The court's interpretation of statute is inherently a question of law, and the court reviews questions of law de novo. Dixon/Organochloride Ctr. v. Pollution Control Hearings Bd., 131 Wash.2d 345, 352, 932 P.2d 158 (1997). "The primary goal in statutory interpretation is to ascertain and give effect to the intent

of the Legislature." Nat'l Elec. Contractors Ass'n. Cascade Chapter v. Riveland, 138 Wash.2d at 19, 978 P.2d 481 (1999). In order to determine legislature intent, the court begins with the statue's plain language and ordinary meaning. Id.

When sentencing an offender to SSOSA, former RCW 9.94A. 670 (4) (b) mandates that an offender be required to participate in treatment for "any period up to three years in duration."[2] Also required by the SSOSA statue is a period of either determined or indeterminate community custody. However, RCW which governs community custody,[3] includes the stipulation that the offender "may be required to participate in a court-ordered treatment program" while on community custody (emphasis added).

As in Mathison's case, this creates a situation where these two statutes can directly contradict one another. A SSOSA recipient sentenced to an indeterminate period of community custody would presumably be under two separate conditions; one stipulating indefinite participation in treatment, while the other stating that treatment would be no more than three years.

These conditions contradict each other in that indefinite duration of treatment being required by community custody would render a large portion of RCW 9.94A.670 meaningless and void. Specifically, the sections that mandate review

2. THE CURRENT VERSION OF RCW 9.94A.670 INCREASES THIS LIMIT TO FIVE YEARS.

3. SEE FORMER RCW 9.94A.715 (2)(b) AND FORMER RCW 9.94A.700 (5)(c).

hearings, progress reports, and the limit to the duration of treatment. The simplest way for these two statues to be harmonized would be for them to be enforced by different penalties; revocation for failing to follow the condition imposed by RCW 9.94A.670, and DOC sanctions for failing to follow the condition imposed by community custody. This would be in compliance with current RCW 9.94A.670 (12) which specifies that violating a condition not required by the SSOSA statute itself would only be subject to DOC sanctions.

In reviewing this matter, Mathison asks this court to consider the difference between a SSOSA condition, and a condition of community custody; and whether both carry the penalty of revocation.[4] The following rulings should be applicable:

> "To resolve this apparent conflict between statutes, we must attempt to give effect to the legislature's intent in enacting them, as expressed in the statutes." Draper Mach. Works, Inc. v. Dept. of Natural Resources, 117 Wash.2d 306, 311, 815 P.2d 770 (1991).
>
> "When two statutes appear to conflict, we try to harmonize their respective provision." City of Pasco v. Dept. of Retirement Systems, 110 Wn.App. 582, 42 P.3d 992 (Wash.App. Div. 2 2002).
>
> "Statutes curtailing civil liberties should be strictly construed so as not to expand their scope beyond that minimally required by the language itself, and statutes should be construed in a constitutional fashion when possible." Detention of Hendrickson v. State, 140 Wn.2d 686, 2 P.3d 473 (Wash. 2000).

4. SEE EXHIBIT 1, PORTION OF PLEA AGREEMENT SPECIFICALLY STATES THAT FAILURE TO COMPLY WITH CONDITIONS OF COMMUNITY CUSTODY MAY RESULT IN SANCTIONS. (CLERKS PAPERS AT PAGE 31)

"Finally, we note that where two criminal statutes, when read together, are susceptible to more than one reasonable, but irreconcilable, interpretation, the rule of lenity applies. Under that rule, we must strictly construe the statutes in favor of the defendant." In re Sentence of Kindberg, 97 Wash.App. 287, 983, P.2d 684 (1999).

This court should also consider the ruling in **State** v. Onefrey, 119 Wash.2d 572, 575, 835 P.2d 213 (1992); where it was determined that only those who could be treated in the limited amount of time provided by statute were eligible for SSOSA. Conversely, because Mathsion was granted a SSOSA sentence, his condition of treatment could not have been extended beyond the limit of the statute itself.

(iii) Rule of Lenity

In well established precedent, the rule of lenity provides that when a statute, or a sentence condition, is ambiguous it must be construed in a manner that is most beneficial to the defendant. See Bell v. United States, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed 905 (1955). In it's unpublished opinion, the Division One, appellate court denied Mathison's appeal stating that the sentencing condition that was imposed on his J&S unambiguously informed him that he was required to complete more than three years of treatment.[5] The appellate court bases this finding, in part, on a portion of the treatment providers recommendation that was attached as an addendum to appendix H of Mathison's J&S. Included

5. UNPUBLISHED OPINION AT PAGE 1, SEE APPENDIX B

in this recommendation was an estimation that the duration of Mathison's group treatment would be for "three years plus". However, not only was this treatment provider's estimation buried deep within an addendum to an Appendix, but it was contrary to two Judges' rulings, and to former RCW 9.94A.670 (4), (6). The following facts are relevant:

* August 18, 2005 before the Honorable Kenneth Comstock on VRP 10 lines 21-23 states "conditions are that you be in treatment for a period of three years with Northwest Treatment Associate".... This statement was given by Judge Comstock when he was accepting the plea agreement from Mathison.

* September 30, 2005 before Honorable Michael J. Fox on VRP 6 lines 20-24, Judge Fox tells Jeffrey Lee McVicars (victim's father) that Mathison is to comply "with all of the requirements of the SSOSA over a 3 - year period"....

* Former RCW 9.94A.670 (4) (b) specifically states that the treatment duration could be any period up to three years.

* On Mathison's J&S, Judge Fox specifically marked the box indicating that Mathison complete three years of treatment, and purposefully refrained from establishing any sort of hearing where this condition could be extended pursuant to former RCW 9.94A.670 (6), (8), (9).

As demonstrated in this matter - two Judges, and a statute, reflect that Mathison was only to be in treatment for three years. Therefore, the conclusion analysis from Division One was erroneous because they have allowed a treatment provider's estimation to supersede Judge Comstock's plea agreement; to supersede Judge Fox's J&S; and supersede the legislature's RCW 9.94A.670 (4) (b).[6]

6. SEE EXHIBITS 1 AND 2. RELEVANT PORTIONS OF PLEA AGREEMENT AND J&S. (CLERKS PAPERS AT PAGES 31, 40, AND 46)

Another element that the Unpublished Opinion points to, is the following statement that Judge Fox made when issuing Mathhison's sentence: "upon release from jail, Mr. Mathison shall enter into and make reasonable progress and successfully complete a program for the treatment of sexual deviancy for a period of 3 years or however long it takes to so successfully complete the program with Northwest Treatment and Associates." (Emphasis added).[7] The appellate court claims that this statement meant that Mathison was required to attend treatment for three years or longer. However, upon close examination and consideration of the use of the word "or"; this statement should be found to mean that treatment would be for any period up to three years; which would be in compliance with RCW 9.94A.670. As ruled in Kindberg, 97 Wash.App. 287: because this interpretation of the treatment condition, Mathison was under while on SSOSA is reasonable and in compliance with statute, despite being contrary to the opinion of the appellate court; Mathison requests that this court find that the rule of lenity should apply.

(vi) Conflict of Interest

In terminating review of the petitioner's appeal, the appellate court decided that the petitioner was required, but had failed, to remain in treatment until "successful completion"; and the failures of the court and treatment

7. REPORT OF PROCEEDINGS 9-30-2005 AT PAGE 17 LINE 18

provider to fulfill their obligations of holding review hearings and submitting progress reports was "collateral to this issue."[8] However, the findings in the court's opinion would mean that determining successful completion was solely the discretion of the treatment provider. The petitioner believes this to be a conflict of interest as it allows treatment providers to keep offenders participating in their program indefinitely while directly profiting from that participation. This would be a violation of appearance of fairness doctrine. "A party asserting a violation of the appearance of fairness doctrine must produce sufficient evidence demonstrating bias, such as personal or pecuniary interest on the part of the decision maker; mere speculation is not enough." In re Haynes, 100 Wn.App. 366 (Wash.App. Div. 1 2000). As in Mathison's case, NWTA had a pecuniary interest in the matter because they were profiting from Mathison's continued participation. Therefore, they could not be the decision maker in determining whether Mathison's condition of treatment participation was to be extended. Furthermore, the fact that NWTA had not submitted to the court any reports on Mathison's progress in their program for almost 6 years, shows that they were more interested in profiting from his participation than in providing a way for him to "complete" their program.

8 UNPUBLISHED OPINION AT PAGE 7. SEE APPENDIX B.

In reviewing this matter, it should be noted that current RCW 9.94A.670 (13) mandates that the treatment provider who does the initial evaluation of a SSOSA candidate cannot be the provider who ultimately profits from having that offender court-ordered to attend their program. At this time the petitioner asks this court to determine if the findings in the Unpublished Opinion are in accordance with state statute and legislative intent. Because of the large number of offenders that are court-ordered to attend some form of treatment, and the subsequent public interest in this issue, this would meet the test provided in RAP 13.4 (b) (4).

2. DOES FAILURE TO CONDUCT APPROPRIATE INVESTIGATIONS, ARGUE RELEVANT ISSUES, AND PROTECT DEFENDANT'S RIGHT TO ALLOCUTION, CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?

DIVISION ONE HAS RULED IN MATHISON IN A WAY THAT WILL LOWER THE STANDARD OF PERFORMANCE OF AN ATTORNEY, THUS RENDERING INEFFECTIVE ASSISTANCE

An ineffective assistance of counsel claim requires the defendant to show that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 687 104 S.Ct. 2024, 2052, 2064, 80 L.Ed.2d 674 (1984).

First, the appellant must show that counsel's performance was deficient. This requires showing that counsel made

errors so serious that counsel was not functioning as guaranteed by the Sixth Amendment. Second, the appellant must show that the deficient performance prejudiced the defense.

First prong: counsel Wilson failed to properly assert the right of allocution. In State v. Canfield, 154 Wn.2d 698, 116 P.3d 391 (2005), the Washington state Supreme Court held that due process requires that a defendant be given the chance to be granted allocution at a revocation hearing where said defendant had made "some indication" of his wish to be granted that right. In State v. Crider, 78 Wn.App. 849, 899 P.2d 24 (1995), it had been held that being granted this right only after the court had rendered its decision was "a totally empty gesture"; and that due to the liberty interest at stake in a revocation hearing, it was "not harmless error."

Second prong: similar to Canfield, and Crider, Mathison wanted to request his right to allocution. Wilson failed to inform the judge about Mathison's wish, and failed to object when this right was not granted before the decision was rendered; thus failing to preserve the issue for appeal. Had counsel stated Mathison's intent before the judge's decision, or objected afterwards, the outcome would have benefited Mathison. Furthermore, had counsel been effective,

the arguments made by Mathison in his SAG, and this petition, concerning the treatment condition of his SSOSA would have been brought up at revocation. Because they were not, counsel was ineffective.

For the remainder of this argument of ineffective assistance, see also the Motion For Reconsideration and the appellant's Statement of Additional Grounds that is included as an appendix to this petition. Due to the importance of the Sixth amendment, this Honorable Court should grant review of this issue.

3. DOES "EQUAL PROTECTION" REQUIRE THAT A SSOSA RECIPIENT BE GRANTED CREDIT AGAINST IMPOSED SENTENCE FOR TIME SPENT IN A COURT-ORDERED TREATMENT PROGRAM?

DENYING CREDIT FOR TIME SPENT IN PARTICIPATION IN SSOSA, PROMOTES INEQUALITY COMPARED TO OTHER TREATMENT PROGRAMS. THIS RENDERS A VIOLATION OF EQUAL PROTECTION.

Because petitioner has used his maximum sheets for his petition for review; petitioner asks that this Court review the Equal Protection argument included in the SAG. See App. C.[9]

F. CONCLUSION

For these reasons, Mathison respectfully asks that this Court grant review. It should also reverse and remand for a new revocation hearing to determine appropriate sanction time.

Respectfully submitted on this 14 day of April, 2014.

Jason Mathison

Jason Mathison, Pro se

9. STATEMENT OF ADDITIONAL GROUNDS, GROUND 2 AND GROUND 4

ATTACHMENT

APPENDIX A

ORDER DENYING MOTION FOR RECONSIDERATION

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

STATE OF WASHINGTON, Respondent, v. JASON MATHISON, Appellant.	)	No. 68849-9-I ORDER GRANTING MOTION EXTENSION OF TIME, DENYING MOTION FOR RECONSIDERATION, AND CHANGING AND REPLACING OPINION

Appellant Jason Mathison filed a motion for an extension of time to file a motion for reconsideration of the court's opinion filed December 9, 2013. The panel has determined that the motion should be granted and the motion for reconsideration considered on its merits. After due consideration of the motion for reconsideration, the panel has determined it should be denied but that the opinion should be amended and replaced as noted below. Now therefore, it is hereby

ORDERED that appellant's motion for extension of time to file a motion for reconsideration is granted. It is further

ORDERED that appellant's motion for reconsideration is denied. It is further

ORDERED that the opinion be amended on page 4, the second full paragraph: Replace the semicolon at the end of the first full sentence with a period (sentence beginning with "Mathison's sex offender treatment counselor") and add a new sentence which reads: "In addition, Mathison's own witness, sex offender treatment provider

Marsha Macy, testified about Mathison's deception at Northwest Treatment Associates:"

The remainder of the opinion shall remain unchanged. It is further

ORDERED that the amended opinion shall replace the original opinion filed herein.

Done this 21st day of January, 2014.

Verellen, J.

Leach, J.

Becker, J.

ATTACHMENT

APPENDIX
B

COURT OF APPEALS' DECISION ON DIRECT APPEAL

UNPUBLISHED OPINION

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

STATE OF WASHINGTON, Respondent, v. JASON PAUL MATHISON, Appellant.	)	No. 68849-9-I UNPUBLISHED OPINION FILED: January 21, 2014

VERELLEN, J. — Jason Mathison appeals from the May 2012 superior court order revoking his 2005 suspended special sex offender sentencing alternative (SSOSA) sentence after the court determined that he failed to make satisfactory progress in sex offender treatment and had unapproved contact with a minor. Mathison contends he was denied due process because he was affirmatively advised he would have to complete only three years of sex offender treatment and was not adequately informed his suspended sentence could be revoked if he was terminated from treatment after completing three years. Consistent with former RCW 9.94A.670 (1994), which mandated the trial court to order sex offender treatment for "any period up to 3 years in duration," one section of the judgment and sentence had a box checked stating that the defendant shall complete sex offender treatment for three years, but the conditions of community custody contained in the judgment and sentence unambiguously required Mathison to satisfactorily participate in treatment until successful completion, even if it took longer than three years. The trial court orally advised Mathison he was required to

successfully complete treatment even if it took longer than three years. And Mathison's conduct is consistent with his understanding of this requirement. Mathison does not establish a denial of due process or any other reversible error. We affirm.

FACTS

Mathison pleaded guilty to two counts of first degree rape of a child and one count of possession of depictions of minors engaged in sexually explicit conduct for acts occurring between September 1, 2004 and January 1, 2005. In his statement on plea of guilty, Mathison acknowledged that in conjunction with the suspension of his sentence, he would be "placed on community custody for the length of the statutory maximum sentence of the offense," that he "will be ordered to participate in sex offender treatment," and that "[i]f a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence."[1]

He was sentenced on September 30, 2005. The sentencing court suspended 131 months of confinement on the rape counts and imposed a SSOSA sentence, requiring Mathison to first serve 12 months in prison on the pornography count, and to then follow an extensive set of requirements of his sentence and community custody conditions. The SSOSA portion of the judgment and sentence included a box that was checked that the defendant shall undergo sex offender treatment "for [X] three years"[2] But the judgment and sentence also required Mathison to "comply with any other conditions stated in this [j]udgment and [s]entence,"[3] including that he "shall participate in the following crime-related treatment or counseling services: SSOSA treatment

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[1] Clerk's Papers at 14.

[2] Clerk's Papers at 40.

[3] Clerk's Papers at 40.

pursuant to sex deviancy evaluation of [Northwest] Treatment Associates with all treatment recommendations, attached."[4] The sex offender evaluation attached as an addendum expressly stated that the "[e]stimated duration for group treatment would be three years plus."[5] The sentencing court explained to Mathison that he would be required to successfully complete treatment, whether it took three years or more:

> Now, most people who are subjected to this sentencing alternative succeed. Some of the most satisfying days that I have spent as a judge is when a defendant appears before me at the conclusion of the treatment period, after three or more years of treatment, and I receive not only passing, but sometimes glowing reports of the progress that such offenders have made as treatment recipients and as human beings. It's a genuine pleasure at that point to sign documents indicating their compliance and their success.
>
> . . . .
>
> Upon release from jail, Mr. Mathison shall enter into and make reasonable progress and successfully complete a program for the treatment of sexual deviancy for a period of 3 years or however long it takes to so successfully complete the program with Northwest Treatment and associates.[6]

After serving a term of confinement, Mathison began treatment with Northwest Treatment Associates in January 2006. He remained active in treatment until February 8, 2012, when he was terminated based in part on information the Department of Corrections listed in its January 31, 2012 notice that Mathison violated conditions of his sentence. Specifically, the Department alleged that Mathison was engaged in a romantic relationship with a woman who had a one-year-old daughter without disclosing the nature of the relationship to his community corrections officer or treatment provider as required. After he was terminated from treatment, the Department filed a

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[4] Clerk's Papers at 44.

[5] Clerk's Papers at 46.

[6] Report of Proceedings (RP) (Sept. 30, 2005) at 16-17.

supplemental notice of violation to include his noncompliance with the treatment requirement.

At the superior court hearing to address Mathison's violations, the State alleged 14 violations. Mathison stipulated he had been terminated from treatment and that it was a violation of his SSOSA conditions.

Mathison's sex offender treatment counselor, Mr. Dandescu, testified that Mathison had fooled his counselors into believing he was succeeding in treatment when in fact he was not. In addition, Mathison's own witness, sex offender treatment provider Marsha Macy, testified about Mathison's deception at Northwest Treatment Associates:

> A. . . . He said that he was doing well. He seemed to be in compliance. He would use—he would give little pieces of information of something he would do wrong in order to appear as if he was being disclosing and he was not. But that seemed to be generated more towards the end of his treatment. So, again, had he been someplace else, he may have been successfully advanced out of treatment and that would have never come to the foreground. So it's good fortune for the community that he was where he was and that they were finally made aware that this was going on.[7]
>
> Q. You also indicated that Mr. Mathison has been characterized as a, quote, treatment failure.
>
> A. Yes.
>
> . . . .
>
> Q. And also you characterized his behavior as an egregious disregard for his condition [of] treatment. Is that also fair to say?
>
> A. Yes, it is.[8]

The trial court concluded that Mathison violated the terms of his sentence by being terminated from treatment and having unapproved minor contact, revoked his

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[7] RP (May 18, 2012) at 78.

[8] RP (May 18, 2012) at 87.

suspended sentence, and imposed the remainder of the sentence, 131 months, on the rape counts.

ANALYSIS

Mathison contends that the trial court violated his due process right to notice because he was not informed that his suspended sentence could be revoked if he was terminated from treatment after completing three years. Mathison's argument is without merit.

A SSOSA sentence may be revoked at any time where there is sufficient proof to reasonably satisfy the trial court that "(a) the offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment."[9] "Once a SSOSA is revoked, the original sentence is reinstated."[10] An offender serving a conditional suspended sentence has minimal due process rights at a revocation hearing.[11]

Mathison's claim that he had inadequate notice of the condition requiring him to remain in sex offender treatment is belied by the record and by his affirmative conduct. The plea agreement, judgment and sentence, and sentencing court's oral remarks all demonstrate that Mathison had ample notice that he was required to successfully complete treatment as a condition of his community custody, even if it took longer than three years.

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[9] Former RCW 9.94A.670(10) (2004); State v. McCormick, 166 Wn.2d 689, 705, 213 P.3d 32 (2009).

[10] State v. Dahl, 139 Wn.2d 678, 683, 990 P.2d 396 (1999).

[11] State v. Nelson, 103 Wn.2d 760, 762-63, 697 P.2d 579 (1985); State v. Badger, 64 Wn. App. 904, 907, 827 P.2d 318 (1992).

Mathison's own actions and words further reveal that he was not confused about this requirement.[12] Mathison remained in treatment for approximately six years. And when he was terminated from treatment, he sought admission to a different program. At the revocation hearing, Mathison conceded that he knew he was required to complete treatment, and was frustrated by this fact, stating, "I attended treatment, but over time . . . I didn't know when I could be released or when community custody would ever end and I could move on with my life.[13]

At the revocation hearing, his counsel expressly conceded the violation:

> COUNSEL: Your Honor, it's defense's position that Mr. Mathison is admitting to the two violations, which are, in fact, DOC violations and violations of the conditions of his judgment and sentence.
>
> COURT: Which are?
>
> COUNSEL: Which are that he has been terminated from treatment. I think that's—that's clear.
>
> COURT: Right.
>
> . . . .
>
> COURT: So I just want to understand your position. I'm looking at the judgment and sentence signed by Judge Fox back in September of 2005, appendix H says, two-thirds of the way down, "Defendant shall participate in the following crime-related treatment or counseling services: SSOSA treatment pursuant to sex deviancy evaluation of Northwest Treatment Associates with all treatment recommendations. Attached." And then there's a document that says, "Addendum to appendix H." So part of your stipulation, I just want to be clear, is that Mr. Mathison is in violation of that condition. Is that right?
>
> COUNSEL: Correct.[14]

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[12] See State v. Harris, 97 Wn. App. 647, 985 P.2d 417 (1999) ("Harris's own actions in complying with the conditions of his SSOSA defeat his argument that without an interpreter he did not have adequate notice of what he was required to do.")

[13] RP (May 18, 2012) at 136.

[14] RP (May 18, 2012) at 118-19.

A trial court's decision to revoke a SSOSA suspended sentence is reviewed for an abuse of discretion.[15] A trial court abuses its discretion only where the trial court's decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."[16] Here, the trial court applied the correct legal standards in revoking Mathison's SSOSA sentence. Mathison fails to demonstrate any denial of due process or abuse of discretion.

Mathison raises additional arguments in his statement of additional grounds for review. None of Mathison's arguments has merit.

Mathison contends that the trial court's failure to set a prospective "treatment termination hearing" and the treatment provider to send "quarterly reports," as required in former RCW 9.94A.670 "caused the conditions on the Appellants J&S to become ambiguous."[17] But the judgment and sentence was not ambiguous. Mathison had notice that he was required to successfully complete treatment, whether it took up to three years, or longer. Whether the court and treatment providers fulfilled their obligations to set a hearing and generate reports is collateral to this issue.

Mathison contends that he received ineffective assistance of counsel at his revocation hearing because his counsel failed to argue that his judgment and sentence was rendered ambiguous by the court's failure to set a termination hearing. However, these were collateral issues. Given the unambiguity of the judgment and sentence and the record demonstrating Mathison's awareness of the treatment requirements, counsel was not ineffective for not focusing on these concerns.

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[15] State v. Partee, 141 Wn. App. 355, 361, 170 P.3d 60 (2007).

[16] State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

[17] Statement of Additional Grounds at 3-4.

Mathison argues that he was denied the opportunity for allocution upon revocation of his suspended sentence. At the revocation hearing, Mathison's counsel informed the court he wished to allocute only after the court announced its decision. His request was granted. Mathison addressed the court and the court stated that it appreciated Mathison's remarks, then signed the order revoking the sentence.

Although our Supreme Court in State v. Canfield recognized a defendant's "limited right of allocution based upon the common law right of allocution and the minimal due process requirements at revocation hearings," this "is not a right of constitutional magnitude."[18] As was true in Canfield, here, the trial court did not have "adequate notice that [the defendant] wished to offer a plea in mitigation of his sentence or to plead for leniency" before it announced its decision to revoke the suspended sentence.[19] If a trial court fails to solicit a defendant's statement before imposing sentence, the defendant must object in order to preserve a claim of error. The Washington Supreme Court decision in State v. Hatchie controls.[20] There, the trial court announced its sentence before giving the defendant a chance to speak.[21] Concluding that the defendant waived the issue by failing to object, the court refused to consider

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[18] 154 Wn.2d 698, 708, 116 P.3d 391 (2005). Mathison cites and quotes extensively from the Court of Appeals decision in State v. Canfield, 120 Wn. App. 729, 86 P.3d 806 (2004). To the extent that the earlier opinion is inconsistent with the later Supreme Court opinion, it is no longer applicable authority.

[19] 154 Wn.2d at 707, 708 ("while allocution itself is not a right of constitutional magnitude, the constitutional 'right to be heard in person' includes a right to allocution if the defendant requests it").

[20] 161 Wn.2d 390, 405, 166 P.3d 698 (2007).

[21] Hatchie, 161 Wn.2d at 405-06.

Hatchie's challenge to the timing of the allocution.[22] The same analysis applies here. Because Mathison failed to object below, he has not preserved the issue for appeal, and his challenge fails.

Mathison's argument that his counsel was ineffective by her failure to ask for allocution earlier does not establish prejudice under these circumstances. He was given the opportunity to address the court, and availed himself of that opportunity.

Finally, Mathison asserts that he should receive credit against his sentence for time spent in the court-ordered treatment program. Our Supreme Court held in State v. Pannell that "an offender is not entitled to credit against the maximum sentence for nonconfined time spent when a sentence is suspended pursuant to a SSOSA."[23] Mathison fails to persuasively distinguish his case from Pannell.

Affirmed.

WE CONCUR:

[22] The Supreme Court also has refused to consider a challenge to a complete failure to offer an opportunity for allocution where the defendant did not object in the trial court. State v. Hughes, 154 Wn.2d 118, 153, 110 P.3d 192 (2005), overruled on other grounds, Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006); accord State v. Ague-Masters, 138 Wn. App. 86, 109-10, 156 P.3d 265 (2007).

[23] 173 Wn.2d 222, 234, 267 P.3d 349 (2011).

ATTACHMENT

APPENDIX C

APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS

ADDITIONAL GROUNDS ONE

DID THE TRIAL COURT ABUSE ITS DISCRETION BY REVOKING APPELLANTS SSOSA SENTENCE WITHOUT STATUTORY AUTHORITY?

In accordance with Former RCW 9.94A.670(4)(b) (2004) [Fn1/] which Appellant was sentenced under, the Judgment and Sentence ("J & S") included a condition of treatment participation for a 3-year duration, (CP at 40). Though the trial court worded the condition as "successfully complete" the treatment program, the trial court had no legal authority, and abused its discretion, by doing so under afore mentioned state statute.

The trial court also included a condition of no contact with minors "without supervision of a responsible adult who has knowledge of this condition; and with permission of [the] treatment provider and community corrections officer ("CCO"), (CP at 40). As worded, this condition of no contact could only have been in effect for the 3-years that the court had authority to impose treatment participation under Former RCW 9.94A.670(4)(b) (2004). "Courts should not construe statutes to render any language superfluous", State v. Riles, 135 Wn.2d 326, 340, 957 P.2d 655 (1998). At sentencing, the Honorable Judge Fox stated that his most satisfying days were "when a defendant appears before [him] at the conclusion of the treatment period", and that it was "a genuine pleasure at that point to sign documents indicating their compliance and their success", (09/30/2005, RP at 16).

At that same hearing, Judge Fox assured the victims father that the

Fn1/ Former RCW 9.94A.670(4)(b) (2004) states: "The court **shall order** treatment for any period **up to three years** in duration".

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sentence would require "strict compliance with all the requirements of SSOSA over a 2-year period", (09/20/2005, pp at 5).

However, contrary to RCW 9.94A.670(5) (2004), the trial court erred by never scheduling the "treatment termination hearing" that would find successful completion of treatment at the end of the 2-years. Pursuant to state statute it's the trial courts responsibility to schedule this hearing, and not the petitioners. [n2]

Also, with this error of the trial court; Northwest Treatment Associates ("NTA"), the treatment provider required by the Appellants SSOSA, also failed to follow well established state statute. Despite the advice set out in RCW 9.94A.670(7),(8) (2004) [n3], NTA initially submitted only one progress report of treatment participation, and then failed to ever submit any others for the entire time Appellant attended their program, (pp at 20). These errors, of both the trial court and NTA combined, created a situation where "successful completion" of treatment was unattainable.

More than six (6) years after sentencing, and despite continuous participation in treatment, the trial court held a revocation hearing, where it was determined that the Appellant's SSOSA should be revoked due to "no successful completion of treatment, and breach of no-contact order", (pp at 19). However, since RCW 9.94A.670(4),(5) (2004) did not require

[n2] RCW 9.94A.670(5) (2004) states: "At the time of sentencing, the court **shall set** a treatment **termination hearing** three months prior to the anticipated date for completion of treatment".

[n3] RCW 9.94A.670(7) (2004) states: "The sex offender treatment provider **shall submit** quarterly reports on the offender's progress in treatment to the court and the parties"."

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"successful completion" of a treatment program, and a hearing had never been held to extend the condition of treatment participation beyond the 3-year duration mandated by state statute; the trial court abused its discretion by finding that those conditions had not been met. "A decision based on an error of law is based on an untenable reason and my constitute an abuse of discretion", Noble v. Safe Harbor Family Pres. Trust, 167 Wn.2d 11, 17, 215 P.3d 1007 (2009).

Furthermore, the errors of both the trial court at sentencing, and WDTA during treatment, caused the conditions on the Appellants J&S to become ambiguous; was the Appellant supposed to attend treatment for 3-years, or until "successful completion"? (CP at 40).

In the case at hand, the "rule of lenity" should apply. "The rule of lenity provides that where an ambiguous statute has two possible interpretations, the statute is to be strictly construed in favor of the defendant", State v. Lively, 130 Wn.2d 1, 14, 921 P.2d 1035 (1995).

C O N C L U S I O N

Appellant seeks an evidentiary hearing to determine if the trial court abused its discretion if so, the trial court's decision to revoke SSOSA should be reversed and remanded for a new hearing untainted by the errors.

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ADDIDITONAL GROUNDS TWO

DID APPELLANT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL AT HIS REVOCATION HEARING?

At the Appellant's SSOSA revocation hearing, ineffective assistance of counsel was shown in the following three ways:

(1) Defense counsel Wilson failed to obtain copies of treatment rules, progress reports, and polygraph results that could have countered claims of violation. Because the state claimed that the alleged violations included manipulation of polygraph results, failure to follow treatment rules, and lack of progress in the treatment program; a complete and effective defense attorney would have investigated documentation that could have proven otherwise. By not appropriately investigating these documents, defense counsel could offer no legitimate defense to the States allegations, which caused undue and substantial prejudice against Appellant at the revocation hearing. Attorney Wilson's failure to obtain this kind of exculpatory documentation is most noted on the record during the cross examination of State's witness Andrei Dandescu from Northwest Treatment associates ("NWTA"). Defense counsel questioned the treatment provider about the context of Appellant's treatment contract and polygraph results, but Mr. Dandescu failed to produce them. (05/18/2012, RP at 57-59, 121).

As pointed out in the Appellant's opening brief, at the bottom of page 4, NWTA had failed to provide the court with quarterly progress reports of the Appellants treatment participation for almost six years. This was in direct violation of state statute, Former RCW 9.94A.670(7). An effective defense counsel would have investigated the Court's paperwork and discovered

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this error of the treatment provider's and brought it to the attention of the trial court during the revocation hearing.

(2) Defense counsel also failed to investigate both Former RCW 9.94A.670 (2004) and the State's failure to hold a "Treatment Termination Hearing" at the end of the 3-year treatment period as required by Former RCW 9.94A.670(5) and Judgment and Sentence ("J&S"). This treatment termination hearing was required by Former RCW 9.94A.670(5) (2004).

Because the SSOSA sentence being revoked was issued under the previously mentioned state statute, defense counsels failure to investigate it was entirely inappropriate. "A defendant can overcome the presumption of effective representation by demonstrating that counsel failed to conduct appropriate investigations. The defendant may also meet this burden by demonstrating the absence of legitimate strategic or tactical reasons supporting the challenged conduct by counsel." State v. Crawford, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006) (citations omitted).

During the revocation hearing, the court appears to have considered only the "Appendix H" portion of the Appellants SSOSA sentence instead of the J&S in its entirety. (05/18/2012, RP at 119. This caused an incomplete view of the conditions that the Appellant was under. Had defense counsel Wilson produced the portions of the J&S **preceding** "Appendix H", a better understanding of the condition of treatment participation would have been offered. This more complete view of Appellants sentencing conditions would also have uncovered the state's failure to follow state statute by not ever scheduling the mandated treatment termination hearing at the end of the 3-year treatment participation ordered by Appellants J&S. Although counsel

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Wilson did mention the state's error regarding the treatment termination hearing in her arguments, she failed to pursue the reason for this error and its consequences in the Appellants case. This is noted on the record when she stated to the trial court that: "Mr. Mathison mentioned to me that after his sentencing, there was something in his J&S that he was supposed to have a review hearing or something, and that never happened". (05/18/2012, RP at 125). Not only does this statement fail to pursue the relevant issue, but it also implies that defense counsel lacked first-hand knowledge of, and had not actually investigated, the J&S in question. An effective attorney would not have made this critical error.

Had counsel Wilson been effective, and had conducted appropriate investigations into the alleged violations, the trial courts decision to revoke the SSOSA sentence would have been unlikely. For reasons already discussed in "Additional Ground One", Appellants SSOSA conditions of participation in treatment and no-minor contact may have been found to have been met, or ambiguous enough for the "Rule of Lenity" to apply. All other violations alleged by the state were not revocable offenses. "To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) Defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, except for counsel's unprofessional errors, the results of the proceedings would have been different." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). (emphasis added).

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(3) Defense counsel failed to specifically notify the trial court that Appellant was requesting the right to allocution. "Due process requires that a defendant be given an opportunity to be heard in person at a revocation hearing. Given our common law and statutory history of affording allocation and the legitimate interest of a defendant to personally address the court, we conclude that where a defendant asserts his right to allocution, the court should allow him to make a statement in allocution." State v. Canfield, 154 Wn.2d 698, 707, 115 P.3 391, 395 (2005). (emphasis added). Although counsel Wilson was aware that the Appellant had prepared a written statement to read to the court, she failed to properly inform the trial court of this fact before a decision was rendered. "The offender must be specifically invited to speak before the court renders a decision." State v. Canfield, 120 Wn.App. 729, 733, 86 P.3d 806 (2004) (emphasis added).

According to the record, the closest that defense counsel came to indicating that the Appellant would need the right to address the trial court directly was when, while discussing the alleged violations, counsel Wilson informed the court that: "He would have to explain that for himself"; to which the Honorable Judge Oishi replied "SURE". (03-29-2012, RP at 31-32). However, defense counsel failed to pursue and preserve that right and ensure that it was granted before the trial court rendered its decision. Although a chance for allocution was eventually offered by the trial court, it was only after the decision to revoke the Appellant's SSOSA sentence had been rendered; causing any offer for allocution at that point to be an empty gesture. "An opportunity to speak extended for the first time after sentence has been imposed is 'a totally empty gesture'" State v. Crider,

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78 Wn.App. 849, 861, 899 P.2d 24 (1995). (emphasis added).

In summary, defense counsel Wilson was ineffective by failing to investigate documentation and state statutes that could have aided defense of the Appellants case, and failing to properly assert the right of allocution. These failures led to counsel committing critical errors in defense of Appellants case, including seeking testimony from a potential new treatment provider. Not only did this imply that defense was not objecting to the State's claims that the SSOSA condition of 3-years participation in treatment had not been met, but the live testimony that was given by the potential new treatment provider caused actual prejudice against the Appellant. As shown on the record, some of the comments made by Ms. Macy, the potential new treatment provider, were repeated by Honorable Judge Ofshi as his reasoning for revoking the Appellant's SSOSA. (05/18/2012, RP at 130-131).

C O N C L U S I O N

Appellant seeks an evidentiary hearing to determine if defense counsel offered ineffective assistance of counsel. If so, the trial court's decision to revoke SSOSA should be reversed and remanded for a new hearing untainted by the errors.

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ADDITIONAL GROUND THREE

WAS APPELLANT DENIED HIS RIGHT TO ALLOCUTION AT THE SSOSA REVOCATION HEARING?

In Canfield, the Washington State Supreme Court considered three consolidated cases implicating allocution. In its analysis, the court drew a distinction between a revocation hearing and a sentencing Nevertheless, it concluded that a limited due process right to allocution applies to revocation hearings. One of the stipulations of their holdings was that, although they were not imposing any specific formal requirements for preserving the right to allocution; "The defendant must give the court **some indication** of his wish to plead for mercy or offer a statement in mitigation of his sentence", State v. Canfield, 154 Wn.2d 698, 707, 116 P.3d 391 (2005) (Emphasis added).

As already pointed out in "Additional Grounds 2", defense counsel Wilson did inform the trial court that the Appellant would need to explain his alleged conduct for himself, and that Honorable Judge Olshi acknowledged this need, (03/29/2012, RP at 31-32). Nevertheless, regardless of this acknowledgment, the trial court later rendered the decision to revoke the Appellants SSOSA before allowing the opportunity for allocution. "The offender **must** be specifically invited to speak before the court renders a decision", Canfield, 120 Wn.App. at 733.

Although the record shows that the trial court did offer the chance for allocution immediately after the decision to revoke SSOSA had been rendered, the gesture at that point was an empty one, (05/18/2012, RP at 134). "An opportunity to speak extended for the first time after sentence

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has been imposed is 'a totally empty gesture'", State v. Crider, 78 Wn.App. 949, 961, 899 P.2d 24 (1995).

As pointed out in Canfield, because the greatest penalty the trial court is empowered to give at a revocation hearing is imposition of the suspended sentence; denial of the right to allocution is an error that "Cannot be Harmless", Canfield, 120 Wn.App. at 734.

In summary, although defense counsel Wilson failed to **specifically** request the right to allocution; counsel **did** inform the trial court that the Appellant would need to speak for himself, and the court agreed. However, the trial court erred by not honoring that right before rendering a decision. This constituted manifest error on the part of the trial court that requires a new hearing in order to be remedied.

C O N C L U S I O N

Appellant seeks an evidentiary hearing to determine if the trial court abused its discretion by denying Appellants right to allocution. If so, the trial court's decision to revoke SSOSA should be reversed and remanded for a new hearing untainted by the errors.

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ADDITIONAL GROUND FOUR

SHOULD APPELLANT HAVE BEEN GRANTED CREDIT AGAINST IMPOSED SENTENCE FOR TIME SPENT PARTICIPATING IN THE COURT-ORDERED TREATMENT PROGRAM?

In three substantially similar cases: Pannell, Miller, and Cartrell; the court of appeals has reached the conclusion that time spent on community custody under SSOSA is not treated as "partial confinement" when that SSOSA is revoked. Thus an offender is not entitled to credit towards the balance of imposed confinement for time spent in community custody. However, in Pannell, the court did find that there could exist conditions where such credit would be permitted: "While it may be that a trial Judge could impose conditions that would be so restrictive as to belie the nature of a suspended sentence or that in certain circumstances, equal protection would demand that the offender be given credit, Pannell makes no argument of such here." State v. Pannell, 173 Wn.2d 222, 233, 267 P.3d 349 (2011).

State statute defines partial confinement as including "work release, home detention, work crew, and a combination of work and home detention." RCW 9.94A.030(35). Notably, community custody is not a part of this definition. The main differences between being on community custody and participation in one of these types of partial confinements, is the level of monitoring an offender is subject to, and the amount of liberty given up each day. In essence, time spent on "community custody" is mainly prohibitive, i.e., an offender abides by restrictions while pursuing daily activities; while "partial confinement" is obligatory, i.e., an offender spends daily activities pursuing the fulfillment of court ordered

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obligations. A particular item of note, is that participants in a work crew program can earn the opportunity to receive credit for time spent at their own, how be it, approved and verified, choice of employment; and that "the hours served as part of a work crew sentence may include substance abuse counseling and/or job skills training." RCW 9.94A.725.

Just as court-ordered work crew or home detention count as partial confinement; so also should time spent participating in a court ordered SSOSA treatment program. Similar to work crew, participation in a sex offender treatment program requires a substantial commitment of time each day. Not only is there required attendance of both group and individual therapy sessions, treatment also includes hours of each day completing rehabilitative homework-style assignments. Along with being required to maintain productive, and approved, employment as part of the treatment program; participants must also account for all "free time", and show compliance to strict rules of conduct in all aspects of life. In comparison, participation in a sex offender treatment program requires much more of a commitment of time and energy than does participation in a daily work crew. Furthermore, this serious level of commitment creates a substantial loss of an offenders liberty, and meets the requirements of partial confinement.

As previously pointed out in Pannell, equal protection could also demand that an offender be granted credit for time spent fulfilling a court ordered obligation, such as a sex offender treatment program. "The equal protection clause of both the State and Federal Constitutions require that 'persons similarly situated with respect to the legitimate purpose of the law receive

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like treatment.'" In re Personal Restraint of Runyan, 121 Wn.2d 432, 448, 853 P.2d 424 (1993). Similar to SSOSA, Washington Sate often offers the drug offender sentencing alternative ("DOSA") to offenders who meet a specific criteria. Both SSOSA and DOSA are similar in nature, in that they offer alternative sentences for offenders who have limited criminal history and show amenability to treatment. RCW 9.94A670(2)(b), (3) and RCW 9.94A.660(1)(g), (4). Both of these alternatives utilize treatment programs and limited times in confinement as an incentive for compliance. RCW 9.94A.670(5) and RCW 9.94A.660(3), (5). Likewise, both of these programs can be revoked for violation behavior. RCW 9.94A.670(11) and RCW 9.94A.660(7(b).

When a DOSA sentence is revoked, the offender receives credit towards imposed confinement for all time that had been spent in compliance with the program. "While serving the community portion of the DOSA sentence, the defendant must comply with a number of mandatory conditions, including successfully participating in substance abuse treatment, following the rules and regulations of DOC, and obeying all laws. If an offender fails to complete, or DOC administratively terminates the offender from the DOSA program, the offender is re-incarcerated to serve the balance of the un-expired sentence subject to the rules of early release." In re Albritton, 143 Wn.App. 584, 592, 180 P.3d 790 (2008) (emphasis added). Because SSOSA and DOSA are similar in nature in regards to treatment participation and compliance, equal protection would require that SSOSA offenders also receive credit for time spent participating in a court ordered treatment program.

As stated in the Appellants opening brief and "Additional Grounds One";

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before facing SSOSA revocation the Appellant had participated in a court ordered treatment program for just over six years. This was three years more than the period of treatment ordered by J&S due to the State's error of not scheduling the "treatment termination hearing" required by state statute. CP 40. Within a week of completing the one year of incarceration ordered by the SSOSA sentence agreement, the Appellant entered a treatment program with Northwest Treatment Associates ("NWTA"). The Appellant then continued to participate in their program, at significant financial cost and substantial loss of liberty, from January 2006, until January 2012; at which time the Appellant was terminated due to the State claims of violation. CP 48, 50 & 63.

At this time, the Appellant seeks to have his 72 months of participation in treatment with NWTA to be credited as partial confinement against the 131 months of total confinement imposed by the trial court at sentencing. "When the court revokes a SSOSA and must credit all confinement time served during the period of community custody, the confinement time to be credited is the total or partial confinement imposed." State v. Cartrell, 138 Wn.App. 787, 791, 158 P.3d 636 (2007) (emphasis added).

In summary, the time an offender spends abiding by the prohibitive conditions of community custody is very different from the time spent fulfilling the obligations and commitments of a court ordered treatment program. Due to equal protection, and the significant loss of liberty that participation in a SSOSA program entails; an offender should receive credit for all time spent fulfilling those obligations. This would be similar to an offender receiving credit for work crew, or for participation in DOSA.

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Because the State failed to hold a treatment termination hearing at the end of the court ordered 3-year treatment period, the Appellant seeks credit for all six years of his treatment participation.

C O N C L U S I O N

Whether the SSOSA revocation is reversed and remanded or not, the Appellant seeks an evidentiary hearing to determine if he should be granted credit for 72 months of partial confinement during treatment participation against the 131 months of total confinement imposed by the trial court.

RESPECTFULLY submitted this 21st day of March, 2013.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

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TABLE OF LEGAL AUTHORITIES

Cases Cited

TABLE OF LEGAL AUTHORITIES (cont)

Statutes Cited

THE STATE OF WASHINGTON)
) ss. AFFIDAVIT OF JASON P. MATHISON
COUNTY OF SNOHOMISH)

After being duly sworn on oath, I depose and say that:

1. My name is Jason P. Mathison.

2. I am the Appellant in this matter and this Affidavit is in support of my accompanied Additional Grounds. I am competent to be a witness in this matter.

3. I was released from jail after serving the non-suspended 12 months of incarceration ordered by my J&S on December 24th, 2005.

4. I entered a treatment program with NWTA within a few days of being released from jail, and participated in their program until I was terminated in January of 2012.

5. Attendance at the court-ordered program run by NWTA required over an hour drive, each way, to their meetings.

6. I attended sessions with the individual therapist, Andrei Dandescu, once each week at a cost of $90 a session.

7. I also attended group sessions, run by Steven Silver, once each week at a cost of $30 a session.

8. I was given homework assignments to accomplish at home each week that required several hours a day in order to complete. These homework

assignments included written reports and essays, along with audio recordings that would be brought to sessions for proof of compliance and performance.

9. As part of the rules of the treatment program, I was required to be gainfully employed. All employment also had to be verified and approved by NWTA and my CCO.

10. Due to the cost of treatment and community custody, full-time employment was required.

11. Along with treatment attendance, I was required to report for quarterly polygraph tests of compliance, at a cost of $150 for each one.

12. Several times over the course of treatment, I was required to submit to plethysmograph tests of treatment progress, at a cost of $150 each time.

13. NWTA charged me an extra $75 quarterly for the writing of progress reports that were to be sent to my CCO and the court, per state statute.

14. After 3 years of attendance at NWTA I had completed all mandatory homework assignments, though I still continued to attend both individual and group sessions.

15. NWTA informed me that a letter of "graduation" would only be issued if the court asked for one in preparation for a review hearing to determine my compliance with the conditions ordered by my J&S.

16. Even after completing the court-ordered 3 years of treatment, I felt it would be beneficial for me to keep attending.

17. Over the next three years I continued my participation in treatment, but asked my CCO and NWTA several times if I needed a recommendation to the state for any kind of review hearing. I did not receive a definitive answer.

18. During the entire 6 years of treatment participation, I paid in excess of $37,000 to NWTA for the cost of my participation.

19. As required by both NWTA and DOC, and to be able to afford the cost of both community custody and treatment participation, I maintained full-time employment during the entire 6 years.

20. During the last 4 years of treatment participation, I also attended college in an attempt to gain more beneficial employment. This college attendance required approval from both DOC and NWTA.

21. Maintaining full-time employment while also participating in court-ordered treatment, being on community custody, **and** attending courses at Green River Community College left me with <u>extremely</u> limited "free-time" over the past 6 years. The college courses were paid for under the State's "worker retraining" program.

22. Many other men would attend treatment at NWTA voluntarily, thus were not required to follow as strict of rules as those who attend due to court

orders. I believed that because I had finished the mandatory homework assignments, and the 3 years ordered by my J&S, I would fall into this category.

23. After being arrested for DOC violations, I informed the public defender assigned to my case that my J&S had ordered only 3-years of treatment, and that I believed I had met this requirement. She assured me that she would look into that issue.

24. While incarcerated awaiting my hearing, defense counsel Wilson advised me to seek an evaluation from a new treatment provider; saying that it would make me look better to the court to be shown as still amenable to treatment.

25. Before the revocation hearing, defense counsel advised me to prepare a written statement and to be ready to speak on my own behalf.

26. At the revocation hearing, not only did defense counsel not address the issue of 3-year duration of treatment that I had requested, but she also failed to ensure that I was able to read my prepared statement in allocution **before** the court rendered a decision.

27. Being granted a chance for allocution only after the court had rendered a decision, much of what I had prepared to say was then obsolete. My emotional state was also severely compromised while trying to allocute.

28. During the duration of my community custody I knew that DOC was

receiving the progress reports prepared by NWTA, because I had seen them in my CCO's office. However, it was only after reading the Appellate's opening brief prepared by my attorney that I had any idea that NWTA had not been submitting these same progress reports to the **court** during the 6 year duration that I had attended their program.

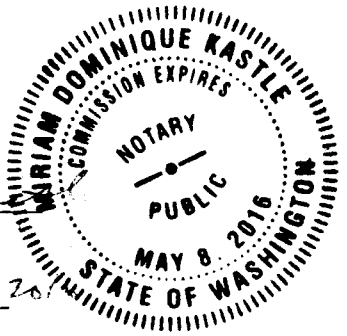
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 21 day of March, 2013. At Monroe, Washington.

Jason P. Mathison #885987 / B509
Monroe Correctional Complex -TRU
P.O. Box 888
Monroe, Washington 98272-0888

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 21st day of March, 2013.

Notary Public in and for the
State of Washington.
My Commission Expires: 05-08-2016



EXHIBITS

EXHIBIT

1

COPY OF FELONY PLEA AGREEMENT

(CLERKS PAPERS, PAGES 26-33)

FELONY PLEA AGREEMENT

Date of Crime: 9/1/04 - 2/4/05 Date: 8/3/05

Defendant: Jason Mathison Cause No: 05-1-04439-6 (SEA/KNT)

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement **may be withdrawn at any time prior to entry of the guilty plea.** The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I, II + III of the ☐ original ☒ 1st amended information.

☐ **With Special Finding(s):** ☐ deadly weapon - firearm, RCW 9.94A.510(3); ☐ deadly weapon other than firearm, RCW 9.94A.510(4); ☐ sexual motivation, RCW 9.94A.835; ☐ protected zone, RCW 69.50.435; ☐ domestic violence, RCW 10.99.020; ☐ other _____; for count(s): _____

☐ **DISMISS:** Upon disposition of Count(s) _____, the State moves to dismiss Count(s): _____.

☒ **REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES:** In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:
☒ The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
☐ The facts set forth in ☐ Appendix C; ☐ _____.

☒ **RESTITUTION:** Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and
☒ agrees to pay restitution in the specific amount of $ _____.
☐ agrees to pay restitution as set forth in ☐ Appendix C; ☐ _____

☐ **OTHER:** _____

CRIMINAL HISTORY AND OFFENDER SCORE:

a. ☒ The defendant **agrees** to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b. ☐ The defendant **disputes** the Prosecutor's Statement of the Defendant's Criminal History, as follows:
(1) Conviction: _____ Basis: _____
(2) Conviction: _____ Basis: _____

c. The State's recommendation may change if the score used by the court at sentencing differs from that set out in Appendix A.

Maximum on Count(s) I, II + ~~III~~ is not more than life years each and $ 50,000 fine each.

Maximum on Count(s) III is not more than 5 years each and $ 10,000 fine each.

☐ Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: _____

☐ Mandatory weapon sentence enhancement for Count(s) _____ is _____ months each; for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

Jason Mathison
Defendant

Deputy Prosecuting Attorney 14336

29491
Attorney for Defendant

Judge, King County Superior Court

KING COUNTY PROSECUTING ATTORNEY
Revised 1/2003

GENERAL SCORING FORM

Violent Sex Offenses

Use this form only for the following offenses: Child Molestation 1; Indecent Liberties (with forcible compulsion); Rape of a Child 1 and 2; Rape 2

OFFENDER'S NAME	OFFENDER'S DOB	STATE ID#
JASON P. MATHISON	09/19/1976	WA22645567
JUDGE	CAUSE #	FBI #
	05-1-04439-6 SEA	295396HC5
		DOC #

In case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count *all* adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360)

ADULT HISTORY

Enter number of sex offense convictions	____	x 3 =	____
Enter number of other serious violent and violent felony convictions	____	x 2 =	____
Enter Number of other felony convictions	____	x 1 =	____

JUVENILE HISTORY

Enter number of sex offense adjudications	____	x 3 =	____
Enter number of other serious violent and violent felony adjudications	____	x 2 =	____
Enter number of other felony adjudications	____	x ½ =	____

OTHER CURRENT OFFENSES (Those offenses not encompassing the same criminal conduct) **Cts. II&~~III~~: Rape of Child 1st**

Enter number of other sex offense convictions	1	x 3 =	3
Enter number of other serious violent and violent felony convictions	____	x 2 =	____
Enter number of other felony convictions	1	x 1 =	1

STATUS AT TIME OF CURRENT OFFENSES

If on Community Placement at time of current offense add 1 point.	+ 1 =	____

Total the last column to get the Offender Score
(Round down to the nearest whole number) **4**

STANDARD RANGE CALCULATION*

Count I

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD	TO	HIGH RANGE
Rape of Child 1st	XII	4	129	TO SENTENCE	171

- Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation.
- If the court orders a deadly weapon enhancement use the applicable enhancement sheets on pages III-14 or III-15 to calculate the enhanced sentence

GENERAL SCORING FORM

Violent Sex Offenses

Use this form only for the following offenses: Child Molestation 1; Indecent Liberties (with forcible compulsion); Rape of a Child 1 and 2; Rape 2

OFFENDER'S NAME	OFFENDER'S DOB	STATE ID#
JASON P. MATHISON	09/19/1976	WA22645567
JUDGE	CAUSE #	FBI #
	05-1-04439-6 SEA	295396HC5
		DOC #

In case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count *all* adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360)

ADULT HISTORY

Enter number of sex offense convictions	____	x 3 =	____
Enter number of other serious violent and violent felony convictions	____	x 2 =	____
Enter Number of other felony convictions	____	x 1 =	____

JUVENILE HISTORY

Enter number of sex offense adjudications	____	x 3 =	____
Enter number of other serious violent and violent felony adjudications	____	x 2 =	____
Enter number of other felony adjudications	____	x ½ =	____

OTHER CURRENT OFFENSES (Those offenses not encompassing the same criminal conduct) **Cts. I&~~III~~: Rape of Child 1st**

Enter number of other sex offense convictions	1	x 3 =	3
Enter number of other serious violent and violent felony convictions	____	x 2 =	____
Enter number of other felony convictions	1	x 1 =	1

STATUS AT TIME OF CURRENT OFFENSES

If on Community Placement at time of current offense add 1 point.	+ 1 =	____

Total the last column to get the Offender Score
(Round down to the nearest whole number) **4**

STANDARD RANGE CALCULATION*

Count II

Rape of Child 1st	XII	4	129	TO	171
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD	SENTENCE	HIGH RANGE

- Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation.
- If the court orders a deadly weapon enhancement use the applicable enhancement sheets on pages III-14 or III-15 to calculate the enhanced sentence

GENERAL SCORING FORM

Unranked Offenses

Use this form only for unranked offenses (not listed on any other scoring form).

OFFENDER'S NAME	OFFENDER'S DOB	STATE ID#
Jason Mathewson		
JUDGE	CAUSE# 05-1-04439-6	FBI ID#

ADULT HISTORY:

not scored

JUVENILE HISTORY:

not scored

OTHER CURRENT OFFENSES:

not scored

STATUS AT TIME OF CURRENT OFFENSES:

not scored

Ct. III

STANDARD RANGE CALCULATION*

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE	TO	HIGH STANDARD SENTENCE RANGE
Possession of Depictions		unranked	0	TO	12

- If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-5 or III-6 to calculate the enhanced sentence.

* Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation.

APPENDIX B TO PLEA AGREEMENT
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
(SENTENCING REFORM ACT)

Defendant: **JASON P MATHISON** FBI No.: **295396HC5** State ID No.: **WA22645567**
DOC No.:

This criminal history compiled on: **February 09, 2005**

☐ None known. Recommendations and standard range assumes no prior felony convictions.
☐ Criminal history not known and not received at this time. WASIS/NCIC last received on 02/09/2005

Adult Felonies - None Known

Adult Misdemeanors - None Known

Juvenile Felonies - None Known

Juvenile Misdemeanors - None Known

Comments

Prepared by: _____

Chanthavy San, CCA
Department of Corrections

STATE'S SENTENCING RECOMMENDATION
SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE

Date of Crime: 9/1/04 - 1/21/05 Date: 8/3/05
Defendant: Jason Matthison Cause: 05-1-04439-6 (SEA/KNT)

The State recommends that the defendant be sentenced to a term of total confinement in ☐ **King County Jail** ☐ **Department of Corrections** as follows:

DETERMINATE SENTENCE :

_____ months/days on Count 5; _____ months/days on Count _____; _____ months/days on Count _____;

_____ months/days on Count _____; _____ months/days on Count _____; _____ months/days on Count _____.

COMMUNITY CUSTODY is mandatory for the length of the suspended sentence or 3 years, whichever is longer. The defendant is required to comply with any conditions imposed by the court and by the Department of Corrections pursuant to RCW 9.94A.670, .715, and .720.

INDETERMINATE SENTENCE – FOR QUALIFYING SEX OFFENSES occurring on or after 9-1-2001:

Count I: **Minimum Term:** 131 (months)/days; **Maximum Term:** life years/(life)

Count II: **Minimum Term:** 131 (months)/days; **Maximum Term:** life years/life

Count _____: **Minimum Term:** _____ months/days; **Maximum Term:** _____ years/life

Count _____: **Minimum Term:** _____ months/days; **Maximum Term:** _____ years/life

See sentence Rec Ct. III

COMMUNITY CUSTODY is mandatory for any period of time the defendant is released from confinement before the expiration of the maximum sentence. Unless a condition is waived by the court, the defendant is required to comply with any conditions imposed by the court and by the Department of Corrections pursuant to RCW 9.94A.670, .712, and .713. The defendant is required to comply with any conditions imposed by the Indeterminate Sentence Review Board pursuant to RCW 9.94A.713 and 9.95.420 - .435.

Terms on each count to run concurrently/~~consecutively~~ with: ☒ each other; ☐ with and consecutive to count III

SPECIAL SEX OFFENDER SENTENCE ALTERNATIVE – RCW 9.94A.670

The State believes that the defendant is eligible for and the community will benefit from use of the statutory special sex offender treatment alternative and has considered the victim's opinion concerning the following recommendation. The State recommends execution of the above-stated term(s) of total confinement be **SUSPENDED** on the following conditions:

CONFINEMENT: Defendant serve 6 months of total/partial confinement* (maximum six months with credit for time served as provided in RCW 9.94A.505(6)). This period of confinement shall be served: ☒ in the ***King County Jail***, or ☐ in ***King County Work/Education Release*** subject to conditions of conduct ordered by the court.

* Consecutive to 6 months confinement Ct III

TREATMENT is mandatory for up to three years duration and may include in-patient or out-patient sex offender treatment in the court's discretion. ***The State recommends that the court order the defendant to enter, to make reasonable progress in, and to successfully complete a specialized program for the treatment of sexual deviancy for a period of three years with:*** Northwest Treatment + Associates.

= 12 mo, confinement

The defendant shall not change treatment providers without prior court approval.

FAILURE TO COMPLY with the terms, conditions, or rules of community custody may result in sanctions imposed by the court or administratively imposed by the Department of Corrections and may include up to 60 days confinement for each violation. Failure to comply with any term or condition of the suspended sentence and/or failure to make satisfactory progress in treatment may result in revocation of the order suspending sentence and the execution of the sentence. Execution of the sentence means the defendant must serve the entire sentence imposed, followed by the mandatory period of community custody.

Revised 7/03

ADDITIONAL RECOMMENDED CONDITIONS OF COMMUNITY [ ]SUPERVISION, [X]CUSTODY:

follow all recommendations of treatment + DOC

NO CONTACT: For the maximum term, the defendant shall have no contact, direct or indirect, in person, in writing, by telephone or through third parties with: P.I. (3/6/95)

[X] any minors without the supervision of a responsible adult who has knowledge of this conviction and order. and only as approved by treatment provider

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Department of Corrections pursuant to RCW 9.94A.670, .750, and .753:

[X] Restitution as set forth on "Plea Agreement" and reimburse the victim for the cost of any counseling required as a result of the offender's crime;

[X] Court costs, $500 Victims Penalty Assessment, recoupment of costs for appointed counsel; $100 DNA collection fee;

[ ] Other _____.

X BLOOD TESTING: HIV blood testing is mandatory under RCW 70.24.340 for any sex offense, prostitution related offense, or drug offense under RCW 69.50 associated with needle use.

X DNA TESTING: DNA testing is mandatory under RCW 43.43.754 for any felony offense.

X SEX OFFENDER REGISTRATION: Every person convicted of a sex offense is required to register as a sex offender pursuant to RCW 9A.44.130.

X FIREARM REVOCATION: Revocation of the right to possess a firearm is mandatory for any felony conviction. RCW 9.41.040.

[ ] The State will consider recommending the Special Sex Offender Sentencing Alternative RCW 9.94A.670, following receipt of a sexual deviancy evaluation from a qualified State-certified treatment provider. In the event the State agrees to recommend a SSOSA sentence, the State's recommendation will be _____ months as to Count(s) _____.

Approved by:

_____
Deputy Prosecuting Attorney, WSBA # 16336

Revised 7/03

STATE'S SENTENCE RECOMMENDATION
(FELONIES COMMITTED ON OR AFTER 7/1/2000; SENTENCE OF ONE YEAR OR LESS)

Date of Crime: 2/4/05 Date: 8/3/05

Defendant: Jason Mathison Cause No.: 05-1-04439-6 SEA/KNT

The State recommends that the defendant be sentenced to a term of confinement as follows:

12 months/days on Count III (Cts I + II see SSOSA rec) _____ months/days on Count _____

_____ months/days on Count _____ _____ months/days on Count _____

This term shall be served:

☒ in the King County **Jail** or if applicable under RCW 9.94A.190(3) in the Department of Corrections

☐ in King County **Work/Education Release** subject to conditions of conduct

☐ in King County **Electronic Home Detention** subject to conditions of conduct

☐ For **burglary or residential burglary** offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served ~~concurrently~~/consecutively with: Cts I + II (total 12 months confinement)

_____ Terms to be consecutive to any other term(s) not specifically referred to in this form.

☐ This is an agreed recommendation.

☐ **ALTERNATIVE CONVERSION** (RCW 9.94A.680): _____ days of total confinement should be converted to:

_____ days/hours of community restitution (maximum of 30 days conversion from confinement, violent offenses not eligible, RCW 9.94A.680) under the supervision of the Department of Corrections to be completed as follows:

☐ on a schedule established by the community corrections officer; ☐ other: _____.

REASONS FOR NOT RECOMMENDING NON-JAIL ALTERNATIVE SENTENCE: ☐ criminal history; ☐ failure to appear history; ☐ violent offense - not eligible; ☐ other _____.

☐ **EXCEPTIONAL SENTENCE**: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form or brief.

☐ **COMMUNITY CUSTODY**: Pursuant to RCW 9.94A.545, the defendant should complete 12 months of community custody as defined in RCW 9.94A.030 and the State recommends the following additional conditions:

☐ Obtain an alcohol/substance abuse evaluation and follow all treatment recommendations; not possess or use alcohol.

☐ Enter into, make reasonable progress in, and successfully complete Domestic Violence Batterer's treatment, per WAC 388-60.

☐ Other: See SSOSA recommendation counts I + II

☐ **NO CONTACT**: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: _____

☐ **NO CONTACT**: For the maximum term, defendant shall have no unsupervised contact with minors.

MONETARY PAYMENTS: Defendant shall make the following monetary payments under the supervision of the Department of Corrections for up to 10 years pursuant to RCW 9.94A.753 and RCW 9.94A.760.

☐ *Restitution as set forth in the "Plea Agreement" page and* ☐ *Appendix C.*

X Court costs; mandatory $500 Victim Penalty Assessment; recoupment of cost for appointed counsel; $100 DNA collection fee.

☐ King County Local Drug Fund $_____; ☐ $100 lab fee (RCW 43.43.690).

☐ Fine of $_____; ☐ $1,000 fine for VUCSA; ☐ $2,000 fine for subsequent VUCSA.

☐ Costs of incarceration in K.C. Jail at $50 per day (RCW 9.94A.760(2)).

☐ Emergency response $_____ (RCW 38.52.430); ☐ Extradition costs of $ _____; ☐ Other_____.

MANDATORY CONSEQUENCES: **HIV** blood testing (RCW 70.24.340) for any sex offense, prostitution related offense, or drug offense associated with needle use. **DNA** testing (RCW 43.43.754). **Revocation of right to possess a FIREARM** (RCW 9.41.040). **DRIVER'S LICENSE REVOCATION** (RCW 46.20.285; RCW 69.50.420). **REGISTRATION**: ALL persons convicted of sex offenses and some kidnap/unlawful imprisonment offenses are required to register pursuant to RCW 9A.44.130.

_____
Deputy Prosecuting Attorney, WSBA No. 16336

KING COUNTY PROSECUTING ATTORNEY
Revised 3/2003

EXHIBITS

EXHIBIT 2

COPY OF APPELLANT'S JUDGMENT AND SENTENCE

(CLERKS PAPERS, PAGES 36-47)

OCT -7 2005
COMMITMENT ISSUED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 05-1-04439-6 SEA
Vs.	)	**JUDGMENT AND SENTENCE FELONY**
MATHISON, JASON PAUL Defendant,	)	

I. HEARING

I.1 The defendant, the defendant's lawyer, CHARLES MARKWELL, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court **finds:**
2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 08/18/2005 by plea of:

Count No.: I Crime: RAPE OF A CHILD IN THE FIRST DEGREE
RCW 9A.44.073 Crime Code: 01064
Date of Crime: 09/01/2004 – 01/21/2005 Incident No. _____

Count No.: II Crime: RAPE OF A CHILD IN THE FIRST DEGREE
RCW 9A.44.073 Crime Code: 01064
Date of Crime: 09/01/2004 – 01/21/2005 Incident No. _____

Count No.: III Crime: POSSESSING DEPICITIONS OF MINORS ENGAGED IN SEXUALLY EXPLICIT CONDUCT
RCW 9.68A.070 Crime Code: 00978
Date of Crime: 02/04/2005 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code: _____
Date of Crime: _____ Incident No. _____

[ ] Additional current offenses are attached in **Appendix A**

SPECIAL VERDICT or FINDING(S):

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

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

_____

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

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	4	XII	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR $50,000
Count II	4	XII	129 TO 171		129 TO 171 MONTHS	LIFE AND/OR $50,000
Count III	N/A	UNRNKD	0 TO 12		0 TO 12 MONTHS	5 YRS AND/OR $10,000
Count						

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

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

Agreement of the parties constitutes the basis for the exceptional sentence

III. JUDGMENT

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

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **RESTITUTION AND VICTIM ASSESSMENT:**

[ ] Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E.**

[ ] Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.

[X] Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.

[X] Date to be set.

[X] Defendant waives presence at future restitution hearing(s).

[ ] Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of $500.

4.2 **OTHER FINANCIAL OBLIGATIONS:** Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) [ ] $_____, Court costs; [ ] Court costs are waived; (RCW 9.94A.030, 10.01.160)

(b) [ ] $100 DNA collection fee; [ ] DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);

(c) [ ] $_____, Recoupment for attorney's fees to King County Public Defense Programs; [ ] Recoupment is waived (RCW 9.94A.030);

(d) [ ] $_____, Fine; [ ]$1,000, Fine for VUCSA; [ ]$2,000, Fine for subsequent VUCSA; [ ]VUCSA fine waived (RCW 69.50.430);

(e) [ ] $_____, *King County Interlocal Drug Fund*; [ ] *Drug Fund payment is waived*; (RCW 9.94A.030)

(f) [ ] $_____, State Crime Laboratory Fee; [ ] Laboratory fee waived (RCW 43.43.690);

(g) [ ] $_____, Incarceration costs; [ ] Incarceration costs waived (RCW 9.94A.760(2));

(h) [ ] $_____, Other costs for: _____.

4.3 **PAYMENT SCHEDULE:** Defendant's **TOTAL FINANCIAL OBLIGATION** is: $ 500 + Restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: [ ]Not less than $_____ per month; [X]On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. **The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied.** Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

[X] Court Clerk's trust fees are waived.

[X] Interest is waived except with respect to restitution.

4.4 SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE (SSOSA): The court finds that the defendant is convicted of a sex offense and that the defendant is a sex offender who is eligible for the special sentencing alternative under RCW 9.94A.670(2). The court has determined, pursuant to RCW 9.94A.670(4), that the Special Sex Offender Sentencing Alternative is appropriate and imposes the following sentence:

CONFINEMENT: A term of total confinement in the custody of the Department of Corrections as follows:

DETERMINATE SENTENCE:

6 : months on Count III; _____ months on Count _____; _____ months on Count _____;

_____ months on Count _____; _____ months on Count _____; _____ months on Count _____.

INDETERMINATE SENTENCE – QUALIFYING SEX OFFENSES occurring on or after 9-1-2001:

Count I: **Minimum Term:** 131 months/days; **Maximum Term:** Life years/life

Count II: **Minimum Term:** 131 months/days; **Maximum Term:** Life years/life

Count _____: **Minimum Term:** _____ months/days; **Maximum Term:** _____ years/life

Count _____: **Minimum Term:** _____ months/days; **Maximum Term:** _____ years/life

The above terms for Counts I, II are consecutive / concurrent.
Count III is Consecutive
The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT with cause No.(s)_____

The above terms shall run [X] CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order. on counts I & II only

The execution of this sentence is ***SUSPENDED*** *and the following conditions of suspension are imposed:*

(a) [X] **CONFINEMENT:** Defendant shall serve a term of confinement as follows, commencing:
[X] immediately; [ ] (Date): _____ by _____ a.m./p.m.:

6 days/months on Count I; 6 days/months on Count III; _____ days/months on Count ___;

6 days/months on Count II; _____ days/months on Count ___; _____ days/months on Count ___.

This term shall be served:
[X] in the King County **Jail** or if applicable under RCW 9.94A.190(3) in the Department of Corrections.
[ ] in King County **Work/Education Release** subject to conditions of conduct ordered this date.

[X] The terms of confinement in Counts I, II are consecutive / concurrent.
Count III shall run consecutively to Counts I, II
This sentence shall run CONSECUTIVE / CONCURRENT with the sentence(s) in cause No.(s) _____, and CONSECUTIVE / CONCURRENT with any other sentence.

Credit is given for [X] 238 day(s) served [ ] days determined by the King County Jail solely for confinement under this cause number pursuant to RCW 9.94A.505(6). [ ] Jail term is satisfied and defendant shall be released under this cause.

Total jail commitment is 12 months

(b) **COMMUNITY CUSTODY (Term to be imposed for each count):**

Defendant is placed on community custody for:

[ ] **Determinate Sentence** for Count(s) _____ :
[ ] the length of the suspended sentence (if greater than three years)
[ ] three years;
(The longer of the two terms must be imposed.)

[X] **Indeterminate Sentence** (qualifying sex offenses occurring on or after 9-1-2001) for Count(s) I, II
[X] the length of the maximum sentence imposed.

Community custody shall commence immediately but is tolled during any term of confinement. The defendant shall report to the Department of Corrections within 72 hours of release from confinement and shall comply with all rules, regulations and requirements of the Department of Corrections, any other conditions stated in this Judgment and Sentence, and any conditions of the Indeterminate Sentence Review Board, if applicable. **Appendix H** is incorporated by reference.
(For offenses prior to 6-6-96 substitute Community Supervision for Community Custody.)

(c) **TREATMENT:** The defendant shall undergo sex offender treatment as follows:

for [X] three years, or for [ ] _____ months in duration (must be less than three years); and enter, make reasonable progress in, and successfully complete a specialized program for sex offender treatment with Northwest Treatment Associates.

Defendant shall abide by all conditions of treatment and shall not change sex offender treatment provider without prior court approval.

A **treatment termination hearing** is set for _____ (date three months prior to the anticipated date of completion of treatment).

4.5 [X] **NO CONTACT:** For the maximum term of Life years, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties with: P.I. (dob 3/6/95)

[X] Any minors without supervision of a responsible adult who has knowledge of this conviction. { with permission of his treatment provider & CCO

4.6 **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, as ordered in **APPENDIX G.**
HIV TESTING: The defendant shall submit to HIV testing as ordered in **APPENDIX G.**

4.7 **SEX OFFENDER REGISTRATION:** **Appendix J** is attached and incorporated by reference into this Judgment and Sentence.

4.8 **FIREARMS:** Defendant shall not own, use, or possess a firearm or ammunition.

4.9 **COMMUNITY CUSTODY UPON SSOSA REVOCATION:**

Determinate Sentence

[ ] For Count(s) _____ **(offenses committed on or after 7-1-00 and sentenced to a determinate period of confinement),** the court further imposes the following additional term of Community Custody upon revocation of this suspended sentence: a period of 36 to 48 months or the entire period of earned early release, whichever is longer. The defendant will be required to comply with the conditions of Community Custody set forth in section 4.4(b) and **Appendix H** herein or any other conditions imposed by the Court.

[ ] For Count(s) _____ **(offenses committed before 7-1-00 and sentenced to a determinate period of confinement),** the court further imposes the following additional term of Community Custody upon revocation of this suspended sentence: a period of three years or the entire period of earned early release, whichever is longer. The defendant will be required to comply with the conditions of Community Custody set forth in section 4.4(b) and **Appendix H** herein or any other conditions imposed by the court.

Indeterminate Sentence (qualifying sex offenses committed on or after 9-1-01)

[X] For Count(s) I, II, the court further imposes the following additional term of Community Custody upon revocation of this suspended sentence: for any period of time the defendant is released from confinement before the expiration of the maximum sentence. Unless a condition is waived by the court, the defendant will be required to comply with any conditions imposed by the Court and the Department of Corrections pursuant to RCW 9.94A.712 - .713 and **Appendix H** herein. The defendant will also be required to comply with all conditions imposed by the Indeterminate Sentence Review Board. RCW 9.94A.713 and RCW 9.95.420 - .435.

Violation of the conditions or requirements of this sentence is punishable by revocation of this suspended sentence and commitment to the Department of Corrections.

Date: 9/30/05

JUDGE
Print Name: Judge M.J. Fox

Presented by:

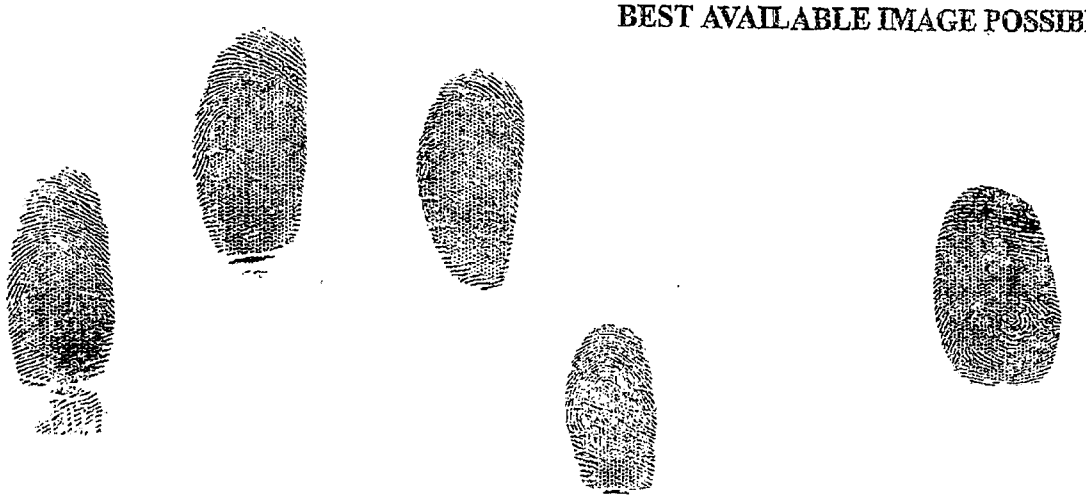
Deputy Prosecuting Attorney, WSBA # 23382
Print Name: R. Roegh

Approved as to form:

Attorney for Defendant, WSBA # 20429
Print Name: C. Gwen Markwell

F I N G E R P R I N T S

BEST AVAILABLE IMAGE POSSIBLE



RIGHT HAND
FINGERPRINTS OF:

MATHISON JASON PAUL

DEFENDANT'S SIGNATURE: Jason Mathison
DEFENDANT'S ADDRESS: 26040 221 PL SE.
Maple Valley, WA 98038

DATED: 9/30/05

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: Carol Mail
DEPUTY CLERK

JUDGE, KING COUNTY SUPERIOR COURT

CERTIFICATE

I, _____,
CLERK OF THIS COURT, CERTIFY THAT THE ABOVE IS A TRUE COPY OF THE JUDGEMENT AND SENTENCE IN THIS ACTION ON RECORD IN MY OFFICE.
DATED: _____

_____
CLERK

BY: _____
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA22645567

DOB: SEPTEMBER 19, 1976

SEX: M

RACE: W

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 05-1-04439-6 SEA
	)	
vs.	)	APPENDIX G
	)	ORDER FOR BIOLOGICAL TESTING
MATHISON JASON PAUL	)	AND COUNSELING
	)	
Defendant,	)	
	)	

(1) **DNA IDENTIFICATION (RCW 43.43.754):**

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) ☐ **HIV TESTING AND COUNSELING (RCW 70.24.340):**

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 9-30-05

JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 05-1-04439-6 SEA
vs.	)	JUDGMENT AND SENTENCE
	)	APPENDIX H
MATHISON JASON PAUL	)	COMMUNITY PLACEMENT OR
	)	COMMUNITY CUSTODY
Defendant,	)	

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

1) Report to and be available for contact with the assigned community corrections officer as directed;
2) Work at Department of Corrections-approved education, employment, and/or community service;
3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
4) Pay supervision fees as determined by the Department of Corrections;
5) Receive prior approval for living arrangements and residence location;
6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
7) Notify community corrections officer of any change in address or employment; and
8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

[ ] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: P.I. (3/6/95) · Minors w/o permission of, & pursuant to conditions imposed by both the CCO & treatment provider

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit:

[X] The defendant shall participate in the following crime-related treatment or counseling services: SSOSA treatment Pursuant to Sex Deviancy evaluation of NW Treatment Associates with all treatment recommendations, attached

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

[ ] _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 9/30/05

JUDGE

Addendum to Appendix H

In the opinion of Mr. Matzke, based upon Mr. Mathison's physiological-emotional responses to the relevant questions he did not appear to be attempting deception to the above questions.

IMPRESSIONS AND RECOMMENDATIONS

Mr. Mathison appears to be a mildly personality disordered individual, likely with obsessive-compulsive traits. He does not seem to be antisocial in any way, having no prior arrest history. He comes from a solid family background and seems to have a good work ethic.

On 5-25-05 I spoke with Mr. Mathison's mother by telephone. She confirmed that the family is solidly supportive of Jason and that he would be allowed to live in their home. She also confirmed that while there are children in the neighborhood none live nearby.

Aside from problems maintaining marital relationships, Mr. Mathison appears to have an exemplary record of follow through and accomplishment. He appears to be very open and honest with regard to his sexually deviant behavior and readily accepts accountability. He might be a good candidate for antiobsessive-compulsive medication.

In general, I see Mr. Mathison as being an excellent candidate for community treatment and a SSOSA disposition. We would be more than willing to work with him under the following conditions:

1. All restrictions normally applied to child molesters should be applied to Mr. Mathison. He should not be in a living situation with children. He should not be around children. He should not be in a position of power and control over children. He should not frequent areas where children congregate.

   An exception might be made for the children of Mr. Mathison's siblings, but only after he has made substantial progress in treatment and we have had the opportunity to educate his parents and his siblings and assess their level of protectiveness. I would think this issue would be best left to the discretion of the treatment team, to include Mr. Mathison's supervising Community Corrections Officer.

2. Mr. Mathison should continue to lead a drug and alcohol-free lifestyle. We have no evidence of any history of alcohol or drug problems, but his controls are best described as tenuous and it would seem to us to be the height of folly to be ingesting substances which further erode judgment and control.

3. Mr. Mathison should enter into, cooperate with, and successfully complete a course of treatment with an agency seen as having expertise in the field of sexual deviance and duly certified by the state for that purpose. He should make his choice of providers now and no change of treatment provider should be made without court hearing and then only for substantive reasons. No "therapy hopping" should be tolerated.

The following treatment plan would be suggested:

1. Specialized sexual offender group treatment: Groups typically meet for two hours once weekly. Mr. Mathison can attend up to seven additional groups per week at no further charge. Estimated duration for group treatment would be three years plus.

2. Individual treatment: Sessions are one hour weekly. Focus would be on relapse prevention, cognitive restructuring, and counterconditioning measures to modify deviant sexual interest. Some focus would also be placed on relationship issues. Estimated duration of individual treatment would be 12 to 18 months.

3. If Mr. Mathison returns to his relationship with his wife or if he enters into a new relationship, his partner would be required to attend our wives of offenders group which meets on an every other week basis for 1¾ hours. Estimated duration would be six months.

4. All aspects of treatment would be cross checked utilizing the clinical polygraph on the basis of once per six months unless the supervising Community Corrections Officer would require a more frequent schedule. Physiological sexual arousal testing utilizing a penile plethysmograph would be on a pre-post basis.

It is hoped the above-outlined steps will assist Mr. Mathison in dealing with his sexual behavior problems to his benefit, to that of his family, and hopefully ultimately to the protection of the community. If there are further questions in this matter, please do not hesitate to contact me.

Sincerely,

Roger W. Wolfe

Roger W. Wolfe, M.A.
Psychological Affiliate
Northwest Treatment Associates

RW:ps

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,) No. 05-1-02439-6 SEA

vs.) APPENDIX J

Jason Paul Mathison) JUDGMENT AND SENTENCE

) SEX OFFENDER NOTICE OF

Defendant,) REGISTRATION REQUIREMENTS

SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

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

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with the sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move, work, carry on a vocation, or attend school out of Washington State, you must send written notice within 10 days of establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state, to the county sheriff with whom you last registered in Washington State.

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

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours, excluding weekends and holidays, after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you registered on a weekly basis. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

Copy Received:

Jason Mathison

Defendant Date

JUDGE

APPENDIX J
Rev. 11/03 Distribution:
Original/White - Clerk
Yellow - Defendant
Pink - King County Jail