

FILED
June 16, 2014
Court of Appeals
Division III
State of Washington

COURT OF APPEALS FOR THE STATE OF WASHINGTON
Division III
No. 31580-1-III

STATE OF WASHINGTON,)	
Plaintiff/Respondent,)	
)	
)	MOTION ON THE
)	MERITS
v.)	
)	
)	
JOSE MENDEZ, JR.,)	
Defendant/Appellant.)	

1. IDENTITY OF MOVING PARTY

The moving party is the Respondent, the State of Washington.

2. STATEMENT OF RELIEF SOUGHT

The State asks that the court deny the requested review, dismiss the appeal, and enter an order affirming Jose Mendez's convictions and sentence in Yakima County Superior Court cause number 12-1-01560-6. This court should grant the motion on the merits based on the fact that the issues on review from the above-entitled action are clearly controlled by settled law, are factual and supported by the evidence, and are matters of judicial discretion and the decision is clearly within the discretion of the trial court. RAP 18.4(e).

In this case, the Verbatim Report of Proceedings (RP) is 586 pages in length. The Clerk's Papers (CP) are 140 pages in length. The report of proceeding includes multiple hearings from start to finish of the case.

However, the few issues on appeal are limited to a very narrow portion of the record and are dispositive of the case. As such, the Respondent is respectfully asking that the court rule on the merits given the situation presented in this case. The first issue, regarding findings not being filed, has been resolved and is no longer an issue. The second issue of identity can be found in a limited portion of the trial record as Sgt. McNearney was the person who identified Mendez as the driver. That limited portion can be found at pages 280, 304, 314-328, and 351 of the transcript. The final issue of the exceptional sentence is merely a legal argument based on pages 2 and 3 of the judgment and sentence, attached as Exhibit A. CP 128.

3. STATEMENT OF FACTS

Mendez was charged with attempting to elude, possession of cocaine, possession of heroin, first degree driving while license revoked (DWLR), and felony driving under the influence (DUI). CP 23.

Testimony at trial showed that Sgt. McNearney was on patrol when a SUV pulled out right in front of him, almost hitting him. RP 226. The officer had to stop to avoid colliding with the SUV. RP 226-27. Sgt. McNearney turned around to stop the SUV, and activated his overhead lights. RP 227. The driver pulled over to the right shoulder. RP 228. Sgt. McNearney put his spotlight on the vehicle and parked slightly to the left of the SUV. Id. He walked up behind the

SUV, but then saw the brake lights come on and the car take off again. RP 280-81. He was close enough to see the driver's face in the SUV's side mirror. RP 280. He described the person he saw in the mirror as a Hispanic male with short hair, facial hair, and a red shirt. RP 280.

A vehicle pursuit commenced in which the driver ran numerous stops signs and red lights. RP 281-83, 296, 300-01. Two other officers, Officers Panatoni and James, joined the pursuit. RP 290. During the pursuit, other drivers had to pull over or brake to avoid being hit by the SUV. RP 287-9, 294. The SUV slid and struck a power pole at one point, and also struck and damaged another moving vehicle. RP 284, 298.

The vehicle pursuit ended when the driver of the SUV stopped, got out of his vehicle, and ran into someone's yard. RP 304-5, 350. Sgt. McNearny ran after the driver. RP 306. He heard someone in a bush and told him to come out. RP 307. The driver ran out of the bush. Sgt. McNearney chased him and was eventually able to detain the driver and place him in handcuffs. RP 311. The driver was identified as Jose Mendez. RP 312.

Mendez was irate and claimed that the devil was chasing him. RP 313, 342. He repeatedly stated, "The devil is gonna get me." RP 381.

Mail for Mendez was subsequently found in the SUV. RP 327-8, 360, 384. 484. Illegal drugs were also found inside and outside the SUV, as well as in the bush where Mendez had been briefly hiding. RP 320. The SUV was registered to the same home address listed on Mendez's identification card. RP 522.

At trial, Sgt. McNeaney positively identified Mendez in court as the person he saw driving the SUV. RP 315. He testified that Mendez was the only person who got out of the SUV and that he did not see any other individuals around the area. RP 318, 351.

Mendez stipulated that his license was revoked at the time and that he had four or more prior DUI convictions within 10 years. CP 71-74. The only defense Mendez asserted at trial was that he was not the driver. RP 554, 558, 562-73. The jury found him guilty as charged and also returned a special verdict that he endangered others while attempting to elude. CP 111-16.

On the eluding count and felony DUI, Mendez has an offender score of 16. CP 128. The range is 22-29 months on the elude and 60 months on the DUI. Id. He has an offender score of 11 for the drug convictions, resulting in a standard range of 12 months and one day to 24 months. Id. The gross misdemeanor count of DWLR has a range of 0-364 days. Id.

The judge sentenced Mendez to an exceptional sentence by running some of the counts consecutive to one another. CP 128. The court found that substantial and compelling reasons justified an exceptional sentence under RCW 9.94A.535(2)(c), the “free crimes” aggravator. Id. In addition, the court made the following finding in section 2.6 of the Judgment and Sentence:

[X] The defendant committed multiple current offenses and his high offender score results in some the current offenses going unpunished.

Specifically, Mendez was sentenced to 29 months on the eluding (count 2), 24 months on both drug counts (counts 2 and 3), and 60 months on the DUI (count

5). Id. Counts 2 and 3 were ordered to be served concurrently. Id. In sum, the total term of confinement for the felonies (counts 1, 2, 3, and 5) was 113 months. The endangering enhancement added 12 more months and the misdemeanor (count 4) added 180 days. Id.

Mendez appealed. The appeal was stayed for entry of the 3.5 findings of fact and conclusions of law, which were filed in court on May 9, 2014.

4. ARGUMENT

A. 3.5 Findings

The first assignment of error is that the court erred by failing to enter written findings of fact and conclusions of law after the Criminal Rule 3.5 hearing. On May 9, 2014, pursuant to a stay, findings were filed with the court. No prejudice to the Appellant has been caused by any delay in filing the findings. No further issues have been raised pertaining to the 3.5 hearing.

B. Identity

In reviewing the sufficiency of the evidence, this court must consider the evidence in the light most favorable to the State and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A challenge to the sufficiency of the evidence admits the truth of the State's evidence. State v. Finch, 137 Wn.2d 792, 831, 975 P.2d 967, cert. denied, 528 U.S. 922, 145 L. Ed. 2d 239, 120 S. Ct. 285 (1999).

Questions of identification are for the trier of fact. State v. Johnson, 12 Wn. App. 40, 44, 527 P.2d 1324 (1974), review denied, 85 Wn.2d 1001 (1975).

Here, there was overwhelming evidence of identification. It was not based on “guess, speculation, or conjecture” as Mendez argues.

Sgt. McNearney, an experienced officer who has made hundreds of DUI arrests, testified as follows regarding the first time he saw Mendez:

MCNEARNEY: I could see a face that was peering back in the driver’s side mirror on the door at that time, yes.

CLEMENTS: And how would you describe the face?

MCNEARNEY: It appeared to be a Hispanic male with shorter hair, facial hair wearing a red colored shirt.

CLEMENTS: Okay and how close did you get to the driver’s side door?

MCNEARNEY: I got approximately to the rear bumper of the vehicle.

CLEMENTS: Okay, so could you clearly see his face in the rearview mirror?

MCNEARNEY: Yes, I could.

RP 280. A little bit later, Sgt. McNearney saw Mendez get out of the car:

CLEMENTS: So, you actually saw somebody getting out of the driver’s seat?

MCNEARNEY: Yes, I did.

CLEMENTS: Okay and did that person match the physicals of the person that you observed earlier when you pulled the vehicle over?

MCNEARNEY: Yes, it did.

RP 304. Sgt. McNearney then apprehended Mendez in the bushes. He described his high level of certainty regarding the identification as follows:

CLEMENTS: Okay. When you observed Mr. Mendez leave the vehicle --- or how certain are you that Mr. Mendez is the same person that you saw getting out of the driver’s side and run into the backyard?

MCNEARNEY: **Absolutely certain.**

CLEMENTS: Okay, did you see any other people exit the Blazer --- Trailblazer?

MCNEARNEY: No.

CLEMENTS: Okay, did you see any other people around that area?

MCNEARNEY: No.

RP 318 (emphasis added). Sgt. McNearney also identified Mendez in open court.

RP 315. On cross-examination, Sgt. McNearney indicated that no passengers were seen in the SUV:

SWAN: Okay, did you see anybody get out of the passenger side?

MCNEARNEY: No.

SWAN: Could there had been opportunity for somebody to get out of the passenger side before you arrived?

MCNEARNEY: I do not believe so, no.

RP 351.

In addition to the positive eye-witness identification by an experienced law enforcement officer, there is corroborating evidence that Mendez was the driver of the SUV in question. The evidence at trial showed that Mendez was obviously impaired, which is consistent with the reckless driving that was observed. Physical evidence included mail in Mendez's name that was found in the SUV, as well as drugs found in both the SUV and the bush that Mendez ran from. In addition, the car was registered to someone at Mendez's address.

The evidence of identity was challenged during the trial, but for purposes of this appeal, the evidence is construed in the light most favorable to the State. There was simply no evidence indicating that anyone other than Mendez was driving the SUV. No one saw anyone else in the SUV. No one saw anyone else get out of the SUV. No one saw anyone else running away from the SUV or in the area of where the pursuit ended.

In sum, Sergeant McNearney's eye-witness testimony alone could be enough for the jury to convict Mendez. But on top of that, there was strong

corroborating evidence. As such, a rational trier of fact could have found beyond a reasonable doubt that Mendez was the driver.

C. Exceptional Sentence

Mendez asserts that the trial court erred in imposing an exceptional sentence because “an offender score of 9 does not, in and of itself, justify an exceptional sentence.” However, he was not given an exceptional sentence simply because he had an offender score of 9. He was given an exceptional sentence because he committed multiple current offenses and his high offender score results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c). This was explained in State v. Stephens:

We do not hold that an offender score greater than 9, in and of itself, justified an exceptional sentence. We hold that such an offender score, **in conjunction with multiple current offenses**, may warrant an exceptional sentence if imposition of a standard sentence would result in there being no additional punishment for one or more of the current convictions.

116 Wn.2d 238, 246, 803 P.2d 319 (1991) (emphasis added).

Here, the trial court found that this aggravating factor was a substantial and compelling reason to justify an exceptional sentence in his case:

(c) The defendant has committed multiple current offenses and the defendant’s high offender score results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

CP 128. “Some current offenses go unpunished” under RCW 9.94A.535(2)(c) when no penalty is imposed specific to those offenses. Under the “multiple

offense policy,” other current offenses result in a penalty by increasing the offender score, and thereby increasing the standard range, as current offenses generally run concurrently to one another. RCW 9.94A.589; State v. Alkire, 124 Wn. App. 169, 173, 100 P.3d 837 (2004), review granted in part, remanded, 154 Wn.2d 1032, 119 P.3d 852 (2005). A defendant’s standard range sentence, however, is at its maximum at an offender score of 9. RCW 9.94A.510; State v. Alvarado, 164 Wn.2d 556, 561, 192 P.3d 345 (2008). So if I defendant is maxed out at 9 points on 1 conviction, and all sentences run concurrently, he may face no *additional* time on the other convictions, absent an exceptional sentence. This is where the “free crimes” aggravator comes in.

In adopting RCW 9.94A.535(2)(c), the Legislature intended to codify the “free crimes” aggravating factor as announced in State v. Stephens, 116 Wn.2d 328, 803 P.2d 319 (1991), and State v. Smith, 123 Wn.2d 51, 864 P.2d 1371 (1993). In both these cases the Washington Supreme Court held that former RCW 9.94A.535(2)(i) – “multiple offense policy results in a clearly too lenient sentence” – is automatically satisfied whenever the defendant’s high offender score is combined with multiple current offenses so that a standard range sentence would result in “free crimes.” Stephens, 116 Wn.2d at 243; State v. Smith, 113 Wn.2d at 56. “Free crimes” are “crimes for which there is no additional penalty.” Stephens, 116 Wn.2d at 243; Smith, 123 Wn.2d at 56. The Stephens court explained:

... although the crimes were counted in calculating the offender score, most of them had no effect on the sentence because Stephens’ score was ‘9 or more’ already. Thus, Stephens would not be

penalized twice if the multiple crimes were considered toward an exceptional sentence. We believe that the Legislature must have intended that these additional crimes be reflected in the sentence imposed, and that this is one type of situation for which RCW 9.94A.390(2)(g)¹ was designed.

Id. at 244 (footnote added). The court concluded that any other rule would mean that a defendant would be free from additional punishment on other counts, which would be inconsistent with the purposes of the Sentencing Reform Act (SRA) and against public policy. Id. at 245.

That “free crimes” aggravator requires only three findings: (1) the defendant has committed multiple current offenses, (2) the defendant has a high offender score, and (3) that high offender score results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c). The record supports all three findings in Mendez’s case.

Mendez was convicted of the following felony offenses: attempting to elude, possession of cocaine, possession of heroin, first degree driving while license revoked, and felony driving under the influence. Thus, there are multiple current offenses, satisfying the first requirement of the statute. Given his prior criminal history, Mendez had an offender score of 16 on count 5, felony DUI.² This meets the second requirement, a high offender score.

With 16 points, the standard range is 60 months for the felony DUI. If Mendez had been convicted of only that count, he would have had an offender

¹ RCW 9.94A.390(2)(g) was recodified to RCW 9.94A.535.

² Mendez does not contest the judge’s finding regarding his offender score on appeal and therefore it is a verity. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

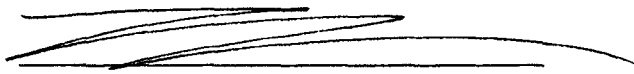
search out case law for his argument. See Johnson, 119 Wn.2d at 171. The court may assume there is none.

In sum, Mendez's first claim regarding his exceptional sentence is well-settled by case law and can be determined by looking at his judgment and sentence. He was not simply sentenced to an exceptional "because of a high offender score." His other two arguments are without any case law to support them. As such, the court should uphold the exceptional sentence in his case.

5. CONCLUSION

There was sufficient evidence to prove the identity of Mendez as the driver in this case. There was also a sufficient basis for the exceptional sentence. As such, the State respectfully requests that this court grant the State's motion and affirm the convictions and sentence in this matter.

DATED: June 16, 2014.



TAMARA A. HANLON, WSBA # 28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington
Attorney for Respondent

score of 14 and the same standard range of 60 months. If convicted of all counts and *not* given an exceptional sentence, he would receive no punishment for the other felonies because they would not increase his standard range on the DUI (60 months). This meets the third requirement of the statute.

In sum, the record adequately supports the trial court's conclusion that given his high offender score, some of Mendez's current offenses (counts 1, 2, 3 and 4) would have gone unpunished if a standard range sentence (60 months) had been imposed on the DUI. Therefore, the trial court's imposition of an exceptional sentence was not clearly erroneous.

Mendez's next claim is that somehow the court's exceptional sentence is erroneous because the jury found the endangerment enhancement on the attempt to elude. He cites no law and fails to explain the relevance of the enhancement to the exceptional sentence. As such, this court may assume that there is none and has no duty to find support for Mendez's argument. See State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992). Further, the fact that Mendez endangered many innocent lives by his criminal conduct was not the basis for the court's exceptional sentence in this case. The eluding enhancement and the "free crimes" aggravator serve completely different purposes.

Mendez's final claim is that the "nature and circumstances of the other offenses...are not "extraordinary" and therefore do not justify the imposition of an exceptional sentence. There is no requirement that the offenses be "extraordinary." He cites no case law for his argument that the *type* of crime is relevant to the "free crimes" aggravator. Again, the court is not required to

EXHIBIT A

13-9-01368-6

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SUPERIOR COURT

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SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON

NO. 12-1-01560-6

Plaintiff,

FELONY JUDGMENT AND SENTENCE
(FJS)

vs.

JOSE MENDEZ

- Prison
- Community Custody Ordered
- Probation Order
- Clerk's Action Required: 4.D.8 (Payroll Deduction); 5.2 (NLVR); 5.5 (NTIPF); 2.2 MV Special Finding/License Revocation

Defendant.

SID NO.: WA13596797
Motor Vehicle Involved: Yes
D.L.#: MENDEJ*332R3; DOC: 936781;
DOB:12/23/1967; SEX: Male; RACE: Hispanic

I. HEARING

1.1 **Hearing:** A sentencing hearing was held April 12, 2013. Present were the defendant, JEFFERY B. SWAN, attorney for the defendant, and TROY J. CLEMENTS, Deputy Prosecuting Attorney.

1.2 **Allocution:** The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered. There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment.

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds:

2.1 **Current Offense(s):** On February 22, 2013, the defendant was found guilty by a jury verdict of:

Count 1 **ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE**
RCW 46.61.024 and RCW 9.94A.533(11) and 9.94A.834
and RCW 9.94A.535(2)(c)
Date of Crime: October 10, 2012
Law Enforcement Incident No.: UGPD #12U005197

Count 2 **POSSESSION OF A CONTROLLED SUBSTANCE, COCAINE**
RCW 69.50.4013(1) and RCW 9.94A.535(2)(c)
Date of Crime: October 10, 2012
Law Enforcement Incident No.: UGPD #12U005197

ORIGINAL

- Count 3** **POSSESSION OF A CONTROLLED SUBSTANCE, HEROIN**
RCW 69.50.4013(1) and RCW 9.94A.535(2)(c)
Date of Crime: October 10, 2012
Law Enforcement Incident No.: UGPD #12U005197
- Count 4** **FIRST DEGREE DRIVING WHILE LICENSE REVOKED**
RCW 46.20.342(1)(a) and RCW 9.94A.535(2)(c)
Date of Crime: October 10, 2012
Law Enforcement Incident No.: UGPD #12U005197
- Count 5** **FELONY DRIVING WHILE UNDER THE INFLUENCE OF**
INTOXICATING LIQUOR AND/OR DRUGS
RCW 46.61.502(6)
Date of Crime: October 10, 2012
Law Enforcement Incident No.: UGPD #12U005197

2.2 Special Findings: The Court makes the following special findings, based either upon a special verdict or upon the Court's own review of the evidence pursuant to a plea of guilty:

- Counts 1, 2, 3, and 5 do not encompass the same criminal conduct and **do not count as one crime** in determining offender score, pursuant to RCW 9.94A.589.
- The crime in Count 1 and in Count 5 is a felony in the commission of which a **motor vehicle** was used. The clerk of the Court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- The defendant's breath/blood test result was refused.
- One or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime of Attempting to Elude a Pursuing Police Vehicle. RCW 9.94A.834.
- The crime in Count 3 is a drug offense under 69.50 RW associated with the use of hypodermic needles.

2.3 Criminal History: Prior criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juvenile	Type of Crime*
Felony Viol Protection Order 06-1-00753-6	5-30-2006	Yakima, WA	3-18-2006	Adult	NV
Felony Viol Protection Order 05-1-01077-3	2-17-2006	Yakima, WA	9-1-2005	Adult	NV
Malicious Mischief 2 02-1-01364-9	9-9-2002	Yakima, WA	7-8-2002	Adult	NV
Attempt to Elude 00-1-01893-8	9-9-2002	Yakima, WA	11-9-2000	Adult	NV
VUCSA - Poss w/o Prescription - 00-1-01678-1	9-9-2002	Yakima, WA	10-4-2000	Adult	Drug
Conspiracy to Distribute - Cocaine	5-29-1990	US Eastern Dist., WA	12-20-1989	Adult	Drug
Fail to Return to Work Release - 88-1-01090-1	11-1-1988	Spokane, WA	11-1-1988	Adult	NV
VUCSA 88-1-00365-4	6-20-1988	Spokane, WA	2-21-1988	Adult	Drug
VUCSA 88-1-00365-4	6-20-1988	Spokane, WA	2-28-1988	Adult	Drug

VUCSA 88-1-00365-4	6-20-1988	Spokane, WA	2-12-1988	Adult	Drug
VUCSA 87-1-01568-3	1-6-1988	Yakima, WA	11-24-1987	Adult	Drug
Drive Under Influence #H00013586	7-15-2011	Yakima Municipal, WA	1-5-2011	A	
Drive Under Influence #654880	12-15-2008	Yakima District, WA	11-30-2008	A	
Drive Under Influence #732993	11-13-2008	Yakima District, WA	5-9-2008	A	
Drive Under Influence #G00058003	7-15-2011	Yakima Municipal, WA	4-15-2008	A	
Drive Under Influence #605137	2-20-2007	Yakima Municipal, WA	12-1-2006	A	

2.4 Other Current Convictions under other cause number(s) used to determine offender score:

Crime	Cause Number	Court (County and State)
None		

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9.94A.510 and RCW 9.94A.517:

Count	Offender Score	Seriousness Level	Standard Range	Enhancements*	Enhanced Range	Maximum Term
1	18 16	I	22-29 mos	12 mos		
2	12 11	I	12+-24 mos			
3	18 11	I	12+-24 mos			
4	N/A	Gross Misd.	0-364 mos			
5	18 16	V	60 mos			

(E) Eluding (RCW 9.94A.533(1)).

2.6 Exceptional Sentence: The Court finds substantial and compelling reasons exist which justify an exceptional sentence. Pursuant to RCW 9.94A.835(2)(c), the Court finds that an exceptional sentence by running Counts 1, 2, 3 and/or 5 consecutively based on the following aggravating circumstance(s):

The defendant committed multiple current offenses and his high offender score results in some the current offenses going unpunished.

The Prosecuting Attorney did or did not recommend a similar sentence.

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant is an adult and is not disabled and therefore has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2.1.

3.2 Exceptional Sentence: Pursuant to RCW 9.94A.535(2)(a), the Court is justified in entering an exceptional sentence which consists of running Counts 1, 2, 3 and/or 5 consecutively.

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below.

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement:

29 Months Base Sentence plus 12 Months Endangerment Enhancement on Count 1
24 Months on Count 2
24 Months on Count 3
190 364 Days with 0 Days Suspended on Count 4
60 Months on Count 5

Credit for Time Served in the Yakima County Jail: The defendant shall be given credit for 173 days served on this charge only. The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections.

Credit for Time in Other Jail: The defendant shall receive _____ days credit for time served on this case in jail or prison; in transport from _____; in other _____

4.A.2 Concurrent or Consecutive:

Concurrent: The confinement time of Counts 2+3 are concurrent for a term of _____ months.

Consecutive: The confinement time of Counts 1-5 are consecutive for a term of _____ months.

Consecutive: The confinement time in Count 4 shall run consecutive to Counts 1, 2, 3, and 5.

Consecutive: The 12 months Endangerment Enhancement shall run consecutive to the Base Sentence in Count 1.

Consecutive With Other Sentences: Unless otherwise specified here, this sentence shall be consecutive with prior sentences.

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows:

Total Confinement: The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year.

B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 Community Custody: The defendant shall serve community custody for a period of 12 months on Count 2 and 3 pursuant to RCW 9.94A.702 to commence upon the date of this order and shall comply with the conditions and crime related prohibitions as set forth below. During the time the defendant is in total or partial confinement pursuant to this sentence or a violation of this sentence, the period of community custody shall toll. The defendant shall report, in person, within 24 hours of this order or release from incarceration, whichever is later, to the Washington State Department of Corrections, 210 North Second Street, Yakima, Washington.

C. SENTENCE CONDITIONS

4.C.1 DNA Testing: The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43.43.754.

4.C.2 HIV Testing: The defendant shall submit to HIV testing, pretest and posttest counseling and the defendant shall fully cooperate in the testing and counseling. If in custody and sentenced to serve additional time, the testing shall be performed by the Yakima County Care Provider prior to the defendant being released. If out of custody or the Yakima County Care Provider is unable to perform the testing prior to the defendant's release, the defendant shall report to the Yakima Health District, 1210 Ahtanum Ridge Drive, Union Gap, WA. for the purposes of testing . RCW 70.24.340

4.C.3 Conditions of Community Custody or Probation: While the defendant is on community custody, community placement, or probation, the defendant shall comply with each of the conditions below.

- Report to and be available for contact with the assigned community corrections officer as directed.
- Cooperate fully with the supervising Community Corrections Officer.
- Perform such affirmative acts necessary for the Department of Corrections to monitor compliance with the court's orders.
- Work at Department of Corrections-approved education, employment and/or community service.
- Do not unlawfully possess or consume any controlled substances except pursuant to a lawfully issued prescription.
- Pay supervision fees as determined by the Department of Corrections.
- Residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community custody.
- Allow home visits by the Department of Corrections to monitor compliance with supervision. Home visits must include access for the purposes of visual inspection of all areas of the residence in which the defendant lives or has exclusive or joint control or access.
- Not own, use, or possess, including constructively, any firearm or ammunition.
- Maintain law-abiding behavior and commit no new crimes.
- If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections, and the defendant's treatment information must be shared with the Department of Corrections for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- Report no later than the next business day after sentencing or release from jail to a Washington State approved alcohol/drug assessment facility for evaluation. Cooperate fully with the facility and immediately enter into and complete any recommended treatment program by the end of supervision.
- If a treatment program is not recommended, promptly complete Alcohol/Drug Information School.
- Report for urinalysis as ordered by the Department of Corrections.
- Submit to regular polygraph examinations about drug and alcohol usage upon the request of the supervising Community Corrections Officer.
- Do not possess or consume any alcohol or intoxicating beverages, and submit to a breath alcohol analysis upon the request of the supervising Community Corrections Officer.
- Remain away from the following drug trafficking area(s): _____

- Not drive a motor vehicle without a valid driver's license and financial responsibility.
- ~~Submit to regular polygraph examinations about drug and alcohol usage upon the request of the supervising Community Corrections Officer.~~
- ~~Report for urinalysis as ordered by the Department of Corrections.~~
- ~~Do not possess or consume any alcohol or intoxicating beverages, and submit to a breath alcohol analysis upon the request of the supervising Community Corrections Officer.~~
- Complete the Drive Under Influence Victim Impact Panel within 60 days of release from jail or prison as directed by the supervising Community Corrections Officer.
- Complete Defensive Driving School within 60 days of release from jail or prison as directed by the supervising Community Corrections Officer.
- Other: _____

4.C.4 Ignition Interlock Device Notice: The defendant must apply for an ignition interlock driver's license from the department of licensing under RCW 46.20.385 and the defendant must have a functioning interlock device installed on all motor vehicles that the defendant operates. The ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The defendant will be required to have the ignition interlock device for a period of 10 years. (RCW 46.61.5055(5))

4.C.5 Treatment During Incarceration: The defendant shall undergo alcohol or chemical dependency treatment services during incarceration. The defendant shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available. (RCW 9.94A.603)

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9.94A.760(7)(b).

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9.94A.753(4) and RCW 9.94A.760(4).

4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901:

RTN	\$ 2,139.39	Restitution distributed to: Dirk Spencer, subject to modification
PCV	\$ 500.00	Crime Penalty Assessment – felony or gross misd. (RCW 7.68.035)
FRC	\$ 200.00	Criminal filing fee
PUB	\$ 600.00	Court appointed attorney recoupment (RCW 9.94A.760)
DNA	\$ 100.00	DNA collection fee (any felony committed after 7/1/02) (RCW 43.43.7541)
JFR	\$ 250.00	Jury fee
FCM/MTH	\$ 1,120.50	Drive Under Influence Fine (includes BAC Assessment of \$125.00, and TPS of \$43.00)
FCM/MTH	\$ 2,000.00	Fine to the State of Washington
DFK	\$ 250.00	Drug enforcement fund – LEAD (RCW 9.94A.760)
CLF	\$ 100.00	Crime lab fee (RCW 43.43.690)
	\$ 7,259.89	TOTAL

4.D.4 Costs of Incarceration: In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100.00 per day of incarceration (the rate in 2013 is \$65.00 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2). *7000.00*

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130. *covered of \$1000*

4.D.6 Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10.73.160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10.01.160 through RCW 10.01.180 and RCW 10.73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made at least fifteen monthly payments within an eighteen-month period, as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10.82.090.

V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10.73.090 and RCW 10.73.100.

5.2 Loss of Voting Rights: The defendant understands and acknowledges that:

1. The defendant's right to vote is lost because of this felony conviction.
2. If the defendant is registered to vote, his or her registration will be canceled.
3. The defendant's right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections.
4. The defendant must reregister before voting.
5. The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations.
6. The defendant's right to vote may be permanently restored by one of the following for each felony conviction:
 - a. A certificate of discharge issued by the Yakima County Superior Court, as provided in RCW 9.94A.637; or
 - b. A court order issued by the Yakima County Superior Court restoring the defendant's right to vote, as provided in RCW 9.92.066; or
 - c. A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
 - d. A certificate of restoration issued by the governor, as provided in RCW 9.96.020.
7. Voting before the right to vote is restored is a class C felony under RCW 29A.84.660.

5.3 Sentence Condition Violation: Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement for any violation related to a felony charge. RCW 9.94A.633. Any violation of this Judgment and Sentence is punishable by up to the total number of confinement days suspended for any violation related to a non-felony charge.

5.4 Successful Completion: Upon successful completion of the requirements of the sentence, the defendant shall be eligible for a certificate of discharge. RCW 9.94A.637.

5.5 Firearms: The defendant understands that he or she must immediately surrender any concealed pistol license and may not own, use, or possess any firearm unless the right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.6 Restitution Hearing: If this box is checked and initialed here _____ then the defendant gives up or waives the right to be present at any restitution hearing.

VI. SIGNATURES

DATED: April 12, 2013

JUDGE

Presented by:

Approved as to form:

TROY J. CLEMENTS
Deputy Prosecuting Attorney
Washington State Bar No. 34399

JEFFREY B. SWAN
Attorney for Defendant
Washington State Bar No. 24010

Acknowledging the notices in Section V and receiving a copy:

DEFENDANT

INTERPRETER'S DECLARATION: I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the notices in section V for the defendant from English into that language. The defendant acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Interpreter

Print Name

Date and Place

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON
TO: The Yakima County Sheriff
TO: The Yakima County Department of Corrections
TO: The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crimes of:

- COUNT 1 - ATTEMPTING TO ELUDE A PURSUING POLICE VEHICLE
- COUNT 2 - POSSESSION OF A CONTROLLED SUBSTANCE, COCAINE
- COUNT 3 - POSSESSION OF A CONTROLLED SUBSTANCE, HEROIN
- COUNT 4 - FIRST DEGREE DRIVING WHILE LICENSE REVOKED
- COUNT 5 - FELONY DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND/OR DRUGS

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence.

YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

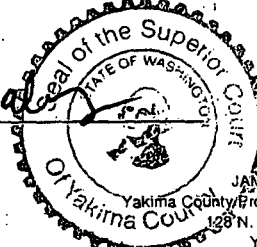
DATED: April 12, 2013

By the Direction of the Honorable
Hon. MICHAEL G. MCCARTHY

J.U.D.G.E

KIM M. EATON, Clerk

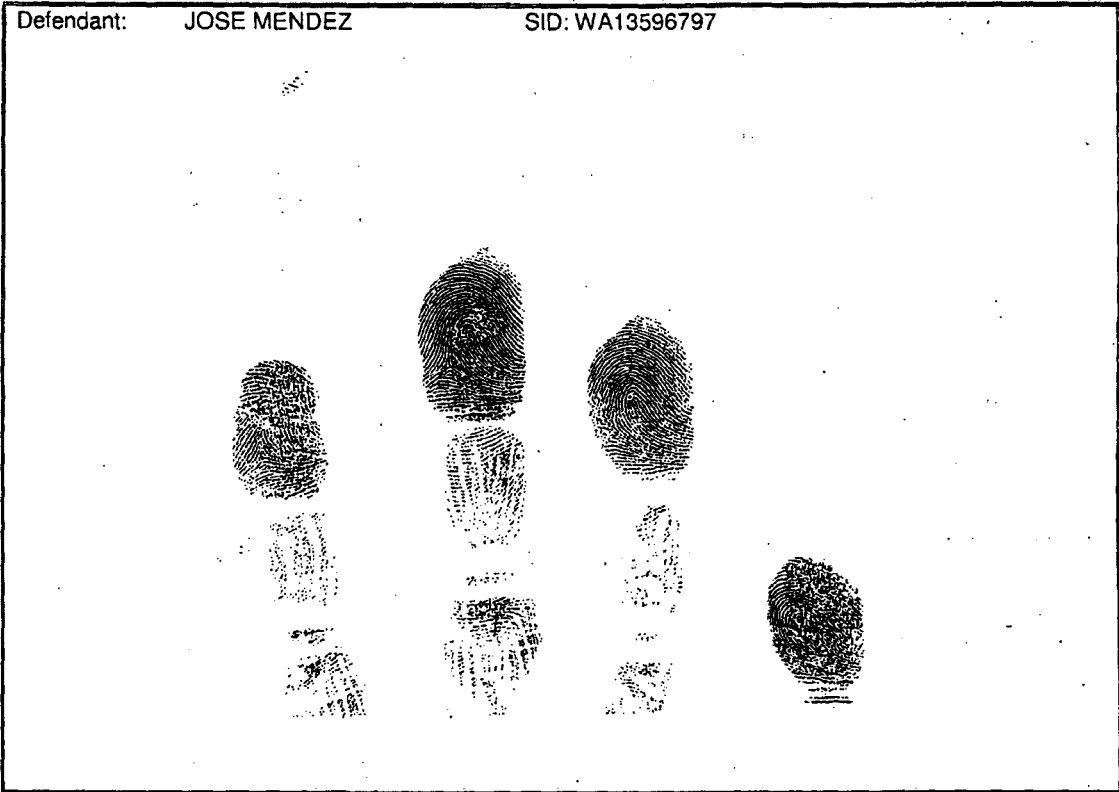
By: *Sandra G...*
Deputy Clerk



JAMES P. HAGARTY
Yakima County Prosecuting Attorney
128 N. 2nd St, Room 329
Yakima, WA 98901
(509) 574-1210 Fax (509) 574-1211

Defendant: JOSE MENDEZ

SID: WA13596797



FINGERPRINT CERTIFICATE OF ATTESTATION

STATE OF WASHINGTON)

County of Yakima)

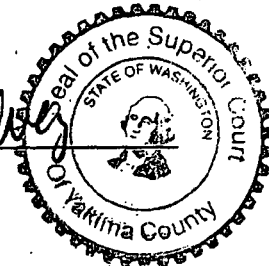
ss.

I, Kim M. Eaton, Yakima County Clerk and ex-officio Clerk of the Superior Court, hereby attest that the fingerprints appearing on this certificate are the fingerprints of the above-named defendant, and were affixed in open court on April 12, 2013.

DATED: April 12, 2013

KIM M. EATON, Clerk

By: *Sandra Grady*
Deputy Clerk




Address of Defendant:

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on June 16, 2014, by agreement of the parties, I emailed a copy of the State's Motion on the Merits to Mr. Kenneth Kato at khkato@comcast.net.

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

DATED this 16th day of June, 2014 at Yakima, Washington.



TAMARA A. HANLON, WSBA#28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington
128 N. Second Street, Room 329
Yakima, WA 98901
Telephone: (509) 574-1210
Fax: (509) 574-1211
tamara.hanlon@co.yakima.wa.us

YAKIMA COUNTY PROSECUTOR

June 16, 2014 - 4:05 PM

Transmittal Letter

Document Uploaded: 315801-Mendez Motion on Merits.pdf
Case Name: STATE OF WASHINGTON V. JOSE MENDEZ, JR.
Court of Appeals Case Number: 31580-1
Party Represented: STATE OF WASHINGTON
Is This a Personal Restraint Petition? Yes No
Trial Court County: ____ - Superior Court # ____

Type of Document being Filed:

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: Motion on the Merits
- Response/Reply to Motion: ____
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Comments:

No Comments were entered.

Sender Name: Tamara A Hanlon - Email: tamara.hanlon@co.yakima.wa.us