SUPREME COURT NO. 97139-1

COURT OF APPEALS NO. 76873-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

V.

JOSHUA McINTYRE,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable George F. Appel, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHERS

A. IDENTITY OF PETITIONER

Petitioner Joshua McIntyre asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the court of appeals decision in State v. McIntyre, COA No. 76873-5-I, filed February 11, 2019, and the denial of the motion to reconsider, filed April 1, 2019, attached as appendices to this petition.

C. ISSUE PRESENTED FOR REVIEW

Whether the court's denial of petitioner's requests to continue sentencing deprived him of his due process right to present relevant evidence in favor of his request for a special sex offender sentencing alternative (SSOSA)?

D. STATEMENT OF THE CASE

On October 29, 2015, the Snohomish county prosecutor charged 26-year-old Joshua McIntyre with third degree rape of a child involving L.S., who was nearly 16 years old at the time of the charged offense. CP 310-17. McIntyre and L.S. had a relationship over the course of seven months, after meeting on a social media texting application. CP 314.

McIntyre was released in December 2015 pending trial and committed a new offense involving nearly 13-year-old B.G. between

September and October 2016. CP 295. The two met on a texting application in late August or early September and texted nearly every day before eventually meeting. CP 56, 137; see also RP 40. At least one available text message demonstrated it was B.G. who first contacted McIntyre, represented she was 22 years old and sent him a picture of herself. Id.

McIntyre stipulated to a bench trial on agreed documentary evidence and was found guilty. CP 269-88; RP 8. As part of the stipulation, McIntyre admitted he committed the charged crimes and indicated he entered into the stipulation in order to "accept the state's offer and obtain a sexual deviancy evaluation and seek sentencing under the special sex offender sentencing alternative (SSOSA)." CP 276.

The stipulation indicated the standard range for count one was 31-41 months; the range for count two was 120-158 months. CP 270. McIntyre had one prior conviction for vehicular assault in 2013;[1] the date of the offense was September 3, 2010. CP 288. Thus, while McIntyre was not eligible for a SSOSA on count one, he was eligible on count two, because it occurred after five years from when the prior offense was committed. RCW 9.94A.670.

[1] McIntyre suffered traumatic brain injury as a result of the accident leading to the conviction. CP 154.

McIntyre underwent a SSOSA evaluation with Dr. Michael O'Connell, including interviews with O'Connell between 1/19/17 and 3/2/17. CP 139. At the first interview, "Joshua denied any sexual contact with either of these girls, although he did acknowledge 'some touching and a little bit of kissing at the motel' with the 12-year-old girl[.]" CP 148.

However, at a later interview, McIntyre admitted:

> [A]fter talking about his car accident has led him to, "fight with myself . . . Things I do I don't want to ... choosing wisely ... my brain is always going ... There are some things I have not been honest with you about ... These girls . . . I did have sex with both of them . . . just like they both said.

CP 149.

Following the initial intake wherein McIntyre denied sexual contact, O'Connell contacted defense counsel Peter Mazzone and suggested he have a "Dutch uncle" talk with McIntyre. CP 161. At sentencing, Mazzone explained that initially, McIntyre mistakenly believed he had to deny everything to qualify for the SSOSA. Once Mazzone told McIntyre he needed to be completely honest about his sexual history, McIntyre was happy to comply. RP 68. Indeed, McIntyre passed his sexual history polygraph with no deception detected at the rescheduled interview. CP 150.

Sentencing initially was scheduled for March 24. RP 8. On March 22, Peter Mazzone – who had just taken over as defense counsel after McIntyre's prior attorney abruptly left the firm – moved to continue the upcoming hearing as the SSOSA evaluation was not yet complete and Mazzone had a scheduling conflict. RP 18. At the hearing on March 24, Braden Pence stood in for Mazzone and asked the court to continue sentencing to April 28, so that both Mazzone and Dr. O'Connell could be present in case the court had questions about the SSOSA request. RP 18. Mazzone was available April 21, but Dr. O'Connell was not available until the 28th. RP 18, 26.

The court granted the motion to continue but only until the 21st, reasoning that it could just read the Dr.'s report:

> I'm not going to continue it out to the 28th because it's not necessary to hear from a doctor. Doctors generally know what needs to go into a report, and I can read the report, and I will.

RP 30. The court remanded McIntyre into custody and set no bail. RP 30.

At the hearing on April 21, 2017, the state conceded McIntyre's relationship with B.G. was such that he legally qualified for a SSOSA on count 2. RP 42-43. The court agreed McIntyre qualified. RP 44. The defense recommended a term of 36 months on count one and 12 months on count two, to be served concurrently, followed by a three-year

treatment regimen pursuant to SSOSA and a lifetime of DOC supervision upon his release. CP 58.

Mazzone argued a SSOSA was appropriate, because McIntyre genuinely wanted treatment, as evidenced by his complete honesty during the SSOSA polygraph examination. RP 56-57. Moreover, as everyone seemed to notice – Mazzone, McIntyre's parents, the PSI writer and Dr. O'Connell – the circumstances called out for treatment as McIntyre had suffered a traumatic and so-far untreated brain injury. RP 58. As O'Connell opined, there was likely still time to address it. RP 58.

And if the court were to grant the SSOSA, Mazzone represented that the defense would obtain the assistance of someone in addition to O'Connell, such as Dr. Richard Packer, who has expertise in treatment of sex offenders with neurological issues. RP 58.

The court asked about amenability. RP 65. The court did not see where Dr. O'Connell actually wrote that McIntyre is amenable to treatment. To the court, it seemed like the doctor opined he *might* be amenable. RP 66.

Mazzone pointed to the end of Dr. O'Connell's evaluation where he concluded he would be willing to treat McIntyre, transfer him to someone such as Dr. Packer, or at least work adjunctively with a doctor,

like Packer, with neurological expertise. RP 69. As Mazzone interpreted the doctor's conclusion, a finding of amenability was implicit. RP 70.

Still unsatisfied, the court inquired: "If Dr. O'Connell did, indeed, believe your client was amenable to treatment, why wouldn't he just say so?" RP 70. Mazzone offered that: O'Connell wouldn't offer to treat someone who is not amenable; *that he (Mazzone) could procure an addendum or supplement from O'Connell to that effect*; and the court's questions were exactly why Mazzone sought the continuance to April 28 to have the doctor present. RP 71.

The court declined to impose the SSOSA on grounds O'Connell did not clearly state that McIntyre is amenable to treatment:

> But he doesn't actually say that Mr. McIntyre is amenable to treatment, and I think it is safe to assume, given – given his qualifications, that it's because he does not know if it's – if it's so.
>
> It may be so. But might not be. Very unclear.

RP 83-85.

On appeal, McIntyre argued the court abused its discretion and denied his due process right to present evidence when it refused to continue sentencing so he could present testimony from Dr. O'Connell

regarding amenability. Brief of Appellant (BOA) at 25-33; Reply Brief of Appellant (RB) at 1-7.

In disposing to this argument the court of appeals ruled:

> Even if the court granted a continuance to allow Dr. O'Connell to attend the sentencing hearing or supplement his report, McIntrye cannot show the court would have reached a different result. The record shows the court reviewed the report and SSOSA evaluation Dr. O'Connell submitted before the sentencing hearing. The court concluded McIntyre was not amendable to treatment and presented a risk to the community.

Appendix at 6-7.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

THE TRIAL COURT'S DENIAL OF McINTYRE'S REQUESTS TO CONTINUE SENTENCING TO PRESENT THE DOCTOR'S TESTIMONAY AND/OR AN ADDENDUM TO HIS REPORT DEPRIVED McINTYRE OF HIS RIGHT TO PRESENT RELEVANT EVIDENCE AT SENTENCING.

A defendant facing sentencing has a due process right to present relevant evidence in favor of his requested sentence. By denying the requested continuances, the court deprived McIntyre of his due process right to present relevant evidence. Kansas v. Marsh, 548 U.S. 163, 170, 126 S. Ct. 2516, 165 L. Ed. 2d 429 (2010); Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006); State v. Abd-Rahmaan, 154 Wn.2d 280, 289, 111 P.3d 1161 (2005); see also

unpublished decision in State v. Sam Nang You, noted at 179 Wn. App. 1028 (2014) (denial of request to continue sentencing 10 days so defense counsel could obtain documents to make a same criminal conduct argument constituted an abuse of discretion).[2]

The failure to grant a continuance may deprive a defendant of a fair trial and due process of law, within the circumstances of a particular case. State v. Downing, 151 Wn.2d 265, 274-275, 87 P.3d 1169 (2004). Additionally, a denial of a request for a continuance may violate a defendant's right to compulsory process if the denial prevents the defendant from presenting a witness material to his defense. State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974). Whether the denial of a continuance rises to the level of a constitutional violation requires a case-by-case inquiry. Id.; Unger v. Sarafite, 376 U.S. 575, 84 S. Ct. 841, 11 L. Ed.2d 921 (1964).

Whether a constitutional violation has occurred appears to depend on due diligence and materiality. Both were satisfied here. Defense counsel Mazzone acted diligently in taking over McIntyre's case following the prior attorney's unexpectedly abrupt departure just 11 days before the March 24th hearing. Mazzone contacted the doctor in advance

[2] McIntyre cites to the unpublished case under GR 14.1 as non-binding authority to be afforded such persuasive value as the Court deems fit.

of the hearing and learned the first date both he and the doctor were available was April 28th.

Mazzone also acted diligently in filing the defense sentencing memorandum 9 days in advance of the April 21st hearing. There was no way for him to know beforehand the court had unanswered questions about the evaluation.

The information Mazzone sought to present was material and bore on the defense sentencing request. Dr. O'Connell could have answered the court's questions about amenability and risk. By denying the requested continuances, the court prevented McIntyre from presenting relevant evidence in favor of his SSOSA request. As argued on appeal, the court's denial of his requests for a continuance prevented McIntyre from presenting his full story.

In rejecting his due process claim, the court of appeals essentially found McIntyre could not show the trial court would have reached a different result had he been allowed to supplement the doctor's report. This is not supported by the record, however.

In so finding, the appellate court focused on the trial court's own finding McIntyre was not amenable due to the sequence of events in the case – i.e. that McIntyre committed a new offense while on bail pending the

original charge. Significantly, however, the doctor was aware of this fact and still gauged McIntyre as a low to moderate risk. CP 161.

And the trial court's attempt to resolve – on its own – the question of amenability was prompted by the court's mistaken belief that the Dr. O'Connell had not found McIntyre amenable to treatment. This too was incorrect. In his report, O'Connell expressly stated McIntrye was treatable: "A lengthy prison sentence will likely limit if not completely foreclose opportunities to address what I suspect is a still-treatable traumatic brain injury while his brain still retains some plasticity." CP 162 (emphasis added). Moreover, the fact O'Connell was willing to treat McIntyre implicitly suggested O'Connell found him amendable. RP 71. Regardless, defense counsel made an offer of proof that O'Connell could provide a supplemental report confirming his finding of amenability. RP 71.

And contrary to the court of appeals finding, the trial court indicated it would have imposed a SSOSA had there been an explicit finding of amenability by the doctor:

> If I take a chance on Mr. McIntyre, notwithstanding the fact that it nowhere clearly says that he is amendable to treatment, then I suppose it's true. I do have a hammer over his head if he violates. But that won't occur until after there's another victim, is my fear.
>
> On the other hand, if I don't, it may be that he would do substantial time in prison and come out and do it

> again because he didn't get the same treatment he would have gotten in the community.
>
> And I think everyone needs to understand that because that is the stark decision that I must make. If I thought it would help, I would grant the SSOSA, regardless of who was opposed, simply out of concern that the chances of another victim coming along, another person being victimized would be minimized thereby.

Emphasis added. Thus, McIntyre in fact showed the court would have been influenced in his favor by the additional evidence he sought to present.

As an aside, it would have been easy for the court to take the matter under advisement pending receipt of the supplemental report. And McIntyre was already incarcerated. There was therefore no need for such haste. The court's refusal to allow McIntyre to present this evidence deprived him of his due process right to present evidence. This court should accept review of this significant question of law under the state and federal constitutions.

F. CONCLUSION

Because this case involves a significant question of law under the state and federal constitutions, this Court should accept review. RAP 13.4(b)(3).

Dated this 1st day of May, 2019.

Respectfully submitted,

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

STATE OF WASHINGTON, Respondent, v. MCINTYRE, JOSHUA DEAN, DOB: 08/20/1988, Appellant.	)	No. 76873-5-I UNPUBLISHED OPINION FILED: February 11, 2019

SCHINDLER, J. — The court convicted Joshua Dean McIntyre of second degree rape of a child and third degree rape of a child. McIntyre challenges denial of his request to continue the stipulated trial and the sentencing hearing and imposition of community custody conditions. We affirm.

FACTS

On October 29, 2015, the State charged Joshua Dean McIntyre with rape in the third degree of 15-year-old L.S. Twenty-six-year-old McIntyre met L.S. by using text message applications.

While the charges were pending, McIntyre had sexual intercourse with 12-year-old B.G. McIntyre communicated with B.G. using social media, text messages, and "video chats." McIntyre and B.G. exchanged nude photographs of each other on their

cell phones. On December 23, 2016, the State filed an amended information charging McIntyre with rape of B.G. in the second degree.

On January 4, 2017, McIntyre stipulated to a bench trial on "agreed documentary evidence," including the affidavits of probable cause. As part of the stipulation, the State indicated its intent to recommend a concurrent sentence of 41 months for rape of a child in the third degree and 158 months for rape of a child in the second degree. McIntyre did not agree with the State's sentencing recommendation. McIntyre stated he intends to obtain a sexual deviancy evaluation and request a special sex offender sentencing alternative (SSOSA). The State objected to a SSOSA.

The court scheduled the stipulated trial for March 24, 2017. On March 22, McIntyre filed a motion to continue the trial until after the completion of the SSOSA evaluation.

> Mr. McIntyre has been evaluated by Michael O'Connell and Mr. O'Connell's evaluation is not yet complete. We expect that Mr. O'Connell's SSOSA evaluation report will be ready sometime during the week of April 3, 2017. For this reason we are asking the Court to continue the scheduled March 24, 2017 hearing, in its entirety, until April 21, 2017 to allow defense counsel to adequately scrutinize the report and present a sentencing memorandum on behalf of Mr. McIntyre.

The court denied the continuance. Following the stipulated trial on March 24, the court found McIntyre guilty of rape of a child in the third degree and rape of a child in the second degree. Defense counsel asked the court to continue the sentencing hearing to April 28 to allow Dr. O'Connell to attend and "provide comments to the Court." The State expressed concern that the grandmother of one of the victims who was present on March 24 would not be available on April 28. The court scheduled the sentencing hearing for April 21. The court ruled, "I'm not going to continue it out to the 28th

because it's not necessary to hear from a doctor. Doctors generally know what needs to go into a report, and I can read the report, and I will."

Before the sentencing hearing, McIntyre submitted Dr. O'Connell's 25-page sexual deviancy report. The April 7 report states the results of clinical testing suggest McIntyre is "somewhat unwilling to accept a psychological interpretation of his problems. He is not very introspective and his pessimistic attitude may make it difficult for him to establish a therapeutic relationship." The report states McIntyre did not acknowledge that he engaged in sex with a child. While McIntyre acknowledged "some type of sexual behavior occurred," Dr. O'Connell states McIntyre "has thinking errors which he uses to help him explain the sexual behavior that did occur." Dr. O'Connell states McIntyre "does not believe he needs help to control his sexual impulses and behaviors."

With regard to risk assessment, Dr. O'Connell concluded McIntyre was in the "low-moderate risk category" because of his "relative young age," lack of a long-term "live-in relationship," and "having an unrelated victim."[1] In assessing McIntyre's "potential to change" and "ability to self-regulate" his "sexual and emotional behavior," Dr. Connell placed McIntyre in the "moderate need" category.[2] Dr. O'Connell stated McIntyre's scores were elevated because of his impulsivity, lack of a "primary" sexual relationship, his failure to cooperate with supervision by committing an additional offense while on conditional release, and his "deviant sexual interests."

[1] Emphasis in original.

[2] Emphasis in original.

Dr. O'Connell also noted McIntyre suffers symptoms of an "undiagnosed and untreated traumatic brain injury," the result of a serious car accident at the age of 21. Dr. O'Connell recommended McIntyre obtain a thorough neurological assessment. Acknowledging McIntyre would spend at least two years in prison before he could begin treatment under a SSOSA, Dr. O'Connell states that "chances for treatment mitigation of underlying neurological problems may well have passed if [McIntyre] were to serve a much longer prison sentence."

During the sentencing hearing on April 21, the court questioned whether McIntyre was "amenable to treatment." In response, defense counsel told the court, "[I]f that's what . . . the Court is concerned about, I'm sure that Dr. O'Connell could offer some supplement or some addendum or whatever if you want that specific language."

The court ruled McIntyre was not amenable to treatment and declined to impose a SSOSA.

> I have Dr. O'Connell's report. We've been discussing it. I understand that in addition to lying to the victims and lying to the police, Mr. McIntyre also lied to his own evaluator.
>
> That does not support a finding that he is amenable to treatment, because a person is unlikely to be amenable to treatment if they are unable to come to grips with what they have done. I don't say that it is impossible. People can change. People can figure things out over time. But it is a pretty important thing to take into account.
>
> I appreciate that his attorney took steps in order to make sure Mr. McIntyre had the best possible situation today.
>
> But the efforts of [defense counsel] are not the same as amenability on the part of Mr. McIntyre. And in the end, following — following Mr. McIntyre's new interview with Dr. O'Connell, the conclusions that Dr. O'Connell renders still don't do more than say that the defendant might be amenable to treatment and that, if he is amenable to treatment — and this is my paraphrase — the chances for treatment mitigation of underlying neurological problems are increased if he is not in prison for very long.
>
> . . . .

> But he doesn't actually say that Mr. McIntyre is amenable to treatment, and I think it is safe to assume, given — given his qualifications, that it's because he does not know if it's — if it's so.

The court also rejected a SSOSA because McIntyre committed the crime of rape of a child in the second degree while the charges against him for rape of a child in the third degree were pending.

> One of the things about a SSOSA is that the Court has to be satisfied that a person can safely be in the community following rules imposed by the Court.
>
> Mr. McIntyre, I'm sure you will understand why I have no satisfaction that you would do that, because when you were under a court order to avoid certain things and people and situations, you committed another crime.

The court sentenced McIntyre to a concurrent sentence of 41 months on rape of a child in the third degree and 158 months on rape of a child in the second degree. The court imposed community custody conditions, including a prohibition against forming relationships with women or families who have minor children, remaining overnight in a residence where minor children live or spend the night, accessing the Internet without approval of the community corrections officer and treatment provider, and possessing or maintaining access to a computer without approval.

ANALYSIS

Denial of Continuances

McIntyre challenges the court's denial of his requests to continue the stipulated trial and sentencing. McIntyre claims the court deprived him of his due process right to present evidence in support of the SSOSA and his right of compulsory process.

The "decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court." State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). This court reviews decisions to grant or deny a continuance under an abuse of discretion standard. Downing, 151 Wn.2d at 272. Unless the trial court's decision is " 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons,' " it should be upheld. Downing, 151 Wn.2d at 272-73 (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

"Whether the denial of a continuance rises to the level of a constitutional violation requires a case-by-case inquiry." Downing, 151 Wn.2d at 275. Because "continuances and compulsory process in criminal cases involve such disparate elements as surprise, diligence, materiality, redundancy, due process, and the maintenance of orderly procedures," whether to grant or deny a continuance is "within the discretion of the trial court, to be disturbed only upon a showing that the accused has been prejudiced and/or that the result of the trial would likely have been different had the continuance not been denied." State v. Eller, 84 Wn.2d 90, 95, 524 P.2d 242 (1974).

McIntyre cannot show the court abused its discretion or prejudice as a result of the court's denial of his request to continue the stipulated trial or the sentencing hearing.

In deciding whether to impose a SSOSA, the court must "consider whether the offender is amenable to treatment." RCW 9.94A.670(4). The SSOSA statute also requires courts to "consider the risk the offender would present to the community . . . or to persons of similar age and circumstances as the victim." RCW 9.94A.670(4).

Even if the court granted a continuance to allow Dr. O'Connell to attend the sentencing hearing or supplement his report, McIntyre cannot show the court would

have reached a different result. The record shows the court reviewed the report and SSOSA evaluation Dr. O'Connell submitted before the sentencing hearing. The court concluded McIntyre was not amenable to treatment and presented a risk to the community.

Community Custody Conditions

McIntyre challenges the court's authority to impose community custody conditions that prohibit him from dating women or forming relationships with families who have minor children, staying overnight in a residence where minor children live or are spending the night, and accessing the Internet or possessing or accessing a computer without prior approval. The four community custody conditions state:

> 8. Do not date women or form relationships with families who have minor children, as directed by the supervising Community Corrections Officer.
> 9. Do not remain overnight in a residence where minor children live or are spending the night.
> . . . .
> 14. Do not access the Internet on any computer in any location, unless such access is approved in advance by the supervising Community Corrections Officer and your treatment provider. Any computer to which you have access is subject to search.
> . . . .
> 18. You may not possess or maintain access to a computer, unless specifically authorized by your supervising Community Corrections Officer. You may not possess any computer parts or peripherals, including but not limited to hard drives, storage devices, digital cameras, [W]eb cam[era]s, wireless video devices or receivers, CD/DVD[3] burners, or any device to store or reproduce digital media or images.

McIntyre contends the court exceeded the statutory authority to impose the conditions because the conditions are not crime-related. We disagree.

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[3] Compact disc/digital versatile disc.

A sentencing court has the statutory authority to order an offender to "[c]omply with any crime-related prohibitions" as part of any term of community custody. RCW 9.94A.703(3)(f); see also RCW 9.94A.505(9). A "crime-related prohibition" is an "order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted." RCW 9.94A.030(10).

We review the imposition of crime-related community custody conditions for abuse of discretion. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007); State v. Irwin, 191 Wn. App. 644, 656, 364 P.3d 830 (2015). A court abuses its discretion if imposition of a sentencing condition is manifestly unreasonable. State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). "A court does not abuse its discretion if a 'reasonable relationship' between the crime of conviction and the community custody condition exists." State v. Nguyen, 191 Wn.2d 671, 684, 425 P.3d 847 (2018) (citing Irwin, 191 Wn. App. at 658-59). The prohibited conduct need not be identical to the crime of conviction, but there must be " 'some basis for the connection.' " Nguyen, 191 Wn.2d at 684 (quoting Irwin, 191 Wn. App. at 657).

There is a reasonable relationship between the crime of rape of a child in the third degree and rape of a child in the second degree and the conditions restricting McIntyre from dating women with minor children and staying overnight in a residence where minor children live. Although McIntyre did not befriend the parents of his victims, dating women with minor children "is reasonably related to the[ ] crimes." State v. Autrey, 136 Wn. App. 460, 468, 150 P.3d 580 (2006).

The conditions requiring McIntyre to obtain authorization for Internet and computer access are crime-related. McIntyre used social media to communicate with

his victims. Here, unlike in State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008), there is overwhelming evidence that technology facilitated commission of the crimes.

We affirm the convictions and entry of the judgment and sentence.

WE CONCUR:

FILED
4/1/2019
Court of Appeals
Division I
State of Washington

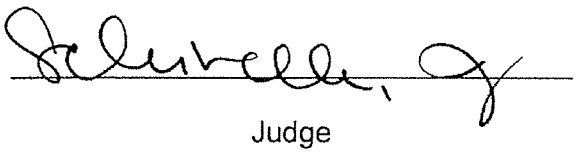
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. MCINTYRE, JOSHUA DEAN, DOB: 08/20/1988, Appellant.	)	No. 76873-5-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Joshua Dean McIntyre filed a motion for reconsideration of the opinion filed on February 11, 2019, and the respondent State of Washington filed an answer to the motion. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

For the Court:



Judge

NIELSEN, BROMAN & KOCH P.L.L.C.

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