

67454-4

67454-4

No. 67454-4-I

THE COURT OF APPEALS
DIVISION ONE

STATE OF WASHINGTON, RESPONDENT

v.

MAXIMO ARROYO-MIRANDA, APPELLANT

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

MAXIMO ARROYO-MIRANDA #707279
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049 (T-UNIT)
AIRWAY HEIGHTS, WA 99001-2049

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

STATE OF WASHINGTON,) No. #67454-4-I
Respondent,)
V.) STATEMENT OF ADDITIONAL
MAXIMO ARROYO-MIRANDA,) GROUNDS FOR REVIEW
Appellant,)

I. INTRODUCTION

To understand the overall basis of Arroyo-Miranda's claim for relief, it is important to know that in 1993, he entered into a plea agreement with the Whatcom County Prosecutor's Office. The plea consisted of one count of Murder 1°, and three counts of Assault 2°. With no prior criminal history, the three counts of Assault 2° added two points a piece, for a total of six points. This placed Arroyo-Miranda in a standard range of 416 months for the Murder 1°, and 33-43 months for the three Assault 2° counts. All counts were to be ran concurrent.

However, the State recommended that Arroyo-Miranda receive 416 months for all counts. The sentencing court entered a written finding which expressed 416 months for counts I, II, III, & IV to be ran concurrently. When Arroyo-Miranda was transferred

1 to the Department of Corrections, records computed his sentence
2 to reflect that he was to serve **4 concurrent 416 month sentences**
3 **(34 years each)**. Arroyo-Miranda discovered the error during a
4 classification review, and filed a 7.8 Motion to vacate the 3
5 **Assault 2°** counts, because they exceeded the agreed to standard
6 range of **33-43 months**. Arroyo-Miranda was convicted in **1993**,
7 and the assault counts did not expire until **2002**. Thus, Arroyo-
8 Miranda served **108 months** on a **43 month** sentence.

9 II. ASSIGNMENTS OF ERROR

10 A. Assignments of Error

- 11 1. THE STATE COMMITTED ERROR WHEN
12 IT BREACHED THE PLEA AGREEMENT
WITH ARROYO-MIRANDA.
- 13 2. THE TRIAL COURT ERRED BY IMPOSING
14 AN EXCEPTIONAL & EXCESSIVE SENTENCE
UPON ARROYO-MIRANDA.
- 15 3. AT RESENTENCING, THE TRIAL COURT
16 ERRED BY CORRECTING ARROYO-MIRANDA'S
JUDGMENT AND SENTENCE UNDER CR 60(a).

17 B. Issues Pertaining To Assignments Of Error

- 18 1. THE PROSECUTOR BREACHED THE PLEA
19 AGREEMENT BY RECOMMENDING 416 MONTHS
FOR ALL FOUR COUNTS.
- 20 2. THE TRIAL COURT IMPOSED AN EXCEPTIONAL
21 SENTENCE BY ENTERING A WRITTEN FINDING
OF 416 MONTHS ON ALL COUNTS.
- 22 3. THE TRIAL COURT ERRONEOUSLY CORRECTED
23 A "JUDICIAL ERROR" UNDER CR 60(a) AS A
"CLERICAL ERROR."

24 III. STATEMENT OF THE CASE

25 Maximo Arroyo-Miranda now appeals the decision of the Whatcom
26 County Superior Court, where he filed a 7.8 Motion requesting

1 relief from the error in his judgement and sentence. Instead,
2 the State drafted a Transport Order remanding Arroyo-Miranda
3 back to Whatcom County for resentencing. The State finally did
4 submit a reply and presented it at the resentencing proceeding.

5 The State's position was that the "**written finding**" was a
6 "clerical error", that required correction under CR 60(a).

7 Arroyo-Miranda asserted in his 7.8 Motion that the assault 2°
8 counts were exceptionally imposed, because they exceeded the
9 standard range, and required vacation. Arroyo-Miranda further
10 requested that he be resentenced at **0 points**, and sought spec-
11 ific performance of the Murder 1°, at a range of **240-312 months**.

12 Because the assault counts exceeded the standard range, vac-
13 ation would place Arroyo-Miranda at **0 points**.

14 IV. ARGUMENT

15 1. THE PROSECUTOR BREACHED THE PLEA 16 AGREEMENT BY RECOMMENDING 416 MONTHS 17 FOR ALL FOUR COUNTS.

18 First, Arroyo-Miranda asserts that the prosecutor breached
19 the plea agreement by recommending 416 months for all the counts.
20 (see Exhibit 1., Pg. 4, Ln's 8-11, for 3-22-93 VRP of sentence
21 transcript) "When a plea rests in any significant degree on a
22 promise or agreement of the prosecutor...such a promise must be
23 fulfilled." Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct.
24 495, 30 L.Ed.2d 427 (1971). To determine whether a prosecutor
25 has adhered to the terms of an agreement, we review the sent-
26 encing record to ascertain the parties' objective manifestations.

1 of intent. Turley, 149 Wn,2d at 400 (citing Wilson Court L.T.D.
2 P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 699, 952 P.2d 590
3 (1988)). We review a prosecutor's actions and comments object-
4 ively from the sentencing record as a whole to determine whether
5 the plea agreement was breached. Jerde, 93 Wn.App. at 780.

6 The plea bargaining process requires that both the state and
7 the defendant adhere to their promises. When the process is
8 frustrated, the fairness of the resulting sentencing hearing is
9 seriously called into question. A defendant pleads guilty on a
10 false promise when the state breaches a plea agreement. Mabry
11 v. Johnson, 467 U.S 504, 509, 104 S.Ct. 2543 81 L.Ed.2d 437 (1984)

12 Arroyo-Miranda had a due process right to be sentenced in
13 accordance with the plea agreement's exact terms, and he was
14 entitled to serve the range set by the SRA for each offense.

15 The fact that the three assaults were concurrent with the
16 416 months for the murder count, does not negate the fact that
17 the range was exceeded. This is a constitutional error, because
18 the Constitution protects defendant's from excessive punishment
19 beyond the standard range. "When a defendant claims constit-
20 utional error, the court previews the merits of the claimed
21 error to determine whether the argument is likely to succeed.
22 State v. WWJ Corp., 138 Wn.2d 596, 603, 980 P.2d 1257 (1999).

23 The error is considered "manifest" under RAP 2.5(a)(3) if
24 the facts necessary to review the claim are in the record and
25 the defendant shows actual prejudice. State v. McFarland, 127
26 Wn.2d 322, 333, 899 P.2d 1251 (1995). Arroyo-Miranda relies on

1 Sanchez to show how a due process violation occurs when a plea
2 is not followed. "In both these cases, all relevant facts are
3 in the record. Actual prejudice is shown by the fact that nei-
4 ther Sanchez nor Harris was sentenced according to the plea
5 agreement. Because failure to adhere to a plea bargain impli-
6 cates due process, this court can accept review under the
7 "manifest error affecting a constitutional right" standard.
8 State v. Sanchez, 146 Wn.2d at 346. In Arroyo-Miranda's case,
9 the statute only allowed for him to serve 43 months on the 3
10 assaults, and when the prosecutor recommended 416 months for
11 all the counts, the plea was breached.

12 This court has recognized two possible remedies where the
13 state breaches a plea agreement. Miller, 110 Wn.2d at 531.

14 "The defendant has the choice to either withdraw his plea
15 and be tried anew on the original charges, or receive specific
16 performance of the agreement." Id. Because a plea agreement is
17 analogous to a contract, the defendant is entitled to a remedy
18 which restores him to the position he occupied before the state
19 breached." State v. James, 35 Wn.App. 351, 355, 666 P.2d 943 (1983).

20 Furthermore, "the defendant's choice of remedy controls,
21 unless there are compelling reasons not to allow that remedy."
22 Miller, 110 Wn.2d at 535. The trial court's imposition of it's
23 sentence is identical to the prosecutor's recommendation.

24 The recommendation does not reflect the terms of what the
25 agreement's contents entail. The record shows that the court
26 followed the recommendation, because theres no oral ruling.

1 2. THE TRIAL COURT IMPOSED AN EXCEPTIONAL
2 SENTENCE BY ENTERING A WRITTEN FINDING
3 OF 416 MONTHS ON ALL COUNTS.

4 Second Arroyo-Miranda contends that the trial court imposed
5 an exceptional sentence on the three assault counts. The counts
6 were supposed to carry a standard range of 33-43 months.

7 Arroyo-Miranda's judgment and sentence reflects that he must
8 serve 416 months concurrently on all counts. Arroyo-Miranda's
9 sentence on those assaults was supposed to expire after the 43
10 months, but instead he served 9 years on those counts.

11 Arroyo-Miranda's sentence for the assaults did not expire
12 until 2002. (see Exhibit 2. for Department of Corrections letter
13 from Headquarters Records Officer Carrie Fleming).

14 Therefore, the sentence imposed was exceptional and excess-
15 ive for the three assault counts. "Plea agreements are contracts
16 and the law imposes upon the state an implied promise to act in
17 good faith." State v. Sledge, 133 Wn.2d 828, 839, 947 P.2d 1199
18 (1997). "A trial court's sentencing authority is limited to
19 that expressly found in the statutes. If the provisions are not
20 followed, the action of the court is void." State v. Furman, 122
21 Wn.2d 440, 456, 858 P.2d 1092 (1993). Additionally, a defendant
22 cannot extend the trial court's sentencing authority by agreeing
23 to a punishment in excess of statute. see In re Moore, 116 Wn.2d
24 at 38. An exceptional sentence may be imposed only where the
25 trial court finds substantial and compelling reasons set forth
26 in written findings and conclusions, which support an exceptional

1 sentence. RCW 9.94A.120(2)(3); State v. Halgren, 137 Wn.2d 340,
2 345, 971 P.2d 512 (1999). A judgment and sentence is invalid
3 on its face if it exceeded the duration allowed by statute and
4 the alleged defect is evident on the face of the document with-
5 out further elaboration. In re Pers. Restraint of Hemenway, 147
6 Wn.2d 529, 532, 55 P.3d 615 (2002). In determining whether a
7 sentence is clearly excessive, we apply an abuse of discretion
8 standard. State v. Ritchie, 126 Wn.2d 388, 392, 894 p.2d 1308
9 (1995). A defendant may also challenge his sentence if the
10 trial court exceeded its statutory authority. In re Pers. Res-
11 traint of Moore, 116 Wn.2d 30, 38-39, 803 p.2d 300 (1991).

12 "[A] defendant cannot agree to punished more than the Leg-
13 islature has allowed for." Id. at 38. Under the Sentencing
14 Reform Act of 1981, a trial court must impose a sentence within
15 the standard range unless it finds "substantial and compelling"
16 reasons to justify a departure. RCW 9.94A.120(2)(3). In the
17 case at bar, there was no such factors in the record supporting
18 the imposition of 416 months on all counts. The standard of
19 review for an exceptional sentence is set forth in RCW 9.94A.210(4)
20 which states:

21 "To reverse a sentence which is outside the sentence range,
22 the reviewing court must find; (a) either that the reasons
23 supplied by the sentencing judge are not supported by the
24 record which was before the judge or that those reasons do
not justify a sentence outside the standard range for that
offense; or (b) that the sentence imposed was clearly ex-
cessive or clearly too lenient."

25 There is no miscarriage of justice where the sentence imp-
26 posed is the precise sentence requested by the defendant. see

1 In re Pers Restraint of Breedlove, 128 Wn.2d at 311. In the
2 case of Arroyo-Miranda, the court did not impose the precise
3 sentence in accordance with the plea agreement. The duration
4 of the sentence that was fixed for the three assault counts was
5 clearly excessive, and this court should not ignore that fact.

6 "A sentence will be deemed clearly excessive only if the
7 trial court abused its discretion in fixing the duration of the
8 sentence. State v. Farmer, 116 Wn.2d 414, 492, 805 P.2d 200, 13
9 A.L.R. 5th 1070 (1991). This court has been clear that "the
10 imposition of an unauthorized sentence does not require vacation
11 of the entire judgment or granting of a new trial. The error
12 is grounds for reversing only the erroneous portion of the
13 sentence imposed. Eilts, 94 Wn.2d at 496. Arroyo-Miranda sought
14 specific performance of the Murder 1°, and vacation of the 3
15 assaults in his 7.8 motion. In reviewing an exceptional sent-
16 ence, an appellate court undergoes a three-part analysis.

17 First, the court asks whether the factors listed by the
18 court for an exceptional sentence are supported by the under-
19 lying record. The court applies a "clearly erroneous" standard
20 to this review. Second, the court must determine whether the
21 factors used by the trial court are valid as a matter of law.

22 Finally, the court must determine, under an "abuse of dis-
23 cretion" standard whether the sentence is clearly too lenient
24 or clearly too excessive. State v. Solberg, 122 Wn.2d 658, 705
25 861, P.2d 460 (1993); State v. Batista, 116 W.2d 777, 792, 808
26 P.2d 1141 (1991).

1 3. THE TRIAL COURT ERRONEOUSLY CORRECTED
2 A "JUDICIAL ERROR" UNDER CR 60(a) AS
3 A "CLERICAL ERROR".

4 Third, Arroyo-Miranda argues that the Whatcom County Super-
5 ior Court erroneously corrected his judgment and sentence as a
6 "clerical error" on remand. Arroyo-Miranda asserts that the
7 error in his judgement and sentence stems from the original
8 "written finding", and was a "judicial error". A clerical
9 error is a "mistake or omission mechanical in nature which is
10 apparent on the record and which does not involve a legal dec-
11 ision or judgment by an attorney. In re Marriage of King, 66
12 Wn.App. 134, 138, 831 P.2d 1094 (1992). A judicial error is an
13 error of substance. see King Id. at 138. According to the
14 Oxford American Dictionary 1980 Edition:

15 substance (sub stans) n. 2. the essence
16 of something spoken or written.

17 The written finding is manifest in **Section 4.3** of Arroyo-
18 Miranda's "judgment and sentence." It was put there by the
19 judge, and is an error of substance. The test for distinguish-
20 ing between "judicial" and "clerical" error is whether, based on
21 the record, the judgment and sentence embodies the trial court's
22 intention. Foster v. Knutson, 10 Wn.App. 175, 516 P.2d 786 (1973)
23 46 Am Jur.2d Judgments 209 (1969). Arroyo-Miranda further
24 contends that the 3 assault counts should not have been merely
25 corrected, but dismissed because they exceeded the range that
26 the SRA holds. This was not clerical in nature, but judicial.

1 A clerical error involves an error or mistake made by a
2 clerk or other judicial or ministerial officer in writing or
3 keeping records, it does not include an error made by the court
4 itself. State v. Ryan, 146 Wash, 114, 261 P. 775 (1927); Blank-
5 enship v. Royalty Holding Co., 202 F.2d 77 (10th Cir. 1953) see
6 also Foster v. Knutson, 10 Wn.App. 175, 516 P.2d 786 (1973);
7 United States v. Stuart, 392 F.2d 60 (3rd Cir. 1968); Merry
8 Queen Transfer Corp. V. O'Rourke, 266 F.Supp. 605 (E.D.N.Y. 1967).

9 This "written finding" is in the judgment and sentence, and
10 was entered by the original sentencing judge, which states:

11 **"416 MONTHS FOR COUNTS I, II III, IV TO BE RAN CONCURRENTLY"**

12 This written finding caused the sentence for the assaults to
13 cause Arroyo-Miranda to serve an excessive sentence, therefore,
14 the error was Judicial. (see exhibit 3. for Section 4.3 of the
15 Judgment and Sentence). There is no record of the original
16 sentencing court's intention, because the judge who resentenced
17 Arroyo-Miranda on remand, states that; "The court ordered that
18 you serve 416 months for count I, and failed to state the spec-
19 ifice sentence for counts II, III, and IV..."

20 Therefore, no "oral pronouncement" was made, and nothing in
21 the record exists to use as a reference to interpret the court's
22 intention. (see Exhibit 4., Pg. 3., Ln's 24-25, Pg. 4., Ln's
23 1-10 2011 Sent. VRP). Regardless of whether the trial court int-
24 ended the notation to be part of the sentencing order or merely
25 an acknowledgement of the agreement, including the notation on
26 the judgment and sentence gave it the imprimatur of the trial court.

1 Phelps, 113 Wn.App. at 357. The plain language of the notation
2 does not limit its application and nothing suggests that the
3 notation carries less than full weight of the trial court's
4 sentencing authority. Phelps, 113 Wn.App at 356-57.

5 Clerical errors occur when a judgment and sentence does not
6 reflect the intent of the court. State v. Rooth, 129 Wn.App.761
7 770, 121 P.3d 755 (2005)(citing Presidential Estates Apartment
8 Assoc. v. Barrett, 129 Wn.2d 320. Arroyo-Miranda contends that
9 the intent of the court was never set forth for three reasons;
10 (1) based on the prosecutor's recommendation; (2) the lack of,
11 or the original sentencing judge's absence of an oral ruling on
12 the record; (3) the judge's written findings on the judgment
13 and sentence stating how the sentence was to be ran. This act
14 can be interpreted as intentional, because there was too much
15 information before the court to pronounce the precise sentence
16 both "orally" and "written" according to the terms contained in
17 the plea agreement. An intentional act by the court cannot be
18 a clerical error. In re Getz, 57 Wn.App. 602, 604, 789 P.2d 331
19 (1990). The rule addresses clerical errors only; a court can-
20 not use CR 60(a) to correct judicial error. In re Getz, Id.

21 In deciding whether an error is "judicial" or "clerical", a
22 reviewing court must ask itself whether the judgment as amended,
23 embodies the trial court's intention as expressed in the record
24 at the trial. Marchel v. Bungler, 13 Wn.App. 81, 533 p.2d 406,
25 review denied, 85 Wn.2d 1012 (1975). If the answer to that is
26 yes, it logically follows that the error is clerical in that

1 the amended judgment merely corrects language that did not
2 correctly convey the intention of the court, or supplies lang-
3 uage that was inadvertently omitted from the original judgment.

4 If the answer to the question is no, however, the error is
5 not clerical, and therefore, must be judicial. Thus, even
6 though a trial court has the power to enter a judgment that
7 differs from its oral ruling, once it enters a written judgment,
8 it cannot, under CR 60(a) go back, rethink the case, and enter
9 an amended judgment that does not find support in the trial
10 court record. Presidential Estates v. Barrett, 129 Wn.2d at 326.
11 There's an absence of any oral ruling as to the specificity of
12 the assault counts. A judgment and sentence is not a contract;
13 it is a formal declaration that an individual has been found
14 guilty of a criminal offense and a declaration of the punishment
15 being imposed. State v. Munds, 83 Wn.App. at 494. An appellate
16 court may look to the oral decision of the trial court to clar-
17 ify the basis of a written ruling. see In re LaBelle, 107 Wn.2d
18 196, 219, 728 P.2d 138 (1986). But a trial court's oral opinion
19 is only a verbal expression of its informal opinion at the time
20 and "may be altered, modified, or completely abandoned." State
21 v. Hescocock, 98 Wn.App. 600, 605-06 (1999). Where, as here, the
22 trial court's written findings and conclusions are unambiguous,
23 it is unnecessary to look to the oral ruling to interpret the
24 written conclusions. Id. at 606. Lastly, Arroyo-Miranda asserts
25 that the judge who resentenced him, is not the original judge
26 who sentenced him in 1993, and should not have been able to

1 assume or interpret judge Nichols' intention, and take it upon
2 himself to modify Arroyo-Miranda's judgment and sentence to
3 what he thought the original court's sentencing motives were.

4 "In Barros, however, the judge who heard the motion had not
5 presided over the original divorce proceeding." see 26 Wn.App.
6 at 364 n. 1. The court in Barros, as in other courts, have
7 held that when a judge who is not the original judge who sat
8 over the proceedings corrects or modifies a judgment, that
9 judge does so by attempting to interpret the original judge's
10 intention.

11 **V. CONCLUSION**

12 Arroyo-Miranda respectfully requests for the above reasons
13 that this court dismiss the three **Assault 2°** counts, because
14 they exceeded the standard range, and were excessive.

15 Arroyo-Miranda further requests that this court grant him
16 specific performance on the valid portion for the **Murder 1°**,
17 and resentence him at **0 points** for a new standard range of
18 **240-312 months**.

19 DATED this ___ day of _____ 2011.

20 Respectfully submitted,

21 X

MAXIMO ARROYO-MIRANDA

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EXHIBIT 1

EXHIBIT 1

1 MR. McEACHRAN: Your Honor, as I mentioned, the crime
2 is murder in the first degree and also three counts of
3 assault in the second degree. The recommendation of the
4 state is that the defendant serve 416 months to run
5 concurrently.

6 THE INTERPRETER: Again, the interpreter would like
7 to have that said a little louder, please. I'm sorry.

8 MR. McEACHRAN: Your Honor, as I mentioned, it was
9 416 months and that would be for all of the counts and
10 also I do have a work sheet that shows how all of those
11 relate to each other, your Honor.

12 THE COURT: Okay.

13 MR. McEACHRAN: The range for murder in the first
14 degree is 312 to 416 months. The counts of assault all
15 are 10-year sentences. I would ask they all run together
16 and I'm asking for the top of the range, which is 416
17 months.

18 THE COURT: All right. Ms. Bernstein.

19 MS. BERNSTEIN: Thank you, your Honor. The range, as
20 Mr. McEachran says, is between 312 and 416 months and I
21 will be asking the court today to impose 312 months as a
22 sentence. The years, as in terms of the actual sentence
23 at the bottom end of the range, is 26 years, and where
24 Mr. McEachran is at is 34.8 and we would have some
25 comments we would like to address in support of our

EXHIBIT 2

EXHIBIT 2

05.11.06

RECEIVED

MAY 06 2011

Statewide Records

Attn: DOC Records Dept. Headquarters (Carrie Fleming)

From: Maximo Arroyo-Miranda #707279

Date: 5-1-11

Re: Confirmation from Headquarters regarding exactly what each E.R.D. is for the following convictions.

Dear DOC Records Headquarters, (Carrie Fleming)

I would respectfully like to know what my E.R.D. is for each of my convictions:

COUNT 1: MURDER IN THE FIRST DEGREE

COUNT 2: ASSAULT IN THE SECOND DEGREE

COUNT 3: ASSAULT IN THE SECOND DEGREE

COUNT 4: ASSAULT IN THE SECOND DEGREE

Mainly, I would like to know specifically when the assault counts expire.

Respectfully,

Maximo Arroyo Miranda

ATTN: RECORDS

TB362



OFFENDER'S KITE

PAPELETA DE PETICIÓN DEL INTERNO

OFFENDER NAME (PRINT) NOMBRE DEL INTERNO (LETRA DE MOLDE)		
ARKOYO MIRANDA MAXIMO		
DOC NUMBER/NÚMERO DOC	UNIT, CELL/JUNIDAD, CELDA	DATE/FECHA
707279	I-6-50-1	8-10-2011
DESIRE INTERVIEW WITH OR ANSWER FROM/DESEA ENTREVISTA CON O RESPUESTA DE		

Interpreter needed for _____ (language).
 Necesito intérprete para _____ (idioma).

REASON/QUESTION
RAZÓN/PREGUNTA

I WOULD LIKE TO
KNOW WHEN MY
RELEASE DATE IS
FOR COUNTS II
ASSAULTS III
IV ?

SIGNATURE/FIRMA	DAYS OFF/DÍAS LIBRES
<i>[Signature]</i>	SAT - SUN

RESPONSE
RESPUESTA

Count 2-4
6-16-2002
due to the ten year
Statutory Max

RESPONDER/PERSONA QUE RESPONDE	DATE/FECHA
<i>[Signature]</i>	8-15-2011

Distribution: WHITE/YELLOW-Responder, YELLOW-Return to Offender with Response, PINK-Offender keeps
 Distribución: BLANCA/AMARILLA-Persona que responde, AMARILLA-Devuelva al interno con respuesta,
 ROSA-Interno



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
Government, Community Relations and Regulatory Compliance
Statewide Records Correctional Justice Center
1015 Center Street, 1st Floor • Tacoma, Washington 98409
Tel 253.671.4000
FAX 253.593.2310

May 11, 2011

Maximo Arroyo-Miranda #707279
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001

Dear Mr. Arroyo-Miranda:

I am responding to your letter dated May 1, 2011, regarding your earned early release date for Whatcom County Cause #921005231.

You were sentenced on four counts under this cause. Count 1 is Murder 1st and you were sentenced to 416 months. Murder 1st is a serious violent offense and you are eligible to receive 15% earned early release credits on this count. Your earned early release date for the Murder 1st is currently January 15, 2022.

You were sentenced on 3 counts of Assault 2nd and you were sentenced to 416 months on each count. Assault 2nd is a violent offense and you are eligible to receive 33.33% earned early release credits on these counts. Your earned early release date on the 3 counts of Assault 2nd was June 16, 2002.

Your counts are running currently but one is calculation at 15% earned early release credits and the other three were calculated a 33.33%. Your earned early release can be extended if you are infracted or not programming.

If you need further information regarding your sentence, please work with your facility Records Department and your Counselor.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Fleming".

Carrie Fleming
Statewide Correctional Records Manager

CF:gac:05.11.06

cc: Offender Central File

Analyze Prison Calculations : ARROYOMIRANDA, Maximo (707279)

Cause: AA-921005231-Whatcom-CP Consecutive To Cause: Count: 1
--

Calculation Type: Base	Length: 34 Y, 8 M, D	Consecutive to:	
ERT% 15	ERD	Max Ex Date	Original ERD
Time Start	04/13/1993	04/13/1993	04/13/1993
(+) Length	12661	12661	12661
(-) Cause Credits	301	301	301
(-) Good Time Credits	53		53
(+) Potential Earned Time Release Credits	615.29		615.29
(+) Earned Time not Earned	3.59		
(-) Potential Good Conduct Time	1,231		1,231
(-) Good Conduct Time Lost	40		
(+) Out Time	0	0	0
Expiration Date	01/15/2022	02/14/2027	12/03/2021
Remaining Days To Be Served	3,959	5,815	3,916

Date Printed: 03/14/2011

logged on user: Deanna Leyerle

Analyze Prison Calculations : ARROYOMIRANDA, Maximo (707279)

<p>Cause: AA-921005231-Whatcom-CP</p> <p>Consecutive To Cause:</p> <p>Count: 2</p>

Calculation Type: Base	Length: 34 Y, 8 M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	04/13/1993	04/13/1993	04/13/1993
(+) Length	12661	12661	12661
(-) Cause Credits	301	301	301
(-) Good Time Credits	53		53
(+) Potential Earned Time Release Credits	1,367.17		1,367.17
(+) Earned Time not Earned	10.17		
(-) Potential Good Conduct Time	2,734		2,734
(-) Good Conduct Time Lost	40		
(+) Out Time	0	0	0
Expiration Date	11/19/2015	02/14/2027	09/30/2015
Remaining Days To Be Served	1,710	5,815	1,660

Date Printed: 03/ 4/2011

logged on user: Deanna Leyerle

Analyze Prison Calculations : ARROYOMIRANDA, Maximo (707279)

Cause: AA-921005231-Whatcom-CP Consecutive To Cause: Count: 3
--

Calculation Type: Base	Length: 34 Y, 8 M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	04/13/1993	04/13/1993	04/13/1993
(+) Length	12661	12661	12661
(-) Cause Credits	301	301	301
(-) Good Time Credits	53		53
(+) Potential Earned Time Release Credits	1,367.17		1,367.17
(+) Earned Time not Earned	10.17		
(-) Potential Good Conduct Time	2,734		2,734
(-) Good Conduct Time Lost	40		
(+) Out Time	0	0	0
Expiration Date	11/19/2015	02/14/2027	09/30/2015
Remaining Days To Be Served	1,710	5,815	1,660

Date Printed: 03/ 4/2011

logged on user: Deanna Leyerle

Analyze Prison Calculations : ARROYOMIRANDA, Maximo (707279)

Cause:
 AA-921005231-Whatcom-CP
Consecutive To Cause:

Count:
 4

Calculation Type: Base	Length: 34 Y, 8 M, D	Consecutive to:	
ERT% 33	ERD	Max Ex Date	Original ERD
Time Start	04/13/1993	04/13/1993	04/13/1993
(+) Length	12661	12661	12661
(-) Cause Credits	301	301	301
(-) Good Time Credits	53		53
(+) Potential Earned Time Release Credits	1,367.17		1,367.17
(+) Earned Time not Earned	10.17		
(-) Potential Good Conduct Time	2,734		2,734
(-) Good Conduct Time Lost	40		
(+) Out Time	0	0	0
Expiration Date	11/19/2015	02/14/2027	09/30/2015
Remaining Days To Be Served	1,710	5,815	1,660

Date Printed: 03/ 4/2011

logged on user: Deanna Leyerle

EXHIBIT 3

EXHIBIT 3

and the Community Corrections Officer shall monitor these payments.

() That defendant shall pay the amount of \$ _____ per month toward his/her legal financial obligations. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

(j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) NOT APPLICABLE.

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the DEPARTMENT OF CORRECTIONS as follows commencing IMMEDIATELY:

416 MONTHS FOR COUNTS I, II, III AND IV. TO RUN CONCURRENTLY.

(X)

Credit is given for TIME SERVED OF ~~279~~ 279 + 42 = 321 DAYS as of 3/22/93 ~~12. 1992~~, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections. This includes credit for 'good time' ~~at 15%~~ at 15%.

∞

CUSTODIAL RECOMMENDATION FOR COMMUNITY PLACEMENT FOR ONE (1) YEAR/S conditioned upon full compliance with the following terms, all of which are imposed pursuant to RCW 9.94A.120(8)(b):

() Defendant shall not sell, use or under any circumstances have in her possession any illicit drug; that is, any drug such as marijuana, cocaine, LSD or any others which are not compounded, manufactured or refined by a licensed commercial pharmaceutical company. That the defendant shall not knowingly be anywhere where illegal or unprescribed drugs are being sold or used. In addition, the defendant shall not sell, use or have in her possession any prescription

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 5
Re: MAXIMO ARROYO-MIRANDA

EXHIBIT 4

EXHIBIT 4

1 I have read the State's because I did get a judge's
2 copy of that. And I have reviewed the judgment and
3 sentence that Judge Nichols signed as well as your
4 statement on plea of guilty at the time you entered
5 your plea. And the judgment and sentence so states
6 what the maximum punishment is for, each of the counts.

7 To the extent that the Department of Corrections
8 is taking the position that you were sentenced to 416
9 months for the assault in the second degree count,
10 that's not correct and they cannot interpret it that
11 way. That was not the intention of the court. The
12 court ordered that you serve 416 months for Count I,
13 and failed to state the specific sentence for Counts
14 II, III and IV, the assault in the second degree. And
15 the range on that was for --

16 MR. MCEACHRAN: Thirty-three to forty-three
17 months.

18 THE COURT: Thirty-three to forty-three months for
19 each of those counts. The time that you got on each of
20 these counts was to be served concurrently. And this
21 court should correct the judgment and sentence to
22 reflect the appropriate sentence for those three
23 counts.

24 At this point in time I do not know specifically
25 whether Judge Nichols intended to sentence you to the

1 43 months or the 33 months for Counts II, III and IV.
2 I do know that he sentenced you to 416 months for Count
3 I. And in either event at this point in time since
4 these sentences ran currently you have served the time
5 on the Assault 2 convictions. And since it doesn't
6 make any difference, this court will presume leniency
7 as far as I'm concerned and I'm going to order that the
8 judgment and sentence be corrected to reflect that you
9 are sentenced to 416 months for Count I and 33 months
10 for each of the Counts II, III and IV. And that those
11 sentences are to run concurrently.

12 MR. MCEACHRAN: I have a judgment and sentence,
13 Your Honor, that does reflect that; I will present that
14 to the court.

15 THE INTERPRETER: There's something I do not
16 understand.

17 THE COURT: Uh-huh?

18 THE INTERPRETER: So the 416 months will be the
19 total all the charges put together?

20 THE COURT: No. No. The sentence is 416 months
21 on Count I which is what Judge Nichols ordered. He
22 failed to specify what his sentence was on Counts II,
23 III and IV. So I'm reducing -- to the extent that the
24 judgment and sentence indicates that it could be
25 interpreted you were sentenced to 416 months on each