

NO. 74195-1-I

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

In re the Personal Restraint Petition Of:

JESSE WHITE,

Petitioner.

FILED
May 27, 2016
Court of Appeals
Division I
State of Washington

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

The Honorable Marybeth Dingley, Judge

BRIEF OF PETITIONER

KEVIN A. MARCH
Attorney for Petitioner

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A. STATEMENT OF THE ISSUES

1. Under RCW 10.01.160(4) and RCW 10.73.160(4), is White**Error! Bookmark not defined.** entitled to move for remission of legal financial obligations (LFOs) at any time?

2. Did the trial court err in applying CrR 7.8(c)(2) to White's LFO remission motion and in concluding White's motion to terminate LFOs was time barred under RCW 10.73.090?

3. Did the trial court err in failing to consider White's timely and proper remission motion on the merits, and is remand necessary so that it may do so?

4. Although the Washington Supreme Court's decision in State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), overcomes the RCW 10.73.100(6) time bar because it is a significant change in the law and although Blazina also applies retroactively collateral review, this court need not reach these issues in this case.

B. STATEMENT OF THE CASE

In February 2011, Jesse Marion White was sentenced for harassment, unlawful possession of a firearm, reckless endangerment, and two counts of second degree assault. Appendix¹ (App.) 1, 5. In the judgments and

¹ This brief attaches one appendix that contains consecutive pagination written in marker in the lower right corner of each of the appendix's pages.

sentences, the trial court waived all nonmandatory LFOs, imposing only the \$500 victim penalty assessment and \$100 biological sample fee. App. 11. The trial court also ordered White to pay the costs of services to collect unpaid legal financial obligations and ordered that the LFOs would bear interest from the date of judgment until payment in full. App. 11.

White appealed and this court affirmed. State v. White, noted at 170 Wn. App. 1011, 2012 WL 3568580 (2012), review denied, 176 Wn.2d 1030, 299 P.3d 20 (2013). The State filed a cost bill seeking \$12,249.38 in appellate costs against White, which this court imposed. App. 18, 27-28. White also unsuccessfully sought collateral review, after which the State sought \$452 in additional costs. App. 25-26.

On September 1, 2015, White filed a pro se motion to terminate legal financial obligations. App. 19-22. Based on a June 19, 2015 LFO account summary attached to his declaration, White owed a total of \$16,096 in LFOs, consisting of \$12,949.38 imposed in trial court and appellate costs and \$3,382.05 in interest, less \$235.43 paid from White's prison wages. App. 24. White requested complete termination of his outstanding LFOs, and alternatively requested resentencing or an order suspending all legal financial obligations. App. 22.

In his accompanying affidavit, White asserted that he does not "have the ability to pay the LFOs now or in the future" and cannot "even pay the

interest that is accruing at an unattainable rate.” App. 23. White indicated the LFOs impose an undue burden on him and his family. App. 23.

The State responded to White’s motion by claiming it was an untimely motion for relief from judgment under CrR 7.8 and should thus be transferred to the Court of Appeals for consideration as a personal restraint petition. App. 34-38.

White filed a reply brief arguing, among other things, that RCW 10.01.160 and RCW 10.73.160 permitted him to move for remission of his LFOs at any time. App. 40-44. Thus, White asserted his motion was timely, the LFOs were imposing manifest hardship on him and his family, and that the trial court should grant him the relief he requested. App. 40-44.

The trial court treated White’s remission motion as a time barred CrR 7.8 motion and transferred it to this court as a personal restraint petition. App. 46-47.

In March 2016, the Acting Chief Judge appointed Nielsen, Broman & Koch, PLLC and referred the personal restraint petition to a panel of judges for determination on the merits. App. 48-49. It appeared to the Acting Chief Judge that White’s argument that the Blazina decision overcomes RCW 10.73.100(6)’s time bar was not frivolous. App. 48.

According to a Department of Corrections LFO withdrawal acknowledgment, as of March 31, 2016 White carried an outstanding LFO balance of \$17,353.28. App. 50. This balance continues to accrue interest.

C. ARGUMENT

1. MOTIONS TO REMIT LFOs ARE ALWAYS TIMELY, THEY ARE NOT CrR 7.8 MOTIONS, AND REMAND IS NECESSARY SO THAT THE TRIAL COURT CAN DETERMINE WHETHER THE ENORMOUS AMOUNT OF OUTSTANDING LFOs IMPOSE MANIFEST HARDSHIP ON WHITE AND HIS FAMILY

The trial court erred in transferring this matter to the Court of Appeals as a personal restraint petition under CrR 7.8. CrR 7.8 does not control; the LFO remissions statutes—RCW 10.01.160 and RCW 10.73.160—do. Under these statutes, a defendant sentenced to pay LFOs (including appellate costs) may petition for remission or reduction of the LFOs at any time. Accordingly, this court should remand for a hearing on White's timely motion to remit his LFOs so that the trial court can determine whether the LFOs impose manifest hardship on White and his family.

- a. Washington's LFO statutes permit the filing of petitions to remit LFOs at any time for manifest hardship

RCW 10.01.160(4) provides,

A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the

amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.¹²¹

(Emphasis added.) RCW 10.01.160(4)'s appellate cost analogue, RCW 10.73.160(4), is nearly identical:

A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(Emphasis added.) These statutes are crystal clear: if LFOs are imposed on a defendant, that defendant may move for remission of the LFOs at any time.

White moved for remission of his LFOs on September 1, 2015. App. 19 (showing filing date). September 1, 2015 surely falls under the "at any time" language of RCW 10.01.160(4) and RCW 10.73.160(4).

The trial court was mistaken when it applied CrR 7.8(c)(2) and concluded White's remission motion was time barred by RCW 10.73.090. CrR 7.8 does not apply in this circumstance; RCW 10.01.160 and RCW 10.73.160 apply. Under RCW 10.01.160 and RCW 10.73.160, motions to remit LFOs are always timely.

² RCW 10.01.170 allows the court to set a time period or specify installments for LFO payments.

Furthermore, a remission motion “does not alter or amend the judgment but rather changes the requirement of payment based on a present showing that payment would impose manifest hardship.” State v. Smits, 152 Wn. App. 514, 524, 216 P.3d 1097 (2009). Although Smits involved the appealability of an order denying remission, its reasoning illustrates that an LFO remission motion is not a CrR 7.8 motion for relief from judgment but a motion requesting LFOs be terminated or reduced based on manifest hardship. This court should remand for consideration of White’s timely and proper remission motion on the merits.

b. The trial court was required to consider White’s remission motion on the merits

Because defendants may move for remission at any time, it follows that they must be given some process on the subject of remission when they so move. The second sentences of each of the remission statutes read, “If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant’s immediate family, the court may remit all or part of the amount due in costs” RCW 10.01.160(4); RCW 10.73.160(4).³ Without some fact finding process, no court could satisfy itself that payment will or will not impose a manifest hardship. In other words, no manifest hardship determination can

³ RCW 10.73.160(4) refers to the “sentencing court” rather than just the “court.”

be made unless and until the moving party is able to present evidence and arguments to the trial court demonstrating why the LFOs cause manifest hardship. A basic, commonsense reading of RCW 10.01.160(4) and RCW 10.01.173(4) requires a hearing on the issue of manifest hardship.

Washington courts interpreting the remissions statutes have recognized that the actual merits of a remission petition must be considered. In Smits, 152 Wn. App. at 524, the court held an order denying a RCW 10.01.160(4) remission motion was not appealable because, in its view, orders denying remission are neither final judgments nor amendments to judgments under RAP 2.2(a)(1) or (9). This was so, according to the court, because the plain language of the statute makes the “amount imposed [in LFOs] . . . always subject to modification.” Smits, 152 Wn. App. at 524. The court explained,

A decision to grant or deny a motion to remit LFOs is a determination of whether the defendant should be required to pay based on the conditions as they exist when the request is made. It does not alter or amend the judgment but rather changes the requirement of payment based on a present showing that payment would impose manifest hardship.

Id. (emphasis added) (footnote omitted). Under Smits, a trial court must actually consider the issue of manifest hardship based on the defendant’s present circumstances. Indeed, that is precisely what the trial court did in Smits: “The court held a hearing and entered separate orders denying the

‘Defendant’s Motion to terminate Legal Financial Obligations.’” Id. at 518 (emphasis added). White, like Smits, is entitled to a hearing on his motion to terminate LFOs.

Similarly, in State v. Mahone, 98 Wn. App. 342, 346, 989 P.2d 583 (1999), “the [trial] court determined Mahone did not show how payment would constitute a manifest hardship.” This demonstrates that the trial court in Mahone actually did what RCW 10.01.160 and RCW 10.73.160 instruct: it considered whether the imposed LFOs would cause manifest hardship and determined they would not. Malone also supports White’s claim that the trial court must consider LFO remission motions on their merits.

The Court of Appeals has also indicated that fact finding on the issue of manifest hardship is particularly warranted in indigent cases. In State v. Campbell, 84 Wn. App. 596, 600, 929 P.2d 1175 (1997), the court stated that “additional fact finding from the bench is probably warranted in low income cases like this.” The court was somewhat incredulous toward the trial court for determining Campbell could pay any amount of LFOs, stating, “Although it is difficult to comprehend how a person supporting himself and a child on \$700 per month would have *any* disposable income, Campbell indicated that he did, so we uphold the trial court’s finding.” Id. Therefore, “under these facts,” “the trial court did not abuse its discretion by denying” Campbell’s motion. Id. at 600-01. However, Campbell’s marked

reservations in the context of indigent cases call for enhanced judicial scrutiny of an indigent person's ability to pay LFOs when the indigent person moves for remission based on manifest hardship.

An adequate remissions process also goes beyond mere legislative grace—it is necessary to the constitutionality of the LFO system as a whole. In Fuller v. Oregon, 417 U.S. 40, 47-48, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974), the Court rejected Fuller's equal protection challenge because Oregon's statute, like Washington's, provided a remissions process. "The convicted person from whom recoupment is sought thus retains all the exemptions accorded to other judgment debtors, in addition to the opportunity to show at any time that recovery of the costs his legal defense will impose 'manifest hardship[.]'" Id. at 47 (emphasis added). Because Oregon's statute permitted remission at any time, it was "free of the kind of discrimination" that violates the equal protection clause. Id. at 47-48.

Other federal courts have interpreted Fuller as requiring examination of a defendant's financial circumstances whenever the issue of hardship arises. See Alexander v. Johnson, 742 F.2d 117, 124 (4th Cir. 1984) (holding that, under Fuller, courts must give defendant notice and opportunity to be heard on the issue of repayment of counsel fees and "the entity deciding whether to require payment must take cognizance of the individual's resources, the other demands on his own and family's finances,

and the hardships he or his family will endure if repayment is required”); Olson v. James, 603 F.2d 150, 155 (10th Cir. 1979) (gleaning Fuller’s constitutional requirements to mean a person “ought at any time to be able to petition the sentencing court for remission of the payment of costs or any unpaid portion thereof. The court should have the power to issue remittitur if payment will impose manifest hardship on the defendant or his immediate family”).

Washington courts have also recognized that a meaningful remissions process is a constitutional requirement, beginning with State v. Barklind, 87 Wn.2d 814, 817, 577 P.2d 314 (1977). There, the court recited what is constitutionally required under Fuller:

[A] convicted person under obligation to repay may petition the court for remission of the payment of costs or of any unpaid portion thereof. The trial court order specifically allows the defendant to petition the court to adjust the amount of any installment or the total amount due to fit his changing financial situation.

Barklind, 87 Wn.2d at 817. In State v. Curry, 118 Wn.2d 911, 915, 829 P.2d 166 (1992), likewise, the court listed one of the seven requirements that “must be met” for Washington’s LFO scheme to be constitutional: “The convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion.” RCW 10.01.160 was constitutional because the “court is directed to consider ability to pay, and a mechanism is

provided for a defendant who is ultimately unable to pay to have his or her sentence modified.” Curry, 118 Wn.2d at 916.

In State v. Blank, 131 Wn.2d 230, 244, 930 P.2d 1213 (1997), the Washington Supreme Court upheld the constitutionality of the appellate cost scheme under RCW 10.73.160, because it “allows for a defendant to petition for remission at any time.” The court noted that an obligation to pay “without opportunity for a hearing in which the defendant may dispute the amount assessed or the ability to repay, and which lacks any procedure to request a court for remission of payment violates due process.” Blank, 131 Wn.2d at 244.

More recently, in Utter v. Department of Social and Health Services, 140 Wn. App. 293, 303-04, 165 P.3d 399 (2008), the court “delineated the salient features of a constitutionally permissible costs and fees structure” to include a requirement that the “convicted person must be permitted to petition the court for remission of the payment of costs or any unpaid portion”

The constitutional lesson of these cases and the plain language of RCW 10.01.160(4) and RCW 10.73.160(4) is that defendants must be given a fair hearing on the subject of their LFO remission motions so that trial courts can make a manifest hardship determination based on the facts. When faced with a remission motion, the trial court must ask the right question—

do outstanding LFOs impose manifest hardship? The trial court failed to do so here. This court should remand so that White's remission motion may be considered on the merits.

2. BLAZINA CONSTITUTES A SIGNIFICANT CHANGE IN THE LAW UNDER RCW 10.73.100(6) AND APPLIES RETROACTIVELY ON COLLATERAL REVIEW

The order appointing counsel and referring this petition to a panel of judges stated, "White contends that his motion is exempt from the time-bar because Blazina constitutes a significant change in the law for purposes of RCW 10.73.100(6)" and determined, "it appears that White's petition raises an issue that is not frivolous." App. 48. White agrees. Blazina not only constitutes a significant change in the law under RCW 10.73.100(6), but also applies retroactively on collateral review.⁴

However, this issue is not yet ripe for review in White's case because the trial court failed to consider the merits of White's remission motion and erroneously transferred it to this court as a personal restraint petition. See Part 1 supra. In the event the State responds by arguing White's remission motion is time barred, White will address this issue more fully in the reply brief.

⁴ Undersigned counsel has briefed these arguments in another case, and the briefing is available for the State's full and fair review. See Br. in Support of Pers. Restraint Petition at 18-23, In re Pers. Restraint of Dove, No. 47796-3-II, available at <https://www.courts.wa.gov/content/Briefs/A02/477963-Personal%20Restraint%20Petition%20Brief.pdf> (last accessed May 26, 2016).

3. ANY REQUEST BY THE STATE FOR APPELLATE COSTS SHOULD BE DENIED

White should prevail by obtaining remand so that the trial court can consider White's remission motion on the merits. In the event he does not, however, this court should deny any request by the State for appellate costs.

This court indisputably has discretion to deny appellate costs. RCW 10.73.160(1) ("The court of appeals . . . may require an adult offender convicted of an offense to pay appellate costs." (emphasis added)); State v. Sinclair, 192 Wn. App. 380, 388, 367 P.3d 612 (2016) (holding RCW 10.73.160 "vests the appellate court with discretion to deny or approve a request for an award of costs").

White has already alleged that his outstanding LFOs, which currently exceed \$17,000, impose manifest hardship on him and his family. Compounding interest is accruing faster on this amount than White's limited payments made from prison wages. See App. 23. As White asserted in his reply brief below:

Over the last five years and five months, the defendant has been able to pay a total of \$238.30 towards these LFOs. That averages out to \$43.29 a year. The interest on the defendant's fine this year will be approximately \$2,000.00. That amount is over 47 times the amount that the defendant has proven able to pay each year; and that is just the interest. The princip[al] is over 380 times the amount that the defendant has proven that he is able to pay each year. At

this rate of growth, the defendant will owe between \$26,000 and \$29,000 upon his release from prison

App. 41-42.

Imposing appellate costs now in the event White does not substantially prevail would only add to the astonishing financial burden White already faces. This court recently recognized that carrying an obligation to pay thousands of dollars in appellate cost plus accumulated interest “can be quite a millstone around the neck of an indigent offender.” Sinclair, 192 Wn. App. at 391. White currently owes significantly more in LFOs than Sinclair would have had this court imposed appellate costs against Sinclair. Compare App. 50 (outstanding balance of \$17,353.28) with Sinclair, 192 Wn. App. at 386 (cost bill requesting \$6,923.21). This court should not place White in a worse financial position for attempting to remit his outstanding LFOs on the basis of manifest hardship. Instead, this court should exercise discretion and deny any request by the State for appellate costs.

D. CONCLUSION

The trial court erred in transferring White's timely and proper LFO remission motion to this court for consideration as a personal restraint petition under CrR 7.8. White asks that this court remand his motion to terminate LFOs to Snohomish County Superior Court for a determination on the merits.

DATED this 27th day of May, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

KEVIN A. MARCH
WSBA No. 45397
Office ID No. 91051

Attorneys for Petitioner

APPENDIX

FILED

2011 FEB 11 PM 3:49

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL14632804

INELIGIBLE TO CARRY FIREARMS

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

No. 10-1-00690-1

v.

JUDGMENT & SENTENCE (As to Count V only)
(Gross Misdemeanor)

WHITE, JESSE MARION

Defendant.

Aliases:

The above-named defendant was found guilty on December 10, 2010 by jury verdict of:

Count V: Reckless Endangerment (DV), RCW 9A.36.050 and 10.99.020, Date of Crime: 04/12/2010

IT IS ADJUDGED that the defendant is guilty of the above crime(s) and that the defendant be sentenced to imprisonment in the Snohomish County Jail for a maximum term of 365 days on Count No. V.

IT IS ORDERED that the execution of 0 days of this sentence is () deferred
 suspended upon the following conditions:

1. The defendant shall commence serving the portion of the sentence not suspended or deferred
 immediately () no later than the _____ day of _____, 20____,
at _____ .m.

(a) The defendant shall receive credit for Time days served.

(b) () If eligible, and subject to the rules and regulations of the program, the defendant may participate in the () work release program
() home detention program.

Count IV shall run consecutive to Counts I-III and shall

2. () The defendant shall report to the Department of Corrections and shall be under the charge of a community corrections officer designated by that department and follow implicitly the instructions of that department and rules and regulations promulgated by the department during the term of probation.

be served first.

→ first to Count IV.

Credit for time served in Snohomish County Jail shall be applied

0555-00-SCSO
DPA Stmt X/N
CC Jail
CC SCSO
Clerk
CC PA

unable to enter
not enough info

3. The termination of probation shall be set at 24 months from the date of this order; however, the court shall have the authority at any time prior to the entry of an order terminating probation to revoke, modify, or change the terms and conditions of this sentence and to extend the period of probation. Probation is tolled during any time the defendant is in custody.
4. () The defendant shall not commit any law violations.
5. () The defendant shall enter and successfully complete any () inpatient () outpatient treatment and therapy programs as directed by the defendant's community corrections officer.
6. The defendant shall pay to the clerk of this court: *See J+S c.s. to [redacted] as established by*
 (a) () \$ _____ court costs, plus any costs determined after this date *Counts I - IV for L.F.O.s*
 separate order of this court;
 (b) () Victim assessment;
 \$100.00 Prior to June 6, 1996.
 \$500.00 on or after June 6, 1996.
 (c) \$ TBD total amount restitution (with credit for amounts paid by co-defendants).
 The amount and recipient(s) of the restitution are as established by separate order of this court;
 (d) () \$667/727 recoupment for attorney's fees;
 (e) () \$ _____ fine;
 (f) () \$ _____ Dept. Drug enforcement fund;
 (g) () \$125.00 Washington State Toxicology Laboratory Fee. [] All or part suspended due to inability to pay. RCW 46.61.5054(1).
 (h) () \$ _____ Domestic Violence Penalty (Post 6/4/04--\$100 maximum) RCW 10.99.080
7. The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms:
 () not less than \$ _____ per month,
 () on a schedule established by the defendant's community corrections officer, to be paid within _____ months of () this date () release from confinement.
8. The defendant shall be prohibited from having any contact, directly or indirectly, with N.W. (dob: 07/16/2007) for a period of 2 years.
9. () The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish County Health District in conducting a test for the presence of human immuno-deficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, Washington, within one hour of this order to arrange for the test.
10. If this is a crime enumerated in RCW 9.41.040 which makes you ineligible to possess a firearm, you must surrender any concealed pistol license at this time, if you have not already done so. (Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court).
11. The crime charged in Count II involves Domestic Violence.

ORDER OF COMMITMENT

FILED

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SONYA KRASKI
COUNTY CLERK
SNOHOMISH COUNTY, WA

THE STATE OF WASHINGTON to the Department of Corrections of the County of Snohomish, State of Washington:

WHEREAS, JESSE MARION WHITE, has been convicted of the crime(s) of Count VSR Reckless Endangerment (DV) and judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of Judgment and Sentence, Now, Therefore,

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize the release of the defendant to a Work/Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS, the Honorable RONALD L. CASTLEBERRY, Judge of Snohomish County Superior Court, and the seal thereof, this 6th day of Jan, 2011.

Sonya Kraski
Clerk of the Superior Court

By: B. M. Douglas
Deputy Clerk

FILED

2011 FEB 11 PM 3:49

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



INELIGIBLE TO CARRY FIREARMS

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

No. 10-1-00690-1

Plaintiff,

JUDGMENT AND SENTENCE (As to Counts I, II, III, and IV)

v.

Prison

WHITE, JESSE MARION

Jail One Year or Less

First Time Offender

Defendant.

Special Drug Offender Sentencing Alternative

Clerk's action required, firearm rights
revoked, ¶ 5.5

SID: WA25176297

Clerk's action required, ¶¶ 2.1, 4.1, 4.3, 4.5, 5.2, 5.3

If no SID, use DOB:

Clerk's action required, ¶ 5.6 (use of motor vehicle)

Restitution Hearing set, ¶ 4.3

I. HEARING

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

II. FINDINGS

2.1 CURRENT OFFENSE(S). The defendant was found guilty on December 10, 2010 by jury-verdict of:

COUNT	CRIME	RCW	CLASS	INCIDENT #	DATE OF CRIME
I	Second Degree Assault (DV) (Firearm Allegation)	9A.36.021(2)(a), 10.99.020, 9.94A.535(3)(h), 9.94A.533(3), 9.41.010, and 9.94A.825	B	SSO 1006596	04/12/2010
II	Second Degree Assault (DV) (Firearm Allegation)	9A.36.021(2)(a), 10.99.020, 9.94A.535(3)(h), 9.94A.533(3), 9.41.010, and 9.94A.825	B		04/12/2010
III	Harassment (DV)	9A.46.020(2)(b), 10.99.020, and 9.94A.535(3)(h)	C		04/12/2010
IV	Unlawful Possession of Firearm in the	9.41.040(2)	C		04/12/2010

as charged in the Amended Information.

CC-SCSO
CC Jail
CC PA
CC Clerk
CC SCSO
DPA Stmt Y N

Unlawful Possession

5 91 3

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

- See ¶ 4.1 regarding findings in relation to Drug Offender or Parenting Sentencing Alternative.
- The defendant used a firearm in the commission of the offense(s) in Counts I and II. RCW 9.94A.602, 9.41.010, 9.94A.533.
- The defendant used a deadly weapon other than a firearm in the commission of the offense(s) in Count(s) _____ . RCW 9.94A.602, 9.94A.533.
- The defendant committed the offense in Count(s) _____ with sexual motivation. RCW 9.94A.835.
- Count(s) _____ Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public transit stop shelter; or in or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count(s) _____ . RCW 9.94A.605, 69.50.401, 69.50.440.
- Count(s) _____ is (are) a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count(s) _____ is (are) the crime of unlawful possession of a firearm and the defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.____.
- The defendant committed vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count(s) _____ involve(s) attempting to elude a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- Count(s) _____ is (are) a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.
- The defendant has a chemical dependency that has contributed to the offense(s) in Count(s) _____ . RCW 9.94A.607.
- The crime charged in Counts I, II and III involve(s) domestic violence. RCW 10.99.020.
- The offense in Count(s) _____ was (were) committed in a county jail or state correctional facility. RCW 9.94A.533(5).
- Count(s) _____ involve(s) kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- Count(s) _____ and _____ merge. (See ¶ 3.2 for dismissal of specific count.)

- Counts I and II encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

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

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J (Adult or Juvenile)	TYPE OF CRIME
1	*First Degree Forgery (5 counts)	02/01/2000	Washington County, OR	A	C
2	*Bribe Giving	02/01/2000	Washington County, OR	A	C
3	*First Degree Forgery	03/31/2000	Clackamas County, OR	A	C
4	*First Degree Criminal Mischief	04/14/2000	Clackamas County, OR	A	C

- The defendant committed Count(s) _____ while on community custody (adds one point to score). RCW 9.94A.525.
- The court finds the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA.

COUNT NO.	OFFENDER SCORE	SRA LEVEL	STANDARD RANGE (not including enhancements)	*PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	IV ✓	12+-14 months ✓	36 months (F)	48-50 months	10 years ✓
II	2	IV ✓	12+-14 months ✓	36 months (F)	48-50 months	10 years ✓
III	2	III ✓	4-12 months ✓		4-12 months	5 years ✓
IV	2	III ✓	4-12 months ✓		4-12 months	5 years

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile Present, (CSG) Criminal Street Gang Involving Minor, (AE) Endangerment While Attempting to Elude.

⊗ Firearm enhancements must run consecutive to each other + all other time imposed.

- 2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above below the standard range for Count(s) _____ or within the standard range for Count(s) _____ but served consecutively to Count(s) _____.

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

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory. Findings of fact and conclusions of law are attached in Appendix 2.4. The jury's interrogatory is attached. The prosecuting attorney did did not recommend a similar sentence.

↓ Special Verdict Form 1E, 2E, 3D

Aggravating factor as set forth in RCW 9.94A.535(3)(h) as to Count I, II, and III.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753(5));

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

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

14 + 36 + 22 months on Count I	12 months on Count IV
14 + 36 + 22 months on Count II	12 months on Count V - consecutive to Counts I-IV
12 + 22 months on Count III	_____ months on Count VI

Terms on each count to run:

concurrently with or consecutively to each other

concurrently with or consecutively to the terms imposed in Cause No(s). _____

* The standard ranges to run concurrent on Counts I-III for a total of 14 months as to the standard range.

* The firearm enhancements run consecutive to each other + to all other confinement. Total firearm enhancement as to Count I + II is $36 + 36 = 72$ months.

* State is recommending ^{additional} 22 month exceptional sentence above standard range for Counts I, II, III to run concurrent to each other but consecutive to firearm enhancement.

Total recommendation for time to be served is as follows:

I + II - 14 months (counts I + II) + 36 months + 36 months + 22 months = 108 months

III - 12 months + 22 months = 34 months - concurrent to I + II + IV

IV - 12 months - concurrent to I, II, + III.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the counts and charges listed in Paragraph 2.1.
- 3.2 The court DISMISSES Count(s) _____
- 3.3 The defendant was found NOT GUILTY of Count(s) _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

CONFINEMENT. RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

$14 + 36 + 12$ months on Count I 12 months on Count IV
 $14 + 36 + 12$ months on Count II 12 months on Count V - separate J+S
12 months on Count III months on Count VI

The confinement time on Count(s) I + II includes 36 + 36 = 72 months as enhancement for Firearm Deadly Weapon VUCSA in a Protected Zone Manufacture of Methamphetamine with Juvenile Present other _____

Actual term of total confinement ordered is 14 + 36 + 36 + 12 = 98 months.

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

Count II shall run consecutive to Counts I-IV
Defendant shall complete sentence as to Count II first.
 The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

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

Credit shall be given first against Count II first for time served at the Snohomish County Jail.

WORK ETHIC PROGRAM. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in ¶ 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement.

Counts I-IV shall run concurrent except as to firearm enhancements which shall run consecutive and to all other time imposed. Count II

Time imposed on Count I+II are as follows: 14 months - Standard Range, 36 months - firearm enhanc., 12 months - exceptional sent.

4.2

COMMUNITY CUSTODY. RCW 9.94A.701. The defendant shall serve the following term of community custody (12 months for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate; 18 months for violent offenses; and 36 months for serious violent offenses):

Count I for a period of <u>18</u> months	Count IV for a period of _____ months
Count II for a period of _____ months	Count V for a period of _____ months
Count III for a period of _____ months	Count VI for a period of _____ months

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

The defendant shall report to DOC, 8625 Evergreen Way, Suite 100, Everett, Washington 98208 not later than 72 hours after release from custody.

While on community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) notify DOC of any change in the defendant's address or employment; (4) not consume or possess controlled substances except pursuant to lawfully issued prescriptions; (5) not own, use, or possess firearms or ammunition; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with orders of the court as required by DOC; and (8) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The residence location and living arrangements are subject to the prior approval of DOC while on community custody.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with Raina Stevens. See ¶ 4.5.
See also J+S for Count II regarding no contact with N.W.
- The defendant shall remain within outside of a specific geographical boundary, to wit:

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

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

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

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

PVC	<input checked="" type="checkbox"/> \$500	Victim assessment	RCW 7.68.035
CRC	\$ _____ <input checked="" type="checkbox"/> waived	Court costs, including	RCW 9.94A.030, .505; 10.01.160
		Criminal filing fee \$ _____	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SPW/SRF
		Jury demand fee \$ _____	JFR
		Other \$ _____	RCW 10.46.190
PUB	<input type="checkbox"/> \$962 <input checked="" type="checkbox"/> waived	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other costs	RCW 9.94A.760
FCM	<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDV	\$ _____	Drug enforcement fund of \$ _____	RCW 9.94A.760
FCD/NTF/SAD/SDI	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
CLF	<input type="checkbox"/> \$100	Extradition costs	RCW 9.94A.505
EXT	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide, DUI only, \$1000 maximum)	RCW 38.52.430
RTN/RJN	\$ _____	Biological Sample Fee	RCW 43.43.7541
	<input checked="" type="checkbox"/> \$100	(for offenses committed after 07-01-2002)	
	\$100 <input checked="" type="checkbox"/> waived	Domestic Violence Penalty (for offenses committed after 06-04-2004 - maximum \$100)	RCW 10.99.080
PDV	\$ _____	Other costs for: _____	
	\$ <u>600.00</u>	TOTAL	RCW 9.94A.760

RESTITUTION. The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753.

A restitution hearing shall be set for _____
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
 Defendant waives any right to a restitution hearing within 6 months. RCW 9.94A.750.

A separate Restitution Order is being entered contemporaneously with this Judgment and Sentence.

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here of not less than:

\$ 25.00 per month commencing 60 days after release. RCW 9.94A.760.

All payments shall be made within 120 months of release of confinement; entry of judgment; other _____.

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

In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at \$100.00 per day (not to exceed \$100 per day) unless another rate is specified here _____ RCW 9.94A.760(2).

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

11

- 4.4 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.
- HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 3020 Rucker, Suite 206, Everett, Washington 98201 within one (1) business day of entry of this order to arrange for the test. RCW 70.24.340.

4.5 **NO CONTACT.**

The defendant shall not have contact with Raina Stevens (DOB 5/23/79)
 _____ (name, DOB)

including, but not limited to, personal, verbal, telephonic, written or contact through a third party until January 6, 2021 (date) (not to exceed the maximum statutory sentence). EVEN IF THE PERSON WHO THIS ORDER PROTECTS INVITES OR ALLOWS CONTACT, YOU CAN BE ARRESTED AND PROSECUTED. ONLY THE COURT CAN CHANGE THIS ORDER. YOU HAVE THE SOLE RESPONSIBILITY TO AVOID OR REFRAIN FROM VIOLATING THIS ORDER.

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

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

4.6 **OTHER.** _____

4.7 **OFF-LIMITS ORDER.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Unless otherwise ordered, all conditions of this sentence shall remain in effect notwithstanding any appeal.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender for the 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. RCW 9.94A.753(4); RCW 9.94.A.760 and RCW 9.94A.505(5).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606.
- 5.4 **VIOLATION OF JUDGMENT AND SENTENCE/COMMUNITY CUSTODY VIOLATION.**
(a) Any violation of a condition or requirement of sentence is punishable by up to 60 days confinement for each violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5 **FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. *(The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.)* RCW 9.41.040, 9.41.047.

(Pursuant to RCW 9.41.047(1), the Judge shall read this section to the defendant in open court.)

The defendant is ordered to forfeit any firearm he/she owns or possesses no later than _____ to _____ (name of law enforcement agency). RCW 9.41.098

- 5.6 **MOTOR VEHICLE.** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.7 **CERTIFICATE OF DISCHARGE.**
(a) If you are under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received notice from Department of Corrections and clerk's office that you have completed all requirements of the sentence and satisfied all legal financial obligations. RCW 9.94A.637.

(b) If you are not under the custody and supervision of the Department of Corrections, the court will not issue a Certificate of Discharge until it has received verification from you that you have completed all sentence conditions other than payment of legal financial obligations and the clerk's office that you have satisfied all legal financial obligations.

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

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

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

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

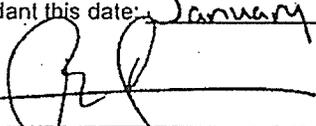
5.9 VOTING RIGHTS STATEMENT. I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

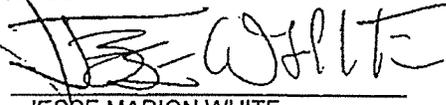
My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

5.10 OTHER. _____

DONE in Open Court and in the presence of the defendant this date: January 6, 2011


 JUDGE
 Print name: **RONALD L. CASTLEBERRY**





JARETT A. GOODKIN
 WSBA 25399
 Deputy Prosecuting Attorney



JULIAN DENES, #37505
 WSBA
 Attorney for Defendant

_____ **JESSE MARION WHITE**
 Defendant

Interpreter signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language. Cause No. of this case: 10-1-00690-1.

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

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

Clerk of said County and State, _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID Number: WA25176297
(If no SID, take fingerprint card for State Patrol)

Date of Birth: 12/07/1977

FBI Number: 938547JB3

Local ID Number: _____

PCN Number: _____

DOC Number: _____

Alias name, SSN, DOB:

Race: White

Ethnicity:

Sex: M

Hispanic

Non-Hispanic

Height: 510

Weight: 160

Hair: Brown

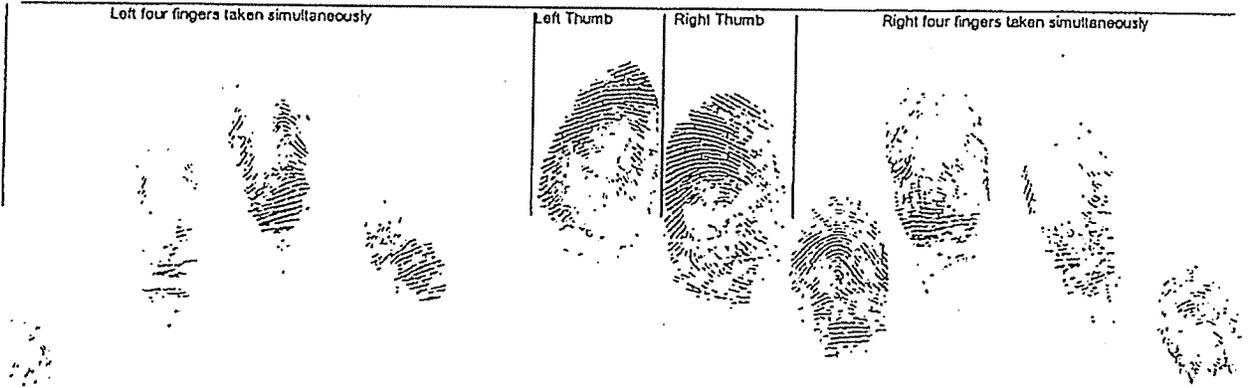
Eyes: Blue

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

Dated: 1-6-11

DEFENDANT'S SIGNATURE: _____

ADDRESS: _____



ORDER OF COMMITMENT

FILED

2011 FEB 17 PM 3:49
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

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

WHEREAS, JESSE MARION WHITE has been duly convicted of the crime(s) of Count 1: First Degree Assault (DV) (Firearm Allegation), Count 2: Second Degree Assault (DV) (Firearm Allegation), Count 3: Harassment (DV), Count 4: Unlawful Possession of a Firearm in the Second Degree, as charged in the Amended Information filed in the Superior Court of the State of Washington, in and for the County of Snohomish, and judgment has been pronounced against him/her that he/she be punished therefore by imprisonment in such correctional institution under the supervision of the Department of Corrections, Division of Prisons, as shall be designated by the Secretary of the Department of Corrections pursuant to RCW 72.02.210, for the term(s) as provided in the judgment which is incorporated by reference, all of which appears of record in this court; a certified copy of said judgment being endorsed hereon and made a part thereof; Now, Therefore,

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

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

WITNESS the Honorable RONALD L. CASTLEBERRY, Judge of the said Superior Court and the seal thereof, this 6th day of Jan., 2011.

Sonya Kraski
CLERK OF THE SUPERIOR COURT

By: B. MacDorquez
Deputy Clerk

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

STATE OF WASHINGTON,)
) No. 66632-1-1
)
 Respondent,)
)
 v.) MANDATE
)
) Snohomish County
 JESSE MARION WHITE,)
) Superior Court No. 10-1-00690-1
)
 Appellant.)
)

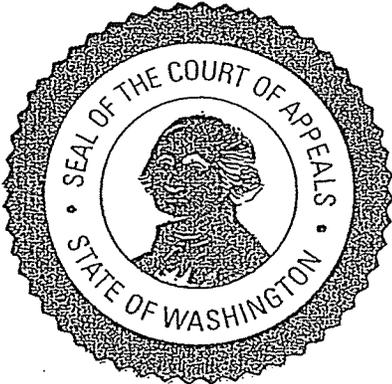
RECEIVED
MAY 03 2013
Nielsen, Broman & Koch, P.L.L.C.

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Snohomish County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on August 20, 2012, became the decision terminating review of this court in the above entitled case on May 3, 2013. An order denying a petition for review was entered in the Supreme Court on April 5, 2013. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

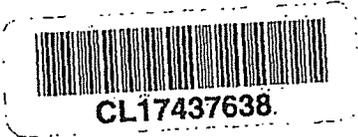
Pursuant to RAP 14.4, costs in the amount of \$12,249.38 are awarded against judgment debtor JESSE MARION WHITE as follows: costs in the amount of \$12,153.26 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE, INDIGENT DEFENSE FUND and costs in the amount of \$96.12 are awarded in favor of judgment creditor SNOHOMISH COUNTY PROSECUTOR'S OFFICE.

c: Andrew Zinner
Jarett Goodkin, John Juhl
Hon. Ronald Castleberry



IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the seal of said Court at Seattle, this 3rd day of
May, 2013.


RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.



FILED

2015 SEP -1 PH 4: 19

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

State of Washington,
Plaintiff,

v.

Jesse White,
Defendant.

CASE NO.: 10-1-00690-1 and
71886-0-I

MOTION TO TERMINATE
LEGAL FINANCIAL OBLIGATIONS

(CLERK'S ACTION REQUIRED)

I. IDENTITY OF MOVING PARTY

- 1.1 COMES NOW THE DEFENDANT, Jesse White, Pro se, and submits this Motion and attached Affidavit requesting this Court to:
- (A) Terminate Legal Financial Obligations (RCW 10.01.160 (3));
 - (B) Remand to Superior Court to make the required individualized inquiry into the defendant's ability to pay. (RCW 10.01.160 (3)); State v. Blazina, 183 Wn.2d 827, 344 P.3d 680 (2015), as an alternative end;
 - (C) Reimburse the defendant for the money taken for the cost of Legal Financial Obligations and Interest Fees (RCW 10.01.160 (3)).

II. RELIEF REQUESTED

2.1 The defendant asks this Court to take action as required in section 1.1 concerning the following Court ordered Legal Financial Obligations imposed under cause number(s):

Case number: 10-1-00690-1 and Case Number: 71886-0-I (SEE APPENDIX)

MOTION TO TERMINATE LFOs

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III. GROUNDS FOR RELIEF

- 3.1 At the time that the Legal Fines were imposed, the Court did not make an individualized inquiry into the defendant's current and future ability to pay.
- 3.2 The boilerplate determination by the Court that the defendant has, or likely will have the future ability to pay the Legal Financial Obligations imposed is not supported by factual findings on the record.
- 3.3 The Court did not consider the defendant's indigent status as defined under General Rule 34.
- 3.4 The Eighth amendment of the United States Constitution, mirrored by Washington State's Constitution, article I § 14, states that: "Excessive bail shall not be required, nor excessive fines imposed..."

IV. ARGUMENT

RCW 10.01.160 (3) states: "The court shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of costs, the court shall take account of the financial resources of the defendant and the nature of the burden the payment of costs will impose." Further, RCW 9.94A.142 (1) states: "The court should take into consideration the total amount of restitution owed, the offender's present, past and future ability to pay, as well as any assets the offender may have." It should be noted that the defendant meets the requirements of indigency under General Rule 34.

In this case, the Court did not adhere to the above statutes, RCW 9.94A.142 (1) and RCW 10.01.160 (3). Even though the defendant's Judgment and Sentence state that the Court did make a finding, the

MOTION TO TERMINATE LFOs

transcripts do not support the boilerplate finding. The Court did not consider the defendant's indigent status, GR 34, nor did they consider the defendant's Constitutional protections under the Eighth amendment, which mirrors Washington State's Constitution against imposing excessive fines.

Because the Court held in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), that RCW 10.01.160 (3) requires that the Court must do more than sign a judgement and sentence with boilerplate language stating that it engaged in the required inquiry, this Court is now obligated to either terminate the defendant's LFOs, or remand to make an individualized inquiry into the defendant's current and future ability to pay.

[I]f the current record ie. transcripts does not reflect that the sentencing judge made the individualized findings, then the Court had no duty to impose Legal Financial Obligations and the Department of Corrections has no authority to extract the "mandatory 20%" for LFOs pursuant to the judgement and sentence, which is now manifest error. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015); SEE *Fuller v. Oregon*, 40 L.Ed.2d 642, 645 (1974). It is well settled; *United States v. Davis*, 117 F.3d 459 (11th Cir. 1997), Such obligations may only be forced upon those who actually become able to pay them, *Id. United States v. Granados*, 962 F.2d 767, 771 (8th Cir. 1992), It is incorrect to impose a fine that the defendant has little chance of paying. *United States v. Walker*, 39 F.3d 489, 493 (4th Cir. 1992); *United States v. Fransisco*, 35 F.3d 116 (4th Cir. 1994), The Court is required to make specific finding regarding factors for imposition of fine because those findings are essential to effective appellate review of fines imposed. Failure to make any findings is grounds for vacation of fine.

MOTION TO TERMINATE LFOs

V. CONCLUSION

Action requested:

Based upon State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), controlling the above argument, the defendant respectfully requests this Court grant the following relief:

- I). Approve the requested action in section 1.1 concerning Legal Financial Obligations; or
- II). Remand for resentencing to assist the Court in developing a factual record to properly assess the defendant's likely present/future ability to pay LFOs; or
- III). Modify the judgement and enter an Order to Suspend all Legal Financial Obligations in the above stated case number(s) and, if applicable, pursuant to State v. Blazina (2015), supra; reimburse defendant with all money, including interest fees taken without authority to pay toward LFOs by Department of Corrections and the Judicial Administration. (SEE APPENDIX)

Respectfully submitted,

Jesse White

Jesse White
Pro se

Signed on this 24th day in August, 2015.

MOTION TO TERMINATE LFOs



IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

State of Washington,
Plaintiff,

v.

Jesse White,
Defendant.

CASE NO.: 10-1-00690-1 and
71886-0-I

AFFIDAVIT IN SUPPORT OF MOTION
TO TERMINATE LEGAL FINANCIAL
Obligations

I, Jesse White, THE DEFENDANT AND ACCUSED involved in this action, on oath state the following:

During my sentencing, and after my appeal, the Judge did not ask me any questions pertaining to my ability to pay the legal financial obligations imposed. Since the time I have been confined, Department of Corrections has been taking money that the Court has imposed upon me to pay, while the Judicial Administration has been collecting interest on the amount imposed. I do not have the ability to pay the LFOs now or in the future, I can not even pay the interest that is accruing at an unattainable rate. The money that has, and is, being taken from me has been an undue burden on me and my family.

In accord with State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015), I now respectfully ask this Court to terminate the legal financial obligations imposed and to reimburse me all the money taken, to date, including interest fees.

Affidavit pursuant to 28 U.S.C. § 1746 and Dickerson v. Wainwright, 626 F.2d 1184 (1980), sworn as true and correct under penalty of perjury has full force of and does not have to be verified by Notary Public.

Dated this 24th day in August, 2015.

Respectfully yours,

Jesse White

Jesse White

FILED
AUG 25 - 1 PM 4:20
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

3:29:35 Friday, June 19, 2015

06/19/15 09:28:30

DG1310MI Case Financial History (CFHS) SNOHOMISH SUPERIOR S31
 Case: 101006901 S1 Csh: Pty: DEF 1 StID: C 25176297
 Name: WHITE, JESSE MARION NmCd: IN 095 45936

----- A C C O U N T I N G S U M M A R Y -----

TOTAL TRUST	:	TOTAL AR	:
Current Bail:	:	AR ORDERED: Fine/Fee:	12,949.38
Bail Payable:	:	Restitution:	
Undisbursed Fnds:	:	TOTAL AR ORDERED:	12,949.38
Other Trust:	:	ADJUSTMENTS: Fine/Fee:	
Trust Balance:	:	Restitution:	
Other Rev Rec:	:	AR ADJUSTMENTS:	
Current Bond:	:	INTEREST: Int Accrued:	3,382.05
Bond Payable:	:	Int Received:	
Disbur to Payees:	:	INTEREST BALANCE:	3,382.05
Bail Forfeit Rec:	:	RECEIVED: Fine/Fee:	235.43
Disp Code:	:	Restitution:	
Last Receipt Date: 06/18/2015	:	TOTAL AR RECEIVED:	235.43
Cln Sts: Time Pay: N	:	BAIL/OTHER APPLIED:	
Joint and Several Case: N	:	BALANCE: Fine/Fee:	16,096.00
Case Fund Investments: N	:	Restitution:	
Obligor AR Rec:	:	TOTAL AR BALANCE:	16,096.00

PF Keys: AR=2 Adj=3 Rec T=4 Rec Dt=5 Disb=6 BndBail T=9 Bnd Dt=10 Bail Dt=11

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

In the matter of the Personal
Restraint of:
JESSE M. WHITE,
Petitioner.

71886-0-1
COST BILL

State of Washington, Respondent, asks that the following costs be awarded:

(1)	Statutory Attorney's Fees	\$ 200.00
(2)	Costs of producing Response To Personal Restraint Petition (126) pages at \$2.00 per page	\$ 252.00
(3)	Reproduction Costs charged by The Court of Appeals for the State's Response to Personal Restraint Petition	\$ -0-
(4)	Cost of Preparing Record	<u>\$ 0.00</u>
	TOTAL	\$ 452.00

The above items are expenses reasonably necessary for review of this matter that were actually incurred by the State in prosecuting the defendant that are allowed as costs by RAP 14.3.

COST BILL - 1

Appellant, JESSE M. WHITE, should be ordered to pay \$452.00 to the Snohomish County Prosecutor's Office.

DATED this 20th day of March, 2015.

John J. Juhl
JOHN J. JUHL, #18951
Deputy Prosecuting Attorney
Attorney for Respondent

I certify that I mailed a copy of the foregoing Cost Bill to:

Jesse M. White, DOC# 347132, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326, this 24th day of March, 2015. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of March, 2015, at the Snohomish County Prosecutor's Office.

Diane K. Kremenich
Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

RECEIVED
AUG 29 2012
Nielsen, Broman & Koch, P.L.L.C.

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

THE STATE OF WASHINGTON,
Respondent,
v.
JESSE M. WHITE,
Appellant.

No. 66632-1-I

COST BILL

State of Washington, Respondent, asks that the following costs be awarded:

(1)	Costs of producing Brief of Respondent (43) pages at \$2.00 per page	\$ 86.00
(2)	Reproduction costs charged by the Court for copying the Brief of Respondent	\$ 10.12
(3)	Cost of preparing the Clerk's Papers	\$ 64.50
(4)	Cost of preparing the transcript	\$ 2,359.48
(5)	Reproduction costs charged by the Court for copying the Brief of Appellant	\$ 29.28
(6)	Cost of Court appointed appellate counsel	<u>\$ 9,700.00</u>
	TOTAL	\$12,249.38

The above items are expenses reasonably necessary for review of this matter that were actually incurred by the State in prosecuting the defendant that are allowed as costs by Rule 14.3 and RCW 10.73.160.

Appellant, JESSE M. WHITE, should be ordered to pay \$96.12 (items 1 and 2) to the Snohomish County Prosecuting Attorney's Office and \$12,153.26 (items 3 through 6) to the Appellate Indigent Defense Fund.

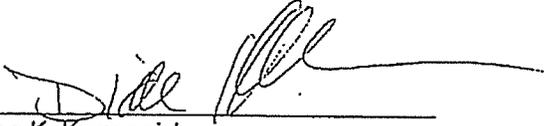
DATED this 28 day of August, 2012.



JOHN J. JUHL, #18951
Deputy Prosecuting Attorney
Attorney for Respondent

I certify that I mailed a copy of the foregoing Cost Bill to: Nielsen, Broman & Koch, 1908 East Madison Street, Seattle, WA 98122, on the 28th day of August, 2012. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28th day of August, 2012, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

1 months.

2 As to counts 3 and 4, I'll sentence the defendant to
3 the high end of 12 months each.

4 As to Count 5, I will sentence the defendant to the 365
5 days.

02:32

6 Counts 1, 2, 3, 4 will run concurrent, with the
7 exception of course of the deadly weapon enhancement,
8 which will run consecutive to each other, and to the
9 enumerated counts.

10 As to Count 5, it will run consecutive to Counts 1, 2,
11 3 and 4.

02:32

12 Obviously, and for purposes of the exceptional
13 sentence, the court had found that the requisite
14 aggravating circumstance is present, to wit: that it was
15 committed in the presence of the minor child.

02:33

16 I will sentence the -- order the defendant to pay the
17 mandatory \$500 victim penalty assessment, the \$100 DNA
18 fee. If there is restitution it will be in an amount to
19 be determined.

20 The requirement for payments will go into effect
21 immediately so that if he obtained funds while they are --
22 while he is in prison, obviously those funds can be
23 confiscated. He will pay in an amount of no less than \$25
24 a month starting 60 days after his release. I will place
25 him on the community custody for the terms that have been

02:33

02:33

08/19/2015 16:18
EVMCKEE

Department of Corrections
CLALLAM BAY CORRECTIONS CENTER
TRUST ACCOUNT STATEMENT

Page 1 Of 4
OTRTASTA
10.2.1.3

DOC#: 0000347132 Name: WHITE, JESSE MARION DOB: 12/07/1977
LOCATION: B01-020-BF08L

ACCOUNT BALANCES Total: 311.98 CURRENT: 281.98 HOLD: 30.00
02/01/2015 08/19/2015

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	10.00	10.00
SAVINGS BALANCE	241.81	244.61
WORK RELEASE SAVINGS	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
POSTAGE ACCOUNT	14.62	27.37
COMM SERV REV FUND ACCOUNT	0.00	0.00

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
CVCS	CRIME VICTIM COMPENSATION/07112000	02152011	UNLIMITED	123.96	0.00
COIS	COST OF INCARCERATION /07112000	02152011	UNLIMITED	485.48	0.00
CVC	CRIME VICTIM COMPENSATION	02152011	UNLIMITED	36.19	0.00
TVD	TV CABLE FEE DEBT	09132014	0.00	0.48	0.00
TVD	TV CABLE FEE DEBT	04092011	0.00	0.50	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20110311	UNLIMITED	238.26	0.00
DEND	DENTAL COPAY DEBT	09012011	0.00	14.64	0.00
COI	COST OF INCARCERATION	02152011	UNLIMITED	0.00	0.00
HYGA	INMATE STORE DEBT	04112011	0.00	8.13	0.00
TVD	TV CABLE FEE DEBT	09102011	0.00	4.49	0.00
EL	ESCORTED LEAVE	06282011	UNLIMITED	0.00	0.00
SPRD	STORES PERSONAL HYGIENE DEBT	06102014	0.00	1.56	0.00
TVD	TV CABLE FEE DEBT	12142013	0.00	1.03	0.00
HYGA	INMATE STORE DEBT	12132011	0.00	55.60	0.00
LMD	LEGAL MAIL DEBT	04132011	0.00	3.32	0.00
HYGA	INMATE STORE DEBT	02182011	0.00	4.81	0.00
COPD	COPY COSTS DEBT	12312014	0.00	11.94	0.00
MEDD	MEDICAL COPAY DEBT	11032014	0.00	7.77	0.00

TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
02/02/2015	CRS	CRS SAL ORD #8116922	(9.94)	0.06
02/06/2015	COPD	COPIES DEBT	1.54	1.60
02/06/2015	COP	COPIES legal	(1.60)	0.00
02/11/2015	OTH	OTHER DEPOSITS 82843	10.00	10.00
02/11/2015	CRS	CRS SAL ORD #8131833	(9.34)	0.66
02/13/2015	OTH	OTHER DEPOSITS 82925	10.00	10.66
02/13/2015	DED	Deductions-LFO-20110311 D D	(0.66)	10.00
02/13/2015	PJ	CLASS 3 GRATUITY JAN 2015	45.36	55.36

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FILED

2015 SEP -4 PM 3:45

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

JESSE WHITE,

Defendant.

No. 10-1-00690-1

RESPONSE TO MOTION TO
TERMINATE LEGAL FINANCIAL
OBLIGATIONS AND STATE'S
MOTION TO TRANSFER
MOTION FOR RELIEF FROM
JUDGMENT

I. MOTION

The State of Washington responds to the defendant's Motion to Terminate Legal Financial Obligations and moves for an order transferring the defendant's Motion to Terminate Legal Financial Obligations to the Court of Appeals for consideration as a personal restraint petition. This motion is based on CrR 7.8(c)(2) and the following memorandum.

II. FACTS

A jury convicted the defendant of Assault in the Second Degree While Armed With a Deadly Weapon, Assault in the Second Degree by Strangulation, Felony Harassment, Reckless Endangerment, and Unlawful Possession of a Firearm. On January 6, 2011, the court sentenced the defendant to 98 months in prison and

Page 1

ORIGINAL

Snohomish County
Prosecuting Attorney - Criminal Division
3000 Rockefeller Ave., MS 504
Everett, Washington 98201-4046
(425) 388-3333 Fax: (425) 388-3572

143

1 imposed only \$700 in legal financial obligations ("LFO's"). Of that amount, only the
2 \$100 fee for services to collect unpaid LFOs was discretionary, while the remainder
3 were mandatory costs attributable to the crime victim penalty assessment and the
4 biological sample fee. Compare RCW 36.18.190 ("may") with RCW 7.68.035 ("shall")
5 and RCW 43.43.7541 ("must").

6 The defendant filed a direct appeal. The Court of Appeals affirmed the
7 convictions and issued a mandate on May 3, 2013. The mandate order also assessed
8 appellate costs against the defendant in a total amount of \$12,249.38, including
9 \$12,153.26 payable to the Washington Office of Public Defense Indigent Defense and
10 \$96.12 payable to the Snohomish County Prosecutor's Office. While in custody the
11 defendant has made payments on his LFO's totaling \$238.26, pursuant to the
12 Department of Corrections garnishing a portion of the wages he earns in prison. The
13 defendant's earliest anticipated release date is May 30, 2018.

14
15 The defendant also filed a personal restraint petition in the Court of Appeals. On
16 March 19, 2015, the Court of Appeals issued an Order Conditionally Dismissing
17 Personal Restraint Petition. The order stated that the personal restraint petition would
18 be dismissed after the Superior Court entered an order nunc pro tunc correcting a
19 clerical error in the judgment and sentence. A hearing is currently scheduled for
20 September 10, 2015, before Judge Marybeth Dingley in order to accomplish that
21 task.¹

22
23 The defendant has now filed a pro se Motion to Terminate Legal Financial
24 Obligations. Based on the arguments and attachments contained in that motion it is
25

26 ¹ The delay between March and September is attributable to the State's invitation to defendant's trial
counsel to explain the situation to the defendant and to help obtain the defendant's signature on the nunc
pro tunc order. This process ultimately resulted in setting a hearing for September 10, 2015.

1 clear that the defendant is seeking modification of appellate costs as well as the
2 original costs imposed by this court. Regarding the costs imposed by this court, he
3 alleges that the court never made an individual inquiry into his present or future ability
4 to pay discretionary costs pursuant to the recently issued opinion in State v Blazina,
5 183 Wn.2d 827, 344 P.3d 680 (2015).

6 III. ISSUE

7 Should this case be transferred to the Court of Appeals for consideration as a
8 personal restraint petition?
9

10 IV. ARGUMENT

11 Motions to modify judgment can be either resolved by this court on the merits or
12 transferred to the Court of Appeals. The standards governing this choice are set out in
13 CrR 7.8(c)(2):

14 The court shall transfer a motion filed by a defendant to the Court of Appeals for
15 consideration as a personal restraint petition unless the court determines that
16 the motion is not barred by RCW 10.73.090 and either (i) the defendant has
17 made a substantial showing that he or she is entitled to relief or (ii) resolution of
18 the motion will require a factual hearing.

19 The provisions of this rule are mandatory. If the requirements for transfer are
20 satisfied, the court may not decide the motion – even if the motion is clearly unfounded.
21 State v. Smith, 144 Wn. App. 860, 184 P.3d 666 (2008).

22 Under this rule, this court should resolve three issues: (1) Is the motion barred
23 by RCW 10.73.090? (2) Has the defendant made a substantial showing that he is
24 entitled to relief? (3) Will resolution of the motion require a factual hearing?

25 **A. THE DEFENDANT'S MOTION IS TIME BARRED.**

26 RCW 10.73.090(1) sets a time limit on motions to vacate judgments and other
forms of "collateral attack." Such a motion must be filed within one year after the

1 judgment becomes final. Since the judgment in the present case was appealed, it
2 became final on May 3, 2013, the day that the appellate mandate was issued. RCW
3 10.73.090(3)(b). The present motion was filed on September 1, 2015. It was filed
4 outside of the one year time limit.

5 **B. THE DEFENDANT HAS NOT MADE A SUBSTANTIAL SHOWING OF**
6 **ENTITLEMENT TO RELIEF.**

7 **1. The Defendant's Motion Is a Motion for Relief from Judgment which**
8 **Should be Considered Under CrR 7.8. If Imposition Of Financial Obligations Was**
9 **An Error Of Law, Such Errors Do Not Provide A Basis for Relief From Judgment.**

10 The defendant's Motion to Terminate Legal Financial Obligations" is a motion for
11 relief from judgment. CrR 7.8 governs motions for relief from judgment. The grounds
12 for vacating a judgment are set out in CrR 7.8(b). The defendant has not identified any
13 of these grounds as a basis for his motion. Instead he has cited RCW 10.01.160(3),
14 and State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). These authorities do not
15 address the circumstances in which a judgment may be vacated.
16

17 The defendant claims "failure to make any findings is grounds for vacation of
18 fine." This is incorrect. "Mistakes of law may not be corrected by a motion for relief
19 from judgment under CrR 7.8(b) but must be challenged on direct appeal." State v.
20 Dorenbos, 113 Wn App. 494, 499, 53 P.3d 52 (2002).
21

22 In Blazina the issue was raised on direct appeal. The court held this is not an
23 issue that can be raised automatically for the first time on appeal. Blazina, 182 Wn.2d
24 at 833. Instead the court chose to consider the issue as a matter of discretion. Id. at
25 835. The court specifically said "this error will not taint sentencing for similar crimes in
26 the future." Id. at 834. It is thus clear that an error under Blazina does not provide

Page 4

Snohomish County
Prosecuting Attorney - Criminal Division
3000 Rockefeller Ave., M/S 504
Everett, Washington 98201-4046
(425) 388-3333 Fax: (425) 388-3572

1 grounds for vacating a sentence on collateral attack.

2 **2. With The Exception Of The Collection Cost, The Financial Obligations In**
3 **The Present Case Do Not Require Any Prior Assessment Of the Defendant's**
4 **Ability To Pay. If The Court Erred In Imposing The Collection Cost It Was**
5 **Harmless.**

6 Even if the issue were properly before the court the defendant would not be
7 entitled to relief. The defendant relies on Blazina to argue all of the legal financial
8 obligations in his case were illegally imposed. There are many different kinds of legal
9 financial obligations. Whether any specific legal financial obligation was validly
10 imposed must be determined by reference to the statute that authorized that particular
11 obligation.

12 **a. Court Costs**

13
14 Blazina only dealt with one kind of legal financial obligation, costs imposed
15 pursuant to RCW 10.01.160. Costs under that statute are those expenses incurred by
16 the state in prosecuting the defendant. RCW 10.01.160(2). Collection costs are
17 appropriately considered a court cost under that statute. Under that statute "the court
18 shall not order a defendant to pay costs unless the defendant is or will be able to pay
19 them." RCW 10.01.160(3). Blazina holds that the word "shall" is mandatory. To
20 comply with the statutory requirement, the court must make "an individualized inquiry
21 into the defendant's current and future ability to pay." Blazina, 182 Wn.2d at 838.

22
23
24 Blazina requires the court to make a record when it considers the defendant's
25 present and future ability to pay costs. Id. Because the defendant challenges the
26 court's action he bears the burden to provide an adequate record to establish error.

1 State v. Barry, 183 Wn. 2d 297, 317, 352 P.3d 161 (2015). The defendant has
2 provided his own factual declaration and a partial transcript of the sentencing hearing,
3 which together appear to confirm that the court did not orally pronounce it's imposition
4 of the \$100 collection cost. But the partial record presented by the defendant does not
5 include his own attorney's presentation of the defendant's financial circumstances,
6 which is a fairly routine part of most presentations by defense counsel at a criminal
7 case sentencing hearing. The incomplete record presented by the defendant is
8 insufficient to confirm his assertion that the court did not consider his financial
9 circumstances when imposing LFOs. On the other hand, the face of the judgment and
10 sentence reflects in boilerplate language that the court did consider the defendant's
11 ability to pay. See sub 91, Judgment and Sentence, ¶ 2.5. Other than the collection
12 cost the court imposed no other discretionary legal financial obligations. Id. at ¶ 4.3.
13
14

15 However, even if the court did not make a finding that the defendant had the
16 present or future ability to pay the \$100 cost then it would have been an error in
17 application of a statute, not a constitutional error. Errors that are not of constitutional
18 magnitude will only be reversed if the defendant demonstrates that the claimed error
19 "constitutes a fundamental defect which inherently results in a complete miscarriage of
20 justice." In re Rice, 118 Wn. 2d 876, 884, 828 P.2d 1086 (1992). Here the defendant
21 demonstrated that he does have the ability to pay the discretionary \$100 collection cost
22 because he has already paid more than twice that amount while serving his sentence.
23 Any error in failing to make a record of the defendant's ability to pay was therefore
24 harmless.
25
26

1 **b. Crime Victim's Assessment**

2 This assessment is required by RCW 7.68.035. This assessment is mandatory
3 and requires no consideration of a defendant's ability to pay. State v. Williams, 65 Wn.
4 App. 456, 460-61, 828 P.2d 1158 (1992).
5

6 **c. Biological Sample Fee**

7
8 This fee is required by RCW 43.43.7541. Like the crime victim's assessment,
9 the biological sample fee requires no consideration of the defendant's ability to pay.
10 State v. Lundy, 176 Wn App. 96, 102-03, 308 P.3d 755 (2013).
11

12 **d. Appellate Costs**

13 These costs were awarded by the Court of Appeals under RCW 10.73.160.
14 This court has no authority to declare an action of the Court of Appeals illegal. In any
15 event, assessment of these costs does not require any determination of ability to pay.
16 State v. Blank, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997). Instead, this court may
17 remit the costs on a showing that payment would impose a manifest hardship. RCW
18 10.73.160(4). Defendant has not made this request.
19
20

21 In short, the reasoning of Blazina does not apply to any of the legal financial
22 obligations imposed in this case. Consequently, the defendant has made no showing
23 that he is entitled to relief.
24

25 **C. THE DEFENDANT IS NOT ENTITLED TO A FACTUAL HEARING.**

26 The only material factual dispute relates to whether the trial court considered the

1 defendant's present or future ability to pay the \$100 collection cost and made a record
2 of that consideration. But even if he is correct that the court failed in this regard, he
3 has demonstrated with his payments that indeed he does have the ability to pay that
4 cost. He has therefore failed to establish a prima facie showing that he is entitled to
5 relief. In re Rice, 118 Wn.2d at 885-86. As to all other obligations, there do not appear
6 to be any material factual disputes. The defendant is not entitled to relief as a matter of
7 law. There is no need for a factual hearing.
8

9
10 **V. CONCLUSION**

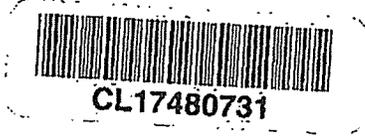
11 This motion is time barred. The defendant has not made a substantial showing
12 of entitlement to relief. There is also no need for a factual hearing. Under CrR
13 7.8(c)(2), the motion should be transferred to the Court of Appeals for consideration as
14 a personal restraint petition.

15 Respectfully submitted on September 4, 2015.
16

17
18 MARK K. ROE
19 Snohomish County Prosecuting Attorney

20
21 By:


22 ANDREW E. ALSDORF, WSBA # 35574
23 Deputy Prosecuting Attorney
24
25
26



FILED

2015 OCT 15 AM 11:34

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

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

State v. Jesse White	vs.	Plaintiff/Petitioner	No. 10-1-00690-1
		Defendant/Respondent	COVER SHEET

ATTACHED HERETO IS:

Reply to Response to Motion to Terminate
 Legal Financial Obligations & State's
 Motion to Transfer Motion for Relief
 from Judgment. Judgment.

148

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
JESSE WHITE,
Defendant.

Case No.: 10-1-00690-1

REPLY TO RESPONSE TO MOTION
TO TERMINATE LEGAL FINANCIAL
OBLIGATIONS AND STATE'S MOTION
TO TRANSFER MOTION FOR RELIEF
FROM JUDGEMENT

I. ISSUE

Does the Superior Court have the authority to terminate, or modify, Legal Financial Obligations?

II. ARGUMENT

The State's response, and Motion to transfer motion for relief from judgement did not have any merit. By their own admission in the first sentence of their argument on page 3 of the motion: "Motions to modify judgement can be resolved by this court on the merits..." Further, RCW 10.01.160(4) states:

"A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at anytime petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170(1)."

Therefore the defendant's Motion to Terminate Legal Financial Obligations is the appropriate approach to this issue and he is not time barred. In addition to

this, RCW 10.73.100(1) and (6) are sufficient to entitle the defendant exception the one year time bar for collateral attack, as State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015) is (1) Newly discovered evidence..." and (6) a "significant change in law... or procedure, which is material to the conviction, sentence, or order in a criminal proceeding...that sufficient reason exists to require retroactive application of the changed legal standard."

The prosecutor also argued that the defendant has not made a substantial showing of entitlement to relief. I disagree. The Eighth Amendment of the United States Constitution, which is mirrored by Washington State's Constitution, article I § 14 state that "Excessive bail shall not be required, nor excessive fines imposed..." The fines imposed by the Court are clearly excessive. Proof of this is that in 2013, \$12,949.38 was added to the defendant's LFOs using boilerplate language, while no regard was given to the requirements set out in State v. Blazina, RCW 10.01.160; RCW 9.94A.142(1), the Eighth Amendment, and the defendant's indigent status as defined in General Rule 34. Since the imposition of that fine, the defendant's debt has risen to \$16,348.28. In the last two years the interest alone on this fine is \$3637.01.

Over the last five years and five months, the defendant has been able to pay a total of \$238.30 towards these LFOs. That averages out to \$43.29 a year. The interest on the defendant's fine this year will be approximately \$2,000.00. That amount is over 47 times the amount that the defendant has proven able to pay each year; and that is just the interest. The principle is over 380 times the amount that the defendant has proven that he is able to pay each year. At this rate of growth, the defendant will owe between \$26,000 and \$29,000 upon his

release from prison, depending on the date (Earned good-time makes date flexible). Which means, that upon release from prison, the defendant will have a debt that is approximately 600 times the amount that he has proven able to pay each year. This is exactly why the Supreme Court ruled in Blazine:

"...Washington's LFO system carries problematic consequences. To begin with, LFOs accrue interest at a rate of 12% and may accumulate collection fees when they are not paid on time; RCW 10.82.090(1). Many defendants cannot afford these high sums and either do not pay at all or contribute a small amount every month. But on average, a person who pays \$25 per month toward their LFOs will owe the state more 10 years after conviction than they did when the LFOs were initially assessed. Consequently, indigent offenders owe higher LFO sums than their wealthier counterparts because they cannot afford to pay, which allows interest to accumulate and to increase the total amount they owe. The inability to pay off the LFOs means that courts retain jurisdiction over impoverished offenders long after they are released from prison because the court maintains jurisdiction until they completely satisfy their LFOs. RCW 9.94A.760(4) 'for an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender...until the obligation is completely satisfied, regardless of the statutory maximum of the crime.' The court's long-term involvement in defendant's lives inhibits reentry: legal background checks will show an active record in superior court for individuals who have not fully paid their LFOs. This active record can have serious negative consequences on employment, on housing and on finances. LFO debt also impacts credit ratings, making it more difficult to find secure housing. All of these reentry difficulties increase the chance of recidivism.

Moreover, the State cannot collect money from defendants who cannot pay, which obviates one of the reasons courts impose LFOs; RCW 9.94A.030"

This leads to why RCW 10.01.160(3) is so important. The trial court must decide to impose LFOs and must consider the defendant's current or future ability to pay LFOs based on the particular facts of the defendant's case. The Legislature did not intend LFO orders to be uniform among cases of similar crimes. Rather, it intended each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances. It requires that the record reflect that the sentencing judge made an individualized inquiry

into the defendant's present/future ability to pay before the court imposes LFOs. "This inquiry also requires the court to consider important factors, such as incarceration and defendant's other debts, including restitution, when considering defendant's ability to pay." Blazina.

Had the court made this inquiry they would have found that the fines imposed exponentially exceed any amount that the defendant will be able to earn while incarcerated. Also, they would be forced to consider the defendant's indigent status falls far below the lowest state and federal poverty level.

The prosecutor's response made several other meritless arguments. He states that the defendant provided a partial record of the transcripts pertaining to the imposition of the LFOs. However, the defendant provided the court with copies of all records pertaining to this matter that he could find in the transcripts. The reason that there is no record of the defense counsel's argument pertaining to this matter is because the defendant's counsel, at sentencing, failed to argue this portion of the sentence. Blazina held that this is not harmless error.

The prosecutor also argues that this is an application in statute, not a constitutional error. I disagree; it is both. The clearly excessive fines imposed is a violation of the Eighth Amendment. It could also be argued that there is a Due Process violation in that the trial court failed to follow the required procedures for imposition of LFOs provided in RCW 10.01.160 and RCW 9.94A.142. In Blazina the Supreme Court of Washington State held that this is not harmless error, and has several adverse consequences. It is clear that the State's response to the defendant's Motion to Terminate LFOs is an attempt to mislead the Court; further, to waste the Appellate court's time by transferring

this matter to their review. The State should be aware of this court's authority to address this matter under RCW 10.01.160(4). Also, this Court does have the authority to address appellate costs under RCW 10.73.160(4) which states:

(4) "A defendant offender who has been sentenced to pay costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the defendant for remission of the payment of the costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount will impose manifest hardship on the defendant, or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170."

As stated in the Affidavit submitted by the defendant, these LFOs are imposing manifest hardship on the defendant, ~~and~~ his family, and for all the aforementioned reasons quoted from Blazina, the defendant is entitled to relief.

III. CONCLUSION

Based upon RCW 10.73.160(4); RCW 10.01.160(3) and (4); RCW 9.94A.142 (1) and State v. Blazina. 183 Wn.2d 827, 344 P.3d 680 (2015) controlling the above argument, the defendant respectfully requests that this court hear this Motion to Terminate Legal Financial Obligations, and grant the relief requested in the Conclusion of the Motion to Terminate Legal Financial Obligations submitted to this court for review.

Respectfully submitted on this 17th day in September, 2015.

Jesse White

Jesse White
Pro se

I declare under penalty of perjury under the laws of Washington State that I mailed a copy of this Reply to Snohomish County Prosecutors at 3000 Rockefeller Ave., Everett, WA. 98201; mailed from Clallam Bay Corrections Center in Clallam Bay, WA.

RECEIVED

MAR 16 2016

Nielsen, Broman & Kocn, P.L.L.C.

FILED

2015 OCT 15 AM 11:34



CL17480732

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

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

State v.

Jesse White vs.

Plaintiff/Petitioner

Defendant/Respondent

No. 10-1-00690-1

COVER SHEET

ATTACHED HERETO IS:

Order Transferring Motion
for Relief from Judgment

FILED
October 19, 2015
Court of Appeals
Division I
State of Washington

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

JESSE M. WHITE,

Defendant.

No. 10-1-00690-1

ORDER TRANSFERRING MOTION
FOR RELIEF FROM JUDGMENT

(CLERK'S ACTION REQUIRED)

This matter came before the court pursuant to CrR 7.8(c)(2), for initial consideration of the defendant's Motion To Terminate Legal Financial Obligations. The court has considered the documents listed below. Being fully advised, the court hereby concludes and orders as follows:

I. CONCLUSIONS OF LAW

1. The defendant's motion is time barred by RCW 10.73.090.
2. The defendant has not made a substantial showing that the defendant is entitled to relief.
3. Resolution of the defendant's motion will not require a factual hearing.

 ORIGINAL

46

II. ORDER

1. Pursuant to CrR 7.8(c)(2), the defendant's Motion to Terminate Legal Financial Obligations is a Motion for Relief from Judgment and is transferred to the Court of Appeals for consideration as a personal restraint petition.

2. The clerk of this court shall transmit copies of the following to the Court of Appeals:

a. This order;

b. The Defendant's Motion to Terminate Legal Financial Obligations (sub No.139).

c. The Defendant's Affidavit in Support of Motion to Terminate Legal Financial Obligations (sub. No. 140)

d. The State's Response to Motion to Terminate Legal Financial Obligations and State's Motion to Transfer Motion For Relief From Judgment (sub No. 143).

e. The Defendant's Reply to Motion to Terminate LFOs.

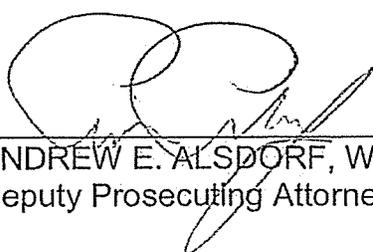
Entered this 13 day of ~~September~~, 2015.

October



JUDGE MARYBETH DINGLEDDY

Presented by:



ANDREW E. ALSDORF, WSBA #35574
Deputy Prosecuting Attorney

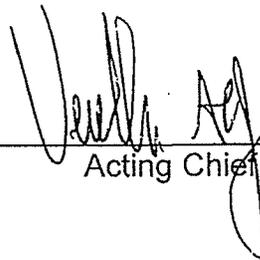
Now, therefore, it is hereby

ORDERED that this personal restraint petition is referred to a panel for review and determination. It is further

ORDERED that Nielson, Broman, and Koch is appointed as counsel to petitioner; and it is further

ORDERED that the clerk of the court shall set the briefing schedule. Upon completion of the briefing, the clerk shall determine whether the case shall receive oral argument and set the date for a hearing on the merits.

Done this 14th day of March, 2016.



Acting Chief Judge

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2016 MAR 14 AM 5:45

Ack#: 3429412 - 1

Facility: AB1

Location: B01BF08L

Department of Corrections

Legal Financial Obligations Withdrawal Acknowledgement

For the period 1/1/2016 through 3/31/2016, Payment Dates: 1/22/2016 and 4/11/2016

DOC#: 347132, White, Jesse M

<u>County Paid</u>	<u>Cause#</u>	<u>LFO Balance</u>	<u>Withdrawals</u>	<u>Payments</u>	<u>Refunds</u>
Snohomish County Clerk	101006901	\$17,353.28		\$7.45	
Total Paid To: Snohomish County Clerk					
Withdrawal Acknowledgement Summary					
			\$7.45	\$7.45	\$0.00

The County Clerk maintains the official LFO payment record. For proof of receipt of money by the county, send a self addressed stamped envelope to the County Clerk.
Some counties may charge copy fees for a payment history.

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

In re Personal Restraint Petition of Jesse White:)	
)	
STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 74195-1-I
)	
JESSE WHITE,)	
)	
Petitioner.)	

DECLARATION OF SERVICE

I, John Sloane, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 27TH DAY OF MAY 2016, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF PETITIONER** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JESSE WHITE
 DOC NO. 347132
 CLALLAM BAY CORRECTIONS CENTER
 1830 EAGLE CREST WAY
 CLALLAM BAY, WA 98326

SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF MAY 2016.

X 