

74507-7

74507-7

NO. 74507-7-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In re Personal Restraint Petition of
WILLIAM NEAL FRANCE,
Petitioner.

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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Division I
State of Washington

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A. AUTHORITY FOR RESTRAINT OF PETITIONER

The petitioner, William Neal France, is restrained pursuant to a plea of guilty to nine counts of felony harassment and six "officer of the court as a victim" aggravators. Appendix A.

B. ISSUES PRESENTED

1. Can the defendant challenge his conviction after he pled guilty in a negotiated plea that required him to agree to his criminal offense history, offender score and standard range?

2. Is the "unit of prosecution" for felony harassment each independent threat made by a perpetrator, or can a perpetrator make threats to the same victim on innumerable occasions, and over an infinite period of time, knowing he can face but a single charge?

C. SUMMARY OF ARGUMENT

Over the course of a two month period, the defendant, a former client of The Defender Association (TDA), threatened attorney Anita Paulsen, attorney Lisa Daugaard, and social worker Nina Beach multiple times using some of the most vial threats and language the three had ever heard in the course of their jobs as defense attorneys and a social worker. Each call was recorded.

After his case was assigned out for trial, the defendant decided to plead guilty in a carefully crafted plea agreement. Despite agreeing to his criminal history, offender score and standard range as a condition of his plea agreement, in his petition, for the first time, the defendant asserts that the charges to which he pled guilty violate double jeopardy principles, that he could only be convicted of three counts – one count for each victim. This, the defendant posits, is what the legislature intended as the “unit of prosecution.” Thus, according to the defendant, a perpetrator can threaten a victim on multiple occasions and over any length of time and be subjected to but a single count of harassment, regardless of the number of times the victim is threatened or the harm caused.

This Court should reject the defendant’s attempt to challenge his conviction because his guilty plea contained specific conditions that he now is attempting to circumvent. In addition, this Court should reject the defendant’s strained interpretation of the harassment statute. The defendant’s interpretation of the statute is not dictated by the language of the statute, it does not effectuate the legislative purpose of the statute, it would lead to absurd results and it would essentially turn the harassment statute into the stalking statute. Instead, the “unit of prosecution” that is most true to the

statutory language and effectuates the legislative intent is that each independent threat is a chargeable act.

D. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The defendant was charged as follows:

<u>Count</u>	<u>Charge</u>	<u>Victim</u>	<u>Violation Date</u>
1	Felony Harassment	Anita Paulsen	12/1/10
2	Felony Harassment	Anita Paulsen	12/26/10
3	Felony Harassment	Anita Paulsen	12/28/10
4	Felony Harassment	Anita Paulsen	1/10/11
5	Felony Harassment	Anita Paulsen	1/12/11
6	Felony Harassment	Anita Paulsen	1/25/11
7	Felony Harassment	Lisa Daugaard	1/11/11
8	Felony Harassment	Lisa Daugaard	1/12/10
9	Felony Harassment	Lisa Daugaard	1/25/11
10	Felony Harassment	Lisa Daugaard	1/25/11
11	Felony Harassment	Lisa Daugaard	1/29/11
12	Felony Harassment	Nina Beach	12/28/10
13	Felony Harassment	Nina Beach	12/28/10
14	Felony Harassment	Nina Beach	1/12/11
15	Felony Harassment	Nina Beach	1/25/11
16	Felony Harassment	Nina Beach	1/29/11

Appendix B. Each count carried a “deliberate cruelty to the victim” aggravator. Id.; RCW 9.94A.535(3)(a). Counts 1 through 11 carried an “officer of the court as victim” aggravator. Id. RCW 9.94A.535(3)(x).

On October 18, 2011, the defendant’s case was assigned to trial before the Honorable Judge Steven Gonzalez. Appendix C. The next day, the defendant decided to plead guilty. Appendix D.

The defendant entered a negotiated plea with the following terms and conditions:

The defendant agreed to plead guilty to counts 3, 4 & 6 (Public Defender Anita Paulsen was the victim), counts 7, 8 & 9 (Public Defender Lisa Daugaard was the victim) and counts 12, 14 & 15 (Social Worker Nina Beach was the victim). The State agreed to dismiss counts 1, 2, 5, 10, 11, 13 and 16, and the deliberate cruelty aggravator on all counts. The defendant agreed to plead guilty to the officer of the court as a victim aggravator on counts 3, 4, 6, 7, 8 and 9. Appendix E.

The plea documents included a scoring form and a list of all of the defendant's current and prior criminal convictions. Id. The defendant's offender score was calculated as a 14 on each count; 6 points for his prior felony convictions and 8 points for the eight other current felony harassment convictions. Id. In entering his plea, the defendant specifically agreed that "the attached sentencing guidelines scoring form(s)..., offender score, and the attached Prosecutor's Understanding of Defendant's Criminal History...are accurate and complete." Id.¹

¹ In his presentence report submitted to the sentencing judge, the defendant again acknowledged that his offender score was a 14. Appendix F.

The State's sentence recommendation was for 60 months on each count. The counts against each victim would be served concurrently (3, 4 & 6 together, 7, 8, & 9 together, and 12, 14, & 15 together). Based on the officer of the court as a victim aggravator, each group of three would be served consecutive to each other group of three, for a total sentence of 180 months. Id. This is the exact sentence that the defendant received, although the court added as a basis for imposing an exceptional sentence, the "free crimes" aggravator. Appendix A; RCW 9.94A.535(2).²

The defendant appealed the imposition of his exceptional sentence. This Court affirmed the imposition of the exceptional sentence, remanded the case to correct some scrivener errors in the judgment and sentence, and issued a mandate on March 21, 2014. Appendix G.

² Using the agreed criminal history, offender score and standard range, the defendant asked for a "drug offender sentence alternative" or DOSA, that would have given the defendant a sentence of just over 27 months confinement – by statute, half the midpoint of the standard range. Appendix F; RCW 9.94A.660.

2. SUBSTANTIVE FACTS

In pleading guilty, the defendant admitted to leaving the following messages for Anita Paulsen:³

Count 3, December 28, 2010: Hey Anita bitch, how yeah doin'? This is France again. Did you get my message this morning? Were you in, were you in the closets over at the King County, King County Courthouse, in the closet with some motherfucker suckin' some mo, suckin' more cock so you can make more money? Huh? You out suckin' more cock? Huh? Suckin' dick, huh? You're a good dick suckin' bitch, aren't yeah? Plus you're a snitch bitch. Yeah, well I got a surprise for you when I get out a jail bitch. I'm gonna take a hold a yeah, I'm gonna grab a hold a yeah and rip your fuckin' shirt right off yeah so I can see those bit tits of yours. I wanna see them big fuckin' tits you've got. I wanna maybe even suck on 'em, suck on 'em and see how you fuckin' feel bitch. See, huh? Then maybe bend you over and stick my dick in your ass. Fuck you in your ass, yeah. Why I'm suckin' on your tits. Yeah. Just do it right in the main street, right on the sidewalk. Bitch, I got surprises for you, you snitchin' motherfuckin' bitch. You just fuckin' wait. When I get out, you gonna get a whole lot of it. A whole lot a my cock up in your ass.

Count 4, January 10, 2011: Hey Anita, this is France calling ya. You got such a sweet voice, you know it? I bet you got some sweet lips too to go around my fuckin' cock. Suck my dick when I want, when I want you to. You know that I got a shit sandwich for you? Yeah, when I see you on the streets. I get out in nine months, bitch. None mother fucking months I'm getting out. You got it? And I'm going to be, I'm going to be all over you like stink on shit, bitch. I got a shit sandwich for you. Oh yeah. You don't think this is all going to happen? You fucked off. You're a worthless, fucking lawyer. You brung shit on me that came out of Chehalis and should have never came up. Eleven fucking years

³ In his plea of guilty, the defendant confessed that he "placed the calls that are contained in pre-trial exhibit 1." Pre-Trial Exhibit 1 is a CD that contains the actual recordings of the defendant's messages, as well as a transcript of all the calls made by the defendant. The quotations below are all taken from the exhibit and pertain to the counts to which the defendant pled guilty.

old. You understand? Eleven fucking years old, period. It should have stayed in the archives, you dumb bitch. You're stupid. You're really fucking stupid. I didn't want to hear nothing about that shit in Chehalis ever again. I walked out of that fucking jail and I got that mother fucker behind me. You wanted to bring it up in court. You're a worthless bitch, Anita. You're worthless. And I'm going to stick a fucking shit sandwich down your fucking throat when I get out of prison. I'm going to find ya. I'm going to do. I'm going to walk right up to you and I'm going to shove it right down your fucking throat. Count on it, bitch. It's a dream come true. Don't think I'm not going to do it because I will do it. You have a nice fucking life until I get out, which is nine months away.

Count 6, January 25, 2011: Hey Paulsen. This is France again. You ain't scared yet? You better be. You better be, you better quiverin' in them fuckin', those panties you got on. You're gonna be quiverin' in that pussy you got in between your legs. Because what you did to me in fuckin' court while I was in jail, you're gonna be, you're, you're, you're fuckin' gonna, you're gonna pay the price. I got nine more months to go and I'm out a this motherfuckin' place. Nine fuckin' months and I'm gonna check you out. I'm gonna find out where the fuck you live and the whole ball a wax. Yep. It's time for me to put a bullet in yeah. Not kill yeah, just put a bullet in yeah. If you know what the phrase is. Not kill you, just make you walk with a fuckin' limp for the rest of your fuckin' life. And if you ain't scared now, you better be in nine motherfuckin' months bitch. Take heed, I'll be back. I'll be out there pretty soon. Ha, ha, ha, ha, ha, ha. You worthless nigger bitch.

In pleading guilty, the defendant admitted to leaving the following messages for Lisa Daugaard:

Count 7, January 11, 2011: Hey Lisa, this is France. In nine months you're going to be available because you got a bullet with your' fucking name on it, bitch. Don't interfere with anything I'm doing on the phone with fucking Paulsen. You got that? Or Nina bitch. Got that? You got, you got that? Get it up your cunt, bitch. Get wise. Don't be stupid.

Count 8, January 12, 2011: Yeah, well Lisa, this is France again. I'm trying to get a hold of you. Apparently some man came to my door and told me that you're my, you was my fucking lawyer at one point and time. You've never been my lawyer. Okay. That I can remember. Okay. Ah, as far as it goes by, by me, me pursuing what I've told you what I'm going to do. Yes. I got nine fucking months. And I got a surprise for you. Okay. Like I said, you got a fucking bullet with your fucking name on it, bitch. So does Paulsen. Okay. She's going to eat a shit sandwich first because I'm going to put it right in the fuckin' kneecap. And I'm going to cut your bra off when I see you in the mother fucking hallway or in the fucking elevator. When I first put sights on you, bitch, I'm cutting your bra right off you. And I'm going to do it. I don't give a fuck what the consequences. You got in my fucking position. You got in my program. So eat shit and die, bitch. Got it? Huh? Ya got it?

Count 9, January 25, 2011: Hey Lisa, this is Mr. France callin' you again. What the fuck possesses you to call the penitentiary, and talk to some fat motherfucker that comes to my fuckin' door tellin' me that you used to be my fuckin' lawyer. You've never been my fuckin' lawyer, you, you fuckin' (unintelligible) ignorant tramp. You stupid bitch. And what all I've been sayin' about how, what I'm gonna do to yeah, I'm gonna put a fuckin' bullet in your fuckin' kneecap when I see yeah on the streets.

You are developing a big pain in my motherfuckin' dick and the only way to get rid of the pain in my dick is if I put a bullet in your goddamn kneecap, and make sure you walk around, wobble around for a while. You know? Stay in a wheelchair for a while is what you deserve you little nigger bitch. Cause I'm gonna get you when I get out. This is affirmative. This is like ball, this is a ballpark field. You know? It's, it's a homerun bitch. You know? And like uh, uh I'm pretty pissed off at yeah. Real mad. Real mad, I'm mad as a motherfucker. Mad as a motherfucker. I'm really fuckin' mad. And I've never been so mad since, at a bitch, my whole fuckin' life like I am at you.

You are, are history. You're gonna hit, you're gonna hit the motherfuckin' wheelchair real soon. Soon as I get out. And I know what you look like. You're not gonna know what the fuck I look like, but I'm gonna find out what the fuck you look like. You fuckin' right

I am. As soon as I do, ha, ha, ha, oh yeah, you're fuckin' gonna get it. You're gonna get it on the slide side. Comin' out an elevator, pow, right in the fuckin' kneecap...and I'm gonna walk away. Oh I'm gonna make sure sweetheart. A good gun don't make a lot a noise see. I got a be professional. You can get anything you want on the street if you got the fuckin' money. Anything you want. Anything. It don't matter what the fuck it is. Anything you want you can get.

Uh just remember, I'm gonna be seein' you in about nine motherfuckin' months. Do you hear me Lisa? Yeah, 'bout nine motherfuckin' months. And I'm gonna get yeah, get you, get you, good. Think about bitch, while you sit there, think hard about it how it's gonna fuckin' feel. Uh, huh. Or that I can just put a cut in your tit, just cut your tits. You know? Cut your motherfuckin' bra off and cut your tit. Ha, ha, ha, ha, ha. Make it bleed baby, like your pussy. You sometimes bleed out of the pussy don't yeah? Yeah, I but you do. I like to lick it up. Yeah cause that's how I am. I like to lick the pussy when it's on the rag, when bitches are on the rag. You're on the fuckin' rag bitch, I'll find you when you're on the rag and I'll eat your pussy and put my dick in your booty. Ha, ha, ha (unintelligible)...

In pleading guilty, the defendant admitted to leaving the following messages for Nina Beach:

Count 12, December 28, 2010: Nina. You're nothing but a snitching fucking bitch. You know that? A rotten fucking nigger. This is France calling you, cunt. When I get out of jail, I've got a surprise for you. A big fucking surprise. When I see you come out of that fucking building, I'm going to grab a hold of you and rip your fucking shirt right off ya, because I want to see them big brown fucking tits, bitch. Because you're fucking mine, when I get out. You hear me, you nigger bitch? You rotten snitching fucking bitch. I got a letter from Lisa telling me I've been harassing you. I didn't harass your fucking ass. At least you could have done is wrote me a fucking letter and told me that you couldn't help me. But you didn't want to do that. You want to be a stupid nigger bitch. And I'm out to get ya. Believe it. I'm going to get ya. I get out in a

fucking year, bitch. And I'm going to get you. I'm going to get you good.

Count 14, January 12, 2011: How come you never answer your fucking phone, your worthless black fucking nigger bitch? This is France. And by the way, you think for one fucking minute of what I'm telling you on the fucking phone, and been telling you on the fucking phone, won't come true? My dreams come true, bitch. And when I get out in nine mother fucking months, I'm going to stalk you. In the right place, the right time. I'm cutting your fucking bra right off you, bitch. And I'm going to put a shit sandwich down your mother fucking throat. Count on it, bitch. It's like a deposit in the fucking bank. You worthless nigger bitch. You're worthless. You're worthless fucking nigger bitch. But you do got nice titties. You do got some nice tits.

Count 15, January 25, 2011: It's more like Nina bitch. You know Nina bitch. Yeah Nina, this is France again. How you gonna feel when I suck on your fuckin' black tits and I put my white cock in your ass? Huh? Cause I'm gonna stalk the bitch when I get out. I'm gonna find out where the fuck you live. And I'm gonna fuckin' kick your fuckin' door in and have my, I'm gonna have some fuckin' fun with you. Oh I'm gonna have some motherfuckin' fun with you bitch. You're nothing but a worthless tramp, fuckin' worthless cunt, motherfuckin' snitch bitch and I don't like snitchin' bitches.

So take heed, if you ain't scared now, you're gonna be in nine fuckin' months when I get out of, when I get out a, get out a prison. Cause I'm gonna, I'm gonna fuck your whole world up bitch. I'm gonna fuckin' suck on them tits. I'm puttin' my white cock in your ass. Oh yeah. And if you smell good enough, I might eat your pussy. I don't know yet. That's a, that's a tosser, but I will put my dick in your ass though. That's for goddamn sure. How does it feel to be called a fuckin' nigger? Huh? How does it feel to be called a fuckin' snitch bitch? Huh? I didn't, I didn't, I wasn't harassin' you and I wasn't threatenin' you. I just wanted to get your fuckin' help on some SSI, but you wouldn't even write me back and tell me what the fuck is going on. You're a worthless motherfuckin' cunt man. You're worthless and I'm gonna get yeah. Get yeah. I'm gonna keep callin' yeah and lettin' you know that you got a rabbit on your ass and I'm gonna chew you up.

E. ARGUMENT

1. THE DEFENDANT WAIVED ANY DOUBLE JEOPARDY CLAIM

The defendant entered into a negotiated plea deal wherein he specifically agreed to his criminal history -- including his current offenses, offender score and standard range on each count. The sentence recommendations by the defendant and by the State were based on these agreed facts and conditions of the plea. By entering the specific agreement he did, the defendant waived any double jeopardy claim. In addition, a double jeopardy violation must be clear from the plea documents that were before the trial court, and no such violation is evident here.

Under the double jeopardy clauses of the United States Constitution and article I, section 9 of the Washington Constitution, the State may not punish a defendant multiple times for the same offense unless permitted so by the legislature. State v. Hughes, 166 Wn.2d 675, 681, 212 P.3d 558 (2009).

The double jeopardy clause applies in a number of situations. It protects against a second prosecution for the same offense after acquittal. United States v. Ball, 163 U.S. 662, 16 S. Ct. 1192, 41 L. Ed. 300 (1896). It protects against a second

prosecution for the same offense after conviction. In re Nielsen, 131 U.S. 176, 9 S. Ct. 672, 33 L. Ed. 118 (1889). It protects against multiple punishments under different statutes for the same offense obtained in a single trial where not allowed by the legislature. See, e.g., State v. Kier, 164 Wn.2d 798, 194 P.3d 212 (2008) (convictions for first-degree robbery and second-degree assault based on the same act violates double jeopardy), and State v. Calle, 125 Wn.2d 769, 772, 888 P.2d 155 (1995) (legislature intended that a single act of sexual intercourse can be punished under both the incest statute and the rape statute). And finally, as applicable here, the double jeopardy clause protects an accused from being charged with multiple counts under the same statute where the legislature has defined the punishable conduct to encompass all of the charged acts, the so-called "unit of prosecution" of the statute. See, e.g., State v. Sutherby, 165 Wn.2d 870, 880, 204 P.3d 916 (2009) (the unit of prosecution for possession of child pornography is one count for all of the photographs possessed, regardless of the number of photographs

possessed or the number of children depicted in the images); State v. Furseth, 156 Wn. App. 516, 520-22, 233 P.3d 902 (under Sutherby, the State was barred from charging more than a single count of child pornography despite Furseth's possession of multiple photographs containing child pornography), rev. denied, 170 Wn.2d 1007 (2010).

When a person pleads guilty, the plea generally insulates a defendant's conviction from collateral attack. See Tollett v. Henderson, 411 U.S. 258, 267, 93 S. Ct. 1602, 36 L. Ed. 2d 235 (1973). For example, a guilty plea waives "constitutional rights that inhere in a criminal trial, including the right to trial by jury, the protection against self-incrimination, and the right to confront one's accusers." Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551, 160 L. Ed. 2d 565 (2004).

The right to be free from double jeopardy is a right that *may* be waived in certain situations. See United States v. Broce, 488 U.S. 563, 565, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989); Menna v. New York, 423 U.S. 61, 63, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975). Examples include situations where a defendant asks for separate trials on a greater and its lesser offense, where a defendant obtains a retrial after an appeal of a conviction, or where a defendant

obtains a mistrial and a new trial is had. In each case, a second prosecution for the same offense occurs but the double jeopardy clause does not prohibit the second trial. Jeffers v. United States, 432 U.S. 137, 152, 97 S. Ct. 2207, 53 L. Ed. 168 (1977).

In the context of a guilty plea, a defendant may waive a double jeopardy claim by explicit waiver or he may do so through his actions in negotiating a plea agreement. See In re Shale, 160 Wn.2d 489, 500-01, 158 P.3d 588 (2007) (Madsen concurrence). An express waiver is not required. Broce, 488 U.S. at 573. As the Supreme Court has stated, “the Double Jeopardy Clause, which guards against Government oppression, does not relieve a defendant from the consequences of his voluntary choice.” United States v. Scott, 437 U.S. 82, 99, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978).

In addition, in the context of a double jeopardy claim involving a guilty plea, any double jeopardy violation must be clear from the record that was presented to the trial court, or it is waived. State v. Knight, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008) (citing

Broce, 488 U.S. at 575-76).⁴ A “guilty plea prevents a defendant from expanding the record to prove two convictions actually stem from a single conspiracy.” Id., accord In re Newlun, 158 Wn. App. 28, 33-34, 240 P.3d 795 (2010) (documents from police report attached to defendant’s reply brief were not before the trial court and could not be considered). It is only where a plea “judged on its face” contains a charge which the State may not constitutionally prosecute, that a guilty plea does not constitute waiver. Menna v. New York, 423 U.S. at 63 n.2.

Thus, while a guilty plea by itself does not constitute a waiver or a bar to collateral attack for all types of double jeopardy claims, it does here. First, the defendant waived any double jeopardy claim by specifically agreeing as a condition of his plea to the accuracy of his criminal record -- including his current offenses, his offender score on each count and his standard range on each count. Second, as will be explained in more detail in the sections

⁴ Like here, Broce was a unit of prosecution case. Broce pled guilty to multiple counts of conspiracy. Later, he tried to collaterally attack his conviction arguing that his multiple convictions constituted but one offense. The Supreme Court held that Broce’s double jeopardy challenge was foreclosed by his guilty plea because “[j]ust as a defendant who pleads guilty to a single count admits guilt to the specified offense, so too does a defendant who pleads guilty to two counts with facial allegations of distinct offenses concede that he has committed two separate crimes.” Broce, 488 U.S. at 570. While an exception to waiver might have applied to Broce’s case, the Court noted that it was not clear from the record that a double jeopardy violation had occurred and therefore no exception to waiver applied. Broce, at 569.

below, the documents before the trial court do not clearly evidence a double jeopardy violation even if this Court were to accept what the defendant's claims constitutes a "unit of prosecution" under the harassment statute.

In asserting he can bring his double jeopardy claim despite his plea agreement, the defendant relies on State v. Knight, supra, and In re Francis.⁵ Both cases are clearly distinguishable.

In Knight, the defendant pled guilty to conspiracy to commit burglary, conspiracy to commit robbery and conspiracy to commit murder. In a subsequent collateral attack, the Court held that Knight's guilty plea did not constitute a waiver of Knight's double jeopardy claim where the plea agreement simply called for Knight to agree to testify in a co-defendant's trial and to plead guilty to certain charges while the State agreed to dismiss other pending charges. By pleading guilty, Knight fulfilled the terms of the plea agreement. The subsequent double jeopardy challenge did not violate the conditions of the plea. Additionally, the double jeopardy violation was clear from the plea documents. See Knight, supra.

In In re Francis, the defendant pled guilty to felony murder, attempted first-degree robbery and second-degree assault. When

⁵ 170 Wn.2d 517, 242 P.3d 866 (2010).

Francis raised her double jeopardy claim, the State asserted that the simple fact of her entering a plea of guilty waived the issue. The Supreme Court disagreed, stating that “the mere act of pleading guilty does not waive a double jeopardy challenge.” Additionally, “[b]ecause the State expressly relied on the second degree assault conduct to elevate the attempted robbery to the first degree when it charged the crimes, convictions on both charges violate double jeopardy protections.” Id. at 521.

In contrast to the situations in Knight and Francis, the defendant here did more than simply enter pleas of guilty. The Statement on Plea of Guilty contained the following statement:

The standard sentence range is based on the crime charged and my criminal history...[t]he prosecuting attorney’s statement of my criminal history is attached to this agreement. Unless I have attached a different statement, **I agree** that the prosecuting attorney’s statement is correct and complete.

Appendix E at 3.

The Plea Agreement contained the following condition:

The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, and the attached Prosecutor’s Understanding of Defendant’s Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing

recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s), if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

Appendix E. With the defendant's specific affirmative agreements he did exactly what the Supreme Court notes constitutes waiver, he took affirmative steps and entered into a voluntary plea that evidences waiver.

2. THE LEGISLATURE DID NOT INTEND FOR A DEFENDANT TO BE ABLE TO THREATEN A VICTIM WITH IMPUNITY AND FACE BUT A SINGLE CHARGE

The defendant contends that for all the many acts of harassment he committed against each of his defenseless victims, he can only be charged and convicted of a single count of harassment per victim. More specifically, the defendant contends that in enacting the harassment statute, the legislature intended that no matter how many times a defendant threatens a victim, and no matter how many days, months or even years the threats continue, the "unit of prosecution" under the harassment statute is one count per victim. This claim must be rejected.

What constitutes a "unit of prosecution" under a statute is a pure question of legislative intent and the legislature could never

have intended such an absurd result, allowing a victim to be victimized over and over and over again with no additional consequences to his or her abuser. The “unit of prosecution” under the statute is each separate act of threatening a victim. Nothing else properly protects victims, holds defendants accountable for their actions, is true to the statutory language, is consistent with cases interpreting other statutes, and fosters the legislature’s goal of preventing harassing and stalking behavior.

When a defendant is convicted of violating one statute multiple times, the proper double jeopardy inquiry is what “unit of prosecution” has the legislature intended as the punishable act under the specific criminal statute. State v. Adel, 136 Wn.2d 629, 633-34, 965 P.2d 1072 (1998); Bell v. United States, 349 U.S. 81, 83, 75 S. Ct. 620, 99 L. Ed. 905 (1955). Here, the question is, what act or course of conduct has the legislature defined as the punishable act under the harassment statute, RCW 9A.46.020.

The principal focus in determining whether the legislature intended multiple acts to constitute but one crime is whether the legislature intended the punishable offense to be a continuing offense. Ex parte Snow, 120 U.S. 274, 7 S. Ct. 556, 30 L. Ed. 658

(1887). This is in contrast to statutes aimed at offenses that can be committed *uno actu*, or in a single act. Snow, 120 U.S. at 286.

In Snow, the defendant was convicted of three counts of bigamy, each count identical in all respects except that each count covered a different time span that was part of a continuous period of time. Snow, 120 U.S. at 276. The Court noted that bigamy is “inherently a continuous offense, having duration, and not an offense consisting of an isolated act.” Snow, at 281. Because bigamy is a continuing offense, the Court held that the defendant committed but one offense.

In contrast is the situation that existed in Ebeling v. Morgan, 237 U.S. 625, 35 S. Ct. 710, 59 L. Ed. 1151 (1915). Ebeling cut open seven mail bags that were held in a single railway postal car. For this, Ebeling was convicted of seven counts of feloniously injuring a mail bag. Rejecting Ebeling’s claim that he committed but a single offense, the Court noted that the offense of injuring a mail bag was *not* one continuous offense, rather, each offense was complete irrespective of any attack upon any other mail bag. Morgan, 237 U.S. at 629. It was not, the Court noted, “continuous offenses where the crime is necessarily, and because of its nature,

a single one, though committed over a period of time.” Id. at 629-30.

In pertinent part, the harassment statute reads as follows:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person ***knowingly threatens***:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out...

(2) (a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim’s family or household or

any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. . .

RCW 9A.46.020.

In State v. Alvarez,⁶ the Supreme Court was tasked with looking at what act or acts could be charged under the harassment statute. Alvarez was convicted of one count of harassment against a neighbor for telling her to “shut up bitch or I’ll take you out.” Alvarez was convicted of a second count of harassment for threatening to put Drano in his teacher’s drink. On appeal, Alvarez argued that the harassment statute required more than one act of harassment against a single victim before a person could be charged under the statute. The Supreme Court disagreed.

The Court stated that the harassment statute “is designed to prevent the type of conduct exhibited by Appellant Alvarez.”

Alvarez, 128 Wn.2d at 12. “Any person,” the Court said “may be convicted of harassment if all the elements of the offense are

⁶ 128 Wn.2d 1, 904 P.2d 754 (1995).

satisfied. Those elements stated in RCW 9A.46.020 do not include 'repeated invasion of privacy' nor a 'pattern of harassment.' Appellant Alvarez' behavior satisfied all elements of the offense of harassment." Id. This fits squarely within the analysis of the Supreme Court in Snow and Morgan, supra, and shows that harassment is an offense that "can be committed *uno actu*, or in a single act." While a perpetrator can certainly continue to commit acts of harassment, just as any perpetrator can continue committing additional acts of criminal behavior under any criminal statute, harassment is not "necessarily, and because of its nature" a continuing offense.

Now the defendant argues Alvarez answered a different question than he posits. He asserts that while Alvarez held that a single act of harassment may be charged as harassment, the Court did not hold that multiple acts could be charged separately. However, the defendant's argument fails to articulate how a crime that the Supreme Court has held can be committed and charged *uno actu*, from a single act, is by its nature a "continuing offense" where only a single count can be charged regardless of the number of acts committed. It would be like saying that a perpetrator who assaults a victim on Monday can be charged with assault, but if the

perpetrator then assaults the victim again on Tuesday, that assault is subsumed in the act committed the day before and only one count of assault can be charged. This is an absurd result the legislature could not have intended.

In examining the harassment statute, it is also useful to examine a similar statute and how the courts and the legislature treated the unit of prosecution question.

Prior to 2008, no court had addressed what the proper unit of prosecution was under the witness tampering statute. Former RCW 9A.72.120(1) provided that:

A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

- (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or
- (b) Absent himself or herself from such proceedings; or
- (c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

In State v. Hall,⁷ this Court was tasked with answering the unit of prosecution question. Hall had been convicted of three counts of witness tampering. Before this Court, Hall made similar arguments to the arguments made here. He maintained that the unit of prosecution for witness tampering was “a course of conduct directed towards a witness or a person in relation to a specific proceeding.” Hall, 147 Wn. App. at 489. Hall argued “that it does not matter how many attempts a defendant makes to tamper with a single witness as long as the intent to obstruct justice in the specific proceeding remains the same.” Id.

This Court rejected Hall's interpretation of the statute finding it unreasonable and inconsistent with the legislative intent.

Hall's reading of the statute is incorrect. The statute prohibits any attempt to induce a witness or potential witness to do any of the actions enumerated. The focus is upon the attempt to induce, not on the specific identity of the person or proceeding. There is no ambiguity here.

Moreover, Hall's interpretation is not reasonable. Under his reasoning, a defendant would have no incentive to stop after the first attempt, as he would expose himself to criminal liability for only one count of witness tampering no matter how many efforts he made to induce the witness to disappear or testify

⁷ 147 Wn. App. 485, 196 P.3d 151 (2008).

falsely. This interpretation does not serve the legislative purpose.

Hall, 147 Wn. App. at 489 (footnote omitted).

This Court also rejected Hall's argument that the statutory language was ambiguous, and therefore it should be construed in his favor under the rule of lenity. Instead, this Court found that the language of the statute was clear; that "the unit of prosecution for tampering with a witness is any one instance of attempting to induce a witness or a person to do any of the actions set forth in RCW 9A.72.120." Id.

When an appellate court issues a judicial construction of a legislative act, it is presumed that the legislature is familiar with the court's opinion. The failure of the legislature to amend the statute after it has been judicially construed indicates intent to concur in that construction. State v. Berlin, 133 Wn.2d 541, 558, 947 P.2d 700 (1997); State v. Fenter, 89 Wn.2d 57, 70, 569 P.2d 67 (1977). After this Court's judicial construction of the witness tampering statute, the legislature did not amend the statute, a clear indication that the legislature agreed with this Court's conclusion. This would become even clearer in the years that followed.

The Supreme Court accepted review of Hall's case and reversed this Court's decision. Specifically, the Court held that the unit of prosecution for witness tampering was "the ongoing attempt to persuade a witness not to testify in a proceeding," rather than any single attempt to do so. State v. Hall, 168 Wn.2d 726, 734, 230 P.3d 1048 (2010). After the Supreme Court issued its opinion, the legislative response was swift and straightforward.

In direct response to the Hall decision, the legislature amended the witness tampering statute. In doing so, the legislature stated the following: "In response to State v. Hall, 168 Wn.2d 726 (2010), the legislature *intends to clarify* that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness." 2011 Wash. Legis. Serv. Ch. 165 (H.B. 1182) (emphasis added). The legislature added the following provision to the statute: "For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense." Laws of 2011, ch. 165, § 3. What this history clearly shows is that the legislature always intended to make each attempt to intimidate a witness a punishable act.

Statutes must be read together with other provisions in order to determine the legislative intent underlying the entire statutory scheme. State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. Id.

Bearing in mind that there is no clear divergence in the language of the pre-Hall harassment statute and the witness tampering statute, and that the statutes serve the similar goal of stopping threatening behavior, it would be absurd to interpret the two statutes in a markedly different way. More to the point, it would be nonsensical to believe that the legislature intended each act of a perpetrator threatening a potential witness to be separately punished, but when a perpetrator makes identical threats (or worse) to a victim who is not a potential witness, the later perpetrator can only be charged with a single offense while the former can be charged with multiple offenses. This would create an inequity of

punishment for similar criminal behavior that cannot be explained with rational thought and cannot be what the Legislature intended.⁸

Another statute that is particularly relevant in discerning the unit of prosecution of the harassment statute is the stalking statute – a crime in the same RCW chapter as harassment. In pertinent part, the statute reads as follows:

(1) A person commits the crime of stalking if. . . :

(a) He or she intentionally and **repeatedly harasses** or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

RCW 9A.46.110(1) (emphasis added). "Repeatedly" means on two or more separate occasions. RCW 9A.46.110(6)(e).

⁸ Additionally, chargeable acts of witness tampering cease upon occurrence of the proceeding that is the subject to the tampering. Harassment has no end point. A perpetrator could continue his unlawful acts of harassment indefinitely.

Two aspects of this stalking statute are particularly relevant.

First, had the legislature intended harassment to be a continuing offense, it certainly knew what language to use to convey such an intent. In the stalking statute, the legislature clearly articulated the intent that a course of conduct be the punishable unit of prosecution by using the phrase "repeatedly harasses." Where the legislature uses certain language in one instance, and different language in another, this evidences a different legislative intent. See City of Kent v. Beigh, 145 Wn.2d 33, 46, 32 P.3d 258 (2001).⁹

Second, the defendant's claim that harassment is a continuing offense essentially makes the statute a nullity. Stalking already includes persons who "repeatedly harass" another person. But the "harassment statute is part of a multifaceted remedial scheme the Legislature established to protect citizens from harmful harassing behavior." State v. Smith, 111 Wn.2d 1, 759 P.2d 372 (1988). "Washington law" "provides a full spectrum of legal remedies, both civil and criminal, legal and equitable designed to

⁹ There are a variety of other terms and phrases the legislature also could have used but chose not to do so. See, e.g., RCW 9A.32.055 Homicide by Abuse (using the phrase "engages in a pattern or practice of assault against a child"); RCW 9.46.0269 Professional Gambling (using the phrase "engages in" gambling activity); RCW 26.50.110(5) Violation of a No Contact Order (using the phrase "at least two previous convictions").

provide meaningful relief in the myriad situations where harassment occurs.” Id. (internal citations and quotations omitted). The harassment statute is one part of this legislative scheme and the statute governs situations the stalking statute does not. It makes criminal individual acts of harassment. Alvarez, 128 Wn.2d at 11-12.

In addition, statutes that relate to the same subject matter are to be read in connection with each other. State v. Houck, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). The civil harassment statute defines “unlawful harassment” as “a knowing and willful **course of conduct** directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person...” RCW 10.14.020(2) (emphasis added). “Course of conduct” is defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” RCW 10.14.020(1). “[W]hen the Legislature uses certain language in one instance, and different language in another, there is a difference in legislative intent.” State v. E.J.H., 65 Wn. App. 771, 775, 830 P.2d 375 (1992). Thus, the omission of any reference to “course of conduct” in the criminal harassment statute shows that the legislature intended to focus on singular acts of

harassment in the criminal context and a course of conduct in the civil context.¹⁰ See State v. Alvarez, 74 Wn. App. 250, 259-60, 872 P.2d 1123 (1994), aff'd, 128 Wn.2d 1 (1995).

The defendant relies heavily on a case from Division Three, State v. Morales,¹¹ a case that opined upon the unit of prosecution question. However, the analysis in Morales is heavily flawed, and in any event, its holding is limited to situations not applicable to the defendant's case.

Jesus Morales and Yanett Farias have three children together but lived apart. On one particular day, Morales became angry because he believed Farias had stolen \$4,000 from him. He

¹⁰ In a similar mode, this Court has rejected the notion that violation of a no-contact order is a continuing offense. See State v. Brown, 159 Wn. App. 1, 248 P.3d 518 (2010), rev. denied, 171 Wn.2d 1015 (2011). Brown was convicted of five counts of violating a no-contact order on consecutive days. He argued that his acts amounted to a single "unit of prosecution." This Court held that it was clear the legislature intended to make each violation of a court order a chargeable offense. Id.

Many times violations of a no-contact order are consensual in nature and result in no physical or mental harm. See State v. Dejarlais, 136 Wn.2d 939, 945, 969 P.2d 90, 92-93 (1998) (victim continued having a consensual relationship with the defendant despite having obtained a no-contact order). Here again the absurdity of the defendant's interpretation of the harassment statute is evident. Under the defendant's interpretation of the harassment statute, where a perpetrator is actually threatening his victim with harm and the victim is placed in reasonable fear the threat will be carried out (a requirement under the statute), according to the defendant the legislature intended only a single punishment regardless of the number of threats made. On the other hand, this Court has already held that the legislature intended to allow a perpetrator to be charged with multiple counts, one for each act that violates a no-contact order, even where no harm or threat of harm has occurred.

¹¹ 174 Wn. App. 370, 298 P.3d 791 (2013).

first went to her house but she refused to open the door. Morales then went to the home of Farias's sister and the sister's husband, Trinidad Diaz. "Trembling" in anger Morales told Diaz that he was going to kill Farias the next morning when she dropped the kids off at daycare. Farias was warned of the threat and she called the police.

The next morning, Farias took the kids to daycare as usual but with a plan to avoid Morales if she saw him. However, Morales was waiting for her and blocked her vehicle with his truck. He then yelled at her, "[T]his is as far as you've gone, you fucking bitch, because I'm going to kill you here." Morales, 174 Wn. App. at 374-75. Morales was convicted of two counts of harassment with Farias as the victim on each count and the threats having occurred on consecutive days.

The Court of Appeals was asked to determine if Morales's acts constituted a single unit of prosecution or two units of prosecution. Ultimately, the Court came to the following conclusion as to what constitutes the unit of prosecution under the harassment statute. The Court held that where "(1) a perpetrator threatens to cause bodily harm to a single identified person at a particular time and place and (2) places a single victim of the harassment in

reasonable fear that the threat will be carried out, the conduct constitutes a single offense.” Morales, 174 Wn. App. at 387. Even assuming this is the unit of prosecution under the statute, it does not help the defendant here. The defendant did not threaten just a single type of harm, a single particular time or a single particular location. Rather, the defendant threatened variously to sexually assault, physically assault, and even shooting his three victims. He threatened to get them at the “right place” and the “right time,” or in “nine months,” or “when I get out of here.” He threatened to harm them on the sidewalk on a main street, or when they “come out of [your] building,” or in an elevator, or to find out “where you live.”

In addition to the facts of this case not fitting within the scope of the unit of prosecution found in Morales, the analysis in the Morales case is flawed.

In reaching their conclusion, the Morales court stated that the operative phrase contained in the statute, “knowingly threatens,” is “not inherently a single act.” Id. at 387. What the court failed to recognize is that the word “threatens” is a verb, not a noun. Merriam-Webster’s Collegiate Dictionary, 1302 (11th ed. 2003). The noun, “threat,” to which the verb applies is found at RCW 9A.04.110(28) and it is singular. Id. The plural of “threat” is

“threats.” Id. “Threatens” is not some sort of plural verb of the noun “threats.” Grammatically, a person “knowingly threatens” a threat. To indicate that multiple threats need occur, another phrase, such as “repeatedly threatens” or “repeatedly harasses,” or some other phrase would have to be used.

The Morales court also relied on the language of RCW 9A.46.030; what the court termed the “venue provision of the harassment statute.” The court noted that the provision referred to multiple threats. The court’s citation to the statute is as follows:

Any harassment offense committed as set forth in RCW 9A.46.020 ... may be deemed to have been committed where the conduct occurred or at the place from which the **threat or threats** were made or at the place where the threats were received.

Morales, 174 Wn. App. at 386 (emphasis added).

There are two problems with the court drawing any unit of prosecution conclusion from this provision.

First, left out of the RCW citation in the court’s opinion is the fact that the venue provision does not just dictate venue for harassment, it also dictates venue for stalking; an offense that

requires multiple acts.¹² Thus, to draw a conclusion about the unit of prosecution from the venue provision is misguided.

Second, the venue provision does define the elements of any crime. Acts of harassment, as well as stalking, can occur in many different locations and can occur via conduits from different locations, i.e., by phone, computer, mail, etc., where the victim and defendant may be in different venues. The statute does nothing more than identify which venue may be appropriate.

The preamble of the harassment/stalking statute states that:

The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

RCW 9A.46.010. The best way to achieve the intended purpose of the chapter is to punish and stop harassment when it begins. In contrast, the broader the unit of prosecution, the less deterrent affect the statute has. Allowing a perpetrator to continue harassing a victim after his initial threat, with no additional sanction under the statute, leaves the target of the harassment at greater risk of

¹² With the omitted language, the statute reads that "[a]ny harassment offense committed as set forth in RCW 9A.46.020 **or 9A.46.110**... may be deemed to have been committed..." RCW 9A.46.030 (emphasis added). RCW 9A.46.110 defines the crime of stalking.

emotional distress and harm.¹³ In fact, with the knowledge that he is not subject to further criminal charges, a defendant may well be emboldened to continue with his harassing behaviors.¹⁴

Finally, the defendant's hopeful reliance upon the rule of lenity is misplaced. Courts interpret statutes to effectuate the legislative intent and to avoid unlikely, strange or absurd results. State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). A statute is not ambiguous, and thus the rule of lenity is not employed, when the alternative reading is strained. State v. C.G., 114 Wn. App. 101, 55 P.3d 1204 (2002), overruled on other grounds, 150 Wn.2d 604, 80 P.3d 594 (2003); State v. Tili, 139 Wn.2d 107, 115, 985 P.2d 365 (1999). Here, as stated above, the defendant's interpretation is not only strained, it would lead to

¹³ The defendant asserts that this dire result can be ameliorated because if a defendant were to change his mode or manner of threatening behavior, additional charges of harassment could be filed. This is incorrect. There is nothing in the statutory language that shows that the legislature intended the unit of prosecution under the statute be dependent upon the mode or manner of the defendant's threats.

¹⁴ The defendant's argument would apply equally to other statutes using the same language. A look at these statutes further highlights the absurdity of the defense argument. For example, the threats to bomb statute uses the term "threaten," and thus, a perpetrator could call in a bomb threat to a school day after day after day and face but a single count. See RCW 9.61.160. A perpetrator commits the offense of criminal gang intimidation if the perpetrator "threatens" another person because they refuse to join a gang. See RCW 9A.46.120. Under the defendant's argument, the gang member can threaten his victim day after day after day with no further repercussions beyond a single count.

absurd results, undercut the legislature's intent, and create a giant loophole in the statute.

Harassment is a *choate* crime complete when a single act of harassment occurs. The elements section of the statute is unambiguous in describing what is necessary for conviction: a single act. A unit of prosecution encompassing each act of harassment is supported by the plain reading of the statute and best effectuates the legislative intent of protecting victim and holding defendants accountable for their discrete criminal acts.¹⁵

¹⁵ This is not to say that other factors do not dictate filing decisions. Filing decisions are regulated by law and standards of prosecution. See RCW 9.94A.411; State v. Lewis, 115 Wn.2d 294, 307, 797 P.2d 1141 (1990) (The filing decision was "within the prosecutor's filing standards, standards promulgated to secure the integrity of the SRA's sentencing framework. The charging decision adequately reflects the defendant's actions and ensures that his punishment is commensurate with the punishment imposed on others committing similar offenses and ensures that the punishment for a criminal offense is proportionate to the seriousness of the offense").

Additionally, when there are several acts that occur close in time, the factual doctrine of "continuing course of conduct" may be applied and a single count filed by the State. For example, where two distinct assaults occur in one place, over a short period of time, and involve the same victim, this may be considered one continuing act supporting a single charge. See State v. Handran, 113 Wn.2d 11, 17-18, 775 P.2d 453 (1989); also State v. Marko, 107 Wn. App. 215, 231-32, 27 P.3d 228 (2001) (multiple threats over a 90-minute period of time held to be a continuing course of conduct and one criminal act).

F. CONCLUSION

For the reasons cited above, this Court should dismiss the defendant's petition.

DATED this 19 day of May, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
DENNIS J. McCURDY, WSBA #21975
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appendix

- A: Judgment & Sentence
- B: Amended Information
- C: Case Assignment
- D: Clerk's Minutes
- E: Plea of Guilty & Plea Agreement
- F: Defendant's Sentencing Memorandum
- G: Appellate Court Opinion, Mandate and Order Amending Judgment & Sentence

APPENDIX A

FILED
KING COUNTY, WASHINGTON

NOV 10 2011

NOV 14 2011

SUPERIOR COURT CLERK COMMITMENT ISSUED

PRESENTENCING STATEMENT & INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

WILLIAM NEAL FRANCE

Defendant,

No. 11-1-01715-6 SEA

JUDGMENT AND SENTENCE
FELONY (FJS)

I. HEARING ^{Law Office of Brian J Todd}
6523 California Ave SW #179
Seattle, WA 98136

I.1 The defendant, the defendant's lawyer, BRIAN TODD, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Det Cooper, Anita Paulsen, Nina Brach, Lisa Dausgaard

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10/19/2011 by plea of:

Count No.: III Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code: 00500
Date of Crime: 12/28/2010 Incident No. _____

Count No.: IV Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code: 00500
Date of Crime: 09/23/2009 Incident No. _____

Count No.: VI Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code: 00500
Date of Crime: 01/25/2011 Incident No. _____

Count No.: VII Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code: 00500
Date of Crime: 01/11/2011 Incident No. _____

Additional current offenses are attached in Appendix A

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

- (a) \$ _____, Court costs (RCW 9.94A.030, RCW 10.01.160); Court costs are waived;
- (b) \$100 DNA collection fee (RCW 43.43.7541)(mandatory for crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); Recoupment is waived;
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); VUCSA fine waived;
- (e) \$ _____, King County Interlocal Drug Fund (RCW 9.94A.030); Drug Fund payment is waived;
- (f) \$ _____, \$100 State Crime Laboratory Fee (RCW 43.43.690); Laboratory fee waived;
- (g) \$ _____, Incarceration costs (RCW 9.94A.760(2)); Incarceration costs waived;
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 600 -. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; [] (Date): _____ by _____ m.

60 months/days on count 3, 4; 60 months/days on count 4; 60 months/day on count 6

60 months/days on count 7; 60 months/days on count 8; 60 months/day on count 9

60 months on Ct 12 60 months on count 14 60 months on count 15
The above terms for counts _____ are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____
Cts 3, 4, 6 shall run concurrent to each other & consecutive to all others
Cts 7, 8, 9 shall run concurrent to each other & consecutive to all others

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

Cts 12, 14, 15 shall run concurrent to each other & consecutive to all others

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 180 months.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): [] _____ day(s) or days determined by the King County Jail.
[] For nonviolent, nonsex offense, credit is given for days determined by the King County Jail to have been served in the King County Supervised Community Option (Enhanced CCAP) solely under this cause number.
[] For nonviolent, nonsex offense, the court authorizes earned early release credit consistent with the local correctional facility standards for days spent in the King County Supervised Community Option (Enhanced CCAP).

4.5 NO CONTACT: For the maximum term of 15 years, defendant shall have no contact with _____
See attached APPENDIX H

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.
[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY CUSTODY for qualifying crimes committed before 7-1-2000, is ordered for [] one year (for a drug offense, assault 2, assault of a child 2, or any crime against a person where there is a finding that defendant or an accomplice was armed with a deadly weapon); [] 18 months (for any vehicular homicide or for a vehicular assault by being under the influence or by operation of a vehicle in a reckless manner); [] two years (for a serious violent offense).

(b) [] COMMUNITY CUSTODY for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months.

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h) Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) Aggravating circumstances as to count(s) III, IV, VI, VII, VIII, IX, XII, XIV, XV: OFFICER OF THE COURT AGGRAVATOR

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

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

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count III, IV, VI, VII, VIII, IX, XII, XIV & XV	14	III	51 TO 60		51 TO 60 MONTHS	5 YEARS AND/OR \$10,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE

Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) ~~above~~ 3, 4, 6, 7, 8, 9 see 9.94A.535(3) officer of the court.
Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) see above The court would impose the same sentence on the basis of any one of the aggravating circumstances.

An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
 An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.
 The Court DISMISSES Count(s) I, II, V, X, XI, XIII & XVI

(c) **COMMUNITY CUSTODY** - for qualifying crimes committed after 6-30-2000 is ordered for the following established range or term:

- Sex Offense, RCW 9.94A.030 - 36 months—when not sentenced under RCW 9.94A.507
- Serious Violent Offense, RCW 9.94A.030 - 36 months
 - If crime committed prior to 8-1-09, a range of 24 to 36 months.
- Violent Offense, RCW 9.94A.030 - 18 months
- Crime Against Person, RCW 9.94A.411 or Felony Violation of RCW 69.50/52 - 12 months
 - If crime committed prior to 8-1-09, a range of 9 to 12 months.

Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or the court.
 APPENDIX H for Community Custody conditions is attached and incorporated herein.
 APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP**: The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement, subject to the conditions set out in **Appendix H**.

4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480**. The State's plea/sentencing agreement is attached as follows:

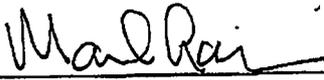
The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 11-10-11



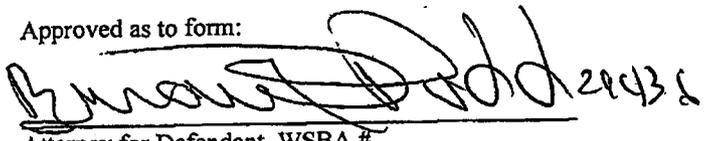
JUDGE
Print Name: Steven Gonzalez

Presented by:



Deputy Prosecuting Attorney, WSBA#
Print Name: _____

Approved as to form:



Attorney for Defendant, WSBA #
Print Name: Law Office of Brian J Todd
6523 California Ave SW #179
Seattle, WA 98136
206-778-0750

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM NEAL FRANCE

Defendant,

No. 11-1-01715-6 SEA

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX A
ADDITIONAL CURRENT OFFENSES

2.1 The defendant is also convicted of these additional current offenses:

Count No.: VIII Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code 00500
Date Of Crime 01/12/2011 Incident No. _____

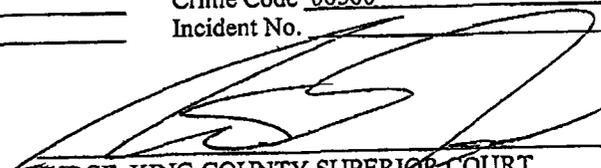
Count No.: IX Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code 00500
Date Of Crime 01/25/2011 Incident No. _____

Count No.: XII Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code 00500
Date Of Crime 12/28/2010 Incident No. _____

Count No.: XIV Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code 00500
Date Of Crime 01/12/2011 Incident No. _____

Count No.: XV Crime: FELONY HARASSMENT
RCW 9A.46.020(1), (2) Crime Code 00500
Date Of Crime 01/25/2011 Incident No. _____

Date: 11/10/11



JUDGE, KING COUNTY SUPERIOR COURT

STEVEN GONZALEZ

BEST AVAILABLE IMAGE POSSIBLE

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: William France
DEFENDANT'S ADDRESS: DOC

WILLIAM NEAL FRANCE

DATED: 11-10-11

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: Indra Jones
DEPUTY CLERK

[Signature]
JUDGE, KING COUNTY SUPERIOR COURT
STEVEN GONZALEZ

CERTIFICATE

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

OFFENDER IDENTIFICATION

S.I.D. NO. WA10356245
DOB: MARCH 11, 1954
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM NEAL FRANCE

Defendant,

No. 11-1-01715-6 SEA

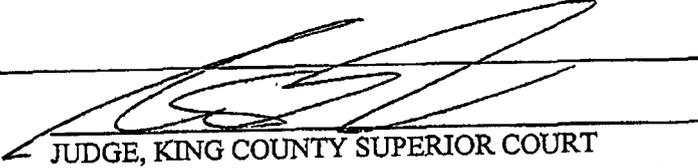
JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ROBBERY-2	03/28/1978	ADULT	70233	KING CO
FELONY HARASSMENT	02/21/2003	ADULT	021063906	KING CO
FELONY TELEPHONE HARASSMENT-DV	06/17/2005	ADULT	051049851	KING CO
PROTECTION ORDER VIOL-PREV CO	10/16/2009	ADULT	091051859	KING CO
MALICIOUS MISCHIEF-2	09/23/2005	ADULT	051087443	KING CO
TAKING VEHICLE W/O PERMISSION	01/28/2000	ADULT	991009376	LEWIS CO
POSSESS STOLEN PROPERTY-2	01/28/2000	ADULT	991009376	LEWIS CO

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 11/10/11


JUDGE, KING COUNTY SUPERIOR COURT

STEVEN GONZALEZ

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM NEAL FRANCE,

Defendant.

No. 11-1-01715-6 SEA

APPENDIX H

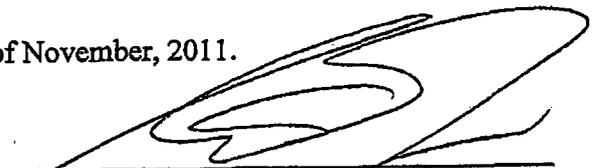
NO CONTACT ORDER

IT IS SO ORDERED by this Court that the defendant is excluded from being within 1,000 feet of any of the victims (Anita Paulsen, Nina Beach, and Lisa Daugaard) or within a 1,000 foot perimeter of the office of The Defender Association (Central Building, 8th floor, 810 3rd Ave., Seattle), the King County Department of Adult and Juvenile Detention (DAJD) (500 5th Ave., Seattle), and the King County Courthouse (516 3rd Ave., Seattle) unless: (1) the defendant has documented business at the DAJD or the King County Courthouse; (2) unless he is under arrest; or (3) his presence has been previously cleared by his corrections officer. If not under Washington State Department of Correction's supervision, prior notice of the defendant's

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expected presence is to be given to the DAJD and King County Court security unless the
defendant's presence is pursuant to his in-custody status.

Signed this 10 day of November, 2011.


THE HONORABLE STEVEN GONZALEZ

APPENDIX B

1
2 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
3 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
4 FRANCE that the defendant committed the offense against a public official or officer of the
5 court in retaliation of the public official's performance of his or her duty to the criminal justice
6 system under the authority of RCW 9.94A.535(3)(x).

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COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about December 26, 2010, having been previously convicted on September 23, 2009, of the
crime of Felony Violation of a Court Order against a person specifically named in a no contact or
no harassment order, without lawful authority, knowingly did threaten to cause bodily injury
immediately or in the future to Anita Paulsen, to subject Anita Paulsen to physical confinement
or restraint, to maliciously do an act intended to substantially harm Anita Paulsen with respect to
her physical or mental health or safety; and the words or conduct did place Anita Paulsen in
reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
FRANCE that the defendant committed the offense against a public official or officer of the
court in retaliation of the public official's performance of his or her duty to the criminal justice
system under the authority of RCW 9.94A.535(3)(x).

COUNT III

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about December 28, 2010, having been previously convicted on September 23, 2009, of the
crime of Felony Violation of a Court Order against a person specifically named in a no contact or

1 no harassment order, without lawful authority, knowingly did threaten to cause bodily injury
2 immediately or in the future to Anita Paulsen, to subject Anita Paulsen to physical confinement
3 or restraint, to maliciously do an act intended to substantially harm Anita Paulsen with respect to
her physical or mental health or safety; and the words or conduct did place Anita Paulsen in
reasonable fear that the threat would be carried out;

4 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
5 Washington.

6 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
7 the authority of the State of Washington further do allege the crime involves the following
8 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
9 offense and that the defendant's conduct during the commission of this offense manifested
10 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

11 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
12 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
13 FRANCE that the defendant committed the offense against a public official or officer of the
14 court in retaliation of the public official's performance of his or her duty to the criminal justice
15 system under the authority of RCW 9.94A.535(3)(x).

16 COUNT IV

17 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
18 NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
19 together with another crime charged herein, committed as follows:

20 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
21 about January 10, 2011, having been previously convicted on September 23, 2009, of the crime
22 of Felony Violation of a Court Order against a person specifically named in a no contact or no
23 harassment order, without lawful authority, knowingly did threaten to cause bodily injury
24 immediately or in the future to Anita Paulsen, to subject Anita Paulsen to physical confinement
or restraint, to maliciously do an act intended to substantially harm Anita Paulsen with respect to
her physical or mental health or safety; and the words or conduct did place Anita Paulsen in
reasonable fear that the threat would be carried out;

19 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
20 Washington.

21 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
22 the authority of the State of Washington further do allege the crime involves the following
23 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
24 offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

1 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
2 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
3 FRANCE that the defendant committed the offense against a public official or officer of the
4 court in retaliation of the public official's performance of his or her duty to the criminal justice
5 system under the authority of RCW 9.94A.535(3)(x).

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COUNT V

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about January 12, 2011, having been previously convicted on September 23, 2009, of the crime
of Felony Violation of a Court Order against a person specifically named in a no contact or no
harassment order, without lawful authority, knowingly did threaten to cause bodily injury
immediately or in the future to Anita Paulsen, to subject Anita Paulsen to physical confinement
or restraint, to maliciously do an act intended to substantially harm Anita Paulsen with respect to
her physical or mental health or safety; and the words or conduct did place Anita Paulsen in
reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
FRANCE that the defendant committed the offense against a public official or officer of the
court in retaliation of the public official's performance of his or her duty to the criminal justice
system under the authority of RCW 9.94A.535(3)(x).

COUNT VI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about January 25, 2011, having been previously convicted on September 23, 2009, of the crime
of Felony Violation of a Court Order against a person specifically named in a no contact or no
harassment order, without lawful authority, knowingly did threaten to cause bodily injury

1 immediately or in the future to Anita Paulsen, to subject Anita Paulsen to physical confinement
2 or restraint, to maliciously do an act intended to substantially harm Anita Paulsen with respect to
3 her physical or mental health or safety; and the words or conduct did place Anita Paulsen in
4 reasonable fear that the threat would be carried out;

5 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
6 Washington.

7 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
8 the authority of the State of Washington further do allege the crime involves the following
9 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
10 offense and that the defendant's conduct during the commission of this offense manifested
11 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

12 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
13 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
14 FRANCE that the defendant committed the offense against a public official or officer of the
15 court in retaliation of the public official's performance of his or her duty to the criminal justice
16 system under the authority of RCW 9.94A.535(3)(x).

17 COUNT VII

18 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
19 NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
20 together with another crime charged herein, committed as follows:

21 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
22 about January 11, 2011, having been previously convicted on September 23, 2009, of the crime
23 of Felony Violation of a Court Order against a person specifically named in a no contact or no
24 harassment order, without lawful authority, knowingly did threaten to cause bodily injury
immediately or in the future to Lisa Dugaard, to subject Lisa Dugaard to physical confinement
or restraint, to maliciously do an act intended to substantially harm Lisa Dugaard with respect to
her physical or mental health or safety; and the words or conduct did place Lisa Dugaard in
reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant WILLIAM NEAL

1 FRANCE that the defendant committed the offense against a public official or officer of the
2 court in retaliation of the public official's performance of his or her duty to the criminal justice
3 system under the authority of RCW 9.94A.535(3)(x).

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COUNT VIII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about January 12, 2011, having been previously convicted on September 23, 2009, of the crime of Felony Violation of a Court Order against a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to cause bodily injury immediately or in the future to Lisa Daugaard, to subject Lisa Daugaard to physical confinement or restraint, to maliciously do an act intended to substantially harm Lisa Daugaard with respect to her physical or mental health or safety; and the words or conduct did place Lisa Daugaard in reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do allege the crime involves the following aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said offense and that the defendant's conduct during the commission of this offense manifested deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant WILLIAM NEAL FRANCE that the defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system under the authority of RCW 9.94A.535(3)(x).

COUNT IX

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about January 25, 2011, having been previously convicted on September 23, 2009, of the crime of Felony Violation of a Court Order against a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to cause bodily injury immediately or in the future to Lisa Daugaard, to subject Lisa Daugaard to physical confinement or restraint, to maliciously do an act intended to substantially harm Lisa Daugaard with respect to

1 her physical or mental health or safety; and the words or conduct did place Lisa Daugaard in
2 reasonable fear that the threat would be carried out;

3 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
4 Washington.

5 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
6 the authority of the State of Washington further do allege the crime involves the following
7 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
8 offense and that the defendant's conduct during the commission of this offense manifested
9 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

10 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
11 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
12 FRANCE that the defendant committed the offense against a public official or officer of the
13 court in retaliation of the public official's performance of his or her duty to the criminal justice
14 system under the authority of RCW 9.94A.535(3)(x).

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COUNT X

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about January 25, 2011, having been previously convicted on September 23, 2009, of the crime
of Felony Violation of a Court Order against a person specifically named in a no contact or no
harassment order, without lawful authority, knowingly did threaten to cause bodily injury
immediately or in the future to Lisa Daugaard, to subject Lisa Daugaard to physical confinement
or restraint, to maliciously do an act intended to substantially harm Lisa Daugaard with respect to
her physical or mental health or safety; and the words or conduct did place Lisa Daugaard in
reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
FRANCE that the defendant committed the offense against a public official or officer of the

1 court in retaliation of the public official's performance of his or her duty to the criminal justice
2 system under the authority of RCW 9.94A.535(3)(x).

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COUNT XI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about January 29, 2011, having been previously convicted on September 23, 2009, of the crime of Felony Violation of a Court Order against a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to cause bodily injury immediately or in the future to Lisa Daugaard, to subject Lisa Daugaard to physical confinement or restraint, to maliciously do an act intended to substantially harm Lisa Daugaard with respect to her physical or mental health or safety; and the words or conduct did place Lisa Daugaard in reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do allege the crime involves the following aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said offense and that the defendant's conduct during the commission of this offense manifested deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant WILLIAM NEAL FRANCE that the defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system under the authority of RCW 9.94A.535(3)(x).

COUNT XII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about December 28, 2010, having been previously convicted on September 23, 2009, of the crime of Felony Violation of a Court Order against a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to cause bodily injury immediately or in the future to Nina Beach, to subject Nina Beach to physical confinement or restraint, to maliciously do an act intended to substantially harm Nina Beach with respect to her

1 physical or mental health or safety; and the words or conduct did place Nina Beach in reasonable
2 fear that the threat would be carried out;

3 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
4 Washington.

5 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
6 the authority of the State of Washington further do allege the crime involves the following
7 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
8 offense and that the defendant's conduct during the commission of this offense manifested
9 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

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COUNT XIII

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about December 28, 2010, having been previously convicted on September 23, 2009, of the
crime of Felony Violation of a Court Order against a person specifically named in a no contact or
no harassment order, without lawful authority, knowingly did threaten to cause bodily injury
immediately or in the future to Nina Beach, to subject Nina Beach to physical confinement or
restraint, to maliciously do an act intended to substantially harm Nina Beach with respect to her
physical or mental health or safety; and the words or conduct did place Nina Beach in reasonable
fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

COUNT XIV

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about January 12, 2011, having been previously convicted on September 23, 2009, of the crime
of Felony Violation of a Court Order against a person specifically named in a no contact or no
harassment order, without lawful authority, knowingly did threaten to cause bodily injury

1 immediately or in the future to Nina Beach, to subject Nina Beach to physical confinement or
2 restraint, to maliciously do an act intended to substantially harm Nina Beach with respect to her
3 physical or mental health or safety; and the words or conduct did place Nina Beach in reasonable
4 fear that the threat would be carried out;

5 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
6 Washington.

7 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
8 the authority of the State of Washington further do allege the crime involves the following
9 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
10 offense and that the defendant's conduct during the commission of this offense manifested
11 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

12 COUNT XV

13 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
14 NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
15 together with another crime charged herein, committed as follows:

16 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
17 about January 25, 2011, having been previously convicted on September 23, 2009, of the crime
18 of Felony Violation of a Court Order against a person specifically named in a no contact or no
19 harassment order, without lawful authority, knowingly did threaten to cause bodily injury
20 immediately or in the future to Nina Beach, to subject Nina Beach to physical confinement or
21 restraint, to maliciously do an act intended to substantially harm Nina Beach with respect to her
22 physical or mental health or safety; and the words or conduct did place Nina Beach in reasonable
23 fear that the threat would be carried out;

24 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
the authority of the State of Washington further do allege the crime involves the following
aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
offense and that the defendant's conduct during the commission of this offense manifested
deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

COUNT XVI

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
NEAL FRANCE of the crime of **Felony Harassment**, based on a series of acts connected
together with another crime charged herein, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about January 29, 2011, having been previously convicted on September 23, 2009, of the crime

1 of Felony Violation of a Court Order against a person specifically named in a no contact or no
2 harassment order, without lawful authority, knowingly did threaten to cause bodily injury
3 immediately or in the future to Nina Beach, to subject Nina Beach to physical confinement or
4 restraint, to maliciously do an act intended to substantially harm Nina Beach with respect to her
5 physical or mental health or safety; and the words or conduct did place Nina Beach in reasonable
6 fear that the threat would be carried out;

7 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
8 Washington.

9 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
10 the authority of the State of Washington further do allege the crime involves the following
11 aggravating factor and accuse the defendant WILLIAM NEAL FRANCE of committing said
12 offense and that the defendant's conduct during the commission of this offense manifested
13 deliberate cruelty to the victim, under the authority of RCW 9.94A.535(3)(a).

14 DANIEL T. SATTERBERG
15 Prosecuting Attorney

16 By: 
17 _____
18 Mark Larson, WSBA #15328
19 Senior Deputy Prosecuting Attorney

APPENDIX C

ORIGINAL COURT MINUTES

ENT'D.

PAGE #: 10

SEATTLE COURTHOUSE
KING COUNTY SUPERIOR COURT
CRIMINAL TRIAL CALENDAR CALENDAR DATE: 10/19/2011
RONALD KESSLER

JUDGE:

COURT CLERK: ANGIE VILLALOVOS COURT REPORTER

CASE NO: 11-1-01715-6 SEA

DEFENDANT: FRANCE, WILLIAM N
TRUE NAME:
CCN: 0066674
EXP: 11-11-11

DPA: KING COUNTY, PROSECUTING ATT
ATD: TODD, BRIAN JAMES
2067780750

CO-DEFENDANTS:

CHARGE: FEL STALKING W/AGG 3CTS
ARR DATE: 03/08/2011
LOC: 4N11UC05
INT:
ORIGINAL TRIAL DATE: 05/02/2011
COMMENCE DATE: 03-08-11
TRIAL SET EXP: 05-07-11
MOTION JUDGE #: HON. 000
AFFIDAVIT:

ACTION:

HOLD TO _____

5-DAY EXTENSION TO _____

CONT - CONTINUED TO _____

60/90 WAIVER TO _____

ASSIGNED TO JUDGE Gonzalez

PLEA - SENT TO _____

STRIKE

BEN - BENCH WARRANT TO BE ISSUED

DSMHRG - ORDER OF DISMISSAL

ORDER SIGNED/ORDER TO BE PRESENTED

APPENDIX D

CLERK'S MINUTES

SCOMIS CODE: GPOH

Judge: Steven Gonzalez
Bailiff: Christina Jaccard
Court Clerk: Andre Jones
Reporter: Joanne Leatiota
Digital Record:

Dept. 5
Date: 10/18/2011

KING COUNTY CAUSE NO.: 11-1-01715-6 SEA

State of Washington vs. William France

Appearances:

Mark Larson, appearing DPA for State of Washington

Brian Todd, appearing attorney for Defendant

MINUTE ENTRY

Respective counsel and defendant present

Cause comes on for Trial
Cts. 1-16 Felony Harassment

Discussions on preliminary matters, motions, trial memos, trial schedule, jury selection process

No CrR 3.5 or 3.6 hearings, No motion in limines

State Exhibit 1 (Pre Trial)

For ID Only

Cause continued to 10-19-11 at 9am

**State of Washington vs. William France
King County Cause No. 11-1-01715-6 SEA**

Date: 10-19-11

Judge: Steven Gonzalez
Bailliff: Christina Jaccard
Court Clerk: Andre Jones
Reporter: Joanne Leatiota
Digital Record:

Continued from: 10-18-11

MINUTE ENTRY

Respective counsel and defendant present

Change of plea hearing is held

Defendant withdraws plea of not guilty previously entered and enters a plea of guilty to
Cts. 3, 4, 6-9, 12, 14, 15 Felony Harassment

Sentencing date will be held on 11-10-11 at 1pm before Judge Gonzalez Rm. W 941

Guilty Plea Order signed by all parties

Court adjourns

APPENDIX E

FILED
2011 OCT 19 PM 12:17
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 11-1-01715-6 SEA

vs.

William France

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO FELONY
NON-SEX OFFENSE (STDFG)

Defendant.

1. My true name is William France

2. My date of birth is 3-11-1955

3. I went through the 10th grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Brian J. Dodd

(b) I am charged with the crime(s) of Felony Harassment - 9 counts
3 of counts include an aggravated in support of an exceptional sentence
The elements of this crime(s) are set forth in the information/ amended information,

which is incorporated by reference and which I have reviewed with my lawyer.

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5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to testify and to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
ALL			_____ years \$ _____
3, 4, 6, 7, 8, 9, 12, 14, 15	51-60 mo	N/A	5 years \$ 10,000
			_____ years \$ _____

1 The crime of _____ is a most serious offense as defined by
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge. *W.F.S.*]

7 (b) The standard sentence range is based on the crime charged and my criminal history.
8 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
9 this state, in federal court, or elsewhere.

10 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.
11 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is
12 correct and complete. If I have attached my own statement, I assert that it is correct and complete.
13 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
14 to tell the sentencing judge about those convictions.

15 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
16 history is discovered, both the standard sentence range and the prosecuting attorney's
17 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
18 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
19 charge is binding on me.

20 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
21 victim's compensation fund assessment and a \$100 DNA fee. If this crime is a felony drug violation
22 of RCW Chapter 69.50, the judge will impose an additional fine of \$1000 (\$2000 if this is not my

1 first such conviction) unless the judge finds that I am indigent. If this crime resulted in injury to any
2 person or damages to or loss of property, the judge will order me to make restitution, unless
3 extraordinary circumstances exist which make restitution inappropriate. The judge may also order
4 that I pay a fine, court costs, attorney fees, and other costs and fees, and place other restrictions and
5 requirements upon me. Furthermore, the judge may place me on community custody.

6 (f) In addition to confinement, if the total period of confinement ordered is more than 12
7 months, the judge will sentence me to the following period of community custody, unless the judge
8 finds substantial and compelling reasons to do otherwise:

9 For crimes committed prior to July 1, 2000: for a drug offense, assault 2, assault of a child
10 2, or any crime against a person where there is a finding that I or an accomplice was armed with a
11 deadly weapon, one year; for any vehicular homicide or for a vehicular assault by being under the
12 influence or by operation of a vehicle in a reckless manner, 18 months; for a serious violent offense,
13 two years.

14 For crimes committed on or after July 1, 2000, and prior to August 1, 2009, as follows:

- 15 Serious violent offense: a range of 24 to 36 months.
16 Violent offense: 18 months.
17 Crimes against persons or violation of RCW 69.50 or 69.52 : a range of 9 to 12
18 months.

19 For crimes committed on or after August 1, 2009, as follows:

- 20 Serious violent offense: 36 months.
21 Violent offense: 18 months.
22 Crimes against persons or violation of RCW 69.50 or 69.52 : 12 months.

The longest applicable period of community custody will be imposed. During the period of
community custody I may be under the supervision of the Department of Corrections, and I will
have restrictions and requirements placed upon me. My failure to comply with these conditions will

1 result in the Department of Corrections transferring me to a more restrictive confinement status or
2 other sanctions being imposed. (If not applicable, this section should be stricken and initialed by the
3 defendant and the judge W.F.S. * 60 months on 3, 4, 6 concurrent w/ each other
60 months on 7, 8, 9 concurrent w/ each other
60 months on 12, 14, 15 concurrent w/ each other

4 (g) The prosecuting attorney will make the following recommendation to the judge: each 60
5 month sentence concurrent with totaling 180 months,
6 mandatory \$500 V/A + \$100 V/A will fee, court costs, recoupment
7 no contact with Anita Kullen, Nina Beach or Lisa Nungard
8 Dismiss 7 remaining counts and remove deliberate cruelty
 The prosecutor will make the recommendation stated in the plea Agreement and State's eg.

9 Sentence Recommendation, which are incorporated by reference.

10 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge
11 must impose a sentence within the standard range unless there is a finding of substantial and
12 compelling reasons not to do so or both parties stipulate to a sentence outside the standard range. If
13 the judge goes outside the standard range, either I or the State can appeal that sentence to the extent
14 to which it was not stipulated. If the sentence is within the standard range, no one can appeal the
15 sentence.

16 (i) The crime of _____ has a mandatory minimum sentence of
17 at least _____ years of total confinement. The law does not allow any reduction of this sentence.
18 For crimes committed on or after July 24, 2005, this does not apply to juveniles tried as adults
19 pursuant to a transfer of jurisdiction under RCW 13.40.110 (see RCW 9.94A.540(3)). (If not
20 applicable, this paragraph should be stricken and initialed by the defendant and judge W.F.S.)

21 (j) The crime charged in Count _____ includes a firearm / deadly weapon
22 sentence enhancement of _____ months. This

1 additional confinement time is mandatory and must be served consecutively to any other
2 sentence and any other enhancement I have already received or will receive in this or any
3 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant
4 and the judge WR 3, 4, 6, 7, 8, 9

5 (k) The sentences imposed on counts 12, 14, 15, except for any weapons enhancement,
6 will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.

7 [If not applicable, this paragraph should be stricken and initialed by the defendant and judge
8 _____.]

9 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
10 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
11 46.61.5055. This additional confinement time is mandatory and must be served consecutively to
12 any other sentence and any other enhancement I have already received or will receive in this or any
13 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
14 the judge WFS]

15 (m) Counts _____ are serious violent offenses arising from separate and distinct
16 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
17 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
18 stricken and initialed by the defendant and the judge WR]

19 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
20 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as
21 90 days of confinement plus all of the conditions described in paragraph (6)(e). The judge also may
22 require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed

1 course of study or occupational training. In addition, I may be sentenced to up to 6 months or, if
2 treatment is ordered, 12 months of community custody. [If not applicable, this paragraph should
3 be stricken and initialed by the defendant and the judge WFS]

4 (o) The judge may sentence me under the special drug offender sentencing alternative
5 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001),
6 or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
7 period of total confinement for one-half of the midpoint of the standard range or 12 months,
8 whichever is greater, and community custody of at least one-half of the midpoint of the standard
9 range, plus all of the other conditions described in paragraph (6)(e). The judge could impose a
10 residential treatment-based DOSA alternative that would include three to six months of residential
11 chemical dependency treatment and 24 months of community custody, plus all the other conditions
12 described in paragraph (6)(e). During confinement and community custody under either alternative,
13 I will be required to participate in substance abuse evaluation and treatment, not to use illegal
14 controlled substances and to submit to testing to monitor that, and other restrictions and
15 requirements will be placed on me. [If not applicable, this paragraph should be stricken and
16 initialed by the defendant and the judge _____.]

17 (p) The judge may sentence me under the parenting sentencing alternative if I qualify under
18 RCW 9.94A.655. A sentence under that alternative would consist of a period of 12 months of
19 community custody, plus all of the other conditions described in paragraph (6)(e). During
20 community custody, I will be required to follow conditions imposed by the court and the
21 Department of Corrections. [If not applicable, this paragraph should be stricken and initialed by the
22 defendant and the judge WFS]

1 (q) This plea of guilty will result in revocation of my privilege to drive under RCW
2 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not
3 applicable, this paragraph should be stricken and initialed by the defendant and the judge WFE]

4 (r) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
5 judge finds I used a motor vehicle in the commission of this felony.

6 (s) If this crime involves a sexual offense, prostitution, or a drug offense associated with
7 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
8 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
9 judge WFE]

10 (t) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
11 crime under state law is grounds for deportation, exclusion from admission to the United States, or
12 denial of naturalization pursuant to the laws of the United States.

13 (u) I will be required to provide a biological sample for purposes of DNA identification
14 analysis.

15 (v) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
16 minor, I will be required to register with the sheriff of the county of the state of Washington where I
17 reside, study, or work. The specific registration requirements are described in the "Offender
18 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the
19 defendant and the judge WFE]

20 (w) This plea of guilty will result in the revocation of my right to possess, own, or have in
21 my control any firearm unless my right to do so is restored by a superior court in Washington State,
22

1 and by a federal court if required. I must immediately surrender any concealed pistol license. RCW
2 9.41.040.

3 (x) I will be ineligible to vote until that right is restored in a manner provided by law. If I
4 am registered to vote, my voter registration will be cancelled.

5 (y) Because this is a crime of domestic violence, I may be ordered to pay a domestic
6 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court
7 may order me to participate in a domestic violence perpetrator program approved under RCW
8 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and
9 the judge WFS]

10 (z) Because this crime involves the manufacture, delivery, or possession with intent to
11 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,
12 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be
13 assessed. RCW 69.50.401(2)(b). [If not applicable, this paragraph should be stricken and initialed
14 by the defendant and the judge WFS]

15 (aa) Because this crime involves a violation of the state drug laws, my eligibility for state
16 and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and
17 21 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the
18 defendant and the judge WFS]

19 (bb) Because the crimes I am pleading guilty to include both a conviction under RCW
20 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more
21 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the
22 sentences imposed for these crimes shall be served consecutively to each other. RCW

1 9.94A.589(1)(c). [If not applicable, this paragraph should be stricken and initialed by the defendant
2 and the judge WFA]

3 (cc) If I have Washington State volunteer firefighters vehicle license plates, I must surrender
4 those license plates at the time this plea is entered.

5 7. I plead guilty to the crime(s) of Felony Harassment -
6 9 counts

7 And to the aggravator on counts 3, 4, 6, 7, 8, 9 in support of
8 an exceptional sentence.
9 as charged in the information/ amended information, including all charged
9 enhancements and domestic violence designations. I have received a copy of that information.

10 8. I make this plea freely and voluntarily.

11 9. No one has threatened harm of any kind to me or to any other person to cause me to make
12 this plea.

13 10. No person has made promises of any kind to cause me to enter this plea except as set
14 forth in this statement.

15 11. The judge has asked me to state briefly in my own words what I did that makes me
16 guilty of this (these) crime(s), including enhancements and domestic violence relationships, if they
17 apply. This is my statement:

18 COUNTS 3, 4, 6: I placed the calls that
on or about December 28, 2010, January 10, 2011 and January
also contained in pre-trial exhibit 1
agreed to the following:

19 25, 2011 in King County Washington I did knowingly threaten
20 to cause bodily injury immediately or in the future to Anita
21 Paulsen and threatened to maliciously do an act intended to
22 substantially harm her and my words placed her in

→
see next
page

Paragraph 11 (cont'd)

reasonable fear that the threat would be carried out, I did this after having been convicted previously of felony violation of a no contact order against a ~~the~~ person specifically named in the no contact order. Also, this offense was against my prior attorney, a public official or officer of the court in retaliation of the performance of his duty to the criminal justice system.

COUNTS 12, 14, 15:

Also on or about December 28, 2010, January 12, 2011, and January 25, ²⁰¹¹ in King County Washington I did knowingly threaten to cause bodily injury immediately or in the future to ~~the~~ Nina Beach and threatened to maliciously do an act intended to substantially harm her and my words placed her in reasonable fear the threat would be carried out. I had previously been convicted of felony violation of a court order against a person specifically named in a no contact order.

COUNTS
7: Also on or about January 11, 2011, January 12, 2011, and January 25, 2011, I did knowingly threaten to cause bodily injury immediately
8: or in the future to Lisa Naugard and threatened to maliciously
9: do an act intended to substantially harm her and my words placed her in reasonable fear the threat would be carried out. I had previously been convicted of a felony violation of a court order against a person specifically named in a no contact order. Also, this offense was against my prior attorney's supervisor, a public official or officer of the court in retaliation of the performance of her duties to the criminal justice system.

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12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

William Frank
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Mark Larson
PROSECUTING ATTORNEY
Print Name: MARK LARSON
WSBA# 15328

Brian J Todd
DEFENDANT'S LAWYER 24436
Print Name: Brian J Todd
WSBA#

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 19th day of October, 2011.

Steven Gonzalez
JUDGE
STEVEN GONZALEZ

FELONY PLEA AGREEMENT

Date of Crime: Nov 2010 - March 2011

Date: 10-19-11

Defendant: William France
SEA/KNT

Cause No: 11-1-01715-6 SEA

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

On Plea To: As charged in Count(s) 3, 4, 6, 7, 8, 9, 12, 14, 15 of the original amended information.
 With Special Finding(s): deadly weapon - firearm, RCW 9.94A.510(3); deadly weapon other than firearm, RCW 9.94A.510(4); sexual motivation, RCW 9.94A.835; protected zone, RCW 69.50.435; domestic violence, RCW 10.99.020; other offense of court assistance on counts; for count(s): _____

This is part of an indivisible agreement that includes cause number(s): _____

DISMISS: Upon disposition of ^{above} Count(s) ~~1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15~~ the State moves to dismiss: ~~counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15~~

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in Appendix C; _____

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and agrees to pay restitution in the specific amount of \$ _____ agrees to pay restitution _____

OTHER: _____

CRIMINAL HISTORY AND OFFENDER SCORE:

a. The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement. Defendant agrees that he has 6 prior felony convictions

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows: that count in his offender score.

- (1) Conviction: _____ Basis: _____
- (2) Conviction: _____ Basis: _____

c. The defendant understands that one or more convictions from other jurisdictions have been included in the offender score, and agrees that these convictions have been properly included and scored according to the comparable offense definitions provided by Washington law.

d. ~~The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a drug offender or parenting sentencing alternative.~~

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

Maximum on Count(s) _____ is not more than _____ years each and \$ _____ fine each.

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

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

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

William France
Defendant

Mall
Deputy Prosecuting Attorney

Brown 29436
Attorney for Defendant

[Signature]
Judge, King County Superior Court

STEVEN GONZALEZ

GENERAL SCORING FORM

Nonviolent Offenses

Use this form only for the following offenses: Abandonment of Dependent Persons 1 and 2; Abstract of Driving Records - Intentional Use; Advancing Money or Property for Extortionate Extension of Credit; Assault 3; Assault by Watercraft; Assault of a Child 3; Bail Jumping with Class A Felony; Bail Jumping with Class B or C Felony; Bribe Received by Witness; Bribery; Bribing a Witness; Commercial Bribery; Computer Trespass 1; Counterfeiting - 3rd Conviction & Value Greater Than \$10,000; Counterfeiting - Endangering Public Health & Safety; Criminal Gang Intimidation; Criminal Mistreatment 1; and 2; Custodial Assault; Domestic Violence Court Order Violation; Delivery of Imitation Controlled Substance by Person 18 or Over to Person Under 18; Digital Signatures Fraud; Extortion 2; Extortionate Extension of Credit; Extortionate Means to Collect Extensions of Credit; False Verification for Welfare; Forged Prescription (Legend Drug); Forged Prescription for a Controlled Substance; Forgery; Harassment; Health Care False Claims; Hit and Run with Vessel - Injury Accident; Improperly Obtaining Financial Information; Identity Theft 1 and 2; Inciting Criminal Profiteering; Indecent Exposure to Person under Age 14; Influencing Outcome of a Sporting Event; Intimidating a Judge; Intimidating a Juror; Intimidating a Public Servant; Intimidating a Witness; Intentional Infliction of Injury or Death to Guide Dog; Introducing Contraband 1 and 2; Malicious Explosion 3; Malicious Harassment; Malicious Injury to Railroad Property; Malicious Mischief 1 and 2; Malicious Placement of Explosives 2 and 3; Malicious Placement of Imitation Device 1 and 2; Manufacture, Distribute, or Possess with Intent to Distribute an Imitation Controlled Substance; Perjury 1 and 2; Persistent Prison Misbehavior; Possession of a Stolen Firearm; Possession of a Controlled Substance that is Heroin or a Narcotic from Schedule I or II or Flunitrazepam from Schedule IV; Possession of a Controlled Substance that is a Narcotic from Schedule III-V or a Nonnarcotic from Schedule I-V (Except PCP or Flunitrazepam); Possession of Incendiary Device; Possession of Machine Gun or Short-Barreled Shotgun or Rifle; Possession of Phencyclidine (PCP); Possession of Stolen Property 1 and 2; Promoting Prostitution 1 and 2; Reckless Burning 1; Rendering Criminal Assistance 1; Securities Act Violation; Stalking; Taking Motor Vehicle Without Permission; Tampering with a Witness; Telephone Harassment; Theft 1 and 2; Theft of Anhydrous Ammonia; Theft of a Firearm; Theft of Livestock 1 and 2; Theft of Rental, Leased, or Lease-purchase Property-Class B and C; Threats to Bomb; Trafficking in Insurance Claims; Trafficking in Stolen Property 1 and 2; Unlawful Imprisonment; Unlawful Issuance of Checks or Drafts; Unlawful Possession of a Firearm 1 and 2; Unlawful Practice of Law; Unlawful Storage of Anhydrous Ammonia; Unlawful Use of a Professional Title; Unlawful use of Building for Drug Purposes; Unlawful Use of Food Stamps; Unlicensed Practice of a Profession or Business; Unused Property Merchant; Use of Proceeds of Criminal Profiteering; Vehicle Prowl 1; Voting Violation-Mail Ballot.

OFFENDER'S NAME WILLIAM NEAL FRANCE	OFFENDER'S DOB 03/11/1954	STATE ID# WA10356245
JUDGE	CAUSE# 11-1-01715-6 SEA	FBI ID# 606594N1

DOC # - 626275

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.525).

ADULT HISTORY:

Enter number of felony convictions 6 x 1 = 6

JUVENILE HISTORY:

Enter number of serious violent and violent felony dispositions _____ x 1 = _____

Enter number of other nonviolent felony dispositions _____ x 1/2 = _____

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other felony convictions 8 x 1 = 8

STATUS AT TIME OF CURRENT OFFENSES:

Community Placement 09-1-05185-9

If on community placement at time of current offense, add 1 point + 1 = _____

Total Offender Score: **14**

Count I - III	STANDARD RANGE CALCULATION*					
Felony Stalking Fel. Harass.	III	14	51	TO	60	
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW		HIGH	STANDARD SENTENCE RANGE

- If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-18 or III-20 to calculate the enhanced sentence.
- Multiply the range by 75% if the current offense is an attempt, conspiracy or solicitation under RCW 9A.28. For Possession of a Controlled Substance or Forged Prescription of a Controlled Substance, see RCW 69.50.407.

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

Defendant: WILLIAM N FRANCE

FBI No.: 606594N1

State ID No.: WA10356245

DOC No.: 626275

This criminal history compiled on: February 23, 2011

- None known. Recommendations and standard range assumes no prior felony convictions.
 Criminal history not known and not received at this time. WASIS/NCIC last received on 08/13/2009

Adult Felonies

Offense	Score	Disposition
70233 robbery 2	10/18/1974	WA King Superior Court - Guilty 03/28/1978 1 year jail, 5 years deferred; parol revoked 20 years released from prison 8/22/83
89-1-01068-9 atempt to elude pursuing poli	01/25/1989	WA King Superior Court - Guilty 04/24/1989 p/guilty. serve 90d k cjail conc w/89-1-00964-8. 12m comm supervision. pay costs/atty fees. pay cv/pen asst \$70.
02-1-06390-6 felony harassment	09/26/2001	WA King Superior Court - Guilty 02/21/2003 felony 12+m doc.
05-1-04985-1 felony telephone harassment dv	02/20/2005	WA King Superior Court - Guilty 06/17/2005 felony 14m doc ct 1. sntcd 12m jail suspd ct 2 (non-felony) conc w/ct 1. serve 3m jail ct 2 conc w/ct 1. 24m prob.
09-1-05185-9 protection order viol-prev co	08/10/2009	WA King Superior Court - Guilty 10/16/2009 19m doc conc w/tukwila muni ct #cr0053819. 19m comm custody (dosa sentence).
05-1-08744-3 malicious mischief-2	01/18/2005	WA King Superior Court - Guilty 09/23/2005 4m jail conc w/05-1-04985-1.
99-1-00937-6 taking vehicle w/o permission	10/15/1999	WA Lewis Superior Court - Guilty 01/28/2000 2 mos lcj/12 mos comm super/lfo
99-1-00937-6 possess stolen property 2nd d	10/15/1999	WA Lewis Superior Court - Guilty 01/28/2000 2 mos lcj/12 mos comm super/lfo

Adult Misdemeanors

Offense	Score	Disposition
malicious mischief 3rd	06/12/1981	WA Seattle Municipal Court - Guilty
malicious mischief	11/27/1983	WA Seattle Municipal Court - Guilty
dui	11/27/1983	WA Seattle Municipal Court - Guilty
FI102479 dui	12/14/1984	WA Seattle Municipal Court - Guilty
dwi	03/11/1988	WA Seattle District Court - Guilty
89-1-00964-8 attempt taking motor vehicle	10/14/1988	WA King Superior Court - Guilty 04/21/1989 30 days
J92519 assault 4th	10/02/1997	WA Southwest Div King Co Dist Ct - Guilty

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

Defendant: WILLIAM N FRANCE

FBI No.: 606594N1

State ID No.: WA10356245

DOC No.: 626275

Adult Misdemeanors

Offense	Score	Disposition
99-1-04173-5 harassment	12/24/1998	WA King Superior Court - Guilty 01/07/2000 12m suspended. 80d jail.
00-1-03788-7 assault 4th dv	04/22/2000	WA King Superior Court - Guilty 08/25/2000 12m suspd sent, serve 6m jail, 12m comm supv. 09 17 01 ord mod sent, 90d jail.
Y00302966 KC malicious mischief 3rd	10/01/2000	WA Seattle District Court - Guilty
02-1-10116-6 attempt harassment	10/30/2002	WA King Superior Court - Guilty 02/21/2003 non felony 12m jail susp. 100d jail. 24m prob. 06 25 04 ord mod sent. serve 30d jail, 10d in ccap.
05-1-04985-1 misd telephone harassment dv	02/20/2005	WA King Superior Court - Guilty 06/17/2005 felony 14m doc ct 1. sntcd 12m jail suspd ct 2 (non-felony) conc w/ct 1. serve 3m jail ct 2 conc w/ct 1. 24m prob.
06-1-02578-1 protection order violation (g)	02/11/2006	WA King Superior Court - Guilty 06/16/2006 12m jail suspd cts 1-3 conc. 120d jail. 12m prob. 01 24 07 ord mod prob. serve 60d jail, conc w/05-1-04985-1. 09 14 07 ord mod prob. serve 185d jail.
06-1-02578-1 protection order violation (g)	02/11/2006	WA King Superior Court - Guilty 06/16/2006 12m jail suspd cts 1-3 conc. 120d jail. 12m prob. 01 24 07 ord mod prob. serve 60d jail, conc w/05-1-04985-1. 09 14 07 ord mod prob. serve 185d jail.
06-1-02578-1 theft-3 dv	02/11/2006	WA King Superior Court - Guilty 06/16/2006 12m jail suspd cts 1-3 conc. 120d jail. 12m prob. 01 24 07 ord mod prob. serve 60d jail, conc w/05-1-04985-1. 09 14 07 ord mod prob. serve 185d jail.
CR0053819 TK assault fourth degree - dv	05/02/2009	WA Tukwila Municipal Court - Guilty
BC0152591 BE criminal trespass-2nd degree	04/25/2009	WA KCD - Guilty
488200 SP dv viol ordr	06/24/2006	WA Seattle Municipal Court - Guilty
C00495718 WS dui	07/10/2004	WA Seattle District Court - Guilty
Y20300268 BU theft third degree	09/29/2002	WA Southwest Div King Co Dist Ct - Guilty
CR0021861 RE disorderly conduct	05/25/2002	WA Northeast District Court - Guilty
CR0021860 RE assault 4th degree	05/25/2002	WA Northeast District Court - Guilty
Y20022036 BU criminal trespass-2nd degree	01/20/2002	WA Southwest Div King Co Dist Ct - Guilty

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

Defendant: WILLIAM N FRANCE

FBI No.: 606594N1

State ID No.: WA10356245

DOC No.: 626275

Adult Misdemeanors

Offense	Score	Disposition
CQ44045KC KC dwls 3rd degree	01/17/2002	WA Renton District Court - Guilty
Y20013095 KC fail transfer/pass/pay metro	01/12/2002	WA Shoreline Div King Co District Ct - Guilty
Y10147832 KC theft third degree	05/08/2001	WA Seattle District Court - Guilty
394834 SP harassment	12/30/2000	WA Seattle Municipal Court - Guilty
59456 CT dv protection order vio	12/03/1999	WA Centralia Municipal Court - Guilty
990303899 KC third degree theft	08/12/1999	WA Southwest Div King Co Dist Ct - Guilty
990303899 KC harassment	08/12/1999	WA Southwest Div King Co Dist Ct - Guilty
990066952 BU telephone calls to harass	03/01/1999	WA Southwest Div King Co Dist Ct - Guilty
990028309 BU third degree theft	01/27/1999	WA Southwest Div King Co Dist Ct - Guilty
CQ16942KC KC obstructing a public servant	08/23/1998	WA Southwest Div King Co Dist Ct - Guilty
J00106665 SP resisting arrest	11/17/1990	WA Seattle District Court - Guilty
J00020300 KC negligent driving	08/20/1989	WA Seattle District Court - Guilty
J00020300 KC dwls	08/20/1989	WA Seattle District Court - Guilty
I00068518 KC dui	12/12/1987	WA Southwest Div King Co Dist Ct - Guilty
I00068518 KC hit and run unattended vehicl	12/12/1987	WA Southwest Div King Co Dist Ct - Guilty
872950004 SP d.u.i.	10/22/1987	WA Seattle Municipal Court - Guilty
872950004 SP susp.ol.	10/22/1987	WA Seattle Municipal Court - Guilty
861590434 SP d.u.i.	06/08/1986	WA Seattle Municipal Court - Guilty
861590434 SP susp.ol.	06/08/1986	WA Seattle Municipal Court - Guilty
852170015 SP menacing	08/05/1985	WA Seattle Municipal Court - Guilty
852170014 SP trespass	08/05/1985	WA Seattle Municipal Court - Guilty

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

Defendant: WILLIAM N FRANCE

FBI No.: 606594N1

State ID No.: WA10356245

DOC No.: 626275

Juvenile Felonies - None Known

Juvenile Misdemeanors - None Known

Comments

Prepared by: _____

Chanthavy San, CCA
Department of Corrections

STATE'S SENTENCE RECOMMENDATION
(USE FOR NON-SEX OFFENSE, NON-DOSA SENTENCES OF OVER ONE YEAR ONLY)

Date of Crime: Nov 2010 - March 2011

Date: 10-19-11

Defendant: William France

Cause No.: 11-1-01715-6 SEA SEA/KNT

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

60 months/days on Counts ~~1,2,3~~ 3,4,6,7,8,9 months/days on Count _____
_____ months/days on Count 12,14,15 months/days on Count _____

with credit for time served as provided under RCW 9.94A.505. Terms to be served concurrently/consecutively with each other. Terms to be served concurrently/consecutively with: Counts 3, 4, 6, 7, 8, 9 but consecutive to counts ~~1,2,3~~ 7,8,9 which are consecutive to each other but consecutive to counts ~~1,2,3~~ 12,14,15.
Terms to be consecutive to any other term(s) not specifically referred to in this form.

WEAPONS ENHANCEMENT - RCW 9.94A.510: The above recommended term(s) of confinement do not include the following weapons enhancement time: _____ months for Ct. _____, _____ months for Ct. _____, _____ months for Ct. _____; which is/are mandatory, served without good time and served consecutive to any other term of confinement.

_____ ENHANCEMENT: : _____ months for Ct. _____.

TOTAL LENGTH OF CONFINEMENT recommended in this cause, including all counts and enhancements is 180 months.

This is an agreed recommendation.

NO DRUG OFFENDER SENTENCE ALTERNATIVE (DOSA) - RCW 9.94A.660:

- Defendant is not legally eligible for DOSA because current sex or violent offense; prior violent offense within 10 years or any prior sex offense; weapon enhancement; subject to final deportation order; not small quantity of drugs; more than one prior DOSA within 10 years; felony DUI or physical control.
- Defendant is eligible but DOSA is not recommended because Defendant committed this crime while serving a DOSA sentence

EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth in the attached form or brief. State intends to seek an exceptional sentence based on 'free crimes' aggravator for all counts and 'officer of court' aggravator for counts

NO CONTACT: For the maximum term, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties, with: Lisa Dargood; Nina Beach; Anita Paulson or any other member of The Defender Association

MONETARY PAYMENTS: Defendant shall make the following monetary payments pursuant to RCW 9.94A.753 and RCW 9.94A.760.

- Restitution as set forth in the "Plea Agreement" page and _____
- Court costs; mandatory \$500 Victim Penalty Assessment and \$100 DNA collection fee; recoupment of cost for appointed counsel.
- King County Local Drug Fund \$ _____; \$100 lab fee (RCW 43.43.690).
- Fine of \$ _____; \$1,000 fine for VUCSA; \$2,000 fine for subsequent VUCSA.
- Costs of incarceration in K.C. Jail at \$50 per day (RCW 9.94A.760(2)).
- Emergency response costs \$ _____ (RCW 38.52.430); Extradition costs of \$ _____; Other _____.

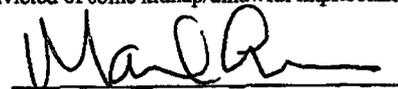
COMMUNITY CUSTODY: for qualifying crimes, the defendant shall serve a term of community custody set forth below.

- Serious violent offense: 36 months (a range of 24 to 36 months if crime committed before 8/1/2009).
- Violent offense: 18 months
- Crimes against persons or violation of Ch. 69.50 or .52: 12 months (a range of 9 to 12 months if crime committed before 8/1/2009).

Community Custody includes mandatory statutory conditions as well as discretionary conditions set by the court or Dept. of Corrections. The State recommends the court impose these discretionary conditions:

- Obtain an alcohol/substance abuse evaluation within 30 days of release and follow all treatment recommendations.
- Enter into within 30 days of release, make reasonable progress in, and successfully complete state-certified Domestic Violence treatment.
- Other: _____

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


Deputy Prosecuting Attorney, WSBA No. _____

APPENDIX F

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
Plaintiff,)	No. 11-1-01715-6 SEA
)	
vs.)	
)	DEFENDANT'S
WILLIAM FRANCE,)	PRESENTENCE REPORT
Defendant.)	

SENTENCING JUDGE:	STEVEN GONZÁLEZ
SENTENCING DATE:	November 10, 2011
CHARGED CRIME:	Felony Harassment x 9
OFFENDER SCORE:	14
STANDARD RANGE:	51 to 60 months

I. DEFENDANT'S RECOMMENDATION

The defendant respectfully requests that this court impose a sentence pursuant to the Drug Offender Sentence Alternative (DOSA). This would result in 27.75 months in custody and 27.75 months on community custody. The defendant further requests that this Court waive all non-mandatory fines, fees, and assessments.

Law Office of Brian J. Todd
6523 California Avenue SW #179
Seattle, Washington 98136-1833
(206) 778-0750
FAX (206) 937-6419
Btodd72@GMAIL.com

1
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3 II. ARGUMENT

4 THE DEFENSE ASK THAT THE COURT IMPOSE A SENTENCE PURSUANT TO
5 THE DRUG OFFENDER SENTENCING ALTERNATIVE (DOSA) RCW 9.94A.660.

6 RCW 9.94A.660 provides that an offender is eligible for the special drug offender
7 sentencing alternative if the offender is convicted of a felony that is not a violent offense or sex
8 offense and the violation does not involve an enhancement under RCW 9.94A.533(3) or (4); the
9 offender is convicted of a felony that is not a felony driving while under the influence of
10 intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle
11 while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6); the
12 offender has no current or prior convictions for a sex offense or violent offense within ten years
13 before conviction of the current offense, in this state, another state, or the United States; if it is a
14 drug offense under RCW 69.50 then the offense must involve a small quantity; the offender has
15 not been found by the United States attorney general to be subject to a deportation detainer or
16 order and does not become subject to a deportation order during the period of sentence; the
17 standard sentence range is greater than one year; and, the offender has not received a drug
18 offender sentence alternative more than once in the prior ten years before the current offense.
19 RCW 9.94A.660(1).

20 Given the language of the DOSA statute stating a court "may" impose DOSA if the
21 statutory factors warrant it, we adopt the abuse of discretion standard for reviewing DOSA
22 eligibility determinations. RCW 9.94A.660(2); *see also State v. Conners, 90 Wn.App. at 53*
23 (stating DOSA "may be applied in the discretion of the trial court" provided statutory factors

1
2 apply). An abuse of discretion occurs if the sentencing court's decision is manifestly
3 unreasonable or based upon untenable grounds or reasons. State v. Stenson, 132 Wn.2d 668, 701,
4 940 P.2d 1239 (1997). Stated another way, an abuse of discretion occurs when no reasonable
5 person would adopt the trial court's view of the issue. Williams, 112 Wn.App. at 178-9 citing
6 State v. Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

7 The imposition of a DOSA would also meet the purposes of the Sentencing Reform Act.
8 The imposition of a DOSA sentence for Mr. France would "protect the public; offer the offender
9 an opportunity to improve him or herself; make frugal use of the State's resources; and reduce
10 the risk of re-offending by offenders in the community." RCW 9.94A.010 (4,5,6,7).

11 The imposition of a DOSA sentence in this case is entirely within this Court's discretion.
12 Mr. France qualifies for a DOSA sentence on all points of the statute including the language that
13 the offender and the community will benefit from the use of the alternative. RCW 9.94A.660
14 (2). This would allow Mr. France to receive court ordered treatment that would allow him to
15 address addiction concerns.

16 As the Court can see from Mr. France's criminal history, she has several convictions on
17 his records which would indicate a substance abuse problem. Specifically, Mr. France has
18 several DUI convictions on his record.

19 The standard range is 51 to 60 months. The midpoint of that range is 55.5 months. One
20 half of that is 27.75 months which would be served in custody. The other 27.75 months would
21 be served on community custody.

22 Mr. France had actually been given a DOSA sentence which resulted in his incarceration
23 this last time. From speaking with Mr. France, it appears as though he may not have understood

1
2 what the exact requirements of a DOSA sentence were which is why he failed to complete his
3 DOSA. It also appears from speaking with Mr. France that he not only has an alcohol problem,
4 but also has a problem with crack cocaine.

5 Mr. France is statutorily eligible for a second DOSA. He respectfully asks this Court to
6 grant this last opportunity.

7
8 **REPLY TO STATE'S RECOMMENDATION:** The State is asking this Court to impose
9 an exceptional sentence for Mr. France of 15 years. That total is 5 years for each victim running
10 consecutively based on the aggravator that two of the victims were officers of the court and that
11 these acts were in retaliation for the performance of their duties to the criminal justice system.
12 The State is also justifying this request by saying that Mr. France would be getting "free crimes"
13 because his offender score is over the maximum of 9.

14 The defense would ask that this Court deny the State's request to impose an exceptional
15 sentence. This is not a case where Mr. France should be punished more than the guidelines with
16 regard to his sentence.

17 While an offender score of 14 is indeed over the maximum score of 9, this is only as a
18 result of there being 9 current convictions which add 8 points to each conviction along with the 6
19 that Mr. France comes to this case with. It is not even double the amount of points from the
20 maximum which would arguably justify a double sentence.

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III. CONCLUSION

For these reasons, the defendant respectfully requests that this Court impose a sentence pursuant to the Drug Offender Sentence Alternative of 27.75 months in custody and 27.75 months on community custody.

RESPECTFULLY submitted this 9th day of November, 2011.

Brian J. Todd #29436

APPENDIX G

COPY TO COUNTY JAIL MAR 26 2014

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

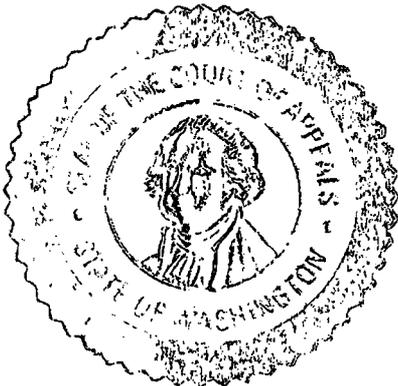
STATE OF WASHINGTON,)	No. 67959-7-1
)	
Respondent,)	MANDATE
)	
v.)	King County
)	
WILLIAM NEAL FRANCE,)	Superior Court No. 11-1-01715-6 SEA
)	
Appellant.)	Court Action Required

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

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on September 9, 2013, became the decision terminating review of this court in the above entitled case on March 21, 2014. An order denying a petition for review was entered in the Supreme Court on February 5, 2014. 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 opinion.

c: Casey Grannis
Samantha Kanner
Hon. Steven Gonzalez

Court Action Required: The sentencing court or criminal presiding judge is to place this matter on the next available motion calendar for action consistent with the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 21st day of March, 2014.

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

2013 SEP -9 AM 9:17

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM NEAL FRANCE,

Appellant.

No. 67959-7-1

DIVISION ONE

PUBLISHED OPINION

FILED: September 9, 2013

APPELWICK, J. — France pleaded guilty to nine counts of felony harassment. He had six prior felony convictions. The trial court imposed an exceptional sentence on all nine counts, based in part on the “free crimes” aggravator and in part on the officer of the court aggravator. France argues that the free crimes aggravator could not lawfully attach to three current offenses, because they increased his offender score to a “9 or more” and therefore did not go unpunished. We affirm France’s exceptional sentence, but remand for correction of the two clerical errors in the judgment and sentence.

FACTS

This appeal arises from William France’s 180 month exceptional sentence for felony harassment of three women—Anita Paulsen, Nina Beach, and Lisa Daugaard. Paulsen, a public defense attorney at The Defender Association, represented France in a previous case. Beach was also involved in the previous case as France’s social worker. Unsatisfied with his representation, France began leaving graphic voicemails with both women threatening to stalk them, sexually assault them, and then “put a bullet” in them. Paulsen notified Daugaard, deputy director at The Defender

Association, who sent France a cease and desist letter. France then began leaving Daugaard similar threatening voicemails. All three women feared for their safety and contacted the Seattle Police Department.

The State charged France by amended information with 16 counts of felony harassment. The State alleged two aggravating factors: that France's conduct manifested deliberate cruelty to the victims (all 16 counts) and was committed against officers of the court (counts 1-11).

The parties entered a plea agreement in which France agreed to plead guilty to nine counts of felony harassment as follows: counts 3, 4, 6 (against Paulsen), counts 7, 8, 9 (against Daugaard), and counts 12, 14, 15 (against Beach). In exchange, the State recommended dismissing the remaining seven counts and removing the deliberate cruelty aggravator. France stipulated that the officer of the court aggravator applied to the six counts (3, 4, 6, 7, 8, and 9) against Paulsen and Daugaard.

France also agreed that his prior felony convictions counted as six points toward his offender score. His current offenses counted as eight points, resulting in an offender score of 14. Based on his offender score of 9 or more, the standard range sentence for each count was 51 to 60 months. The plea statement provided: "The sentences imposed on counts 3, 4, 6, 7, 8, 9, 12, 14, [and] 15 . . . will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise." But, the State indicated its intent to seek an exceptional sentence on all counts based on the free crimes aggravator. As a result, the State recommended 180 months total confinement, consisting of exceptional consecutive sentences as follows: 60 months on counts 3, 4,

6, concurrent to each other; 60 months on counts 7, 8, 9, concurrent to each other; and 60 months on counts 12, 14, 15, concurrent to each other.

During the plea colloquy, France acknowledged that the officer of the court aggravator attached to counts 3, 4, 6, 7, 8, and 9. He also acknowledged that no statutory aggravator attached to counts 12, 14, and 15. The State explained its sentence recommendation:

[B]asically on Counts 12, 14 and 15, there would be a base sentence of 60 months with no aggravator, Counts 3, 4 and 6 there would be 60 months consecutive based on the aggravator of officer of the court, and then Counts 7, 8 and 9 would run consecutive to both of those based on the aggravator of officer of the court.

However, the State reiterated that it would be seeking an exceptional sentence on the additional basis that France's high offender score resulted in some of his current offenses going unpunished, essentially receiving free crimes.

The trial court adopted the State's recommendations and sentenced France to 180 months confinement as follows: counts 3, 4, 6 shall run concurrent to each other and consecutive to all others; counts 7, 8, 9 shall run concurrent to each other and consecutive to all others; and counts 12, 14, 15 shall run concurrent to each other and consecutive to all others. The court justified the exceptional sentence based on the frequency and "truly alarming" nature of the voicemails. The court found little hope for France's rehabilitation. Therefore, the function of the sentence "really comes down to protection." Moreover,

[I]n this case we are dealing with the very underpinning of our democracy, and that is the right to protection and constitutional protection, and we have dedicated officers performing that duty, and we need to make sure that they are safe and able to perform that duty without such threats.

The court explained that it relied on both the free crimes aggravator and the officer of the court aggravator, but that either alone would have been sufficient.

France appeals.

DISCUSSION

France challenges the trial court's authority to impose an exceptional sentence based on the free crimes aggravator on three of his current offenses. He also argues that there is a clerical error in the judgment and sentence stating that the officer of the court aggravator attached to all nine counts. Lastly, he contends that the trial court imposed a community custody condition when it had no statutory authority to do so.

I. Free Crimes Aggravator

A defendant's standard range sentence reaches its maximum limit at an offender score of "9 or more." RCW 9.94A.510. An offender score is computed based on both prior and current convictions. RCW 9.94A.525(1). For the purposes of calculating an offender score when imposing an exceptional sentence, current offenses are treated as prior convictions. State v. Newlun, 142 Wn. App. 730, 742, 176 P.3d 529 (2008). Where a defendant has multiple current offenses that result in an offender score greater than nine, further increases in the offender score do not increase the standard sentence range. See State v. Alvarado, 164 Wn.2d 556, 561-63, 192 P.3d 345 (2008). However, a trial court may impose an exceptional sentence under the free crimes aggravator when "[t]he defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished." RCW 9.94A.535(2)(c). In other words, if the number of current offenses results in the legal conclusion that the defendant's presumptive sentence is identical to that which would be

imposed if the defendant had committed fewer current offenses, then the court may impose an exceptional sentence. Newlun, 142 Wn. App. at 743.

France's prior felony convictions contributed six points toward his offender score. Three more current offenses were needed before France's offender score reached nine points on the sentencing grid. Therefore, France contends, those three current offenses were punished, because they increased his standard range sentence. Only six remaining counts would go unpunished if France was sentenced within the standard range. According to France, then, only six of his crimes are subject to an exceptional sentence, because the free crimes aggravator cannot lawfully attach to the three punished crimes. He contends that those three punished crimes must then run concurrently with the six unpunished counts. Therefore, he argues, his sentence should be 120 months instead of 180 months, and remand for resentencing is required to rectify the error.

To reverse an exceptional sentence, we must find: (1) under a clearly erroneous standard, there is insufficient evidence in the record to support the reasons for imposing an exceptional sentence; (2) under a de novo standard, the reasons supplied by the sentencing court do not justify a departure from the standard range; or (3) under an abuse of discretion standard, the sentence is clearly excessive or clearly too lenient. RCW 9.94A.585(4); State v. Law, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). The second standard of review applies here, because France challenges the trial court's authority to construct the exceptional sentence as it did. He does not argue that 180 months is clearly excessive.

In construing the free crimes aggravator, our primary duty is to ascertain and carry out the legislature's intent. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Statutory interpretation begins with the statute's plain meaning. Id. If the statute's meaning is unambiguous, our inquiry ends. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). A statute is ambiguous when it is susceptible to two or more reasonable interpretations. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). However, a statute is not ambiguous merely because different interpretations are conceivable. Id.

The free crimes aggravator is triggered when the defendant's high offender score combines with multiple current offenses to leave "some of the current offenses going unpunished." RCW 9.94A.535(2)(c) (emphasis added). The legislature could have specified that "only those current offenses going unpunished are subject to an exceptional sentence." But, it did not do so. Nor does the statute specify that the trial court must find that all current offenses would go unpunished. Rather, use of the word "some" contemplates a situation like France's where some current offenses contribute to the defendant's offender score and some go unpunished. Then, once the defendant has some current offenses going unpunished, the trial court's discretion to impose an exceptional sentence on all current offenses is triggered. RCW 9.94A.535(2)(c) makes no distinction between punished and unpunished crimes, because all current offenses are subject to an exceptional sentence. Merely because France proposes a conceivable interpretation of RCW 9.94A.535(2)(c) does not make it ambiguous. We decline to read ambiguity into the statute where there is none.

The trial court has “all but unbridled discretion” in fashioning the structure and length of an exceptional sentence. State v. Halsey, 140 Wn. App. 313, 325, 165 P.3d 409 (2007) (quoting State v. Creekmore, 55 Wn. App. 852, 864, 783 P.2d 1068 (1989)); see also Law, 154 Wn.2d at 93. For instance, the trial court here could have imposed a 20 month sentence on each count, to run consecutively, achieving the same 180 month sentence. Or, the court could have sentenced France to 180 months on each count, to run concurrently. See State v. Batista, 116 Wn.2d 777, 785-86, 808 P.2d 1141 (1991) (recognizing the trial court’s authority to impose an exceptional sentence by lengthening concurrent sentences or imposing consecutive sentences). The trial court here clearly intended to impose an exceptional sentence of 180 months and had authority to do so, because France had some current offenses going unpunished.¹

Case law does not compel a different result. France relies primarily on State v. Stephens to argue that an exceptional sentence like the one here improperly penalizes a defendant twice for the same crime. 116 Wn.2d 238, 803 P.2d 319 (1991), overruled in part by State v. Hughes, 154 Wn.2d 118, 140, 110 P.3d 192 (2005), abrogated on other grounds by Washington v. Ruenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 411 (2006). In Stephens, the defendant committed eight counts of second degree

¹ The judgment and sentence states that counts 3, 4, and 6 “shall run concurrent to each other [and] consecutive to all others” and counts 7, 8, and 9 “shall run concurrent to each other [and] consecutive to all others.” France argues this is a clerical error, because it conflicts with the court’s oral ruling that counts “7, 8, and 9 are concurrent with each other, but consecutive to the previous three counts.” However, clerical errors exist if, based on the record, the judgment does not embody the trial court’s intention. State v. Rooth, 129 Wn. App. 761, 770, 121 P.3d 755 (2005). The court clearly intended to impose 60 months for each set of crimes, grouped by victim, to run consecutively to one another. To interpret the judgment and sentence as a clerical error thwarts that intention.

burglary. 116 Wn.2d at 239. Because of his high offender score, his presumptive sentence would be the same had he committed only two burglaries instead of the eight. Id. at 241-42. The six "free" burglaries justified an exceptional sentence of eight concurrent 96-month sentences. Id. at 239, 246. The Washington Supreme Court upheld the sentence, reasoning that "although the crimes were counted in calculating the offender score, most of them had no effect on the sentence because Stephens' score was '9 or more' already. Thus, Stephens would not be penalized twice if the multiple crimes were considered toward an exceptional sentence." Id. at 244. France seizes upon this language. But, the Stephens court went on to hold that a defendant, "being sentenced for multiple current offenses, no one of which would warrant an exceptional sentence, [may] receive an exceptional sentence based on the number of crimes committed." Id. at 243-44.

Likewise, in State v. Brundage, the defendant committed multiple current offenses, including first and second degree rape. 126 Wn. App. 55, 67, 107 P.3d 742 (2005). Brundage's prior offenses resulted in eight offender score points Id. at 67. His current unlawful possession of a firearm conviction added one point to his offender score for a total of nine. Id. With an offender score of nine, Brundage's standard range sentence for the first degree rape was 240 to 318 months. Id. at 61, 67. The second degree rape conviction increased his offender score to 12. Id. The sentencing grid ends at nine, though, so Brundage's standard range sentence remained 240 to 318 months. Id. at 67. Because the second degree rape would go unpunished if the trial court imposed a standard range sentence, an exceptional sentence was justified to ensure Brundage did not receive a free crime. Id. at 67, 69. The second degree rape

conviction with an offender score of 12 had a standard range of 210 to 280 months. Id. at 61, 67. The court upheld an exceptional sentence of 498 months for the first degree rape and 400 months for the second degree rape, to run concurrently. Id. at 69. The Brundage court did not consider the issue France argues here. Nevertheless, in that case, one current offense going unpunished justified an exceptional sentence on both current offenses. See id. Imposing an exceptional sentence for both crimes was consistent with the legislature's stated purpose to "[e]nsure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history." Id. (alteration in original) (quoting RCW 9.94A.010(1)).

Six of France's current offenses would go unpunished if he received a standard range sentence, triggering the judge's discretion to impose an exceptional sentence based on RCW 9.94A.535(2)(c). We hold that the trial court acted within its authority to impose an exceptional sentence on all nine counts of felony harassment.

II. Clerical Error in the Judgment and Sentence

Under "SPECIAL VERDICT or FINDING(S)," the judgment and sentence provided: "[X] Aggravating circumstances as to count(s) III, IV, VI, VII, VIII, IX, XII, XIV, XV: OFFICER OF THE COURT AGGRAVATOR." France stipulated that the officer of the court aggravator applied only to counts 3, 4, 6, 7, 8, and 9. The judgment and sentence incorrectly states that the aggravator attached to counts 12, 14, and 15. The State concedes that this is a clerical error. Accordingly, we remand to the trial court for correction of this error. In re Pers. Restraint of Mayer, 128 Wn. App. 694, 701, 117 P.3d 353 (2005).

III. No Contact Order

France argues that the trial court imposed a community custody condition of no contact when it lacked statutory authority to do so. In the judgment and sentence, a box was checked stating, "[X] APPENDIX H for Community Custody conditions is attached and incorporated herein." Appendix H is a no-contact order prohibiting France from contacting the three victims. The Sentencing Reform Act of 1981 (SRA) does not authorize a court to impose community custody for felony harassment. See RCW 9.94A.701; see also In re Postsentence Review of Childers, 135 Wn. App. 37, 41, 143 P.3d 831 (2006).

However, the SRA does authorize trial courts to impose crime-related prohibitions as a condition of sentence, independent of community custody. RCW 9.94A.505(8); State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). A no-contact order is one such crime-related prohibition. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 376, 229 P.3d 686 (2010). The record demonstrates that the court imposed the no-contact order as a condition of sentence rather than a condition of community custody. Section 4.5 of the judgment and sentence specifies: "NO CONTACT: For the maximum of 15 years, the defendant shall have no contact with see attached Appendix H." Section 4.7 lists community custody conditions, but is not checked. Community custody conditions are not checked later in the judgment, either. Appendix H says nothing about community custody. The court acknowledged in its oral ruling that it had no authority to impose supervision, but was ordering no contact. And, the no-contact order is scheduled to last only the length of the sentence. For these reasons, we

decline to vacate the no-contact order. We remand to the trial court to correct the erroneous reference to community custody conditions.

We affirm France's exceptional sentence, but remand for correction of the two clerical errors in the judgment and sentence.

Appelwick, Jr.

WE CONCUR:

Jan, J.

Dugan, J.

FILED
KING COUNTY

DEC 05 2013

KARLA CAMERON
DEPUTY

COPY TO COUNTY JAIL DEC 06 2013

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM NEAL FRANCE,

Defendant.

No. 11-1-01715-6 SEA

ORDER AMENDING JUDGMENT
AND SENTENCE

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff, for an order amending the Judgment and Sentence in the above entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Judgment and Sentence shall be amended, in accordance with the opinion of the Court of Appeals, in the following manner:

In Section 2.1, entitled "Special Verdict or Finding(s)", subsection (j) should not include counts XII, XIV, or IV as aggravating circumstances (officer of the court aggravator). This is a correction of a clerical error, as it is clear that all parties were in agreement that the aggravating circumstances only applied to counts III, IV, VI, VII, and VIII, as evidenced by the Statement of Defendant on Plea of Guilty, section 7, page 10.

In Section 4.7, entitled Community Custody, subsection (c), a box for Appendix H was inadvertently checked. As the appellate court noted, this was an erroneous reference to community custody conditions that do not apply to the sentence in this case. The Appendix H that was filed with the Judgment and Sentence is hereby deleted. The No Contact Order that was filed under Section 4.5 is in effect, however.

Order Amending Judgment and Sentence - 1

Norm Maleng,
Prosecuting Attorney
Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429



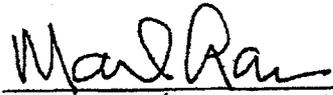
ORIGINAL

1 All other portions of the Judgment and Sentence, including the confinement period,
2 remain in force.

3 DONE IN OPEN COURT this 5th day of ^{December}~~September~~, 2013.

4 
5 JUDGE **Lori K. Smith**

6
7 Presented by:

8 
9 _____
10 Mark Larson, WSBA #15328
11 Chief Criminal Deputy Prosecuting Attorney

12 Approved for entry:

13 
14 _____
15 Brian J. Todd, WSBA #29436
16 Attorney for Defendant

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the petitioner, Casey Grannis of Nielsen Broman & Koch PLLC containing a copy of the State's Response to Personal Restraint Petition, in IN RE PERSONAL RESTRAINT OF FRANCE, Cause No. 74507-7-I, in the Court of Appeals, Division I, for the State of Washington.

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


Name
Done in Seattle, Washington

05-19-16
Date