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ASSIGNMENTS OF ERROR

1. The trial court erred by entering Finding of Fact No. 2.3 of the Judgment and Sentence, which reads as follows:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9	II	60 months + 1 day to 120 months		60 months + 1 day to 120 months	10 years / \$10,000

CP 5.

2. The trial court erred by sentencing Mr. Evenson with an offender score of nine.
3. Mr. Evenson's judgment and sentence is void on its face because of the discrepancy between the criminal history and the offender score.
4. Mr. Evenson should have been sentenced with an offender score of five.
5. The trial court erred by miscalculating Mr. Evenson's standard sentence range.
6. If Mr. Evenson has four prior convictions for Malicious Mischief in the Second Degree, the trial court erred by failing to determine whether or not they comprised the same criminal conduct.
7. Mr. Evenson was denied the effective assistance of counsel when his attorney agreed to the prosecution's determination of the standard range.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The sentencing court determined that Mr. Evenson had four prior adult felonies and three prior juvenile felonies. The prosecution has not cross-appealed that finding.

Based on the criminal history as found by the court, the correct offender score should have been five, and the correct standard range should have been 20+ to 60 months. Without explanation, the sentencing court calculated Mr. Evenson's offender score as 9, and determined that his standard range was 60+ to 120 months.

1. Is the judgment and sentence void on its face because of the discrepancy between the criminal history and the offender score? Assignments of Error Nos. 1, 2, 3, 5.

2. Must the sentence be vacated and the case remanded for sentencing with an offender score of five? Assignments of Error Nos. 1, 2, 3, 4, 5.

The record contains conflicting information regarding Mr. Evenson's criminal history. One document in the court file, a plea agreement, lists four 1995 convictions for Malicious Mischief in the Second Degree, under the same cause number. This document is contradicted by other documents in the court file. Furthermore, even assuming the truth of the document's assertions, the offender score should have been calculated as 8 rather than 9.

The trial court did not determine whether or not the four prior Malicious Mischief convictions-- if they exist-- comprised the same criminal history.

3. If the four prior Malicious Mischief convictions actually existed, did the sentencing court err by failing to determine whether or not they were the same criminal conduct? Assignments of Error Nos. 2, 6.

Despite the discrepancies between the criminal history and the offender score, defense counsel agreed to the prosecuting attorney's calculation of the standard range. Defense counsel did not comment on the four malicious mischief convictions.

4. May a miscalculated offender score be challenged for the first time on appeal? Assignments of Error Nos. 2, 3, 4, 5.

5. May a defendant challenge a miscalculated offender score for the first time on appeal, after agreeing to the offender score in the trial court? Assignments of Error Nos. 2, 3, 4, 5.

6. Is a sentence based on a miscalculated offender score unlawful because it is imposed in excess of the sentencing court's statutory authority? Assignments of Error Nos. 1, 2, 3, 4, 5, 6, 7.

7. Was Mr. Evenson denied the effective assistance of counsel at sentencing? Assignment of Error No. 7.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Victor Evenson was charged with two counts of Delivery of Heroin in Grays Harbor County Superior Court on June 30, 2004. CP 1-3. His criminal history was listed in a plea agreement filed in the court file, and included the following:

Crime	Sent. Date	Place of Conviction	Adult or Juv	Date of Crime	Crime Type	Points
Theft 2 03-1-117-4		GH	A	3/11/03	F	
TMV 01-1-354-5		GH	A		F	
Theft Firearm 97-1-89-9		Pac	A		F	
MM2 (4cts) 95-1-31-1		Pac	A		F	4
Res Burg 93-8-828-6		Thur	J		F	
TMV 93-8-828-6		Thur	J		F	
PSP 2 93-8-183-3		GH	J		F	

Supp. CP.

The prosecuting attorney submitted a similar list, but indicated only one prior malicious mischief conviction instead of four. Statement of Prosecuting Attorney, Supp. CP. Mr. Evenson pled guilty to one count of delivery, and the state dismissed the other count on November 15, 2004. Supp. CP, Statement of Defendant on Plea of Guilty; RP (11-15-04) 7-9. The Defendant's Statement on Plea of Guilty did not include a list of criminal history, but indicated that one was attached. Supp. CP.

Prior to being sentenced, Mr. Evenson filed a Motion to Withdraw his Plea. Supp. CP. He argued that he made the plea because of drugs he had taken and because he had new evidence that would prove his innocence. RP (11-28-05) 7-9. The court denied his motion. RP (11-28-05) 12.

The court found that Mr. Evenson had four prior adult felonies, and three prior juvenile felonies, consistent with the state's Statement of Prosecuting Attorney. CP 4-5. Without explanation, the court determined that Mr. Evenson had an offender score of 9, and a standard range of 60+ to 120 months. CP 5. Defense counsel agreed that the standard range was 60+ to 120 months, and the court sentenced Mr. Evenson to 90 months in prison. CP 4-9. Mr. Evenson appealed. CP 10-17. The prosecution did not cross-appeal the trial court's finding on Mr. Evenson's criminal history.

ARGUMENT

I. THE JUDGMENT AND SENTENCE IS VOID ON ITS FACE BECAUSE THE TRIAL COURT FOUND ONLY FOUR PRIOR ADULT FELONIES AND THREE PRIOR JUVENILE FELONIES, YET SENTENCED MR. EVENSON WITH AN OFFENDER SCORE OF NINE.

RCW 9.94A.500(1) requires that the court conduct a sentencing hearing “before imposing a sentence upon a defendant.” Furthermore, “[i]f the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record... Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.” RCW 9.94A.500(1).

“Criminal history” means more than just a list of prior felonies (although it is often treated as such). Instead, “criminal history” is defined to include all prior convictions and juvenile adjudications, and “shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.” RCW 9.94A.030(13). To establish criminal history, “the trial court may rely on no more information than is admitted by the plea

agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.” RCW 9.94A.530(2). Under RCW 9.94A.525, the offender score is calculated by adding one point for each prior adult felony and one-half point for each prior juvenile felony (with exceptions not relevant here). The result is then rounded down to the nearest whole number. See RCW 9.94A.525.

Illegal or erroneous sentences, including those based on a miscalculated offender score, may be challenged at any time. *In re Pers. Restraint of Cadwallader*, 155 Wn.2d 867 at 874, 123 P.3d 456 (2005); *State v. Ford*, 137 Wn.2d 472 at 477, 973 P.2d 452 (1999). Furthermore, a defendant cannot agree to a sentence in excess of that which is statutorily authorized; therefore, vacation and remand is required even when the defendant agrees to a miscalculated offender score. *Cadwawllader, supra, at 874.*

In this case, the trial court found that Mr. Evenson had four prior adult felonies and three prior juvenile felonies. CP 4-5. The prosecution did not cross-appeal this finding. Based on this criminal history and the rule in RCW 9.94A.525, Mr. Evenson’s offender score is 5, and his standard range is 20+ to 60 months. RCW 9.94A.525; RCW 9.94A.517. The trial court determined Mr. Evenson had an offender score of 9, calculated his standard range as 60+ to 120 months, and imposed 90

months incarceration. CP 4-8. The trial judge gave no explanation for the discrepancy between its finding on criminal history and its calculation of the offender score.¹

The underlying record contains conflicting information regarding Mr. Evenson's criminal history. First, the Statement of Defendant on Plea of Guilty indicates that a statement of criminal history is attached, but no such statement is attached. Statement of Defendant on Plea of Guilty, Supp. CP. Second, the written plea agreement suggests that Mr. Evenson had four convictions for Malicious Mischief in the Second Degree (under a single cause number), but the prosecuting attorney's statement of the case lists only one conviction for Malicious Mischief. *Compare* Plea Agreement, Supp. CP. *with* Statement of Prosecuting Attorney, Supp. CP. In addition, even if Mr. Evenson had four adult convictions for Malicious Mischief in the Second Degree that counted separately, his offender score would be 8, and not 9. RCW 9.94A.525.

Because the trial court judge miscalculated the offender score, the judgment and sentence is void on its face. *Cadwallader, supra*. Since the prosecuting attorney did not cross-appeal the trial court's finding on Mr.

¹Defense counsel agreed with the prosecution's assertion that the standard range was 60+ to 120 months. RP (11-28-05) 12. However, as noted above, a defendant cannot agree to a miscalculated offender score; a sentence based on such a score is in excess of the court's statutory authority. *Cadwallader, supra*.

Evenson's criminal history, it is barred from arguing for any additional criminal history. The sentence must be vacated and the case remanded to the trial court for resentencing with an offender score of 5. *Cadwallader, supra.*

II. IF MR. EVENSON HAD FOUR PRIOR MALICIOUS MISCHIEF CHARGES, THE TRIAL COURT SHOULD HAVE DETERMINED WHETHER OR NOT THEY WERE THE SAME CRIMINAL CONDUCT.²

Under RCW 9.94A.525, the sentencing court is required to analyze multiple prior convictions to determine whether or not they should count as one offense:

Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense... The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently... whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a)...
RCW 9.94A.525(5)(a)(i)

Under RCW 9.94A.589(1)(a), "same criminal conduct" means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. The sentencing court is not bound by prior determinations, but must exercise its discretion and

² Since the court found that Mr. Evenson had only one prior Malicious Mischief conviction, and since the prosecution did not cross-appeal that finding, this argument is likely unnecessary to the remedy sought by Mr. Evenson. Nonetheless, it is included out of an abundance of caution, to ensure that it is not deemed waived.

decide whether multiple prior offenses should count separately or together. *State v. Wright*, 76 Wn.App. 811 at 829, 888 P.2d 1214 (1995), interpreting former RCW 9.94A.360(6)(a). Furthermore, the burden is on the State to establish that multiple convictions do not stem from the same criminal conduct. *State v. Dolen*, 83 Wn.App. 361 at 365, 921 P.2d 590 (1996), review denied at 131 Wn.2d 1006, 932 P.2d 644 (1997), citing RCW 9.94A.110; *State v. Jones*, 110 Wn.2d 74, 750 P.2d 620 (1988) and *State v. Gurrola*, 69 Wn.App. 152, 848 P.2d 1993, review denied, 121 Wn.2d 1032, 856 P.2d 383 (1993).

In this case, the plea agreement indicates that Mr. Evenson had four convictions for Malicious Mischief in the Second Degree, under Pacific County Cause No. 95-1-31-1. Plea Agreement, Supp. CP. As noted above, this conflicts with the prosecuting attorney's statement of the case and with the trial court's findings. Statement of Prosecuting Attorney, Supp. CP.; CP 4-5. However, if Mr. Evenson did have four prior malicious mischief charges, the sentencing court was obligated to determine whether or not they counted as the same criminal conduct. There is no indication in the record that the court did so. RP (11-28-05) 5-13, CP 4-5. This was error. Because the trial court failed to exercise discretion, the sentence must be vacated, and the case remanded for resentencing with a corrected offender score. *Wright, supra*.

III. IF THE OFFENDER SCORE ISSUE IS WAIVED, MR. EVENSON WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL.³

The right to counsel is guaranteed by the Sixth Amendment and Fourteenth Amendment to the U.S. Constitution and by Article I, Section 22 of the Washington Constitution. Furthermore, the right to counsel is the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)). This includes the right to the effective assistance of counsel at sentencing. *See, e.g., State v. Saunders*, 120 Wn. App. 800 at 824, 86 P.3d 232 (2004); *State v. McGill*, 112 Wn. App. 95 at 101, 47 P.3d 173 (2002).

The test for ineffective assistance of counsel consists of two prongs: (1) whether defense counsel's performance was deficient, and (2) whether this deficiency prejudiced the defendant. *State v. Holm*, 91 Wn.App. 429, 957 P.2d 1278 (1998), *citing Strickland, supra*. The defendant must show a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Holm, supra*, at 1281.

³ As noted above, a defendant cannot agree to a miscalculated offender score. *Cadwallader, supra*. Nonetheless, this section is included, to ensure that Mr. Evenson's issues are addressed on the merits.

To establish deficient performance, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness based on consideration of all the circumstances. *State v. Bradley*, 141 Wn.2d 731, 10 P.3d 358 (2000). To prevail on the prejudice prong of the test for ineffective assistance of counsel, an appellant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *State v. Saunders*, 91 Wn.App. 575 at 578, 958 P.2d 364 (1998). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *In re Fleming*, 142 Wn.2d 853 at 866, 16 P.3d 610 (2001). A claim of ineffective assistance is reviewed *de novo*. *State v. S.M.*, 100 Wn.App. 401 at 409, 996 P.2d 1111 (2000).

Here, defense counsel expressed agreement with the standard range and offender score, despite the inconsistency between the criminal history and the offender score. RP (11-28-06) 12. Under these circumstances, Mr. Evenson was denied the effective assistance of counsel.⁴ *Strickland, supra*.

⁴ As noted above, a defendant cannot agree to a sentence based on a miscalculated offender score, because such a sentence is in excess of the trial court's statutory authority. *Cadwallader, supra*. Nonetheless, an argument on ineffective assistance of counsel is included here to ensure that the issue is properly before this court.

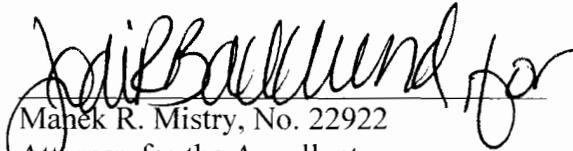
First, defense counsel's performance was deficient. A reasonably competent attorney would have investigated the accused's criminal history and argued for the correct offender score of 5. Second, defense counsel's deficient prejudiced Mr. Evenson. If defense counsel had pointed out the problem with the offender score and the standard range, Mr. Evenson would have been sentenced within his actual standard range, 20+ to 60 months. The failure to familiarize himself with Mr. Evenson's criminal history and to assert the correct offender score and standard range was ineffective. Accordingly, Mr. Evenson's sentence must be vacated and the case remanded for a new sentencing hearing. *Saunders, supra; McGil, supra.*

CONCLUSION

For the foregoing reasons, Mr. Evenson's sentence must be vacated and the case remanded for sentencing within the correct standard range of 20+ to 60 months.

Respectfully submitted on July 25, 2006.

BACKLUND AND MISTRY


Manek R. Mistry, No. 22922
Attorney for the Appellant


Jodi R. Backlund, No. 22917
Attorney for the Appellant

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

Mr. Victor Evenson, DOC# 735528
Stafford Creek Corrections Center
191 constantine Way
Aberdeen, WA 98520

and to:

Grays Harbor Prosecuting Attorney
102 West Broadway Avenue, Room 102
Montesano, WA 98563-3621

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on July 25, 2006.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on July 25, 2006.



Jodi R. Backlund, No. 22917
Attorney for the Appellant

FILED
COURT OF APPEALS
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STATE OF WASHINGTON
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APPENDICES:

1. Plea Agreement
2. Statement of Defendant on Plea of Guilty
3. Judgment and Sentence

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SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff,

No.:

04-1-318-3

PLEA AGREEMENT

v.

Victor T Ewanson

Defendant.

I. PLEA AGREEMENT

The State of Washington and the above 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. This plea agreement is only binding upon the defendant and the Grays Harbor County Prosecuting Attorney's Office. The Plea Agreement is as follows:

1.1 **PLEA:** The defendant shall plead guilty to Count(s) I of the
 original information [] amended information: _____.

1.2 [] **SPECIAL FINDING:** The defendant agrees that there should be a special finding pursuant to RCW 9.94A.125 for use of a deadly weapon on Count(s) _____.

1.3 **DISMISS COUNTS/VIOLATIONS OF JUDGMENT AND SENTENCE:** Upon sentencing in the above Count(s), the State moves to dismiss:

Count(s) II in Cause No(s) _____.

[] Violations of Judgment and Sentence in Cause No(s) _____.

[] Agree not to file probation violations as a result of this charge.

PLEA AGREEMENT

38

H. STEWARD MENEFFEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98563

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4 1.4 **OTHER:** _____
5 _____
6 _____

7 1.5 **REAL FACTS OF HIGHER, MORE SERIOUS, OR ADDITIONAL CRIMES:** In
8 accordance with RCW 9.94A.370, the parties agree that in sentencing, the court may
9 consider the following as real and material facts: _____
10 _____

11 1.6 **AGREEMENT OF CRIMINAL HISTORY:** The defendant agrees that the
12 Prosecutor's Statement of Defendant's Criminal History (as listed below per RCW
13 9.94A.360) is accurate and complete, as known to the parties at the time of the plea. The
14 parties further agree that the defendant was represented by counsel or waived counsel at
15 the time of each prior conviction.

16 **PROSECUTOR'S STATEMENT OF DEFENDANT'S CRIMINAL HISTORY:**

Crime	Sentencing Date	Place of Conviction	Adult or Juvenile	Date of Crime	Crime Type	Points
Theft 2°	03-1-117-4	GH	A	3/11/03	F	
TUV	01-1-354-5	GH	A		F	
Theft Firearm	97-1-89-9	Pac	A		F	
MU 2° (4 CH)	95-1-31-1	Pac	A		F	(4)
Res Burg	93-8-828-6	Thru	J		F	
TUV	93-8-828-6	Thru	J		F	
PSP 2°	93-8-183-3	GH	J		F	
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

25 Prior Convictions counted as one offense in determining the offender score (RCW
26 9.94A.360(11)): _____

27 *Current convictions

PLEA AGREEMENT

H. STEWARD MENEFFEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98853

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4 1.8 [X] **SENTENCING DATA:** The defendant agrees that the following is accurate:

	Offender Score	Seriousness Level	Standard Range	Maximum Term
5				
6				
7	Count I: <u>9</u>	<u>II</u>	<u>60+ to 120 mo</u>	<u>10 years</u>
8	Count II: _____	_____	_____	_____
9	Count III: _____	_____	_____	_____

10 1.9 **SENTENCE RECOMMENDATION:** The State will recommend the following:

11 (a) **COSTS, FINES AND ASSESSMENTS:**

- 12 [X] Court costs: \$110.00.
13 [X] Victim/Witness Assessment: \$500.00 / \$250.00
14 [X] DNA collection fee: \$100.00.
15 [X] Attorney's Fees: \$500.00.
16 [] Fine: \$ _____
17 [] Contribution to Grays Harbor County Inter-Agency Drug Task Force Drug Fund, or
18 _____ Drug Fund: \$ _____
19 [X] Washington State Patrol Crime Lab Fee: \$100.00.
20 [X] Mandatory \$1,000.00 / \$2,000.00 / \$3,000.00 fine, unless found indigent by the court.

21 (b) **CONFINEMENT:**

- 22 [X] Count I: 60 mo + 1 day Count III: _____
23 Count II: _____ Count IV: _____
24 [] _____ days of jail converted to _____ hours of community service on count(s) _____.
25 [] Credit for up to 30 days for successful completion of in-patient treatment.

26 (c) **OTHER CONDITIONS:**

- 27 [X] Community supervision / placement / custody:
[] _____ months or as required by law.
[X] 9 to 12 months, or earned early release, whichever is longer, or as
required by law.
[] Gross Misdemeanor
[] Misdemeanor
_____ months District Court Probation.
[] Subject to random urinalysis by Department of Corrections, probation and/or jail.
[] First time offender waiver.

PLEA AGREEMENT

H. STEWARD MENEFFEE
PROSECUTING ATTORNEY
GRAYS HARBOR COUNTY COURTHOUSE
102 WEST BROADWAY, ROOM 102
MONTESANO, WASHINGTON 98563

- Crime related prohibitions:
 Any and all criminal acts.
 Crimes of dishonesty.
 Illegal drug or illegal drug-related offenses.

 SSOSA / DOSA if eligible.
 Western State Hospital Treatment pursuant to RCW 9.94A.120.
 Exceptional Sentence.
 No contact with _____ for a period of _____ years pursuant to RCW 9.94A.120.
 No possession, ownership or control of firearms pursuant to RCW 9.41.040.
 Predicate offense under RCW 9.94A - Persistent Offender Accountability Act.
 Complete ~~alcohol / drug / domestic violence~~ evaluation by a state certified agency within 45 days of release and successfully complete any recommended treatment.
 Not possess or consume controlled substances nor possess drug paraphernalia without a valid prescription with random urinalysis testing to ensure compliance.
 Not drive a motor vehicle without a valid license and insurance.
 Other: _____

1.10 **RESTITUTION:** Charged crimes Uncharged crimes Agreed Disputed

To: _____ Amount: \$ _____

To: _____ Amount: \$ _____

1.11 **The State's recommendation will increase in severity if additional criminal convictions are found which were not known to the State or disclosed by the defendant prior to the plea of guilty, or if the defendant commits any new crime, fails to appear for sentencing or violates the conditions of release.**

1.12 The following Appendices are attached and incorporated by reference as part of this Plea Agreement: _____

Date: 11-15-04

Victor G. Jensen
 Defendant's Signature

Date: 11/15/04

[Signature]
 Attorney for Defendant
 WSBA # 28835

Date: 7/14/04

[Signature]
 Senior Deputy Prosecuting Attorney
 WSBA # 152489

PLEA AGREEMENT

H. STEWARD MENEFFEE
 PROSECUTING ATTORNEY
 GRAYS HARBOR COUNTY COURTHOUSE
 102 WEST BROADWAY, ROOM 102
 MONTESANO, WASHINGTON 98563

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II. COURT APPROVAL (RCW 9.94A.090)

The court, having reviewed the above Plea Agreement and having heard the statements of counsel regarding the reasons for the above Plea Agreement, finds:

- (a) The Plea Agreement is consistent with the interests of justice and the prosecutorial standards.
- (b) The Plea Agreement is not consistent with the interests of justice and prosecutorial standards. Neither party is bound by the Plea Agreement, and the defendant may withdraw the plea of guilty.

Date: 4/15/04 _____
JUDGE

III. INTERPRETER CERTIFICATION

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

Dated: _____
Interpreter

12

NOV 13 2004

SUPERIOR COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON,

Plaintiff

NO. 04-1-00318-3

vs

Victor T. Evensen,

Defendant

**STATEMENT OF DEFENDANT
ON PLEA OF GUILTY TO NON-
SEX OFFENSE (STTDFG)**

- 1. My true name is Victor Thomas Benjamin Evensen
- 2. My age is 4/26/76
- 3. I went through the 11th + GED grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

- (a) I have the right to be represented by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
- (b) I am charged with VUCSA - Delivery of Heroin

The elements are: did knowingly deliver a controlled substance, to wit: heroin

NE

5) I UNDERSTAND 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 hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am 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.

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

(a) The Standard Sentence Range, maximum sentence and fine for each crime charged is:

C O U N T	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only for crimes committed on or after 7/1/00. For crimes committed prior to 7/1/00 see paragraph 6(f))	MAXIMUM TERM AND FINE
1	9	60+ - 120 mos		60+ - 120 mos		10 yrs / 20,000.00
2						
3						

* (F) Firearm, (d) other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, (see RCW 46.61.520, (JP) Juvenile Present

- (b) The standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.
- (c) The prosecutor's statement of my criminal history is attached to the plea agreement. Unless I have attached a different statement, I agree that the prosecutor's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecutor's recommendation may increase. Even so, my plea of guilty is binding on me. I cannot change my mind even if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 to the victim's compensation fund. If this crime resulted in injury to any person or damage or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of the restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If the crime is vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community

custody, or community supervision, I will be under the supervision of the Department of Corrections and I will have restrictions on my activities.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned early release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned early release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned early release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned early release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

(g) The prosecuting attorney will make the following recommendations to the judge: _____

The prosecutor will recommend as stated in the plea agreement which is incorporated herein by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard sentencing range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard sentence range, either the State or I can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) Public assistance will be suspended during any period of imprisonment.

(k) I understand that I will be required to have a biological sample collected for purpose of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100 DNA collection fee.

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(l) **FIREARMS.** I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol permit. RCW 9.41.040 **READ TO DEFENDANT: (judge's Initials)**

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE

(m) This offense is a *most serious offense* or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of release.

(n) I may be sentenced as a first time offender instead of given a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, two years community supervision, if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the provisions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

(o) If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment

FE
JE
(p) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(q) If this crime involves prostitution, or drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.

(r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph 6(e). During confinement I will be required to take a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the costs of monitoring and require other conditions, including affirmative conditions.

(s) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances for which I am pleading guilty.

(t) If this crime involves the manufacture, delivery, or possession with the intent to deliver amphetamine or methamphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

(u) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091 and 21 U.S.C. § 862a.

(v) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

(w) If this crime involves vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional 2 years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

(x) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. This sentence may not be reduced. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(m).

(y) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(z) I understand that I am pleading guilty to a charge that includes a deadly weapon or firearm enhancement. Such enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

(aa) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9A.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(bb) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least 6 months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

Eu
VE

Eu
VE

7. I plead guilty to:
count one
count _____
count _____
in the original information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened any harm to me or to any other person to cause me to enter this plea..

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

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this crime.

This is my statement: On or about May 11, 2004, I did
knowingly deliver a controlled substance that
was heroin. This act occurred in Grays Harbor
County, Washington.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. 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 of the judge.

Victor Evers
Defendant

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

William J. [Signature]
Prosecuting Attorney Bar # 152189

[Signature]
Attorney for Defendant Bar # 28835

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:

- The defendant had previously read; or
- The defendant's lawyer had previously read to him or her; or
- An interpreter had previously read this entire statement and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. 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: 11/15/04

[Signature]
JUDGE

WARR CLK 3
 DOC 1
 DOL _____
 F/U _____
 ABST _____
 S G 1
 PROS 1
 FN COL _____
 OFR (FAX) _____
 RHHD _____

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 COUNTY OF GRAYS HARBOR
 '05 NOV 28 A10 :44

SUPERIOR COURT OF WASHINGTON
 COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON, Plaintiff,

v.

VICTOR THOMAS EVENSON,
 Defendant.

SID: WA16206161
 If no SID, use DOB: 04-26-76

No. **04-1-318-3** **058103**

JUDGMENT AND SENTENCE (JS)

- Prison
- RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- RCW 9.94A.712 Prison Confinement
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Clerk's Action Required, para. 4.15.2, 5.3, 5.6 and 5.8.

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer, Erik Kupka, and (Deputy) Prosecuting Attorney William A. Leraas were present.

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 November 15, 2004, by plea as charged in the Information of:

COUNT	CRIME	RCW	DATE OF CRIME
1	VUCSA - DELIVERY OF HEROIN	69.50.401(a)(1)	05-11-04

2.2 CRIMINAL HISTORY: (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A (Adult) or J (Juvenile)	TYPE OF CRIME
Theft 2*	04-21-03	Grays Harbor County, WA Cause No. 03-1-117-4		Adult	Felony
TMVWOP		Grays Harbor County, WA Cause No. 01-1-354-5	05-20-01	Adult	Felony

JUDGMENT AND SENTENCE (JS) (Prison)
 RCW 9.94A.500, 9.94A.505) (WPF CR 84.0400 (7/2003))

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CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A (Adult) or J (Juvenile)	TYPE OF CRIME
Theft of a Firearm		Pacific County, WA Cause No. 97-1-89-9	04-15-97	Adult	Felony
Malicious Mischief 2'		Pacific County, WA Cause No. 95-1-31-1	02-06-95	Adult	Felony
Residential Burglary		Thurston County, WA Cause No. 93-8-828-6	12-04-93	Juvenile	Felony
TMVWOP		Thurston County, WA Cause No. 93-8-828-6	12-11-93	Juvenile	Felony
PSP 2'		Grays Harbor County, WA Cause No. 93-8-183-3	07-02-93	Juvenile	Felony

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9	II	60 months + 1 day to 120 months		60 months + 1 day to 120 months	10 years / \$10,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom., See RCW 46.61.520, (JP) Juvenile present.

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

III. JUDGMENT

3.1 The defendant is GUILTY of the count(s) and charge(s) in Paragraph 2.1 and Appendix 2.1.

3.2 [X] The Court DISMISSES Count(s): 2

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

	\$ _____	Restitution to:	
JASS CODE	\$ _____	Restitution to:	
RTN/RJN	\$ _____	Restitution to:	(Name and Address - address may be withheld and provided confidentially to Clerks' Office)
PCV	\$ 500.00	Victim assessment	RCW 7.68.035
FRC	\$ 110.00	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160.	
WFR	\$ _____	Witness costs	
SFR/SFS/SFW/SRF	\$ _____	Sheriff service fees	
JFR	\$ _____	Jury demand fee	

JUDGMENT AND SENTENCE (JS) (Prison)
RCW 9.94A.500, 9.94A.505) (WPF CR 84.0400 (7/2003))

EXT	\$ _____	Extradition Costs	
	\$ _____	Other	
PUB	\$ 500.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM	\$ 1,000.00	Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, ★ VUCSA additional fine deferred due to indigency RCW 69.50.430.	RCW 69.50.430
CDF/LDV	\$ _____	Drug enforcement fund of the:	RCW 9.94A.760
FCD/NTF/SAD/SDI CLF	\$ 100.00	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ 100.00	Felony DNA collection fee [] not imposed due to hardship	
MTH	\$ _____	Meth/Amphetamine Cleanup Fine, \$3,000. RCW 69.50.440, 69.50.401(a)(1)(ii).	
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ 1310.00	TOTAL	RCW 9.94A.760

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

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

[] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the Department of Corrections or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____
RCW 9.94A.760.

[] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190 and RCW 9.94A.780(5)

[] The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

I.
4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

_____ 90 _____ months on Count 1

Actual number of months of total confinement ordered is: 90

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above in Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall be run consecutively with the sentence in cause number(s): _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589
Confinement shall commence immediately unless otherwise set forth here: _____

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

4.6 **COMMUNITY PLACEMENT** is ordered as follows:
Count _____ for _____ months;

COMMUNITY CUSTODY is ordered as follows:
Count 1 for a range from 9 to 12 months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

- (a) The defendant committed a current or prior: (i) Sex offense; (ii) Violent Offense; (iii) Crime against a person (RCW 9.94A.411); (iv) Domestic Violence offense (RCW 10.99.020); (v) Residential burglary offense; (vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine; (vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii).
- (b) The conditions of community placement or community custody include chemical dependency treatment.
- (c) The defendant is subject to supervision under the interstate compact agreement, RCW

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

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

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions:

- ▶ **No drug related offenses.**

CAUSE NUMBER of this case: 04-1-318-3

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA16206161 Date of Birth 04-26-76
(if no SID take fingerprint card for State Patrol)

FBI No. _____ Local ID No. _____

PCN No. _____ Other DOC #735528

Alias Name, SSN, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian
 Native American Other: _____ Ethnicity: Hispanic Non-Hispanic Sex: Male Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature to this document.

Clerk of the Court: Joan Sheppard, Deputy Clerk. Dated: NOV 28 2005

DEFENDANT'S SIGNATURE: Victor Wilson

ADDRESS: 52 Arland Rd Montevideo WA

PHONE NUMBER: (360) 249-3525



Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR GRAYS HARBOR COUNTY

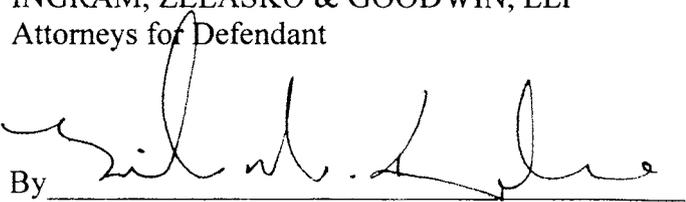
STATE OF WASHINGTON,)	
)	
)	Plaintiff,
vs.)	NO. 04-1-00318-3
)	
VICTOR THOMAS BENJAMIN EVENSEN,)	NOTICE OF APPEAL TO THE
)	COURT OF APPEALS-DIVISION II
)	
)	Defendant.
)	

Defendant hereby seeks review by the Court of Appeals of the State of Washington, Division II of the judgment and sentence, and every part thereof, entered on November 28, 2005, in Grays Harbor County Superior Court. A copy of the Judgment and Sentence is attached.

DATED: November 29, 2005.

Respectfully submitted:

INGRAM, ZELASKO & GOODWIN, LLP
Attorneys for Defendant

By 

Erik M. Kupka
WSBA #28835

NOTICE OF APPEAL TO THE COURT OF APPEALS-DIVISION II - 1

INGRAM, ZELASKO & GOODWIN, LLP
ATTORNEYS AT LAW
601 BANK OF AMERICA BUILDING
POST OFFICE BOX 1106
ABERDEEN, WASHINGTON 98520
TELEPHONE (360) 533-2865
TELEFAX (360) 538-1511

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1 Name and Address of Defendant:
2 Victor Thomas Benjamin Evensen, DOC #735528
3 Washington State Corrections Center
4 P.O. Box 900
5 Shelton, WA 98584

6 EMK CC
7 HAE/EVENSEN, VICTOR H586-2\NOTICE OF APPEAL DOC
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32 NOTICE OF APPEAL TO THE COURT OF
APPEALS-DIVISION II - 2

INGRAM, ZELASKO & GOODWIN, LLP
ATTORNEYS AT LAW
601 BANK OF AMERICA BUILDING
POST OFFICE BOX 1106
ABERDEEN, WASHINGTON 98520
TELEPHONE (360) 533-2865
TELEFAX (360) 538-1511

ll

SUPERIOR COURT OF WASHINGTON
COUNTY OF GRAYS HARBOR

STATE OF WASHINGTON, Plaintiff,

v.

VICTOR THOMAS EVENSON,
Defendant.

SID: WA16206161
If no SID, use DOB: 04-26-76

No. **04-1-318-3**

JUDGMENT AND SENTENCE (JS)

- Prison
 - RCW 9.94A.712 Prison Confinement
 - Jail One Year or Less
 - RCW 9.94A.712 Prison Confinement
 - First Time Offender
 - Special Sexual Offender Sentencing Alternative
 - Special Drug Offender Sentencing Alternative

- Clerk's Action Required, para. 4.15.2, 5.3, 5.6 and 5.8.

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer, Erik Kupka, and (Deputy) Prosecuting Attorney William A. Leraas were present.

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 November 15, 2004, by plea as charged in the Information of:

COUNT	CRIME	RCW	DATE OF CRIME
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2.2 CRIMINAL HISTORY: (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A (Adult) or J (Juvenile)	TYPE OF CRIME
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TMVWOP		Grays Harbor County, WA Cause No. 01-1-354-5	05-20-01	Adult	Felony

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CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A (Adult) or J (Juvenile)	TYPE OF CRIME
Theft of a Firearm		Pacific County, WA Cause No. 97-1-89-9	04-15-97	Adult	Felony
Malicious Mischief 2*		Pacific County, WA Cause No. 95-1-31-1	02-06-95	Adult	Felony
Residential Burglary		Thurston County, WA Cause No. 93-8-828-6	12-04-93	Juvenile	Felony
TMVWOP		Thurston County, WA Cause No. 93-8-828-6	12-11-93	Juvenile	Felony
PSP 2*		Grays Harbor County, WA Cause No. 93-8-183-3	07-02-93	Juvenile	Felony

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	9	II	60 months + 1 day to 120 months		60 months + 1 day to 120 months	10 years / \$10,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom., See RCW 46.61.520, (JP) Juvenile present.

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

III. JUDGMENT

3.1 The defendant is GUILTY of the count(s) and charge(s) in Paragraph 2.1 and Appendix 2.1.

3.2 The Court DISMISSES Count(s): 2

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$ _____	Restitution to:	
<u>JASS CODE</u> \$ _____	Restitution to:	
<u>RTN/RJN</u> \$ _____	Restitution to:	(Name and Address - address may be withheld and provided confidentially to Clerks' Office)
<u>PCV</u> \$ <u>500.00</u>	Victim assessment	RCW 7.68.035
<u>FRC</u> \$ <u>110.00</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160.	
<u>WFR</u> \$ _____	Witness costs	
<u>SFR/SFS/SFW/SRF</u> \$ _____	Sheriff service fees	
<u>JFR</u> \$ _____	Jury demand fee	

EXT	\$ _____	Extradition Costs	
	\$ _____	Other	
PUR	\$ 500.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM	\$ 1,000.00	Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, FCM VUCSA additional fine deferred due to indigency RCW 69.50.430.	RCW 69.50.430
CDF.LDV	\$ _____	Drug enforcement fund of the:	RCW 9.94A.760
FCD/NTF/SAD/SDI CLF	\$ 100.00	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ 100.00	Felony DNA collection fee [] not imposed due to hardship	
MTH	\$ _____	Meth/Amphetamine Cleanup Fine, \$3,000. RCW 69.50.440, 69.50.401(a)(1)(ii).	
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ 1310.00	TOTAL	RCW 9.94A.760

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

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

[] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the Department of Corrections or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____
RCW 9.94A.760.

[] In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760.

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190 and RCW 9.94A.780(5)

[] The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

I.
4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

_____ 90 _____ months on Count 1 _____

Actual number of months of total confinement ordered is: _____ 90 _____

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above in Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall be run consecutively with the sentence in cause number(s): _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589
Confinement shall commence immediately unless otherwise set forth here: _____

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

4.6 **COMMUNITY PLACEMENT** is ordered as follows:
Count _____ for _____ months;

COMMUNITY CUSTODY is ordered as follows:
Count 1 for a range from 9 to 12 months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

- (a) The defendant committed a current or prior: (i) Sex offense; (ii) Violent Offense; (iii) Crime against a person (RCW 9.94A.411); (iv) Domestic Violence offense (RCW 10.99.020); (v) Residential burglary offense; (vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine; (vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii).
- (b) The conditions of community placement or community custody include chemical dependency treatment.
- (c) The defendant is subject to supervision under the interstate compact agreement, RCW

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by the Department of Corrections; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

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

The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions:

- ▶ **No drug related offenses.**

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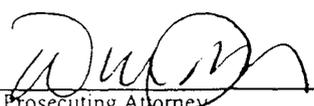
- ▶ Complete a drug evaluation by a state certified agency within 45 days of release and successfully complete any recommended treatment or follow-up.
- ▶ Not possess or consume controlled substances nor possess drug paraphernalia without a valid prescription with random urinalysis testing to ensure compliance.

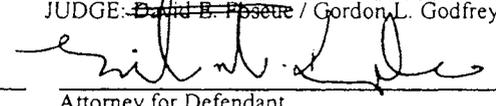
V. NOTICES AND SIGNATURE

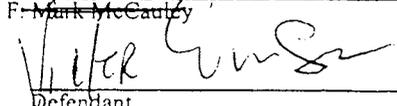
- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.
- 5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.
- 5.9 **OTHER:** _____

DONE in Open Court and in the presence of the defendant this date: _____

JUDGE: ~~David B. Puseur~~ / Gordon L. Godfrey / F: ~~Mark McCauley~~


 Deputy Prosecuting Attorney
 WSBA #15489
 Print name: WILLIAM A. LERAAS


 Attorney for Defendant
 WSBA #28835
 Print name: ERIK KUPKA


 Defendant

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CAUSE NUMBER of this case: 04-1-318-3

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA16206161 Date of Birth 04-26-76
(if no SID take fingerprint card for State Patrol)

FBI No. _____ Local ID No. _____

PCN No. _____ Other DOC #735528

Alias Name, SSN, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Native American Other: _____
Ethnicity: Hispanic Non-Hispanic
Sex: Male Female

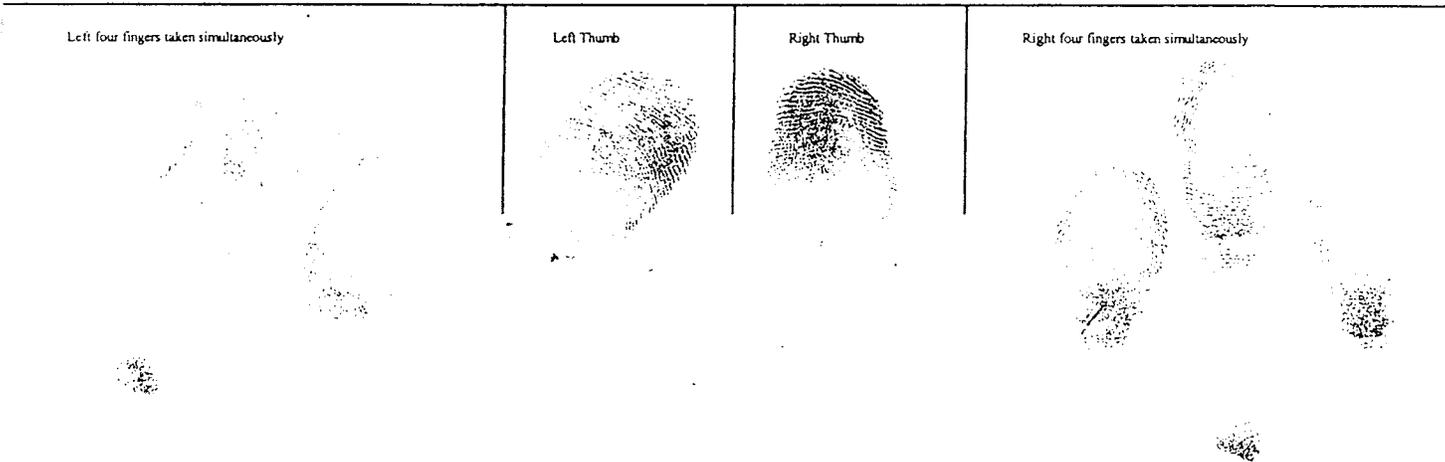
FINGERPRINTS: I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: _____, Deputy Clerk. Dated: _____

DEFENDANT'S SIGNATURE: Victor Emerson

ADDRESS: 52 Arland Rd Montevideo WA

PHONE NUMBER: (360) 249-3525



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