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Court of Appeals No. consol to 34521-8

Mason County Superior Court No. 02-1-00232-3

CA

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

In re the Personal Restraint of:

WALTER JESSE BARBEE,

Petitioner.

PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT
AND AUTHORITIES

By:

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I. STATUS OF PETITIONER/PROCEDURAL HISTORY

Petitioner Walter J. Barbee is currently incarcerated at Clallam Bay Corrections Center in Clallam Bay, Washington.

The Fourth Amended Information in Mason County Superior Court No. 02-1-00232-3 charged Walter J. Barbee with the following offenses: Count I, Murder in the First Degree of victim Oscar L. Abundiz, Jr. on June 14, 2002; Count II, Murder in the Second Degree of victim Oscar L. Abundiz, Jr. on June 14, 2002; Count III, Robbery in the First Degree of victim Oscar L. Abundiz, Jr. on June 14, 2002; Count IV, Unlawful Possession of a Controlled Substance (Marijuana) on June 14 or 15, 2002; and Count V, Conspiracy to Commit Robbery in the First Degree of victim Oscar L. Abundiz, Jr. during May and June, 2002. App. A.

The case proceeded to jury trial beginning on May 14, 2003. On May 27, 2003, prior to the conclusion of the trial, Barbee pleaded guilty to a single count of Murder in the First Degree with a Firearm Enhancement. App. C (Transcript of Plea Hearing); App. B (Statement of Defendant on Plea of Guilty).

On, June 12, 2003, the Court sentenced Barbee to 304 months on the murder count and an additional 60 months on the firearm enhancement for a total of 364 months. App. E (Transcript of Sentencing Hearing) at 1370-71; App. D (Judgment and Sentence).

Mr. Barbee, through undersigned counsel, filed on March 1, 2006, a notice of appeal challenging the same conviction and sentence. The case number is 34521-8-II. Barbee filed a motion on March 16, 2006 to excuse

the late filing of the appeal. He will file an opening brief in that case as soon as the clerk's papers and transcripts have been transmitted, and will raise the same claims presented here. He has filed this PRP in an excess of caution in the event that the Court finds the existing record insufficient to grant relief. Barbee has filed today a motion to consolidate the two actions.

Barbee was represented in the superior court by Robert M. Quillian, 2633 Parkmont Lane SW, Suite A, Olympia, Washington 98502-5793.

Barbee is not seeking to proceed at public expense.

II. OVERVIEW

At Barbee's plea and sentencing, his lawyer and the judge assured him that he could receive good-time credit on his entire murder sentence (although not on the firearm enhancement). Much later, Barbee learned that the first 20 years of his murder sentence cannot earn good-time credit. This affects the actual amount of time he will serve by as much as three years. Because his plea is based on misinformation, he is asking this Court to vacate his sentence and remand to the superior court so that Barbee can choose his remedy – specific performance or vacation of his plea.

III. STATEMENT OF THE CASE

Towards the end of the trial, the prosecutor approached Mr. Barbee's counsel with a plea offer. In deciding whether or not to accept the offer, it was important to Barbee exactly how this would affect his sentence. Because the State agreed to recommend the low end of the

range, Mr. Barbee believed he had a good chance of receiving the low end.¹ Mr. Barbee understood that the range would be 261-347 months on the murder charge, plus an additional 60 months for the firearm enhancement. His lawyer, Robert Quillian, told him that the time on the firearm enhancement would be “flat time,” that is, that it could not be reduced through good conduct in prison. Mr. Quillian also told Mr. Barbee that he could earn fifteen percent good-time credit on the murder sentence. Mr. Barbee would not have pled guilty had he known that he could not receive good-time credit on the first 20 years of his sentence. App. F (Declaration of Walter J. Barbee).²

At the plea hearing, the judge explained that the firearm enhancement would be served without good-time credit. App. C at 1331. Nobody said anything at the hearing about how the sentence for the underlying murder charge would be served.

Mr. Barbee did not admit guilt in the plea form or at the plea hearing. Rather, he checked the following box: “Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.” App. B at para. 11.

¹ Mr. Barbee understood that the Court was free to impose any sentence within the standard range. He is not claiming error based on the judge imposing the middle of the range.

² The original of this document has been filed as an exhibit to Barbee’s motion for leave to file a late appeal in Case No. 34521-8-II. Mr. Quillian has orally informed undersigned counsel that he will sign a declaration confirming most of these points. I will forward that declaration to the Court as soon as I receive it.

At Barbee's sentencing hearing, the Court imposed 304 months on the murder charge, which was approximately the middle of the standard range. App. E at 1370-71. The Court stated explicitly that Barbee would earn 15 percent good-time credit on these 304 months. Id. Mr. Quillian confirmed that understanding. Id. at 1370. The prosecutor did not object or disagree.

Mr. Quillian has submitted a declaration confirming that the sentencing calculations were very important to Mr. Barbee in his decision to plead guilty. We went over many times the likely outcomes if he continued with the trial versus pleading guilty and I tried to break down the numbers for him under each scenario as precisely as possible.

App. G at para. 4. Mr. Quillian does not specifically recall what he said to Mr. Barbee about good-time credit prior to the plea. "However, I certainly would not have told him one thing prior to the plea and then said something different during the plea hearing or sentencing hearing." Id. at para. 3. "I do not recall ever telling Mr. Barbee – whether before, during, or after his plea and sentencing – that he would be prohibited from earning good-time credit on the first 20 years of his murder sentence." Id. at para. 6.

The written plea agreement in this case contains the following warning at paragraph 6(x): "The crime of Murder 1^o has a mandatory minimum sentence of at least 20 years of total confinement. The law does not allow any reduction of this sentence." There is no warning that the first 20 years of the sentence would be served without good-time credit even if

such credit would not reduce the time served to less than 20 years. Mr. Quillian recently reviewed the provision quoted above.

I likely understood this to mean that the Judge could not go below a 20-year sentence even if he thought there were grounds for an exceptional sentence below the standard range. I would not necessarily have interpreted this clause to have any application to a sentence longer than 20 years.

App. G. at para. 5.

Barbee's father hired undersigned counsel to look into possible legal issues in Barbee's case in 2005. In the course of this work, counsel learned that Barbee is not receiving any good-time credit on the first 20 years of his sentence. App. F at paras. 7-8.

IV. GROUNDS FOR RELIEF³

A. MR. BARBEE IS ENTITLED TO HIS CHOICE OF REMEDY BECAUSE HE WAS MISINFORMED ABOUT THE PENALTIES FOR THE CRIME

"It is a violation of due process to accept the guilty plea without an affirmative showing that the plea was made intelligently and voluntarily." State v. Barton, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980), citing Boykin v. Alabama, 395 U.S. 238, 23 L.Ed.2d 274, 89 S. Ct. 1709 (1969). See also, State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). "The record of a plea hearing or clear and convincing evidence must affirmatively disclose a guilty plea was made intelligently and voluntarily, with an understanding of the full consequences of such a plea." Barton at 304,

³ In the interest of clarity and conciseness, petitioner has consolidated the legal argument and authorities with the petition. See RAP 16.7(a)(2).

citing Wood v. Morris, 87 Wn.2d 501, 554 P.2d 1032 (1976). “A defendant must understand the sentencing consequences for a guilty plea to be valid.” State v. Walsh, 143 Wn.2d 1, 17 P.3d 591 (2001), citing State v. Miller, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). This principle is codified in CrR 4.2(d).

When Mr. Barbee entered his guilty plea he made no statement admitting guilt. Rather, he checked a box indicating that the court could review certain documents to determine a factual basis for the plea. In North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), the U.S. Supreme Court held that a guilty plea may be constitutional even if the defendant does not admit guilt. When this Court adopted Alford in State v. Newton, 87 Wn.2d 363, 552 P.2d 682 (1976), it noted the special concerns with such pleas. “When a defendant seeks to plead guilty while protesting his innocence, the trial judge is confronted with a danger signal. It puts him on guard to be extremely careful.” Id. at 373 (citations and internal quotations omitted). “An equivocal plea may be an indication the plea is not voluntarily and intelligently made.” Id. at 373. See also, In re Montoya, 109 Wn.2d 270, 280-81, 744 P.2d 340 (1987).

Here, the basis for the plea was not Mr. Barbee’s desire to admit guilt, but rather his understanding of the more favorable sentencing consequences of a plea. Unfortunately, Mr. Barbee was misinformed about the penalties he faced. He was told that he could earn 15 percent good-time credit on his entire murder sentence when in fact he could not earn any credit on the first 20 years of the sentence. See RCW

9.94A.540(2). This changes the actual time to be served by as much as three years. It is likely that the difference will actually be that great because Mr. Barbee has so far avoided infractions and performed all work assignments appropriately.

In Walsh, supra, both parties were mistaken about the standard range at the time of the plea. Id. at 4-5. The error was corrected by the time of sentencing, and the defendant raised no objection in the trial court. Id. at 5. Walsh was nevertheless entitled to challenge the voluntariness of his plea agreement either on direct appeal or in a personal restraint petition. Id. at 6-7. In Walsh, the mistake was only that the low end of the standard range was 95 rather than 86 months, and Walsh understood that the trial court was in any event free to impose an exceptional sentence. Id. at 4-5. Here, the error was much greater since Mr. Barbee was led to believe that he could earn three more years of good-time credit than were actually available.

In State v. Conley, 121 Wn. App. 280, 87 P.3d 1221 (2004), the defendant entered a plea to first-degree assault without being advised that he could not earn early release credit on the first five years of his sentence. Id. at 282-83. The Court of Appeals held that the “the statutory prohibition against earned early release credit for the period of the mandatory minimum sentence” was a direct consequence of the plea because it had a “definite, immediate, and automatic effect on the range of Mr. Conley's sentence.” Id. at 286. “While the early release credits themselves are discretionary with the Department of Corrections and the

mere potential to earn them does not constitute a direct consequence of a plea, the total prohibition of earned early release credits during the mandatory minimum sentence period is automatic.” Id. (citation omitted).

The Conley court did not grant relief, however, because Mr. Conley failed to prove that this misinformation was material; that is, that it affected his decision to plead guilty. Id. at 287. That portion of the Conley decisions was effectively overruled by Personal Restraint of Isadore, 151 Wn.2d 294, 88 P.3d 390 (2004). “We hold that a defendant who is misinformed of a direct consequence of his guilty plea need not make a special showing of materiality in order to be afforded a remedy for an involuntary plea.” Id. at 296.

This hindsight task is one that appellate courts should not undertake. A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision.

Id. at 302.

In any event, Mr. Barbee would be entitled to relief even under the analysis in Conley because he has demonstrated materiality. Mr. Barbee has offered a sworn statement that he would not have pled guilty had he known about the limitations on good-time credit. App. F at para. 2. This is corroborated by his attorney, who recalls how important the precise sentencing calculations were to Barbee. App. G. at para. 4.

When a plea agreement is “based on misinformation,” the defendant may choose “specific enforcement of the agreement or withdrawal of the guilty plea” unless the State can demonstrate on remand

“compelling reasons” that the defendant’s choice would be unjust. Walsh, 143 Wn.2d at 8-9. See also, Isadore, 151 Wn.2d at 303. “Where fundamental principles of due process are at stake, the terms of the plea agreement may be enforced, notwithstanding statutory language.” Isadore at 303, citing State v. Miller, 110 Wn.2d at 532.

The Court should therefore remand to the superior court for a hearing at which Mr. Barbee will elect his choice of remedy.

B. IN THE ALTERNATIVE, MR. BARBEE IS ENTITLED TO RELIEF BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL

A defendant has a Sixth Amendment right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A defendant is deprived of effective assistance if he is prejudiced by counsel’s deficient performance. Id.

During plea bargaining, counsel has a duty to assist the defendant "actually and substantially" in determining whether to plead guilty. State v. Osborne, 102 Wash.2d 87, 99, 684 P.2d 683 (1984); State v. Stowe, 71 Wash.App. 182, 186, 858 P.2d 267 (1993). It is counsel's responsibility to aid the defendant in evaluating the evidence against him and in discussing the possible direct consequences of a guilty plea. State v. Holley, 75 Wash.App. 191, 197, 876 P.2d 973 (1994).

State v. S.M., 100 Wn. App. 401, 410-11, 996 P.2d 1111 (2000). To demonstrate constitutionally ineffective assistance of counsel at the plea bargaining stage, the defendant must show that his counsel’s performance “fell below an objective standard of reasonableness based on consideration of all the circumstances,” and that “there is a reasonable probability that,

but for counsel's errors, [defendant] would not have pleaded guilty and would have insisted on going to trial." State v. Acevedo, 137 Wn.2d 179, 198-99, 970 P.2d 299 (1999) (citations omitted).

A defendant may be entitled to relief based on ineffective assistance of counsel even if the misinformation did not concern a direct consequence of the plea. "[E]rroneous advice about a matter collateral to the conviction can constitute constitutionally deficient performance." State v. Littlefair, 112 Wn. App. 749, 51 P.3d 116 (2002), review denied, 149 Wn.2d 1020, 72 P.3d 761 (2003) (internal quotations omitted), citing State v. Holley, 75 Wn. App. 191, 198, 876 P.2d 973 (1994) and State v. Stowe, 71 Wn. App. 182, 858 P.2d 267 (1993). In Littlefair, the defendant was not advised about the deportation consequences of his plea. Although this was not a direct consequence of the plea, Littlefair was entitled to relief because his lawyer affirmatively assured him that he would not be deported.

In this case, Mr. Barbee's lawyer affirmatively assured him that he would receive earned release credit on his entire murder sentence. As discussed above, he would not have pled guilty otherwise. Barbee has therefore proved both prongs of his ineffective assistance claim.

C. THIS PETITION IS NOT BARRED BY RCW 10.73.090

1. The One-Year Time Limit Has Not Yet Begun to Run Because Mr. Barbee's Conviction is Not Final

In general, collateral attacks must be brought within one year "after the judgment becomes final." RCW 10.73.090(1). A judgment becomes

final on the *last* of several alternative dates, including “[t]he date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction.” RCW 10.73.090(3)(b).

As noted above, Mr. Barbee recently filed a direct appeal. Although the notice of appeal was filed outside the 30-day time limit set out in RAP 5.2(a), Mr. Barbee has asked that it be considered timely because he never knowingly waived his right to appeal. Thus, the direct appeal process is still ongoing and the one-year time limit for collateral attacks has not begun to run.

This result is consistent with the purpose of RCW 10.73.090, which is to give prisoners a reasonable opportunity to file collateral attacks *after* they have completed their direct appeals, while also precluding excessive delay. In the vast majority of cases, of course, the direct appeal is initiated within 30 days of the judgment. But when, as here, there is a valid basis to extend the deadline for filing a direct appeal, the deadline for collateral attack should likewise be extended.

2. Mr. Barbee is Excused From Any Time Limits Under the Doctrine of Equitable Estoppel

Even if this Court were to interpret RCW 10.73.090 to mean that the one year time limit began to run when the judgment was entered in 2003, Mr. Barbee should be excused from that rule by the principle of equitable tolling. "Equitable tolling `permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.'" State v. Littlefair, 112 Wn. App. 749, 759, 51 P.3d

116 (2002), review denied, 149 Wn.2d 1020, 72 P.3d 761 (2003), quoting, State v. Duvall, 86 Wn. App. 871, 874, 940 P.2d 671 (1997), review denied, 134 Wn.2d 1012, 954 P.2d 276 (1998). See also In re Hoisington, 99 Wn. App. 423, 993 P.2d 296 (2000); Mark A. Wilner, Justice at the Margins: Equitable Tolling of Washington's Deadline for Filing Collateral Attacks on Criminal Judgments, 75 Wash. L. Rev. 675 (2000).

The facts of Littlefair are similar to those in this case. In Littlefair, the court and attorneys failed to advise the defendant that deportation would be a consequence of his plea. Because of that, the one-year deadline did not begin to run until Littlefair learned that his plea was based on misinformation. Id. at 763. The Court suggested that the one-year time limit would not begin to run until the defendant “knew all necessary facts” concerning his claim. Id. at 759, n. 23.⁴

Here, Mr. Barbee was expressly told by his attorney and the trial court that he would earn early release credit on his entire murder sentence. Over a year later, Mr. Barbee was given a printout from the Department of Corrections showing a later release date than he had expected. To his credit, Mr. Barbee admits that he received this information more than one year ago.

⁴ In Littlefair it was apparently undisputed that the prisoner had *no* knowledge of his potential claim until less than a year before he filed his petition. Id. at 752, 755. By contrast, the defendant in Personal Restraint of Stoudmire, 141 Wn.2d 342, 5 P.3d 1240 (2000) knew “all necessary facts” more than a year before he filed his petition. See Littlefair at 759 n.23.

But the equitable tolling should not end on the date that Mr. Barbee received the printout, because it did not tell him that he had a claim *concerning his plea and sentence*. His natural assumption was that DOC made some mistake in calculation. After all, the trial judge himself had personally explained that Barbee would earn good time credit. Faced with the apparently inconsistent information in the printout, Barbee did the sensible thing: he wrote his trial lawyer asking for advice. Unfortunately, Mr. Quillian did not respond to his repeated inquiries.

It was not until after Barbee's father hired undersigned counsel that Barbee learned the truth: his attorney and the trial judge had misstated the law. He has filed his petition well within a year of the date that he learned this information.

The State may argue that RCW 10.73.090 should be equitably tolled only until the date that Barbee was given DOC's calculation of his release date. The statute, however, sets a time limit only on challenges to a "judgment and sentence" and not on challenges to conditions of confinement. See RCW 10.73.090(1). Barbee was led to believe that his complaint was against the DOC records department rather than against his judgment and sentence.⁵ On a legal issue, it was only natural for him to trust the word of the trial court judge rather than some administrative prison staff. Barbee had no reason to think he needed to hurry in

⁵ Typically, such problems are corrected informally rather than through court action. But even if a prisoner must ultimately file a PRP to correct a DOC mistake regarding his release date, he is not challenging his judgment and sentence.

correcting DOC's apparent mistake; even with the earlier release date he would spend many more years in prison. Nevertheless, Barbee did take appropriate steps to resolve the issue by attempting to contact his trial lawyer.

3. The Petition Falls Within the Exception Under RCW 10.73.100(1)

Alternatively, Barbee should be excused from the one-year time limit under the exception for "newly discovered evidence." See RCW 10.73.100(1). Under this subsection, the petitioner must act "with reasonable diligence in discovering the evidence and filing the petition or motion."

The "evidence" underlying Barbee's claim is that he was misinformed about his entitlement to earned release credit. He initially had no reason to search for such evidence at all since he reasonably believed that the trial court was telling him the truth. As discussed above, the DOC printout did not provide him notice of a potential claim, since he reasonably believed that the mistake was DOC's. In any event, Mr. Barbee did act with diligence after viewing the printout since he made repeated efforts to contact his trial lawyer. Further, within months of hiring a new lawyer, Mr. Barbee sought clarification on this issue and then filed his petition within a reasonable time.

V. REQUEST FOR RELIEF

The Court should vacate Barbee's sentence and remand for a hearing at which he may choose his remedy – withdrawal or specific

enforcement of the plea agreement. In the alternative, if the Court finds it necessary to resolve disputed facts, it should remand for a reference hearing.

VI. OATH

After being first duly sworn on oath, I depose and say that: I am the attorney for petitioner, I have read the petition, know its contents, and believe the petition is true.

DATED this 24th day of March, 2006.

Respectfully submitted,



David B. Zuckerman, WSBA #18221
Attorney for Walter J. Barbee

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on this 24th day of MARCH, 2006.


Notary Public for Washington

My Commission Expires: 11/09/08



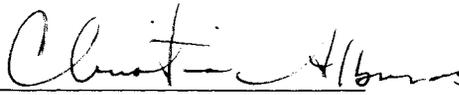
CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by United States Mail one copy of the foregoing Personal Restraint Petition and the Appendix to Personal Restraint Petition on the following:

Mason County Prosecuting Attorney
PO Box 639
521 North 4th Street, Suite A
Shelton, Washington 98584

Mr. Walter J. Barbee #753733
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, Washington 98326

3/24/06
Date


Christina Alburas

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BY CA

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Plaintiff/Appellee, v. WALTER J. BARBEE, Defendant/Appellant.	Court of Appeals No. 34521-8-II Mason County Superior No. 02-1-00232-3 MOTION TO CONSOLIDATE APPEAL WITH PERSONAL RESTRAINT PETITION
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I. IDENTITY OF MOVING PARTY

Defendant/Appellant Walter J. Barbee, through attorney David B. Zuckerman, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Defendant/Appellant Walter J. Barbee asks to consolidate this appeal with the personal restraint petition filed today.

III. FACTS RELEVANT TO MOTION

On February 28, 2006, Mr. Barbee filed, through undersigned counsel, a notice of appeal in this case. On March 16, 2006, he filed a motion to permit the late filing of the appeal. Barbee will soon file an opening brief arguing that his plea was invalid because he was misinformed about the opportunity to earn good-time credit on the first 20 years of his sentence.

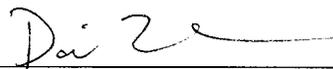
The personal restraint petition (PRP) filed today raises the same claims that would be addressed in the direct appeal. Barbee has filed the PRP in perhaps an excess of caution in the event that the Court finds the existing record insufficient to grant relief. Along with the PRP, Barbee has submitted a declaration from himself explaining some facts that are outside of the trial court record. He has also provided a declaration from his trial attorney.

IV. GROUNDS FOR RELIEF AND ARGUMENT

“The appellate court, on its own initiative or on motion of a party, may order the consolidation of cases or the separation of cases for the purpose of review.” RAP 3.3(b). “A party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases.” *Id.* In this case, consolidation would certainly be in the interest of judicial economy. For the most part, the issues presented in the two proceedings are identical, and both proceedings rely on the same portions of the trial court record. It is true that the PRP presents a few additional facts, and somewhat different procedural issues, but these can be considered efficiently along with the underlying claims.

DATED this 23rd day of March, 2006.

Respectfully submitted:



David Zuckerman, WSBA #18221
Attorney for Walter J. Barbee

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served one copy of the foregoing document by United States Mail on the following:

Mason County Prosecuting Attorney
PO Box 639
521 North 4th Street, Suite A
Shelton, Washington 98584

Mr. Walter J. Barbee #753733
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, Washington 98326

3/24/06
Date

Christina Alburas
Christina Alburas

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STATE OF WASHINGTON

BY DA

Court of Appeals No. _____

Mason County Superior Court No. 02-1-00232-3

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

In re the Personal Restraint of:

WALTER JESSE BARBEE,

Petitioner.

APPENDIX TO PERSONAL RESTRAINT PETITION

By:

David B. Zuckerman
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- B. Statement of Defendant on Plea of Guilty, May 27, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3
- C. Excerpt of Verbatim Report of Proceeding, Plea Hearing, May 27, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3
- D. Judgment and Sentence, June 12, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3
- E. Verbatim Report of Proceedings, Sentencing, June 12, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3
- F. Declaration of Walter J. Barbee, February 18, 2006, *In Re Personal Restraint of Walter Jesse Barbee*, Washington State Court of Appeals (Division II) No. 34521-8-II
- G. Declaration of Robert M. Quillian, March 22, 2006, *In Re Personal Restraint of Walter Jesse Barbee*, Washington State Court of Appeals (Division II) No. 34521-8-II

- A. Fourth Amended Information, May 12, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3

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

MASON CO. CLERK
HANGWANTOS, CO. CLERK
BY [Signature] DEPUTY

STATE OF WASHINGTON,)

Plaintiff,)

vs.)

WALTER JESSE BARBEE,)

BM101177)

HT:5'09" WT:160 HAIR:SHVD EYES:BRO)

SID: WA18055506)

FBI: 591463CB5)

Defendant.)

NO. 02-1-00232-23

FOURTH AMENDED INFORMATION

SPD 02-05496

RCW 9A.32.030

RCW 9A.56.200

RCW 69.50.401

RCW 9A.28.040

I, Gary P. Burluson, Prosecuting Attorney for the County of Mason, State of Washington, by this Fourth Amended Information accuse the above-mentioned defendant: **WALTER JESSE BARBEE** with the crimes of:

- COUNT I: MURDER IN THE FIRST DEGREE (WITH FIREARM ENHANCEMENT)
- COUNT II: MURDER IN THE SECOND DEGREE (charged in the alternative as to Count I) (WITH FIREARM ENHANCEMENT)
- COUNT III: ROBBERY IN THE FIRST DEGREE (WITH FIREARM ENHANCEMENT)
- COUNT IV: UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE
- COUNT V: CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE

committed as follows, to wit:

COUNT I:

That the Defendant, WALTER JESSE BARBEE, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit MURDER IN THE FIRST DEGREE, a Class A Felony, in that the defendant did commit or attempt to commit the crimes of robbery in either the first or second degree or kidnapping in either the first or second degree, and in the course of or in furtherance of such crimes or in immediate flight therefrom, he or another participant caused the death of a person other than one of the participants, to-wit: Oscar

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L. Abundiz, Jr., and/or was an accomplice in the commission of said crime, contrary to RCW 9A.32.030(1)(c) and 9A.28.020 and against the peace and dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT II:

That the Defendant, WALTER JESSE BARBEE, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit MURDER IN THE SECOND DEGREE, a Class A Felony, in that the defendant did commit or attempt to commit a felony, to wit: Theft in the Second Degree and/or Unlawful Possession of a Controlled Substance (Marijuana over 40 grams), and in the course of or in furtherance of such crime or in immediate flight therefrom he or another participant caused the death of a person other than one of the participants, to-wit: Oscar L. Abundiz, Jr., and/or the defendant was an accomplice in the commission of said crime(s), contrary to RCW 9A.32.050(1)(b) and 9A.28.020 and against the peace and dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT III:

That the Defendant, WALTER JESSE BARBEE, in the County of Mason, State of Washington, on or about the 14th day of June, 2002, did commit ROBBERY IN THE FIRST DEGREE, a Class A Felony, in that said defendant did unlawfully take personal property, to-wit: marijuana, from the person or in the presence of another, to wit: Oscar L. Abundiz, Jr., against such person's will, by use or threatened use of immediate force, violence, or fear of injury to that person or his property, or the person or property of anyone, and did use such force or fear to obtain or retain possession of the property or to prevent or overcome resistance to the taking of said property, with the intent to commit theft of the property, and during such taking or in the immediate flight therefrom, the defendant was armed with a deadly weapon and/or displayed what appears to be a firearm or other deadly weapon and/or inflicted bodily injury, and/or was an accomplice in the commission of said crime, contrary to RCW 9A.56.200(1)(c)

and RCW 9A.08.020 and against the peace and dignity of the State of Washington, and it is further alleged, pursuant to RCW 9.94A.510(3), that at the time of the commission of the alleged offense, the defendant or an accomplice was armed with a firearm as defined in RCW 9.41.010.

COUNT IV:

That the Defendant, WALTER JESSE BARBEE, in the County of Mason, State of Washington, on or about the 14th and/or the 15th day(s) of June, 2002, did commit POSSESSION OF A CONTROLLED SUBSTANCE, a Class C Felony, in that said defendant did unlawfully possess a controlled substance, knowing it to be a controlled substance, to-wit: over forty (40) grams of Marijuana, contrary to RCW 69.50.401(d) and against the peace and dignity of the State of Washington.

COUNT V:

That the Defendant, WALTER JESSE BARBEE, in the County of Mason, State of Washington, during the month of May, 2002 and/or during the period of June 1, 2002 through June 14, 2002, did commit CONSPIRACY TO COMMIT ROBBERY IN THE FIRST DEGREE, a Class B Felony, in that the Defendant, with intent that conduct constituting the crime of ROBBERY IN THE FIRST DEGREE be performed, did agree with one or more persons to engage in or cause the performance of such conduct, to wit: to unlawfully take personal property, to-wit: marijuana, from the person or in the presence of another, to wit: Oscar L. Abundiz, Jr., against such person's will, by use or threatened use of immediate force, violence, or fear of injury to that person or his property, or the person or property of anyone, and did further agree that during such taking or in the immediate flight therefrom, one or more participants would be armed with a deadly weapon and/or would display what appeared to be a firearm or other deadly weapon and/or would inflict bodily injury, and any one of them did take a substantial step in pursuance of such agreement, contrary to RCW 9A.56.200 and RCW 9A.28.040 and against the peace and dignity of the State of Washington.

Dated:

May 12, 2003

GARY P. BURLESON,
Prosecuting Attorney

By:


GARY P. BURLESON, #4632
Mason County Prosecutor

B. Statement of Defendant on Plea of Guilty, May 27, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court
No. 02-1-00232-3

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PAT SWARTOS, Clerk of the
Superior Court Mason Co. Wash.

**SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY**

NO. 02-1-08002-0

STATE OF WASHINGTON _____

Plaintiff

vs.

Walter Jesse Banhee _____

Defendant.

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

1. My true name is: Walter Jesse Banhee
2. My age is: 25
3. I went through the 7th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
 - (a) I have the right to representation 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: Murder in the First Degree with Firearm, Enhancement
The elements are: Committing the crime of Murder in the first degree with a firearm, on a voluntary, premeditated, and deliberate killing of another human being.
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;

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- (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 unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

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

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	2	261-507 months	60 mo	321-567 months	29-48 months	life \$50,000
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 sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The 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. 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 prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind 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 \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of 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 this crime is a 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 and requirements placed upon me.

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 offense 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 release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned 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 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 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 and requirements placed upon me. 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) *ELB* The prosecuting attorney will make the following recommendation to the judge: *less and if*
~~... (handwritten text) ...~~ *Discuss Court's II - 11*
 The prosecutor will recommend as stated in the plea agreement, which is incorporated 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 range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either the state or I can appeal that sentence. If the sentence is within the standard 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) 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 license. RCW 9.41.040.
- (k) Public assistance will be suspended during any period of imprisonment.
- (l) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100 DNA collection fee.

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 parole.
- [n] The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to 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 conditions 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. WJ
- [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. WJ
- [p] If this is a crime of domestic violence and if I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150. WJ
- [q] If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. WJ

- [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 undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of 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 cost 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 of the crime for which I am pleading guilty.
- [t] If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, 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(r) 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 the offense of 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 two 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 M.V.D. has a mandatory minimum sentence of at least 20 years of total confinement. The law does not allow any reduction of this sentence. 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 the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm 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 9.41.040 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.

7. I plead guilty to:

count I Misdemeanor in the First Degree with Firearm, Subsequent

count _____

count _____

in the _____ Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

10. No person has made 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 what I did in my own words that makes me guilty of this crime.

This is my statement: I understand that I am pleading guilty to a misdemeanor in the first degree with a firearm, subsequent offense and possession of a firearm in the first degree. In the course of said offense, I was in possession of the firearm, which I used to threaten the victim with a program of the _____

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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 the judge.

[Signature]
Defendant

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

[Signature]
Defendant's Lawyer Bar # [Number]

[Signature] #4032
Prosecuting Attorney Bar #

Cary Burleson
Print Name

[Signature]
Print Name

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 the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

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: 5-27-03

[Signature]
Judge

- C. Excerpt of Verbatim Report of Proceeding, Plea Hearing, May 27, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3

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

STATE OF WASHINGTON,)
)
Plaintiff,) NO. 30756-1-II
)
vs.) VOLUME XIV
)
MICHAEL JESSE GONZALES,) NO. 02-1-00415-6
WALTER JESSE BARBEE,) NO. 02-1-00232-3
)
Defendant.)
)

VERBATIM REPORT OF PROCEEDINGS

FROM JURY TRIAL OF
MAY 14, 2003
MAY 15, 2003
MAY 16, 2003
MAY 19, 2003
MAY 20, 2003
MAY 21, 2003
MAY 22, 2003
MAY 23, 2003
MAY 27, 2003

1 MR. BURLESON: Your Honor, my understanding is at
2 this time that Walter Jesse Barbee intends to enter a plea of
3 guilty to Count I, Murder in the First Degree with firearm
4 enhancement, to the Fourth Amended Information.

5 MR. QUILLIAN: Your Honor, that's correct. Could
6 we have a five minute recess just to complete going over the
7 forms? There's one thing I need to talk to him about.

8 THE COURT: Sure, we'll take five minutes.

9 MR. QUILLIAN: Thank you.

10 Court adjourns for a brief
11 recess.

12 RECESS/COURT RECONVENES

13 Court reconvenes on the same
14 date and the following is
heard in the absence of the
jury:

15 THE COURT: Thank you. Please be seated. Court's
16 back in session.

17 MR. QUILLIAN: Your Honor, as Mr. Burleson
18 indicated, it's Mr. Barbee's intention at this time to enter
19 a plea of guilty to Murder in the First Degree with a firearm
20 enhancement. I've reviewed the Statement of Defendant on
21 Plea of Guilty with him. He has reviewed it and read it
22 himself. I'm confident he understands the nature and
23 consequences of the plea.

24 THE COURT: Thank you. Your name is Walter Jesse
25 Barbee?

1 MR. BARBEE: Yeah.

2 THE COURT: How old are you?

3 MR. BARBEE: 25.

4 THE COURT: Walter, you've completed the 12th
5 grade, is that correct?

6 MR. BARBEE: Yes.

7 THE COURT: You read and write the English
8 language?

9 MR. BARBEE: Yeah, perfectly.

10 THE COURT: I've been handed a Statement of
11 Defendant on Plea of Guilty. You're represented by
12 Mr. Quillian. Have you had an opportunity to read this form
13 in its entirety with the assistance of your attorney?

14 MR. BARBEE: Yeah, thoroughly.

15 THE COURT: Do you understand that representation
16 has been made to the Court that you've entered into a plea
17 negotiation, a plea agreement. Nothing says that you have to
18 enter into this agreement. Nothing says that you have to
19 make this plea. Do you understand?

20 MR. BARBEE: Yes, I do.

21 THE COURT: If you want to continue on to trial
22 you're welcome to do so. We've got the jury there. We're a
23 day-and-a-half away from going to the jury. Do you
24 understand that?

25 MR. BARBEE: Yes.

1 THE COURT: So if you have any hesitation, now is
2 the time to let me know, right? Because if I accept your
3 plea, you're giving up these trial rights that are set forth
4 in section 5 (a) through (f), of the Statement of Defendant
5 on Plea of Guilty, right?

6 MR. BARBEE: Yep, that's it.

7 THE COURT: Murder in the First Degree with a
8 firearms enhancement. Is that your understanding?

9 MR. BARBEE: Yes, it is.

10 THE COURT: Life in prison and/or \$50,000.00 fine.
11 That's the maximum penalty prescribed by law. Do you
12 understand that?

13 MR. BARBEE: Yes.

14 THE COURT: In your situation the indication is
15 that you have a personal offender score of 2, which would
16 give you a standard range sentence of 261 - 347 months plus a
17 60 month firearms enhancement. And the firearms enhancement
18 is served with no good time. And is served on top of the
19 other sentence imposed. Do you understand?

20 MR. BARBEE: Yes, I do.

21 THE COURT: In addition to that, of course there
22 is the possibility, or the requirement of community custody,
23 of 24 - 48 months. Do you understand that as well?

24 MR. BARBEE: Yes, I do.

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THE COURT: The indication is the Prosecuting Attorney's Office will dismiss the remaining counts of the Information upon the Court's acceptance of the plea to Count I. Is that your understanding?

MR. BARBEE: I'm sorry, say again?

THE COURT: That the prosecution will move to dismiss the remaining counts if I accept the plea to Count I?

MR. BARBEE: Yes.

THE COURT: In addition, the indication is the Prosecuting Attorney is intending to recommend the low end sentence to the Court plus the firearms enhancement. Defendant will testify truthfully and to the State's satisfaction in the case of State vs. Patrick Calfrobe. Is that your understanding?

MR. BARBEE: Uh huh. Yes, it is.

THE COURT: And the satisfaction is actually as to simply truthful testimony. Is that correct?

MR. BURLESON: That's correct.

MR. QUILLIAN: That language was in the other Plea Agreement.

THE COURT: Is that your understanding as well?

MR. BARBEE: Yeah.

THE COURT: Not very good language, I don't personally think.

1 MR. QUILLIAN: It was in the other one so I put it
2 in this one too. I agree.

3 MR. BURLESON: We just want it to be truthful.

4 MR. QUILLIAN: It's fine with me if you want to
5 strike that part of it and make sense -- make --

6 MR. BURLESON: And the State has no problem with
7 that either.

8 THE COURT: I don't like language that says "to
9 the satisfaction of the State". I think that that is not
10 what I hear people saying. My understanding is that it's
11 supposed to be truthful testimony. And then it would be your
12 burden to demonstrate it wasn't truthful if you were seeking
13 to satisfy the plea.

14 MR. BURLESON: Like I said, I have no problem.

15 MR. QUILLIAN: I would ask that you then strike
16 that language. That's fine.

17 THE COURT: Why don't you go ahead and strike and
18 initial. You sat here while I was going over the Statement
19 of Defendant on Plea of Guilty with your co-Defendant,
20 Mr. Gonzales. And in that I indicated to him that you have
21 to understand that the prosecution is binding themselves to
22 making a specific recommendation to the Court. They must do
23 so in good faith. They have to make a good faith
24 recommendation to the judge. However, the judge is the one
25 that has to impose the sentence. And the judge may impose

1 within the standard range, up to the maximum of the standard
2 range. And if that were done, you wouldn't have the right to
3 appeal because that's a presumptively correct sentence.

4 So with an offender score of 2, if the Court were to do
5 that, of course the Court would be imposing 347 months which
6 is the top end, plus 60 months. And you'd have no right of
7 appeal. Understood?

8 MR. BARBEE: Yes.

9 THE COURT: I'm not telling you that necessarily
10 that is what will happen. But it is important for you to
11 understand that that could happen, all right?

12 MR. BARBEE: Yes, sir.

13 THE COURT: If the judge exceeds the standard
14 range, goes over the 347 months, and imposes an exceptional
15 sentence, you then have the right to appeal that sentence
16 insofar as it exceeds the standard range. Do you understand
17 that?

18 MR. BARBEE: Yes.

19 THE COURT: Has anybody offered you anything that
20 I'm not being told about to get you to plead her today?

21 MR. BARBEE: No.

22 THE COURT: Has anybody threatened you in any way
23 to get you to plead?

24 MR. BARBEE: No.

25

1 THE COURT: Are you prepared at this time to enter
2 a plea to Count I of the Information charging you with the
3 crime of Murder in the First Degree alleged to have occurred
4 in the County of Mason, State of Washington, on or about the
5 14th day of June, 2002?
6 MR. BARBEE: Yeah.
7 THE COURT: As to that charge, are you guilty or
8 not guilty?
9 MR. BARBEE: Guilty.
10 THE COURT: You started to fill out a statement in
11 support of your plea, then crossed that out and initialed.
12 Instead of making a statement I agree the Court may review
13 the police reports and/or statement of probable cause. Is
14 that your --
15 MR. BARBEE: I didn't get in on that. I didn't
16 fill out any statement. I just crossed it out..
17 MR. QUILLIAN: Yeah, I wrote it out and then we
18 decided to just cross it out and let the Court rely on the
19 trial facts and the statement of probable cause.
20 MR. BURLESON: Same thing as Mr. Gonzales. We
21 incorporate all of the trial testimony in this matter and to
22 the Statement on Plea.
23 THE COURT: And so the record is perfectly clear,
24 the predicate felony that we're dealing with here is?
25 MR. BURLESON: Robbery.

1 THE COURT: Robbery in the First Degree.
2 MR. BURLESON: First or Second Degree, yes.
3 THE COURT: First or Second Degree. And that's
4 everybody's understanding?
5 MR. QUILLIAN: Yes, your Honor.
6 THE COURT: Defense have any problem with
7 incorporating all of the testimony and record from this
8 trial?
9 MR. QUILLIAN: No.
10 MR. BURLESON: In support of the plea?
11 MR. QUILLIAN: Sure.
12 THE COURT: And is this your signature in support
13 of your plea, Mr. Barbee?
14 MR. BARBEE: Yeah.
15 THE COURT: The record is sufficient to support
16 the plea. The Court will accept the plea of the Defendant to
17 the crime of Murder in the First Degree with firearms
18 enhancement. You do agree that during the commission of this
19 crime you were armed with a firearm; to-wit, a pistol?
20 MR. BARBEE: Yeah.
21 THE COURT: The Court accepts the plea, finds the
22 Defendant guilty of the crime of Murder in the First Degree
23 with firearms enhancement. State's motion.
24 MR. BURLESON: Move to dismiss Count II, which is
25 an alternative to Count I; Count III, Robbery in the First

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Degree; Count IV, Unlawful Possession of Controlled Substance; and Count V, Conspiracy to Commit Robbery in the First Degree.

MR. QUILLIAN: No objection.

THE COURT: The State's oral motion is granted. Mr. Barbee, having been convicted of this felony, you do not have the right to own or possess a firearm. And you will never gain that right. Do you understand that?

MR. BARBEE: Yeah.

MR. BURLESON: This is a strike, your Honor. It's one.

THE COURT: Thank you. And as indicated by the Prosecutor, this is a strike. With that, if you ever were to obtain a third strike is the effect that it would have on sentencing. You have to understand that at that point the judge would have no discretion in sentencing. The only alternative the judge would have would be to sentence to life in prison without the possibility of parole. Do you understand that?

MR. BARBEE: Yes.

THE COURT: So this is strike one.

MR. BURLESON: Sentencing date on the 12th.

THE COURT: Sentencing for the 12th. Defendant to be held pending.

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MR. BURLESON: Your Honor, I think with the Court's indulgence, I think what we should do is remove Mr. Barbee and bring the jury in.

THE COURT: I'll bring the jury in and explain to them what has occurred.

MR. BURLESON: When he's removed.

THE COURT: Sure. Thank you, gentlemen. If we could have our jurors please. Yes, please. Off the record.

MR. BURLESON: I wanted the Court to be aware that the family of the victim was consulted before those pleas as well.

THE COURT: Okay, thank you.

MR. BURLESON: I wanted the Court to understand that.

THE COURT: Thank you. Now we can go off the record.

Court adjourned at 3:59 p.m.

* * * * *

D. Judgment and Sentence, June 12, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court No. 02-1-00232-3

OK

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JUN 12 2003

CLERK OF THE SUPERIOR COURT, Mason Co. Wash.

SUPERIOR COURT OF WASHINGTON
COUNTY OF MASON

STATE OF WASHINGTON, Plaintiff,

v.

WALTER JESSE BARBEE,
Defendant.

SID:WA18055506

If no SID, use DOB: 101177

03-9-620-2

No. 02-1-00232-3

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 4.1 and 5.8**

I. HEARING

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

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MAY 27, 2003
by plea jury-verdict bench trial of: (Date)

COUNT	CRIME	RCW	DATE OF CRIME
1	MURDER IN THE FIRST DEGREE (With Firearm Enhancement)	9A.32.030	061402

as charged in the Fourth Amended Information. See appendix 2.1 for additional current offenses.

- The court finds that the defendant is subject to sentencing under RCW 9.94A.712
- A special verdict/finding for use of **firearm** was returned on Count I. RCW 9.94A.609, .510.
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) . RCW 9.94A.602 .510.
- A special verdict/finding of **sexual motivation** was returned on Count(s) . RCW 9.94A.835.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) , RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic

center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) . RCW 9.94A.605.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.575.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) involve(s) **domestic violence**.
- The offense(s) in Count(s) was/were committed in a county jail or state correctional facility. RCW 9.94A.510(5)
- A special verdict/finding determining aggravating circumstances was returned on Count(s) , as follows: . RCW 10.95.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): []
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): []

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	DATE OF RELEASE	A or J Adult, Juv.	TYPE OF CRIME
1	THEFT 2°	090696	KING; WA	032395		A	
2	PSP 2°	112598	KING; WA	122097		A	
3							

V = Violent; SV = Serious Violent; Sex = Sex Offense; Vsex = Violent Sex; SVSex = Serious Violent Sex

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score. (RCW 9.94A.525:
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS -NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	2	XV	261 - 347 MONTHS	60 MONTHS (F)	321 - 407 MONTHS	LIFE

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

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) . Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

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

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

DEPORTATION: If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service subject to arrest and reincarceration in accordance with law, then the undersigned Judge and Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.685.

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

1. LOW END OF STANDARD RANGE (PLUS FIREARM ENHANCEMENT)
2. DEFENDANT MUST TESTIFY TRUTHFULLY IN THE CASE OF STATE V. PATRICK CALFROBE.
3. DISMISS COUNTS II - V

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 [X] The Court DISMISSES Counts II, III, IV and V.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE	\$ _____	Restitution to: _____	
RTN/RJN	\$ _____	Restitution to: _____	
		(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
CRC	\$ <u>2797.²⁰</u>	Court costs, including	RCW 9.94A.760, 9.94A.505, 10.01.160,
		Criminal filing fee \$ <u>110.00</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ <u>1423.20</u>	SFR/SFS/SFW/WRF
		Jury demand fee \$ <u>100.⁰⁰</u>	JFR
		Extradition Costs <u>1164.⁰⁰</u>	EXT
		Other \$ _____	
JB	\$ <u>reserved</u>	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; [] VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/PCD NTF/SAD/SDI	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
CLF	\$ _____	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ <u>100.00</u>	Felony DNA collection fee [] not imposed due to hardship	RCW 43.43
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
MTH	\$ _____	Meth/Amphetamine Cleanup fine, \$3000	RCW 69.50.440, 69.50.401(a)(1)(ii)
	\$ _____	Other costs for: _____	
	\$ <u>3397.²⁰</u>	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: [] shall be set by the prosecutor [X] is scheduled for SEPTEMBER 4, 2003 @ 9:00 A.M.

[] RESTITUTION. Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim name)</u>	<u>(Amount-\$)</u>
--------------------------------	---------------------	----------------------	--------------------

RJN _____

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, 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.

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 10.73.160. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73. Interest shall accrue on restitution from the date of this order without exception.

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.

4.3 The defendant shall not have contact with (name, DOB) _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 **OTHER:**

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 (DOC):

304 + 60 = 364 months on Count I _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: 364 (304 + 60 MOS. FIRE ARM ENH.)
(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 at Section 2.3, and except for the following counts which shall be served consecutively: _____

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

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT. RCW 9.94A.712: The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____ minimum term _____ maximum term _____
Count _____ minimum term _____ maximum term _____

(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;
Count _____ for _____ months; Count _____ for _____ months;

[] COMMUNITY CUSTODY for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[X] COMMUNITY CUSTODY is ordered as follows:

Count I for a range from 24 to 48 months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ 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 orderd. [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 and 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.]

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 DOC-approved education, employment and/or community restitution; (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 DOC; and (6) perform affirmative acts necessary to minor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while on 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: SEE CONDITIONS FILED THIS DATE

For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than 7 working days.

4.7 **WORK ETHIC CAMP.** RCW 9.94A.690. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).
- This crime involves Rape of a Child in which the victim became pregnant. The defendant shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is longer.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): WJB
- 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, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

Cross off if not applicable:

~~5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~———— If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~

~~———— If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.~~

~~———— If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.~~

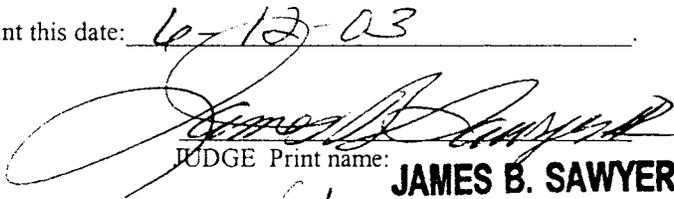
~~———— Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.~~

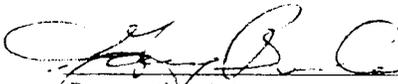
~~———— If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.~~

~~———— If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).~~

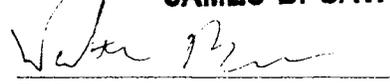
5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.

DONE in Open Court and in the presence of the defendant this date: 10-12-03


JUDGE Print name: **JAMES B. SAWYER**


Prosecuting Attorney
WSBA # 4632
Print name: Gary P. Burleson


Attorney for Defendant
WSBA # 8836
Print name: Robert M. Quillian


Defendant
Print name:

CAUSE NUMBER of this case: 02-1-00232-2

I, PAT SWARTOS, 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. WA18055506 Date of Birth 101177
(If no SID take fingerprint card for State Patrol)

FBI No. 591463CB5 Local ID No. _____

PCN No. _____ Other _____

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. Cherbig Dated: 6-12-03

DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously

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JUN 12 2003

PAUL SPARKS, Clerk of the
Superior Court, Mason Co., Wash.

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

STATE OF WASHINGTON,)
Plaintiff,) NO. 02-1-00232-2

vs.)

CONDITIONS OF

[] COMMUNITY PLACEMENT

[X] COMMUNITY CUSTODY

WALTER JESSE BARBEE,)
Defendant.) [] COMMUNITY SUPERVISION

[] COMMUNITY PROBATION

Upon release from total confinement in the Department of Corrections, the defendant shall be on Community Placement / Custody / Supervision / Probation for the period specified in the Judgment and Sentence, upon the following conditions:

[X] The defendant shall report to and be available for contact with the assigned Community Corrections Officer as directed;

[X] The defendant shall reside at a location and under living arrangements that have been approved in advance by the CCO, and shall not change such arrangements/location without prior approval;

[X] The defendant shall remain within, or outside of, geographic boundaries specified by the CCO;

[X] The defendant shall work at a Department of Corrections-approved education, employment and/or community service program;

The defendant shall not own, use, possess, transport, or receive firearms or ammunition;

The defendant shall not possess or consume any mind or mood-altering substances, to include the drug alcohol, or any controlled substances, except pursuant to lawfully issued prescriptions;

The defendant shall not go into bars, taverns, lounges, or other places whose primary business is the sale of liquor;

The defendant shall have a [chemical dependency] [mental health] evaluation within 30 days of release from custody, provide a copy of the evaluation to the CCO, successfully participate in and complete all recommended treatment, and sign all releases necessary to ensure that the CCO can consult with the treatment provider to monitor progress and compliance;

The defendant shall, at his/her own expense, submit to urinalysis and/or breathalyzer testing at the request of the CCO or treatment provider to verify compliance;

The defendant shall not associate with any known drug users or sellers, except in the context of a chemical dependency treatment program approved by the CCO;

Defendant shall pay a community placement fee as determined by the Department of Corrections;

A notice of payroll deduction may be issued or other income withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation

payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed;

Legal financial obligation payments are to be made on a schedule established by D.O.C. to begin as directed by the D.O.C.

Other: The defendant shall participate in the MRT +/-or Victim Awareness Education Program at the direction of his Community Corrections Officer.

Other: The defendant shall participate in and successfully complete a certified Domestic Violence counseling program.

Other: The defendant shall have no contact, either direct or indirect, with the victim, _____, or members of the victim's immediate family, including but not limited to contact in person, by mail, telephonically or through third parties. Any such contact may be reinitiated only upon the joint recommendation of the defendant's Domestic Violence counselor and PO/CCO and upon the written approval of this court.

Other: The defendant shall enroll in and successfully complete a high school Equivalency Diploma Program.

Other: The defendant shall obey all laws.

Other: The defendant shall participate in mental health counseling or treatment at the direction of the CCO.

Other: The defendant shall not operate a motor vehicle without a valid license to drive and proof of financial responsibility for the future.

Other: The defendant shall not refuse to submit to a breath or blood test to determine alcohol concentration upon request of a

law enforcement officer who has reasonable grounds to believe that the defendant was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs.

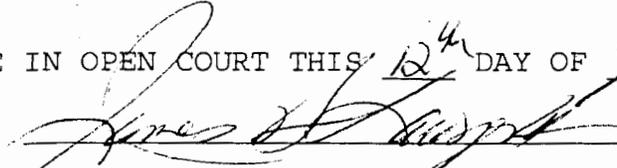
[] Other: The defendant may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device during the period of probationary supervision.

[] Other:

[] Other: The defendant shall comply with all provisions and conditions of the Day Reporting Program contract.

[] The defendant shall not possess, write or endorse checks except as to his/her own sufficiently funded checking account, his/her own payroll check or his/her own entitlement check.

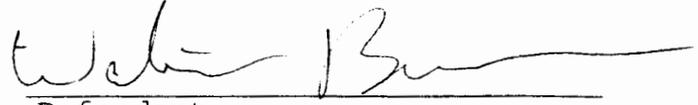
DONE IN OPEN COURT THIS 12th DAY OF June, 2003



Judge of the Superior Court **JAMES B. SAWYER**



Prosecutor



Defendant



Attorney for Defendant

RECEIVED & FILED

JUN 12 2003

PAT SWARTZ, Clerk of the Superior Court Mason Co. Wash.

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

STATE OF WASHINGTON,)
Plaintiff,) NO. 02-1-00232-2
)
vs.) WARRANT OF COMMITMENT
) (WC)
WALTER JESSE BARBEE,)
Defendant.)

THE STATE OF WASHINGTON

TO: The Sheriff of Mason County.

The defendant: WALTER JESSE BARBEE
has been convicted in the Superior Court of the State of
Washington of the crime of:
COUNT I: MURDER IN THE FIRST DEGREE (With Firearm Enhancement)

and the Court has ordered that the defendant be punished by
serving the determined sentence of:

- 304 + 60 = 364 (Days) (Months) JAIL/PRISON on Count No. I
- _____ (Days) (Months) JAIL/PRISON on Count No. _____
- _____ (Days) (Months) JAIL/PRISON on Count No. _____

~~PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:~~

* 60 MONTH FIREARM ENHANCEMENT

- work crew home detention
- work release day reporting
- _____ (Days) (Months) of partial confinement in the County JAIL
- _____ (Days) (Months) of total confinement in the county JAIL
- _____ Days confinement converted to _____ hours community service

DEFENDANT shall receive credit for time served prior to this date:
[XX] To be calculated by the staff of the Mason County Jail
[] In the amount of _____ Days.

[] YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

[XX] YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

[] The DEFENDANT is committed for up to (30) days evaluation at the Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery to the proper officers of the Secretary of the Department of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

Dated this 12th Day of June, 20 03.

By Direction of the HONORABLE

JAMES B. SAWYER II

Judge

PAT SWARTOS

Mason County Clerk

Carolyn Herbig

By Deputy Clerk

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3)

- E. Verbatim Report of Proceedings, Sentencing, June 12, 2003, *State of Washington v. Walter Jesse Barbee*, Mason County Superior Court
No. 02-1-00232-3

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

STATE OF WASHINGTON,)
Plaintiff,)
vs.) VOLUME XV
WALTER JESSE BARBEE,) NO. 02-1-00232-3
Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 12th day of June, 2003, Mason County Cause No. 02-1-00232-3 came on for sentencing hearing before the Honorable James B. Sawyer, II, Judge of the Superior Court sitting at the Mason County Courthouse, in the City of Shelton, County of Mason; and the parties being represented by their respective attorneys as follows:

GARY P. BURLESON, Prosecuting Attorney, and REINHOLD P. SCHUETZ, Deputy Prosecuting Attorney, 521 N. 4th Street, Shelton, Washington 98584, appearing on behalf of the Plaintiff;

ROBERT M. QUILLIAN, Attorney at Law, 2633 Parkmont Lane S.W., Suite A, Olympia, Washington 98502, appearing on behalf of the Defendant Walter Barbee.

1 Court convened with all
2 parties present on Thursday,
3 June 12, 2003, at 9:02 a.m.

4 THE COURT: Thank you. Please be seated. Court
5 is in session. The matter before the Court today is cause
6 number 02-1-00232-3, State of Washington vs. Walter Barbee.
7 This matter comes on today for sentencing; the Defendant
8 having pled guilty to the crime of Murder in the First Degree
9 with weapons enhancement. Is the State ready to proceed?

10 MR. BURLESON: The State's ready, your Honor.
11 There are a number of the victim's family that wish to be
12 heard prior to my recommendation.

13 THE COURT: That's fine.

14 MR. BURLESON: That, I would assume -- that's fine
15 with defense counsel?

16 MR. QUILLIAN: Sure.

17 THE COURT: Is the defense ready to proceed?

18 MR. QUILLIAN: We are, your Honor.

19 THE COURT: In so far as persons who wish to be
20 heard today, what I'm going to ask you to do, we've got a
21 microphone over here. I'm going to ask you to come up, state
22 your name for the record into the microphone, and then give
23 your statement that you'd like to make to the Court.

24 Mr. Burleson.

25 MR. BURLESON: Who wants to be first?

1 MR. SCHUETZ: Is there an interpreter here yet?
2 Because we did arrange for one.
3 THE COURT: Who made arrangements for one?
4 MR. SCHUETZ: Sherry.
5 THE COURT: I don't believe that she would have
6 any reason to know that there was supposed to be one.
7 MR. SCHUETZ: I dealt with her directly yesterday,
8 and she told me that she had -- it was -- it was the eleventh
9 hour, but she did say she was able to.
10 THE COURT: Okay. She's scheduled to be here at
11 9:00 and it's 20 'til.
12 MR. BURLESON: 20 'til 8:00?
13 THE COURT: Our clock stopped.
14 MR. SCHUETZ: 9:04 on the record.
15 THE COURT: And it is. Actually 9:06 by my watch.
16 So we're waiting on an interpreter.
17 MR. SCHUETZ: Unless there is a member out there
18 who doesn't feel they need an interpreter.
19 MR. BURLESON: Well, I think part of the reason is
20 they want an interpreter here.
21 MR. SCHUETZ: To translate what's being said?
22 MR. BURLESON: Yeah.
23 MR. SCHUETZ: Okay.
24 MR. BURLESON: Or you can speak without an
25 interpreter, can't you? Why don't you come forward.

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THE COURT: Come on forward, come right here. And just state your name please for the record.

MS. RODRIGUEZ: Maria Rodriguez.

THE COURT: Go ahead.

MS. RODRIGUEZ: I am Oscar's cousin.

THE COURT: It's Maria, right?

MS. RODRIGUEZ: Correct.

THE COURT: Okay, thank you. Go ahead.

MS. RODRIGUEZ: Sorry. I just wanted to say that --

THE COURT: Do you want a --

MS. RODRIGUEZ: Yeah.

THE COURT: You can step forward.

MS. RODRIGUEZ: I just wanted to say that it's been hard for us, this past year. We haven't been able to have any closure, just because we weren't able to see my cousin for the last time. He had to have a closed casket. It's -- all our family has been hurt because of this. And I'm just, you know, asking that -- I know that there's a certain penalty for everything, and a certain time that they can serve, or whatever. But we didn't -- we're never going to have closure just because of that. They -- we don't have nothing to hold onto. We've -- we couldn't say one last good bye. And these -- the Defendant's family are going to be

1 able to see him and we never got to say -- not even one last
2 kiss, especially his mother. That's all I wanted to say.

3 THE COURT: Thank you, Maria.

4 MR. BURLESON: This is Roman Abundiz. He was a
5 witness in the case, brother of the victim.

6 THE COURT: Just go ahead and state your name and
7 then proceed with your statement.

8 MR. ROMAN ABUNDIZ: Roman Abundiz.

9 THE COURT: Go ahead, Mr. Abundiz.

10 MR. ROMANO ABUNDIZ: I just want to say that this
11 has been horrible for us. It's really hard to imagine how
12 hard it has been for us. And he was my brother, my older
13 brother. He was the guy to look up to all the time. I can
14 ask him if I had a problem, you know, hey, help me out.
15 Whenever I needed something he would always be there for me.
16 And now he's gone. They took him away from me. The only way
17 I can talk to him is talk to him, but he's never going to
18 answer back, I mean.

19 And they -- like them, they're going to get a certain
20 time. They'll be able to get out. They'll -- they will get
21 a second chance. But where's my brother's second chance? He
22 doesn't get one in this life. He only gets one with God.
23 He's -- he's the only one that can get a second chance with
24 him. We won't be able to touch him with no feelings, just
25 straight -- we can only talk to him spiritually like. And

1 like their -- their parents can go and visit him, and see
2 him, talk to him, you know. And we can't ever get that from
3 our brother. And it's really bad. That's all I wanted to
4 say.

5 THE COURT: Thank you. Our interpreter was
6 supposed to be here at 9:00. She is running a bit late, and
7 so we're going to have to take a moment's recess to allow her
8 to get here. We'll take just a moment's recess. Well, I
9 don't want to interrupt this. I want to go straight through
10 it. So I'll step down.

11 MR. SCHUETZ: Maybe we could briefly discuss the
12 costs. We do have a cost bill printed out, but there --
13 while there's a jury fee assessed, there's no witness fee
14 figure apparently available today?

15 THE COURT: I don't see anything in here for
16 jurors cost, or witness.

17 MR. BURLESON: The interpreter's here, your Honor.

18 THE COURT: Oh, good. Did you have any
19 investigative fees?

20 MR. QUILLIAN: The only thing I had is -- and I
21 haven't gotten a bill for this yet. I hired a process server
22 over in Yakima during trial to attempt to serve -- and they
23 did some skip tracing back over to Sumner. But I haven't
24 gotten a bill from them yet.

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THE COURT: Okay. Well, we'll have to retain jurisdiction for that.

MR. QUILLIAN: Yeah, that's fine. And for my fee as well.

THE COURT: And you may want to talk to your client about whether he wants to be present on that or not.

MR. QUILLIAN: Okay.

THE COURT: Are we trying to clear her through security? Mariana, we're ready for your services. And what we're going to be doing is we're going to have individuals of the family that are going to be coming forward and giving their statements on the record. And so I'm just going to have you come up here to the microphone and be available. Thank you.

MR. SCHUETZ: Do we want two mics?

THE COURT: Probably wouldn't hurt.

MR. BURLESON: The next individual that's asked to speak is Rosa Abundiz, the mother of the victim.

THE COURT: Please state your name for the record.

MS. ROSA ABUNDIZ: My name is Rosa Abundiz. And I am mom for Oscar Abundiz.

THE COURT: Okay. And are you more comfortable speaking in Spanish?

MS. ROSA ABUNDIZ: Yes.

1 THE COURT: We have Mariana Sparkman present. And
2 if you want to go ahead and just make the statement that you
3 want and Mariana will translate for you.

4 MS. ROSA ABUNDIZ: Thank you. I would like to
5 explain something to the Judge. I have not my son for me.
6 He -- he had -- I had him when he was 15 -- since he was 15.
7 He was my friend, my buddy, my brother. He was my brother,
8 my friend and my son.

9 THE COURT: Roman Abundiz just indicated that the
10 statement that his mother made was that she was 15 when she
11 had her son, as opposed to I've had him since he was 15.
12 Thank you.

13 MS. ROSA ABUNDIZ: Yes.

14 THE COURT: All right, continuing.

15 MS. ROSA ABUNDIZ: He was my right hand. I tried
16 to do a good job as a mother. And they took him away from my
17 arms. I couldn't do anything. To me, they ended my life.
18 Twice I have thoughts that it was better that I wouldn't live
19 any more. Because it's been a year and I'm still not over
20 it. My little boy, Fernando, he was a second father because
21 he took care of him. Any time that something happens to
22 Fernando, he runs to his room and calls Oscar, Oscar.

23 Nobody can really understand the pain and the hurt that a
24 family has when they lose somebody. There was a lot of
25 people that really loved my son. Everything changed for us.

1 Not only they killed my son, but they killed a part of our
2 family. And the future doesn't mean much to us anymore.
3 They always tell me go ahead with life because I have my
4 other kids that still need me. But there's a little part of
5 me that they killed and I don't know if I can continue.

6 I would like your Honor to see that they killed my son,
7 they took away my son. They deprive us from the right to see
8 him to say good bye because his coffin was closed. They
9 wasted my son as if he was nothing. These are people without
10 heart. I hope to God that justice will be done and God is
11 helping me. And I hope here also justice will be made.

12 I thank you very much for all the help and support that
13 the prosecution office has given us, the detectives,
14 everybody. That's it. I do want justice to be done.
15 Nothing can bring my son back. But I would like that the
16 punishment would be for life.

17 THE COURT: Thank you.

18 MR. OSCAR LUIS ABUNDIZ: My name is Oscar Luis
19 Abundiz. I am the father of Oscar Junior. A lot of things
20 that I have in mind to tell you, they were said already by my
21 wife.

22 It's something very, very hard. It's extremely difficult
23 to explain the pain that is in your heart when something like
24 this happens. I understand that we're all going to die
25 sometime. But I believe that's when God decides, not when

1 some bad people decide to take away the life. Especially
2 somebody like my son. He was a special kid. He never had
3 any problems, not even at school. Some time I had to
4 reprimand him or call his attention for anything. He would
5 never talk back to me. He always smiled, laughed, and did
6 whatever he had to do.

7 Never in my life I could imagine that he would end up that
8 way. I'm extremely sad. Like my wife said, it changed our
9 lives. Not only our very close family, but everybody that's
10 around us. I never -- I never heard him being disrespectful
11 to anybody or fooling around.

12 This -- his death is supposedly to be involved with
13 something to do with drugs. I understand that the drugs
14 victimized not anybody from any walk of life. It doesn't
15 distinguish color, race, religion, or anything.

16 I would like to tell you a story of something that I heard
17 casually when I went to eat in a place. They were talking
18 about this person -- these people that killed my son. And
19 they didn't know I was the father. And I didn't say anything
20 to them, so they were talking about him. They said that
21 these people were already around doing robberies, or these
22 dirty business. I don't know how to explain. I felt badly,
23 very badly.

24 Being here is something very difficult and painful for us.
25 But I have to be here. There's a lot of things that I have

1 on my mind. But it's hard to say and express them because
2 nothing is going to bring my son back. If there's a way that
3 we can get our son back, it would be God that will return our
4 son back in another life perhaps. Because I am sure that in
5 another life I am going to see him again.

6 I would like to thank the prosecutors, all the police that
7 helped to bring justice, the detectives. And the only thing
8 I ask for these people, that they will be punished with all
9 the weight of the law. Thank you.

10 THE COURT: Thank you, Mr. Abundiz.

11 MS. MARIA RIVEROS: Good morning. I am Maria
12 Riveros. I am Rosa Abundiz's sister. I came to ask for the
13 same thing that my brother-in-law and my sister are asking of
14 you.

15 I am asking for justice to be done with all its power,
16 because as my sister said, they have taken away a part of us.
17 For us, our lives changed, as she said. Even though these
18 people didn't let us give our nephew the last good bye, and
19 they didn't let us see him. Besides, I don't believe that
20 there is any amount of money or anything that will be as
21 valuable as a life of a person, and would be worth taking a
22 life away. Life only can be taken away by God. Why do they
23 have to do that to people that haven't hurt them or haven't
24 done anything bad to them?

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1 My nephew was a peaceful person. He never had any
2 problems, not in school, not in the neighborhood. That's why
3 I'm sure he didn't have major problems with these people
4 without a conscience and without a heart. That's why we're
5 asking for justice to be done. Because they have changed our
6 lives. They have taken away a very, very valuable person to
7 us. Because -- because if they weren't taught to respect
8 other people's life, to love everybody else, we were taught
9 that.

10 I would like to thank all the police officers that worked
11 during the investigation. And I say it again; we want
12 justice for these people without a conscience and without
13 love. Thank you.

14 THE COURT: Thank you.

15 MR. BURLESON: Anyone else?

16 THE COURT: Just turn it down toward him. I think
17 if you just tip it down.

18 MR. ROMAN ABUNDIZ: Okay.

19 THE COURT: I think it will get him just fine.
20 Anything you'd like to say, Fernando? Are you Fernando?

21 MR. FERNANDO ABUNDIZ: Fernando.

22 MR. ROMAN ABUNDIZ: He told me he wanted to talk
23 up here.

24 THE COURT: That's all right. How old are you,
25 Fernando? Five? Very good.

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MR. ROMAN ABUNDIZ: He just wanted justice.

THE COURT: Thank you.

MR. ROMAN ABUNDIZ: And he misses his brother.
That's what he said, in words, you know.

THE COURT: Thank you, Roman. Did you have anybody that is going to be wanting to speak?

MR. QUILLIAN: No, your Honor.

THE COURT: Okay.

MR. BURLESON: Your Honor, as you've indicated, we're here for sentencing, pursuant to Mr. Barbee's plea to First Degree Murder with firearm enhancement.

We were in trial for eight or nine days. And although it broke at the time Mr. Barbee pled guilty and Mr. Gonzales pled guilty, there was -- the substantial amount and weight of the evidence was presented, at least as far as the State is concerned, so that the Court has -- should have a very, very good understanding of what the -- what the evidence suggests.

Now we didn't hear from -- we didn't hear from the defense and any of the witness that Mr. Barbee were -- was planning on putting on. Or -- but we heard substantially from Mr. Gonzales in terms of his witness. And -- so the Court at this point in time, as far as the State is concerned, is very well acquainted with the facts of this case as the State

1 knows them. And should be in a very good position to proceed
2 based on the facts without me elaborating to any great deal.

3 I would say this though, just initially in terms of
4 sentencing. The -- factually generally when put in the back
5 drop of the law, this case is not terribly complicated as far
6 as the State is concerned. And by that I mean Oscar Abundiz,
7 Jr. was killed during the course of a robbery. And that --
8 and that's a -- that's a pretty obvious and simple factual
9 conclusion to -- to reach. Factually -- I'm sorry.

10 THE COURT: Would the family be more comfortable
11 if we had Mariana interpreting for you at this time? Are you
12 able to follow along?

13 UNKNOWN: It would be good.

14 UNKNOWN: Yes.

15 THE COURT: Mariana, do you mind?

16 INTERPRETER: No.

17 THE COURT: So you're going to have to pace
18 yourself. Thank you.

19 MR. BURLESON: Two specific facts however are --
20 are extremely disputed and -- and sometimes difficult to
21 absolutely understand exactly what occurred. So to repeat,
22 as far as the State was concerned, in a general sense, we
23 know who was involved in -- in the killing of Oscar Abundiz,
24 Jr. We know that that killing occurred during the course of
25 a robbery. And we know it -- we know a gun was used in it.

1 And so consequently with respect to Mr. Barbee, we know that
2 he committed First Degree Murder while armed with a weapon
3 basically. And that's -- under the law that's -- that's
4 essentially all we need to know.

5 But in terms of sentencing it's -- as far as I'm
6 concerned, it's important to understand the -- the nature of
7 the facts to the extent that we can. But after eight or nine
8 days of trial the Court should be aware --

9 THE COURT: Remember you've got somebody trying to
10 interpret behind you.

11 MR. BURLESON: I understand. Should be aware, as
12 I am aware, that on almost any given fact that we talk about
13 in this case, there's dispute, depending on which Defendant
14 you talk to and what that Defendant has to say.

15 Mr. Quillian has submitted a factual recitation of -- of
16 Mr. Barbee's account. And we didn't get to that point in the
17 trial. I would indicate that it is extremely close, based on
18 my memory, as to what Mr. Barbee told me prior to the plea
19 being entered by Mr. Barbee and Mr. Gonzales' plea. And so
20 the Court should aware -- should be aware that that
21 recitation, which is at odds on many, many facts that we were
22 exposed to in the trial, and also consistent with many facts
23 depending on which witness testified that we were exposed to
24 in the trial.

1 All told, the -- the case in a general legal sense from
2 the facts, as far as the State is concerned is quite easy.
3 From a specific factual point, it's difficult. And from the
4 specific legal fact standpoint, it becomes important,
5 relative to how the State proceeded in terms of the
6 prosecution of these individuals because we needed to
7 determine who did what in -- in terms of reaching our
8 decisions with respect to how culpable they should be held --
9 they should be held for what they did in terms of this
10 offense.

11 Mr. Barbee, in our opinion, was -- was the individual that
12 in -- that in all likelihood -- and I would indicate to the
13 Court, I accept the testimony of Doctor Lacsina -- killed
14 Oscar Abundiz, Jr. And he was -- even though that
15 specifically could be argued, and is subject to debate, the
16 State takes the position he in all likelihood is the killer.
17 Even Mr. Barbee says that he is the individual, and the only
18 individual, that fired a weapon at -- at that particular
19 time. And so if Mr. Abundiz, Jr. was killed by a gunshot, as
20 Doctor Lacsina's opinion was, then Mr. Barbee's the
21 individual that is -- is the killer. And it was done during
22 the course of a robbery.

23 Mr. Barbee, through cooperation, agreed to testify against
24 Mr. Gonzales. And it was at that point in time in the trial
25 that -- when his information was provided to us, that was the

1 catalyst that brought about the plea of Mr. Gonzales. And so
2 as in -- in a trial of this complexity, the State needs and
3 uses the testimony of one defendant against another. It's --
4 it's the only way basically in a case like this we can get
5 down to the bottom of things, even if the bottom of things is
6 in -- are in factual dispute.

7 In -- in a general factual legal sense, it's extremely
8 valuable in holding as many of the people responsible as
9 should be responsible. Consequently the State entered into a
10 plea agreement with respect to Mr. Barbee at that point in
11 time where he would pled guilty to robbery -- excuse me,
12 Murder in the First Degree with a firearm enhancement;
13 recommendation of 321 months, 261 on the murder and an
14 additional 60 on the firearm enhancement.

15 And that is my recommendation. I indicate to the Court
16 I'm comfortable with that recommendation under the facts of
17 this case and under -- under the scenario of cooperation that
18 Mr. Barbee performed.

19 One other thing I would indicate to the Court is in -- in
20 my view, this is not a case that has aggravating
21 circumstances under any event. I don't see them here. I see
22 this as a -- as a standard range First Degree Murder, without
23 aggravating facts and circumstances. The State's
24 recommendation is 261 months with an additional 60 months for
25 the -- the firearm enhancement.

1 I would indicate to the Court as well at the time of
2 taking the plea, it was -- it was communicated with the
3 family. The family has been here, and the Court knows that
4 the family to a large extent was here throughout the trial.
5 They have indicated, some of them from the start, that --
6 that they feel a life sentence is -- is the appropriate
7 sentence for the individuals involved. That being said, I
8 want the Court to understand that before the plea was taken,
9 there was communication with the family. And they -- they
10 understood at that point in time the -- the reason the plea
11 was taken. And they understood what was going to be
12 recommended by the State. And although they didn't agree
13 with it, they -- they indicated that they were basically
14 supportive of the prosecution's position. So that's all I
15 have to indicate to the Court.

16 THE COURT: Thank you. Mr. Quillian on behalf of
17 the defense.

18 MR. QUILLIAN: Thank you very much, your Honor.
19 As Mr. Burleson has -- has indicated, the statement -- the
20 Defendant's statement of the case that I put -- set forth in
21 our sentencing memorandum was to the best of my recollection,
22 exactly what was discussed over the noon hour of the last day
23 of trial for a couple hours between myself, Mr. Barbee,
24 Mr. Schuetz, and Mr. Burleson down in the jail. I felt it
25 was appropriate at that point in time, given the way the

1 trial was going and the fact that it was about to wrap up,
2 for that conversation to take place.

3 INTERPRETER: Your Honor --

4 THE COURT: Yes.

5 MR. QUILLIAN: Am I going to fast?

6 INTERPRETER: Can you slow down?

7 MR. QUILLIAN: I'm sorry, okay.

8 THE COURT: Thank you.

9 MR. QUILLIAN: I felt it was appropriate at that
10 time, given the way the trial was going, that it was about to
11 conclude, for that conversation to take place. And it was at
12 my suggestion that it did take place. I did not take notes
13 during that entire conversation. But as Mr. Burleson has
14 indicated, I believe I have summarized that as best I could.
15 And indeed, I reviewed that with Mr. Barbee last night as to
16 accuracy, and he agreed that what is in that statement is
17 accurate.

18 And in my opinion, when I heard that statement from him on
19 that day, it had a ring of truth to it in my opinion. And
20 quite frankly, it answered several questions that still
21 existed in my mind about what had actually happened on the
22 dates in question.

23 After Mr. Barbee made his plea and was taken from the
24 courtroom, I felt that was the appropriate time, and the
25 first time, for me to express my condolences to the Abundiz

1 family. I did that on that day, and I will do it again this
2 day. Mr. Abundiz, Sr. and Roman were most gracious with me
3 that day. They shook my hand and they accepted my
4 condolences. And they said they understood that I had a job
5 to do. And I appreciated that. And all I ask is that my
6 comments today be taken in that same spirit.

7 As the Court knows, I went to Yakima for several days to
8 work on this case and interview a number of people, and did
9 that. And I spoke to a lot of people who knew Jesse, and
10 knew him very well. Jesse went to school in Seattle. He was
11 a stand-out soccer player until an injury ended that part of
12 his career. And the people I spoke with in Yakima where he
13 ended up residing, uniformly had nothing but good things to
14 say about him. They termed him a good man, and one who had
15 helped a lot of people in a lot of ways.

16 I fully appreciate and sympathize with the loss the
17 Abundiz family has absorbed. And I'm sure you know that
18 Mr. Barbee's parents are here in the courtroom and have been
19 here throughout this trial as well. They and the people who
20 know and love Jesse are also facing a huge loss. And I'm
21 sure that Mr. Barbee or his mother could stand up and regale
22 you with the good times and the good things that Jesse has
23 done in his life.

24 I was in front of the Supreme Court two days ago arguing a
25 case where the issue was whether the defense of duress should

1 be available where the crime charged is Attempted Murder.
2 And part of my argument in that case, as the Court well
3 knows, the Statute says that duress is not available where
4 the crime charged is murder, or manslaughter, or homicide by
5 abuse. And one of the arguments I made, which I think struck
6 some resonance with the justices, was the distinction as to
7 why the defense is not available in those enumerated crimes,
8 is what I term the fact of death; that in those crimes there
9 is the fact of death which distinguishes those crimes from
10 any other crimes.

11 Clearly from the comments of the Abundiz family, they are
12 dealing and grieving over the fact of death in this case.
13 And it is that same fact of death that places Jesse before
14 this Court to be sentenced for the crime of Murder in the
15 First Degree. Were it not for that fact, we'd be here for a
16 sentencing on perhaps robbery and assault.

17 I don't want the Court to think that anything in my
18 memorandum is meant to minimize Jesse's role in this
19 incident. I only put the comment in there about if indeed
20 Mr. Abundiz was shot because there -- just even from Doctor
21 Lacsina's testimony, there was a bit of a question about
22 that. However I agree with Mr. Burleson, and I am not
23 disputing at this point, nor is Jesse disputing, the fact
24 that in all likelihood a bullet from Jesse's gun killed
25 Mr. Abundiz. And we're not -- we're not denying that at all.

1 The Legislature has set forth the standard sentence range
2 for someone who comes before the Court as Jesse does with his
3 two prior convictions for Theft in the Second Degree and
4 Possession of Stolen Property. And that range is 261 months
5 at the low end, and 347 months at the high end.

6 And it's interesting that that range encompasses not
7 only -- or it is there not only for the crime of felony
8 Murder in the First Degree where there is absolutely no
9 intent that anyone be killed -- and I submit that is indeed
10 the fact in this case. There is nothing in the evidence that
11 I'm aware of, of any discussion or intent on the part of
12 anyone that Mr. Abundiz was to be killed.

13 But the range is there not only for felony murder, but
14 also for someone who commits the crime of premeditated murder
15 where you plan for months to kill someone and put that plan
16 into effect and do it.

17 Without at all meaning to minimalize, or minimize the
18 impact this has had on the Abundiz family, I submit that the
19 facts of this case call out for a sentence at the low end of
20 the range. This plea and this agreed recommendation was
21 negotiated between myself and the prosecutors. And I'm
22 comfortable that it was based on Mr. Burleson's feeling,
23 given his knowledge of this entire case -- and you've heard a
24 lot of this -- of this case. But I'm sure he has additional
25 items that he's aware of that did not come out on the witness

1 stand, or in this trial. But I'm sure it was based on his
2 feeling that this agreement, this sentence under all the
3 circumstances and facts known to him at the time, was a just
4 result. Just as I'm sure you're going to hear from four or
5 five other attorneys today and tomorrow who are going to be
6 saying exactly the same thing.

7 There's a reason to treat Jesse differently because he was
8 holding the gun that fired the bullet. And he is being
9 treated differently, both in terms of recommendations from
10 the State and in terms of sentence ranges that he as opposed
11 to the other individuals involved here, are looking at. And
12 let's not fool ourselves. All these people, Mr. Barbee,
13 Mr. Calfrobe, Mr. Moreno, Mr. Jeffery, and Mr. Gonzales, were
14 under the law, guilty of First Degree Murder. And yet for
15 reasons that I absolutely understand and accept, Mr. Barbee
16 sits here being the only one of those five, convicted of
17 First Degree Murder. And placed on a higher level, facing a
18 higher penalty. And that's appropriate.

19 Twenty-six years, nine months, which is the low end of the
20 range plus the -- including the enhancement, is a significant
21 sentence. It is more time than Mr. Barbee has been on this
22 earth. That, your Honor, is a just sentence under all the
23 circumstances of this case. And I would urge you to adopt
24 the agreed recommendation and impose exactly that sentence.
25 Thank you very much.

1 THE COURT: Walter Jesse Barbee, anything that
2 you'd like to say in your own behalf?
3 MR. BARBEE: Yes, but it's -- it's not much.
4 THE COURT: Pardon me?
5 MR. BARBEE: Yes.
6 THE COURT: Go ahead and stand up and tell me what
7 you have to say.
8 MR. BARBEE: Throughout the trial I held my tongue
9 a lot because --
10 THE COURT: Remember we've got an interpreter
11 that's trying to translate.
12 MR. BARBEE: Yeah.
13 THE COURT: So go slow.
14 INTERPRETER: Speak louder.
15 MR. SCHUETZ: Actually she wants him to speak
16 louder.
17 THE COURT: Oh, yes. Speak up, if you could.
18 MR. BARBEE: Because nobody in their hot seat, you
19 know, that were pleading out wanted to say what happened.
20 And at the time, I didn't want to say what happened. I don't
21 know if the real story will be told, but I wish I could tell
22 it. But I can do it truthfully.
23 INTERPRETER: I'm sorry, your Honor, (inaudible)
24 THE COURT: Why don't you come on up around this
25 corner and then just go ahead and interpret back. You'll

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have to keep your voice up, which will give us a little bit of difficulty. And I'm sure he's going to have a hard time keeping his voice up as loud as what you'll need it to be.

INTERPRETER: (inaudible)

THE COURT: Sure.

INTERPRETER: I'm sorry, your Honor. I'm going to have my back to you.

THE COURT: That's fine. Go ahead.

MR. BARBEE: That day before I pled out, I spoke to Mr. Burleson. I wasn't trying to get leverage for the truth of the story which I had to be told against Gonzales, or against any defendant to bargain to make things lighter on me. I said it, because it needed to be said.

You know, there's nothing I can say to make anything better. I'm pretty sure nobody really wants to hear what I say. But there's not a day that goes by that I wish I couldn't take Oscar's life. And the sorrow that his family feels outweighs me wanting freedom. Because if it had been me who died, not Oscar, there would be no sorrow in that family that I clearly feel, even though they may not feel that I feel that. Because I have family too and I've lost family. And it's a devastating impact.

And I would rather have my family feel in sorrow for me having peace in death than seeing me be a burden to them. I

1 love my family, but it is not as much as sorrow that I feel
2 for the Abundiz's.

3 I really don't have anything spectacular or special to
4 say. I don't -- I don't want to hurt anybody's intelligence
5 or disrespect anybody in this room. And don't get me wrong.
6 I mean I want -- I want to live, you know, just as anybody
7 else does and deserves. But given the choice, I'd take
8 Oscar's place. You know, that's what I have to say. Because
9 I don't have enough time to say what happened. And I know
10 that needs to be said. And hopefully one day the story can
11 come out, detail for detail, for what it's worth. That's all
12 I have to say.

13 THE COURT: Thank you, Mr. Barbee.

14 MR. QUILLIAN: Thank you, your Honor.

15 THE COURT: Anything further from the State?

16 MR. BURLESON: Just very briefly, your Honor.

17 That unfortunately we have -- we have a situation where --
18 where criminal behavior and criminal enterprise produces this
19 type of situation. We had a -- we had a drug deal that was
20 just big enough to where it justified -- I mean a drug
21 deal -- a drug robbery, that was just big enough where it
22 caused people to be armed in -- in various ways. Once that
23 type of thing is put in motion, the -- all the intentions of
24 what may have been planned or hoped for can go haywire. It
25 did, and we have this -- this just incredibly tragic result.

1 And with a -- with a -- with a victim whose life was lost.
2 And with five people at least, and maybe more, that are going
3 to be doing very long prison sentences of varying degrees.

4 My understanding and -- and I guess it's important it's
5 pointed out in Mr. Barbee's memoranda. But my understanding
6 of the facts, and I know that some of the outrage of this
7 particular case, above and beyond the death is the -- was the
8 desecration of the body afterwards. That -- the hiding of
9 the body.

10 The facts as I understand them is that Mr. Barbee
11 basically exited from -- from the case. And really was not
12 involved afterwards. At least I have no facts that I can --
13 I can point to. If he was involved in -- in what went on,
14 then -- then I'm just flat wrong but -- in my analysis of the
15 facts. But there are other individuals, one in particular,
16 Mr. Moreno, that's absolutely being held responsible for
17 that.

18 Mr. Barbee is being held responsible, I believe, for what
19 he did. Which was murder during the course of a robbery with
20 a weapon. And that -- that pretty much explains his
21 involvement. But the greater picture once again is this type
22 of criminal behavior can and often times does end up in this
23 type of situation.

24 I'm -- I'm -- I'm intrigued, not by anything that came
25 from Mr. Barbee, but by one of Mr. Pimentel's comments in the

1 opening statement that he made as to why Mr. Gonzales didn't
2 exit through the back door. Because in this type of -- this
3 type of drug deal there's -- there's usually -- or often
4 times, an armed guard at the back door. Well, these
5 individuals knew the type of situation they were -- they were
6 engaging in. And this, unfortunately, was the result.
7 And -- and when you have this result, it's -- it's my job to
8 determine who's responsible. And hopefully put those
9 individuals that are responsible in a situation where
10 consequences, appropriate consequences are meted out.

11 And my recommendation is my recommendation. It's done for
12 a number of reasons I'm comfortable with. And that's --
13 that's really all I have to add.

14 THE COURT: What's wrong with this whole thing?
15 What's wrong with this whole picture? I hadn't had a chance
16 really to listen to Mr. Barbee speak prior to his statement
17 just now from the standpoint of listening to how he speaks,
18 and how he reasons, and things like that. But I can tell you
19 that listening to him just a moment ago, impressed me from
20 the standpoint of his command of the language, his I believe,
21 true compassion and sense of remorse for the entire Abundiz
22 family. And it tells me that what I have here is an
23 intelligent young man.

24 I never got to know Oscar. But I have had the opportunity
25 perhaps to know him a little bit through seeing his family.

1 And I had the opportunity to listen to Roman on the stand and
2 to see how he has interacted, and how he has presented
3 himself through this trial. And I suspect that in Roman I
4 see a little of Oscar. And I'm sure that I see a little of
5 Fernando. And what I see is I see a very capable, very
6 intelligent young man who has a great sense of family, and a
7 huge sense of loss.

8 How can I take two groups of people; intelligent, well
9 spoken, well meaning people, and find myself here today
10 sentencing one of these people for having killed the other.
11 This wasn't a hate crime. This wasn't some idiot that went
12 out and got drunk and ran somebody down and killed them.
13 This was the result of on-going criminal enterprise. It was
14 the result of people, intelligent people, taking their God
15 given energy and putting it into crime instead of putting it
16 into something positive.

17 And Mr. Burleson absolutely stole my thunder when he
18 talked about how this just went bad. And once it went bad,
19 somebody died. And what a horrible, horrible waste.

20 I feel for the Abundiz's very, very much. We have --
21 well, all of us here, have our own children. And we know how
22 we prize those children and how much we cherish them. But
23 what scares me too is that the ultimate lesson of this case
24 may not be learned.

25

1 Fernando and Roman are living, intelligent, valuable
2 people who need to recognize that there is a way in this
3 world other than dealing drugs to make an honorable and
4 valuable living. Because it was that that really was the
5 undercurrent in what caused this ultimately to occur. And I
6 hope that the family will gather around those two children
7 and do everything they can to see that their lives don't end
8 up going the course that Oscar's did.

9 Oscar did not deserve to die just because he was involved
10 in a criminal act. But certainly but for his involvement, he
11 would not have died.

12 Nothing that I say here today, nothing that I do here
13 today, can bring Oscar back to his family; to his aunt, to
14 his cousins, to his brothers, to his mom or his dad. Our
15 system will never have that capability. And so what we have
16 to do in sentencing is impose sentences that send messages
17 and that create a respect for the law.

18 Life is not available. I absolutely can understand why if
19 I had lost a son I would want to stand up and say the very
20 least that he should get is life. But it is not available.
21 And you've heard discussion by both the prosecutor and
22 defense counsel about what a standard range sentence is in
23 this case. That's the sentencing system that we have to work
24 with.

25

1 Before I get into the sentence itself, I would like to say
2 one thing. And that is I don't believe that I have ever
3 heard a more sincere statement of remorse in a case of this
4 nature than we just heard from Mr. Barbee.

5 Low end of the standard range is 261 months, high end is
6 347 months. On top of that he gets 5 years for the fact that
7 there was a gun involved. Mid-range sentence is 304 months.
8 We start at the mid-range, we move up for aggravating
9 circumstances, we move down for mitigating circumstances.
10 The prosecutor had his reason to make his deal and agree to
11 make the recommendation of 261 months. A lot of the public
12 doesn't understand about plea negotiation, and I wish they
13 could understand. But it is an absolute essential part of
14 this process.

15 Mr. Barbee, you're a young man. As was pointed out by the
16 Abundiz's, you will come out and have a life again.
17 Mid-range sentence, I believe, is appropriate in your case.
18 I'm imposing 304 months on the Murder First, plus an
19 additional 60 months, for a total of 364 months. And if you
20 want to do the math, that's 30.33 years.

21 Now counsel, I believe that good time on a murder is 10%,
22 is it, or is it 5?

23 MR. QUILLIAN: It's 15.

24 MR. BURLESON: I thought it was 15.

25 THE COURT: 15, okay.

1 MR. BURLESON: On the murder.

2 THE COURT: On the murder. And no good time on
3 the 60 months.

4 MR. BURLESON: Firearm.

5 THE COURT: So the 5 years is just done straight
6 time. And then the 304 months, assuming that Mr. Barbee does
7 his time in a fashion that allows him good time, will result
8 in the 304 less 15%, so that the family understands what's
9 going on. I don't want you to be shocked to realize that he
10 gets out faster than that.

11 You're going to be an old man. Well, I'm not willing to
12 accept old man by the time you get out since I'm about the
13 age that you will be when you come out. But you're going to
14 spend a lot of time thinking and reliving.

15 And what I'm hoping that you will do with your time is try
16 and figure out what you can do when you get out to make the
17 rest of your life meaningful; to make it mean something when
18 you finally pass on. Because this certainly is not what you
19 had hoped for yourself, I don't believe. And certainly not
20 what mom and dad would have hoped for you in your future.

21 Court costs -- and we can only be partial on these. Oh,
22 in addition to that of course, he has 24 - 48 months of
23 community custody and for a period of earned release,
24 whichever is longer, so far as the post-release supervision.
25 Counsel, do we have your calculation fees at this time?

1 MR. QUILLIAN: We do not at this time, your Honor.
2 I understand we'll have to come back for that.

3 THE COURT: The Court will retain jurisdiction to
4 allow a calculation of actually fees incurred. Court costs
5 without that, and without --

6 MR. SCHUETZ: Witness.

7 THE COURT: Without the witness because we were
8 unable to obtain that, is \$2,797.20. Crime Victim's
9 compensation is \$500; DNA, \$100. Legal financial obligation
10 to date, \$3,397.20, payable at the direction of Department of
11 Corrections, but not to be payable at less than \$100 a month
12 beginning upon his release. Restitution hearing to be
13 scheduled for August 28th.

14 MR. QUILLIAN: I'm out of town on the 28th.

15 THE COURT: September 4th, is that acceptable to
16 the prosecution?

17 MR. SCHUETZ: Uh huh.

18 THE COURT: Does the Defendant wish to be present
19 for a restitution hearing?

20 MR. BARBEE: Not really.

21 MR. QUILLIAN: We'll waive presence.

22 THE COURT: You'll waive your presence. Also I'll
23 be fixing an attorney's fee amount in this. Do you want to
24 be present for that?

25

1 MR. BARBEE: I don't want to go in one more
2 courtroom for the rest of my life.

3 THE COURT: As part of the legal process, you have
4 the right to be present in anything that we do in your case
5 that effects your case. You have that right. Of course
6 along with having the right, you have the right to waive your
7 presence. So you would like to waive your presence and allow
8 the Court to impose those costs?

9 MR. BARBEE: Whatever court date that I don't have
10 to go into a courtroom, yeah, I don't want to go into it. So
11 whatever thing I have to waive, whatever court date.

12 THE COURT: You're willing to waive your presence
13 at the hearing to fix attorney's fees and costs?

14 MR. BARBEE: Yeah.

15 THE COURT: And we'll do those both at the same
16 time, and the additional witness fees that will be
17 calculated.

18 MR. SCHUETZ: We would also ask, we have received
19 a bill from Doctor Lacsina for his expert testimony and
20 involvement. We don't have that figure right here in front
21 of us, but we would ask that that be reserved.

22 THE COURT: We'll retain jurisdiction on that.

23 MR. SCHUETZ: With the understanding that that
24 will be joint and several as to all defendants; Gonzales and
25 Barbee, in which he was used.

1 THE COURT: Right.

2 MR. SCHUETZ: Uh huh.

3 THE COURT: Okay.

4 MR. QUILLIAN: That's fine, sure.

5 THE COURT: Is that understood?

6 MR. QUILLIAN: I understand some of these costs,
7 witness fees, etcetera, would be jointly -- will be joint and
8 several anyway, I would think.

9 THE COURT: You understand the sentence that has
10 been imposed, Mr. Barbee?

11 MR. BARBEE: Yeah.

12 THE COURT: Do you have any questions about it?

13 MR. BARBEE: Not really.

14 THE COURT: Again, I hope that you focus your life
15 towards something positive. You can have an impact, and you
16 can be positive.

17 MR. SCHUETZ: In terms of the community custody
18 conditions, I'm assuming standard?

19 THE COURT: Standard conditions.

20 MR. SCHUETZ: Including drug conditions, although
21 I'll defer to the Court as to whether there's a treatment
22 requirement.

23 THE COURT: No treatment requirement, however no
24 drugs, no possession, that type of thing.

25 MR. SCHUETZ: Uh huh. MIT victim?

1 THE COURT: Pardon me?
2 MR. SCHUETZ: MIT or victim awareness?
3 THE COURT: I don't think so.
4 MR. SCHUETZ: Okay.
5 THE COURT: I think that that would be meaningless
6 at this point. Mr. Quillian, here's a notice that you can
7 sign off on that indicates that he's waiving his presence.
8 MR. QUILLIAN: Oh.
9 MR. SCHUETZ: And there's a similar section on
10 page 8.
11 THE COURT: Right.
12 MR. SCHUETZ: Of the J&S too.
13 THE COURT: Belt and suspenders.
14 MR. SCHUETZ: Right.
15 THE COURT: Counsel, we have received a note from
16 Mr. Pimentel indicating that he is in Kent; that he had been
17 told by the Prosecutor's office that sentencing was tomorrow.
18 MR. SCHUETZ: That's -- that's not what we had
19 planned.
20 THE COURT: Well in reality, we have three
21 sentencings on tomorrow. And we can add this sentencing. I
22 am assuming that the family was intending to be present
23 tomorrow for sentencings as well? Okay. So we're not going
24 to create a particularly big difficulty with that. It's just
25

1 that we'll have four sentencings tomorrow as opposed to
2 three.

3 MR. BURLESON: It's fine with us.

4 MR. SCHUETZ: That actually -- since we weren't
5 able to schedule anybody until 11:00-ish, with Mr. Corliss,
6 as long as he's here at 9:00, we could -- we can get rolling
7 pretty well.

8 MR. BURLESON: I would assume that with four, it's
9 going to take probably the better part of the day.

10 THE COURT: Let's confirm that Mr. Pimentel is
11 available at 9:00 a.m. And Mariana, has anybody talked to
12 you about your being available tomorrow?

13 INTERPRETER: (Inaudible)

14 THE COURT: You have some truancy hearings here?

15 INTERPRETER: (Inaudible).

16 THE COURT: We may one up them a little bit. But
17 if we could know that you'd be present, that would be
18 helpful. Thank you.

19 MR. SCHUETZ: Do we know who spoke with
20 Mr. Pimentel?

21 THE COURT: The handwriting is Carolyn's. So I'm
22 assuming that they probably called Geri. And Geri's been
23 told that she needs to confirm with Mr. Pimentel that it will
24 be here at 9:00 a.m. so that we can get started with the
25 sentencing on Gonzales. The Judgment and Sentence has been

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signed in the presence of Mr. Barbee. Thank you, Mr. Barbee.
That's all.

MR. QUILLIAN: Thank you, your Honor.

THE COURT: Thank you to the family for being here
and sharing.

Court adjourned at 10:21 a.m.

* * * * *

F. Declaration of Walter J. Barbee, February 18, 2006, *In Re Personal Restraint of Walter Jesse Barbee*, Washington State Court of Appeals (Division II) No. 34521-8-II

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5 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
6 DIVISION II

7
8 In re the Personal Restraint of:

Court of Appeals No. _____
Superior Court No. 02-1-00232-2

9 WALTER JESSE BARBEE,
10 Petitioner.

DECLARATION OF WALTER J. BARBEE

11
12 Walter J. Barbee declares as follows:

- 13 1. I am the defendant/petitioner in this case.
- 14 2. Towards the end of my trial, the prosecutor approached my lawyer, Robert Quillian, with
15 a plea offer. I was reluctant to accept the offer because the prosecutor was asking me to
16 plead to murder in the first degree and none of the other defendants had pled to anything
17 more serious than murder in the second degree. I finally agreed to plead guilty because
18 my lawyer assured me that I would serve considerably less time than if I were found
19 guilty at trial. I had him go over the sentencing calculations carefully with me. Mr.
20 Quillian specifically assured me that I could receive 15% good-time credit on my entire
21 murder sentence. I did understand, though, that I could not earn good-time credit on the
22 firearm enhancement. I would not have entered the plea had I known that I was
23 3. Part of the plea bargain was that the prosecutor would recommend the low end of the
24 standard range. Both my lawyer and the prosecutor told me that it was unlikely the judge
25

1 would go above the prosecutor's recommendation. I felt that the low end, less good time
2 credit, was something I could live with.

3 4. Nobody ever told me that I had a right to appeal from my conviction and sentence. I was
4 under the impression that I could not appeal because I pled guilty and I was sentenced
5 within the standard range. If I had known that I received incorrect advice about good-
6 time credit, and that a plea could be challenged on that basis, I would certainly have
7 asked my lawyer to promptly file a notice of appeal.

8 5. After my sentencing, I was first sent to the Washington Corrections Center at Shelton.
9 Later, I was transferred to Clallam Bay Corrections Center. During a meeting a Clallam
10 Bay with my counselor, I was shown a printout of my earliest release date. It was several
11 years higher than what I expected. I believe that this happened in the latter part of 2004.

12 6. I did not know why the prison had calculated such a late release date. I promptly sent a
13 letter to Mr. Quillian seeking his opinion about this. He did not respond. Over the next
14 year, I sent him a total of about six letters regarding this and other issues. He never
15 responded to any of them.

16 7. In 2005, my father obtained a trial transcript and hired attorney David Zuckerman to look
17 into my case. Mr. Zuckerman initially devoted his time to a review of the trial transcript
18 and clerk's papers.

19 8. In October, 2005, I informed Mr. Zuckerman that the prison was calculating my release
20 date differently from what I expected. He looked into this and explained to me that my
21 attorney and the trial judge had misstated the law concerning the availability of good-
22 time credit. This was the first time I learned that it was the trial judge rather than the
23 prison who was mistaken.

24 9. My father then made arrangements for Mr. Zuckerman to challenge my plea in court. In
25 the course of this work, Mr. Zuckerman informed me that I might be able to challenge my

1 plea through a direct appeal as well as through a personal restraint petition. This was the
2 first time that anyone informed me I might have a right to an appeal.
3

4 I swear under penalty of perjury of the laws of the State of Washington that the foregoing
5 is true and correct.
6

7 2/18/06 C.B.C.C
8 Date and Place

Walter J. Barbee
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Walter J. Barbee

- G. Declaration of Robert M. Quillian, March 22, 2006, *In Re Personal Restraint of Walter Jesse Barbee*, Washington State Court of Appeals (Division II) No. 34521-8-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

)	
)	Court of Appeals No. _____
In re the Personal Restraint of:)	Superior Court No. 02-1-00232-2
)	
WALTER JESSE BARBEE,)	
)	
Petitioner.)	DECLARATION OF
)	ROBERT M. QUILLIAN
)	
_____)	

ROBERT M. QUILLIAN declares as follows:

1. I was the trial attorney for Walter J. Barbee in this case.
2. To refresh my memory for this declaration, I have reviewed the statement of defendant on plea of guilty and the transcripts of the plea and sentencing hearings.
3. At the sentencing hearing, the Judge and I both stated that Mr. Barbee could earn 15% good-time credit on his entire murder sentence, although he could not earn good-time credit on his firearm enhancement. I do not have a specific recollection of what I said to Mr. Barbee about good-time credit prior to the time he entered his plea. However, I certainly would not have told him one thing prior to the plea and then said something different during the plea hearing or sentencing hearing.
4. I do recall that the sentencing calculations were very important to Mr. Barbee in his decision to plead guilty. We went over many times the likely outcomes if he continued with the trial versus pleading guilty and I tried to break down the numbers for him under each scenario as precisely as possible.

DECLARATION
OF ROBERT M. QUILLIAN - 1

ROBERT M. QUILLIAN
Attorney at Law
2633-A PARKMONT LANE S.W.
Olympia, Washington 98502
(360) 352-0166

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5. I see that paragraph 6(x) of the plea agreement states, "The crime of Murder 1 has a mandatory minimum sentence of at least 20 years of total confinement. The law does not allow any reduction of this sentence." I likely understood this to mean that the Judge could not go below a 20-year sentence even if he thought there were grounds for an exceptional sentence below the standard range. I would not necessarily have interpreted this clause to have any application to a sentence longer than 20 years

6. I do not recall ever telling Mr. Barbee - whether before, during, or after his plea and sentencing - that he would be prohibited from earning good-time credit on his first 20 years of his murder sentence.

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

SIGNED at Olympia, Washington, this 22nd day of March, 2006.



ROBERT M. QUILLIAN