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I. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Mr. Blanks' motion to withdraw his guilty plea because Mr. Blanks did not adequately understand either the nature of a SSOSA sentence or that the State would not agree to a SSOSA sentence.

2. Mr. Blanks' guilty plea was predicated upon a miscalculated offender score and standard range.

3. Mr. Blanks was denied effective assistance of counsel by his trial attorneys' failure to adequately advise him of the State's opposition to a SSOSA sentence, and by his sentencing attorney's failure to move to withdraw his plea on the basis of his miscalculated offender score and standard range.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court commit reversible error when it denied Mr. Blanks' motion to withdraw his guilty plea where his guilty plea was involuntary? (Assignment of Error Number One.)

2. Should Mr. Blanks now be allowed to withdraw his guilty plea on the basis that it was predicated upon a miscalculated offender

score and standard range sentence? (Assignment of Error Number Two.)

3. Was Mr. Blanks denied effective assistance of counsel by his plea attorneys where he was not adequately advised regarding a SSOSA sentence, and where he was not advised by his sentencing attorney that the miscalculation of his offender score and standard range plea could be the basis for a motion to withdraw his guilty plea? (Assignment of Error Number Three.)

III. STATEMENT OF THE CASE

1. Procedural History

On September 17, 2004, appellant/defendant, Derek Lamont Blanks, was charged by Information with two counts of Rape of a Child in the First Degree, and one count of Child Molestation in the First Degree.¹ On May 27, 2005, Mr. Blanks entered a guilty plea to the sole count of first degree child molestation, which was charged in

¹

RCW 9A.44.073, RCW 9A.44.083.

the Amended Information. CP 4, CP 6-19.² On January 13, 2006, an evidentiary hearing was held on Mr. Blanks' Motion to Withdraw his guilty plea. RP 1 16-137. The trial court denied the motion. RP 1 138-142.

On March 24, 2006, Mr. Blanks was sentenced to ninety(90) months in the Department of Corrections, which represents the middle of his presumptive range of seventy-seven to one hundred two (77-102) months to life. RP 2 14-16; CP 104-118. A timely Notice of Appeal was filed on March 30, 2006.

2. Plea Hearing and Motion to Withdraw Plea

Mr. Blanks' trial attorney, Dino Sepe, was not present for the plea hearing. Instead, Lisa Contris appeared as stand in counsel. Ms. Contris advised the court that she had not gone over the plea form with Mr. Blanks, but it was her understanding that Mr. Sepe had. RP 1 1- The plea hearing was very brief. RP 1 1-4. At the hearing Mr. Blanks

²

The statement of the Defendant on Plea of Guilty is attached as Appendix and incorporated by reference herein.

was not advised of the State's sentencing recommendation in its entirety. The Court asked Mr. Blanks: "Do you understand what the State's recommendation is regarding sentencing? 130 months." RP 1 3. No mention was made concerning SSOSA. Following the plea hearing multiple motions and declarations were filed to withdraw Mr. Blanks' guilty plea. CP 24, 25-36, 37-39, 56-77, 78-90. The motion to withdraw Mr. Blanks' plea was predicated upon his misunderstanding of the State's sentencing recommendation and ineffective assistance of counsel.

An evidentiary hearing was finally held on Mr. Blanks' Motion to Withdraw his plea on January 13 and January 17, 2006. RP 1 16-146. Attorney Lori Smith represented Mr. Blanks at the evidentiary hearing. The trial court denied Mr. Blanks' motion. No written findings and conclusions were filed. The witnesses who testified at the hearing included Mr. Blanks, Lisa Contris, Dino Sepe, Glen Glover, and Dorethia Blanks.

Derek Lamont Blanks testified that prior to the plea hearing he

had never met Ms. Contris. Ms. Contris did not go over the plea form or “any paperwork” with him. RP 1 19-20. On the morning of the plea hearing Mr. Sepe had gone over the plea paperwork in part with Mr. Blanks. RP 1 20. Mr. Sepe had discussed “a SSOSA plea” with Mr. Blanks previously on May 5, 2005. On May 20, 2005, Jeanglee Strickland of Comte’s and Associates had come to see Mr. Blanks about the “SSOSA plea.” RP 1 22. Mr. Blanks testified that at no time did Mr. Sepe advise him that the State was not going to go along with the SSOSA, nor did he read that on the plea form. Furthermore, he did not understand what the word “oppose”³ meant. RP 1 24-25.

Mr. Blanks was not told he could ask questions of Ms. Contris or address the court at the plea hearing. RP 1 26-27. Within forty-eight hours after the plea hearing Mr. Blanks called Mr. Sepe. He advised Mr. Sepe that he wanted to withdraw his guilty plea, because after the

3

The plea form states the following with respect to the prosecutor’s sentencing recommendation: “130 months DOC credit time served. Community custody - life, comply with registration requirements, HIV/DNA test, no contact with A.R. Restitution if any, 500 CVPA, 110 costs, \$500. DAC \$500 fine \$100. DNA. Defendant can petition for SSOSA, state will oppose SSOSA. CP 6-19 at p.4.

plea hearing he had compared his SSOSA paperwork with that of other inmates, and had realized “there was no SSOSA” in his paperwork. Up until this point he fully believed that SSOSA was not only an *agreed sentencing recommendation*, but also a *type of plea* one can enter, that is, “a SSOSA plea.” RP 1 22, 27-30.

Lisa Contris is an attorney for the Department of Assigned Counsel. RP 1 52. She testified that she did not remember Mr. Blanks, but “apparently” she stepped in for Mr. Sepe to cover Mr. Blanks’ plea hearing. RP 1 52-53. She testified that she would not have gone over the plea form with Mr. Blanks, because she would have assumed that Mr. Sepe had already done so. RP 1 53. She had no independent recollection of Mr. Blanks’ plea hearing. RP 1 53-54.

Dino Sepe, who was Mr. Blanks trial attorney, testified that Mr. Blanks had asked him about SSOSA approximately six months after being charged, although Mr. Blanks had mispronounced SSOSA. RP 1 36. Ultimately the State had agreed to reduce the charges to be within a SSOSA range. Mr. Sepe testified that he had advised Mr.

Blanks that the State would not, however, agree with a SSOSA sentencing recommendation. He testified that there is an “Appendix C” included whenever the State recommends SSOSA, and no “Appendix C” was attached to Mr. Blanks’ plea form. RP 1 73. He went over the plea form with Mr. Blanks on May 27th, which was the morning of the plea hearing. RP 1 63.

Glen Glover is an investigator who works for the Department of Assigned Counsel. He testified that he investigated Mr. Blanks’ case for purposes of trial. RP 1 111-127.

Doretthia Blanks is Mr. Blanks’ mother. Mrs. Blanks testified that Gary Glover had spoken with her three times by phone and visited she and her daughter twice. RP 1 130.

3. Sentencing Hearing

Attorney Lori Smith continued to represent Mr. Blanks at his sentencing hearing. Judge Orlando determined that two previous convictions, which constituted the same criminal conduct, had been miscounted as two separate convictions. Consequently, Mr. Blanks

offender score was five (5) rather than six (6), and his standard range was seventy-seven to one hundred two (77-102) instead of ninety-eight to one hundred thirty (98-130) months. Additionally, the State's recommendation changed from one hundred thirty months to one hundred two (102). At no point during the sentencing hearing was Mr. Blanks advised by the Court or his attorney that the previously miscalculated offender score and standard range, upon which his plea was predicated, was a basis for withdrawal of the guilty plea.

A. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING MR. BLANKS' MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE MR. BLANKS DID NOT UNDERSTAND AND WAS NOT ADEQUATELY ADVISED THAT THE STATE WOULD NOT RECOMMEND SSOSA.

Under CrR 4.2(f), the trial court shall allow a defendant to withdraw his plea of guilty whenever it appears that withdrawal is necessary to correct a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure. *State v. Taylor*, 83 Wn.2d 594,598,521 P.2d 699 (1974). In *Taylor*, the Court set forth

four indicia of manifest injustice which would allow withdrawal of a guilty plea: (1) the denial of effective assistance of counsel, 2) the plea was not ratified by the defendant, (3) the plea was involuntary, and (4) the plea agreement was not honored by the prosecution. Any of the four indicia listed above would independently establish “manifest injustice” and would require a trial court to allow a defendant to withdraw his plea. *State v. Taylor*, 83 Wn.2d at 597; see also *State v. Wakefield*, 130 Wn.2d 464,472,925 P.2d 183 (1996).

Due Process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily. *State v. Ross*, 129 Wn.2d 279,284,916 P.2d 405 (1996); see also *State v. Zumwalt*, 97 Wn.App. 124,901 P.2d 319 (1995). A plea of guilty is not voluntary if it is the product of or induced by coercive threat, fear, persuasion, promise or deception. *State v. Swindell*, 22 Wn. App. 626,630,590, P.2d 1292(1979), *affirmed* Wn.93 Wn.2d 192,607 P.2d 852 (1980).

It is the court’s duty, before accepting a guilty plea, to ensure on the record that the plea is voluntary. *State v. Walsh*, 143 Wash. 2d 1,

5-6, 17 P.3d 591 (2001). Criminal Rule 4.2(d) provides that the trial court “shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” The court’s failure to comply fully with this rule requires that the plea be set aside. S.M., 100 Wn.App.at 413; Wood v. Morris 87 Wn. 2d 501,511,554 P.2d 1032 (1976). Moreover, “[a] defendant must understand the sentencing consequences for a guilty plea to be valid.” Walsh, 143 Wn.2d at 8 (quoting State v. Miller, 110 Wn.2d 528,531,756 P.2d 122 (1988)).

A guilty plea is thus involuntary where the defendant did not understand, or was misinformed, of the direct consequences of pleading guilty. State v. Barton, 93 Wn.2d 301,305,609 P.2d 1353 (1980). As such, when a defendant does not understand or is erroneously advised regarding the sentencing, the plea may be considered involuntary and the defendant may elect to withdraw the guilty plea. State v. Miller, 110 Wn.2d 528,531,756 P.2d 122 (1988).

SSOSA eligibility is a direct sentencing consequence. State v. Adams, 119 Wash.App. 373,82 P.3d (2003). Although the State's recommendation does not determine *statutory* SSOSA eligibility, the recommendation by the State is undoubtably a major, if not a controlling factor, in *actual* SSOSA eligibility, and whether the court will grant a SSOSA sentence. Additionally, as recently stated by our Supreme Court, "[a] knowing, voluntary, and intelligent guilty plea requires a meeting of the minds." State v. Mendoza, No. 77587-7, Wa. Supreme Court (8-17-06) emphasis added.

In Mr. Blanks' case there was no meeting of the minds as to the State's recommendation or the nature of a SSOSA sentencing option. Mr. Blanks simply did not adequately understand the SSOSA sentencing alternative. The record shows that the court did not mention or explain SSOSA in any way at Mr. Blanks' plea hearing. In fact, the court specifically omitted the portion of the State's recommendation concerning SSOSA when it explained the State's recommendation. Mr. Blanks' stand in attorney did not discuss

SSOSA or even go over the plea form with Mr. Blanks. Mr. Blanks testified that he did not understand the State would not agree to a SSOSA sentence, nor did he understand the word “oppose” which was written in the plea form, and which he discovered after the plea hearing. Mr. Blanks contacted Mr. Sepe immediately upon learning of this misunderstanding to attempt to withdraw his plea. Under the circumstances of this case Mr. Blanks guilty plea was not knowingly, voluntarily, and intelligently entered.

B. MR. BLANKS DID NOT ENTER HIS PLEA OF GUILTY KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY BECAUSE HE WAS NOT ADVISED OF HIS CORRECT OFFENDER SCORE AND STANDARD RANGE SENTENCE.

Where a defendant is misinformed regarding the standard sentencing range, the plea is involuntary and constitutes a manifest injustice. *State v. Walsh*, 143 Wn.2d 1,6-9,17 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528,531-535,756 P2d. 122 (1988). This is so regardless of the fact that the correct sentencing range is lower than the miscalculated range. *State v. Moon*, 108 Wn.App. 59,63-64,29 P.3d

734(2001); *State v. Murphy*, 119 Wn.App. 805,806,81 P.3d 122 (2002); *In re Isadore*, 151 Wn.2d 294,88 P.3d 390 (2004). *State v. Mendoza*, Wash.Supreme Court No. 77587-7 (8-17-06). The remedy where a plea agreement is based on misinformation as to the standard sentencing range is the defendant's choice of specific performance of the agreement or withdrawal of the guilty plea unless there are compelling reasons not to allow that remedy. *Id.*; *State v. Walsh*, 143 Wn 2d at 8-9.

Most recently, the Washington Supreme Court resolved the split of authority in the divisions of the Court of Appeals concerning a mistaken standard range where the actual range is lower than stated on the plea form in *State v. Mendoza, Supra*. The *Mendoza* Court held that waiver of this issue can occur only “where it is clear that a defendant was informed of the miscalculation before sentencing and does not object or move to withdraw the plea on that basis.” *Mendoza* at p.2. The Court further stated that “when the defendant is informed of the less onerous standard range before he is sentenced and given the

opportunity to withdraw the plea, the defendant may waive the right to challenge the validity of the plea.” *Supra* at p.6. (emphasis added).

In the case at bar, Mr. Blanks was clearly misadvised that his standard range was ninety-eight to one hundred thirty (98-130) months based on an offender score of six (6). CP 6-19; RP 1 2. He was also misadvised that the State would recommend one hundred thirty months. CP 6-19; RP 1 3. It was not until the sentencing hearing that the trial court determined Mr. Blanks’ correct offender score was in fact five (5), and his standard range was seventy-seven to one hundred two (77-102) months. Additionally, the State’s sentencing recommendation was one hundred two (102) months, which was greater than a two year difference.

The trial court’s determination of Mr. Blanks’ correct offender score and standard range occurred within minutes of the imposition of the sentence. At no time was Mr. Blanks informed that the previous miscalculation could be the basis for a motion to withdraw his guilty plea. In short, because Mr. Blanks’ correct presumptive range was

established virtually simultaneous to his sentence, and because he was not given the opportunity to withdraw his plea based on the previous misinformation, no waiver occurred. This case should be remanded to allow Mr. Blanks' withdrawal of his plea on this basis alone.

C. MR. BLANKS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BY COUNSELS' FAILURE TO ADEQUATELY ADVISE HIM OF THE STATE'S OPPOSITION TO SSOSA, HIS CORRECT OFFENDER SCORE AND STANDARD RANGE, AND THAT HIS PLEA COULD BE WITHDRAWN PRIOR TO THE IMPOSITION OF SENTENCE BASED ON THE MISCALCULATED OFFENDER SCORE AND STANDARD RANGE.

The Washington State and United States Constitutions guarantee a criminal defendant the right to effective assistance of counsel. Washington Constitution Art.1 section 22; United States Constitution Amend. 14. To prevail on a claim of ineffective assistance of counsel, the defendant must show: (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's deficient performance the result of the proceeding would have been different. *Strickland v. Washington*, 466 W.S. 668,80

L.Ed.2d 674,104 S.Ct. 2025, *rehearing* denied, 467 U.S. 1267 (1984).

In 1985, the United States Supreme Court held in *Hill v. Lockhart*, 474 U.S. 52,106 S.Ct. 366 (1985), that the same two part test should be applied in challenges based on ineffective assistance of counsel in the context of guilty plea. *See also State v. Garcia*, 57 Wn.App .927,791 P.2d 244 (1990).

Counsel has an affirmative obligation to assist a defendant “actually and substantially” in determining whether to plead guilty. *State v. Stowe*, 71 Wn.App. 182,186,858 P.2d 267 (1993). When counsel fails to inform the defendant of the applicable law or affirmatively misrepresents a collateral consequence of a plea that results in prejudice to the defendant, the defendant is denied effective assistance of counsel, which renders the plea involuntary. *Stowe*, 71 Wn.App. at 188-89. In the context of a guilty plea, the defendant must show that his counsel failed to “actually and substantially [assist] his client in deciding whether to plead guilty,” and that but for counsel’s failure to adequately advise him, he would not have pleaded guilty.

State v. McCollum, 88 Wn.App. 977,947 P.2d 1235(1997).

In Mr. Blanks' case, neither Mr. Sepe nor Ms. Contris adequately advised Mr. Blanks of the meaning of a SSOSA sentencing option, the role the State's recommendation plays in the potential for receiving a SSOSA sentence, or the State's actual recommendation against a SSOSA sentence in his case. Although Mr. Sepe testified that he had discussed SSOSA as well as the State's recommendation, the record shows that Mr. Blanks did not understand the information. This misunderstanding could have been resolved at the plea hearing, but unfortunately, the trial court not only failed to mention SSOSA or inquire as to Mr. Blanks' comprehension of it, but further exacerbated the confusion during its verbal colloquy with Mr. Blanks by omitting the portion of the State's recommendation that pertained to SSOSA. By her own testimony Mr. Sepe's stand in attorney, Lisa Contris, failed to explain the plea form or SSOSA to Mr. Blanks at all.

Additionally, Mr. Blanks was not advised of his correct offender score and standard range sentence prior to pleading guilty. Once his

correct standard range was determined, his sentencing attorney, Lori Smith, should have advised Mr. Blanks that the previous miscalculation upon which his plea was entered, could form the basis for a motion to withdraw his plea, and that failure to bring such a motion at the trial court could result in a waiver of this issue on appeal.

The prejudice to Mr. Blanks is apparent. Mr. Blanks, still likely not understanding SSOSA, did not even attempt to obtain it. The likelihood of the Court imposing a SSOSA sentence by the time the sentencing hearing was held was reduced as a result of the motion to withdraw the guilty plea. Moreover, Mr. Blanks made an uninformed decision to relinquish his constitutional rights and forego a trial, based on the belief that his standard range was higher than it actually was. Finally, his right to appeal the miscalculated offender score and standard range was ultimately compromised because he was uninformed of, and thus did not have the opportunity to file, a motion to withdraw his guilty plea at the trial court on the basis of the miscalculation. Because Mr. Blanks was denied the effective

assistance of counsel this case should be remanded.

V. CONCLUSION

For all of the foregoing reasons and conclusions, Mr. Blanks respectfully requests that this Court reverse and remand for him to withdraw his guilty plea.

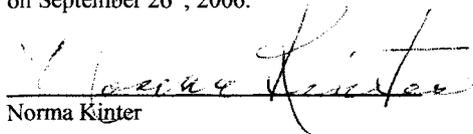
RESPECTFULLY SUBMITTED this 26th day of September,
2006.



Sheri L. Arnold
WSBA # 18760
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on September 26 , 2006, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave. South, Tacoma, WA. 98402, and by the U.S. Post Office to appellant, Derek L.Blanks, DOC # 768939, Airway Heights Corrections Center, Post Office Box 1899, Airway Heights, WA. 99001, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on September 26 , 2006.


Norma Kinter

Blanks, Derek L. Opening Brief COA No. 34628-1-II

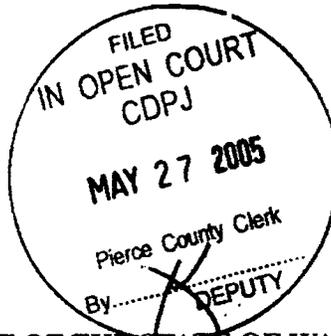
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APPENDIX

Statement of Defendant on Plea of Guilty



04-1-04442-3 23121166 STTDFG 05-31-05



MAY 27 2005

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

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-04442-3

vs.

Derek Blanks

Defendant.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

1. My true name is: Derek Blanks

2. My age is: 34

3. I went through the 12 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. My lawyer's name is DG Sepe 15879

(b) I am charged with the crime(s) of:

Count I: Child Molestation First Degree

The elements are: In Pierce County, WA did unlawfully, being at least 36 months older, have sexual contact with a person less than 12 years old and not married to that person

This crime carries a maximum sentence of Life years imprisonment and a \$ 50,000 fine. The standard range is from 98 months to 130 to life months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent [] Non-Violent [] Sex [x] Drug [] Traffic [] Check all that apply.

Count II: _____

Elements: _____

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - I

This crime carries a maximum sentence of _____ years imprisonment and a \$_____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.
 Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

(c) _____ Additional counts are addressed in Attachment "B".

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

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent 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 as well as other pretrial motions such as speedy trial challenges and suppression issues.

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.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide. See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	98-130 mos	+ to life	98-130 mos + to life	life	life - 50,000
2					

_____ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT
 ON PLEA OF GUILTY - 2

- (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 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 upon 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 less 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. If this crime is a sex offense, the court will order me to serve at least three years of community custody. 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 placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

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 less 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

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 3

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
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 placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge: 130 mos Doc credit time served. Community custody-life, comply with registration requirements, HIV/DNA test, NO contact with A.R., Restitution if any, 500 CPLA, 110 cohrs, 500 DAC 500 fine 100 DNA. Defendant can petition for SSOSA, state will oppose SSOSA.
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, 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.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 4

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.

- (k) 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.
In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes 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.
- (l) The judge may sentence me as a first-time offender instead of giving me 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 two years of community custody of 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.
- (m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or ~~the term~~, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.
- (n) Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.
- (o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.
- (p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 5

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

The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). 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 (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.

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).

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.

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 46.61.505(8).

The crime of _____ has a mandatory minimum sentence of at least _____ 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(k).

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.

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.

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

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 6

sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count III in the Amended 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: During a period between April 1, 2004 and May 19, 2004 I had sexual contact with A.R. who was less than 12 years old at the time. I was at least 36 months older and not married to her. This occurred in Pierce County WA.

xDB

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. 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
WSBA # 15879

Approved for entry:

[Signature]
Prosecuting Attorney
WSBA# 26650

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

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 the appropriate box]:

- (a) The defendant had previously read the entire statement above and the defendant understood it in full; or
- (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.

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 this 27 day of May, 2005.

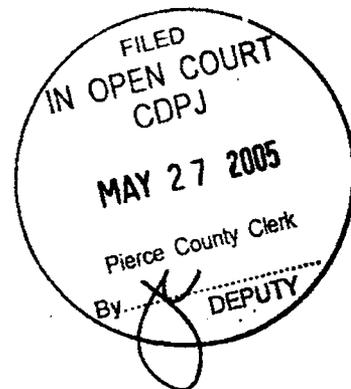

 Judge **JAMES R. ORLANDO**

***INTERPRETER'S DECLARATION**

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

Dated this _____ day of _____, _____.

Interpreter



Case Name: State v. BlanksCause No: 04-1-04442-3

ATTACHMENT "A"

(If required, attach to Statement of Defendant on Plea of Guilty.)

Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

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

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

If I move to another state, or if I work, carry on a vocation, or attend school in another state I 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. I 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 I last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay

ATTACHMENT "A" - 1

there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level II or III, or on a monthly basis if I 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.

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STATEMENT ON PLEA OF GUILTY ADDENDUM TO ATTACHMENT "A"
(Applicable to sex offenses or kidnapping offenses involving a minor)

In addition to the registration requirements in Attachment A, you are subject to the following additional requirement:

If I gain employment at a public or private institution of higher education, I shall, within 10 days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff of the county of my residence of my employment by the institution. If my enrollment or employment at a public or private institution of higher education is terminated, I shall, within 10 days of such termination, notify the sheriff of the county of my residence of my termination or enrollment or employment at the institution.

CASE NAME: State v. Blanks Cause No: 04-1-04442-3

ATTACHMENT "S": See paragraph 6(f) and 6(o) of Statement on Plea of Guilty. (Required attachment to Statement of Defendant on Plea of Guilty for plea to any sex offense.)

Paragraph 6(f) For sex 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 the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release period, whichever is longer. 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 placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For sex crimes committed on or after July 1, 2000, but prior to Sept. 1, 2001:

Unless I am being sentenced under RCW 9.94A.670 (SSOSA) (formerly RCW 9.94A.120(8)), 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 period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 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 placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

For sex crimes committed on or after September 1, 2001:

(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentencing Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for the statutory maximum sentence for that offense. The statutory maximum sentence for this offense is [] ten years [] life. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities and I may be required to participate in rehabilitative programs or other affirmative conduct. 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.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old.	Rape of a child in the second degree committed when I was at least 18 years old.
Child molestation in the first degree committed when I was at least 18 years old.	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Assault in the first degree	Kidnapping in the second degree
Assault in the second degree	Assault of a child in the first degree
Burglary in the first degree	

(bb) If the current offense is any sex offense, other than failure to register as a sex offender, and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Assault in the first degree	Kidnapping in the second degree
Assault in the second degree	Assault of a child in the first degree
Burglary in the first degree	

(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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 period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities.

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3 **Paragraph 6(o)**

4 **For offenses committed before September 1, 2001:** The judge may suspend execution
5 of the standard range term of confinement under the special sex offender sentencing
6 alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed
7 before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1,
8 2001). If the judge suspends execution of the standard range term of confinement, I will
9 be placed on community custody for the length of the suspended sentence or three years,
10 which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will
11 be ordered to participate in sex offender treatment; and I will be subject to all of the
12 conditions described in paragraph 6(c). Additionally, the judge could require me to
13 devote time to a specific occupation and to pursue a prescribed course of study or
14 occupational training. If a violation of the sentence occurs during community custody,
15 the judge may revoke the suspended sentence.

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18 **For offenses committed on or after September 1, 2001:** The judge may suspend
19 execution of the standard range term of confinement or the minimum term of confinement
20 under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW
21 9.94A.670. If the judge suspends execution of the standard range term of confinement
22 and my current offense is for any sex offense other than those listed in paragraph
23 6(f)(i), I will be placed on community custody for the length of the suspended sentence or
24 three years, whichever is greater. If the judge suspends execution of minimum term of
25 confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community
26 custody for the length of the statutory maximum sentence of the offense. In addition to
27 the term of community custody, I will be ordered to serve up to 180 days of total
28 confinement; I will be ordered to participate in sex offender treatment; and I will be
subject to all of the conditions described in paragraph 6(c). Additionally, the judge could
require me to devote time to a specific occupation and to pursue a prescribed course of
study or occupational training. If a violation of the sentence occurs during community
custody, the judge may revoke the suspended sentence.