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STATE OF WASHINGTON
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STATE OF WASHINGTON
COURT OF APPEALS DIVISION II

STATE OF WASHINGTON,
RESPONDENT,

NO. 04-1-04442-3
COA NO. 34628-1-II

V.

APPELLANT'S PRO SE,
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW BRIEF
SUPPLEMENTING APPELLANT'S
OPENING BRIEF
UNDER RAP RULE 10.10

DEREK L. BLANKS
APPELLANT / DEFENDANT.

I, DEREK L. BLANKS, APPELLANT / DEFENDANT, have received and reviewed the Appellant's Opening Brief filed by my Appellant Attorney. I understand that the Court will Review All the Constitutional Prejudicial Facst of Reversable Errors in this Statement of Additional Grounds for Review Brief when my Appeal is considered on the merits.

In Support of this Notice to Include the (SAGR), the

BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW COA NO. 34628-1-II.

1
2 following is the Statement of Additional Grounds for
3 Review Brief of Assignments of Errors.
4

5
6 RESPECTFULLY SUBMITTED this, 26th. day of OCTOBER, 2006,
7 at Airway Heights, Washington.
8

9
10
11 Signature 

12
13 DEREK L. BLANKS DOC # 768939 Pro Se,
14 Airway Heights Correction Center
15 POST OFFICE BOX 1839
16 AIRWAY HEIGHTS, WA. 99001-1839

17 *Mertie B. Duncan*
18 *10/26/06*



25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW COA NO. 34628-1-II.

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06 OCT 30 PM 1:22

STATE OF WASHINGTON

BY _____
DEPUTY

NO. 34628-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

RESPONDENT,

V.

DEREK LAMONT BLANKS,

APPELLANT / DEFENDANT.

PIERCE COUNTY SUPERIOR COURT

CAUSE NO. 04-1-04442-3

THE HONORABLE JAMES R. ORLANDO,

Presiding at the Trial Court.

APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

DEREK L. BLANKS DOC # 768939 Pro Se,

Airway Heights Correction Center
POST OFFICE BOX 1839
AIRWAY HEIGHTS, WA. 99001-1839

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Strickland V. Washington, 466 U.S. 668, 80 L.Ed. 2d 674, 104 S. Ct. 2025, rehearing denied, 467 U.S. 1267 (1984).
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State V. Jeffries, 105 Wn.2d 398, 717 P.2d. 722 (1986),
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U.S. V. Dawson, 857 F.2d 923(3rd Cir. 1988).
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U.S. Ex. Rel. Patterson V. Neal, 678 F. Supp. 749 (N. D. ILL. 1988).
State V. Adams, 119 Wash. App. 373, 82 P.3d (2003).
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State V. McCollum, 88 Wn. App. 977, 947 P.2d 1235(1997).

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1
2 TABLE OF AUTHORITIES (continued)

3 WASHINGTON CASES

4 State V. Mendoza, NO. 77587-7, Wash. Supreme Ct. (8-
5 17-2006).
6 State V. Miller, 110 Wn.2d 528, 756 P.2d 122 (1988).
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8 State V. Murphy, 119 Wn. App. 805, 81 P.3d 122 (2002).
9 State V. Stowe, 71 Wn. App. 182, 858 P.2d 267 (1993).
10 State V. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183,
11 (1996).
12 State V. Branch, 129 Wn. 2d 635, 642-43, 919 P. 2d 1228
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14 Wood V. Morris, 87 Wn. 2d 501, 508 n. 1, 554 P. 2d 1032
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17 U.S. V. Andis, 333 F.3d 886, 891-92 (8th Cir. 2003).
18 e. g., U.S. V. Hansel, 70 F.3d 6, 8(2d Cir.1995).
19 State V. Stough, 96 Wn. App. 480 (1990).
20 State V. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192(2001)
21 State V. Valdobinos, 122 Wn.2d 270, 279, 858 P.2d 199
22 (1993)(citing State ex rel. Carroll V. Junker, 79
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25 Hews II, 108 Wn.2d at 591-92, 594-595.
26 Chapman, 386 U.S. at 23 (Quoting) Fahy, 375 U.S. at 86-
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State V. Franklin, 46 Wn. App. 84, 729 P.2d 70 (1986).

25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW COA NO. 34628-1-II.

1
2 TABLE OF AUTHORITIES (continued)

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5 State V. Green, 46 Wn. App. 92, 730 P.2d 1350 (1986).
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8 review denied, 134 Wn.2d 1020, 958 P.2d 317 (1998).
9 State V. Calvert, 79 Wn. App. 569, 903 P.2d 1003 (1995),
10 review denied, 129 Wn.2d 1005, 913 P.2d 65 (1996).
11 State V. Zumwalt, 119 Wn. App. 126, 82 P.3d 672 (2003).
12 State V. Freeman, 153 Wn.2d 765, 108 P.3d 753 (2005).
13 State V. Rowland, 97 Wn. App. 301, 983 P.2d 696 (1999).
14 State V. Miller, 92 Wn. App. 693, 964 P.2d 1196 (1998).
15 State V. Anderson, 72 Wn. App. 453, 864 P.2d 1001, review
16 denied, 124 Wn.2d 1013, 879 P.2d 293 (1994).
17 State V. Taylor, 90 Wn. App. 312, 950 P.2d 526 (1998).
18 State V. Dolen, 83 Wn. App. 361, 921 P.2d 590 (1996),
19 review denied, 131 Wn.2d 1006, 932 P.2d 644 (1997).
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21 State V. Dunaway, 109 Wn.2d 207, 743 P.2d 1237 (1987).
22 U.S. V. Mackins, 315 F.3d 399, 409-11 (4th Cir. 2003).
23 U.S. V. Cornett, 195 F.3d 776, 785 (5th Cir. 1999).
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I. STATEMENT OF ADDITIONAL GROUNDS FOR
(REVIEW ASSIGNMENT OF ERROR NUMBER ONE)

APPELLANT'S SIXTH AMENDMENT AND DUE
PROCESS RIGHTS WERE VIOLATED DURING
THE PRE-TRIAL CONTEXT STARTING FROM
OCTOBER 05, 2004, (THROUGH TO); MAY
10, 2005.....

A. P R E - T R I A L
OCTOBER 05, 2004,
(THROUGH TO);
MAY 10, 2005.

During the Pre - Trial Context of Appellant's Very
Serious Case Trial Counsel " DINO SEPE " Was Overtly
Ineffective by the " SIXTH AMENDMENT RIGHT " Because
Counsel's Performance Fell Below an " OBJECTIVE
STANDARD OF REASONABLENESS " Based on the Fact that;
Trial Counsel (ERRONEOUSLY) " ADVISED " Appellant to
Sign " SIXTH AMENDMENT CONSTITUTIONAL RIGHTS WAIVER "
to Have " COMPULSORY PROCESS " Upon Going to Trial
in Court Documents Dating From; (OCTOBER 05, 2004,

BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. A.) COA NO. 34628-1-II.

1
2 THROUGH TO; MAY 10, 2005), That Stated:

3 i. " NO MOTION FROM DEFENSE TO SUPPRESS STATES
4 WITNESS STATEMENTS ".

5 ii. " DEFENDANT DENIED STATES PLEA OFFER ".

6 iii. " NO DEFENSE WITNESSES WILL BE INTERVIEWED OR
7 SUBPOENAED ".

8 Trial Counsel's Failure to (CONDUCT AN ADEQUATE AND
9 REASONABLE INVESTIGATION INTO KNOWN AND POTENTIALLY
10 IMPORTANT ALIBI AND MATERIAL CHARACTER WITNESSES IN
11 BEHALF OF BLANKS), Was in Fact " PREJUDICIAL " BECAUSE
12 " HAD " TRIAL COUNSEL " INTERVIEWED " AND " SUBPOENAED "
13 (SPECIFICLY) KNOWN AND POTENTIALLY IMPORTANT ALIBI
14 AND MATERIAL CHARACTER WITNESSES IN BEHALF OF BLANKS,
15 AND TO HAVE MOTIONED THE COURT FOR A (SUPPRESSION
16 OF EVIDENCE HEARING) — " STATES WITNESSES HEARSAY
17 STATEMENTS ", Investigation Would Have Produced
18 reasonable Probability of Blanks' " ACQUITTAL ". SEE
19 IN APPENDIX (I. A.) TESIMONY OF GLEN GLOVER, Page(s);
20 120, 124, 125. Which, Constitutes The Denial of
21 BLANKS' Right To (EFFECTIVE ASSISTANCE OF COUNSEL)
22 AND TO (DUE PROCESS OF LAW) GUARANTEED BLANKS BY THE
23 CONSTITUTION, STATUTE, OR RULE. Furthermore, This

24
25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. A.) COA NO. 34628-1-II.

1
2 Was " NOT " A " HARMLESS ERROR " THIS WAS AN " ERROR "
3 OF A CONSTITUTIONAL MAGNITUDE AND A FUNDAMENTAL DEFECT
4 RESULTING IN A MISCARRIAGE OF JUSTICE SO AS TO ENTITLE
5 BLANKS TO RELIEF BY REVERSAL AND REMAND. AS THE RESULT
6 FROM THE APPARENT PREJUDICE OF APPELLANT BEING DENIED
7 HIS CONSTITUTIONAL SIXTH AMENDMENT RIGHT TO EFFECTIVE
8 ASSISTANCE OF COUNSEL AND TO DUE PROCESS OF LAW, TO
9 HAVE COMPULSORY PROCESS FOR AN ADEQUATE LEGAL DEFENSE
10 " UPON " GOING TO TRIAL FROM OCTOBER 05, 2004, THROUGH
11 TO; MAY 10, 2005, BY TRIAL COUNSEL'S " FAILURE " TO
12 CONDUCT AN ADEQUATE AND REASONABLE INVESTIGATION INTO
13 KNOWN AND POTENTIALLY IMPORTANT ALIBI AND MATERIAL
14 CHARACTER WITNESSES IN BEHALF OF BLANKS, BECAUSE AN
15 ADEQUATE INVESTIGATION WOULD HAVE PRODUCED REASONABLE
16 PROBABILITY OF " APPELLANT'S ACQUITTAL ". SEE IN
17 APPENDIX (I. A.) TESTIMONY OF BLANKS, PAGE(S); 20,23,
18 30,47,50,51. AND SEE, DINO SEPE, PAGE(S); 84,99,100,
19 106,107. AND ALSO, GLEN GLOVER, PAGE(S); 120,124,125.
20 APPELLANT RESPECTFULLY REQUESTS AND ASKS THAT THIS
21 COURT REVERSE AND REMAND HIS UNLAWFUL AND UNJUST
22 CONVICTION TO ALLOW BLANKS TO PROCEED TO JURY TRIAL.
23 Strickland V. Washington, 466 U.S. 668, 80 L.Ed. 2d 674,

24
25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. A.) COA NO. 34628-1-II.

1
2 104 S.Ct. 2052 (1984). Strickland V. Washington,
3 466 W.S. 668, 80 L.Ed. 2d 674, 104 S.Ct. 2025, rehearing
4 denied, 467 U.S. 1267 (1984). State V. McFarland,
5 127 W. 2d 322, 334-337 (1995), citing State V. Thomas,
6 109 W. 2d 222, 225-226 (1987). State V. Jeffries, 105
7 Wn. 2d 398, 717 P. 2d 722,(1986), and reiterated in
8 State V. Davis, 119 Wn. 2d 657, 835 P. 2d 1039 (1992).
9 Everett V. Beard, 290 F. 3d 500, 515-16 (3rd Cir. 2004).
10 Harris V. Cotton, 365 F.3d 552, 556-57 (7th Cir. 2004).
11 Fla. V. Nixon, 543 U.S. 175, 192 (2004).
12 Williams V. Washington, 59 F.3d 673, 679-83 (7th Cir.
13 1995). Towns V. Smith, 395 F.3d 251, 258-60 (6th Cir.
14 2005). Brown V. Meyers, 137 F.3d 1154 (9th Cir.1988).
15 U.S. V. Dawson, 857 F.2d 923 (3rd Cir. 1988).
16 Wade V. Armontrout, 798 F.2d 304 (8th Cir. 1986).
17 U.S. Ex. Rel. Patterson V. Neal, 678 F. Supp. 749 (N.
18 D. ILL. 1988). SEE ALSO IN APPENDIX (I. A.),
19 TESTIMONY'S OF "BLANKS " PAGE(S); 20, THROUGH 51;
20 AND OF "DINO SEPE " PAGE(S); 84, THROUGH 107; AND OF
21 "GLEN GLOVER " PAGE(S); 120, THROUGH 125.

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25 **BLANKS, DEREK L. STATEMENT OF ADDITIONAL**
26 **GROUND'S FOR REVIEW (I. A.) COA NO. 34628-1-II.**

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I. STATEMENT OF ADDITIONAL GROUNDS FOR
(REVIEW ASSIGNMENT OF ERROR NUMBER TWO)

APPELLANT'S SIXTH AMENDMENT AND DUE
PROCESS RIGHTS WERE VIOLATED AT THE
WITHDRAWAL OF PLEA HEARING.....

B. MOTION TO WITHDRAW PLEA
EVIDENTIARY HEARING
JANUARY 13, & 17, 2006

(a). The Trial Court ERRED and Appellant's State and Federal Constitutional Rights To Effective Assistance of Counsel and To Due Process By The Withdrawal Of Plea, To Proceed To Jury Trial Were VIOLATED WHEN THE Trial Court DENIED APPELLANT'S MOTION TO WITHDRAW HIS PLEA. BECAUSE BLANKS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL BASED ON THE FACT THAT; BLANKS WAS " NOT " Advised By His Trial Counsel " DINO SEPE " OF THE " PLEAS DIRECT CONSEQUENCE " BECAUSE OF BEING " INCORRECTLY INFORMED " As, 98 to 130 Months As His " COMPLETE STANDARD SENTENCING RANGE ", AND " NOT " As it Being " CORRECTLY INFORMED " As, 98 to 130

BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. B.) COA NO. 34628-1-II.

1
2 Months As His " MINIMUM STANDARD SENTENCING RANGE OF
3 LIFE ", That Was The " RESULT " From BLANKS Being
4 " INDUCED " By Trial Counsel's " ERRONEOUS ADVISE "
5 OF " PROMISING " BLANKS THE " SENTENCING ALTERNATIVE ",
6 OTHER THAN A " PRISON SENTENCE ", (BUT), HOWEVER,
7 " FAILING " TO " ADVISE BLANKS " THAT THE STATE DID NOT
8 AGREE WITH THE SENTENCING ALTERNATIVE " AT THE SIGNING
9 OF PLEA ". " HAD " TRIAL COUNSEL ADVISED BLANKS OF THE
10 PLEAS " DIRECT CONSEQUENCE ", BLANKS COULD HAVE MADE
11 AN INFORMED DECISION TO " REJECT THE PLEA " AND HAVE
12 " INSISTED ON GOING TO TRIAL ". SEE IN APPENDIX (I. B.)
13 TESTIMONY OF BLANKS, PAGE(S); 26,32,36. AND SEE ALSO;
14 TESTIMONY OF DINO SEPE, PAGE(S); 94,109.

15
16 (b). FURTHERMORE, " UNDER CrR 4.2(d), " THE TRIAL
17 COURT " FAILED " TO " THOROUGHLY QUESTION " AND TO FULLY
18 EXPLAIN TO BLANKS ABOUT THE " IMPORTANT CONSTITUTIONAL
19 RIGHTS " THAT HE WOULD BE WAIVING BY PLEADING GUILTY.
20 SEE IN APPENDIX (I. B.) PLEA HEARING, PAGE 3. " HAD "
21 THE TRIAL COURT " UPHELD " IT'S DUTY DURING THE DAY OF
22 THE " ENTERING OF PLEA HEARING ", ON (MAY 27, 2005),
23 " SPECIFICLY " BECAUSE OF BLANKS HAVING A " STAND IN

24
25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. B.) COA NO. 34628-1-II.

1
2 COUNSEL ", DUE TO BLANKS' " APPOINTED TRIAL COUNSEL "
3 FAILING TO ATTEND THE PLEA HEARING, TO HAVE THOROUGHLY
4 QUESTIONED AND " FULLY EXPLAINED " TO BLANKS THE WAIVER
5 OF " IMPORTANT CONSTITUTIONAL RIGHTS " HE WOULD BE
6 " RELINQUISHING " TO " ENSURE " AND " CONFIRM " THAT
7 BLANKS' PLEA OF GUILTY, WAS MADE " VOLUNTARILY ",
8 " INTELLIGENTLY ", AND " KNOWINGLY " AND THAT " BLANKS "
9 FULLY UNDERSTOOD THE PLEAS DIRECT CONSEQUENCE,
10 (SPECIFICLY) " BEFORE " ACCEPTING BLANKS' PLEA OF
11 GUILTY, THUS BLANKS COULD HAVE MADE AN " INFORMED "
12 DECISION TO " REJECT " THE PLEA AND " INSISTED ON
13 GOING TO TRIAL ". WHEREFORE, UNDER CrR 4.2(d), THE
14 TRIAL COURT'S " FAILURE " TO " COMPLY FULLY WITH THIS
15 RULE, REQUIRES THAT THE PLEA BE SET ASIDE ". WHEREAS,
16 BY BLANKS BEING " MISINFORMED " ABOUT THE PLEAS DIRECT
17 CONSEQUENCE, PLUS THE " ABSENCE " OF BLANKS APPOINTED
18 TRIAL COUNSEL, AND THE TRIAL COURT'S " FAILURE " TO
19 FULLY ENFORCE IT'S DUTY UNDER CrR 4.2(d), CONSTITUTES
20 THE DENIAL OF BLANKS' CONSTITUTIONAL RIGHT TO DUE
21 PROCESS OF LAW AND TO EFFECTIVE ASSISTANCE OF COUNSEL
22 GUARANTEED APPELLANT BY CONSTITUTION, STATUTE, OR
23 RULE. FURTHERMORE, THIS WAS NOT A " HARMLESS ERROR",
24

25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. B.) COA NO. 34628-1-II.

1
2 THIS WAS AN " ERROR " OF A CONSTITUTIONAL MAGNITUDE
3 AND A FUNDAMENTAL DEFECT RESULTING IN A COMPLETE
4 MISCARRIAGE OF JUSTICE SO AS TO ENTITLE BLANKS TO
5 RELIEF BY REVERSAL AND REMAND. AS THE RESULT FROM
6 THE APPARENT PREJUDICE OF BLANKS BEING DENIED HIS
7 CONSTITUTIONAL SIXTH AMENDMENT RIGHT TO DUE PROCESS OF
8 LAW AND TO EFFECTIVE ASSISTANCE OF COUNSEL, APPELLANT
9 RESPECTFULLY REQUESTS AND ASKS THAT THIS COURT REVERSE
10 AND REMAND HIS UNLAWFUL AND UNJUST CONVICTION FOR
11 HIM TO WITHDRAW HIS INVOLUNTARILY MADE PLEA OF GUILTY
12 TO ALLOW APPELLANT TO PROCEED TO JURY TRIAL. SEE ALSO;
13 Hill V. Lockhart, 474 U.S. 52, 59 (1985). SEE ALSO;
14 State V. Stough, 96 Wn. App. 480 (1990). SEE IN
15 APPENDIX (I. B.) TESTIMONY OF BLANKS, PAGE(S); 26, 32,
16 36. AND SEE ALSO, TESTIMONY OF SEPE, PAGE(S); 94, 109.
17 AND OF TRIAL COURT PLEA HEARING, PAGE; 3.

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25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. B.) COA NO. 34628-1-II.

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I. STATEMENT OF ADDITIONAL GROUNDS FOR
(REVIEW ASSIGNMENT OF ERROR NUMBER THREE)

APPELLANT'S SIXTH AMENDMENT AND DUE
PROCESS RIGHTS WERE VIOLATED AT THE
SENTENCING.....

C. S E N T E N C I N G
MARCH 24, 2006

(a). The Sentencing Court ERRED and Appellant's
State and Federal Constitutional Rights To Due Process
Were VIOLATED When The Sentencing Court FAILED TO
TREAT APPELLANT'S Prior Two(2) " 1997 " FELONY
CONVICTIONS (COUNT 1.): FIRST(1st.) DEGREE RECKLESS
ENDANGERMENT, AND (COUNT 2.): SECOND(2nd.) DEGREE
UNLAWFUL POSSESSION OF A FIRE ARM, AS THE " SAME
CRIMINAL CONDUCT " FOR AN OFFENDER SCORE OF (1) POINT.
WHERE THE OFFENSES INVOLVED THE SAME VICTIM, AND
OCCURRED AT THE SAME PLACE, AND WERE SIMULTANEOUS IN
TIME, AND INVOLVED THE SAME CRIMINAL INTENT. ADDED;

(b). APPELLANT'S Other Prior Two(2) " 2002 " FELONY

BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. C.) COA NO. 34628-1-II.

1
2 CONVICTIONS (COUNT 1.): SECOND(2nd.) DEGREE ASSAULT,
3 AND (COUNT 2.): FELONY HARASSMENT, AS THE " SAME
4 CRIMINAL CONDUCT " AS WELL FOR AN OFFENDER SCORE OF
5 (2) POINTS - VIOLENT CRIME. PLUS, (1) ADDITIONAL POINT
6 FOR BEING ON COMMUNITY CUSTODY, FOR BLANKS' " CORRECT "
7 OFFENDER SCORE TO TOTAL (4). INSTEAD OF IT BEING
8 " INCORRECTLY CALCULATED " AT FIVE(5). Whereas, Again,
9 THE OFFENSES INVOLVED THE SAME VICTIM, AND OCCURRED
10 AT THE SAME PLACE, AND WERE SIMULTANEOUS IN TIME, AND
11 INVOLVED THE SAME CRIMINAL INTENT. Furthermore, The
12 Sentenced Imposed is UNJUST AND IS IN VIOLATION OF DUE
13 PROCESS BY THE SEPERATION OF POWERS DOCTRINE. THE
14 TRIAL COURT ABUSED IT'S DISCRETION BY COUNTING
15 APPELLANT'S PRIOR PAST OFFENSES AS SEPERATE CRIMES,
16 AND INCORRECTLY CALCULATING BLANKS' OFFENDER SCORE AT
17 FIVE(5), INSTEAD OF " CORRECTLY " CALCULATING IT AT
18 FOUR(4).. Wherefore, The Sentence Imposed Was UNLAWFUL
19 AND MUST BE CORRECTED. SEE IN APPENDIX (I. C.),
20 OFFENDER SCORE CHALLENGE MEMORANDUM (LORI SMITH),
21 Page(s); 2, THROUGH 8. AS THE RESULT FROM THE APPARENT
22 PREJUDICE OF BLANKS BEING DENIED HIS CONSTITUTIONAL
23 RIGHT TO (DUE PROCESS OF LAW), APPELLANT RESPECT-

24
25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. C.) COA NO. 34628-1-II.

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**FULLY REQUESTS AND ASKS THAT THIS COURT REVERSE AND
REMAND HIS " UNLAWFUL " AND " UNJUST " CONVICTION TO
ALLOW HIM TO PROCEED TO JURY TRIAL. SEE ALSO;
State V. Tili, 139 Wn.2d 107, 985 P.2d 365 (1999).
State V. Lessley, 118 Wn.2d 773, 777, 827 P.2d 996,
(1992).
State V. Haddock, 141 Wn.2d 103, 110, 3P.3d 733 (2000).
State V. Green, 46 Wn. App. 92, 730 P.2d 1350 (1986).
State V. Roche, 75 Wn. App. 500, 878 P.2d 497 (1994).
State V. Morris, 87 Wn. App. 654, 943 P.2d 329 (1997).
State V. Franklin, 46 Wn. App. 84, 729 P.2d 70 (1986).**

**BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. C.) COA NO. 34628-1-II.**

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**I. STATEMENT OF ADDITIONAL GROUNDS FOR
(REVIEW ASSIGNMENT OF ERROR NUMBER FOUR)**

**APPELLANT'S SIXTH AMENDMENT AND DUE
PROCESS RIGHTS WERE VIOLATED AT THE
SENTENCING.....**

**D. S E N T E N C I N G
MARCH 24, 2006**

**(a). Manifest Errors of Constitutional Magnitude
Such as the Sentencing Court's Abuse of Discretion
and the VIOLATION of the APPELLANT'S RIGHTS TO DUE
PROCESS at Sentencing May Be Raised for the First
time ON APPEAL. The Sentencing Court ERRED and
APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS
TO DUE PROCESS AND TO WITHDRAWAL OF PLEA TO PROCEED
TO JURY TRIAL WERE VIOLATED When the Sentencing Court
COMMITTED REVERSAL ERROR IN PROCEEDING IN SENTENCING
APPELLANT, INSTEAD OF (JUSTLY) GRANTING THE WITH-
DRAWAL OF BLANKS' PLEA OF GUILTY UNDER CrR 4.2(f).
Thus After Being CLEARLY SHOWN ON THE RECORD OBVIOUS
AND OVERT MANIFEST INJUSTICE, AS THE RESULT OF**

**BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. D.) COA NO. 34628-1-II.**

1
2 INEFFECTIVE ASSISTANCE OF " TRIAL COUNSEL DINO SEPE "
3 BECAUSE OF MISINFORMED PLEA, BLANKS' MISCALCULATED
4 OFFENDER SCORE, AND MISINFORMED STANDARD SENTENCING
5 RANGE OF THE PLEAS DIRECT CONSEQUENCE. WhereAs, Also
6 By (LORI SMITH), BLANKS' SENTENCING COUNSEL'S FAILURE
7 TO ADDRESS THE COURT FOR THE WITHDRAWAL OF PLEA, IS
8 OBVIOUS AND OVERT INEFFECTIVE ASSISTANCE OF COUNSEL AS
9 WELL. LORI SMITH'S SOLE PURPOSE TO BEING APPOINTED TO
10 BLANKS' WITHDRAW OF PLEA CASE WAS TO " ASSIST BLANKS
11 ADEQUATELY FOR THE WITHDRAWAL OF HIS (INVOLUNTARILY)
12 MADE PLEA. (INSTEAD), COUNSEL (LORI SMITH)
13 (INEFFECTIVELY) ADDRESSED THE TRIAL COURT TO "RECOM-
14 MEND " A SENTENCE IN MID - RANGE, (INSTEAD) OF
15 (EFFECTIVELY) RECOMMENDING THE WITHDRAWAL OF BLANKS'
16 PLEA. WHICH CONSTITUTES THE DENIAL OF APPELLANT'S
17 CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF
18 COUNSEL AND TO DUE PROCESS OF LAW, GUARANTEED BLANKS
19 BY CONSTITUTION, STATUTE, OR RULE. SEE IN APPENDIX
20 (I. D.) SENTENCING TESTIMONY OF LORI SMITH, PAGE(S);
21 6,14,16.

22
23 (b). Furthermore, The Trial Court COMMITTED A

24
25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. D.) COA NO. 34628-1-II.

1
2 " REVERSAL ERROR " OF A CONSTITUTIONAL MAGNITUDE THAT
3 WAS OBVIOUS AND OVERT, BUT HOWEVER, " NOT " A HARMLESS
4 ERROR, BY FAILING TO " ADVISE BLANKS " AT THAT TIME OF
5 THE TRIAL COURT BEING CLEARLY SHOWN ON THE VRP RECORD,
6 MANIFEST INJUSTICE THAT BLANKS COULD THEN WITHDRAW HIS
7 PLEA, THUS DENYING BLANKS' RIGHT TO DUE PROCESS OF LAW
8 GUARANTEED APPELLANT BY CONSTITUTION, STATUTE, OR RULE
9 SEE IN APPENDIX (I. D.) SENTENCING TESTIMONY OF LORI
10 SMITH, PAGE(S); 12,14,16. " HAD " BLANKS' COUNSEL
11 (LORI SMITH) AND THE (TRIAL COURT), ADVISED BLANKS
12 PRIOR TO BEING SENTENCED THAT THE PREVIOUSLY MANIFEST
13 INJUSTICE UPON WHICH HIS PLEA WAS ENTERED ON, UNDER
14 CrR 4.2(f), WAS THE BASIS FOR APPELLANT'S (JUST)
15 (RIGHT) TO THE WITHDRAWAL OF HIS (INVOLUNTARILY)
16 MADE PLEA OF GUILTY. THUS BLANKS COULD HAVE MADE AN
17 INFORMED DECISION TO HAVE WITHDRAWN THE PLEA AND PRO-
18 CEEDED TO JURY TRIAL. WHICH CONSTITUTES THE DENIAL OF
19 APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF
20 LAW. BECAUSE, BLANKS PROCEEDING TO JURY TRIAL WOULD
21 HAVE PRODUCED REASONABLE PROBABILITY OF BLANKS'
22 " ACQUITTAL ". SEE IN APPENDIX (I. D.) SENTENCING
23 TRIAL COURT'S PREJUDICE, PAGE(S); 14,16. THEREFORE,

24
25 **BLANKS, DEREK L. STATEMENT OF ADDITIONAL**
26 **GROUND(S) FOR REVIEW (I. D.) COA NO. 34628-1-II.**

1
2 APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO DUE
3 PROCESS OF LAW AND TO EFFECTIVE ASSISTANCE OF COUNSEL,
4 UNDER CrR 4.2(f). SEE; In re Pers. of Goodwin, 146 Wash.
5 2d 861, 867-72 50 P. 3d 618 (2002); THAT STATES:
6 "An individual Cannot, By Way of a Negotiated Plea
7 Agreement, Agree to a Sentence in Excess of that
8 Allowed By Law And Thus Cannot Waive Such a Challenge "
9 FURTHERMORE, THIS WAS "NOT" A "HARMLESS ERROR",
10 THIS WAS AN ERROR OF A CONSTITUTIONAL MAGNITUDE AND A
11 FUNDAMENTAL DEFECT RESULTING IN A COMPLETE MISCARRIAGE
12 OF JUSTICE SO AS TO ENTITLE APPELLANT TO RELIEF BY
13 REVERSAL AND REMAND. THE CONTINUING OF SENTENCING
14 BEING IMPOSED IS "UNJUST" AND IS IN VIOLATION OF DUE
15 PROCESS. TO HAVE BEEN SENTENCED WAS "UNLAWFUL" AND
16 MUST BE CORRECTED. AS THE RESULT FROM THE "APPARENT
17 PREJUDICE" OF BLANKS BEING DENIED HIS CONSTITUTIONAL
18 RIGHT TO (EFFECTIVE ASSISTANCE OF COUNSEL) AND TO
19 (DUE PROCESS OF LAW). APPELLANT RESPECTFULLY ASKS
20 AND REQUESTS THAT THIS COURT REVERSE AND REMAND HIS
21 UNJUST AND UNLAWFUL CONVICTION TO ALLOW APPELLANT TO
22 PROCEED TO JURY TRIAL. SEE; Neder V. U.S., 527 U.S. 1,
23 7 (1999). ALSO; Nichols V. U.S., 75 F.3d 1137(7th Cir.
24 1996).

25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. D.) COA NO. 34628-1-II.

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I. STATEMENT OF ADDITIONAL GROUNDS FOR
(REVIEW ASSIGNMENT OF ERROR NUMBER FIVE)

APPELLANT'S SIXTH AMENDMENT AND DUE
PROCESS RIGHTS WERE VIOLATED AT THE
SENTENCING.....

E. S E N T E N C I N G
MARCH 24, 2006

The Trial Court Erred in Sentencing Appellant Under
Statute RCW 9.94A.712, When Appellant " DO NOT " Meet
The " REQUIREMENTS " As OUTLINED IN THE (N P O) S. B.
6151 THAT STATES: " ANY OFFENDER, WHO IS NOT A
PERSISTENT OFFENDER, WHO IS SENTENCED FOR ANY ONE OF
THE OFFENSES ENUMERATED IN RCW 9.94A.712(1)(a)(i)(ii)
OR IS CONVICTED OF ANY SEX OFFENSE, (AND HAS A PRIOR)
CONVICTION FOR A " TWO STRIKE " OFFENSE UNDER RCW 9.94
A.030(32)(b), MUST BE SENTENCED TO AN INDITERMINATE
TERM ". Wherefore, THE OFFENDER MUST HAVE ALREADY
" HAD A PRIOR " SEX OFFENSE CONVICTION OF SPECIFIC
CRIMES UNDER STATUTE RCW 9.94A.030(32)(b). AS A

BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (I. E.) COA NO. 34628-1-II.

1
2 (SPECIFIC REQUIRED ELEMENT) FOR SUCH A SENTENCE TO
3 BEING IMPOSED. FURTHERMORE, THE ELEMENTS OF THAT
4 STATUTE UNDER RCW 9.94A.712, WERE "REINFORCED" BY
5 THIS WASHINGTON STATE COURT OF APPEALS DIVISION 2, IN
6 THE OCTOBER 26, 2004, RULING "STATE V. VERNON, ON.
7 31366-9-II". WHEREAS, APPELLANT "DO NOT" HAVE ANY
8 "PRIOR" CONVICTIONS WITH A FINDING OF A SEXUAL NATURE.
9 THEREFORE, THE TRIAL COURT SENTENCING BLANKS UNDER THE
10 INCORRECT STATUTE, IS AN ERROR OF A CONSTITUTIONAL
11 MAGNITUDE AND A FUNDAMENTAL DEFECT RESULTING IN A
12 COMPLETE MISCARRIAGE OF JUSTICE SO AS TO ENTITLE
13 APPELLANT TO RELIEF BY REVERSAL AND REMAND. BY THE
14 APPELLANT BEING SENTENCED UNDER THE "INCORRECT"
15 STATUTE IS "UNJUST" AND IS IN VIOLATION OF DUE
16 PROCESS. THE SENTENCED IMPOSED WAS "UNLAWFUL" AND
17 MUST BE CORRECTED. AS THE "APPARENT PREJUDICE" OF
18 BLANKS BEING DENIED HIS CONSTITUTIONAL RIGHT TO DUE
19 PROCESS OF LAW, APPELLANT RESPECTFULLY REQUESTS AND
20 ASKS THAT THIS COURT REVERSE AND REMAND HIS UNLAWFUL
21 AND UNJUST CONVICTION TO ALLOW BLANKS TO PROCEED TO
22 JURY TRIAL. SEE; IN APPENDIX (I. E.) SENTENCING 2005
23 (N P O) S. B. 6151. SEE ALSO; State V. Willis, 151 Wn.
24 2d 255, 87 P.3d 1164 (2004).

25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW (I. E.) COA NO. 34628-1-II.

1
2 APPEALS COURT ACCORD LIBERAL READING AND CONSTRUCTION
3 THERE TO APPLYING OF ANY APPROPRIATE STANDARDS AND
4 THEREFORE SO THAT APPELLANT IS NOT HELD AT WASHINGTON
5 STATE BAR STANDARDS!

6
7
8 APPELLANT SUBMITS THIS IN KEEPING WITH (Haines V.
9 Kerner,) 404 U.S. 519, 520, 90 S. Ct. 594, 595-596,
10 (HOLDING Pro-Se PLEADINGS TO LESS STRINGENT STANDARDS
11 THAN THOSE PREPARED BY ATTORNEYS). THE APPELLANT
12 DEREK L. BLANKS RESPECTFULLY REQUESTS AND ASKS THIS
13 " Appeals Court " TO LIBERALLY CONSTRUE THIS MOTION
14 BEFORE DECIDING THE BRIEF AND OTHER PLEADINGS WITH
15 DEFERENCE TO WHICH Pro-Se LITIGANTS ARE ENTITLED TO.
16 SEE Maleng V. Cook, 490 U.S. 48, 8, 493, 109 S. Ct.
17 1923, 1926-27 (1998); ACCORD E. G. Brock V. Western,
18 31 F. 3d 887, 890 (9th Cir. 1994) (HOLDING THE COURT
19 WAS OBLIGATED TO CONSTRUE " Pro-Se PETITIONER
20 FAVORABLY ") (CITING Feldman V. Ferrill, 902 F.2d 1445
21 1449 (9th Cir. 1990).

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25 BLANKS, DEREK L. STATEMENT OF ADDITIONAL
26 GROUNDS FOR REVIEW COA NO. 34628-1-II.

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II.

CONCLUSION

Based on the Foregoing Reasons Stated, Appellant Respectfully Requests and Asks That This Court Reverse and Remand Appellant's "Unjust" and "Unlawful" Conviction To Allow Blanks To Proceed To Jury Trial.

RESPECTFULLY SUBMITTED this 26th. day of OCTOBER 2006, at Airway Heights, Washington.


Signature

DEREK L. BLANKS DOC # 768939 PRO SE,
Airway Heights Correction Center
POST OFFICE BOX 1839
AIRWAY HEIGHTS, WA. 99001-1839

Mertie B. Duncan
10/26/06



BLANKS, DEREK L. STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW COA NO. 34628-1-II.

A P P E N D I X

I. A.

PRE - TRIAL

OCTOBER 05, 2004, — MAY 10, 2005.

1 A No.

2 Q Did Miss Contris go over any plea paperwork with you?

3 A No.

4 Q Did Mr. Sepe go over the plea paperwork with you?

5 A Um, earlier of the plea date, not the full entire plea,
6 but the statement of defendant and what was the rest of
7 it --

8 Q There were several pages of a document he went over with
9 you?

0 A Yeah, yeah.

1 Q Why did you decide to enter a plea?

2 A Because he wouldn't provide for me a legal defense, bring
3 witnesses that are important to my case for my defense.

4 Q Is there any other reason that you were going to do a
5 plea?

6 A Um, no, not other than that reason.

7 Q Okay. Did -- do you recall what Mr. Sepe told you about
8 what kind of sentence you were going to get, what you
9 were pleading to?

0 A Well, he came to me -- well, we went to court on
1 May 3rd, and at one of the hearings on May 3rd, he
2 went in to sign the paper that stated defense would not
3 subpoena witnesses and State offered plea for defendant;
4 defendant denied it. And I never seen that plea. So I
5 rejected to sign that paper.

1 about a SSOSA plea.

2 Q Why did you think that you would want to do a SSOSA plea?

3 A Well, on May 10th, when I was trying to give him the
4 witness's name that I want to subpoena for my trial, he
5 told me he wasn't going to waste the court's time with my
6 frivolous, fraudulent issues and motions or witnesses.

7 Q Did you give him names of witnesses?

8 A He never let me finish. That's when he started telling
9 me that: Not going to waste the court's time.

0 Q Now, did Mr. Sepe tell you that if you did a SSOSA, for
1 it to go through, you would probably have to admit that
2 you did the crime?

3 A Yes.

4 Q He did tell you that.

5 A Yes.

6 Q Okay. Now, when did Mr. Sepe bring plea paperwork to you
7 to go over?

8 A On the 27th of May.

9 Q May 27th. Okay.

0 A But he was supposed to have been setting up the plea
1 agreement from I think it was May 11th from the time he
2 denied me my witnesses to come to court.

3 Q May 10th?

4 A Yeah, because he told me May 10th, then he showed up on
5 the 11th with the SSOSA, when we looked up SSOSA. He

1 paperwork and seeing that they hold paperwork for SSOSA
2 wasn't even the same as mine. So the paperwork itself
3 that they had had SSOSA in it and the paperwork that I
4 had didn't have SSOSA in it at all.

5 Q And what -- what do you think a plea agreement is? What
6 did you think that meant, "plea agreement"?

7 A Well, that the prosecution and me or my attorney is
8 agreeing to the SSOSA. That's the plea agreement. or
9 that's what I think it is, it should be.

0 Q Have you ever entered a guilty plea ever before?

1 A Yeah.

2 Q How many times?

3 A Just once.

4 Q And at that time, were both sides agreeing?

5 A Yes.

6 Q As far as the witnesses that you wanted Mr. Sepe to
7 contact, why do you think those witnesses could have
8 helped you?

9 A Because they were witnesses as far as the times that the
0 stuff was -- well, not stuff, but the alleged charges was
1 said that I was at this place so I done this. There was
2 witnesses to show that I wasn't there, that I wasn't in
3 the same place that, you know, like alibi witnesses,
4 character witnesses.

5 Q Okay. Now, Mr. Glover and Mr. Sepe did interview the

A No -- no, not really.

Q You didn't see him at a pretrial or an OH? You didn't see him at the motion to continue?

A Yeah. But he didn't talk to me, he just want me to sign a paper and that was it.

Q Did you tell him about your witnesses then?

A He didn't ask me.

Q He didn't ask you. But it wasn't important for you to tell him?

A Well, he didn't have time. We seen together through a glass window, slid the papers through said, "You need to sign this for continuance," and that was it.

Q Okay. And then your next trial date was in January, January 6 of '05?

A January 6th.

Q Does that sound right?

A Uh huh. Same thing.

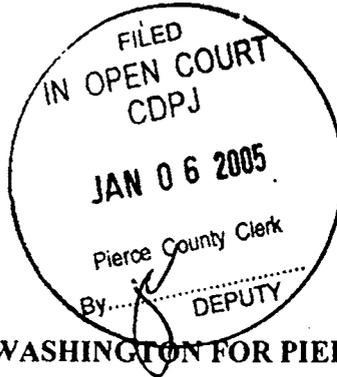
Q Same thing. You -- so by January 6th, you had been in custody almost three months and you haven't had a substantive conversation with him?

A No.

Q Didn't say a word to him?

A No. Here is my January 6th paper right there, went through the court, said you need this much time to interview plaintiff's witnesses finish investigation.

Refer to JANUARY 6, 05. EXHIBIT #1. Following:



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Derek Lamont Blanks)
Defendant)

Cause No. 04-1-04442-3

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.

upon agreement of the parties pursuant to CrR 3.3(f)(1) or

is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or

for administrative necessity.

Reasons: Additional time needed to interview complaining witness, finish investigation and explore all possible options.

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

<input checked="" type="checkbox"/> OMNIBUS HEARING	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> STATUS CONFERENCE HEARING SET FOR:	Feb 9 th 2005	8:30	C02 530	1315738
THE CURRENT TRIAL DATE OF <u>1-6-05</u>	Mar 16, 2005	8:30	C025-211A	1315739
IS CONTINUED TO: <u>3-30-05 @ 8:30 am Room C025/211A</u>				

Expiration date is: 4-29-05 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 6 day of Jan., 2005

Derek Blanks
Defendant
[Signature]
Attorney for Defendant/Bar # 15879

[Signature]
Judge **JAMES R. ORLANDO**
[Signature]
Prosecuting Attorney/Bar #

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified

1 talking to me wasn't helping me at all because he wasn't
2 listening to nothing I was saying. So how is that
3 helping me?

4 Q Nobody listened to you?

5 A Nope, evidently not.

6 Q So you waited until you had been in jail eight months?

7 A No, I try to contact Sepe.

8 Q You call him, you leave messages on the phone?

9 A Yeah, yes.

0 Q How much times did you tell him who those witnesses were
1 on the phone?

2 A When I was going to trial. I was trying to tell him
3 before my trial.

4 Q The eight months. How many times did you call him and
5 say, "You need to talk to so-and-so and so-and-so and
6 so-and-so"?

7 A I didn't tell him that until, let's see --

8 Q Early May?

9 A No, I think it was one time before then, but I didn't
0 have all the witnesses' names. But the actual time I
1 told him that I needed these witnesses was May 10th.

2 That was the actual -- because I had -- well, I still
3 didn't have all the full ones, but I had some of the
4 witnesses' names.

5 Q You were doing some investigation on your own?

A Well, I have to. I mean, he wasn't doing any; Glover wasn't doing it. All they were doing was interview the State's witnesses; they wasn't interviewing my witnesses.

Q You have read the declaration for probable cause?

A I have one I don't know what.

Q You knew you were charged basically with having sex -- sexual contact with the victim between April and May of 2004. Right?

A Repeat that again.

Q You know you were charged with having sexual contact with a victim whose initials are AR between April and May of 2004.

A I think charging papers say rape. Charging papers saying it was --

Q April of 2004 and May of 2004.

A Yes.

Q That sound right?

A Yeah. Like the -- yeah. That sounds right.

Q And you were living in that house?

A No, that's what I was trying to say, I wasn't living in the house.

Q You weren't living --

MR. SHEERAN: Nothing else, Your Honor.

MS. SMITH: I don't have anything else, Your Honor.

THE COURT: Okay, thank you. You may step down.

* From Page 81.

*

*

with it, see if you would consider it.

Q So at that time it was not your idea.

A No.

Q Okay.

A It was never my idea.

Q At what point did the defendant talk to you about these other witnesses?

A I would say about -- trial date in May, and I would say maybe about a week, two weeks before he indicated, you know, "I have all of these witnesses." And I had never seen these people or heard of these people before, and I was kind of upset, to be honest with you. I am saying, "We have had this case for six months and you give me these things now?" And then expected me to go start interviewing these people and, you know, may or may not get it done. Even if I do, it might lead to something else, I have got to back ask the judge for another continuance on a case that is about seven months old. Judges are getting a little bit -- rightfully so -- about cases getting that old, continuing them further.

Q Did you tell him you weren't going to look at these witnesses?

A No.

Q What did you tell him?

A I told him I would turn it over to Mr. Glover, but he's

* Refer to EXHIBIT #2. Trial COUNSEL WAS Already in a Trial, NO COMMUNICATION FROM HIM TO INFORM HIM ABOUT witnesses Following?

* Refer to EXHIBIT #2 AND EXHIBIT #3. Following?

* Refer to Page 120, Glen Glover's TESTIMONY

Refer to EXHIBIT # 1, Page 47.

What was the reason put down for that continuance?

A Additional time needed to interview complaining witness, finish investigation, and explore all possible options.

Q Okay.

A This was January 6, 2005.

MR. SHEERAN: I am sorry, counsel, could I --

A Done in open court January 6, 2005.

Q (By Ms. Smith) Okay. And then I have another order continuing the trial that's dated March 30th, looks like different handwriting, but what's the reason?

A Not my handwriting, I know that.

Q Right.

A I assume I was in trial, but it is not my handwriting. Says, "Defense counsel has been in trial until this morning, recently received additional discovery and needs time to prepare. DPA assigned to this case only two days ago."

Q Do we know who -- which --

A Your guess is as good as mine who that is. That is my signature, though. But that's not my writing.

Q Okay. And then we have another order continuing the trial dated May 25th, which was just two days before he did the plea, and does that look like your writing there?

A Yeah.

Q What was your reason?

* Refer to Page 84.

~~*~~
100

A "Defense counsel in trial in Department 8. Case will resolve with a plea."

Q Do you remember if Mr. Blanks knew at that time this was going to resolve with a plea just two days before --

A Oh, yeah, I am sure he did.

Q Now, I think Friday you had mentioned that when you first got this case, you were in trial for a couple of months.

A Month and a half. We were doing a trial in Judge Culpepper's court involving two Fort Lewis soldiers, one of them murdered his wife and another was an accomplice.

Took awhile.

Q This case started out in September maybe October and some of November you were involved in --

A Yes.

Q -- another trial?

A Yes, I was.

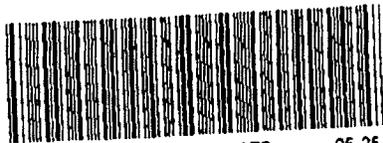
Q And then from the orders I just showed you, it was continued in January and continued again in March, and then by May on this May 25th date you had put down it would resolve with a plea.

A Yes.

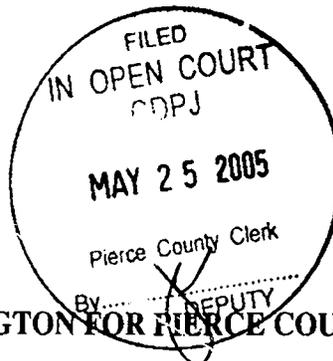
Q How many cases do you carry at one time, can you guess?

A Right now I have the most open class A felonies of anyone in the office. I was shocked to find that out, because Mr. Kawamura had taken a few days off and I looked and I

→ *
He's in
trial
NO
COMMUNICATION
From Him
AT ALL



04-1-04442-3 23102885 ORCTD 05-25-05



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
Plaintiff)
vs.)
Derek Blanks)
Defendant)

Cause No. 04-1-04442-3

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Defense counsel in trial in Dept 8
Case will resolve with a plea

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>5-25-05</u>	IS CONTINUED TO: <u>6-23-05</u> @ 8:30 am Room <u>CDPS</u> <u>SU</u> <u>RM 211A</u>			

Expiration date is: 7-27-05 (Defendant's presence not required) TFT days remaining: 30

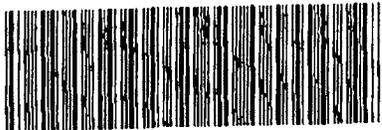
DONE IN OPEN COURT this 25 day of May, 2005

[Signature]
Defendant
[Signature]
Attorney for Defendant/Bar # 15879

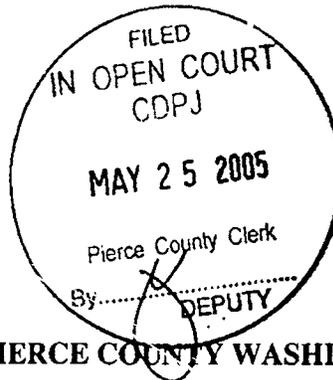
[Signature]
Judge
[Signature]
Prosecuting Attorney/Bar # 26050

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
Interpreter/Certified/Qualified



04-1-04442-3 23102896 ORSTD 05-25-05



IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,
Plaintiff

vs.
Derek Blanks
Defendant

NO. 04-1-04442-3

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Approval No	Hearing Type	Date	Time	Courtroom
	<input type="checkbox"/> Pretrial Conference	,20__	AM/PM	
	<input type="checkbox"/> Omnibus Hearing	,20__	8:30 AM	
	<input type="checkbox"/> Status Conference	,20__	8:30 AM	CDPJ
	<input type="checkbox"/> Motion (Describe):	,20__	AM/PM	CDPJ
	<input checked="" type="checkbox"/> TRIAL	<u>6/23</u> , <u>2005</u>	8:30 AM	CDPJ
<u>1378543</u>	<u>M Pleg</u>	<u>5-27</u> , <u>2005</u>	<u>1:30AM/PM</u>	<u>CDPJ 211A</u>
	<input type="checkbox"/>	,20__	AM/PM	

2. Moving papers due: _____ Responsive brief due: _____
3. The defendant shall be present at these hearings and report to the courtroom indicated at
930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

4. DAC; Defendant will be represented by Department of Assigned Counsel.
 Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

Dated May 25, 2005.

Copy Received:

Derek Blanks
Defendant

[Signature]
Attorney for Defendant/Bar # 15879

[Signature]
JUDGE
[Signature]
Prosecuting Attorney/Bar # 26050

Q That's for Mr. Blanks' case?

A This may or may not have been the first one.

Q Because it took more time than what you originally thought?

A Yes.

Q What is the date on this one?

A October 29, 2004.

Q So that wasn't too long after the case started?

A No, not usually.

Q Do you often have to go get additional authorizations for investigators?

A Oh, yes. They'll give us maybe 10, 12 hours to start, but a case of class A with several witnesses usually runs up to 30 hours or more, so we have to additionally petition.

Q And then you said that the evaluation process did not finish as far as the SSOSA goes because Mr. Blanks had called and said he wanted to withdraw his plea?

A Yes.

Q Now, if Mr. Blanks had given you those extra witnesses, say a couple weeks before and the trial was set -- trial was set May 25th, I think, is that kind of your recollection?

A Trial was set -- yeah, somewhere in that neighborhood.

Q But it sounds like you were busy in another trial around

that May 25th date anyway?

A I had started another case May 25th in Judge Tollefson's court.

Q Wouldn't Mr. Blanks' case have been continued anyway?

A Depends. Depends on how the court would have given priority, you know. I don't know. I know that case was an assault one/robbery one, but I don't know how long he was in custody as opposed to Mr. Blanks and the age. You know, the court does a balancing thing. So I suspect they both would have come in on the same day and the judge would have said, "This one has priority."

Q But you could have asked for continuance to go interview some of these other witnesses, couldn't you?

A Not after he told me he wanted the SSOSA.

MS. SMITH: Okay. I don't think I have anything else, Your Honor.

THE COURT: Mr. Sheeran?

MR. SHEERAN: Thank you, Your Honor, briefly.

RE CROSS EXAMINATION

BY MR. SHEERAN:

Q Counsel just asked you you could have asked to interview other witnesses, your response was, "Not after he asked for the SSOSA." You mean you could not have or it was pointless to?

A Yeah, it was pointless to, in that sense. But, you know,

Refer to EXHIBIT #3 Following #2 Page 84.

IT was continued to 6-23-05

Refer to Page 84.

gearing up to do that. And that's why I was starting to contact everybody, hoping to obtain records that -- and other documents.

Q The people that were listed here, do you remember having a conversation with Mr. Sepe about other witnesses late -- late in the proceeding?

A Very late.

Q And what was your -- what's your recollection of that conversation?

A The recollection was that basically in the 11th hour, we had received a list of names that our client had -- that he hadn't provided, I guess, until then. And I guess we were discussing at that point if the case was going to go forward and those kind of issues.

Q And were those people interviewed?

A No.

Q And why not?

A I think ultimately we just -- he was going to take a deal, so I was not going to do any more work on the case.

Q Okay. What was your understanding of what those witnesses were -- that Mr. Blanks alleged that they were going to say?

Make it you're typical practice -- let me back up a second -- is not to basically get a name and then go ask somebody, "Hey, have you ever met this guy? What do you

A I did not say --

Q You did not say?

A -- that I tried to interview.

Q So you did not attempt to interview?

A No, I did not.

Q Okay. If Mr. Red supposedly had had some kind of exposure incident, wouldn't it have been important to interview him, if he had been around the child?

A You mean to ask him if he did that in front of the children?

Q Or just to talk to him, if he was someone that -- someone else had given you the name, that he had had troubles like this before?

A Well, criminal history was reviewed on Mr. Red, and I did talk to Mr. Sepe about it. But I did never make an effort to contact him.

Q And what about did you do any criminal history research on Regina Blanks?

A Yes.

Q Did she have any criminal history that you recall?

A I believe so. I have it here. I have both their criminal histories here.

Q Does it sound like that Regina would have had a forgery?

A That sounds right.

Q How about CPS history, are you in a position to get any

CPS history information?

A Typically how that works is I mention that to the attorney; they take care of the subpoenas, and occasionally I will deliver them, but usually DAC has an in-house process person that would do that so that would not be something that I would do.

MS. SMITH: I think this witness list is in the file already, but I would like to make it an exhibit. It has been marked on a little bit.

THE COURT: Any objection to Exhibit 4?

MS. SMITH: Just your witness list from Mr. Schuchman, then I move to admit that once it's all put together.

THE COURT: Be admitted.

Q (By Ms. Smith) Mr. Blanks himself didn't give you a list of witnesses, did he?

A I don't believe so.

Q And you didn't talk to him late in the case, you would have talked to him earlier when you --

A Right. I spoke to his mother probably six times over the course of the case.

Q And were you ever told by Mr. Sepe that the defendant was going to try to get a SSOSA?

A I don't remember the specifics of what kind of plea he was going to take, but I remember there was comments that a plea was possible.

A P P E N D I X

I. B.

(PLEAS DIRECT CONSEQUENCE)

1 THE DEFENDANT: Yes.

2 THE COURT: Are you entering this plea freely and
3 voluntarily?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand what the State's
6 recommendation is regarding sentencing? 130 months.

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that set forth on
9 Attachment A there are a number of consequences to you,
10 including the requirements that you register as a sex
11 offender?

12 THE DEFENDANT: Yes.

13 THE COURT: Section 11 says, "During a period between
14 April 1, 2004 and May 19, 2004, I had sexual contact with
15 AR, who was less 12 years old at the time. I was at
16 least 36 months older and not married to her. This
17 occurred in Pierce County, Washington." You have signed
18 your name below that. Is that a true statement?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand child molestation in the
21 first degree is considered a strike offense? And
22 possible sentence that can be imposed, if you have two
23 similar strike offenses, is a sentence of life in prison
24 without the possibility of parole.

25 At this time, Mr. Blanks, how do you plead to the

two points, but they thought my calculated score was at seven but it was at six, so the range wasn't at 108 to 144; range was at 98 to 130 months.

Q And that was later changed, wasn't it?

A Well, I told them about it at that time, yes.

Q Did you ever discuss doing a SSOSA with Mr. Sepe?

A Yes. That date, matter of fact.

Q The 5th of May?

A I told him -- what's the word I am looking for -- talk to the prosecutor about a SSOSA plea.

Q You asked Mr. Sepe to talk to the prosecutor about a SSOSA plea. And did Mr. Sepe make any arrangements for you to try to get evaluated for a SSOSA?

A Yes.

Q Did anyone come to see you about a SSOSA?

A Yes, Jeanglee Strickland on May 20th.

Q And who -- is she with Comte's?

A Comte's, yes, SSOSA provider. Comte's and Associates.

Q Now, did Mr. Sepe explain to you what a SSOSA involved?

A He just said that it's like an alternative.

Q Yes.

A I would -- all -- I did all the investigation of it, that's what I did, that's when I asked him talk to the prosecutor about a SSOSA plea. But he never came to me with SSOSA plea. I asked him to talk to the prosecutor

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A Register for life part, that was the pretty much mostly it in the statement, that I had to admit to the charge.

Q Okay. And is there anything else that you -- that sticks out in your mind that he emphasized that he went over with you about the plea agreement?

A That was pretty much mostly it. The stressing -- he was stressing the register. When I get out on SSOSA, "you register all the time or they come and get you, violate your order," as the case may be.

* REFER TO SEPE TESTIMONY, Page, 109.

Q Now, you went in to court later that day on the 27th to do the plea?

A Yes.

Q And when you got there to enter the plea, you said Mr. Sepe wasn't there?

A No. He was not there.

Q Did you -- the court asked you questions during your -- when you entered the plea.

A Uh huh.

Q Did anybody mention the word SSOSA during that plea hearing that you remember?

A Nobody mentioned SSOSA.

Q If you were confused about something, did you feel that you could have asked Miss Contris about it?

A Well, nobody told me I could address anybody.

Q What do you mean?

1 Q You have read through that?

2 A Yes.

3 Q Accurate?

4 A Um, I guess. I can't remember that.

5 Q You don't remember it being any different -- you don't
6 remember it?

7 A Well, I am saying it was so fast, you know, I don't have
8 no --

9 Q You don't have an independent recollection of that
0 hearing?

1 A I would have to go over the plea hearing. I have, but I
2 have to look at it.

3 Q When you went over it, did you notice anything that was
4 wrong?

5 A Yeah. There was no SSOSA in it. Nobody mentioned SSOSA.

6 Q No, that you recall from the plea hearing, was there
7 anything in the transcript that was wrong?

8 A No SSOSA.

9 Q Was SSOSA mentioned at the plea hearing?

0 A It was supposed to have been. Mr. Sepe was supposed to
1 have been here for --

2 Q I am trying to narrow this down really simple. The
3 transcript is of the plea hearing, correct?

4 A Uh huh.

5 Q Is the transcript accurate of what happened?

1 you?

2 A I didn't say I wanted to know where Dino was. Did I just
3 say -- I don't think I just said that.

4 Q The court asked you during the plea hearing, "Are you
5 entering this plea freely and voluntarily?" And you
6 answered "Yes." Correct?

7 A I think so.

8 Q And then the court said, "Do you understand what the
9 State's recommendation is regarding sentencing, 130
0 months?" And you answered "yes"; is that correct?

1 A That's my range.

2 Q You understood the State's recommendation to be 130
3 months?

4 A No, I knew my range was 130 months.

5 Q Okay. The court asked you a straightforward question,
6 didn't it?

7 A Um --

8 Q "Do you understand what the State's recommendation is
9 regarding sentencing, 130 months?"

0 A That's my range. That's what I am saying.

1 Q And you answered "Yes," didn't you?

2 A Well, my range is 130 months. For the plea, my range is
3 98 to -- yeah, 98 to 130 months.

4 Q The court then asked you, "Section 11 states, quote,
5 'During a period between April 1, 2004 and May 19, 2004,

1 You are looking at 130 months in prison.

2 A The SSOSA was --

3 Q It was a simple question. It's yes or no.

4 A You can't just say anything to get a SSOSA, it has to
5 pertain to what the charge is, I guess.

6 Q Okay.

7 THE COURT: Does that have the attachment to it?

8 MR. SHEERAN: I believe so. Regarding registration?
9 Yes.

0 Q (By Mr. Sheeran) Mr. Blanks, I am going to go over this
1 plea form with you. Mr. Sepe went over this page,
2 correct?

3 A Yeah.

4 THE COURT: Page 1?

5 MR. SHEERAN: Page 1, thank you, Your Honor.

6 Q (By Mr. Sheeran) And Mr. Sepe went over all the rights
7 that you were waiving?

8 A No, he just went over this, 98 to 130 months.

9 Q Mr. Sepe did not tell you that you were waiving the right
0 to speedy trial?

1 A No.

2 Q He didn't tell you you had the right to remain silent
3 before and during the trial?

4 A No, no.

5 Q He didn't tell you you were waiving the right to a trial,

September of 2001.

Q And you went over both?

A Oh, yes.

Q You went over the appendix?

A Yes.

Q What else is on that page?

A Then paragraph G is the recommendation of the prosecuting attorney, and then paragraph H says the judge doesn't have to follow anybody's recommendation.

Q Okay. Could you go over the prosecutor's statement in the same manner that you went over it with him that day?

A Sure. "State's recommending 130 months; credit for time served. Community custody for life. Comply with registration requirements. HIV/DNA test. No contact with AR. Restitution, if any," and I wrote this.

You have got to understand, it's my understanding that your recommendation did not have a 130 months to life, but I explained to him through the appendix that it's really 130 months is the minimum, I think that's where I wrote it, because I believe that's how it appeared on your recommendation. It didn't have the life in there.

Q But the plea form does.

A The plea form on page 2 does, 90 to 130 months to life; yes, it does.

Q Okay.

Q That it was a triable case?

A Oh, very much so.

Q Not that you would win or lose?

A No.

Q I mean --

A There was a good argument to be made that the wife was behind this, no doubt about it.

Q You are not going to make that prediction. You are telling Mr. Blanks, I take it, as you are talking to him about the plea --

A Yeah.

Q -- "We have got a shot"?

A Sure.

Q You get convicted, however --

A You go away for 30 years.

Q 30 years, maybe for the rest of your life?

A Or life, yeah.

Q Take the plea, you got a plea, frankly, being out next week?

A Exactly.

Q That was the conversation you had?

A Oh, yeah. Typical for these kinds of cases for many clients.

Q Was there any point in there, as you are having these conversations and the weeks before this plea, that

A P P E N D I X

I. C.

(LORI SMITH) OFFENDER SCORE

MEMORANDUM

EXHIBIT #

1 of moving to withdraw his plea (that motion was denied by this Court).

2
3 The Defendant Derek Blanks' felony criminal history is as follows:

4 DATE OF VIOLATION	SENTENCING DATE	CRIME	VICTIM(S)
5 5/17/1997	7/31/97	Reckless Endangerment 1st Degree	Lewis & Hartfield
6 5/17/1997	7/31/97	Unlawful Possess. /Firearm 2nd [gun used to commit Reckless Endangerment]	
7 4/6/02	5/28/02	Assault Second Degree	Ms. Owens
8 4/6/02	5/28/02	Felony Harassment	Ms. Owens

9 Plus 1 additional point for being on Community Custody at the time of the current offense.

10 **THE 2002 CONVICTIONS**

11 In an Amended Information involving the 2002 crime, the State charged one count of
12 Assault in the Second Degree and on count of Felony Harassment. The charging document
13 stated in pertinent part as follows:
14

15 I, GERALD A. HORNE, Prosecuting Attorney for Pierce County. . . do accuse
16 DEREK LAMONT BLANKS of the crime of ASSAULT IN THE SECOND
DEGREE, committed as follows:

17 That DEREK LAMONT BLANKS, in Pierce County, on or about the 6th day of
18 April, 2002, did unlawfully and feloniously, under circumstances not amounting
19 to assault in the first degree, intentionally assault VENACIA OWNES[sic], and
20 thereby recklessly inflict substantial bodily harm, contrary to RCW
9A.36.021(1)(a), and against the peace and dignity of the State of Washington.

21 **COUNT II**

22 I, GERALD HORNE. . . do accuse Derek Lamont Blanks of the crime of
23 FELONY HARASSMENT, a crime of the same or similar character, and/or a
24 crime based on the same conduct or on a series of acts connected together or
25 constituting parts of a single scheme or plan, and/or so closely connected in
respect to time, place and occasion that it would be difficult to separate proof of
one charge from of the others. committed as
26 follows:

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(206) 383-1241

EXHIBIT

1 Endangerment 1st, the Unlawful Possession of a Firearm, and the Felony Harassment as one
2 point each (for 3 additional points), plus the community custody point to equal six points
3 according to the CCO (2+3+1=6). With 6 points the Defendant's sentencing range for the
4 current offense is 98-130 months. If the Defendant's score is 5, the range is 77-102 months, and
5 if his score is 4, the range is 72-96 months. Thus, even one point's difference in the Defendant's
6 score makes a significant difference in his standard range.
7

8 As set out in the following argument and law, the Defendant submits that the computation
9 of his offender score by the State is incorrect because the 1997 and 2002 offenses were
10 committed on the same date, involved the same victims, involved the same criminal intent, and
11 were sentenced on the same dates respectively.
12

II. ARGUMENT/APPLICABLE LAW

13
14 **THE DEFENDANT'S OFFENDER SCORE IS INCORRECTLY CALCULATED**
15 **IN THE PSI AND BY THE STATE BECAUSE HIS 1997 AND 2002**
16 **CONVICTIONS SHOULD BE DETERMINED BY THIS COURT AS BEING ONE**
17 **OFFENSE EACH BECAUSE THE CRIMES CONSTITUTED THE SAME**
18 **CRIMINAL CONDUCT RESPECTIVELY, THUS MAKING THE**
19 **DEFENDANT'S OFFENDER SCORE 4 RATHER THAN 6.**

20 Whether prior offenses are counted as the same criminal conduct is currently governed by
21 RCW 9.94A.525, which states in pertinent part

22 In the case of multiple prior convictions, for the purpose of computing the
23 offender score, count all convictions separately, except:

24 Prior offenses which were found, under RCW 9.9fA.589(1)(a), to encompass the
25 same criminal conduct, shall be counted as one offense, the offense that yields the
26 highest offender score. The current sentencing court shall determine with
respect to other prior adult offenses for which sentences were served concurrently
. . . whether those offenses shall be counted as
one offense or as separate offenses using the

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1 "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court
2 finds that they shall be counted as one offense, then the offense that yields the
3 highest offender score shall be used.

4 Id. [Emphasis added.]

5 The relevant portion of RCW 9.94A.589(1)(a) provides "'Same criminal conduct,' as
6 used in this section, means two or more crimes that require the same criminal intent, are
7 committed at the same time and place, and involve the same victim." Id. If all three elements
8 are present, the court must find that the crimes encompass the same criminal conduct and treat
9 them as one offense when calculating the Defendant's offender score. State v. Walden, 69
10 Wn.App. 183, 187-88, 847 P.2d 956 (1993). When considering whether crimes encompass the
11 same criminal intent, courts focus on the extent to which the criminal intent, viewed objectively,
12 changed from one crime to the next. State v. Dunaway, 109 Wn.2d 207, 215, 743 P.2d 1237
13 (1987) corrected, 749 P.2d 160 (1988) [emphasis added]. If crimes are committed for different
14 purposes, they are not considered to be part of the "same course of conduct." State v. Haddock,
15 141 Wn.2d 103, 113, 3 P.3d 733 (2000) [emphasis added]. This analysis may include, but is not
16 limited to, whether one crime furthered the other, whether they were part of the same scheme or
17 plan, and whether the criminal objectives changed." State v. Calvert, 79 Wn.App. 569, 578, 903
18 P.2d 1003 (1995).

19 Calculation of an offender score is reviewed *de novo*. State v. Roche, 75 Wn.App. 500,
20 512-13, 878 P.2d 497 (1994). If the trial court misapplies the law or abuses its discretion in
21 determining whether offenses constitute the same criminal conduct, the sentence will be
22 reversed. State v. Anderson, 92 Wn. App. 54, 960 P.2d 975

23 IAC Lori Smith - failed to address the court

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24 DEFENDANT'S MEMORANDUM IN RE: OFFENDER SCORE

25 5 on record for defendant
26 to WDP that resulted from miscalculation of score
obvious manifest injustice involuntarily plea significant
difference in sentence

1 (1998). "Review for abuse of discretion is a deferential standard, review for misapplication of
2 the law is not." Id.
3

4 Defendant's 1997 Reckless Endangerment/UPFA2nd Convictions

5 Pursuant to the above-set-out law, the Defendant's 1997 convictions for Reckless
6 Endangerment 1st Degree and Unlawful Possession of a Firearm in the Second Degree should
7 count as one point. These crimes were committed on the same day, at the same time, involved
8 the same victims, the firearm was used to commit the Reckless Endangerment, and in fact use of
9 the firearm was an essential element of the crime (put another way, the Defendant had to possess
10 the firearm in order to fire the shot to commit the Reckless Endangerment). The sentence for
11 these crimes was also served concurrent.
12

13 Reckless Endangerment was defined by former RCW 9A.36.045(1) and read in part as
14 follows: "A person is guilty of reckless endangerment in the first degree when he or she
15 recklessly discharges a firearm as defined in RCW 9.41.010 in a manner which creates a
16 substantial risk of death or serious physical injury to another person and the discharge is either
17 from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the
18 shooter." Id. (emphasis added). Furthermore, because of the way this crime was committed,
19 these two crimes involved the same criminal intent. Therefore, the two 1997 crimes should
20 count as one point.
21

22 Defendant's 2002 Convictions for Assault 2nd and Felony Harassment

23 For the same reasons, the 2002 convictions of Assault in the Second Degree and Felony
24 Harassment should also count as one offense, but as two points
25

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1 (because the conviction with the highest score--the Assault 2nd --controls, and also double
2 counts since the current offense is also a violent offense). Count I was an Assault in the Second
3 Degree charge involving the same victim as the Felony Harassment charge, Venacia Owens.
4 Both incidences occurred at the same time, on the same day, and at the same place. Moreover,
5 the very charging language in the State's Information as to the Felony Harassment charge
6 emphasizes the "same criminal intent" nature of these two crimes when it states
7

8 Gerald Horne, Prosecuting Attorney. . . do accuse Derek Lamont Blanks of the
9 crime of FELONY HARASSMENT, a crime of the same or similar character,
10 and/or a crime based on the same conduct or on a series of acts connected together
11 or constituting parts of a single scheme or plan, and/or so closely connected in
12 respect to time, place and occasion that it would be difficult to separate proof of
13 one charge from proof of the others, committed as follows:

14 That DEREK LAMONT BLANKS, in Pierce County, on or about the 6th day of
15 April, 02, . . . did unlawfully, knowingly threaten Venacia Owens to cause bodily
16 injury, immediately or in the future, . . . and by words or conduct placed the
17 person threatened in reasonable fear that the threat would be carried out. . .

18 Amended Information, Cause No. 02-1-01662-8.

19 Because the Assault 2nd and the Felony Harassment were committed at the same time,
20 against the same victim and involved the same criminal conduct and intent, this Court should
21 count these convictions as only one offense. Indeed, the very language in the State's charging
22 document for the Assault 2nd and Felony Harassment charges underlined above, stating in
23 particular that the harassment was ". . . a crime . . . constituting parts of a single scheme or plan",
24 this Court should find that these two crimes were the same criminal conduct and involved the
25 same criminal intent. Calvert, 79 Wn.App. at 578 ("This analysis may include, but is not limited
26 to, whether one crime furthered the other, whether they were

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TACOMA, WASHINGTON 98401
(206) 383-1241

EXHIBIT #

1 part of the same scheme or plan, and whether the criminal objectives changed.")

2
3 III. CONCLUSION

4 By statute, when imposing sentence for the current offense, this Court is empowered
5 with the discretion to decide whether prior multiple convictions served concurrently, committed
6 at the same time, same place, upon the same victim(s), and involving the same criminal intent,
7 should be counted as separate offenses or as one offense each. In the present case, it is
8 respectfully submitted that Derek Blanks' two crimes in 1997, and two crimes in 2002, both meet
9 the criteria for counting each as one offense for purposes of his offender score. Accordingly, this
10 Court should find that Mr. Blanks' offender score is 4, rather than 6.

11
12 RESPECTFULLY SUBMITTED THIS 23rd day of March, 2006.

13 
14 LORI SMITH, WSBA 27961
15 Attorney for Derek Blanks

16 CERTIFICATE OF HAND DELIVERY

17 The undersigned declares under the penalty of perjury
18 of the laws of the State of Washington that on
19 March 23, 2006, a copy of this document was
20 served upon counsel for the State by delivering
said document to the Pierce County Prosecutor's Office,
Reception Desk, 9th Floor, County/City Building,
Tacoma, Washington. (A bench copy was also
provided to Honorable Judge Orlando.
Signed on the date below at Tacoma, Washington.

21 3/23/06 
22 Date Signature

23
24
25 LORI SMITH
26 ATTORNEY AT LAW
P.O. BOX 1463
TACOMA, WASHINGTON 98401
(206) 383-1241

A P P E N D I X

I. D.

VRP SENTENCING MARCH 24, 2006
RECORD SHOW'S (MANIFEST INJUSTICE)

FILED
COUNTY CLERK'S OFFICE

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 30 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

vs.

DEREK LAMONT BLANKS,
Defendant.

ORIGINAL

No. 04-1-04442-3

COA No. 34628-1-II

VERBATIM REPORT OF PROCEEDINGS
SENTENCING

BE IT REMEMBERED that on the 24th day of March, 2006, the above-captioned cause came on duly for hearing before the HONORABLE JAMES ORLANDO, Department 1, Superior Court Judge in and for the County of Pierce, State of Washington;

WHEREUPON, the following proceedings were had and done, to wit:

Reported by:

Dana S. Eby, CCR, RPR
CCR# EB-Y*-*D-S312KG

1 assault in the second degree and felony harassment
2 from 2002. Those convictions are really the
3 foundation of the discussion in Counsel's brief
4 indicating that she does not believe -- or the
5 defendant is arguing, I should say, that those are
6 same criminal conduct.

7 So, without filing a brief at this point,
8 Your Honor, if the Court's comfortable proceeding, I
9 think the State can proceed.

10 THE COURT: Okay.

11 MR. SHEERAN: Maybe Defendant should go
12 first since it's Defendant's motion.

13 MS. SMITH: Okay. I did tell Mr. Sheeran
14 at our last hearing the substance of what I was
15 going to argue, which was that these should be
16 counted same criminal conduct, and I'm not going to
17 rehash this brief. I did provide Your Honor with a
18 copy of it, but especially with regard to the
19 assault in the second degree and the felony
20 harassment, obviously all of these were at the same
21 time, same place, same victims. I think it would
22 come down to the criminal intent factor.

23 As to the assault second and felony
24 harassment, even in the charging documents by the
25 State, they put in that this was a continuing course

1 it can be committed in a vehicle as well, but this
2 was a gun. So without having possession of a gun,
3 there wouldn't have been a reckless endangerment.

4 It's the defense's position that that should
5 count as one point for the 1997 one and that the
6 assault in the second and the felony harassment
7 which were against the same victim, I don't see how
8 the criminal intent would have changed from the
9 assault second and the felony harassment. But we're
10 just arguing that it's one point for the 1997
11 felonies, and then the assault second is going to
12 double count so it would be two points for the 2002
13 convictions rather than three.

14 I don't know if the judge wants to hear any
15 other argument as to whether it should be low end or
16 high end or anything from me at this point, or if
17 you just want to stick with this particular issue.

18 THE COURT: Well, let's deal with the
19 offender score issue first.

20 MS. SMITH: Okay.

21 MR. SHEERAN: Your Honor, with respect to
22 the '97 case, reckless endangerment in the first
23 degree, unlawful possession of a firearm in the
24 second degree, I've handed both to the Court the
25 Court of Appeals opinion that gives an explanation

1 don't wash, the State asserts that his offender
2 score is six, as he acknowledged in his guilty plea
3 in this case, that his standard range is 98 to 130
4 months, and I ask the Court to proceed to
5 sentencing.

6 THE COURT: Well, let me start first with
7 the assault second degree and felony harassment. I
8 think that's actually an easier argument because,
9 clearly, the conduct that was alleged originally in
10 the probable cause declaration which is set forth in
11 Exhibit 1 is that there was a completed assault done
12 and over with, the victim calmed down, the parties
13 continued driving down the freeway. There were then
14 the comments made that were the basis for the felony
15 harassment. I think that offense does not involve
16 the same criminal conduct. Those two offenses
17 should be counted separately. This current case
18 being a violent offense and the assault two is also
19 violent, that's doubled, so his offender score for
20 that would be a three for the assault and the felony
21 harassment.

22 As to the reckless endangerment and the
23 unlawful possession of a firearm in the second
24 degree, I was provided with a copy of the
25 unpublished opinion involving State of Washington

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offender score of four.

MR. SHEERAN: Actually, it's five
because --

THE COURT: All right.

MS. SMITH: Five, Your Honor.

THE COURT: He was on community custody,
so it is a five. And the range with an offender
score of five is --

MS. SMITH: 77 to 102 months.

THE COURT: I'll hear from the State on
its recommendation.

MS. SMITH: It is an indeterminate
sentence, Your Honor.

THE COURT: So it's 77 to 102 to life.

MS. SMITH: Yes, Your Honor.

THE COURT: With lifetime community
custody.

MR. SHEERAN: Yes. And lifetime
registration. The State's recommendation is 102
months in the Department of Corrections, Your Honor.
The State makes that recommendation based not only
on the facts of this case and the defendant's
criminal history and score, but also the extensive
misdemeanor criminal history.

When deciding whether or not one should be

1 the original charges under the real facts doctrine,
2 and the prosecutor doesn't seem to be doing that,
3 but I don't think this is a high end case.
4 Mr. Blanks has never, ever been either accused that
5 I know of or charged with anything like this type of
6 crime. I think his misdemeanor domestic violence
7 situations were quite awhile ago, most of them, and
8 really, his -- I mean, his felony crimes were two
9 incidents, regardless of the number of crimes.

10 I would ask that the Court impose mid-point
11 of the standard range. And again, the range is 77
12 to 102 months, and it is an indeterminate sentence,
13 so I realize the Court has to give that admonishment
14 as far as 77 to 102 months to life and just
15 basically take into consideration that this is not
16 the type of behavior that Mr. Blanks has ever done
17 before. I'd ask the Court to impose mid-point.

18 THE COURT: Thank you. Mr. Blanks, you
19 have the right to address the Court regarding
20 sentencing. Is there anything that you wish to say?

21 THE DEFENDANT: Your Honor, I had a long
22 speech to say, but I changed my mind. I'm not going
23 to say it. I'm going to ask that I get sentenced to
24 the low end because I intelligently made a plea
25 agreement. Why would somebody plead to the high end

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MY RIGHT
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OF COUNSEL
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*
MISTYPED
I SAID
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Dana Eby.

* Refers to, Appoint of New Counsel
FOR WITHDRAW OF PLEA, OCT. 21, 05
Page 14. AND NEW COUNSEL'S MEMORANDUM
JAN. 05, 05

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proposed in --

THE COURT: Appendix H.

MR. SHEERAN: -- Appendix H. Thank you.

THE COURT: Right. Obviously, one of the
most significant burdens is that you register as a
sex offender. That is an ongoing requirement. You
are also going to be under the supervision of the
Department of Corrections for life under this
conviction.

I think you have the possibility to, with
counseling and perhaps gaining some empathy for the
victim in this case, overcome this offense. I know
that the victim and her mother have been portrayed
as vindictive and evil in this and that they set you
up. But obviously, I have to go by what you pled
to, what the actual factual allegations are.

I don't think, based upon the information
before me, that this is either a high end case or a
low end case. I think I adopt the recommendation
for a mid-range, and I'll impose 90 months, which is
basically the mid-point, with the maximum being
life; lifetime community custody; mandatory HIV and
DNA testing; \$500 Crime Victim Penalty Assessment;
\$110 filing fee; \$100 DNA test fee; law abiding
behavior; no contact with the victim for life; no

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COUNSEL
FAILED TO
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DEFENDANT
OF BASIS TO
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STATUTE

release for "persistent offenders." The life sentence applies to both "Three Strikes" and "Two Strikes" offenders.

"Three Strikes"

The original "Three Strikes" legislation defined a "persistent offender" as an offender who is convicted of a "most serious offense" and who has at least two prior convictions for most serious offenses that would be included in the offender score under 9.94A.525. In order to be applicable to the three strikes statute, the first prior conviction must have occurred before the second prior conviction offense was committed. A "most serious offense" is defined as any of a list of enumerated offenses. (See RCW 9.94A.030(28)). The definition includes any Class B felony committed with sexual motivation and any felony committed with a deadly weapon.

"Two Strikes"

The definition of persistent offender also includes "Two Strike" sex offenders. To qualify as a persistent sex offender, an offender must have two separate convictions of specified sex offenses. The 1997 Legislature broadened the list of offenses that qualify as strikes under the "Two Strike" law. The specific offenses qualifying as "Two Strikes" are enumerated in RCW 9.94A.030(32)(b) and include: a) Rape First Degree, Rape Second Degree, Indecent Liberties by Forcible Compulsion, Rape of a Child First Degree (where the offender was age 16 or older at the time of the offense) Rape of a Child Second Degree (where the offender was 18 or older at the time the offense), Child Molestation in the First Degree; or b) Murder First Degree, Murder Second Degree, Kidnapping First Degree, Kidnapping Second Degree, Assault First Degree, Assault Second Degree, Burglary First Degree, Homicide by Abuse or Assault of a Child in the First Degree with a finding of sexual motivation; or c) an attempt to commit any of the crimes listed above. An offender convicted of one of these offenses, who has at least one previous conviction for one of these offenses, must be sentenced to life in prison without the possibility of release.

NONPERSISTENT SEX OFFENDERS

During the 2001 Second Special Session, the Legislature enacted 3ESSB 6151 - The Management of Sex Offenders in the Civil Commitment and Criminal Justice Systems. Any offender, who is not a persistent offender, who is sentenced for any one of the offenses enumerated in RCW 9.94A.712(1)(a)(i) or (ii), or an attempt to commit any of those offenses, or is convicted of any sex offense, except failure to register, and has a prior conviction for a "two-strike" offense under RCW 9.94A.030(32)(b), must be sentenced to an indeterminate term. This sentencing rule does not apply to offenders seventeen years old or younger at the time of the offense and who have been convicted of rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree.

A "6151" sentence must contain a minimum term of confinement that falls within the standard range, according to the seriousness level of the offense and the offender score, and a maximum term equaling the statutory maximum sentence for the offense. The minimum term may also constitute an exceptional sentence as provided by RCW 9.94A.535. A "6151" offender is eligible for earned release pursuant to RCW 9.94A.728; given the opportunity of receiving sex offender treatment while incarcerated; and are eligible for the Special Sex Offender Sentencing Alternative as provided in

total
dollars