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I. CLAIMS FOR RELIEF

1. The Superior Court's reliance upon a prior Oregon conviction to elevate Mr. Davenport's current Washington conviction to a "third strike" under the Persistent Offender Accountability Act ("POAA") was impermissible for two reasons:

(a) the Oregon robbery statute lacks three elements of second-degree robbery in Washington – a completed crime, ownership, and a taking from the person or presence of the victim – so that prior out-of-state conviction cannot be counted as a "strike"; and

(b) the prior conviction involved a "comparability" determination rather than just a decision about whether the prior conviction existed, so relegating this decision to a judge without the beyond-a-reasonable-doubt proof standard violated Apprendi.¹

2. The mandatory minimum sentence of life without possibility of parole is disproportionate to the crime of robbery and, hence, violates state Constitutional protections against cruel or unusual punishments.

3. Trial counsel was ineffective in failing to move to suppress due to Mr. Davenport's warrantless arrest.

II. ISSUES PRESENTED

¹ Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

1. Was the prior Oregon robbery conviction “comparable” to second-degree robbery in Washington, such that it can be classified as a “strike” (under RCW 9.94A.030(29)(o)) elevating Mr. Davenport’s standard sentence range to life without parole – given that the Oregon statute lacks the elements of a completed crime, ownership, and a taking from the person or presence of the victim the conviction under the Washington statute requires?

2. Does the trial court’s decision to raise the statutory maximum from the SRA range to life without parole, based on a prior Oregon conviction that could have been committed in a variety of ways, some of which would amount to a “strike” and some of which would not, without a jury determination beyond a reasonable doubt, violate Appendi?

3. Is a mandatory minimum sentence of life without possibility of parole for second-degree robbery unconstitutionally disproportionate, under the state Constitution?

4. Was the warrantless arrest of Mr. Davenport for this felony, based on the supposedly exigent circumstance of the nature of this crime, valid – and, hence, was trial counsel ineffective for failing to raise this issue?

III. STATEMENT OF THE CASE

A. Overview of Procedural Posture

Jerald Davenport, Jr., was convicted of two counts of robbery in the first degree for a single incident on November 19, 2000, in Clark

County, Washington. He was sentenced to life without parole under POAA. Following direct appeal, one of his robbery convictions was reversed. State v. Davenport, 154 Wn.2d 1001, 110 P.3d 753 (2005) (remanding to Court of Appeals for reconsideration of unit of prosecution issue); State v. Davenport, 2005 Wash. App. LEXIS 1550 (2005) (vacating one robbery conviction). One robbery conviction remains, and Mr. Davenport's case has now been returned to the Superior Court for re-sentencing. Because of his two prior second-degree robbery convictions, it is anticipated that another life-without-parole sentence may be imposed.

B. The Trial

The current conviction arose out of an incident at "Handy Andy's," a convenience store in Vancouver, Washington, on November 19, 2000. Janna Wiseman was working behind the counter, operating the cash register. Ricki Singleton was cleaning and stocking shelves. VRP:325-26; 342-43; 349-50; 363-64.

A male who had been in the store a few minutes earlier approached Wiseman at the checkout counter, and pulled a gun from his pocket. Singleton was near the counter, talking to Wiseman, but was not behind it. She did not have access to the registers at any time during the robbery. VRP: 327-28; 344-45; 352-52; 363-65.

The male pointed the gun at Wiseman and told her to give him the

money from the cash registers. Wiseman complied, while Singleton stood to one side and watched. The male thanked Wiseman and left the store, approximately three minutes after he first approached the counter. VRP:327-30; 332-33; 350-54.

As the robber left the store, Lilton James, a regular customer, pulled into the parking lot. James saw a male exit the building, walk to the right side of the parking lot, and drive away in a green Volkswagen Golf. He was unable to obtain a license plate number for the vehicle. VRP:367-72.

Wiseman, Singleton and James immediately contacted the police. Officer Boswell of the Vancouver Police Department responded and obtained a description of the car and the robber. VRP:380.

A few minutes later, Officer Spencer Harris of the Vancouver Police Department observed a vehicle matching the broadcast description headed westbound towards Interstate 205. Harris briefly observed the driver, who appeared to match the description given on the radio. As Harris pursued the vehicle, it entered Interstate 205 southbound, and accelerated. RP, p. 395-98.

Several police vehicles pursued the Volkswagen south on Interstate 205, across the bridge into northeast Portland, Oregon. The car left the freeway a short time later, and was found abandoned. A search of the area

did not locate the driver of the vehicle. VRP:398-406.

Police searched the interior of the Volkswagen, and determined that its registered owner was a Hispanic male, Carlos Pacheco. Inside the vehicle, the officers discovered a birth certificate belonging to the defendant, Jerald Davenport, Jr. They also located a photograph of two males, including the defendant. Harris looked at this photograph, and indicated to other officers that the male on the right – Davenport – looked like the driver. VRP:205-207; 405-408.

The two store clerks were shown pictures of Mr. Davenport in both a single-photo show up and a photographic montage, including a montage in which Davenport's photo – the only one repeated from the show-up – was the only person of color (he is a light-skinned African-American) depicted. They identified him. VRP:205-13; 232-35; 289-91; 245-58; 386-94; 418-19.

On November 22, 2000, three days after the incident, police officers received information that Davenport was residing at a home in the Portland area. Several officers went to the house to arrest Davenport. But they did not have a warrant for Davenport's arrest. The Oregon officers were aware that Davenport had an arrest warrant in Clark County, for an *unrelated* felony probation violation. This warrant was not the subject of any ongoing extradition proceedings in the State of Oregon. VRP:53-57;

70-74.

Officers encountered two individuals coming from Davenport's residence, but did not determine whether they lived there. These individuals indicated that they did not know whether anyone was in the residence, and that they did not care if officers looked for him inside. The officers then entered the residence, ordered Davenport downstairs at gunpoint, and arrested him. VRP:54-58; 68-69; 71-78.²

Before that, the court conducted a CrR 3.5 hearing concerning the admissibility of the defendant's statements to police. The court ruled that the statements were voluntarily made after a knowing and intelligent waiver of rights, and that they were admissible at trial. Trial counsel did not move to suppress the statements as the product of the defendant's warrantless arrest from his residence.

Mr. Davenport was convicted following a bench trial.

C. Sentencing

Because Mr. Davenport had two prior convictions for robbery, the trial court sentenced Davenport under the POAA to life imprisonment without possibility of parole. VRP:522-40. As discussed above, one of

² Davenport was bleeding from a gash on his neck, the result of an attempted suicide. A large amount of blood was located in the residence. As a result of his wound, Davenport lost significant blood, became short of breath, and lost consciousness. VRP:30-33; 46-47; 49-50; 58-59; 77-81; 155-68. Davenport was taken to Emmanuel Hospital, where doctors spent several hours tending to his wound.

the robbery convictions was vacated; one remains; and the two prior “strikes” remain, also.

IV. ARGUMENT

A. **Mr. Davenport’s Prior Oregon Second-Degree Robbery Conviction Cannot Count as a “Strike”, Because Its Elements Are Not “Comparable” to The Elements of Second-Degree Robbery in Washington.**

1. *Mr. Davenport’s Prior Oregon Conviction for Second-Degree Robbery*

Mr. Davenport was convicted of second-degree robbery in Oregon in 1992.

He was charged on November 19, 1992, with two counts of robbery in the second degree, in violation of ORS 164.405, for an October 17, 1992, robbery; the charging document is attached as Appendix A.

But he was convicted of just one count. The Order Entering Plea of Guilty Pursuant to Petition Filed, dated April 15, 1993, Appendix B, shows that Mr. Davenport pled guilty to Count 1, robbery in the second degree. As discussed in Section (2) below, that crime can be committed in a variety of ways. Some ways do not require proof of a completed crime; some ways do not require proof that the taking was from the person or presence of the victim; some ways do not require proof of the victim’s ownership of the property taken. The Judgment did not specify which way Mr. Davenport’s second-degree robbery was committed. It recited

only that he was convicted of second-degree robbery. See Appendix C (Judgment).

The Petition to Plead Guilty and Waiver of Jury Trial contains Mr. Davenport's statement, and it did not fill in those blanks either; it said: "On 10/17/92, I helped another person steal money from a store clerk. The other person pretended he had a gun." Petition to Plead Guilty, paragraph 15-A, Appendix D. This statement does not contain any admission that he took anything from the person or presence of the clerk, or say anything about ownership of the money, or whether an actual robbery was completed.

2. ***Oregon's Second-Degree Robbery Statute Lacks The Elements of a Completed Taking, Ownership, and Taking From the Person of Another, That Are Contained in Washington's Second-Degree Robbery Statute***

When dealing with out-of-state or foreign convictions in a "three strikes" or POAA case, Washington courts first ask whether the out-of-state conviction is "comparable" to one of the Washington convictions that counts as a "strike," so that it can be counted as a "strike" for "three strikes" purposes. State v. Russell, 104 Wn. App. 422, 440, 16 P.3d 664 (2001).

To determine if the foreign conviction is comparable to a "strike" – that is, comparable to a most serious offense which would count as a strike

under RCW 9.94A.030(29)(o) – the court must compare the elements of the out-of-state offense with the elements of a comparable Washington offense. State v. Morley, 134 Wn.2d 588, 605, 952 P.2d 167 (1998). If the elements of the out-of-state offense are the same as those of the comparable Washington crime, then the foreign conviction is comparable. Morley, 134 Wn.2d at 605.

If the out-of-state offense is missing any element required to prove the Washington counterpart of the offense, then the foreign conviction is not comparable to its purported Washington counterpart. Id., 134 Wn.2d at 606; Russell, 104 Wn. App. at 441.

In the past, Washington courts had ruled that if the foreign statute lacked *some* of the elements of a purportedly comparable Washington statute; or if the foreign statute contained alternative elements, *some* of which are missing from the supposedly comparable Washington crime; then the Washington court could review portions of the foreign conviction record to figure out which alternative and what facts actually applied to the defendant. See State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452 (1999).

But that has changed. In In re the Personal Restraint of Lavery, 154 Wn.2d 249, 111 P.3d 837 (2005), the Washington Supreme Court ruled that the comparability analysis is based, first and foremost, on a side-

by-side comparison of the elements of the Washington and out-of-state crimes. Any comparison of the facts allegedly underlying the conviction is at best “problematic,” according to that Court, given the practical consideration that a person who pled guilty to a prior foreign offense did not necessarily have any incentive to litigate the specifics of the allegations that the state of Washington now sought to use against him. Id., 154 Wn.2d at 255.

We therefore compare the elements of second-degree robbery in Oregon with the elements of second-degree robbery in Washington, to see if the former is comparable to the latter.

Mr. Davenport was charged with second-degree robbery in Oregon in violation of ORS 164.405. That statute provides, “(1) A person commits the crime of robbery in the second degree *if the person violates ORS 164.395* and the person: (a) Represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or (b) Is aided by another person actually present.” (Emphasis added.)

The referenced ORS 164.395 provides – or rather provided, at the time of Mr. Davenport’s prior Oregon conviction:

(1) A person commits the crime of robbery in the third degree *if in the course of committing or attempting to commit theft* the person uses or threatens the immediate use of physical force *upon another* person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property *or another person* to deliver the property or to engage in other conduct which might aid in the commission of the theft.

(Emphasis added.) As the emphasized portions show, in the order in which they appear, this robbery statute does not require proof of a completed crime; does not require proof of taking from the person or presence of another (that force can be used, instead, on anyone); and does not require proof of another's ownership.

This third-degree robbery statute, by its prohibition of theft, incorporates by reference the elements of Oregon's theft statute, ORS 164.015. That statute sets forth a variety of ways of committing theft, including several that do not involve a taking from or in the presence of the victim, such as simply taking lost or mislaid property, withholding property, and obtaining property by deception; it also lacks the element of taking the property from the actual owner:

A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065; or

(3) Commits theft by extortion as provided in ORS 164.075; or

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

In Washington, second-degree robbery is defined in RCW 9A.56.190 and RCW 9A.56.210. The first statute, RCW 9A.56.190, defines robbery:

A person commits robbery when he unlawfully takes personal property *from the person of another or in his presence against his will* by the use or threatened use of immediate force, violence, or fear of injury *to that person or his property or the person or property of anyone*. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

(Emphasis added.) The second statute, RCW 9A.56.210, provides that second degree robbery is robbery, as defined above.

Both the Oregon and Washington statutes require that force or threats of force be used.

But there are three other portions of the Oregon statute that are narrower than the counterpart Washington statute. First, Oregon's statutory definition of robbery requires that a person, while "in the course

of committing or *attempting* to commit theft,” use force or threats of force, etc. ORS 164.395 (emphasis added). Washington’s robbery statute requires an actual taking, not just an attempt.

Second, Oregon’s second-degree robbery statute *lacks the element of a taking from the person or the presence of another*. It criminalizes as second-degree robbery all sorts of takings, incorporating by reference all the different sorts of theft listed in ORS 164.015. That theft statute criminalizes takings of lost or mislaid property; of “property delivered by mistake”; and even of property taken “by deception.” ORS 164.015(2), (4). Such takings are not necessarily from the person or presence of the victim; more likely than not, those sorts of takings occur some distance away from the victim.

Oregon’s robbery statute, which incorporates the elements of this Oregon theft statute, does not provide the missing elements. Under ORS 164.405, second-degree robbery includes *either* the element that the defendant purported to be armed, *or* the element that he was aided by another person. Aiding can certainly occur outside the presence of the victim in a theft by deception, or theft of lost or mislaid property, etc., situation; use of a weapon can, too. Under ORS 164.405’s cross-referenced ORS 164.395, second-degree robbery also requires “immediate use of physical force.” But such physical force can be used on any person,

or in the statute's words, "another person." It does not have to be the victim. Thus, neither of these statutes supplies the missing elements that the theft statute lacks.

Related to this second problem is the third problem, that is, the ownership element. The Washington robbery statute requires proof of taking from the owner, that is, from someone with an ownership or possessory interest in the property. State v. Bunting, 115 Wn. App. 135, 143 & nn. 17-18, 61 P.3d 375 (2003) (cited with approval in In re Laverty, 154 Wn.2d 249). This element is not contained in the Oregon statute. See, e.g., ORS 164.075 (theft by extortion lacks this element; this is one of the alternative grounds of theft in the theft statute).

Hence, the elements of the prior Oregon conviction are not "comparable" to the elements of Washington's second-degree robbery statute. Since the elements of the Oregon statute are broader than the elements of the Washington statute, the two statutes are not comparable.

We acknowledge that Division II rejected an argument similar to this one in State v. McIntyre, 112 Wn. App. 478, 482, 49 P.3d 151 (2002). In that case, this Court analyzed the element of a taking from the person or presence *of the victim* – and concluded that under both Washington and Oregon law, the force could be used either to obtain or retain the property, so the force *against the victim* did not have to be contemporaneous with

the taking. All of the examples used in the McIntyre opinion involved taking or retaining property from the person or presence *of the victim*; all of the analysis in that opinion assumed that the element in both statutes was use of force *against the victim*. The McIntyre court therefore rejected the defendant/appellant's argument that the Oregon statute lacked the element of taking from the person or presence that the Washington statute contained.

But we are focusing on something else. We are focusing on the fact that the Washington statute requires proof of a taking (or retaining) from the person or presence *of the victim*, or, in Washington's statutory language, "takes personal property from the person of another or in his presence ...". The Oregon statute does not require proof of a taking from the person or presence of the victim at all – the theft can be done at a distance, by deception, by retaining lost or mislaid property, or by extortion, and in Oregon the force required can be against anyone – in Oregon's statutory language, "upon another person," without limitation. The McIntyre court thus rejected an argument that attempted to distinguish the Oregon and Washington second-degree robbery statutes on the basis of *when* the force was used. It did not address the argument that we make – the argument that the Washington statute narrowly limits the recipient of the use of force to the victim of the taking while the Oregon statute does

not - at all.

Further, the McIntyre court did not address the ownership issue on which the appellate court ruled in Bunting. It could not address that argument, because Bunting was decided after McIntyre.

3. *This Comparison of the Elements is Outcome-Determinative; No Further Comparison of Facts is Permitted*

It is this comparison of the elements – rather than a comparison of allegations– that must form the “cornerstone” of this Court’s inquiry.³

In fact, following Lavery, this comparison of the elements should provide the end of the inquiry. As the Supreme Court stated in In re Lavery, 111 P.3d 837, 842: “Any attempt to examine the underlying facts of a foreign conviction, facts that were neither admitted or stipulated to, nor proved to the finder of fact beyond a reasonable doubt in the foreign conviction, proves problematic. Where the statutory elements of a foreign conviction are broader than those under a similar Washington statute, the foreign conviction cannot truly be said to be comparable.” As the Lavery court acknowledged, this conclusion is bolstered by Apprendi v. New Jersey, 530 U.S. 466, 490, which held that any *fact* increasing the statutory

³ Morley, 134 Wn.2d at 606 (“While it may be necessary to look into the record of a foreign conviction to determine its comparability to a Washington offense, the elements of the charged crime must remain the cornerstone of the comparison. Facts or allegations contained in the record, if not directly related to the elements of the charged crime, may not have been sufficiently proven in the trial.”).

maximum must be determined by a jury, by the beyond a reasonable doubt standard.

The Laverty Court's ruling on this point applies here, in large part because that case arose in virtually the same procedural posture as this one, that is, in the context of a personal restraint petition challenging a "three strikes" determination based on a prior, arguably incomparable, prior conviction. Laverty, 111 P.3d 837. The Laverty Court specifically explained of Apprendi's impact on the comparability determination:

In Apprendi, the United States Supreme Court held that *except for a prior conviction*, a "fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi, 530 U.S. at 490. Life without possibility of parole is a penalty beyond the statutory maximum for the crime of second degree robbery.

In applying Apprendi, we have held that the existence of a prior conviction need not be presented to a jury and proved beyond a reasonable doubt. ... All a sentencing court needs to do is find that the prior conviction exists. ... No additional safeguards are required because a certified copy of a prior judgment and sentence is highly reliable evidence. ... *While this is also true of foreign crimes that are identical on their face, it is not true for foreign crimes that are not facially identical. In essence, such crimes are different crimes.*

Laverty, 111 P.3d 837, 841-42 (emphasis in original).⁴

⁴ See United States v. Rodriguez-Gonzales, 358 F.3d 1156, 1158-61 (9th Cir. 2004) (prior conviction must be proven to jury if it is being used to elevate a misdemeanor offense to a felony).

4. *Even a Review of the Factual Record of the Prior Oregon Conviction Does Not Classify It As a Strike*

Even if this Court could review the factual record, it would not prove that the prior Oregon conviction was comparable to second-degree robbery in Washington.⁵ If the Washington court could look at the Oregon documents to see if that prior robbery was based on an actual theft or an attempted theft, and if the theft was from the person or presence of another, the answer would not be clear.

Mr. Davenport was charged with robbery during the course of a theft in Oregon. But the admission in his guilty plea states only: “On 10/17/92, I helped another person steal money from a store clerk. The other person pretended he had a gun.” Petition to Plead Guilty, paragraph 15-A, Appendix D. This does not say whether the theft was attempted or completed. It does not say how the theft occurred, or whether Mr. Davenport actually helped in the clerk’s presence, or even whether the person he “helped” got that for. Thus, even if this Court could permissibly

⁵ We note that such a comparison is not barred just by Laverty, but also by other pre-Laverty Washington cases. Those prior cases limited the documents that the Washington court could consider in deciding whether the prior crime was factually comparable to a Washington “strike” and barred reliance upon documents reciting conduct that was not necessarily proven. E.g., State v. Morley, 134 Wn.2d at 612 (Washington court can look at prior *stipulation to facts* to determine the basis of the prior conviction; no comment on whether other sources of factual support might also be sufficient); State v. Bunting, 115 Wn. App. 135, 140-41 (declining to rely on facts *alleged* in Illinois complaint and “official statement of facts” to establish element of specific intent on prior conviction).

consider this guilty plea statement, it cannot be used to supply the missing elements that the statute lacks.

B. The Sentence of Life Imprisonment With No Possibility of Parole is Grossly Disproportionate to the Crime of Robbery in the Second Degree and, Hence, Violates the State Constitution.

1. Prior Treatment of This Issue by the Washington Supreme Court in Rivers⁶.

The Washington State Constitution bars cruel or unusual punishments, and that portion of our Constitution is more protective of individual rights than is the federal Constitution.⁷ In fact, the Washington Supreme Court has explicitly ruled that Washington’s constitutional requirement of *proportionality* in sentencing – the protection at issue here – is more protective of individual rights than is the U.S. Constitution. State v. Fain, 94 Wn.2d 387, 617 P.2d 720 (1980).

In State v. Rivers, 129 Wn.2d 697, 712-15, however, the Court ruled that application of the “three strikes” law to a defendant convicted of second-degree robbery did *not* constitute cruel punishment. It examined several factors, including a comparison of the punishment imposed for this

⁶ State v. Rivers, 129 Wn.2d 697, 921 P.2d 495 (1996).

⁷ State v. Roberts, 142 Wn.2d 471, 506, 14 P.3d 713 (2000), amended by Order Changing Opinion (February 2, 2001) (citing “our repeated recognition that the Washington State Constitution’s cruel punishment clause often provides greater protection than the Eighth Amendment”) (numerous citations omitted).

crime in the other states, and concluded:

It is likely Defendant Rivers would have received a similar, harsh sentence for his third serious offense under the majority of jurisdictions in this country. The penalties vary, but many include life sentences for three-time offenders. This court has held that the distinction between life sentences with and without parole is not significant. In re Grisby, 121 Wn.2d 419, 427, 853 P.2d 901 (1993).

Thus, without conducting a state by state comparison of the actual penalties imposed in other states, the Rivers court summarily stated that all such sentences would be harsh. It then concluded that the difference between a harsh life sentence that involves parole, and a harsh life sentence that denies parole, was not “significant.”

Both conclusions must be re-evaluated. It is not true that most other jurisdictions would impose an equally harsh sentence; and it is no longer legally correct to say that the difference between even a life with parole sentence and a life without parole sentence is not “significant.”

2. ***Rivers Must Be Re-Evaluated, Because the Washington Supreme Court – in Thomas⁸ – Ruled That the Difference Between Life Without Parole and Life With Parole Was Constitutionally Significant.***

With respect to the latter point, the Washington Supreme Court has now ruled that the difference between even a life with parole sentence and a life without parole sentence is constitutionally significant. State v.

⁸ State v. Thomas, 150 Wn.2d 821,83 P.3d 970 (2004).

Thomas, 150 Wn.2d 821, 847 (explicitly acknowledging that despite the contrary statement in Rivers, quoted above, the Court was now holding: “For several reasons, we hold that there *is* a significant difference between a life sentence with parole and a sentence of life without parole in the context of capital sentencing.”). This alone compels re-evaluation of Rivers’ conclusion.

3. ***Rivers Must Be Re-Evaluated, Because a Multi-State Comparison of Sentences for Similar Crimes Shows That the Difference is Constitutionally Significant Under Thomas.***

Now that we know that the difference between a sentence for a term of years and a sentence of life without parole matters, there is no way to do the comparability analysis other than by actually comparing the sentence imposed for Mr. Davenport’s crime of conviction, with the sentence he would have received in other states. The Rivers Court did not do that; we present that comparison here.

a. **The Maximum for This Crime In Washington – Without the Three Strikes Law – Would Be 116 Months.**

First-degree robbery, Mr. Davenport’s crime of conviction, is a Class A felony. Without the three strikes law, the statutory maximum for such a class A felony would be life in prison (though not life without possibility of parole). RCW 9A.56.200; RCW 9A.20.021(1)(a).

The standard sentence range, however, with a criminal history score of 7, was 87 to 116 months, as the Judgment itself states. Further, second-degree robbery – the basis for Mr. Davenport’s two prior “strikes” – constitute Class B felonies, with a statutory maximum of ten years.

Thus, Mr. Davenport’s life without parole sentence is very much more serious than the sentence he would have received without these prior convictions in Washington.

b. The Average Sentence for This Crime in Washington – Without The Three Strikes Law – Would Be 75 Months.

The Sentencing Guidelines Commission keeps statistics on sentences for all crimes in Washington, and we have learned from them that the average prison sentence for the offense of *second-degree robbery* in Washington, under the SRA, from 1999 to 2004, has been approximately 19.6 months.⁹ Please see Tables 2 and 11 in Appendix E, which show the average sentence imposed by offense for Robbery 2 and Theft 1, and the sentence departure by type and offense for the same crimes, respectively.

The average prison sentence for the offense of *first-degree robbery* in Washington, under the SRA, for the period July 1, 1999 to June 30, 2004, has been 75.6 months. See attachments in Appendix E.

⁹ Sentencing Guidelines Commission, Statistical Summaries, 1997-2001.

Mr. Davenport's sentence of life imprisonment is disproportionate to both of those average sentences.

c. The Maximum Sentence for Both First- and Second-Degree Robbery in Most Other States is Far Less Than Life Without Parole.

The next question is whether Mr. Davenport's punishment is disproportionate to sentences imposed in *other* jurisdictions for the same crime.

For that reason, we did a multi-state analysis of the sentences imposed in other states for the comparable crime. In some cases that comparable crime may be characterized as second-degree robbery; in some cases it may be characterized as first-degree robbery. We include the results of that survey for both crimes, here.

ROBBERY STATUTES AND PENALTIES BY STATE

RCW 9A.56.210 (2002), Robbery in the second degree:

- (1) A person is guilty of robbery in the second degree if he commits robbery.
- (2) Robbery in the second degree is a class B felony.

State	Robbery Statute	Sentence	Fine
Alabama	Code of Ala. § 13A-8-43(2)(b) (2005) Robbery 3rd degree Class C felony	Code of Ala. § 13A-5-6 (3) (2005) not less than 1 yr 1 day, not more than 10 years	Code of Ala. § 13A-5-11 (a)(3) (2005) not more than \$5,000

Alaska	Alaska Stat. § 11.41.510 (a)(2)(b) (2006) Robbery 2nd degree Class B Felony	Alaska Stat. § 12.55.125 (d) (2006) not more than 10 yrs	Alaska Stat. § 12.55.035 (3) (2006) not more than \$100,000
Arizona	A.R.S. § 13-1902A.B. (2006) Robbery Class 4 felony	A.R.S. § 13- 702A.3 (2006) Min. 1.5 yrs. Max. 3 yrs.	A.R.S. § 13- 801A (2006) Not more than \$150,000
Arkansas	A.C.A. § 5-12-102 (a)(b) (2006) Class B Felony	A.C.A. § 5-4- 401 (a)(3) (2006) Not less than 5 yrs, not more than 20 yrs	A.C.A. § 5-4- 201 (a)(1) (2006) Not to exceed \$15,000
California	Cal Pen Code § 212.5 (c) (2006) Robbery 2nd degree	Cal Pen Code § 213 (B)(2) (2006) 2,3 or 5 yrs.	Not applicable
Colorado	C.R.S. § 18-4-301 (2005) Robbery Class 4 Felony	C.R.S. § 18-1.3- 401 (V) (A) (2005) Min. 2 yrs. Max. 6 yrs. Mandatory Period of Parole - 3 years	C.R.S. § 18-1.3- 701 (2005) No fine shall be imposed for conviction of a felony except as provided by §18-1.3-401
Connecticut	Conn. Gen. Stat. § 53a-136 (2004) Robbery 3rd degree Class D Felony	Conn. Gen. Stat. § 53a-35a (7) (2004) not less than 1 year; not more than 5 yrs	Conn. Gen. Stat. § 53a-41 (4) (2004) not to exceed \$5,000
Delaware	11 Del. C § 831(a) (2) (2005) Robbery 2nd degree Class E Felony	11 Del. C. § 4205(5) (2005) up to 5 yrs served at level	11 Del. C. § 4205 (k) (2005) as court deems appropriate

		V facility	
District of Columbia	D.C. Code § 22-2801 (2006) Robbery	D.C. Code § 22-2801 (2006) min. 2 yrs.-max. 15 yrs.	Not applicable
Florida	Fla. Stat. § 812.13 (c) (2005) Robbery 2nd degree Felony – 1st degree	Fla. Stat. § 775.082 3(c) (2005) not exceeding 15 yrs	Fla. Stat. § 775.083 (b) (2005) \$10,000
Georgia	O.C.G.A. § 16-8-40 (a)(2) (2005) Robbery	O.C.G.A. § 16-8-40 (b) (2005) Min. 1 yr – max. 20 yrs	Not applicable
Hawaii	HRS § 708-841(1)(b) (2005) Robbery 2nd degree Class B Felony	HRS § 706-660(1) (2005) 10 yrs	HRS § 706-640(1)(b) (2005) \$25,000
Idaho	Idaho Code § 18-6501 (2005) Robbery	Idaho Code § 18-6503 (2005) Not less than 5 yrs and may be extended to life	Not applicable
Illinois	720 ILCS 5/18-1(a) and (b) (2005) Robbery Class 2 Felony	730 ILCS 5/5-8-1(5) (2005) not less than 3 yrs, not more than 7 yrs	730 ILCS 5/5-9-1(a) (1) (2005) \$25,000
Indiana	Burns Ind. Code Ann. § 35-42-5-1 (2) (2005) Robbery Class C Felony	Burns Ind. Code Ann. § 35-50-2-6 (a) (2005) Fixed 4 yrs. (aggravating add <u>not more than</u> 4 yrs; mitigating subtract <u>not more than</u> 2 yrs)	Burns Ind. Code Ann. § 35-50-2-6 (2005) Not more than \$10,000
Iowa	Iowa Code § 711.3(2005) Robbery 2nd degree Class C Felony	Iowa Code § 902.9 4 (2005) not more than 10 years	Iowa Code § 902.9 4 (2005) At least \$1,000 but not more

			than \$10,000
Kansas	K.S.A. § 21-3426 (2005) Robbery Level 5/Person Felony	K.S.A. § 21-4704 (2005) Per grid on Kansas website 50-60 months	Not applicable
Kentucky	KRS § 515.030 (1)(2) (2005) Robbery 2nd degree Class C Felony	KRS § 532.060 (2)(c) (2005) Not less than 5 yrs, not more than 10 yrs	KRS § 534.030 (1) (2005) Not less than \$1,000, not greater than \$10,000 or double the commission of the offense, whichever is greater
Louisiana	La. R.S. § 14:65 A (2005) Simple Robbery	La. R.S. § 14:65 B (2005) Not more than 7 yrs, and/or fine	La. R.S. § 14:65 B (2005) Not more than \$3,000 and/or imprisonment
Maine	17 A M.R.S. § 651 1B(2), 2 (2005) Robbery Class B Crime	17-A M.R.S. § 1252 2B.(2005) not to exceed 10 yrs. (looks at criminal history)	17-A M.R.S. § 1301 1-A.B(2005) not to exceed \$20,000
Maryland	Md. Criminal Law Code Ann. §3-402(a)(b) (2006) Robbery Felony	Md. Criminal Law Code Ann. §3-402(a)(b) (2006) Not to exceed 15 yrs.	Not applicable
Massachusetts	Mass. Ann. Laws ch. 265 § 21 (2005) Confining or Putting in Fear a Person for the Purpose of Stealing	Mass. Ann. Laws ch. 265 § 21 (2005) For life or for any term of years	Not Applicable

Michigan	MCL § 750.531 (2005) Robbery; bank, safe or vault; compelling opening; destruction; attempts Felony	MCL § 750.531 (2005) For life or any term of years	Not Applicable
Minnesota	Minn. Stat. § 609.24 (2005) Simple Robbery	Minn. Stat. § 609.24 (2005) Not more than 10 yrs and/or fine	Minn. Stat. § 609.24 (2005) not more than \$20,000 and/or imprisonment
Mississippi	Miss. Code Ann. § 97-3-73 (2005) Robbery	Miss. Code Ann. § 97-3-75 (2005) Not more than 15 yrs.	Not Applicable
Missouri	§ 569.030 R.S.Mo. 1,2 (2006) Robbery 2nd Degree Class B Felony	§ 558.011 R.S.Mo. 1(2) (2006) not less than 5 yrs and not to exceed 15 yrs	Not Applicable
Montana	Mont. Code Anno. § 45-5-401 (1)(b) (2005) Robbery	Mont. Code Anno. § 45-5-401(2) (2005) not less than 2 yrs or more than 40 yrs and may be fined	Mont. Code Anno. § 45-6-103(2) (2005) not to exceed \$50,000
Nebraska	R.R.S. Neb. § 28-324 (1)(2) (2005) Robbery Class II felony	R.R.S. Neb. § 28-105 (1) (2005) Min. 1 yr. Maximum 50 yrs	Not Applicable
Nevada	NRS § 200.380(1)(a)(b), 2 (2005) Robbery	NRS § 200.380 (2) (2005) Not less than 2	Not Applicable

	Category B Felony	yrs, not more than 15 yrs	
New Hampshire	RSA 636:1.I (b), III (2005) Robbery – Class B Felony	RSA 625:9 (a)(2)(2005) More than 1 yr, not in excess of 7 yrs.	RSA 618:1 (2005) Imposed by the sentence of the court
New Jersey	N.J. Stat. §2C:15-1 a(2) (2005) Robbery 2nd degree crime	N.J. Stat. § 2C:43-6 a(2) (2005) Between 5 and 10 yrs	N.J. Stat. § 2C:43-3 a(2) (2005) \$150,000
New Mexico	N.M. Stat. Ann. § 30-16-2 (2006) Robbery 3rd Degree Felony	N.M. Stat. Ann. § 31-18-15A(5)(2006) 3 years imprisonment	N.M. Stat. Ann. § 31-18-15E(5)(2006) Court may impose fine not to exceed \$5,000
New York Note: no clear match - Definition of using “forcibly”	NY CLS Penal § 160.05 (2005) Robbery 3rd degree Class D Felony	NY CLS Penal § 70.00 2(d) (2005) Term fixed by court not to exceed 7 yrs	NY CLS Penal § 80.00 2(a)(b) (2005) Fixed by court not to exceed \$5,000 or double the amount of defendant’s gain
North Carolina	N.C. Gen. Stat. § 14-87.1 (2005) Common-law Robbery Class G Felony	N.C. Gen. Stat § 15A-1340.17(c) (2005) Max. 13-16 months	N.C. Gen. Stat § 15A-1340.17(b) (2005) Fines <u>may be included</u>
North Dakota	N.D. Cent. Code, § 12.1-22-01 (2005) Robbery Class C felony	N.D. Cent. Code, § 12.1-32-01 (4) (2005) Max. 5 yrs and/or fine	N.D. Cent. Code, § 12.1-32-01 (4) (2005) \$5,000 and/or imprisonment
Ohio	ORC Ann. 2911.02 (A)(3) (2006)	ORC Ann. 2929.14 (A)(3)	ORC Ann. 2929.18 (3)(c)

	Robbery Felony 3rd degree	(2006) 1,2,3,4 or 5 years	(2006) Not more than \$10,000
Oklahoma	21 Okl. St. § 791, § 794, § 797 (2005) Robbery 2nd degree Felony	21 Okl. St § 799 (2005) Not exceeding 10 yrs	Not applicable
Oregon	ORS § 164.395 (1)(b) (2003) Robbery 2nd degree Class C Felony	ORS § 161.605 (3) (2003) 5 yrs	ORS § 161.625 (1) (c) (2003) Not to exceed \$100,000
Pennsylvania	18 Pa.C.S. § 3701(a)(1)(V)(2)(b) (2005) Robbery Felony – 3rd degree	18 Pa.C.S. § 106 (b)(4) (2005) not more than 7 yrs	Not applicable
Rhode Island	R.I. Gen. Laws § 11- 39-1(a)(b) (2006) Robbery 2nd degree	R.I. Gen. Laws § 11-39-1(a)(b) (2006) Not less than 5 years and not more than 30 yrs And/or fine	R.I. Gen. Laws § 11-39-1(a)(b) (2006) Not more than \$10,000 and/or imprisonment
South Carolina	S.C. Code Ann. § 16- 11-325 (2005) Robbery Felony	S.C. Code Ann. § 16-11-325 (2005) Not more than 15 yrs	Not applicable
South Dakota	S.D. Codified Laws § 22-30-1, § 22-30-6, § 22-30-7 (2006) Robbery 2nd degree Class 4 felony	S.D. Codified Laws § 22-6-1 (6)(2006) 10 yrs. and fine may be imposed	S.D. Codified Laws § 22-6-1 (6)(2006) May add on \$15,000
Tennessee	Tenn. Code Ann. § 39-13-401 (2005)	Tenn. Code Ann. § 40-35- 111(b)(4)	Tenn. Code Ann. § 40-35- 111(b)(4)

	Robbery Class C felony	(2005) Not less than 3 yrs, not more than 15 yrs.	(2005) Jury may assess fine not to exceed \$5,000
Texas	Tex. Penal Code § 29.02(2)(b) (2005) Robbery Felony 2nd degree	Tex. Penal Code § 12.33 (a) (2005) not less than 2 yrs, not more than 20	Tex. Penal Code § 12.33 (b) (2005) May include fine not to exceed \$10,000
Utah	Utah Code Ann. § 76- 6-301 (1)(b)(3) (2005) Robbery Felony 2nd degree	Utah Code Ann. § 76-3-203 (2)(b) (2005) not less than 1 yr., not more than 15 yrs	Utah Code Ann. § 76-3-301 (1)(a) (2005) may be sentenced to pay fine not to exceed \$10,000
Vermont	13 V.S.A. § 2503 (2006) Larceny from the person	13 V.S.A. § 2503 (2006) not more than 10 yrs and/or fine	13 V.S.A. § 2503 (2006) not fined more than \$500 and/or imprisonment
Virginia	Va Code Ann. §18.2- 95 (ii) (2005) Grand Larceny	Va Code Ann. §18.2-95 (2005) Not less than 1 yr, not more than 20 yrs	Va Code Ann. §18.2-95 (2005) Not applicable unless sent to jail in a non- jury trial, than \$2,500 may be fined
Washington	RCW § 9A.56.190, RCW § 9A.56.210 (2005) Robbery 2nd degree Class B felony	RCW § 9A.20.021 (1)(b)(2005) 10 years and may include fine	RCW § 9.94A.550 (2005) 0-\$20,000 in addition to imprisonment

West Virginia	W. Va. Code § 61-2-12 (b)(2005) Robbery, second degree Felony	W. Va. Code § 61-2-12 (b) (2005) Not less than 8 years	Not applicable
Wisconsin	Wis. Stat. § 943.32 (1)(b) (2005) Robbery Class E Felony	Wis. Stat. § 939.50(3)(e) (2005) Not to exceed 15 yrs. And/or fine	Wis. Stat. § 939.50(3)(e) (2005) Not to exceed \$50,00 and/or imprisonment
Wyoming	Wyo. Stat. § 6-2-401(a)(ii)(b) (2005) Robbery Felony	Wyo. Stat. § 6-2-401(a)(ii)(b) (2005) Not more than 10 yrs	Not applicable

ROBBERY STATUTES AND PENALTIES BY STATE

RCW 9A.56.200 (2002), Robbery in the first degree:

- (1) A person is guilty of robbery in the first degree if:
 - (a) In the commission of a robbery or of immediate flight therefrom, he or she:
 - (i) Is armed with a deadly weapon; or
 - (ii) Displays what appears to be a firearm or other deadly weapon; or
 - (iii) Inflicts bodily injury; or
 - (b) He or she commits a robbery within and against a financial institution as defined in RCW 7.88.010 or 35.38.060.
- (3) Robbery in the first degree is a class A felony.

State	Robbery Statute	Sentence	Fine
Alabama	Code of Ala. § 13A-8-41 (2005) Robbery 1 st degree Class A felony	Code of Ala. § 13A-5-6 (a)(1) (2005) not less than 10 years, not more than 99 years or for life	Code of Ala. § 13A-5-11 (a)(1) (2005) not more than \$20,000
Alaska	Alaska Stat. § 11.41.500 (2006) Robbery 1st degree Class A Felony	Alaska Stat. § 12.55.125 (c) (2006) not more than 20 yrs 1 st offense 5-8 yrs 1 st and armed 7- 11 yrs; 2 nd offense 10-14 yrs; 3 rd offense 15-20 yrs	Alaska Stat. § 12.55.035 (2) (2006) not more than \$250,000
Arizona	A.R.S. § 13- 1904A.B. (2006) Armed Robbery Class 2 felony	A.R.S. § 13- 702A.1 (2006) Min. 4 yrs. Max. 10 yrs.	A.R.S. § 13- 801A (2006) Not more than \$150,000
Arkansas	A.C.A. § 5-12-103 (a)(b) (2006) Aggravated Robbery Class Y Felony	A.C.A. § 5-4-401 (a)(1) (2006) Not less than 10 yrs, not more than 40 yrs, or life	A.C.A. § 5-4-201 (d)(1) (2006) Not to exceed 2x amount of pecuniary gain
California	Cal Pen Code § 212.5 (a)(b) (2006) Robbery 1st degree	Cal Pen Code § 213 (B) (2006) 3,4 or 6 yrs. Dwelling (3,6 or 9 yrs - § 213 (A))	Not applicable
Colorado	C.R.S. § 18-4-302 (2005) Aggravated	C.R.S. § 18-1.3- 401 (1)(A)(II) (2005)	C.R.S. § 18-1.3- 401 (III)(A) (2005)

	Robbery Class 3 Felony	Min. 8 yrs. Max. 12 yrs. Increase of 4 yrs to presumptive range per (10)(b) (IX)	\$3,000-\$750,000
Connecticut	Conn. Gen. Stat. § 53a-134 (2004) Robbery 1st degree OR Robbery 2 nd degree (53a-135) Class B Felony OR Class C Felony	Conn. Gen. Stat. § 53a-35a (5) or (6) (2004) not less than 1 year; not more than 20 yrs OR not less than 1 yr; not more than 10 yrs	Conn. Gen. Stat. § 53a-41 (2) or (3) (2004) not to exceed \$15,000 OR Not to exceed \$10,000
Delaware	11 Del. C § 832(a) (2005) Robbery 1 st degree Class B Felony	11 Del. C. § 4205(2) (2005) Not less than 2 yrs, up to 25 years served at level V facility	11 Del. C. § 4205 (k) (2005) as court deems appropriate
District of Columbia	D.C. Code § 22- 2801 (2006) Robbery	D.C. Code § 22- 2801 (2006) min. 2 yrs.-max. 15 yrs.	Not applicable
Florida	Fla. Stat. § 812.13 (2) (a) (b) (2005) Robbery 1st degree Felony – 1st degree	Fla. Stat. § 775.082 3(a) (2)(2005) Life or not exceeding 40 yrs	Fla. Stat. § 775.083 (b) (2002) \$10,000
Georgia	O.C.G.A. § 16-8- 41 (2005) Armed Robbery	O.C.G.A. § 17- 10-6.1 (2) (b) (2005) Mandatory Min. of 10 years	Not applicable
Hawaii	HRS § 708-840 (2005) Robbery 1st degree Class A Felony	HRS § 706-659 (2005) Indeterminate term of 20 years, min. determined by parole	HRS § 706- 640(1)(a) (2005) Not exceeding \$50,000

		authority	
Idaho	Idaho Code § 18-6501 (2005) Robbery	Idaho Code § 18-6503 (2005) Not less than 5 yrs and may be extended to life	Not applicable
Illinois	§ 720 ILCS 5/18-5 (2005) or 5/18-2 Aggravated Robbery OR Armed Robbery Both - Class 1 Felony	§ 730 ILCS 5/5-8-1(4) (2005) not less than 3 yrs, not more than 15 yrs	§ 730 ILCS 5/5-9-1(a)(1) (2005) \$25,000
Indiana	Burns Ind. Code Ann. § 35-42-5-1 (2) (2005) Robbery Class B Felony	Burns Ind. Code Ann. § 35-50-2-5 (2005) Fixed term between 6 and 20 yrs, advisory is 10 yrs	Burns Ind. Code Ann. § 35-50-2-5 (2005) Not more than \$10,000
Iowa	Iowa Code § 711.2 (2005) Robbery 1 st degree Class B Felony	Iowa Code § 902.9 2 (2005) not more than 25 years	Not applicable
Kansas	K.S.A. § 21-3427 (2005) Aggravated Robbery Level 3/Person Felony	K.S.A. § 21-4704 (2005) Per grid on Kansas website 89-100 months	Not applicable
Kentucky	KRS § 515.020 (2005) Robbery 1 st degree Class B Felony	KRS § 532.060 (2)(b) (2005) Not less than 10 yrs, not more than 20 yrs	KRS § 534.030 (1) (2005) Not less than \$1,000, not greater than \$10,000 or double the commission of the offense, whichever is greater
Louisiana	La. R.S. § 14:64.1	La. R.S. §14:64.1	Not applicable

	A (2005) First Degree Robbery	B (2002) Not less than 3 yrs, and not more than 40 yrs	
Maine	17 A M.R.S. § 651 C, D, E (2005) Robbery Class A Crime	17-A M.R.S. § 1252 2A.(2005) not to exceed 30 yrs.	17-A M.R.S. § 1301 1-A.(A) (2005) not to exceed \$50,000
Maryland	Md. Criminal Law Code Ann. §3-403 (2006) Robbery with a Dangerous Weapon Felony	Md. Criminal Law Code Ann. §3-403(b) (2006) Not to exceed 20 yrs.	Not applicable
Massachusetts	Mass. Ann. Laws ch. 265 § 21 (2005) Confining or Putting in Fear a Person for the Purpose of Stealing	Mass. Ann. Laws ch. 265 § 21 (2005) For life or for any term of years	Not Applicable
Michigan	MCL § 750.531 (2005) Robbery; bank, safe or vault; compelling opening; destruction; attempts Felony	MCL § 750.531 (2005) For life or any term of years	Not Applicable
Minnesota	Minn. Stat. § 609.245 (2005) Aggravated Robbery	Minn. Stat. § 609.245 (2005) Not more than 20 yrs and/or fine	Minn. Stat. § 609.245 (2005) not more than \$35,000 and/or imprisonment
Mississippi	Miss. Code Ann. § 93-3-79 (2005) Robbery; use of deadly weapon	Miss. Code Ann. § 97-3-79 (2005) Not less than three yrs., max. life (jury)	Not Applicable

		determined)	
Missouri	§ 569.020 R.S.Mo. 1,2 (2006) Robbery 1st Degree Class A Felony	§ 558.011 R.S.Mo. 1(1) (2006) not less than 10 yrs and not to exceed 30 yrs	Not applicable
Montana	Mont. Code Anno. § 45-5-401 (2005) Robbery	Mont. Code Anno. § 45-5-401 (2005) not less than 2 yrs or more than 40 yrs and may be fined	Mont. Code Anno. § 45-4-401(2) (2005) not to exceed \$50,000
Nebraska	R.R.S. Neb. § 28- 324 (1)(2) (2005) Robbery Class II felony	R.R.S. Neb. § 28- 105 (1) (2005) Mand. Min. 3 yrs Maximum 50 yrs	Not Applicable
Nevada	NRS § 200.380(1)(a)(b), 2 (2005) Robbery Category B Felony	NRS § 200.380 (2) (2005) Not less than 2 yrs, not more than 15 yrs	Not Applicable
New Hampshire	RSA 636:1.I III (2005) Robbery – Class A Felony	RSA 625:9, III (a)(1)(2005) in excess of 7 yrs.	RSA 625:9 III(a)(1) (2005) Imposed by the sentence of the court
New Jersey	N.J. Stat. § 2C:15-1 a, b (2005) Robbery 1st degree crime	N.J. Stat. § 2C:43-6 a(1) (2005) Between 10 and 20 yrs	N.J. Stat. § 2C:43-3 a(1) (2005) Not to exceed \$200,000
New Mexico	N.M. Stat. Ann. § 30-16-2 (2006) Robbery 1 st Degree (second or more offense) or	N.M. Stat. Ann. § 31-18-15A(2) (5)(2006) 1 st degree – 18 yrs	N.M. Stat. Ann. § 31-18-15E (2)(5)(2006) Court may impose fine not to exceed

	2 nd Degree (first offense) Felony	2 nd degree – 9 yrs	\$15,000 OR not to exceed \$10,000
New York	NY CLS Penal § 160.15 (2005) Robbery 1 st degree Class B Felony	NY CLS Penal § 70.00 2(b), 3(a)(i) (2005) Term fixed by court not less than 15 years, not to exceed 25 yrs	NY CLS Penal § 80.00 2(a)(b) (2005) Fixed by court not to exceed \$5,000 or double the amount of defendant's gain
North Carolina	N.C. Gen. Stat. § 14-87 (2005) Robbery with firearms or other dangerous weapons Class D Felony	N.C. Gen. Stat § 15A-1340.17(c) (2005) Max. 103-129 months	N.C. Gen. Stat § 15A-1340.17(b) (2005) Fines <u>may be included</u>
North Dakota	N.D. Cent. Code, § 12.1-22-01 (2005) Robbery Class B felony	N.D. Cent. Code, § 12.1-32-01 (3) (2005) Max. 10 yrs and/or fine	N.D. Cent. Code, § 12.1-32-01 (4) (2005) \$10,000 and/or imprisonment
Ohio	ORC Ann. 2911.02 (B) (2006) Robbery Felony 2nd degree	ORC Ann. 2929.14 (A)(2) (2006) 2-8 years	ORC Ann. 2929.18 (3)(a) (2006) Not more than \$20,000
Oklahoma	21 Okl. St. § 791, § 794, § 801 (2005) Robbery or attempted robbery with dangerous weapon or imitation firearm Felony	21 Okl. St § 801(2005) Not less than 5yrs, up to life imprisonment	Not applicable
Oregon	ORS § 164.415 (2003) Robbery 1st degree Class A Felony	ORS § 161.605 (1) (2003) Max. of 20 yrs	ORS § 161.625 (1) (b) (2001) Not to exceed \$375,000
Pennsylvania	18 Pa.C.S. § 3701 (2005)	18 Pa.C.S. § 106 (2) (b)(2) (2005)	Not applicable

	Robbery Felony – 1 st degree	Max. more than 10 years	
Rhode Island	R.I. Gen. Laws § 11-39-1(a)(b) (2006) Robbery 1 st degree	R.I. Gen. Laws § 11-39-1(a)(3) (2) (2006) Not less than 10 years and not more than life And/or fine	R.I. Gen. Laws § 11-39-1(a)(b) (2006) Not more than \$15,000 and/or imprisonment
South Carolina	S.C. Code Ann. § 16-11-330(A) (2005) Robbery and attempted robbery while armed with a deadly weapon Felony	S.C. Code Ann. § 16-11-330(A) (2005) Not more than 30 yrs	Not applicable
South Dakota	S.D. Codified Laws § 22-30-1, § 22-30- 2, § 22-30-3, § 22- 30-7 (2006) Robbery 1st Class 2 felony	S.D. Codified Laws § 22-6-1 (4) (2006) 25 yrs. and fine may be imposed	S.D. Codified Laws § 22-6-1 (4) (2006) May add on \$50,000
Tennessee	Tenn. Code Ann. § 39-13-402 (2005) Aggravated Robbery Class B felony	Tenn. Code Ann. § 40-35- 111(b)(2) (2005) Not less than 8 yrs, not more than 30 yrs.	Tenn. Code Ann. § 40-35- 111(b)(2) (2005) Jury may assess fine not to exceed \$25,000
Texas	Tex. Penal Code § 29.03 (2005) Aggravated Robbery Felony 1st degree	Tex. Penal Code § 12.32 (a) (2005) Life, or any term not more than 99 yrs, less than 5 years	Tex. Penal Code § 12.32 (b) (2005) May include fine not to exceed \$10,000
Utah	Utah Code Ann. § 76-6-302 (2005)	Utah Code Ann. § 76-3-203 (1) (2005) not less than 5	Utah Code Ann. § 76-3-301 (1)(a) (2005) may be sentenced

	Aggravated Robbery Felony 1st degree	years, which may be life	to pay fine not to exceed \$10,000
Vermont	13 V.S.A. § 2503, § 2507 (2006) Larceny from the person, Larceny conviction in burglary or robbery prosecution	13 V.S.A. § 2503 (2006) not more than 10 yrs and/or fine	13 V.S.A. § 2503 (2006) not fined more than \$500 and/or imprisonment
Virginia	Va Code Ann. §18.2-58 (2006) Robbery	Va Code Ann. §18.2-58 (2006) Not less than 5 yrs, not more than life	Not applicable
Washington	RCW § 9A.56.190, RCW § 9A.56.200 (2005) Robbery 1st degree Class A felony	RCW § 9A.20.021 (1)(a)(2005) Term of life or fine fixed by court, or both	RCW § 9.94A.550 (2005) 0-\$50,000 in addition to imprisonment
West Virginia	W. Va. Code § 61-2-12 (a) (2) (2005) Robbery 1 st degree Felony	W. Va. Code § 61-2-12 (a) (2) (2005) Not less than 10 years	Not applicable
Wisconsin	Wis. Stat. § 943.32 (2) (2005) Robbery Class C Felony	Wis. Stat. § 939.50(3)(c) (2005) Not to exceed 40 yrs. And/or fine	Wis. Stat. § 939.50(3)(c) (2005) Not to exceed \$1000,00 and/or imprisonment
Wyoming	Wyo. Stat. § 6-2-401(c) (2005) Aggravated Robbery Felony	Wyo. Stat. § 6-2-401(c) (2005) Not less than 5 yrs, nor more than 25 yrs	Not applicable

This shows that with respect to second-degree robbery, the

majority of the states (31) have established a maximum penalty of ten years or less for this crime – and of those 31 states with a ten-year-or-less maximum penalty, thirteen establish a maximum penalty of ten years; seven establish a maximum penalty of six to nine years; seven establish a maximum penalty of only five years; and four establish a maximum penalty of even less than five years. The remainder of the states has statutory maximum penalties that are higher. Ten states establish a statutory maximum penalty of 15 years; four states establish a statutory maximum penalty of 20 years; one state has a maximum of 30 years; and one state each has a maximum of 40 years, 50 years, term that might be extended to life. Two states then have the highest punishment, which appears to be a term of life or any term of years.

With respect to first-degree robbery, the majority of the states (29) have established a maximum penalty of twenty-five years or less for this crime – and of those eleven states have a ten-year-or-less maximum penalty, seven establish a maximum penalty of ten years, and four establish a maximum penalty of six to nine years. The remainder of the states has statutory maximum penalties that are higher. Four states establish a statutory maximum penalty between 12 and 15 years; nine states establish a statutory maximum penalty of 20 years; five states have a maximum of 25 years; four states have a maximum of 30 years; five states

have a maximum of 40 years; one state has a maximum of 50 years; and five states have a term that might be extended to life. Six states then have the highest punishment, which appears to be a term of life or any term of years.

Thus, there is no state in the union that imposes life without parole as a punishment for second-degree robbery (which it is not a third strike); the table below shows the maximum statutory punishments for this crime in all 50 states and not one of them is life without parole:

SUMMARY OF MAXIMUM SENTENCING BY LENGTH OF TIME
BY STATE

for Robbery in the Second Degree

Length of Maximum Sentence	State
For a term of life or any term of years	Massachusetts Michigan
May be extended to life	Idaho
50 years	Nebraska
40 years	Montana
30 years	Rhode Island
20 years	Arkansas Georgia Texas Virginia
15 years	Dist. of Columbia Florida Maryland Mississippi

	Missouri Nevada South Carolina Tennessee Utah Wisconsin
10 years	Alabama Alaska Hawaii Iowa Kentucky Maine Minnesota New Jersey Oklahoma South Dakota Vermont Washington Wyoming
6 – 9 years	Colorado (6) Illinois (7) Louisiana (7) New Hampshire (7) New York (7) Pennsylvania (7) West Virginia (8)
5 years	California Connecticut Delaware Kansas North Dakota Ohio Oregon
Less than 5 years	Arizona (3) Indiana (4) New Mexico (3) North Carolina (1.5)

The same is true of first-degree robbery; there is not one state that

imposes a punishment of life without parole (when it is not a third strike),
as the following table summarizes:

SUMMARY OF MAXIMUM SENTENCING BY LENGTH OF TIME
BY STATE

for Robbery in the First Degree

Length of Maximum Sentence	State
For a term of life or any term of years	Alabama Massachusetts Michigan Mississippi Texas Washington
May be extended to life	Idaho Oklahoma Rhode Island Utah Virginia
50 years	Nebraska
40 years	Arkansas Florida Louisiana Montana Wisconsin
30 years	Maine Missouri Tennessee South Carolina
25 years	Delaware Iowa New York South Dakota Wyoming
20 years	Alaska

	Connecticut Hawaii Indiana Kentucky Minnesota New Jersey New Mexico (18) Oregon
15 years	Colorado (12) District of Columbia Illinois Nevada
10 years	Arizona Georgia (Mandatory Minimum) North Carolina North Dakota Pennsylvania Vermont West Virginia
6 – 9 years	California (9) Kansas (8.5) New Hampshire (7) Ohio (8)

d. The Maximum Sentence for Both First- and Second-Degree Robbery as Third Strikes in Other States is Still Less than Life Without Parole.

The next question is, what sentence would be imposed for this crime in states with “Three Strike” laws similar to Washington’s? The answer is that very few would impose the mandatory minimum term of imprisonment of life without parole.¹⁰ A summary of third strike penalties

¹⁰ For second-degree robbery: Louisiana, Mississippi, Montana and Washington; for first-degree robbery: Alabama (Code of Ala § 13A-5-9(b)(3) (2006)), Georgia (O.C.G.A. § 17.10.6.1 (a)(2) and §17-10-7(2) (2005)), Louisiana (La. R.S. § 15.529.1A.(1)(b)(ii) and

and maximum “third strike” sentencing by state is attached as Appendix F.

There are *fifteen states* that do not have “three strikes,” or equivalent “persistent offender,” or “habitual criminal,” laws applicable to a third felony conviction at all for second-degree robbery. They are: Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Iowa, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Virginia. See Appendix F. Then there are *nine states* that do not have “three strikes,” or equivalent “persistent offender,” or “habitual criminal,” laws applicable to a third felony conviction at all for first-degree robbery. They are: Arkansas, Idaho, Illinois, Iowa, Maine, Oregon, South Dakota, Tennessee and Vermont. Id. These states do not provide the harsh automatic penalty of life without possibility of parole for robbery even where it is a third serious felony.

There are then several states that have “three strikes” or equivalent laws applicable to a third felony conviction, but their third strike type of laws are *discretionary* in application – they do not automatically “click in” upon proof of prior convictions but are activated only if the priors are proved *and* the sentencing judge believes that the extended sentence is

La. R.S. § 14.2(13) (2005)), Mississippi (Miss. Code Ann. § 99-19-81, § 99-19-83 (2005)), Montana (Mont. Code Anno., § 46-18-219(1)(b)(iv) (2005), South Carolina (S.C. Code Ann. § 17-25-45 (A)(1), (C)(1) (2005)), Virginia (Va Code Ann. § 18.2-58, §19.2-297.1(e) (2006)) and Washington (RCW § 9.94A.570 (2005)).

appropriate given the nature of the offense and the character of the defendant. For second-degree robbery, those states are Hawaii, Indiana, Kentucky, Michigan, North Dakota, Rhode Island, Wisconsin. Appendix F. For first-degree robbery, those states are Hawaii, Maine, Michigan, Minnesota, North Dakota and Wisconsin. *Id.* Thus, these states do not provide the harsh automatic penalty of life without possibility of parole for first or second-degree robbery even where it is a third serious felony – they leave sentencing discretion where it has traditionally been, with the trial court judge.

Then there are a few states and the District of Columbia that do mandate some sort of increase in the statutory *maximum* sentence for first or second-degree robbery where it is a third serious felony. Those states are Connecticut (first-degree robbery), District of Columbia (first and second-degree robbery), Michigan (first and second-degree robbery), and Missouri (first-degree robbery). Appendix F. But these listed states only mandate an increase in the statutory maximum for robbery as a third “strike” – they do not provide an increase in the statutory mandatory minimum. Hence, they do not provide the harsh automatic penalty of life without possibility of parole for robbery even where it is a third serious felony. They do not provide any automatic sentence at all, but simply increase the discretion of the sentencing judge.

There are other states -- like Washington -- that have provided a mandatory increase in the statutory minimum sentence for robbery where as here it is a third "strike." But most of the states that have done so have not extended that mandatory increase in the statutory minimum sentence for robbery as a third "strike" to life *without possibility of parole*. Instead, they increase the mandatory minimum sentence by a matter of years -- sometimes a few years, and sometimes a great many years, but just by a set number of years. See Summaries of Maximum "Third Strike" Sentencing for Robbery in the Second Degree, Robbery in the First Degree, Appendix F.

e. Conclusion Regarding Rivers and Disproportionality.

Thus, the punishment of life in prison without possibility of parole for robbery as a third strike is impermissible under the Washington Constitution, despite the holding of Rivers to the contrary. Rivers' conclusion that the sentence of life without parole was not significantly different from sentences imposed in the other jurisdictions for this crime is simply incorrect under new, controlling, authority. First, it is now clear, following Thomas that a sentence of life without parole is significantly different from a sentence of life with parole and, hence, these differences must factor into the multi-state comparison of proportionality. Given that

recognition, it is now also clear that Rivers' factual conclusion was incorrect. The sentences that robbers receive in other jurisdictions are significantly different, and significantly shorter, than the sentence that Mr. Davenport received under Washington's three strikes law.

C. **The Warrantless Arrest of Mr. Davenport for this Felony Cannot Be Excused Due to "Exigent Circumstances" Which Consist Solely of the Nature of the Crime.**

1. *Treatment of this Issue on Direct Appeal*

On direct appeal, Mr. Davenport asserted that his trial lawyer provided ineffective assistance because she failed to challenge his arrest in Oregon, for this Washington felony conviction, on the ground that it was made without an Oregon warrant. The state responded that there was an outstanding warrant for Mr. Davenport's arrest from Washington. The appellate court rejected both Mr. Davenport's claim and the state's argument; it ruled that controlling authority bars reliance upon a Washington state warrant to conduct an arrest outside the jurisdictional limits of this state. State v. Davenport, 121 Wn. App. 1041, 2004 Wash. App. LEXIS 971 (2004), *reversed in part, remanded in part*, 2005 Wash. App. LEXIS 1550 (2005).

The appellate court ruled, instead, that "exigent circumstances" – an emergency – justified the warrantless arrest. State v. Davenport, 2004

Wash. App. LEXIS 971 at *15. Since exigent circumstances justified the arrest, there was no probability of success on a suppression motion, and hence his trial lawyer was not ineffective for failing to make such a motion. Id.

2. *This Issue Can be Raised Again in a PRP*

We recognize that an issue that was raised and rejected on direct appeal cannot be re-raised in a personal restraint petition, unless the “interests of justice” exception to this re-litigation bar is satisfied. In re Davis, 152 Wn.2d 647, 750, 101 P.3d 1 (2004). Thus, re-litigation of an issue is permitted if there is new law or “some other justification” for raising the issue again. Id. We respectfully suggest that the discussion of the true prerequisites to application of the exigent circumstances exception to the warrant requirements in Section (3), immediately below, provides such a justification.

3. *Both the U.S. Supreme Court and the Washington Supreme Court Focus on the Need for Prompt Action to Prevent Destruction of Evidence or Flight, Not on the Nature of the Crime, and a Three Day Lapse of Time Between the Crime and the Invasion is Insufficient Under Both Sources of Law*

Under controlling Supreme Court authority, the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry into a home for a routine felony arrest. Payton v.

New York, 439 U.S. 1044, 99 S.Ct. 718, 58 L.Ed.2d 703 (1978). And, “The general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible if the link between the evidence and the unlawful conduct is not too attenuated.” INS v. Lopez-Mendoza, 468 U.S. 1032, 1040, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984).

The appellate court in this case relied on State v. Terrovona, 105 Wn.2d 632, 716 P.2d 295 (1986), for its ruling that exigent circumstances justified Mr. Davenport’s warrantless arrest. State v. Davenport, 2004 Wash. App. LEXIS 971 at *15.

In Terranova, the Washington Supreme Court listed six prerequisites to application of the exigent circumstances exception: “(1) a grave offense, particularly a crime of violence, is involved; (2) the suspect is reasonably believed to be armed; (3) there is reasonably trustworthy information that the suspect is guilty; (4) there is strong reason to believe that the suspect is on the premises; (5) the suspect is likely to escape if not swiftly apprehended; and (6) the entry is made peaceably.” Id., 105 Wn.2d at 644. This list contains four prerequisites that focus solely on the nature of the offense, only one that asks if there is a danger of escape, and a final one that requires the entry into the home to be made peacefully. It does not even ask about the likelihood of destruction of evidence.

But the prerequisites to application of the exigent circumstances exception to the warrant requirement under federal law are different, and more demanding. They do not focus on the nature of the crime – indeed, under both state and U.S. Supreme Court law, even if the crime were murder there would have to be a separate showing of exigent circumstances to justify a warrantless entry into the home and arrest.

Instead, as the Supreme Court summarized in Illinois v. McArthur, 531 U.S. 326, 121 S.Ct. 946, 148 L.Ed.2d 838 (2001), application of the exigent circumstances doctrine depends not on the nature of the crime but on whether there is a need for immediate action to prevent destruction of evidence or escape, and on whether the least restrictive means available were used for the shortest period of time until a warrant did issue. As that decision reveals, those tests are especially difficult to satisfy where, as in Mr. Davenport’s case, the intrusion is into a private home, there is no risk of destruction of evidence, *and no warrant was ever sought*:

We conclude that the restriction at issue was reasonable, and hence lawful, in light of the following circumstances, which we consider in combination. First, the police had probable cause to believe that McArthur's trailer home contained evidence of a crime and contraband, namely, unlawful drugs. ...

Second, the police had good reason to fear that, unless restrained, McArthur *would destroy the drugs before they could return with a warrant*. ... They reasonably could have concluded that McArthur, consequently suspecting an imminent search, would, if given the chance, *get rid of the drugs fast*.

Third, the police made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy. *They neither searched the trailer nor arrested McArthur before obtaining a warrant.* Rather, they imposed a significantly less restrictive restraint, preventing McArthur only from entering the trailer unaccompanied. They left his home and his belongings intact--until a neutral Magistrate, finding probable cause, issued a warrant.

Fourth, the police imposed the restraint for a limited period of time, namely, two hours. ... As far as the record reveals, this time period was no longer than reasonably necessary for the police, acting with diligence, to obtain the warrant. ... Given the nature of the intrusion and the law enforcement interest at stake, this brief seizure of the premises was permissible.

Illinois v. McArthur, 531 U.S. 326, 330-33 (emphasis added).

When the facts of Illinois v. McArthur are compared with the facts here, it is clear that exigent circumstances are lacking in each of the four listed areas.

The first and second factors listed in Illinois v. McArthur concern the presence of evidence and the defendant's ability to destroy that evidence if the police take the few hours necessary to obtain a warrant. The third and fourth factors focus on restraints that the police place upon their conduct, namely, limiting the scope of the intrusion by not conducting the actual arrest or search until a warrant is obtained and using that limited intrusion for just a short period of time.

The record in Mr. Davenport's case shows that the state fails each

of these prerequisites. Instead, the record shows there was a *three day lag* between the robbery and the arrest. See Statement of the Case, supra, pp. 4-6. It shows that the police never sought a warrant to arrest Mr. Davenport at all during that time, or even after they entered the house to detain and arrest him. Id. It further reveals that substantial investigation occurred during that *three-day time period* which was sufficient for law enforcement to obtain a warrant to search the car that Mr. Davenport was using. Id. *A fortiori*, it was a sufficient amount of time for them to obtain a warrant for the arrest, since it would be based on precisely the same information. Thus, under the controlling federal authority provided by Illinois v. McArthur, the Davenport appellate court's focus on the nature of the crime is incorrect. A proper focus on whether there was a danger of destruction of evidence or insufficient time to obtain a warrant would have produced the opposite result.

The same result is compelled by more recent Washington Supreme Court law. In State v. Gaines, 154 Wn.2d 711, 116 P.3d 993 (2005), the police conducted a warrantless search of the closed trunk of the defendant's car, after the victim reported the crimes. The crimes of conviction in that case were not just robbery, as in this case, but also kidnapping and assault. Only one day, rather than three days, elapsed between the date of the crime and the date of the challenged search in that

case. Nevertheless, there were no exigent circumstances in that case. (The Court upheld the search based on the independent source doctrine instead.)

Under the new Gaines decision, the warrantless arrest in Mr. Davenport's case would not satisfy the exigent circumstances exception to the warrant requirement, either.

V. CONCLUSION

The PRP should be granted.

DATED this 11th day of April, 2006.

Respectfully submitted,



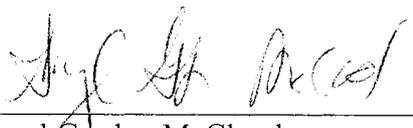
Sheryl Gordon McCloud, WSBA No. 16709
Attorney for Petitioner, Mr. Davenport

CERTIFICATE OF SERVICE

I certify that on the 10th day of April, 2006, a true and correct copy of the foregoing Opening Brief in Support of Personal Restraint Petition was served upon the following individual by depositing same in the U.S. Mail, first-class, postage prepaid:

Clark County Prosecutor
Appellate Unit
Attn: Mark Beam
Clark County Courthouse
P.O. Box 5000
Vancouver, WA 98666-5000

Jerald Wayne Davenport, Jr.
DOC No. 708898
Florence Correctional Center
P.O. Box 6900
Florence, AZ 85232



Sheryl Gordon McCloud

FILED
2 NOV 19 1992
JUDICIAL DISTRICT

GJ 16-C IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON,)	C	92-11-36764
)	DA	479344
Plaintiff,)	PPB	92-92691
)		
v.)		
)		INDICTMENT FOR VIOLATION OF
JERALD WAYNE DAVENPORT,)		
DOB: 3/20/72)	ORS	164.405 (1,2)
Defendant.)		

The above defendant is accused by the Grand Jury of Multnomah County, State of Oregon, by this indictment of the crimes of COUNTS 1 and 2 - ROBBERY IN THE SECOND DEGREE, committed as follows:

COUNT 1

ROBBERY IN THE SECOND DEGREE

The said defendant, on or about October 17, 1992, in the County of Multnomah, State of Oregon, did unlawfully and knowingly use and threaten the immediate use of physical force upon Laura Rusk, being aided by other persons actually present, while in the course of committing theft of property, to-wit: lawful currency of the United States of America, with the intent of preventing and overcoming resistance to the said defendants' taking of the said property, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

COUNT 2

ROBBERY IN THE SECOND DEGREE

The said defendant, on or about October 17, 1992, in the County of Multnomah, State of Oregon, did unlawfully and knowingly aid and abet another who used and threatened the immediate use of physical force upon Laura Rusk, and did represent by word and conduct that he, the said defendant was armed with a deadly weapon, to-wit: a firearm, while in the course of committing theft of property, to-wit: a cash drawer and its contents to include lawful currency of the United States of America and food stamps, with the intent of preventing and overcoming resistance to the said defendant's taking of the said property, contrary to the Statutes in such cases made and provided and against the peace and dignity of the State of Oregon,

Dated at Portland, Oregon, in the county aforesaid on November 19, 1992.

Witnesses

Examined Before the Grand Jury:

A TRUE BILL

Laura Rusk
Donald Lind

ENTERED

NOV 19 1992

IN REGISTER BY SB

James A. Elowson

/s/ JAMES A. ELOWSON
Foreman of the Grand Jury

MICHAEL D. SCHRUNK (67111)
District Attorney
Multnomah County, Oregon

By *Gregg A. Lowe* Deputy

Security Amount: \$ 20,000 + 20,000

The District Attorney hereby affirmatively declares for the record, as required by ORS 161.565, upon appearance of the defendant for arraignment, and before the court asks under ORS 135.020 how the defendant pleads to the charge, the State's intention that any misdemeanor charged herein proceed as a misdemeanor. BALL/78015/dlb

In the Circuit Court of the State of Oregon
for Multnomah County

THE STATE OF OREGON,

Plaintiff,

No.

C 92-11-36764 Cr
DA 479344

vs.
JERARD WAYNE DAVENPORT

ENTERED

ORDER ENTERING PLEA OF GUILTY
PURSUANT TO PETITION FILED

APR 15 1993

IN REGISTER BY JKT

Residence and phone.

Defendant.

IT IS ORDERED that the following be entered of record:

Appearances: STACY HEYDORF Dep. DA: SCOTT RAIVIO Def. Att.

defendant's plea of GUILTY: () and arraignment (truly named in charging instrument, or as follows: —

to Robbery II as charged in count 2 of the indictment
count, indictment,
information, complaint

() to the lesser, included offense of _____

defendant's withdrawal of his former plea of Not Guilty and his Plea of GUILTY.

() this case continued pending receipt of a presentence investigation conducted by _____

() the Corrections Division: () long form; () short form

() previous report updated; must be received by _____

() Diagnostic Center; must be received by _____

() other _____

() the following matters be continued pending disposition of the within case: () indictment

() count(s) _____ of the indictment. () other cases, Nos. _____

() this case continued for sentence to _____
(day, date and time)

() the within matter be continued to a later date yet to be determined by the Court.

() other _____

DATED this 30th day of March, 19 93.

[Signature]
JUDGE

DISTRIBUTION:

- Original: File
- Green: Def. Att.
- Yellow: Court
- Pink: DA
- Goldenrod: DA

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON

CASE# C9211-36764

D.A.# 479344

V.

JERALD DAVENPORT, JR.

Defendant

JUDGMENT OF CONVICTION
AND SENTENCE (SINGLE COUNT)

Reporter/Tape No. CTA175151-884

175692

OSB# 78015

1. Hearing Date: APRIL 12, 1993

2. District Attorney: CHARLES BALL

3. Defense Attorney: SCOTT RAIVIO

OSB# 81093

4. Defendant is convicted of the following offense:

Offense

ROBBERY II (Count I)

Date of Incident

10/17/92

Offense involved operation of a motor vehicle.

Defendant's: DOB _____

Defendant is unrepresented and knowingly waived counsel.

Defendant waived two-calendar-day delay before sentencing.

5. Defendant is: in custody on recognizance

on security release on sheriff's population release.

6. IT IS ADJUDGED THAT DEFENDANT HAS BEEN CONVICTED on defendant's plea of:

guilty.

no contest.

not guilty and verdict of guilty, by jury trial.

not guilty and finding of guilty, by court trial.

7a. Defendant is acquitted of the following count: _____

b. All other counts contained in the charging instrument in this case are hereby dismissed on motion of the District Attorney in the interests of justice.

8. The security posted is to be:

applied to other court-ordered obligations owed by the defendant or surety in this or any other case, and the balance, if any, is to be refunded.

refunded to the person who posted it less the applicable security release fee.

9. Defendant was advised of the right to appeal (ORS 137.020).

10. Security on appeal (to guarantee the appearance of the defendant)

is set at \$ _____ (ORS 135.285).

is denied.

Bond on appeal (to guarantee payment of fines and costs (ORS 161.665) is set at \$ _____ (ORS 138.135).

ENTERED
APR 16 1993
REGISTER BY JKT

FILED 4TH JUDICIAL DISTRICT
93 APR 15 AM 11:45

DISPOSITION

SGL

(On or after 11/1/89)

IT IS ORDERED THAT THE FOLLOWING SENTENCE IS IMPOSED:

11. DEPARTURE SENTENCE OR PRESUMPTIVE SENTENCE

- This sentence is a durational departure,
This sentence is a dispositional departure, and the Court finds substantial and compelling reasons as stated in the record for this departure.
[X] This is a presumptive sentence. The sentencing guideline grid coordinates are 6 and I

12. PROBATION

- [X] Defendant is placed on probation for 36 months subject to the standard conditions, any special conditions indicated on the Special Probationary Conditions attached hereto, and any financial obligations imposed in the Money Judgment.

Defendant shall be supervised by:

- Oregon State Corrections Division.
Multnomah County Probation Office.
Bench Probation.
This case is transferred to Judge _____ for all judicial supervision of probation.

X MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY CORRECTIONS

13(a). IMPRISONMENT

- A term of imprisonment for _____ months, and a period of post-prison supervision for _____ months. If the defendant violates the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board. Defendant is committed to the custody of the Oregon State Corrections Department.
A gun minimum of _____ is imposed. ORS 161.610.
Defendant is found to be a dangerous offender. ORS 161.725.

13(b). The Court recommends the Defendant enter the following Corrections treatment programs:

- Social Skills Unit Sexual Offender Unit
Mentally and Emotionally Disabled Unit Drug and Alcohol Unit (Cornerstone)

13(c). JAIL

- A jail term of _____; Defendant is committed to the custody of the Multnomah County Sheriff.
i. the term is to:
commence immediately.
commence on _____
ii. and, as provided by ORS 137.520:
work release authorized.
passes as authorized by counselor.
release on pass, furlough, leave, work, or educational leave prohibited.

The sentence to imprisonment or jail is to run:

- concurrently with _____
consecutive to _____
with credit for all time served.

13(d). FINE

Defendant shall pay the fine, if any, listed in the Money Judgment.

13(e). OTHER

MONEY JUDGMENT

14. IT IS ADJUDGED THAT DEFENDANT PAY THE FOLLOWING OBLIGATIONS:

JUDGMENT CREDITOR: STATE OF OREGON

JUDGMENT DEBTOR: DEFENDANT

15. RESTITUTION

- Restitution will be ordered when the amount is determined.
- Restitution is ordered now to the persons named below (addresses should be sent by separate cover to Criminal Department):

	NAME	AMOUNT	CLAIM NO.
(1)	<u>Laura Rusk</u>	<u>\$750 Compensatory Fine</u>	
(2)	_____		
(3)	_____		
(4)	_____		

Victims are to be paid so:

- they are satisfied in the sequence listed.
- each receives an equal amount of each payment made.
- each receives a proportional amount of each payment made.

16.	OBLIGATION	TOTAL IMPOSED	WAIVED
	* (1) Penalty Assessment (CIC)	\$ _____	<input type="checkbox"/>
	(2) Restitution (REST)	\$ _____	<input type="checkbox"/>
	(3) Indigent Defense Recovery (IDRC)	\$ <u>350</u>	<input type="checkbox"/>
	(4) Fine (FINE) .. <u>Compensatory</u>	\$ <u>750</u>	<input type="checkbox"/>
	* (5) BPST (BPAS)	\$ _____	<input type="checkbox"/>
	* (6) DUII Conviction (DMVC)	\$ _____	<input type="checkbox"/>
	* (7) DMV Records (MVRA)	\$ _____	<input type="checkbox"/>
	* (8) Jail Assessment (CJAS)	\$ _____	<input type="checkbox"/>
	(9) Other: <u>Unitary Assessment</u>	\$ <u>85</u>	<input type="checkbox"/>
	_____	\$ _____	<input type="checkbox"/>
	_____	\$ _____	<input type="checkbox"/>
	TOTAL MONEY JUDGMENT.....	\$ <u>1,185.00</u>	

* Unless a waiver is indicated, those fees and assessments marked are to be imposed administratively if the amount is left blank, and will be a condition of probation, and will not be subject to judgment docketing.

17. PRIORITY OF PAYMENTS

- As listed in Section 16.
- As follows: _____

18. TERMS OF PAYMENT: The amount of the money judgment is:

- suspended until defendant is released from custody.
- to be paid immediately.
- to be paid in full by _____
- to be paid in installments of \$ _____ per month, beginning on per p.o. and due each month thereafter on that date until satisfied. Compensatory fine paid first;
- restitution is joint and several with defendant(s) in case(s): _____

APRIL 13, 1993
DATE OF JUDGMENT


SIGNATURE

MICHAEL H. MARCUS
Name of Judge Typed or Printed

SPECIAL CONDITIONS OF PROBATION

IT IS ORDERED THAT THE FOLLOWING CONDITIONS OF PROBATION REFERRED TO IN SECTION 12 ARE IMPOSED:

19. It is ordered that the defendant serve a total of 180/90^{reserved} custody units in a correctional facility or as part of a custody program as set forth in this section, and Defendant is committed to the custody of the appropriate supervisory authority.

- a. _____ custody units in jail.
 - i. the term is to:
 - commence immediately.
 - commence on _____.
 - ii. and, as provided by ORS 137.520:
 - work release authorized.
 - passes as authorized by counselor.
 - release on pass, furlough, leave, work, or educational leave prohibited.

The court finds that space is available and that the defendant is eligible for the programs indicated below:

- b. _____ custody units at a work release center.
To be served as follows: _____
- c. _____ custody units at a 24-hour residential custodial treatment facility: Drug Alcohol Mental Health
 _____ treatment.
To be served as follows: _____
- d. _____ custody units at a restitution center.
To be served as follows: _____
- e. _____ custody units at a community service center: _____
To be served as follows: _____
- f. _____ custody units of house arrest.
To be served as follows: _____
- g. _____ custody units of community service work (each custody unit equals twenty-four hours of community service).
To be served as follows: _____
- h. _____ custody units at _____
To be served as follows: _____

20. OTHER SPECIAL CONDITIONS OF PROBATION:

- a. submit to polygraph examination by a qualified polygraph examiner designated by the court or probation officer under terms and conditions as follows: _____

In the Circuit/District Court of the State of Oregon
for Multnomah County

FILED
93 APR 14 AM 11:34

STATE OF OREGON,

Plaintiff,

C 92-11-36764
DA No. 479344
Citation No. _____

v.

Jerald Wayne Davenport, Jr.

Defendant.

PETITION TO PLEAD GUILTY/
~~NO CONTEST~~ AND WAIVER OF
~~JURY TRIAL~~

ENTERED
APR 15 1993

The defendant represents to the Court:

1. My full true name is above
but I also am known as _____
2. I am 21 years of age. I have gone to school through grade 7 GED
My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except _____

3. I understand my right to hire or have the Court appoint a lawyer to help me.

(a) I am represented by: Scott Raivio

(b) I choose to give up my right to a lawyer; I will represent myself: _____ (defendant's initials).

4. I have told my lawyer all the facts I know about the charge(s) against me. My lawyer has advised me of the nature of the charge(s) and the defenses, if any, that I have in this case. I am satisfied with the advice and help I have received from my lawyer.

5. I understand that I have the following rights: (A) the right to a jury trial; (B) the right to see, hear and cross-examine or question all witnesses who testify against me at trial; (C) the right to remain silent about all facts of the case; (D) the right to subpoena witnesses and evidence in my favor; (E) the right to have my lawyer assist me at trial; (F) the right to testify at trial; (G) the right to have the jury told, if I decide not to testify at trial, that they cannot hold that decision against me; and (H) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.

6. I understand that I give up all of the rights listed in paragraph 5 when I plead guilty/no contest. I also understand that I give up: (A) any defenses I may have to the charge(s); (B) objections to evidence; and (C) challenges to the accusatory instrument.

7. I want to plead Guilty/~~No Contest~~ to the charge(s) of Robbery - Second Degree (Count 1)

8. I know that a No Contest Plea will result in a Guilty finding regarding the charge(s) listed in Paragraph 7.

9. I know that when I plead Guilty/No Contest to the charge(s) in paragraph 7, the maximum possible sentence is 10 years in (prison) ~~jail~~, and a fine with assessments totaling \$ 100,000, including a mandatory fine of \$ _____. I also know that the Court can impose a minimum sentence of _____. Further I know that these maximum and minimum sentences can be added to sentences in these other cases: _____

Finally, I know that my driver's license ~~can~~ (will) (cannot) be suspended for _____

10. I understand that I might () will not () be sentenced as a dangerous offender, which could increase each maximum sentence to 30 years, with a 15-year minimum.

11. I have been told that if my crime involved my use or threatened use of a firearm I can receive a mandatory minimum sentence without parole or work release for a period of N/A

12. I know that if I am not a United States citizen, my plea may result in my deportation from the USA, or denial of naturalization, or exclusion from future admission to the United States.

13. I know that this plea can affect probation or parole and any hearing I may have regarding probation or parole. If probation or parole is revoked, I know that the rest of the sentence in each of those cases could be imposed and executed, and could be added to any sentence in this case.

C 92-11-36764

14. I know that the sentence is up to the Court to decide. The District Attorney may provide reports or other information if requested by the Court. I understand that the District Attorney will make the following recommendation to the Court about my sentence or about other pending charges. This recommendation is () is not () made pursuant to ORS 135.432(2): Gridblock 6 I; 3 years probation, 10 units work release or 150 hours community service, CAA fees, unitary assessment. Dismiss Count 2.

15-A. I plead Guilty because, in Multnomah County, Oregon, I did the following: on 10/17/92, I helped another person steal money from a store clerk. The other person pretended he had a gun.

15-B. I plead No Contest because (A) I understand that a jury or judge could find me guilty of the charge(s), so I prefer to accept the plea offer (defendant's initials: _____). of (B): _____

16. I declare that no government agents have made any threats or promises to me to make me enter this plea other than the District Attorney's recommendation set forth in Paragraph 14, except: _____

17. I am signing this plea petition and entering this plea voluntarily, intelligently, and knowingly.

3/30/93
(Date)

Jerald W. Davern Jr.
(Defendant's Signature)

CERTIFICATE OF COUNSEL

I am the lawyer for the defendant and I certify:

1. I have read and explained fully to the defendant the allegations contained in the accusatory instrument(s). I believe defendant understands the charges and all possible defenses to them. I have explained alternatives and trial strategies to defendant.

2. I have explained to the defendant the maximum and minimum penalties that could be imposed for each charge and for all charges together.

3. The plea(s) offered by defendant is (are) justified by my understanding of the facts related to me.

4. To the best of my knowledge and belief, the declarations made by defendant in the foregoing petition are true and accurate.

5. Defendant's decision to enter the plea is made voluntarily, intelligently, and knowingly. I recommend that the Court accept the plea.

I have signed this certificate in the presence of the defendant and after full discussion of its contents with the defendant.

3/30/93
(Date)

Scott Mann
(Lawyer's Signature)

81093
(Bar No.)

Table 2
Average Sentence Imposed by Offense (Robbery 1 only)

	<u>Prison</u>		<u>Non-Prison (Jail)</u>		<u>Total</u>	
	N	Months	N	Months	N	Months
FY 99	273	98.9%	3	1.1%	276	77.4
	4	100.0%	0	0.0%	4	Life
FY 00	254	98.8%	3	1.2%	257	76.7
	7	100.0%	0	0.0%	7	Life
FY 01	211	97.2%	6	2.8%	217	77.5
	3	100.0%	0	0.0%	3	Life
FY 02	248	98.4%	4	1.6%	252	76
	5	100.0%	0	0.0%	4	Life
FY 03	228	99.1%	2	0.9%	230	69.4
	4	100.0%	0	0.0%	4	Life
FY 04	259	100.0%	0	0.0%	259	76.4
	3	100.0%	0	0.0%	3	Life

Table 2
Average Sentence Imposed by Offense (Robbery 2 and Theft 1 only)

	<u>Prison</u>		<u>Months</u>	<u>Non-Prison (Jail)</u>		<u>Months</u>	<u>Total</u>	<u>Months</u>
	<u>N</u>	<u>%</u>		<u>N</u>	<u>%</u>			
FY 99	144	49.5%	31.1	147	50.5%	5.7	Rob 2	18.2
	2	100.0%	Life	0		0	Rob 2	Life
FY 99	151	19.9%	29.6	607	80.1%	2.5	Theft 1	7.9
FY 00	166	60.1%	31.4	110	39.9%	6.3	Rob 2	21.4
	11	100.0%	Life	0		0	Rob 2	Life
FY 00	128	17.6%	28.9	599	82.4%	2.5	Theft 1	7.2
FY 01	151	56.3%	28.2	117	43.7%	6.3	Rob 2	18.6
	2	100.0%	Life	0		0	Rob 2	Life
FY 01	186	23.3%	27.6	611	76.7%	2.4	Theft 1	8.3
FY 02	201	58.8%	31	141	41.2%	5.9	Rob 2	20.7
	1	100.0%	Life	0	0.0%	0	Rob 2	Life
FY 02	236	26.4%	30.9	659	73.6%	2.6	Theft 1	10
FY 03	146	56.6%	28.6	112	43.4%	5.6	Rob 2	18.6
	2	100.0%	Life	0	0.0%	0	Rob 2	Life
FY 03	234	26.7%	27.7	643	73.3%	2.5	Theft 1	9.3
FY 04	159	60.9%	29	102	39.1%	6.2	Rob 2	20.1
	1	100.0%	Life	0	0.0%	0	Rob 2	Life
FY 04	247	29.8%	29.2	581	70.2%	2.8	Theft 1	10.7

Table 11
Sentence Departure by Type and Offense (Robbery 2 and Theft 1 only)

	<u>Above</u>	<u>Exceptional Below</u>	<u>Within</u>	<u>%</u>	<u>Total Sentences Per FY</u>	
FY 99	2	4	2	2.3%	344	Rob 2
	35	4	13	6.2%	842	Theft 1
FY 00	17	7	2	7.9%	331	Rob 2
	24	4	3	3.9%	797	Theft 1
FY 01	11	5	3	6.0%	316	Rob 2
	32	7	3	4.7%	887	Theft 1
FY 02	18	4	1	5.9%	392	Rob 2
	47	5	0	5.2%	1008	Theft 1
FY 03	11	6	1	6	307	Rob 2
	38	2	3	4	976	Theft 1
FY 04	10	8	1	6	312	Rob 2
	30	5	0	4	910	Theft 1

Third Strike Penalties

- (a) Second-Degree Robbery
(b) First-Degree Robbery

State	Third Strike Statute	Penalty
Alabama	<p>a) third-degree robbery Code of Ala. § 13A-5-9 (b) (1) (2006) from Class C to Class A felony</p> <p>b) first-degree robbery Code of Ala. § 13A-5-9 (b) (3) (2006)</p>	<p>a) life or any term not more than 99 years, not less than 10 years Code of Ala. § 13A-5-6 (a) (1) (2005)</p> <p>b) life or any term not less than 99 years (same statute)</p>
Alaska	<p>a) second-degree robbery Alaska Stat. § 12.55.25 (d)(4) (2006) Class B Felony</p> <p>b) first-degree robbery Alaska Stat. § 12.55.25 (c)(4) (2006)</p>	<p>a) 6-10 years (same statute)</p> <p>b) 15-20 years (same statute)</p>
Arizona	<p>a) Robbery A.R.S. § 13-604 (C) (2006) Class 4 Felony</p> <p>b) Armed Robbery A.R.S. § 13-604 (D) (2006) Class 2 Felony</p>	<p>a) 8-12 years (full sentence, no probation, etc.) (same statute)</p> <p>b) 14-28 years (full sentence, no probation, etc.) (same statute)</p>
Arkansas	<p>a) Robbery A.C.A. § 1690-201 (2) (2006) Class B Felony</p> <p>b) Aggravated Robbery A.C.A. § 16-90-121, § 16-90-201 (2) (2006) Class Y Felony</p>	<p>a) Not more than the maximum for first offense, 20 years (same statute)</p> <p>b) Determinate, not more than the maximum for first offense, 40 years (same statute)</p>

California	<p>a) second-degree robbery (serious felony) Cal Pen Code § 667.7 (a)(1) (2006)</p> <p>b) first-degree robbery (serious felony) Cal Pen Code § 667.7 (a)(1) (2006)</p>	<p>a) life, parole eligible after 20 years</p> <p>b) life, parole eligible after 20 years</p>
Colorado	<p>a) robbery – class 4 felony C.R.S. § 18-1.3-401(V)(A) (2005) – no enhancement, same penalty</p> <p>b) aggravated robbery – class 3 felony C.R.S. § 18-1.3-801(1)(a)(I)(B), (II)(c) (2005) – crime of violence</p>	<p>a) Max. 6 years (same penalty)</p> <p>b) life imprisonment, parole eligible after 40 years (same statute)</p>
Connecticut	<p>a) third-degree robbery – class D felony Conn. Gen. Stat. § 53a-40 (2004) – no enhancement, same penalty</p> <p>b) first-degree robbery (Class B) OR second-degree robbery (Class C) Conn. Gen. Stat. § 53a-40 (a)(1)(A) (h) (2004)</p>	<p>a) not more than 5 years</p> <p>b) not more than 40 yrs for either first or second degree robbery (same statute)</p>

Delaware	<p>a) second-degree robbery – Class E felony 11 Del. C. § 4215 (a), (2005) – a second or other conviction (court discretion on greater punishment)</p> <p>b) first-degree robbery (Class E felony) 11 Del. C. § 4214 (b) (2005)</p>	<p>a) up to 5 years, but court may impose a greater punishment 11 Del. C. § 4215 (a) (2004)</p> <p>b) life sentence, sentenced as a habitual criminal (same statute)</p>
District of Columbia	<p>a) robbery – D.C. Code § 22-1804a (a) (2) (2006), D.C. Code § 22-4501(f) – robbery is “crime of violence”</p> <p>b) robbery - D.C. Code § 22-1804a (a) (2) (2006), D.C. Code § 22-4501(f) – robbery is “crime of violence”</p>	<p>a) up to life without parole (same statute)</p> <p>b) up to life without parole (same statute)</p>
Florida	<p>a) second-degree robbery - felony in the first degree 3 time violent felony offender, Fla. Stat. § 775.084(c)(1)(4)(c)1.(b), 2.</p> <p>b) first-degree robbery - felony in the first degree, 3 time violent felony offender, Fla. Stat. § 775.084(c)(1)(4)(c)1.(a)</p>	<p>a) 30 years, court may go higher (same statute)</p> <p>b) imprisonment for life (same statute)</p>
Georgia	<p>a) robbery O.C.G.A. § 17-10-7 (c) (2005) (<i>applies to fourth conviction only</i>)</p> <p>b) armed robbery - O.C.G.A. § 17-10-6.1 (a)(2) (2005), serious violent felony, § 17-10-7(2)</p>	<p>a) not applicable, max. penalty remains 20 years</p> <p>b) life without parole (same statute)</p>

Hawaii	<p>a) second-degree robbery, Class B Felony HRS § 706-662 (1), § 706-661(3) (2005)</p> <p>b) first-degree robbery - Class A Felony HRS § 706-662 (1), § 706-661(2) (2005)</p>	<p>a) indeterminate 20 year term – HRS § 706-661(3) (2005)</p> <p>b) indeterminate life imprisonment – HRS § 706-661(2) (2005)</p>
Idaho	<p>a) robbery - Idaho Code § 19-2514 (2006)</p> <p>b) robbery - Idaho Code § 19-2514 (2006)</p>	<p>a) not less than 5 years, may be extended to life (same penalty)</p> <p>b) not less than 5 years, may be extended to life (same penalty)</p>
Illinois	<p>a) robbery, Class 2 Felony 720 ILCS 5/33B-1 (2005) Not applicable, only Class X felonies apply</p> <p>b) aggravated or armed robbery - both Class 1 Felony 720 ILCS 5/33B-1 (2005) Not applicable, only Class X felonies apply</p>	<p>a) same penalty as first and second conviction – max. 7 years</p> <p>b) same penalty as first and second conviction – max. 15 years</p>
Indiana	<p>a) Robbery, Class C Felony Burns Ind. Code Ann. § 35-50-2-8 (h) (2005)</p> <p>b) robbery - Class B Felony Burns Ind. Code Ann. § 35-50-2-8 (h) (2005)</p>	<p>a) additional fixed term not to exceed 30 years – max. 38 years (disc.) (same statute)</p> <p>b) additional fixed term not to exceed 30 years – max. 50 (discretionary fixed term) (same statute)</p>

Iowa	<p>a) second-degree robbery, Class C Felony Iowa Code § 902.8, § 902.9 3 (2005)</p> <p>b) first-degree robbery - Class B Felony Iowa Code § 902.9 2 (2005)</p>	<p>a) no more than 15 years (Iowa Code § 902.8 and § 902.9 3 (2005))</p> <p>b) Not more than 25 years (same penalty)</p>
Kansas	<p>a) robbery, Level 5/Person Felony K.S.A. § 21-4709 A (2005)</p> <p>b) aggravated robbery - Level 3/Person Felony K.S.A. § 21-4709 A (2005)</p>	<p>a) max. 136 months (11.33 years)</p> <p>b) max. 247 months (20.58 years)</p>
Kentucky	<p>a) second-degree robbery, Class C Felony KRS § 532.080(3), (6)(b) (2005)</p> <p>b) first-degree robbery - Class B Felony KRS § 532.080(3), (6)(a) (2005)</p>	<p>a) not less than 10 years, nor more than 20 years (same statute) (indeterminate)</p> <p>b) not less than 20 years, nor more than 50 years, or life (same statute) (indeterminate)</p>
Louisiana	<p>a) simple robbery La. R.S. § 15.529.1A. (1)(b)(ii) (2005), crime of violence under La. R.S. § 14.2(13)</p> <p>b) first-degree robbery, La. R.S. § 15.529.1A. (1)(b)(ii) (2005), crime of violence under La. R.S. § 14.2(13)</p>	<p>a) life without parole (same statute)</p> <p>b) life without parole (same statute)</p>

Maine	<p>a) robbery, Class B crime 17-A M.R.S. § 1252 (4-A) (2005) – sentence one class higher</p> <p>b) robbery - Class A crime 17-A M.R.S. § 1252 (4-A) (2005) – (sentencing court looks at prior record) – no higher class</p>	<p>a) not to exceed 30 years (determinate), penalty as Class A crime, 17-A M.R.S. § 1252 (2-A) (2005)</p> <p>b) not to exceed 30 years (sentencing court looks at prior record) 17- A M.R.S. § 1252 (2-A) (2005)</p>
Maryland	<p>a) robbery, felony crime of violence Md. Criminal Law Code § 14.101(a)(9), (d)(1) (2006).</p> <p>b) robbery with a dangerous weapon, felony, crime of violence under Md. Criminal Law Code § 4.101(a)(9), (d)(1) (2006).</p>	<p>a) not less than 25 years (same statute)</p> <p>b) not less than 25 years (same statute)</p>
Massachusetts	<p>a) confining or putting in fear a person for the purpose of stealing - ALM GL ch. 279, § 25 (2005) – habitual criminal, max. term as provided by law</p> <p>b) confining or putting in fear a person for the purpose of stealing - ALM GL ch. 279, § 25 (2005) – habitual criminal, max. term as provided by law</p>	<p>a) life, ALM GL ch. 265, § 21 (2005) (parole eligible)</p> <p>b) life, ALM GL ch. 265, § 21 (2005) (parole eligible)</p>

Michigan	<p>a) Robbery, felony MCLS § 769.11(1)(b)</p> <p>b) Robbery felony MCLS § 769.11(1)(b)</p>	<p>a) life (indeterminate – “or lesser term”)</p> <p>b) life (indeterminate – “or lesser term”)</p>
Minnesota	<p>a) simple robbery, defined as violent crime under 609.1095(d), Subd. (3)</p> <p>b) aggravated robbery, defined as violent crime under 609.1095(d), Subd. (3)</p>	<p>a) mandatory 10 years, no parole, court discretion to go higher (same statute)</p> <p>b) mandatory 20 years, no parole, court discretion to go higher (same statute)</p>
Mississippi	<p>a) robbery, max. sentence imposed pursuant to Miss. Code Ann. § 99-19- 81, 83 as “crime of violence” (2005)</p> <p>b) robbery, use of deadly weapn max. sentence imposed pursuant to Miss. Code Ann. § 99-19- 81, § 99-19-83 (habitual criminals, felonies are crimes of violence) (2005)</p>	<p>a) life without parole</p> <p>b) life without parole</p>
Missouri	<p>a) second-degree robbery, class B felony, to class A felony (§ 558.016 R.S.Mo. 3, 4, 6, 7(2) (2006))</p> <p>b) First-degree robbery, class A felony, any sentence authorized as class A (§ 558.016 R.S.Mo. 3, 4, 7(1)</p>	<p>a) Max. not to exceed 30 years (§ 558.011 R.S.Mo. 7(2) (2006)) mand. min. 10 yrs.</p> <p>b) max. not to exceed 30 years (§ 558.011 R.S.Mo. 7 (1) (2006)) mand. min. 10 yrs</p>

	(2006))	
Montana	<p>a) robbery, Mont. Code Anno., § 46-18-219 (1)(b)(iv) (2005)</p> <p>b) robbery, Mont. Code Anno., § 46-18-219 (1)(b)(iv) (2005)</p>	<p>a) life without parole (same statute)</p> <p>b) life without parole (same statute)</p>
Nebraska	<p>a) robbery, Class II felony R.R.S. Neb. § 29-2221(1) (2005), habitual criminal</p> <p>b) robbery, Class II felony R.R.S. Neb. § 29-2221(1) (2005), habitual criminal</p>	<p>a) max. term not more than 60 years (same statute), mand. min. 10 years</p> <p>b) max. term not more than 60 years (same statute), mand. min. 10 years</p>
Nevada	<p>a) robbery, category B felony, Nev. Rev. Stat. Ann § 207.012(a)(b) (2005) – upgraded to category A</p> <p>b) robbery, category B felony, Nev. Rev. Stat. Ann § 207.012(a)(b) (2005) – upgraded to category A</p>	<p>a) from 25 years (mandatory min. of 10 years), to life, to life without possibility of parole Nev. Rev. Stat. Ann § 207.012(b)(1)(2) or (3)</p> <p>b) from 25 years (mandatory min. of 10 years) to life, to life without possibility of parole Nev. Rev. Stat. Ann § 207.012(b)(1)(2) or (3)</p>

New Hampshire	<p>a) robbery, class B felony RSA § 651:6 II(a), III (a) (2005)</p> <p>b) robbery, class A felony, RSA § 651:6 II(a), III (a) (2005)</p>	<p>a) not more than 30 years (mand. min. not more than 10 years) (same statute)</p> <p>b) not more than 30 years (mand. min. not more than 10 years) (same statute)</p>
New Jersey	<p>a) robbery, second degree crime, N.J. Stat. § 2C:43- 7 a.(3)(2005), extended terms of imprisonment</p> <p>b) robbery, first degree crime, N.J. Stat. § 2C:43- 7 a.(3)(2005), extended terms of imprisonment</p>	<p>a) fixed term between 10 and 20 years (same statute)</p> <p>b) fixed term between 20 years and life (same statute)</p>
New Mexico	<p>a) Robbery, 3rd degree felony, N.M. Stat. Ann. § 31-18-17 B. (2006), adds 4 years to sentence</p> <p>b) Robbery, 1st degree felony, N.M. Stat. Ann. § 31-18-17 B. (2006), adds 4 years to sentence</p>	<p>a) 7 years (term set by statute – no good time) N.M. Stat. Ann. § 31- 18-17 B. and 31-18- 5A(5)</p> <p>b) 22 years (term set by statute – no good time)</p> <p>N.M. Stat. Ann. § 31- 18-17 B. and 31-18- 5A(2) (5)</p>
New York	<p>a) robbery, 3rd degree, Class D felony, NY CLS Penal § 70.08 3(c) (2005)</p> <p>b) robbery, 1st degree, Class B felony NY CLS Penal § 70.08 3(a) (2005)</p>	<p>a) at least 12, not more than 25 years</p> <p>b) at least 20, not more than 25 years</p>

North Carolina	<p>a) common law robbery, Class G felony, N.C. Gen. Stat. § 14-7.6, sentenced as Class C felon</p> <p>b) robbery with dangerous weapon, Class D felony, N.C. Gen. Stat. § 14-7.6, sentenced as Class C felon</p>	<p>a) 116-145 months N.C. Gen. Stat. § 15-A-1340.17(c)</p> <p>b) 116-145 months N.C. Gen. Stat. § 15-A-1340.17(c)</p>
North Dakota	<p>a) Robbery, class C felony, ND. Cent. Code, § 12.1-32-09 (1) c, (2) c (2005)</p> <p>b) Robbery, class B felony, ND. Cent. Code, § 12.1-32-09 (1) c, (2) b (2005)</p>	<p>max. of 10 years (discretionary) ND. Cent. Code, § 12.1-32-09 (2) c (2005), must serve 85% of sentence § 12.1-32-09.1</p> <p>b) max. of 20 years (discretionary) ND. Cent. Code, § 12.1-32-09 (2) b (2005), must serve 85% of sentence § 12.1-32-09.1</p>
Ohio	<p>a) robbery, third degree felony, Ann. § 2929.14 (2)(a)</p> <p>b) robbery, second degree felony, Ann. § 2929.14 (2)(a)</p>	<p>a) 5 years = longest term (determinate)</p> <p>b) 8 years = longest term (determinate)</p>
Oklahoma	<p>a) second-degree robbery , 21 Okl. St. § 51.1 B; 57 Okl. St. § 571 (2005)</p> <p>b) robbery or attempted robbery with dangerous weapon or imitation firearm, 21 Okl. St. § 51.1 B; 57 Okl. St. § 571 (2005)</p>	<p>a) 20 years to life (doesn't apply if more than 10 years since last conviction)</p> <p>b) 20 years to life (doesn't apply if more than 10 years since last conviction)</p>

Oregon	<p>a) second-degree robbery, Class C felony, ORS §164.395(1)(b) (2003)</p> <p>b) first-degree robbery, Class A felony, ORS §164.415 (2003)</p>	<p>a) Habitual Criminal statute repealed, max penalty remains 5 years ORS § 131.605(3) (2003)</p> <p>b) Habitual Criminal statute repealed, max penalty remains 20 years ORS § 131.605(1) (2003)</p>
Pennsylvania	<p>a) robbery, felony in third degree, 18 Pa.C.S. § 3701(a)(1)(V)(2)(b) (2005)</p> <p>b) robbery, felony in first degree. 42 Pa.C.S. § 9714 (a)(2) – is defined as “crime of violence”</p>	<p>a) not applicable – not defined as “crime of violence” under second and subsequent offense statute – therefore, not more than 7 years</p> <p>b) 25 years (man. min.) to life without parole</p>
Rhode Island	<p>a) second-degree robbery, R.I. Gen. Laws § 12-9-21 (a) (2006) “habitual criminal”</p> <p>b) first-degree robbery, R.I. Gen. Laws § 12-9-21 (a) (2006) “habitual criminal”</p>	<p>a) Additional term not exceeding 25 years, max. would be 55 years</p> <p>b) Additional term not exceeding 25 years, max would be life</p>
South Carolina	<p>a) common law robbery, S. C. Code Ann. § 16-11-325</p> <p>b) armed robbery, S. C. Code Ann. § 17-25-45 (A) (1), (C) (1) (2005) – “most serious offense”</p>	<p>a) repeat offender statute does not apply, subsequent offense committed within 360 days - S. C. Code Ann. § 16-1-120 (1)(E) – therefore, max remains at 15 years</p> <p>b) Life without parole</p>

South Dakota	<p>a) second-degree robbery, Class 4 felony, SD Codified Laws §§ 22-30-1, 22-30-6, 22-30-7 (2006)</p> <p>b) first-degree robbery, Class 2 felony, SD Codified Laws §§ 22-30-2, 22-30-3, 22-30-7 (2006)</p>	<p>a) Not applicable, 3 or more prior felonies, SD Codified Laws § 22-7-8.1 (2005), therefore, penalty the same – max 10 years</p> <p>b) Not applicable, 3 or more prior felonies, SD Codified Laws § 22-7-8.1 (2005), therefore, penalty the same – max 25</p>
Tennessee	<p>a) robbery, Class C felony, Tenn. Code. Ann. § 39-13-401 (2005)</p> <p>b) aggravated robbery, Class B felony, § 39-13-402 (2005)</p>	<p>a) Not applicable, prior convictions do not meet definition of “persistent offender” under § 40-35-107 (2005) – therefore, penalty the same, max. 15 yrs.</p> <p>b) Not applicable, prior convictions does not meet definition of “persistent offender” under § 40-35-107 (2005) – therefore, penalty the same, max. 30 years</p>
Texas	<p>a) robbery, second-degree felony, Tex. Penal Code § 12.42 (d) (2005)</p> <p>b) aggravated robbery, first-degree felony, Tex. Penal Code § 12.42 (d) (2005)</p>	<p>a) life, not more than 99 years, not less than 25 years</p> <p>b) life, not more than 99 years, not less than 25 years</p>

Utah	<p>a) robbery, second-degree felony – Utah Code Ann. § 76-3-203.5 (1) (2)(b) (2005) – “habitual violent offender”</p> <p>b) aggravated robbery, first-degree felony, Utah Code Ann. § 76-3-203.5 (1) (2)(c) (2005) – “habitual violent offender”</p>	<p>a) upgrade to first-degree felony, max. life</p> <p>b) same penalty, adds no eligibility for parole, therefore, max. life without parole</p>
Vermont	<p>a) larceny from the person, 13 V.S.A. § 2503 (2006)</p> <p>b) larceny from the person, 13 V.S.A. § 2503 (2006), larceny conviction in burglary or robbery 13 V.S.A. § 2507</p>	<p>a) not applicable, does not meet definition of habitual criminal, 13 V.S.A. § 11 or violent career criminal, 13 V.S.A. § 11a, penalty same, max. 10 years</p> <p>b) not applicable, does not meet definition of habitual criminal, 13 V.S.A. § 11 or violent career criminal, 13 V.S.A. § 11a, penalty same, max. 10 years</p>
Virginia	<p>a) Grand larceny – Va Code Ann. § 18.2-95 (ii) (2005)</p> <p>b) Robbery –Va Code Ann. § 18.2-58 (2006) and Va Code Ann. § 19.2-297.1 (e) (2006) – sentence of person twice previously convicted of certain violent felonies</p>	<p>a) not applicable, same penalty, max. 20 years (man. min. 1 yr)</p> <p>b) life without parole</p>

Washington	<p>a) second-degree robbery, Class B felony, ARCW § 9.94A.570 (2005) – persistent offender</p> <p>b) first-degree robbery, Class A felony, ARCW § 9.94A.570 (2005) – persistent offender</p>	<p>a) Life without parole</p> <p>b) life without parole</p>
West Virginia	<p>a) robbery, second-degree felony, W. Va. Code § 61-11-18 (c) (2006), punishment for second or third offense of felony</p> <p>b) robbery, first-degree felony, W. Va. Code § 61-11-18 (c) (2006), punishment for second or third offense of felony</p>	<p>a) life</p> <p>b) life</p>
Wisconsin	<p>a) robbery, Class E felony, Wis. Stat. § 939.62 (1) (c) (2005) – increased penalty for habitual criminality (prior felony conviction 5 years or less)</p> <p>b) robbery, Class C felony Wis. Stat. § 939.62 (1) (c) (2005) – increased penalty for habitual criminality (prior felony conviction 5 years or less)</p>	<p>a) Adds max. of 6 years, therefore, max. penalty is 21 years (disc.)</p> <p>b) Adds max. of 6 years, therefore, max. penalty is 46 years (discr.)</p>

Wyoming	<p>a) robbery, felony – Wyo. Stat. § 6-10-2019(a)(b) “habitual criminal” convicted of “violent felony” § 6-10-104 (xii)</p> <p>b) Aggravated robbery, felony, Wyo. Stat. § 6-10-2019(a)(b) “habitual criminal” convicted of “violent felony” § 6-10-104 (xii)</p>	<p>a) not more than 50 years (man. min. 10)</p> <p>b) not more than 50 years (man. min. 10)</p>
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SUMMARY OF MAXIMUM "THIRD STRIKE" SENTENCING BY LENGTH OF
TIME BY STATE

for Robbery in the Second Degree

Length of Maximum Sentence	State
Life without parole	Louisiana Mississippi Montana Washington
Life without parole (discretionary)	District of Columbia Nevada (mand. min. 10 years up to LWOP)
Life (discretionary)	Massachusetts Michigan (indeterminate) Utah West Virginia
Life (discretionary with mandatory minimum term)	Alabama (mand. min. 10 yrs) California (mand. min. 20 yrs) Idaho**(mand. min. 5 yrs) Oklahoma (mand. min. 20 yrs) Texas (mand. min. 25 yrs)
31-60 years (mandatory min. if applicable)	Nebraska (60) (mand. min. 10 yrs) Rhode Island (55) (discretionary) Wyoming (50) (mand. min. 10 yrs) Indiana (38) (discretionary fixed term)

<p>30 years (mandatory min. if applicable)</p>	<p>Florida (court discretion to go higher) Maine (determinate) Missouri (mand. min. 10 yrs.) New Hampshire (mand. min. 10 yrs.)</p>
<p>21-25 years (mandatory min. if applicable)</p>	<p>Maryland (25) New York (25) (mand. min. 12 yrs) Wisconsin (21) (discretionary)</p>
<p>20 years (mandatory min. if applicable)</p>	<p>Arkansas** Georgia** Hawaii (indeterminate) Kentucky (indeterminate) (mand. min. 10 yrs) New Jersey (fixed mand. min. 10 yrs) Virginia**</p>
<p>11-15 years (mandatory min. if applicable)</p>	<p>California (15) Iowa (15) South Carolina (15)** Tennessee (15)** Arizona (12)* (mand. min. 8 yrs) North Carolina (12) Kansas (11.33) (mand. min. 122 months)</p>
<p>10 years (mandatory min. if applicable)</p>	<p>Alaska (mand. min. 6 yrs) Minnesota* (court discretion to go higher) North Dakota*** (discretionary) South Dakota** Vermont**</p>

5 – 9 years	Illinois (7)** New Mexico (7) Pennsylvania (7)** Colorado (6)** Connecticut (5)** Delaware (5)** (court discretion to go higher) Ohio (5) Oregon (5)** (determinate)
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NOTE:

- * No parole or reduction in sentence.
- ** No enhancement penalty for "third strike"
- *** Must serve 85% of sentence.

SUMMARY OF MAXIMUM "THIRD STRIKE" SENTENCING BY LENGTH OF
TIME BY STATE

for Robbery in the First Degree

Length of Maximum Sentence	State
Life without parole	Alabama (not less than 99 yrs) - Georgia Louisiana Mississippi Montana South Carolina Virginia Washington
Life without parole (discretionary)	District of Columbia (up to LWOP) Nevada (mand. min. 10 yrs, can be LWOP) Pennsylvania (mand. min. 25 yrs, can be LWOP) Utah (up to LWOP)
Life (discretionary)	Delaware Florida Hawaii (indeterminate) Massachusetts Michigan (indeterminate) Rhode Island West Virginia
Life (discretionary and mandatory min. if applicable)	California (mand. min. 20 yrs.) Colorado (mand. min. 40 yrs) Idaho** (mand. min. 5 yrs.) New Jersey (fixed term, mand. min. 20 yrs) Texas (mand. min. 25 yrs.)

<p>41-60 years (mandatory min. if applicable)</p>	<p>Nebraska (60) (mand. min. 10 yrs) Indiana (50) (discretionary, fixed term) Kentucky (50) (mand. min. 20 yrs., indeterminate) Wyoming (50) (mand. min. 10 yrs.) Wisconsin (46) (discretionary)</p>
<p>40 years</p>	<p>Arkansas** Connecticut</p>
<p>28-30 years (mandatory min. if applicable)</p>	<p>Indiana (30) Maine**(30) (discretionary to look at prior hx) Missouri (mand. min. 10 yrs.) New Hampshire (mand. min. 10 yrs.) Tennessee** Arizona (28)* (mand. min. 14 yrs.)</p>
<p>21-25 years (mandatory min. if applicable)</p>	<p>Iowa** (25) Maryland (25) New York (25) (mand. min. 20 yrs.) South Dakota** (25) New Mexico (22)</p>
<p>20 years (mandatory min. if applicable)</p>	<p>Alaska (mand. min. 15 yrs) Kansas (20.58) (mand. min. 221 months) Minnesota* (discretionary to go higher) North Dakota*** (discretionary) Oregon**</p>

11-15 years (mandatory min. if applicable)	Illinois** (15) North Carolina (12) (mand. min. 116 months)
10 years	Vermont **
5 – 9 years	Ohio (8)

NOTE:

* No parole or reduction in sentence.

** No enhancement penalty for "third strike"

*** Must serve 85% of sentence.