

Original

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

STATE OF WASHINGTON,

Plaintiff-Appellee,

Case No: 35738-1-II

vs.

NORMAN WHITTIER,

Defendant-Appellant.

STATE OF WASHINGTON
DEPT. OF CORRECTIONS
BY: [Signature]
DATE: 11/13/07

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW
RAP 10.10 (A) & (c)

I, Norman Whittier, have received and reviewed the opening appeals brief prepared by my attorney, Thomas Michael Kummerow. Summarized below are the additional grounds and assignment of errors for review that are not addressed in attorney Kummerow's opening appeals brief.

IDENTITY OF MOVING PARTY

Mr. Whittier is presently serving his sentence at Stafford Creek Corrections Center, Aberdeen Washington. Mr. Whittier is serving his sentence pursuant to a plea of guilty in Pierce County, Cause No. 05-1-04496-1. Mr. Whittier pled guilty on November 6, 2006 to Intimidating a witness- RCW 9A.72.110(1)(c) Count II and Felony Harassment- RCW 9A.46.020(1)(A)(i)(b), (2)(b) Count III. Mr. Whittier's date of sentence was November 2, 2006. Sentencing Judge was Sergio Armijo.

STATEMENT OF THE CASE

Appellant, Mr. Whittier on or about the 12th day of

September, 2005 was accused of the crime of Assault in the First Degree, Domestic Violence, Felony Harassment, and Intimidation of a witness. The alleged incident occurred in Tacoma Washington. The complainant in this matter is Kerri Lee Connelly, Appellant's live-in girlfriend at the time.

Pierce County Sheriff's Deputies Carlson and Burkes contacted Ms. Connelly who reported the alleged injuries. On September 13, 2005, Mr. Whittier contacted Deputy Decker at the Pierce County Sheriff's Department to turn himself in for the alleged crime. Mr. Whittier informed the Sheriff's Office Administrative Clerk that he was there to be taken into custody. Deputy Decker contacted Mr. Whittier concerning the incident. Mr. Whittier stated to officer Decker he wanted to turn himself in. Mr. Whittier, after talking about the alleged crime with Deputy Decker was then asked to have a seat and wait.

Mr. Whittier waited approximately one hour at the Pierce County Sheriff's Office prior to being placed into custody. It was only when the now Defendant was being escorted to the elevators that his Miranda Rights were read to him. Deputy Decker, while reading the Defendant his Miranda Rights discontinued reading the Defendant his rights after the Defendant made a verbal comment that he already has knowledge of his Miranda Rights. Thereafter, Defendant was booked into the Pierce County Jail.

FACTS RELEVANT TO MOTION

The following facts set forth in this Statement of

Additional Grounds (RAP 10.10) are, to wit:

I. U.S.C.A. Sixth Amendment, ineffective defense trial counsel;

II. U.S.C.A. Fourteenth Amendment, sentencing trial violations involving due process issues;

III. Admissible and inadmissible information involving violations of state court rules;

IV. Numerous false and inconsistent prejudicial statements made by prosecutor's witnesses while under oath.

V. Violations of the Washington State Constitution and state law.

I. A. - U.S.C.A. Sixth Amendment, ineffective defense trial counsel:

Appellant's trial defense attorney, Barbara Corey, WSBA #11778 failed to provide an adequate trial defense for her client, Norman Whittier. The counsel for Mr. Whittier's defense failed to inform her client of the legal implications and resulting consequences of all the proceedings during Mr. Whittier's trial.

Counsel for Mr. Whittier failed to file a CrR 3.6 motion to suppress evidence at the proper time in the proceedings. The trial record of proceedings, on its face does not reflect an adequate attempt by defense counsel to suppress prejudicial evidence to her client. This neglect of counsel to competently petition the trial court to suppress evidence is a neglect of employing State Court Rules: ER 402.2, ER 403 - evidence which tends to prove or disprove a fact of consequences. See Exhibit 2.

Defense counsel's "motions in limine" Argument is inadequate due to the fact that counsel's initial argument

is centered upon terminology of usage of the word "victims" versus a much more passive term of "complaining witnesses." Exhibit 2, sec. (1). Counsel refers to jury matters, of which Defendant did not have a jury trial. Defense counsel alludes to the possibility and expectation that according to Exhibit 2, page 2, sec. 2 that the Court could "exclude witnesses so that they cannot hear the testimony of other witnesses: counsel prejudiced her client by usage of the Defendant's statement on page 3, sec. 5 of Exhibit 2, to Wit:... "if I stay out I'll just go an do it again." Defense counsel neglected to note that according to ER 615 the Rule does not authorize - (1) "A party who is a natural person." (3) "A person whose presence is shown by a party to be reasonably necessary to the presentation of the party's cause."

Rule ER 615 modifies previous Washington law in that it delineates certain witnesses who may not be excluded. Defense counsel failed to competently explore the usage of ER 3.6 - Suppression Hearings - states that any motions set forth by this rule shall in "writing" and "supported by an affidavit." Defense counsel failed to set forth facts that they (the moving party) will be elicited at a hearing and "memorandum of authorities."

United States v. Gonzalez-Lopez, No. 05-352 (2006)(29) the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.

this substandard defense by trial counsel amounts to "structural defects."

Gonzalez at (36) these "defy analysis by harmless error standards" because they "affect the framework within which the trial proceeds," and are not "simply an error in the trial process itself." Such errors include the denial of counsel.

Defense counsel was denied her motion of limine.

the Defendant did not have a jury trial, Exhibit 2, Sec. 1. Defense counsel did not preserve the issues of the Defendant on appeal after denial of her motion of limine. State v. Koch, No. 20896-7-II 2004, Defense counsel failed to describe evidence to be excluded, such as Defendant's taped statement, the defense investigators mitigating report, any photos or medical statements relating to the "complaining witness." Furthermore, the trial court failed to grant suppression of evidence/limine which directs that the trial court should grant such motions.

George Amend v. Bell, 89 Wash.2d 124 (31) the trial court should grant such a motion if it describes the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn or which may develop during the trial.

Mr. Whittier's defense counsel failed to utilize various discovery options which would have advanced Mr. Whittier's defense. In re Personal Restraint Petition of Aubert, No. 58680-7-I 2007:

(27) counsel's failure to discover and advance the defense was plainly deficient performance.

Defense counsel failed to argue and advance the benefits of the Defendant having a jury trial. This a violation of:

Superior Court Rule 38 (A) Right of jury trial preserved- "the right of trial by jury as declared by Article 1, section 21 of the Constitution or as given by a statute shall be preserved to the parties

inviolate.

Mr. Whittier's defense counsel is in violation of RPC Rule 1.1 competence: Ms. Corey was negligent in her responsibility to "keep the client (Mr. Whittier) reasonably informed about the status of matter."

Ms. Corey, defense counsel failed to submit any affidavit or procure any beneficial testimony on Mr. Whittier's behalf. In addition, defense counsel neglected to provide any written depositions which may support a viable defense. The facts supported on the record of proceedings (RP) violates State Court CR 43(e)(1)-

"When a motion is based on fact not appearing of record the court may hear the matter on affidavit presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions."

II. U.S.C.A. Fourteenth Amendment, sentencing trial violations involving due process issues.

II. A- Exceptional sentence - Blakely issues - right to jury trial.

Exhibit (3) is the list of witnesses called for jury trial by the prosecuting attorney Grant Blinn. The record of proceedings is void of defense counsel list of witnesses. Exhibit (3) lists nine witnesses. Exhibit (4) stipulation on prior record and offender score is illustrative of Appellant's past felonies. The transcripts of Appellant's trial highlight the discussion as to the admissibility or inadmissibility of Appellant's past criminal record. Exhibit (1) does not reflect the admissibility of past convictions in relation to Mr. Whittier's 3.5 hearing. Exhibit (4)

Appellant's judgment and sentence - again illustrates Appellant's prior criminal record, at page 2. Exhibit (5) Lines 5-11 are indisputable proof that the State lied to the defense counsel by misleading defense counsel and the court that Defendant's prior convictions would not be admitted.

Exnibit (6) defense counsel expresses her wish to admit as testimony the fact the alleged victim "was using heroin every day, I think the jury gets to hear about that." Exhibit (6), RP at Page 61. Exhibit (7) - more defense counsel reference to admitting victim character testimony. RP at page 62, lines 22-25. Due process considerations were deprived of the Appellant when defense counsel, Ms. Corey removed herself from her responsibility of defending Appellant, see Exhibit (8), RP at page 67, to wit: Ms. Corey- "and 5, I'm withdrawing" ... technically and legally, Mr. Whittier was without counsel. Further mitigating evidence concerning this trial is on page 69 - record of proceedings to 10-31-06 colloquy - lines 4-11 whereby the State was not initially planning on going into the fact of an actual physical assault. Exhibit (9) reverses the former position of the State to: ... "evidence of prior disputes, quarrels, ... that the State would be seeking to introduce." lines 18-20 RP at page 80.

PREJUDICE BY INTERNET

It is obvious and evident that according to RP, page 150-redirect examination by prosecutor Blinn that all three people, Kerri, Connely, Kenneth Neal were influenced by the

sex offender notification the complainants saw on the internet. RP, page 150-164, discusses the affect this alarming information became mutually involved in the trial.

II. B- Right to a Jury trial. Mr. Whittier was encouraged by his defense counsel to waive any Blakely, jury rights, Exhibit (4) - stipulation on prior record, plea of guilty -page 2, sec (1) - "Defendant waives and such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above." How can the court justify an exceptional sentence of fifteen years without a jury trial? Cunningham v. California, No. 05-6551 1007 a defendant has a right to a jury trial, which is safeguarded by the Sixth and Fourteenth amenemdnets.

Cunningham v. Callifornia, --- "The federal Constitution's jury-trial guarantee proscribes a sentencing scheme that allows a jury to impose a sentence above the statutory maximum based on a fact, other than a prior conviction, not found by a jury or admitted by the defendant."

II

"This court has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence."

at 18- "Several states have modified their systems in the wake of Apprendi and Blakely to retain determinate sentencing, by calling upon the jury to find any fact necessary to the imposition of an elevated sentence."

A jury trial leading to an exceptional sentence. Mr. Whittier's sentence is proscribed by State law that sets forth minimum and maximum limits of a sentence governed by the number of points or prior crimes and crime category. In

order for a trial judge to proscribe a sentence outside the minimum and maximum set by statute a few considerations must be met. (1) That a defendant be informed of his/her right to a jury trial; that a trial judge has to set forth reasons in the finding of facts and conclusions of law which may justify the imposition of a sentence outside the the statutorily established minimum and maximum sentence ranges.

Cunningham at (42)- "Apprendi said that any fact extending the defendant's sentence beyond the maximum authorized by the jury's verdict would have been considered an element of an aggravated crime -- and thus the domain of the jury -- by those who framed the Bill of Rights."

Appellant openly admits to open-handedly slapping Kerri Connely one time, for which he received a 15 year sentence. See Exhibit (4), page 2, the trial Judge exceeded his judicial authority by, by sentencing the Appellant beyond the crime grid which established a sentence within the standard range.

Cunningham cont. - (51) ... "For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has not right to a jury determination of the facts that the judge deems relevant."

(52) "The guidelines as written, however, are not advisory; they are mandatory and binding on all judges."

Mr. Whittier should be re-sentenced to within the "standard" sentence range as reflected with a total of 3 crimes, 2 previous, plus current. By re-sentencing Appellant to a more realistic sentence this would result in SRA sentence uniformity statutory precepts. U.S. v. Booker, No. 04-104
2005-

(9) ... "The court held that the sentence violated the Sixth Amendment and instructed the district court either to sentence Booker within the sentencing range supported by the jury's findings or to hold a separate sentencing before a jury."

Scnardt v. Payne, No. 02-36164 (9th Cir. 2005)

(57) "It is clear after Blakely that in creasing Ameline's punishment based on facts not admitted by him or determined by a jury beyond a reasonable doubt (or by the District Judge with a jury waived) was clearly contrary to his Sixth Amendment jury right."

Appellant's defense counsel and the state went so far as to call upon random jurors, CF 47(A) examination of jurors. Exhibit (7), page 62, Line 22; Exhibit (9), page 80, lines 7-8 and 24. Appellant was not made aware that a decision had been made to abandon having a jury. The court progressed as far as calling prospective jurors and creating jury instructions but suddenly, Appellant's defense counsel instructed Appellant to sign a stipulated guilty plea (Alford plea). Appellant's due process considerations were violated when he was not completely informed as to the reasons for not having a jury trial, the consequences of waiving Blakely jury Rights considerations. In place of a jury trial, Appellant was hoodwinked into believing he was receiving a less than 15 year sentence. According to CrR 6.15 the trial had been called for a jury. RP (transcripts) do not reflect the Superior Court Judge calling off the scheduled jury trial. The record reflects that jury selection and related papers were filed with the trial court clerk pursuant to CrR 6.15.

The trial court violated RCW 4.44.090 Questions of Fact

for Jury because any questions of fact other than those mentioned in RCW 4.44.080 "shall be decided by the jury, and all evidence thereon addressed to them." Defense counsel failed to discuss the waiver of trial by jury with defendant as evidenced by Appellant's personally written letter to his defense attorney. Exhibit (10) - "Mr. Whittier addresses court and wishes to withdraw his plea and have a jury trial." Exhibit (11) is undisputable evidence that Appellant was expecting a trial by jury. Appellant states, to wit:

"Well, I would like to withdraw it and go to court with 12 jurors."

Washington State law, i.e., RCW 7.06.070 - Right to Trial by Jury: "No provision of this chapter may be construed to abridge the right to trial by jury."

II. C. Exceptional Sentence - guilty plea.

Appellant received an exceptional sentence as a result of entering a stipulated plea of guilt in connection to an "Alford Plea" as a result of defense counsel's architectural intent to secure a plea of guilt. State v. Corder, No. 23315-4-III 2006-

(29 "A guilty plea cannot be knowing and intelligent if the defendant has been misinformed about the element of the offense."

Exhibit (12), the prosecuting attorney's "Amended Information" uses unsubstantiated accusations of three witnesses, i.e., Kerri Connely, Kenneth Neal and John McDonald. The prosecutor, Mr. Blinn, used what amounts to hearsay, and witness statements by the aforementioned which are riddled with inconsistencies. The record of proceedings

(RP)/transcripts clearly illustrate and demonstrate the unstable scrambled testimony of all three witnesses. Exhibit (13), victim impact statement by Kerri Connely is completely different than from the witness statement. Ms. Connely states in Exnibit (13): ... "I am looking at having major surgery on my mouth." If Ms. Connely's exaggerated injuries are so serious then where are the police/medical photos? Is it not strange that a person who was admittedly slapped with the Appellant's open hand, receives so much trauma? According to Ms. Connely's victim impact statement she suffered so much bruising and her body had difficulty moving and she claims to have lost "valuable work time." Ms. Connely claims she can barely function, yet she continually feeds her heroin habit. Mental instability is manifested in many ways. Exnibit (13), page 2, Ms. Connely states: "I am unable to let anyone get close to me anymore which makes me feel like I am all alone and it hurts to think I will end up alone for the rest of my life because of him."

Mr. Whittier received a total of fifteen years for what amounts to domestic violence. Mr. Whittier's sentence does not reflect the recommendation of the prosecuting attorney. The prosecutor's "Motion in Limine" states in part: Exhibit (14) -

I. "To exclude reference to the fact that defendant may be sentenced to life in prison, may be a persistent offender, may be a "3 striker", or other similar references to possible punishment."

The trial Judge ignored the prosecutor's and defense counsel's motions in limine as evidenced by Exnibit (4)

-page 2, sec (1). Why would the Appellant's defense attorney endorse and allow Mr. Whittier's signing of Exhibit (4) -"Stipulation of Prior Record and Offender Score (Plea of Guilty)"? Done in "open court" on the same day was the filing and admission into the proceedings of evidence is the prosecutor's "Amended Information," which promotes a different and opposite theory. See Exhibit (12). Mr. Whittier's sentence, on its face is defective as the trial judge did not correctly sentence Mr. Whittier to 46 months properly reflecting the Count II and III.

Exhibit 15 sets forth the "findings of fact and conclusions of law for exceptional sentence." The findings of fact and conclusions of law lack sufficient reasons and facts of a criminal nature which may justify an exceptional sentence.

State v. Hilyard, Nos. 12325-8-II, 13597-5-II
(69) "Written findings ensure that the reasons for exceptional sentences are articulated, thus informing the defendant, appellate courts, the sentencing guidelines commission, and the public of the reasons for deviating from the standard range."

Dghi Enterprises v. Pacific Cites Inc., 137 Wash.2d 933
(48) "Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk. In giving the decision, the facts found and the conclusions of law shall be separately stated."

II. D. Appellant, Mr. Whittier was not adequately informed of the facts and consequences of the stipulated and amended information as admitted by Appellant's defense counsel during the critical period of sentencing.

CrR 7.3 - Judgment - "a judgment of conviction shall set forth whether defendant was represented by counsel ... the verdict of findings.

II. D. APPELLANT, Mr. Whittier was not adequately informed of the facts and consequences of the stipulated and amended Information as admitted by appellant's defense counsel during the critical period of sentencing.

CrR7.3-Judgment-" A judgment of conviction shall set forth whether defendant was represented by counsel...the verdict or findings".

State v. Calhoun 2007

(23) " A guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea,.....

(29) CrR 4.2 (f) Provides that a trial court must permit the withdrawal of a guilty plea to correct a manifest of injustice. Denial of effective counsel is one way to establish a manifest injustice."

Exhibit 16- Is indisputable proof that appellant is confused

about what his defense counsel encouraged him to sign concerning length of sentence. **Appellant's personal letter** to his defense counsel, **pg.2.**

Exhibit 17- Statement of defendant on plea of guilty has a entirely **different** length of sentence written in, **section (b).**

Pg2 of the appellant's plea of guilty is misleading on its' face as **sec.6, pg 2** states in writing that "total actual confinement" is " 26-34" ct1; "9-12" ct2. In addition, appellant's plea of guilty is written in a disorderly manner at best.

Exhibit 4 is devoid of any "sentence enhancements" as states:
" The defendant stipulates "... " that the offender score is correct". In appellant's case, the only offender score visible is- count II "26-34 months" and count III "9-12 months".

In re Personal restraint petition of Pirtle, 136 Wash. 2d 467. (142) "Pirtle must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Mr. Whittier's attorney's performance is deficient as it falls below an objective standard of reasonableness.

Appellant's trial court failed to enter facts of law and aggravating circumstances which would justify an "exceptional sentence".

State v. Poston, no. 56473-1-I

(30) "The issue is whether the trial court engaged in judicial fact finding to support the exceptional sentence that it imposed. We hold it did not."

State v. Corder, no. 23315-4-III 2006-(27) "Both the federal and State Constitutions guarantee the accused the right to be informed of the nature and

cause of the action against him. U.S. Const. amend. VI; Const. art. I. sec. 22 (amend10).

Appellant was prejudiced as his personal letters written to his attorney spell out confusion and frustration. The requirement of the charging documents need to contain all essential facts and elements, which is known as the 'essential elements' Rule.

The primary goal of the essential elements Rule is to give notice to Mr. Whittier, the nature of the accusations against him so that he and his trial attorney can prepare an adequate defense. State law has been contravened and the sentence needs to be remanded back to the sentencing court pursuant to :

RCW 9.94A.585- (2) "A sentence outside the standard sentence range for the offense is subject to appeal"....

(4) "To reverse a sentence which is outside the standard sentence range, the reviewing court must find that the reasons supplied by the sentencing court are not supported by the record which was before the judge or that those reasons do not justify a sentence outside the standard sentence range for that offense"....

(5) "A review under this section shall be made solely upon the record that was before the court."

Bell v. Cone, NO. 01-400 U.S. Supreme Court 2002

(54) "Counsel's short comings include a failure to interview witnesses who could have provided mitigating evidence; A failure to introduce available mitigating evidence; and the failure to make any closing argument or plea... these circumstances "justify a presumption that respondent's conviction was insufficiently reliable to satisfy the constitution."

III. Admissable and inadmissible information involving violations of State Court Rules.

Violations of State law and State court rules exist to support this appeal of trial errors back to the original sentencing court, for in the very least, a correction of sentence.

III. cont: **Exhibit 18-** Declaration for determination of probable cause, September 15, 2005 is not sufficiently supported in facts of law, the amended complaint or Mr. Whittier's judgment and sentence. There was no photos or medical statements admitted or excluded into the trial. Mr. Whittier's illegally taped statement was not admitted. At best, the witness statements from all three witnesses are cloudy and wavering at best. **Exhibit 18-** Describes deputy's Carlson and Burks contact with Kerri Connelly. The assertions made in **exhibit 18** are not mentioned or supported in future trial transcripts. By the trial court accepting the witness statements as proof, the court violated **RCW 10.58.035-**

(3) "Where the court finds that the confession, admission, or other statement of the defendant is sufficiently trustworthy to be admitted, the court shall issue a written order setting forth the rationale for admission."

Exhibits-13,19,14,2,17,20,5,8,pg47 colloquy-10/31/06, pg69 colloquy,pg152 11/2/06-John McDonald.

State v. Cenich, NO.32532-II Wash. App.-(69) "The fourteenth amendment of the United States Constitution and article 1, section 3 of the Washington Constitution require the State to preserve material exculpatory evidence in a criminal trial. *State v. Wittenbarger*, 124 Wn.2d. If the State fails to preserve material exculpatory evidence, the trial court must dismiss criminal charges."

CR43 (h) Report or Transcripts as evidence.

"Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony."

Mr. Whittier, was in fact convicted of uncharged accusations purported criminal activity throughout his trial. This is a clear violation of Rule 404(b), to wit:

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action or propensity. The primary purpose of this rule is to restrict the admissibility of related, but uncharged, criminal activity in a criminal case.

ER 404 (b) expresses the traditional rule that prior misconduct is inadmissible to show that Mr. Whittier is a dangerous person or a "criminal type". Evidence that is otherwise admissible under Rule 404(b) should be excluded under rule 403 if its' probative value is outweighed by the danger of unfair prejudice. **ER 103 (11)** "Opening the door" The door is opened only by the introduction of evidence. Mr. Whittier was prejudiced by the prosecuting attorney not being allowed to cross-examine appellant. This would, in effect impeach the credibility of the victim. Mr Whittier testifies one version, Ms. Connelly another. Did the court admit heresay? Clearly yes as evidenced by the witness statements.

IV Numerous false and inconsistent prejudicial statements made by prosecutor's witnessess while under oath.

Exhibit 12- Prosecutor's "amended information" does not describe facts or elements of criminal law that is conclusive. Count II is nothing more than a feeble and unsound statement that is the equivalent of heresy. **State v. Ferguson**, NO. 68899-1 2001 Emphasizes the finding of "deliberate cruelty" which was a substantial and compelling reason justifying imposition of the aggravated exceptional sentence.

Ferguson at (55) "The essential question before this court is whether the facts require for proof of the elements of charged offense"....

None of the State's witnesses actually witnessed the alleged assault. All three witnesses before, during and after the incident did not act frightened or intimidated in the presence of Mr. Whittier. Up until the day of the incident continued to associate like normal with Mr. Whittier. Exhibit 12- "Felony harrassment, count III carries a 5 year statutory maximum sentence. The standard range is 9-12 months. Exhibit 12 clearly does not set forth facts on the face of the prosecutor's amended information justifying a 5 year sentence.

State v. Thorne:

(123) "A purpose of the SRA is to ensure that punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history."

Exhibit 4 and 17, Appellant's statement and plea of guilty charge and convict Mr. Whittier of felony harrassment, RCW-9A.46.020.

Exhibit 4, pg 1 Judgment and sentence concludes Mr. Whittier is guilty of 9A.46.020 (2) (b) Which states:

(b) "A person who harasses another is guilty of a class C felony if either of the following applies:
(i) The person has previously been convicted in this or any other State of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victims family or household or ant person specifically named in a no-contact or no-harrassment order;"

Mr. Whittier has never been "convicted in this or any other state of any crime of harrassment,".... Mr. Whittier lived with Kerri Connelly which constitutes "household".

The other two male witnesses have not and were not members of Mr. Whittier's "household".

Prior to the 9/12/05 date of the incident, Mr. Whittier did not violate "any person specifically named in a no-contact or no-harrassment order." **Exhibit 4** is clear that Mr. Whittier was found guilty of this part of the harrassment statute.

RCW 9A.46.020 (ii) is not written on the appellant's judgment and sentence; 9A.46.020 (1) (i) (b),(2) (b) is clearly written on the judgment and sentence. **Exhibit 12** asserts that Mr. Whittie r is guilty of a crime and or a series of acts connected together.... This criminal charge would be under the statutory definition of sec (ii) of 9A.46.020.

This is not on appellant's judgment and sentence.

Exhibit 12- Prosecutor's "amended information" charges Mr. Whittier with count II, **Intimidating a witness-** **RCW 9A72.110 (1) (d), Intimidating a witness** is a statute defining, as its' elements anyone intimidating a witness by threats related to a "prospective witness". It is clear that Mr. Whittier could not foretell a yet to materialize trial. The statutory content of RCW 9A.72.110 correlates to prospective criminal/trial witness or the abuse and neglect of a minor child. It is impossible for Mr. Whittier as charged in the prosecutor's amended information, to predict "John McDonald and/or Kenneth Neal, a current or prospective witness, attempt to induce John McDonald and... Kenneth Neal not to report the information relevant to a criminal investigation".... It is unequivocally clear that the crime as charged by the prosecutor did not involve a minor child, as described in the statute and amended information. There are specific elements of a crime which must correspond to the initial information charged and defined on the accused judgment and sentence.

State v. Chino, NO. 21186-0-III

(49) "To convict the defendant of the crime of intimidating a witness, each of the following elements of the crime must be proved beyond a reasonable doubt."

The overall scheme or plan refers to the "fear" witnesses had for the defendant.

The evidence is admissible if the trial judge concludes that the evidence is sufficient for the jury to conclude there was a common scheme or plan.

Rules of evidence and admissibility were contravened when the court deemed as credible the three witness testimonies. Kerry Connely is a self-admitted heroin addict. Apparently the trial court neglected to factor into the testimony the long term effects heroine had on the alleged victim's memory, spatial relationship of reality time and location as related to charged elements of the crime.

ER 608- Evidence of Character and conduct of witness

V. Withdrawal of Guilty Plea:

Appellant's guilty plea, **exhibits 4 and 17** need to be withdrawn. Appellant's guilty plea was not signed by appellant knowingly and willingly as evidenced by appellant's personal letter to his defense attorney, **exhibits 11 and 16**. CrR 4.2 (f) allows the appellant to withdraw his plea of guilty.

CrR 4.2 (f) Withdrawal of Plea

"The court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest of injustice. If the motion for withdrawal is made after judgment, it shall be governed by CrR 7.8.

Appellant requests the appellate court to act upon this manifest of injustice. It is evident that in light of numerous inconsistencies, abandonment of a jury trial, inadequate defense counsel and a egregious misleading plea agreements cunningly engineered. In addition, the appellate court has the authority to modify previous trial court decisions. **RAP 7.2**

State v. Corder, NO. 23315-4-III 2006 (61)

"A guilty plea may be deemed involuntary where there is a mutual mistake of fact or law and where this mistake forms part of the basis for the defendant's plea."

Exhibits 21, pgs 177-178, 184 and 185 are undisputable proof that appellant felt the need to address the trial court prior to sentencing. It is also evident that exhibit 21, pgs 184, 185 that appellant's effort to withdraw his guilty plea was not properly briefed before the Superior Court. There is no question that the sentencing court pushed ahead with the closure of this trial. Appellant was not made aware of the elements of the charge by his attorney. Appellant, as evidenced by his personal letters of frustration and confusion was not made aware of the nature of the charges against him. Mr. Whittier's attorney did not discuss the police statement or the content of the state's offer with him so that he could make an intelligent and willingly plea to the charges against him.

Bradshaw v. Stumpf, NO. 04-637, U.S. Sup. Ct. 2005
(36) "Stumpf's guilty plea would indeed be invalid if he had not been aware of the nature of the charges against him, including the elements of the aggravated murder to which he pleaded guilty."

RELIEF SOUGHT

Appellant requests that the appellant court, Division II authorize that this statement of additional grounds (SAG) be remanded by the appellate court to the Superior Court. It is recommended that this matter be remanded for; (1) A correction of sentence to reflect the standard sentence range for which insures sentence uniformity which the Sentencing Reform Act calls for; (2) A withdrawal of appellant's guilty plea due to the fact of State and Federal Constitutional defects.

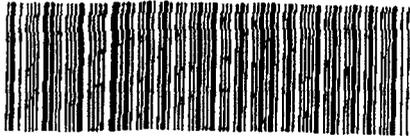
Done this 25 day of October, 2007.

Respectfully Submitted, Norman F. Whittier

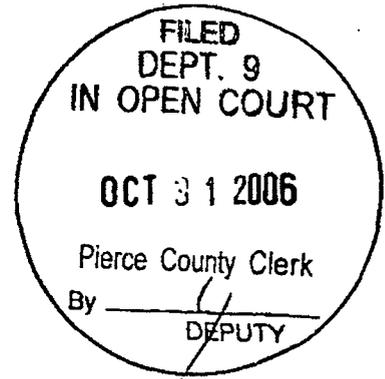
Norman Whittier

NO. 128597 H1-B65

Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520



05-1-04496-1 26491449 EXRV 11-13-08



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff,

Cause No. 05-1-04496-1

vs.

EXHIBIT RECORD - 3.5 MOTION

NORMAN FLOYD WHITTIER,
Defendant.

| P D | No. | Description | Off | Obj | Admitted Agreed Illustrative Published Redacted Reserved Withdrawn | Admit Date | Rec'd by Clerk's Office |
|--------|-----|--|-----|-----|--|---------------|----------------------------------|
| P | 1 | Three page copy of Pierce County Sheriff Dept. Supplemental police report dated 9-13-5 by Officer Winson Waterman. | NO | NO | NO | NO | ✓ |
| P | 2 | Two page copy of front and back of Miranda Warning card. | X | N | Admitted | 10-31-6 | ✓ |
| P | 3 | One page copy of Advisement of Rights form signed by Norman Whittier. | X | Y | Admitted | 10-31-6 | ✓ |
| P | 4 | Eleven page copy of Pierce County Sheriff's Dept. Interview report dated 9-13-5 of Norman Whittier. | X | Y | Admitted | 10-31-6 | ✓ |
| P | 5 | Four page copy of Pierce County Sheriff Dept. Supplemental police report dated 9-13- by Officer Sean Decker. | NO | NO | NO | NO | ✓ |
| P | 6 | Six page copy of Pierce County Sheriff Dept. Supplemental police report dated 9-13-5 by Officer Eric Carlson. | X | Y | Admitted | 10-31-6 | ✓ |
| | | | | | | | |
| | | | | | | | |
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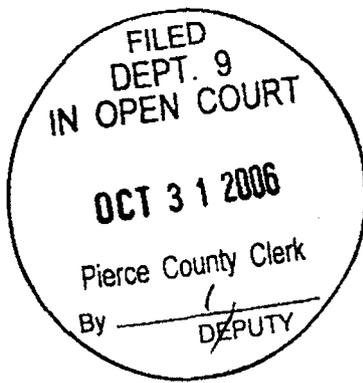
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EXHIBIT RECORD - 1
STATE OF WASHINGTON vs. WHITTIER, NORMAN FLOYD, 05-1-04496-1

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05-1-04496-1 28491553 MTL 11-13-06



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

STATE OF WASHINGTON,

Plaintiff,

vs

NORMAN FLOYD WHITTIER,

Defendant.

NO. 05-1-04496-1

DEFENDANT'S MOTIONS
IN LIMINE

1. This court should prohibit reference to the complaining witnesses as "victims."

Mr. Whittier asserts a defense of general denial. Because the critical issue for the jury is whether Mr. Whittier committed any crime, referring to the complaining witnesses as "victims" invades the province of the jury and denies Mr. King a fair trial. Such a reference is also an improper opinion of the credibility of the State's witnesses. State v. Smith, 56 Wn.App. 909, 786 P.2d 320 (1990). It is also an improper opinion of the defendant's guilt. State v. Dolan, 118 Wn.App. 323, 73 P.3d 1011 (2003). This is particularly true in cases whether the issue is whether any crime was committed. If the issue is whether a crime occurred, then calling the complaining witnesses "victims" reinforces the State's case by expressing the opinion that the State's witnesses are telling the truth, a crime was committed, and the

DEFENDANT'S MOTIONS
IN LIMINE

BARBARA COREY, ATTORNEY, PLLC
901 South "I" St, #201
Tacoma, WA 98405
253.779.0844

ORIGINAL

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1 defendant committed the crime. The term "victims" further is argumentative and begs the
2 question to be answered by the jury. It would be just as improper for defense counsel and
3 witnesses to refer to the complaining witnesses as "liars" or "delusional accusers" in order to
4 promote a particular view of the evidence.

5
6 2. This court should exclude witnesses pursuant to ER 615.
7 ER 615 permits the court, upon its own motion or the motion of a party, to exclude
8 witnesses so that they cannot hear the testimony of other witnesses.

9 Defendant Whittier asks this court to exclude witnesses for the reason identified in the
10 rule.

11
12 3. This court should admit evidence that the complaining witness used heroin daily at
13 the time of the alleged crime where such evidence is relevant for the fact finder to evaluate
14 credibility.

15 It is well settled in Washington that evidence of drug use admissible to impeach the
16 credibility of a witness if there is a showing that the witness was using or was influenced by the
17 drugs at the time of the occurrence which is the subject of the testimony. State v. Russell, 125
18 Wn.2d 24, 83, 882 P.2d 747 (1994).

19 In this case, complaining witness Kerri Connelly admitted during the defense interview
20 on August 24, 2006, that she had "just started" using street drugs "right before this all
21 happened." She acknowledged that her drug of choice was heroin and that she used it every
22 day.

23 The jury is entitled to know about Ms. Connelly's drug abuse and to consider that when
24 evaluating her credibility.
25

1
2 4. This court should prohibit any witness from testifying that the defendant has prior
3 convictions or has served time in prison.

4 ER 4021 defines "relevant evidence" as evidence having any tendency to make the
5 existence of any fact that is of consequence to the determination of the action more probable or
6 less probable than it would be without the evidence. ER 402 provides that evidence that is not
7 relevant is not admissible

8 In this case, the complaining witness Kerri Connelly knew that the defendant had served
9 time in prison and hours before the alleged assault, she looked up his prior convictions on the
10 Internet and realized that he had spent more than twenty years in prison. In addition, she stated
11 during the defense interview that because she had done prison herself, she knew how hard it was
12 to transition back to life in the community.

13 Obviously evidence that the defendant served time in prison is not relevant to the fact
14 finder's determination whether he committed the charged crimes. In addition, evidence of the fact
15 of the defendant's prior convictions is unfairly prejudicial.

16 This court therefore should exclude this evidence.

17
18 5. This court should exclude the defendant's statement, made when he surrendered
19 himself at the Sheriff's Department, that "if I stay outside, I'll just go and do this again" because it
20 conveys to the jury that he has been in prison.

21 The defendant went to the Pierce County Sheriff's Department on September 13, 2005, "to
22 turn himself in for beating up his girlfriend." While the deputy at the front desk determined
23 whether the defendant was wanted for any crimes, the defendant stated, "if I stay out I'll just go
24 and do it again".
25

DEFENDANT'S MOTIONS
IN LIMINE

BARBARA COREY, ATTORNEY, PLLC
901 South "I" St, #201
Tacoma, WA 98405
253.779.0844

1 The statement "if I stay out" strongly compels the conclusion that the defendant has done
2 prison time. It is unfairly prejudicial and excludable under ER 403.

3 The defendant made other incriminating statements at the Sheriff's office, but none of
4 them referred to prior incarceration.

5

6 DATED: October 26, 2006.

7

8

9


BARBARA COREY, WSBA #11778
Attorney for Defendant

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FILED
IN COUNTY CLERK'S OFFICE
A.M. SEP 28 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,

NO. 05-1-04498-1

Plaintiff,

vs.

NORMAN FLOYD WHITTIER

Defendant(s).

LIST OF WITNESSES

TO: NORMAN FLOYD WHITTIER, defendant, and

TO: BARBARA L. COREY, his/her attorney

The following is a list of witnesses in the above entitled cause for JURY TRIAL on 10/26/2008

DALE HEIDEL

DENISE SEVERSON

JAMES FULCHER, MD

JOHN ROBERT MCDONALD

KENNETH M NEAL

KERRI LEE CONNELLY

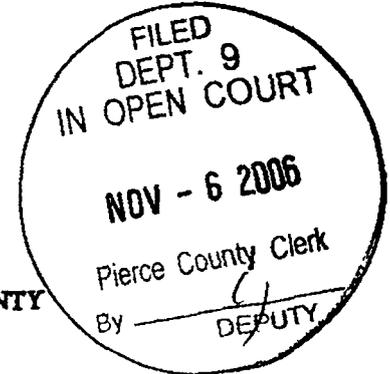
ERIC ALLEN CARLSON
PIERCE COUNTY SHERIFF #345

SEAN PATRICK DECKER
PIERCE COUNTY SHERIFF #388

WILLIAM MARTIN BURKS
PIERCE COUNTY SHERIFF #464

EX 3

05-1-04496-1



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-04496-1

vs.

JUDGMENT AND SENTENCE (FJS)

NORMAN FLOYD WHITTIER

Defendant.

- Prison [] RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (DOSA), 4.15.2, 5.3, 5.6 and 5.8

SID: 10129036
DOB: 03/20/40

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11/02/2006 by [X] plea [] jury-verdict [] bench trial of:

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|-------|------------------------|---|-------------------|---------------|--------------|
| II | Intimidating a Witness | 9A.72.110(1)(d) | N/A | 09/12/05 | 052550116 |
| III | Felony Harassment | 9A.46.020(2)(b); 9A.46.020(1)(a)(i)(b) | N/A | 09/12/05 | 052550116 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Amended Information

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

06-9-13139-9

239

EX 4

05-1-04496-1

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

| | CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J ADULT JUV | TYPE OF CRIME |
|---|-----------|------------------|--------------------------------------|---------------|------------------------|---------------|
| 1 | Assault 1 | 06/22/73 | Thurston County, WA | 12/14/72 | A | SV |
| 2 | Rape 1 | 02/04/80 | Pierce County, WA | 12/15/79 | A | SV, Sex |

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancement) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancement) | MAXIMUM TERM |
|-----------|----------------|-------------------|---|-------------------|---|--------------|
| II | 3 | VI | 26 - 34 months | N/A | 26 - 34 months | 10 yrs |
| III | 3 | III | 9 - 12 months | N/A | 9 - 12 months | 5 yrs |

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

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

III. JUDGMENT

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

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

05-1-04496-1

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [] HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 [X] DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with John McDonald
Kenneth Neel (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 10 years (not to exceed the maximum statutory sentence).

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

4.10 OTHER:

Empty rectangular box for additional information.

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

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

120 months on Count II _____ months on Count _____
60 months on Count III _____ months on Count _____
_____ months on Count _____ months on Count _____

Counts II and III are to run consecutive to each other for a total of 180 months.

Actual number of months of total confinement ordered is: 180

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

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other

242

05-1-04496-1

1
2 deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served
3 consecutively: counts II and III to run consecutively,

4 The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the
5 commission of the crime(s) being sentenced.

6 Confinement shall commence immediately unless otherwise set forth here:

7
8 (b) The defendant shall receive credit for time served prior to sentencing if that confinement was
9 solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail
unless the credit for time served prior to sentencing is specifically set forth by the court: 419 days.

10 4.13 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

11 Count _____ for _____ months;

12 Count _____ for _____ months;

13 Count _____ for _____ months;

14 COMMUNITY CUSTODY is ordered as follows:

15 Count II for a range from: 9 to 18 Months;

16 Count _____ for a range from: _____ to _____ Months;

17 Count _____ for a range from: _____ to _____ Months;

18
19 or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer,
20 and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses --
21 serious violent offense, second degree assault, any crime against a person with a deadly weapon finding,
Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A.
Use paragraph 4.7 to impose community custody following work ethic camp.]

22 PROVIDED: That under no circumstances shall the combined term of confinement and term of
community custody actually served exceed the statutory maximum for each offense

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

[] The defendant shall not consume any alcohol.

Defendant shall have no contact with: Kerr: Lee Connelly, John McDonald, Kenneth Neal

05-1-04496-1

Print name: GRANT BLINN Print name: BANBURA CONE
WSB # 25570 WSB # 11778

x Norman F. Whittier
Defendant
Print name: Norman Whittier

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: x Norman F. Whittier

1 were the preMiranda statements.

2 Therefore, all statements made to Mr. Waterman
3 are admissible under Criminal Rule 3.5 and the
4 requirements of Miranda.

5 With respect to the statements to Deputy Decker,
6 the State will not be offering those statements in the
7 trial. But in the event of a conviction, the State
8 believes that the Court ought to be able to consider those
9 statements in proving whether or not -- or in determining
10 whether or not the State has proved the assistance of
11 these prior convictions.

12 Deputy Decker, again, asked the defendant at
13 some point why he was feeling suicidal. According to
14 Deputy Waterman's testimony, Deputy Decker would have come
15 on the scene perhaps 30, 40 minutes post Miranda. The
16 questions were custodial. They were the result of
17 interrogation, or the answers were the result of
18 interrogation. But, again, they were post Miranda and
19 even though the State is not seeking to admit them in
20 trial, they are not inadmissible under Rule 3.5 or
21 inadmissible under Miranda.

22 Finally, the taped statement. Ms. Corey stated
23 earlier the State is not offering, there is an independent
24 statutory requirement that someone be Mirandized on tape
25 when they were taking a taped statement from a suspect.

EX 5

1 charges and anything that she testifies to in the days
2 leading up to that, if she was using heroin every day, I
3 think the jury gets to hear about that. Use of heroin or
4 other drugs after the incident, I do not agree are
5 admissible and, again, as Ms. Corey stated, specifically
6 disagree about drug use on or about the date she was
7 interviewed by defense counsel.

8 I would only ask, again, that counsel take leave
9 of the Court before exploring that area.

10 MS. COREY: My understanding is that it's agreed
11 that evidence that she was using heroin in the days prior
12 to and on the day of this incident is -- we agree that
13 that's admissible. That if the defense wants to ask about
14 heroin use after that, we need to excuse the jury and
15 obtain permission from the Court and argue it at that
16 time. Is that correct?

17 MR. BLINN: Yes. With one point of
18 clarification. That is, if for example, she testifies
19 specifically about the nature of her relationship with the
20 defendant for, say, a week leading up to the incident, I
21 think heroin use during that period of time, the week
22 leading up to the incident, is certainly admissible.
23 Exploring a lengthier history of drug use that may go back
24 years, I don't agree that would be admissible. But the
25 period of time that she testifies about, describing the

E16

1 nature of your relationship with the defendant, yes, they
2 can explore that.

3 THE COURT: I hear a week, I hear leading up to
4 that. What did you have in mind?

5 MS. COREY: You know, part of what I would have
6 in mind depends on exactly what history the State elicits.
7 Ms. Connelly, Kerri Connelly, the alleged victim, has made
8 different statements, even about how long she lived with
9 the defendant and how long she knew him. But she did
10 testify that, you know, by the time of these events, she
11 was shooting up daily. And so I don't intend to go back
12 to the first time she stuck a needle in her arm, but
13 depending on how far back counsel goes in their
14 relationship, it may or may not be relevant. Certainly
15 the events of August and September of 2005, there's no
16 question but that she was shooting up on a daily basis.
17 That clearly comes in.

18 So, you know, beyond that I'm willing to not go
19 without prior leave of the Court. It's hard for me to
20 know at this point the full extent of the State's direct
21 examination. So if they were to open the subject of other
22 drug use, I would ask that the jury be excused and ask
23 permission to go into that. But August and September, I
24 think, are clearly, her drug use then is clearly
25 admissible and the State does not contest that.

Ex 7

1 inappropriate and goes to the ultimate issue in the trial.

2 I also don't think it's difficult to modify our
3 thought to refer to her as the complaining witness.

4 THE COURT: The Court has pretty much agreed the
5 defense on that issue when it's brought up, not that often
6 but when it's brought up. I agree with defense that it's,
7 to some degree, prejudicial to say victim. Complaining
8 witness is sufficient. Complaining witness would be the
9 Court's ruling in that matter.

10 No. 2?

11 MR. BLINN: State agrees to exclusion of
12 witnesses.

13 THE COURT: No. 3?

14 MR. BLINN: I think 3 we have already dealt with
15 through the State's motions in limine.

16 MS. COREY: I think we have. Likewise, 4.

17 MR. BLINN: Likewise 4.

18 MS. COREY: And 5, I'm withdrawing because the
19 testimony has come out a little different than I thought
20 it would. The Court has, in fact, ruled on that in terms
21 of the 3.5 hearing.

22 I have one other matter that I want to bring up
23 that wasn't briefed. But my reading of the law and, you
24 know, the Evidence Rules is that if the State is going to
25 bring in any evidence of any prior assaults, then the

ET 8

1 NOVEMBER 1, 2006

2 MORNING SESSION

3 THE COURT: Please take your seats. Good
4 morning.

5 MR. BLINN: Good morning.

6 MS. COREY: Good morning.

7 THE COURT: I say we call the jurors who want to
8 talk to you, unless you have other ideas.

9 MR. BLINN: That's fine with me. I know there
10 are four that requested we speak in private. Ms. Corey
11 has some additional ones that she would like to address in
12 a more private setting.

13 Just by way of scheduling, I guess, it's the
14 State's position that we should interview those in private
15 who we're going to interview in private. If there's time
16 left over at the end of the morning, perhaps we can start
17 general voir dire. Ms. Corey and I had had a discussion
18 over the telephone yesterday afternoon regarding 404(b)
19 evidence, evidence of prior disputes, quarrels, et cetera,
20 that the State would be seeking to introduce. Ms. Corey
21 suggested, and I agreed too, if the Court is willing, have
22 the victim and one other witness in this afternoon to
23 testify, have that offer of proof as to what they would
24 testify to in front of the jury and then the Court can
25 make a determination and the Court will have better

Ex 9

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 05-1-04496-1

MEMORANDUM OF JOURNAL ENTRY

vs.

Page: 2 of 2

WHITTIER, NORMAN FLOYD

Judge: SERGIO ARMIJO

MINUTES OF PROCEEDING

Judicial Assistant: Lupe Torres

Court Reporter: CARLA HIGGINS

Start Date/Time: 11/06/06 1:36 PM

November 06, 2006 **01:36 PM** Present is Pros. Grant Blinn. Also present is Atty. Barbara Corey along with her client in custody Norman Whittier this date of Sentencing. Ms. Corey states that her client wishes to fire her from this case and withdrawl his plea. **01:36 PM** Mr. Whittier addresses court. Hands judge letter for him to read. **01:38 PM** Atty. Blinn addresses court in regards to Mr. Whittier withdrawing plea. **01:40 PM** Atty. Corey replies. Judge states at this time court to proceed with Sentencing. **01:44 PM** Atty. Blinn replies to court in regards to plea paperwork. **01:45 PM** Atty. Corey replies. **01:46 PM** Mr. Whittier addresses court and wishes to withdraw his plea and have a jury trial. **01:49 PM** Judge reponds to Mr. Whittier he replies. **01:50 PM** Judge advises Mr. Whittier he will proceed with Sentencing. Atty. Corey reviews all sentencing paperwork with her client. **02:00 PM** Judge reads rights to appeal to Mr. Whittier, Mr. Whittier states he understands his rights. Judge signs the following orders, Advice of Right to Appeal, Judgment and Sentence, Order For Biological Sample Draw for DNA Identification Analysis, Warrant of Commitment, and Three Orders Prohibiting Contact for Kenneth Neal, John McDonald and Kerri Connelly and Scheduling Order setting Restitution hearing for Dec. 1, 2006 @ 1:30 PM. Letter presented by Mr. Whittier today in court filed. **02:07 PM** Court adjourns.

End Date/Time:

EX 10

①

13829 11/13/2006 0991
05-1-04496-1

I, Norman F. Dittler when to court
about 5 time and no one was there,
away has some else to do.

Two time ago I when and Barbara
my attorney said she had
some thing else to do.

I signed a paper that I go to
court in 30-45 day. That was O.K.

Then the judge ask the Prosecutor
Lower and that Prosecutor said
yes because no one was there
then my Barbara said Keri Connelly
was in jail.

That make me mad. For if
no one was there it should have
be over. and I would sign the paper

Well I was talking to a
friend and she said on the
T.V. thing the Prosecutor Lower

Put out they to get Keri John
and Noel to come to court, with
my attorney was or is to ~~bring~~
some thing down. ~~Right~~

like now, I am in court and
Barbara said this Prosecutor Lower
is the same one. No he is not

For I write the the judge and
told her the Prosecutor and my ~~att~~
Lobby

(2)

Barbara coy wanted to meet with Keri. So I called a friend and had Barbara to see Keri well the Proctor Loney and my Loney seen Keri and I was told Keri was High.

Well I lost that judge and the one Proctor now I got this other one there; Head one. Barbara said he was always here on my cases. No he was not this is a new Proctor Barbara told to me.

I sign a ^{power} paper that gave me 10 year felt.

Well I would like to with down it and go to court with 12 juror's.

I am to old to do the 10 years. For I would be 76 years old when I get out. and No good to No one.

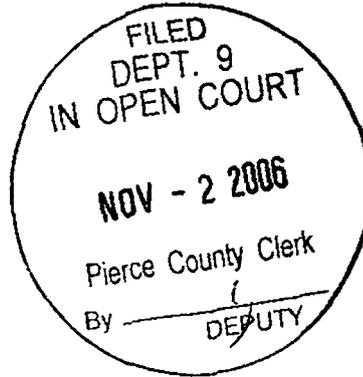
I got to take it to court.

I thank you for this time

Norman F Whittier
ET 11



05-1-04496-1 28491843 AMINF 11-13-06



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-04496-1

NOV 13 2006

vs.

NORMAN FLOYD WHITTIER,

AMENDED INFORMATION

Defendant.

DOB: 3/20/1940
PCN#: 538538019

SEX : MALE
SID#: UNKNOWN

RACE: WHITE
DOL#: UNKNOWN

COUNT II

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse NORMAN FLOYD WHITTIER of the crime of INTIMIDATING A WITNESS, committed as follows:

That NORMAN FLOYD WHITTIER, in the State of Washington, on or about the 12th day of September, 2005, did unlawfully and feloniously by use of a threat directed to John McDonald and/or Kerri Connelly and/or Kenneth Neal, a current or prospective witness, attempt to induce John McDonald and/or Kerri Connelly and or Kenneth Neal not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to prosecute the crime or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child, contrary to RCW 9A.72.110(1)(d), and against the peace and dignity of the State of Washington.

COUNT III

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse NORMAN FLOYD WHITTIER of the crime of FELONY HARASSMENT, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or

AMENDED INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

ORIGINAL

12

1 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of
2 one charge from proof of the others, committed as follows:

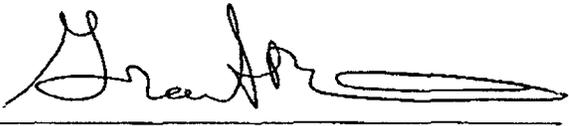
3 That NORMAN FLOYD WHITTIER, in the State of Washington, on or about the 12th day of
4 September, 2005, without lawful authority, did unlawfully, knowingly threaten Kerri Connelly and/or
5 Kenneth Neal and/or John McDonald to cause bodily injury, immediately or in the future, to that person
6 or to any other person, and by words or conduct place the person threatened in reasonable fear that the
7 threat would be carried out, and that further, the threat was a threat to kill the person threatened or any
8 other person, thereby invoking the provisions of RCW 9A.46.020(2)(b) and increasing the classification
9 of the crime to a felony, contrary to RCW 9A.46.020(1)(a)(i)(b) and 9A.46.020(2)(b), and against the
10 peace and dignity of the State of Washington.

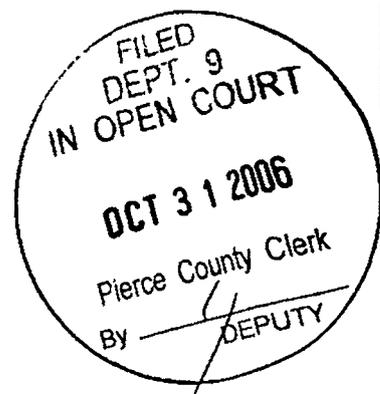
11 DATED this 2nd day of November, 2006.

12 PIERCE COUNTY SHERIFF
13 WA02700

14 GERALD A. HORNE
15 Pierce County Prosecuting Attorney

16 geb

17 By: 
18 GRANT E. BLINN
19 Deputy Prosecuting Attorney
20 WSB#: 25570



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
NORMAN FLOYD WHITTIER,
Defendant.

CAUSE NO. 05-1-04496-1
STATE'S MOTIONS IN LIMINE

COMES NOW THE STATE OF WASHINGTON, by and through Deputy Prosecuting Attorney Grant Blinn, and hereby requests the court to grant the following motions.

I. To exclude reference to the fact that defendant may be sentenced to life in prison, may be a persistent offender, may be a "3 striker", or other similar references to possible punishment. ER 402; State v. Thorne, 129 Wn.2d 736, 921 P.2d 514 (1996).

II. To exclude criminal history (both the fact of conviction and facts underlying the conviction) of the State's witnesses that are not crimes of dishonesty or are more than 10 years old. ER 609.

III. To exclude evidence of the victim's drug use, except for that which may have occurred on the day in question. ER 402, ER 403.

ORIGINAL

EX 14

1 IV. To exclude reference to criminal charges that the victim currently has pending, or the
2 allegations underlying those charges. ER 402, ER 403.

3
4 V. To exclude allegations of prior misrepresentations of the victim pertaining to her own drug
5 use and criminal history. ER 402, ER 403.

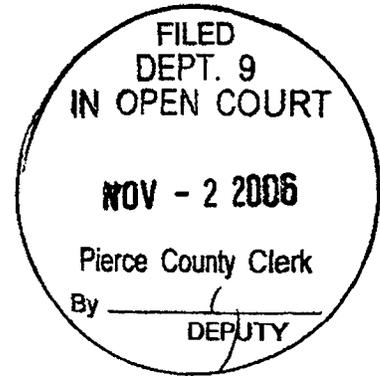
6
7 V. To exclude reference to the victim's prior abusive relationships.
8

9 DATED this 30th day of October, 2006.

10 GERALD A. HORNE
11 Prosecuting Attorney

12 By: 
13 Grant Blinn
14 Deputy Prosecuting Attorney
15 WSB# 25570

16 geb



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-04496-1

vs.

NORMAN FLOYD WHITTIER,

Defendant.

STIPULATION ON PRIOR RECORD AND OFFENDER SCORE (Plea of Guilty)

Upon the entry of a plea of guilty in the above cause number, charge ; INTIMIDATING A WITNESS; FELONY HARASSMENT , the defendant NORMAN FLOYD WHITTIER, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

Table with 9 columns: Crime, Date of Sentence, Jurisdiction, Date of Crime, Adult/Juvenile, Crime Type, Class, Score, Felony or Misdemeanor. Rows include Assault 1 and Rape 1.

Concurrent conviction scoring: N/A

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

Table with 9 columns: Crime, Date of Sentence, Jurisdiction, Date of Crime, Adult/Juvenile, Crime Type, Class, Score, Felony or Misdemeanor. (Table is mostly empty)

05-1-04496-1

| | | | | | | | |
|--|--|--|--|--|--|--|--|
| | | | | | | | |
|--|--|--|--|--|--|--|--|

Concurrent conviction scoring: N/A

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancement) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancement) | MAXIMUM TERM |
|-----------|----------------|-------------------|--|-------------------|--|--------------|
| II | 3 | VI | 26-34 months | N/A | 26-34 months | 10yrs |
| III | 3 | III | 9-12 months | N/A | 9-12 months | 5 yrs |

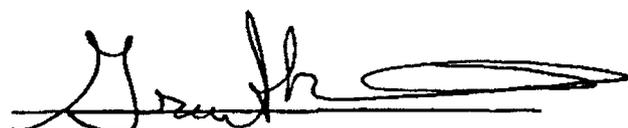
*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 2nd day of November, 2006.





05-1-04496-1

GRANT E. BLINN
Deputy Prosecuting Attorney
WSB # 25570

NORMAN FLOYD WHITTIER

Barbara L. Corey

BARBARA L. COREY
WSB # 11778

geb

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FILED
DEPT. 9
IN OPEN COURT
NOV - 2 2006
Pierce County Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 05-1-04496-1

vs.

NORMAN FLOYD WHITTIER,

Defendant.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE**

NOV 13 2006

THIS MATTER having come on before the Honorable Sergio Armijo, Judge of the above entitled court, for sentencing on 11/6/2006, the defendant, **NORMAN FLOYD WHITTIER**, having been present and represented by his attorney, **BARBARA L. COREY**, and the State being represented by Deputy Prosecuting Attorney **GRANT E. BLINN**, and the court having considered all argument from both parties and having considered all written reports presented, and deeming itself fully advised in the premises, does hereby make the following Findings of Fact and Conclusions of Law by a preponderance of the evidence.

FINDINGS OF FACT

I.

The defendant was found pled guilty to November 2, 2006. That the standard range sentence is 26 to 34 months imprisonment.

II.

EX 15

05-1-04496-1

1
2
3 The parties do hereby stipulate that the court has the authority to impose an exceptional
4 sentence above the standard range, specifically that the court has the authority to sentence the
5 defendant to 10 years in the department of corrections *where is count I* on count II, and 5 years on count III, and
6 that the counts may be run consecutively. The parties further stipulate that the court should
7 impose such a sentence, and jointly recommend such a sentence to the court. This stipulation is
8 entered into by the authority of State v. Hilyard, 63 Wash.App. 413, 819 P.2d 809 (1991), and In
9 re Personal Restraint of Breedlove, 138 Wn.2d 298, 979 P.2d 417 (1999). Defendant
10 furthermore agrees to waive any challenge to such a sentence that may exist per under Blakely v.
11 Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004)

12 III.

13
14 Because of the presence of the above aggravating factor(s), and considering the purposes
15 of the Sentencing Reform Act, sentencing with the standard range is not an appropriate sentence.
16 120 months (count II) and 60 months (count III) to be run consecutively for a total of 180 months
17 in the Department of Corrections is an appropriate sentence.

18 CONCLUSIONS OF LAW

19 I.

20
21 That there are substantial and compelling reasons justifying an exceptional sentence
22 outside the standard range.

23 II.

24 Defendant NORMAN FLOYD WHITTIER, should be incarcerated in the Department of
25 Corrections for a determinate period of 120 on COUNT II and 60 months on COUNT III,
26 consecutive, for a total of 180 months.
27
28

05-1-04496-1

DONE IN OPEN COURT this 2nd day of November, 2006.

[Signature]
JUDGE

Presented by:

[Signature]

GRANT E. BLINN
Deputy Prosecuting Attorney
25570

Approved as to Form:

[Signature]

BARBARA L. COREY
Attorney for Defendant
11778



geb

①

To: Judge Susan Miller
 Superior Court of Wash
 Pierce county
 Court Room 211A
 J.D. No. 1576018

| | |
|--|---|
| Barbara Cory #11778 Attorney of Defendant | Prosecuting Attorney Bar # 20705 Jeri Kuo |
|--|---|

I Defendant Norman F. Whittier cause
 No. # 051-04496-1

I Norman F. Whittier would like
 to voice on my case, for my trial
 is this month on the 10-26-06 my
 attorney and the prosecuting attorney
 got together and talked to the victim
 Keri Lee Connelly

The Prosecuting attorney made a deal
 with her Keri to come to my trial against
 me. and he will clear all of the things
 against her. For she has two First
 Degree Assault and two other charges

When my attorney and prosecuting
 attorney talked to her Keri she
 was High on drugs. Well that
 made me mad. For we when to
 trial three or more times now and
 No one showed up. ours # 16

Two

my attorney wanted to talk to Keni,
 So one of my friends told Jerry Coon
 one of my legal investment
 572 6194 were she Keni was.
 that how they fund Her, they
 made a deal and now she is
 going to trial.

I talked to my attorney
 Barbara Coy 779 0844 I ask
 her if I had a deal she said
 5 year, I ask her if I would get
 1/3 off she did not answer me.

She got up on life, I was under
 the old guide lines, We had 5 years
 7 1/2 year and 13 year 4 months was life
 and the 15 year B ¹²⁻¹²

The last time I see my attorney
 she said the time is now 10-15 year
 the prosecuting attorney said second
 Degree Assault Well second
 Degree assault is a strike,
 and I do 10 years flat, and
 that would be # No. three.

Why would I sign that my
 attorney Barbara Coy never
 put a paper in front of me to
 sign, For I would of signed the
 5 years with 1/3 off

③ three

that would be 3 year 4 months

- now I got life.

I wrote Barbara letter and tell
Barbara Coy of Keri doing time
in another state 5-6 month ago.

Keri did 5 year in Nebraska
or some place back there?.

my attorney just said Oh!
Keri did some time in some state,

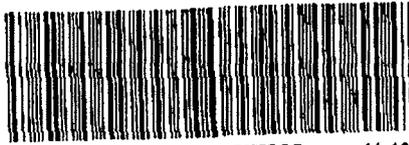
Barbara should had read
my letter 5-6 months ago

Well what do I do now,

Judge I thank you for
your time

Thank you
norm

Norman F. Whillier
Pierce Co. Corrections
3 West C-25
910 Tacoma Ave. South
Tacoma, WA 98402



05-1-04496-1 26491908 STDFG 11-13-06



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

STATE OF WASHINGTON,

Plaintiff,

vs.

Norman Floyd Whittier

Defendant.

CAUSE NO. 05-1-04496-1

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

NOV 13 2006

- 1. My true name is: Norman Floyd Whittier
- 2. My age is: 66 yrs old (dob 3/20/1940)
- 3. I went through the 12th grade, graduated.
- 4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is

Barbara Corey

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

Count I: Intimidating a witness -

The elements are: did unlawfully & feloniously did by use of a threat to a person attempt to induce that person, a current or prospective witness, not to report the information relevant to a criminal investigation,

This crime carries a maximum sentence of 10 years imprisonment and a \$ ~~20,000~~ fine. The standard range if from 26 months to 34 months based upon the attached stipulation as to my criminal history.

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

Count II: Felony Harassment - did unlawfully &

Elements: knowingly threaten a person to cause bodily harm to that person or another person, immediately or in the future, to that person or another - thereby placing that person/ person threatened in reasonable fear that the threat would be carried out, & the threat was to kill the

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 1

Et 17

This crime carries a maximum sentence of 5 years imprisonment and a \$ 10 fine. The standard range is from 9 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent Sex[] Drug[] Traffic[] (check all that apply)

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

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

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

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

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

| COUNT NO. | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f)) | MAXIMUM PENALTY |
|--------------|--|--|--|--|---|
| 1 | 26-34 | / | 26-34 9-18 | 26-34 mos. | 5 years; \$10,000 10 years, \$20,000 |
| 2 | 9-12 | / | 9-12 | 9-12 mos | 5 years; \$10,000 |
| 3 | 9-12 | / | 9-12 | 9-12 mos | 5 years; \$10,000 |

_____ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT ON PLEA OF GUILTY - 2

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For Crimes Committed Prior to July 1, 2000:**
 In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

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

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

| OFFENSE TYPE | COMMUNITY CUSTODY RANGE |
|--|--|
| Sex Offenses (Not sentenced under RCW 9.94A.120(8)) | 36 to 48 months or up to the period of earned release, whichever is longer |
| Serious Violent Offenses | 24 to 48 months or up to the period of earned release, whichever is longer |
| Violent Offenses | 18 to 36 months or up to the period of earned release, whichever is longer |
| Crimes Against Persons as defined by RCW 9.94A.440(2) | 9 to 18 months or up to the period of earned release, whichever is longer |
| Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6)) | 9 to 12 months or up to the period of earned release, whichever is longer |

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

*RC/MFW
rest. put on
by L.O.C.*

- (g) The prosecuting attorney will make the following recommendation to the judge: STIPULATED *RC/MFW*
EXCEPTIONAL SENTENCES - 10 yrs on Ct I, 5 yrs on Ct II; consecutive
Credit for time served; (1/3 off) \$500⁰⁰ CUPA, \$100* DNA.
\$110⁰⁰ court costs; no contact w/ Kern Connelly, John McDonald,
Kenneth Neal.
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 4

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

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

7. I plead guilty to counts I, II, & III in the Amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: Although I do not believe I committed a crime, I ^{only} pleading guilty to take advantage of the State's plea offer, I have discussed the evidence with my attorney and I heard the witnesses at the evidentiary hearing today. ~~It~~ ^{Moreover} I know there is a substantial likelihood of conviction if I go to trial on the charges in the original information

N.F.W.

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

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Roman F. Whittier
Defendant

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

Jubna Cary
Defendant's Lawyer
WSBA # 11770

Approved for entry:

[Signature]
Prosecuting Attorney
WSBA# 22570

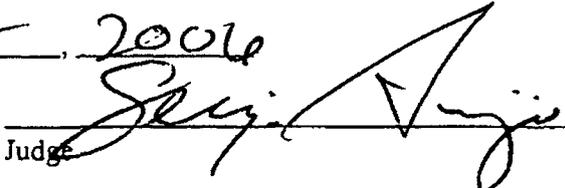
STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check the appropriate box]:

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

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 2 day of November, 2006

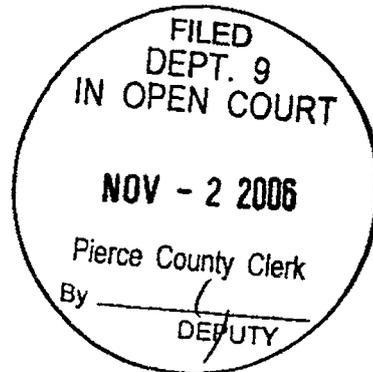

 Judge

***INTERPRETER'S DECLARATION**

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

Dated this _____ day of _____, _____.

Interpreter



NO. 05-1-04496-1

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE

MARY E. ROBNETT, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 052550116;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 12th day of September, 2005, the defendant, NORMAN FLOYD WHITTIER, did commit the crime of **Assault in the First Degree-Domestic Violence, Felony Harassment, and Intimidation of a Witness.**

On September 12, 2005, Pierce County Sheriff's Deputies Carlson and Burks contacted Kerri Lee Connelly who reported the following: the defendant, Norman Floyd Whittier, punched her repeatedly in the face, briefly choked, and kicked her in the head twice. The deputies noted that she was bleeding, shaking, and crying; she appeared to be in a great deal of pain and she showed the officers where one of her front teeth had been knocked out, she had a large bruise on her cheek and her eye was beginning to swell. Connelly reported that they were roommates but he wanted an intimate relationship; after being rejected, he punched her and choked her but she did not previously report it to police.

On September 13, 2005, Deputy Decker contacted Connelly who reported the following: the defendant has a delusion that their relationship is more than it is; he gets very jealous of other men; on September 11, she went out and when she returned home, the defendant cornered her in their residence and started punching her then he held her down by her throat and threatened to kill her if she tried to leave; she eventually left to stay at McDonald's house' the defendant came over at 4 a.m. on the 12th and asked her to come back with him; she refused and the defendant backed her into a corner; the defendant started punching Connelly in the face and even though she managed to get away from him several times, he would catch her and punch her some more; he got her on the ground and held her down by the throat and he punched her in the mouth breaking and dislodging several teeth; she managed to get into a bedroom where another male, Kenneth Neal, was sleeping; Neal got up out of bed and intervened and the defendant left the residence; he went out to his truck and then the defendant returned to the house and tried to kick the front door open; the defendant then went back to his truck and fled from the scene.

Deputies at the scene spoke to McDonald who reported that he knew of the prior assault even though Connelly did not report it to police. McDonald reported that when the defendant arrived, McDonald went outside; the defendant wanted to speak to Connelly; McDonald reported that he could not reason with the defendant and he let the defendant inside for fear he would get assaulted if he did not; once inside, the defendant began talking to Connelly but quickly became irate; the defendant raised a fist to McDonald and threatened to "kill all of you;" the defendant started punching Connelly and McDonald grabbed a cell phone to call 911; he could hear the defendant yelling "If you call the police I will kill you all;" McDonald could hear Connelly screaming as he called 911; the defendant then yelled that he would be back and he fled in his truck.

The deputies also contacted Kenneth Neal who corroborated that he had he was sleeping and woke up when Connelly "fell on his screaming;" Neal hear the defendant threaten to kill everyone and Neal saw the defendant punch Connelly in the mouth a couple times; Neal got in front of Connelly to protect her and yelled at the defendant to stop; the defendant then fled from the scene.

DECLARATION FOR DETERMINATION OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

Ex 18



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
WESTERN STATE HOSPITAL

FILED
IN COUNTY CLERK'S OFFICE

W27-19 • 9601 Steilacoom Blvd SW • Tacoma WA 98498-7213 • (253) 582-8000

APR 10 2006 P.M.

APRIL 4, 2006

PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

FORENSIC PSYCHOLOGICAL REPORT

RE: STATE OF WASHINGTON
vs.
NORMAN FLOYD WHITTIER

CAUSE NO: 05-1-04496-1
WSH NO: 128597
DOB: 03/20/40

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report was released only to the court, its officers and to others designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

(a) NATURE OF EXAMINATION

Reason for Referral

According to a Pierce County Superior Court order dated 01/17/06, the above named defendant was committed to Western State Hospital for an evaluation to aid the Court in determining whether the defendant is competent to stand trial or in need of psychiatric treatment in order to restore his trial competency. As is mandated by RCW 10.77.060, this report will also address the defendant's mental condition, dangerousness to others, likelihood of committing further criminal acts, and any further need for evaluation under RCW 71.05.

Mr. Whittier is charged with Assault in the First Degree, Intimidating a Witness, and Felony Harassment, which allegedly occurred on or about 09/12/05. According to the Declaration for Determination of Probable Cause, the alleged offenses occurred as follows:

On September 12, 2005, Pierce County Sheriff's Deputies contacted Kerri Lee Connelly who reported the following: the defendant, Norman Whittier, punched her repeatedly in the face, briefly choked her, and kicked her in the head twice. The deputies noted that she was bleeding, shaking, and crying; she appeared to be in a great deal of pain and she showed the officers where one of her front teeth had been knocked out, she had a large bruise on her cheek, and her eye was beginning to swell. Ms. Connelly reported that she and Mr.

EX 19

**FORENSIC PSYCHOLOGICAL REPORT
RE: WHITTIER, NORMAN****APRIL 4, 2006
PAGE 2 OF 12**

Whittier were roommates but that he wanted an intimate relationship with her. The day prior, Ms. Connelly had arrived home and was cornered by Mr. Whittier in their residence. He began punching her and held her down by her throat, threatening to kill her if she tried to leave. Ms. Connelly eventually left to stay at a friend's house, the home of Mr. McDonald. At 4:00 a.m. Mr. Whittier arrived at Mr. McDonald's house, asking Ms. Whittier to come back with him, however, she refused and Mr. Whittier backed her into a corner, punching her in the face, repeatedly catching her when she got away, and punching her more. He held her down by the throat on the floor and punched her in the mouth, breaking and dislodging several teeth. Ms. Connelly managed to get into a bedroom where another male, Kenneth Neal, was sleeping. Mr. Neal got out of bed and intervened and Mr. Whittier left the residence. He went to his truck then returned and tried to kick the front door open. He then returned to his truck and fled from the scene. Immediately prior to the assault Mr. Whittier raised his fist to Mr. McDonald and threatened to "kill all of you." When Mr. McDonald left to call 911, he could hear Mr. Whittier yelling, "If you call the police I will kill you all."

On 9/13/05, Mr. Whittier contacted personnel at the Pierce County Sheriff's department and reported that he wanted to turn himself in. He reported that he had slapped Ms. Connelly on more than one occasion and that he was angry that she was hanging out with other men. He denied causing substantial injuries to her but he could not explain how she had become injured and admitted that she was not injured when he initially arrived at Mr. McDonald's residence. Mr. Whittier told the Deputy that he was suicidal because this was his third strike. Mr. Whittier denied making any threats and reported that he was sorry.

Database

Mr. Whittier was admitted to the Center for Forensic Services at Western State Hospital on 03/13/06. He was placed on ward F1 to undergo psychological, psychiatric, psychosocial, and physical examinations, including 24-hour clinical observations. Nitin Karnik, M.D., Staff Psychiatrist, and Lori Thiemann, Ph.D., Staff Psychologist, comprised the Sanity Commission. Information from the following sources was considered in preparing this report:

1. Initial intake interview on 03/13/06.
2. Forensic interview on 03/23/06.

1 after that I asked him, "Having been made fully aware
2 of these rights, do you voluntarily wish to answer
3 questions now?" And then he wrote "yes" next to that
4 question.

5 Q. Next, I'm going to show you what's been marked for
6 identification as Plaintiff's 4.

7 MR. BLINN: The State would move to admit
8 Plaintiff's 3 at this point.

9 MS. COREY: Your Honor, I'm going to object to
10 the admission of 3 and 4 on relevance grounds. The
11 prosecutor has informed me that he's not offering the
12 statements made because it was taken in violation of law.
13 So any testimony about a statement that's not going to be
14 admitted because it was taken in violation of the law is
15 unnecessary to this hearing. The purpose of which is for
16 the Court to determine whether the State has proven by a
17 preponderance whether statements of the defendant are
18 admissible. If they are not going to sue the statements
19 because they were unlawfully taken, we don't need to hear
20 testimony about those.

21 THE COURT: You're talking specifically about
22 the taped statement?

23 MS. COREY: That's correct, Your Honor. I
24 believe they went right from the rights to the taped
25 statements. The prosecutor has informed me he is not

E-20

SENTENCING

1
2 MR. BLINN: Good afternoon. For the record,
3 Grant Blinn appearing on behalf of the State of
4 Washington. We're here on the record on the matter of
5 State versus Norman Floyd Whittier, 05-1-04496-1. He's
6 here in custody represented by his attorney, Ms. Corey.

7 This matter comes before the court for
8 sentencing. One of the three victims, Kerri Lee Connelly,
9 is also present in court but she does not wish to address
10 the Court.

11 THE COURT: Defense ready?

12 MS. COREY: Yes, Your Honor.

13 Judge, my client wishes to fire me at this point
14 and withdraw his plea so I don't know how the Court wants
15 to proceed.

16 THE DEFENDANT: Okay if I stand up, Your Honor?

17 THE COURT: No. You can sit there.

18 THE DEFENDANT: All the time that I had this
19 attorney, she never did come to see me. I called her a
20 hundred times. She never answered, nothing. She couldn't
21 find somebody. I had somebody find her because she wanted
22 to meet them, they made a deal to turn me in. I got all
23 the stuff right here that I would like to say but I'm not
24 that good of a reader but I did write it down. Would you
25 please read it?