

original

FILED  
BY: *Cmm*

THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

35928-6-II

---

STATE OF WASHINGTON  
RESPONDENT,

VS.

DALE E. HALE  
APPELLANT.

---

BRIEF OF RESPONDENT

---

DAVID J. BURKE  
PROSECUTING ATTORNEY  
WSBA #16163

*David J. Burke*

---

OFFICE ADDRESS:  
P. O. Box 45  
South Bend, WA 98586  
(360) 875-9361

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii-v
A. STATE'S RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR.....	1-2
B. STATE'S RESPONSE TO ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.....	2-3
C. STATEMENT OF THE CASE.....	3-4
D. ARGUMENT.....	5-27
E. CONCLUSION.....	28

TABLE OF AUTHORITIES

Page

Federal Cases

Blakely v. Washington,  
542 U.S. 296, 124 S. Ct. 253  
159 L.Ed. 2d 403  
(2004).....3,20,21,22,25,26

State Cases

City of Bellevue v. Kravik,  
69 Wash. App. 735,  
850 P.2d 559 (1993)..... 17

City of Redmond v. Moore,  
151 Wash. 2d 664,  
91 P.3d 875 (2004)..... 20

State v. Bowerman,  
115 Wash. 2d 794  
802 P.2d 116 (1990).....23,24

State v. Campbell,  
103 Wash. 2d 1  
691 P.2d 929 (1984)..... 7

State v. Casteneda-Perez,  
61 Wash. App. 354  
810 P.2d 74 (1991)..... 17

<u>State v. Cauthron,</u>	
120 Wash. 2d 879	
846 P.2d 502 (1993).....	5
<u>State v. Fladebo,</u>	
113 Wash. 2d 388	
779 P.2d 707 (1989).....	5
<u>State v. Gowens,</u>	
27 Wash. App. 921	
621 P.2d 198 (1980).....	.6
<u>State v. Hoffman,</u>	
116 Wash. 2d 51	
804 P.2d 577 (1991).....	5
<u>State v. Hughes,</u>	
154 Wash. 2d 118	
100 P.3d 192 (2005).....	25
<u>State v. James,</u>	
178 Wash. 2d 483	
739 P.2d 699 (1987).....	22,24
<u>State v. Lobe,</u>	
___ Wash. App. ___	
167 P.3d 627 (2007).....	11,12
<u>State v. Martin,</u>	
94 Wash. 2d 1	
614 P.2d 164 (1980).....	22
<u>State v. Neidigh,</u>	
78 Wash. App. 71	
895 P.2d 423 (1995).....	16
<u>State v. Nguyen,</u>	
68 Wash. App. 906	
847 P.2d 936 (1993).....	7

<u>State v. Padilla,</u>	
69 Wash. App. 295	
846 P.2d 564 (1993).....	15, 17,18
<u>State v. Rice,</u>	
120 Wash. 2d 549	
844 P.2d 416 (1993).....	17
<u>State v. Robtoy,</u>	
98 Wash. 2d 30	
653 P.2d 284 (1982).....	23,24
<u>State v. Rohrich,</u>	
149 Wash. 2d 647	
71 P.3d 638 (2003).....	6
<u>State v. Salinas,</u>	
119 Wash. 2d 192	
829 P.2d (1992).....	12
<u>State v. Stover,</u>	
67 Wash. App. 228	
P.2d 671 (1992).....	16
<u>State v. Suarez-Bravo,</u>	
72 Wash. App. 359	
864 P.2d 426 (1994).....	17
<u>State v. Suleiman,</u>	
158 Wash. 2d 280	
143 P.3d 795 (2006).....	21
<u>State v. Swan,</u>	
114 Wash. 2d 613	
790 P.2d 610 (1990).....	17
<u>State v. Thomas,</u>	
150 Wash. 2d 821	
83 P.3d 970 (2004).....	14

<u>State v. Thorne,</u>	
129 Wash. 2d 736	
921 P.2d 514 (1996).....	20

<u>State v. Woods,</u>	
143 Wash. 2d 561	
23 P.3d 1046 (2001).....	5,7

### Other Rules & Regulations

CrR 3.3.....	6
CrR 3.3 (f)(2).....	1,2,5,11
RCW 9.94A.530(3).....	21
RCW 9.94A.535.....	24
RCW 9.94A.535(3).....	25
RCW 9.94A.535(3)(v).....	21,27
RCW 9.94A.537.....	19,20-24
RCW 9.94A.537(5).....	27

**A.**

**STATE'S RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. The trial court did not err in denying Mr. Dale Hale's motion to dismiss the case based on a violation of his right to speedy trial.

2. The trial court did not err in entering Findings of Fact 12, 13, 14, 15 and 16 in support of its ruling granting a continuance pursuant to CrR 3.3(f)(2) on October 11, 2006. See Appendix "A".

3. The trial court did not err in entering Conclusions of Law 2, 3, 4, 5, and 6 in support of its ruling granting the State's request for continuance on October 11, 2006. See Appendix "A".

4. The trial court did not err in entering Findings of Fact 1, 2, 3, 4, 5, 6, 7, and 8 on November 28, 2006. See Appendix "B".

5. The trial court did not err in entering Conclusions of Law 2, 3, 4, and 5 on November 28, 2006. See Appendix "B".

6. The trial record contains sufficient evidence to establish that Mr. Hale had the requisite intent to commit Assault in the Second Degree.

7. An improper comment by the deputy prosecuting attorney did not deny Mr. Hale a fair trial.

8. The trial court did not err in imposing an exceptional sentence upward.

9. The trial court's basis for imposing an exceptional sentence upward is contained in the report of proceedings (RP) and in the Judgment and Sentence. See Appendix "C".

**B.**

**STATE'S RESPONSE TO ISSUES PERTAINING TO  
APPELLANT'S ASSIGNMENTS OF ERROR**

1. The trial court did not err in granting two continuances under CrR 3.3(f)(2) that moved the trial date from October 24, 2006, to December 11, 2006. Response to Assignments of Error No. 1, 2, 3, 4 and 5.

2. There is sufficient evidence in the trial record to demonstrate that Mr. Hale had the requisite mental intent to commit Assault in the Second Degree. Response to Assignment of Error No. 6.

3. Mr. Hale received a fair trial even though the deputy prosecutor engaged in a proscribed "liar" line of questioning. Response to Assignment of Error No. 7.

4. The trial court did not abuse its discretion in denying Mr. Hale's motion for a new trial when the deputy prosecutor asked Mr.

Hale to comment on the veracity of a police officer. Response to Assignment of Error No. 7.

5. The so-called "Blakely fix" is not unconstitutional.

Response to Assignment of Error No. 8.

6. The so-called "Blakely fix" is a valid exercise of legislative power and allows a trial court to impose an exceptional sentence under certain circumstances. Response to Assignment of Error No. 8.

7. The trial court did not abuse its discretion by failing to exercise discretion in the imposition of an exceptional sentence; the failure to enter separate written Findings of Fact and Conclusions of Law does not justify remand because the trial record delineates why the trial court imposed an exceptional sentence. Response to Assignment of Error No. 8.

### **C.**

#### **STATEMENT OF THE CASE**

The State of Washington accepts the Appellant's Statement of the Case. However, the State would add that the car chase on April 27, 2006, involving Mr. Dale Hale started on the beach adjacent to the Pacific Ocean in Ocean Park at approximately 225<sup>th</sup>

Street. 3 RP at 24. Mr. Hale headed north on the beach. He exited the beach using the Ocean Park beach approach and traveled easterly on Bay Avenue through Ocean Park at a high rate of speed. Sheriff deputies were chasing Mr. Hale. 2 RP at 108-111. Mr. Hale then turned south onto Sandridge Road (a two-lane road). 2 RP at 113. He was traveling at a speed of approximately 95 miles per hour. 2 RP at 116. Mr. Hale made a U-turn shortly before he encountered another deputy sheriff whose vehicle was in the roadway at approximately 133<sup>rd</sup> and Sandridge Road. 3 RP at 12-15, 19-20. Mr. Hale then traveled north on Sandridge Road, went into the opposite lane of traffic, and almost hit Chief Criminal Deputy Ron Clark, who had pulled off the roadway because he was fearful of being hit by Mr. Hale's vehicle. 2 RP at 33-34, 51-61, 142. Deputy Robert Langendorfer opined that Mr. Hale displayed "a total disregard for oncoming traffic." 3 RP at 117. The car chase occurred on both sides of the Long Beach Peninsula over an extended swath of land. 2 RP and 3 RP passim.

D.

ARGUMENT

1. MR. HALE'S RIGHT TO A SPEEDY TRIAL WAS NOT VIOLATED.

a. The Granting of Continuances Lies Within the Sound Discretion of the Trial Court.

Under CrR 3.3(f)(2) a continuance may be granted on the motion of the Court or a party when "required in the administration of justice" so long as the defendant is not prejudiced in the presentation of his or her defense." However, "[t]he Superior court speedy trial rules themselves are not of constitutional magnitude and a violation of the rules is not necessarily a constitutional deprivation." State v. Fladebo, 113 Wash. 2d 388, 393, 779 P.2d 707 (1989); State v. Cauthron, 120 Wash. 2d 879, 846 P.2d 502 (1993) ("Trial in the allotted time is not constitutionally required, and the trial court has discretion to grant continuances." Id. at 910); State v. Hoffman, 116 Wash. 2d 51, 77, 804 P.2d 577 (1991).

Furthermore, a decision to grant a continuance will not be disturbed absent a showing of manifest abuse of discretion. State v. Woods, 143 Wash. 2d 561, 579, 23 P.3d 1046 (2001). In order

to demonstrate a manifest abuse of discretion, Mr. Hale must show that the trial judge's decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State v. Rohrich, 149 Wash. 2d 647, 654, 71 P.3d 638 (2003). "A decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take,' . . . and arrives at a decision 'outside the range of acceptable choices.' [citations omitted]." Id. "A decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." Id.

**b. The Continuances Granted in This Case  
Comport With the Requirements of CrR 3.3.**

Although Mr. Hale discusses the constitutional right to a speedy trial, Appellant's Brief at 27, the gravamen of his argument centers on whether the two continuances that were granted on October 11, 2006, and November 28, 2006, respectively, violated the requirements of CrR 3.3. To sustain his contention, Mr. Hale must show that the actions of Judge Michael Sullivan were arbitrary and capricious or contrary to law. State v. Gowens, 27 Wash. App. 921, 923, 621 P.2d 198 (1980). In other words, Mr. Hale cannot

prevail unless he can demonstrate that no reasonable person would have taken the position adopted by Judge Sullivan. Id.

Mr. Hale's waiver of speedy trial expired on October 30, 2006. The two continuances granted by Judge Sullivan postponed the trial until December 11, 2006. Mr. Hale asserts that both of these continuances were unreasonable. Appellant's Brief at 30-33. However, in assessing whether the granting of a continuance was justified, the reviewing court must examine a number of factors. Continuances for months have been upheld over a defendant's objection. See, e.g., State v. Woods, 143 Wash. 2d 561, 23 P.3d 1046 (2001) and State v. Campbell, 103 Wash. 2d 1, 691 P.2d 929 (1984). In order to justify a continuance, a trial judge must articulate why a continuance is necessary for the administration of justice. In the context of witness unavailability, "[t]he unavailability of a material state witness is a valid ground for continuing a criminal trial where there is a valid reason for the unavailability, the witness will become available within a reasonable time and there is no substantial prejudice to the defendant." State v. Nguyen, 68 Wash. App. 906, 914, 847 P.2d 936 (1993).

In analyzing the first continuance which was granted by Judge Sullivan on October 11, 2006, Mr. Hale focuses on whether there was a valid reason for Ron Clark's unavailability. Mr. Hale does not argue that the amount of time that Chief Criminal Deputy Clark spent tending to his son's brain surgery was unreasonable. Mr. Hale also makes no showing that he was substantially prejudiced by the delay. The essence of Mr. Hale's argument is that the Pacific County Sheriff's Office should have communicated better with the Prosecutor's Office so that there would have been more time to move the trial within the confines of the original speedy trial waiver.

The problem with this argument is that there was no available time to move the trial. Judge Sullivan determined on October 11, 2006, that the end of November was the soonest available time to hold the trial. Obviously, the trial court would have opted to hold the trial before the expiration of the speedy trial waiver on October 30, 2006, if it had been possible to do so. One must remember that Pacific County only has one superior court judge and one courtroom that is large enough to hold a superior

court trial. Thus, the flexibility that large jurisdictions may have is not present in Pacific County.

While Mr. Hale asserts that Judge Sullivan should have scheduled his trial sooner, Mr. Hale does not discuss how an earlier trial date would have been possible. Instead, Mr. Hale is content to argue that alleged poor communication between the Prosecutor's Office and the Sheriff's Office justifies a dismissal of the charges based on a violation of the defendant's speedy trial right. This argument does not pass muster under an abuse of discretion standard. The reasons for Judge Sullivan's decision are delineated with specificity. See Appendix "A". This, it cannot be said that Judge Sullivan's decision is untenable or that no reasonable person would agree with the ruling of Judge Sullivan. Because Judge Sullivan did not abuse his discretion and sought to advance the administration of justice, Mr. Hale's argument concerning the first continuance is without merit.

Similarly, Mr., Hale's argument concerning the second continuance which was granted on November 28, 2006, is specious. Mr. Hale asserts "that the State erred by waiting until the day before scheduled trial to transport Hale from Monroe."

Appellant's Brief at 30-31. Mr. Hale characterizes the decision to transport Mr. Hale the day before trial as mismanagement. What Mr. Hale fails to mention is that he has an extensive criminal history which includes escape convictions. See Appendix "C". Pacific County has a small jail, and management of the jail is always problematic because of issues associated with segregating disparate inmates. In general, the Pacific County corrections staff has difficulty accommodating inmates with extensive criminal history. Additionally, Mr. Hale was known to have a volatile personality. See, e.g., Mr. Hale's profane outburst during trial. 2 RP at 163. Therefore, there clearly was a rational basis for transporting Mr. Hale the day before trial.

Moreover, Judge Sullivan's decision to continue the trial to December 11, 2006, was based on the severe weather conditions that enveloped Pacific County on November 28, 2006. Judge Sullivan explicitly found the safety of prospective jurors would be affected if they attempted to travel to South Bend for the trial. Consequently, regardless of any transportation issue pertaining to Mr. Hale, the unseasonably severe weather required a postponement of the trial. See Appendix "B". Consequently, Mr.

Hale cannot show that Judge Sullivan abused his discretion in granting the second continuance.

For the reasons discussed above, Judge Sullivan exercised the discretion that is granted to him under CrR 3.3(f)(2) in setting trial dates. The record reflects that Judge Sullivan was mindful of the defendant's speedy trial right, and the judge did everything that he could to ensure that Mr. Hale received the earliest possible trial setting. Therefore, Mr. Hale's arguments pertaining to the right to a speedy trial should be rejected. Mr. Hale's right to a speedy trial was not violated.

**2. THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT THAT MR. HALE WAS GUILTY OF ASSAULT IN THE SECOND DEGREE.**

**a. The Legal Standard for Determining Sufficiency of the Evidence Favors the State of Washington.**

Mr. Hale asserts that he did not have the requisite mental intent which is required to commit Assault in the Second Degree. Mr. Hale claims that insufficient evidence was presented at trial to sustain a conviction for Assault in the Second Degree.

To prevail on a claim of insufficient evidence, a defendant has an uphill battle. As stated in State v. Lobe:

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wash. 2d 192, 201, 829 P.2d (1992). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in the State's favor and interpreted most strongly against the defendant. Salinas, 119 Wash. 2d at 201, 829 P.2d 1068.

\_\_\_\_\_ Wash. App. \_\_\_\_\_, 167 P.3d 627, 630 (2007).

Thus, the State of Washington should prevail unless Mr. Hale can demonstrate that there is a paucity of evidence which supports the State's position.

**b. The State of Washington Presented Ample Evidence to Sustain the Jury's Verdict.**

Mr. Hale argues that he did not have the intent to use his vehicle "to create apprehension or fear of bodily injury in Clark." Appellant's Brief at 34. Mr. Hale asserts that his intent was "to get out of Long Beach." Id. Mr. Hale recounts his testimony in an attempt to demonstrate that he did not possess the requisite intent to be convicted of Assault in the Second Degree. Id. at 34-36. But Mr. Hale conveniently ignores that the evidence adduced at trial must be viewed in a light most favorable to the State.

The weight of the evidence suggests that Mr. Hale was willing to do whatever it took so as not to be apprehended. On the surface, it seems incongruous that Mr. Hale would turn his vehicle 180 degrees and head north on Sandridge Road. However, Mr. Hale needed to make an abrupt U-turn due to the presence of a police vehicle that was parked on Sandridge Road. 3 RP at 12-15, 19-20. Consequently, a rational person easily could infer that Mr. Hale possessed motives other than merely trying to leave the Long Beach Peninsula. In addition, the testimony of Chief Criminal Deputy Ron Clark shows how close Mr. Hale came to hitting him at a high rate of speed. 2 RP at 33-36. But for Chief Deputy Clark's evasive maneuvers, a collision would have occurred.

Judging in a light most favorable to the State, there clearly is circumstantial evidence upon which a trier of fact could infer that Mr. Hale, at a minimum, wanted to put Chief Criminal Deputy Clark in fear or apprehension of bodily harm. The testimony of Ron Clark definitely indicates that he was scared. 2 RP at 51-61. Since the credibility of witnesses is solely within the province of the trier of fact, the jury was free to reject the self-serving testimony of Mr. Hale. Because Ron Clark testified that an accident was imminent

absent evasive action on his part, 2 RP at 33-34, 51-57, there is ample evidence to torpedo Mr. Hale's insufficient evidence argument.

Further, a reviewing court does not make credibility determinations because appellate courts defer to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of evidence. State v. Thomas, 150 Wash. 2d 821, 874, 875, 83 P.3d 970 (2004). When examining the evidence in a light most favorable to the State, a rational trier of fact could conclude beyond a reasonable doubt that Mr. Hale had the requisite intent to commit Assault in the Second Degree. Therefore, Mr. Hale's argument falls flat on its face.

**3. PROSECUTORIAL MISCONDUCT DID NOT DENY MR. HALE A FAIR TRIAL.**

**a. "Liar" Comments Do Not Automatically Necessitate the Reversal of a Conviction.**

The State of Washington readily concedes that Michael Anderson, the deputy prosecutor in this case, asked an inappropriate question when he intimated that Mr. Hale believed that Ron Clark was a liar. 3 RP at 90-91. Mr. Hale's attorney lodged an appropriate objection. This objection was sustained by

Judge Sullivan. Later in the proceedings, Judge Sullivan issued the following curative instruction:

At this time, members of the jury, I want to give you what's called an instruction. I'll just leave it at that. I'm instructing you not to consider in any way, shape or form, in other words, I'm striking it and ordering you not to consider the line of questioning that you heard earlier when Mr. Anderson was asking questions of Mr. Hale. There was a certain point in there where there were some questions regarding differences in testimony, differences in statements between what Deputy Clark said regarding his version of the testimony and the Defendant's. Specifically, there was a line of questioning where Mr. Anderson turned to Deputy Clark - - excuse me, Chief Criminal Deputy Clark and said something like, "So Deputy Clark's a liar." You're not to consider that particular line of questioning in any way, shape, or form. You're to disregard that entirely.

3 RP at 104-05.

Mr. Hale argues that this specific curative instruction did not undo the damage that was caused when the deputy prosecutor asked a "liar" question. Mr. Hale points that the only meaningful remedy is reversal of the convictions with a remand for a new trial. But as stated in State v. Padilla, 69 Wash. App. 295, 301, 846 P.2d 564 (1993): "Prosecutorial misconduct requires reversal only if there is a substantial likelihood that the misconduct affected the

verdict.” Put differently, “[l]iar questions and comments are held to be harmless if they were not so egregious as to be incapable of cure by an objection and an appropriate instruction to the jury.” State v. Neidigh, 78 Wash. App. 71, 77, 895 P.2d 423 (1995) (quoting State v. Stover, 67 Wash. App. 228, 232, 834 P. 2d 671 (1992)).

**b. There is Not a Substantial Likelihood That the Jury’s Verdict Was Affected by the Deputy Prosecutor’s Inappropriate Comment.**

In the present case, there are several factors that militate against the conclusion that there is a substantial likelihood that misconduct by the deputy prosecutor affected the jury’s verdict. First of all, in addition to the curative instruction that Judge Sullivan orally communicated to the jury, instruction No. 1 contained the following language:

The lawyers’ remarks, statements and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers’ statements are not evidence. The evidence is the testimony of the witnesses. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

See Appendix “D”.

When a trial court gives an instruction to disregard statements of counsel, the reviewing court should presume that the jury followed the instruction. State v. Swan, 114 Wash. 2d 613, 662, 790 P.2d 610 (1990). “[This] presumption will prevail until it is overcome by a showing otherwise.” City of Bellevue v. Kravik, 69 Wash. App. 735, 743, 850 P.2d 559 (1993). So even though the deputy prosecutor’s remarks were improper, “[t]he trial court minimized prejudice when it stated the State’s argument was not evidence.” State v. Rice, 120 Wash. 2d 549, 573, 844 P.2d 416 (1993).

Secondly, the offending comments made by the deputy prosecutor were of a short duration. The cases cited by Mr. Hale, viz., State v. Padilla, 69 Wash. App. 295, 846 P.2d 564 (1993); State v. Casteneda-Perez, 61 Wash. App. 354, 810 P.2d 74 (1991); and State v. Suarez-Bravo, 72 Wash. App. 359, 864 P.2d 426 (1994), involve repeated and persistent attempts by a prosecutor to get the defendant to call police witnesses liars. No such pattern of misconduct occurred in the present case.

Thirdly, State v. Padilla articulates three factors that should be considered in determining whether the misconduct affected the

jury's verdict. These factors include: (1) whether the prosecutor was able to provoke the defense witness into saying that a State's witness must be lying; (2) whether the State witness' testimony was believable and/or corroborated; and (3) whether the defense witness' testimony was believable and/or corroborated. Padilla, 69 Wash. App. at 301.

All of these factors bolster the position of the State of Washington. The deputy prosecutor in the current case did not actually get Mr. Hale to say that Ron Clark was lying. [The State of Washington, however, certainly acknowledges that the deputy prosecutor attempted to elicit this testimony.] Further, the testimony of Chief Criminal Deputy Ron Clark is both believable and corroborated. Chief Criminal Deputy Clark was trying to stop a very serious felony eluding situation. His observations are consistent throughout his testimony which lends credence to his assertions. Additionally, other law enforcement personnel were involved in chasing and capturing Mr. Hale. These witnesses corroborate each other and paint a consistent picture of Mr. Hale's misdeeds. 2 RP and 3 RP passim. On the other hand, Mr. Hale

was the only defense witness. His statements appear to be self-serving and they lack corroboration.

Thus, it is difficult to jump to the conclusion that the “liar” comment by the deputy prosecutor likely affected the jury verdict. The “liar” comment did not significantly prejudice Mr. Hale. The curative instruction given by Judge Sullivan ameliorated the harm to the defendant. Even with the misconduct, Mr. Hale received a fair trial (albeit not a perfect trial). His convictions should be sustained.

**4. RCW 9.94A.537 IS NOT UNCONSTITUTIONAL; THIS STATUTE DOES NOT “CHILL” A DEFENDANT’S EXERCISE OF HIS TRIAL RIGHTS.**

**a. The Defendant Cannot Show That RCW 9.94A.537 Is a Facially Invalid Statute.**

Mr. Hale argues that RCW 9.94A.537 is unconstitutional because a defendant is subject to the possibility of an exceptional sentence if he exercises his right to a jury trial, whereas an exceptional sentence is precluded if he chooses to plead guilty. Mr. Hale asserts that RCW 9.94A.537 is unconstitutional since it “does not provide any means for impaneling a jury other than the jury impaneled to try the crime.” Appellant’s Brief at 43. Thus, under Mr. Hale’s logic, if a defendant pleads guilty, he forecloses the possibility of receiving an exceptional sentence.

Mr. Hale's argument fails on several grounds. First, as a preliminary observation, Mr. Hale appears to be making a facial challenge to the validity of RCW 9.94A.537. Although Mr. Hale does not explicitly address whether he is presenting an "as-applied" or "facial" challenge to the validity of RCW 9.94A.537, nothing in the record suggests that Mr. Hale ever seriously contemplated pleading guilty or that his decision to proceed to trial was influenced by RCW 9.94A.537. Consequently, Mr. Hale's argument is best viewed as a facial challenge.

To prevail on a facial challenge, one must show that "no set of circumstances exists in which a statute, as currently written, can be constitutionally applied." City of Redmond v. Moore, 151 Wash. 2d 664, 669, 91 P.3d 875 (2004). The party challenging the constitutionality of a statute bears the burden of proving its unconstitutionality beyond a reasonable doubt. State v. Thorne, 129 Wash. 2d 736, 769-770, 921 P.2d 514 (1996).

Mr. Hale cannot meet this stringent legal standard because there are situations in which an exceptional sentence upward can be imposed that do not require the procedure articulated in RCW 9.94A.537. In short, Mr. Hale misreads the holding in Blakely v.

Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004). As noted in State v. Suleiman, 158 Wash. 2d 280, 289, 143 P.3d 795 (2006), “the Blakely court also acknowledged that a jury need not find facts supporting an exceptional sentence when a defendant pleads guilty and stipulates to the relevant facts.” Ordinarily, a jury will be called upon to determine whether an aggravating circumstance is present. However, a defendant can agree that an aggravating factor exists, i.e., it is possible for a defendant to stipulate to an aggravating circumstance. (See RCW 9.94A.530(3)).

In this case, nothing prevented Mr. Hale from pleading guilty to an Information which included an aggravating circumstance.<sup>1</sup> Hence, because RCW 9.94A.537 is not the exclusive procedure for imposing an exceptional sentence, Mr. Hale has not demonstrated that this statute is unconstitutional beyond a reasonable doubt.

**b. A Defendant’s Right to Plead Guilty Has Limitations; These Strictures Undercut the Defendant’s Argument Regarding the Purported Unconstitutionality of RCW 9.94A.537.**

---

<sup>1</sup> The aggravating factor that was pled in the last Amended Information in this case is delineated in RCW 9.94A.535(3)(v): “The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim’s status as a law enforcement officer is not an element of the offense.”

Mr. Hale's argument pertaining to the purported unconstitutionality of RCW 9.94A.537 seems to be based on the premise that a defendant has a right to plead guilty to a charge and excise any aggravating circumstances from his plea. Mr. Hale's argument relies heavily on State v. Martin, 94 Wash. 2d 1, 614 P.2d 164 (1980) which holds that a defendant has a right to plead guilty under CrR 4.2(a). However, State v. James, 178 Wash. 2d 483, 739 P.2d 699 (1987), specifically limits the holding in Martin to the initial arraignment. "[T]he unconditional nature of the right to plead guilty does not apply in subsequent proceedings if the defendant voluntarily, knowingly, and intelligently enters a not guilty plea at arraignment." James at 488. The facts in this case mirror the facts in James. In both cases the court granted the prosecutor's motion to amend the charges after the initial arraignment had been held, and the defendant entered a plea of not guilty. Thus, Mr. Hale cannot complain that his right to plead guilty was compromised by the so-called "Blakely fix," because he did not have a right to plead guilty once he entered his initial plea.

Moreover, the State of Washington proleptically asserts that no legal basis exists for the proposition that a defendant, after the

initial arraignment, has an absolute right to plead guilty to only a portion of an Information. Cf. State v. Robtoy, 98 Wash. 2d 30, 653 P.2d 284 (1982) (“[N]o defendant is entitled to gamble on submitting a case to a jury on the theory that he has entered a plea of not guilty and, then, after verdict, say that he was prejudiced by not having been given an opportunity to plead guilty.” Id. at 45); and State v. Bowerman, 115 Wash. 2d 794 802 P.2d 116 (1990) (“The statutory right to plead guilty is a right to plead guilty to the Information as charged.” Id. at 799). In this case, the charging document contained an aggravating factor; thus, Mr. Hale could not have pled guilty without also acknowledging the truth of the alleged aggravating circumstance, viz., (1) that the victim of the Assault in the Second Degree, Ron Clark, was a law enforcement officer who was performing his duties at the time of the offense; (2) that Mr. Hale knew that Ron Clark was a law enforcement officer; and (3) that Ron Clark’s status as a law enforcement officer was not an element of Assault in the Second Degree.

In summary, Mr. Hale’s desire to bootstrap the analysis in State v. Hughes, 154 Wash. 2d 118, 100 P.3d 192 (2005) onto RCW 9.94A.537 does not succeed. Mr. Hale makes a theoretical

argument that does not pass muster when analyzing the constitutionality of a statute under the facial invalidity test. Mr. Hale's argument is also dependent on the unstated assumption that a defendant always has a statutory right to plead guilty to an offense and not be subject to any aggravating factors that are contained in an Information. The holdings in James, Robtoy, and Bowerman make this assertion untenable. The facts of this case do not allow the defendant to use RCW 9.94A.537 as a vehicle to overturn his exceptional sentence. Mr. Hale's contention that RCW 9.94A.537 is unconstitutional should be rejected.

**5. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION  
IN IMPOSING AN EXCEPTIONAL SENTENCE BASED  
ON THE JURY'S SPECIAL VERDICT.**

Mr. Hale argues that Judge Sullivan failed to exercise discretion in giving the defendant an exceptional sentence. Mr. Hale claims that this purported failure to exercise discretion is an abuse of discretion. Appellant's Brief at 45. In large measure, the State of Washington agrees with Mr. Hale's assessment of what is required to impose an exceptional sentence under RCW 9.94A.535 and RCW 9.94A.537. Appellant's Brief at 45-47. In general, a jury must find beyond a reasonable doubt that one or more of the

aggravating circumstances listed in RCW 9.94A.535(3) is present. The trial judge then must determine whether the aggravating fact is a substantial and compelling reason to impose an exceptional sentence.

Nevertheless, the State of Washington asserts that Judge Sullivan engaged in the proper analysis to impose an exceptional sentence. While the Judgment and Sentence does not include separate Findings of Facts and Conclusions of Law (See Appendix “B”), the Judgment and Sentence is clear on its face. Section 2.4 of the Judgment and Sentence (page three) indicates that “[s]ubstantial and compelling reasons exist which justify an exceptional sentence.” This section of the Judgment and Sentence makes reference to the jury’s special interrogatory which is attached to the Judgment and Sentence. Therefore, it is absolutely clear that Judge Sullivan used the jury’s special interrogatory as the basis to impose the exceptional sentence.

Moreover, under Blakely, when a defendant exercises his right to a jury trial, the only possible basis for imposing an exceptional sentence is the jury’s finding in a special interrogatory. Any additional findings that theoretically could be made by a judge

at sentencing would be proscribed under Blakely. The oral decision of Judge Sullivan indicates that he felt that the findings of the jury in the special interrogatory were sufficient to impose an exceptional sentence. 4 RP at 39-46. While Mr. Hale argues that the trial judge failed to exercise the required discretion, this assertion is belied by the trial transcript. Specifically, at 4 RP 45-46, the following exchange occurred between Mr. Karlsvik (Mr. Hale's trial counsel) and Judge Sullivan:

MR. KARLSVIK: Your Honor, I just have one last thing for the record and for the benefit if anyone's reading the transcript at a future date that the Court indicated on the Assault Two sentence that it was the intent of the jury in delivering the answer to the Special Interrogatory to give an exceptional sentence. I do disagree with that. I don't think that any intent can be inferred from the jury on that interrogatory as to what kind of sentence they thought was appropriate in the case.

THE COURT: And that's - - very good. I stand corrected on that. I have no idea what their intent was. I believe that that would be their intent. It's certainly my intent viewed from the evidence that I'm familiar with in this case and after listening to all the argument of counsel, listening to the people who - - other people who have spoken, it's my - - it's what I believe is fair and just. And that's a very good point that you raised. I don't know what's in the mind of the jury and it wasn't really meant to be that but it did come across that way. But that's my

sentence, my decision and mine alone.  
[emphasis added].

The above passage definitively indicates that Judge Sullivan exercised the discretion that is contemplated by RCW 9.94A.537(5). Judge Sullivan did not fail to exercise his own judgment in deciding to impose an exceptional sentence after the jury made the requisite findings under RCW 9.94A.535(3)(v). Therefore, Mr. Hale's argument pertaining to abuse of discretion should be rejected.<sup>2</sup>

---

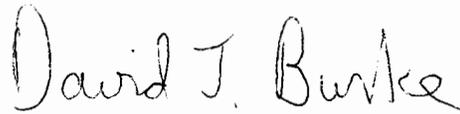
<sup>2</sup> The State of Washington acknowledges that while Section 2.4 of the Judgment and Sentence contains language that constitutes a Finding of Fact, (viz., the jury's special interrogatory constitutes a substantial and compelling reason to impose an exceptional sentence), the Judgment and Sentence does not contain a formal Conclusion of Law to compliment this Finding of Fact. This technical omission does not justify remanding the case to the trial court for the entry of separate Findings of Fact and Conclusions of Law, because the oral record delineates the basis for Judge Sullivan's decision. Adding statutory citations to the Judgment and Sentence in order to lay out formal Conclusions of Law is an "unnecessary administrative detail." See State v. Bynum, 76 Wash. App. 262, 266, 884 P.2d 10 (1994).

E.

**CONCLUSION**

For the reasons listed above, the relief sought by Mr. Hale should be denied. Mr. Hale's convictions for Assault in the Second Degree and Attempting to Elude a Pursuing Police Vehicle should be upheld. The exceptional sentence imposed by the trial court also should be sustained.

RESPECTFULLY SUBMITTED BY:

A handwritten signature in black ink that reads "David J. Burke". The signature is written in a cursive style with a horizontal line underneath the name.

---

DAVID J. BURKE – WSBA #16163  
PROSECUTING ATTORNEY

FILED

2007 FEB -9 PM 3:47

CLERK OF SUPERIOR COURT  
PACIFIC CO. WA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON,	)	
	)	NO. <b>06-1-00104-2</b>
Plaintiff,	)	
	)	FINDINGS OF FACT
vs.	)	AND CONCLUSIONS OF LAW
	)	PERTAINING TO THE
<b>DALE E. HALE,</b>	)	CONTINUANCE GRANTED ON
Defendant.	)	OCTOBER 11, 2006.
_____	)	

THIS MATTER having come before the Court on October 11, 2006, on the State's motion for an order continuing the trial date past the expiration of the speedy trial period, the Court having read the documents submitted by the parties and heard arguments of counsel, and having considered the records and files herein, now makes the following:

**FINDINGS OF FACT**

1. Dale Hale was charged with Assault in the Second Degree and Attempting to Elude a Police Vehicle.
2. The defendant knowingly, intelligently, and voluntarily waived his right to

FINDINGS OF FACT &  
CONCLUSIONS OF LAW - 1

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

**APPENDIX 'A'**

1 a speedy trial through October 30, 2006. The defendant has been incarcerated  
2 in the State prison system on an unrelated felony conviction stemming from an  
3 incident in Pierce County.  
4

5  
6 3. Trial was set to begin in this case on October 24, 2006.  
7

8 4. On October 11, 2006, the State filed a Motion and Declaration to continue  
9 the trial date beyond the expiration of the speedy trial period.  
10

11 5. The defendant has not waived his right to a speedy trial beyond October  
12 30, 2006.  
13

14 6. The defendant objected to the setting of the trial on any date beyond the  
15 speedy trial deadline. The defendant argued that this case should be dismissed  
16 with prejudice if it could not be tried by the end of the speedy trial period.  
17  
18

19 7. The defendant argued at the hearing on the motion to continue the trial  
20 that he would be prejudiced if a continuance were granted because his mental  
21 competency would deteriorate if he were housed in the Pacific County Jail.  
22  
23

24 Alternatively, the defendant asserted that he would be prejudiced if he were sent  
25 back to prison because he would not have ready access to his court-appointed  
26 attorney.  
27  
28  
29

30 8. Because the State's Declaration submitted with its motion to continue the  
31 trial was basically uncontested, and because the Court is relying upon the facts in  
32  
33

FINDINGS OF FACT &  
CONCLUSIONS OF LAW - 2

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

1 that declaration in making this decision, the Court hereby incorporates by  
2  
3 reference the State's Declaration into these factual findings.

4  
5 9. As the State's Declaration attests, the key witness for the State had a  
6  
7 serious and unavoidable conflict if the trial would have commenced on October  
8  
9 24, 2006. Ron Clark, the Chief Criminal Deputy for Pacific County, who was the  
10  
11 victim named in Count I of the Information, needed to attend to his son who was  
12  
13 scheduled to have brain surgery on October 24, 2006.

14  
15 10. Ron Clark was a material State witness.

16  
17 11. Due to the brain surgery performed on his son, Ron Clark was unavailable  
18  
19 to testify from October 24, 2006 to November 5, 2006. This short absence  
20  
21 indicates that Ron Clark would be available to testify within a reasonable period  
22  
23 of time.

24  
25 12. The State was not negligent in bringing its motion for continuance on  
26  
27 October 11, 2006. While there could have been more communication between  
28  
29 the Pacific County Prosecutor's Office and Chief Criminal Deputy Ron Clark, the  
30  
31 State did not mismanage this case.

32  
33 13. The State did not engage in governmental misconduct or arbitrary action  
which prejudiced the rights of the defendant.

14. The administration of justice would be compromised if the State's motion

1 for a continuance were not granted because the unavailability of the State's key  
2  
3 witness would have necessitated the dismissal of Count I. The administration of  
4  
5 justice mandates that the State be given an opportunity to fully present its case  
6  
7 provided that the defendant is not thereby unfairly prejudiced.

8 15. Granting a continuance in this case to November 29-30, 2006, would not  
9  
10 prejudice the defendant in the presentation of his defense. The defendant made  
11  
12 no showing that the continuance would prevent him from calling any witnesses  
13  
14 to support his theory of the case. The defendant's bare assertions that a  
15  
16 continuance would cause him to suffer mental anguish by being incarcerated in  
17  
18 the Pacific County Jail or that a continuance would prevent him from having  
19  
20 access to his attorney were not credible. Continuing this case to November 29-  
21  
22 30, 2006, in no way impacts the defendant's ability to fully present his case to  
23  
24 the jury.

25 16. Due to court congestion, the first available trial date for a two-day trial  
26  
27 was November 29, 2006. Breaking up the trial would have negatively impacted  
28  
29 the administration of justice.

## 30 **II. CONCLUSIONS OF LAW**

31 1. Under Superior Court Criminal Rule 3.3(f)(2), continuances can be granted  
32  
33 on motion of the court or a party "when such continuance is required in the

1 administration of justice and the defendant will not be prejudiced in the  
2 presentation of his or her defense." If the Court grants a motion for continuance  
3 under this subsection, the trial must be moved to a specific date. A continuance  
4 also can be granted due to unavailable or unforeseen circumstances beyond the  
5 control of the court or the parties, if the defendant is not prejudiced. CrR  
6 3.3(e)(8).  
7  
8  
9  
10

11 2. The dismissal of a criminal charge is an extraordinary remedy that is  
12 available only as a last resort when there has been prejudice to the rights of the  
13 accused that materially affects the right to a fair trial. No such prejudice exists in  
14 this case; therefore, this case should not be dismissed.  
15  
16  
17

18 3. "Loss of freedom" by the defendant during a continuance period does not  
19 by itself constitute prejudice under Superior Court Rule No. 3.3(f)(2). Moreover,  
20 this argument is inapposite because the defendant has been incarcerated due to  
21 a separate felony conviction.  
22  
23  
24

25 4. The unavailability of a material witness is a valid ground for continuing a  
26 criminal trial where (1) there is a valid reason for the unavailability, (2) the  
27 witness will become available within a reasonable time, and (3) there is no  
28 substantial prejudice to the defendant. The State has demonstrated that there is  
29 a valid reason for the unavailability of Chief Criminal Deputy Ron Clark--a  
30  
31  
32  
33

1 material State witness. The State also has shown that Chief Criminal Deputy Ron  
2  
3 Clark will be available to testify within a reasonable time. Finally, there has been  
4  
5 no showing that the defendant would be prejudiced by having this trial  
6  
7 continued.

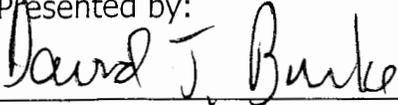
8 5. Because the presentation of the defendant's case would not be prejudiced  
9  
10 by a continuance and because the interests of justice support a continuance, a  
11  
12 continuance should be granted under the authority of Superior Court Criminal  
13  
14 Rule 3.3(f)(2). The failure to grant a continuance would undermine the  
15  
16 administration of justice.

17 6. In order to ensure that the continuance is as short as possible, the trial  
18  
19 should be continued to November 29-30, 2006.

20 DATED this 9<sup>th</sup> day of February, 2007.

21  
22  
23   
JUDGE

24 Presented by:

25   
26 \_\_\_\_\_  
27 DAVID J. BURKE, WSBA#16163  
28 Prosecuting Attorney

29 Approved as to form:

30  
31 \_\_\_\_\_  
32 HAROLD KARLSVIK, WSBA#23026  
33 Attorney for Defendant.

FINDINGS OF FACT &  
CONCLUSIONS OF LAW - 6

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

FILED

2007 FEB -9 PM 3:47

VIRGINIA LEACH CLERK  
PACIFIC CO. WA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON,	)	
	)	NO. <b>06-1-00104-2</b>
Plaintiff,	)	
	)	FINDINGS OF FACT
vs.	)	AND CONCLUSIONS OF LAW
	)	PERTAINING TO THE
<b>DALE E. HALE,</b>	)	CONTINUANCE GRANTED ON
Defendant.	)	NOVEMBER 28, 2006.
	)	

THIS MATTER having come before the Court on November 28, 2006, on the State's motion for an order continuing the trial date, the Court having read the documents submitted by the parties and heard arguments of counsel, and having considered the records and files herein, now makes the following:

**FINDINGS OF FACT**

1. A severe ice/snow storm enveloped Pacific County and Western Washington on November 28, 2006. On the scheduled date of trial, November 29, 2006, the defendant would not have been in court. The Pacific County Sheriff's Office attempted to pick up the defendant where he was housed at the

FINDINGS OF FACT &  
CONCLUSIONS OF LAW - 1

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

**APPENDIX 'B'**

1 Monroe Correctional Facility. The Sheriff's Office was unable to complete the  
2 transport due to dangerous road conditions.  
3

4 2. The winter storm event made travel virtually impossible throughout Pacific  
5 County and Western Washington.  
6

7  
8 3. The road conditions were going to be so dangerous in Pacific County on  
9 the scheduled trial date that the lives of prospective jurors would have been  
10 endangered if they attempted to travel to the Courthouse in South Bend. Many  
11 of the prospective jurors would have had to travel up to 50 miles to reach the  
12 Courthouse. Since the roads in Pacific County were going to be extremely  
13 dangerous on the scheduled trial date, it would have been foolhardy to place the  
14 lives of prospective jurors at risk. Therefore, the administration of justice  
15 required that the trial be continued.  
16  
17  
18  
19  
20

21 4. Because Pacific County only has one Superior Court Judge (this judge also  
22 presides in Wahkiakum County), and because certain docket days are scheduled  
23 far in advance, the Court had limitations with regard to when this trial could be  
24 held. Nevertheless, the Court moved other cases to ensure that this case was  
25 tried as soon as possible.  
26  
27  
28  
29

30 5. Because this case was going to take at least two days, December 11,  
31 2006 was the first available date for a two-day trial. It would have been  
32  
33

1 imprudent to move the trial to November 30, 2006, because the weather forecast  
2 was problematic. Friday, December 1, 2006, was a weekly motion docket.  
3  
4 December 4, 2006, was the Wahkikaum County motion day. A "dependency"  
5  
6 docket was set for December 5, 2006. A juvenile docket was scheduled for  
7  
8 December 7, 2006. December 8, 2006, was a weekly motion docket. Thus, it  
9  
10 would have been unwise to have attempted to start the trial earlier than  
11  
12 December 11, 2006, because the trial would have had to be continued to  
13  
14 December 11, 2006 in any event.

15 6. Breaking up the trial would have negatively impacted the administration of  
16  
17 justice.

18 8. The Findings of Fact pertaining to the continuance granted on October 11,  
19  
20 2006, are hereby incorporated by reference.

## 21 22 **II. CONCLUSIONS OF LAW**

23 1. Under Superior Court Criminal Rule 3.3(f)(2) continuances can be granted  
24  
25 on motion of the court or a party "when such continuance is required in the  
26  
27 administration of justice and the defendant will not be prejudiced in the  
28  
29 presentation of his or her defense." If the Court grants a motion for continuance  
30  
31 under this subsection, the trial must be moved to a specific date. A continuance  
32  
33 also can be granted due to unavailable or unforeseen circumstances beyond the

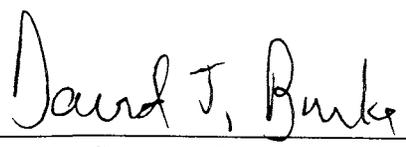
1 control of the court or the parties, if the defendant is not prejudiced. CrR  
2  
3 3.3(e)(8).  
4  
5 2. In this instance, the extreme weather conditions constituted unavoidable  
6 unforeseen circumstances affecting the time for trial that were beyond the  
7 control of the Court or the parties. Moreover, even if the defendant would have  
8 been present in court on November 29, 2006, the severe weather conditions  
9 justified the postponement of the trial because of prospective jurors would have  
10 had to risk life and limb in traveling to South Bend.  
11  
12 3. "Loss of freedom" by the defendant during a continuance period does not  
13 by itself constitute prejudice under Superior Court Rule No. 3.3(f)(2). Moreover,  
14 this argument is inapposite because the defendant has been incarcerated due to  
15 a separate felony conviction.  
16  
17 4. Continuing the trial from November 29-30, 2006, to the second week of  
18 December does not prejudice the defendant in the presentation of his defense.  
19 This continuance is required in the administration of justice. Therefore, a  
20 continuance should be granted under the authority of Superior Court Criminal  
21 Rule 3.3(f)(2).  
22  
23 5. In order to ensure that the continuance is as short as possible, the trial  
24 should be continued to December 11-12, 2006.  
25  
26  
27  
28  
29  
30  
31  
32  
33

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

DATED this 9<sup>th</sup> day of February, 2007.

  
\_\_\_\_\_  
JUDGE

Presented by:

  
\_\_\_\_\_  
DAVID J. BURKE, WSBA#16163  
Prosecuting Attorney

Approved as to form:

\_\_\_\_\_  
HAROLD KARLSVIK, WSBA#23026  
Attorney for Defendant.

FILED

2007 FEB -9 PM 3:50

VIRGINIA LEASER COURT  
PACIFIC CO. WA

SUPERIOR COURT OF WASHINGTON  
COUNTY OF PACIFIC

STATE OF WASHINGTON, Plaintiff,

vs.

**DALE E. HALE**  
Defendant.

SID:WA18424986  
If no SID, use DOB: 04/23/81

No.06-1-00104-2

**FELONY JUDGMENT AND SENTENCE (FJS)**

- Prison  RCW 9.94A.712 Prison Confinement
- Jail One Year or Less  RCW 9.94A.712 Prison Confinement
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8**

**I. HEARING**

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

**II. FINDINGS**

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on December 12, 2006  
by  plea  jury-verdict  bench trial of: \_\_\_\_\_ (Date)

COUNT	CRIME	RCW	DATE OF CRIME
I	ASSAULT IN THE SECOND DEGREE	9A.36.021	4/27/06
II	ATTEMPTING TO ELUDE	46.61.024	4/27/06

(If the crime is a drug offense, include the type of drug in the second column.)  
as charged in the \_\_\_\_\_ Amended) Information.

Additional current offenses are attached in Appendix 2.1.

The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.

A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 9.94A.533.

A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) \_\_\_\_\_  
\_\_\_\_\_. RCW 9.94A.602, 9.94A.533.

- A special verdict/finding of **sexual motivation** was returned on Count(s) \_\_\_\_\_ . RCW 9.94A.835.
- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) \_\_\_\_\_ . RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) \_\_\_\_\_ involve(s) **domestic violence**.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 ESCAPE 2 <sup>ND</sup>	7/20/06	PIERCE CO	3/29/06	A	
2 VUCSA	4/5/05	PIERCE CO	3/6/05	A	
3 TMVWOP	11/10/05	SNOHOMISH CO	3/4/05	A	
4 PSP 2 <sup>ND</sup>	2/20/04	PACIFIC CO	2/6/04	A	
4 PSP 1 <sup>ST</sup>	2/21/03	KING CO	10/31/02	A	
5 TMVWOP	11/7/03	KING CO	10/22/02	A	
6 ATTEMPT TO ELUDE	9/9/98	KING CO	8/12/98	J	
7 TMVWOP	9/9/98	KING CO	8/12/98	J	
8 THEFT OF A FIREARM	6/2/98	KING CO	2/27/98	J	
9 TMVWOP	11/19/97	KING CO	8/13/97	J	

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

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

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	<del>10</del> 9	IV	63-84 MONTHS			10 YEARS/\$25,000
II	<del>10</del> 9	I	22-29 MONTHS			5 YEARS/\$10,000

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

Additional current offense sentencing data is attached in Appendix 2.3.

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within  below the standard range for Count(s) \_\_\_\_\_.

above the standard range for Count(s) \_\_\_\_\_.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4.  Jury's special interrogatory is attached. The Prosecuting Attorney  did  did not recommend a similar sentence.

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

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

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 and Appendix 2.1.

3.2  The court DISMISSES  The defendant is found NOT GUILTY of Counts \_\_\_\_\_

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

RTN/RJN

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ \_\_\_\_\_ Domestic Violence assessment RCW 10.99.080

CRC \$ 300.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$200.00 FRC

Witness costs \$ \_\_\_\_\_ WFR

Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/WRF

Jury demand fee \$ \_\_\_\_\_ JFR

Extradition costs \$ \_\_\_\_\_ EXT

Other \$100.00

PUB \$ 250.00 Fees for court appointed attorney RCW 9.94A.760

WFR \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ \_\_\_\_\_ Fine RCW 9A.20.021;  VUCSA chapter 69.50 RCW,  VUCSA additional fine deferred due to indigency RCW 69.50.430DCDF/LDI/FC

\$ \_\_\_\_\_ Drug enforcement fund of FUND RCW 9.94A.760 NTF/SAD/SDI

CLF \$ \_\_\_\_\_ Crime lab fee  suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee  not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ 250.00 Other costs for: Jury costs

\$ ~~100.00~~ TOTAL RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for \_\_\_\_\_

RESTITUTION. Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant CAUSE NUMBER (Victim's name) (Amount-\$)

RJN \_\_\_\_\_

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$35.00 per month commencing BY THE 10<sup>TH</sup> DAY OF THE MONTH. RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: \_\_\_\_\_. (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with RON CLARK \_\_\_\_\_ (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 No-Contact Order or Antiharassment No-Contact Order is filed with this Judgment and Sentence.

4.4 OTHER CONDITIONS: Defendant shall report to the County Clerk's Office within 7 days of release from custody to verify address, payment conditions and sign payment conditions and requirements form. If it understood that failure to comply may result in the issuance of a warrant for my arrest.

**DEFENDANT'S INITIALS:**   i  H  

**OTHER:**

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

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

100 months on Count I                      29 months on Count II  
\_\_\_\_\_ months on Count \_\_\_\_\_                      \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_                      \_\_\_\_\_ months on Count \_\_\_\_\_

Actual number of months of total confinement ordered is: \_\_\_\_\_  
(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 \_\_\_\_\_.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

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

to any other sentences Str. Dale Hale Pierce Co. Cause # 06-1-2875-1

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

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

Count \_\_\_\_\_ minimum term \_\_\_\_\_ maximum term \_\_\_\_\_  
Count \_\_\_\_\_ minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

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

4.6  COMMUNITY PLACEMENT is ordered as follows: Count \_\_\_\_\_ for \_\_\_\_\_ months;  
Count \_\_\_\_\_ for \_\_\_\_\_ months; Count \_\_\_\_\_ for \_\_\_\_\_ months.

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

COMMUNITY CUSTODY is ordered as follows: 20

Counts I-, for a range from 18 months to 36 months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July

1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to 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 not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.

Defendant shall have no contact with: \_\_\_\_\_

Defendant shall remain  within  outside of a specified geographical boundary, to wit: \_\_\_\_\_

Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse  mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions: **SEE ATTACHED APPENDIX H**

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

4.7  **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the Defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials):    DIT
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of commitment per violation. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

**Cross off if not applicable:**

~~5.10 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

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

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

move out of Washington State, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination.

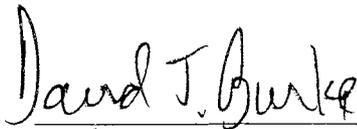
Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

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

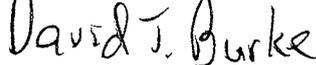
If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of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

- 5.8  The court finds that Count II is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.
- 5.10 OTHER: \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 2/9/07

  
Deputy Prosecuting Attorney

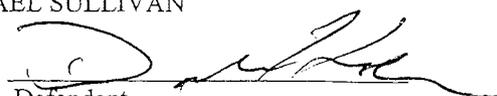
WSBA No. ~~34048~~ 14113  
~~MICHAEL ROTHMAN~~



  
Attorney for Defendant

WSBA#23026  
HAROLD KARLSVIK,

  
JUDGE MICHAEL SULLIVAN

  
Defendant

DALE E. HALE

**VOTING RIGHTS STATEMENT:** RCW 10.64. \_\_\_\_\_. I acknowledge that my right to vote has been lost due to felony conviction. 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: \_\_\_\_\_ . 2005 Wash. Laws 246 § 1.

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the \_\_\_\_\_ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: \_\_\_\_\_

I, VIRGINIA LEACH, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_.

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF DEFENDANT**

SID No. WA18424986 Date of Birth 4/23/81  
(If no SID take fingerprint card for State Patrol)

FBI No. 294676JB7 Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

Alias name, DOB:

**Race:**  Asian/Pacific  Black/African-American  Caucasian  Native American  Other: \_\_\_\_\_  
**Ethnicity:**  Hispanic  Non-Hispanic  
**Sex:**  Male  Female

**FINGERPRINTS:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, \_\_\_\_\_ Dated: 2-9-2007

DEFENDANT'S SIGNATURE: \_\_\_\_\_

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

SUPERIOR COURT OF WASHINGTON  
 COUNTY OF PACIFIC

STATE OF WASHINGTON, Plaintiff,

No. 06-1-000104-2

vs.

**DALE E. HALE**

Defendant.

**ADDITIONAL CURRENT OFFENSES,  
 CRIMINAL HISTORY AND CURRENT  
 OFFENSE SENTENCING DATA  
 (APPENDIX 2.1, 2.2 and 2.3, JUDGMENT  
 AND SENTENCE) (APX)**

2.1 The additional current offenses of defendant are as follows:

COUNT	CRIME.....	RCW CRIME	DATE OF CRIME

(If the crime is a drug offense, include the type of drug in the second column.)

2.2 The defendant has the following prior criminal convictions (RCW 9.94A.100):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 0	TMVWOP	7/23/97	KING CO	4/28/97	J
1 1	THEFT 2 <sup>ND</sup>	10/29/96	KING CO	8/3/96	J
1 2	ESCAPE 2 <sup>ND</sup>	10/29/97	KING CO	9/7/97	J

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON )  
Plaintiff, ) NO. **06-1-00104-2**  
)  
vs. ) JUDGMENT AND SENTENCE  
) (FELONY) APPENDIX H  
8 **DALE E. HALE,** ) ADDITIONAL CONDITIONS  
Defendant. ) OF SENTENCE  
)

4.3 Continued: Additional conditions of sentence are:

[X] Defendant shall serve <sup>30</sup> ~~18-35~~ **MONTHS** Defendant shall report to the Department of Corrections, by phone at (360)533-9758 or (360)942-4817, within **72 hours** of the commencement of community supervision and the defendant shall comply with all rules, regulations and requirements of the Department of Corrections, and any other conditions of community supervision stated in this Judgment and Sentence;

[X] Must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of residence, in which the offender lives or has exclusive/joint control/access.

[X] Defendant shall not consume, possess, or have under his control any alcoholic beverages.

[X] Defendant shall not consume, possess, or have under his control any controlled substances unless otherwise prescribed by a certified physician.

[X] Defendant shall submit to urinalysis/breathalyzer at the request of his CCO.

[X] Defendant shall obtain drug/alcohol evaluation and follow recommended treatment within 45 days of release.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

[X] Defendant shall not initiate or permit contact with known drug users or drug sellers.

[X] Defendant shall not initiate or permit contact with known felons or persons on probation or supervision.

[X] Defendant shall not drive a motor vehicle without a valid driver's license.

[X] Defendant shall have no direct or indirect contact with Ron Clark unless it is official police business.

Date: 2/9/07 Michael Sullin  
JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PACIFIC COUNTY

STATE OF WASHINGTON, )  
)  
)  
Plaintiff, )  
)  
vs. )  
)  
DALE E. HALE, )  
Defendant. )  
\_\_\_\_\_ )

NO. 06-1-00104-2  
  
WARRANT OF COMMITMENT

STATE OF WASHINGTON

TO: The Sheriff of Pacific County.

The defendant: **DALE E. HALE** who was convicted in the Superior Court of the State of Washington of the crime of: **I - ASSAULT IN THE SECOND DEGREE AND ATTEMPTING TO ELUDE.**

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

- 100 (month(s)) on Count No **I**, 29 months on Count No **II**, \_\_\_\_\_ months on Count No. III. \_\_\_\_\_.
- \_\_\_\_\_ (day(s) (month(s)) of partial confinement in the County jail.
- \_\_\_\_\_ (month(s)) of total confinement in the Pacific County jail.

Defendant shall receive credit for time served to this date.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

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

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

The defendant is committed for up to thirty (30) days evaluation at Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

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

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

DATED this 9 day of ~~December, 2006~~ February, 2007.

By Direction of the Honorable  
MICHAEL SULLIVAN  
\_\_\_\_\_  
JUDGE  
\_\_\_\_\_  
*[Signature]*  
CLERK  
BY: \_\_\_\_\_  
DEPUTY CLERK

cc: Prosecuting Attorney  
Defendant's Lawyer  
Defendant  
Jail ✓  
Institutions (3) *[initials]*  
*[Signature]*



## INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proven, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proven, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled

to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness' testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness' memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness' statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony of the witnesses. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this.

If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberation, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proven to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties received a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

STATE OF WASHINGTON  
COUNTY OF PACIFIC  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DPT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

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

STATE OF WASHINGTON, )  
 )  
 Respondent. )  
 )  
 vs. )  
 )  
 DALE E. HALE, )  
 )  
 Petitioner. )  
 \_\_\_\_\_ )

NO 35928-6-II  
AFFIDAVIT OF MAILING

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PACIFIC )

VICKI FLEMETIS, being first duly sworn on oath, deposes and says:

I am the Office Administrator for the Pacific County Prosecutor.

That on 25, Oct., 2007, I mailed a two copies of the State's Brief of Respondent to Peter B. Tiller, Attorney for Appellant at the following address:

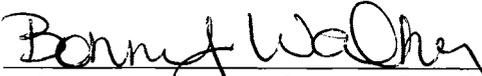
Peter B. Tiller  
Attorney at Law  
P.O. BOX 58  
Centralia, WA 98531

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

  
VICKI FLEMETIS

SUBSCRIBED & SWORN to before me this 25th day of  
OCTOBER, 2007.

  
NOTARY PUBLIC in and for the State  
of Washington, residing at Raymond

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362