

PRP

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

FILED
COURT OF APPEALS
DIVISION II
06 JAN 10 PM 3:33
STATE OF WASHINGTON
DEPUTY

FORREST EUGENE AMOS,

PETITIONER

NO.

PERSONAL RESTRAINT PETITION

34375-4

Consol. to
36104-3

A. STATUS OF PETITIONER

I, Forrest Eugene Amos # 809903, ~~Washington State Penitentiary, 1313 N. 13th Ave.,~~ ^{Stafford Creek Corr. Center, 191 Constantine} way, Aberdeen, WA 98520, ~~Walla Walla, Wa 99362~~, apply for relief from confinement. I am now in custody serving a sentence upon conviction of a crime.

- 1) The court in which I was sentenced is Lewis County Superior Court Dept. No. 3.
- 2) I was convicted of the crimes of Burglary first degree, Robbery first degree, Assault second degree w/36 month firearm enhancement, Theft of a firearm, and unlawful possession of a firearm first degree.
- 3) I was sentenced after a plea of guilty on April 25th, 2000 and re-sentenced on July 19th, 2005. The judge who imposed sentence was Richard L. Brosey.
- 4) My lawyer at trial court was Jodi R. Backlund, 331 N.W. Park Street, Chehalis, WA. 98532, Phone number 360-740-4445. Also at re-sentencing I acted pro se and my stanby counsel was Michael J. Underwood, 2120 State Avenue N.E., Olympia, Wa. 98506, phone number 360-748-4727 or 360-458-4824.

PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE

[Signature]
COURT CLERK 1/31/06

- 5) I did not appeal from the decision of the trial court.
- 6) Since my conviction I have asked a court for some relief from my sentence other than I have already written above. The courts I asked were Division Two Court of Appeals by way of Personal Restraint Petition, No. 31735-4-II and Lewis County Superior Court Dept. No. 3 by way of motions to merge and consider same criminal conduct. Relief was granted in part on April 18th, 2005 for my Personal Restraint Petition and relief was denied on July 19th, 2005 for my motions to merge and consider same criminal conduct.
- 7) The name of my lawyer in the proceedings mentioned in my answer to question 6 was myself acting pro se.
- 8) If the answers to the above questions do not really tell about proceedings and the courts, judges and attorneys involved in your case, tell about it here:

In May 2004 a Personal Restraint Petition was filed on my Lewis County Cause because of the use of two washed out juvenile adjudications in the calculation of my offender score and Double Jeopardy violations for receiving multiple punishments base on the same assault conduct.

On February 28th, 2005 the Court of Appeals granted relief for the use of the two washed out juvenile adjudications in the calculation of my offender score pursuant to In re La Chappell, 153 Wn.2d 1, 13 (2004) and stayed my petition on my Double Jeopardy claims pending the Supreme Courts decision in State VS. Freeman, 153 Wn.2d 765, 780, 108 P.2d 753 (2005). I then motioned the Court of Appeals to withdraw my Double Jeopardy claims with the assumption I could argue and receive the same type of relief with the use of the same criminal conduct analysis at re-sentencing for the miscalculated offender score. 2

This withdrawal motion was also done because of the time the Freeman decision was taking.

On April 18th, 2005 the Court of Appeals granted this request even though the Freeman decision finally came down and remanded me back for re-sentencing.

On July 19th, 2005 while acting pro se I filed motions on Double Jeopardy pursuant to the new Freeman decision and on same criminal conduct for the convictions of Robbery first degree and Theft of a firearm. The trial judge, Richard L. Brosey, entered rulings on these motions in favor of the state. Motions to reconsider these issues were denied on September 12th, 2005 and trial judge told me to PRP it if I did not agree with his rulings.

B. GROUNDS FOR RELIEF.

I have four reasons for this court to grant me relief from the convictions and sentence described in Part A.

GROUND ONE.

1) I should be given a new trial or release from confinement because my conviction and sentence for count three Assault second degree is barred by Double Jeopardy, thereby exceeding the trial courts authority. Both count two Robberty first degree and count three Assault second degree are based on the same assault action so they are required to merge for Double Jeopardy purposes.

2) The following facts are important when considering my case: as charged count two Robberty first degree requires use or threatened use of immediate force. As plead to, one assault action was used to support convictions for both count two Robbery first degree and count three Assault first degree. Count three Assault first degree was withdrawn and amended to second degree assault. 3

This Assault second degree was not based on a different Assaultive action but rather a reduction from the original Assault pleads guilty to. This assault must be used to support my conviction of count two Robbery first degree. See the attached Brief, Exhibits, and Verbatim Reports to support these facts.

3) The following reported court decisions in cases similar to mine show the error I believe happened in my case: State VS. Freeman, 153 Wn.2d 765, 780, 108 P.2d 753 (2005). In re Butler, 24 Wn.App 175, 599 P.2d 1311 (1979). See the attached Brief for further authorities to support these errors.

4) The following statutes and constitutional provisions should be considered by the court: RCW 9A. 56.190; RCW 9A. 56.200, RCW 9A. 36.021; The Merger Doctrine; The Fifth and Fourteenth Amendment of the United States Constitution; Article 1, section 9 and Article 1, section 3 of the Washington Constitution.

5) This petition is the best way I know to get the relief I want, and no other way will work because the time for appeal has expired and the next avenue for relief is by way of this petition in the Washington Courts.

GROUND TWO

1) I should be given a new trial or released from confinement because the trial court miscalculated my offender score by counting by subsequent offense and conviction for Assault second degree as a prior conviction when re-sentencing my 2000 convictions five years after my sentencing date.

This miscalculation exceeds the trial courts authority and violates Double Jeopardy guarantees because the legislature intended for an offense and conviction that occurred while under sentence for a prior conviction to be a subsequent offense and conviction

requiring an automatic consecutive sentence that latters the underlying sentence within the meaning of RCW 9.94A. 589 (2) (a) and not a prior conviction enhancing my offender score by two point within the meaning of RCW 9.94A. 525 (1) (8).

2) The following facts are important when considering my case: The assault incident resulting in my Assault second degree offense and conviction occurred on February 26th, 2004 almost four years after my sentencing date which was April 25th, 2000.

I plead guilty to the Assault second degree offense and conviction on June 20th, 2005 after reaching a plea bargain agreement.

On November 7th, 2005 I received an automatic consecutive 29 month sentence for the subsequent Assault second degree offense and conviction that latters my sentence imposed for my 2000 convictions. The automatic consecutive sentence was imposed pursuant to specific procedures of the SRA because the offense and conviction occurred while I was serving my underlying sentence for my 2000 convictions.

On July 19th, 2005 at re-sentencing for my 2000 convictions my subsequent assault second degree offense and conviction was counted as a prior conviction in order to enhance my offender score by two points for my underlying sentence that must expire before the automatic consecutive sentence imposed for the same subsequent Assault second degree offense and conviction can start. See the attached Brief and Exhibits to support these facts.

3) The following reported court decisions in cases similar to mine show the error I believe happened in my case: As far as I know there are no reported court decisions that support the specific errors that I claim. However, see the attached Brief to support the errors I claim. 5

4) The following statutes and constitutional provisions should be considered by the court: RCW 9.94A. 589 (2) (a); RCW 9.94A. 525 (1) (8); The Fifth and Fourteenth Amendments of the United States Constitution, Article 1, section 9 and Article 1, section 3 of the Washington Constitution.

5) This petition is the best way I know to get the relief I want, and no other way will work because the time for appeal has expired and the next avenue for relief is by way of this petition in the Washington Courts.

GROUND THREE.

1) I should be given a new trial or released from confinement because the prosecutor and trial court breached the plea bargain agreement at my re-sentencing date on July 19th, 2005 by modifying my judgment and sentence with the use of a subsequent offense and conviction for Assault second degree in the calculation of my offender score.

The terms of the plea bargain agreement only provided the use of any new convictions that occurred between the time of pleading guilty on February 16th, 2000 and the date of sentencing on April 25th, 2000.

I have a right to be re-sentenced pursuant to my original plea consistent with the plea bargain agreement. This principle operates to bind the court as well as the prosecutor.

2) The following facts are important when considering my case: On February 16th, 2000 I plead guilty as charged pursuant to a plea bargain agreement.

One of the terms of the plea bargain agreement was not being convicted of any additional crimes between the time I plead guilty and the date I was sentenced.

On April 25th, 2000 I was sentenced and I was not convicted of any additional crimes before that date. - 6

On June 20th, 2005 I plead guilty to a crime committed on February 26th, 2004. I was not under the terms of the plea bargain agreement at the time I committed the crime and was convicted of the crime.

Despite this at my re-sentencing on July 19th, 2005 to correct the erroneous sentence in excess of statutory authority the prosecutor and trial court modified my judgment and sentence with the use of my subsequent offense and conviction for Assault second degree in the calculation of my offender score.

My full compliance with the terms of the plea bargain agreement was not given any consideration at my re-sentencing date even though it is my right to be re-sentenced pursuant to my original plea consistent with the plea bargain agreement or withdraw my plea of guilty and plead anew. See the attached Brief and Exhibits to support these facts.

3) The following reported court decisions in cases similar to mine. Show the error I believe happened on my case: As far as I know there are no reported court decisions that support the specific error that I claim. However, see the attached Brief to support the error I claim.

4) The following statutes and constitutional provisions should be considered by the court: The Fifth and Fourteenth Amendments of the United States Constitution; Article 1, section 3 of the Washington constitution.

5) This petition is the best way I know to get the relief I want, and no other way will work because the time for appeal has expired and the next avenue for relief is by way of this petition in the Washington Courts.

GROUND FOUR. - 7

1) I should be given a new trial or released from confinement because the Doctrine of Collateral Estoppel bars the redetermination of how many prior convictions exist at my re-sentencing date because the trial court already determined how many prior convictions existed at my sentencing date. So my subsequent offense and conviction for Assault second degree should not have been counted as a prior conviction at re-sentencing because that offense and conviction occurred after my sentencing on April 25th, 2000. Re-sentencing was required to correct the erroneous sentence in excess of statutory authority and does not affect the finality of the portion of the judgment and sentence that was correct and valid when imposed. So because a majority of the judgments made at my sentencing date were correct and valid such as the number of prior convictions, same criminal conduct determinations, etc... those issues are final and the Doctrine of Collateral Estoppel bars a redetermination of those issues.

2) The following facts are important when considering my case: On April 25th, 2000 the trial court found that four prior juvenile adjudications existed. Those were, two counts of Burglary second degree, Possession of stolen Property second degree and Malicious Mischief second degree.

The trial court used all of those prior juvenile adjudication when calculating my offender score.

Years after my sentencing date a Washington Supreme Court case held that prior juvenile adjudications occurring before the defendant's fifteenth birthdate and July 1st, 1997 are considered washed out under the SRA and cannot be used in the calculation of their offender score — 8

This court decision rendered my sentence erroneous because two of the four prior juvenile adjudications were considered washed out.

I was remanded back to the trial court to correct the erroneous sentence. At re-sentencing the trial court predetermined how many prior convictions existed and counted my subsequent offense and conviction that occurred well after my sentencing date as a prior conviction.

The determination of how many prior convictions I have was correctly determined at my sentencing, so the issue should not have been re-determined. See the attached Brief and Exhibits to support these facts.

3) The following reported court decisions in cases similar to mine show the error I believe are no reported court decisions that support the specific error that I claim. However, see the attached Brief to support the error I claim.

4) The following statutes and constitutional provisions should be considered by the court: RCW 9.94A. 500, The Doctrine of Collateral Estoppel; The Fifth and Fourteenth Ammendments of the United States Constitution; Article 1, section 9 and Article 1, section 3 of the Washington Constitution.

5) This petition is the best way I know to get the relief I want, and no other way will work because the time for appeal has expired and the next avenue for relief is by way of this petition in the Washington Courts.

C. STATEMENT OF FINANCES.

I ask the court to file this petition without making me pay \$250 filing fee and appoint a Lawyer for me because I cannot afford to pay for either. See the attached motion and affidavit to proceed in forma pauperis for my statement of finances.

D. REQUEST FOR RELIEF.

I want this court to: vacate my conviction for count three Assault second degree for Double Jeopardy purposes; and vacate my sentence and remand back for re-sentencing without the use of my subsequent offense and conviction for Assault second degree in the calculation of my offender score.

E. OATH OF PETITIONER.

STATE OF WASHINGTON

SS:

COUNTY OF ~~WALLA WALLA~~ GRAYS Harbor

After being first duty sworn, on oath, I depose and say; that I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

X Forrest Eugene Amos

FORREST EUGENE AMOS

Subscribed and sworn before me this 6th day of January, 2006.

X Notary Public was not available.

NOTARY PUBLIC

Dickerson vs. Wainwright, 626 F.2d 1184 (1980):
Sworn true and correct under penalty of perjury
has full force of law without being verified by a
Notary Public.

MOTION AND AFFIDAVIT TO PROCEED IN FORMA PAUPERIS

I, Forrest Eugene Amos, am the petitioner in the above-entitled case; in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor and believe I am entitled to redress:

The responses, which I have made to questions and instructions below, are true.

- 1. Are you presently employed? Yes () No (x)
a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

N/A.

- b. If the answer is no, state the date of last employment and the amount of the salary and wages per month, which you receive.

I've never been employed because I've been in prison since the age of sixteen.

- 2. Have you received within the past twelve months any money from any of the following sources?

- a. Business, profession or form of self-employment? Yes () No (x)
b. Rent payments, interest or dividends? Yes () No (x)
c. Pensions, annuities or life insurance payments? Yes () No (x)
d. Gifts or inheritances? Yes (x) No ()
e. Any other sources? Yes () No (x)

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

I would receive gifts from my grandmother to pay for postage and personal hygiene supplies. Such gifts amount to approximately 100 dollars in the past 12 months.

- 3. Do you own any cash, or do you have any money in a checking or savings account? Yes (x) No ()
(Include any funds in prison accounts) If the answer is yes, state the total value of the accounts: Approx. \$85.00 Total.

- 4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes () No (x)
If the answer is yes, describe the property and state its approximate value.

N/A

- 5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

NONE.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury, and I declare under penalty of perjury that the foregoing is true and correct.

Signed this 6th day of January, 2006.

Forrest Eugene Amos
Signature of Plaintiff Petitioner.

12/20/2005

DLOVERTURF

DEPARTMENT OF CORRECTIONS
STAFFORD CREEK CORRECTIONS CENTER

Page 1 of 1

OIRPLRAR

6.03.1.0.1.2

PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 06/01/2005 TO 11/30/2005

DOC : 0000809903

NAME : AMOS FORREST

ADMIT DATE :04/28/2000

DOB : 05/16/1983

ADMIT TIME :00:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
62.16	12.43	0.00	0.00

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTION CENTER
CERTIFIED BY *D. Owsen*

DLOVERTURF

STAFFORD CREEK CORRECTIONS CENTER

OTRTASTA

TRUST ACCOUNT STATEMENT

6.03.1.0.1.2

DOC: 0000809903 Name: AMOS, FORREST E
 LOCATION: S04-321-FB05

DOB: 05/16/1983

ACCOUNT BALANCES Total: 12.50 CURRENT: 12.50 HOLD: 0.00

06/01/2005 12/20/2005

SUB ACCOUNT	START BALANCE	END BALANCE
SPENDABLE BAL	0.00	10.00
SAVINGS BALANCE	0.00	2.50
WORK RELEASE SAVINGS	0.00	0.00
EDUCATION ACCOUNT	0.00	0.00
MEDICAL ACCOUNT	0.00	0.00
POSTAGE ACCOUNT	0.00	0.00
COMM SERV REV FUND ACCOUNT	0.00	0.00

STATE OF WASHINGTON
 DEPARTMENT OF CORRECTIONS
 OFFICE OF CORRECTIONAL OPERATIONS
 STAFFORD CREEK CORRECTION CENTER
 CERTIFIED BY: *[Signature]*

DEBTS AND OBLIGATIONS

TYPE	PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.
CVCS	CVC/07112000	04282000	UNLIMITED	44.10	0.00
COIS	COI/07112000	04282000	UNLIMITED	176.37	0.00
MEDD	MEDICAL COPAY DEBT	10262000	0.00	3.00	0.00
MEDD	MEDICAL COPAY DEBT	03252002	0.00	3.93	0.00
MEDD	MEDICAL COPAY DEBT	07262001	0.00	3.00	0.00
COI	COST OF INCARCERATION	04282000	UNLIMITED	0.00	0.00
CVC	CRIME VICTIM COMPENSATION	04282000	UNLIMITED	12.98	0.00
SPHD	STORES PERSONAL HYGIENE DEBT	10072002	0.00	5.27	0.00
TVD	TV CABLE FEE DEBT	07132002	0.00	2.00	0.00
TVD	TV CABLE FEE DEBT	09142002	0.00	1.10	0.00
TVD	TV CABLE FEE DEBT	05132000	0.00	2.49	0.00
LFO	LEGAL FINANCIAL OBLIGATIONS	20040126	UNLIMITED	5.18	0.00
POSD	POSTAGE DEBT	06192000	0.00	10.50	0.00
POSD	POSTAGE DEBT	07312002	0.00	0.37	0.00
POSD	POSTAGE DEBT	09172002	0.00	4.91	0.00
POSD	POSTAGE DEBT	05152002	3.68	4.07	0.00
HYGA	INMATE STORE DEBT	11282001	0.00	20.56	0.00
HYGA	INMATE STORE DEBT	06262001	0.00	5.50	0.00
HYGA	INMATE STORE DEBT	06162000	0.00	47.00	0.00
HYGA	INMATE STORE DEBT	06072004	0.00	1.40	0.00
MISCD	MISCELLANEOUS DEBT	05032000	0.00	1.92	0.00
MISCD	MISCELLANEOUS DEBT	11212001	2.96	5.79	0.00

TRANSACTION DESCRIPTIONS --

SPENDABLE BAL SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
12/07/2005	AD	INTERFACE-I03	0.00	0.00
12/08/2005	MISCD	MISCELLANEOUS DEBT	2.96	2.96
12/08/2005	MISC	MISC DEDUCTION-INTAKE BAG	(2.96)	0.00
12/10/2005	TVD	TV CABLE FEE DEBT	0.50	0.50
12/10/2005	TV	I05 - TV CABLE FEE	(0.50)	0.00

DLOVERTURF

STAFFORD CREEK CORRECTIONS CENTER

OTRTASTA

T R U S T A C C O U N T S T A T E M E N T

6.03.1.0.1.2

DOC: 0000809903 Name: AMOS, FORREST E
 LOCATION: S04-321-FB05

DOB: 05/16/1983

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
12/14/2005	HYGA	INMATE STORE DEBT (AUTO)	0.48	0.48
12/14/2005	CRS	CRS SAL ORD #3200964STR	(0.48)	0.00
12/15/2005	OTH	OTHER DEPOSITS-33441-D. Amos	25.00	25.00
12/15/2005	DED	Deductions-CVCS-04282000 D D	(1.25)	23.75
12/15/2005	DED	Deductions-COIS-04282000 D D	(5.00)	18.75
12/15/2005	DED	Deductions-SAV-11152001 D D	(2.50)	16.25
12/15/2005	DED	Deductions-LFO-20040126 D D	(5.00)	11.25
12/15/2005	DED	Deductions-TVD-07132002 D D	(0.50)	10.75
12/15/2005	DED	Deductions-HYGA-11282001 D R	(0.48)	10.27
12/15/2005	DED	Deductions-POSD-05152002 D R	(0.27)	10.00

TRANSACTION DESCRIPTIONS -- SAVINGS BALANCE SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
12/15/2005	DED	Deductions-SAV-11152001 D D	2.50	2.50

TRANSACTION DESCRIPTIONS -- WORK RELEASE SUB-ACCOUNT SAVINGS

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- EDUCATION ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- MEDICAL ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- POSTAGE ACCOUNT SUB-ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
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TRANSACTION DESCRIPTIONS -- COMM SERV REV SUB-ACCOUNT FUND ACCOUNT

DATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
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Received & Filed
LEWIS COUNTY, WASH
Superior Court

SEP 12 2005
By Kathy A. Brack, Clerk
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF LEWIS

STATE OF WASHINGTON, Plaintiff,

v.
FORREST EUGENE AMOS, Defendant.

SID#: WA 18562708
DOC#: 809903

No. 00-1-00033-7
JUDGMENT AND SENTENCE (JS)

PRISON

Clerk's Action Required, para 4.1, 5.6 & 5.7

I. HEARING

1.1 A sentencing hearing was held and the defendant appearing pro se and the Prosecuting Attorney were present.

II. FINDINGS

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

2.1 **CURRENT OFFENSES:** The defendant was found guilty of Counts I,II,V&VI on 16 February 2000 and Count III on 25 April 2000 by guilty pleas to the following crimes:

COUNT	CRIME	RCW	DATE OF CRIME
I	BURGLARY IN THE FIRST DEGREE	9A.52.020(1)(a)	01.16.00
II	ROBBERY IN THE FIRST DEGREE	9A.56.200(1)(a)	01.16.00
III	ASSAULT IN THE SECOND DEGREE	9A.36.021(1)(c)	01.16.00
V	THEFT OF A FIREARM	9A.56.300	01.16.00
VI	UNLAWFUL POSSESSION OF A FIREARM 1 st	9.41.040(1)(a)	01.16.00

as charged in the 2nd Amended Information.

A special verdict/finding for use of **firearm** was returned on Count III RCW 9.94A.602, .510.

The court finds that the offender has a **chemical dependency** that has contributed to the offense(s).
RCW 9.94A.607.

[X] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589): Counts I & II. The court further finds that the conduct in Count III (w/firearm) is separate and distinct from the assaultive conduct (w/walkie-talkie) underlying Counts I & II. The court also finds that under RCW 9A.52.050 the crimes in Counts III, V, and VI may be punished separately from the crime in Count I and that the crimes in Counts III, V, and VI are not the same criminal conduct as Counts I or II. The court further finds that only Counts I & II merge for sentence purposes and that under the facts of this case, conviction of Count I – Robbery in the First Degree and Count III – Assault in the Second Degree is not barred by double jeopardy.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1 Assault in the Second Degree	*	Walla Walla Co., WA 04-1-00201-7		A	V
2 Burglary in the Second Degree	03.02.99	Lewis Co., WA 99-8-00079-0	02.25.99	J	NV
3 Malicious Mischief 2 nd	09.01.98	Lewis Co., WA 98-8-00271-9	05.24.98	J	NV
4 Burglary in the Second Degree	05.16.97	Lewis Co., Wa ** 97-8-00215-0	05.02.97	J	NV
5 Possession of Stolen Property 2 nd	05.16.97	Lewis Co., WA ** 97-8-00230-3	05.02.97	J	NV

* Defendant entered and the court accepted a guilty plea on 20 June 2005. RCW9.94A.030(11).

** These convictions were deemed “washed” at the time of the commission of the instant offenses and have not been counted in the offender score for these offenses. *In re La Chappell*, 153 Wn.2d 1 (2004) holding Laws of 2002, Chapt. 107 applies to crimes committed after 13 June 2002; *State v. Varga*, 151 Wn.2d 179 (2004).

[X] The court finds that NONE of the prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525).

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7.5	VII	67-89 mos	None	67-89 months	Life
II	7.0	IX	87-116 mos	None	87-116 months	Life
III	7.0	IV	43-57 mos	36 months +	79-93 months	10 years
V	4.0 ++	VI	31-41 mos	None	31-41 months	10 years
VI	4.0 ++	VII	36-48 mos	None	36-48 months	

+ Firearm enhancement must run consecutively to the total period of confinement for all offenses, regardless of which underlying offense is subject to the firearm enhancement. RCW 9.94A.533(3).

++ Theft of Firearm and UPF1 not counted against each other as they are to be served consecutively. RCW 9.94A.5891(a).

2.4 [X]EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence below the standard range for Count II. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did 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 as follows: 120 months DOC.

III. JUDGMENT

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

3.2 The court DISMISSES Count IV.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ 600.00 Restitution to: Joe Hull, 118 Urquhart Road, Chehalis, WA _____

RTN/RJN

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500.00 Victim assessment RCW 7.68.035

CRC \$ 110.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ _____ WFR

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

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Other \$ _____

PUB \$ _____ 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 69.50.430

<i>CDF/LDI/FCD</i>	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
<i>NTF/SAD/SDI</i>			
<i>CLF</i>	\$ _____	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ _____	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.(Ch. 289 L 2002 § 4)
<i>RTN/RJN</i>	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ <u>1,000.00</u>	Other costs for: Incarceration in the Lewis County Jail	RCW 9.94A.145
	\$ _____	TOTAL	RCW 9.94A.760

[X] Restitution ordered above shall be paid jointly and severally with:

	<u>NAME of other defendant</u>	<u>CAUSE NUMBER</u>	<u>(Victim name)</u>	<u>(Amount-\$)</u>
<i>RJN</i>	Lane Patrick Steele	00-1-00032-9	Joe Hull	\$600.00
	Lance Martin Kapsh	00-1-00031-9	Joe Hull	\$600.00

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

[X] 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 statutory rate. RCW 9.94A.760.

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

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.

[X] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with Joe Hull including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life.

4.4 **OTHER:** refrain from the use of controlled substance not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO, no possession or consumption of alcohol, submit to random BAC/PBT's as directed by CCO. Prohibition against use of unlawfull controlled substances is an express condition of this Judgment and Sentence.

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

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

71 months on Count I 38 months on Count V
84 months on Count II 48 months on Count VI
57 months on Count III _____ months on Count _____

Actual number of months of total confinement ordered is : 84 + 36 = 120 months
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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: Count V shall be served consecutively to Count VI.

Confinement shall commence immediately.

- (b) The defendant shall receive credit for time served since 21 January 2000.

- 4.6 [X] COMMUNITY PLACEMENT is ordered as follows: Count I for 12 months; Count II for 12 months; Count III for 12 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.]

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; (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.

[X]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: _____

[] 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: _____

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).

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 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): _____.

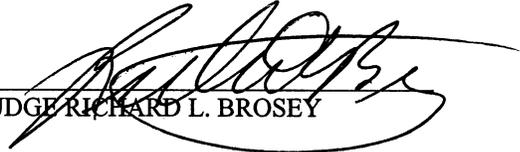
5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634.

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 court clerk 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.

5.7 **VOTING RIGHTS.** Your right to vote in the State of Washington is forfeited until lawfully restored. The Clerk is directed to notify the Auditor of these felony convictions.

5.8 **OTHER:** _____

DONE in Open Court and in the presence of the defendant on the 12 day of ~~July~~ ^{September} 2005.


JUDGE RICHARD L. BROSEY


Prosecuting Attorney
WSBA # 2248
JEREMY RANDOLPH

WAIVED
Attorney for Defendant
WSBA #
Print name:


Defendant Pro Se
FORREST EUGENE AMOS

CAUSE NUMBER of this case: 00-1-00033-7

I, Kathy Brack, 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 said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA18562708

Date of Birth 05.16.83

FBI No. 498830NB6

Local ID No. _____

PCN No. _____

DOC No. 809903

Alias name, SSN, DOB: _____

Race:

Asian/Pacific
Islander

Black/African-American Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

Other: _____

Non-Hispanic

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, S. Tyju Dated: 9/12/05

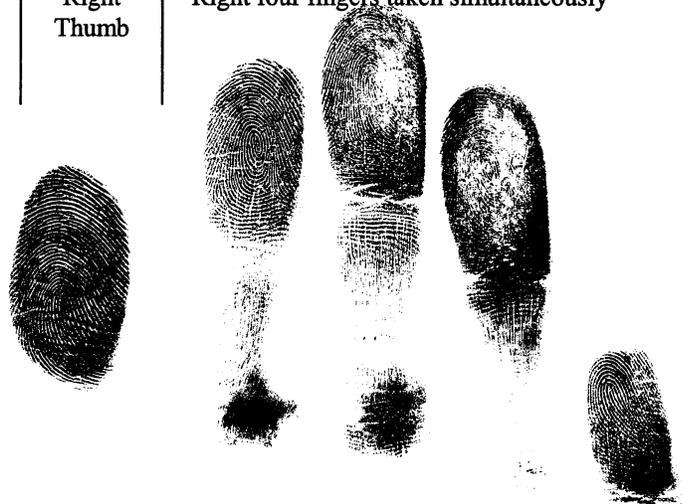
DEFENDANT'S SIGNATURE: Joseph E. Am...

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



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IN THE SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF LEWIS

STATE OF WASHINGTON,
Plaintiff,

v.
FORREST EUGENE AMOS,
Defendant.

No. 00-1-00033-7

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW IN SUPPORT OF EXCEPTIONAL SENTENCE
APPENDIX 2.4 TO JUDGMENT AND SENTENCE**

An exceptional sentence below the standard range should
be imposed based upon the following Findings of Fact and
Conclusions of Law:

I. FINDINGS OF FACT

- 1.1 The defendant and the state entered into a plea
agreement wherein the state agreed to recommend a
sentenced of 120 months in the Department of Corrections
(DOC).
- 1.2 Based on the defendant's criminal history at the time of
re-sentencing, the minimum sentence that may imposed
without an exceptional sentence below the standard range
is 123 months. The state requested the court to impose
an exceptional sentence 3 months below the standard
range to comport with its original plea offer.

II. CONCLUSIONS OF LAW

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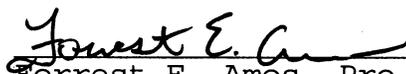
2.1 This Court has jurisdiction over the defendant and the subject matter of this action.

2.2 There are substantial and compelling reasons justifying the imposition of an exceptional sentence below the standard range pursuant to RCW 9.94A.535.

DONE in open court this 12 day of ^{September}~~July~~, 2005


SUPERIOR COURT JUDGE
RICHARD J. BLOWSY


Jeremy Randolph, WSBA# 2248
Prosecuting Attorney


Forrest E. Amos, Pro Se

STATE OF WASHINGTON, Plaintiff,

vs.

FORREST EUGENE AMOS,
Defendant.

SID: WA18562708

FBI:

DOB: 5-16-83

No. 00-1-33-7

SCANNED By
JUDGMENT AND SENTENCE (JS)

PRISON

W APR 25 2000

Nettie Jungers, Clerk

Deputy

Exhibit E

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer, Jody Backlund, and the deputy prosecuting attorney, Donald Blair, 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 4-25-00 AND 2-16-00
(cr #)

by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I.	BURGLARY IN THE FIRST DEGREE (F)	9A.52.020(1)(a)	1-16-00
II.	ROBBERY IN THE FIRST DEGREE (F)	9A.56.200(1)(a)	1-16-00
III.	ASSAULT IN THE SECOND DEGREE (F)	9A.36.021(1)(c)	1-16-00
V.	THEFT OF A FIREARM (F)	9A.56.300	1-16-00
VI.	UNLAWFUL POSSESSION OF A FIREARM 1 ST (F)	9.41.040(1)(a)	1-16-00

as charged in the 2ND amended Information.

Additional current offenses are attached in Appendix 2.1

A special verdict/finding for use of a firearm was returned on Count(s) III. RCW 9.94A.125, .310

A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____ . RCW 9.94A.125, .310

A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.127

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

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400): Count I & II.

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).RCW9.94A.120.

Other current convictions listed under different cause numbers used in calculating the offender score are:

00-0-635-1

JUDGMENT AND SENTENCE (FELONY - PRISON)
(RCW 9.94A.110, .120)(WPF CR 84.0400 (8/1999))

Page 1 of 8

2.2 CRIMINAL HISTORY (RCW 9.94A.360) Prior convictions constituting criminal history for purposes of calculating the offender score are:

CRIME	DATE OF SENTENCE	SENTENCING CRT (COUNTY & STATE)	DATE OF CRIME	ADULT OR JUVENILE	TYPE OF CRIME
BURGLARY 2 ND	5-16-97	LEWIS, WA	5-2-97	J	NV
PSP 2 ND	5-16-97	LEWIS, WA	5-2-97	J	NV
MAL MISCH 2 ND	9-1-98	LEWIS, WA	5-24-98	J	NV
BURGLARY 2 ND	3-2-99	LEWIS, WA	2-25-99	J	NV

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement. RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360): _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: _____

2.3 SENTENCING DATA:

COUNT	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENTS *	TOTAL STANDARD RANGE	MAXIMUM TERM
I.	7	VII	67-89 MO	N/A	67-89 MO	LIFE
II.	6	IX	77-102 MO	N/A	77-102 MO	LIFE
III.	6	IV	33-43 MO	36 MO (F)	69-79 MO	10 YRS
V.	2	VI	21-27 MO	N/A	21-27 MO	10 YRS
VI.	2	VII	26-34 MO	N/A	26-34 MO	10 YRS

*(F) Firearm, (D) Other Deadly Weapon, (V) VUCSA, (VH) Veh. Hom, See RCW 46.61.520

- 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 above the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney 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.142

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows: 120 MO DOC _____

III. JUDGMENT

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

3.2 [X] The Court DISMISSES Counts IV.

3.3 [] 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:

\$ _____ Restitution to: JOE HULL - ~~TBD~~

JASS CODE

\$ _____ Restitution to:

RTN/RJN

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Victim assessment RCW 7.68.035

CRC \$ ~~110.00~~ Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ 110.00 FRC

Witness costs \$ _____ WFR

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

Jury demand fee \$ _____ JFR

Other \$ _____

PUB \$ ~~2073.50~~ Fees for court appointed attorney RCW 9.94A.030

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD \$ _____ Drug enforcement fund of Lewis County RCW 9.94A.030

NTF/SAD/SDI

CLF \$ _____ Crime lab fee [] deferred due to indigency RCW 43.43.690

EXT \$ _____ Extradition costs RCW 9.94A.120

\$ _____ Emergency response costs (Veh Aslt, Veh Homicide, \$1000 max) RCW 38.52.430

\$ ~~1000.00~~ Other costs for: Incarceration in the Lewis County Jail. RCW 9.94A.145

[X] 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 statutory rate. RCW 9.94A.145

\$ _____ TOTAL RCW9.94A.145

[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.142. A restitution hearing:

[X] shall be set by the prosecutor

[] is scheduled for _____

[] RESTITUTION. Schedule attached, Appendix 4.1.

[] Restitution ordered above shall be paid jointly and severally with: _

NAME of other defendant CAUSE NUMBER (Victim name) (Amount \$)RJN

[X] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Rate to be determined by the Community Corrections Officer commencing 90 days post release. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

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

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340 (All "sex offenses," RCW 9.94A.030(33) and all "violent offenses," RCW 9.94A.030(38).)

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754 (All "sex offenses," RCW 9.94A.030(33), "prostitution offenses," RCW 9A.88, "needle related drug offenses," RCW 69.50, and all "violent offenses," RCW 9.94A.030(38).)

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The defendant shall not have contact with known drug users/drug traffickers as directed by CCO, Joe Hull including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life.

Domestic Violence Protection Order or Anti-Harassment Order attached as Appendix 4.4.

4.5 OTHER: refrain from use controlled substances not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO, no possession or consumption of alcohol, submit to random BAC/PBT's as directed by CCO _____

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

- (a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

84 Months on count I _____ Months on count IV
84 Months on count II 27 Months on count V
72 Months on count III 34 Months on count VI

Actual number of months of total confinement ordered is: 120 mo. DOC
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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: CT & CONSECUTIVE TO COUNT VI.

The sentence herein shall run consecutively with the sentence in cause number(s) _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. 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: _____

4.7 [X] COMMUNITY PLACEMENT [] COMMUNITY CUSTODY is ordered for 12 months or for the period of earned early release awarded pursuant to RCW 9.94A.150(1)and (2), which ever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense – RCW 9.94A.120(10). Use paragraph 4.8 to impose community custody following work ethic camp.]

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 Department of Corrections-approved education, employment and/or community 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 the Department of Corrections; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[X] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with: known drug users/traffickers as defined by CCO, _____

[] Defendant shall remain [] within [] outside of a specified geographical boundary, to wit: _____

[] The defendant shall participate in the following crime related treatment or counseling services: _____

[X] The defendant shall comply with the following crime-related prohibitions: _____

refrain from use of controlled substances not lawfully prescribed by a licensed medical practitioner, submit to random UA's as directed by CCO

[] Other conditions may be imposed by the court or Department during community custody, or are set forth here: _____

4.8 [1] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that 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. If the defendant successfully completes work ethic camp, the department shall convert the period of work ethic camp confinement at the rate of one day of work ethic camp to three days of total standard confinement. 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 4.7.

4.9 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.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145
- 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 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.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): JK
- 5.5** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 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 court clerk 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

5.8 OTHER: Any bond previously posted is hereby exonerated, _____

DONE in Open Court and in the presence of the defendant this date: April 25, 2000

Richard Brssoy
JUDGE Print name:
Richard Brssoy

[Signature]

Deputy Prosecuting Attorney
WSBA # 24637
Print name: Donald Blair

[Signature] Forest Amos
Attorney for Defendant
WSBA # 22917
Print name: Jody Backlund
Defendant

Translator signature/Print name: _____

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.

I, _____, 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 said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA18562708

Date of Birth: 5-16-83

FBI No.

Local ID No. _____

PCN No. _____

Other:

Alias name, SSN, DOB:

Race:

Asian/Pacific Islander

Black/African-American

Caucasian

Ethnicity:

Hispanic

Sex:

Male

Native American

Other: _____

Non-Hispanic

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: Sherry Tyler, Deputy Clerk. Dated: 4-25-00

DEFENDANT'S NAME: FORREST EUGENE AMOS

DEFENDANT'S SIGNATURE: Forrest Amos

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

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SCANNED

JAN 26 2000

[Signature]
By

Nettie Jungers, Clerk
Deputy

Exhibit F

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

STATE OF WASHINGTON,)	
)	No. 00-1-00033-7
Plaintiff,)	
)	
vs.)	MOTION FOR ORDER
)	DETERMINING EXISTENCE
FORREST EUGENE AMOS,)	OF PROBABLE CAUSE
)	
Defendant.)	

I. MOTION

The (Deputy) Prosecuting Attorney:

- 1.1 informs the court that an Information was filed accusing the defendant of the crime(s) of Burglary 1; Robbery 1; Assault 1; Possession Of Stolen Firearm; Theft Of A Firearm; Unlawful Possession Of A Firearm In The First Degree:
- 1.2 moves the court for an order determining the existence of probable cause based on the probable cause affidavit on file herein;
- 1.3 moves the court for an order determining that the probable cause for the detention of defendant exists.

Dated: 1-26-00

JEREMY RANDOLPH
Prosecuting Attorney

By:

[Signature]

DONALD A. BLAIR, WSBA# 24637
Deputy Prosecuting Attorney

MOTION FOR ORDER
DETERMINING EXISTENCE
OF PROBABLE CAUSE

SCANNED

By Nettie Jungers, Clerk
Deputy

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

1	STATE OF WASHINGTON,)	
2)	No. 00-1-00033-7
3	Plaintiff,)	
4	vs.)	AFFIDAVIT REGARDING
5)	PROBABLE CAUSE
6	FORREST EUGENE AMOS,)	
7	Defendant.)	

II. AFFIDAVIT

8 STATE OF WASHINGTON)
 9 : ss.
 10 COUNTY OF L E W I S)

The undersigned on oath states:

2.1 I am a (Deputy) Prosecuting Attorney for this county:

2.2 I am familiar with the investigative report in Lewis County Sheriff's Office 00C-590 and the following information is contained in that report:

On January 16, 2000, at approximately 1:49 a.m., Lewis County Sheriff Deputy A. Stull was dispatched to 118 Urquhart Rd., regarding a home invasion robbery.

Upon arrival, Dep. Stull contacted Joe Hull who stated that at approximately 12:30 a.m. he heard a knock on his front door. Mr. Hull stated that he answered the door and observed four young males. Mr. Hulls stated that the males asked to speak with Brian, Mr. Hull's son. Mr. Hull described the males as an Oriental male, 16 - 18 years old, white male 16-18 years old, white male 16-18 years old, and the youngest one, possibly 16 years old with dark complexion, possibly Hispanic. Mr. Hull went on to describe what they were wearing.

AFFIDAVIT REGARDING
PROBABLE CAUSE

1 Mr. Hull stated that he told the four males that Brian no
2 longer lived at the house. They responded by saying that
3 they had driven all the way down here and were dropped off
4 and did not have a ride back. They stated that they were to
5 meet Brian at midnight and asked if they could use his
6 telephone to page someone. Mr. Hull stated that he agreed to
7 let them use the telephone and allowed them to use his
8 portable telephone.

9 Mr. Hull stated that he gave one of the males his cordless
10 telephone and two calls were attempted. Mr. Hull stated that
11 two of the males also used his bathroom while they were
12 waiting. Mr. Hull stated at one point one of the white males
13 handed the Oriental male a receipt.

14 Mr. Hull stated that at the time the receipt was passed,
15 three of the males brought out clubs and began striking him
16 with the clubs, striking him in the head area. Mr. Hull
17 stated that they kept asking him where his handguns and pot
18 were. Mr. Hull stated that they just kept hitting him.

19 Mr. Hull stated that he brought the males into his bedroom
20 and showed them where he kept his marijuana under his bed and
21 his handgun, which was in a night stand next to his bed.

22 Mr. Hull stated that the males asked him where the rest was
23 and he told them that he didn't have anymore. Mr. Hull
24 stated that they hit him again and they asked where the other
25 handgun and marijuana were because they knew he had more.
26 Mr. Hull stated that he showed them his marijuana grow in his
27 closet and they took one large marijuana plant. Mr. Hull
28 stated that as a result of the assault he was going in and
29 out of consciousness and was bleeding severely from the back
30 of his head. Mr. Hull stated that he thought they were going
31 to kill him.

32 Mr. Hull stated that the four then left the residence with
33 the marijuana and his Ruger pistol. Mr. Hull stated that
34 after the four left he found a greed duffel bag in the
35 residence that didn't belong to him.

1 Mr. Hull stated that he believe that his son may be connected
2 with the suspects. Mr. Hull stated that he called his ex
3 wife, Debra Hull, and his son, Brian, and asked if they were
4 involved. Mr. Hull stated that he also called his mother and
father and they came to the residence.

5 Deputies observed inside the residence a blood smear mark on
6 the wall in the kitchen, the receipt that the suspects handed
7 to each other which was from a Schuck's Auto Parts store in
Tacoma, and a large bloody smear mark on the door to Mr.
8 Hull's bedroom. Officers also observed the remnants of Mr.
Hull's marijuana grow in his bedroom closet. Other Deputies
9 arrived and attempted a track with a K-9 unit but were
unsuccessful.

10 Brian Hull arrived at the residence and stated that a friend
11 of his, identified as FORREST EUGENE AMOS, DOB: 5-16-83, may
12 be involved. Brian Hull stated that others that may have
13 been involved include Chris Sanchez, Mike Morgan, and Josh
Caroll. Brian Hull stated that he had hung around with Mr.
14 AMOS before and that Mr. AMOS had been to his dad's house
before and he and his friends knew that his dad had
15 marijuana.

16 The parents of Mr. AMOS were contacted and stated that Mr.
17 AMOS carries a club around with him and they believed that he
is capable of this kind of assault.

18 Detectives traveled to the Tacoma area and were able to
19 locate and take into custody Mr. AMOS on an outstanding
20 warrant for his arrest. Mr. AMOS was brought to Lewis County
after his arrest.

21 Detectives advised Mr. AMOS of his Miranda warnings and his
22 juvenile warnings and Mr. AMOS agreed to speak with them.
23 Mr. AMOS initially denied any involvement or knowledge of the
assault of Mr. Hull. When asked, Mr. AMOS agreed to take a
polygraph regarding the incident. Mr. AMOS' mother was

AFFIDAVIT REGARDING
PROBABLE CAUSE

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PROSECUTING A
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(360) 740-11
FAX (360) 740

1 contacted and she consented to have Mr. AMOS take a
2 polygraph.

3 Mr. AMOS submitted to the polygraph and it was determined
4 that his answers of non-involvement were deceptive. When
5 confronted with his failure, Mr. AMOS stated "all we were
6 gonna do was take some weed."

7 Mr. AMOS then went into detail of what had occurred, stating
8 that he and three other males, identified as LANCE MARTIN
9 KAPSH, DOB: 12-7-81, MATHEW COLLETT, DOB: 11-4-82, and LANG
10 (unknown last name), later identified as LANE PATRICK BELL
11 STEELE, DOB: 4-17-83, had talked about who they could take
12 drugs from and decided to come to Lewis County and go to Mr.
13 Hull's residence.

14 Mr. AMOS went on to described how the four of them had driven
15 to Lewis County and parked away from the Hull residence.
16 They walked up to the residence and knocked on the door,
17 stating that they had asked to use the telephone, describing
18 the ruse they had used to get inside the residence. Mr. AMOS
19 stated that after approximately twenty minutes, Mr. KAPSH
20 walked up behind Mr. Hull, grabbed him, and started punching
21 him, asking him where the marijuana and the guns were. Mr.
22 AMOS stated that Mr. STEELE and Mr. COLLETT also began to
23 assault Mr. Hull. Mr. AMOS described how Mr. STEELE used a
walkie talkie and hit Mr. Hull over the head several times.
Mr. AMOS stated that the four took the marijuana and the
pistol and left the residence.

Mr. AMOS described the route taken by the four after they
left the Hull residence and that they had gone back up to
Tacoma. Mr. AMOS stated that Mr. COLLETT had told him that
the pistol had been sold for \$50.00 in Tacoma.

Mr. AMOS drew a map for the detectives of their route and
told the detectives that they had thrown some gloves and a
walkie talkie out of the car as they were leaving because it
had blood on it from when Mr. STEELE was hitting Mr. Hull.

AFFIDAVIT REGARDING
PROBABLE CAUSE

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PROSECUTING AT
360 NW NORTH ST MS
CHEHALIS, WASHINGTON
(360) 740-1240
FAX (360) 740-14

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1 Detectives were able to use the map made by Mr. AMOS and
2 recovered the walkie talkie and a pair of gloves as he
described them.

3 Detectives contacted the family of Mr. KAPSH and Mr. KAPSH
4 was eventually taken into custody. Detectives are continuing
5 their investigation and are attempting to contact the other
suspects.

6 On the afternoon of 1-25-00, Lewis County detectives were
7 able to contact Mr. STEELE and took him into custody. After
8 Miranda and juvenile warnings, the detectives stated that Mr.
9 STEELE gave a full confession as to the events on the morning
of 1-16-00.

10 Mr. STEELE stated that Mr. AMOS came up with a plan to have
11 the group of young males go to Chehalis and steal some "weed"
12 from a guy Mr. AMOS knew. They all got into Mr. COLLETT's
13 vehicle and drove to the victims residence, hid the vehicle,
14 walked to the residence, had flashlights, gloves, and walkie-
15 talkies with them. Mr. STEELE stated that they used a ruse
16 to contact the homeowner and after approximately 20 minutes
17 Mr. KAPSH grabbed Mr. Hull in a choke hold and they beat the
18 victim and dragged him into the bedroom and forced him to
19 tell them where his drugs and guns were. Mr. STEELE stated
20 that they took marijuana and a handgun. Mr. STEELE stated
21 that Mr. COLLETT struck Mr. Hull in the head with the walkie-
22 talkie, causing his head to bleed.

23 Mr. STEELE stated that he knew the plan was to go to Mr.
Hull's residence and commit the robbery and that he planned
to buy the drugs from the others after they stole the drugs.
Mr. STEELE denied that he participated in the beating or the
threats. Mr. STEELE stated that Mr. AMOS had the pistol at
his (AMOS) residence for some time after the robbery and
later gave it to Mr. COLLETT who "had a buyer."

A review of Mr. AMOS' criminal history reveals convictions
for Burglary 2nd Degree (2-25-99), Malicious Mischief 2nd
Degree (5-24-98), Possession of Stolen Property 2nd Degree

AFFIDAVIT REGARDING
PROBABLE CAUSE

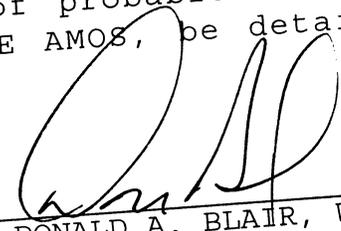
1 (5-2-97), Burglary in the 2nd Degree (5-2-97), Theft (x2),
2 and Criminal Trespass 1st Degree.

3 A review of Mr. KAPSH's criminal history reveals that he is
4 pending trial in Pierce County on charges of Robbery in the
5 First Degree (2 counts - 11-19-99), and Assault in the Second
6 Degree (1-18-00). Prior charges include Unlawful
7 Imprisonment, Rape in the Second Degree, and Assault.

8 A review of Mr. COLLETT's criminal history reveals
9 convictions for Theft of a Firearm (4-27-97), Assault in the
10 Third Degree (3-9-97), Possession of Stolen Property in the
11 First Degree (11-25-95), Theft in the Second Degree (x2 - 5-
12 5-96 & 11-12-95), Attempting to Elude Police Vehicle (5-5-
13 96), Assault (x4), Malicious Mischief, and Theft. Mr.
14 COLLETT has two active felony warrants for his arrest on
15 charges of Attempting to Elude and Possession of Stolen
16 Property First Degree.

17 A Review of Mr. STEELE's criminal history reveals convictions
18 for Residential Burglary (1-13-99), and Theft.

19 Based on the above, the State requests that the
20 court make a finding of probable cause and that the
21 suspect, FORREST EUGENE AMOS, be detained subject to
22 conditions of release.



DONALD A. BLAIR, WSBA# 24637

23 SUBSCRIBED and SWORN to before me January 26, 2000.


Ann E. Basey, NOTARY PUBLIC in
and for the State of Washington,
residing at Chehalis. My
commission expires 6-19-03.

JAN 26 2000

By Nettie Jungers, Clerk

Deputy

SCANNED

Ex Parte

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

STATE OF WASHINGTON,)

Plaintiff,)

No. 00-1-00033-7

vs.)

ORDER DETERMINING

FORREST EUGENE AMOS,)

EXISTENCE OF PROBABLE

Defendant.)

CAUSE

I. BASIS

This court has considered a motion and affidavit for the determination of probable cause filed by the [Deputy] Prosecuting Attorney of this County.

II. FINDINGS

The court finds that probable cause exists for the detention of the defendant.

III. ORDER

IT IS ORDERED that:

3.1 The defendant be subject to conditions of release set out in ORDER SETTING CONDITIONS OF RELEASE.

Dated: 1/26/00

SUPERIOR COURT JUDGE

PRESENTED BY:

DONALD A. BLAIR, WSBA# 24637
Deputy Prosecuting Attorney

ORDER DETERMINING
EXISTENCE OF PROBABLE
CAUSE 1

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5 contrary to the form of the statute in such cases made and
6 provided, and against the peace and dignity of the State of
7 Washington.

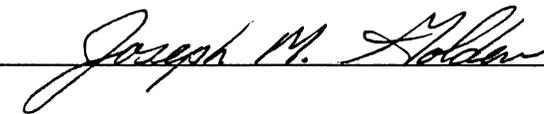
8 DATED at Walla Walla, Washington, 22nd day of April,
9 2004.

10 JAMES L. NAGLE,
11 Prosecuting Attorney in and
12 for said County

13 
Deputy WSBA# 19572

14 STATE OF WASHINGTON)
15 : ss.
16 County of Walla Walla)

17 JOSEPH M. GOLDEN, being first duly sworn on oath, says
18 I am a Deputy Prosecuting Attorney in and for said County,
19 that I have read the foregoing information, know the
20 contents thereof and believe the same to be true.

21 

22 SUBSCRIBED AND SWORN to before me this 22nd day of
23 April, 2004.

24 
25 Notary Public in and for the State
26 of Washington, residing at Walla
27 Walla.

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DEFENDANT INFORMATION:
ADDRESS: WA STATE PEN 1313 N 13TH
 WALLA WALLA WA 99362
SEX: M RACE: W DOB: 05/16/1983 DOL: STATE:
SID: WA18562708 HT. 508 WT. 145 HAIR BLN EYES BLU
DOC: 809903 PCN: AGENCY NO. WWP 04-3029

Exhibit H

00-1-33-7

Received & Filed
LEWIS COUNTY, WASH
Superior Court

JUL 19 2005
Nathy A. Brack, Clerk
By _____ Deputy

FILED
MARTIN
CLERK

JUL 20 P 4:13

WALLA COUNTY
WASHINGTON
BY _____

SCANNED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF WALLA WALLA

STATE OF WASHINGTON,

) Case No. 04-1-00201-7

Plaintiff,

) STATEMENT OF DEFENDANT ON
) PLEA OF GUILTY TO NON-SEX
) OFFENSE
) (STDFG)

vs.

FORREST E. AMOS

Defendant.

1. My true name is Forrest E. Amos

2. My age is 22. My date of birth is 5-16-83

3. I went through the GED grade.

4. **I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:**

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

(b) I am charged with: ASSAULT IN THE 2ND DEGREE, RCW 9A.36.021(2)(a), (CLASS B FELONY, \$25,000 or 10 years or both.)

STATEMENT OF DEFENDANT ON PLEA OF
GUILTY TO NON-SEX OFFENSE - P. 1

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WALLA WALLA, WASHINGTON 99362
(509) 525-5090

pl

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1 The elements are:

2

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(1) On or about 2/26/2004, FORREST E. AMOS, in the County of Walla Walla, State of Washington;

4

5

(2) Did assault MICHAEL HALE by intentionally causing him substantial bodily harm, but not amounting to an assault in the first degree;

6

(3) Mr. AMOS was not acting in reasonable self defense at the time.

7

8

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

9

10

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

11

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

12

(c) The right at trial to hear and question the witnesses who testify against me;

13

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(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

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16

(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

17

(f) The right to appeal a finding of guilt after a trial.

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STATEMENT OF DEFENDANT ON PLEA OF
GUILTY TO NON-SEX OFFENSE – P. 2

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WALLA WALLA, WASHINGTON 99362
(509) 525-5090

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

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

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see Paragraph 6(f))	MAXIMUM TERM AND FINE
1	Unknown 4 (2275)	Unknown 16-20 22-29	Na	Na	18 to 36 months	10 yrs. Or a \$25,000 or both.

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

13
 14 (b) The standard sentence range is based on the crime charged and my criminal
 15 history. Criminal history includes prior convictions, juvenile adjudications or convictions,
 16 whether in this state, in federal court or elsewhere.

17 (c) The prosecuting attorney's statement of my criminal history is attached to this
 18 agreement. Unless I have attached a different statement, I agree that the prosecuting
 19 attorney's statement is correct and complete. If I have attached my own statement, I assert
 20 that it is correct and complete. If I am convicted of any additional crimes between now and
 21 the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

22 (d) If I am convicted of any new crimes before sentencing, or if any additional
 23 criminal history is discovered, both the standard sentence range and the prosecuting attorney's
 24 recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I
 25 cannot change my mind if additional criminal history is discovered even though the standard
 sentencing range and the prosecuting attorney's recommendation increase or a mandatory
 sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay
 \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any
 person or damage to or loss of property, the judge will order me to make restitution, unless
 extraordinary circumstances exist which make restitution inappropriate. The amount of

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE - P. 3

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 ATTORNEYS AT LAW
 103 EAST POPLAR
 WALLA WALLA, WASHINGTON 99362
 (509) 525-5090

1 restitution may be up to double my gain or double the victim's loss. The judge may also order
2 that I pay a fine, court costs, attorney fees and the costs of incarceration.

3 (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to
4 confinement, the judge may order me to serve up to one year of community supervision if the
5 total period of confinement ordered is not more than 12 months. If this crime is a drug
6 offense, assault in the second degree, assault of a child in the second degree, or any crime
7 against a person in which a specific finding was made that I or an accomplice was armed with
8 a deadly weapon, the judge will order me to serve at least one year of community placement.
9 If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge
10 will order me to serve at least two years of community placement. The actual period of
11 community placement, community custody, or community supervision may be as long as my
12 earned early release period. During the period of community placement, community custody,
13 or community supervision, I will be under the supervision of the Department of Corrections,
14 and I will have restrictions and requirements placed upon me.

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

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

19 During the period of community custody I will be under the supervision of the Department of
20 Corrections, and I will have restrictions and requirements placed upon me. My failure to
21 comply with these conditions will render me ineligible for general assistance, RCW
22 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more
23 restrictive confinement status or other sanctions.

24 (g) The prosecuting attorney will make the following recommendation to the
25 judge:

26 Once Defendant's offender score is known, prosecutor will recommend a sentence
27 within the standard range for the amended charge.

28 STATEMENT OF DEFENDANT ON PLEA OF
29 GUILTY TO NON-SEX OFFENSE - P. 4

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WALLA WALLA, WASHINGTON 99362
(509) 525-5090

1 (h) The judge does not have to follow anyone's recommendation as to sentence.
2 The judge must impose a sentence within the standard range unless the judge finds substantial
3 and compelling reasons not to do so. If the judge goes outside the standard range, either the
State or I can appeal that sentence. If the sentence is within the standard range, no one can
appeal the sentence.

4 (i) If I am not a citizen of the United States, a plea of guilty to an offense
5 punishable as a crime under state law is grounds for deportation, exclusion from admission to
6 the United States, or denial of naturalization pursuant to the laws of the United States.

7 (j) I understand that I may not possess, own, or have under my control any firearm
8 unless my right to do so is restored by a court of record and that I must immediately surrender
any concealed pistol license. RCW 9.41.040.

9 (k) Public assistance will be suspended during any period of imprisonment.

10 (l) I understand that I will be required to have a biological sample collected for
11 purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I
will be required to pay a \$100 DNA collection fee.

12 **NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE**
13 **FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN**
14 **AND INITIALED BY THE DEFENDANT AND THE JUDGE.**

15 (m) This offense is a most serious offense or strike as defined by RCW 9.94A.030,
16 and if I have at least two prior convictions for most serious offenses, whether in this state, in
federal court, or elsewhere, the crime for which I am charged carried a mandatory sentence of
life imprisonment without the possibility of parole.

17 (n) The judge may sentence me ~~as a first-time offender instead of giving a~~
18 ~~sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could~~
19 ~~include as much as 90 days' confinement, and up to two years community supervision if the~~
20 ~~crime was committed prior to July 1, 2000, or up to two years of community custody if the~~
crime was committed on or after July 1, 2000, plus all of the conditions described in
paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time
to a specific occupation, and to pursue a prescribed course of study or occupational training.

21 (o) If this crime involves ~~a kidnapping offense involving a minor, I will be~~
22 ~~required to register where I reside, study or work. The specific registration requirements are~~
set forth in the "Offender Registration" Attachment.

23 (p) If this is a crime of ~~domestic violence, I may be ordered to pay a domestic~~
24 ~~violence assessment of up to \$100.00. If I or the victim of the offense, have a minor child, the~~
25 ~~court may order me to participate in a domestic violence perpetrator program approved under~~
RCW 26.50.150.

STATEMENT OF DEFENDANT ON PLEA OF
GUILTY TO NON-SEX OFFENSE - P. 5

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WALLA WALLA, WASHINGTON 99362
(509) 525-5090

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

4 (r) The judge may sentence me under the special drug offender sentencing
5 alternative (DOSA) if I qualify under former RCW 9.94A.120(6) (for offenses committed
6 before July 1, 2001) or RCW 9.94A.660 (for offenses committed on or after July 1, 2001).
7 This sentence could include a period of total confinement in a state facility for one-half of the
8 midpoint of the standard range plus all of the conditions described in paragraph 6(e). During
9 confinement, I will be required to undergo a comprehensive substance abuse assessment and
10 to participate in treatment. The judge will also impose community custody of at least one-half
11 of the midpoint of the standard range that must include appropriate substance abuse treatment,
12 a condition not to use illegal controlled substances, and a requirement to submit to urinalysis
13 or other testing to monitor that status. Additionally, the judge could prohibit me from using
14 alcohol or controlled substances, require me to devote time to a specific employment or
15 training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring
16 and require other conditions, including affirmative conditions.

17 (s) If the judge finds that I have a chemical dependency that has contributed to the
18 offense, the judge may order me to participate in rehabilitative programs or otherwise to
19 perform affirmative conduct reasonably related to the circumstances of the crime for which I
20 am pleading guilty.

21 (t) If this crime involves the ~~manufacture~~, delivery, or possession with the intent
22 to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of
23 \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

24 (u) If this crime involves a violation of the state drug laws, my eligibility for state
25 and federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. §109(r)
and 21 U.S.C. §862a.

(v) If this crime involves a ~~motor vehicle~~, my driver's license or privilege to drive
will be suspended or revoked. If I have a driver's license, I must now surrender it to the
judge.

(w) If this crime involves the offense of vehicular homicide while under the
influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or
after January 1, 1999, an additional two years shall be added to the presumptive sentence for
vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

(x) The crime of _____ has a mandatory
minimum sentence of at least _____ years of total confinement. The law does not allow any
reduction of this sentence. This mandatory minimum sentence is not the same as the

1 mandatory sentence of life imprisonment without the possibility of parole described in
2 paragraph 6(m).

3 (y) I am being sentenced for two or more serious violent offenses arising from
4 separate and distinct criminal conduct and the sentences imposed on counts _____ and _____
5 will run consecutively unless the judge finds substantial and compelling reasons to do
6 otherwise.

7 (z) I understand that the offense(s) I am pleading guilty to include a deadly
8 weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory,
9 they must be served in total confinement, and they must run consecutively to any other
10 sentence and to any other deadly weapon or firearm enhancements.

11 (aa) I understand that the offenses I am pleading guilty to include both a conviction
12 under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and
13 one or more convictions for the felony crimes of theft of a firearm or possession of a stolen
14 firearm. The sentences imposed for these crimes shall be served consecutively to each other.
15 A consecutive sentence will also be imposed for each firearm unlawfully possessed.

16 (bb) I understand that if I am pleading guilty to the crime of unlawful practices in
17 obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at
18 least 6 months if this is my first conviction and for at least 12 months if this is my second or
19 subsequent conviction. This suspension of benefits will apply even if I am not incarcerated.
20 RCW 74.08.290.

- 21 7. I plead guilty to:
22 count: 1 in the amended Information. I have received a copy of that Information.
- 23 8. I make this plea freely and voluntarily.
- 24 9. No one has threatened harm of any kind to me or to any other person to cause me to
25 make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set
forth in this statement.
- 11. The judge has asked me to state what I did in my own words what makes me guilty of
this crime. This is my statement:
On February 26, 2004, I did assault Michael Hale by causing him substantial bodily
harm, amounting to an assault in the second degree. I was not acting in reasonable self
defense at the time. This took place in the County of Walla Walla, State of
Washington.

STATEMENT OF DEFENDANT ON PLEA OF
GUILTY TO NON-SEX OFFENSE - P. 7

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WALLA WALLA, WASHINGTON 99362
(509) 525-5090

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

Joseph Eugene Am...
Defendant

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

Joseph M. Golden
Deputy Prosecuting Attorney
WSBA # 19572

[Signature]
Defendant's Lawyer - WSBA # 32316

Joseph M. Golden
Print Name

JULIE A. CARLSON
Print Name

The foregoing statement was signed by the defendant in open Court in the presence of the defendant's lawyer and the undersigned Judge. The defendant asserted that (check appropriate box):

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

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

Dated this 20th day of June, 2005

Robert J. [Signature]
SUPERIOR COURT JUDGE

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO NON-SEX OFFENSE - P. 8

McADAMS, PONTI & WERNETTE, P.S.
ATTORNEYS AT LAW
103 EAST POPLAR
WASHINGTON 99362
360-725-5090

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL WHICH IS ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY CLERK OF WALLA WALLA COUNTY.

THIS 8th DAY OF July 2005
[Signature] COUNTY CLERK [Signature] DEPUTY

11. Det. Atty
Jail
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Exhibit I

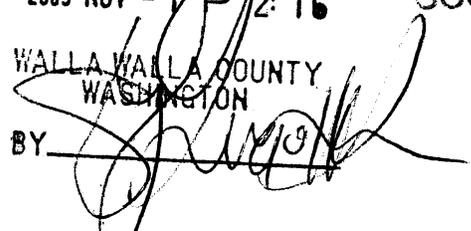
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WASHINGTON
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SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

JUDGMENT # 05 9 01162 5

THE STATE OF WASHINGTON,

Plaintiff,

NO. 04-1-00201-7

- vs -

JUDGMENT AND SENTENCE
(FELONY)

FORREST E. AMOS,
SID NO. WA 18562708

Defendant.

PCN NO. 948102544

I. HEARING

1.1 A sentencing hearing in this case was held: October 24, 2005
(Date)

1.2 The defendant, the defendant's lawyer, Julie A. Carlson, and
the Deputy Prosecuting Attorney, Joseph M. Golden, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): Defendant was found guilty on 06/20/05 by
plea/verdict/finding of:

Count No.: 1 Crime: Assault in the Second Degree

RCW 9A.36.021(2)(a) Crime Code _____

Date of Crime 02/26/04 Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

OFFICE OF THE PROSECUTING ATTORNEY

JUDGMENT AND SENTENCE (8/05)
(RCW 9.94A.505)
P. - 1

240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 527-3232

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

as charged in the (Amended) Information.

- () Additional current offenses are attached in Appendix 2.1.
- () A special verdict/finding for use of a firearm was returned on Count(s) _____. RCW 9.94A.510.
- () A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.510.
- () A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.535.
- () A special verdict/finding of a RCW 69.50.401(a) and RCW 69.50.435 violation was returned on Count(s) _____ in a school, school bus, within 1000 feet of a designated school bus route or the perimeter of a school grounds; a public transit vehicle, public park, 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.
- () 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, 69.50.401, 69.50.440.
- () The defendant was convicted of Vehicular Homicide wherein the defendant was driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner and therefore is 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 defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A. _____.
- (x) The offense in Count(s) 1 was committed in a county jail or state correctional facility. RCW 9.94A.510(5).

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5 () Current offenses encompassing the same criminal conduct and counting
6 as one crime in determining the offender score are are (RCW
9.94A.589(1)):

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

10 2.2 CRIMINAL HISTORY: (RCW 9.94A.525):

Crime	Sentencing Date	Court County/State	Date of Crime	Adult or Juv.	Crime Type
MM 2nd	09/01/98	Lewis/WA	05/24/98	J	NV
Burg 2nd	03/02/99		02/25/99	J	NV
Burg 1st	04/25/00	Lewis/WA	01/26/00	A	V
Robbery 1st	04/25/00	Lewis/WA	01/26/00	A	V
Assault 2nd	04/25/00	Lewis/WA	01/26/00	A	V
Theft Firearm	04/25/00	Lewis/WA	01/26/00	A	NV
U-Poss Firearm 1st	04/25/00	Lewis/WA	01/26/00	A	NV

16 () Additional criminal history is attached in Appendix 2.2

17 () The defendant committed a current offense while on community
18 placement, which adds one point to the score. RCW 9.94A.525(17).

19 () Prior convictions served concurrently and counted as one offense in
20 determining the offender score are (RCW 9.94A.525):

21 2.3 SENTENCING DATA:

Count No.	Offender Score	Serious-ness Level	Standard Range	Enhancement*	Total Standard Range	Maximum Term
1	5	IV	22 to 29 mo		22 to 29 mos	10 yrs

24 * (F) Firearm, (D) Deadly Weapon, (V) VUCSA in a protected zone, (VH)
25 Vehicular Hom. RCW 46.61.520, (P) Jail/Prison RCW 9.94A.510(4).

26 () Additional current offenses sentencing data is attached in Appendix
27 2.3.

28 2.4 EXCEPTIONAL SENTENCE:

29 () Substantial and compelling reasons exist which justify a sentence
(above)(below) the standard range for Count(s) _____.

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() The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds that the exceptional sentence furtehrs 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. The Prosecuting Attorney () did () did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. (RCW 9.94A.760) The court has considered 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 specifically finds that the defendant has the ability or likely future ability to pay the legal financial obligations ordered herein.

() Extraordinary circumstances exist that make restitution inappropriate:
_____.

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

III. JUDGMENT

3.1 The defendant is GUILTY of the counts and charges listed in paragraph 2.1.

3.2 The court DISMISSES count(s) _____.

3.3 The defendant is found NOT GUILTY of counts _____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of Court:

\$ TBD ~~0~~ , Restitution to: \$ _____

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\$ 110.00, Court costs (9.94A.030 & .760, 10.01.160, 10.46.190);
\$ _____, Witness fees;
\$ _____, Jury Demand fees;
\$ 275.20, Sheriff fees; (x) including booking fee (RCW 70.48.390);
\$ 500.00, Victim assessment (RCW 7.68.035);
\$ _____, Fine (RCW 9A.20.021); () VUCSA additional fine waived
due to indigency (RCW 69.50.430);
\$ 750.00, Fees for court appointed attorney;
\$ _____, Court appointed defense expert and other defense costs
(RCW 9.94A.030);
\$ _____, Drug Enforcement fund of _____
\$ 100.00, Crime laboratory fee (RCW 43.43.680/690)
() waived due to indigency;
\$ ~~100.00~~, \$100.00 Biological Sample fee for felony committed after
July 1, 2002 (RCW 43.43.7541)
\$ _____, Emergency Response Costs (Vehicular Assault, Vehicular
Homicide only, \$1,000 maximum - RCW 38.52.430)
\$ _____, Extradition costs (RCW 9.94A.760)
\$ _____, Domestic Violence Penalty Assessment (RCW 10.99.____,
1,735²⁰ \$100 maximum, effective 06/10/04)
\$ 1,835.20, TOTAL legal financial obligations

() The above amount does not include all restitution. Restitution shall
be ordered at a later hearing scheduled for _____.

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5 Payments shall be made on a schedule established by the Department of
6 Corrections or the Clerk of the Court, commencing immediately, unless the
7 Court sets forth the rate as follows: not be less than \$ 50⁰⁰ per
8 month commencing 60 days after release. RCW 9A.9.94A.760.

9
10 (x) The Department of Corrections shall have authority to disburse money
11 from the defendant's personal account while he/she is in custody,
12 pursuant to RCW 72.11.020, for court-ordered legal financial obligations.

13
14 Payments shall be made to the Clerk of the Court by certified check,
15 money order or cash. Personal checks will not be accepted. Per RCW
16 10.82.090, Financial Obligations imposed shall bear interest from the
17 date of the judgment until payment, at the rate applicable to civil
18 judgments. The defendant shall immediately notify the Clerk of any change
19 of address. An award of costs on appeal against the defendant may be
20 added to the total legal financial obligations. RCW 10.73.160. The
21 defendant shall remain under the court's jurisdiction and the supervision
22 of the Department of Corrections for a period up to ten years from the
23 date of sentence or release from confinement to assure payment of the
24 above monetary obligations.

25
26 (X) The Department of Corrections may immediately issue a Notice of
27 Payroll Deduction. RCW 9.94A.7603.

28
29 (X) The defendant shall pay the costs of services to collect unpaid
30 legal financial obligations. RCW 36.18.190.

31
32 () 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 said costs at the rate of \$50.00 per day, unless another
rate is specified here _____. RCW 9.94A.760(2).

() Restitution ordered above shall be jointly and severally with:

<u>Name</u>	<u>Cause Number</u>	<u>Victim</u>	<u>Amount</u>

33
34 (x) Bond is hereby exonerated.

4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following sentence:

(a) CONFINEMENT: Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections commencing _____:
(Date)

29 months on Count No. 1 () concurrent (X) consecutive
_____ months on Count No. _____ () concurrent () consecutive
_____ months on Count No. _____ () concurrent () consecutive

() Actual number of months of total confinement ordered is:
(X) This sentence shall be () concurrent with (X) consecutively to the sentence in Lewis County
Count(s) or cause number(s)

(X) Credit is given for - 0 - days served.

(b) COMMUNITY PLACEMENT/CUSTODY (RCW 9.94A.700-.720). The defendant is sentenced to (X) community custody () community placement for 18-36 months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer and statutory mandatory conditions are ordered. Community custody or placement for sex offenders may be extended for up to the statutory maximum term of the sentence. The terms of community custody or placement shall include the following conditions and affirmative acts necessary to monitor compliance:

- (i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.
- (ii) The defendant shall work at Department of Corrections-approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) The defendant shall not unlawfully possess controlled substances while in community custody.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.
- (vi) Defendant shall obey all laws.
- (vii) Defendant shall not directly or indirectly contact the victims of this case or a specified class of individuals:

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- 5 (viii) The defendant shall remain within, or outside, of a
specified geographical boundary:
- 6
- 7 (ix) The defendant shall participate in crime related
treatment or counseling services as follows:
- 8
- 9 (x) The defendant shall not consume alcohol.
(xi) The defendant's residence location and living
arrangements, if a sex offender, shall be subject to
the prior approval of the Department of Corrections.
- 10 (xii) The defendant shall comply with any crime related
prohibitions as follows:
- 11

12 4.4 () The defendant shall not have contact, directly or indirectly,
with _____, for a period of _____ years
13 (not to exceed the maximum statutory sentence). Violation of a
no-contact provision of this order is a criminal offense under RCW 10.99
14 and will subject a violator to arrest; any assault, drive-by shooting,
or reckless endangerment that is a violation of this order is a felony.

15 () A domestic violence protection or antiharassment order is attached
16 as Appendix 4.3.

17 () Defendant shall enroll in, participate and successfully complete a
state certified domestic violence perpetrator counseling program at his
18 own expense.

19 4.5 () WORK ETHIC CAMP PROGRAM. The court finds that the defendant
is eligible for the Work Ethic Camp Program pursuant to RCW 9.94A.690
20 and is likely to qualify for said program. If the defendant successfully
completes the Program, the Department of Corrections shall convert the
21 period of Work Ethic Camp confinement at the rate of one day of camp
confinement to three days of total standard confinement, and the
22 defendant shall be released on community custody for any remaining time
of total confinement. The conditions of community custody are attached
23 hereto in paragraph 4.3 above.

24 4.6 () HIV TESTING. The Health Department or designee shall test the
defendant for HIV as soon as possible and the defendant shall fully
25 cooperate in the testing. RCW 70.24.340.

26 4.7 (x) DNA TESTING. The defendant shall have a biological sample
taken for the purposes of DNA identification analysis. RCW 43.43.754.

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5 4.8 () OFF LIMITS ORDER (RCW 10.66.020). The following areas are off
6 limits to the defendant while under the supervision of the Department of
7 Corrections: _____

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12 V. NOTICES

13 5.1 COLLATERAL ATTACK. You are hereby notified that any petition or
14 motion for collateral attack on this judgment and sentence, including
15 but not limited to any personal restraint petition, state habeas corpus
16 petition, motion to vacate judgment, motion to withdraw guilty plea,
17 motion for new trial or motion to arrest judgment, must be filed within
18 one year of the final judgment in this matter, except as provided in RCW
19 10.73.100. RCW 10.73.090.

20 5.2 INCOME WITHHOLDING ACTION. If the court has not ordered an
21 immediate notice of payroll deduction in section 4.1, you are notified
22 that the Department of Corrections may issue a notice of payroll
23 deduction without notice to you if you are more than 30 days past due in
24 monthly payments in an amount equal to or greater than the amount
25 payable for one month. RCW 9.94A.7603. Other income-withholding action
26 under RCW 9.94A. may be taken without further notice. RCW 9.94A.7609.

27 5.3 EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO
28 60 DAYS OF CONFINEMENT. (RCW 9.94A.634(3)).

29 5.4 FIREARMS. You must immediately surrender any concealed pistol
30 license and you may not own, use or possess any firearm unless your
31 right to do so is restored by a court of record. The clerk shall
32 forward the defendant's driver's license, identicard, or comparable
identification to the Department of licensing with the date of
conviction. RCW 9.41.040,.04.

5.5 () SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130. If
applicable, requirements are attached in Appendix 5.5.

Robert L. Zagelow

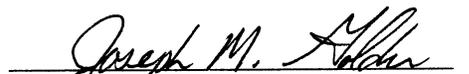
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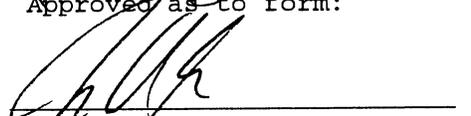
Judge of the Superior Court

Presented by:

Approved as to form:



Joseph M. Golden, WSBA# 19572
Deputy Prosecuting Attorney



Julie A. Carlson, WSBA# 32316
Lawyer for Defendant

JUDGEMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - P. - 9
(RCW 9.94A.10, .120)

OFFICE OF THE PROSECUTING ATTORNEY
240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 527-3232

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9 SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

10 - - - - -
11 THE STATE OF WASHINGTON,)
12)
13 Plaintiff,) No. 04-1-00201-7
14)
15 -vs-) WARRANT OF COMMITMENT
16)
17 FORREST E. AMOS,)
18)
19 Defendant.)

20 THE STATE OF WASHINGTON

21 TO: The Sheriff of Walla Walla County.

22 The defendant: Forrest E. Amos has been
23 convicted in the Superior Court of the State of Washington
24 of the crime(s) of:

25 Assault in the Second Degree, RCW 9A.36.021(2)(a), Class B
26 Felony (10 years or fine of \$20,000 or both);

27 and the court has ordered that the defendant be punished by
28 serving the determined sentence of:

- 29 29 (day(s)/month(s)) on Count No. 1,
30 (day(s)/month(s)) on Count No. _____ and _____
31 (day(s)/month(s)) on Count No. _____, *to Rhr consecutive*
32 *to Lewis Co,*
33 () _____ (day(s)/month(s)) of partial confinement in
34 in the County Jail.
35 () _____ (day(s)/month(s)) of total confinement in
36 the County Jail.

37 Defendant shall receive credit for 0 days served prior
38 to this date.

FINGERPRINTS



Right Hand
Fingerprints of:

Forret E. Amos

Dated: 11-7-05

Attested by:

By: *[Signature]*

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
Clerk of this Court, certify
that the above is a true copy
of the Judgment and Sentence
in this action on record in
my office.

Dated: _____

Clerk

By: _____
Deputy Clerk

S.I.D. No. WA18562708

Date of Birth: 05/16/83

Sex: M Race: W

PCN: 948102544

ORI _____

OCA _____

OIN _____

DOA _____

OFFICE OF THE PROSECUTING ATTORNEY

JUDGEMENT AND SENTENCE (FELONY)
FINGERPRINTS (CrR7.3; RCW 9.94A.110,
120(7), 10.64.110)

240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 527-3232

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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

PERSONAL RESTRAINT PETITION

OF

FORREST EUGENE AMOS

NO. 34375-4

PRO SE PERSONAL RESTRAINT PETITION BRIEF

FILED
COURT OF APPEALS
DIVISION TWO
06 JAN 10 PM 3:33
STATE OF WASHINGTON
BY [Signature]
DEPUTY

1) TABLE OF AUTHORITIES

- State VS. Bobic, 140 Wn. 2d 250,260,996 P.2d 610 (2000).
- State VS. Collicott, 118 Wn. 2d 649, 827 P.2d 263 (1992).
- State VS. Cosner, 85 Wn. 2d 45,530 P.2d 317 (1975).
- State VS. Freeman, 153 Wn.2d 765, 780,108 P. 2d 753 (2005).
- State VS. Freitag, 127 Wn.2d 141, 896 P. 2d 1254,905 P.2d 355 (1995).
- State VS. Johnson, 92 Wn.2d 671,600P.2d 1249 (1979).
- State VS. Moon, 108 Wn.App. 59, 29, P.3d 734 (2001).
- State VS. Miller, 110 Wn.2d 528,532,756 P.2d 122 (1988).
- State VS. Schaupp, 111 Wn. 2d 34,38,757 P.2d 970 (1988).
- State VS. Schilling, 77 Wn.App. 166,889 P.2d 948 (1995).
- State VS. Tourtellotte, 88 Wn.2d 579,583,564 P.2d 799 (1977).
- State VS. Walsh 143 Wn.2d 1, 17 P.3d 591 (2001).
- State VS. Wheeler, 95 Wn. 2d 799, 803, 613 P.2d 376 (1981).
- State VS. Worl, 91 Wn. App. 88, 955 P.2d 814 (1998).
- In re Butler, 24 Wn.App. 175,599 P.2d 1311 (1979).
- In re Carle, 93 Wn.2d 31,604 P.2d 1293 (1980).
- In re Eilts, 94 Wn.2d.
- In re Gardner, 94 Wn.2d 504,507,617 P.2d 1001 (1980).
- In re PRP of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002).
- In re James, 96 Wn.2d 847, 640 P.2d 18 (1982).
- In re La Chappell, 153 Wn.2d 1, 13 (2004).
- In re Moore, 116 Wn.2d 30, 803 P.2d 300(1991).

In re Palodichuk, 22 Wn.App. 107,113,589 P2d 269 (1978).

Dukes VS. Warden, Conn. State Prison, 406 U.S. 250, 258, 92 S. Ct. 1551, 32 L. Ed.2d 45(1972).

Lankford VS. Idaho,500 U.S. 110,111 S.Ct. 1723, 114 L.Ed.2d 173 (1991).

Menna VS. New York, 423 U.S. 61, 46 L.Ed.2d 195, 96 S.Ct.241 (1975).

United States VS. Quan, 789 F.2d 711,713 (9th cir.), cert. dismissed, 478 U.S. 1033, 107 S.Ct. 16, 92 L.Ed.2d 770 (1986).

Santobello VS. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971).

RCW 9.94A. 500 formerly RCW 9.94A. 110.

RCW 9.94A. 525, formerly RCW 9.94A.360.

RCW 9.94A. 589, formerly RCW 9.94A.400.

RCW 9A.56.190.

RCW 9A.56.200.

The Fifth Amendment of the United States Constitution.

The Fourteenth Amendment of the United States Constitution.

Article 1, section 3 of the Washington Constitution.

Article 1, section 9 of the Washington Constitution.

The Doctrine of Collateral Estoppel.

The Merger Doctrine.

RAP 16.4

2) ASSIGNMENT OF ERRORS.

I, the petitioner claims the trial court committed many errors when pronouncing my judgment and sentence: Ground one, double jeopardy was violated with the multiple punishments received

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for the same assault action; Ground two, the trial court exceeded their authority and violated double jeopardy by using my subsequent offense and conviction in the calculation of my offender score; Ground three, the prosecutor and trial court breached my plea bargain agreement by modifying my judgment and sentence with the use of my subsequent offense and conviction in the calculation of my offender score at re-sentence; and Ground four, The Doctrine of Collateral Estoppel bars the re-determination of how many prior convictions exist at my re-sentence date.

3)STATEMENT OF CASE.

On January 26th, 2000 Lewis County prosecutor filed information accusing me of count one Burglary first degree, count two Robbery first degree, count three Assault first degree, all with firearm enhancements, count four Possession of Stolen Firearm, count five Theft of a Firearm, and count six Unlawful Possession of a Firearm first degree. See Exhibit C.

On February 16th, 2000 I plead guilty as charged pursuant to a plea bargain agreement. My plea statement acknowledging factual guilt of the crimes charged stated: On January 16th, 2000, in Lewis County, I was in a persons building, I had permission to go in but not to remain as long as I did. I went with the intent to help my friends take some marijuana. While we were there, we assaulted Mr. Hull and caused him great bodily injury with a deadly weapon (walkie-talkie) , we stole the marijuana and a gun. I have been convicted of a serious felony in the past and I cannot possess a gun. See Exhibit A and the February 16th, 2000 Verbatim Reports.

On April 25th, 2000 after the first plea bargain agreement fell through, new terms were reached which resulted in reducing the charge of Assault first degree to Assault second degree, dismissing count four Possession of Stolen Firearm, and dismissing the firearm enhancements on count one Burglary first degree and count two Robbery first degree. The trial judge allowed me to withdraw my pleas of guilty to the above in order to reach the new terms of the plea bargain

agreement. See Exhibit B and the April 25th, 2000 Verbatim Reports.

On April 25th, 2000 the trial Judge Richard L. Brosey pronounced a judgment and sentence. The trial judge found that count one Burglary first degree and count two Robbery first degree, constituted some criminal conduct and counted as one crime when sentencing. All other crimes counted as other current offenses when calculating my offender score. See Exhibit E.

My criminal history was four juvenile adjudications which were two counts of Burglary second degree, Possession of Stolen Property second degree, and Malicious Mischief second degree. See Exhibit E.

A total of 120 months was imposed. See Exhibit E.

In May of 2004, I filed a Personal Restraint Petition on a miscalculation of my offender score and Double Jeopardy claims. The miscalculation resulted in the use of two washed out juvenile adjudications and Double Jeopardy resulted in being punished twice for my assault action and theft for a firearm. See Personal Restraint Petition No. 31735-4-II which is not attached.

On February 28th, 2005 the Court of Appeals granted relief for the use of the two washed out juvenile adjudications in the calculation of my offender score pursuant to *in re LaChappell*, 153 Wn.2d 1, 13 (2004) and stayed my petition on my Double Jeopardy claims pending the Supreme Courts decision in *State Vs. Freeman*, 153 Wn.2d 765,780,108 P.2d 753 (2005).

I then motioned the Court of Appeals to withdraw my Double Jeopardy claims with the assumption I could argue and receive the same type of relief with the use of the same criminal conduct analysis at re-sentence for the miscalculated offender score.

On April 18th 2005, the Court of Appeals granted this request even though the Freeman decision was issued two weeks after my request. I was then remanded back for re-sentence.

In between all of this I was charged with Assault first degree in Walla Walla County for an

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incident that occurred on February 26, 2004 while I was in prison under sentence for my 2000 convictions. See Exhibit G.

On June 20th, 2005 pursuant to a plea bargain agreement I plead guilty to Assault second degree. See Exhibit H.

On July 19th, 2005 I was re-sentenced on my 2000 convictions. At re-sentencing I argued that the new Supreme Court decision in State Vs. Freeman, 153 Wn.2d 765, 780, 108 P.2d 753 (2005) applied to my case to merge count two Robbery first degree and count three Assault second degree for Double Jeopardy purposes because they are both based on the same assault action. The prosecutor disagreed and argued that count three was based on an assault with a firearm and count two was based on an assault with a walkie-talkie. The trial court agreed. See Exhibit D.

Also at re-sentencing the prosecutor argued to count my new Assault second degree conviction in Walla Walla County in my offender score. Despite my argument that this new conviction was a post conviction and not a prior conviction the trial court allowed the prosecutor to count my new Assault second degree conviction in my offender score. See Exhibit D.

My motion to reconsider merger was denied on September 12th, 2005 and the trial judge told me to PRPit if I did not agree his rulings.

RAP 16.4 (a) provides in relevant part: the appellate court will grant appropriate relief to a petitioner if the petitioner is under a "restraint" as defined in section (b) and petitioner's restraint is unlawful for one or more of the reasons defined in section ©.

RAP 16.4 (b) provides in relevant part: A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a ...criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement,...resulting from a judgment or sentence in a criminal case.

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RAP 16.4 © provides: the restraint must be unlawful for one or more of the following reasons: (2) the conviction was obtained or the sentence or other order entered in a criminal proceeding was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.

All four of my grounds for relief constitute unlawful restraint requiring the appellate court to grant my relief.

4) GROUNDS AND ARGUMENTS FOR RELIEF.

GROUND ONE

I, the petitioner, claim my conviction and sentence for count three Assault second degree is barred by Double Jeopardy thereby exceeding the trial courts authority. Both count two Robbery first degree and count three Assault second degree are based on the same assault action so they are required to merge for Double Jeopardy purposes.

The Fifth Amendment of the United States Constitution states: “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.”

Similarly, article 1, section 9 of the Washington Constitution declares: “no person shall be...twice put in jeopardy for the same offense.”

The Double Jeopardy clauses each prohibit: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. State VS. Bobic, 140 Wn.2d 250,260,996 P.2d 610 (2000).

Focusing on the prohibition of multiple punishments for the same offense the Washington Criminal Code, RCWA Title 9A, enacted in 1976, created more clearly defined degrees of crimes to prevent the occasion of pyramiding crimes.

In State VS. Johnson, 92 Wn.2d 671,600 P.2d 1249 (1979) the state adopted the Merger

Doctrine. The states Merger Doctrine is a rule of statutory construction which applies where the Legislature has clearly indicated that in order to prove a particular degree of crime the state must prove not only that a defendant committed that crime but that crime was accompanied by an act which is defined as a crime elsewhere in the criminal statutes.

Relying on the rationale in State Vs. Freeman, 153 Wn2d 765,780,108 P.2d 753 (2005) our Supreme Court held that convictions for first degree Robbery and second degree Assault will always merge unless they have an independent purpose or effect from the crime charged and Double Jeopardy precluded separate sentences for Robbery and Assault to facilitate Robbery.

On July 19th, 2005 at re-sentence the trial court rejected my merger arguments and placed me in jeopardy twice for the same assault action.

The trial court justified their judgment and sentence by holding that the conduct in count three Assault second degree was based on an assault with a firearm and the conduct in count two Robbery first degree was based on an assault with a walkie-talkie therefore it is separate and distinct and not barred by Double Jeopardy. See Exhibit D.

In my arguments to trial court I continuously argued that I was only charged with one assault action with a walkie-talkie that was used to support factual basis for both count two Robbery first degree and count three Assault second degree; that no assault with a firearm was ever charged or even committed in this case; and even if there was an assault with a firearm it still must have an independent purpose or effect from the Robbery in order to survive the Freeman decision because the mere fact the violence use was excessive does not allow for the trial court to avoid merger. The use of a firearm and deadly weapon does not support excessive violence in relation to a first degree Robbery because a Robbery first degree can be committed with both.

The facts in this case are set forth generally in the Affidavit Regarding Probable Cause. See

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Exhibit F.

The relevant portions of the Affidavit Regarding Probable Cause provide: Mr. Hull stated at the time the receipt was passed, three of the males brought out clubs and began striking him with the clubs... Mr. Hull stated that they kept asking him where his handguns and pot were. Mr. Hull stated that he brought the males into his bedroom and showed them where he kept his marijuana under his bed and his handgun, which was in a night stand next to his bed. Mr. Hull stated that the males asked him where the rest was and he told them that he didn't have anymore. Mr. Hull stated that they hit him again and they asked where the other handgun and marijuana were because they knew he had more. Mr. Hull stated that he showed them his marijuana grows in his close and they took one large marijuana plant. Mr. Hull stated that the four then left the residence with the marijuana and his Ruger Pistol.

Nothing indicated in the Affidavit Regarding Probable Cause supports an assault with the stolen firearm nor does it support a separate and distinct assault action that was unnecessary to further commission of the Robbery first degree.

Viewing further facts to support my merger arguments the February 16th, 2000 pleas statement, Exhibit A, provides in relevant part: "while we were there, we assaulted Mr. Hull and caused great bodily injury with a deadly weapon (walkie-talkie), we stole the marijuana and a gun." Here "Assaulted" means one.

The February 16th, 2000 Verbatim Reports indicates when pleading guilty to both count two Robbery first degree and count three Assault first degree.

Q. (By the court) with regard to the charge of Robbery in the first Degree, what did you do, Mr. Amos?

A. We hit him and took his gun and marijuana without his permission.

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Q. Did that occur in Lewis County?

A. Yes

Q. Did that occur on or about January 16, 2000?

A. Yes.

The Court: Does the state accept the statements as sufficient for the plea on that count?

Mr. Arcuri: Yes, your honor.

Q. (By the court) under Count 3, the charge of Assault in the first degree, would you tell me in your own words what you did?

A. Hit Joe Hull over the head with a walkie-talkie that caused bodily injury

Q. And do you agree that the instrument used or force used would likely produce great bodily harm or death?

A. Yes.

Q. And were you also armed with a firearm?

A. Yes.

Q. Did that occur in Lewis County?

A. Yes.

Q. And did that occur on or about January 16, 2000?

A. Yes.

Q. And did you commit the assault with the intent to inflict great bodily harm?

A. Yes.

The Court: Does the state accept the statement as sufficient for the plea on that count?

Mr. Arcuri: It may be redundant, he's already stated that they used a deadly weapon, but there is also a deadly weapon enhancement, so I ask...obviously, he admits they, while their committing

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the assault armed with a firearm, but a deadly weapon?

Ms. Backlund: I thought he already said that.

The defendant: Yes.

See page 15 and 16 of the February 16th, 2000 Verbatim Reports.

These facts support my claim that the same assault was the basis for both count two Robbery first degree and count three Assault first degree.

Now in the end count three Assault first degree was withdrawn on April 25th, 2000 pursuant to new plea negotiations once the original plea bargain fell through which resulted in reducing count three Assault first degree to Assault second degree. See Exhibit B.

The trial court stated in the April 25th, 2000 Verbatim Reports: "The court: charge count three as rewritten charge with assault in the second degree, which is a reduction from the original plea of count three, which was assault in the first degree". See page 7 of the April 25th, 2000 Verbatim Reports.

The fact that the charge in count three was reduced from first degree to second degree Assault does not change the facts underlying the charge meaning my plea of guilty to count three Assault second degree was based on the same assault I first plead guilty to.

Further evidence in the amended charging information support the fact that the intent of count three Assault second degree was to commit another felony. See Exhibit C.

One of the elements I was charged with was to assault Joe Hull with the intent to a felony, Robbery first degree. See Exhibit C.

Over and over again the facts do not change. The intent of my assault action was to deprive Mr. Hull of his personal property which constitutes the completed crime of robbery in general. See RCW 9A.56.190. The fact that a firearm or deadly weapon was used elevates the robbery to

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first degree. See RCW 9A.56.200.

The appellate court is required to grant me relief from the multiple punishments imposed for my assault action. The appropriate relief is to vacate my conviction and sentence for count three Assault second degree and remand me back to the trial court for re-sentence. In re Butler, 24 Wn.App.175, 599 P.2d 1311 (1979).

On one last point even though this case involved a negotiated plea were I received substantial benefits in exchange for my plea of guilty does not prevent me from obtaining merger for Double Jeopardy purposes because in State Vs. Freeman, 153 Wn. 2d 765, 780, 108 P.2d 753 (2005) the Supreme Court found that the legislature did not intend to punish second degree Assault separately from first degree robbery when the assault facilitates the robbery. See Freeman at 776.

In re Butler, 24 Wn.App.175, 599 P.2d 1311 (1979) and in re PRP of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002) both recognized that beneficial plea bargains do not preclude a defendant from obtaining relief from a conviction and sentence in excess of the legislatures intent.

The Butler court held that a defendant's plea of guilty does not waive a claim that the offense is one which the state may not constitutionally prosecute. Also see Menna Vs. New York, 423 U.S. 61, 46 L.Ed. 2d 195, 96 S.Ct. 241 (1975).

In Goodwin our Supreme Court held "the court has granted relief to personal restraint petitioners in the form of re-sentence within the statutory authority where a sentence in excess of that authority had been imposed, without regard to the plea agreements involved. See Gardner, 94 Wn.2d 504; Moore, 116 Wn.2d 30." "The portion of a sentence in excess of statutory authority must be reversed, and a plea agreement to the unlawful sentence does not bind the defendant, Eilts, 94 Wn.2d 489". Goodwin at 877.

GROUND TWO

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I, the petitioner, claims the trial court miscalculated my offender score by counting my subsequent offense and conviction for Assault second degree as a prior conviction when re-sentence my 2000 convictions five years after my sentencing date.

This miscalculation exceeds the trial courts authority and violates Double Jeopardy guarantees because the legislature intended for an offense and conviction that occurred while under sentence for a prior conviction to be a subsequent offense and conviction requiring an automatic consecutive sentence that latters the underlying sentence within the meaning of RCW 9.94A.589 (2) (a) and not a prior conviction enhancing my offender score by two points within the meaning of RCW 9.94A. 525 (1) (b).

A trial court may impose only a sentence which is authorized by statute. In re Carle, 93 Wn.9d 31, 604 P.2d 1293 (1980).

RCW 9.94A.589 (2) (a) provides: “whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.”

RCW 9.94A. 525 (1) provides in relevant part: “A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed.”

It would be inconceivable to think the legislature intended for both of these statutes to work in relation to each other to count my Assault second degree offense and conviction as both a subsequent offense and conviction under RCW 9.94A.589 (2) (a) and a prior conviction under RCW 9.94A.525 (1).

The prosecutor relied on the Supreme Courts decision in State VS. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992) in their argument to the trial court. In Collicott the court held the SRA

permitted the use of a subsequent conviction for the purposes of determining the offender score at the defendants re-sentence. Other courts have held the same way because of the Collicott decision. See State VS. Shilling, 77 Wn.App 166, 889 P.2d 948, review denied, 127 Wn.2d 1006 (1995); State VS. Worl, 91 Wn.App 88, 955 P.2d 814, review denied, 136 Wn.2d 1024 (1998).

With regard to these court decisions I believe this case is distinguishable because in all the above cases the defendants arguments and court decisions focus on the use of a subsequent “conviction” for an offense committed before the defendants sentencing date in the calculation of their offender score upon re-sentence and not on the use of a subsequent “offense” and “conviction” that occurred after the defendants sentencing date in the calculation of their offender score upon re-sentence. I believe it is a different situation when the “offense” that resulted in the conviction occurs after the defendants sentencing because the SRA considers it and punishes it as a subsequent offense and conviction under RCW 9.94A.589 (2) (a). Even the trial judge in State VS. Collicott, 118 Wn.2d recognized the potential difference if the offense for the second conviction was committed after the sentencing date but before the re-sentence for the defendants first offense and conviction. Collicott at 653-54.

Now the fact is the Walla Walla County Assault incident that resulted in the conviction occurred on February 26th, 2004 while I was under sentence for my 2000 convictions which are being re-sentenced. See Exhibit G. So because the offense was subsequent to my April 25th, 2000 sentencing date the SRA provides a specific procedure that cannot be circumvented by the judiciary in order to fit their agenda. State VS. Freitag, 127 Wn.2d 141, 144, 896 P.2d 1254, 905 P.2d 355 (1995) (“It is the function of the judiciary to impose sentences consistent with legislative enactments.”)

The trial court in Lewis County should not of counted my subsequent offense and conviction for Assault second degree as a prior conviction when re-sentence my underlying sentence which my subsequent offense and conviction for Assault second degree occurred under. Both RCW 9.94A. 589(2) (a) and RCW 9.94A. 525 (1) provide two completely different legislative intents that cannot work in relation with each other.

Further evidence to support my claim that Lewis County trial court miscalculated my offender score by counting my subsequent offense and conviction for Assault second degree as a prior conviction when calculating my offender score at re-sentence is the Double Jeopardy violation that occurs with this calculation.

I believe Double Jeopardy is violated because I am receiving multiple punishments for the same offense. My reasoning is: Pursuant to RCW 9.94A. 589 (2) (a) I received an automatic consecutive sentence for the Assault second degree offense and conviction that latters my underlying sentence imposed on April 25, 2000 because the felony was committed while I was serving my underlying sentence. Then upon re-sentence of my underlying sentence which the Assault second degree offense occurred under I am receiving an enhanced offender score by using the same Assault second degree offense and conviction that was considered a subsequent offense and conviction under RCW. 9.94A. 589 (2) (a) as a prior conviction under RCW 9.94A 525 (1) (B). See Exhibits I, D.

The Fifth Amendment of the United States Constitution states: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Similarly, article 1, section 9 of the Washington Constitution declares: "No person shall be... twice put in jeopardy for the same offense." Both of these Double Jeopardy clauses prohibit multiple punishments for the same offense. State VS. Bobic, 140 Wn.2d 250, 260, 996 P.2d 610 (2000).

In sum, I received a consecutive 29 month sentence for my subsequent Assault second degree offense and conviction that latters the 120 month sentence imposed on April 25th, 2000 for my 2000 convictions because the Assault second degree offense and conviction occurred while I was under sentence for my 2000 convictions. See RCW 9.94A 589 (2) (a); Exhibit I. Then at re-sentence for my 2000 convictions I received two points added to my offender score for my subsequent Assault second degree offense and conviction which resulted in my offender score going from five points to seven points and my standard range for the offense that yields the highest standard range going from 57-75 months to 67-89 months. So if Lewis County could not use my subsequent Assault second degree offense and conviction in the calculation of my offender score because I already received an automatic consecutive sentence under the SRA for it, at the most I would of received a sentence of 75 months plus a 36 month firearm enhancement for a total of 111 months rather that the 120 months imposed by using the two points added to my offender score for my subsequent Assault second degree offense and conviction. In light of this I have to serve at least 9 months because of the use of my subsequent Assault second degree offense and conviction in the calculation of my offender score before the automatic consecutive 29 month sentence imposed pursuant the the SRA for the same subsequent Assault second degree offense and conviction can start.

I just believe if the SRA requires an automatic consecutive sentence for my subsequent Assault second degree offense and conviction because it occurred while I was under sentence for my 2000 convictions then the same subsequent Assault second degree offense and conviction cannot be used as a prior conviction in the calculation of my offender score at re-sentence to set the sentence for my 2000 convictions that must expire before the consecutive sentence can start.

Both RCW 9.94A. 589 (2) (a) and RCW 9.94A. 525 (1) (8) cannot work in relation to each other

without resulting in a miscalculation or Double Jeopardy violation. Re-sentence shall be required without using my subsequent Assault second degree offense and conviction in the calculation of my offender score because the SRA is clear on the differences between RCW 9.94A. 589 (2) (a) and RCW. 9.94A. 525 (1) (8) and the Double Jeopardy senerio addressed above is an obvious multiple punishment based on the same offense.

State Vs. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992) or any following decision based on Collicott should not be controlling on this issue because the fact^{is} that the “offense” in question that resulted in a conviction occurred after the sentencing date while I was under sentence for my 2000 convictions which are being re-sentenced. The SRA provides a specific procedure for this type of senerio under RCW 9.94A.589 (2) (a) which cannot be circumvented by the judiciary. State VS. Freitag, 127 Wn.2d 141, 144, 896 P.2d 1254, 905 P.2d 355 (1995) (“It is the function of the judiciary to impose sentences consistent with legislative enactments.”)

GROUND THREE

I, the petitioner, claim the prosecutor and trial court breached the plea bargain agreement at my re-sentence date on July 19th, 2005 by modifying my judgment and sentence with the use of a subsequent offense and conviction for Assault second degree in the calculation of my offender score. The terms of the plea bargain agreement only provided the use of any new convictions that occurred between the time of pleading guilty on February 16th, 2000 and the date of sentencing on April 25th, 2000.

I have a right to be re-sentenced pursuant to my original plea consistent with the plea bargain agreement. This principle operates to bind the court as well as the prosecutor.

The terms of a plea bargain agreement are defined by what the defendant reasonably understood them to be when he or she entered the plea. State VS. Cosner, 85 Wn.2d 45, 51-52, 530 P.2d 317

(1975). Also see United States VS. Quan, 789 F.2d 711, 713 (9th Cir.) (The reviewing court looks to what the defendant reasonably understand when entering the plea to determine whether a plea agreement has been broken), cert. dismissed, 478 U.S. 1033, 107 S.Ct. 16, 92 L.Ed.2d 770 (1986).

Understanding the plea bargain agreement when I plead guilty I understood that my standard sentence range was base on the crime charged and my criminal history. Also I understood that if I was convicted of any additional crimes between the time of pleading guilty on February 16th, 2000 and the date of sentencing on April 25th, 2000 the plea of guilty was still binding on me even though my standard sentence range and the prosecutor's recommendation may increase. See Exhibit A.

Viewing the statement of defendant on plea of guilty, Exhibit A provides in relevant part: section 6 provides: In considering the consequences of my guilty plea, I understand that: (b) the standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.© The prosecuting attorneys statement of my criminal history is as follows: Burglary second degree-two counts, Malicious mischief second degree, and Possession of stolen property second degree- all as juvenile. Unless I have attached a different statement, I agree that the prosecuting attorneys statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions. (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and prosecuting attorneys recommendation may increase. Even so, my plea of guilty to this change is binding on me. I

cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorneys recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

I met these requirements by acknowledging all my criminal history that existed prior to pleading guilty and most importantly I did not commit any additional crimes between the time of pleading guilty on February 16th, 2000 and the date of sentencing on April 25th, 2000. However, at my sentencing on April 25th, 2000 unknown to me, the prosecutor and the trial court two of the four juvenile adjudications used in the calculation of my offender score were considered washed out under the SRA and should not of been used. This error was not known until the Supreme Court decided the issue in. In re LaChappell, 153 Wn.2d 1, 13 (2004). So because the trial court miscalculated my offender score re-sentence was required to correct the erroneous portion of the judgment and sentence. In re PRP of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002). In re Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980) (“A plea bargaining agreement cannot exceed the statutory given to the courts.”) Also see in re Moore, 116 Wn.2d 30, 803 P.2d 300 (1991). Now because this case involves a plea bargain agreement and a mutual mistake in the calculation of my offender score I have a right to correct the mistake and a choice of remedy of either withdrawing my plea ~~and~~pleading anew, or of being re-sentenced on my original plea consistent with the plea bargain agreement. State Vs. Walsh, 143 Wn.2d 1, 17 P.3d 591 (2001); State VS. Moon, 108 Wn.App. 59, 29 P.3d 734 (2001).

On July 19th, 2005 at my re-sentence I was offered neither choice of remedy and was re-sentence without regard of my full compliance with the original plea bargain agreement. I did not commit any additional crimes nor was I convicted of any additional crimes between the time of pleading guilty on February 16th, 2000 and the date of sentencing on April 25th, 2000. This

was a part of the terms of the plea bargain agreement that should have been specifically enforced at re-sentence. However, that was not the case. My judgment and sentence was modified with the use of an offense and conviction that occurred after my sentencing date on April 25th, 2000 but before my re-sentence date. See Exhibits G, H, I.

Both the prosecutor and trial court relied on State Vs. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992) to support their modification of my judgment and sentence with the use of a subsequent offense and conviction in the calculation of my offender score at re-sentence. The Collicott decisions provided that the SRA permitted the use of a subsequent conviction for the purpose of determining the offender score at the defendants re-sentence. Their reasoning was that the term "sentencing date" under RCW 9.94A. 360 (1) is interpreted to encompass the defendants re-sentence date. This decision does not give regard to a defendant that enters into a plea bargain agreement with the prosecutor. I believe the decision is fundamentally unfair to those defendants that enter into a plea bargain agreement because the Statement of Defendant on Plea of Guilty forms used by Washington Courts only notify the defendants that their plea of guilty is still binding on them if they are convicted of any additional crimes between the time of pleading guilty and the date of sentencing or if any additional criminal history is discovered. It does not contemplate the use of subsequent offenses and convictions that may have occurred after the defendants sentencing date but before their re-sentence date to correct a breach in the plea bargain agreement or a sentence in excess of the statutory authority of the court, in the calculation of their offender score.

A defendant has a right to be re-sentenced according to his original plea consistent with the plea bargain agreement and has a right to be re-sentenced within the statutory authority of the court because a plea bargain agreement cannot exceed the statutory authority given to the court. In re

Palodichuk, 22 Wn.App. 107, 113, 589 P.2d 269 (1978), in re PRP of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002). So there is a problem of where the binding requirements of the plea bargain agreement end if the defendant is erroneously sentenced and has a right to be re-sentenced under the specific terms of the plea bargain agreement when he originally plead guilty and the right to be re-sentenced within the statutory authority of the court.

The question is does the binding requirement of not being convicted of any additional crimes end at the defendants sentencing date where the erroneous sentence was imposed or at the defendants re-sentence date where the erroneous portion of the sentence is being corrected?

I believe the binding requirements of the plea bargain agreement should end at the defendants sentencing date where the erroneous sentence was imposed because the sentencing court made a sentencing determination that I was not convicted of any additional crimes between the time of pleading guilty and the date of sentencing.

Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed. In re Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980). So serious questions of Double Jeopardy and Collateral Estoppel would be raised. See Ground Four.

It would be a different situation if I did not disclose all my criminal history or any additional convictions that occurred between the time of pleading guilty and the date of sentencing.

However, that was not the case here.

Also if the Collicott decision controls in a case that involves a plea bargain agreement what will preven the prosecutor from playing fast and loose at the defendants sentencing date? For instance, in a senerio where the prosecutor enters into a plea bargain agreement with a defendant that has a pending charge that has not been resoved yet, who is to say the Collicott decision does

not permit the prosecutor to play fast and loose at the defendant's sentencing hearing in order to breach the plea bargain agreement or commit a sentencing error in excess of the statutory authority of the court, whether on purpose or not, in hopes that when the defendant achieves re-sentence to correct the erroneous portion of the sentence his pending charge would be removed and result in increasing the defendant's standard sentence range and prosecutor's recommendation without breaching the plea bargain agreement.

In essence, the defendant would be pressured into foregoing review of the sentencing error and accepting the erroneous sentence or suffer an increase in their standard sentence range and prosecutor's recommendation.

This is a realistic scenario that could occur so despite the Collicott decision specific enforcement of the plea bargain agreement should only bind the terms of the agreement to the defendant and his actions between the time the defendant pleads guilty and his sentencing date and not between the time the defendant pleads guilty and his re-sentencing date. "Where fundamental principles of due process so dictate, the specific terms of a plea agreement ... may be enforced despite the explicit terms of a statute." State vs. Miller, 110 Wn.2d 528, 532, 756 P.2d 122 (1988).

Plea bargain agreements are regarded and interpreted as contracts. Santobello vs. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). State vs. Wheeler, 95 Wn.2d 799, 803, 613 P.2d 376 (1981) held that courts should strictly apply contract principles to plea bargain agreements. So because contract principles apply due process guarantees overlap.

The Fifth and Fourteenth Amendments of the United States Constitution and article 1, section 3 of the Washington Constitution state in similar context: "No person shall be deprived of life, liberty, or property without due process of law".

Lankford vs. Idaho, 500 U.S. 110, 111 S.Ct. 1723, 114 L.Ed.2d 173 (1991) (due process clause

requires that defendants have notice of the possible sentence).

Under a contract theory, each party to the plea bargain agreement gives consideration, thereby rendering the agreement enforceable. See Wayne R. LaFare and Jerold H. Israel, Criminal Procedure sec. 21.1 (a) (2d ED 1992). I gave up as consideration my constitutional right to a jury trial; confront witnesses; confront ones accuser; remain silent; be convicted beyond a reasonable doubt; and to appeal a find of guilt after a trial. State VS. Tourtellotte, 88 Wn.2d 579, 583, 564 P.2d 799 (1977).

These Constitutional rights I waived are considered the most important rights a defendant has. Waiving them is considered the most devastatin waiver possible under the Constitution. Dukes VS. Warden, Conn. State Prison, 406 U.S. 250, 258, 92 S.Ct. 1551, 32 L.Ed2d 45 (1972). So because of the fundamental importance of what I gave up as consideration in the plea bargain agreement, Washington courts are serious about providing an adequate remedy when the state breaches the agreement. In re James, 96 Wn.2d 847, 849-50, 640 P.2d 18 (1982).

“When the prosecutor breaks the plea bargain, he undercuts the basis for the waiver of constitutional rights implicit in the plea”. Tourtellotte, 88 Wn.2d at 584.

The remedies provided give the defendant the choice of either withdrawing his plea and pleading anew, or of being re-sentenced on his original plea consistent with the plea bargain agreement. In re Palodichuk, 22 Wn.App. 107, 113, 589 P.2d 269 (1978). State VS. Schaupp, 111 Wn.2d 34, 38, 757 P.2d 970 (1988) (“Those principles operate to bind the court, as well, once a plea agreement has been validly accepted”.)

In conclusion, I met the strict requirements of the plea bargain agreement by first waiving most of my important constitutional rights. Then I acknowledged all my criminal history that existed prior to pleading guilty and most importantly I did not commit any additional crimes nor was I

convicted of any additional crimes between the time of pleading guilty on February 16th, 2000 and the^{date} of sentencing on April 25th, 2000.

So with all this cooperation on my part my choice of remedy is to be re-sentenced upon the terms of the original plea consistent with the plea bargain agreement meaning my subsequent offense and conviction for Assault second degree cannot be used in the calculation of my offender score because it occurred after my sentencing date on April 25th, 2000 when I was not under the binding terms of the plea bargain agreement. See Exhibit G, H.

“If a defendant cannot rely upon an agreement made and accepted in open court, the fairness of the entire criminal justice system would be thrown into question”. Tourtellotte, 88 Wn.2d at 584. Enforcement of a plea bargain agreement is an adequate ground for relief from unlawful restraint. In re James, 96 Wn.2d 847, 640 P.2d 18 (1982). The unlawful restraint results from the use of two points for my subsequent offense and conviction for Assault second degree in the calculation of my offender score at re-sentence which was not part of the terms of the plea bargain agreement I entered into with the prosecutor.

GROUND FOUR.

I, the petitioner, claim that the Doctrine of Collateral Estoppel bars the redetermination of how many prior convictions exist at my re-sentence date because the trial court already determined how many prior convictions existed at my sentencing date. So my subsequent offense and conviction for Assault second degree should not have been counted as a prior conviction at my re-sentence because that offense and conviction occurred after my sentencing on April 25th, 2000.

Re-sentence was required to correct the erroneous sentence in excess of statutory authority and does not affect the finality of the judgments^{that} made at my sentencing date[↑] were correct and valid

such as the number of prior convictions, same criminal conduct determinations, etc...those issues are final and the Doctrine of Collateral Estoppel bars a redetermination of those issues.

The Fifth Amendment of the United States Constitution states: "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb." Similarly, article 1, section 9 of the Washington Constitution declares: "No person shall be...twice put in jeopardy for the same offense." A component of these Double Jeopardy clauses is the Doctrine of Collateral Estoppel.

The Doctrine of Collateral Estoppel applies in criminal cases and bars re-litigation of issues that have already been litigated. State VS. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992).

The application of Collateral Estoppel in a criminal action is a two step operation: the first is to determine what issues were raised and resolved by the former judgment, and the second is to determine whether the issues raised and resolved in former judgment are identical to those sought to be barred in the subsequent action.

In State VS. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992) the court held that Collateral Estoppel prohibited imposition of an exception sentence at the defendants re-sentencing because the trial court declined to impose an exceptional sentence at the defendants sentencing.

I believe the Doctrine of collateral Estoppel applies to prohibit re-litigation of other issues such as the number of prior convictions, same criminal conduct determinations, etc... when the defendant achieves re-sentencing to correct an erroneous sentence in excess of statutory authority because correcting an erroneous sentence in excess of statutory authority does not affect the finality of the judgment and sentence that was correct and valid when imposed. In re Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980).

On April 25th, 2000 I was sentenced after a plea of guilty on February 16th, 2000. See Exhibits E, A.

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Pursuant to RCW 9.94A 500 (1), formerly RCW 9.94A, 110, the trial court "shall specify the convictions it has found to exist" at the defendants sentencing hearing.

On April 25th, 2000 at my sentencing the trial court found that four juvenile adjudications existed. Those were, two counts of Burglary second degree, Possession of stolen Property second degree, and Malicious Mischief second degree. I was sentenced according to these prior convictions and my current convictions. See Exhibit E.

Years after my sentencing date the Washington Supreme Court decided that juvenile adjudications occurring before the defendant's fifteenth birthdate and July 1st, 1997 were considered washed out under the SRA and cannot be used in the calculation of their offender score. In re La Chappell, 153 Wn.2d 1, 13 (2004).

This decision rendered my sentence erroneous because it was in excess of statutory authority because two of the four juvenile adjudications used in the calculation of my offender score were considered washed out under the SRA. Re-sentence was required to correct the error. On July 19th, 2005 I was re-sentenced. At re-sentencing the trial court re-determined my offender score. In doing so the trial court re-determined how many prior convictions existed and counted my subsequent offense and conviction for Assault second degree as a prior conviction and counted it in the calculation of my offender score. See Exhibit D.

The fact is this offense and conviction for Assault second degree occurred after my April 25th, 2000 sentencing date after the trial court already determined how many prior convictions existed. See Exhibits G, H, E.

The trial court and prosecutor relied on the decision in State Vs. Collicott, 118 Wn.2d 649, 827 P.2d 263 (1992) to count my subsequent offense and conviction as a prior conviction and count it in the calculation of my offender score. The Collicott decision provided that the SRA

permitted the use of a subsequent conviction for the purpose of determining the offender score at the defendants re-sentence.

This decision does not give regard to the Doctrine of Collateral Estoppel even though in a separate issue decided in the Collicott decision Collateral Estoppel was found to bar imposition of an exceptional sentence at the defendants re-sentence because the trial court declined to impose an exceptional sentence at the defendants sentencing.

The question is how can the Doctrine of Collateral Estoppel bar redetermination of one sentencing issue and not another sentencing issue at the defendants re-sentence?

The Doctrine of Collateral Estoppel cannot function as a circuit breaker when it comes to two different sentencing issues. The fact is under RCW 9.94A. 500 formerly RCW 9.94A. 110 the trial court already determined how many prior convictions existed at the time of sentencing. That determination was final because it was correct and valid on the date of sentencing. Re-sentencing was required only to correct the way the trial court calculated those prior convictions and impose a sentence within the statutory authority.

In Conclusion, the Doctrine of Collateral Estoppel should bar the redetermination of how many prior convictions exist at the time of re-sentencing because the issue was already determined at my sentencing date on April 25th, 2000. Re-sentencing to correct an erroneous sentence in excess of statutory authority does not affect the finality of the judgment and sentence that was correct and valid when imposed meaning because the determination of how many prior convictions existed at the time of sentencing on April 25th, 2000 was correct that issue is final. Re-sentencing is required without the use of my subsequent offense and conviction for Assault second degree because it did not exist before my date of sentencing on April 25, 2000.

The Collicott decision with regard to the use of a subsequent conviction when calculating the

defendant's offender score at re-sentencing is fundamentally unfair and violates components of the Double Jeopardy clauses of both the United States Constitution and the Washington Constitution.

50 CONCLUSIONS

In conclusion, relief shall be granted for the unlawful restraint imposed for the numerous errors presented in the above four grounds.

With regard to the basic issue presented in ground two, three, and four the Court of Appeals should of remanded me back for re-sentencing "nunc pro tunc" to prevent the use of my subsequent offense and conviction for Assault second degree in the calculation of my offender score at re-sentencing.

The legal term "nunc pro tunc" means: "Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, I.E., with the same effect as if regulary done."

"Nunc pro tunc merely describes inherent power of court to make its record speak the truth. I.E., to correct record at later date to reflect what actually occurred at trial."

"Nunc pro tunc signifies now for then, or, in other words, a thing is done now, which shall have same legal force and effect as if done at time when it ought to have been done." Quoting Blacks Law Dictionary, Sixth Edition.

28.

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