

SUPP-Response-PRP

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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY [Signature]  
DEPUTY

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

Consol. to  
36104-3

In Re Personal Restraint of	)	
	)	NO. 334375-4-II
FOREST EUGENE AMOS	)	SUPPLEMENTAL RESPONSE
	)	
	)	
	)	

1. **IDENTITY OF MOVING PARTY**

The State of Washington asks for the relief designated in Part II.

2. **STATEMENT OF RELIEF SOUGHT**

The State moves for a dismissal of this petition pursuant to RAP 18.14, RCW 10.73.090 and RCW 10.73.140.

3. **FACTS RELEVANT TO MOTIONS**

Amos was sentenced on 25 April 2000 and resentenced on 12 September 2005 on his guilty pleas. Report of Proceedings at his resentencing is attached as Appendix A. Report of Proceedings at formal entry is attached as Appendix B. As can be seen, he received an exceptional sentence below the standard range. This personal restraint

petition was filed 10 January 2006.

**4. GROUNDS FOR RELIEF AND ARGUMENT**

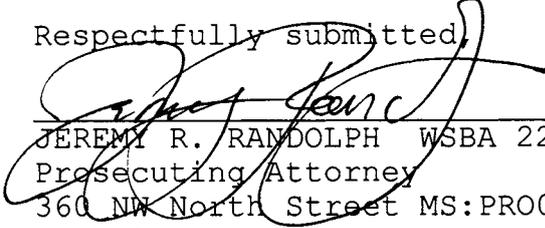
Amos does not have either a constitutional right or a statutory right to appeal his sentence. He waived his right to appeal at the time of his guilty pleas. He may not appeal a standard range sentence or an exceptional sentence downward. RCW 9.94A.585.

If this Court chooses to consider this matter as a belated appeal it is submitted that an inquiry should be made as to whether good cause exists for the 120+ day delay from date of resentencing before filing this action. The time for filing a direct appeal of right having long past, Amos does not have a right to appointed counsel to prosecute this matter whatever it is designated. *State v. Forrest*, 125 Wn.App. 703, 707-08, (2006). For the reasons set out in the State's initial Response and herein, this petition should be dismissed as baseless without the necessity of oral argument. Pursuant to RAP 14.2 and 14.3 and RCW 10.73.160, the State respectfully requests that petitioner be required to pay all taxable costs of this PRP, including

the cost of the reproduction of briefs, verbatim transcripts, clerk's papers, filing fee, and statutory attorney fees. *State v. Blank*, 131 Wn. 2d 230, 930 P.2d 1213 (1997).

Dated this 25<sup>th</sup> day of September, 2006.

Respectfully submitted,

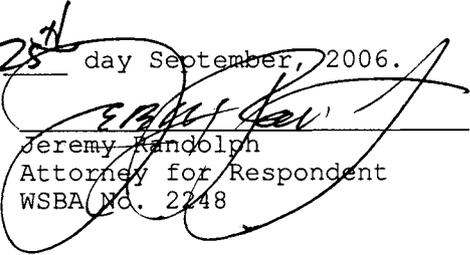
  
\_\_\_\_\_  
JEREMY R. RANDOLPH WSBA 2248  
Prosecuting Attorney  
360 NW North Street MS:PRO01  
Chehalis, WA 98532-1900  
360.740.1240

CERTIFICATE

I certify that on 25<sup>th</sup> day of September 2006 I mailed a copy of the foregoing Supplemental Response by depositing same in the United States Mail, postage pre-paid, to the following parties at the addresses indicated:

Forrest Eugene Amos  
Inmate No. 809903  
Washington State Reformatory  
P.O. Box 777  
Monroe, WA 98272

DATED this 25<sup>th</sup> day September, 2006.

  
\_\_\_\_\_  
Jeremy Randolph  
Attorney for Respondent  
WSBA No. 2248

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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
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**APPENDIX A**

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

**RECEIVED**  
MAR 15 2006

STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) **LEWIS CO. PROS. ATTY.**  
 ) SUP. NO. 00-1-00033-7  
 vs. ) APPEALS NO. 34375-4-II  
 )  
 FORREST EUGENE AMOS, )  
 )  
 Defendant.)

VERBATIM REPORT OF PROCEEDINGS  
July 19, 2005  
Resentencing

A P P E A R A N C E S

For the State: JEREMY RANDOLPH  
Lewis County Prosecuting  
Attorney  
Chehalis, Washington

For the Defendant: PRO SE

Presiding Judge: RICHARD L. BROSEY  
Dept No. 3

Kellie A. Smith, RPR, CCR  
Official Court Reporter  
Lewis County Superior Court  
Chehalis, Washington 98532  
(360) 740-2658

CCR #SM-IT-HK-A225J5



1 with that, but I attempted to bring it here and it  
2 didn't get down here. If the Court wishes to make a  
3 further Faretta Inquiry to make sure the record's clear,  
4 I have no objection to that.

5 THE COURT: Is that your true and correct  
6 name, Forrest Eugene Amos?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Randolph, the state's ready to  
9 proceed?

10 MR. RANDOLPH: The state's ready to proceed,  
11 yes.

12 THE COURT: Mr. Amos, are you ready to  
13 proceed?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: As I understand it, and  
16 notwithstanding my hopes to the contrary, the original  
17 Mr. Amos's letter/memorandum, dated July 2nd, is not in  
18 the court file, but as I understand it, basically  
19 Mr. Amos is making two claims. First of all, that  
20 there's a merger here and also that there's same  
21 criminal conduct. The matter's on for resentencing by  
22 virtue of the Court of Appeals disallowing prior  
23 juvenile convictions that were committed before he was  
24 15 years of age, as I remember.

25 MR. RANDOLPH: That's correct, Your Honor.

1 THE COURT: All right. What's the state's  
2 position?

3 MR. RANDOLPH: The state's position is that  
4 the state of record has just succinctly stated our  
5 position. The Court of Appeals, in the order partially  
6 granting the personal restraint petition, based on the  
7 state's concession that two prior juvenile offenses that  
8 occurred on May 2nd, 1997, prior to Mr. Amos turning age  
9 15, not be counted according to the decision in *in re*  
10 *LaChapelle*, which is a companion case to *in re Westfall*  
11 of this county, 153 Wn. 2d 1, period. Mr. Amos did  
12 present to the Court of Appeals in his initial petition  
13 double jeopardy issues. That issue was stayed by the  
14 Court of Appeals pending the decision of *State v.*  
15 *Freeman*. However, Mr. Amos withdrew or asked the Court  
16 to not consider the double jeopardy issues, and Court of  
17 Appeals took him up on that offer, and the only issue  
18 decided by the Court of Appeals is that the two prior  
19 to -- the two offenses that occurred prior to July 1,  
20 1997, may not be counted.

21 State's position is that we are here for sentencing  
22 on a plea agreement. Mr. Amos entered into two plea  
23 agreements to be exact. Number one, he entered into a  
24 plea agreement that would have resulted in substantially  
25 less prison time if he testified truthfully involving

1 his co-participants. He was unable to pass a polygraph  
2 examination, and as the Court knows, the state will not  
3 use witnesses who are not truthful. The plea agreement  
4 provided that if he didn't comply with that plea  
5 agreement, he would be facing actually more time than  
6 what the state recommended in this case. My  
7 recollection is that it was -- the top end on robbery  
8 was 179 months. He entered into a second plea agreement  
9 in which he agreed to plead to the charges before Your  
10 Honor today in exchange for an agreed recommendation of  
11 120 months. For him to sit in this courtroom or to  
12 write letters to the Court of which, for the record, we  
13 got the brief thing, whatever it's called, letter, dated  
14 July 2nd. We received it at 1430 hours, give or take,  
15 yesterday afternoon. It's my understanding Your Honor  
16 attempted to get that to counsel. However, there wasn't  
17 anybody here to copy it. I understand that. If  
18 Mr. Amos had complied with the court rules, that  
19 wouldn't have been a problem. We would have had it a  
20 week ago. It doesn't raise anything particularly except  
21 whining.

22 Mr. Amos made a deal. He doesn't like the deal. He  
23 is trying to renege on the deal. He's got one of two  
24 choices. Either he rolls with the Court the agreement  
25 that he made beforehand or the state is going to ask

1 leave of the Court to ask that his guilty pleas be  
2 stricken and we go back to ground one where he'd be  
3 facing somewhere in the ballpark of 220 months. It's as  
4 simple as that. To come in and start whining about same  
5 criminal conduct and complaining about double jeopardy  
6 issues when he agreed in the calculation of his offender  
7 score in open court before Your Honor his breach of the  
8 plea agreement.

9 And it cuts both ways. The state is pilloried by  
10 the appellate courts if they do anything whatsoever that  
11 appears to be going back on the plea agreement. Several  
12 members of the Supreme Court have received, almost  
13 encouraged, such activity, but the majority of the  
14 appellate courts make it very clear that the agreements  
15 cut both ways. So the first issue before the Court is  
16 whether or not Mr. Amos wants to stand before this Court  
17 based upon his guilty pleas.

18 The document -- and I only got through the first  
19 couple of pages, but the document that he filed with  
20 Your Honor indicates he doesn't want to withdraw his  
21 pleas to the charges. So he stands convicted of count  
22 one, burglary in the first degree; count two, robbery in  
23 the first degree; count three, assault in the second  
24 degree with a firearm enhancement; count five, theft of  
25 a firearm; and count six, unlawful possession of a

1 firearm. The state withdrew the firearm allegation as  
2 relates to the robbery, which, as Your Honor knows, is a  
3 five-year enhancement rather than a 36-month  
4 enhancement, so we gave up a considerable amount.

5 The Court's decisions are very clear that if a  
6 person reneges on their plea agreement and tries to get  
7 out of it, the state is given the opportunity to, at the  
8 very least, refile the charges with all the appropriate  
9 enhancements that appeared prior to the guilty plea  
10 process. However, we're prepared to proceed to  
11 sentencing on the charges before the Court.

12 The state has calculated Mr. Amos's offender score.  
13 First we'd ask the Court to make a finding that count  
14 one and count two, as agreed by the state and the  
15 defendant at the time of the initial sentencing, were in  
16 fact same criminal conduct. We'd ask the Court to make  
17 a further finding, as Your Honor has already done, that  
18 none of the other crimes are same criminal conduct with  
19 burglary or the robbery charge. We're asking the Court,  
20 as was done beforehand, to make a special finding that  
21 the firearm was used on the class B felony, count three,  
22 assault in the second degree. Asking the Court also  
23 make a finding that the conduct in count three, that is,  
24 assault in the second degree, was with a firearm by  
25 either Mr. Amos or by one of his companions.

1           And by way of background, Your Honor, the facts in  
2           this case are pretty simple. Four young men made a  
3           decision to go in and break into an older gentleman's  
4           house to obtain some medical marijuana from him. They  
5           went inside, beat the heck out of him, used  
6           walkie-talkies as clubs. During the course of that --  
7           and that was the purpose of the robbery, is to get to  
8           the marijuana -- they used the walkie-talkies as their  
9           instruments of force. After they obtained the  
10          marijuana, they then located and stole a pistol. One  
11          of -- either Mr. Amos or one of his cohorts then  
12          assaulted, in a separate act, the victim in an attempt  
13          to steal other items with that firearm.

14          Asking the Court to make it clear there's a  
15          distinction between the weapon and methodology used in  
16          the assault with a firearm, obviously, and the  
17          assaultive conduct in counts one and two, which involve  
18          beating on the man with the walkie-talkie. Mr. Amos, in  
19          his guilty plea form, admits that a walkie-talkie was  
20          used in the robbery. Obviously count one, which is a  
21          burglary under RCW 9.94A.589, the other crimes may be  
22          punished, and this Court has discretion to punish all of  
23          the other crimes separately from the burglary offense.

24          I have calculated Mr. Amos's offender score based  
25          upon where he stands before Your Honor today. On count

1 one, burglary in the first degree, he has 7.5 points.  
2 That's a seriousness level of seven offense. The  
3 standard range for 7.5 is 67 to 89 months. There are no  
4 enhancements. Count two, seven points. That's a level  
5 nine offense. A sentencing range of 87 to 116 months.  
6 There is no enhancement alleged or proven. Count three  
7 is seven points. That's a seriousness level four.  
8 Standard range is 43 to 57 months, and there is a 36-  
9 month enhancement. Count five, four points, and that's  
10 a Roman Numeral six seriousness level, with a range of  
11 31 to 41 months. No enhancement is possible. And  
12 number six is four points with a seriousness level of  
13 Roman Numeral seven, 36 to 48 months.

14 To get to how I got to that calculation, I will  
15 attempt, without boring the Court to death, to explain.  
16 Number one, Mr. Amos was convicted on May 16th, 1997, of  
17 two offenses. Those washed as of the time of this  
18 offense and cannot be counted under *in re LaChapelle* and  
19 are not counted for point purposes. Although,  
20 interestingly, they are now countable again, which just  
21 deepens the mystery of our sentencing process.

22 He was convicted on March 2nd, 1999, of burglary in  
23 the second degree as a juvenile, and September 1st,  
24 1998, of malicious mischief in the second degree.  
25 Against the burglary, the malicious mischief counts as

1 one half point. The burglary in the second degree  
2 juvenile conviction counts as one whole point.

3 Mr. Forrest Amos pled guilty and a guilty plea was  
4 accepted by the Walla Walla Superior Court on June 20th,  
5 2005, of the violent crime of assault in the second  
6 degree. Under RCW 9.94A.030, subsection 11, and I'll  
7 quote, "conviction" quote/end quote, "means an  
8 adjudication of guilt pursuant to titles 10 and 13, RCW,  
9 and includes a verdict of guilty, a finding of guilty  
10 and acceptance of the plea of guilty." That gives  
11 Mr. Amos seven and a half points on the burglary in the  
12 first degree. The burglary conviction as a juvenile  
13 only counts as a half point against the robbery, which  
14 is why upon both the robbery and the assault second  
15 there's only seven points, and of course the 7.5 rounds  
16 down to seven.

17 The Court of Appeals noted that there was an error  
18 in the scoring on the two nonviolent offenses, count  
19 five and count six, in that the other offenses had not  
20 been properly counted against it, and although the Court  
21 calculated those at two at the time, they actually  
22 should have been four. It really doesn't make a lot of  
23 difference in the final analysis because the state  
24 entered into a deal with -- an agreement with Mr. Amos  
25 to recommend to Your Honor 120 months. The state is

1 recommending 120 months with credit for all time served  
2 against these charges.

3 To get to 120 months, the state is going to ask the  
4 Court to impose an exceptional sentence downward on  
5 count two, robbery in the first degree, of 84 months  
6 rather than 87 months.

7 Because under 9.94A.533, sub 3, the firearm  
8 enhancement on the assault charge has to be run  
9 consecutively to the highest score, and to get to the  
10 120 months that we agreed on and dealt for, 84 and 36  
11 equals 120, and I do not feel comfortable recommending  
12 any more than what we previously recommended to Your  
13 Honor because we made a deal. And, of course, on the  
14 numbers down below on the theft of a firearm, as Your  
15 Honor's aware, the theft of a firearm and UPFs are not  
16 counted against each other because they run  
17 consecutively.

18 The state would submit that I spent a considerable  
19 amount of time doing these calculations, and arguments  
20 about same criminal conduct cannot be raised. They were  
21 not raised beforehand, there was no objection to these  
22 being counted at the initial sentencing. It's very  
23 clear, if they're not raised at the initial sentencing,  
24 they may not be raised. And then on the double jeopardy  
25 issue, he withdrew that from the Court of Appeals

1 consideration. He could have had possibly some guidance  
2 on that. But under the *Freeman* decision -- which this  
3 case was momentarily stayed, Mr. Amos withdrew it from  
4 the Court of Appeals -- *Freeman* case makes it very clear  
5 that if there's an assault in a robbery, that assault is  
6 not to be enjoined of the robbery. They may be counted  
7 separately. In this case we have a clearer situation  
8 where we have the assaultive behavior with  
9 walkie-talkies to facilitate the burglary and the  
10 robbery, and then later either Mr. Amos or one of his  
11 cohorts assaulted the victim with the firearm that they  
12 had stolen from the victim.

13 Thank you, Your Honor.

14 THE COURT: Just so there's no  
15 misunderstanding of the state's position, first of all,  
16 what you're saying is that Mr. Amos may not raise the  
17 issues that he's attempting to raise, i.e. merger and  
18 same criminal conduct, from the state's perspective.  
19 Secondly, even if the Court were to consider those  
20 issues as having been raised, assuming that I have the  
21 authority to do that, and it doesn't have to be done by  
22 a PRP to the Court of Appeals, that the -- as far as the  
23 state is concerned, there is no merger, there is no same  
24 criminal conduct.

25 MR. RANDOLPH: Right. That's our position.

1 Even if the Court were to consider -- I don't think the  
2 Court is foreclosed from doing it so much as Mr. Amos is  
3 foreclosed from being able to bring it up any time he  
4 wants to. But if the Court feels that it's appropriate  
5 -- because I don't think the Court is foreclosed from  
6 considering. The Court has the authority to make a  
7 determination on those issues. Although I think there  
8 is somewhere in the law of the case issue as it relates  
9 to same criminal conduct, Your Honor has already made a  
10 finding that they're not same criminal conduct. He's  
11 already agreed they're not same criminal conduct. The  
12 problem with these are is these people -- and after 30  
13 some years now I should know better. I'm not dealing  
14 with a banker or gentleman. I'm dealing with a person  
15 who's been denominated by society as a criminal, so I  
16 should expect on a regular basis, and as Your Honor will  
17 see from our guilty plea forms and from our stipulations  
18 on prior record, every time we get one of these things  
19 from the prison system where they're trying to withdraw  
20 all or part of their guilty plea, we try to amend to  
21 deal with these in the future. And Mr. Amos's case, he  
22 made it clear in his guilty plea that he wasn't  
23 objecting to the calculation of the offender score.

24 Neither he nor I could have predicted *in re*  
25 *LaChapelle*. In fact, when I was arguing it, I thought I

1 was winning. But obviously it was a five/four decision  
2 the other way. That's something that's outside of Your  
3 Honor's control, it's outside of Mr. Amos's or our  
4 control. All the other matters were clearly within the  
5 control of the sentencing coordinating parties at the  
6 time of the plea and sentencing. Those issues weren't  
7 raised. They shouldn't be considered at this time, and  
8 even if considered, I think that there's more than  
9 sufficient evidence before this court that the other  
10 crimes are not same criminal conduct, there is not a  
11 merger issue. The only merger that the state concedes,  
12 purely from the standpoint of sentencing process, was  
13 that the burglary and robbery were intertwined enough  
14 that they should be counted as same criminal conduct.

15 THE COURT: The original sentencing score on  
16 the original judgment listed an offender score on count  
17 one of seven.

18 MR. RANDOLPH: Yes, Your Honor.

19 THE COURT: You now list it as seven and a  
20 half.

21 MR. RANDOLPH: Because he picks up two points  
22 for his new assault conviction. Loses one -- loses one,  
23 and I think that this was underscored. I think it  
24 should have been a 7.5. What the state's argument is is  
25 that he's right back to where he was. With the assault

1 second, he picks up two points, and he lost 1.5. That's  
2 what it was.

3 THE COURT: All right. Anything else from the  
4 state?

5 MR. RANDOLPH: No, Your Honor. Not at this  
6 time.

7 THE COURT: Now, Mr. Amos, first and foremost,  
8 you had a hearing before the court commissioner back on  
9 July the 12th, and at that time Mr. McConnell, who had  
10 been appointed as your counsel for this proceeding, was  
11 allowed to withdraw and you were allowed to represent  
12 yourself.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, there's nothing wrong with  
15 representing yourself, but I need to ascertain and make  
16 sure that you understand exactly what it is you're  
17 doing. It is your wish to continue to represent  
18 yourself?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I'm aware, from what you wrote me,  
21 that apparently you and Mr. McConnell had some degree of  
22 difficulty.

23 THE DEFENDANT: Yes. Mr. McConnell seemed to  
24 be -- seemed to be losing motions that I wanted him to  
25 file pursuant to my resentencing on merger and same

1 criminal conduct. All of a sudden the U.S. Mail, or his  
2 office, one of the two, because when I came back from  
3 Shelton, I made sure and contacted the person that sends  
4 out legal mail. All three legal letters back to back to  
5 back sent out on the same date were sent to his office,  
6 the same address, so on and so forth, and Mr. McConnell  
7 seemed to be at a loss on every issue, not even knowing  
8 the facts of the case. Even last week when that  
9 occurred, he did not even have my court record or any of  
10 the facts of the case with him.

11 THE COURT: Okay. I understand that. What  
12 I'm -- I'm not so much concerned with the fact that  
13 Mr. McConnell is out as the fact that you're here before  
14 me representing yourself, and this is a serious matter,  
15 because in your pleadings you've taken the position that  
16 there is same criminal conduct, that there is merger,  
17 and what you've handed up this morning, suffice it to  
18 say, your determination of prior criminal history points  
19 and the prosecutor's are, shall we say, at odds.

20 THE DEFENDANT: Yes.

21 THE COURT: So I want to make certain that you  
22 do understand that you're representing yourself, and if  
23 there's any question about where you stand legally, in  
24 as much as the issues that concern the Sentencing Reform  
25 Act, some of the interplay of some of the decisions that

1 have been made by the United States Supreme Court, and  
2 the Court of Appeals, those are highly technical issues,  
3 and I've had -- for what it's worth, I've had deputy  
4 prosecutors and experienced lawyers stand before me and  
5 they can't get it right numerous times. So if there's  
6 any question in your mind about the interplay of this,  
7 and if you want representation, albeit not Don  
8 McConnell, but if you want representation to help you  
9 out and assist you in any way in respect to your  
10 argument on merger and same criminal conduct and for  
11 that matter prior criminal history, I will not hesitate  
12 if you ask to appoint competent counsel to assist you.  
13 That would necessarily probably entail that we would  
14 continue the hearing, but you're here anyway, and I'm  
15 not opposed to doing that. So I'll give you that option  
16 if that's what you want to do. I'm aware from what  
17 you've filed that you've done some research yourself,  
18 but I think you're probably at somewhat of a  
19 disadvantage while you're here because I don't think you  
20 have access to the same resources here that you had when  
21 you were at Shelton or anywhere else in the state's  
22 system.

23 THE DEFENDANT: Your Honor, I think from the  
24 letter that I filed, which I did -- I sent the same copy  
25 of the letter to Mr. Randolph's office the day I sent

1 your letter out, so he's had ample notice with that  
2 letter. I believe in that letter I've explained my  
3 point and explained the decisions and the law in  
4 accordance with my facts, so I think I can proceed by  
5 myself.

6 THE COURT: All right. Do you have any  
7 question at all about your right to be represented by  
8 counsel?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: And you're voluntarily waiving  
11 that and choosing to proceed yourself?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you believe that you have  
14 sufficient skill and expertise to be able to do this  
15 given what you've done heretofore since your conviction?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And the court  
18 commissioner did go through a long discussion with you,  
19 did she not, relative to the issue of representation or  
20 self-representation back on July the 12th?

21 THE DEFENDANT: Yes. She made sure that I did  
22 all this and got this back on my own legal research and  
23 so on and so forth.

24 THE COURT: Okay. All right. Now, the  
25 prosecutor, first of all, takes the position that you

1 can't even raise the issue of same criminal conduct and  
2 merger because of the fact that you agreed with the 120  
3 months that was imposed the first time around. In  
4 essence, you didn't raise the issue of same criminal  
5 conduct the first time, so you can't raise it now. You  
6 didn't raise the issue of merger, so you can't raise it  
7 now. Do you have a response to that?

8 THE DEFENDANT: Yes, Your Honor. First off,  
9 I'd like to say that when I withdrew my merger claim in  
10 my personal restraint petition, I notified court on why  
11 I was withdrawing that claim and I sent the same letter  
12 to Mr. Randolph's office notifying the Court of why I  
13 withdrew that claim, and the only reason was because of  
14 my pending charge in Walla Walla County. I was about  
15 ready to go to trial, and I wanted to get this finished  
16 before then -- beforehand. Plus, I did not know whether  
17 *Freeman* was going to be held in my favor or not. I  
18 didn't know anything about it. Also, I explained to  
19 them that I can obtain the same relief upon resentencing  
20 under the state's sentencing procedure at resentencing  
21 the invalid judgment and sentence by the same criminal  
22 conduct analysis, considering everything same criminal  
23 conduct. That was the only reason that I withdrew the  
24 claim, and that's noted in the letter, and that's why  
25 they allowed me to withdraw the claim.

1           THE COURT: So as far as you're concerned, you  
2 are not foreclosed on the issue, and you're not  
3 precluded from making the argument?

4           THE DEFENDANT: No. And as far as I'm  
5 concerned, too, is the plea agreement does not foreclose  
6 me from making the argument as they found in *in re*  
7 *Butler*, 24 Wn. App., that you never waive a  
8 constitutional claim despite the plea agreement being  
9 beneficial to you, because the state should have never  
10 constitutionally prosecuted you for that crime in the  
11 first place. And also in *in re Call*, they made it clear  
12 that if the plea record does not know that you knowingly  
13 waived that right, that even though in *in re Call* the  
14 respondent was not challenging the validity of the  
15 guilty plea, but challenging the length of his sentence,  
16 which in -- it can be raised on a first-time appeal or  
17 in a PRP if it's in violation of the state sentencing  
18 procedure. And there's nothing that elected in  
19 Mr. Call's argument that he intended to allow or  
20 intended to allow the Court to count his two prior Texas  
21 convictions against him even though they washed out  
22 under the SRA. Under my argument, there's nothing in  
23 the plea deal or the court record that shows that I  
24 intended or I knew that the crimes would have been the  
25 same criminal conduct if it was brought up. I was --

1 back then I was represented by incompetent counsel in  
2 the first place, which sent letters of admission  
3 admitting that we're going to juggle -- and this has  
4 been not only admitted by her, but other Lewis County  
5 public defenders. When they enter into a plea agreement  
6 with the state, they juggle their points to equal the  
7 number of points necessary to get up to where the  
8 state's willing to give you a plea recommendation for.  
9 Which isn't even in accordance with the sentencing  
10 procedure. As far as I'm concerned, that's the present  
11 sentencing practices and a manipulation of the  
12 Sentencing Reform Act by Lewis County public defenders  
13 and the prosecutors, in my case. As far as I'm  
14 concerned, same criminal conduct for theft of a firearm  
15 and robbery in the first degree and burglary in the  
16 first degree shall be considered.

17 In my co-defendant's case, Mr. Collett, your  
18 courtroom found his theft of a firearm and burglary in  
19 the first degree on your discretionary (sic) finding  
20 that it was same criminal conduct, so I don't see how a  
21 discretionary (sic) issue can be found in a  
22 co-defendant's case and not in the other when it's based  
23 on the same facts, same intent, same victim, and so on  
24 and so forth. And I believe that there's a number of  
25 reasons why I should obtain the same relief and the same

1 criminal -- the same criminal conduct finding found in  
2 Mr. Collett's case as he should be able to obtain the  
3 same criminal conduct finding that was found in my case  
4 of robbery in the first degree and burglary in the first  
5 degree tomorrow when he comes forth before you for  
6 resentencing. But the reasons are is the nonmutual  
7 collateral estoppel doctrine would require that a  
8 discretionary (sic) finding by a judicial officer be  
9 found in co-defendants' cases in the same manner as the  
10 Supreme Court had said in *State vs. Costen*, 152 Wn. 2d,  
11 where they relied on a New Jersey Supreme Court state  
12 ruling where one judge found in a co-defendant's case  
13 that there was a suppression of evidence based on  
14 unlawful search and seizure. Collateral -- nonmutual  
15 collateral estoppel barred them from making a different  
16 discretionary (sic) finding in the other  
17 co-defendant's case. That's one issue why I should be  
18 able to obtain same criminal conduct on the theft of a  
19 firearm and robbery in the first degree and burglary in  
20 the first degree. Also, equal protection of the law for  
21 people similarly situated would require the same  
22 finding. There's nobody that's going to be situated --  
23 similarly situated pertaining to facts and law other  
24 than co-defendants facing the same facts and the same  
25 law.

1 THE COURT: All right. Well, let's start by  
2 looking at count number three, because Mr. Randolph  
3 concedes and I already found that the action in counts  
4 one and two was in fact the same criminal conduct. So  
5 tell me why assault in the first degree is the same  
6 criminal conduct as the burglary first degree and  
7 robbery first degree.

8 THE DEFENDANT: It's assault in the second  
9 degree, Your Honor. And the reason why is because of  
10 the decision in *State vs. Freeman*, which was decided  
11 March 17th, '05. The Court concluded saying that  
12 assault second degree will always merge into robbery in  
13 the first degree for double jeopardy purposes unless the  
14 state proves an independent purpose or effect. They  
15 can't rely on sparse distinctions between ongoing  
16 criminal conduct and so on and so forth. There is  
17 nothing -- even in Mr. Randolph's response brief,  
18 fighting these issues in my personal restraint petition,  
19 he claims that the later -- "In the later stages of the  
20 robbery, ongoing robbery, that for further theft of  
21 items, Amos or one of his confederates assaulted the  
22 person to steal more items from the victim." It's my  
23 claim that that is a fictional argument and is not based  
24 on sworn statements on his affidavit of probable cause  
25 to support the charges in the first place, nor is it

1 based on my plea statement, or the case charged. I pled  
2 guilty in my plea statement to assaulting the victims  
3 with a deadly weapon, plus I was in possession of a  
4 firearm. That's exactly what my -- at the time of the  
5 assault. It does not necessarily say that the assault  
6 actually was committed by hitting the victim with a  
7 firearm. That's not the plea I pled guilty to. And nor  
8 is it alleged by the victim in the case, and  
9 Mr. Randolph's or whoever was the prosecutor at this  
10 time, Mr. Blair back then, in his affidavit of probable  
11 cause to support the charges. And even if that  
12 argument, as I argued in the letter I sent the Court  
13 would suffice the Court, it still wouldn't survive the  
14 interpretation on *Freeman's* -- the *Freeman* decision,  
15 which requires an independent purpose or effect.

16 THE COURT: Well, I remember taking the plea,  
17 because I took -- this was an unusual case because you  
18 pled to everything except count three, and then you came  
19 back and there was a supplemental plea to count three,  
20 and I took that plea.

21 THE DEFENDANT: Yes.

22 THE COURT: And I remember specifically that  
23 -- if I'm not mistaken, and I'd have to check the  
24 record, but I have a pretty good memory usually, I think  
25 Mr. Blair at the time was asserting that it was an

1 assault with a firearm, and you were adamant at the time  
2 that the assault two was with a walkie-talkie. And as a  
3 matter of fact, that's written into the plea statement,  
4 that it was an assault with a walkie-talkie, not an  
5 assault with a firearm. So given that the firearm had  
6 nothing to do with the assault second, it was a  
7 walkie-talkie assault, and it was done to facilitate  
8 Mr. Hull, the victim, disclosing to you and your  
9 codefendants as to the location of his medical  
10 marijuana, which, as I understand the probable cause  
11 statement, he subsequently showed you was under his bed.  
12 His Ruger pistol, which was subsequently stolen, was in  
13 his nightstand, and then thereafter, after being  
14 assaulted further, disclosed that there was more  
15 marijuana, in fact, growing plants, in the closet, at  
16 least one of which was taken. So again, tell me how  
17 this assault second is the same criminal conduct or  
18 merges into this robbery given that it was not -- given  
19 that it was done in the manner it was.

20 THE DEFENDANT: Because it was an ongoing  
21 crime of robbery. He's taken two incidents, two  
22 assaults, and split -- and split it into two separate --  
23 to support two separate crimes basically, which the *Ohio*  
24 *vs. Brown*, United States Supreme Court, says that the  
25 Fifth Amendment isn't such a fragile guarantee that

1 prosecutors can arbitrarily split up ongoing criminal  
2 conduct based on sparse indistinctions between the  
3 crimes or the charges, and that's precisely what it is.  
4 It's an ongoing crime, which we intended to go there and  
5 steal Mr. Hull's marijuana. Because he would not give  
6 up -- it says right here, Mr. -- after we first  
7 assaulted him and he showed us where he kept marijuana  
8 under his bed, which was in -- and his pistol in the  
9 nightstand next to his bed, it says that "Mr. Hull  
10 stated that the males asked him where the rest was and  
11 he told them that he didn't have any more." That right  
12 there is grounds to -- under robbery in the first  
13 degree, is to use violence or first force necessary to  
14 get him to -- I mean, that's what you do when you commit  
15 a robbery in the first degree, is you use a force to  
16 obtain what you intend to go there for, which is to  
17 steal, which was his marijuana, which -- and then he  
18 said -- "Mr. Hull stated they hit him again and asked  
19 him where the other handgun and marijuana were, because  
20 they knew he had had more." That was the whole intent  
21 of going there, was to steal his grow operation. And  
22 then he said -- "Mr. Hull stated that he showed them  
23 where the marijuana grow was in his closet and they took  
24 a large marijuana plant." That's all ongoing criminal  
25 conduct. There's no separate independent purpose or

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4 committing the robbery, it furthered the robbery. It  
5 furthered everything. And then it says, "the four then  
6 left the residence with the marijuana and the Ruger  
7 pistol." He was never assaulted after that.

8 THE COURT: Well, tell me how the count five  
9 and count six, the theft of a firearm and the unlawful  
10 possession of a firearm, somehow merges same criminal  
11 conduct?

12 THE DEFENDANT: I'm not alleging that count  
13 five or six be same criminal conduct with each other,  
14 because the *State vs. Freeman* -- I mean, *State vs.*  
15 *Haddock* in 141 Wn. 2d, requires that unlawful possession  
16 of a firearm in the first degree cannot be considered  
17 same criminal conduct with a theft of a firearm even  
18 though the firearm was the same because the public is  
19 the victim at large. I'm saying that the theft of a  
20 firearm should be same criminal conduct with my burglary  
21 in the first degree and robbery in the first degree  
22 because it was found in a discretionary (sic) issue in  
23 Mr. Collett's case, which was a co-defendant.

24 THE COURT: Well, given that you went there  
25 with the admitted purpose of stealing his growing

1 marijuana, how is it the same criminal conduct?

2 THE DEFENDANT: We went there to steal a  
3 firearm and marijuana. There's -- I mean, we went there  
4 to commit a robbery against his marijuana and his  
5 firearm, and it's the same criminal intent. It occurred  
6 at the same time. A theft and a robbery is the same  
7 intent. The only difference -- the only essential  
8 difference is the use of force to commit the robbery.  
9 The theft of a firearm occurred in the midst of the  
10 robbery with the robbery of marijuana.

11 THE COURT: All right. Do you want to address  
12 the issue of criminal scoring?

13 THE DEFENDANT: Yes. As you see, my offender  
14 score, I shall be two points based on all the same  
15 criminal conduct and/or merger, and it lists -- and the  
16 only current offense in this case that shall be counted  
17 against me because of same criminal conduct or merger  
18 shall be the unlawful possession of a firearm in the  
19 first degree as one point. I don't believe because a  
20 judgment and sentence had not been rendered on the  
21 postconviction in Walla Walla County that the two  
22 additional points for the separate assault conviction  
23 that just occurred in prison should not be counted  
24 against me because it's a postconviction. Mr. Randolph  
25 should not be able to prejudice me because of his

1 manipulative tactics from 2000 to inflate my offender  
2 score and use a postconviction. That's -- he should  
3 only use prior convictions from when this judgment and  
4 sentence was entered, which was April 25th, 2000.  
5 There's nothing that gives him the statutory authority.

6 THE COURT: Are you telling me you haven't  
7 been sentenced by Walla Walla County?

8 THE DEFENDANT: No. I've only entered a plea.  
9 They have not sentenced me on that case yet. There's no  
10 reason why the sentence could be pronounced. I mean,  
11 there still may be questions why that sentence may not  
12 be pronounced, whether it's jurisdictional issues or so  
13 on and so forth. Or a deferred sentence. You never  
14 know what Mr. Zagelow's going to do to my sentence.

15 THE COURT: A deferred sentence for an  
16 assault?

17 THE DEFENDANT: You never know.

18 THE COURT: By somebody who's in the  
19 institution?

20 THE DEFENDANT: I mean, all I'm saying is you  
21 never know, Your Honor. It's not a valid J&S now. He  
22 shouldn't be able to use that postconviction. There's  
23 no statutory authority allowing him to use a  
24 postconviction.

25 THE COURT: I've read your material obviously.

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Anything else?

THE DEFENDANT: That's about it, Your Honor.

THE COURT: Mr. Randolph, rebuttal?

MR. RANDOLPH: As I said at the outset, when you deal with a criminal, you should expect criminal conduct. The simple fact is the state manipulated his offender score to cut his sentence to less than half. Let me repeat that. Less than half of what he was facing. Last time I looked at this, and I'll do it again, he was facing 344 to 402 months in prison on his assault one conviction, to which he initially pled, because Your Honor was correct. On February 16th he pled guilty, among other things, to count three, assault in the first degree, and he was facing 402 months. He got a sentence -- and I'm not totally sure why the state was so kind, quite frankly, because he did not fulfill his part of the plea bargain as relates to being available for testimony fruitfully. He's already evidenced some difficulty in the honesty field. The state allowed him to plead to assault second, which I believe would have been an amended charge. I think a third amended information was filed on April 25th, thus lowering his exposure, at least on that assault one, but his exposure on the other cases were still 179 to 231 months. And if you crank that down, because again, he

1 was facing the enhancement on the robbery and/or on the  
2 burglary first of 60 months. The state manipulated his  
3 offender score down by two years or three years -- or  
4 I'm sorry, two years -- down to 36 months for an  
5 enhancement. They manipulated his score down from close  
6 to 400 months down to a total of 120 months, and yet  
7 he's still not happy. But the long and short of it is,  
8 a person who has this criminal background -- and the  
9 Supreme Court has not said that this court has to close  
10 its eyes and pretend like those convictions that are  
11 quote/unquote, "washed," don't exist if this person  
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19 to this Sentencing Reform Act, that people who do more  
20 grievous offenses with more grievous backgrounds should  
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14 state on numerous occasions has held that a conviction  
15 that occurs after the guilty plea -- and we submit that  
16 the statutory definition is pretty clear -- has to be --  
17 not may be -- has to be counted in the offender score.  
18 The most recent decision I came across, *State v. Clark*,  
19 which is 123 Wn. App. 515, which reaffirmed the  
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15 of the record, people do not get deferred sentences in  
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22 plus the usual community custody, and that, of course,  
23 sentence has to run consecutive to whatever's imposed in  
24 this case because that offense was committed after the  
25 judgment in this case while he was, quote, serving time.

1           We submit that our calculation of the offender score  
2           is A) generous to Mr. Amos. The alternative, Mr. Amos  
3           persists that the state move to set aside his guilty  
4           plea and then he can be facing assault one again. He  
5           can be facing 403 months.

6           THE COURT: Anything else?

7           MR. RANDOLPH: No, Your Honor.

8           THE COURT: As I stated already a couple of  
9           times, I have read Mr. Amos's materials. The original  
10          plea that was accepted by Judge Hall in this matter back  
11          on February 16th, 2000, was to different charges than  
12          ultimately Mr. Amos was sentenced on because there was a  
13          subsequent plea as to count three, a replea, as it were.  
14          I'm not sure that's a proper phrase. But there was a  
15          supplemental as to count three, which reduced the charge  
16          from assault first degree to assault second while armed  
17          with a firearm, and of course that led to the 36 months  
18          enhancement. The information charged in count one and  
19          count two, burglary first degree, in each instance, the  
20          allegation was that he was armed with a deadly weapon.  
21          In count one, the deadly weapon is not identified. It  
22          just says "deadly weapon," and then it goes on and makes  
23          the firearm allegation. In the robbery count, robbery  
24          two, it says that the defendant was armed with a deadly  
25          weapon, a walky-talky. Then the assault second, the

1 amended information charges -- well, the amended  
2 information still charges assault first, but it was a  
3 plea to assault second.

4 The statement that was made, "It was on January  
5 16th, 2000. I was in a person's building. I had  
6 permission to go in, but not to remain as long as I did.  
7 I went in with the intent to help my friend's take some  
8 marijuana. While we were there we assaulted Mr. Hull  
9 and caused great bodily injury," and it says, "with a  
10 deadly weapon, a walkie-talkie." And that's initialed  
11 by his then attorney Jody Backlund. "Stole marijuana  
12 and a gun. I've been convicted of a serious felony in  
13 the past and I cannot possess a gun."

14 I've already made a finding, and I will make again a  
15 finding as requested by the state, that counts one and  
16 two encompassed the same criminal conduct. With respect  
17 to the assault three in count number -- excuse me --  
18 assault two as reflected in count three, I do not find  
19 that that's the same criminal conduct as the robbery or  
20 the burglary. I am mindful of Mr. Amos's argument that  
21 it was basically just one continuous criminal  
22 enterprise, so to speak, but I don't think so. I think  
23 this was a gratuitous assault on Mr. Hull. It was not  
24 necessary to facilitate the robbery that was already in  
25 progress. There was, from my perspective, no need and

1           necessity to actually hit Mr. Hull with the  
2           walkie-talkies, specifically, to induce him to disclose  
3           the location of his medical marijuana. And accordingly,  
4           I reject the idea that count three constitutes the same  
5           criminal conduct or somehow merges into counts one and  
6           two. Simply put, it's quite conceivable to me that  
7           having decided to enter and/or remain unlawfully in  
8           Mr. Hull's residence with the intent to commit a crime  
9           and being armed with a deadly weapon, the -- and having,  
10          in essence, threatened or used to -- or attempted to  
11          threaten Mr. Hull with the use of immediate force, fear  
12          of violence or injury to obtain his property, that  
13          encompasses the robbery and that encompasses the  
14          burglary. That does not encompass the assault in the  
15          second degree. There was no reason, and it was simply a  
16          gratuitous assault, as far as I'm concerned, to actually  
17          hit Mr. Hull with the walkie-talkie.

18                 With respect to the firearm, again, the plea here  
19                 was to count five. Count five was theft of a firearm.  
20                 The theft of the firearm does not merge into the  
21                 burglary or the robbery. Again, there was no need or  
22                 necessity, as far as I can determine, to take the gun.  
23                 It was not done with the intent to -- the robbery and  
24                 the burglary were not done, according to Mr. Amos, with  
25                 the intent, at least initially, he said, to steal the

1 gun. It was done to take the marijuana grow, his grow,  
2 because they knew he had marijuana that he was growing  
3 for his medical use. I seem to recall in the back of my  
4 mind that there was some statement made by perhaps the  
5 prosecutor at the time that the medical marijuana was  
6 being used because Mr. Hull had had a stroke or a heart  
7 attack or something that necessitated that he use that  
8 stuff. In any event, they knew he had it. That's what  
9 they went in there to take. They didn't go in there to  
10 take the gun. Taking the gun was kind of like a -- not  
11 exactly sure how to phrase it, but it was an inadvertent  
12 discovery, the end result of which is they took the gun,  
13 and subsequently, as I recall the state's argument,  
14 Mr. Hull was subsequently assaulted with the gun to  
15 induce him to disclose the location of the additional  
16 marijuana, which was growing in the closet. And of  
17 course, count six, unlawful possession of a firearm in  
18 the second degree, Mr. Amos, having been previously  
19 convicted in juvenile court of the offenses he'd been  
20 convicted of, could not lawfully possess a gun, so that  
21 one doesn't merge with anything and it's not the same  
22 criminal conduct.

23 So having said that -- and further, not having been  
24 provided with any authority to the contrary, I'm  
25 accepting the state's claim with respect to the

1 conviction out of Walla Walla County, that a plea is a  
2 conviction. Notwithstanding the fact that someone  
3 hasn't been sentenced, I can see all kinds of problems  
4 if in fact we get to the point where somebody says --  
5 the Court of Appeals, for example, or the Supreme Court  
6 starts saying, "Well, he hadn't been sentenced on this  
7 one, so therefore you can't count that." We're going to  
8 have all kinds of problems between counties as far as,  
9 "Okay, you sentence him first." "No, you sentence him  
10 first." Or perhaps even some collusion between counties  
11 to the effect that you sentence him first, because if  
12 you sentence him first, and then the other county  
13 sentences him first, perhaps you'll get higher time from  
14 the second county than the first. That leads to all  
15 kinds of problems, and I think Mr. Randolph's argument  
16 has merit. That's the reason that the statute is  
17 written the way it's written, which is basically a  
18 conviction is a conviction, notwithstanding the fact  
19 that the judgment and sentence has not been entered. So  
20 I will accept for the purpose of argument that the  
21 offender score as to count one is seven and a half;  
22 count two, seven; count three, seven; count five, four;  
23 and count six, four. And that includes the assault two  
24 conviction out of Walla Walla County. And that  
25 conviction out of Walla Walla County looks to me like

1 simply assault two, was not an assault two with a deadly  
2 weapon. There was no enhancement apparently.

3 In any event, the state's calculation with a --  
4 given that offender score and a seriousness level, their  
5 calculations as to count one was a standard range of 67  
6 to 89 months; count two, 87 to 116; count three, 43 to  
7 57, plus 36-month enhancement; count five, as I  
8 understood it, was 31 to 41; and count six was 36 to 48.

9 Are those correct, Mr. Randolph?

10 MR. RANDOLPH: Yes, Your Honor.

11 THE COURT: Be it the judgment of the Court  
12 Mr. Amos on count one will be sentenced to -- let's see  
13 here. 71 months on count one, 84 months on count two,  
14 and that's an exceptional sentence below standard range.

15 THE DEFENDANT: I object to that, Your Honor.

16 THE COURT: Well --

17 THE DEFENDANT: *Blakely vs. Washington* --

18 THE COURT: I have the authority to go below  
19 standard range. Even under *Blakely*.

20 On count three, the Court sentences Mr. Amos to 57  
21 months plus 36 months enhancement as required by law,  
22 which has to be served first. On count five, 38 months,  
23 and on count six, 48 months. The time on counts one,  
24 two, three, five and six is concurrent, and the 36-month  
25 enhancement will be served consecutive to and actually

1 prior to the balance of the time imposed, but it's  
2 specifically consecutive to the highest standard range,  
3 which is count two, which is 84 months, which gets us to  
4 120 months. And the reason for the Court imposing the  
5 exceptional sentence below standard range -- which, as  
6 far as I'm concerned, under all of the cases, including  
7 *Blakely vs. Washington*, I do have the authority to  
8 impose -- is to facilitate the plea bargain that the  
9 prosecuting attorney's office made with Mr. Amos back  
10 when the original sentence in this matter was pronounced  
11 by the Court back on April 25th of 2000. And of course,  
12 Mr. Amos gets credit for time served.

13 So as far as I'm concerned, Mr. Amos, at this  
14 juncture, you can, as I'm sure you will, make your  
15 arguments with respect to merger and same criminal  
16 conduct and anything else that you want to raise in the  
17 Court of Appeals.

18 THE DEFENDANT: All right.

19 MR. RANDOLPH: Thank you, Your Honor. Ask  
20 that the formal entry be set over, and I apologize, I  
21 don't have my calendar with me, but I think, except for  
22 today, just about any time between now and Thursday at 5  
23 o'clock.

24 THE COURT: Are you due to go back to Walla  
25 Walla? Is that where you're going?

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THE DEFENDANT: Yes.

THE COURT: So you probably want to get back there as soon as you can, I imagine?

THE DEFENDANT: Doesn't matter.

THE COURT: Well, the reason I'm asking is because if we can do formal entry between now and Thursday, then you'll go on Friday.

THE DEFENDANT: Yeah. They haven't even did -- set a sentencing date. It don't matter.

MR. RANDOLPH: To delay any fears of collusion, I've not spoken with the deputy prosecutor that handled this case over in Walla Walla for about a month. I was under the impression it was still pending trial on assault one with a deadly weapon --

THE COURT: Are they housing you in a Walla Walla County Jail, or were you still at the institution?

THE DEFENDANT: No. Still at the institution.

MR. RANDOLPH: He'd written a letter to Judge Zagelow complaining about the fact that he was being detained unlawfully at Walla Walla State Penitentiary pending this trial in that county. That's how I met him over the telephone, because he was claiming that Walla Walla was refusing to ship him to Lewis County, which, of course, was obviously not the case.

THE COURT: They were holding you just in

1 general population of max security? Not IMU?

2 THE DEFENDANT: Max in IMU.

3 THE COURT: Oh, you're in IMU?

4 THE DEFENDANT: Yeah.

5 THE COURT: Okay. I had a tour of that  
6 institution two years ago. That's not a pleasant place  
7 to be.

8 THE DEFENDANT: No, it's not.

9 MR. RANDOLPH: So do you want me to set this  
10 with the court --

11 THE COURT: I have time -- I have time  
12 tomorrow, I have time today, I have time tomorrow, I  
13 have time Thursday. Thursday, however, we have  
14 transport problems because --

15 MR. RANDOLPH: Tomorrow --

16 THE COURT: -- these officers have to  
17 transport to the calendar on Thursday, so I'd like --

18 MR. RANDOLPH: Should I set that with Susie  
19 then?

20 THE COURT: Get the paperwork done and set it  
21 with the court administrator. I'd like to get  
22 Mr. Amos's amended judgment and sentence done so he can  
23 be on his way and he can be dealing with the Court of  
24 Appeals.

25 THE DEFENDANT: Your Honor, how can I get a

1 copy of the court record, this proceeding right here?

2 THE COURT: First of all, when I do the actual  
3 signing, I will advise you of your appellate rights.  
4 That also will include, if you wish, appointment of  
5 counsel to assist you in appealing those portions of the  
6 decision that I just made that you feel are in error.  
7 There is a procedure that I'll explain to you when I go  
8 through your appellate rights as far as how you do that.  
9 All right?

10 THE DEFENDANT: All right.

11 THE COURT: So, Mr. Randolph, get that set up,  
12 and if at all possible, I'd like to do it other than on  
13 Thursday so we don't have problems with transport.

14 THE DEFENDANT: I think I can -- the  
15 paperwork's about 97 percent done. I just didn't want  
16 to --

17 THE COURT: Okay.

18 (Conclusion of proceedings.)

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C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF PIERCE )

I, Kellie A. Smith, Notary Public, in and for the State of Washington, County of Pierce, residing at Tacoma, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings, Ruling of the Court, was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the ^ proceedings heard before ^ ruling announced by Judge Richard L. Brosey on the ^ DAY day of ^ MONTH, 2005, at the Lewis County Courthouse, Chehalis, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public, in and for  
the State of Washington,  
residing at Tacoma.

**APPENDIX B**

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

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 ) NO. 00-1-00033-7  
 vs. )  
 )  
 FORREST EUGENE AMOS, )  
 )  
 Defendant. )

VERBATIM REPORT OF PROCEEDINGS  
September 12, 2005  
Formal Entry of Judgment and Sentence

A P P E A R A N C E S

For the State: JEREMY RANDOLPH  
Lewis County Prosecuting  
Attorney  
Chehalis, Washington

For the Defendant: PRO SE

Presiding Judge: RICHARD L. BROSEY  
Dept No. 3

Kellie A. Smith  
Official Court Reporter  
Lewis County Superior Court  
Chehalis, Washington 98532  
(360)740-2658

CCR #1950



1 argument, and I put in a motion to show that the court  
2 record, as dated for the first plea, is I pled guilty to  
3 one assault, and that assault was never assault with a  
4 firearm after the first assault to commit a robbery.  
5 That was -- the assault that I pled guilty to says on  
6 page 10 of the court record that as to second -- as to  
7 the second amended information, count III, "charging you  
8 with assault in the second degree, where it is claimed  
9 that on or about January 16th of 2000, in Lewis County,  
10 you intentionally assaulted Joe Hull with a deadly  
11 weapon with intent to commit a felony, robbery or  
12 burglary in the first degree, to commit thereof you were  
13 armed with a Ruger pistol, that being a firearm, and as  
14 RCW 9.94.110, which invokes provisions of 9.94.310,  
15 adding, as provided in 9.94.370, hard time for armed  
16 crimes. What is your plea?" And I pled guilty. That's  
17 in the court record on page 10 of our hearing. This was  
18 with you back in 2000. But Mr. Randolph's claim was  
19 this was a second or later-in-time assault done with the  
20 firearm, I assaulted Mr. Hull with a firearm. That is  
21 not what I pled guilty to when I pled guilty to count  
22 III. And, I mean, that's basically it. I've -- my  
23 theory is I should be able to withdraw this plea if the  
24 Court is going to accept Mr. Randolph's claim that I  
25 committed a second or later-in-time assault, because the

1 record doesn't support that I committed such an assault,  
2 nor did I plead guilty to such an assault.

3 **THE COURT:** Mr. Randolph?

4 MR. RANDOLPH: I've had an awful lot of time  
5 to think about this, Your Honor, and I don't think  
6 Mr. Amos has. I'm going to ask the Court to set this  
7 over one week for Mr. Amos to deal with reality. The  
8 reality is this: If I withdraw any objection to his  
9 withdrawing his guilty plea to count III in the second  
10 amended information, we go back to assault I with a  
11 firearm, which under the case he likes to cite, *State v.*  
12 *Freeman*, doesn't merge. He freely and voluntarily in  
13 February pled guilty to assault in the first degree  
14 while armed with a firearm before Judge Hall, and he's  
15 going to get out of the frying pan and he's going to be  
16 right in the middle of the fire. Quite frankly -- I  
17 think the record should be very clear on this -- a deal  
18 was struck with Mr. Amos, and the fact is, the initial  
19 deal that was struck by me is that he would not even be  
20 facing prison if he cooperated fully and he was in a  
21 position to testify truthfully. And as Your Honor is  
22 aware, when the state makes a deal for a person to  
23 testify, we have them placed on a polygraph or have a  
24 polygraph exam because we want to make sure that the  
25 testimony that they're presenting is in fact the truth.

1 We're not just trying to get somebody convicted. We  
2 want truthful testimony. And Mr. Amos blew that  
3 polygraph, lied on two important issues. One was the  
4 issue of whether or not he personally took the gun, and  
5 the other was whether or not he personally struck  
6 Mr. Hull. I think the comment of Mr. Underwood is most  
7 important. Mr. Amos, although very polite, doesn't seem  
8 to have any concept of truth. I don't think I've ever  
9 seen that from a polygraph operator. But the deal was  
10 struck, he pled guilty on February 16th, the year 2000,  
11 to six counts, one of which was assault in the first  
12 degree with a firearm. And he was facing on that  
13 charge, with a recalculation of his offender score, he  
14 was facing four times what he's facing today on assault  
15 with a firearm. Assault second with a firearm. If he  
16 withdraws his guilty plea -- and quite frankly, I don't  
17 object. If he wants to go ahead and withdraw his guilty  
18 plea, the firearm enhancements, as part of the deal we  
19 will withdraw our request to strike the firearm  
20 enhancements of count I, II, and as he pled guilty to  
21 the assault first, on the assault first. The firearm  
22 enhancement alone on those three crimes is going to be  
23 more time straight than he's got straight based upon a  
24 plea deal. Now, what happened is -- this is not --  
25 Mr. Blair was not reputed to be the most level person

1 and the most charitable person, but the plea was to  
2 those very serious offenses with firearm enhancements,  
3 and my recollection is it was going to be three times  
4 five years, 15 years just on firearm enhancements, flat  
5 time. He's looking at 10 with credit for good time  
6 scenario as a present. If he wants the 15 flat time,  
7 we'll withdraw our objection to his withdrawing the  
8 guilty plea and we'll go back to where we were and ask  
9 the Court to sentence him on his guilty pleas made on  
10 February 16th, but what happened is he flunked those  
11 polygraphs. We could not use him if we had to for trial  
12 purposes because he was not truthful. And the usual  
13 situation in our office, if a person fails to completely  
14 comply with the plea agreement, is that they're at  
15 square one, they're right at the beginning, which is  
16 facing all of the things that he pled to. In this  
17 specific case, I think Mr. Blair -- and I don't think --  
18 I know Mr. Blair talked to me, and because the initial  
19 cooperation by Mr. Amos got us the other three  
20 participants, we were in a position to prosecute those  
21 other three participants, and quite frankly, we didn't  
22 really know and we didn't have much of a lead on who did  
23 what until we captured Mr. Amos. And we didn't know who  
24 the other three were. So the long and the short of it  
25 was we felt he should get part credit for the first

1 steps, but we couldn't give him full credit because he  
2 was unusable as a witness because he was not truthful.

3 The long and the short of it is, if he wants to  
4 withdraw his guilty plea, we will withdraw our  
5 objection, we'll move to put the enhancements back on  
6 and have him sentenced for burglary in the first degree  
7 while armed with a firearm, robbery in the first degree  
8 while armed with a firearm, assault in the second degree  
9 while armed with a firearm, and I think we also let him  
10 withdraw his guilty plea or did not object to his  
11 withdrawing his guilty plea to count IV, possession of a  
12 stolen firearm, theft of a firearm, unlawful possession  
13 of a firearm.

14 The only reason we're back here is because of a  
15 state supreme court decision, not related to Mr. Amos's  
16 case per se, that dealt with juvenile -- or the  
17 sentencing and how you count juvenile offenses. And it  
18 doesn't do me a lot of good to agree with the sentence.  
19 It was a five/four decision. Simple fact is we're here,  
20 we've already done the resentencing, but if he wants to  
21 withdraw his guilty plea to the assault second, we won't  
22 object and he'll be looking at -- I don't know. Even if  
23 the Court were to give him zero days on each of the  
24 offenses, the enhancements alone, by my calculation,  
25 would be the five times three. But if Your Honor -- and

1 I did provide to Mr. Amos and to Your Honor copies of  
2 the transcript. The transcript is replete with the fact  
3 that Mr. Amos was anxiously trying to get down to 120  
4 months. And we face this constantly with these type of  
5 people. They then go -- once they've made a deal, once  
6 they've gotten the benefit of the deal, then they want  
7 to even chip at the deal even more. Simple fact is that  
8 the sentence was -- the offender score was correctly  
9 calculated the second time around by Your Honor, based  
10 upon the *Smith, Varga* and -- I can't even remember the  
11 other ones -- the *Cruz* decisions. And it still is up --  
12 he's right where he was at 120 months because he went  
13 out and committed an assault while he was in prison,  
14 which added two points. So that, of course -- I haven't  
15 even had a chance, Your Honor, because this just struck  
16 me, with the added two points and it being a prior  
17 assault in the second degree, the time that he's facing,  
18 I think before it was 402 months, which is more than 30,  
19 add the assault seconds. I don't know. So what I'm  
20 asking is for the Court to inquire of Mr. Amos if he  
21 wants to go ahead and proceed with this. I'm not  
22 threatening. I'm just trying to state the record. The  
23 record's very clear. He pled guilty to assault one with  
24 a firearm, robbery with a firearm, burglary with a  
25 firearm. If we pull out of the April 25th, 2000, deal,

1 we go back to the February 16th. Simple as that. And  
2 I'm not -- I don't want to be vindictive. I think, as  
3 Mr. Amos and his attorney did in the year 2000, that the  
4 120 months was a relatively fair sentence. If he wants  
5 more time and is placing himself in the situation of  
6 getting more time, there's not much more I can do about  
7 it if he really wants it that bad.

8 **THE COURT:** Well, would you like to comment on  
9 the idea that merely because the Court doesn't accept  
10 his argument on the application of the merger doctrine,  
11 that that's a basis to allow somebody to withdraw their  
12 plea?

13 **MR. RANDOLPH:** Well, Your Honor, again, I  
14 provided counsel with -- I think it's about a month-old  
15 case that of course goes back -- I think *State v. Taylor*  
16 is one of the few cases where the precedent has stated  
17 since the date the supreme court decided it, every case  
18 involving withdrawal of guilty plea cites the *State v.*  
19 *Taylor*, and to the two criteria that are necessary to  
20 qualify for a withdrawal of guilty plea. And one is the  
21 showing of manifest injustice. This does not -- Your  
22 Honor's ruling certainly doesn't qualify as manifest  
23 injustice. And we'd submit that he just doesn't make it  
24 under the -- first place, to the right to withdraw  
25 guilty plea. Only we'll withdraw the objection if he

1 really wants to withdraw his guilty plea. But he has to  
2 do that. You know, we've spent an awful lot of time  
3 trying to figure out what the consequences and making  
4 sure the defendants are aware of the consequences of  
5 pleading guilty. Mr. Amos has to be aware of the  
6 consequences for withdrawing his guilty plea because it  
7 goes back to February 16, and 15 years flat time for  
8 firearm an enhancements. I think that would be more of  
9 a difficulty for him than whether or not he's  
10 experienced a manifest injustice in the resentencing  
11 process. In the resentencing process he was sentenced  
12 for things that he did based upon his criminal history.

13 **THE COURT:** Mr. Amos?

14 **MR. AMOS:** Your Honor, all I'm trying to get  
15 across here with this motion is that if Mr. Randolph  
16 wants to keep alleging some fictional assault, that I  
17 assaulted somebody with a firearm, which I never pled  
18 guilty to, I'm acknowledging that I pled guilty to what  
19 the record shows, and that assault was what I pled  
20 guilty to when I pled guilty to second degree assault.

21 **THE COURT:** Well --

22 **MR. AMOS:** Mr. Randolph wants to come --

23 **THE COURT:** Let me stop you for a minute. I'm  
24 looking at the transcript of the hearing that was held  
25 April 25th, 2000. Page 11, it says, "Tell me in your

1 own words what you did that makes you think you're  
2 guilty of assault in the second degree."

3 "I assaulted Joe Hull," -- it says Hall but it's  
4 actually Hull -- "with a deadly weapon."

5 "The Court: What was that?"

6 "The Defendant: Firearm and a walky-talky."

7 Sounds to me like you admitted right there that you  
8 assaulted him with a firearm.

9 MR. AMOS: If you look lower, the actual plea  
10 statement was that on -- it says on page 11 and 12, it  
11 says:

12 The Court: "'Paragraph 11, he says on 1/16/2000, in  
13 Lewis County, I assaulted an individual with a deadly  
14 weapon. I was in possession of a firearm at the time of  
15 the assault.'

16 Is that your statement?"

17 The Defendant: "Yes."

18 That -- I mean, that's what I'm trying to say. I  
19 committed an assault.

20 **THE COURT:** Do you understand what  
21 Mr. Randolph is saying?

22 MR. AMOS: Yeah, I understand what  
23 Mr. Randolph is saying, but I don't agree. If it is  
24 withdrawn, the whole plea statement is out the door and  
25 I should be able to have a trial on the whole thing

1           whether I'm facing the original charges or not. I don't  
2           agree with three consecutive enhancements for one  
3           firearm.

4                   **THE COURT:** Well, that's what you pled to,  
5           what you pled to initially. You pled guilty to six  
6           individual counts in front of Judge Hall.

7                   **MR. AMOS:** Pursuant to a plea agreement.

8                   **THE COURT:** Which you didn't keep. Then you  
9           came back before me, and the prosecutor's office still  
10          allowed you to withdraw your plea to two counts and that  
11          substituted one count of assault in the second degree  
12          for assault in the first degree and you pled guilty to  
13          that. And you told me in your own words that you  
14          assaulted Joe Hull with a deadly weapon. I asked you  
15          what that was, and you said a firearm and a walky-talky.  
16          So as far as I'm concerned, you admitted that you  
17          assaulted him with a firearm.

18                   **MR. AMOS:** Well, what assault did this occur?  
19          I mean, that's what we're trying to get at. I mean,  
20          this -- in my theory, this assault was based on the  
21          assault to further the robbery. I pled guilty to one  
22          assault, and that one assault was what I pled guilty to  
23          in the record. Whether -- I mean, there's -- I mean --

24                   **THE COURT:** You pled guilty.

25                   **MR. AMOS:** There's discrepancies in the

1 record --

2 **THE COURT:** You pled guilty to one assault in  
3 front of me, but you pled guilty to a different assault  
4 in front of Judge Hall.

5 MR. AMOS: No, not necessarily. That was the  
6 same assault because even the court record says right  
7 here on page 7, "I will allow him to withdraw his pleas  
8 to count III and IV of the second amended information."  
9 The Court charged Count III as rewritten, charged with  
10 assault in the second degree, which is a reduction from  
11 the original plea on count III, which was first degree  
12 assault. It was the same assault whether it was -- it  
13 was the -- I pled guilty to one assault first degree in  
14 front of Mr. Hall and then came -- we withdrew that plea  
15 here and we pled guilty to the same assault. It was  
16 just a reduction of the charge. It wasn't a second or  
17 third or fourth or fifth assault. It was one assault.

18 **THE COURT:** I think you're not understanding  
19 the point that I'm asking you about. The point that I'm  
20 asking you about is -- the merger has nothing to do with  
21 the two degrees of assault. The merger has to do with  
22 whether the assault merges into the other crime.

23 MR. AMOS: Yes. I understand that.

24 **THE COURT:** So what I ruled previously was  
25 that there were two separate incidents here, not one but

1 two, and that's why there was no merger.

2 MR. AMOS: Yeah, I understand that, Your  
3 Honor. What I'm trying to get across is I pled guilty  
4 to only one of those assaultive behaviors, not two of  
5 those assaultive behaviors. And that was the point of  
6 this withdrawal is to understand what I pled guilty to,  
7 to have the state argue what did I plead guilty to, to  
8 find out what we pled guilty to, and that was one  
9 assault, which was -- whether it was the first amended  
10 information, the second amended information or the third  
11 amended information, it all encompassed one assault.  
12 The assaults never changed.

13 **THE COURT:** Well, as far as I'm concerned,  
14 robbery in the first degree, which is what you pled  
15 guilty to in front of Judge Hall, it says, "A person is  
16 guilty of robbery in the first degree if, No. 1, is  
17 armed with a deadly weapon -- a person is guilty of  
18 robbery in the first degree if in the commission of a  
19 robbery or immediate flight therefrom, he or she, one,  
20 is armed with a deadly weapon or two, displays what  
21 appears to be a firearm or other deadly weapon, or  
22 three, inflicts bodily injury."

23 So the assault on Mr. Hull when you hit him with the  
24 walky-talky elevates it to robbery in the first degree.  
25 The assault in the second degree with a firearm, which

1 is what you admitted to when you pled guilty to the  
2 amended charge in front of me, as far as I'm concerned,  
3 is entirely a separate assault. That's what I've  
4 already ruled. That's why I said there was no merger.

5 MR. AMOS: Then how do we have a basis for a  
6 robbery one? Where's the basis for the robbery one?

7 THE COURT: You assaulted him with a  
8 walky-talky.

9 MR. AMOS: But I never pled guilty to that  
10 assault.

11 THE COURT: Yes, you did. You just admitted  
12 it right here in this statement.

13 MR. AMOS: Yeah, but that statement right  
14 there is based on me pleading guilty to the second  
15 degree assault. The only thing in that -- in the record  
16 before you is me pleading guilty to the second degree  
17 assault. That's what I'm trying to get at, Your Honor,  
18 is I only pled guilty to one assault. And that assault  
19 was the basis -- I mean, that's what I argued into my  
20 motion to reconsider merger, is I pled guilty to one  
21 assaultive action, period. That was on February 16th,  
22 and the plea statement is -- I have my plea statement  
23 here somewhere. And then what I'm trying to get across  
24 is that I pled guilty to that charge, that crime right  
25 here. When I first pled guilty to everything as charged

1 on February 16th, I said, "On January 16th, 2000, in  
2 Lewis County, I was in the person's building. I had  
3 permission to go in, but not to remain as long as I did.  
4 I went in with the intent to help my friends take some  
5 marijuana. While we were there, we assaulted Mr. Hull  
6 and caused bodily injury with a deadly weapon, a  
7 walky-talky. We stole the marijuana and a gun. I have  
8 been convicted of a serious crime in the past and I can  
9 not possess a gun."

10 Okay. Pleading guilty to that as charged on  
11 February 16th, it was allowed in your court on April  
12 25th, 2000, I withdrew that plea to count I, assault in  
13 the first degree. That plea, pursuant to new plea  
14 agreements reached between me and Mr. Blair, I pled  
15 guilty as the Court said their understanding was, "I  
16 will allow him to then withdraw his pleas to count III  
17 and IV of the second amended information."

18 The Court: "Charge Count III, as rewritten,  
19 charges with assault in the second degree, which is a  
20 reduction from the original plea to count III, which was  
21 the assault in the first degree."

22 See, I've only ever pled guilty to one assault.

23 **THE COURT:** All right. Is there anything else  
24 you want to say?

25 **MR. AMOS:** No.

1                   **THE COURT:** The motion to withdraw the plea,  
2                   which was taken before me on April 25th, 2000, is  
3                   denied. There is no manifest injustice here in adhering  
4                   to the plea agreement here as made, and the mere fact  
5                   that the Court does not, at least at this level, does  
6                   not accept your argument of merger as to the robbery one  
7                   and the assault second with a firearm, the mere fact  
8                   that I don't accept that, because I think there were in  
9                   fact two distinct incidents here that gave rise to both  
10                  the conviction for robbery in the first degree and  
11                  assault second while armed with a firearm, is not a  
12                  reason or a basis justifying the withdrawal of a plea.

13                  And I also don't accept the state's argument that if  
14                  in fact we were to allow that, that we'd necessarily go  
15                  back to where we were prior to the time that I allowed  
16                  you to withdraw the plea to assault in the first degree  
17                  as taken in front of Judge Hall, because I think that  
18                  plea in fact has gone away by the fact that it was  
19                  allowed to be withdrawn. But in any event, I'm not  
20                  granting the motion to withdraw the plea. There's no  
21                  manifest injustice here, there's no reason why, as far  
22                  as I'm concerned, you're harmed by the mere fact that I  
23                  don't accept your argument of merger. If you think the  
24                  trial court is wrong on the ruling of merger, you can  
25                  file a PRP with the Court of Appeals, which you've

1 already done on more than one occasion and you know how  
2 to do. I've already pronounced sentencing on this, have  
3 I not?

4 MR. RANDOLPH: Yes, Your Honor.

5 THE COURT: What's left is formal entry?

6 MR. RANDOLPH: That's correct, and I'll hand  
7 to --

8 THE COURT: And an order denying the request  
9 to withdraw the plea.

10 MR. RANDOLPH: What I have is proposed  
11 judgment and sentence and findings of fact, exceptional  
12 sentence downward by three months. I'm going to give  
13 those to counsel to go over with, to provide legal  
14 advice or whatever.

15 MR. AMOS: And, Your Honor, I put in another  
16 motion to reconsider the same criminal conduct on theft  
17 of a firearm, robbery in the first degree.

18 THE COURT: And I'm denying it.

19 MR. AMOS: Your Honor, I'd like the record to  
20 show that I object to the exceptional sentence downward  
21 of three months.

22 THE COURT: Mr. Amos, did you review these  
23 documents with your standby counsel?

24 MR. AMOS: Yes.

25 THE COURT: Did the documents say in writing

1           what I said out loud?

2                       MR. AMOS:  Yes.

3                       **THE COURT:**  Other than your voiced objection  
4           to the exceptional sentence below the standard range, do  
5           you have any questions?

6                       MR. AMOS:  No, Your Honor.

7                       **THE COURT:**  All right.  This again is a felony  
8           conviction.  It's part and parcel of a felony conviction  
9           for a class A felony.  As a result of that, your right  
10          to possess a firearm of any type in Washington is  
11          revoked.  You may not under any circumstances possess a  
12          firearm unless or until your right to do so is restored  
13          by superior court.  As a practical matter, given that  
14          you're convicted of a class A felony, it's highly  
15          unlikely that will ever happen.  You need to be aware  
16          that possession of a firearm, in your case, is at least  
17          a class B felony.  This county, along with several  
18          others, prosecutes that particular crime.  So when you  
19          are released from DOC custody, do not have in your  
20          possession or control any kind of a firearm, including a  
21          black powder rifle or pistol.  No hunting or target  
22          shooting with any kind of a gun.  Don't be around  
23          anybody with guns.  Don't have any guns in your house,  
24          car or apartment.  I can't remember if there's community  
25          custody on this or not.

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MR. RANDOLPH: I believe -- I think it's --

**THE COURT:** Community placement for 12 months.

MR. RANDOLPH: Placement.

**THE COURT:** During any period of time that you're under supervision, including if you get any earned early release credits and are released early, it's very important that you do what's required by your community custody, don't do what he or she tells you not to do. If you do what you're told not to do or you don't do what you're told to do, if you've received early release credits, they could treat it as a probation violation, which are 60 days in jail per violation. In the alternative, they could send you back to the institution to serve the balance of the time imposed by the Court.

You also have lost the right to vote. Do not attempt to vote, don't attempt to register to vote unless or until you receive a certificate of discharge from the Court. That comes at the completion of the maximum term of the sentence. In as much as this is a class A felony, it's unlikely that will ever happen, but if you attempt to vote or you do vote, you will be committing a crime in the State of Washington.

Do you have any questions?

MR. AMOS: No.

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**THE COURT:** As I stated earlier, if you think that the Court is wrong on my determination of the issue on merger, your remedy is to file a PRP on that issue, which you already know how to do. You need to take your fingerprints.

**MR. RANDOLPH:** Mr. Amos has a PRP pending, which the Court has taken under its own advisement. I don't even remember what that one's about.

(Conclusion of proceedings.)

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C E R T I F I C A T E

STATE OF WASHINGTON        )  
                                  ) ss  
COUNTY OF PIERCE         )

I, Kellie A. Smith, Notary Public, in and for the State of Washington, County of Pierce, residing at Puyallup, do hereby certify:

That the annexed and foregoing Verbatim Report of Proceedings, Formal Entry, was reported by me and reduced to typewriting by computer-aided transcription;

That said transcript is a full, true, and correct transcript of the proceedings heard before Judge Richard L. Brosey on the 12th day of September, 2005, at the Lewis County Courthouse, Chehalis, Washington;

That I am not a relative or employee of counsel or to either of the parties herein or otherwise interested in said proceedings.

WITNESS MY HAND AND OFFICIAL SEAL THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, in and for  
the State of Washington,  
residing at Puyallup.