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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

NO. 37344-1-II

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

STATE OF WASHINGTON, Respondent

v.

AIBA NAJIB HODROJ, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-02036-5

BRIEF OF RESPONDENT

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pm 11/17/08

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I. STATEMENT OF THE FACTS

The State accepts the Statement of the Facts as set forth by the defendant. Where additional information is necessary, it will be supplied in the argument section of the brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the State failed to prove that the defendant possessed methamphetamine. The claim is further refined to complain that the State has not produced sufficient evidence of actual possession of the controlled substance.

This was not a constructive possession case; this was a case of actual possession with the officers catching the defendant with the drugs in his hand.

By way of information (CP 1) the defendant was charged with one count of Possession of Controlled Substance – Methamphetamine. The charging language read as follows:

That he, AIBA NAJIB HODROJ, in the County of Clark, State of Washington, on or about November 17, 2007, did unlawfully possess a controlled substance, to wit: Methamphetamine; ...

And further, that at the time of the incident, the Defendant, AIBA NAJIB HODROJ, was serving a term of community

placement as to invoke the provisions of RCW 9.94A.525(17).

As the fact pattern in the Appellant's brief indicates, the officers were there looking for someone else, other than the defendant. When they came in contact with the defendant, he ran from them. Chasing him was Officer Fili Matua, an officer of the Department of Corrections. (RP 74). Officer Matua indicated that he had familiarized himself by use of a picture of the defendant and when they had raided the house, the defendant attempted to run. (RP 79-80).

Officer Matua chased after the defendant as he ran into one of the bedrooms. It appeared to the officer that he attempted to discard some items that were in his left hand. (RP 80).

QUESTION (Deputy Prosecutor): Can you be more specific?

ANSWER (Officer Matua): In his left hand it appeared that he was trying to throw something into the closet.

QUESTION: And did you see him throw something?

ANSWER: No. Into the closet, no. And when I finally told him to stop, he immediately stopped that time, and the objects that he was trying to throw from his left hand he just dropped to the side of his body.

- (RP 80, L24 – 81, L6)

QUESTION (Deputy Prosecutor): Okay. And what was your personal observation of the area around him and around his left hand at that point?

ANSWER (Officer Matua): Once I placed handcuffs onto Mr. Hodroj, immediately in plain view to the left of where it appeared he had dropped something, I immediately identified a glass pipe and a plastic baggie.

- (RP 82, L13-18)

The officer recovered those particular items and they were both tested by Bruce Siggins, who is a forensic science supervisor at the Washington State Patrol Crime Laboratory in Vancouver, Washington. (RP 56). He indicated that he tested both of these items and concluded that both of them contained methamphetamine. (RP 66-67).

Actual possession exists where goods are in the personal custody of the person charged with possession. State v. Staley, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Most of the cases dealing with this are discussing constructive possession of the narcotics. Here, we have a situation where the officer clearly sees him with physical possession of the objects and also making furtive attempts to get rid of the objects before being arrested. Once the defendant has determined that that's not feasible, he drops the objects in his immediate vicinity while he is being handcuffed. Those items are then specifically recovered by the officer who has witnessed him in actual possession, tested, and determined to be the controlled substance. The trial court, when it gave its instructions to the

jury (CP 9), also included the definition of constructive possession along with actual possession. Constructive possession means that the defendant exercised dominion and control. Dominion and control over the premises in which contraband is found is but one factor. The defendant must also have dominion and control over the contraband itself. State v. Roberts, 80 Wn. App. 342, 353-354, 908 P.2d 892 (1996). Here also, the defendant having been seen in actual possession of the contraband clearly has dominion and control over the contraband itself.

Another way of looking at the concept of dominion and control is that the object may be reduced to actual possession immediately. State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969); State v. Simonson, 91 Wn. App. 874, 960 P.2d 955 (1998). Again, when we look at the facts of our case, clearly dominion and control has been established because it may be reduced to actual possession immediately. In our situation he had actual possession immediately and gave it up so he wouldn't be caught with the drugs on his person.

The State submits that this is a case of actual possession but also fits all of the criteria and definitions of constructive possession as well. This is a factual issue for the jury to determine. The State submits that there has been sufficient evidence established to allow this question to go to the jury.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that the trial court should have instructed the jury with the use of a Petrich instruction.

As previously set forth in this brief, the defendant was charged with one count of Possession of Controlled Substance and both objects were in his left hand and dropped simultaneously onto the floor. Further, they were both tested and both found to contain the controlled substance. The State submits that this is not a multiple act case and thus Petrich is not necessary. State v. Price, 126 Wn. App. 617, 109 P.3d 27 (2005).

However, even if the appellate court were to determine that this is a multiple act case, failure to provide a unanimity instruction in multiple act cases is harmless if no rational trier of fact could have entertained a reasonable doubt that each incident established the criminal conduct charge in the information beyond a reasonable doubt. State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988). In our situation, the items were both simultaneously dropped by the defendant and both of them contained the controlled substance. If an election were made between one or the other or a Petrich instruction given, the State submits that it wouldn't make the slightest bit of difference to a rational trier of fact because the

same information and the same opinions would apply to both. This is more like a situation where the contraband, rather than being a controlled substance, is counterfeit money. If one of them is a five dollar bill and one a ten dollar bill, is it necessary for the court to give a unanimity instruction to the jury if both of them are determined to be counterfeit and dropped by the defendant at the same time? It just makes no sense.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim of ineffective assistance of counsel in two specific areas: a claim that his counsel was ineffective by stipulating that he was on community custody at the time of the commission of the current offense and his failure to object to one of his witnesses appearing in court while wearing prison clothing.

Concerning the first claim of ineffective assistance of counsel, it is hard to understand the argument. The defense agreed at the time of sentencing that he was on community placement at the time that he was caught with the controlled substances. This was based on the documentation that had been supplied and his prior criminal history, which appears for the most part to be out of Clark County. A copy of the felony Judgment and Sentence (RP 29) is attached hereto and by this

reference incorporated herein. This was not something that was presented to the jury, nor was it discussed with them. It was merely an indication that he was agreeing with the criminal history that had been laid out. Prior to the sentencing hearing, the State had provided the defense with certified copies of criminal history and wasn't sure if there was going to be any argument by the defense over scoring of the defendant. The defense attorney at that time had indicated that they would review those matters and sentencing was set over. (RP 144).

At the time of the sentencing, the defense had another attorney from their office standing in who indicated that he had been in contact with the defense attorney and was comfortable going forward with the sentencing. (RP 146). The State then laid out the criminal history at the time of the sentencing and indicated that there did not appear to be any dispute or contest that the defendant was on community custody at the time of the offense. The prosecutor also made a representation to the court that he and the defense attorney had discussed this on the phone and determined that they were not going to contest the community custody point. (RP 147). The defendant, now on appeal, makes claim that this has prejudiced him. But it is difficult to understand where the prejudice would occur. His attorney reviewed this matter with the prosecutor and they determined that the information was sufficiently there in the certified

documents to indicate that he was in fact on community placement at the time that this occurred. To establish prejudice a defendant must show a reasonable probability that but for counsel's deficient performance, the result would have been different. State v. Leavitt, 49 Wn. App. 348, 359, 743 P.2d 270 (1987). The State submits that there is absolutely no prejudice that has been shown.

The question of the defense witness appearing with leg shackles and in jail garb is more interesting. The defense had called Mr. Duke, who indicated that all of the drugs were his. He further indicated in front of the jury that he had been prosecuted for this particular crime. (RP 108-109). The State submits that this was an attempt to show the "real bad guy" who was taking responsibility for all of the drugs belonging to him and that the other people there didn't know anything about them. This had led to him already being charged with these particular crimes and thus explains his wardrobe.

The defense attorney then comes back to this in closing argument where he makes the following comment:

Mr. Duke exposed himself to additional criminal charges. Why would you say something is yours when it's not? Why would you expose yourself to new criminal charges? Because he's your buddy, you want to help him out? You're going to go do time for your friend? No, you're not. He came here and he told you that all that stuff was his because it was true. And do you doubt that? Do you doubt

it was his? He's a druggie and he's honest about it. He has no qualms about it.

-(RP 135, L1-9)

He finishes up his discussion concerning Mr. Duke with the jury as follows: "...in the United States we don't put people in jail unless we're pretty darn sure they did it". (RP 135, L19-20).

The cases dealing with shackling and jail clothing appear to all deal with the defendant and not with one of his own witnesses. State v. Hutchinson, 135 Wn.2d 863, 959 P.2d 1061 (1998); State v. Breedlove, 79 Wn. App. 101, 900 P.2d 586 (1995).

Even in the setting where defendants are seen shackled or handcuffed, it is not necessarily the grounds for reversible error simply because jurors see a defendant in that position. Hutchinson, 135 Wn.2d at 888; State v. Early, 70 Wn. App. 452, 462, 853 P.2d 964 (1993); State v. Gosser, 33 Wn. App. 428, 435, 656 P.2d 514 (1982).

Concerning the concept of ineffective assistance of counsel as it relates to both these claims, although deliberate tactical choices may constitute ineffective assistance of counsel if they fall outside the wide range of professionally competent assistance, exceptional deference must be given when evaluating counsel's strategic decisions. State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). In general, a stipulation as to

facts is a tactical decision. State v. Mierz, 127 Wn.2d 460, 476, 901 P.2d 286 (1995).

To show ineffective assistance of counsel, an appellant must show that counsel's performance was deficient and the deficient performance prejudiced him. State v. Thomas, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987). Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. Prejudice occurs when there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984). In other words, counsel's deficiencies must have adversely affected the defendant's right to a fair trial to an extent that undermines confidence in the outcome. State v. Brett, 126 Wn.2d 136, 199, 892 P.2d 29 (1995).

When a trial attorney's actions involve matters of trial tactics or strategy, the appellate courts are hesitant to find ineffective assistance of counsel. State v. Jones, 33 Wn. App. 865, 872, 658 P.2d 1262 (1983). The appellate courts presume that counsel's performance was reasonable. State v. Bowerman, 115 Wn.2d 794, 808, 802 P.2d 116 (1990).

We accord deference to counsel's performance in order to "eliminate the distorting affects of hindsight" and therefore we presume reasonable performance. (Cites omitted). A decision concerning trial strategy or tactics will not establish deficient performance.

- (State v. Hermann, 138 Wn.2d 596, 605, 158 P.3d 96 (2007)).

The State submits that there has been no showing that the use of Mr. Duke in front of the jury the way that the defense did was not a tactical decision by the defense. The question of his shackling was raised at the time of sentencing by the defendant and not necessarily by the attorney. It was an attempt to gain credibility for the defendant by placing all of the blame on someone who is already being prosecuted, if not convicted, of exactly what the defendant was being charged with. The defense wanted the witness to look like a "drugger". It was an attempt to meet the expectations of a jury concerning this type of activity. Likewise, the concession of the community placement number which did not take place in front of the jury, was also a matter of strategy or tactics and did not constitute deficient performance.

The State submits that because the appellate court strongly presumes that defense counsel's conduct constituted sound trial strategy, the defendant must demonstrate in light of the entire record that no legitimate strategic or tactical reasons supported the challenged conduct.

State v. Barragan, 102 Wn. App. 754, 762, 9 P.3d 942 (2000). The State submits that that cannot be done on this record. There has been no showing of ineffective assistance of counsel.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 17 day of Nov., 2008.

Respectfully submitted:

ARTHUR D. CURTIS
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Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

FILED

JAN 23 2008

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

AIBA NAJIB HODROJ,
Defendant.

SID: WA20876182
If no SID, use DOB: 7/23/1983

No. 07-1-02036-5

08-9-00464-2

Felony Judgment and Sentence (FJS)

- Prison RCW 9.94A.712 Prison Confinement
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **finds:**

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

- guilty plea jury-verdict bench trial:

Count	Crime	RCW	Date of Crime
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	11/14/2007

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

- Additional current offenses are attached in Appendix 2.1.

The jury returned a special verdict or the court made a special finding with regard to the following:

- The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A._____.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

Felony Judgment and Sentence (FJS) (PRISON)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

Handwritten initials or signature.

- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- 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 defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ . RCW 9.94A.602, 9.94A.533.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- 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** in Count _____ . RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult, Juv.	Type of Crime
See attached criminal history					

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	6	I - D	12 MONTHS to 24 MONTHS		12 MONTHS to 24 MONTHS	5 YEARS \$10,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

within below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

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

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

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

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

III. Judgment

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

3.2 The defendant is found **Not Guilty** of Counts _____.

The court **Dismisses** Counts _____.

IV. Sentence and Order

It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE
RTN/RJN

	\$ _____	Restitution to	
<i>PCV</i>	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
	\$ _____	Domestic Violence assessment	RCW 10.99.080
<i>CRC</i>	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ 200.00	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
<i>PUB</i>	\$ <u>700.00</u>	Fees for court appointed attorney	RCW 9.94A.760
	\$ _____	Trial per diem, if applicable	
<i>WFR</i>	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
<i>FCM/MTH</i>	\$ <u>500.00</u>	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
<i>CDF/LDI/FCD</i> <i>NTF/SAD/SDI</i>	\$ <u>2,000.00</u>	Drug enforcement Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
<i>CLF</i>	\$ <u>100.00</u>	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ <u>100.00</u>	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.7541
<i>RTN/RJN</i>	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for: _____	
	\$ _____	Total	RCW 9.94A.760

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

shall be set by the prosecutor.
 is scheduled for _____
 Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

<u>Name of other defendant</u>	<u>Cause Number</u>	<u>(Victim's name)</u>	<u>(Amount-\$)</u>
<i>RJN</i>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

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

The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit at 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: _____. (JLR) RCW 9.94A.760.

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

4.1b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

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

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

4.3 No Contact: The defendant shall not have contact with _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

4.4 Other: _____

4.5 Confinement Over One Year. The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

* 16 months on Count 01

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

The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 16 months

The combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory maximum. RCW 9.94A.505(5)

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

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

in either District Court or Superior Court unless otherwise specified herein: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.712 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01 minimum term _____ maximum term _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 30 days CTS

4.6 Community Placement or Community Custody. The court orders community placement or community custody as follows:

Community Placement:
Count 01 for _____ months

Community Custody for count(s) _____, sentenced under RCW 9.94A.712, for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

* **Community Custody:**
Count 01 for a range from 9 to 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.]

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (8) for sex offenses, submit to electronic monitoring if imposed by DOC; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with: _____
- The defendant shall remain within outside of a specified geographical boundary, to wit: _____
- The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- The defendant shall participate in the following crime-related treatment or counseling services: _____
- The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____
- Other conditions: _____
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

4.8 Off - Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move 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, you must do so 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. If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Restitution Hearing.

I waive any right to be present at any restitution hearing (sign initials): _____

5.5 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.6 Firearms. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

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

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

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

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

5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

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

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the

sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

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

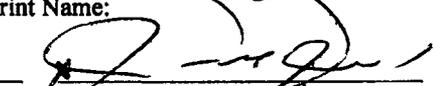
- 5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 Persistent Offense Notice

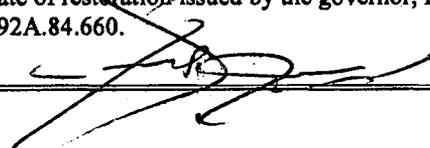
- The crime(s) in count(s) _____ is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.
- The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: _____.


Judge/Print Name: _____

 Deputy Prosecuting Attorney WSBA No. 35235 Print Name: Randolph J. St. Clair	 Attorney for Defendant WSBA No. 35883 Print Name: ANTOINE TISSOT	 Defendant Print Name: AIBA NAJIB HODROJ
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Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: 

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

Interpreter signature/Print name: _____

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

Witness my hand and seal of the said Superior Court affixed this date: _____.

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

Identification of the Defendant

AIBA NAJIB HODROJ

SID No: WA20876182

Date of Birth: 7/23/1983

(If no SID take fingerprint card for State Patrol)

FBI No. 541862WB6

Local ID No. 164439

PCN No. _____

Other _____

Alias name, DOB:

Race: W

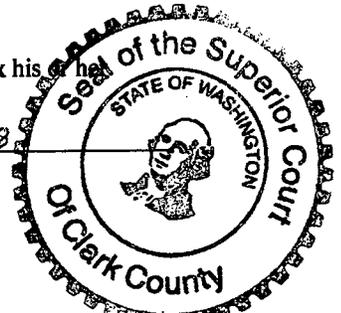
Ethnicity:

Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk,

Dated: 1/23/08



The defendant's signature:

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



1
2
3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 AIBA NAJIB HODROJ,
Defendant

No. 07-1-02036-5

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of
10 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
defendant has the following undisputed prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
12 FORGERY	CLARK/WA 02-1-00897-6	5/7/2002	6/12/2002	1
13 PCS-METH	CLARK/WA 03-1-01607-1	8/9/2003	9/17/2003	1
14 UNLAWFUL POSSESSION OF FIREARMS	CLARK/WA 03-1-02449-0	11/25/2003	1/12/2004	1
15 ASSAULT 3	CLARK/WA 03-1-02449-0	11/25/2003	1/12/2004	1
16 ASSAULT 2--ATTEMPT	MULTNOMAH/OR 051237463	11/30/2005	3/17/2006	1

17
18

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

21 DATED this 23rd day of January, 2008.

22
23 Defendant

24
25 ANTOINE TISSOT, WSBA#35883
Attorney for Defendant

26
27
28
29 Randolph J. St. Clair, WSBA#35235
Deputy Prosecuting Attorney

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 07-1-02036-5

v.

AIBA NAJIB HODROJ,

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

Defendant.

SID: WA20876182

DOB: 7/23/1983

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	11/14/2007

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	16 Days Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 30 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

[Handwritten Signature]

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1/23/08

SHERRY W. PARKER, Clerk of the
Clark County Superior Court



By: *[Handwritten Signature]*
Deputy

