

FILED
COURT OF APPEALS
DIVISION II

No. 37586-9-II

08 AUG 18 PM 12:19

STATE OF WASHINGTON
BY *cm*
DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

DAVID VANDAMENT

BRIEF OF APPELLANT

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

ORIGINAL

TABLE OF CONTENTS

A. Assignments of Error.....1

B. Statement of Facts.....2

C. Argument.....8

 1. The trial court erred by denying Mr. Vandament's motion to withdraw his guilty plea on the ground that he was never provided a copy of the First Amended Information and never advised of the nature of the charges against him.....8

 2. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that the community custody range on Count II is 36 to 48 months.....14

 3. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that first degree child rape and first degree child molestation are not most serious offenses.....18

D. Conclusion.....19

TABLE OF AUTHORITIES

Cases

<u>Auburn v. Brooke</u> , 119 Wn.2d 623, 636, 836 P.2d 212 (1992).....	14
<u>State v. Acevedo</u> , 137 Wn.2d 179, 970 P.2d 299 (1999).....	15
<u>State v. Aho</u> , 137 Wn.2d 736, 742-46, 975 P.2d 512 (1999)	16
<u>State v. Carr</u> , 97 Wn.2d 436, 439, 645 P.2d 1098 (1982).....	9
<u>State v. Crawford</u> , 159 Wn.2d 86, 147 P.3d 1288 (2006)	19
<u>State v. Gurrola</u> , 69 Wn. App. 152, 158-59, 848 P.2d 199 <u>rev. denied</u> , 121 Wash.2d 1032 (1993).....	17
<u>State v. Isadore</u> , 151 Wn.2d 294, 88 P.3d 390 (2004).....	15
<u>State v. Jensen</u> , 125 Wn. App. 319, 326-28, 104 P.3d 717, <u>rev. denied</u> , 154 Wn.2d 1011 (2005).....	16
<u>State v. Leach</u> , 113 Wn.2d 679, 782 P.2d 552 (1989).....	12
<u>State v. McCarty</u> , 140 Wn.2d 420, 998 P.2d 296 (2000)	13
<u>State v. Parker</u> , 132 Wn.2d 182, 191, 937 P.2d 575 (1997)	16
<u>State v. Recuenco</u> , 163 Wn.2d 428, 180 P.3d 1276 (2008).....	12
<u>State v. Ross</u> , 129 Wn.2d 279, 916 P.2d 405 (1996).....	15
<u>State v. Vangerpen</u> , 125 Wn.2d 782, 888 P.2d 1177 (1995)	12
<u>United States v. Resendiz-Ponce</u> , 425 F.3d 729 (9 th Cir. 2005)	13
<u>United States v. Resendiz-Ponce</u> , 549 U.S. 102, 127 S. Ct. 782, 166 L. Ed. 2d 591 (2007).....	13

A. Assignments of Error

Assignments of Error

1. The trial court erred by denying Mr. Vandament's motion to withdraw his guilty plea on the ground that he was never provided a copy of the First Amended Information and never advised of the nature of the charges against him.

2. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that the community custody range on Count II is 36 to 48 months.

3. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that first degree child rape and first degree child molestation are not most serious offenses.

Issues Pertaining to Assignments of Error

1. Did the trial court err by denying Mr. Vandament's motion to withdraw his guilty plea on the ground that he was never provided a copy of the First Amended Information and never advised of the nature of the charges against him when: (1) the failure to provide him a copy prejudiced his ability to assist his attorney in preparing a defense to the charge; and (2) the total failure to advise a defendant of the nature of the charges against him and the essential elements thereof is structural error that requires reversal?

2. Should Mr. Vandament be allowed to withdraw his guilty plea on the ground that he was erroneously advised that the community custody range on Count II is 36 to 48 months when the correct community custody range is 36 months?

3. Should Mr. Vandament be allowed to withdraw his guilty plea on the ground that he was erroneously advised that first degree child rape and first degree child molestation are not most serious offenses?

B. Statement of Facts

Mr. David Vandament appeals from a denial of his motion to withdraw guilty plea. CP, 459. In his motion, he raised numerous issues pro se. On appeal, he raises several issues through counsel: whether the plea was voluntary for failure to advise him of a direct consequence of the plea, namely that the offenses to which he was pleading were most serious offenses (strikes) under the persistent offender statute. In order to understand the nature of his claim, a brief recitation of the chronology of his case is necessary.

On June 5, 2006, Mr. Vandament appeared in the Kitsap County Superior Court for a preliminary appearance. CP, 394; RP, 1 (June 5,

2006).¹ At that time, he was advised that the court was finding probable cause to an unnamed sexual offense. CP, 394; RP, 3-4 (June 5, 2006).

The State filed an information on August 22, 2006 charging Mr. Vandament with one count of first degree child molestation against RMNJ between May 31, 2005 and May 31, 2006. CP, 1. The information stated that the maximum penalty was life in prison and that the mandatory minimum was life without the possibility of parole if he had two prior most serious offenses or one prior most serious sex offense. CP, 2.

The next time he appeared in court was on August 23, 2006. At that time, the court advised Mr. Vandament that he was charged with one count of first degree child molestation. CP, 121, appendix 54, RP, 2 (Aug. 23, 2006). The court told him that the charge was a “felony punishable by potential jail and prison.” Id at 2. Mr. Vandament was not asked to make a plea at that time, although a trial date was set. Id at 6. At no time during the arraignment was a record made whether the defendant had received a copy of the information. Nor was the information read to him.

¹ With one exception (the court hearing on March 7, 2008) all transcripts in this case appear in the record as appendices to the various motions. Some of these pleadings are quite lengthy. For instance, one document is 272 pages. See CP 121 and following. Rather than identify the specific pages in the clerk’s papers, documents will be identified by the first page of the document, and then the page of the report of proceedings within the document.

The State filed an amended information on September 1, 2006. CP, 5. The amended information charged one count of first degree child rape against RMNJ between May 31, 2005 and May 31, 2006 and one count of first degree child molestation against a different victim, BJG, between January 1, 1999 and January 1, 2004. CP, 6. The information also notes that BJG's birthday is September 1, 1988. CP, 6. The amended information stated that the maximum penalty was life in prison and that the mandatory minimum was life without the possibility of parole if he had two prior most serious offenses or one prior most serious sex offense. CP, 7.

Mr. Vandament was arraigned on the amended information on September 12, 2006. CP, 121, appendix 56, RP, 1 (Sept. 12, 2006). The court did not read the amended information nor was a plea entered. In his post-conviction motion to withdraw his guilty plea, Mr. Vandament states that he never received a copy of the First Amended Information. CP, 88. The State filed a response in the trial court essentially conceding that, although the document was provided to defense counsel, there is no evidence that Mr. Vandament ever received a copy. CP, 445. The State also argued that there was no prejudice. CP, 445.

According to Mr. Vandament's affidavit, on or about October 6, 2006, he met with his defense counsel and the issue of the alleged dates

was discussed. CP, 134. Mr. Vandament wanted to know when the crimes were alleged to have occurred. Defense counsel told him that the prosecutor is permitted to charge a range of dates. CP, 134. There was no discussion of the significance of the range of dates.

Mr. Vandament appeared before the court to plead guilty on November 14, 2006. CP, 121, appendix 57, RP, 1 (Nov. 14, 2006). At the hearing, the prosecutor immediately moved to correct a “scrivener’s error” in the first amended information. The prosecutor wanted to change the range of dates alleged on Count II to reflect January 1, 1999 to September 1, 2000. Id at 2. The judge suggested that the dates be interlineated with initials from counsel. Id at 3. Defense counsel indicated no objection to that procedure. Id at 3. Count II of the amended information reads, “On or between January 1, 1999 and ~~January 1, 2004~~ Sept. 1, 2000. . .” CP, 6. Mr. Vandament did not initial the change.

Mr. Vandament alleges that at some point during the plea colloquy, the judge beckoned the prosecutor to the bench where alterations to the plea agreement were made. CP, 139. Mr. Vandament was not shown the changes. CP, 139.

During the plea colloquy, the court discussed the length of community custody. The prosecutor stated that community custody would be “712 supervision” for Count I and 36 to 48 months for Count II. CP,

121, appendix 57, RP, 6 (Nov. 14, 2006). The plea was an Alford Plea. Id at 11.

The plea agreement in this case indicates there would community custody on Count I “until the maximum term (see data table).” Community custody would be imposed on Count II for 36 to 48 months. CP, 22.

The guilty plea has several paragraphs relating to community custody, dependant upon the date of the offense. CP, 12-13. All of the paragraphs are initialed by Mr. Vandament. On page 5 of the Statement of Defendant on Plea of Guilty, the document indicates that all non-applicable paragraphs should be stricken. CP, 15. Most of the following paragraphs are stricken. The paragraphs that are not stricken bear Mr. Vandament’s initials. Paragraph (p) is stricken. CP, 15. Paragraph (p) advises Mr. Vandament that first degree child rape and first degree child molestation are most serious offenses under the three strikes and two strikes statutes. CP, 15.

In Mr. Vandament’s affidavit, he asserted that at the time of signing the guilty plea, he “had no knowledge as to what ‘1st degree’ implied nor the classification difference separating the degree of crime. Vandament assumed and was not advised otherwise that the division or

classification of the degree of a crime implied grade of intent according to the circumstances surrounding the commission of the crime.” CP, 141.

According to Mr. Vandament’s affidavit, approximately three weeks after pleading guilty, he had a telephonic conversation with his attorney where he asked about the alterations in the guilty plea and plea agreement during the plea colloquy. CP, 140. Defense counsel told him that the changes involved altering the dates of commission. Mr. Vandament also learned during that conversation for the first time that BJG turned twelve years old on September 1, 2000, and that first degree child molestation required proof that the victim was under twelve years old at the time of the sexual contact. CP, 140. Mr. Vandament responded to this new information by exclaiming, “The can’t do that. . . they can’t change the Plea Agreement after I signed it.” CP, 141. Mr. Vandament also realized that he did not own the boat where the molestation was alleged to have occurred or the truck allegedly used to transport BJG to the boat until 2001. It was therefore impossible that the molestation against BJG could have occurred before his twelfth birthday. This prompted Mr. Vandament to tell his attorney that he wanted to withdraw his guilty plea. CP, 141. Defense counsel refused to file a motion to withdraw the guilty plea. CP, 142.

Mr. Vandament was sentenced on March 19, 2007. He received a minimum sentence on Count I of 160 months with a maximum sentence of life. CP, 71. Community custody on Count I would be for the remainder of his life. CP. 72. He received a sentence of 89 months on Count II followed by 36 to 48 months of community custody. CP, 71-72.

On February 5, 2008, Mr. Vandament filed a pro se motion to withdraw his guilty plea. CP, 79. He filed hundreds of pages of pleadings in support of his motion. CP, 79-429. On March 12, 2008, the trial court denied the motion without comment on the merits of any of the issues. CP, 459. Mr. Vandament appealed and counsel was appointed.

C. Argument

1. The trial court erred by denying Mr. Vandament's motion to withdraw his guilty plea on the ground that he was never provided a copy of the First Amended Information and never advised of the nature of the charges against him.

The Fifth Amendment requires that a defendant be advised of the nature of the charges against him. Article 1, section 22 of the Washington Constitution goes even further and requires that the defendant be advised of the “nature and cause of the accusations against him, [and] to have a copy thereof.” Mr. Vandament alleges in his post-conviction pleadings

that he did not receive a copy of the First Amended Information and this allegation is corroborated by the record. There is no indication that the information was provided to him at the time of his arraignment on the First Amended Information on September 12, 2006. Nor is there any evidence that the First Amended Information was read to him. In fact, it does not appear that Mr. Vandament ever entered a plea on either the original Information or the First Amended Information. The State in its pleading appears to concede that Mr. Vandament did not receive a copy of the First Amended Information, although there is little doubt from the record that defense counsel had a copy. CP, 445.

When the State is permitted to amend the Information prior to trial, the defendant is entitled to a copy of the Information. State v. Carr, 97 Wn.2d 436, 439, 645 P.2d 1098 (1982). In Mr. Vandament's case, the State essentially amended the information twice. The first time was when they filed the First Amended Information. The second time was when the First Amended Information was interlineated. Mr. Vandament did not receive a copy of the First Amended Information in either of its forms. His rights under the Fifth Amendment and Article 1, section 22 were violated.

The State's primary argument in the trial court was that Mr. Vandament was not prejudiced by the failure to provide him a copy of the

First Amended Information. Although Mr. Vandament's pro se pleadings are not the model of clarity, he does allege prejudice from this failure.

As originally charged, Count II of the Amended Information alleged that he committed first degree child molestation of BJG between January 1, 1999 and January 1, 2004. CP, 6. After being interlineated, the range of dates was changed to between January 1, 1999 to September 1, 2000. The First Amended Information sets forth the essential elements of first degree child molestation, including that the victim must be under twelve years old. The First Amended Information notes that BJG's birthday is September 1, 1988. Therefore, he turned twelve years old on September 1, 2000. This is undoubtedly why the prosecutor wanted to interlineate the change of dates, what she called a "scrivener's error." Mr. Vandament's defense counsel confirmed this three weeks later on the phone.

While the record is clear that Mr. Vandament was repeatedly told the titles of the crimes for which he was pleading guilty, both orally and in writing², there is no evidence that he was properly advised of the nature of these charges. Mr. Vandament was prejudiced by the failure to provide

² The titles of the offenses appear repeatedly in the Statement of Defendant on Plea of Guilty and in the Plea Agreement. The trial court also mentioned them several times during the plea colloquy.

him a copy of the First Amended Information (both before and after the interlineations) in two ways, one factual and one legal.

First, Mr. Vandament did not know factually that in order to commit first degree child molestation against BJG, the sexual contact had to occur before September 1, 2000, BJG's twelfth birthday. According to Mr. Vandament, he did not own the boat (where the molestation was alleged to have occurred) or the truck (used to transport BJG to the boat) until 2001.³ Assuming the truth of this assertion, while Mr. Vandament might be guilty of second or third degree child molestation, he cannot be guilty of first degree child molestation. Had Mr. Vandament been provided with a copy of the First Amended Information, he could have explored these defenses with his defense counsel.

Second, the requirement that a person receive a copy of the charging document appears in the Washington Constitution right next to the requirement that the defendant be advised of the nature and cause of the accusations against him. These two clauses serve the same purpose: to properly advise a defendant of the charges against him and the elements

³ BJG did not disclose the sexual abuse until he was eighteen years old, when he was interviewed by Karen Sinclair, child interviewer of the Kitsap County Prosecutor's Office. CP, 31. Ms. Sinclair's interview notes are not contained in the record, but are summarized in the PSI. BJG disclosed that the abuse started when he was "11 or 12 years old" and took place at a Seattle apartment and in a boat at the Port Orchard Marina. It continued until BJG was a junior in high school. CP, 32.

thereof. Part of this requirement includes the requirement that the charging document set out each of the essential elements of the charge. State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989). The purpose of the essential elements rule is to provide defendants with notice of the crime charged and to allow defendants to prepare a defense. State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008). The Fifth Amendment of the United States Constitution requires the same. If a person has not received a copy of the information, then the person has not been advised of the essential elements of the offense.

In Mr. Vandament's case, the failure to properly advise him of the essential elements of the offense prejudiced his preparation. He did not know that one of the requirements of the offense to which he was pleading guilty was that the victim be under twelve years old. Given that he was not provided a copy of the First Amended Information, it was as if the State failed to advise him of the essential elements of the charges. Had the latter happened, this Court would not hesitate to dismiss without prejudice. State v. Vangerpen, 125 Wn.2d 782, 888 P.2d 1177 (1995). The remedy in Mr. Vandament's case should be withdrawal of the guilty plea⁴ and providing him with a copy of the charging document.

⁴ Although Mr. Vandament did not receive a copy of the First Amended Information and was, therefore, not properly advised of the essential

There has been much discussion whether violation of the essential elements rule is structural error. United States v. Resendiz-Ponce, 549 U.S. 102, 127 S. Ct. 782, 166 L. Ed. 2d 591 (2007) (Justice Scalia, dissenting). In Resendiz-Ponce, the United States Supreme Court granted certiorari to resolve that issue, which has divided the federal courts, but eventually decided to resolve the issue on a narrower issue. The case under review, United States v. Resendiz-Ponce, 425 F.3d 729 (9th Cir. 2005), held that violations of the essential elements rule are structural error and not subject to harmless error review.

Regardless of whether the United States Supreme Court eventually holds that violation of the essential elements rule is structural, Washington has a long history of upholding the letter and spirit of the rule. Washington has a rule based in part on whether the charging document is challenged before or after verdict. If a charging document is challenged for the first time on review, it is construed liberally and will be found sufficient if the necessary elements appear in any form, or by fair construction may be found, on the face of the document. State v. McCarty, 140 Wn.2d 420, 998 P.2d 296 (2000). While this rule may be helpful when the issue is whether the charging document is inartfully phrased, it is

elements, the document filed by the State does contain all of the essential elements. He does not argue that dismissal without prejudice is the proper remedy.

less helpful when the issue is that the defendant was not advised of *any* of the essential elements, only the name of the crime. Mr. Vandament's case is, therefore, analogous to the situation in Auburn v. Brooke, where the charging document simply stated the title of the offense and omitted all essential elements. The Supreme Court held that there need be no showing of prejudice when all of the essential elements are omitted, "In the cases before us, the citations make no attempt to state the elements or the facts supporting the elements; they merely state the numerical code sections defining the offenses and the titles of the offenses alleged." Auburn v. Brooke, 119 Wn.2d 623, 636, 836 P.2d 212 (1992). The Supreme Court ordered the citations dismissed.

Mr. Vandament was not properly advised of the essential elements of the offenses for which he was pleading guilty because he was never provided a copy of the First Amended Information. He has demonstrated prejudice both factually and legally. But even if prejudice is not proven, the complete failure to advise the defendant of anything more than the title of the crime is structural error and reversal is required.

2. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that the community custody range on Count II is 36 to 48 months.

The community custody for a criminal offense is a direct consequence of a plea and the defendant must be advised of the proper community custody term. State v. Isadore, 151 Wn.2d 294, 88 P.3d 390 (2004); State v. Acevedo, 137 Wn.2d 179, 970 P.2d 299 (1999); State v. Ross, 129 Wn.2d 279, 916 P.2d 405 (1996). When a defendant is misadvised of the proper community custody term, he is entitled to withdraw his guilty plea.

The boilerplate language in Mr. Vandament's Statement of Defendant on Plea of Guilty correctly sets forth the community custody term. CP, 12-13. For offenses committed prior to July 1, 2000, the proper community custody term is 36 months or the period of earned early release. For offenses committed between July 1, 2000 and September 1, 2001, the period of community custody is 36 to 48 months. After September 1, 2001, the community custody term is for the rest of his life pursuant to RCW 9.94A.712.

The plea agreement correctly states that Mr. Vandament was subject to a community custody term of life for Count I. But it incorrectly states that the term of community custody for Count II is 36 to 48 months. The correct community custody term for Count II is 36 months because there is no evidence that the offense occurred after July 1, 2000.

The date of the offense determines the law governing both the substantive crime and the sentence. This is a rule mandated by both statutes, RCW 9.94A.345, and the Fourteenth Amendment Due Process and ex post facto clauses of United States Constitution as well as the comparable clauses of the Washington Constitution. State v. Aho, 137 Wn.2d 736, 742-46, 975 P.2d 512 (1999); State v. Parker, 132 Wn.2d 182, 191, 937 P.2d 575 (1997); U.S. Const. art. I, § 9 (“No Bill of Attainder or ex post facto Law shall be passed.”); Washington Const. art. I, § 23 (“No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.”). The trial court therefore must determine the date of the offense to determine the law governing a sentence.

Washington permits the state to allege criminal conduct occurring during a charging period rather than on a specific date. See, e.g., State v. Jensen, 125 Wn. App. 319, 326-28, 104 P.3d 717, rev. denied, 154 Wn.2d 1011 (2005). But if different sentencing statutes apply during that period, the state still bears the burden to prove the crime occurred when the more punitive statute was effective. If the state fails in this burden, courts must impose the less punitive sanction effective during the charging period. See e.g., State v. Parker, 132 Wn.2d 182, 191, 937 P.2d 575 (1997) (where a charging period included time both before and after the date of a statutory amendment, and where the state failed to prove that the charged conduct

occurred after the date of the amendment, the ex post facto clause required imposition of less harsh, pre-amendment punishment); accord, State v. Gurrola, 69 Wn. App. 152, 158-59, 848 P.2d 199 rev. denied, 121 Wash.2d 1032 (1993). Parker and Gurrola addressed amendments to statutes governing the seriousness levels and offender scores for the charged offenses.

Because the correct community custody term for Count II is 36 months, and the plea agreement erroneously listed 36 to 48 months, Mr. Vandament was misinformed of a direct consequence of the plea. The remedy is withdrawal of the guilty plea.

It is improper for appellate courts to look to the reasons behind a guilty plea. In Isadore, the significant issue was whether an appellant is required to show that the error was material to his or her decision to plead guilty. The Court unanimously disavowed language from the Acevado plurality decision and held as follows:

We decline to adopt an analysis that requires the appellate court to inquire into the materiality of mandatory community placement in the defendant's subjective decision to plead guilty. This hindsight task is one that appellate courts should not undertake. A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision. If the test is limited to an assertion of materiality by the defendant, it is of no consequence as any defendant could make that after-the-fact claim.

Isadore at 301. Mr. Vandament's motion to withdraw his guilty plea should be granted.

3. Mr. Vandament should be allowed to withdraw his guilty plea on the ground that he was erroneously advised that first degree child rape and first degree child molestation are not most serious offenses.

Under Washington law, a person who pleads guilty to a most serious offense may face life imprisonment without the possibility of parole. A most serious offense results in this sentence if the person has two prior most serious offenses, what is often referred to as a "three-strike" case. In addition, if the person has one of several enumerated most serious sex offenses, then the person may be subject to life in prison upon conviction for a second offense. This is often referred to as a "two-strike" case, a nickname that would surely cause Bud Selig great consternation. Mr. Vandament pled guilty to two sex offenses that qualify him for potential life in prison should he be convicted in the future of two additional "three-strike" offenses or one additional "two-strike" offense.

The Statement of Defendant on Plea of Guilty has a paragraph explaining the "three-strike" and "two-strike" principles. It appears on

page 5, paragraph (p), of the Statement. CP, 15. The paragraph is stricken. On pages 5 through 7, there are nine paragraphs. All but two are stricken⁵. Paragraph (q), which is not stricken and immediately follows paragraph (p), contains Mr. Vandament's initials. Taken in context, Mr. Vandament was advised that he was not pleading guilty to most serious offenses.

Washington law does not require that a person be advised that the offense to which he is pleading guilty is a strike offense, although it is highly recommended. RCW 9.94A.561; State v. Crawford, 159 Wn.2d 86, 147 P.3d 1288 (2006). Crawford is distinguishable from Mr. Vandament's case, however. In Crawford, the complaint was the absence of advice that the offense was a strike offense. In Mr. Vandament's case, there was advice; only the advice was erroneous. He was advised that the offense is not a strike. Mr. Vandament should be entitled to withdraw his guilty plea.

⁵ Paragraph (v) is also not stricken. Paragraph (v) should have been stricken. It does not contain Mr. Vandament's initials. It states that Mr. Vandament's offenses are serious violent offenses and the sentences must be served consecutively. While this paragraph is erroneous, the plea agreement and plea colloquy are clear that Mr. Vandament's sentences would be served concurrently.

D. Conclusion

Mr. Vandament should be entitled to withdraw his guilty plea.

DATED this 14th day of August, 2008.

A handwritten signature in black ink, appearing to read 'T. Weaver', is written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

FILED
COURT OF APPEALS
DIVISION II

08 AUG 18 PM 12:19

STATE OF WASHINGTON
BY cm
DEPUTY

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

STATE OF WASHINGTON,)	Case No.: 06-1-00867-5
)	Court of Appeals No.: 37586-9-II
Respondent,)	AFFIDAVIT OF SERVICE
)	
vs.)	
)	
DAVID VANDAMENT,)	
)	
Defendant.)	

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action, and competent to be a witness.

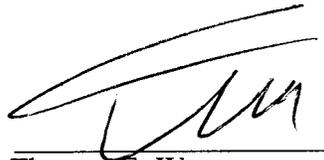
On August 14, 2008, I sent an original and a copy, postage prepaid, of the BRIEF OF APPELLANT, to the Washington State Court of Appeals, Division Two, 950 Broadway, Suite 300, Tacoma, WA 98402.

ORIGINAL

1 On August 14, 2008, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to
2 the Kitsap County Prosecutor's Office, 614 Division St., MSC 35, Port Orchard, WA 98366-
3 4683.

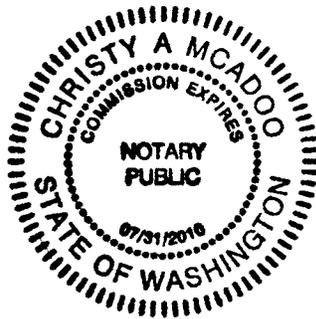
4 On August 14, 2008, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to
5 Mr. David Vandament, DOC #300458, Washington Corrections Center, P.O. Box 900, Shelton,
6 WA 98584.

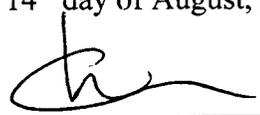
7 Dated this 14th day of August, 2008.

8
9 

10 Thomas E. Weaver
11 WSBA #22488
12 Attorney for Defendant

13 SUBSCRIBED AND SWORN to before me this 14th day of August, 2008.



26 
27 Christy A. McAdoo
28 NOTARY PUBLIC in and for
29 the State of Washington.
30 My commission expires: 07/31/2010