

No **38025-1**

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

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IN RE THE PERSONAL RESTRAINT PETITION OF:

GERALD WHITE III,

PETITIONER.

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**PERSONAL RESTRAINT PETITION**

FILED  
COURT OF APPEALS  
DIVISION II  
03 MAY 27 AM 10:29  
STATE OF WASHINGTON  
BY  DEPUTY

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**PETITIONER MAY FILE THE  
PETITION WITHOUT PAYMENT OF  
A FILING FEE**

  
**COURT CLERK** *St 36/400*

A. STATUS OF PETITIONER

Gerald White III (hereinafter “White”) challenges his 1989 Thurston County conviction for Robbery in the Second Degree (89-100495-3).

White is currently not in custody as a result of this conviction. However, he remains under several “disabilities” as a result. Most notably, this conviction served as a necessary predicate for White’s current life sentence as a result of a subsequent conviction and persistent offender finding (Thurston County Case Number 96-1-00633-9).

B. FACTS

On November 10, 1970, Gerald White was convicted of Forgery in the First Degree in King County Superior Court. On June 6, 1971, he was convicted of Robbery, also in King County. Just over three years later, on November 27, 1974, he was convicted of Burglary in the Second Degree. White was convicted of an additional burglary on April 13, 1976. *See Summary of White’s Criminal History* attached as Appendix A.

On January 17, 1990, Gerald White pled guilty to one count of Robbery in the Second Degree committed on August 3, 1989. *See Appendix B, Judgment and Sentence.* In his plea statement, that form indicated that White had “two (2) points.” Appendix C, *Statement of Defendant on Plea of Guilty.* During the plea colloquy, the trial court and the parties discussed White’s criminal history, with the Court noting it was important to “get the points correct.” However, when the Court asked what

the “two points” represented, the prosecutor stated the two points were for a “Robbery in the *First Degree* sentenced on 4-13-76.” RP 3. The defense attorney then stated the conviction was a *second-degree* robbery. *Id.* In fact, robbery was not separated by degrees at the time of conviction, which was 1971, not 1974. The prosecutor then added that White’s criminal history included: “Also, Burglary in 1974.” The defense attorney followed by adding “a weapons violation in ’88.” *Id.* Despite the fact that this criminal history results in an offender score of “4,” (not to mention the fact that it is incorrect in several other respects) the Court did not inquire further.

In his plea statement, White further admitted that he committed the robbery by taking a motorcycle from another person by the threatened use of force. Nevertheless, the plea form did not inform White that any felony involving a motor vehicle results in automatic suspension of his license.

When White was sentenced that same day, the Court found that he had a prior “Robbery 2<sup>o</sup>” conviction from “4-13-76.” It also listed, but then lined out a “Burglary” conviction from “11-27-74.” *See* Appendix B. The *Judgment and Sentence* fails to include any maximum penalty for the crime. In addition, neither the *Judgment*, nor the guilty plea statement informs White of any limits on collateral attack.

This is White’s first *Personal Restraint Petition* attacking this judgment.

## C. ARGUMENT

### 1. INTRODUCTION

White's PRP is not time barred because he was never informed of the time bar.

In addition, White's judgment is invalid on its face because it fails to specify the maximum penalty for robbery in the second degree. It is also invalid on its face because it incorrectly calculates White's offender score and standard range. This is apparent from the face of the document—crossing off a conviction that clearly should count—and becomes even more clear by looking at other documents that show additional errors with the calculation of White's offender score. As a result, White's petition is not time barred.

White's judgment reveals a guilty plea based on misinformation about several direct consequences. White's offender score is miscalculated in that document. In addition, he was not told about the automatic suspension of his license. Thus, White's plea was involuntary. White does not need to show that he would have made a different choice if he had been correctly advised that community placement was required. Instead, White should be entitled to withdraw his plea. If re-convicted of any crime, White

should be re-sentenced using his correct offender score (including White's subsequent convictions).

2. NOTICE OF TIME BAR

Any discussion regarding the expiration of the time bar presupposes that the one year, post-conviction clock started in the first place. However, in order to start the one-year limit, a defendant must be given notice. *State v. Schwab*, 141 Wn. App. 85, 167 P.3d 1225 (2007).

Under RCW 10.73.110, the trial court *must* advise a defendant of the one-year statute of limitations *when* it pronounces judgment and sentence (“the court shall advise the defendant of the time limit specified in RCW 10.73.090 and 10.73.100”). *See In re Pers. Restraint of Vega*, 118 Wn.2d 449, 823 P.2d 1111 (1992) (we held that where the State made no attempt to give petitioner notice of the amended one-year limitation on filing a personal restraint petition, as required by statute, petitioner was not bound by the one-year limitation). The statute provides that a Court must advise the defendant of both the time limit as it is defined in RCW 10.73.090 and the applicable exceptions set forth in RCW 10.73.100. In other words, the statute requires the Court to advise a defendant of the definition of a collateral attack (RCW 10.73.090), the existence of the one-year limitation (*Id.*), when the one-year period begins (*Id.*), as well as the six instances where the one-year limit does not apply (RCW 10.73.100). This advice

*must* be given in every case. See *In re Restraint of Runyan*, 121 Wn.2d 432, 452-53, 853 P.2d 424 (1993) (finding that Dept. of Corrections did not need to prove actual notice to every prisoner, but noting that notice would not be a problem for prisoners sentenced after effective date of statute because Courts are required to provide notice in every case).

It is not difficult to comply with the notice requirement. All that is required is to provide a defendant, on the record at sentencing, with a statement setting forth the text of RCW 10.73.090 and .100. The text of both statutory provisions can easily fit on one piece of paper. Notice can be accomplished in a minute—sometimes less.

Washington courts have required strict compliance with the statute, including the notice requirements, because “the very purpose of RCW 10.73.090 ... is to encourage prisoners to bring their collateral attacks promptly.” *In re Restraint of Runyan*, 121 Wn.2d at 450. It logically follows that strict compliance applies with equal force to the requirement of notice. *Schwab, supra*. When notice is not properly given, this omission creates an exemption to the time bar and a court, therefore, must treat the defendant's petition for collateral review as timely. *Schwab, supra*. See also *In re Restraint of Vega*, 118 Wn.2d at 450-51 (applying rule to RCW 10.73.120); *State v. Golden*, 112 Wn.App. 68, 78, 47 P.3d 587 (2002) (applying *Vega* rule to RCW 10.73.110), *review denied*, 148 Wn.2d 1005, 60 P.3d 1212 (2003).

Here, White was not given notice. For that reason, the one-year time clock never started.

3. FACIAL INVALIDITY

In addition, the one-year time limit does not apply if a judgment is invalid on its face. RCW 10.73.090.

A judgment is “invalid on its face” if that document reveals an infirmity. *In re Restraint of LaChapelle*, 153 Wn.2d 1, 100 P.2d 805 (2004) (an improperly calculated sentence is invalid on its face). A judgment and sentence is invalid on its face deviates from the sentencing authority authorized by statute and the alleged defect is evident on the face of the document without further elaboration. *See In re Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002); *In re Restraint of Thompson*, 141 Wn.2d 712, 718-19, 10 P.3d 380 (2000).

When a judgment reveals an infirmity “on its face” the reviewing court can then look to other documents. The phrase “on its face” includes documents signed as part of a plea agreement. *In re Restraint of Thompson*, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). Collateral documents, signed as part of a plea agreement, may be considered when those documents are relevant in assessing the validity of the judgment and sentence. *Hemenway*, 147 Wn.2d at 532. For example, a judgment and sentence is invalid on its

face where a petitioner's washed out convictions were considered in calculating an offender score—an error usually not fully apparent on the face of a judgment. *In re Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002) (“Initially, the State appropriately concedes that Goodwin may challenge his sentence despite the one-year bar of RCW 10.73.090 because the judgment and sentence appears invalid on its face.”). *See also In re LaChapelle*, 153 Wn.2d 1, 6, 100 P.3d 805 (2004).

Thus, it is well established that a judgment which contains an erroneous offender score is invalid on its face. Even a cursory examination of the documents supporting the judgment reveal the errors associated with the offender score. However, this Court does not even need to examine those documents to conclude that the judgment is erroneous in at least one extent. The judgment lists White’s two prior convictions as “Robbery 2<sup>o</sup>” and Burglary 2<sup>o</sup>”. The judgment lists the date of sentencing for the burglary as 1974 and then states that the robbery was sentenced in 1976. Based on this limited information, both convictions have a ten year wash-out period. The Court then determined that the robbery did not wash out. However, because less than ten years passed between the burglary and robbery conviction and because both crimes have a 10 year wash out (based on the information on the judgment), either one or both convictions count as criminal history. Thus, even limiting the review to the judgment itself reveals an obvious error.

In addition, White's judgment suffers from an additional facial invalidity because it does not include *any* maximum penalty or fine. As a result, White's petition is not time barred.

4. INVOLUNTARY PLEA

When a defendant pleads guilty, he must do so knowingly, voluntarily, and intelligently. *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). *See also* CrR 4.2(d); *In re Fonseca*, 132 Wn.App. 464, 132 P.3d 154 (2006) (plea withdrawn where defendant did not know he was ineligible for DOSA at time he pled guilty).

It is now well-settled that the constitutional validity of a guilty plea turns, in part, on whether the defendant was informed of "all" the "direct" consequences of his plea. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A sentencing consequence is direct when "the result represents a definite, immediate and largely automatic effect on the range of the

defendant's punishment.” *Id.* at 284, quoting *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

A guilty plea is invalid when it includes misinformation regarding the standard sentence range. *See State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 49 (2006); *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001). It makes no difference whether the correct sentence range is higher or lower than the mistaken range specified in the plea. *Mendoza*, 157 Wn.2d at 591 (“Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or higher than anticipated.”).

The Washington Supreme Court has held that a petitioner is unlawfully restrained “to the extent he [or she] was sentenced on the basis of an incorrect calculation of his [or her] offender score.” *In re Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997). This is because “[a] sentencing court acts without statutory authority ... when it imposes a sentence based on a miscalculated offender score.” *Id.* Moreover, a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice. *Johnson*, 131 Wn.2d at 569, 933 P.2d 1019.

Here, White’s offender score and resulting range are obviously incorrect in several respects. First, White was told that he had an offender

score of two based on a 1976 Robbery in the Second Degree conviction— with a listed date of conviction as “4-13-76”. White was not convicted of second-degree robbery on that date. He was convicted of second-degree burglary, a different crime and one that counted only as one, rather than two points. White was convicted of Robbery (prior to the time robbery was separated by degrees) in 1971. However, it was not just the date (and degree of crime) that was incorrect. The parties and Court correctly noted that White was convicted of burglary in 1974, but erroneously concluded that it did not count as criminal history. It should have counted, raising the offender score to three. The burglary did not wash out. Thus, it was a legal error to determine that it did not count as criminal history—an error on both the judgment and in White’s guilty plea.

However, additional criminal history also went un-scored. In fact, White’s offender score was five, not two. Thus, his plea was based on misinformation—in several respects. The plea colloquy, where White is told that three convictions count (and one of them counts as two points), but that his offender score is three, further underscores the invalidity of the plea. RP 3.

An additional error existed in White’s guilty plea. White was convicted of a crime that unmistakably involved the use of a vehicle. Nevertheless, he was not informed that his guilty plea would result in revocation of his privilege to drive.

RCW 46.20.285(4) requires (“shall”) the revocation of a person's driver's license for a period of one year for “[a]ny felony in the commission of which a motor vehicle is used.” RCW 46.20.285 has existed in essentially its present form since 1937. Recently, the Supreme Court construed the word “use” to mean that the vehicle must contribute in some way to the accomplishment of the crime or there must be some relationship between the vehicle and the commission or accomplishment of the crime. *State v. Batten*, 140 Wn.2d 362, 997 P.2d 350 (2000).

The mandatory license revocation imposed under RCW 46.20.285 is a penalty for a crime and not an administrative sanction. *State v. Hopkins*, 109 Wn. App. 558, 567, 36 P.3d 1080 (2001). Further, it is the *plea of guilty* that results in license revocation. Thus, the fact that the revocation is not noted on the *Judgment* makes no difference since the revocation is triggered by the plea.

Given that the revocation statute clearly applies to this case, the State may instead argue that a license revocation is collateral, not a direct consequence of the plea. However, that argument too is bound to fail.

“Direct consequences” are those that represent an immediate and automatic effect on the range of the defendant's punishment and include license revocation. *See State v. Wilson*, 117 Wn. App. 1, 11, 75 P.3d 573 (2003) (“Wilson was advised of the direct consequences of his plea, that his driver's license might be suspended or revoked, and that the prosecutor

would recommend no contact with the victim, jail time, and two years probation.”). Thus, the failure to properly advise White of this consequence renders his plea involuntary.

Where a defendant is misinformed about a “direct consequence of a guilty plea” he does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). According to *Isadore*, a defendant “need not make a special showing of materiality” in order for misinformation to render a guilty plea invalid, but instead must show that the misinformation concerned “a *direct* consequence of [the] guilty plea.” 151 Wn.2d at 296 (emphasis added).

*Isadore* is similar in several respects to this case. Isadore pled guilty to second degree burglary and third degree assault, but neither the State nor the defense was aware that Isadore's convictions required community placement after incarceration. After Isadore was sentenced, the Department of Corrections notified the prosecutor's office that Isadore's sentence should have included a mandatory one-year term of community placement. On the State's motion, the trial court amended Isadore's sentence to include the community placement condition. Later, the Washington Supreme Court granted Isadore's personal restraint petition, determined his plea was involuntary, and granted his requested remedy of specific performance of the plea agreement holding that Isadore was deprived of his constitutional

right to due process because his guilty plea was not knowing, voluntary and intelligent.

Withdrawal of a guilty plea is appropriate even where correction of the mistake works to a defendant's benefit. For example, in *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 149 (2006), the Washington Supreme Court held that a guilty plea is involuntary when it is based on a miscalculated sentence range, even where the correct sentence range results in a lower sentence. 157 Wn.2d at 584. "Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on a direct consequence of the plea, regardless of whether the actual sentence range is lower or higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea." *Id.* at 591. A guilty plea based on incorrect information regarding a direct consequence of the plea is deemed involuntary without a case specific showing of materiality because 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." *Isadore*, 151 Wn.2d at 302. Instead, a knowing, voluntary, and intelligent guilty plea requires a meeting of the minds. *See State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988).

4. WITHDRAWAL OF PLEA

White is entitled exercise his choice. He chooses to withdraw his guilty plea. A defendant may withdraw his guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. *Isadore, supra*; CrR 4.2(f). “An involuntary plea produces a manifest injustice.” *Isadore*, 151 Wn.2d at 298.

Where a plea agreement is based on misinformation, the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea.” *Walsh*, 143 Wn.2d at 8-9. *See also In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000). The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. *Miller*, 110 Wn.2d at 535.

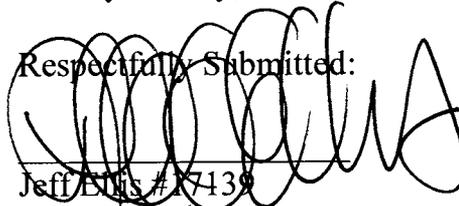
As noted above, White chooses withdrawal of his plea.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate White's robbery convictions and remand this case to Thurston County Superior Court to permit him to withdraw his guilty plea.

DATED this 23<sup>rd</sup> day of May, 2008.

Respectfully Submitted:



Jeff Ellis #17139  
*Attorney for Mr. White*

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APPENDIX A ~  
WHITE'S CRIMINAL HISTORY

**STATE OF WASHINGTON**  
**DEPARTMENT OF CORRECTIONS**  
**DIVISION OF COMMUNITY CORRECTIONS**  
 715 Eighth Avenue SE - Olympia WA - 360/586-0917

REPORT TO: The Honorable Paula Casey  
 Thurston County Superior Court

DATE: 10/21/96

NAME: **WHITE, GERALD J.** NUMBER: **229583**  
 Thurston County 96-1-00633-9

CRIME: Robbery in the First Degree While Armed With  
 A Deadly Weapon; Unlawful Possession of a Firearm  
 in the First Degree SENTENCE: To be determined

DATE OF SENTENCE: To be determined TERMINATION DATE: To be determined

PRESENT LOCATION: Thurston County Jail STATUS: Pending Sentence  
 Olympia WA 98502

CLASSIFICATION: 5B

**PRESENTENCE INVESTIGATION - SPECIAL**

**THIS REPORT IS BEING SUBMITTED TO THE COURT IN RESPONSE TO THEIR REQUEST FOR CRIMINAL HISTORY INFORMATION. THE FOLLOWING INFORMATION IS PROVIDED FOR THE COURT'S REVIEW:**

#	DATE	JURISDICTION	CRIME	DISPOSITION
1	11/10/70	King County Superior Court	Forgery, First Degree	Six years probation
2	6/6/71	King County Superior Court	Robbery, <del>Second Degree</del>	Twenty years confinement
3	11/27/74	King County Superior Court	Burglary, Second Degree	Five years probation
4	4/13/76	King County Superior Court	Burglary, Second Degree	Fifteen years confinement. Paroled 12/11/81
5	1/18/90	Thurston County Superior Court	Robbery, Second Degree	12 months + one day confinement. Released 9/15/90
6	5/24/91	Thurston County Superior Court	Assault, Third Degree (a)	Nine months jail confinement-twelve months community supervision
7	5/24/91	Thurston County Superior Court	Assault, Third Degree (b)	Nine months jail confinement-twelve months community supervision. Paroled 9/30/92

**APPROVED:**

*D. Hasselbach*  
**Doug Hasselbach**  
 Community Corrections Supervisor

**Submitted by:**

*R. Whiting*  
**Robert C. Whiting**  
 Community Corrections Officer III  
 715 Eighth Avenue SE  
 Olympia WA 98504  
 360/586-0917

/jt

Orig: Court Clerk/Thurston  
 2c: Prosecuting Attorney  
 FF \_\_\_\_\_

STATE OF WASHINGTON  
 County of Thurston  
 I, Betty J. Gould, County Clerk and Ex-officio Clerk of the Superior Court of the State of Washington, for Thurston County holding session at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing ONE pages.  
 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court

DATED: November 4th 2003  
**BETTY J. GOULD**  
 County Clerk, Thurston County, State of Washington  
*[Signature]*

**EXHIBIT #1**

APPENDIX B ~  
JUDGMENT AND SENTENCE

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

STATE OF WASHINGTON,

Plaintiff,

vs.

Gerard J. White III  
Defendant.

90 JAN 17

THELMA THOMPSON, CLERK

FILED  
SUPERIOR COURT  
COUNTY OF THURSTON, WASH. 89-1-495-3

JUDGMENT AND SENTENCE  
WARRANT OF COMMITMENT  
(Felony Committed After  
July 1, 1984)

I. HEARING

- The above-named defendant was found guilty on 1/17/90 by (plea) (~~jury verdict~~) (~~bench trial~~) of the crime(s) of Robbery 2 9A.56.210
- A sentencing hearing in this case was held on 1/17/90. Present were: the above-named defendant, D. GRAY, defendant's attorney, and W. Gilbert, Deputy Prosecuting Attorney for Thurston County.
- Defendant was asked if there was any legal cause why judgment should not be pronounced and no legal cause was shown.

II. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of:

and that the standard range for the crime(s): \_\_\_\_\_  
with the following criminal history:

Crime	Sent. Date	Adult/Juv Cr.	Date Cr.	Crime Type
<u>Robbery 2</u>	<u>4-13-76</u>	<u>Adult</u>		<u>Violent Felony</u>
<u>Robbery 2</u>	<u>4-27-79</u>	<u>"</u>		<u>Violent Felony</u>

III. ORDER

IT IS ORDERED that:

- The defendant is sentenced to a term of total confinement of 12 months and 1 day to be served in a facility operated by the State in accordance with RCW 9.94A.190, with credit for time served in Thurston County Jail: 45 days
- Defendant shall pay costs of this prosecution taxed at \$ 70.<sup>00</sup>
- Defendant shall pay a fine(s) as follows: N/A
- Defendant shall pay \$ 100.<sup>00</sup>, assessed in accordance with RCW 7.68.035.
- Defendant shall pay restitution as follows: if assessed, IN AN AMOUNT TO BE DETERMINED BY FUTURE COURT ORDER
- Defendant shall: HAVE NO CONTACT W/ VICTIM FOR 10 YEARS.
- The payment of all costs, fines, restitution, or assessments shall be through the Clerk of the Thurston County Superior Court.
- Defendant is remanded to the custody of the Sheriff of this county to be detained and delivered into the custody of the proper officers for transportation to and confinement in the appropriate facility.

SIGNED this 17th day of January, 1990, in the presence of said defendant.

[Signature]  
JUDGE

PRESENTED BY:  
PATRICK D. SUTHERLAND  
Prosecuting Attorney

APPROVED FOR ENTRY:

[Signature]  
Deputy Prosecuting Attorney

[Signature]  
Attorney for Defendant

THURSTON COUNTY SUPERIOR COURT 89-1-495-3

CRUISE NO. 89-1-495-3; BOOKING NO. B20929  
SID NO. WA 10290665; RACE N; SEX M DOB: 10-16-50

IV. WARRANT OF COMMITMENT

THE STATE OF WASHINGTON TO:

The Sheriff of Thurston County and to the proper officers of the Department of Corrections.

The defendant GERALD J. WHITE III has been convicted in the the Superior Court of the State of Washington for the crime(s) of:

ROBBERY 2° 9A. 56 210 RCW

and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

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

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

By direction of the Honorable:

ROBERT J. DORAN

JUDGE

THELMA "Chum" THOMAS

CLERK

By: Judy Williams

DEPUTY CLERK

FINGERPRINTS

CERTIFICATE

I, THELMA "Chum" THOMAS, Clerk of this court, certify that the above is a true copy of the Judgment and Sentence and Warrant of Commitment in this action on record in my office.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

THELMA "Chum" THOMAS

CLERK

By: \_\_\_\_\_

DEPUTY CLERK



Gerald J. White III

DATED this 17<sup>th</sup> day of January, 1990.

Fingerprints attested by:

THELMA "Chum" THOMAS

CLERK

By: Judy Williams

DEPUTY CLERK

STATE OF WASHINGTON  
County of Thurston  
I, Betty J. Gault, County Clerk and Ex officio Clerk of the Superior Court of the State of Washington, for Thurston County holding sessions at Olympia, do hereby certify that the foregoing is a true and correct copy of the original as the same appears on file and of record in my office containing \_\_\_\_\_ pages, IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

Betty J. Gault  
COUNTY CLERK  
COUNTY OF THURSTON  
STATE OF WASHINGTON

RECORDED

APPENDIX C ~  
GUILTY PLEA FORM

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.

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

STATE OF WASHINGTON,

Plaintiff,

THELMA THOMAS, CLERK

NO. 89-1-00495-3

BY dy  
AFFIDAVIT

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY (FELONY)

GERALD J. WHITE, III,

Defendant.

1. My true name is Gerald White
2. My age is 40 D.O.B. Oct. 26, 1950
3. I went through the GED grade in school.
4. I have been informed and fully understand that I have the right to representation by a lawyer, and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is F. Daniel Graf
5. I have been informed and fully understand that I am charged with the crime(s) of Robbery, 2nd degree (RCW 9A.56.210) Class B

that the elements of the crime(s) are: 1) In Thurston County on/about August 3, 1989  
2) did unlawfully take personal property of another 3) against that person's  
will 4) by force or threat of force, violence, or fear of injury to that person  
or property, or the person or property of another (RCW 9A.56.190).

and that the maximum sentence(s) for the crime(s): 10 YEARS

Years and \$ 29,000.00 fine(s).  
 The standard sentence range for the crime(s) is at least twelve (12) months  
 and no more than fourteen (14) months based upon my criminal history which  
 I understand and acknowledge to be: two (2) points

I have been given a copy of the information.

6. I have been informed and fully understand that:
  - (a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
  - (b) I have the right to remain silent before and during trial, and I need not testify against myself.
  - (c) I have the right at trial to hear and question witnesses who testify against me.
  - (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
  - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty. The state would be required to prove beyond a reasonable doubt every element of the crime charged.
  - (f) I have the right to appeal a determination of guilt after a trial.
  - (g) If I plead guilty, I give up the rights in statements 6(a) - (f).
7. I plead Guilty to the crime(s) of Robbery, 2nd degree

as charged in the Original Information.

MICROFILMED

THURSTON COUNTY CLERK

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court - payment of the appropriate costs, fees, assessments, restitution and:

0-12 months + 1 Day Probation w/ Credit for Time Served  
of 45 days @ Work. All Fees @ 100.00. (more info)  
Fund.

I fully understand that the Prosecuting Attorney is not bound to make this recommendation if I have previous convictions not listed in Paragraph 5 of this form.

12. I have been informed and fully understand that the standard sentencing range is based on the crime(s) charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to the charge(s) is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases.

13. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence.

14. ( ) (Mandatory Minimum Term) I have been informed and fully understand that the crime(s) of N/A

with which I am charged carries with it a term of total confinement of not less than \_\_\_\_\_ months. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term. (If applicable, this complete paragraph shall be initialed by the defendant and the judge.)

15. I have been advised that the sentences imposed in Counts N/A will run concurrently/consecutively unless the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole or community supervision, a plea of guilty to the present charge(s) shall be sufficient grounds for a judge to revoke my probation or community supervision or for the Parole Board to revoke my parole.

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the Original Information. This is my statement: On or about August 3, 1989 in Lacey, Washington, I took a Motorcycle from the person and in the presence of another person, by representing to him that I had a gun in a paper bag that I was holding, even though there was no gun.

X (Signature)

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\*\*\*NOT USED\*\*\*

19. I have read or have had read to me and fully understand all of the numbered sections above (1 through 19) and will receive a copy of the "Statement of Defendant on Plea of Guilty" form. I have no further questions to ask of the court, and any signature below represents my voluntary act.

F. Daniel Graf      [Signature]  
Attorney for Defendant      F. Daniel Graf      Defendant's Signature

Defendant's Address      Thurston Co. jail

[Signature]  
Deputy Prosecuting Attorney      City, State and Zip

The foregoing statement was read by me or to the defendant and signed by the defendant in the presence of his or her attorney, and the undersigned judge, in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge(s) and the consequences of the plea; that there is factual basis for the plea, and that the defendant is guilty as charged.

The court finds that the plea agreement is consistent with the interests of justice and the prosecuting standards pursuant to RCW 9.94A.090.

DATED this 17<sup>th</sup> day of January, 1990

[Signature]  
JUDGE

( ) Attached is a verification by an interpreter.

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APPENDIX D ~  
TRANSCRIPT OF PLEA  
AND SENTENCING HEARINGS

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

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GERALD J. WHITE, )  
 )  
 Defendant. )

Cause No. 89-1-00495-3

COPY

PLEA AND SENTENCING HEARING

BE IT REMEMBERED that on January 17, 1990, the  
above-entitled and numbered cause came on for hearing before  
JUDGE ROBERT J. DORAN, Thurston County Superior Court,  
Olympia, Washington.

A P P E A R A N C E S

For the Plaintiff: MR. WILLIAM GILBERT  
Deputy Prosecuting Attorney  
Olympia, WA 98502

For the Defendant: MR. F. DANIEL GRAF  
Attorney at Law  
Olympia, WA 98502

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Karen Smith Avery, Court Reporter  
Snohomish County Courthouse  
3000 Rockefeller Avenue, MS 502  
Everett, Washington 98201  
(425) 388-3375

CSR License 2139 Expires 9-12-08

1 January 17, 1990

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THE COURT: This is State vs. Gerald White.

Before you came into the courtroom, Mr. Graf handed me a three-page Statement of Defendant on Plea of Guilty which purports to have your signature on the last page. Is this your signature?

THE DEFENDANT: Yes, it is.

THE COURT: Your name is Gerald White. You are 40 years of age. You have received your GED.

I take it you read and understand the English language?

THE DEFENDANT: Yes.

THE COURT: You have had no difficulty reading or understanding any of these statements?

THE DEFENDANT: No.

THE COURT: Are you a citizen of the United States?

THE DEFENDANT: Yes, I am.

THE COURT: Are you on probation, parole, or community supervision at this time?

THE DEFENDANT: No.

THE COURT: Are you appointed, Mr. Graf?

MR. GRAF: I am, Your Honor.

THE COURT: Your appointed counsel is

1 Mr. F. Daniel Graf.

2 Do you understand that you are charged by Information  
3 with the crime of Robbery in the Second Degree? The  
4 elements are (1) that you did in Thurston County on or  
5 about the 3rd day of August 1989, unlawfully take personal  
6 property from another against that person's will by force  
7 or threat of violence or fear of injury to that person or  
8 to the property or person of another.

9 The maximum punishment for this offense is ten years  
10 imprisonment and/or a fine of \$20,000 or both. The  
11 standard range under the Sentencing Reform Act is 12 to 14  
12 months based on a two point prior conviction.

13 Counsel might inform the Court what the two points  
14 are for.

15 MR. GILBERT: Robbery in the First Degree,  
16 sentenced on 4-13-76, a felony which doesn't wash.

17 MR. GRAF: I believe that was Robbery in the  
18 Second Degree. The weapons charge was dropped in return  
19 for a plea of guilty to that crime.

20 MR. GILBERT: Also, Burglary in 1974.

21 MR. GRAF: And a weapons violation in '88.

22 THE COURT: One thing that is important  
23 under the Sentencing Reform Act is that we get the points  
24 correct.

25 MR. GRAF: I understand, Your Honor.

1 THE COURT: We have to know what the points  
2 are, what counts, what doesn't count, so the Court can  
3 determine the limits of its authority in the imposition of  
4 a sentence.

5 I take it with his two points, based upon prior  
6 convictions that have been referred to, the SRA has a  
7 standard range of 12 to 14 months.

8 MR. GRAF: That's correct, Your Honor.

9 THE COURT: Is that 12-plus?

10 MR. GRAF: Yes, Your Honor.

11 THE COURT: Your criminal history, given  
12 your age, is based upon any prior convictions in State or  
13 Federal Court or elsewhere. If your criminal history  
14 should turn out to be other than that as represented, it  
15 could change the prosecutor's recommendation, could change  
16 the standard range. But if I accept your plea today, you  
17 will not be permitted to withdraw it. Do you understand  
18 that?

19 THE DEFENDANT: (Nodded affirmatively).

20 THE COURT: If you are not prepared to enter  
21 a change of plea today, Mr. White, the Court will grant you  
22 a minimum of 24 hours or such additional time you might  
23 desire so you can consider your plea and discuss this case  
24 further with your lawyer if you care to do so.

25 I simply ask you now do you desire additional time to

1 think the matter over?

2 THE DEFENDANT: No.

3 MR. GRAF: Perhaps we better take a few  
4 minutes, Your Honor, and let you call another case and I  
5 will speak to Mr. Gilbert about this.

6 THE COURT: We will take this matter up in a  
7 few minutes.

8

9 (Court in recess)

10

11 THE COURT: We will take up the Gerald White  
12 case again.

13 MR. GILBERT: The defendant's criminal  
14 history consists of one conviction that counts, and he was  
15 sentenced on 4-13-76, and that was a conviction for Robbery  
16 in the First Degree. That is an over ten-year-old  
17 conviction, but it would not wash as it is a Class A  
18 felony.

19 Since it is a Robbery under the Sentencing  
20 Guidelines, Robbery would be a serious violent offense.  
21 When you take that one conviction, it is times two, and  
22 that gives him a total offender score of 2, and that would  
23 give him a standard range of 12-plus to 14 months. I  
24 believe that would be Robbery in the Second Degree as the  
25 current offense, so that would give him the standard range

1 of 12-plus to 14 months.

2 MR. GRAF: That's correct, Your Honor.

3 THE COURT: I don't recall if I had advised  
4 him of his rights. I believe I was inquiring whether he  
5 desired additional time to think it over.

6 MR. GRAF: The Court was reiterating the  
7 standard range with two points on the first page, Your  
8 Honor.

9 THE COURT: Do you desire additional time to  
10 think the matter over or discuss this case with your  
11 lawyer, Mr. Graf?

12 THE DEFENDANT: No, sir.

13 THE COURT: I don't believe I advised this  
14 defendant of his rights.

15 MR. GRAF: You did not, Your Honor.

16 THE COURT: You have been sitting in the  
17 jury box, and you have heard me tell other defendants it is  
18 necessary I go over the rights individually with a  
19 defendant to insure that defendant understands these rights  
20 before I may accept a plea.

21 I will advise you that you have the right to continue  
22 your plea of not guilty to the crime charged in the  
23 Information, that crime being Robbery in the Second Degree.  
24 If you do, you have a right to trial by jury before an  
25 impartial jury selected in the County. At trial, you have

1 the right to be represented by a lawyer, the same as you  
2 are at this arraignment. At trial, you have the right to  
3 hear and question witnesses called by the State of  
4 Washington, and you also have the right to have witnesses  
5 appear on your own behalf, and they could be made to appear  
6 without expense to you if they are available.

7 At trial, you have the right to testify or remain  
8 silent. If you decide you didn't want to testify, the  
9 Court would, at the request of your lawyer, instruct the  
10 jury your silence could not be held against you.  
11 Throughout the entire criminal proceedings, you are  
12 presumed innocent of any crime. That presumption would  
13 continue until or unless the State proved at trial each and  
14 every element of the crime with which you are charged  
15 beyond a reasonable doubt or until such time as you enter a  
16 plea of guilty.

17 If the case proceeded to trial before a jury, you  
18 would have the right to appeal from a finding of guilty and  
19 any judgment and sentence imposed by the Court.

20 Do you understand your legal and constitutional  
21 rights and also the elements of the crime with which you  
22 are charged?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: As far as a plea bargain is  
25 concerned, the State will recommend the low end of the

1 range, 12 plus one day, credit you with time served, 45  
2 days, any costs, fees, and assessments, and a payment into  
3 the Crime Victims Fund.

4 Is that the full nature and extent of the plea  
5 bargain?

6 MR. GILBERT: And restitution, if  
7 applicable, by future court order, Your Honor. I don't  
8 think there is any restitution.

9 MR. GRAF: There is not.

10 THE COURT: That would be included, if any.

11 I take it, Mr. Gilbert, the plea bargain, in your  
12 judgment, is consistent with prosecutorial guidelines and  
13 in the interest of justice?

14 MR. GILBERT: Yes, it is, Your Honor.

15 THE COURT: The Court will make such a  
16 finding.

17 You understand that the plea bargain is not binding  
18 on the sentencing court. The Court, however, would be  
19 required to sentence you within the range of 12 to 14  
20 months, unless a judge is able to state a substantial and  
21 compelling reason to impose an exceptional sentence.

22 If you were to be sentenced beyond 14 months, you  
23 have the right to appeal. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Does the defendant waive formal

1 reading?

2 MR. GRAF: We do.

3 THE COURT: Now, then, to that certain  
4 Information, which was filed in the Court on August 4,  
5 1989, in which it is alleged that you, Gerald White, in the  
6 County of Thurston, State of Washington, on or about the  
7 3rd day of August, 1989, did unlawfully take personal  
8 property from a person or in the presence of Roy Wallace  
9 against such person's will by use of or threatened use of  
10 immediate force, violence or fear of injury to such person  
11 or his property and to the person or property of another,  
12 to the crime of Robbery in the Second Degree, I ask you how  
13 you plead, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Let the record show the  
16 defendant has entered a plea of guilty to the crime charged  
17 in the Information.

18 I ask you whether you make your plea freely and  
19 voluntarily?

20 THE DEFENDANT: Yes.

21 THE COURT: Has anyone threatened you or  
22 anyone else to cause you to enter this plea?

23 THE DEFENDANT: No.

24 THE COURT: Any promises been made to you  
25 other than those set forth on your statement?

1 THE DEFENDANT: None.

2 THE COURT: Tell me in your own words what  
3 you did and what you're pleading guilty to.

4 THE DEFENDANT: I took back something that I  
5 thought was my property.

6 THE COURT: You took it back by indicating  
7 to the person you had a gun in a paper bag?

8 THE DEFENDANT: Yes.

9 THE COURT: Even though there was no gun?

10 THE DEFENDANT: Even though there wasn't.

11 THE COURT: But you took the property back,  
12 threatening to use the gun that was in the bag?

13 THE DEFENDANT: Yes. It was implied, yes.

14 THE COURT: Does counsel believe that  
15 satisfies all of the elements?

16 MR. GILBERT: Yes.

17 THE COURT: Mr. Graf?

18 MR. GRAF: I do, Your Honor.

19 THE COURT: You took property against  
20 Mr. Wallace's will, and it was only because of the  
21 threatened force he returned the property?

22 THE DEFENDANT: He didn't want to give it to  
23 me.

24 THE COURT: The Court will accept the plea.  
25 You may be seated.

1 Will there be a request for a presentence report?

2 MR. GRAF: No. We would like to go to  
3 sentencing at this time.

4 THE COURT: You may be seated.

5 MR. GILBERT: The only thing I have to add  
6 is the Court should order in terms of community placement  
7 that the defendant have no contact with the victim for ten  
8 years.

9 MR. GRAF: No objection.

10 THE COURT: Mr. Graf?

11 MR. GRAF: No objection.

12 THE COURT: I believe that is the only  
13 statement Mr. Gilbert was making. He is making a  
14 recommendation based upon the plea bargain on the  
15 defendant's plea statement.

16 MR. GRAF: We have no objection to that,  
17 Your Honor.

18 THE COURT: Do you have any statement to  
19 make?

20 MR. GRAF: None.

21 THE COURT: Mr. White, will you please  
22 stand?

23 Is there any statement you would like to make before  
24 sentence is imposed?

25 THE DEFENDANT: No, I don't think so.

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THE COURT: The Court will accept the terms of the plea bargain in the standard range, and that is the presumptive sentencing range to the crime for which you have entered a plea of guilty. The Court will sentence you to 12 months and one day of confinement, credit you with time served, which is 45 days, require that you pay the costs of prosecution, an amount into the Crime Victims Account, and any restitution that may be necessary.

You are to have no contact, directly or indirectly, with the victim, Mr. Wallace, for a maximum term of ten years.

Any other conditions, Mr. Gilbert, you recommended?

MR. GILBERT: No, Your Honor, just the standard range.

THE COURT: The Court is signing the Judgment and Sentence in the presence of the defendant in the matter of State of Washington vs. Gerald J. White, in Cause No. 89-1-495-3.

(Court in recess)