

FILED  
COURT OF APPEALS  
DIVISION II

09 FEB 17 AM 9:30

NO. 38099-4-II

STATE OF WASHINGTON

BY

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

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STATE OF WASHINGTON,

Respondent,

v.

GARNETT LYNN WILLIAMS,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Thomas P. Larkin

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BRIEF OF APPELLANT

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P.M. 2-13-2009

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A. ASSIGNMENTS OF ERROR

1. The trial court violated appellant's constitutional right to confront and cross-examine adverse witnesses by severely curtailing cross-examination of the complaining witness.

2. The trial court failed to determine appellant's criminal history and calculate his offender score on the record consequently miscalculating his offender score.

Issues Pertaining to Assignments of Error

1. Did the trial court violate appellant's constitutional right to confront and cross-examine witnesses by severely curtailing cross-examination of the complaining witness particularly when the witness's credibility was essential to the State's case?

2. Did the trial court fail to determine appellant's criminal history and calculate his offender score on the record consequently miscalculating his offender score where the evidence provided by the State to prove appellant's criminal history does not support the offender score?

B. STATEMENT OF THE CASE<sup>1</sup>

1. Procedural Facts

On May 8, 2008, the State charged appellant, Garnett Lynn Williams, with one count of assault in the first degree and one count of unlawful possession of a firearm in the first degree. CP 1-2. Following a bench trial before the Honorable Thomas P. Larkin, the court found Williams guilty as charged on July 11, 2008. CP 14-18. On July 25, 2008, the court imposed a concurrent sentence of 300 months for count one and 67 months for count two, and 60 months for the firearm enhancement for a total of 360 months in confinement and 24 to 48 months of community custody. CP 26-28.

2. Substantive Facts

a. Trial

John Hall testified that he frequently visited the Woodmark Apartments located off 96<sup>th</sup> and Hosmer, where people buy and sell drugs and he knew a lot of people there who used drugs 4RP 31-32, 41-42. He would run into Williams occasionally and they “hung out” a few times. 4RP 31-33. Hall did not know Williams’ real name but knew him as “Pops.” 4RP 31. On May 7, 2008, he was walking about the apartment

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<sup>1</sup> There are nine verbatim report of proceedings: 1RP - 5/8/08; 2RP - 6/25/08; 3RP - 7/2/08; 4RP - 7/7/08; 5RP - 7/8/08; 6RP - 7/9/08; 7RP - 7/10/08; 8RP - 7/11/08; 9RP - 7/25/08.

complex and heard Williams arguing with Rondala Mathis. 4RP 34-35. Hall heard his name mentioned so he approached them and told Williams “whatever they got going on, keep me out of it.” 4RP 35. According to Hall, he turned around to leave and he was about ten feet away when Williams shot him in the back. He fell to the ground and Williams shot him in the back again. 4RP 36-37. As he laid on the ground and held his hands up to cover his face, Williams shot him in the hand. 4RP 38. Hall did not see Williams with a gun before he was shot. 4RP 38. Williams ran off and the next thing that Hall could remember was someone putting a towel on his back and then the ambulance came and he woke up in a hospital bed “a week later.” 4RP 40. He remained hospitalized for about three weeks. 4RP 41.

Under cross-examination, Hall claimed that he was visiting “associates” at the Woodmark Apartments but did not know their names or their apartment numbers. 4RP 44-45. When asked if he knew Rondala and Demetra, he admitted that he knew them and that they bought drugs from him before the time of the shooting. 4RP 45-46. Hall denied that he was familiar with handguns but admitted that he was convicted of murder in the second degree using a handgun. 4RP 47-48. Hall was coming out of somebody’s apartment when a female came and told him that his name came up in an argument between Williams and someone else. There were

quite a few people around when he confronted Williams but he did not pay attention to who they were. 4RP 51-53. Hall could not recall talking to any officers after he was shot because he was “going in and out” of consciousness. 4RP 54-55. He remembered that Williams was wearing a “gray” hoody. 4RP 56-57.

Dametra Bolar testified that she was in Williams’ father’s apartment at the Woodmark Apartments on the day of the shooting. 4RP 67-68, 71. She and Williams’ father’s girlfriend, LaShanda, were “getting high” when they heard Rondala banging on the door. 4RP 71-72. LaShanda let Rondala in and she wanted money to buy drugs from Hall. 4RP 72-73. While Rondala was asking them for money, Williams and his father walked in the door. Williams asked them what they were doing there. 4RP 73-74. Dametra decided to leave but Rondala started arguing with Williams and “being rude” and “getting smart” with him. 4RP 74-76. While Rondala kept arguing with Williams, Dametra walked down to the next hallway where there was a lot people. Then she saw Rondala go to get Hall and heard “a lot of commotion going on.” 4RP 77-78. Hall and Williams were arguing in front of the apartment with Williams “backed up like against the door.” 4RP 78. Suddenly, she heard gunshots and ran, “I heard the shots and I’m gone.” 4RP 79. When she got to the driveway,

she turned around and saw Hall fall and Williams was standing over him with a gun. 4RP 79-80.

Dametra went to a nearby 7-Eleven where the police arrived shortly thereafter because Rondala led them to believe that she witnessed the shooting. 4RP 83. Dametra initially gave the police a false name because she had an outstanding warrant. 4RP 64, 83. The police arrested her, handcuffed her, and placed her in the patrol car. 4RP 84. They kept her in the patrol car for four hours and kept “harassing” her so she eventually told them what she saw. 4RP 85.

Deputy Jeremy Johnson testified that while on patrol on May 7, 2009, he was driving around the Woodmark Apartments at about 4 p.m. 5RP 137-38, 153. He noticed several people standing in one of the walkways and then he heard “four loud pops” that sounded like gunfire. Johnson stopped his patrol car immediately and notified dispatch. As he got out of his patrol car, a female came running toward him trying to get his attention, “[s]he was scared, afraid, she was panicked.” 5RP 139. The female, later identified as Rondala Mathis, said that “a guy named Pops had shot her boyfriend.” 5RP 140-41. Johnson looked around and saw a bald black male, wearing a black hoody, walk out toward the parking lot but he did not pursue him. 5RP 140-41. He made contact with the victim who was laying on the ground and obtained his name and birthdate, but

“he didn’t give me any information about who shot him.” 5RP 143. Other officers arrived on the scene less than two minutes later. 5RP 144. While Johnson was obtaining more information from Rondala, he received a radio call that a suspect had been apprehended. He drove Rondala a few blocks to where the suspect was detained and she identified Williams as the shooter. 5RP 150-52. Johnson got out of his patrol car and told Deputy Honeycutt that “it was a positive I.D.” 5RP 152.

Deputy Eric Honeycutt heard Deputy Johnson radio for backup at the Woodmark Apartments and as he reported to the scene he saw a suspect described as a “black male about 5’8, heavy build with facial hair wearing a white T-shirt.” 6RP 254-55. At approximately 4:33 p.m., he detained the suspect in handcuffs while waiting for another unit to assist him. 6RP 256. When the other unit arrived, Honeycutt patted down the suspect but found no weapons. 6RP 257. He contacted Johnson for a “witness show-up” and after Williams was positively identified, he placed Williams under arrest, conducted a search, and another officer transported him to the jail. 6RP 257-60.

Detective Ben Benson interviewed Williams at the sheriff’s office after he was taken into custody. 5RP 201. He completed his interview with Williams and obtained a search warrant for Williams’ fathers’ apartment. 5RP 202-03. Benson notified the detectives who remained at

the scene that a search warrant had been signed so they searched the apartment and collected evidence. 5RP 204. On May 22, 2009, Benson interviewed Hall at his home after he was discharged from the hospital. 5RP 205, 208.

Detective Jeff Marziarski interviewed Rondala Mathis and Alisa Nickelberry at the scene and took a taped statement from them. 5RP 177-78. He and other officers searched the apartment after Detective Benson obtained a search warrant. 5RP 178-80. Marziarski found a black hoody on a chair in the living room. 5RP 181. After noticing a slit in the upholstery of a couch, officers ripped the couch open and found a gun and bullets. 5RP 181-82. The items were collected and booked into evidence. 5RP 183.

Forensic investigator Steven Mell collected and documented the evidence from the scene of the shooting. 6RP 263-4. Mell retrieved spent shell casings, a plastic pellet, and clothing outside the apartment. 6RP 272-78. Mell identified items collected from the apartment, including a black hoody sweatshirt, a highpoint pistol, and ammunition. 6RP 281-90. Forensic scientist Brenda Lawrence examined and identified the casings, ammunition, pistol, magazine, and cartridges retrieved from the scene and the court admitted the items into evidence. 6RP 306-313.

Dr. Lori Morgan testified that she operated on Hall on May 7, 2008 for gunshot wounds. 5RP 114-15. She successfully removed a bullet from his lower back but decided not to remove another bullet very high up in the chest. 5RP 118-19. Morgan also removed bullet fragments from Hall's hand. 5RP 125-26. Hall required three weeks of hand therapy and Morgan did not anticipate any problems with the bullet that remains lodged in his chest. 5RP 126-27.

Mujaahidah Sayfullah, Williams' sister, testified that Williams lived with her in Puyallup and they spent most of the day together on May 7, 2008. 7RP 333. Williams had just purchased a vehicle the day before so she took him to the Department of Licensing to renew registration tabs. Sometime between 4:15 p.m. and 4:30 p.m, she dropped him off at their aunt's home at the Cherry Creek Apartments located at 96<sup>th</sup> and Hosmer. 7RP 334-35. Sayfullah recalled the approximate time because she picked up her nephew from daycare that day and she always picks him up by 6 p.m. 7RP 335-36.

b. Sentencing

At sentencing, the State presented a "summary of the defendant's criminal history" and a "certified copy of a 2007 Judgment & Sentence on the Unlawful Possession of Controlled Substance." 9RP 377. The State explained that "the remaining crimes have been proved up through

certified copies already filed with the Court during the course of the trial.” 9RP 377. The Court responded, “Okay. I’ll hear from you.” 9RP 378. The State asserted that appellant’s offender score was “in excess of 9” and recommended the high end of the standard range. 9RP 378. Defense counsel urged the court to impose the low end of the standard range. 9RP 380-81. After hearing from appellant, the court proceeded to impose sentence without determining appellant’s criminal history or calculating appellant’s offender score on the record. 9RP 381-83.

C. ARGUMENT

THE TRIAL COURT VIOLATED WILLIAMS’ CONSTITUTIONAL RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES BY SEVERELY CURTAILING CROSS-EXAMINATION OF THE COMPLAINING WITNESS.

Reversal is required because the trial court violated Williams’ constitutional right to confront and cross-examine witnesses by severely curtailing cross-examination of the complaining witness particularly when the witness’s testimony was essential to the State’s case.

The Sixth Amendment to the United States and Const. art. 1, section 22 guarantee a defendant the right to confront and cross-examine adverse witnesses. State v. McDaniel, 83 Wn. App. 179, 185, 920 P.2d 1218 (1996), review denied, 131 Wn.2d 1011 (1997). The constitutional guarantee “is generally satisfied when the defense is given a full and fair

opportunity to probe and expose [the] infirmities” of the witness’s testimony. Delaware v. Fensterer, 474 U.S. 15, 22, 106 S. Ct. 292, 88 L. Ed. 2d 15 (1985). It is fundamental that a defendant is given extra latitude in cross-examination to show motive or credibility, especially when the particular prosecution witness is essential to the State’s case. State v. Smith, 130 Wn.2d 215, 227, 922 P.2d 81 (1996); State v. York, 28 Wn. App. 33, 36, 621 P.2d 784 (1980). A defendant’s right to impeach a prosecution witness with evidence of bias or a prior inconsistent statement is guaranteed by the constitutional right to confront witnesses. State v. Johnson, 90 Wn. App. 54, 69, 950 P.2d 981 (1998)(citing Davis v. Alaska, 415 U.S. 308, 316-18, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); State v. Dickenson, 48 Wn. App. 457, 469, 740 P.2d 312 (1987)). “Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” Davis v. Alaska, 415 U.S. at 316.

A violation of a defendant’s rights under the confrontation clause is constitutional error. State v. Dickenson, 48 Wn. App. 457, 470, 740 P.2d 312, review denied, 109 Wn.2d 1001 (1987). Constitutional error is presumed to be prejudicial, and the State bears the burden of proving that the error was harmless. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d

321 (1986). In determining whether constitutional error is harmless, Washington courts use the “overwhelming untainted evidence test,” under which appellate courts look only to the untainted evidence to decide if it is so overwhelming that it necessarily leads to a finding of guilt. *Id.* at 426.

Here, the trial court severely curtailed defense counsel’s critical cross-examination of Hall about his prior statements to Detective Benson after he was discharged from the hospital. 6RP 239-52. Defense counsel attempted to establish that Hall testified at trial that he knew Williams as “Pops” but he told Benson that he did not know the name of the person who shot him. 6RP 242-43. The State objected to the questioning asserting that “under 403 the Court can control needless, cumulative evidence.” 6RP 243. The court sustained the objection. Defense counsel attempted to show that contrary to Hall’s testimony that he did not see Williams with a gun before shots were fired, when Benson asked him if he saw Williams with a gun he said, “Yeah, I seen him fumbling in his pockets, that is why I tried to walk away.” 6RP 244-45. The State interjected, “I guess I’ll object to that as relevance.” 6RP 245. The court sustained the objection. 6RP 246. Defense counsel attempted to point out that Hall testified that he did not know any of the names of the people who were at the Woodmark Apartments but he specifically named Red when Benson asked him who was there at the time of the shooting. 6RP 247-48.

The State objected to “the form of the question as argumentative.” 6RP 248. The court sustained the objection. Defense counsel attempted to emphasize that Hall referred to Red by her name but never told Benson that Williams’ name was Pops. 6RP 251-52. The State objected “as asked and answered and beyond the scope.” 6RP 252. Once again the court sustained the objection.

Clearly, the purpose of defense counsel’s cross-examination was to prove that Hall’s testimony lacked credibility because of prior inconsistent and contradictory statements made to Detective Benson. To this end, defense counsel properly asked leading questions, that is, questions which suggested the desired answer, allowed under ER 611(c)(“leading questions should be permitted on cross examination”). By sustaining the State’s improper objections and severely curtailing defense counsel’s cross-examination, the court prevented defense counsel from impeaching Hall’s testimony to show that it was unreliable. As the complaining witness, Hall’s testimony was essential to the State’s case. Consequently, the court was required to give defense counsel greater latitude during cross-examination to test Hall’s credibility. State v. Smith, 130 Wn.2d at 227. By unduly restricting defense counsel’s efforts, the court violated Williams’ right to confront and cross-examine adverse witnesses. “The central concern of the Confrontation Clause is to ensure the

reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” Maryland v. Craig, 497 U.S. 836, 845, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990).

Furthermore, the court’s violation of Hall’s constitutional right did not constitute harmless error because without Hall’s tainted testimony the State’s case against Williams was not overwhelming. The record reflects that although Dametra Bolar claimed that she heard shots and saw Williams standing over Hill with a gun, she did not see Williams shoot Hill and she admitted she was “getting high” just before the shooting. 4RP 71, 94-95. According to Deputy Johnson, Rondala Mathis claimed that Williams shot Hill, but the record substantiates that her accusation was motivated by her hostility toward Williams and provoked by an argument she had with Williams that led to the shooting. 5RP 150-52, 4RP 74-76, 90-91. Significantly, although the forensic experts testified that they collected and examined a handgun found in Williams’ father’s apartment, there was no testimony that connected Williams to the handgun. 9RP 263-323. Moreover, Mujaahidah Sayfullah testified that she dropped Williams off at their aunt’s apartment sometime between 4:15 and 4:30 p.m. 7RP 334-35. This was after the time of the shooting and before Williams was detained by officers.

The trial court's violation of Williams' constitutional right to confrontation requires reversal because the State's untainted evidence was not so overwhelming that it would lead to a finding of guilt beyond a reasonable doubt. State v. Guloy, 104 Wn.2d at 425-26; State v. McDaniel, 83 Wn. App. at 187-88.

2. THE TRIAL COURT FAILED TO DETERMINE WILLIAMS' CRIMINAL HISTORY AND CALCULATE HIS OFFENDER SCORE ON THE RECORD CONSEQUENTLY MISCALCULATING HIS OFFENDER SCORE.

A remand for resentencing is required because the trial court failed to determine William's criminal history and calculate his offender score on the record consequently miscalculating his offender score.

Due process requires the State to prove a defendant's criminal history and offender score by a preponderance of the evidence. State v. Ford, 137 Wn.2d 472, 480-81, 973 P.2d 452 (1999). "Illegal or erroneous sentences may be challenged for the first time on appeal." Id. at 477. A defendant generally cannot waive a challenge to a miscalculated offender score because a defendant cannot agree to punishment in excess of that which the Legislature has established. In re Personal Restraint of Goodwin, 146 Wn.2d 861, 873-74, 50 P.3d 618 (2002). The best evidence of a prior conviction is a certified copy of the judgment. State v. Lopez, 147 Wn.2d 515, 519, 55 P.3d 607 (2002). A document generated by the

State may not be used as proof of prior convictions for the purpose of calculating offender scores. State v. Mendoza, 139 Wn. App. 693, 707-08, 162 P.3d 439 (2007).

Under RCW 9.94A.500(1), “[i]f the [sentencing] court is satisfied by a preponderance of evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record.” Here, the trial court did not determine Williams’ criminal history or calculate his offender score on the record. 9RP 377-83. The record reflects that the State presented its own “summary” of Williams’ criminal history and purportedly a certified copy of a 2007 judgment and sentence for unlawful possession of a controlled substance. 9RP 377. The State explained that “the remaining crimes have been proved up through certified copies already filed with the Court during the course of the trial.” 9RP 377. The State asserted that Williams’ offender score was “in excess of 9.” 9RP 378. Williams’ judgment and sentence indicates that Williams was convicted and sentenced for three counts of robbery in the first degree on March 18, 1998, two counts of robbery in the second degree on March 18, 1998, and possession of a controlled substance on March 13, 2007. CP 24.<sup>2</sup>

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<sup>2</sup> Williams’ judgment and sentence is attached as an appendix.

A review of the entire record reveals that during the State's case in chief, it provided and the court admitted into evidence three certified copies of judgments and sentences. 5RP 171-72. The record contains a judgment and sentence for robbery in the second degree entered on March 18, 1998 under cause number 98-1-00331-8, a judgment and sentence for robbery in the first degree entered on July 2, 2001 under cause number 97-1-04677-9, and a judgment and sentence for robbery in the second degree entered on March 18, 1998 under cause number 97-1-04368-1. Ex. 11, 12, 13. Contrary to Williams' criminal history indicated in his judgment and sentence, the record does not contain any judgment and sentences for three counts of robbery in the first degree entered on March 18, 1998 or a judgment and sentence for possession of a controlled substance entered on March 13, 2007.

The record substantiates that the State failed to produce all the judgment and sentences necessary to prove that Williams' offender score was in excess of 9 and based on the judgment and sentences the State did provide, Williams has a lower offender score which affects his standard range. The court lacked statutory authority to calculate Williams' offender score without requiring the State to prove his prior convictions by a preponderance of the evidence. Consequently, Williams' sentence,

based on an incorrect offender score, is defective and a remand for resentencing is required. State v. Mendoza, 139 Wn. App. at 712-13.

D. CONCLUSION

For the reasons stated, this Court should reverse Williams' convictions, or in the alternative, remand for resentencing.

DATED this 13<sup>th</sup> day of February, 2009.

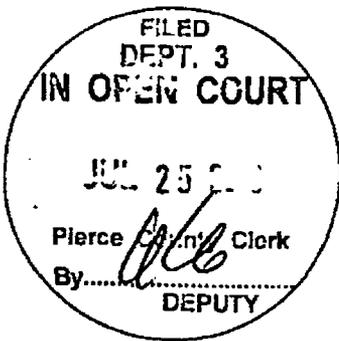
Respectfully submitted,

  
VALERIE MARUSHIGE  
WSBA No. 25851  
Attorney for Appellant

# **APPENDIX**



08-1-02208-2 30216797 JDSWCD 07-28-08



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-02208-2

JUL 26 2008

vs

GARNETT LYNN WILLIAMS,

Defendant.

WARRANT OF COMMITMENT

- 1)  County Jail
- 2)  Dept. of Corrections
- 3)  Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[x] 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody).

08-1-02208-2

[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: July 25, 2008

By direction of the Honorable

[Signature]

JUDGE  
JUDGE THOMAS P. LARKIN  
KEVIN STOCK

By: [Signature]

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUL 26 2008  
Date By [Signature] Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office

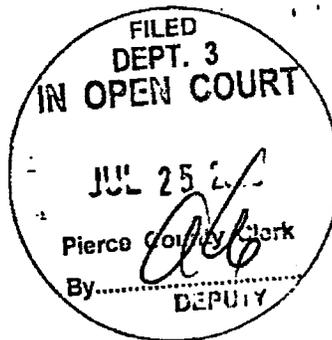
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

\_\_\_\_\_ day of \_\_\_\_\_

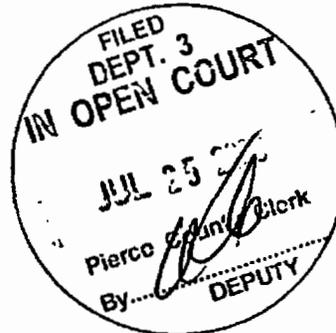
KEVIN STOCK, Clerk

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

sp



08-1-02208-2



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

JUL 26 2008

Plaintiff,

CAUSE NO. 08-1-02208-2

vs.

JUDGMENT AND SENTENCE (JJS)

GARNETT LYNN WILLIAMS

Defendant.

- Prison  RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: 18776392  
DOB: 05-13-1978

I. HEARING

1.1 A sentencing hearing was held and 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, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 07-11-2008 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT 1 (E23)	9A.36.011	F - Firearm	05-07-2008	081280852
II	UPOF 1 (GGG66)	9.41.040	(none)	05-07-2008	081280852

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Original Information

[X] A special verdict/finding for use of firearm was returned on Count(s) I RCW 9.94A.602, 9.94A.533.

08-9-09204-4

08-1-02208-2

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- 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
1	ROBBERY 1	03-18-98	Pierce	08-08-97	A	V
2	ROBBERY 1	03-18-98	Pierce	08-08-97	A	V
3	ROBBERY 1	03-18-98	Pierce	08-08-97	A	V
4	ROBBERY 2	03-18-98	Pierce	08-10-97	A	V
5	ROBBERY 2	03-18-98	Pierce	10-23-97	A	V
6	UPCS	08-13-07	Pierce	06-23-07	A	NV

- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	XII	240-318 months	60 months	300-378 months	LIFE
II	7	VII	67-89 months	N/A	67-89 months	10 years

**2.4  EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which 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 defend'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):

\_\_\_\_\_

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

\_\_\_\_\_

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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: (no agreements)

III. JUDGMENT

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

3.2 [ ] The court DISMISSES Counts \_\_\_\_\_ [ ] The defendant is found NOT GUILTY of Counts

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
PCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ 1,500	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 2,300 TOTAL

[X] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

~~[X]~~ shall be set by the prosecutor.

[X] is scheduled for October 13, 2008 9AM CDI

[ ] RESTITUTION. Order Attached

*Defendant Waives presence at Restitution Hearing*

[ ] 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).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL 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 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with JOHN F. HALL including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE (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:

Empty rectangular box for additional notes or conditions.

4.4a BOND IS HEREBY EXONERATED

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

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

300 months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_

67 months on Count II \_\_\_\_\_ months on Count \_\_\_\_\_

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\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count  
A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 \_\_\_\_\_ months on Count No I \_\_\_\_\_ months on Count No \_\_\_\_\_  
\_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No \_\_\_\_\_  
\_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No \_\_\_\_\_

Sentence enhancements in Counts I shall run  
[ ] concurrent [x] consecutive to each other.  
Sentence enhancements in Counts I shall be served  
[x] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: 360

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

**CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present 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 to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(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 time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 79 Days  
May 7, 2008 Thru July 25, 2008.

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4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

[x] COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 24 to 48 Months;

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ Months;

Count \_\_\_\_\_ for a range from: \_\_\_\_\_ to \_\_\_\_\_ 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 offense 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. Community custody follows a term for a sex offense -- RCW 9.94A. 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 necessary to monitor compliance with the orders of the court as required by DOC, and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[ ] The defendant shall not consume any alcohol.

[x] Defendant shall have no contact with: John Hall

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

[ ] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (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 may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

[ ] 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.

**PROVIDED:** That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

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 and 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.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her 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 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 may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
- N/A
- 5.8  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

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5.10 OTHER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 7/25/08

JUDGE Th U  
Print name JUDGE THOMAS P. LARKIN

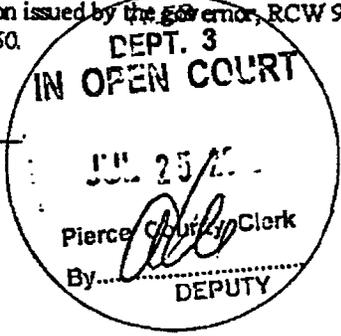
[Signature]  
Deputy Prosecuting Attorney  
Print name: Sorenson  
WSB # 16441

[Signature]  
Attorney for Defendant  
Print name: STEVEN F. BURGESS  
WSB # 18275

[Signature]  
Defendant  
Print name: Garnett Williams

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. 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: [Signature]



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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 08-1-02208-2

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

WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

Court Reporter

*Amy Koetter*

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: \_\_\_\_\_

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: \_\_\_\_\_

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; \_\_\_\_\_

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: \_\_\_\_\_

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IDENTIFICATION OF DEFENDANT

SID No. 18776392 Date of Birth 05-13-1978  
(If no SID take fingerprint card for State Patrol)

FBI No. UNKNOWN Local ID No. UNKNOWN

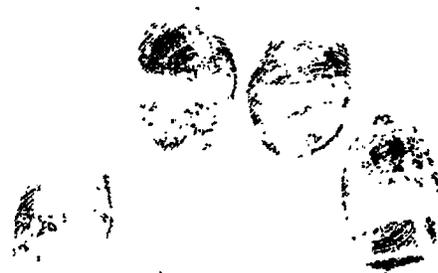
PCN No. UNKNOWN Other

Alias name, SSN, DOB:

<b>Race:</b>	<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African- American	<input type="checkbox"/> Caucasian	<b>Ethnicity:</b>	<input type="checkbox"/> Hispanic	<b>Sex:</b>	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :		<input type="checkbox"/> Non- Hispanic	<input type="checkbox"/>	<input type="checkbox"/> Female	

FINGERPRINTS

Left four fingers taken simultaneously



Left Thumb



Right Thumb



Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, AKG Dated: 7/25/08

DEFENDANT'S SIGNATURE: [Handwritten Signature]

DEFENDANT'S ADDRESS: 6905 154th Street Court East  
Puyallup WA 98373

**DECLARATION OF SERVICE**

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402 and Garnett Lynn Williams, DOC # 777159, Unit C-A-01, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, Washington 98326-9723.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13<sup>th</sup> day of February, 2009 in Kent, Washington.

  
Valerie Marushige  
Attorney at Law  
WSBA No. 25851