

NO. 38366-7-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JONATHAN MICHAEL CARTER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN P. WULLE
CLARK COUNTY SUPERIOR COURT CAUSE NO. 08-1-00005-2

BRIEF OF RESPONDENT

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BY: *sm*
JUL 14 2009
CLERK OF COURT
CLARK COUNTY

TABLE OF CONTENTS

I. STATEMENT OF THE FACTS1
II. RESPONSE TO ASSIGNMENT OF ERROR NO. 11
III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2.....4
IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 36
V. CONCLUSION8

TABLE OF AUTHORITIES

Cases

| | |
|--|------|
| <u>City of Bellevue v. Acrey</u> , 103 Wn.2d 203, 207, 691 P.2d 957 (1984) | 3 |
| <u>City of Seattle v. Williams</u> , 101 Wn.2d 445, 452, 680 P.2d 1051 (1984)... | 3 |
| <u>State v. Allyn</u> , 40 Wn. App. 27, 35, 696 P.2d 45 (1985)..... | 6 |
| <u>State v. Ashue</u> , 145 Wn. App. 492, 188 P.3d 522 (2008) | 2, 3 |
| <u>State v. Brand</u> , 55 Wn. App. 780, 785, 780 P.2d 894 (1989)..... | 3 |
| <u>State v. Castro</u> , 141 Wn. App. 485, 490, 170 P.3d 78 (2007) | 3 |
| <u>State v. Collins</u> , 45 Wn. App. 541, 551, 726 P.2d 491 (1986) | 5 |
| <u>State v. Forza</u> , 70 Wn.2d 69, 71, 422 P.2d 475 (1966) | 2 |
| <u>State v. Garcia</u> , 45 Wn. App. 132, 140, 724 P.2d 412 (1986)..... | 2 |
| <u>State v. Gosser</u> , 33 Wn. App. 428, 435, 656 P.2d 514 (1982)..... | 5, 6 |
| <u>State v. James</u> , 108 Wn.2d 483, 490, 739 P.2d 699 (1987)..... | 5 |
| <u>State v. Laureano</u> , 101 Wn.2d 745, 761, 682 P.2d 889 (1984) | 5 |
| <u>State v. Stegall</u> , 124 Wn.2d 719, 725, 881 P.2d 979 (1994) | 2 |
| <u>State v. Wicke</u> , 91 Wn.2d 638, 645, 591 P.2d 452 (1979) | 2 |

Statutes

| | |
|---------------------|---|
| RCW 9.94A.030 | 7 |
|---------------------|---|

Rules

| | |
|------------------|---|
| CrR 6.1(a) | 3 |
|------------------|---|

I. STATEMENT OF THE FACTS

The State accepts the statement of the facts as set forth by the defendant in the Appellant's Brief.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the court should not have accepted a jury waiver from the defendant. The defendant entered a Waiver of Jury Trial in writing on June 19, 2008. (CP 15). A copy of the Waiver of Jury Trial is attached hereto and by this reference incorporated herein.

The defendant, in his brief, argues that at the time of trial (June 25, 2008) there wasn't enough colloquy between him and the court relating to this previously signed waiver. For example, on page 14 of the Brief of Appellant he indicates that the trial court did not enter into a colloquy with the defendant concerning consulting with an attorney, nature of the jury waiver, rights under the Washington Constitution relating to jury unanimity, and also rights under the United States Constitution.

The difficulty with understanding this argument is that the defendant has not included the hearing on June 19, 2008, where the defendant entered the written Waiver of Jury Trial in open court. He

simply did not order up that transcript. A party seeking review has the burden of perfecting the record so that the reviewing court has before it all the relevant evidence. State v. Garcia, 45 Wn. App. 132, 140, 724 P.2d 412 (1986). If an appellant fails to provide a record sufficient to review an assignment of error, the reviewing court need not address the issue. “A party seeking review has the burden of perfecting the record so that the Appellate Court has before it all the relevant evidence to the issue”. State v. Garcia, 45 Wn. App. at 140.

Regardless of this, the case law would indicate that the defendant’s claim is not well taken. In State v. Ashue, 145 Wn. App. 492, 188 P.3d 522 (2008) the question was raised as to what was required to constitute a valid waiver of jury trial. The court indicated as follows:

It is well established that constitutional rights are subject to waiver by an accused if he or she knowingly, intentionally, and voluntarily waives them. State v. Forza, 70 Wn.2d 69, 71, 422 P.2d 475 (1966). The burden to establish a valid waiver is upon the prosecution. State v. Wicke, 91 Wn.2d 638, 645, 591 P.2d 452 (1979).

“The validity of any waiver of a constitutional right, as well as the inquiry required by the court to establish waiver, will depend on the circumstances of each case, including the defendant's experience and capabilities.” State v. Stegall, 124 Wn.2d 719, 725, 881 P.2d 979 (1994). The court's inquiry will also differ depending on the nature of the constitutional right at issue. *Id.* However, “a court must indulge every reasonable presumption against waiver of

fundamental rights.” City of Bellevue v. Acrey, 103 Wn.2d 203, 207, 691 P.2d 957 (1984).

A criminal defendant may waive his right to a jury trial if the written waiver requirement of CrR 6.1(a) is satisfied. Under CrR 6.1(a), “[c]ases required to be tried by jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.”

Our Supreme Court held that “[w]here a defendant is demonstrably aware of the constitutional right to a jury and has expressly waived that right in writing, the waiver will be effective.” Acrey, 103 Wn.2d at 208. The Court of Appeals in State v. Brand, 55 Wn. App. 780, 785, 780 P.2d 894 (1989) found that “[t]o date, no Washington case has required more than a written waiver. The claim that an extended colloquy on the record is required for jury waiver has been rejected each time it has been presented.” And, the decision to grant or deny a motion to withdraw a previously executed jury waiver is within the trial court's discretion. City of Seattle v. Williams, 101 Wn.2d 445, 452, 680 P.2d 1051 (1984).

-(State v. Ashue, 145 Wn. App. at 502-503)

In our case, there was no objection to this procedure by the trial court, nor by his attorney or by the State. As indicated in CrR 6.1(a), the defendant has filed a written waiver of the jury trial and that written waiver has been consented to by the court. The case law in the State of Washington would indicate that that is sufficient to constitute a valid Waiver of Jury Trial. State v. Castro, 141 Wn. App. 485, 490, 170 P.3d 78 (2007).

The State submits that the defendant has not perfected this matter adequately for determination by the Court of Appeals. In any event, the requirements of the rule and case law have been established and should be affirmed by the Appellate Court.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that the State should not have been allowed to amend the Information after the defense closed its case.

Specifically, the defendant had testified and in his testimony additional or different dates had been included. When the State was moving to amend the Information it indicated, in part:

MS RIDDELL (Deputy Prosecutor): Part of the information that came forward was defendant's own testimony as to when he had contact with the kids, so it's in accordance with the – not only the State's information, but also the Defense information, defendant's own information that he testified to.

THE COURT: Well, you can amend the Information to conform with the testimony –

MS. RIDDELL: And –

THE COURT: - in this case, so I'm going to permit it. Okay.

-(RP 136, L9-19)

The trial began with the defendant being charged with the Amended Information (CP 11). After the defendant's testimony, the dates were modified to conform to his testimony and recollection of dates and a Second Amended Information (CP 22) was entered. A copy of the Second Amended Information is attached hereto and by this reference incorporated herein.

The State submits that the case law is quite clear on this matter. CrR 2.1(d) allows an amendment "at any time before verdict or finding if substantial rights of the defendant are not prejudiced." Amendments are discretionary. State v. Collins, 45 Wn. App. 541, 551, 726 P.2d 491 (1986). A defendant must show prejudice in the amendment process. State v. Laureano, 101 Wn.2d 745, 761, 682 P.2d 889 (1984); State v. Gosser, 33 Wn. App. 428, 435, 656 P.2d 514 (1982). Not seeking a continuance shows lack of surprise and prejudice. Gosser, 33 Wn. App. at 435. "Where the principal element in the new charge is inherent in the previous charge and no other prejudice is demonstrated, it is not an abuse of discretion to allow amendment on the day of trial." *Id.* The trial court's ruling on a motion to amend an information is reviewed for abuse of discretion. State v. James, 108 Wn.2d 483, 490, 739 P.2d 699 (1987).

The Appellate Court has held that where only the date has changed, no alibi has been claimed, and the "principal element in the new charge is inherent in the previous charge and no other prejudice is demonstrated," it is not an abuse of discretion to allow the amendment. State v. Allyn, 40 Wn. App. 27, 35, 696 P.2d 45 (1985) (quoting Gosser, 33 Wn. App. at 435).

In our case, the date of the offense was changed, no alibi defense was claimed, and the amendments had no affect on the elements. The defendant has not demonstrated any type of prejudice or inability to present his case. In fact, the changes came about because of the nature of the defense he was offering and because of his claim of the period of time when he would have had access to the complaining witness.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim that in the Judgment and Sentence there is imposed community custody conditions that are contingent upon an unresolved finding of fact. The claim appears to be that in Paragraph 2.1 of the Judgment and Sentence the court did not resolve whether or not the offense was committed on or after July 24, 2005, which would be the triggering date for the provisions.

A copy of the Felony Judgment and Sentence (CP 78) is attached hereto and by this reference incorporated herein.

In the Judgment and Sentence it clearly indicates that the date of the crimes occurred back in 1995. (Felony Judgment and Sentence, page 2, section 2.2).

It appears that the section being complained of by the defendant is not section 2.1, as indicated in his brief on page 22, but is actually contained in paragraph 4.6 and indicates that the defendant shall remain within/outside of a specified geographical boundary, to wit: as determined by the Department of Corrections. It also indicates that other conditions are listed on the prosecutor's appendix "A". The specific provision objected to appears to be in the appendix "A" on page 7, number 28. That paragraph reads as follows:

If the offense was committed on or after July 24, 2005, you may not reside within 880 feet of the facilities and grounds of a public or private school.

-(RCW 9.94A.030) (CP 78, Appendix "A", Page 7, No. 28)

The State submits that the argument being raised here is nonsense. The paragraph clearly indicates that this provision is only triggered if the offense occurred after July 24, 2005. Further, the provisions on Page 7 of the main Judgment and Sentence do not have checked this provision.

Finally, it is indicated that the Department of Corrections can set geographical boundaries depending on the nature of the activities committed by a defendant.

The State has no exceptions to the case law set forth by the defendant. The issue here is not one of case law, but misinterpretation of a provision of the community custody conditions.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 28 day of May, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

FILED

JUN 26 2008

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,
v.

JONATHAN MICHAEL CARTER

Defendant.

SECOND AMENDED INFORMATION

No. 08-1-00005-2

(CCSO 07-6374)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083

That he, JONATHAN MICHAEL CARTER, in the County of Clark, State of Washington, between January 1, 1994 and May 1, 1996 on an occasion separate from counts 2 and 3, did have sexual contact with N.M.F., who was less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.083.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(25) and (29), and RCW 9.94A.120(4)).

COUNT 02 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083

That he, JONATHAN MICHAEL CARTER, in the County of Clark, State of Washington, between January 1, 1994 and May 1, 1996 on an occasion separate from counts 1 and 3, did have sexual contact with N.M.F., who was less than twelve years old and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.083.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(25) and (29), and RCW 9.94A.120(4)).

COUNT 03 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083

That he, JONATHAN MICHAEL CARTER, in the County of Clark, State of Washington, between January 1, 1994 and May 1, 1996 on an occasion separate from counts 1 and 2, did have sexual contact with N.M.F., who was less than twelve years old and not married to the

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37
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1 defendant and the defendant was at least thirty-six months older than the victim; contrary to
2 Revised Code of Washington 9A.44.083.

3 This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act
4 (RCW 9.94A.030(25) and (29), and RCW 9.94A.120(4)).

5 ARTHUR D. CURTIS
6 Prosecuting Attorney in and for
7 Clark County, Washington

8 Date: June 25, 2008

9 BY: 
10 Tonya Riddell, WSBA #31465
11 Deputy Prosecuting Attorney

| | | | |
|--|--------|-----------------|-------|
| DEFENDANT: JONATHAN MICHAEL CARTER | | | |
| RACE: W | SEX: M | DOB: 8/23/1967 | |
| DOL: CARTEJM334N3 WA | | SID: WA16646512 | |
| HGT: | WGT: | EYES: | HAIR: |
| WA DOC: 746069 | | FBI: 938422TA5 | |
| LAST KNOWN ADDRESS(ES): | | | |
| H - 905 W 13TH ST #9, VANCOUVER WA 98666 | | | |

FILED

SEP 22 2008

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

JONATHAN MICHAEL CARTER,
Defendant.

SID: WA16646512
If no SID, use DOB: 8/23/1967

No. 08-1-00005-2 ✓

Felony Judgment and Sentence (FJS)

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

08-9-06103-2

I. Hearing

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

II. Findings

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

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

guilty plea jury-verdict bench trial:

| Count | Crime | RCW | Date of Crime |
|-------|---------------------------------------|-----------|----------------------------|
| 01 | CHILD MOLESTATION IN THE FIRST DEGREE | 9A.44.083 | 1/1/1994 to 5/1/1996 |
| 02 | CHILD MOLESTATION IN THE FIRST DEGREE | 9A.44.083 | 1/1/1994 to 5/1/1996 |

Additional current offenses are attached in Appendix 2.1.

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

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

56
##

- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 Criminal History (RCW 9.94A.525):

| Crime | Date of Sentence | Sentencing Court (County & State) | Date of Crime | A or J Adult, Juv. | Type of Crime |
|---------------------|-------------------------|--|----------------------|---------------------------|----------------------|
| Child Molestation 1 | 5/2/1996 | Clark County WA 95-1-01199-3 | 8/22/95 | A | Felony |

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

2.3 Sentencing Data:

| Count No. | Offender Score | Seriousness Level | Standard Range (not including enhancements) | Plus Enhancements* | Total Standard Range (including enhancements) | Maximum Term |
|------------------|-----------------------|--------------------------|--|---------------------------|--|---------------------|
| 01 | 6 | X | 98 MONTHS to 130 MONTHS | | 98 MONTHS to 130 MONTHS | LIFE \$50,000 |
| 02 | 6 | X | 98 MONTHS to 130 MONTHS | | 98 MONTHS to 130 MONTHS | LIFE \$50,000 |

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

Additional current offense sentencing data is attached in Appendix 2.3.

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

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

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

above the standard range for Count(s) _____.

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

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

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

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

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

III. Judgment

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

3.2 The defendant is found **Not Guilty** of Counts 03 (CHILD MOLESTATION IN THE FIRST DEGREE).

The court **Dismisses** Counts _____.

IV. Sentence and Order

It is Ordered:

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

JASS CODE

RTN/RJN

\$ 0.00 Restitution to

PCV

\$ 500.00 Victim assessment

RCW 7.68.035

\$ Domestic Violence assessment

RCW 10.99.080

CRC

\$ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ WFR

Sheriff service fees \$ SFR/SFS/SFW/WRF

Jury demand fee \$ JFR

Extradition costs \$ EXT

Other \$

PUB

\$ 2,250.00 Fees for court appointed attorney

RCW 9.94A.760

\$ 500.00 Trial per diem, if applicable

WFR

\$ 148.25 Court appointed defense expert and other defense costs

RCW 9.94A.760

FCM/MTH

\$ 500.00 Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCD
NTF/SAD/SDI

\$ Drug enforcement Fund # 1015 1017 (TF)

RCW 9.94A.760

CLF

\$ Crime lab fee suspended due to indigency

RCW 43.43.690

\$ 100.00 Felony DNA collection fee not imposed due to hardship

RCW 43.43.7541

RTN/RJN

\$ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)

RCW 38.52.430

\$ Other costs for: _____

\$ Total RCW 9.94A.760

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

shall be set by the prosecutor.

is scheduled for _____

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant **Cause Number** (Victim's name) (Amount-\$)

RJN

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

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

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

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

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

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

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

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

4.3 **No Contact:** The defendant shall not have contact with N M F (female, 10/2/1990) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

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

4.4 **Other:** _____

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

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

125 days/~~months~~ on Count 01

125 days/~~months~~ on Count 02

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

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

Actual number of months of total confinement ordered is: 125 months

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

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

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

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

Confinement shall commence immediately unless otherwise set forth here: _____

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

Count 01 minimum term _____ maximum term _____

Count 02 minimum term _____ maximum term _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: 251 days

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

Community Placement:

Count 01 for _____ months

Count 02 for _____ months

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

Community Custody:

Count 01 for a range from 24 months months;

Count 02 for a range from 24 months months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

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

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

c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745

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

- The defendant shall not consume any alcohol.
- The defendant shall have no contact with: _____.
- The defendant shall remain within outside of a specified geographical boundary, to wit: **as determined by the Department of Corrections.**
- The defendant shall not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- The defendant shall participate in the following crime-related treatment or counseling services: _____.
- The defendant shall undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.
- The defendant shall comply with the following crime-related prohibitions: _____.

- Other conditions: **As listed in the attached Prosecutor's Appendix "A".**
- For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

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

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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

5.4 Restitution Hearing.

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

5.5 Community Custody Violation.

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

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

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

Cross off or delete if not applicable:

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

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

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

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

out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

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

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

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

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

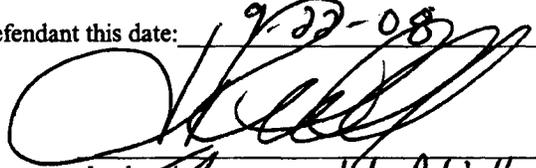
8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your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

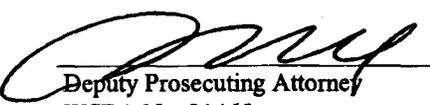
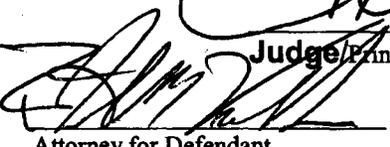
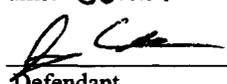
- 5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.9 If you are or become subject to court-ordered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

5.10 Persistent Offense Notice

- The crime(s) in count(s) 01, 02 is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.
- The crime(s) in count(s) 01, 02 is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 9-22-08


 Judge/Print Name: John P. Wulle

| | | |
|--|--|--|
|  Deputy Prosecuting Attorney WSBA No. 31465 Print Name: Tonya R. Riddell |  Attorney for Defendant WSBA No. 28847 Print Name: Robert M Vukanovich |  Defendant Print Name: JONATHAN MICHAEL CARTER |
|--|--|--|

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: 

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

Interpreter signature/Print name: _____

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

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

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

Identification of the Defendant

JONATHAN MICHAEL CARTER

SID No: WA16646512

Date of Birth: 8/23/1967

(If no SID take fingerprint card for State Patrol)

FBI No. 938422TA5

Local ID No. 122557

PCN No. _____

Other _____

Alias name, DOB:

Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk

[Handwritten Signature]

Dated:

Sept 18 2008



The defendant's signature:

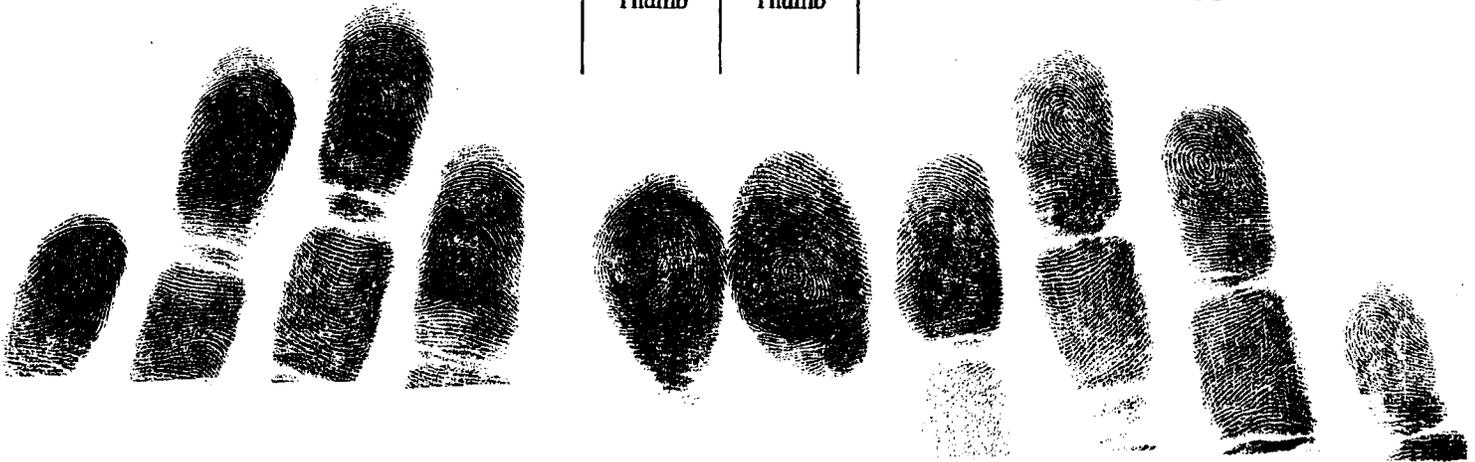
[Handwritten Signature]

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 08-1-00005-2

v.

JONATHAN MICHAEL CARTER,

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

Defendant.

SID: WA16646512

DOB: 8/23/1967

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

GREETING:

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

| COUNT | CRIME | RCW | DATE OF CRIME |
|-------|---------------------------------------|-----------|----------------------------|
| 01 | CHILD MOLESTATION IN THE FIRST DEGREE | 9A.44.083 | 1/1/1994 to 5/1/1996 |
| 02 | CHILD MOLESTATION IN THE FIRST DEGREE | 9A.44.083 | 1/1/1994 to 5/1/1996 |

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

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

| COUNT | CRIME | TERM |
|-------|-------|------|
| | | |

| COUNT | CRIME | TERM |
|-------|---------------------------------------|-----------------|
| 01 | CHILD MOLESTATION IN THE FIRST DEGREE | 125 Days/Months |
| 02 | CHILD MOLESTATION IN THE FIRST DEGREE | 125 Days/Months |

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

The defendant has credit for 251 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

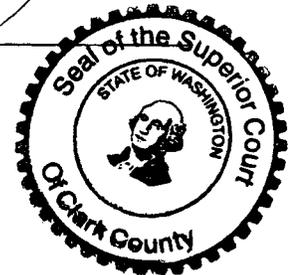
WITNESS, Honorable

[Handwritten Signature] John P. Wulle

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: Sept. 22, 2008.

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

By *[Handwritten Signature]*
Deputy



"APPENDIX A"
9.94A.712

CONDITIONS OF SENTENCE/COMMUNITY CUSTODY

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of _____ years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER
CHAPTER 10.99 RCW AND WILL SUBJECT THE VIOLATOR TO
ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT
THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

7. You shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.
10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.

PRETRIAL OFFER - 5

Revised: September 17, 2008

11. You must consent to allow home visits by Department of Corrections to monitor compliance with supervision. This includes search of the defendant's person, residence, automobile, or other personal property, and home visits include access for the purposes of inspection of all areas the defendant lives or has exclusive/joint control or access. RCW 9.94A.631
12. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
13. You shall not possess, use, or own any firearms or ammunition.
14. You shall not possess or consume alcohol.
15. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
16. You shall not possess any paraphernalia for the use of controlled substances.
17. You shall not be in any place where alcoholic beverages are the primary sale item.
18. You shall take antabuse per community corrections officer's direction.
19. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
20. You shall enter into, cooperate with, fully attend and successfully complete all inpatient and outpatient phases of a Washington State certified sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. You shall not change sex offender treatment providers or treatment conditions without first notifying ht prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor and/or community corrections officer object to the change. "Cooperate with" means you shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
21. The sex offender therapist shall submit quarterly reports on your progress in treatment to the court, Department of Corrections, and prosecutor and you shall execute a release of information to the community corrections officer, prosecutor and the court so that the treatment provider can discuss the case with them. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, your compliance with requirements, treatment activities, and your relative progress in treatment.

PRETRIAL OFFER - 6

Revised: September 17, 2008

22. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.
23. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
24. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
25. You shall not use/possess sexually explicit material; meaning any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2).
26. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney, to monitor your compliance with any of the conditions of this Judgment and Sentence.
27. You shall have no association with persons known to be on probation, parole or community placement.
28. If the offense was committed on or after July 24, 2005, you may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030
29. If you are in the SSOSA program you shall enter into sex offender treatment with a State certified provider within thirty (30) days of sentencing or release from custody, whichever comes first.
30. If you are in the SSOSA program, your treatment plan shall include polygraph exams as set forth in condition number 19. Your treatment provider and/or the defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

PRETRIAL OFFER - 7

Revised: September 17, 2008

COURT OF APPEALS
 DIVISION II
 03 JUN -9 PM 11:25
 STATE OF WASHINGTON
 BY Cm
 DEPUTY

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

STATE OF WASHINGTON,
 Respondent,

No. 38366-7-II

v.

Clark Co. No. 08-1-00005-2

JONATHAN MICHAEL CARTER,
 Appellant.

DECLARATION OF
 TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

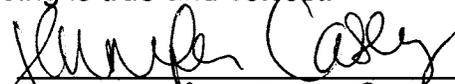
COUNTY OF CLARK)

On May 29, 2009, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

| | | |
|-----|---|--|
| TO: | David Ponzoha, Clerk Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454 | John A. Hays Attorney at Law 1402 Broadway, Ste. 103 Longview, WA 98632 |
| | Jonathan Michael Carter DOC# 746069 MCC – WA State Reformatory PO Box 777 Monroe, WA 98272-0777 | |

DOCUMENTS: Brief of Respondent

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


 Date: May 29, 2009.
 Place: Vancouver, Washington.