

NO. 38723-9-II

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

STATE OF WASHINGTON, Respondent

v.

HOWARD GAIL GUTENDORF, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 07-1-01294-0

BRIEF OF RESPONDENT

Attorneys for Respondent:

ARTHUR D. CURTIS
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Clark County, Washington

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STATE OF WASHINGTON
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CLERK OF COURT

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I. STATEMENT OF THE FACTS

On July 26, 2007, the Prosecutor's Office filed one count of child molestation in the first degree against the defendant (CP 1). On September 24, 2008, the prosecutor amended that Information to one count of assault in the second degree with sexual motivation (CP 2).

As a result of that modification in the crime, the defendant on September 24, 2008, pled guilty in the Clark County Superior Court (Statement of Defendant on Plea of Guilty to Sex Offense, CP 3).

The defendant was then sentenced on January 6, 2009, on the crime that he pled guilty to (Felony Judgment and Sentence, CP 27).

Copies of all the foregoing documents are attached hereto and by this reference incorporated herein.

II. RESPONSE TO ASSIGNMENT OF ERROR

The assignment of error raised by the defendant is a claim that he should be allowed to withdraw his guilty plea because he was misinformed as to the direct consequences of his plea. Specifically, the defendant is maintaining that during the colloquy on the change of plea it became evidence that he was unaware that he was pleading guilty to a life sentence.

The Statement of Defendant on Plea of Guilty to Sex Offense (CP 3) indicates on page two that the maximum term is life in prison. Further, it is spelled out on page three of the document that the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement. Assault in the second degree sexual motivation type crime is included in the list.

On page five of the Statement of Defendant on Plea of Guilty, it is indicated that the recommendation is as stated in the plea agreement which was attached. The pretrial offer, which is attached to the Statement of Defendant on Plea of Guilty, indicates on page two that the offender score is 3, that the minimum standard range sentence is 13 to 17 months plus 24 months enhancement and that the maximum term of sentence is life.

At the time of the Statement of Defendant on Plea of Guilty being entered by the court, the judge clearly sets forth on the record the information previously acknowledged.

THE COURT: Proceed? Okay.

Reading the last – for sex offenses committed after March 20, 2006, minimum term receive the maximum standard range, which would be the life, I assume, or 25 years, whichever is greater.

MS. RIDDELL (Deputy Prosecutor): It's going to be life in this case, Your Honor. It's a Class A now. Assault Two with Sex Mo is a Class A now. And it's a 712, so.

- (RP 8, L.3-10)

The defendant, at the time of sentencing wished to withdraw his plea and made it clear on the record that he wished to do so because he considered that he was an innocent man, not that he was confused with any of the documentation or paperwork or misled by anything that he had done. (RP 47).

The Felony Judgment and Sentence (CP 27) clearly sets forth on page three that the maximum term is life. Further, this is additionally spelled out on page 6 where it is indicated that the minimum term is 39 months and the maximum term is life.

Due process requires that a defendant knowingly, intelligently, and voluntarily enter a guilty plea. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). When a defendant fills out a written statement on plea of guilty in compliance with CrR 4.2(g) and acknowledges he has read and understands it and its contents are true, the written statement provides prima facie verification of the plea's voluntariness. In re Pers. Restraint of Keene, 95 Wn.2d 203, 206-07, 622 P.2d 360 (1980); In re Pers. Restraint of Teems, 28 Wn. App. 631, 633, 626 P.2d 13 (1981); State v. Ridgley, 28 Wn. App. 351, 355, 623 P.2d 717, review denied, 95 Wn.2d 1020 (1981). When the court goes on to inquire orally of the defendant voluntariness, the presumption of

voluntariness is irrefutable. See State v. Perez, 33 Wn. App. 258, 261-62, 654 P.2d 708 (1982); State v. Hystad, 36 Wn. App. 42, 45, 671 P.2d 793 (1983).

Superior Court Criminal Rule (CrR) 4.2(f) allows a defendant to withdraw his or her plea “whenever it appears that the withdrawal is necessary to correct a manifest injustice,” but this is a demanding standard. CrR 4.2(f); State v. Marshall, 144 Wn.2d 266, 280-81, 27 P.3d 192 (2001); State v. Taylor, 83 Wn.2d 594, 597, 521 P.2d 699 (1974). Manifest injustice includes instances where “(1) the plea was not ratified by the defendant; (2) the plea was not voluntary; (3) effective counsel was denied; or (4) the plea agreement was not kept.” Marshall, 144 Wn.2d at 281. The defendant contends that he should be allowed to withdraw his plea because it was not knowing, intelligent, and voluntary. The Appellate Court will overturn a trial court’s denial of a motion to withdraw a plea only for abuse of discretion. Id., at 280; State v. Zhao, 157 Wn.2d 188, 197, 137 P.3d 835 (2006). The Appellate Court reviews a trial court’s denial of a motion to withdraw a guilty plea under an abuse of discretion standard. State v. Olmsted, 70 Wn.2d 116, 118, 422 P.2d 312 (1966); State v. Jamison, 105 Wn. App. 572, 589-90, 20 P.3d 1010 (2001). A court abuses its discretion if its discretion is based on clearly untenable or

manifestly unreasonable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); Jamison, 105 Wn. App. at 589-90.

Nevertheless, CrR 4.2(f) allows a defendant to withdraw his plea of guilty whenever it appears that withdrawal is necessary to correct a “manifest injustice.” A manifest injustice is “an injustice that is obvious, directly observable, overt, not obscure.” State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991) (quoting State v. Taylor, 83 Wn.2d 594, 596, 512 P.2d 699 (1974)); see also State v. Martinez-Lazo, 100 Wn. App. 869, 873, 999 P.2d 1275 (2000); State v. Branch, 129 Wn.2d 635, 641, 919 P.2d 1228 (1996). Although the burden is demanding, a defendant who can show that counsel was ineffective in advising him during the plea process has met the high standard for showing a manifest injustice.

In In re Personal Restraint of Keene, 95 Wn.2d 203, 204-09, 622 P.2d 360 (1980), the Supreme Court discussed the extent to which a trial judge must recite on the record the various elements of the plea. The Keene court concluded that the trial judge could rely on the written plea agreement where the defendant told the court he had read the agreement and that the statements contained therein were truthful. Id. at 206-07. The court found no due process requirement that the court orally question the defendant to ascertain whether he or she understands the consequences of the plea and the nature of the offense. Id. at 207. The Keene court

emphasized that neither CrR 4.2 nor prior case law explicitly required oral inquiries. Keene, 95 Wn.2d at 206. Knowledge of the direct consequences of the plea can be satisfied by the plea document. In re Pers. Restraint of Stoudmire, 145 Wn.2d 258, 266, 36 P.3d 1005 (2001); State v. Codiga, 162 Wn.2d 912, 923, 175 P.3d 1082 (2008).

The State submits that the defendant was fully and fairly advised of the ramifications of pleading guilty to the reduced sentence. He wanted to take advantage of the offer that was made and made his decision accordingly. The paperwork entered by the court clearly demonstrates the proper penalties and lengths of sentences involved. Further, this was also explained to him orally, even though the judge, technically, did not have to. Given these factors, the State submits that the defendant entered a voluntary, knowing, and intelligent plea of guilty.

III. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 16 day of July, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


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

APPENDIX "A"
INFORMATION and
AMENDED INFORMATION

FILED

JUL 26 2007

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.
HOWARD GAIL GUTENDORF
Defendant.

INFORMATION
No. 07-1-01294-0
(BGPD 07-1363)

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:

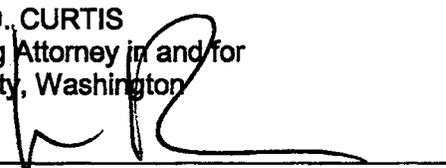
COUNT 01 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083

That he, HOWARD GAIL GUTENDORF, in the County of Clark, State of Washington, on or about June 17, 2007 did have sexual contact with B.M.R., 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(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

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

Date: July 25, 2007

BY: 
Kimberly R. Farr, WSBA #08728
Deputy Prosecuting Attorney

DEFENDANT: HOWARD GAIL GUTENDORF			
RACE: W	SEX: M	DOB: 11/21/1960	
DOL: 3521469 OR		SID: OR06741084	
HGT: 601	WGT: 205	EYES: BRO	HAIR: RED
WA DOC:		FBI: 764478MA5	
LAST KNOWN ADDRESS(ES):			
HOME - 8045 SW 103RD AVE, BEAVERTON OR 97008			

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FILED
SEP 24 2008
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

HOWARD GAIL GUTENDORF

Defendant.

AMENDED INFORMATION

No. 07-1-01294-0

(BGPLD 07-1363)

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:

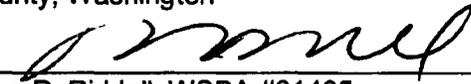
COUNT 01 - ASSAULT IN THE SECOND DEGREE WITH SEXUAL MOTIVATION - 9A.36.021 /9.94A.127

That he, HOWARD GAIL GUTENDORF, in the County of Clark, State of Washington, on or about June 17, 2007, did intentionally assault another person, to wit: B.M.R., and thereby did recklessly inflict substantial bodily harm; contrary to Revised Code of Washington 9A.36.021(1)(a); and further, that the defendant committed the crime with sexual motivation, i.e., that one of the purposes for which the defendant committed the crime was for the purpose of his sexual gratification; as provided, proscribed and defined by RCW 9.94A.030 and RCW 9.94A.127 or RCW 9.94A.835 (for adults) or RCW 13.40.135 (for juveniles)

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

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

Date: September 22, 2008

BY: 
Tonya R. Riddell, WSBA #31465
Deputy Prosecuting Attorney

DEFENDANT: HOWARD GAIL GUTENDORF			
RACE: W	SEX: M	DOB: 11/21/1960	
DOL: 3521469 OR		SID: OR06741084	
HGT: 601	WGT: 205	EYES: BRO	HAIR: RED
WA DOC:		FBI: 764478MA5	
LAST KNOWN ADDRESS(ES): HOME - 7460 SW TRILLIUM, BEAVERTON OR 97008			

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APPENDIX "B"

STATEMENT OF DEFENDANT ON PLEA OF GUILTY TO SEX OFFENSE

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FILED
SEP 24 2008
Sherry W. Parker, Clerk, Clark Co.

Superior Court of Washington for	
<u>State of Washington</u>	Plaintiff
vs.	
<u>HOWARD GAIL GUTENDORF</u>	Defendant

No. 07-1-01294-0

**Statement of Defendant on Plea of
Guilty to Sex Offense
(Felony)
(STDFG)**

1. My true name is: Howard Gutendorf
2. My age is: 47 11/21/60
3. The last level of education I completed was 12+
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
 - (b) I am charged with: Assault 2nd degree with sexual motivation.
The elements are: See attached
5. **I Understand I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:**
 - (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
 - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
 - (c) The right at trial to hear and question the witnesses who testify against me;
 - (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

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(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	3	13-17 months	24 months	37-41 months		Life and \$50,000
2						
3						

*(F) Firearm, (D) Other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) For sex offenses committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if

the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.712: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

<u>Rape in the first degree</u>	<u>Rape in the second degree</u>
<u>Rape of a child in the first degree committed when I was at least 18 years old</u>	<u>Rape of a child in the second degree committed when I was at least 18 years old</u>
<u>Child molestation in the first degree committed when I was at least 18 years old</u>	<u>Indecent liberties by forcible compulsion</u>
<u>Any of the following offenses with a finding of sexual motivation:</u>	
<u>Murder in the first degree</u>	<u>Murder in the second degree</u>
<u>Homicide by abuse</u>	<u>Kidnapping in the first degree</u>
<u>Kidnapping in the second degree</u>	<u>Assault in the first degree</u>
<u>Assault in the second degree</u>	<u>Assault of a child in the first degree</u>
<u>Assault of a child in the second degree</u>	<u>Burglary in the first degree</u>

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006: For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation: If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge:

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a contested hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Public assistance will be suspended during any period of imprisonment.
- (m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.
- (n) I will be required to have a biological sample collected for purposes of DNA identification

analysis. I will be required to pay a \$100.00 DNA collection fee.

- (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

Notification Relating to Specific Crimes: If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.

- (p) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (q) **Special sex offender sentencing alternative:** In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I

will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- (r) If this is a crime of domestic violence, the court may order me to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- (s) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (t) ~~If this offense involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.~~
- (u) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. ~~The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(p).~~
- ~~(v) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~
- (w) The offense(s) I am pleading guilty to include a deadly weapon, firearm or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- (x) For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.

7. I plead guilty to:

count 1 – Assault in the second degree with sexual motivation. _____

count _____

count _____

count _____

in the Amended Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: I have chosen to accept a plea bargain in this case because I feel the State has sufficient evidence which if believed by the jury would result in a conviction of greater crime.

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

X Howard Dwyer
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

[Signature]
Defendant's Lawyer

[Signature]
Prosecuting Attorney

Tonya Riddell 3465
Print Name WSBA No.

Barron, JEFF 18281
Print Name WSBA No.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

Interpreter's Declaration: I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated this document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 24 September 2008



Judge

Case Name HOWARD G GUTENDORF **Cause No.** 07-1-01294-0

“Offender Registration” Attachment: sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.130. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements: Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

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

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

4. Additional Requirements Upon Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I 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. I 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 I 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 I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution. If I become employed at a public or private institution of higher education, I am required to notify the sheriff for the county of my residence of my 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 my enrollment or employment at a public or private institution of higher education is terminated, I am required to notify the sheriff for the county of my residence of my

termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006). If I attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, I am required to notify the sheriff of the county of my residence of my intent to attend the school. I must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If I am enrolled on September 1, 2006, I must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

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

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

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

Date: _____

Defendant's signature

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

STATE OF WASHINGTON,

Plaintiff,

v.

HOWARD GAIL GUTENDORF

Defendant.

AMENDED INFORMATION

No. 07-1-01294-0

(BGPD 07-1363)

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 - ASSAULT IN THE SECOND DEGREE WITH SEXUAL MOTIVATION - 9A.36.021 /9.94A.127

That he, HOWARD GAIL GUTENDORF, in the County of Clark, State of Washington, on or about June 17, 2007, did intentionally assault another person, to wit: B.M.R., and thereby did recklessly inflict substantial bodily harm; contrary to Revised Code of Washington 9A.36.021(1)(a); and further, that the defendant committed the crime with sexual motivation, i.e., that one of the purposes for which the defendant committed the crime was for the purpose of his sexual gratification; as provided, proscribed and defined by RCW 9.94A.030 and RCW 9.94A.127 or RCW 9.94A.835 (for adults) or RCW 13.40.135 (for juveniles)

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(29), RCW 9.94A.030(33), RCW 9.94A.505(2)(a)(v) and RCW 9.94A.570).

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

Date: September 23, 2008

BY: _____
Tonya R. Riddell, WSBA #31465
Deputy Prosecuting Attorney

DEFENDANT: HOWARD GAIL GUTENDORF			
RACE: W	SEX: M	DOB: 11/21/1960	
DOL: 3521469 OR		SID: OR06741084	
HGT: 601	WGT: 205	EYES: BRO	HAIR: RED
WA DOC:		FBI: 764478MA5	
LAST KNOWN ADDRESS(ES): HOME - 7460 SW TRILLIUM, BEAVERTON OR 97008			

(1) Should the Defendant plead guilty to:

Assault in the second degree with sexual motivation

	OFFENDER SCORE	SERIOUSNESS LEVEL	MINIMUM STANDARD RANGE SENTENCE	MAXIMUM TERM SENTENCE
Count 1:	<u>3</u>		13-17 months plus 24 month enhancement	<u>life</u>
Count 2:				
Count 3:				
Count 4:				

The defendant shall also be sentenced to Community Custody under the supervision of the Department of Corrections and the ISRB for any period of time the person is released from confinement before the expiration of the maximum sentence.

(2) then the State and the defense stipulate that the sentence shall be:

- sentencing within the standard range
- remain free to recommend any sentence
- that sentence shall be 39 months (15 months plus 24 months on the sexual motivation enhancement)
- The State shall remain free to recommend any sentence, but the Defense may argue for SSOSA with the following stipulated preconditions:

(3) Should the defendant be placed on any release conditions prior to sentencing and violate any of those conditions then the State's above offer is null and void, and the State shall be free to make any recommendation.

(4) Defense stipulates to a waiver of RCW 9.94A.753 for the setting of restitution and waives the defendant's presence at a restitution hearing. This stipulation of restitution shall include loss of wages, costs of counseling, and other related expenses for the victim and their immediate family as a result of this criminal act. The hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

PRETRIAL OFFER - 2

(5) By accepting this offer, the defendant stipulates to the conditions as set forth herein of the conditions of sentence/community custody and/or supervision.

(6) This stipulated agreement and recommendation is binding on the Prosecuting Attorney, the Defense Attorney, and the defendant only, and shall not bind any investigating officer.

(7) The defense shall only use the Statement of Defendant on Plea of Guilty form as indicated by the Child Abuse Intervention Center. (If you need a copy of this form, please contact the Child Abuse Intervention Center at (360) 397-6002).

"APPENDIX A"
9.94A.712

STIPULATED 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 ___life_____ 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.

PRETRIAL OFFER - 4

Revised: September 23, 2008

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.
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

PRETRIAL OFFER - 5

Revised: September 23, 2008

treatment facility. You shall not change sex offender treatment providers or treatment conditions without first notifying the 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.
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.

The undersigned defendant agrees that he has read this Appendix A, or it has been read and explained to him; that he understands it, agrees with it, and has no questions about it. This is a binding agreement upon the undersigned defendant that is entered into knowingly, voluntarily and intelligently, as part of the plea of guilty and Judgment and Sentence.

Dated: _____ Signed: _____ (Defendant)

Print name: _____ (Defendant)

APPENDIX "C"

FELONY JUDGMENT AND SENTENCE

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Barrar

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JAN 06 2009

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

HOWARD GAIL GUTENDORF,
Defendant.

SID: OR06741084 /WA 24066993
If no SID, use DOB: 11/21/1960

No. 07-1-01294-0

09-9-00054-8

Felony Judgment and Sentence (FJS)

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

I. Hearing

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

II. Findings

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

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

- guilty plea jury-verdict bench trial:

Count	Crime	RCW	Date of Crime
01	ASSAULT IN THE SECOND DEGREE WITH SEXUAL MOTIVATION	9A.36.021(1)(a) /9.94A.127	6/17/2007

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.
- The defendant acted with sexual motivation in committing the offense in Count 01. RCW 9.94A.835.

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

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LM

- 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
See attached criminal history					

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

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	3	IV	13 MONTHS to 17 MONTHS	24 MONTHS (SM)	37 MONTHS to 41 MONTHS	4 YRS 10 YEARS \$0,000

PX

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

Additional current offense sentencing data is attached in Appendix 2.3.

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

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

- within below the standard range for Count(s) _____.
- above the standard range for Count(s) _____.
- The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

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

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

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

III. Judgment

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

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

The court **Dismisses** Counts _____.

IV. Sentence and Order

It is Ordered:

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

JASS CODE
RTN/RJN

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

\$ 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 \$ ¹²⁵⁰~~23000~~ Fees for court appointed attorney RCW 9.94A.760

\$ Trial per diem, if applicable

WFR \$ 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 \$ Drug enforcement Fund # 1015 1017 (TF) RCW 9.94A.760

NTF/SAD/SDI

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.

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

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 B M R (female, 7/27/1999) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 4 1/2 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):

39 days/months on Count 01

The confinement time on Count(s) 1 contain(s) a mandatory minimum term of 24 mo.

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: _____

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 39 months maximum term life

(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: 144 days

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

Community Placement:

Count 01 for _____ months

Community Custody for count(s) 1 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 _____ 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 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: _____
- 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 of 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 is/are "most serious offense(s)." Upon a third conviction a most "serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505.
- The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030(32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 6 January 2009

Robert Harris
Judge/Print Name: Robert Harris

Tonya R. Riddell
Deputy Prosecuting Attorney
WSBA No. 31465
Print Name: Tonya R. Riddell

Robby D. Bantar
Attorney for Defendant
WSBA No. ~~10281~~ 8722
Print Name: ~~Robby D. Bantar~~

Howard Gail Gutendorf
Defendant
Print Name: HOWARD GAIL GUTENDORF

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: *Howard Gail Gutendorf*

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

HOWARD GAIL GUTENDORF

SID No: OR06741084 / WA24060993
(If no SID take fingerprint card for State Patrol)

Date of Birth: 11/21/1960

FBI No. 764478MA5

Local ID No.

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, *[Signature]*

Dated: 1/16/09



The defendant's signature: *[Signature]*

Left four fingers taken simultaneously



Right Thumb



Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 07-1-01294-0

v.

HOWARD GAIL GUTENDORF,

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

Defendant.

SID: OR06741084 / WA 240dd093
DOB: 11/21/1960

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	ASSAULT IN THE SECOND DEGREE WITH SEXUAL MOTIVATION	9A.36.021(1)(a) / 9.94A.127	6/17/2007

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

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

COUNT	CRIME	TERM
01	ASSAULT IN THE SECOND DEGREE WITH SEXUAL MOTIVATION	35 Days/Months

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

The defendant has credit for 144 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.

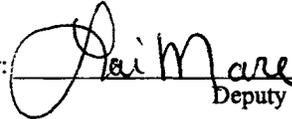
WITNESS, Honorable



JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1/16/09

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

By:


Deputy



"APPENDIX A"
9.94A.712

STIPULATED 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 life 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.

PRETRIAL OFFER - 4

Revised: September 19, 2008

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.
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 the prosecutor, community corrections

PRETRIAL OFFER - 5

Revised: September 19, 2008

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.
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.

The undersigned defendant agrees that he has read this Appendix A, or it has been read and explained to him; that he understands it, agrees with it, and has no questions about it. This is a binding agreement upon the undersigned defendant that is entered into knowingly, voluntarily and intelligently, as part of the plea of guilty and Judgment and Sentence.

Dated: 1/6/09 Signed: H. Duff (Defendant)
Print name: Howard G. Duff (Defendant)

FILED

JAN 06 2009

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.

HOWARD GAIL GUTENDORF,

Defendant.

No. 07-1-01294-0

WAIVER OF PRESENCE AT HEARING
REGARDING RESTITUTION

I have been informed and understand that I have the right to have restitution determined within 180 days from my sentencing hearing. I understand that the State has not yet established a restitution amount.

This case is being placed on an upcoming docket for the _____ day of _____, 2008 at _____ am/pm. I understand that the purpose of this hearing is to either enter a Restitution Order if the amount is not disputed, or to set a restitution hearing if it is disputed. I hereby waive my right to be present on the above-noted date, knowing my attorney will be present. I understand that if I dispute the restitution figure, I must be present at the restitution hearing and that it is my responsibility to maintain contact with my attorney to get notice of that date.

DATED this 6th day of January, ~~2008~~ 2009

H. G. Gutendorf
HOWARD GAIL GUTENDORF

Jeffrey D. Baras
WSBA #18281

