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

STATE OF WASHINGTON
BY Lori Smith
DEPUTY

STATE OF WASHINGTON,)	
)	
Respondent,)	
V.)	NO. 39274-7-II
)	
FREDRICK K. HAACK,)	STATE'S CONCESSION
)	ON APPEAL
Appellant.)	(Sentencing Issue)
)	
_____)	

Michael Golden, Lewis County Prosecuting Attorney, representing Respondent State of Washington, by and through Lori Smith, Deputy Prosecuting Attorney, submits this response to Haack's claim of error on appeal.

Haack claims that at the time he committed the crimes of communicating with a minor for immoral purposes, the crimes were gross misdemeanors, not Class C felonies. Haack is correct. And, although the sentencing issue raised by Haack was not raised below, the State believes the proper response on appeal is to concede error.

Accordingly, the State concedes that because Mr. Haack's crimes were committed in 2005, and at that time the sentencing provision under which he was sentenced did not exist, and was not effective until July of

2006, Haack's crimes were gross misdemeanors, not Class C felonies.
RCW 9.68A.090 (Amended in 2006); State v. Pillatos 159 Wash.2d 459,
475, 150 P.3d 1130, 1138 (Wash.,2007)("A defendant is subject to the
penalty in place the day the crime was committed. After the fact, the State
may not increase the punishment")(citations omitted).

Accordingly, if this Court accepts the State's concession, the State
further agrees that the remedy for this sentencing error is to remand this
case for resentencing for imposition of gross misdemeanor sentences.

RESPECTFULLY SUBMITTED this 2nd day of November, 2009.

MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

by:


LORI SMITH, WSBA 27961
Deputy Prosecuting Attorney

DECLARATION OF MAILING

The undersigned declares under penalty of perjury under the laws of the State of Washington that
on 11/2/09 a copy of this document was placed in the U.S. mail, postage prepaid, addressed to
Appellant's Attorney, Mr. Andrew Zinner, at Nielsen, Broman & Koch, Seattle, Washington.

Dated this 2 day of November, 2009, at Chehalis, Washington.


for Casey Robs, Paralegal

STATE'S CONCESSION
ON APPEAL

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