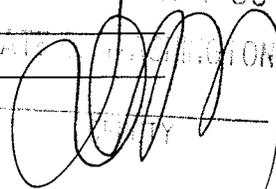


FILED  
COURT OF APPEALS

NO. 39429-4-II

10 JUN -3 PM 4:36

STATE OF WASHINGTON  
BY: 

---

**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAMES DOUGLAS, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Thomas J. Felnagle  
The Honorable Richard E. Culpepper  
The Honorable Susan K. Serko  
The Honorable Bryan E. Chuschcoff

No. 04-1-03902-1

---

**Brief of Respondent**

---

MARK LINDQUIST  
Prosecuting Attorney

By  
THOMAS ROBERTS  
Deputy Prosecuting Attorney  
WSB # 17442

930 Tacoma Avenue South  
Room 946  
Tacoma, WA 98402  
PH: (253) 798-7400

**Table of Contents**

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

    1. Whether the defendant knowingly, intelligently, and voluntarily waived his right to counsel for purposes of resentencing on Cause Number 04-1-03902-1? ..... 1

    2. Whether the court properly imposed a 10-year no-contact order to run from March 27, 2009 until March 27, 2019. .... 1

B. STATEMENT OF THE CASE. .... 1

    1. Procedure..... 1

C. ARGUMENT..... 5

    1. THE DEFENDANT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVED HIS RIGHT TO COUNSEL AT RESENTENCING..... 5

    2. THE NO-CONTACT ORDER IMPOSED BY THE TRIAL COURT DOES NOT EXCEED THE MAXIMUM DURATION ALLOWED BY STATUTE..... 12

D. CONCLUSION. .... 19

## Table of Authorities

### State Cases

<i>Bellevue v. Acrey</i> , 103 Wn.2d 203, 233, 691 P.2d 957 (1984).....	6
<i>City of Spokane v. Spokane County</i> , 158 Wn.2d 661, 673, 146 P.3d 893 (2006) .....	13
<i>Koenig v. City of Des Moines</i> , 158 Wn.2d 173, 181, 142 P.3d 162 (2006) .....	13
<i>State v. Amos</i> , 147 Wn. App. 217, 232, 195 P.3d 564 (2008) .....	14
<i>State v. Armendariz</i> , 160 Wn.2d 106, 108, 156 P.3d 201 (2007).....	14
<i>State v. Barker</i> , 75 Wn. App. 236, 881 P.2d 1051, 1053 (1994) .....	5
<i>State v. Breedlove</i> , 79 Wn. App. 101, 111, 900 P.2d 586 (1995) .....	7
<i>State v. DeWeese</i> , 117 Wn.2d 369, 377, 816 P.2d 1 (1991) .....	5, 6, 7, 11
<i>State v. Hoff</i> , 31 Wn. App. 809, 644 P.2d 763, <i>review denied</i> , 97 Wn.2d 1031 (1982).....	7
<i>State v. J.P.</i> , 149 Wn.2d 444, 449, 69 P.3d 318 (2003) .....	12, 13
<i>State v. Luvene</i> , 127 Wn.2d 690, 698, 903 P.2d 960 (1995) .....	5
<i>State v. Wilson</i> , 136 Wn. App. 596, 608, 150 P.3d 144 (2007) .....	16

### Federal and Other Jurisdictions

<i>Adams v. United States ex rel. McCann</i> , 317 U.S., 63 S. Ct. 236, 143 A.L.R. 435, 87 L. Ed. 268 (1942).....	6
<i>Faretta v. California</i> , 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).....	5, 6, 10

**Constitutional Provisions**

Const. art. 1, § 22 (amend. 10) .....5

**Statutes**

RCW 10.99 .....14, 15, 17

RCW 10.99.010 ..... 16

RCW 9.94A.010(4)..... 16

RCW 9.94A.015 .....13

RCW 9.94A.345 .....13

RCW 9.94A.505(6)..... 15, 16

RCW 9.94A.505(8).....13, 15

RCW 9.94A.700(5)(b)..... 17

RCW 9.94A.715(2)(a).....17

RCW 9A.20.021(1)(b).....12

RCW 9A.36.021(2).....12

**Other Authorities**

Sentencing Reform Act (SRA).....13, 15, 16, 17

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the defendant knowingly, intelligently, and voluntarily waived his right to counsel for purposes of resentencing on Cause Number 04-1-03902-1?
2. Whether the court properly imposed a 10-year no-contact order to run from March 27, 2009, until March 27, 2019.

B. STATEMENT OF THE CASE.

1. Procedure

On August 10, 2004, the State charged James Douglas, hereinafter “the defendant,” under Pierce County Cause Number 04-1-03902-1 with one count of assault in the second degree and one count of assault in the fourth degree. CP 1-3. The State filed an amended information on November 18, 2004, adding one count of bail jumping. CP 4-5.

On November 1, 2004, the State charged the defendant under Pierce County Cause Number 04-1-05086-5 with one count of arson in the first degree<sup>1</sup>. CP 25-49. On March 3, 2005 the trial court joined and consolidated the assault action and the arson action for trial. CP 27, 34.

---

<sup>1</sup> To avoid confusion, the State will adopt the defendant’s method for referring to the two cause numbers. Pierce County Cause No. 04-1-03902-1 will be referred to as the “assault action.” Pierce County Cause No. 04-1-05086-5 will be referred to as the “arson action.”

The two actions proceeded to jury trial where a jury found the defendant guilty as charged. CP 135-137. The trial court sentenced the defendant on February 10, 2006. CP 6-17. On March 10, 2006, he filed a timely notice of appeal. CP 23-24.

This court issued an unpublished opinion in the defendant's appeal on September 8, 2008. CP 25-49. In that opinion, this Court reversed and remanded the arson action for a new trial and affirmed the assault action. *Id.* Pursuant to the appellate decision, the arson action and the assault action came back before the trial court for a hearing on December 1, 2008. 1RP 3.

At the December 1 hearing, the prosecutor informed the court the arson action and the assault action had been consolidated prior to the defendant's trial. 1RP 4. The defendant then made a motion to proceed pro se. 1RP 3. The defendant discussed his overall dissatisfaction with his legal representation at his initial trial and at his initial sentencing. 1RP 5-6. The court engaged in a colloquy with the defendant then granted the defendant's motion to proceed pro se with standby counsel. 1RP 15-17; CP 160.

On December 8, 2008, the defendant filed several motions with the court, including a motion to sever the two actions and a motion for relief from judgment in the assault action. CP 160, 161-164; CP \_\_\_\_.<sup>2</sup> As the two actions were still consolidated at this time, the motions were filed under the arson action's cause number. *Id.* In the motion for relief from judgment, which the defendant labeled with both actions' cause numbers, the defendant sought to vacate the assault action's judgment and sentence and present mitigating circumstances at a resentencing for the assault action. Appendix A. The defendant also filed a motion to sever the assault action from the arson action. CP 161-164.

On December 16, 2008, the court addressed the motions filed by the defendant on December 8, 2008. 2RP 3. Because the arson action, now reversed and remanded for a new trial, affected the defendant's offender score for the assault action's original sentencing, the prosecutor agreed the two cause numbers should be severed and the assault action resentenced. 2RP 12-13; CP 25-49. The judge granted the motion to

---

<sup>2</sup> Pursuant to a motion to supplement the record, filed by the State on April 22, 2010, this court permitted the State to supplement the record with clerk's papers from Pierce County Cause No. 08-1-05086-5. The State submitted a request for supplemental designation of clerk's papers to the Pierce County Superior Court Clerk on May 5, 2010. Some of these supplemental clerk's papers have not yet been prepared by the clerk's office. To facilitate review of this case, the State has attached the supplemental clerk's papers as appendices to this brief. All clerk's papers awaiting designation will be referenced as CP \_\_\_\_, followed by the appropriate appendices designation.

sever the two actions. 2RP 15. The judge also vacated the judgment and sentence for the assault action and set the assault action for resentencing. 2RP 13-16.

On February 6, 2009, the court held a subpoena hearing. 3RP 3. At that hearing, the defendant presented two subpoenas for the trial judge to sign naming two witnesses necessary for the defendant to present mitigating circumstances at his resentencing 2RP 21. The trial judge approved the witnesses and signed the defendant's subpoenas. 3RP 22.

The trial court resentenced the defendant on March 27, 2009. CP 120-131. At the start of the hearing, the defendant brought a motion to dismiss the assault action. 4RP 5. The judge denied the defendant's motion. 4RP 6. Prior to imposing a sentence, the judge heard mitigating evidence testimony from Mari Vaswig, the defendant's marriage counselor, and Dr. Betty Richardson, a psychologist. 4RP 8, 14, 17.

After hearing the witness testimony, the judge sentenced the defendant to 12 months for the second degree assault conviction, with 12 months credit for time served. 4RP 32-34; CP 120-131. As a condition of sentencing the judge imposed a 10 year domestic violence no-contact order barring the defendant from contacting the two victims in the assault action. 4RP 29.

C. ARGUMENT.

1. THE DEFENDANT KNOWINGLY, VOLUNTARILY,  
AND INTELLIGENTLY WAIVED HIS RIGHT TO  
COUNSEL AT RESENTENCING.

On appeal, the defendant claims he did not waive his right to counsel in the assault action. The United States Supreme Court recognizes a criminal defendant's constitutional right to waive assistance of counsel and to represent himself at trial. *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). The Washington Constitution similarly provides that the accused in criminal prosecutions shall have the right to appear and defend in person. Const. art. 1, § 22 (amend. 10). *State v. Barker*, 75 Wn. App. 236, 881 P.2d 1051, 1053 (1994). However, the assertion of the right to proceed pro se must be unequivocal. *State v. Luvene*, 127 Wn.2d 690, 698, 903 P.2d 960 (1995).

A defendant who chooses to waive this right must do so knowingly and intelligently. *State v. DeWeese*, 117 Wn.2d 369, 377, 816 P.2d 1 (1991). Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so the record will establish "he

knows what he is doing and his choice is made with eyes open.” *Adams v. United States ex rel. McCann*, 317 U.S., 63 S. Ct. 236, 143 A.L.R. 435, 87 L. Ed. 268 (1942).

In interpreting *Faretta*, our state supreme court held that a colloquy between the defendant and the court must at a minimum consist of informing the defendant of: 1) the nature and classification of the charge, 2) the maximum penalty upon conviction, and 3) the existence of technical rules which will bind a defendant in the presentation of his case. *Bellevue v. Acrey*, 103 Wn.2d 203, 233, 691 P.2d 957 (1984).

Once a trial court obtains a valid *Faretta* waiver of counsel, the trial court is not obliged to appoint, or reappoint, counsel on the demand of the defendant; this decision is left to the trial court’s discretion. *State v. Dewese*, 117 Wn.2d at 379.

Self-representation is a grave undertaking, one not to be encouraged. Its consequences, which often work to the defendant’s detriment, must nevertheless be borne by the defendant. When a criminal defendant chooses to represent himself and waive the assistance of counsel, the defendant is not entitled to special consideration and the inadequacy of the defense cannot provide a basis for a new trial or an

appeal. *State v. Deweese*, 117 Wn.2d at 379, citing *State v. Hoff*, 31 Wn. App. 809, 644 P.2d 763, review denied, 97 Wn.2d 1031 (1982). Trial courts must be careful when a criminal defendant unequivocally requests the right to represent himself; the unjustified denial of this right requires reversal. *State v. Breedlove*, 79 Wn. App. 101, 111, 900 P.2d 586 (1995).

The defendant in this case knowingly, voluntarily, and intelligently waived his right to counsel for resentencing in the assault action. Pursuant to the State's CrR 4.3 motion to join the arson action and the assault action on March 3, 2005, the trial court joined the two actions and consolidated them for trial. CP 25-49. The charges were not severed after the trial, prior to the original appeal, or immediately following the original appeal. The charges therefore remained joined as of the December 1, 2008, hearing when the defendant moved to proceed pro se.

When the court called the defendant's case on December 1, 2008, under the arson action cause number, the court effectively called both the arson action and the assault action. The prosecutor and judge made this fact clear at the beginning of the hearing.

The Court: Is there a published opinion in this case, or not?

The State: I believe it's an unpublished opinion, Your Honor.

The Court: Unpublished opinion. And the charge is?

The State: There were two charges, or multiple charges, but two separate cases consolidated for trial. First was Assault in the Second Degree and a bail jump stemming from that. The second was Arson in the First Degree, residential burglary, and violation of a protective order.

1RP 3-4. The parties involved had no reason to believe the hearing did not concern both actions.

At this hearing, the defendant brought a motion to proceed pro se. The most pressing issue facing the defendant at this time was the retrial for the arson action. *See* CP 25-49. The trial judge therefore properly focused his colloquy with the defendant on the known issues the defendant would face proceeding pro se. The trial judge informed the defendant of the seriousness of the arson charge, the maximum penalty, how that penalty would affect his strike offense record given the assault action, and the technical rules involved in a trial. 1RP 7-16. The trial judge also informed the defendant he would be held to the same standards as an attorney in the upcoming proceedings. 1RP 9. The defendant agreed to be held to those standards. *Id.*

By December 1, 2008, the assault action had been affirmed on appeal and the defendant had served his sentence for that charge. 1RP 15, CP 25-49. The judge therefore had no reason to go into extensive detail regarding the assault action during the pro se colloquy. Nevertheless, the judge did question the defendant about the assault action.

The Court: You know, Assault in the Second Degree is a strike offense.

The defendant: I understand.

The Court: It's a most-serious offense. Three of those, and you are life in prison without chance of parole.

The defendant: I have already served the time for those charges, Your Honor.

The State: For the assault, he has, Your Honor.

1RP 15. This shows the State, the court, and the defendant all agreed that while the two actions were joined, the pressing matters involved the arson action. The rest of the colloquy reflects this understanding.

After the defendant's extensive colloquy with the court, the judge engaged the defendant in a final discussion.

The Court: Is this exactly what you want to do?

The defendant: Yes.

The Court: You are not going to come back tomorrow and change your mind on me because this is it.

The defendant: No, I mean, I am ready. I am ready to go.

The Court: Do you want to think about it some more?

The defendant: No. I want to do it.

The Court: Okay. You are making a big mistake. I advise you to do other than this. I advise you to at least think about it further, but if you want to go ahead today and pull the trigger on yourself, have at it. Is this your final decision?

The defendant: Yes.

1RP 15-16. Determining the defendant made a knowing, intelligent, and voluntary request, the trial court granted the defendant's motion to proceed pro se and appointed standby counsel to assist the defendant with his case. 1RP 16. This constituted a valid *Faretta* waiver of counsel. *See Faretta*, 422 U.S. 806 (1975).

The defendant's actions immediately after the trial court granted his motion to proceed pro se further support the State's assertion that the defendant knowingly, intelligently, and voluntarily waived his right to counsel for the assault action's resentencing. Immediately after the defendant received notice that he could proceed pro se, he filed a motion to sever the arson action from the assault action. CP 161-164, 165. The defendant simultaneously filed a motion for relief from judgment in the assault action. Appendix A. At the December 16, 2008, hearing, the trial court heard and granted these two motions. 2RP 12-16. As a result, the court scheduled a new sentencing date for the defendant in the assault action. 2RP 17.

It is important to note that the defendant's motions while acting pro se brought about the severance and resentencing. As discussed above, severance and resentencing were not before the court when the defendant initially requested to proceed pro se. Once the defendant received permission to proceed pro se, he sought to sever his charges and be resentenced for the assault action. The defendant clearly intended to proceed pro se for purposes of the assault action and cannot now be heard to complain about proceedings which he motioned the court to hold.

From the time the defendant requested to proceed pro se through his resentencing the defendant filed several motions for the assault action. In multiple appearances before the court for the assault action, the defendant never requested counsel or even questioned his status as a pro se defendant. Additionally, the defendant never petitioned the court to allow standby counsel to actively represent him. When the defendant chose to represent himself, he chose to accept the consequences of his actions. *See State v. Dewese*, 117 Wn.2d at 379. The trial court had no obligation to step in and appoint the defendant counsel *sua sponte* once the defendant successfully severed his charges, successfully vacated the original judgment and sentence, and successfully arranged a resentencing in the assault action. *Id.*

The defendant agreed to be held to the same standards as a lawyer. 1RP 9. Those standards include following through with motions brought before the court and accepting the consequences of those motions. The defendant cannot knowingly, intelligently, and voluntarily waive his right to counsel, fully represent himself, not request reappointment of counsel, refuse to seek the assistance of standby counsel, and then complain the trial court denied him his right to legal representation. The defendant knowingly, voluntarily, and intelligently waived his right to counsel for resentencing.

2. THE NO-CONTACT ORDER IMPOSED BY THE TRIAL COURT DOES NOT EXCEED THE MAXIMUM DURATION ALLOWED BY STATUTE.

The statutory maximum term for second degree assault, a class B felony, is 10 years. RCW 9A.36.021(2); RCW 9A.20.021(1)(b). On appeal the defendant claims his court imposed no-contact order's 10 year duration should run from the defendant's original sentencing date, February 10, 2006, not the March 27, 2009 resentencing date. Brief of Appellant at 14. The plain meaning of the statutory language applicable to the defendant's case does not support the defendant's assertion. Because this case hinges on interpreting the relevant statutes, the court reviews the issue de novo. *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

The goal of statutory interpretation is to discern and apply the legislature's intent. *Id.* at 450. When the plain meaning of a statute is unambiguous on its face, that plain meaning is an expression of legislative intent. *Koenig v. City of Des Moines*, 158 Wn.2d 173, 181, 142 P.3d 162 (2006). To determine the plain meaning of a statute, the court looks at the entire statute as well as related statutes and provisions that disclose legislative intent. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006).

In 1981, the Washington Legislature enacted the Sentencing Reform Act (SRA). Since 1981, the SRA has undergone several amendments. RCW 9.94A.015. When sentencing a defendant, trial courts must use the SRA version in affect at the time the defendant committed the offense. RCW 9.94A.345.<sup>3</sup> The defendant committed the charged assault in this case on July 25, 2004. CP 1-3.

The SRA authorizes the sentencing authority to impose crime-related prohibitions as part of a defendant's sentence. RCW 9.94A.505(8); Appendix B. Crime-related prohibitions include orders prohibiting contact with victims of the charged crime for a duration not to

---

<sup>3</sup> All SRA statutes cited by the State in this brief refer to the SRA language and codification in effect as of July 1, 2004. For clarity, the State has attached all relevant statutes as appendices.

exceed the statutory maximum term. *State v. Armendariz*, 160 Wn.2d 106, 108, 156 P.3d 201 (2007).

The defendant's assault conviction stemmed from an incident involving his mother- and father-in-law during a custody exchange of the defendant's daughter. CP 25-49. Therefore, pursuant to RCW 10.99<sup>4</sup> the trial court imposed a domestic violence no-contact order barring the defendant from directly or indirectly contacting the assault victims. CP 120-131; 150-151. Section IV, paragraph 4.3 of the defendant's judgment and sentence form references this no-contact order, a crime-related prohibition of the defendant's sentence. CP 120-131.

When a defendant is resentenced, the resentencing date becomes the new sentencing date. *See State v. Amos*, 147 Wn. App. 217, 232, 195 P.3d 564 (2008). This rule applies regardless of how many times a defendant is resentenced on a conviction. *Id.* On December 16, 2008, the trial court granted the defendant's motion to vacate his original judgment and sentence. 2RP 16. The trial court resentenced the defendant on March 27, 2009. 4RP 34. The no-contact order is therefore valid for 10 years from March 27, 2009, the day of sentencing. As 10 years is the statutory maximum sentence for second degree assault, the defendant's

---

<sup>4</sup> Chapter 10.99 of the RCW details protocol for handling domestic violence cases, including issuing no-contact orders.

no-contact order duration does not exceed the maximum duration allowed by statute.

The plain meaning of the statutes in the Sentencing Reform Act and in RCW 10.99 show the legislature intended no-contact order durations to run from the sentencing date. RCW 9.94A.505(8) states a court may impose and enforce crime-related prohibitions as “part of any sentence.” Appendix B. As these crime-related prohibitions are part of a defendant’s sentence, they cannot take affect until the judge formally sentences the defendant. *See Id.* Therefore, when the trial court vacated the defendant’s original sentence, it vacated any attached crime-related prohibitions, including no-contact orders. When the trial court resentenced the defendant on March 27, 2009, it effectively imposed a new no-contact order.

While RCW 9.94A.505(6) requires a sentencing court to give a criminal defendant credit for all *confinement* time served before the sentencing “if that confinement was solely in regard to the offenses for which the offender is being sentenced,” the SRA does not require credit given for time passed under prior crime-related prohibitions. Appendix C. When a sentence is vacated, any crime-related prohibitions part of that sentence are vacated as well, with no time credit earned. Had the legislature intended to give a criminal defendant credit for the time crime

related prohibitions were in effect under a vacated sentence, the legislature would have included such language in RCW 9.94A.505(6) or elsewhere in the SRA. Rather, the legislature's intent is to provide as much protection to victims of crime as possible through the use of crime-related prohibitions.

One purpose of the SRA is to protect the public. RCW 9.94A.010(4); Appendix D. Furthermore, "the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim." RCW 10.99.010; Appendix E. A no-contact order is a tool that protects victims from their assailants. *See State v. Wilson*, 136 Wn .App. 596, 608, 150 P.3d 144 (2007). A plain reading of the domestic violence provisions in conjunction with the SRA statutes support the conclusion that the legislature intended no-contact order time durations to run from the sentencing date with no credit for time accrued under a vacated sentence. This provides the most protection to victims of crimes as intended by the legislature.

As a no-contact order is not a type of confinement nor a type of community custody, community supervision, or community placement, a defendant is not prejudiced or unfairly punished by running the durational time for no-contact orders from the resentencing date. The plain language meaning of the SRA shows the legislature intended crime-related

prohibitions to run their duration from the day of sentencing, even if that sentencing is the result of a prior vacated sentence. The trial court properly issued a 10 year no-contact order in the defendant's case under RCW 10.99 and the SRA to be in effect from March 27, 2009 until March 27, 2019.

The defendant cites to cases and relies on statutes within the SRA which correlate with conditions of community placement and community supervision, *not* conditions of sentencing, to support his arguments on this issue. *See* Brief of Appellant at 16. Former RCW 9.94A.700(5)(b), cited by the defendant, allows a sentencing authority to prohibit a defendant from contacting the victims of the charged crimes while on community placement. Brief of Appellant at 16; Appendix F. Similarly, former RCW 9.94A.715(2)(a), cited by the defendant, allows a sentencing authority to prohibit a defendant from contacting the victims of the charged crimes while in community custody. Brief of Appellant at 16; Appendix G. However, as discussed above, the no-contact order imposed by the court in the defendant's case was not imposed under the authority provided by these two statutes.

Community custody and community placement conditions are detailed under Section IV, paragraph 4.6 of the defendant's judgment and sentence form. CP 120-131. The line in that paragraph stating "the

defendant shall have no-contact with \_\_\_\_\_,” is left blank. *Id.* Section IV, paragraph 4.3 of the defendant’s judgment and sentence, detailing conditions of the sentence, states, “The defendant shall not have contact with \_\_\_\_\_ including, but not limited to personal, verbal, telephonic, written or contact through a 3<sup>rd</sup> party for \_\_\_ years (not to exceed the maximum statutory sentence.)” *Id.* In this paragraph, the court handwrote “see no-contact order.” *Id.* The attached domestic violence no-contact order contains the details of this prohibition, including its 10 year duration and the protected victims’ names. CP 150-151. As the court did not impose the no-contact order as a part of community custody or community placement, the statutes cited by the defendant are not applicable to the defendant’s case.

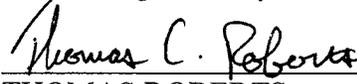
The sentencing court properly imposed a no-contact order as a condition of the defendant’s sentence to expire 10 years from the March 27, 2009, sentencing date pursuant to clear legislative intent.

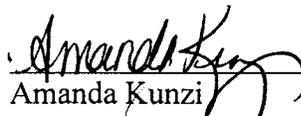
D. CONCLUSION.

For the reasons stated above, the State respectfully requests this Court affirm the judgment and sentence below.

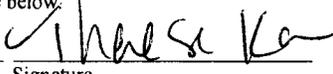
DATED: June 3, 2010.

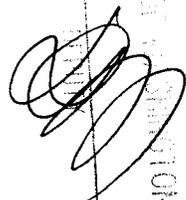
MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
\_\_\_\_\_  
THOMAS ROBERTS  
Deputy Prosecuting Attorney  
WSB # 17442

  
\_\_\_\_\_  
Amanda Kunzi  
Rule 9 Legal Intern

Certificate of Service:  
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

6-3-10   
Date Signature

FILED  
COURT OF APPEALS  
10 JUN -3 PM 4:36  
STATE OF WASHINGTON  
BY 

**APPENDIX “A”**

*Motion for Relief of Judgment*



04-1-05086-5 31057633 MT 12-09-08

SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY

STATE OF WASHINGTON  
Plaintiff

vs

JAMES PHILIP DOUGLAS  
defendant

NO. 04-1-05086-5  
04-1-03902-1  
(consolidated)

MOTION FOR RELIEF  
FROM JUDGEMENT OR  
ORDER

FILED  
IN COUNTY CLERK'S OFFICE

AM. DEC 08 2008 PM.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY DEPUTY

COMES NOW THE DEFENDANT, ABOVE NAMED, RESIDING  
AT PIERCE COUNTY JAIL AS BKG# 2008318039. THE  
ADDRESS AS FOLLOWS: 910 TACOMA, AVESO, TACOMA, WA  
IN 3WA13 UNIT.

THE DEFENDANT COMES BEFORE THE TRIAL COURT SEEKING  
RELIEF FROM JUDGEMENT AND ORDER UNDER CrR 7.8(3,4,5)  
AND UNDER RAP 7.2(e) AND, UPON A SHOWING OF CAUSE  
BY THE APPELLATE COURT, FURTHER REVIEW BY THAT COURT  
UNDER A CONSOLIDATION OF REVIEW 3.3(b), THE PRIOR  
REVIEW BEING UNDER RAP 12.9(b)(c) IN THE FURTHERANCE  
OF JUSTICE.

THE DEFENDANT AFTER CAREFUL REVIEW OF THE  
SENTENCING DOCUMENTS SO NAMED ABOVE FINDS  
THAT UNDER CrR 7.8(b)(3,4,5) OF WASHINGTON RULES  
FOR SUPERIOR COURT THAT PROSECUTOR, KATHLEEN  
OLIVER WSB# 18252, DID KNOWINGLY OR UNKNOWNLY  
SIGN HER SIGNATURE ON THE ORDER FOR BIOLOGICAL

SAMPLE DRAW DATED FEBRUARY 10, 2006 AND ALSO THE JUDGEMENT AND SENTENCE DATED FEBRUARY 10, 2006, IN WHERE, SHE MISTAKENLY SIGNED HER SIGNATURE UNDER THE NAMES OF SUE SHOLIN WSB#21333 AND GREGORY L. GREER WSB#22936 CONSTITUTING THE ACT OF POSSIBLE FRAUD IN RESULT THEREBY RENDERING THE JUDGEMENT VOID.

AS WELL THE ORDER FOR BIOLOGICAL SAMPLE DRAW WOULD ALSO BECOME NULL AND IN PROCESSING THE BIOLOGICAL DRAW THAT WAS TAKEN WOULD BE A VIOLATION OF DEFENDANTS RIGHTS. SINCE THE CAUSE OF 04-1-05086 HAS BEEN REVERSED AND REMANDED FOR NEW TRIAL THIS ISSUE OF DEFENDANTS RIGHT TO HAVE ACCURATE AND VIABLE SENTENCING DOCUMENTS SHOULD BE ADDRESSED PRIOR TO TRIAL.

ADDITIONALLY-

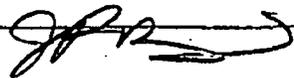
THE DEFENDANT WOULD AT THE DISCRETION OF THE COURT ALSO LIKE TO ADDRESS TWO OTHER ISSUES OF IMPORTANCE WHICH COULD ULTIMATELY AFFECT THE UPCOMING TRIAL FOR 04-1-05086-5.

- 1) THE DEFENDANT, DID NOT WAIVE HIS RIGHT TO APPEAR AT HIS RESTITUTION HEARING BUT WAS SUBSEQUENTLY NOT BROUGHT TO THE COURT FOR THAT HEARING VIOLATING HIS RIGHT TO BE PRESENT.
- 2) THE DEFENDANT HAS DISCOVERED NEW EVIDENCE RELATING TO CAUSE NUMBER 04-1-03902-1 WHICH IN ITS NATURE COULD ALSO AFFECT

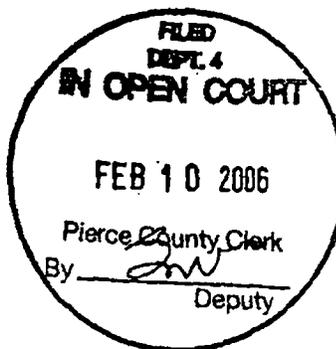
THE ENTIRE SCOPE OF THE PREVIOUS TRIAL AS TO THE DEFENDANTS STATE OF MIND DURING THE ALTERCATION WITH THE PEDERSONS IN THE FORM OF AN EXPERT REPORT AND EVALUATION WHICH SHOWS THE DEFENDANTS PRIOR CLAIM IN THAT INCIDENT WAS VALID TO A SHOWING OF DIMINISHED CAPACITY. THE DEFENDANT WOULD THEN BE ABLE TO PROVIDE SUFFICIENT CAUSE FOR RE-SENTENCING WITH MITIGATING CIRCUMSTANCES.  
(SEE EXHIBITS ATTACHED)

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATED THIS DAY THE 8<sup>TH</sup> OF DECEMBER IN THE YEAR OF 2008.



JAMES PHILIP DOUGLAS  
Defendant



891542  
2-14-06  
(K)

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03902-1

vs.

JUDGMENT AND SENTENCE AS TO COUNTS I AND III ONLY (JS)

JAMES PHILIP DOUGLAS

Defendant.

- Prison
- Jail One Year or Less
- First-Time Offender
- SSOSA
- DOSA
- Breaking The Cycle (BTC)

FEB 13 2006

SID: UNKNOWN  
DOB: 1/31/1968

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

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

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE SECOND DEGREE (E26)	9A.36.021(1)(a)		7/25/04	041744
III	BAIL JUMPING (EE7D)	9A.76.170(1), 9A.76.170(3)(c)		10/12/04	041744

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

as charged in the Amended Information

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

06-9-0892-4

04-1-03902-1

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

**2.2 CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ARSON IN THE FIRST DEGREE	Other Current 04-1-05086-5	Pierce Co., WA	10/10/04	A	V
2	RESIDENTIAL BURGLARY	Other Current 04-1-05086-5	Pierce Co., WA	10/10/04	A	NV
3	DOMESTIC VIOLENCE COURT ORDER VIOLATION	Other Current 04-1-05086-5	Pierce Co., WA	10/10/04	A	NV

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

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	5	IV	22-29 MOS	18-36 MOS	MOS 22-29	10 YRS/ \$20,000
III	4	III	12+-16 MOS		12+-16 MOS	5YRS/ \$10,000

**2.4**  **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence  above  below the standard range for Count(s) \_\_\_\_\_. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney  did  did not recommend a similar sentence.

**2.5** **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

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

---

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

---

04-1-03902-1

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

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

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

- \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_
- \$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_
- \$ \_\_\_\_\_ TOTAL

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

4.2 RESTITUTION

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

shall be set by the prosecutor.

[X] is scheduled for \_\_\_\_\_

defendant waives any right to be present at any restitution hearing (defendant's initials): \_\_\_\_\_

RESTITUTION. Order Attached

04-1-03902-1

~~[X] Restitution ordered above shall be paid jointly and severally with:~~

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN			

4.3 COSTS OF INCARCERATION

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

4.4 COLLECTION COSTS

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

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090.

4.6 COSTS ON APPEAL

An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.

4.7 [ ] HIV TESTING

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

4.8 [X] DNA TESTING

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

4.9 NO CONTACT

The defendant shall not have contact with See attached (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ years (not to exceed the maximum statutory sentence).

Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:


04-1-03902-1

4.11 BOND IS HEREBY EXONERATED

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

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

<u>22</u> months on Count	<u>I</u>	_____ months on Count	_____
<u>16</u> months on Count	<u>III</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: \_\_\_\_\_

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. \_\_\_\_\_

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

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 471 days

4.13  COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

Count \_\_\_\_\_ for \_\_\_\_\_ months,

COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 18 to 36 Months,

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

474 days  
237 days

04-1-03902-1

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

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

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 service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders 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.

Defendant shall have no contact with: see attached

Defendant shall remain  within  outside of a specified geographical boundary, to wit:

The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_

The defendant shall undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management and fully comply with all recommended treatment.

The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: \_\_\_\_\_

4.14  **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 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 may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A
- 5.7 **OTHER:** \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date: 2.10.06

JUDGE

Print name

B. Chushcoff  
**BRYAN CHUSHCOFF**

Deputy Prosecuting Attorney

Print name:

WSB #

[Signature]  
KATHLEEN OLIVER  
18252

Attorney for Defendant

Print name:

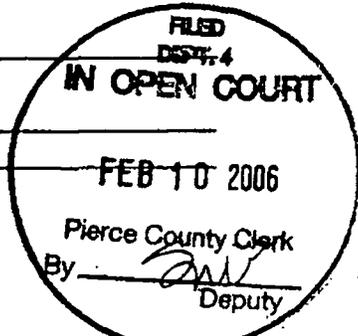
WSB #

[Signature]  
AM Quillian  
683L

Defendant

Print name:

[Signature]  
James Douglas



04-1-03902-1

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 04-1-03902-1

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

FEB 13 2003

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

Clerk of said County and State, by: B. Knight Deputy Clerk

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

04-1-03902-1

IDENTIFICATION OF DEFENDANT

SID No. UNKNOWN Date of Birth 1/31/1968  
(If no SID take fingerprint card for State Patrol)

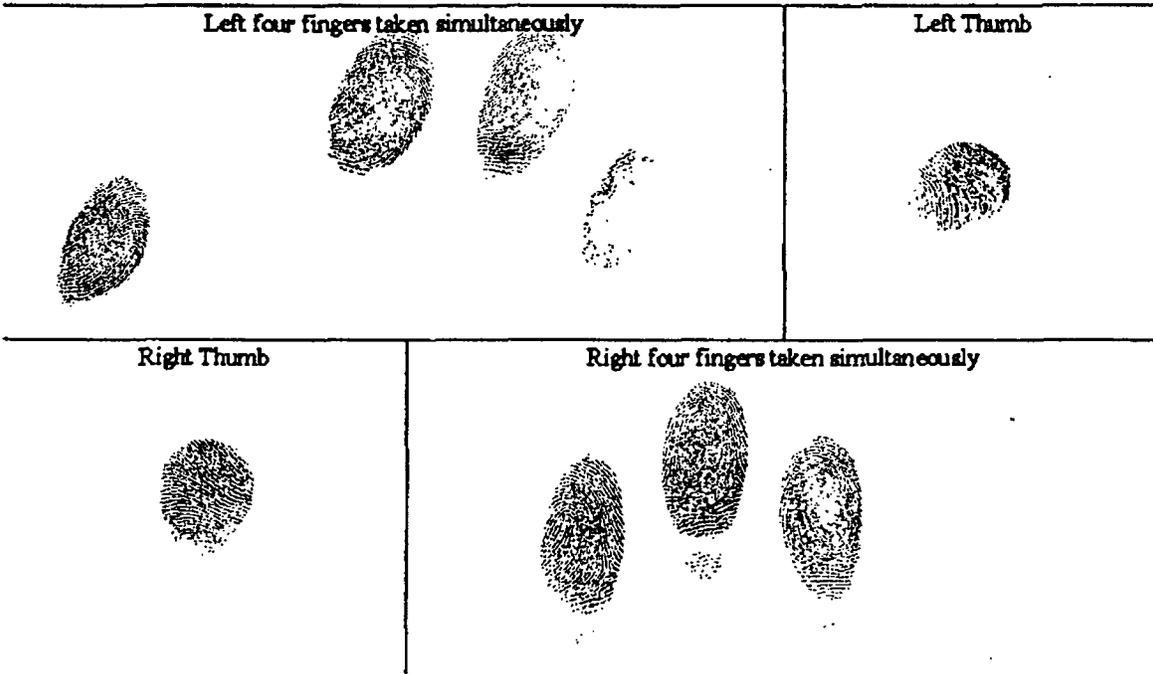
FBI No. UNKNOWN Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB: \_\_\_\_\_

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

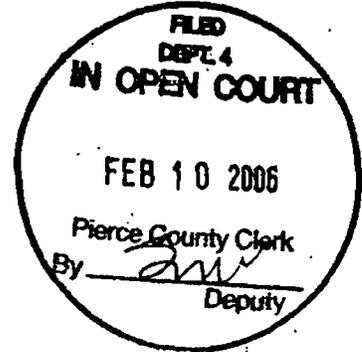
FINGERPRINTS



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, Samuel W. ... Dated: 2-10-04

DEFENDANT'S SIGNATURE: JD

DEFENDANT'S ADDRESS: \_\_\_\_\_



891542  
2-1406  
FEB 13 2006

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 04-1-03902-1

vs

JAMES PHILIP DOUGLAS,

Defendant.

WARRANT OF COMMITMENT

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

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

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

- [ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- [X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

04-1-03902-1

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

Dated: 2.10.06

By direction of the Honorable  
B. Clumbert  
JUDGE

KEVIN STOCK  
CLERK

By: [Signature]  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

FEB 13 2006 [Signature] Deputy



STATE OF WASHINGTON

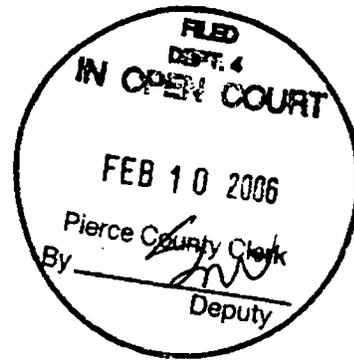
County of Pierce

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

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

FEB 13 2006  
KEVIN STOCK, Clerk  
By: [Signature] Deputy

rlt



04-1-03902-1 24815850 JDOSSG 02-13-06

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03902-1

vs.

JAMES PHILIP DOUGLAS,

Defendant.

JUDGMENT AND SENTENCE

(Misd and/or Gross Misd.)

Plea of Guilty

Found Guilty by Jury

Found Guilty by Court

SUSPENDED

FEB 13 2006

DOB: 01/31/68  
RACE: WHITE  
SEX: MALE  
AGENCY: WA02714  
INCIDENT #: 041744

This matter coming on regularly for hearing in open court on the 10<sup>th</sup> day of FEBRUARY, 2006, the defendant JAMES PHILIP DOUGLAS and his attorney JOHN PHILIP JENSEN appearing, and the State of Washington appearing by GREGORY L GREER Prosecuting Attorney for Pierce County, following a verdict of guilty by jury by the court on the day of June, 2005.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED That said Defendant is guilty of the crime(s) of ASSAULT IN THE FOURTH DEGREE, Charge Code: (E37), as charged in the Amended Information herein, and that he shall be punished by confinement in the Pierce County Jail for a term of not more than 365 days.

Said sentence shall be (suspended) on the attached conditions of (suspended) sentence and that the Defendant pay the prescribed crime victim compensation penalty assessment as per RCW 7.68.035 in the amount of \$ \_\_\_\_\_.

The said Defendant is now hereby committed to the custody of the sheriff of aforesaid county to be detained.

Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason.

Bail is hereby exonerated.

Signed this 10 day of FEBRUARY, 2006, in the presence of said Defendant.

[Signature]  
JUDGE

CERTIFICATE

Entered Jour. No. \_\_\_\_\_ Page No. \_\_\_\_\_ Department No. \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_

I, KEVIN STOCK, County Clerk and Clerk of the Superior Court of the State of Washington, in and for the County of Pierce, do hereby certify that the foregoing is a fully, true and correct copy of the judgment, sentence, and commitment in this cause as the name appears of record in my office.

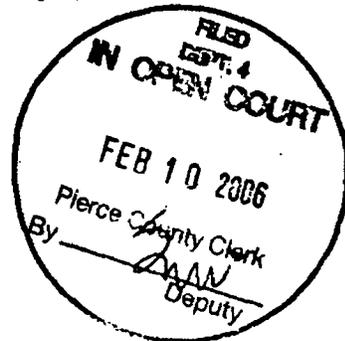
WITNESS my hand and seal of said Superior Court this \_\_\_\_\_ day of FEB 13 2006

KEVIN STOCK  
County Clerk and Clerk of Superior Court.

By [Signature]  
Deputy Clerk

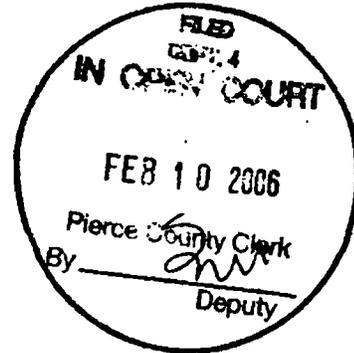
Presented by:

[Signature]  
GREGORY L GREER  
Deputy Prosecuting Attorney  
WSB # 22936



Approved as to Form:

[Signature]  
JOHN PHILIP JENSEN Am Quillan  
Attorney for Defendant  
WSB# 15926 6836



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03902-1

vs.

JAMES PHILIP DOUGLAS,

CONDITIONS ON SUSPENDED SENTENCE

Defendant.

FEB 10 2006

This matter coming on regularly for sentencing before the Honorable Bryan Chusheff Judge, on the 10<sup>th</sup> day of FEBRUARY 2006, and the Court having sentenced the defendant JAMES PHILIP DOUGLAS to the term of 365 days for the crime(s) of ASSAULT IN THE FOURTH DEGREE and the Court having suspended that term, the Court herewith orders the following conditions and provisions:

- 1. ( ) Termination date is to be \_\_\_\_\_ year(s) after date of sentence.
- 2. 85 The Defendant shall be under the charge of a probation officer employed by the Department of Corrections and follow implicitly the instructions of said Department, and the rules and regulations promulgated by the Department of Corrections for the conduct of the Defendant during the time of his/her probation herein.
- ( ) That the Defendant be under the supervision of the Court (bench probation).
- 3. ( ) Defendant will pay the following amounts to the Clerk of the Superior Court, Pierce County, Washington.

\$ \_\_\_\_\_ Attorney fees as reimbursement for a portion of the expense of his/her court appointed counsel provided by the Pierce County Department of Assigned Counsel. The court finds that the defendant is able to pay said fee without undue financial hardship.

Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

04-1-03902-1

1  
2 \$ 500 Crime Victim Compensation penalty assessment per RCW 7.68.035;  
3 \$ 110 Court Costs;  
4  
5 \$ \_\_\_\_\_ Fine;  
6 \$ 100 Other: DNA test fee  
7 \$ \_\_\_\_\_ Restitution to be forwarded to: \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 Restitution hearing set for \_\_\_\_\_  
11 \$ \_\_\_\_\_ TOTAL payable at the rate of \$ \_\_\_\_\_ per month commencing  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 Revocation of this probation for nonpayment shall occur only if defendant wilfully fails to  
15 make the payments having the financial ability to do so or wilfully fails to make a good faith  
16 effort to acquire means to make the payment.

17 A notice of payroll deduction may be issued or other income-withholding action may be  
18 taken, without further notice to the offender, if a monthly court-ordered legal financial obligation  
19 payment is not paid when due and an amount equal to or greater than the amount payable for one  
20 month is owed.

21 THE FINANCIAL OBLIGATIONS IMPOSED IN THIS JUDGMENT SHALL BEAR INTEREST  
22 FROM THE DATE OF THE JUDGMENT UNTIL PAYMENT IN FULL, AT THE RATE  
23 APPLICABLE TO CIVIL JUDGMENTS. RCW 10.82.090. AN AWARD OF COSTS ON APPEAL  
24 AGAINST THE DEFENDANT MAY BE ADDED TO THE TOTAL LEGAL FINANCIAL  
25 OBLIGATIONS. RCW 10.73.

26 Any period of supervision shall be tolled during any period of time the offender is in  
27 confinement for any reason.

28 (y) Further Conditions as follows:

CAB  
mental health treatment/evaluation  
365 - one year - consecutive  
suspended on one year

Office of Prosecuting Attorney  
946 County-City Building  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

IT IS FURTHER ORDERED that, upon completion of any incarceration imposed the defendant shall be released from the custody of the Sheriff of Pierce County and report to the authorized Probation Officer of this district, to receive his instructions: Bail is hereby exonerated.

[ ] PURSUANT TO 1993 LAWS OF WASHINGTON, CHAPTER 419, IF THIS OFFENDER IS FOUND TO BE A CRIMINAL ALIEN ELIGIBLE FOR RELEASE AND DEPORTATION BY THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, SUBJECT TO ARREST AND RE- INCARCERATION IN ACCORDANCE WITH THIS LAW, THEN THE UNDERSIGNED JUDGE AND PROSECUTOR CONSENT TO SUCH RELEASE AND DEPORTATION PRIOR TO THE EXPIRATION OF THE SENTENCE.

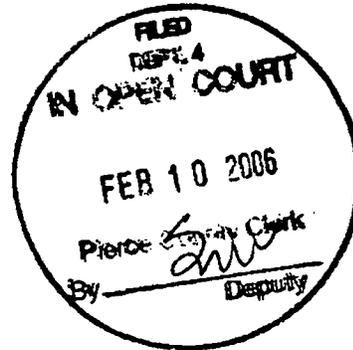
DONE IN OPEN COURT this 10<sup>th</sup> day of February, 2006.

*B. Clumbutt*

JUDGE

Presented by:

*[Signature]*  
GREGORY L GREER  
Deputy Prosecuting Attorney  
WSB # 22936



Approved as to Form:

*[Signature]*  
JOHN PHILIP JENSEN *[Signature]*  
Attorney for Defendant  
WSB # 15926 6831

*[Signature]*  
JAMES PHILIP DOUGLAS  
Defendant

rlt



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 04-1-03902-1

FEB 13 2006

vs.

JAMES PHILIP DOUGLAS

Defendant.

ORDER FOR BIOLOGICAL SAMPLE DRAW FOR DNA IDENTIFICATION ANALYSIS

THIS MATTER having come on regularly before the undersigned Judge for sentencing following defendant's conviction for:

- A felony sex offense, which occurred after July 1, 1990, as defined by RCW 9.94A.030(33), to wit: \_\_\_\_\_, and/or
- A violent offense, which occurred after July 1, 1990, as defined by RCW 9.94A.030(38), to wit: Assault 2, and/or
- Any felony offense for which a conviction was obtained after July 1, 2002, to wit: Bail Jumping

Pursuant to RCW 43.43.754, therefore, it is hereby ordered that the defendant provide a biological sample to be used for DNA identification analysis as follows:

PLACE TO BE TESTED

- (Out-of-Custody) Report immediately to the Pierce County Sheriff's Office located on the 1<sup>st</sup> Floor of the County City Building, 930 Tacoma Ave S, Tacoma, Washington for a biological sample draw.

[ ] (Out-of-Custody) Contact your CCO or other DOC representative to make an appointment to submit a DNA sample. Your sample must be submitted within 60 days of today's date or the date you are released from jail, whichever comes later.

(In-Custody DOC) Submit to the biological sample draw by the Department of Corrections.

[ ] (In-Custody PC Jail) Submit to biological sample draw by the Pierce County Jail.

DONE IN OPEN COURT this 10 day of February, 2006.

*B. Chubb*  
JUDGE

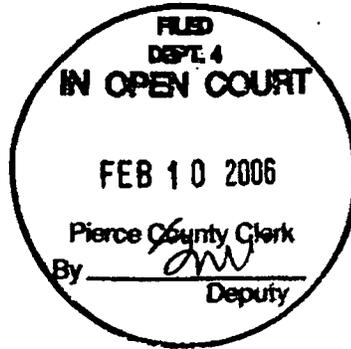
Presented by:

*Sue L. Sholin*  
SUE L. SHOLIN  
Deputy Prosecuting Attorney  
WSB# 21333

Approved as to form:

*John Jensen*  
JOHN JENSEN  
Attorney for Defendant  
WSB# 6836

*James Philip Douglas*  
JAMES PHILIP DOUGLAS  
Defendant



CLERK OF WASHINGTON, County of Pierce  
Kevin Stock, Clerk of the above  
Court, do hereby certify that this  
copying instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
day of \_\_\_\_\_, 20  
Kevin Stock, Clerk  
FEB 13 2006  
*B. Brighton*

## **APPENDIX “B”**

*RCW 9.94A.505(8)*

**RCW 9.94A.505(8)**

As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

# **APPENDIX “C”**

*RCW 9.94A.505(6)*

**RCW 9.94A.505(6)**

The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

# **APPENDIX “D”**

*RCW 9.94A.010*

## **RCW 9.94A.010**

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself;
- (6) Make frugal use of the state's and local governments' resources; and
- (7) Reduce the risk of reoffending by offenders in the community.

# **APPENDIX “E”**

*RCW 10.99.010*

## **RCW 10.99.010**

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

# **APPENDIX “F”**

*RCW 9.94A.700(5)(b)*

**RCW 9.94A.700(5)(b)**

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions: ... (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals.

**APPENDIX “G”**

*RCW 9.94A.715(2)(a)*

**RCW 9.94A.715(2)(a)**

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.