

FILED
COURT OF APPEALS

NO. 39856-7

10 JUN -1 PM 2:03

STATE OF WASHINGTON

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

BY *C*
CLERK

STATE OF WASHINGTON, RESPONDENT

v.

RICHARD WAYNE WILSON, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald E. Culpepper

No. 09-1-01121-6

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

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

1. Did the trial court act properly when it included in defendant's criminal history, his prior convictions based upon guilty pleas when the State's evidence showed that defendant was represented by counsel in each instance and defendant did not dispute that the convictions were his or that the foreign convictions were comparable to Washington offenses?

B. STATEMENT OF THE CASE.

1. Procedure

On March 3, 2009, the Pierce County Prosecutor's Office charged Richard Wayne Wilson, hereafter "defendant," with nine counts of unlawful possession of a firearm in the first degree, Cause No. 09-1-01121-6. CP 1-5. On June 4, 2009, defendant pleaded guilty on all nine counts, and, in exchange, the State agreed to stipulate that the nine charges of unlawful possession were the same course of conduct; to recommend the low end of defendant's sentence range; and to not file additional charges, including nine counts of possession of a stolen firearm. CP 8-20; CP 21-24; RP 10-15. The parties had not reached agreement as to defendant's offender score or the applicable standard sentencing range for

inclusion in the plea agreement. CP 8-20.¹ Defendant did sign the same day, however, a stipulation as to his prior record, acknowledging that he had five prior Washington State convictions, three out-of-state convictions, and three federal convictions. CP 21-24.² After the plea was entered, the State asked that sentencing occur at a later date so that the State could obtain documents relevant to establishing defendant's criminal history and the court could properly calculate defendant's offender score. RP 6. Pursuant to his plea agreement, so long as defendant was sentenced within the standard range, he waived any right to take a direct appeal or file any collateral attack challenging his conviction and/or sentence other than the calculation of his offender score. CP 21-24, p. 3-4.

The sentencing hearing began on September 25, 2009, and finished on October 2, 2009. RP 18, 59. On September, 25, 2009, defense counsel filed a sentencing memorandum, arguing that most of defendant's prior convictions should not be included in the calculation of his offender score. CP 25-48; RP 18. The State introduced into evidence multiple documents establishing defendant's prior convictions. Exhibits 1-24; RP 18-26. Defendant did not contest that all of the convictions in question were his convictions and further agreed that they did not wash out. RP 19. Defendant also retracted some of the arguments raised in his sentencing

¹ The parties indicate that these were "TBD," which means "to be determined."

² Next to one of defendant's out-of-state convictions, someone handwrote "defendant contests conviction."

memorandum. RP 20-21. Defendant, however, argued that his prior convictions were constitutionally invalid on their face because the documentation provided by the State to prove the existence of those convictions did not provide a sufficient factual basis to support his prior guilty pleas. CP 25-48; RP 29-55.

The sentencing court declined to review each of defendant's old plea statements to determine whether they were knowing, voluntary, and intelligent. RP 64. Nevertheless, the court found that defendant's plea to the destruction of property could not be counted as a prior conviction because the plea did not contain the amount of damage, but did include the riot listed in the same judgment in defendant's criminal history. RP 67-68.

Over defendant's objection, the court ruled that defendant's offender score was nine. RP 89-91, 106-108. The court sentenced defendant to 87 months, the low end of the standard range, on each count – all counts to run concurrently. CP 49-60, *see* Appendix A.

Defendant filed a timely notice of appeal. CP 61.

C. ARGUMENT.

1. THE COURT ACTED PROPERLY BECAUSE THE DOCUMENTATION PROFFERED BY THE STATE PROVED THE EXISTENCE OF DEFENDANT'S PRIOR CONVICTIONS AND SHOWED NO FACIAL CONSTITUTIONAL INVALIDITY.

A defendant's criminal history is used to determine the offender score which in turn is used to determine the applicable presumptive

standard sentence range. *State v. Ammons*, 105 Wn.2d 175, 187, 713 P.2d 719 (1986), *cert. denied*, 479 U.S. 930, 107 S. Ct. 398, 93 L. Ed. 2d 351 (1986). The State must prove the defendant's criminal history by a preponderance of the evidence. RCW 9.94A.500(1). "Criminal history" means the list of a defendant's prior convictions. *Ammons*, 105 Wn.2d 175, 185.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist.

RCW 9.94A.500(1). While the best evidence of a prior conviction is a certified copy of the judgment, the State may also introduce "other comparable documents of record or transcripts of prior proceedings." *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999).

The State does not have the affirmative burden of proving the constitutional validity of a prior conviction before it can be used in a sentencing proceeding. *Ammons*, 105 Wn.2d 175, 187. The *Ammons* court stressed the policy reasons behind this rule:

To require the State to prove the constitutional validity of prior convictions before they could be used would turn the sentencing proceeding into an appellate review of all prior convictions. The defendant has no right to contest a prior conviction at a subsequent sentencing. To allow an attack at that point would unduly and unjustifiably overburden the sentencing court. The defendant has available, more appropriate arenas for the determination of the

constitutional validity of a prior conviction. The defendant must use established avenues of challenge provided for post-conviction relief. A defendant who is successful through these avenues can be resentenced without the unconstitutional conviction being considered.

Ammons, 105 Wn.2d at 188. The court articulated that for the conviction to be constitutionally invalid on its face, the conviction must affirmatively show that the defendant's rights *were* violated. *Ammons*, 105 Wn.2d at 189.

A sentencing court may not consider a prior conviction that has been previously determined to have been unconstitutionally obtained or that is constitutionally invalid on its face. *Ammons*, 105 Wn.2d at 187-188. There is a distinction in the law between a judgment that shows *facial constitutional invalidity*, which is relevant to a challenge to the use of a prior conviction at a sentencing hearing and a judgment that is *invalid on its face*, which might be relevant in determining whether a time bar is

applicable to an untimely collateral attack.³ The analysis used to determine facial constitutional invalidity differs from that used to determine whether a judgment is invalid on its face.

Both the United States and Washington Supreme Courts have addressed what constitutes *facial constitutional invalidity* so as to render the conviction invalid for sentencing purposes. *Custis v. United States*, 511 U.S. 485, 496-97, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994); *State v. Roberts*, 142 Wn.2d 471, 529, 14 P.3d 713 (2000). In *Custis v. United States*, the Supreme Court made it unequivocally clear that a defendant in a federal sentencing proceeding has no constitutional right to collaterally attack the validity of a prior conviction, unless it was obtained in violation

³ In Washington, collateral attacks to a judgment must be brought in a timely manner—within one year after the “judgment has become final if the judgment and sentence is *valid on its face*.” RCW 10.73.090(1)(emphasis added). The Washington Supreme Court has held that a “‘facial invalidity’ inquiry under RCW 10.73.090 is directed to the judgment and sentence itself.” *In re Pers. Restraint Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). “‘Invalid on its face’ means the judgment and sentence evidences the invalidity without further elaboration.” *Id.* citing *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866-67, 50 P.3d 618 (2002); *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353, 5 P.3d 1240 (2000); *In re Pers. Restraint of Thompson*, 141 Wn.2d 712, 718, 10 P.3d 380 (2000). The Supreme Court has held, however, that the statute does not limit facial invalidity strictly to constitutional issues. *In re Pers. Restraint of Goodwin*, 146 Wn.2d at 866. (“We have never held, however, that RCW 10.73.090 requires, merely by use of the words “valid on its face,” that the only type of invalidity that will prevent operation of the one-year bar to filing a personal restraint petition is constitutional infirmity.”) Thus, showing facial invalidity of a judgment under RCW 10.73.090 does not demonstrate a facial constitutional invalidity and the case law applicable to the the determination of facial invalidity under RCW 10.73.090 is not interchangeable with case law determining whether a judgment shows facial constitutional invalidity. *Cf. State v. Lewis*, 141 Wn. App. 367 166 P.3d 786 (2007)(citing authority addressing a determination of facial validity under RCW 10.73.090 when faced with a question of whether a prior judgment has “facial constitutional validity” so as to allow its use in a sentencing hearing); *State v. Gimarelli*, 105 Wn. App. 370, 20 P.3d 430 (2001)(same).

of the right to counsel as established in *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). *Custis* concerned a defendant who challenged the use of his prior convictions at a sentencing hearing for a variety of reasons including: 1) the denial of the effective assistance of counsel; 2) an involuntary guilty plea; and, 3) inadequate advisement of his rights in opting for a “stipulated facts” trial. In rejecting these as a basis for a sentencing court to review the constitutionality of the prior conviction, the United States Supreme Court articulated that one reason the denial of appointment of counsel is treated differently than other claims is the relative ease in determining whether such an infirmity exists as the “failure to appoint counsel at all will generally appear from the judgment roll itself, or from an accompanying minute order” whereas “determination of claims of ineffective assistance of counsel, and failure to assure that a guilty plea was voluntary, would require sentencing courts to rummage through frequently nonexistent or difficult to obtain state-court transcripts or records that may date from another era.” *Custis*, 511 at 496; see also *Johnson v. United States*, 544 U.S. 295, 303, 125 S. Ct. 1571, 161 L. Ed. 2d 542 (2005)(“We recognized only one exception to this rule that collateral attacks were off-limits [at sentencing hearings], and that was for challenges to state convictions allegedly obtained in violation of the right to appointed counsel.”).

The Washington Supreme court relied on *Custis* when reaching a similar conclusion as to the type of challenge that may be raised in a

sentencing proceeding. See *State v. Roberts*, *supra*. Roberts asserted that the sentencing court should not have considered some of his Canadian convictions because there was no showing that he was informed of the same rights of which he would have been informed in an American court. The Court, noting that an attack on the validity of a plea does not implicate the facial constitutional validity of the judgment, rejected the argument stating:

Even were this true, the Canadian convictions would presumably still be admissible. See *Custis v. United States*, 511 U.S. 485, 496-97, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994) (while denial of counsel renders a prior conviction per se invalid for sentencing purposes, other alleged errors, including involuntary plea, do not). *Custis* makes the same point this court made in *Ammons*: absent facial constitutional invalidity or an affirmative showing of infirmity by the defendant, the sentencing court should not be forced to conduct an appellate review of each of the defendant's priors. *Custis*, 511 U.S. at 496; *Ammons*, 105 Wn.2d at 188.

State v. Roberts, 142 Wn.2d at 529. The *Roberts* decision reiterated the same concerns the Court had expressed in *Ammons* when it stated that allowing defendants to bring any sort of constitutional challenge would “turn the sentencing proceeding into an appellate review of all prior convictions.” 105 Wn.2d at 188.

As noted in *Roberts* and *Custis*, if the defendant can show a previous judicial determination of the infirmity of a prior conviction *or* if the judgment reflects a denial of counsel on the prior conviction, then these claims, and only these claims, may be raised at a sentencing hearing

to render the prior conviction constitutionally invalid for sentencing purposes. Other claims, even ones seemingly based on constitutional principles such as an involuntary plea, do not result in facial constitutional invalidity of a judgment. Under *Ammons*, those type of constitutional claims must be raised in a collateral attack in the court where the prior judgment was entered or by filing a personal restraint petition. *Ammons*, 105 Wn.2d at 188.

The facts of *Ammons* are nearly identical to those presented in the case now before the court. Ammons argued that his prior conviction, obtained by a guilty plea, was not constitutionally valid and therefore should not be used to enhance his sentence because the guilty plea form failed to show that he was aware of his right to remain silent, failed to set forth the elements of the crime of burglary, and failed to set forth the consequences of pleading guilty; and because the statement “I broke into the welfare office looking for food stamps” was an insufficient factual basis for the court’s accepting the plea. 105 Wn.2d at 189. The *Ammons* court rejected these claims as ones that could be raised in a sentencing hearing. *Id.*

In the case now before the court, the trial court properly assessed defendant’s prior convictions and determined that his offender score should be nine. In the trial court, the State presented documents to prove the existence and comparability of nine prior convictions, including some that were federal and out-of-state. Exhibits 1-22; RP 18-25. Defendant

did not contest that the convictions existed or that they were comparable to Washington crimes. RP 19-23, 48. The trial court noted that the exhibits showed defendant had been represented by counsel. RP 67, 69, 71, 72, 73, 75, 77; Exs. 1, 3, 5, 8, 10, 12, 15, 19, 20. The court found comparability on the foreign convictions. RP 71-72 (Utah-theft), 75 (Florida-grand theft), 76-77 (Alabama-receiving stolen property). The court found that the uniquely federal offenses were equivalent to Class C felonies pursuant to RCW 9.94A.525(3). RP 79-80. Thus, the court properly determined defendant's offender score to be nine. The ruling should be affirmed.

Defendant challenges the sufficiency of the factual basis for his prior pleas just as Ammons tried to do. Brief of Appellant, pp. 5-8. Under *Ammons*, defendant must raise this type challenge in a collateral attack; it is not properly raised in a sentencing hearing for a subsequent crime. The trial court below did not err in refusing to assess the sufficiency of the factual basis underlying the defendant's prior guilty pleas.

This court should note that there are some Washington cases that are not consistent with the principles set forth in *Custis* and *Roberts* as to what constitutes "facial constitutional invalidity" of a conviction so as to preclude its use in a subsequent sentencing hearing. One Washington court found that a trial court properly excluded a Canadian conviction when under Canadian law the defendant did not have a right to a jury trial for that conviction. *State v. Payne*, 117 Wn. App. 99, 107, 69 P.3d 889

(2003). The Court in *Payne* relied upon *State v. Herzog*, 48 Wn. App. 831, 834, 740 P.2d 380 (1987), which dealt with whether a German conviction for rape could be included a defendant's criminal history, when the underlying trial was before a panel of two jurors and the penalty for the rape exceeded six months' imprisonment. The *Herzog* court held that it could not be included relying, in turn, upon *Ballew v. Georgia*, 435 U.S. 223, 98 S. Ct. 1029, 55 L. Ed. 2d 234 (1978) for the proposition that trial to a jury of less than six persons for crimes involving a penalty exceeding 6 months' imprisonment is a deprivation of the defendant's Sixth and Fourteenth Amendment rights to trial by jury. The procedural posture of *Ballew*, however, was that of a direct appeal from a trial involving a defendant who had been sentenced to twelve months of confinement after a five person jury found him guilty of two counts of distributing obscene materials; Ballew successfully argued that the trial procedure used at his trial did not comport with the constitution. Thus, *Ballew* did not address the procedural issue of whether a sentencing court should consider defendant's constitutional challenge to use of a prior conviction in a subsequent sentencing proceeding. The decision in *Herzog* predated the decisions in *Custis* and *Roberts*. Under *Custis* and *Roberts*, such a conviction could be used by a subsequent sentencing court unless the face of the judgment revealed a denial of the Sixth Amendment right to counsel or there was evidence of an earlier judicial determination of the prior conviction's invalidity. While such a defendant might have a meritorious

claim, it would be incumbent on the defendant to file either a collateral attack on the conviction in the court where it was entered or a personal restraint petition, in order to obtain a judicial determination that it was constitutionally invalid on grounds other than denial of counsel.

Although the decision in *Payne* post-dated the decisions in *Custis* and *Roberts*, it simply did not discuss these cases. Because the holdings in *Payne* and *Herzog* conflict with *Custis* and *Roberts*, their continuing validity is in doubt.

Defendant in this case argues that his prior guilty pleas were constitutionally invalid because they did not contain sufficient factual statements and failed to show that defendant understood the charges against him. *See* Brief of Appellant, at 5-8. This type of challenge is not properly made in a subsequent sentencing hearing under *Ammons* and the trial court properly rejected defendant's claims.

D. CONCLUSION.

For the foregoing reasons, the State respectfully request that this Court affirm the judgment entered below.

DATED: JUNE 1, 2010

MARK LINDQUIST
Pierce County
Prosecuting Attorney


KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:

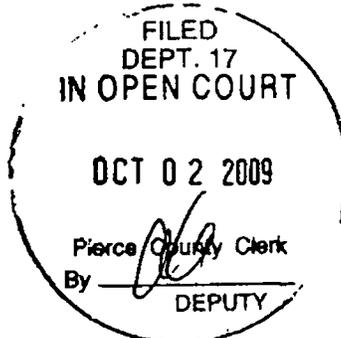
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under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


Date _____ Signature _____

FILED
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10 JUN -1 PM 2:03
STATE OF WASHINGTON
BY  DEPUTY

APPENDIX “A”

Judgment and Sentence



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 09-01121-6

OCT 05 2009

vs.

RICHARD WAYNE WILSON,

WARRANT OF COMMITMENT

DEPT. OF CORRECTIONS - PRISON

Defendant.

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).

[XX] 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).

09-01121-6

[] 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: Oct. 2, 2009

By direction of the Honorable
[Signature]
JUDGE RONALD E. ZULPEPPER
KEVIN STOCK

[Signature]
By: _____
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date OCT 05 2009 [Signature] Deputy

STATE OF WASHINGTON

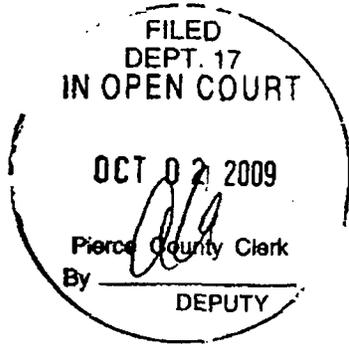
ss.

County of Pierce

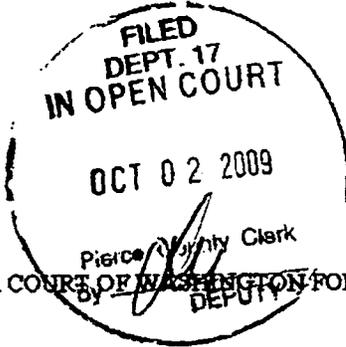
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

jnm



09-01121-6



OCT 05 2009

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-01121-6

vs

JUDGMENT AND SENTENCE (FJS)

RICHARD WAYNE WILSON

Defendant.

DEPT OF CORRECTIONS - PRISON

Clerk's Action Required, para 5.8

SID: WA10245572
DOB: 02/04/1957

I. HEARING

1.1 On June 4, 2009, the defendant entered a plea of guilty that was accepted by the court, the Honorable Ronald E. Culppeper, presiding. The State of Washington was represented by Deputy Prosecuting Attorney John M. Neeb, and the defendant was present and represented by his attorney, David Katayama. On October 2, 2009, a sentencing hearing was held before the court with all parties present.

II. FINDINGS

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

2.1 CURRENT OFFENSES: The defendant was found guilty on JUNE 4, 2009, by plea of guilty to:

COUNT	CRIME	RCW	ENHANC TYPE*	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
II	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
III	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
IV	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 10

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09-01121-6

COUNT	CRIME	RCW	ENHANC TYPE*	DATE OF CRIME	INCIDENT NO.
V	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
VI	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
VII	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
VIII	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)
IX	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a) 9.41.010(12)	none	03/02/09	09-0276 (Gig Harbor PD)

as charged in the Original Information

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

ALL COUNTS, I - IX, ARE SAME CRIMINAL CONDUCT

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): NONE

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

SCORE

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	DESTRUCTION OF PROPERTY	05/10/74	LEWIS CO / WA	04/21/74		
2	RIOT	05/10/74	LEWIS CO / WA	04/21/74		
3	BURGLARY	02/09/77	BENTON CO / WA	11/23/76	ADULT	
4	THEFT	02/11/82	PROVO / UT	01/07/82	ADULT	NV
5	STATUTORY RAPE 2	02/22/85	BENTON CO / WA	01/04/85	ADULT	
6	PSP 2	04/29/88	BENTON CO / WA	10/01/85	ADULT	NV
7	GRAND THEFT	03/17/88	PINELLAS CO / FL	02/25/86	ADULT	NV
8	REC STOL PROP 2	03/08/87	MOBILE CO / AL	03/08/87	ADULT	NV
9	ROBBERY	08/29/90	U.S. DISTRICT CT SEATTLE, WA	03/22/90	ADULT	V
10	USE OF FIREARM	08/29/90	U.S. DISTRICT CT. SEATTLE, WA	03/22/90	ADULT	
11	FALSE CLAIM OF TAX REFUND	08/04/95	U.S. DISTRICT CT. PORTLAND, OR	01/01/95	ADULT	NV
12	UPOF (9 COUNTS)	Current	PIERCE CO / WA	03/02/09	ADULT	NV

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

DESTR OF PROP / RIOT (1974) ARE ONE OFFENSE - PRE-SRA AND CONCURRENT
ROBBERY / USE OF FIREARM (1990) BECAUSE PROBLEM IS EQUIV. TO ENHANCEMENT

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	VII	37-116 months	none	37-116 months	10yrs/20k
II	9	VII	37-116 months	none	37-116 months	10yrs/20k
III	9	VII	37-116 months	none	37-116 months	10yrs/20k
IV	9	VII	37-116 months	none	37-116 months	10yrs/20k
V	9	VII	37-116 months	none	37-116 months	10yrs/20k
VI	9	VII	37-116 months	none	37-116 months	10yrs/20k
VII	9	VII	37-116 months	none	37-116 months	10yrs/20k
VIII	9	VII	37-116 months	none	37-116 months	10yrs/20k
IX	9	VII	37-116 months	none	37-116 months	10yrs/20k

(10yrs/20k each)

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

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

[] above the standard range for Count(s) _____.

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

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

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows: N/A

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 _____

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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	\$ 1000.00	Court-Appointed Attorney Fees and Defense Costs WAVED BY COURT
FRC	\$ 100.00	Criminal Filing Fee WAVED BY COURT
FCM	\$ _____	Fine
	\$ 1000.00	TOTAL SHALL NOT ACCRUE INTEREST WHILE DEFENDANT IS IN CUSTODY.
	600.00	

[] 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.

[] is scheduled for _____

[] RESTITUTION. Order Attached

[] 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).

~~(XX)~~ 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. **Because this charge does not carry a term of community custody, the defendant shall report to the Pierce County Clerk's Office within 1 week of his release from custody to set up a payment plan.**

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

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

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

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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

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4.2 IXI DNA TESTING. SEPARATE ORDER ATTACHED.

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

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

4.3 NO CONTACT

The defendant shall not have contact with _____ (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).

4.4 OTHER:

<input checked="" type="checkbox"/>	DEFENDANT SHALL FORFEIT ANY CLAIM TO ANY OF THE FIREARMS OR OTHER
	CONFIRMED STOLEN PROPERTY THAT WAS RECOVERED DURING THIS INCIDENT

4.4a BOND IS HEREBY EXONERATED

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

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

<u>37</u> months on Count	<u>I (1)</u>	<u>37</u> months on Count	<u>II (2)</u>
<u>37</u> months on Count	<u>III (3)</u>	<u>37</u> months on Count	<u>IV (4)</u>
<u>37</u> months on Count	<u>V (5)</u>	<u>37</u> months on Count	<u>VI (6)</u>
<u>37</u> months on Count	<u>VII (7)</u>	<u>37</u> months on Count	<u>VIII (8)</u>
<u>37</u> months on Count	<u>LX (9)</u>		

Actual number of months of total confinement ordered is: 37 MONTHS.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589.

The sentences imposed in Counts I through IX shall be served CONCURRENTLY.

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crimes being sentenced.

Confinement shall commence immediately.

(c) The defendant shall receive credit for 214 days served prior to sentencing. RCW 9.94A.505.

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4.6 COMMUNITY PLACEMENT / COMMUNITY CUSTODY. DO NOT APPLY IN THIS CASE.

Count _____ for a range from: _____ to _____ Months;

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

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

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers,		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) the defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

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

[] The defendant shall not consume any alcohol.

[] Defendant shall have no contact with: _____

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

[] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8))

[] The defendant shall participate in the following crime-related treatment or counseling services: _____

[] The defendant shall undergo an evaluation for treatment for [] domestic violence [] substance abuse [] mental health [] anger management and fully comply with all recommended treatment.

[] The defendant shall comply with the following crime-related prohibitions: _____

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

[] For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. NOT ORDERED IN THIS CASE.

4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. NOT ORDERED IN THIS CASE.

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

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

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

5.4 RESTITUTION HEARING.

[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

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

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200.

N/A

5.8 ~~The court finds that Counts 1-12 is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.~~

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: _____

FILED
DEPT. 17
IN OPEN COURT
DONE in Open Court and in the presence of the defendant this date: Oct. 2, 2009

Pierce County Clerk JUDGE
By [Signature] DEPUTY Print name: RONALD E. CULPEPPER
RONALD E. CULPEPPER

[Signature]
Deputy Prosecuting Attorney
Print name: JOHN M. NEEB
WSB # 21322

[Signature]
Attorney for Defendant
Print name: DAVID KATAYAMA
WSB # 33758
[Signature]
Defendant
Print name: RICHARD WAYNE WILSON

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050, or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]
RICHARD WAYNE WILSON.

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 09-01121-6

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

KARLA JOHNSON
Court Reporter (PLEA HEARING)

Karla Johnson 9/25/09 + 10/2/09
Court Reporter (SENTENCING HEARING)

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IDENTIFICATION OF DEFENDANT

SID No. WA10245572
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/04/1957

FBI No. 94129ZK2

Local ID No. UNKNOWN

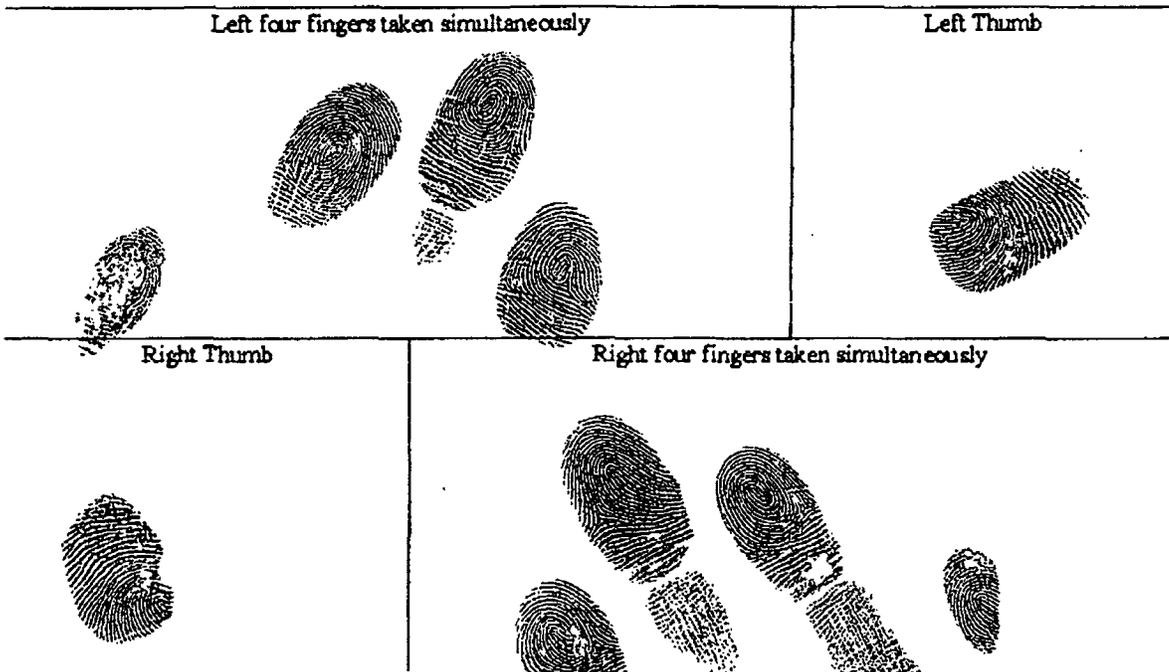
PCN No. PCSD# 629812

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"/>	Native American	<input type="checkbox"/>	Other: :	<input checked="" type="checkbox"/>	Non-Hispanic
				<input checked="" type="checkbox"/>	Male
				<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, A Edwards Dated: 10-2-09

DEFENDANT'S SIGNATURE: _____

DEFENDANT'S ADDRESS: _____