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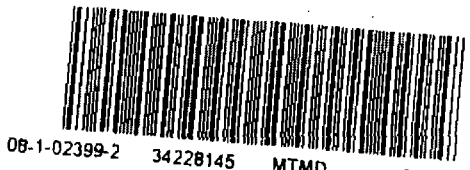
FILED
IN COUNTY CLERK'S OFFICE

A.M. MAY 03 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY



08-1-02399-2 34228145 MTMD 05-03-10

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF PIERCE

| | | |
|---|---|---|
| State of Washington, Plaintiff/Respondent | ) | NO. 08-1-02399-2 |
| | ) | MOTION TO MODIFY OR CORRECT SENTENCE AND JUDGMENT |
| vs | ) | |
| LARRY DARNELL DUNOMES Defendant/Respondent | ) | 40756-6 |

## FACTS

I. That the Defendant, LARRY DARNELL DUNOMES, in the above-entitled case.

II. That the Defendant, appeared before Judge J.ORLANDO, the State being represented by MIKE SOMMERFELD #24009 of PIERCE #28968 County Prosecutors Office, and Defense Attorney H.WHITENER representing the Defendant.

III. That the Defendant plead/went to trial and received a sentence of Life 4 COUNTS TO RUN CONSECUTIVE WITHOUT POSSIBILITY OF RELEASE. PLUS 84 MONTHS TO RUN CONSECUTIVE ON BRIBERY.

## GROUNDS

Pursuant to Rule 7.8, Superior Court Rules of Criminal Procedure, and the court imposed sentence. The Defendant only seeks modification of sentence, not retrial. Error in sentencing Court happened when:

1). A sentence which is ambiguous with respect to time and manner in which to be served;

2). The sentencing Judge must be very clear in pronouncement about whether the sentence will run concurrent or consecutive: U.S. v. Preston, 634 F.2d. 1285, 1294 (1980); also see RCW 9.94A.400; U.S. v. Nass, 755 F.2d. 1133, 1136 (5th Cir. 1985)

PETITIONER MAY FILE THE
PETITION WITHOUT PAYMENT OF
A FILING FEE

COURT CLERK

3). **Other**

See Momorandum In Support of 7.8 Motion Attached.

## RELIEF

Wherefore, Petitioner Respectfully Prays That This Court Grant The Motion To Modify Or Correct Sentence And Judgment. Pursuant To BLAKELY Vs. WASHINGTON, 542 U.S. 296,124 S.Ct 2531, 159 L.Ed. 2d 403 (2004).

**I,** LARRY D.DUNOMES **, swear under the laws of perjury of the State of Washington that the foregoing is true and correct.**

SUBSCRIBED AND SWORN TO BEFORE ME THIS 23rd DAY OF April ,2010.

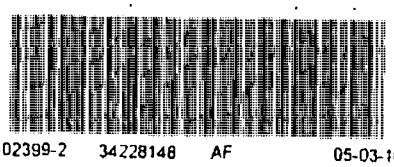
Notary Public in for the State Washington,Residing in Walla Walla Washington.
My Commission April 1, 2013

Larry D. Dunomes
**Signature** 721939

LARRY D. DUNOMES
**Printed Name** #

**Washington State Penitentiary**
**1313 North 13th Avenue**
**Walla Walla, WA 99362**

5/4/2010 9839 638285



08-1-02399-2 34228148 AF 05-03-10

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 03 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

| | |
|---|---|
| LARRY DARNELL DUNOMES,<br>Plaintiff/petitioner, | NO. 08-1-02399-2 |
| VS. | PETITIONER'S AFFIDAVIT<br>IN SUPPORT OF 7.8 motion<br>TO MODIFY AND CORRECT<br>JUDGMENT AND SENTENCE |
| STATE OF WASHINGTON,<br>Defendant(s),et.Al. | |

I, LARRY DARNELL DUNOMES wassentenced by the SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY undercause No. 08-1-02399-2 on December 18th, 2009.

As part of the court's sentence, an out of state class C conviction was erroneously calculated in the offender score as a class B felony. Any increase in seriousness level is a violation of Petitioner's Federal Constitution Rights, Pursuant To Blakely Vs. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. 2d 403 (2004).

It is very clear that the ofice of the Prosecuting Attorney arbitrarily misused the Louisiana Conviction for aggravated battery as "comparable" to Washington's assault in the 2nd degee.

On September 9, 1985, I LARRY DARNELL DUNOMES entered a guilty plea and was convicted in the State of Louisiana of the crime of aggravated battery. I was sentenced on October 16,1985 and was placed on probation for two years.

Aggravated Battery under Louisiana Revised Statute section 14.34 classifies the crime as a class C felony which is distinguishable from Assault in the second degree under the 1985 former RCW 9A.36.020 (1) (c) classified as a class B felony. Petitioner has provided certified copies of documents from Louisiana State Police Criminal Records Unit supporting the facts that LDD Louisana conviction was officoilly classified as a class C felony. (Exhibit 1and2, See Attached)

In addition, Petitioner provides this court with a certified copy of a document from the Superior Court Of Washington For King County in the form of a Judgment and Sentence in which the King County Superior Court considered the Louisiana Conviction "washed out". (See Exhibit 3, Attached)

Moreover, the office of the Prosecuting Attorney attempted to mislead this petitioner into waving Constitutional Rights provided by the United State Supreme Court. (Exhibit 4,5,6,See Attached)

Petitioner respectfully requests the Relief designated in LARRY DARNELL DUNOMES 7.8 Motion To Modify Or Correct Sentenced And Judgment.

NOTE

Copies of Judgment and Sentence Attached. (Exhibit 7-18).

Larry D. Dunomes 72193
Print Name: #

SUBSCIBED AND SWORN to before me this 23rd of April, 2010.

Notary Public in and for the State of Washington, Residing in Walla Walla, Washington. My commission expires: April 1, 2013

VENETTA E. JACKSON
COMMISSION EXPIRES
NOTARY
PUBLIC
APRIL 1, 2013
STATE OF WASHINGTON

COURT CONVENED AT 9:30 A.M.
HON. SAMUEL T. ROWE
PRESIDING DIV. C
DATE October 16, 1985

50563 State of Louisiana vs. Harry Dupones

This day the accused was present in court with court appointed counsel, Gideon Carter, Assistant Public Defender, for sentencing, having previously plead guilty to Aggravated Battery. Court suspended imposition of sentence and placed defendant on active probation for two years, with special condition that defendant make full restitution for medical expenses of Charles Causey, pay a $500.00 fine, $250.00 to Public Defender, $39.50 court costs, $50.00 to the Sheriff's Office, and $10.00 per month each month on probation to the Department of Corrections, said amounts to be paid within one year in equal monthly installments commencing November 15, 1985.

POOR QUALITY ORIGINAL

POOR QUALITY ORIGINAL

STATE OF LOUISIANA AMITE, LOUISIANA
PARISH OF TANGIPAHOA DATE 4 2008
do hereby certify that this document is a true and correct copy of the original thereof, consisting of 1 page(s) being a reproduction thereof from the records on file with the undersigned, in accordance with Louisiana Revised Statutes, Title 13, Section 37
DEPUTY CLERK

5/4/2010 9839 630288

POOR QUALITY ORIGINAL

CCH
CHECK

STATE OF LOUISIANA
DEPARTMENT OF CORRECTIONS
DIVISION OF PROBATION & PAROLE

RECEIVED
MAR 18 1988
LOUISIANA STATE POLICE
CRIMINAL RECORDS UNIT

NO RECORD OUR FILES

Louisiana State Police
Bureau of Criminal Identification
Baton Rouge, Louisiana

Louisiana State Police*
Bureau of Identification
P.O. Box 66614
Baton Rouge, Louisiana

Can't find
3-21-88

Gentlemen:

[X] Please furnish State Police Rap Sheet.

[ ] Please notify if arrested prior to Original sentence date _____.

PROBATION 10/16 1985 Expires 10/16 1987.

| | |
|---|---|
| Date and place of Sentence 10/16/85 Amite, La. | Actual Sentence Imposed Imposition of sentence deferred |
| Charge Aggravated Battery | Suspended Sentence Imposed two (2) years probation with s/conditions. |
| Contributor of Fingerprints LA05301GZ | Probation Imposed two (2) years |
| CANCEL Because _____. | |

| | | | | | |
|---|---|---|---|---|---|
| Name DUNOMES, Larry D. | | Residence 107 Magazine St., Hammond, La. | | | |
| Aliases | Numbers Arrest | Occupation | | Marital Status Single | |
| | Military | Race B | Sex M | Height 5'6" | Nationality |
| FBI # | Alien | Weight 140 | Eyes Brown | Hair Black | Complexion Dark |
| Date of birth 8/16/64 | 435-37-1618 Social Security | Scars, marks and peculiarities "L" on left forearm | | | |
| Place of birth LA | Operator's License | | | | |
| Fingerprint class | | | | | |

| | |
|---|---|
| Name and Address of parties to be notified of apprehension: | Name and Address of Contributor<br>Mail to: Amite Dist. Office<br>La. Dept. of Corrections<br>Box 955<br>Amite, La. 70422<br><br>Agent - Charles J. Recatto |

* To LSP in Duplicate

LA05301GZ
AMITE DISTRICT

# SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

| | | |
|---|---|---|
| STATE OF WASHINGTON, | ) | |
| | ) | |
| Plaintiff, | ) | No. 02-C-06224-1 KNT |
| | ) | |
| vs. | ) | JUDGMENT AND SENTENCE, |
| | ) | (FELONY) - APPENDIX B, |
| LARRY D. DUNOMES, | ) | CRIMINAL HISTORY |
| | ) | |
| Defendant, | ) | |
| | ) | |

**2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):**

| Crime | Sentencing Date | Adult or Juv. Crime | Cause Number | Location |
|---|---|---|---|---|
| CONT SUBST VIOL – SECTION (D) | 03/09/2002 | ADULT | 021011715 | PIERCE |
| CONT SUBST VIOL – SECTION (A) | 07/27/1999 | ADULT | 991032308 | PIERCE |
| ORDER PROHIBIT CONTACT – VIOLAT. | 07/17/1998 | ADULT | 981062319 | KING |
| ARSON 1 | 03/18/1994 | ADULT | 941025747 | KING |
| PBV AGG. BATTERY | UNKNOWN | ADULT | UNKNOWN | LA |

**[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):**

Date: 5/27/03
8/29/03

JUDGE, KING COUNTY SUPERIOR COURT

LAURA GENE MIDDAUGH



6.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br>vs.<br>LARRY DARNELL DUNOMES,<br>Defendant. | CAUSE NO. 08-1-02399-2<br><br>STIPULATION ON PRIOR RECORD AND OFFENDER SCORE<br>(Plea of Guilty) |

Upon the entry of a plea of guilty in the above cause number, charge ASSAULT IN THE FIRST DEGREE; ASSAULT IN THE FIRST DEGREE; ATTEMPTED MURDER IN THE FIRST DEGREE; ATTEMPTED MURDER IN THE FIRST DEGREE; BRIBING A WITNESS , the defendant LARRY DARNELL DUNOMES, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/ Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---|---|---|---|---|---|---|---|---|
| ARSON 1 | 06/10/94 | King Co., WA | 03/18/94 | A | V | A | 2 | FELONY |
| UNLAW SOL TO DEL CON SUB | 09/27/99 | Pierce Co., WA | 05/26/99 | A | NV | C | 1 | FELONY |
| ATT UPCS | 06/04/02 | Pierce Co., WA | 03/11/02 | A | NV | C | 1 | FELONY |
| UPCS | 08/29/03 | King Co., WA | 05/20/02 | A | NV | C | 1 | FELONY |
| UPCS | 08/29/03 | King Co., WA | 05/06/03 | A | NV | C | 1 | FELONY |
| BAIL JUMPING | 12/02/05 | Pierce Co., WA | 01/05/05 | A | NV | C | 1 | FELONY |
| COMM. CUSTODY | | Pierce Co., WA | | | | | 1 | |



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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Concurrent conviction scoring: 8

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/ Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---|---|---|---|---|---|---|---|---|
| AGG BATTERY | 02/24/88 | St. Gabriel, LA | 02/24/88 | A | NV | C | 2 | FELONY |

Concurrent conviction scoring: 1

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancement) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancement) | MAXIMUM TERM |
|---|---|---|---|---|---|---|
| I | 9 | XII | LIFE | | LIFE | LIFE/ $50,000 |
| II | 9 | XII | LIFE | | LIFE | LIFE/ $50,000 |
| III | 9 | XV | LIFE | | LIFE | LIFE/ $50,000 |
| IV | 9 | XV | LIFE | | LIFE | LIFE/ $50,000 |
| V | 9 | IV | 63-84 MONTHS | NONE | 63-84 MONTHS | 10 YRS $20,000 |

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

The defendant further stipulates:

1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.

2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;



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3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;

4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 18TH day of DECEMBER, 2009.

Mike Sommerfeld
MIKE SOMMERFELD
Deputy Prosecuting Attorney
WSB # 24009

refused to sign
LARRY DARNELL DUNOMES

G. Helen Whitener
G. HELEN WHITENER
WSB # 28968

tmc



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Telephone: (253) 798-7400

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

| | |
|---|---|
| STATE OF WASHINGTON,<br>Plaintiff,<br><br>vs.<br><br>LARRY DARNELL DUNOMES<br>Defendant.<br><br>SID: WA16962686<br>DOB: 08/16/1964 | CAUSE NO. 08-1-02399-2<br><br>JUDGMENT AND SENTENCE (FJS)<br>[X] Prison [ ] RCW 9.94A.712 Prison Confinement<br>[ ] Jail One Year or Less<br>[ ] First-Time Offender<br>[ ] Special Sexual Offender Sentencing Alternative<br>[ ] Special Drug Offender Sentencing Alternative<br>[ ] Breaking The Cycle (BTC)<br>**[ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8** |

## I. HEARING

1.1 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 December 2, 2009 by [ ] plea [ X ] jury-verdict [ ] bench trial of:

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|---|---|---|---|---|---|
| I | ASSAULT IN THE FIRST DEGREE (E23) | 9A.36.011(1)(a)<br>9.94A.125/9.94A.602<br>9.94A.310/9.94A.510<br>9.94A.370/9.94A.530<br>9.94A.525(19)<br>9.94A.535(3)(t) | D | 05/15/08 | TPD 081360163 |



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| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO. |
|---|---|---|---|---|---|
| II | ASSAULT IN THE FIRST DEGREE (E23) | 9A.36.011(1)(a) 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.94A.525(19) 9.94A.535(3)(t) | D | 05/15/08 | TPD 081360163 |
| III | ATTEMPTED MURDER IN THE FIRST DEGREE (D1-A) | 9A.32.030(1)(a) 9A.28.020 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530 | D | 05/15/08 | TPD 081360163 |
| IV | ATTEMPTED MURDER IN THE FIRST DEGREE (D1-A) | 9A.32.030(1)(a) 9A.28.020 9.94A.125/9.94A.602 9.94A.310/9.94A.510 9.94A.370/9.94A.530 9.94A.525(19) 9.94A.535(3)(t) | D | 05/15/08 | TPD 081360163 |
| V | BRIBING A WITNESS (KK7) | 9A.72.090(1)(a)(b)(c)(d) 9.94A.525(19) | | 10/29/08 | TPD 081360163 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the SECOND AMENDED Information

[X] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) I, II, III and IV. RCW 9.94A.602, 9.94A.533.

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

[ ] 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 | AGG BATTERY | 02/24/88 | St. Gabriel, LA | 02/24/88 | A | NV |
| 2 | ARSON 1 | 06/10/94 | King Co., WA | 03/18/94 | A | V |
| 3 | UNLAW SOL TO DEL CON SUB | 09/27/99 | Pierce Co., WA | 05/26/99 | A | NV |
| 4 | ATT UPCS | 06/04/02 | Pierce Co., WA | 03/11/02 | A | NV |
| 5 | UPCS | 08/29/03 | King Co., WA | 05/20/02 | A | NV |
| 6 | UPCS | 08/29/03 | King Co., WA | 05/06/03 | A | NV |
| 7 | BAIL JUMPING | 12/02/05 | Pierce Co., WA | 01/05/05 | A | NV |
| 8 | COMM CUSTODY | | Pierce Co., WA | | | |

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



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Tacoma, Washington 98402-2171
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[X] The defendant committed a current offense while on community placement (adds one point to 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 | 9 | XII | LIFE | | LIFE | LIFE/ $50,000 |
| II | 9 | XII | LIFE | | LIFE | LIFE/ $50,000 |
| III | 9 | XV | LIFE | | LIFE | LIFE/ $50,000 |
| IV | 9 | XV | LIFE | | LIFE | LIFE/ $50,000 |
| V | 9 | IV | 63-84 MONTHS | NONE | 63-84 MONTHS | 10 YRS $20,000 |

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:

_____



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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* $ ~~1500~~ 2000 Court-Appointed Attorney Fees and Defense Costs

*FRC* $ 200.00 Criminal Filing Fee

*FCM* $_____ Fine

**OTHER LEGAL FINANCIAL OBLIGATIONS** (specify below)

$_____ Other Costs for: _____

$_____ Other Costs for: _____

$ 2800.00 TOTAL

[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 11/8/10

[ ] **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).

[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.



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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 $_____.

4.2 [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.

[ ] **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 JARVIS BAILEY OR SONYA BAILEY (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).

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

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

| |
|---|
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| |
| |
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| |
| |

4.4a **BOND IS HEREBY EXONERATED**



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4.5 **CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER.** The defendant was found to be a Persistent Offender.

X The court finds Counts I, II, III, AND IV ~~is~~ ARE a most serious offense(s) and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

X The court finds Counts I, II, III, IV is a crime listed in RCW 9.94A.030(31)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree or burglary in the first degree, or an attempt to commit any crime listed in RCW 9.94A.030(31)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(31)(b)(i) or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in RCW 9.94A.030(31)(b)(i).

Those prior convictions are included in the offender score as listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.

(a) **CONFINEMENT.** RCW 9.94A.570 and RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without the possibility of early release on Counts III AND IV EACH

84 months on Count V

____ months on Count ____

____ months on Count ____

Actual number of months of total confinement ordered is: Life without the possibility of early release

(b) **CONSECUTIVE/CONCURRENT SENTENCES.** RCW9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of 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 that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.
[ ] The sentence herein shall run consecutively to the felony sentence in cause number(s) ____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: ____

Confinement shall commence immediately unless otherwise set forth here: ____

4.6 **OTHER:** ____



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Tacoma, Washington 98402-2171
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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):

_____ months on Count _____ _____ months on Count _____

_____ months on Count _____ _____ months on Count _____

_____ months on Count _____ _____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

24 months on Count No III _____ months on Count No _____

24 months on Count No IV _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

Sentence enhancements in Counts _ shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts _ shall be served
[X] flat time [ ] subject to earned good time credit

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

_____ months on Count No _____ _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

_____ months on Count No _____ _____ months on Count No _____

Sentence enhancements in Counts _ shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts _ shall be served
[X] flat time [ ] subject to earned good time credit

Actual number of months of total confinement ordered is: LIFE WITHOUT PAROLE

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

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

**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, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

_____



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The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

_____

Confinement shall commence immediately unless otherwise set forth here: _____

_____

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

4.6 [ ] **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 | III | for a range from: | 18 | to | 36 | Months; |
| Count | IV | for a range from: | 18 | to | 36 | Months; |
| 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 commited 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 commited 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. | | |



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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: _____

_____

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.

**PROVIDED**: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense.



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4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp 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 4.6.

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

_____

_____

_____

_____

## V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** 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.**

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



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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 Count _____ 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:** _____

DONE in Open Court and in the presence of the defendant this date: 12/18/06.

JUDGE [signature]
Print name JAMES ORLANDO

Mike Sommerfeld
Deputy Prosecuting Attorney
Print name: MIKE SOMMERFELD
WSB # 24009

G. Helen Whitener
Attorney for Defendant
Print name: G. Helen Whitener
WSB # 28968.

refused to sign
Defendant
Print name: Larry Dunomes

**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: refused



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## IDENTIFICATION OF DEFENDANT

SID No. WA16982686 (If no SID take fingerprint card for State Patrol) — Date of Birth 08/16/1964

FBI No. 461848JA5 — Local ID No. PCSO212962

PCN No. 539458639 — Other

Alias name, SSN, DOB: _____

| Race: | | | | | | Ethnicity: | | Sex: | |
|---|---|---|---|---|---|---|---|---|---|
| [ ] | Asian/Pacific Islander | [X] | Black/African-American | [ ] | Caucasian | [ ] | Hispanic | [X] | Male |
| [ ] | Native American | [ ] | Other: : | | | [X] | Non-Hispanic | [ ] | Female |

**FINGERPRINTS**

| Left four fingers taken simultaneously | Left Thumb |
|---|---|
| | |

| Right Thumb | Right four fingers taken simultaneously |
|---|---|
| | |

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, Janet Castanti Dated: 12.18.09

DEFENDANT'S SIGNATURE: refused to signed

DEFENDANT'S ADDRESS: Department of Corrections



*Office of Prosecuting Attorney*
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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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FILED
IN COUNTY CLERK'S OFFICE
A.M. DEC 18 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

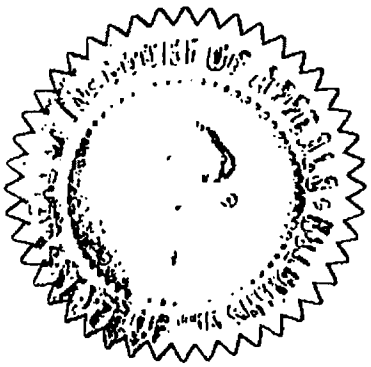
## DIVISION II

| | |
|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>LARRY DARNELL DUNOMES,<br><br>Appellant. | No. 34228-6-II<br><br>MANDATE<br><br>Pierce County Cause No.<br>05-1-00091-2 |

The State of Washington to: The Superior Court of the State of Washington in and for Pierce County

This is to certify that the Court of Appeals of the State of Washington, Division II, entered a Ruling Affirming Judgment in the above entitled case on October 24, 2006. This ruling became the final decision terminating review of this court on November 28, 2006. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the determination of that court. Costs have been awarded in the following amount:

Judgment Creditor: State -0-
Judgment Creditor: A.I.D.F. - $3,097.50
Judgment Debtor: Larry D. Dunomes - $3,097.50



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 18th day of December, 2006.

Clerk of the Court of Appeals,
State of Washington, Div. II

5/28/2019 9376 198249
14265 12/19/2006 00038



Hon. Sergio Armijo
Pierce County Superior Court
930 Tacoma Avenue Court
Tacoma, WA 98402

Indeterminate Sentence Review Board

Michelle Luna-Green
Pierce Co Pros Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA, 98402-2171

Lise Ellner
Attorney at Law
PO Box 2711
Vashon, WA, 98070-2711

5/20/2010 9376 198250
14265 12/15/2006 86635

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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DIVISION II
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STATE OF WASHINGTON
BY ____
DEPUTY

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|---|---|
| THE STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>LARRY DARNELL DUNOMES,<br><br>Appellant. | No. 34228-6-II<br><br>RULING AFFIRMING JUDGMENT |

Larry Darnell Dunomes appeals his Pierce County convictions of bail jumping and possession of less than 40 grams of marijuana. Through counsel, Dunomes claims that he was denied his constitutional right to make a knowing, voluntary, and intelligent decision regarding self representation. In his pro se statement of additional grounds for review, Dunomes challenges the calculation of his offender score. This court reviewed the matter pursuant to its own motion on the merits. RAP 18.14.

FACTS

On January 6, 2005, the State charged Dunomes with one count of unlawful possession of a controlled substance with intent to deliver, in violation of RCW 69.50.401(1). The State amended the information on July 20, 2005, adding two counts of bail jumping and one count of unlawful possession of 40 grams or less of marijuana. In a second amended information filed on

September 27, 2005, the State changed the first count to unlawful possession of cocaine and dropped the first count of bail jumping. It dropped the bail jumping count because the prosecutor believed that Dunomes had shown up for the scheduled pre-trial conference, but was not called while he waited in the court room. Ultimately, Dunomes was charged with one count of possession of cocaine, one count of possession of less than 40 grams of marijuana, and one count of bail jumping.

Trial commenced on September 27, 2005. On September 28, 2005, after the lunch recess, Dunomes refused to change into his civilian clothes and refused to return to the courtroom. He was upset because no one had offered evidence regarding the bail jumping charge that had been dismissed. He told the guards that he was going to show his shackles to the jury and cause a mistrial, and he threatened to make the guards wrestle him in the courtroom in front of the jury. Eight guards escorted Dunomes back to court.

Outside the presence of the jury, the court interviewed the guards, Dunomes, defense counsel, and the prosecutor. This colloquy disclosed that before the information was amended, the State had offered Dunomes a plea bargain recommending a 12-month sentence. Dunomes had refused that offer. After the second bail jumping charge was added, the State again offered a bargain, this time with an 18-month recommendation. Dunomes rejected that offer a few days before trial began. Thereafter, the first bail jump charge was dismissed. Dunomes wanted to present evidence of that charge in order to show that he had been falsely accused. He also argued that the State should reinstate

its first offer. The court had four separate discussions with Dunomes regarding the admissibility of this evidence. The trial judge explained that the evidence was irrelevant and was not going to be allowed.

Dunomes then told the court that he felt his attorney was not representing or defending him, and that he could represent himself better. He also stated that he was being "railroad[ed]," and that he did not want to proceed with trial because he felt he had "two prosecutors sitting here, two, not one."[1] He said he wanted "the deal" because he could not win without the evidence pertaining to the dropped charge.[2]

The court told Dunomes that they were going to finish the trial and that he should change back into his civilian clothes. In response to the incidents and Dunomes' behavior, the court ordered the guards to put a restraining belt under Dunomes' clothes where the jury would not see it. Dunomes continued to refuse to change back into his civilian clothes.

Trial then proceeded, and the jury found Dunomes guilty of one count of possession of less than 40 grams of marijuana and one count of bail jumping. It was unable to reach a verdict on the charge of possession of cocaine. In a separate hearing, the jury found that Dunomes was on community placement at the time he jumped bail. The court sentenced him to 33 months for the bail

---

[1] Report of Proceedings (RP) Sep. 28, 2005 at 191, 193.

[2] RP Sep. 28, 2005 at 192.

jumping charge, the low end of the standard range, and to 90 days with 89 days suspended for the possession of marijuana.

DISCUSSION

Dunomes contends that the trial court erred in failing to engage him in a colloquy regarding his right to proceed pro se. This claim is meritless. A criminal defendant has an independent constitutional right to represent himself or herself, but the request must be unequivocal, and it must be timely. *State v. Breedlove*, 79 Wn. App. 101, 106 (1995); *see also State v. Woods*, 143 Wn.2d 561, 587, *cert. denied*, 534 U.S. 964 (2001).

Dunomes never made a request to proceed pro se. He complained about his attorney and about the court's rulings, but he never asked to represent himself.[3] In fact, he asserted that he did not want to participate in the trial at all. Moreover, even if Dunomes's complaints could be construed as a request to proceed pro se, they were untimely. The cases that have considered the timeliness of a demand for self-representation have generally held that if it is made during the trial, the right to proceed pro se rests largely in the informed discretion of the trial court. *Breedlove*, 79 Wn. App. at 107; *State v. Fritz*, 21 Wn. App. 354, 361 (1978), *review denied*, 92 Wn.2d 1002 (1979). Dunomes's complaints occurred in the middle of trial, after all but two witnesses had testified. The trial court was not required to permit him to proceed pro se at that point.

---

[3] *See State v. Stenson*, 132 Wn.2d 668, 740 (1997) (request to proceed pro se equivocal because defendant wanted different counsel, not to proceed without counsel), *cert. denied*, 523 U.S. 1008 (1998).

Pro se, Dunomes contends that his conviction of aggravated battery in Louisiana should not have been included in his offender score. At the sentencing hearing, he argued that it would not be a felony in Washington. The State must prove a defendant's criminal history by a preponderance of the evidence. *State v. Ammons*, 105 Wn.2d 175, 185-86, *cert. denied*, 479 U.S. 930 (1986). It met its burden. Defense counsel agreed.

Dunomes has presented no meritorious issue. Accordingly, it is hereby

ORDERED that the judgment is affirmed.

DATED this 24th day of October, 2006.

Ernetta G. Skerlec
Court Commissioner

cc: Lise Ellner
Michelle Luna-Green
Hon. Sergio Armijo
Indeterminate Sentence Review Board
Larry Darnell Dunomes



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