

FILED
COURT OF APPEALS
DIVISION II
10 OCT 15 PM 1:26
STATE OF WASHINGTON
BY  DEPUTY

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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

LARRY DARNELL DUNOMES,

Petitioner.

NO. 40126-6-II

STATE'S RESPONSE TO
PETITIONER'S PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PETITIONER'S PERSONAL RESTRAINT
PETITION:

1. Should this Court dismiss petitioner's claims that his arraignment was untimely and his right to a speedy trial was violated when he fails to provide any competent evidence to support these allegations?

2. Should this Court direct correction of the judgment as it fails to specify that the two convictions for attempted murder in the first degree must run consecutively?

3. Should this Court dismiss petitioner's claim that his prior Louisiana conviction for aggravated battery is improperly ranked as a "B" level felony when a prior Appellate Court opinion has determined that it is comparable to Washington's crime of assault in the second degree?

1 B. STATUS OF PETITIONER:

2
3 Petitioner, Larry Darnell Dunomes, is restrained pursuant to a judgment and
4 sentence entered in Pierce County Cause No. 08-1-02399-2. Appendix A. Petitioner was
5 convicted of two counts of attempted murder in the first degree, two counts of assault in
6 the first degree, and bribing a witness on December 2, 2009. The court found that the two
7 counts of assault in the second degree merged with the two counts of attempted murder.
8 Attempted murder in the first degree is a most serious offense, as are petitioner's 1994
9 Washington conviction for arson in the first degree, and his 1988 Louisiana conviction for
10 aggravated battery, which is the Washington equivalent of assault in the second degree.
11 RCW 9.94A.030.(31)(a) and (b). On December 18, 2009, the judge imposed a sentence
12 pursuant to the Persistent Offender Accountability Act, of life without parole on each of
13 the two counts of attempted murder, to run concurrently with the sentence imposed for the
14 count of bribing a witness. Appendix A. 6RP 728-730.

15 Petitioner filed a notice of appeal on December 18, 2009, the appeal is still
16 pending. He filed a motion to modify his judgment and sentence with the trial court on
17 May 3, 2010. He claimed that the court's judgment was ambiguous in whether his
18 sentences were to run concurrently or consecutively, and he raised issues regarding the
19 timeliness of his arraignment and his trial. The trial court forwarded this motion to the
20 Court of Appeals on May 18, 2010, to be treated as a personal restraint petition. The Court
21 of Appeals consolidated petitioner's PRP with his direct appeal.

22 The State has no information on petitioner's financial status.
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2 C. ARGUMENT:

- 3 1. PETITIONER'S CLAIMS THAT HIS RIGHT TO A TIMELY
4 ARRAIGNMENT AND HIS RIGHT TO A SPEEDY TRIAL
5 WERE VIOLATED SHOULD BE DISMISSED AS
6 PETITIONER FAILS TO MEET HIS BURDEN TO SHOW
ANY EVIDENCE TO SUPPORT HIS CHALLENGES OR THAT
HE WAS PREJUDICED.

7 Personal restraint procedure has its origins in the State's habeas corpus remedy,
8 guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of
9 habeas corpus relief is the principle that the writ will not serve as a substitute for an appeal.
10 *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral relief undermines
11 the principles of finality of litigation, degrades the prominence of the trial, and sometimes
12 costs society the right to punish admitted offenders. These are significant costs, and they
13 require that collateral relief be limited in state as well as federal courts. *Id.*

14 In this collateral action, the petitioner has the duty of showing constitutional error,
15 and that such error was actually prejudicial. The rule that constitutional errors must be
16 shown to be harmless beyond a reasonable doubt has no application in the context of
17 personal restraint petitions. *Hagler, supra* at 825, citing *In re Mercer*, 108 Wn.2d 714,
18 718-21, 741 P.2d 559 (1987). Mere assertions are insufficient in a collateral action to
19 demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of
20 the judgment and sentence and not against it. *Id.*, at 825-26.

21
22 Reviewing courts have three options in evaluating personal restraint petitions:

- 23 1. If a petitioner fails to meet the threshold burden of showing actual
24 prejudice arising from constitutional error or a fundamental defect
25 resulting in a miscarriage of justice, the petition must be dismissed;

- 1
- 2 2. If a petitioner makes at least a prima facie showing of actual
3 prejudice, but the merits of the contentions cannot be determined
4 solely on the record, the court should remand the petition for a full
5 hearing on the merits or for a reference hearing pursuant to RAP
6 16.11(a) and RAP 16.12;
- 7 3. If the court is convinced a petitioner has proven actual prejudicial
8 error, the court should grant the personal restraint petition without
9 remanding the cause for further hearing.

10 ***In re Hews***, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

11 In a personal restraint petition, “naked castings into the constitutional sea are not
12 sufficient to command judicial consideration and discussion.” ***In re Williams***, 111 Wn.2d
13 353, 365, 759 P.2d 436 (1988)(citing ***In re Rozier***, 105 Wn.2d 606, 616, 717 P.2d 1353
14 (1986), which quoted ***United States v. Phillips***, 433 F.2d 1364, 1366 (8th Cir. 1970)). That
15 phrase means “more is required than that the petitioner merely claim in broad general
16 terms that the prior convictions were unconstitutional.” ***Williams***, *supra* at 364. The
17 petition must also include the facts and “the evidence reasonably available to support the
18 factual allegations.” *Id.*

19 The evidence that is presented to an appellate court to support a claim in a personal
20 restraint petition must also be in proper form. On this subject, the Washington Supreme
21 Court has stated:

22 It is beyond question that all parties appearing before the courts of this
23 State are required to follow the statutes and rules relating to authentication
24 of documents. This court will, in future cases, accept no less.

25 ***In re Connick***, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). The petition must include a
 statement of the facts upon which the claim of unlawful restraint is based and the evidence
 available to support the factual allegations. RAP 16.7(a)(2); ***Williams***, *supra* at 365.

1 If the petitioner's allegations are based on matters outside the existing
2 record, the petitioner must demonstrate that he has competent, admissible
3 evidence to establish the facts that entitle him to relief. If the petitioner's
4 evidence is based on knowledge in the possession of others, he may not
5 simply state what he thinks those others would say, but must present their
6 affidavits or other corroborative evidence. The affidavits, in turn, must
7 contain matters to which the affiants may competently testify. In short,
8 the petitioner must present evidence showing that his factual allegations
9 are based on more than speculation, conjecture, or inadmissible hearsay.

10 *In re Rice*, 118 Wn.2d 876, 886, 828 P.3d 1086 (1992). If the petitioner fails to
11 provide sufficient evidence to support his challenge, the petition must be dismissed. *Id.*
12 The purpose of a reference hearing "is to resolve genuine factual disputes, not to determine
13 whether the petitioner actually has evidence to support his allegations." *Id.* As will be
14 discussed below, petitioner fails to show that he is entitled to relief.

15 Petitioner makes assertions (in a document directed to the Clerk of the Washington
16 Court of Appeals, dated July 15, 2010) that his arraignment was untimely and that his right
17 to a speedy trial was violated. These claims are wholly unsupported by any competent
18 evidence. His petition contains neither a statement of facts upon which these claims are
19 based, nor any evidence which establishes the facts that entitle him to relief.

20 While the date of his arraignment and his ultimate trial date might be discernable
21 from the record on direct appeal, petitioner must show actual prejudice. He does not
22 articulate how he was prejudiced, much less support his claim with competent evidence.
23 Because the petitioner has failed to provide any evidence to support his challenge, these
24 claims must be dismissed.
25

1
2 2. THE STATE CONCEDES THAT THE JUDGMENT SHOULD BE
3 CORRECTED SO THAT PETITIONER'S TWO SENTENCES FOR
4 ATTEMPTED MURDER IN THE FIRST DEGREE ARE EACH
5 "SERIOUS VIOLENT OFFENSES" AND SHOULD BE RUN
6 CONSECUTIVELY RATHER THAN CONCURRENTLY.

7
8 Petitioner argues that his Judgment and Sentence (judgment) is unclear as to
9 "whether the sentence will run concurrent or consecutive." See Personal Restrain Petition
10 at page 2. The jury found petitioner guilty of two counts of attempted murder in the first
11 degree (counts III and IV), and two counts of assault in the first degree (counts I and II).
12 Appendix A. The court found that the two counts of assault merged with the two counts of
13 attempted murder, and defendant was sentenced only on the two counts of murder (counts
14 III and IV). 6 RP 728 730. He received "life without parole" on each of those counts.
15 Appendix A. He was also convicted of bribing a witness (count V) and received a
16 sentence of 84 months on that count. 6 RP 726. This count was properly run concurrent
17 with the two counts of attempted murder.

18 Appendix A.

19 The court ordered petitioner to serve:

20 4.5 CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER.

21 The defendant was found to be a persistent offender.

22 (a) CONFINEMENT. RCW 9.94A.570 and RCW 9.94A.589.

23 Defendant is sentenced to the following term of total confinement in the
24 custody of the Department of Corrections:

25 Life without the possibility of early release on Counts III and IV each
84 months on Count V

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

1 (b) CONSECUTIVE/CONCURRENT SENTENCES: RCW
2 9.94A589. All counts shall be served concurrently, except for the
3 portion of those counts for which there is a special finding of
4 firearm or other deadly weapon as set forth above in section 2.3,
and except for the following counts which shall be served
consecutively. _____.

5 Appendix A. Section 4.5(b) of the judgment states that all counts shall be served
6 concurrently unless the court specifies counts which are to run consecutively. This section
7 contains a space in which the court may designate specific counts which would run
8 consecutively, but nothing is entered in the space.

9 Each count of attempted murder in the first degree is a serious violent offense.
10 RWC 9.94A.589 mandates:

11 When a person is convicted on two or more serious offenses arising from
12 separate and distinct criminal conduct...sentences imposed under (b) of
13 this subsection shall be served consecutively to each other....

14 The State concedes error to the extent that the judgment does not specify that the
15 sentences on the two counts of attempted murder in the first degree should run
16 consecutively as both are "serious violent offenses." RCW 9.94A589, *See* Personal
17 Restraint Petition at page 16. In order to comport to RCW 9.94A589, the judgment
18 should be corrected to indicate that the two counts of attempted murder should run
19 consecutively.

20 3. PETITIONER'S PRIOR LOUISIANA CONVICTION FOR
21 "AGGRAVATED BATTERY" WAS PROPERLY CLASSIFIED
22 AS A STRIKE OFFENSE IN WASHINGTON PURSUANT TO
THE PERSISTENT OFFENDER ACOCUNTABILITY ACT.

23 The State must provide reliable evidence establishing the accuracy of the offender
24 score calculation. *State v. Wilson*, 112. Wn. App 122, 137, 52 P.3d 545 (2002), *State v.*
25 *Larkins*, 147 Wn. App. 858, 861, 199 P. 3d 441 (2008). The State is also required to

1 produce additional evidence of both the classification and existence of out-of-state
2 convictions. *Wilson, supra.* To compare a foreign crime with one from Washington, the
3 court must first compare the legal elements of an out-of-state conviction with those of a
4 similar Washington crime. *Larkins, supra.* The State must then identify a Washington
5 crime which is comparable to the out-of-state crime, and calculate the offender score using
6 the classification for that Washington crime. *Id.*

7 a. The Trial Court Properly Ruled That The Louisiana
8 Crime Of “Aggravated Battery” Is Equivalent To
9 ”Assault In The Second Degree, “Most Serious
10 Offense” In Washington State.

11 The State’s sentencing memorandum in this case provided the 1985 Louisiana
12 statute for aggravated battery, as well as the 1985 Washington statute for assault in the
13 second degree, so the sentencing court could compare the elements of each state’s statute.
14 The Louisiana crime of aggravated battery has the following elements:

15 The unlawful touching of another committed with a dangerous weapon.

16 6 RP 720. Appendix C. The court also had the Louisiana definition of “dangerous
17 weapon.” The court then reviewed the elements of the Washington crime of assault in the
18 second degree in 1985:

19 (a)n assault that occurs with a weapon or any other instrument or
20 thing likely to produce bodily harm.

21 6 RP 720 and RCW 36.021. Petitioner’s sentencing court determined that the elements of
22 Washington’s crime of assault in the second degree were the equivalent of the elements of
23 aggravated battery in Louisiana. 6 RP 720-721. The sentencing court also knew that a
24 prior appellate court had determined that petitioner’s Louisiana conviction was a felony
25

1 that was properly included in his offender score.¹ Appendix B. Since assault in the
2 second degree is a “most serious offense” the sentencing court properly classified
3 defendant’s Louisiana conviction for aggravated battery as a “most serious offense,” or,
4 a strike. 6 RP 720. RCW 9.94A.031(a) and (b). Regardless of the felony classification
5 that Louisiana ascribed to the crime of aggravated battery, the sentencing court is
6 governed by Washington’s classification of the comparable crime not that of Louisiana.
7 *State v. Weiland*, 66 Wn. App 29, 32, 831 P.2d 749 (1992.) The prosecutor, defendant’s
8 attorney, and the court all agreed that defendant’s Louisiana conviction constitutes a strike
9 in this state.

10
11 Petitioner’s claim that the Court of Appeals determined that his prior conviction
12 was a “C” level felony which “washed out” is without merit. Regardless of the
13 Louisiana classification of the crime of aggravated battery, Washington will use the
14 washout period according to a comparable Washington offense. Petitioner has not
15 shown any evidence to support his challenge to the classification of his conviction for
16 aggravated battery.

17 b. This Claim Must Be Dismissed Since The State has
18 Provided Sufficient Evidence To Show That
19 Petitioners Louisiana Conviction Has “Washed
20 Out.” And His Offender Score Was Properly
21 Calculated As Nine.

22 When calculating petitioner’s offender score, the State properly concluded that
23 his conviction for aggravated battery did not wash out. This conviction was shown to be
24 the equivalent of a level “B” felony in Washington.² As such, it would have “washed
25 out” if petitioner had been crime free for ten years. RCW 9.94A.525(2)(b). He was

¹ The opinion did not specify what level felony the “aggravated battery” charge equated to in Washington. Appendix B.

1 sentenced on the battery charge on February 24, 1988. Appendix A. Petitioner was
2 convicted of arson in the first degree on June 10, 1994, a little more than eight years
3 later. Because he did not remain crime free, his battery conviction did not wash out and
4 was included in his offender score for arson. After his arson conviction, petitioner's
5 offender score would have been two.

6 During the years 1999, 2002, 2003 and 2005, petitioner was convicted of five
7 level "C" felonies. Each of these convictions was within five years, so none of them
8 washed. Because he did not remain crime free for five years after his 2005 level "C"
9 conviction, each remains as a point in his offender score. Petitioner's offender score was
10 seven when he went to trial on this case. Petitioner was convicted on this case in 2009,
11 four years after his 2005 conviction. Petitioner was convicted of two counts of attempted
12 murder, and a count of bribing a witness, which adds two points to his score. Petitioner's
13 offender score is now nine.

14 Petitioner claims that his Louisiana conviction is a level "C" felony, and so
15 should have "washed out." *See* Personal Restraint Petition at page 4. He bases his claim
16 on a Court of Appeals opinion which was filed in a 2005 King County VUCSA case.
17 *See* Personal Restraint Petition at pages 25-26. In that appeal, petitioner filed a challenge
18 to the calculation of his offender score in that case, claiming that the crime of aggravated
19 battery is a misdemeanor. Appendix B. The Court of Appeals found that the crime was a
20 felony and counted as part of his offender score. Appendix B. He has not provided this
21 Court with any elements of his Louisiana conviction to dispute the State's evidence.

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² Petitioner's judgment in this case erroneously classifies his battery conviction as a level "C" felony.
Appendix A.

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Petitioner claims to have provided this Court with copies of Louisiana police records which support his contention that his aggravated battery conviction was a level "C" felony, and his King County judgment which shows that his Louisiana conviction was considered to have washed. *See* Personal Restraint Petition page 4. These documents do not verify petitioner's claim. Petitioner has provided this Court with a Louisiana Department of Corrections letter which notes the crime of which he was convicted, but does not give a designation of Louisiana's felony offense level. *See* Personal Restraint Petition at page 6. Petitioner has failed to show whether his Louisiana conviction was or was not included in his King County offender score, since that judgment gives no guidance as to how the defendant's offender score was calculated in the past.

Petitioner has not met the burden to which he is held in a personal restrain petition. He has not met his burden to show both that an error occurred, much less that he was actually prejudiced by such error. Petitioner's mere assertion that the calculation of his offender score was incorrect is insufficient to demonstrate actual prejudice. Because he has failed to show error or prejudice, his petition must be dismissed.

1
2 D. CONCLUSION:

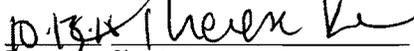
3 The State respectfully requests that this Court dismiss this personal restraint
4 petition as petitioner has failed to show prejudicial constitutional error or a fundamental
5 defect resulting in a complete miscarriage of justice.

6 DATED: October 13, 2010.

7 MARK LINDQUIST
8 Pierce County
9 Prosecuting Attorney

10 
11 KAREN PLATT
12 Deputy Prosecuting Attorney
13 WSB #17290

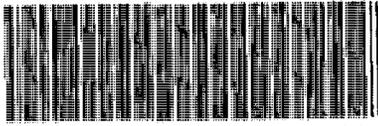
13 Certificate of Service:
14 The undersigned certifies that on this day she delivered by U.S. mail
15 to petitioner true and correct copies of the document to which this certificate
16 is attached. This statement is certified to be true and correct under
17 penalty of perjury of the laws of the State of Washington.
18 Signed at Tacoma, Washington, on the date below.

19 
20 Date Signature

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FILED
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10 OCT 15 PM 1:26
STATE OF WASHINGTON
BY  DEPUTY

APPENDIX “A”

Judgment and Sentence



08-1-02399-2 33399623 JDSWCD 12-21-09



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 08-1-02399-2

vs.

DEC 21 2009

LARRY DARNELL DUNOMES,

Defendant.

WARRANT OF COMMITMENT

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

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

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

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

Case Number: 08-1-02399-2 Date: October 13, 2010
SerialID: A6D8D611-F20D-AA3E-51436F31D3C91262
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02399-2

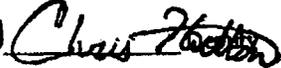
[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 12/18/09

By direction of the Honorable

JUDGE
KEVIN STOKES ORLANDO
CLERK
By: 
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

DEC 21 2009 

FILED
DEPT. 1
IN OPEN COURT
DEC 18 2009
BY  DEPUTY

STATE OF WASHINGTON

County of Pierce

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

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

KEVIN STOCK, Clerk
By: _____ Deputy

tm c



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

DEC 21 2009

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02399-2 NCO

vs

JUDGMENT AND SENTENCE (FJS)

LARRY DARNELL DUNOMES

Defendant.

- Prison [] RCW 9.94A.712 Prison Confinement
- [] Jail One Year or Less
- [] First-Time Offender
- [] Special Sexual Offender Sentencing Alternative
- [] Special Drug Offender Sentencing Alternative
- [] Breaking The Cycle (BTC)
- [] Clerk's Action Required, para 4.5 (SDOSA) 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA16982686
DOB: 08/16/1964

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) 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)(i)	D	03/13/08	TPD 081360163

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

09-9-16070-9

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Case Number: 08-1-02399-2 Date: October 13, 2010

SerialID: A6D8D611-F20D-AA3E-51436F31D3C91262

Digitally Certified By: Kevin Stock Pierce County Clerk, Washington 08-1-02399-2

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.72.050(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. Horn, 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

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 I	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	01/03/05	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):

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page ____ of ____

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

[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:

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/R/N	\$ _____	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	\$ 200 ³⁰⁰	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

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 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).

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.

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).

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.

4.4a BOND IS HEREBY EXONERATED

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 ^{ARE} a most serious offense 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 IV

_____ 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. 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 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: _____

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 consecutive to each other.

Sentence enhancements in Counts _____ shall be served

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 consecutive to each other.

Sentence enhancements in Counts _____ shall be served

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: _____

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 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: _____

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

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-WITHOLDING 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) JD

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, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

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

N/A

5.8 [] The court finds that Court _____ 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: 12/18/09

JUDGE

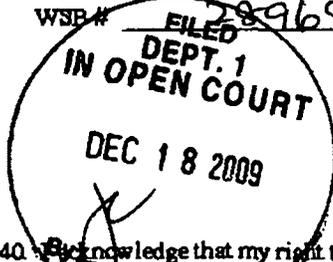
Print name

KAMES 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

Case Number: 08-1-02399-2 Date: October 13, 2010
SerialID: A6D8D611-F20D-AA3E-51436F31D3C91262
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-02399-2

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

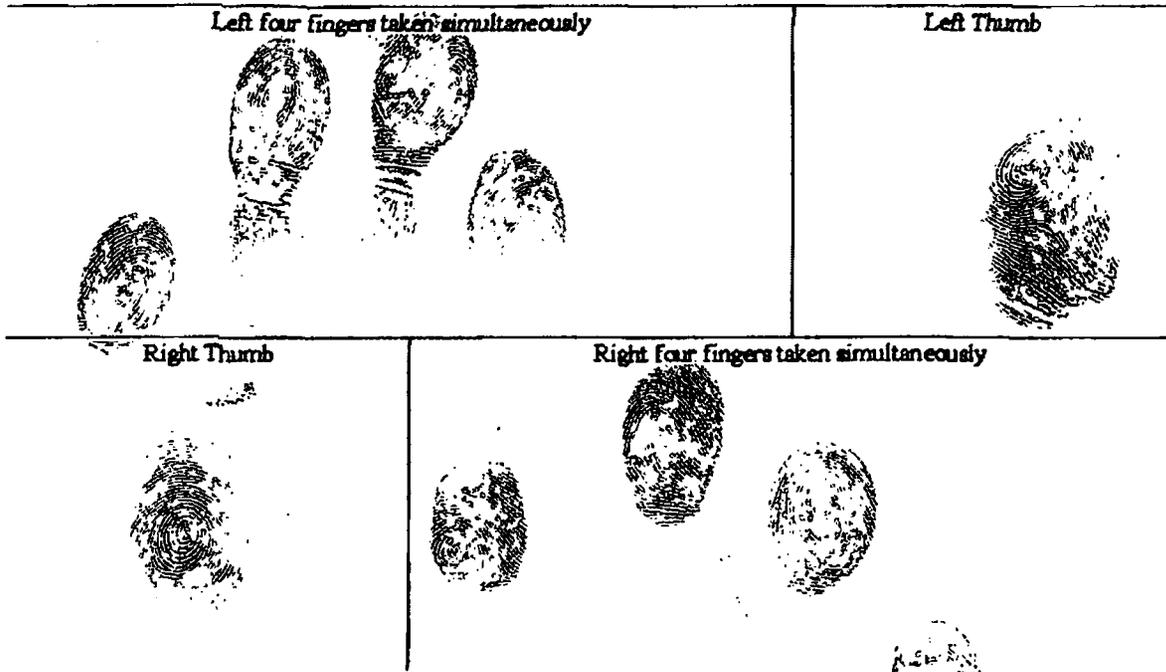
PCN No 539458639

Other

Alias name, SSN, DOB: _____

Race:	<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African- American	<input type="checkbox"/> Caucasian	Ethnicity:	<input type="checkbox"/> Hispanic	Sex:	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :		<input checked="" type="checkbox"/> Non- Hispanic	<input type="checkbox"/>	<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, Jane Cortanti Dated: 12.18.09

DEFENDANT'S SIGNATURE: refused to signed

DEFENDANT'S ADDRESS: Department of Corrections

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: A6D8D611-F20D-AA3E-51436F31D3C91262 containing 14 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Kelvin Brown, Deputy.

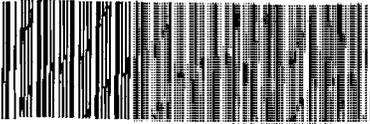
Dated: Oct 13, 2010 11:28 AM



Instructions to recipient: If you wish to verify the authenticity of the certified
document that was transmitted electronically by the Court, sign on to: [https://
www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm](https://www.co.pierce.wa.us/cfapps/secure/linux/courtfilling/certifieddocumentview.cfm),
enter **SerialID: A6D8D611-F20D-AA3E-51436F31D3C91262**.
The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Ruling Affirming Judgment



05-1-00091-2 28879074 MND 12-19-06

CERTIFIED COPY

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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LARRY DARNELL DUNOMES,

Appellant:

No. 34228-6-II

MANDATE

Pierce County Cause No.
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.

[Signature]
Clerk of the Court of Appeals,
State of Washington, Div. II

CASE #: 34228-6-II

State of Washington, Respondent v. Larry Darnell Dunomes, Appellant

Page - 2

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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II
06 OCT 24 AM 11:24
STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

THE STATE OF WASHINGTON,

Respondent,

v.

LARRY DARNELL DUNOMES,

Appellant.

No. 34228-6-II

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

34228-6-11

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

34228-6-II

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.

34228-6-11

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).

34228-6-II

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

STATE OF WASHINGTON, County of Pierce
ss: 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
13th day of Oct, 2010
By: Kevin Stock, Clerk Deputy

APPENDIX “C”

State’s Sentencing Brief



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-02399-2

vs.

LARRY DARNELL DUNOMES,

STATE'S SENTENCING
MEMORANDUM REGARDING
COMPARABILITY OF DEFENDANT'S
FOREIGN CONVICTION

Defendant.

On September 9, 1985, defendant Larry Darnell Dunomes entered a guilty plea and was convicted in the State of Louisiana of the crime of aggravated battery for assaulting victim Charles Causey, for an incident that occurred on February 23, 1985. Defendant was sentenced on October 16, 1985 and was placed on probation for two years. As part of the court's sentence defendant Dunomes was ordered to pay the medical expenses of victim Charles Causey.

On February 24, 1988, the defendant again appeared in the twenty-first Judicial District Court for the Parish of Tangipahoa. The court revoked the defendant's probation on that date and sentenced the defendant to the Louisiana State Department of Corrections for one year. Defendant was again ordered to pay restitution to the victim. Defendant was ordered paroled from prison on May 23, 1988.

1 Defendant was convicted of violating Louisiana Revised Statute section 14.34, which
2 defined the crime of aggravated battery as follows:

3 *Aggravated battery is battery committed with a dangerous weapon.*
4 *Whoever commits an aggravated battery shall be fined not more than five thousand*
5 *dollars, imprisoned with or without hard labor for not more than ten years, or both.*

6 Louisiana Revised Statutes section 14:34 (Acts 1978, No 394, Section 1. Amended by
7 Acts 1980, No 708 Section 1). Louisiana law defined "battery" as follows:

8 Battery is the intentional use of force or violence upon the person of another; or the
9 intentional administration of a poison or other noxious liquid or substance to another.

10 Louisiana Revised Statutes section 14:33 (Acts 1978, No. 394, section 1).

11 Louisiana defined a Dangerous weapon as follows:

12 'Dangerous Weapon' includes any gas, liquid, or other substance or instrumentality,
13 which, in the manner used, is calculated or likely to produce death or great bodily harm.

14 Louisiana Revised Statutes Section 14:2

15 Defendant's conviction in Louisiana is comparable to a conviction in Washington for
16 Assault in the Second Degree as the law existed in 1985 under former RCW 9A.36.020(1)(c),
17 which reads as follows:

- 18 (1) Every person who, under circumstances not amounting to assault in the first degree
19 shall be guilty of assault in the second degree when he:
20 (c) Shall knowingly assault another with a weapon or other instrument or thing likely
21 to produce bodily harm.

22 Under Washington case law assault is defined as an intentional harmful or offensive
23 touching of another. State v. Hall, 104 Wn.App. 56, 14 P.3d 884, review denied, 143 Wn.2d
24 1023 (2000).
25

1 Under the Sentencing Reform Act, out of state convictions for offenses shall be classified
2 according to the comparable offense definitions and sentences provided by Washington law.
3 RCW 9.94A.525(3). It is clear that a "battery" under Louisiana law constitutes an "assault"
4 under Washington law. A "dangerous weapon" under Louisiana law is an "instrumentality,
5 which, in the manner used, is calculated or likely to produce death or great bodily harm."
6 Consequently, "an instrument likely to produce bodily harm" would include a weapon likely to
7 produce death or great bodily harm." Aggravated Assault under Louisiana law is therefore an
8 assault in the Second Degree under the law in Washington as it existed in 1985.

9 In 2005, the defendant was convicted of the crime of Bail Jumping under Pierce County
10 Superior Court Case Number 05-1-00091-2. The trial court in that case determined that the
11 defendant's aggravated battery conviction from Louisiana was comparable to the crime of
12 Assault in the Second Degree in Washington State at the time of conviction. Division II of the
13 Washington State Court of Appeals upheld that ruling under COA case number 34228-6-II.
14 Therefore, the matter is res judicata between the parties and this court should include the
15 conviction in the defendant's criminal history.
16

17 DATED this 18TH day of December, 2009.

18 MARK EVANS LINDQUIST
19 Prosecuting Attorney

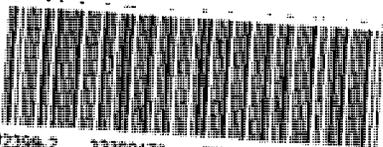
20 By: Michael L. Sommerfeld
21 Michael L. Sommerfeld
22 Deputy Prosecuting Attorney
23 WSB#

24 mls
25

APPENDIX “D”

Exhibit Record filed December 18, 2009

5, with
all here
12-18-09



08-1-02399-2 33399173 EXRV 12-21-09



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

Cause No. 08-1-02399-2

vs.

EXHIBIT RECORD

DUNOMES, LARRY DARNELL,
Defendant

P D	No.	Description	Off	Obj	Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn	Date	Rec'd by Clerk's Office
P-1		Certified copy St. of LA documents	✓		admitted	12.18.09	
P-2		Mandate 05 case Ct of Appeals	✓		admitted	12.18.09	
P-3		St of WA 05.1.0091.2 documents	✓		admitted	12.18.09	
P-4		Judgment & Sentence Yalony King Co.	✓		admitted	12.18.09	
P-5		Judgment & Sentence of case Pierce Co	✓		admitted	12.18.09	
P-6		King Co upon I case	✓		admitted	12.18.09	
P-7		Judgment & Sentence Yalony Case King Co.	✓		admitted	12.18.09	
P-8		1999 Pierce Co Case Documents	✓		admitted	12.18.09	

ORIGINAL