

No. 40271-8-II
Cowlitz Co. Cause No. 08-1-01451-4

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

STATE OF WASHINGTON,

Appellant

v.

CRAIG ALLEN OLSON,

Respondent.

BY *[Signature]*
STATE OF WASHINGTON
JUL 25 AM 11
COWPLITZ CO. CLERK

PM 7/22/10

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

The State of Washington assigns error to the trial court's conclusion of law #2, where the trial court found that based on the Ninth Circuit Court of Appeals decision in *United States v. Vargas-Amaya*, 389 F.3d 901 (2004), an arrest warrant for a probationer may not issue unless a neutral and detached magistrate finds probable cause to support the issuance of the warrant based upon facts set out by oath or affirmation.

II. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court commit reversible error when it found that based on the Ninth Circuit Court of Appeals decision in *United States v. Vargas-Amaya*, 389 F.3d 901 (2004), that an arrest warrant for a probationer may only be issued by a neutral and detached magistrate that finds probable cause based upon a statement sworn on oath or affirmation in compliance with the full requirements of the Fourth Amendment?

III. STATEMENT OF THE CASE

Craig Allen Olson, respondent, was ordered to serve 12 months of community custody stemming from a possession of a controlled substance conviction out of Lewis County Superior Court. CP32. He was assigned to the caseload of Department of Corrections ("DOC") Officer Cody Muller. CP32. On December 23rd, 2008, Officer Muller issued a warrant pursuant to former RCW 9.94A.740 for the respondent's arrest based on an alleged failure to report. CP32. He sent a "Wanted Person Entry Form" to the main DOC office in Olympia, that was neither sworn nor signed

under oath, and a DOC clerk entered the arrest warrant into the Washington Crimination Information Computer (“WACIC”). CP32.

Respondent was stopped by Kelso Police Officer Voelker on December 27th, 2008, who discovered the warrant and placed the defendant under arrest. CP32. During a search incident to arrest, Voelker found methamphetamine. CP32. There was no basis for the search other than the arrest for the DOC warrant.

Respondent moved to suppress the methamphetamine found during the search incident to arrest, the trial court suppressed the evidence and the State of Washington now appeals to the Court of Appeals, Division II, for the State of Washington, for relief from that ruling.

IV. ARGUMENT

Department of Corrections (“DOC”) warrants are not subject to Fourth Amendment oath or affirmation requirements, nor are they required to issue from a neutral and detached magistrate. The trial court incorrectly ruled that *United States v. Vargas-Amaya* applied such requirements to DOC warrants. 389 F.3d 901 (9th Cir. 2004). The State and the defense failed to cite the appropriate authority at the trial court level and the trial court did not have the benefit of the Ninth Circuit’s clarification of their decision in *Vargas-Amaya*, which they issued in *United States v. Sherman*. 502 F.3d 869 (9th Cir. 2007). The court in *Sherman* unequivocally stated that “the Fourth Amendment does not require an administrative parole violator warrant to be supported by oath or affirmation.” *Id.* at 884.

Moreover, administrative warrants are permissible and not subject to the same Fourth Amendment safeguards as judicial warrants. *Id.* at 876, citing *Griffin v. Wisconsin*, 483 U.S. 868, 877-78, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) (distinguishing between “administrative search warrants” and “constitutionally mandated judicial warrants”), *Abel v. United States*, 362 U.S. 217, 232 80 S.Ct. 683, 4 L.Ed.2d 668 (1960) (characterizing a deportation arrest warrant under the Immigration and Nationality Act of 1952 as “an administrative warrant, not a judicial warrant within the scope of the Fourth Amendment”), *United States ex rel. Randazzo v. Follette*, 418 F.2d 1319, 1322 (2nd Cir. 1969) (holding that a parole violator warrant designated as “administrative” under New York law was not subject to ordinary Fourth Amendment safeguards).

It is based on the *Sherman* court's holding that the State respectfully requests that this court reverse the trial court's ruling that DOC warrants are required to comply with the oath or affirmation requirement of the Fourth Amendment.

Vargas-Amaya is not applicable to the case at the bar. *Vargas-Amaya* dealt with the relatively specific question of whether an unsworn warrant that was issued for the arrest of an individual on supervised release was sufficient to extend jurisdiction under 18 U.S.C. Section 3583. The court in *Vargas-Amaya* ultimately ruled that the warrant must comply with the oath or affirmation requirement in the context of that particular statute. However, as the court subsequently clarified in *Sherman*, the

requirement of compliance was based on statutory interpretation and not constitutional interpretation. 502 F.3d at 884. Thus, the holding in *Vargas-Amaya* only "stands for the relatively narrow proposition that an ordinary judicial warrant that is statutorily required for the arrest of a person on supervised release must comply with the Warrant Clause of the Fourth Amendment in order to extend the court's jurisdiction under Section 3583(i)." *Id.* 884-885.

A. STATUTORY INTERPRETATION

The decision in *Sherman* contrasts with the decision in *Vargas-Amaya* in terms of the different statutes that are involved. In *Vargas-Amaya* the court engaged in extensive analysis of 18 U.S.C. Section 3583(i), which provides:

The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and ... a further term of supervised release, extends beyond the expiration of the terms of supervised release...if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

The court then, in the absence of a specific definition of warrant within the statute, gave the term its ordinary meaning within the Fourth Amendment, presuming that Congress had intended the warrant to be based upon probable cause and sworn facts. *Vargas-Amaya*, 389 F.3d at 904. This presumption, however, is rebuttable as both the *Sherman* and *Vargas-Amaya* courts noted. *Sherman*, 502 F.3d at 875, *Vargas-Amaya*, 389 F.3d at 904.

It was the statute at issue in *Vargas-Amaya* that dictated the necessity of compliance with the oath or affirmation requirements of the Fourth Amendment. Since 18 U.S.C. Section 3583(i) dealt with warrants that “ha[d] been issued” using the past tense, the court reasoned that it does not govern the issuance of such warrants and instead looked to 18 U.S.C. Section 3606, which specifically referenced the need for probable cause and gave the court the authority to issue a warrant. The *Vargas-Amaya* court reasoned that since Congress incorporated the probable cause requirement, it must have meant to incorporate the oath or affirmation portion of the Fourth Amendment. 389 F.3d at 905 n 2. The statutes at issue in *Sherman* and in the case before the court are fundamentally different.

The statute in *Sherman*, 18 U.S.C. Section 4213 is fundamentally different than the statute in *Vargas-Amaya*, and the same in all the key areas as former RCW 9.94A.740, the statute at issue in this case. The *Sherman* statute reads:

(a) If any parolee is alleged to have violated his parole, the Commission may--

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that,

in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of--

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

18 U.S.C. Section 4213. This statute is very similar to former RCW

9.94A.740, the statute at issue in this case, which reads:

1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community

custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

Both 4213 and former RCW 9.94A.740 expressly authorized non-judicial entities to issue warrants, making them “administrative warrant[s].” *Sherman*, 502 F.3d 876. Both statutes omit any express reference to Fourth Amendment warrant requirements, unlike the statute in *Vargas-Amaya*, which requires warrants be issued upon probable cause and that they be issued by a judge. Section 4213 requires only an allegation and former RCW 9.94A.740 requires only “reasonable cause.” There is no express reference in either statute that indicates the intent of the respective legislatures to incorporate the Fourth Amendment warrant clause requirements.

DOC warrants issued under former RCW 9.94A.740 are not required to meet the oath or affirmation requirement of the Fourth Amendment. Under the *Sherman* court’s statutory analysis former RCW 9.94A.740 overcomes the presumption of the application of the oath or affirmation requirement.

B. CONSTITUTIONAL ANALYSIS

The analysis begins with the principle that parolees or probationers are fundamentally different than ordinary citizens, who enjoy all the rights enumerated in the Bill of Rights and the Constitution. Indeed, as the United States Supreme Court noted in *Morrissey v. Brewer* that

"revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). Parolees may be searched and arrested based on reasonable suspicion of a violation of their parole, without a warrant or probable cause. *United States v. Rabb*, 752 F.2d 1320, 1324 (9th Cir. 1984), *United States v. Butcher*, 926 F.2d 811, 814 (9th Cir. 1991). These considerations go beyond jurisdiction-specific considerations, and are based on universal characteristics of parole. *Sherman*, 502 F.3d at 884, citing *Latta v. Fitzharris*, 521 F.2d 246, 248 (9th Cir. 1975). It is against this backdrop that the *Sherman* court evaluated the application of the oath or affirmation requirement of the Fourth Amendment to parole warrants.

Former RCW 9.94A.740 governs warrants for individuals on community custody, serving essentially the same capacity as 18.U.S.C. Section 4213. The statute lays out the requirements in the same way, dictating the procedure for the issuance of the warrant, the procedure, and the relevant authority. Individuals on community custody are essentially, the same as "parolees" in the context of this constitutional analysis, as they are under post-conviction supervision. The *Sherman* court found that based on the relaxed application of constitutional protections for post-conviction supervision, the Fourth Amendment "does not require an administrative parole violator warrant to be supported by oath or affirmation." *Id.* While not specifically addressed, the *Sherman* court

implicitly found constitutional the authority of an administrative agency that is not governed by a neutral and detached magistrate, to issue such a warrant.

Vargas-Amaya was incorrectly applied in this case and the trial court should be reversed. As the court in *Sherman* noted, referencing *Vargas-Amaya*, “we never considered the notion of an administrative warrant like that provided in Section 4213.” 502 F.3d at 885. Considering such a warrant in the context of Section 4213, they held that “neither 18 U.S.C. [section] 4213 nor the Fourth Amendment require an oath or affirmation for the issuance of a valid administrative warrant for the retaking of an alleged parole violator.” *Id.* Essentially, given the context of parole and a statute that deals with an administrative warrant, no oath or affirmation is required by the Fourth Amendment. *Id.*

V. CONCLUSION

The trial court incorrectly concluded that under *United States v. Vargas-Amaya*, 389 F.3d 901 (2004), an arrest warrant for a probationer may not issue unless a neutral and detached magistrate finds probable cause to support the issuance of the warrant based upon facts set out by oath or affirmation. The decision upon which the trial court rested its conclusion is superseded by the more specific case of *United States v. Sherman*, 502 F.3d 869 (9th Cir. 2007) , which clarified the limits of the *Vargas-Amaya* ruling and held that administrative warrants, where not otherwise required by statute, were not required to comply with the oath or

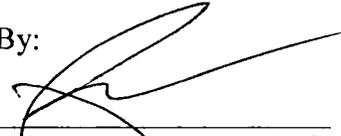
affirmation requirement of the Fourth Amendment. Nor were administrative warrants, or non-judicial warrants themselves, offensive to the Fourth Amendment.

Accordingly, the State requests that this court reverse the trial court and remand the case.

Respectfully submitted this 22nd day of July, 2010.

SUSAN I. BAUR
Prosecuting Attorney

By:



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Deputy Prosecuting Attorney
Representing Appellant

APPENDIX - STATUTES

Former RCW 9.94A.740

- 1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

18 U.S.C. Section 4213

(a) If any parolee is alleged to have violated his parole, the Commission may--

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of--

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

18 U.S.C. Section 3606

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

18 U.S.C. Section 3583

(a) In general.--The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(b) Authorized terms of supervised release.--Except as otherwise provided, the authorized terms of supervised release are--

(1) for a Class A or Class B felony, not more than five years;

(2) for a Class C or Class D felony, not more than three years; and

(3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release.--The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).

(d) Conditions of supervised release.--The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible

imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. The court may order, as a further condition of supervised release, to the extent that such condition--

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(e) Modification of conditions or revocation.--The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice;

(2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(f) Written statement of conditions.--The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.--If the defendant--

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation.--When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation.--The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) Supervised release terms for terrorism predicates.--Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B) is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

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

STATE OF WASHINGTON,)	NO. 40271-8-II
)	Cowlitz County No.
Appellant,)	08-1-01451-4
)	
vs.)	CERTIFICATE OF
)	MAILING
CRAIG ALLEN OLSON,)	
)	
Respondent.)	
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STATE OF WASHINGTON

I, Michelle Sasser, certify and declare:

That on the 22nd day of July, 2010, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Opening Brief of Appellant addressed to the following parties:

Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

Mr. John Hays
Attorney at Law
1402 Broadway
Longview, WA 98632

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

Dated this 22nd day of July, 2010.



Michelle Sasser