

NO **41472-4**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

In Re Personal Restraint Petition of:

JOSEPH EDINGTON,

Petitioner.

**PERSONAL RESTRAINT PETITION
AND OPENING BRIEF**

**Clark County Superior Court No.
07-1-00616-8**

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STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS
DIVISION II

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RAP 16.4(c)(2)	2
United States Constitution, Sixth Amendment	8

1 **I. STATUS OF PETITIONER**

2 On June 14, 2007, a jury convicted Petitioner Joseph Edington of two counts
3 of delivery of cocaine within 1,000 feet of a school bus route stop.¹ On October 9,
4 2007, the trial court sentenced Edington to a total of 104 months in the custody of
5 the Department of Corrections. Twenty-four of those months were the result of the
6 two school bus route stop enhancements. See Exhibit A, *Judgment and Sentence*.
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10 Edington appealed, and on May 12, 2009, this Court affirmed the
11 convictions in an unpublished opinion. See Exhibit B, *State v. Edington*, 2009 WL
12 1299424 (2009). Edington's petition for review was denied by the Washington
13 Supreme Court on November 5, 2009. See *State v. Edington*, 167 Wash.2d 1006
14 (2009). The mandate was issued on November 18, 2009.² There have been no
15 previous requests for post-conviction relief in this case.
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18
19 Edington is currently serving his sentence in the custody of the Department
20 of Corrections. He now seeks relief from this Court in the form of vacation of the
21 two school bus route stop enhancements, and remand to the Clark County Superior
22 Court for re-sentencing.
23
24

25
26 ¹ The jury could not reach verdicts on two additional delivery counts. Those
27 counts were ultimately dismissed.

28 ² On direct appeal this Court did reverse one of the conditions of Edington's
29 community custody imposed by the trial court. Accordingly, the case was
30 remanded and the judgment and sentence was modified on December 10, 2009.

1 **II. GROUNDS FOR RELIEF**

2 Mr. Edington’s continued restraint is unlawful because his judgment violates
3 the Constitutions of the United States and the State of Washington and the laws of
4 the State of Washington. RAP 16.4(c)(2). Specifically, Edington raises the
5 following legal claims:
6

7 Claim No. 1:
8

9 The trial court erred by instructing the jury that it must be unanimous to
10 answer “no” to the questions posed in the special verdict forms. This error
11 was not harmless beyond a reasonable doubt.
12

13 Claim No. 2:
14

15 Appellate counsel was constitutionally ineffective in failing to raise the issue
16 in Claim No. 1 on direct appeal.

17 **III. STATEMENT OF FACTS RELEVANT TO CLAIMS**

18 Edington was accused of selling small amounts of cocaine to a police
19 informant named Kristine Taskey on four separate occasions in March 2007. In
20 exchange for her assistance to the State, Taskey was allowed to resolve two
21 pending counts of possession of controlled substances (cocaine and
22 methamphetamine) on very favorable terms: the day after the last controlled buy,
23 Taskey—whose offender score was nine—was allowed to plead guilty to one count
24 of attempted possession of methamphetamine, and was sentenced to 20 days of
25 work crew.
26
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1 Edington, on the other hand, was ultimately convicted of engaging in two
2 drug sales on March 6, 2007, and on March 23, 2007. The March 6th transaction
3 took place in a car driven by Edington near Evergreen Park in Vancouver,
4 Washintgon. The March 23rd transaction occurred in a car driven by Taskey near
5 the Silver Dragon restaurant in Vancouver, Washington. At trial, evidence was
6 introduced that the distance from a point near Evergreen Park to several nearby
7 school bus stops ranged from 360 to 694 feet. Similarly, evidence was admitted
8 that the distance from a point near the Silver Dragon to several nearby school bus
9 stops ranged from 324 to 976 feet. *See State v. Edington*, RP 75-84, 486-95
10 (testimony of Matthew Dietemeyer); RP 462-77 (testimony of Barbara Suter).³
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16 At the conclusion of the evidence, the trial court instructed the jury
17 regarding the special allegations that Edington committed the deliveries within
18 1,000 feet of a school bus route stop:
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21 If you find the defendant guilty of delivering a controlled substance as
22 charged in any of the Counts 1, 2, 3 or 4, it will then be your duty to
23 determine whether or not the defendant delivered the controlled substance in
24 that Count, within one thousand feet of a school bus route stop designated by
25 a school district. You will be furnished with a Special Verdict Form A on
26 each Count, for this purpose.

27 If you find the defendant not guilty of Delivery of a Controlled Substance—
28 Cocaine, as to any of Counts 1, 2, 3 or 4, do not use the Special Verdict

29 ³ “RP” refers to the Report of Proceedings from Edington’s trial.
30

1 Form for that Count. If you find the defendant guilty in any Count, you will
2 complete the Special Verdict Form for that Count. *Since this is a criminal*
3 *case, all twelve of you must agree on the answer to a Special Verdict.*

4 If you find from the evidence that the State has proved beyond a reasonable
5 doubt that the defendant delivered the controlled substance within one
6 thousand feet of a school bus route stop designated by a school district, it
7 will be your duty to answer the Special Verdict “yes” as to that Count.

8 On the other hand, if, after weighing all of the evidence, you have a
9 reasonable doubt that the defendant delivered the controlled substance to a
10 person within one thousand feet of a school bus route stop designated by a
11 school district, it will be your duty to answer the Special Verdict “no” as to
12 that Count.

13 *See Exhibit C, Instruction No. 18 (emphasis supplied).*

14 **IV. ARGUMENT**

15 Claim No. 1:

16
17 The trial court erred by instructing the jury that it must be unanimous to
18 answer “no” to the questions posed in the special verdict forms. This error
19 was not harmless beyond a reasonable doubt.

20 Instruction No. 18 Was an Incorrect Statement of the Law.

21 Edington’s jury had to be unanimous in order to answer “yes” on the special
22 verdict forms. However, the reverse was not true—the jury did not have to be
23 unanimous to answer “no.” Instead, if *any one* of the jurors had a reasonable doubt
24 regarding the special verdict, then the jury was required to answer “no” on the
25 special verdict forms.
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1 The outcome of Edington’s petition is controlled by the Washington
2 Supreme Court’s recent decision in *State v. Bashaw*, 169 Wash.2d 133, 234 P.3d
3 195 (2010). In *Bashaw*, the defendant—like Edington—was accused of engaging
4 in multiple drug sales to an informant, each occurring within 1,000 feet of a school
5 bus route stop. Regarding the enhancement, the trial court instructed the jury that
6 “Since this is a criminal case, all twelve of you must agree on the answer to the
7 special verdict.” *Bashaw*, 169 Wash.2d at 139. This language is *identical* to the
8 instruction given to Edington’s jury. See Exhibit C.

9 The Washington Supreme Court framed and resolved the instructional issue
10 as follows:
11

12 [W]hen a jury has unanimously found a defendant guilty of a substantive
13 crime and proceeds to make an additional finding that would increase the
14 defendant’s sentence beyond the maximum penalty allowed by the
15 guidelines, must the jury’s answer be unanimous in order to be final? We
16 answered this question in *State v. Goldberg*, 149 Wash.2d 888, 72 P.3d 1083
17 (2003), and the answer is no. A nonunanimous jury decision on such a
18 special finding is a final determination that the State has not proved that
19 finding beyond a reasonable doubt. . .

20 *Bashaw*, 169 Wash.2d at 145 (footnote omitted).

21 The Court noted that this rule serves a number of important values:

22 First, we have previously noted that “[a] second trial exacts a heavy toll on
23 both society and defendants by helping to drain state treasuries, crowding
24 court dockets, and delaying other cases while also jeopardizing the interests
25 of defendants due to the emotional and financial strain of successive
26 defenses.” *State v. Labanowski*, 117 Wash.2d 405, 420, 816 P.2d 26 (1991).

1 The costs and burdens of a new trial, even if limited to the determination of
2 a special finding, are substantial. We have also recognized a defendant's
3 “‘valued right’ to have the charges resolved by a particular tribunal.” *State v.*
4 *Wright*, 165 Wash.2d 783, 792-93, 203 P.3d 1027 (2009) (internal quotation
5 marks omitted) (quoting *Arizona v. Washington*, 434 U.S. 497, 503, 98 S.Ct.
6 824, 54 L.Ed.2d 717 (1978)). Retrial of a defendant implicates core concerns
7 of judicial economy and finality. Where, as here, a defendant is already
8 subject to a penalty for the underlying substantive offense, the prospect of an
9 additional penalty is strongly outweighed by the countervailing policies of
10 judicial economy and finality.

11 *Bashaw*, 169 Wash.2d at 146-47. The Court concluded:

12 [T]he jury instruction stating that all 12 jurors must agree on an answer to
13 the special verdict was an incorrect statement of the law. Though unanimity
14 is required to find the *presence* of a special finding increasing the maximum
15 penalty, *see Goldberg*, 149 Wash.2d at 893, 72 P.3d 1083, it is not required
16 to find the *absence* of such a special finding. The jury instruction here stated
17 that unanimity was required for either determination. That was error.

18 *Bashaw*, 169 Wash.2d at 147.

19 Edington’s case is not only indistinguishable from, it is identical to *Bashaw*.
20 Instruction No. 18 was in incorrect statement of the law, and it was error for the
21 trial court to give it.

22 *The Error Was Not Harmless Beyond a Reasonable Doubt.*

23 In order for the instructional error in this case to be deemed harmless, this
24 Court must “conclude beyond a reasonable doubt that the jury verdict would have
25 been the same absent the error.” *Bashaw*, 169 Wash.2d at 147, quoting *State v.*
26 *Brown*, 147 Wash.2d 330, 341, 58 P.3d 889 (2002), and *Neder v. United States*,
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1 527 U.S. 1, 19, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). In *Bashaw*, despite the
2 fact that there was evidence admitted at trial that all three transactions took place
3 within 1,000 feet of a school bus route stop, and that two of the transactions
4 occurred within 100-150 feet of a school bus route stop, the Court nevertheless
5 concluded that the instructional error was not harmless:
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9 ***The result of the flawed deliberative process tells us little about what result
10 the jury would have reached had it been given a correct instruction.***

11 *Goldberg* is illustrative. There, the jury initially answered “no” to the special
12 verdict, based on a lack of unanimity, until told it must reach a unanimous
13 verdict, at which point it answered “yes.” *Id.* at 891-93, 72 P.3d 1083. Given
14 different instructions, the jury returned different verdicts. We can only
15 speculate as to why this might be so. For instance, when unanimity is
16 required, jurors with reservations might not hold to their positions or may
17 not raise additional questions that would lead to a different result. ***We
18 cannot say with any confidence what might have occurred had the jury
19 been properly instructed. We therefore cannot conclude beyond a
20 reasonable doubt that the jury instruction error was harmless.***

21 *Bashaw*, 169 Wash.2d at 147-48 (emphasis supplied).

22 This reasoning applies with equal force here. The evidence of distance in
23 Edington’s case was similar to the evidence in *Bashaw*. Indeed, the lowest
24 distance testified to regarding the counts for which Edington’s was convicted was
25 324 feet, while in *Bashaw* there was testimony that the distance from two of the
26 transactions to the nearest school bus route stop was as low as 100-150 feet. It is
27 simply impossible to determine what the jury would have done had it been
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1 properly instructed. The holding of *Bashaw* is clear: the instructional error which
2 occurred here cannot be deemed harmless.
3

4 Claim No. 2:

5 Appellate counsel was constitutionally ineffective in failing to raise the issue
6 in Claim No. 1 on direct appeal.
7

8 Effective assistance of trial counsel is guaranteed by the Sixth Amendment
9 to the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 104
10 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The right to effective assistance of appellate
11 counsel, on the other hand, is rooted in the due process clause. *United States v.*
12 *Skurdal*, 341 F.3d 921, 926 (9th Cir. 2003). Nevertheless, the standard adopted in
13 *Strickland* does not only protect criminal defendants at the trial level; it also
14 applies to claims of ineffective assistance of appellate counsel. *Smith v. Robbins*,
15 528 U.S. 259, 285, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000).
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20 To establish that his appellate attorney's representation was constitutionally
21 inadequate, Edington must show that counsel's performance was deficient, and that
22 the deficient performance was prejudicial to his defense. *Strickland*, 466 U.S. at
23 687. In the appellate context, counsel's failure to discover and raise non-frivolous
24 issues on appeal constitutes deficient performance under *Strickland*. *Delgado v.*
25 *Lewis*, 223 F.3d 976, 980 (9th Cir. 2000), citing *Smith v. Robbins*, 528 U.S. at 285.
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1 The second prong of the *Strickland* inquiry is prejudice. If there is a
2 reasonable probability that, but for appellate counsel's unreasonable errors or
3 omissions, the outcome of the proceeding would have been different, Edington is
4 entitled to relief. *See Strickland*, 466 U.S. at 694. A reasonable probability is a
5 probability sufficient to undermine confidence in the outcome. *Id.*

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8 The "reasonable probability" standard is not stringent, and requires a
9 showing by less than a preponderance of the evidence that the outcome of the
10 proceeding would have been different had the claimant's rights not been violated.
11
12 *See, e.g., Pirtle v. Morgan*, 313 F.3d 1160, 1172 (9th Cir. 2002), *cert. denied*, 539
13 U.S. 916 (2003), quoting *Strickland*, 466 U.S. at 694:

14
15
16 A "reasonable probability" is less than a preponderance: "the result of a
17 proceeding can be rendered unreliable, and hence the proceeding itself
18 unfair, even if the errors of counsel cannot be shown by a preponderance of
19 the evidence to have determined the outcome."

20 The Washington Supreme Court decided *Goldberg* in 2003, four years
21 before Edington's trial. The Court accepted review in *Bashaw* on December 2,
22 2008, while Edington's direct appeal was still pending in this Court. *See State v.*
23 *Bashaw*, 165 Wash.2d 1002 (2008). As noted above, the issue presented in
24 *Bashaw* is identical to the instructional error which occurred here. Appellate
25
26 counsel failed to raise this obviously non-frivolous issue on direct appeal, and there
27
28 is more than a reasonable probability that, had counsel raised this issue, Edington's
29
30

1 sentence enhancements would have been vacated on appeal. Edington is entitled to
2 that relief now.
3

4 **V. CONCLUSION**

5 This Court should grant Mr. Edington's petition, vacate the school bus route
6 stop enhancements, and remand this case to the Clark County Superior Court for
7 re-sentencing.
8
9

10 DATED this 18th day of November, 2010.

11
12
13 

14 _____
15 Steven Witchley, WSBA #20106
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17 705 Second Ave., Suite 401
18 Seattle, WA 98104
19 (206) 262-0300
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21 steve@ehwlawyers.com

NO. 41472-4-II

COURT OF APPEALS
DIVISION II

10 DEC -2 PM 12:24

STATE OF WASHINGTON

BY
DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

In Re Personal Restraint Petition of:

JOSEPH EDINGTON,

Petitioner.

VERIFICATION BY PETITIONER

**Clark County Superior Court No.
07-1-00616-8**

Steven Witchley
Law Offices of Holmes & Witchley, PLLC
705 Second Avenue, Suite 401
Seattle, WA 98104
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VERIFICATION BY PETITIONER

I, Joseph Edington, declare under penalty of perjury that I have received a copy of the personal restraint petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 22 day of November, 2010.

Joe Edington
Joseph Edington

COURT OF APPEALS
DIVISION II
10 DEC 2 4 12: 24
STATE OF MISSISSIPPI
BY _____
DEPUTY

EXHIBIT A:

Judgment and Sentence

OCT 09 2007

SOWDER

S9

Sherry W. Parker, Clerk, Clark Co.

SCANNED

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
v.
JOSEPH ALLEN EDINGTON,
Defendant.
SID: WA14401398
DOB: 4/17/1972

No. 07-1-00616-8

FELONY JUDGMENT AND SENTENCE
(FJS) 07-1-00616-8
PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY

Clerk's action required;
 Paragraph 4.5 (SDOSA), 4.2,
 5.3, 5.6 and 5.8

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on June 14, 2007
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
01	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	69.50.401(1),(2)(a)	3/6/2007
03	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	69.50.401(1),(2)(a)	3/23/2007

(If the crime is a drug offense, include the type of drug in the second column.)
as charged in the Information.

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under **RCW 9.94A.712**.
- A special verdict/finding that the offense was **predatory** was returned on Count(s) _____. RCW 9.94A._____.

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- A special verdict/finding that the **victim was under 15 years of age** at the time of the offense was returned on Count(s) _____ RCW 9.94A._____.
- A special verdict/finding that the **victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult** at the time of the offense was returned on Count(s) _____ RCW 9.94A.____, 9A.44.010.
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of **firearm** was returned on Count(s) _____ RCW 9.94A.602, 533.
- A special verdict/finding for use of **deadly weapon** other than a firearm was returned on Count(s) _____ RCW 9.94A.602, .533.
- A special verdict for **Violation of the Uniform Controlled Substances Act (VUCSA)** was returned on Count(s) 1 and 3, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are **Domestic Violence** offense(s) as that term is defined in RCW 10.99.020:
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____.
- The court finds that the current offense is a second or subsequent offense under the Uniform Controlled Substances Act, chapter 69.50 RCW, which invokes the provisions of RCW 69.50.408.

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
See Attached Criminal History					

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- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: _____
- The State has moved to dismiss count(s) 02 (DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE), 04 (DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE).

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUS-NESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	12	II - D	60 MONTHS to 120 MONTHS	(v) 24 MONTHS	84 TO 144 MONTHS	20 YEARS \$50,000
03	12	II - D	60 MONTHS to 120 MONTHS	(v) 24 MONTHS	84 TO 144 MONTHS	20 YEARS \$50,000

* (F) Firearm, (D) other Deadly Weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8).

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____.

The defendant and the 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 to by the defendant, admitted by the defendant in the Guilty Plea, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

The defendant waives his right to have a jury determine any issues regarding the imposition of an exceptional sentence upward. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348, 147 L. Ed 2d 435 (2000), *Blakely v. Washington*, ___ U.S. ___, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

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 defendant'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.750/753.

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

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

2.7 If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

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III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The Court DISMISSES Counts 02 (DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE), 04 (DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE).
- The defendant is found NOT GUILTY of Counts _____.
- 3.3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

RTN/RJN	\$ _____	Restitution to be paid to: <input type="checkbox"/> Victim(s) and amounts to be set by separate court order		RCW 9.94A.750/.753
PCV	\$500.00	Victim Assessment		RCW 7.68.035
	\$ _____	DV Penalty Assessment		RCW 10.99.080
CRC		Court Costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190		
	\$ 200.00	Criminal filing fee	FRC	RCW 9.94A.505
	\$ _____	Witness costs	WFR	RCW 10.01.160 and RCW 2.40.010
	\$ _____	Sheriff Service Fees	SFR/SFS/SFW/WR F	RCW 10.01.160 and 36.18.040
	\$250.00	Jury Demand Fee \$ 250.00	JFR	RCW 10.01.160 and 10.46.190
	\$ _____	Extradition costs	EXT	RCW 9.94A.505
	\$ _____	Other Costs _____		RCW 9.94A.760
PUB	\$ 1,000.00	Fees for court appointed attorney Trial per diem if applicable		RCW 9.94A.505/.760/.030
WFR	\$ _____	Court appointed defense expert and other defense costs		RCW 9.94A.505, .760, 9.94A.030
FCM/MTH	\$500.00	Fine		RCW 9A.20.021
CDF/LDI/FCD/NTF/SAD/SDI	\$2,000.00	Drug fund contribution to be paid within two (2) years Fund # <input checked="" type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)		RCW 9.94A.760
CLF	\$100.00	Crime lab fee - <input type="checkbox"/> Suspended due to Indigency		RCW 43.43.690

	\$100.00	Felony DNA Collection fee (for crimes committed on or after July 1, 2002)	RCW 43.43.7541
RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To: _____ (List Law Enforcement Agency)	RCW 38.52.430
	\$ <u>262.50</u>	Other Costs for: <u>Court-appointed Defense Investigator</u>	RCW 9.94A.760

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.750/753. A restitution hearing:
- shall be set by the prosecutor
 - is scheduled for _____

Restitution ordered above shall be joint and several with the co-defendants listed in the Information or identified below: _____

The Department of Corrections/Superior Court Clerk Collections Unit 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 Superior Court Clerk and on a schedule established by the Department of Corrections/Superior Court Clerk Collections Unit, commencing immediately, unless the court specifically sets forth the rate here:

Not less than \$ _____ per month commencing _____
RCW 9.94A.760.

The defendant shall report as directed by the Superior Court Clerk and provide financial information as requested. RCW 9.94A.760(7)(b). The defendant shall report in person no later than the close of business on the next working day after the date of sentencing or release from custody. A map has been provided to the defendant showing the location of the Superior Court Clerk Collections Unit, 500 West 8th Street, Suite 50, Vancouver, Washington. The defendant must report any changes in address and phone numbers to the Collections Unit within 72 hours of moving.

In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ _____. RCW 9.94A.760

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. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall pay the cost of services to collect unpaid legal financial obligations. This is an annual fee which will be automatically renewed until financial obligations are completed. RCW 9.94A.780 and RCW 36.18.190

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

HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340.

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Failure to provide the DNA/HIV testing sample is a violation of this Judgment and Sentence and a warrant may be issued to compel compliance.

The defendant shall not have contact with _____ including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

A Supplemental Domestic Violence Protection Order, Antiharassment No Contact Order, or Sexual Assault Protection Order is filed with the Judgment and Sentence.

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

4.4 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 confinement in the custody of the Department of Corrections (DOC):

104 days/months on Count 01 (80 months base + 24 school bus stop)
104 days/months on Count 03 (on each count)

Actual number of months of total confinement ordered is: 104 months
(Add mandatory firearm and 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 a mandatory minimum term of _____.

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 a juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count	minimum term	maximum term
01		
03		

(c) Credit for 188 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced. RCW 9.94A.505

4.6 **COMMUNITY PLACEMENT** is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY for Count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered on Counts 1 & 3 for a range from 9 to 12 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 offenses 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.505. 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		
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 Department of Corrections-approved education, employment and/or community 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 the Department of Corrections; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections and (8) for sex offenses, submit to electronic monitoring if imposed by Department of Corrections. 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 be on community placement/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community placement/community custody and any other conditions stated in this Judgment and Sentence. The defendant's conditions of Community Placement/Community Custody include the following:

- 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 if the offense was committed on or after July 24, 2005. (RCW9.94A.030(8)).

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

- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family or as authorized by his/her community corrections officer for treatment purposes. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:

- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages at all to excess.
The defendant will will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for substance abuse mental health anger management treatment and fully comply with all recommended treatment.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment parenting program as established by the community corrections officer and/or the treatment facility.
- Defendant shall participate in a **domestic violence perpetrator program** as approved under RCW 26.50.150 and fully comply with all recommended treatment. RCW 9.94A.505 (11).
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional

evaluations at a later date, if deemed appropriate.

- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any unsupervised contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community

corrections officer and/or the treatment facility. Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the Prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.

- Defendant shall, at his or her own expense, submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall, at his or her own expense, submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody. Copies of the examination results shall be provided to the Prosecuting Attorney's Office upon request.
- Defendant shall not possess or use any pornographic material, defined as any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult or child human genitals: provided however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition as defined in RCW 9.68.130(2), or any equipment of any kind used for sexual gratification and defendant shall not frequent establishments that provide such materials or equipment for view or sale.
- If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the community custody time is tolled during that time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections for supervision.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- 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.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

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

- 4.8 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.9 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.10 When there is a reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections can conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purposes of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned and possessed by the defendant.

4.11 Other:

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 ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes 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 9.94A505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections 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.7606
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

Cross off if not applicable:

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

~~1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting~~

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school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington State, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

8. Application for a name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 The court finds that Count ____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately punch the defendant's Washington Driver's license or permit to drive

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with a "C" as directed by the Department of Licensing pursuant to RCW 46.20.270. The clerk of the court is further 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.

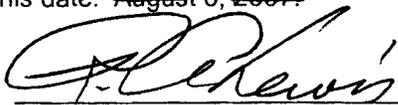
5.9 If the defendant is or becomes subject to a court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW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

5.10 Persistent Offense Notice

- The crime(s) in count(s) _____ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

5.11 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: ~~August 6, 2007.~~ ^{October 9, 2007}

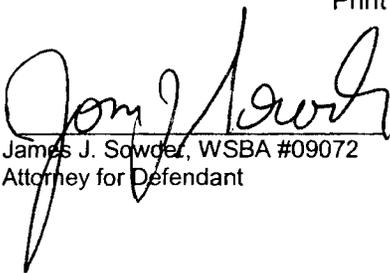


 JUDGE OF THE SUPERIOR COURT

Print Name: R.A. Lewis



 Kasey T. Vu, WSBA #31528
 Deputy Prosecuting Attorney



 James J. Sowder, WSBA #09072
 Attorney for Defendant



 JOSEPH ALLEN EDINGTON
 Defendant

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SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

NO. 07-1-00616-8

v.

JOSEPH ALLEN EDINGTON,

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

Defendant.

SID: WA14401398

DOB: 4/17/1972

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	69.50.401(1),(2)(a)	3/6/2007
03	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	69.50.401(1),(2)(a)	3/23/2007

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	104 Days (Months)
03	DELIVERY OF A CONTROLLED SUBSTANCE - COCAINE	104 (Months)

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 188 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



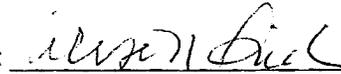
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

10/9/07

SHERRY W. PARKER, Clerk of the
Clark County Superior Court



By:



Deputy

CAUSE NUMBER of this case: 07-1-00616-8

VOTING RIGHTS STATEMENT: I acknowledge that my right to vote has been lost due to felony conviction. 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: x Joe Edington

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

Interpreter signature/Print name: _____

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

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

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

**IDENTIFICATION OF DEFENDANT
JOSEPH ALLEN EDINGTON**

Alias name, SSN, DOB:	
SID No. WA14401398 (If no SID take fingerprint card for State Patrol)	Date of Birth 4/17/1972
Race: B	Sex: M
Driver License No.	Driver License State:
FBI No. 797631NA2	Local ID No. (CFN): 112715
	Corrections No. 993281
Other	

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: Sherry Parker, Deputy Clerk
Dated: 10/9/07

DEFENDANT'S SIGNATURE: x Joe Edington



Left four fingers taken simultaneously Left Thumb Right Thumb Right four fingers taken simultaneously



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2
3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 JOSEPH ALLEN EDINGTON,
Defendant

No. 07-1-00616-8

APPENDIX 2.2

2nd AMENDED
DECLARATION OF CRIMINAL HISTORY

9
10 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of
11 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
12 defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
BURGLARY 1	CLARK/WA 211786 R010 88R008505	4/20/1988	8/8/1988	1
ATTEMPTED INDECENT LIBERTIES	CLARK/WA 211786 R030 88R008507	8/22/1988	10/11/1988	1/2 <i>Red</i>
ACCOMPLICE TO ASSAULT 2	CLARK/WA 89-8-00431-1 211786 R050 89R007015	6/3/1989	12/15/1989	1
THEFT 1 (THEFT 2 IN WA, \$1,000 VALUE ELECTRONIC EQUIPMENT)	WASHINGTON/OR C911885CR	11/28/1991	1/6/1992	<i>D. S. P. C. R. DISTRICT</i>
THEFT 1 (THEFT 2 IN WA, \$500 CD PLAYER)	WASHINGTON/OR C911884CR	11/28/1991	1/6/1992	<i>J. M.</i>
RESIDENTIAL BURGLARY	CLARK/WA 92-1-00360-1	3/23/1992	5/5/1992	1
CONSPIRACY TO COMMIT DCS - COCAINE	CLARK/WA 98-1-02061-0	11/10/1998	3/1/1999	3
ELUDING A POLICE VEHICLE	CLARK/WA 06-1-00938-0	2/16/2006	7/10/2006	1
DCS - COCAINE (2 Counts)	CLARK/WA 07-1-00616-8 (Current)	3/6/2007 3/23/2007	PENDING	3

27 The defendant committed a current offense while on community placement (adds one
28 point to score). RCW 9.94A.525.

29 **DECLARATION OF CRIMINAL HISTORY**
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

141

The Defendant has the following misdemeanor convictions , among others, which prevent washout:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
ATT TO ELUDE	MULTNOMAH/OR 00-09-37633	9/9/2000	4/25/2001	GM
MALICIOUS MISCHIEF 3 - DV	CLARK/WA 02-1-01373-2	7/7/2002	11/20/2002	GM

DATED this 9th day of October, 2007.

Joe Edington
Defendant

James J. Sowder
James J. Sowder, WSBA#9072
Attorney for Defendant

Casey W.
Kasey T Vu, WSBA#31528
Deputy Prosecuting Attorney

EXHIBIT B:

State v. Edington, No. 36848-0-II
Unpublished Opinion

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE RCWA
2.06.040

Court of Appeals of Washington,
Division 2.
STATE of Washington, Respondent,
v.
Joseph Allen **EDINGTON**, Appellant.
No. 36848-0-II.

May 12, 2009.

Appeal from Clark Superior Court; Honorable Robert A. Lewis, J.
Lisa Elizabeth Tabbut, Attorney at Law, Longview, WA, for Appellant.

Michael C. Kinnie, Attorney at Law, Vancouver, WA, for Respondent.

UNPUBLISHED OPINION

PENOYAR, A.C.J.

*1 A jury convicted Joseph **Edington** on two counts of delivery of a controlled substance. He argues that the trial court violated his right to present a defense of his choosing by prohibiting testimony of a witness. Further, he claims that a community custody provision in his judgment and sentence is unconstitutionally vague. We affirm the trial court's evidentiary rulings but remand for resentencing on the community custody issue.

FACTS

On April 9, 2007, the State charged **Edington** with four counts of delivery of a controlled substance. The State alleged that each of these four deliveries occurred within 1,000 feet of a school bus stop, in violation of RCW 69.50.435(1)(b) and RCW 9.94A.533(6).

At trial, the State offered the testimony of police informant Kristine Taskey. Taskey testified that she agreed to work as a police informant after her 2006 arrest for possession of illegal drugs. Taskey told the jury that she knew she was "in a lot of trouble" and that in exchange for a police officer putting in a "good word" for her in her drug case, Taskey agreed to "do some buys" involving **Edington**.^{FN1} 2B Report of Proceedings (RP) at 341-42. Ultimately, Taskey participated in four controlled drug buys with the police and **Edington**.

^{FN1} Taskey knew **Edington** prior to her involvement with police. She had known **Edington** for about two years as he was her sister-in-law's boyfriend.

Taskey testified that the procedure for each of the controlled buys was the same: (1) Taskey would meet with police, (2) police would search her car, (3) police would strip search her, (4) Taskey would make a phone call to **Edington** in police presence, (5) police would give Taskey forty dollars in marked bills to make the buy, (6) police would observe Taskey making the buy from **Edington**, (7) Taskey would give crack cocaine to police who would (8) strip search her and (9) search her car again.

Before cross examination, and outside the presence of the jury and Taskey, defense counsel raised the issue of bringing in a witness who would testify that several years earlier, Taskey concealed clean urine in a vial placed in her vagina, and used that urine to pass court ordered urinalysis tests. As an offer of proof, defense counsel noted that his witness was prepared to testify that she had seen a strange liquid-holding device at Taskey's residence and that when she asked Taskey about it she was told that its purpose was to "smuggle" clean urine. 2B RP at 381-82. This witness would also testify to seeing a bottle of what appeared to be urine at Taskey's house. Defense counsel noted that though this witness "was not present when [Taskey] actually inserted [the vial]" into her vagina, "[s]he observed the items, she observed the urine and she observed Ms. Taskey go into the bathroom, apparently to insert [the vial]." 2B RP at 383. Defense counsel argued that this testimony should be permitted to show that Taskey "[had] ex-

perience in successfully smuggling contraband past police using a body cavity....” 2B RP at 387.

In response, the State argued that **Edington's** offer of proof was nothing more than speculation and further, that “in this instance” there was no evidence that “Ms. Taskey used her body or orifices ... to store any controlled substance.” 2B RP at 384. Further, the State noted, the way the narcotics were packaged would make it virtually impossible to store the items in the matter described in defense's offer of proof. The trial court agreed with the State. In its ruling, the trial court said:

*2 All right. I've had the opportunity to hear both counsel extensively on the issue. My understanding originally was that the testimony was going to be that the witness in this case, Ms. Taskey, had previously, according to eyewitnesses, concealed controlled substances in her body cavity and smuggled them.

That's not the testimony that I'm receiving. Instead, it's [the] testimony of a witness who says that on one occasion she observed paraphernalia for smuggling urine, a liquid substance, and that Ms. Taskey indicated that she had on previous occasions and on this occasion smuggled clean urine into an area. That has extremely slight probative value and it is outweighed by prejudicial effect, so I will not permit that testimony.

You've already elicited that body cavity searches weren't performed in this area. That's-and certainly you're not prohibited from arguing that there's a possibility that there was something in her body cavities, but that's all the speculation I'll allow with regard to that.

2B RP at 387-88.

Examination, direct and cross, continued. In addition to Taskey, the State offered the testimony of several police officers who participated in the controlled buys. The defense offered three character witnesses. **Edington** did not testify.

The jury convicted **Edington** on two of the counts, plus enhancements, but was hung on the remaining two. On the two hung-jury counts the trial court de-

clared a mistrial. Instead of refileing those charges, the State dismissed the two counts. The trial court then sentenced **Edington** to the standard range sentence of 80 months plus 24 months for the enhancements for each count to run concurrently. The sentence also included 9 to 12 months of community custody and an order to not “possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, police scanners, and hand held electronic scheduling and data storage devices.” Clerk's Papers at 133.

Edington now appeals.

ANALYSIS

I. Evidence of Prior Bad Act

Edington argues that the trial court violated his constitutional right to call witnesses and present a defense by excluding testimony that Taskey had previously hidden contraband on her body to deceive law enforcement. The State responds that the trial court ruled properly and did not abuse its discretion. We agree with the State and affirm the trial court's ruling.

We review a trial court's exclusion of evidence for an abuse of discretion. *State v. Posey*, 161 Wn.2d 638, 648, 167 P.3d 560 (2007). The trial court's balancing of the danger of prejudice against the probative value of the evidence is a matter within the trial court's discretion, which we will overturn “only if no reasonable person could take the view adopted by the trial court.” *Posey*, 161 Wn.2d at 648 (citing *State v. Hudlow*, 99 Wn.2d 1, 17, 659 P.2d 514 (1983)).

*3 Additionally, we review a trial court's relevancy determinations for manifest abuse of discretion. *State v. Gregory*, 158 Wn.2d 759, 835, 147 P.3d 1201 (2006). A trial court, not an appellate court, is in the best position to evaluate the dynamics of a jury trial and, therefore, the prejudicial effect and relevancy of evidence. *Posey*, 161 Wn.2d at 648.

Here the trial court did not abuse its discretion by prohibiting the testimony about prior alleged smuggling. It determined that probative value of permitting the testimony was outweighed by its prejudicial

effect. The testimony was not overly probative for one main reason: the packaging of the contraband. As the State noted, the way in which the cocaine was delivered to the police from Taskey's controlled buy from **Edington**, would have made concealing in the way suggested by the defense nearly impossible. Rocks of cocaine were wrapped only in a thin piece of tissue paper with no other packaging. The State argued that Taskey could not have removed this packaging from her body cavity without some evidence of it being discovered, such as plastic wrap, some other container or the package itself would have been wet with moisture. Further, the testimony in this case from Taskey and the police officers indicates that the searches of Taskey were thorough enough and police monitoring of the controlled buys was strict enough that Taskey would not have had the requisite time or privacy to conceal the cocaine inside her person.

Additionally, the trial court determined the testimony to be overly prejudicial when balanced against probative value. ER 403. This is likely because the witness did not actually see Taskey conceal the contraband rather, she claims to have seen the vials and heard Taskey talk about what she did with them. Also, in light of the testimony regarding the thoroughness of the searches and the monitoring of the controlled buys, the trial court likely concluded that unfair prejudice would result if the court permitted information of this unrelated situation.

It is worth noting that the trial court permitted defense counsel to argue its theory that Taskey could have set up **Edington** by concealing the cocaine on her person. Defense counsel argued that theory quite effectively. The jury convicted **Edington** on only two of the four counts; counts one and three. For those two counts, the jury heard testimony that the police were able to observe Taskey's movements at all times. For the other two counts, the controlled buys occurred inside an apartment where the police could not observe Taskey and **Edington**. In one of those instances Taskey and others testified that **Edington** was not the only person present in the apartment. It appears the jury took defense counsel's point as they did not convict **Edington** of the charges where the police did not observe all of Taskey's movements. We affirm the trial court's ruling.

II. Community Custody Condition

Edington argues that the community custody condition the trial court imposed, prohibiting his possession of drug paraphernalia, is unconstitutionally vague. If a case can be decided on nonconstitutional grounds, however, we should decline to consider the constitutional issues. State v. Hirschfelder, 148 Wn.App. 328, 333, 199 P.3d 1017 (2009). As such, we do not address the unconstitutionality of the community custody condition because we can resolve the issue on a statutory basis.

*4 RCW 9.94A.703(3)(f) allows courts to impose "crime related prohibitions" as part of community custody. In State v. Zimmer, we held that a prohibition on possession of a cellular phone and an "electronic data storage device" was not a crime related prohibition because there was no evidence in the record indicating that the defendant used such a device in committing the crime. 146 Wn.App. 405, 413-14, 190 P.3d 121 (2008). Erwin's judgment and sentence prohibits him from possessing things that "can be used" for drug related purposes, even if Erwin has no such intent. As in Zimmer, in this case it is hard to see how possession of things such as boxes, matches, knives or other random objects is crime related, unless the intent is to use these items for drug related purposes.

We hold that the drug paraphernalia provision in **Edington's** judgment and sentence is not a "crime-related prohibition" under RCW 9.94A.703. We therefore strike this provision and remand this matter for the trial court to consider imposing of a more narrowly worded and "crime related" provision. The trial court may consider referencing RCW 69.50.102(a) that defines "drug paraphernalia" and may also consider limiting the prohibition on possession to items that **Edington** actually intends to use for drug purposes.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

I concur: BRIDGEWATER, J.QUINN-BRINTNALL, J.

I concur with the majority's decision to affirm Joseph **Edington's** delivery of a controlled substance con-

victions. But for the reasons stated in *State v. Valencia*, 148 Wn.App. 302, 198 P.3d 1065 (2009), I respectfully dissent from that portion of the majority's decision holding that the drug paraphernalia provision of **Edington's** judgment and sentence is not a "crime related prohibition." "Forbidding a defendant from possessing drug paraphernalia, where the conviction was related to drugs or substance abuse, 'is a "crime-related prohibition[]" authorized under RCW 9.94A.700(5)(e).' " *Valencia*, 148 Wn.App. at 323 (alteration in original) (quoting *State v. Motter*, 139 Wn.App. 797, 804, 162 P.3d 1190 (2007), review denied, 163 Wn.2d 1025 (2008)). In my opinion, community custody conditions such as the prohibition on possession of drug paraphernalia which do not infringe on a convict's constitutionally protected First Amendment rights are not ripe for review on direct appeal. Compare *State v. Bahl*, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008) (pre-enforcement challenge to possessing pornography ripe because First Amendment rights implicated as a matter of law, issue not fact specific) with *Motter*, 139 Wn.App. 797 (pre-enforcement challenge to prohibition of possessing drug paraphernalia not ripe for review because requires factual determination); *Valencia*, 148 Wn.App. at 317-20. Accordingly, because the trial court was sentencing **Edington** on two counts of delivering a controlled substance, I would decline to review **Edington's** challenge to the trial court's community custody condition prohibiting him from possessing drug paraphernalia as premature.

Wash.App. Div. 2,2009.
State v. Edington
Not Reported in P.3d, 2009 WL 1299424
(Wash.App. Div. 2)

END OF DOCUMENT

EXHIBIT C:

Instruction No. 18

INSTRUCTION NO. 18

If you find the defendant guilty of delivering a controlled substance as charged in any of the Counts 1, 2, 3 or 4, it will then be your duty to determine whether or not the defendant delivered the controlled substance in that Count, within one thousand feet of a school bus route stop designated by a school district. You will be furnished with a Special Verdict Form A on each Count, for this purpose.

If you find the defendant not guilty of Delivery of a Controlled Substance - Cocaine, as to any of Counts 1, 2, 3 or 4, do not use the Special Verdict Form for that Count. If you find the defendant guilty in any Count, you will complete the Special Verdict Form for that Count. Since this is a criminal case, all twelve of you must agree on the answer to a Special Verdict.

If you find from the evidence that the State has proved beyond a reasonable doubt that the defendant delivered the controlled substance within one thousand feet of a school bus route stop designated by a school district, it will be your duty to answer the Special Verdict "yes" as to that Count.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt that the defendant delivered the controlled substance to a person within one thousand feet of a school bus route stop designated by a school district, it will be your duty to answer the special verdict "no" as to that Count.