

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

11/20/11 10:00 AM
STATE OF WASHINGTON
BY: 

STATE OF WASHINGTON,)
RESPONDENT)
V.)
JD JONES BARTON,)
APPELLANT)

NO. 41777-4-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, JD JONES BARTON, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the court will review this statement of additional grounds for review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

Charles Lane WSBA #25022, Barton's court appointed counsel; presented his assertions before the RESENTENCING court(04-20-2011)which clearly established a constitutional predicate for a claim of ineffective assistance-RP3, Line11-15. MICKENS V. TAYLOR(2002), 535 U.S. 162, 165-66, 122 S.Ct. 1237, 152 L.Ed.2d 291. The RESENTENCING court neglected to investigate MR. LANE's assertions as he himself voiced the fact that he actively represented conflicting interests that produced a negative impact of constitutional dimensions of Barton's rights when he plead guilty.

ADDITIONAL GROUND 2

MR. Lane requested the resentencing court for a STAY OF PROCEEDINGS due to an active C.O.A #41777-4-II. See RP4, Line12-20. Barton sought for a stay due to his suspicions of the state's attempts to argue after the resentencing hearing that the C.O.A #41777-4-II would be moot. The C.O.A record will reveal that the state did in fact make that very argument. Further noted Barton "REFUSED TO SIGN" the amended J&S; the resentencing court had to issue an order to obtain Barton's fingerprints-RP13, Line4-13, in showing Barton DID NOT waive any rights. The Resentencing court shall have

either allowed Barton to (i)Withdraw his Guilty Plea(s); and/or (ii)Granted the STAY OF PROCEEDINGS and/or (iii)sentenced Barton in accordance to the law as afforded under the RULE OF LENITY.

ADDITIONAL GROUND 3

The resentencing court also imposed community custody even after MR. Lane's Objection-RP8, Line13-19; as the state did not have authority to asks the court to impose such a sentence that exceeds the statutory maximum. See attached in showing Barton's "ERD" being "08-29-2019". Therefore making the community custody facially invalid RCW 9A.20.21(1)(b) and RCW 9.94A.728(1)(2); see also amended J&S p.6, para.4.6. STATE V. ZAVALA-REYNOSO, 127 Wa.app.119 at 123-24.

ADDITIONAL GROUND 4

MR. Lane brought forth an objection of the state requesting the resentencing court to impose two counts of firearm enhancements for a total of 72 months-RP9, Line1-16. The Third amended Information; Certification of probable cause; and Amended J&S which specifically state "**while armed with a deadly weapon-firearm**". Therefore the imposition of the two counts of firearm enhancements CAN NOT be deemed just a Scrivener/clerical error.

ST. V. RECUENCO(2008),163 Wn.2d 428(better known as Recuenco III), "...sentencing enhancements such as deadly weapon allegation, must be included in the INFORMATION(citation omitted)". "Washington law requires the state to allege in the information the crime which it seeks to establish. This includes sentencing enhancements". See into APPRENDI 530 U.S. at 434. "...[w]hen prosecutors seek enhanced penalties, notice of their intent must be set forth in the information". "...[o]nce the state elects which specific charges it is pursuing and includes elements in the charging document, it is bound by that decision"(at 435). "the trial court simply exceed(s) its authority in imposing a sentence not authorized by the charges"(at 442).

Under Recuenco III, because the two counts of firearm enhancements were never alleged in the:(i)Third amended information; (ii)Certification of probable cause; and(iii)Amended J&S, making the firearm enhancements invalid and not authorized by law to be imposed upon the sentence, Therefore, the two counts of deadly weapons shall be imposed for a total of 24 months(12 months each count)-RCW 9.94A.602

and RCW 9A.36.021(1)(c) "assaults another with a deadly weapon".

ADDITIONAL GROUND 5

The resentencing court imposed the states recommendation of counts III of 102 months which CAN NOT RUN CONCURRENTLY to counts I and II at 84 months in which counts I,II, and III are to run concurrently to each other with two counts of 36x2 (72 months) for firearm enhancements for a grand total statutory maximum sentence of 156 months. Therefore, count III shall be 84 months not 102.

ADDITIONAL GROUND 6

The resenting court was provided by the state, Barton's criminal history-Amended J&S p.2, para. 2.2, by unlawfully counting a juvenile non-felony(harassment) as a felony point to enhance Barton's offender score. Barton shall have had 5 points for an official offender score before pleading guilty to counts I. GOODWIN 146 Wn.2d 861, 873, 50 P.3d 618.

ADDITIONAL GROUND 7

The resentencing court sentenced Barton based on the state misappropriating the assertion of Barton's offender score on counts I and II as being scored at 11; while count III being scored at 8. Barton plead guilty subsequently to counts I, II, and the III. The state defrauded Barton as well as the resentencing court in order to seek the resentencing court to impose an illegal sentence NOT authorized under the SRA against Barton. MALONE 138 Wn.app.587, 593

ADDITIONAL GROUND 8

In further support of C.O.A #41777-4-II filed briefs, Barton was misinformed of the direct sentencing consequences of the statutory maximum by sentencing court on October 31, 2008-RP, by informing Barton that the statutory maximum bein(120 months) 10 years. The trial court accepted the recommended stipulated plea agreement of 180 months plus 18-36x 2 months for community custody.

Under ST. V. BARTON(2010),160 Wn.app.1003, the resentencing court followed the Unpublished Opinion to sentence Barton to 156 months which became the new statutory maximum sentence. This manifest error is grounds for Barton to withdraw his guilty plea(s)as Barton was never correctly advised by counsel nor the court of the 156 months being the statutory maximum as the court accepted the unlawful stipulated plea agreement on Oct. 31, 2008, in which the trial court for resentencing shall have determined under RCW 9.94A.090, that the plea agreement was not consistent with (i)the interests of justice or (ii) the prosecuting standards set forth in RCW

9.94A.430-.460, and allowed Barton to withdraw his guilty plea(s) during the resentencing hearing(April 20, 2011).

ADDITIONAL ARGUMENT

With the issues presented before this court in re41777-4-II(in whole) including the SAG 1-8 here above to be incorporated herein its entirety. see into ST. V. WWJ CORP.(1999),138 Wn.2d 595, 602-03, 980 p.2d 1257(citing Mcfarland). "Mcfarland held an error is manifest if it results in actual prejudice to the defendant. An equally correct interpretation of manifest error was given in ST. V. LYNN(1992), 67 Wn.app. 339, 345, 835 P.2d 251, where the court stated "essential to this determination is a plausible showing by the defendant that the asserted error had a practical and identifiable consequences in the trial of the case". Under Lynn, an alleged error is manifest only if it results in a concrete detriment to the claimants constitutional rights, and the claimed error rests upon plausible argument that is supported by the record..." See also into ST. V. TARRER (), 140 Wn.app. 166, 169, 165 P.3d 35.

Barton's plea(sentence) is facially invaled as the court DID NOT KNOW the PLEA/SENTENCE was facially invalid-BARTON,160 Wn.app.1003; and ST. V. MAHONE(1999), 98 Wn.app.342, 347-48, 989 P.2d 583. "... as an aggrieved party must have a present substantial interest in the subject matter of the appeal, and he must be aggrieved 'in a legal sense'".

With the supporting facts enumerated herein by reference, the RULE of LENITY shall be applied. CITY OF SEATTLE V. WINEBRENNER(2009), 167 Wn.2d 451, 468, 219 P.3d 686(under the rule of lenity that the statute must be construed in favor of the defendant). See ADDITIONAL GROUND 2 p.2 here above for the options that the resentencing court shall have considered.

DATED: 10-12-2011

JD JONES BARTON
JD JONES BARTON

Washington State
Department of Corrections

Offender Management Network Information

DOC No.: 867165 Go

Selected DOC No.: 867165 BARTON, Jd Jones

Home Assignments Offender Facility Search Administration

Home > Offender > Legal Face Sheet > Inmate

Help Logged in as Laura Lindsay

Offender Menu

- Inmate Status
- Personal Characteristics
- Register Offender
- Sentence Information
- Release Notification Status
- Warrant Detainer Status

Inmate: BARTON, Jd Jones (867165)

[View Offender Photo](#) | [Legal Face Sheet](#)

Gender: Male	DOB: 02/20/1986	Age: 25	Category: Regular Inmate	Body Status: Active Inmate
RLC: HV	Wrap-Around: No	Comm. Concern: No	Custody Level: Close	Location: WSP-Main — UNF / FW1132
ERD: 08/29/2019	Victim Sensitive: No			CC/CO: Lindsay, Laura C

Offender Information (Inmate)

- Case Management
- Field Discipline
- Custody Facility Plan
- Prison Discipline
- Prison Movements
- Screening & Restriction
- Transfer Orders
- Offender Reports

Prison Max Expiration Date: 10/07/2021	Last Static Risk Assessment Date: 05/11/2010	DOSA:
Planned Release Date:	Last Offender Need Assessment Date: 12/31/2008	ISRB? No
Earned Release Date: 08/29/2019	Offender Release Plan:	Investigation CCB? No
ESR Sex Offender Level:	Victim Witness Eligible?	Yes SOSSA? No
ESR Sex Offender Level:	County Of First Felony Conviction:	Pierce WEP? No
Registration Required?	P U L R E S D X T	2 1 2 1 1 0 1 1 1
ORCS?	Unknown	
DD?	Unknown	
SMIO?		

Personal Characteristics

Aliases, Dates of Birth and Places of Birth

Aliases			
*Last Name:	First Name:	Middle Name or Initial:	Suffix:
Dates of Birth		Places of Birth	
*Dates of Birth:	Use for Age Calculation?	City:	State / Province: Country:
02/20/1986	Yes	Olympia	Washington United States

Identifications

General			
FBI Number:	FBI Fingerprint Code:	WA State ID Number:	ICE Registration Number:
427757AC1		WA19566764	
Social Security		Driver's License	
Social Security Number:	Validated with SSA?	Driver's License Number:	State / Province: Country:
[REDACTED]	N		
Jurisdiction			
*Type of Jurisdiction:	County/State/Country:	*Other Jurisdiction Number:	

Physical Description / Marital Status

*Gender:	Hair Color:	Eye Color:	Complexion:	Marital Status:
Male	Brown	Brown	Light	
Height:	Weight:	*Person Type:	*Twin or Multiple Births?	
5 Ft. 10 In.	145 Lbs	DOC	N	

Race, Hispanic Origin and Citizenship

*Race:	Ethnic Affiliation:	Use for Documentation?	Hispanic Origin?	Citizenship:
White	Other	Y	N	United States

Branch:	Start Date:	End Date:	Served In:	Service Number:	Type of Discharge:	DD214 Verified?	War Zones:
Vehicles							
Year:	Make:	Model:	Type:	Color:	License Plate Number:	State:	Country:

Sentence Structure (Inmate)

Cause: AA - 031009843 - Lewis

State: Washington Convicted Name: Jd Barton Date Of Sentence: 01/21/2004 Consecutive Cause:
 Time Start Date: 01/21/2004 Confinement Length: 0Y, 7M, 27D Earned Release Date:

Count: 1 - RCW 9A.76.120 - Escape 2

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 0M, 0D ERT %: % ERD: MaxEx: Stat Max: Violent Offense? No

Supervision Type: CCJ Supervision Length: 0Y, 12M, 0D Consecutive Count: Hold To Stat Max Expiration:

Cause: AB - 051002225 - Lewis

State: Washington Convicted Name: Jd Barton Date Of Sentence: 08/24/2005 Consecutive Cause:
 Time Start Date: 08/24/2005 Confinement Length: 0Y, 7M, 27D Earned Release Date:

Count: 1 - RCW 9A.36.100 - Custodial Assault

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 0M, 0D ERT %: % ERD: MaxEx: Stat Max: Violent Offense? No

Supervision Type: CCJ Supervision Length: 0Y, 9M, 0D Consecutive Count: Hold To Stat Max Expiration:

Cause: AC - 081007271 - Thurston

State: Washington Convicted Name: Jd Barton Date Of Sentence: 10/31/2008 Consecutive Cause:
 Time Start Date: **10/31/2008** Confinement Length: 0Y, 156M, 0D Earned Release Date: **08/29/2019**

Count: 1 - RCW 9A.36.021(1)(c) - Assault 2 - with Deadly Weapon

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 36M, 0D ERT %: 33.33% ERD: 08/29/2019 MaxEx: 10/07/2021 Stat Max: 10/08/2021 Violent Offense? Yes

Supervision Type: CCP Supervision Length: 0Y, 18M, 0D Consecutive Count: Hold To Stat Max Expiration:

Count: 2 - RCW 9A.36.021(1)(c) - Assault 2 - with Deadly Weapon

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 36M, 0D ERT %: 33.33% ERD: 08/29/2019 MaxEx: 10/07/2021 Stat Max: 10/08/2021 Violent Offense? Yes

Supervision Type: CCP Supervision Length: 0Y, 18M, 0D Consecutive Count: Hold To Stat Max Expiration:

Cause: AD - 081007271 - Thurston

PROOF OF SERVICE

ENCLOSED IS: (1) BARTON'S STATEMENT OF ADDITIONAL GROUNDS, ADDRESSED TO THE ADDRESS AS FOLLOWS:

i) COURT OF APPEALS DIVISION II
C/O SR. CASE MANAGER
950 BROADWAY STE 300
TACOMA, WA 98402-3694

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. EXECUTED ON THIS 13TH DAY OF OCTOBER 2011. PURSUANT TO 28 U.S.C. § 1746.

JD JONES BARTON

DECLARATION OF SERVICE
BY: [Signature]
DATE: 10/13/11