

No. 42064-3-II

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

IN RE THE PERSONAL RESTRAINT OF GUADALUPE SOLIS DIAZ,

Guadalupe Solis Diaz,

Petitioner

PETITIONER'S REPLY BRIEF

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I. INTRODUCTION

This case illustrates why children should not be condemned, at the outset, to spend the rest of their lives in prison. Like the typical adolescent, Guadalupe Solis Diaz (“Guadalupe”) was immature, susceptible to outside influences, and ill-equipped to deal with the difficulties in his life. When he felt overwhelmed by his negative home environment, he turned to a gang for acceptance, a decision which ultimately cost him. With no consideration of his youth or background, he was automatically declined into the adult court system and treated like an adult. Although he was performing at a fifth grade level in school, he was expected to understand complicated legal proceedings and to make life altering decisions on his own. He rejected a 15 year plea offer even though he faced a lifetime in prison by going to trial. Though numerous people were available to testify at sentencing that he had great potential for rehabilitation, his attorney failed to present any testimony and instead requested a 77 year sentence.

For a crime committed at age 16, Guadalupe was sentenced to 92 years in prison, a punishment extremely disproportionate to his culpability and, by all indications, entirely unnecessary to serve penological goals. He asks the court to find that his 92 year sentence is unconstitutional and to remand for a new sentence which provides a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

II. ARGUMENT

A. GUADALUPE'S CLAIMS ARE PROPERLY BEFORE THE COURT

Guadalupe properly brings his claims in a personal restraint petition. Guadalupe seeks relief under RAP 16.4(c)(2) because he was denied his constitutional right to effective assistance of counsel and because his sentence of 92 years for a non-homicide crime committed by a juvenile was imposed in violation of the United States and Washington Constitutions. He also seeks relief under RAP 16.4(c)(4) because *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), represents a significant change in the law which is material to his sentence and applies retroactively.¹

A petition should be granted if the petitioner has demonstrated, as Guadalupe has, actual prejudice created by a constitutional error. *Hews v. Evans*, 99 Wash. 2d 80, 86, 660 P.2d 263 (1983). The State concedes that Guadalupe's claims under the Eighth Amendment and the Washington

¹ *Graham* applies retroactively because it created a new rule of substantive law. In general, a case announces a new rule "if the result was not dictated by precedent existing at the time the defendant's conviction became final." *Teague v. Lane*, 489 U.S. 288, 301, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989). In *Teague*, the Court cited *Ford v. Wainwright*, 477 U.S. 399, 106 S. Ct. 2595, 91 L.Ed.2d 335 (1986), as an example of a case establishing a new rule. *Ford* held that the Eighth Amendment prohibits the execution of insane prisoners. 477 U.S. at 410. Like *Ford*, *Graham* announced a new rule. It "involve[d] an issue the Court ha[d] not considered previously: a categorical challenge to a term-of-years sentence." *Graham*, 560 U.S. ___, 130 S. Ct. at 2022. The rule announced in *Graham* is substantive since it "alters the range of conduct or the class of persons the law punishes" by prohibiting life sentences for juvenile non-homicide offenders. See *Schriro v. Summerlin*, 542 U.S. 348, 353, 124 S. Ct. 2519, 159 L.Ed.2d 442 (2004).

Constitution are of constitutional magnitude and only challenges whether Guadalupe has shown prejudice.² Response at 7. As discussed in more detail below, Guadalupe was substantially prejudiced by his counsel's failure to advocate on his behalf at sentencing and by the imposition of a 92 year sentence in violation of both the Washington and U.S. Constitutions.³

B. GUADALUPE'S SENTENCE VIOLATES THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT

1. Guadalupe's 92 year sentence is indistinguishable from a "life" sentence.

The State attempts to distinguish Guadalupe's sentence from a "life" sentence on the basis that 92 years is a "determinate sentence, within the standard range." Response at 8-9. However, the fact that a

² His claim of ineffective assistance of counsel is also of constitutional magnitude and may be considered for the first time on appeal. *State v. Holley*, 75 Wash. App. 191, 197, 876 P.2d 973 (1994).

³ The State argues that Guadalupe cannot appeal his standard range sentence because, pursuant to RCW 9.94A.585(1), standard range sentences are generally not appealable. Response at 2. However, the Washington Supreme Court has "assume[d] without deciding that constitutional challenges to a standard range sentence are always allowed." *State v. Mail*, 121 Wash.2d 707, 712-13, 854 P.2d 1042 (1993) (citing *State v. Herzog*, 112 Wn.2d 419, 423, 771 P.2d 739 (1989)).

The State also cites RAP 2.5(a) and asserts that Guadalupe waived any argument regarding the unconstitutionality of his sentence by failing to preserve the issue in trial court. Response at 6. The purpose of RAP 2.5 is to avoid unnecessary appeals by ensuring that the trial court has the opportunity to correct errors. *State v. Robinson*, 1171 Wash. 2d 292, 304-05, 253 P.3d 84 (2011). Guadalupe's claims, by their nature, could not have been preserved in the trial court. In any case, as the State notes, a manifest error affecting a constitutional right may be raised for the first time on appeal as a matter of right (RAP 2.5(a)) and, as discussed above, Guadalupe has demonstrated prejudice arising from constitutional errors. The Washington Supreme Court has also recognized that RAP 2.5(a) is discretionary only and does not bar a court from reviewing any claim. *State v. Ford*, 137 Wash. 2d 472, 477, 973 P.2d 452 (1999).

sentence is within the standard range does not make it de facto constitutional. *See, e.g., State v. Fain*, 94 Wash. 2d 387, 402, 617 P.2d 720 (1980) (“legislative authority is ultimately circumscribed by the constitutional mandate forbidding cruel punishment”). Further, the fact that a juvenile is statutorily eligible for a particular sentence “does not indicate that the penalty has been endorsed through deliberate, express, and full legislative consideration.” *Graham*, 560 U.S. ___, 130 S. Ct. at 2026.

Additionally, in an Eighth Amendment analysis, the court must consider the actual effect a sentence will have on the offender. *See* Brief at 9-10.⁴ Common sense dictates that Guadalupe is in the same position as an offender serving a “life” sentence. He will spend the rest of his life in prison, with no more opportunity for release than an offender sentenced to “life.”

Focusing solely on the name of the sentence ignores the Supreme Court’s rationale in *Graham* and renders its decision meaningless. The Court recognized the cruelty of imposing such a severe punishment on a juvenile who has the potential for change, and intended to provide juveniles who committed non-homicide crimes the opportunity to demonstrate maturity and rehabilitation. *Graham*, 560 U.S. ___, 130 S. Ct. at 2030. The Court’s rationale applies equally to all sentences which

⁴ “Brief” refers to Petitioner’s Opening Brief in support of Personal Restraint Petition.

deprive the individual of that opportunity, whether called “life” or “a determinate sentence of 92 years.” If courts read *Graham* to permit a term of years sentence that ensures an offender will die in prison, then its holding rings hollow. States can easily bypass the Supreme Court’s holding by eliminating “life” sentences for juveniles but imposing sentences of 90, 100, or even 1,000 years. Such a result does not comport with the Court’s reasoning or intention.⁵

2. In reaching the conclusion that Guadalupe’s culpability is consistent with a 92 year sentence, the State engages in precisely the type of case-by-case analysis that the *Graham* Court rejected.

As the State correctly notes, the *Graham* Court found that “[t]he age of the offender and the nature of the crime each bear on the [culpability] analysis.” 560 U.S. ___, 130 S. Ct. at 2027. However, the State takes this language to mean that these are factors to be considered in a case-by-case approach, and concludes that, due to the serious nature of the crime and the fact that Guadalupe was “four days shy of his 17th birthday,” a sentence that will keep him in prison for the rest of his life is appropriate. Response at 14. The *Graham* Court rejected such a case-by-case approach and created a categorical rule to avoid precisely this result: that the nature of the crime “would overpower mitigating arguments based

⁵ See *Terry Williams v. Taylor*, 529 U.S. 362, 406, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) (“A state court decision will also be contrary to this Court’s clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent.”).

on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity" call for a less severe sentence." 560 U.S. ___, 130 S. Ct. at 2032.⁶

Guadalupe fits squarely within *Graham*'s categorical rule. First, he was convicted as a juvenile; the fact that he was nearly seventeen is irrelevant. Second, he was convicted of a non-homicide crime, which is one in which nobody is killed. *See id.* at 2027 ("[I]f life is over for the victim of the murderer, but for the victim of even a very serious nonhomicide crime, life ... is not over and normally is not beyond repair.") (internal quotation marks omitted). No one was killed or even injured in this case.

3. Guadalupe's sentence was imposed without any consideration of his culpability.

The State seems to equate conviction with culpability when it argues that Guadalupe's culpability was taken into account. *See* Response at 15. The only factor considered in Guadalupe's sentencing was his conviction of certain crimes. Research has demonstrated that juveniles are less culpable than adults because of their immaturity and underdeveloped sense of responsibility, their heightened susceptibility to negative influences, and the fact that their characters are less fixed than those of adults. *Graham*, 560 U.S. ___, 130 S. Ct. at 2038. Not one of these factors was considered before Guadalupe was sentenced to spend the rest of his

⁶ (citing *Roper v. Simmons*, 543 U.S. 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005))

life in prison.⁷

4. Like a “life” sentence, a 92 year sentence for a juvenile non-homicide offender fails to further penological goals.

The State acknowledges *Graham*'s finding that “[w]ith respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions...provides an adequate justification.” 560 U.S. ___, 130 S. Ct. at 2028. The State then claims that these same goals, while not furthered by a “life” sentence, are furthered by a sentence of 92 years. Response at 16. However, the State fails to explain how a difference in sentence name alone changes the analysis. The Court’s reasoning on this issue in *Graham* applies equally to a 92 year sentence and “life” sentence. See Brief at 13-15.

5. Guadalupe has no meaningful opportunity for release.

The State’s argument that the possibility of release based on “extraordinary circumstances” (Response at 17) satisfies the meaningful opportunity for release requirement is unfounded. As discussed in Guadalupe’s opening brief, the idea that such a remote possibility is meaningful has already been rejected.⁸

⁷ As discussed in Guadalupe’s opening brief, the legislature has recognized that Washington’s mandatory minimum sentences prevent trial judges from taking juvenile differences into account. Brief at 23. This type of sentencing scheme, which treats all offenders who commit a certain crime as equally culpable, is inconsistent with what research now tells us about juvenile offenders.

⁸ See *Graham*, 560 U.S. ___, 130 S. Ct. at 2027 (a life sentence “deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency- the remote possibility of which does not mitigate the harshness of the

6. Guadalupe's affidavit and the affidavits submitted with the reply should be considered by the court.

The State describes Guadalupe's affidavit as "self-serving" and asks the court to disregard it. Response at 15. However, the information presented in the affidavit is consistent with research on juvenile brain development and is corroborated by the affidavits submitted with this reply.⁹

The court should consider these affidavits because they support each of Guadalupe's claims. They demonstrate precisely why the *Graham* court created a categorical rule – to prevent youth like Guadalupe from being condemned to life in prison despite immaturity, susceptibility to negative influences, difficulties in representation, and capacity for change. 560 U.S. ___, 130 S. Ct. at 2042, 2038. They demonstrate that the operation of the multiple offense policy resulted in an excessive, cruel sentence in this case, considering these same factors. And they

sentence."); *see also Solem v. Helm*, 463 U.S. 277, 303, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983) ("Recognition of such a bare possibility [commutation] would make judicial review under the Eighth Amendment meaningless.").

It is no wonder the Supreme Court does not consider such remote possibilities of release to be meaningful. In the 11 year period between 2000 and 2010, only 24 people benefited from the subsection cited by the State (RCW 9.94A.728(4)) and subsection (6)(pardons) *combined*. Appendix 9 (DOC Stats).

The State also argues that Guadalupe's statements do not meet the requirement to show that he has changed. Response at 17. However, his statements were not meant to show rehabilitation, but to demonstrate that Guadalupe is not beyond repair and that, despite the deep sense of hopelessness and lack of incentive that a 92 year sentence creates, he has made efforts to improve himself.

⁹ See App. 1 (Decl. of Robin Jacques); App. 2 (Decl. of Sherry Evans); App. 3 (Decl. of Phillip Geary); App. 4 (Decl. of Zelma Russell); App. 5 (Decl. of Rosela Rangel); App. 6 (Decl. of Elizabeth Dan); App. 7 (Decl. of Colleen O'Connor).

demonstrate some of the information that could have been presented at sentencing had Guadalupe received effective assistance of counsel.

C. GUADALUPE'S SENTENCE VIOLATES THE WASHINGTON CONSTITUTIONAL PROHIBITION AGAINST CRUEL PUNISHMENT

1. In light of juveniles' lessened culpability, the *Fain* analysis necessarily must take Guadalupe's youth into account when deciding whether his sentence is constitutional.

In 1980, the Supreme Court of Washington set forth the test for cruel punishment under the Washington constitution. *State v. Fain*, 94 Wash. 2d 387, 617 P.2d 720 (1980). In doing so, the court recognized that proportionality is not a static concept and "must draw its meaning from the evolving standards of decency." *Id.* at 396-97.¹⁰

In the 31 years since *Fain* was decided, evolving standards of decency have transformed how we look at juveniles in the criminal justice system.¹¹ In a line of groundbreaking decisions, the U.S. Supreme Court has cited to juvenile brain research to extend additional protections to juveniles and to prohibit punishments once considered acceptable. *See, e.g., Roper*, 543 U.S. 551 (prohibiting death penalty for defendants who committed crimes as juveniles); *Graham*, 560 U.S. ___, 130 S. Ct. 2011 (requiring meaningful opportunity for release for juvenile non-homicide

¹⁰ (citing *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958))

¹¹ *See Graham*, 560 U.S. ___, 130 S. Ct. at 2036 ("Society changes. Knowledge accumulates....Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time.... Standards of decency have evolved since 1980. They will never stop doing so.") (Stevens, J., concurring).

offenders); *J.D.B. v. North Carolina*, 563 U.S. ___, 131 S. Ct. 2394 (2011) (holding child’s age properly informs Miranda’s custody analysis).

The State of Washington has also recognized the fundamental differences between juveniles and adults and what that means in the legal context. *See, e.g.*, RCW 9.94A.507(1)(d) (shielding juveniles tried as adults from mandatory minimums for sex offenses); RCW 9.94A.540(3)(a) (eliminating mandatory minimums for juveniles tried as adults)¹²; S.S.B. No. 5746, 60th Leg., Reg., Sess. (Wash. 2009) (eliminating “once an adult” rule where juvenile found not guilty; allowing for transfer back to juvenile court upon agreement by defense and prosecution).

Washington is not alone. The national trend has been toward greater protection of juveniles in the legal system. States have raised the age of juvenile court jurisdiction, changed transfer laws to keep more youth in juvenile court, and altered sentencing laws to protect youth from harsh adult sentences.¹³

In deciding how the *Fain* proportionality test should apply to juveniles sentenced as adults, Washington courts must take into account

¹² This provision does not apply to juveniles *automatically* declined to the adult system.

¹³ *See* Campaign for Youth Justice, *State Trends: Legislative Victories from 2005 to 2010, Removing Youth from the Adult Criminal Justice System*, available at http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf (last accessed Dec. 10, 2011); From 2005 to 2010, 15 states changed their state laws to increase legal protections of youth and, as of January 2010, policy reforms were in progress in at least nine more states.

evolving standards of decency and how the legal landscape regarding juveniles has changed. Today, proportionality analyses cannot ignore juvenile attributes and their implications. Thus, when applying the *Fain* analysis to Guadalupe's sentence, the court must consider his youth rather than treat him as if he were an adult.

2. A *Fain* analysis, properly taking youth into account, demonstrates that Guadalupe's sentence is cruel.

Contrary to the State's argument, condemning a 16-year-old to die in prison for a non-homicide, non-injury crime far outweighs his culpability and constitutes cruel punishment under the Washington constitution.

- a. Nature of the offense: Though first degree assault is a serious offense, the majority of Guadalupe's sentence resulted from bystanders he had no intent to harm. The nature of the crime is also less serious when committed by a juvenile.

As the State points out, the legislature has recognized the gravity of certain crimes, including first degree assault, by requiring that multiple serious violent offenses run consecutively to each other. RCW 9.94A.589(1)(b). But the legislature has also created a specifically enumerated basis for a mitigated exceptional sentence where the multiple offense policy results in an excessive sentence. RCW 9.94A.535(1)(g).

This mitigating factor applies specifically to *serious violent offenses*.¹⁴

The legislature has clearly recognized that even where someone commits multiple counts of a very serious crime, the resulting presumptive sentence may not be appropriate.

Further, the nature of the offense analysis must consider the facts and circumstances involved. The State's theory at trial was that Guadalupe intended to assault one person. RP at 2.¹⁵ However, the State was able to charge Guadalupe with six counts of first degree assault (each accompanied by a five-year firearm enhancement) because under Washington law the intent to assault one person is transferred to others who happen to be present, even if they are not injured. *See State v. Elmi*, 166 Wash. 2d 209, 207 P.3d 439 (2009) (upholding convictions for first degree assault of unharmed, unintended victims).

Though legally Guadalupe assaulted six people, his actual intent should be considered when determining the nature of the crime. Chief Justice Madsen, dissenting in *Elmi*, pointed out that the application of the transferred intent doctrine means punishment often exceeds culpability. 166 Wash. 2d at 221-22 (“[i]t is clear from the legislature’s scheme, which punishes commensurate with mental culpability, that the statute was not

¹⁴ (1st degree assault, 1st degree assault of a child, 1st degree rape, 1st degree kidnapping, 1st degree manslaughter, 1st degree murder, 2nd degree murder, homicide by abuse). *See* RCW 9.94A.030 (45).

¹⁵ RP refers to the Record of Proceedings in *State of Washington v. Guadalupe Solis-Diaz*, Lewis County Superior Court, No. 07-1-00543-3.

intended to...impose multiple punishments where no unintended victim received injury.”). Here, Guadalupe was treated as severely as if he had intentionally shot at six people. Ultimately, over 80 percent of his sentence resulted from the presence of bystanders he had no intention of assaulting.

The nature of the crime analysis must also consider Guadalupe’s youth. Because juveniles are less culpable, a crime committed by a juvenile cannot be considered as egregious as the same crime committed by an adult. *See Graham*, 560 U.S. ___, 130 S. Ct. at 2026-27. Whereas an adult is fully capable of contemplating the consequences of his actions, a juvenile is likely to act impulsively. *See id.* at 2028. While the outcome of the crime might be the same, the level of culpability is not. Although Guadalupe was convicted of serious offenses, the court should consider his actual intent and the fact that the severity of the crime is lessened by his youth. Accordingly, this factor does not weigh in favor of such a severe punishment.

- b. Punishment in other jurisdictions for the same offense: Due to different laws and additional protections for youth, Guadalupe could have received a less severe sentence in other jurisdictions.

Guadalupe’s 92 year sentence resulted from a sequence of events made possible by Washington laws. First, based on Guadalupe’s age and the crimes he was charged with, Washington law required that he be

charged in adult court, with no consideration of his youth or background. *See* RCW 13.04.030(1)(e)(v).¹⁶ Next, Washington's broad interpretation of the transferred intent doctrine allowed the State to add five counts of first degree assault for unintended and uninjured victims. Additionally, Washington's sentencing laws required a mandatory minimum and a firearm enhancement on each assault count, with no consideration of Guadalupe's youth. In other jurisdictions, different laws and/or additional protections for juveniles at various stages of the process would have prevented such a severe sentence.

For example, many jurisdictions have refused to apply the transferred intent doctrine as broadly as Washington. *See Elmi*, 166 Wash. 2d at 221-22 (Madsen, B., dissenting).¹⁷ In those jurisdictions, Guadalupe

¹⁶ Many states have adopted statutory exclusion laws limiting juvenile court jurisdiction. However, states vary on the age and offense types that require automatic adult jurisdiction. For example, in Massachusetts, only offenders charged with murder committed at the age of 14 or older are excluded automatically from juvenile court jurisdiction. Mass. Gen. Laws Ch. 119, § 74.

¹⁷ Citing *Ford v. State*, 330 Md. 682, 710, 625 A.2d 984 (Ct.App.1993) (refusing to uphold trial court's application of doctrine of transferred intent and overturning assault convictions where defendant threw rocks at moving vehicles; noting that the "purpose of transferred intent is to link the mental state directed towards an intended victim, *i.e.*, the intent to kill, maim, or disable that person, with the actual harm caused to another person..."); *State v. Hinton*, 227 Conn. 301, 317-18, 630 A.2d 593 (1993) (declining to apply doctrine of transferred intent and overturning defendant's attempted murder and first degree assault convictions for one injured victim and one uninjured victim of shooting); *People v. Bland*, 28 Cal.4th 313, 326-27, 121 Cal.Rptr.2d 546, 48 P.3d 1107 (2002) (holding doctrine of transferred intent does not extend to "unintended victims to an inchoate crime like attempted murder"; noting that "[t]he crime of attempt sanctions what the person intended to do but did not accomplish, not unintended and unaccomplished potential consequences."); *State v. Johnson*, 205 Ariz. 413, 417-18, 72 P.3d 343 (2003) (declining to uphold trial court's application of doctrine of transferred intent; holding that it cannot be presumed from defendant's shooting at one person that he also intended to scare bystanders); *Ramsey v. State*, 56 P.3d 675, 681-82 (Alaska

would likely have been charged with a lesser crime (perhaps based on recklessness) for the five bystanders.¹⁸ This, in turn, could have resulted in him staying in the juvenile court system or at least receiving a lesser sentence in adult court.

In Oregon, all degrees of assault require injury to the victim. Oregon Revised Statute §§163.160; 163.165; 163.175; 163.185. Since no one was injured in Guadalupe's case, in Oregon, he would have been charged with a lesser crime, such as "recklessly endangering another person," for *all six* victims. *See* O.R.S. §163.195. Recklessly endangering another person requires "conduct which creates a substantial risk of serious physical injury to another person." *Id.* It is a Class A Misdemeanor and carries a maximum of one year in jail. *Id.*; O.R.S. §161.615.

Since Oregon's enhanced penalty for weapon use only applies to felonies, it is possible Guadalupe would not have been eligible for the enhanced penalty in the first place. *See* O.R.S. § 161.610. However, even if he had been charged with a felony (such as unlawful use of a firearm), the judge would have had discretion not to impose an enhanced penalty for weapon use because of Guadalupe's youth. *Id.* Further, Oregon's enhanced penalty for weapon use is not as severe as Washington's, even

Ct.App.2002) (rejecting State's attempt to use doctrine of transferred attempt to convict defendant of attempted murder for injured shooting victim).

for adults. The statute only mandates a minimum prison term for the underlying offense, rather than an additional prison sentence just for the weapon use. *Id.* And, the statute allows for a lesser minimum sentence if the defendant has not previously been subject to the enhanced penalty.

*Id.*¹⁹

Recently in Oregon, an adult defendant was charged with first degree criminal mischief, unlawful use of a weapon, menacing, and 12 counts of recklessly endangering another person for a shooting incident. App. 10 (Indictment & Judgment of Lisandro Sanchez).²⁰ He ultimately pled guilty to unlawful use of a weapon and four counts of recklessly endangering another person and will serve just 18 months in jail. *Id.* Though his crime involved twice as many potential victims as Guadalupe's crime, had Sanchez been convicted at trial, the longest sentence he could have received was 22 years – five years maximum on each Class C Felony (unlawful use of a weapon and criminal mischief) and one year maximum on each count of recklessly endangering another person. O.R.S. §§ 164.365; 163.190; 166.220; 161.605.

¹⁹ In the federal system, the Department of Justice “has issued policies that allow prosecutors to refrain from charging multiple [firearm enhancements] because of the particularly long sentences that stacking can produce.” United States Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, Conclusions and Recommendations* (October 2011) at 361, available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm (last accessed Dec. 7, 2011).

²⁰ See also *Arrest Made in Drive-By Shooting* (Oct. 2, 2011), available at http://tillamookheadlightherald.com/news/article_a16507c0-ed16-11e0-a93b-001cc4c03286.html.

In Colorado, all degrees of assault require bodily injury.²¹ C.R.S. §§ 18-3-202; 18-3-203; 18-3-204. Because no one was injured, Guadalupe would likely have been charged with a lesser crime such as Menacing or Reckless Endangerment. *See* C.R.S. §§18-3-206; 18-3-208. Both are Class 3 Misdemeanors carrying a maximum of six months imprisonment. *Id.*; C.R.S. § 18-1.3-501(1)(a). Menacing can be a Class 5 Felony if a deadly weapon is used; the penalty for a Class 5 Felony is one to three years imprisonment. C.R.S. § 18-1.3-401(1)(a)(V)(A).

It is clear that in other jurisdictions, Guadalupe could have received a sentence significantly less than 92 years. When considering the punishment Guadalupe would have received in other jurisdictions, the court should also consider that the national trend is toward even greater protection of juveniles in the legal system. *See supra* at 10.²²

- c. Punishment for similar crimes in Washington: For a crime in which no one was injured, Guadalupe is serving one of the longest sentences for a juvenile non-homicide offender in Washington.

The State has not named any offender serving such a severe sentence for a juvenile non-homicide crime, and with good reason – there is only one other person in the entire state serving as much time as

²¹ There are exceptions which do not apply here, such as when one assaults an officer. *See* O.R.S. §§ 161.605; 163.190; 164.365; 163.190.

²² Notably, if Guadalupe were charged with the same offenses today, Washington law would allow him to be transferred back to juvenile court if the prosecutor agreed. *See* RCW 13.04.030.

Guadalupe for a non-homicide crime committed as a juvenile. *See* App. 6 to Brief.²³

Guadalupe's sentence cannot be justified by the fact that adults could have received similar sentences. The State does not name any defendant who received an equally long sentence. Instead, it relies on multiplication to conclude that the adult defendants it cites would have received sentences as severe as Guadalupe's sentence had they been charged with as many counts. Response at 23-24. However, a sentence can be so long as to be unconstitutional even where a lesser number of charges would have resulted in a proportional sentence.

In addition, all of the defendants cited by the State were adults when they committed their crimes. App. I-L to Response. As discussed previously, the *Fain* analysis must consider youth and its implications when deciding whether a punishment is cruel. Even if the State could point to adults who received the same sentence for similar crimes, that fact would not make Guadalupe's sentence proportional. When compared to adult non-homicide offenders in Washington, Guadalupe's sentence is excessive. When compared to other *juvenile* non-homicide offenders in Washington, his sentence is extremely unusual and severe.²⁴

²³ Statistics current as of end of year 2010.

²⁴ The State points out that many defendants who receive lower sentences do so because of plea deals. Response at 24-25. Though by nature plea deals provide for lower sentences than trial, they do say something about the appropriate and necessary punishment for certain crimes. As evidenced by Guadalupe's plea offer, the State's

D. GUADALUPE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING SENTENCING

When Guadalupe arrived at sentencing, he was 17 years old and faced a *minimum* standard range sentence of 77 years. App. 1 to Brief. His sentencing hearing transcript is less than 13 pages long. App. 3 to Brief. The hearing consisted in large part of offender score discussion, the judge and the prosecutor arguing about running the drive-by count concurrently, and the prosecutor requesting the high end sentence. Defense counsel's advocacy for a lesser sentence comprised just seven sentences – a single request for the low end sentence of 77 years. The record reflects no evidence of a presentence report. Defense counsel presented no witness testimony and no evidence of Guadalupe's difficult family history, learning deficiencies, or great potential for rehabilitation. By page nine, Guadalupe had been sentenced to spend the rest of his life in prison.

- 1. Failure to request a mitigated exceptional sentence is not a reasonable strategic decision when there is statutory and case law support for such a sentence and the alternative is the certainty that a juvenile non-homicide offender will die in prison.**

The State first argues that Guadalupe has provided no proof that defense counsel was aware of mitigating circumstances. Response at 28.

position was that 15 years imprisonment was sufficient to serve the purposes of the SRA. See App. 8 (Plea Offer). Yet Guadalupe received life in prison after being convicted at trial.

However, defense counsel should have been aware of the specifically enumerated mitigating circumstances listed in RCW 9.94A.535(1), as well as recent case law which provided support for a mitigated sentence in Guadalupe's case. Under RCW 9.94A.535(1)(g), the court may impose a mitigated exceptional sentence if the operation of the multiple offense policy results in a presumptive sentence that is excessive in light of the purpose of the Sentencing Reform Act.²⁵ The Washington Supreme Court had recently made clear that, notwithstanding the requirement that sentences for serious violent offenses be served consecutively, a court could run such sentences concurrently as an exceptional sentence. *See In re Mulholland*, 161 Wash. 2d 322, 331, 166 P.3d 677 (2007) (finding trial court could have imposed mitigated exceptional sentence where defendant was convicted of six counts of assault one for drive-by shooting).

Further, defense counsel representing juveniles charged as adults should have been aware of the U.S. Supreme Court's language in *Roper v. Simmons*, 543 U.S. 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), regarding the major differences between juveniles and adults. Guadalupe was facing the most severe sentence possible for a juvenile after *Roper* – life in prison. Had counsel done a minimal investigation into Guadalupe's background, he would have discovered mitigating evidence which was in

²⁵ As discussed in Guadalupe's opening brief, his sentence does not serve even one of the SRA's goals. Brief at 21-23.

line with *Roper*'s language on juveniles and which would have supported a mitigated exceptional sentence. *See* App. 1-7.

The State next argues that defense counsel's decision not to request a sentence less than 77 years was strategic. Response at 26-27. The fact that a decision is strategic or tactical does not immunize it from attack. *State v. Grier*, 171 Wash. 2d 17, 33-34, 246 P.3d 1260 (2011). "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Id.* at 34.²⁶ In this case, defense counsel's failure to request a mitigated exceptional sentence when there was a statutory basis and case law support was unreasonable. *See* App. 7. By failing to request an exceptional sentence, defense counsel ensured that his juvenile client would receive a minimum of 77 years in prison for a crime in which no one was injured.²⁷ A "strategic" decision based on the hope of receiving a sentence that far exceeds life expectancy is not reasonable, especially where a specifically enumerated mitigating factor and available evidence support a lesser sentence.²⁸

Next, contrary to the State's argument, defense counsel's failure to present testimony at sentencing was not a reasonable tactical decision.

²⁶ (quoting *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000))

²⁷ Even taking into account early release time, the best Guadalupe could have hoped for was release at 88 years of age.

²⁸ Not taking into account lowered life expectancy due to incarceration, Guadalupe's life expectancy in 2007 was 76 years of age. Social Security Administration, *Period Life Table*, available at <http://www.ssa.gov/oact/STATS/Table4c6.html> (last accessed Dec. 12, 2011).

The fact that Guadalupe's mother and sister's alibi testimony was not believed at trial does not necessarily mean the judge would have discounted their testimony at sentencing. *See* App. 7. Furthermore, several other people, including Guadalupe's grandmother and three high school teachers, would have spoken at the hearing. *See* App. 1-3, 5. His grandmother would have provided insight into Guadalupe's childhood, including rejection by his father and neglect by an alcoholic mother since age seven. App. 5. Guadalupe's teachers would have described him as a respectful student who was easily influenced by others but far from irredeemable. Apps. 1-3. Defense counsel's failure to present this testimony likely stemmed from his failure to investigate and discover it, not from a strategic decision.

2. **There is a reasonable probability that the sentencing judge would have imposed less than a life sentence on a juvenile non-homicide offender had he been informed of his discretion to do so and presented with case law and mitigating evidence in support.**

The State argues that Guadalupe cannot demonstrate prejudice and attempts to distinguish *State v. McGill*, 112 Wash.App. 95, 47 P.3d 173 (2002), on the basis that, in *McGill*, the trial court erroneously believed it could not impose an exceptional sentence below the standard range. Response at 5. However, the defendant in *McGill* asserted two claims: trial court error and ineffective assistance. 112 Wash.App. at 97. The court found in favor of the defendant on both claims. *Id.* at 101-102. On

the ineffective assistance claim, the court held that a court “cannot make an informed decision if it does not know the parameters of its decision-making authority. Nor can it exercise its discretion if it is not told it has discretion to exercise.” *Id.* at 177. Like defense counsel in *McGill*, Guadalupe’s counsel failed to inform the sentencing judge of applicable case law giving him authority to impose a mitigated exceptional sentence. Because the judge was not informed of his discretion and was not presented with evidence to support a mitigated sentence, he could not make an informed decision about whether such a sentence was appropriate.

The State also argues that Guadalupe’s high-end sentence demonstrates that the trial judge felt Guadalupe’s conduct “was egregious and did not warrant any type of mitigation in his sentence.” Response at 28. There are two possible explanations for the judge’s imposition of the high-end sentence. First, because counsel did not request an exceptional sentence and did not present testimony at sentencing, the judge did not have the information necessary to decide whether it was appropriate to lock Guadalupe up for the rest of his life. Perhaps in the absence of any mitigating evidence, he assumed there was none – that nobody was willing to speak on Guadalupe’s behalf and that there was nothing redeeming about him.

Alternatively, the judge might have imposed the high end unintentionally. The sentencing transcript supports this theory. First, there are indications that the judge was looking for ways to lessen the sentence. It was he, and not defense counsel, who raised the same criminal conduct argument on behalf of Guadalupe and continued to argue the issue with the prosecutor. App. 3 to Brief at 3-4.²⁹ Second, the judge imposed the high-end sentence immediately following the complicated discussion about running counts concurrently. *Id.* at 8. During this time, defense counsel did not renew his earlier, very brief request for a low-end sentence. It is possible the judge focused on the same criminal conduct issue and then simply imposed the sentence the prosecutor had requested without regard to defense counsel's earlier, minimal advocacy on Guadalupe's behalf. This possibility is supported by the fact that the judge did not provide any reason for imposing the high end sentence. Instead, he said, "It is a long time that's for sure. 1,111 months?" *Id.* at 9. He also stated "So actually, all of the discussion about this has no practical impact when you get right down to it," suggesting he thought the same criminal conduct decision *would* make a difference (and, of course, recognizing that Guadalupe was never going to leave prison). *See id.*

²⁹ Further, after deciding to run the drive-by count concurrently, he stated "And that's the only place..." (before being interrupted by the prosecutor), indicating he was searching for other areas to address. *Id.* at 5.

This court has found defense counsel's failure to make a valid sentencing argument prejudicial where there was strong case law support for the argument. *State v. Saunders*, 120 Wn. App. 800, 825, 86 P.3d 23 (2004), *appeal after new sentencing hearing*, 131 Wash. App. 1002 (2005), *review denied*, 156 Wash.2d 1034 (2006) (same criminal conduct argument). Similarly here, there is a reasonable probability that the judge, if informed of his discretion to do so, would have imposed something less than a 77 year sentence where recent case law provided a solid basis for the argument, and where an adolescent defendant with great potential for rehabilitation was facing life in prison for a crime in which no one was injured.

III. CONCLUSION

For the foregoing reasons, and those set forth in the Brief in support of his Personal Restraint Petition, Guadalupe respectfully asks the court to grant him relief by remanding for a resentencing which will provide him with a meaningful opportunity for release.

Respectfully submitted this 14th day of December, 2011.



Kim Ambrose, WSBA # 19258
Attorney for Guadalupe Solis Diaz



Dylan Tessier, Law Student

REPLY APPENDICES

1	Declaration of Robin Jacques Exhibit A: Individualized Education Program (IEP) Records
2	Declaration of Sherry Evans
3	Declaration of Phillip Geary
4	Declaration of Zelma Russell
5	Declaration of Rosela Rangel
6	Declaration of Elizabeth Dan
7	Declaration of Colleen O'Connor Exhibit A: Resume
8	Plea Offer
9	Washington Department of Corrections Statistics: 2000-2010, Releases Pursuant to RCW 9.94A.728(3), (4), and (6)
10	Indictment & Judgment of Lisandro Sanchez

APPENDIX 1

1 instruction in basic reading skills, math, and written expression. He continued to
2 be identified as SLD in the following two required three-year evaluations.

3 4. His last evaluation took place in February of 2007 when he was sixteen years old
4 and in the tenth grade. The test results showed him to be below grade level on all
5 subjects except basic reading skills. His math skills, written expression, and
6 reading comprehension were below the sixth grade level. The evaluation team
7 recommended assistance in math, reading, and written language, and suggested
8 modified instructional strategies to help Jr. learn. These strategies included
9 establishing eye contact, emphasizing key words and phrases, and determining
10 whether directions were received and understood. Jr.'s Individualized Education
11 Program (IEP) (which contains this information) is attached to this affidavit.

12 5. I worked with Jr. in the special education classroom from 2006 to 2007. He was
13 one of my favorite students. He was a good kid and was always respectful to me
14 and Sherry Evans, the other classroom teacher. Some kids are disrespectful and
15 will walk out of class or slam doors, but Jr. was never like that.

16 6. In my years of teaching, I've seen how kids can get involved in gangs and feel
17 trapped. I remember one time I told another young gang member that he had
18 detention just so he would have an excuse not to attend a "face-off" after school.
19 The kid just smiled and thanked me. I'd given him a way out, at least for that day.
20 I feel that Jr. was a young kid who got caught up in a gang. I knew he was a gang
21 member, but he never brought it into my class.

22 7. I remember one night I was driving and saw Jr. walking in the dark. I drove up
23 behind him and honked the horn, and he jumped about a mile. Even though Jr. was
24 in a gang, I wasn't afraid to do that. I never felt threatened or afraid of him.
25

1 8. There were times when Jr. missed a lot of school. I know there was a period of
2 time he was living away from home. He would often come to school very tired
3 and would just want to put his head down and sleep. He struggled with his work,
4 but when we held him to it, he was willing to work hard.

5 9. Jr. was very close with his sister Stephanie, who was also in the class, but he didn't
6 talk about his home life. From my experience working with kids, I am pretty good
7 at observing their moods, the way they carry themselves. If there are problems at
8 home, they often come in tired and want to sleep, as Jr. did. From my
9 observations, I don't think his home life was the best. Stephanie would often say
10 that their mom was "sick" and she had to take care of her. Their younger sister,
11 Monica, who I teach now, has said the same thing.

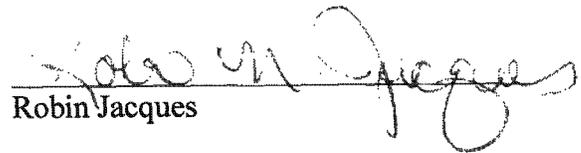
12 10. Since Jr.'s been incarcerated, we've kept in touch through letters. We talk a lot
13 about his younger sister, Monica, and he thanks me over and over and over for
14 watching over her at school. He also thanks me for all the help I gave him. He is a
15 fantastic artist and has sent me drawings. I mentioned to Jr. that I was worried
16 about his younger cousin for being involved in a gang. Jr. wanted me to tell him to
17 mellow out and that he shouldn't be doing that. Jr.'s told me that he's trying to
18 stay out of trouble, but I know it's hard with a sentence that long. If I were him,
19 I'd have no incentive.

20 11. I would have spoken at Jr.'s sentencing if I'd been asked. I would have told the
21 judge about my experience with Jr. and asked him not to lock Jr. up for the rest of
22 his life. I know that what he did was wrong and he could've killed someone, but
23 he didn't. I don't think it's right that he has a life sentence. There are people who
24 have killed and received less time. People at school still talk about "the kid who
25 got 92 years." Even people who don't know Jr., if you tell them about the crime

1 and the sentence, they can't believe it. They think it's extreme. Jr. is so young, he
2 has a life ahead of him, and I truly think he can be rehabilitated. Jr. made some
3 bad choices, but he is not a bad kid. I just hope he gets the chance to come home
4 to his family someday.

5
6 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
7 foregoing is true and correct.

8 DATED this 16th day of December, 2011, at Centralia, Washington.

9
10 
Robin Jacques

**EXHIBIT A
TO APPENDIX 1**

Individualized Education Program (IEP)
Cover Sheet

IEP Meeting Date: 3/23/06
IEP Review Date: 3/22/07

Student: Guadalupe Diaz
Address: 1402 Harrison Ave D211 Centralia Wa 98531
Birth date: 8/14/80 Ph: P 330-2408 A

School Currently Attending: Centralia High
Grade: 9 Disability: Specific Learning Disabled
Surrogate Needed: No Sign or Lang Interpreter: No

Table with 2 columns: Areas identified by evaluation, Areas being served. Rows include Math, Reading, Written Language, Speech/Language, Physical/Motor, Adaptive, Study Skills, Prevoc/Voc. Education, Transition Services, Social, Pre-Academic, Other.

Table with 7 columns: 1. Specialty Designed General Education, 2. Specialty Designed General Education, Extended School Year. Columns include Amount of Instruction, Location, Staff Responsible, Start Date, End Date.

Table for Direct and Related Services. Columns include Position of Staff Responsible, Location, Amount of Service, Start Date, End Date. Rows include OT/PT Therapy, Speech/Language, Audiology, Orientation & Mobility, Special Transportation.

PE: Regular
Describe adaptations:
Extra-curricular/non-academic activities: Yes
Extent that student is not participating with general education students (averages): hrs 5 mins 0 per week
Justification for segregation: Because Guadalupe is functioning far below grade level in math, he needs small group instruction that cannot be administered in the regular education program.

SPECIAL TRANSPORTATION, if selected above:
School Day Start Time: End Time:
Transportation to and from address above? Yes No
Alternative contact, address & phone if parent not home:
Medical Problems:
Special instructions:

STUDENT WILL ATTEND: Centralia High School
Neighborhood School
Non-neighborhood school due to level of service needs
Other:
Date of initial placement (if appropriate):
Anticipated Graduation Date: 6/08
Sp. Ed. Program/Placement: General class with pull-out services
Other factors considered:
Guadalupe will be placed on a reduced schedule as noted on the placement form.

IEP Signature Page

STUDENT: GUADALUPE DIAZ BIRTH DATE: 8/14/1990 SCHOOL: CENTRALIA HIGH

Participants in IEP Meeting:

Sue Hail
Student's General Education Teacher

Melissa Chen SCHOOL PSYCH.
Other/Title

Dennis Tranquero
District Representative

Other/Title

Parent(s)

Other/Title

Elizabeth Oun

Other/Title

Parent(s)

Sherry Evans
Special Education Teacher/ Specialist

Other/Title

Guadalupe Diaz
Student (when appropriate, and beginning at age 14)

Other/Title

PARENT CONSENT

My parent rights and responsibilities have been explained to me in a manner which I understand. I have received a copy of my Due Process Rights as documented by my initials E.O. I have had the opportunity to participate in the development of my student's Individualized Education Program. I understand the reasons why my student is eligible for special education and I approve of the recommended placement, goals/objectives, program/services.

Elizabeth Oun
Parent Signature

3/23/06
Date

Parent Foster Parent Surrogate Parent Adult Student Other: _____

STUDENT CONSENT

I have been informed that at age 18, my rights of placement and program approval transfer to me.

Guadalupe Diaz
Student Signature (required at age 17 or older)

3/23/06
Date

Special Factors and Considerations

IEP Meeting Date: 3/23/06

STUDENT: GUADALUPE DIAZ BIRTH DATE: 8/14/1990 SCHOOL: CENTRALIA HIGH

in developing (or reviewing/revising) an IEP, the IEP Team shall:
Consider the strengths of the student:
Guadalupe is a very polite student. He tries hard and is a good worker in class.
Consider the concerns of the parents for enhancing the education of their student:
Mom wants her son to be successful in school and in life.

State or District-Wide Assessments
Regarding participation in state or district-wide assessments, this student is deemed:
 Appropriate to participate Not appropriate to participate Not appropriate to participate in the following areas:
 Math Reading Written Language Listening Other: _____
Not appropriate to participate applies to the following state assessments:
 WASL ITBS Other: _____
If assessment is not appropriate, indicate why:
 Assessment instrument not appropriate for student's ability level Other: _____
If assessment is not appropriate, describe the alternative assessment:
 MAP Birgance Portfolio assessment
 Other: DAW

Accommodations required to participate:	Dist/WASL	Dist/ITBS	Dist/Other
Questions read orally - math		<u>Allow extra time, frequent breaks</u>	<u>Allow extra time, frequent breaks</u>
Individualized/small group administration		<u>Individualized/small group administration</u>	<u>Individualized/small group administration</u>
<u>Allow extra time, frequent breaks</u>		<u>Questions read orally - math</u>	<u>Questions read orally - math</u>

Behavioral Considerations
This student's behavior:
 Falls within normal disciplinary procedures May impede his/her learning May impede the learning of others
Behavioral Intervention strategies:
 Follow school disciplinary plan Establish a behavior contract Establish a structured behavioral program
 Environment adjustments Modification of consequences
Describe or attach a description of the disciplinary plan (if other than normal school disciplinary plan) which must include positive interventions:
Per CHS student handbook
Describe positive behavioral interventions:
 Structured reward program Documented verbal reward program Special privileges/rewards
 Other: social skills instructions as needed

Other Special Considerations
 None
 Limited English programming needs _____
 Blind/visually impaired student
Need for Braille Yes No Justification Necessary to develop appropriate program Not required for services
 Deaf/hard of hearing student
Need for language therapy Yes No Need for augmentative communication mode Yes No
Need communication mode: Oral communication Signing communication Aural communication
 Needs direct instruction in: Use of technology in speech Signing Communication adaptations

Placement Decision

IEP Meeting Date: 3/23/06

STUDENT: GUADALUPE DIAZ BIRTH DATE: 8/14/1990 SCHOOL: CENTRALIA HIGH

The IEP team is proposing the student's placement into special education and the development of an IEP.

Summary of present levels of performance:

The disability results in [] communication [x] academic [] motor control [] auditory/visual [] behavioral, or [] developmental difficulties which adversely affect the student's involvement and progress with:

- [x] understanding general curriculum [] completing assignments from general curriculum
[] engaging in classroom discussion [] interacting with peers at a developmentally appropriate level
[] complying with classroom behavioral parameters [] completing developmentally appropriate activities

Based on current evaluation results, recommendations, and classroom performance, and considering any potential harmful effect of placement and quality of services, the following continuum of service options are considered in order to determine the appropriate program placement to meet the student's IEP goals and objectives. Preference is given to placement into the general education classroom in the school closest to your home.

Service delivery options:

Reason option rejected/selected: Appropriate Insufficient Too Restrictive Other

Table with 4 columns: Reason option rejected/selected (Appropriate, Insufficient, Too Restrictive, Other) and rows for service delivery options like General education with no services, General class with consulting services, etc.

Other (please explain):

Other factors considered:

Because Guadalupe is failing all of his classes, the IEP team determined that he will be placed on a reduced schedule to allow time for additional assistance in general ed coursework. Parent is highly in favor of this placement.

Description of evaluation:

- [] Information from the parent(s) [x] Previous assessment data [] Reports from other agencies
[x] Observation by the teacher(s) [] New assessment data [] Medical record(s)/report(s)
[x] Classroom assessment by the teacher(s) [] Therapy Performance [] Other Factors:

Additional factors relevant to this proposal/referral: NONE

Transition service needs (16 yrs and older):

- [] General education advanced placement classes:
[x] General education vocational training classes: To Be Determined.
[] Special education community based training:
[] Special education life skills training:

I have received a copy of the Procedural Safeguards: Parents'/Student's Rights and understand that my consent is voluntary and, on initial placement, may be revoked at any time prior to initial placement of special education services.

- [] I give my consent for placement of my student as defined above in the Placement Decision.
[] I do not agree with the proposed placement of my student.

Elizabeth Diaz Parent/Guardian Signature

3/23/06 Date

IEP: Goals and Objectives

IEP Meeting Date: 3/23/08

STUDENT: GUADALUPE DIAZ

IEP AREA: MATH

Present Level of Educational Performance:

Per the WJR III, administered 12/16/03, Guadalupe scored at the 5.2 grade level in math calculation and at the 5.4 grade level in math reasoning. Classroom performance places him at an approximate 6th grade level.

How does the student's disability affect involvement and progress in the general curriculum:

Guadalupe is not able to independently complete general education math assignments. He struggles with understanding the concepts at a fast pace. He needs the curriculum adjusted to his pace and level. Specialized instruction is needed.

Measurable Annual Goal (including how progress toward the annual goal will be measured):

To improve the student's understanding and application of concepts and procedures of algebraic sense from current levels to a growth of one grade level, as measured by a teacher generated performance-based assessment. (EALR 1.5, Math)

You will receive a progress report on the following objectives on a quarterly basis:

Benchmarks or Short-term Objectives (with criteria)	Anticipated Completion Date	Report of Progress			
		1st Date	2nd Date	3rd Date	4th Date
Given instructional materials, the student will recognize, create, extend, and generalize patterns, sequences and series with 80% accuracy, as monitored through observations and on work samples, quarterly, by Special Education Staff. (EALR 1.5.3)	10/08				
Given math activities and projects, the student will evaluate and simplify expressions with 80% accuracy, as monitored through observations and on work samples, quarterly, by Special Education Staff. (EALR 1.5.3)	3/07				

Progress toward annual goal:

Reasons for not making adequate progress on goal:

Explanation of Coding System

Report Of Progress	Progress Toward Annual Goal	Reason For Not Meeting Goal
1. Not applicable during this grading period 2. No progress 3. Little progress made 4. Progress made; Objective not yet met 5. Objective met	1. Anticipate meeting goal 2. Do not anticipate meeting goal (note reason) _____ _____ 3. Goal met (indicate date)	1. More time needed 2. Excessive absences/tardies 3. Assignments not completed 4. Need to review/revise IEP 5. Other (Specify) _____ _____

Transition Services Component of the Individualized Education Program (IEP)

IEP Meeting Date: 3/23/06

STUDENT: GUADALUPE DIAZ

BIRTH DATE: 8/14/1988

SCHOOL: CENTRALIA HIGH

SUMMARY OF FUNCTIONAL VOCATIONAL EVALUATION

Indicate the student's occupational interests, aptitudes and the availability of occupational preparation opportunities including a description of the methods for determining this information (may be completed prior to the meeting if student not attending).

Guadalupe does not know what he wants to do when he gets out of school

ANTICIPATED POST SCHOOL OUTCOMES

Post Secondary Education

- College Program
- Vocational Training Program
- Not Determined
- Other _____

Employment

- Competitive
- Supported
- Not Determined
- Other _____

Community Living

- Independent
- Supported
- Not Determined
- Other _____

Comments/additional needs: n/a

NEEDED TRANSITION SERVICES

Transition services and/or support are needed in the areas as checked below. This IEP includes present levels of educational performance, goals, and objectives in those areas checked as present need and the basis upon which the IEP team determined that services in a required area were not needed at the present time.

REQUIRED AREAS	PRESENT NEED	FUTURE NEED	NOT NEEDED	IF NOT NEEDED:			Other
				Adequate Skills	Inappropriate	General Ed	
Instruction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Vocational Education / Training	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
Community Experiences	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Employment Objectives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Post-school Adult Living Obj	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Daily Living Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Comments:

n/a

INTERAGENCY RESPONSIBILITIES

Involvement of the following organizations/agencies are necessary to meet the student's transition needs. This involvement may range from information gathering to actual initiation of a formal referral. Written consent is required before any information is released.

Agency	Purpose	Team Member Responsible to Make Contact	Date Contact Completed
<u>Career Center</u>	<u>explore job interests</u>	<u>counselor/student</u>	<u>3/22/2007</u>

Class Adaptation Form

IEP Meeting Date: 3/23/08

STUDENT: GUADALUPE DIAZ BIRTH DATE: 8/14/1990 SCHOOL: CENTRALIA HIGH

Specify the modifications and adaptations needed to ensure the student's participation in his/her general education program; include any necessary supplementary aids.

Modify Instructional Strategies

- None required
Establish eye contact
Determine whether directions received/understood
Provide visual/auditory/tactile prompts
Provide immediate feedback/alternative reinforcers
Emphasize key words/phrases
Encourage individualized exercises/movements
Encourage peer prompters
Ensure equity in competitive activities
Encourage student problem-solving/self adaptations
Provide consistent class routine/expectations

Other:

Modify Performance Expectations

- None required
Shorten assignment
Mod. exer. e.g., arms only w/jump jacks, incline pull-ups
Modify game rules/individualize player role/responsibility
Develop individual contracts
Teach self monitoring
Set goals with student
Allow necessary rest breaks

Other: extended time on assignments to end of quarter

Modify Teaching Setting

- None required
Preferential location away from distractions
Isolation from distractions
Other: tests taken in alternate setting; retakes as needed

Modify Materials

- None required
Typed text
Modified text
Use of computer
Other:

Modify Curriculum

- None required
Different curriculum
Modified curriculum
Other:

Modify Grading

- None required
Pass/Fail
Complete/incomplete
Other: pass/fail or grade

Supplementary aids and services: None Explain:

The modifications/adaptations checked or added above may be followed in the following programs/classes. Each of the following teachers must receive a copy of the adaptation form.

Table with 3 columns: General Education Class (elem.), Reading, English, Science, History, Math, All Classes. Includes checkboxes and dates.

Additional information

TRANSITION ACTION PLAN

Student Name: GUADALUPE DIAZ **BirthDay:** 8/14/1990 **Date:** 3/20/2006

Miscellaneous Activities:

Identified Area of Need:

- 1) Social security
- 2) Register to vote and for selective service
- 3) State ID
- 4) Disability awareness

Action Plan

Activity	Responsibility	Due Date	Complt Date
Learn your social security number and store your card in a safe place.	Student/ Parent	8/08	
Register to vote.	Student	8/08	
register with selective service.	Student	8/08	
Obtain a Washington State ID Card or Driver's License.	Student/ Parent	8/08	
Know your disability and be able to describe it.	Student/ Staff	8/07	

Residential

Identified Area of Need

- 1) Housing arrangements
- 2)
- 3)
- 4)

Action Plan

Activity	Responsibility	Due Date	Complt Date
Determine living arrangements post high school.	Student/ Parent	6/08	
During independent living class determines costs for apartment/ other living arrangements.	Student/ Staff	6/08	

TRANSITION ACTION PLAN

Student Name: GUADALUPE DIAZ

Education:

Identified Area of Need:

- 1) Self advocacy
- 2) secondary education
- 3)
- 4)

Action Plan Activity	Responsibility	Due Date	Complt Date
Research secondary education opportunities.	Student/ Staff	8/07	
Obtain applications, fill out and return.	Student/ Parent	8/08	
Submit FAFSA application.	Student/ Parent	8/08	
Research scholarships, grants and loans.	Student/ Staff	8/08	
Contact schools disability coordinator about available accommodations.	Student	8/08	
Attend your IEP meeting.	Student/ Staff	4/08, 4/07, 4/08	3/88
Explain your accommodations, transition class.	Student/ Staff	8/07	
Apply for DVR services	Student/ Parent	8/08	
Take appropriate testing for college placement. PSAT, SAT, ASVAB, ACT, ASSET	Student/ Staff	8/08	

Transportation:

Identified Area of Need

- 1) Driver's license
- 2) Vehicle
- 3) Insurance
- 4)

Action Plan Activity	Responsibility	Due Date	Complt Date
Take and pass driver's license test.	Student	8/08	
Research and purchase reliable transportation.	Student	8/08	
Contact insurance company to have vehicle coverage.	Student	8/08	

TRANSITION ACTION PLAN

Student Name: GUADALUPE DIAZ

Health Care:

Identified Area of Need:

- 1) Health coverage
- 2)
- 3)
- 4)

Action Plan Activity	Responsibility	Due Date	Complt Date
Check on the age requirements on your parent's policy.	Student/ Parent	6/08	
Sign up for individual coverage before parental coverage expires.	Student	8/08	
Apply for SSI.	Student/ Parent	8/08	

Employment:

Identified Area of Need

- 1) Career assessment
- 2) Portfolio toward competitive employment
- 3) Senior project
- 4)

Action Plan Activity	Responsibility	Due Date	Complt Date
Take WOIS assessment in the career center.	Student/ Staff	6/07	
Attend a Worksource (State job resource center) tour, including computer applications	Student/ Staff	8/08	
Complete Career Center Portfolio.	Student/ Staff	8/08	
Complete Independent living class requirements, including updated resume and career research.	Student/ Staff	8/08	
Complete and present senior project.	Student/ Staff	8/08	

Notice of Individualized Education Program (IEP) Meeting

Date: 3/23/06

STUDENT: GUADALUPE DIAZ BIRTH DATE: 8/14/1990 SCHOOL: CENTRALIA HIGH

Dear Elizabeth Dan:

This is to invite you to a meeting for your child, as named above. If your student is 14 years old or older, he or she is invited to attend the IEP meeting. At this meeting, we welcome your input and together we will:

develop or review an Individualized Education Program (IEP) for your child, if he/she is eligible. The development of the IEP will be based on information from a variety of sources including the most recent evaluation, progress reports, and test results.

consider your child's transition service needs beginning at age 16. Transition services are designed to promote your child's movement from school to post-school activities, such as post-secondary education, independent living, and/or community participation. Consideration of transition services is required when a student is 16 or when transition services may be needed.

The meeting is scheduled for Thursday 3/23/06 at 9:00 am

The meeting will be held at Centralia High School Building Library Conference Room

The other people invited to attend are:

Table with 2 columns: NAME and POSITION. Includes Sherry Evans (Special Education Teacher), Dennis Longmeier (District Representative), and Sara Hatfield (General Education Teacher).

Sincerely,

Lynda Hainer IEP Coordinator 807-7245

STUDENT: GUADALUPE DIAZ

Please fill out this part of the form, cut it off, and return it to your child's school, CHS Attn. S. Evans. If this is inconvenient and you would like to reschedule the meeting, please contact us as soon as possible. If you need special accommodations, please indicate:

- Language Interpreter, Signing Interpreter, Other

I have been notified of the IEP meeting for GUADALUPE DIAZ

- I will attend the IEP meeting as scheduled. This is an alternate day and time I can attend an IEP meeting. I am unable to participate in the development of my child's IEP. Please forward a copy of the completed IEP for my approval. I cannot attend the IEP meeting as scheduled.

Chetahis-Centralia Student Support Cooperative

Student Name: _____

DOCUMENTATION OF PARENT CONTACT

Date: 3/13/06 Telephone Conference Other: _____

District Representative: Lynda Kainer Who Contacted: Mother

Comments: Set up IEP date and time

Date: 3/13/06 Telephone Conference Other: letter

District Representative: Lynda Kainer Who Contacted: parent

Comments:

Date: _____ Telephone Conference Other: _____

District Representative: _____ Who Contacted: _____

Comments:

Date: _____ Telephone Conference Other: _____

District Representative: _____ Who Contacted: _____

Comments:

Date: _____ Telephone Conference Other: _____

District Representative: _____ Who Contacted: _____

Comments:

**EVALUATION REPORT
 EVALUATION MANAGER'S REPORT
 CHEHALIS-CENTRALIA
 STUDENT SUPPORT COOPERATIVE
 1265 SW PACIFIC AVE
 CHEHALIS, WA 98532
 (360) 807-7245 FAX 748-8767**

Student Name Guadalupe Diaz

Primary Language English

(a/k/a) _____

Centralia High School

Birthdate 8/14/90 Age 16 CAG 10

School _____

Elizabeth Dan

S. Evans 10

Parent/Guardian Foster Parent

Teacher Grade

Adult Student _____

Referral Reevaluation

1402 Harrison Ave. D211

Evaluation Completed 2/9/07

Address _____

Reevaluation Due Date 2/8/10

Centralia, Wa 98531

City, State _____

Disability Category Specific Learning Disability

888-2146

Phone _____ Alternate Phone _____

This evaluation was conducted in a manner consistent with regulations regarding "Evaluation Safeguards". The results reported are considered valid estimates of this student's functioning at the present time.

PERTINENT PARENTAL INPUT/BACKGROUND

Comments:

Guadalupe is a 16 year old male who is attending the tenth grade at Centralia High School and receiving special education services through the Educational Support Class. He resides with his biological family in Centralia, WA. A review of parent provided information reported no serious illnesses or complications during pregnancy and birth. Developmental milestones with the exception of speech skills were reported to be reached within an average rate. A review of special education records revealed while attending kindergarten at Cascade Elementary School in the Chehalis School District, Guadalupe was referred for a special education evaluation by his classroom teacher due to developmental skill concerns. He was identified as Developmentally Delayed and began receiving specially designed instruction through the Developmental Kindergarten program in the areas of communication, social/emotional and adaptive skills. At the end of his kindergarten year he was reevaluated and found not disabled. In second grade he was referred for a special education evaluation by his classroom teacher due to academic concerns. Guadalupe was identified as a student with a Specific Learning Disability (SLD) and received specialized instruction in the areas of basic reading skills, math calculations, and written expression. When Guadalupe was attending fifth grade at Oakview Elementary School in the Centralia School District, a required three year reevaluation was conducted and Guadalupe continued to be identified as SLD as well as receiving specialized instruction in the basic academic skill areas. At his next required three year reevaluation, Guadalupe continued to be identified as SLD but was eligible for services in the area of math calculation skills. It has been three

SENSORY AND HEALTH SCREENING

EXAMINER: _____

DATE: _____

VISION acuity: Group of professionals determined that vision screening was not needed. GQP has determined existing evaluation data is sufficient. No additional data needed.

HEARING acuity: Group of professionals determined that hearing screening was not needed. GQP has determined existing evaluation data is sufficient. No additional data needed.

HEALTH or sensory concerns relevant to educational planning:
None reported at this time.

27

Nov. 23. 2011 12:56PM STUDENT SUPPORT

No. 9243 P. 16

Re: Guadalupe Diaz

**Chester's-Centralia Cooperative
Stude. Support/Special Services**

years since the last evaluation and state law requires students be reevaluated every three years.

Re: Guadelupe

Diaz

Chehal Centralia Student Support Cooperative

SOCIAL/EMOTIONAL

According to the

- Teacher Report
- Behavior Evaluation Scale

- Parent Interview
- PKBS 2

- Systematic behavior observation
- File review

resulted in a score of:

Comments:

A review of special education records revealed no significant concerns.

ADAPTIVE

According to the results of the Vineland SIB-R

- adaptive behaviors are within normal range.
- adaptive behaviors are commensurate with abilities.
- significant adaptive delays are noted. Specific areas of remediation include:

Group of professionals has determined existing evaluation data is sufficient. No additional data needed.

EXCLUSIONARY FACTORS

It is the Team's judgment that test measurement error cultural factors limited English proficiency environmental factors economic factors behavioral factors did not contribute to the performance deficit.

- There are some indications of test measurement error,
 - but these do not significantly impact the eligibility decision.
 - and they have had a significant effect on the evaluation results.
- There are some indications of cultural factors,
 - but there is no evidence that they had a significant impact on performance.
 - and it appears they have had a significant effect on performance.
- There are some indications limited English Proficiency.
 - but there is no evidence that they had a significant impact on performance.
 - and it appears they have had a significant effect on performance.
- There are some indications of environmental factors,
 - but there is no evidence that they had a significant impact on performance.
 - and it appears they have had a significant effect on performance.
- There are some indications of economic factors,
 - but there is no evidence that they had a significant impact on performance.
 - and it appears they have had a significant effect on performance.
- There are some indications of behavioral factors.
 - but they are not so serious as to suggest a behavioral disability (refer to discussion in SOCIAL/ADAPTIVE section).
 - and it appears that the effect on performance is significant. A Serious Behavioral Disability is indicated.

Refer to group of professionals' reports and Parent Interview for specific details.

Re: Guadalupe

Diaz

Chehalis-Centralia Student Support Cooperative

ELIGIBILITY CRITERIA

Disabling Condition: Specific Learning Disability.

INTELLECTUAL

Test: (1) WISC III Examiner Frederick G. Carr Date 2/13/01

(2) Other _____

Scores: Full Scale IQ 99 Composite Score _____

Verbal IQ 91 Performance IQ 110

Comments: A review of previous special education records revealed the WISC-III was administered 2/98 and Guadalupe obtained the following scores: VIQ= 90 PIQ= 115 FSIQ= 101. Group of professionals has determined existing evaluation data is sufficient. No additional data is needed.

At the present time, as measured by the above test(s), this student's intellectual ability is in the average range.

ACADEMIC

Test: Woodcock-Johnson: III Examiner M. Thomas/S. Evans 2/5/07

Scores: Expectancy: 82

<u>Area</u>	<u>Grade Level</u>	<u>Standard Score</u>	<u>Eligible</u>
Basic Reading Skills	<u>12.0</u>	<u>100</u>	<u>No</u>
Reading Comprehension	<u>5.5</u>	<u>82</u>	<u>Yes</u>
Math Calculation Skills	<u>5.9</u>	<u>78</u>	<u>Yes</u>
Math Reasoning	<u>5.7</u>	<u>82</u>	<u>Yes</u>
Written Expression	<u>5.0</u>	<u>78</u>	<u>Yes</u>
Other: _____	_____	_____	_____
Other: _____	_____	_____	_____

Comments: Student's performance on the test is below grade level with the exception of basic reading skills.

It is the consensus of the Team that measured achievement is is not significantly less than the expectancy of parity with peers.

Re: Guadelupe

Diaz
**RECONCILIATION OF INCONSISTENT INFORMATION/
PROFESSIONAL JUDGMENT/ADDITIONAL INFORMATION**

IEP recommendations: A new IEP needs to be developed.

The team recommends the following placement:

- | | |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> general education with no services | <input type="checkbox"/> specialized learning class with integration into general class and/or community |
| <input type="checkbox"/> general class with consulting | <input type="checkbox"/> specialized learning class |
| <input type="checkbox"/> general class with in-class educational support | <input type="checkbox"/> special or residential school |
| <input type="checkbox"/> general class with pull-out related services | <input type="checkbox"/> home instruction |
| <input checked="" type="checkbox"/> general class with pull-out services | |
| <input type="checkbox"/> other | |

for assistance in:

- | | | |
|------------------------------------------------------|---------------------------------------------------|-----------------------------------------|
| <input checked="" type="checkbox"/> reading | <input type="checkbox"/> prevocational/vocational | <input type="checkbox"/> physical/motor |
| <input checked="" type="checkbox"/> math | <input type="checkbox"/> adaptive | <input type="checkbox"/> pre-academic |
| <input checked="" type="checkbox"/> written language | <input type="checkbox"/> social/behavioral | <input type="checkbox"/> study skills |
| <input type="checkbox"/> speech/language | <input type="checkbox"/> transition services | <input type="checkbox"/> none |

The student's services will be provided at: residential school.

The following services should be considered:

- | | | |
|--------------------------------------------------|--------------------------------------------------------------------|-------------------------------------------|
| <input type="checkbox"/> speech/language therapy | <input type="checkbox"/> occupational therapy | <input type="checkbox"/> physical therapy |
| <input type="checkbox"/> other | <input checked="" type="checkbox"/> no related services are needed | |

The student's need for an extended school year: is not indicated. will be considered in May. is recommended.

Recommendations as to need for specific materials, strategies, and equipment:

Modify Instructional Strategies

- None required
- Establish eye contact
- Determine whether directions received/understood
- Provide visual/auditory/tactile prompts
- Provide immediate feedback/alternative reinforcers
- Emphasize key words/phrases
- Encourage individualized exercises/movements
- Encourage peer prompters
- Ensure equity in competitive activities
- Encourage student problem-solving/self adaptations
- Provide consistent class routine/expectations
- Questions read orally - math and science
- Work transcribed verbatim or using pointing or signing
- Other...

Modify Performance Expectations

- None required
- Shorten assignment
- Mod. exer. e.g., arms only w/jump.jacks, incline pull-ups
- Modify game rules/individualize player role/responsibility
- Develop individual contracts
- Teach self monitoring
- Set goals with student
- Allow extra time, frequent breaks
- Masking portions of assessment page
- Other...

Modify Teaching Setting

- None required
- Preferential location away from distractions
- Isolation from distractions
- Individualized/small group administration
- Other...

Modify Materials

- None required
- Typed text
- Modified text
- Use of computer or word processor
- Use of math manipulatives
- Braille or large type instruments
- Use of sound amplification
- Other...

Modify Grading

- None required
- Pass/Fail
- Complete/Incomplete
- Other...

Modify Curriculum

- None required
- Different curriculum
- Modified curriculum
- Other...

Re: Guadelupe Diaz

Chehalis-Cent. Student Support Cooperative

ELIGIBILITY DECISION

Statement of Eligibility:

This student is eligible under the handicapping condition of Specific Learning Disability.

This condition adversely affects student's educational performance.

The student does require specially designed instruction.

Adverse Educational Impact Statement:

Guadelupe's basic academic skill deficits adversely affect his ability to understand the general education curricula and to successfully complete assignments from the program commensurate with his peers

Initial Evaluation

Reevaluation

This student no longer requires specially designed instruction or does not meet eligibility requirements; and, therefore, is not eligible for special education.

This student has a disabling condition and is in need of special education services. The disability has had an adverse educational impact by preventing academic and/or developmental parity with peers and requires specially designed instruction.

Melissa Chan 2/9/07
MELISSA CHAN Team Leader/School Psychologist Date

* Signature signifies agreement with both the individual report and the Summary Analysis.

EACH PROFESSIONAL OF THE TEAM SHALL CERTIFY BELOW WHETHER THIS SUMMARY ANALYSIS REFLECTS HIS OR HER CONCLUSION. IF NOT, THE MEMBER MUST SUBMIT A SEPARATE STATEMENT PRESENTING HIS OR HER DISSENTING OPINION.

MEMBER SIGNATURE	POSITION	DATE	YES	NO
<u>Melissa Chan</u> MELISSA CHAN	Team Leader	<u>2/9/07</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Julie Smith</u>	General Ed Teacher	_____	<input type="checkbox"/>	<input type="checkbox"/>
<u>Sherry Evans</u> SHERRY EVANS	Special Ed Teacher	<u>2/9/07</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	Parent	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____		_____	<input type="checkbox"/>	<input type="checkbox"/>
_____		_____	<input type="checkbox"/>	<input type="checkbox"/>

RE: Guadalupe Diaz

Chehalis Centralia Student Support Cooperative

SPECIFIC LEARNING DISABILITY ADDENDUM
Classroom Observation

The student was observed on _____ . As compared to the other students in the class, the relevant behaviors noted during the observation were:

- On task.
- Off task due to difficulty with level of work.
- Off task due to behavioral issues.
- Appears not engaged.
- Acting out - disruptive.
- Other/Describe:

- GQP has determined an observation is not required.

Relationship of behavior to academic functioning:

- No adverse impact.
- Adversely impacts academic functioning but does not account for significance of discrepancy between ability and achievement.
- Adversely impacts academic functioning and accounts for degree of academic discrepancy.
- Other:

Statement of severe discrepancy:

Based on the assessment, the student has a need for specially designed instruction in the following area(s).

Reading	Reading Comprehension
Math	Mathematics Calculations Mathematics reasoning
Written Language	

This learning disability does adversely impact academic functioning and he has not made sufficient progress to meet age/state approved grade level standards. This student does require specially designed instruction. It is the group of professionals' decision that the discrepancy/delay is not correctable without special education and related services.

APPENDIX 2

1 students that didn't have enough credits or good enough grades to enter 9th grade,
2 but they could not stay in the middle school. Jr. was one of the nicest students in
3 that group. He was always polite and respectful. He worked hard and never gave
4 me any problems. He always seemed very protective of his family.

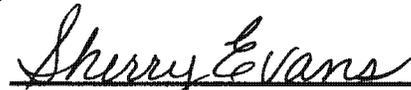
5 4. I knew Jr. was associated with a gang, but I was never afraid of him at any time. I
6 know that his mother and his sister, Stephanie, were very concerned about him.
7 For a while, they didn't know where he was and they were very worried.

8 5. Jr. told me that he would go to Los Angeles (I think to visit his cousins) and that it
9 was common to see people lying in the streets bleeding, some of them having been
10 shot. I think this type of thing is very traumatizing to kids.

11 6. Had I been asked to speak at Jr.'s sentencing, I definitely would have. I believe
12 that Jr. just got in with a bad crowd at a very young age. He wanted to please and
13 belong, and he was just pleasing the wrong people. I saw so much good in Jr. and
14 believe he has so many redeemable qualities. I do not believe he deserves to spend
15 his life in prison.

16 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
17 foregoing is true and correct.

18 DATED this 10th day of December, 2011, at Olympia, Washington.

19
20 
21 Sherry Evans
22
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APPENDIX 3

1 I was present in the classroom with Jr. during all four class periods each day and
2 got know what kind of person he is.

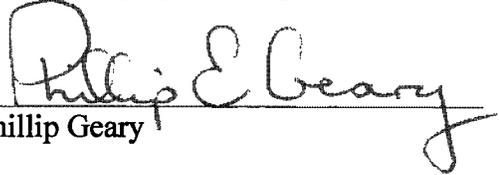
3 4. Jr. was one of the nicest kids around. He was extremely polite. It was very clear
4 to me that Jr. was a kid who was easily influenced and wanted to please people.
5 He wanted to please his teachers and demonstrated it by working diligently, even
6 when we demanded a lot from him. Because of his desire to please and follow, he
7 would also have been very susceptible to negative influences. It would also be
8 typical of Jr. to say he understood something (such as what a judge was telling
9 him) even if he didn't understand. In addition to him wanting to please people,
10 kids at that age are unsure and not confident enough to speak up for themselves.

11 5. In my experience, most kids who join gangs do so because they are looking for a
12 sense of security and belonging that is missing at home. Many kids who came
13 through our program were gang involved to some degree. Some felt it was their
14 mission to let everyone know and to cause as much trouble as possible. Though it
15 was known that Jr. was gang affiliated, he never flaunted that fact in class. He was
16 very well-behaved and very amiable. Though he had difficulties comprehending
17 the concepts, and he required a lot of remedial work, he made great progress.

18 6. I definitely would have spoken at Jr.'s sentencing if I'd been asked. In my
19 opinion, society needs to invest in these young kids rather than throwing them
20 away. Most young people are easily influenced, and some, like Jr., are especially
21 susceptible to influence – both negative and positive. If exposed to positive
22 influences and given time to grow up, Jr. would be fine. I am confident that he can
23 be rehabilitated, and it just doesn't make sense for society to give up on him.
24
25

1 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
2 foregoing is true and correct.

3 DATED this 9 day of December, 2011, at Centralia, Washington.

4 
5 Phillip Geary
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APPENDIX 4

- 1 5. During our first few meetings, we identified Guadalupe's goals and created a
2 counseling plan. His main goal was to work towards his high school diploma. His
3 counseling plan included implementing various skills to properly deal with stressful
4 situations and avoid negative behaviors.
- 5 6. Although Guadalupe had difficulty identifying and labeling his emotions, a problem
6 which likely stemmed from his turbulent childhood, he worked on this issue during
7 counseling with me and with my colleague Christopher Ward. Guadalupe also had
8 challenges comprehending the treatment concepts possibly due to his history of special
9 educational needs. In light of his difficulty grasping concepts, he was referred to the
10 special needs department for evaluation.
- 11 7. Despite these challenges, Guadalupe was committed to counseling from the very
12 beginning and worked diligently to the best of his ability. He paid attention and asked
13 questions when he didn't understand the concepts. Over time, he became very
14 receptive to counseling and talked about his gang life, his future, his family, and his
15 goals.
- 16 8. We discussed Guadalupe's gang affiliation and why he'd felt the need to become part
17 of a gang. He acknowledged that there were issues that had emotionally impacted him
18 during his early development. One of these was his mother's response to death of her
19 significant other several years prior. His mom was devastated and began to increase
20 her drinking as well as engage in other self-destructive behaviors. At a very young
21 age, Guadalupe took on the responsibility of caring for his mother, as well as his
22 siblings. In order to avoid the problems he was facing at home, he at times turned to
23 gang life as an escape.
- 24 9. We also identified other vulnerabilities for joining a gang. These included negative
25 peer influence, the fact that his girlfriend had cheated on him and he was being

1 harassed about it by peers, the need for a sense of belonging, and the need for
2 protection. The area he lived in presented many conflict situations, and he felt a need
3 to prove he was not afraid to defend himself. After joining the gang, he felt a sense of
4 belonging and felt more protected. His best memories of gang life were getting
5 together to have cookouts and gatherings in order to escape the major emotional issues
6 associated with his home life. In my experience, it is natural for a youth to seek
7 support and acceptance elsewhere when dealing with difficulties at home.

8 10. Guadalupe was able to identify the negative results that his gang affiliation had caused
9 in his life. He found them unacceptable and consistently expressed his desire to
10 disassociate himself with the gang life. However, this issue caused a continual internal
11 struggle. There were constant stimuli from fellow gang members and rival gang
12 members in the living unit. Despite the pressures associated with gang involvement,
13 Guadalupe did try to disengage himself from any negative behaviors associated with
14 the gang life. He problem solved by using his skills despite the expectation from
15 fellow gang members that he assault rivals to prove his loyalty.

16 11. Guadalupe was facing a 92 year sentence which of course caused him stress and a
17 sense of hopelessness. In addition, his approaching transfer to a DOC facility at age
18 18 caused feelings of fear and anxiety. He wondered what was going to happen to him
19 and what he might have to do to survive there. We tried to focus on his goals, but that
20 was of little help when he was facing 92 years in prison.

21 12. Despite the ongoing concerns associated with gang issues, family stresses, and worry
22 about his sentence, Guadalupe's commitment to treatment remained high, and he
23 adhered to the rules of the program without any outbursts. He responded well to
24 validation and recognition of successes. There were times he lost his classification
25 level, but he always worked hard to regain his prior classification level. He used the

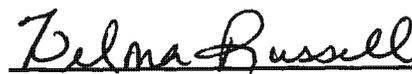
1 skills he had learned in counseling to deal with his feelings appropriately. One week, a
2 peer referred to Mexicans as rapists and liars, causing Guadalupe to become angry and
3 emotional. However, he dealt with the incident by using the skills he had learned and
4 practicing deep breathing. Other times, he would take out his frustrations through
5 reading and exercising. In terms of behavior and dedication to counseling, Guadalupe
6 was excellent and one of the best I've worked with.

7 13. Because of his life sentence, he was pessimistic about his future, but he did express
8 some hope. He stated that he would like to become a counselor so he could counsel
9 young people against the gang life. He also expressed a desire to become involved in
10 religious groups to remove himself from gang affiliations.

11 14. In my opinion, Guadalupe's sentence of 92 years was extremely excessive. In my 21
12 years working at GHS, his was the longest sentence I've seen. I've worked with kids
13 who committed horrific crimes and received far lower sentences. I do not think that
14 Guadalupe deserves or needs to spend his life in prison. His diary cards reflected low
15 self-esteem and self-worth; he wanted to achieve his goals, but the desire to win
16 approval of his peers at times overpowered his ability to do what was best for himself.
17 He was responding very well to counseling and I believe he would have benefited
18 from continued intervention to address the issues in his life.

19 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
20 foregoing is true and correct.

21 DATED this 09 day of December, 2011, at Chhalis, Washington.

22 
23 Zelma Russell
24 Zelma Russell
25

APPENDIX 5

1 called Child Protective Services. When Jr. was around nine or ten years old, he
2 started asking me questions like what kind of liquor I liked and why his mother
3 went out all the time and came home drunk.

4 5. Jr. grew up mostly around women. I always felt bad because I knew he needed a
5 male figure in his life. His father was never around. When Jr. was young, he
6 asked me why his father didn't want him. Later, when he was about thirteen and
7 started hanging out with the wrong crowd, Elizabeth asked Jr.'s father to take him
8 for a while. Jr. went with him a few times, but his father wouldn't even talk to him
9 or pay attention to him while he was there. Jr. went alone the first time, but after
10 that he refused to go without his sister Stephanie. It felt like we forcing Jr.'s father
11 to take him, and I think Jr. could tell. Elizabeth stopped sending him to stay with
12 his father after a while because it was senseless.

13 6. When Jr. and Stephanie were in school, I'd sometimes drive them there or pick
14 them up. They used to ask me why they were getting picked on for being Latino
15 and Native American. I'd try to comfort them by telling them that people picked
16 on me for being Native American when I was in school. Jr. and Stephanie always
17 stood up for each other. If one got picked on, the other would jump in as protector.

18 7. Now that Jr. is in prison, I talk to him on the phone when I can, and we send each
19 other letters and cards. He also sends me drawings that he's done. I remember
20 when he got his GED a few years ago. He was so proud when he told me, and he
21 sent his diploma to his sister Stephanie.

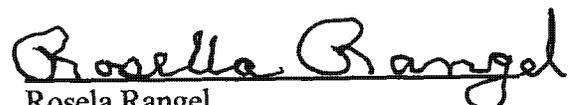
22 8. I wish I'd had the chance to talk at Jr.'s sentencing. I would've told the judge that
23 the Jr. I know is loving and caring. Whenever I was sick or needed something, he
24 was there for me. He would always check on me when I came home from the
25 hospital. He loves his sisters and is always protective of them. I know that Jr.

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needs to be punished and I accept that. But I think that 92 years is too long. I just wish Jr. had a chance someday to prove that he is a good person.

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

DATED this 9 day of December, 2011, at Taholah, Washington.


Rosela Rangel

APPENDIX 6

1 together. He also liked to collect Pikachu cards, play cards and watch Ninja
2 Turtles and Sonic cartoons with the family.

3 5. Jr. has always been really close to his sisters and very protective of them.

4 Sometimes when the kids would lie to me, I'd put Tapatio hot sauce on their
5 tongues. I remember the first time I tried to do it to Monica for lying to me about
6 something. Jr. got very upset. He started screaming at me not to do it, saying it
7 was wrong. Another time, when Stephanie was getting her flu shot, Jr. started
8 yelling at the doctor "No!!! Please don't hurt my sister!" He was jumping up and
9 down and stomping his feet to try and stop the doctor. Jr. is also very generous and
10 I remember him giving his own clothes and shoes to his friends who needed them.

11 6. When the kids were growing up, I worked a lot so I could take care of them.

12 Because I worked so much, I was never home. There were also other things going
13 on in our lives that I think affected Jr. On August 9, 1997, just before Jr. turned
14 seven years old, Stephanie's father drowned. We had his funeral on August 15th,
15 so I forgot Jr.'s seventh birthday on August 14th that year. After Stephanie's
16 father died, I became very depressed. I started drinking and trying to commit
17 suicide, and Stephanie and Jr. witnessed this over the years.

18 7. When Jr. was about twelve or thirteen years old he started smoking pot. The first
19 time I noticed he was high was when I went to pick the kids up from school and
20 Stephanie wouldn't tell me where Jr. was. He came from near the park and I could
21 smell marijuana. I knew that Jr.'s friends were bad influences, so when he went to
22 their houses I'd always try to go get him and bring him home. One time I went to
23 get Jr. and the friends' mom slammed the door in my face. I eventually quit
24 working because I knew the kids needed more attention from me.

25

1 8. When things started getting out of control, I called Jr.'s father to come get him. Jr.
2 spent one week with his father, his step-mother, and their two sons, and then his
3 father brought him back. I told him he needed to take Jr. for another week, but Jr.
4 wanted his sister Stephanie to go with him, so she went. That's how close he and
5 Stephanie were. Jr. would sometimes ask why I sent him to his father's house
6 since his father wouldn't even talk to him. The last time Jr. saw his father was on
7 his 14th birthday.

8 9. Jr. was about 15 when he got involved in a gang. His cousins were involved in
9 gang stuff and I think it influenced him. One of his older cousins, who eventually
10 got out of the gang, still blames himself to this day for introducing Jr. to it.

11 10. Jr. spent some time in juvie, mostly for truancy. He really did want to stay in
12 school but he couldn't seem to do it. If he tried to avoid fights, there was always
13 someone who would continue to provoke him.

14 11. During Jr.'s trial, I remember talking to his lawyer maybe twice. I remember him
15 asking me questions about what happened the night of the crime. Then he asked
16 me those questions during trial. I couldn't watch the trial because I was a witness,
17 but I was present when Jr. got the guilty verdict. I didn't know about the
18 sentencing date. The next time I saw Jr. after the verdict was when he was at
19 Green Hill School, after he'd already been sentenced to 92 years. I don't
20 remember exactly what I said when I found out how long Jr.'s sentence was, but I
21 know I would've told him he should have taken a plea deal. I would've said that
22 even a 15 year sentence would mean he'd be out at 31. But by the time I saw Jr. it
23 was too late.

24 12. Jr. spent some time at Green Hill School before he got transferred to the
25 Washington State Penitentiary. When he was in Green Hill, we got to visit him a

1 lot because he was close to home. Since he's been in prison, I haven't seen him.
2 He does write and send cards, and I sometimes talk to him on the phone.

3 13. If I'd had the chance to speak at sentencing, I would've said everything that I've
4 said right now. I just wished the court would've asked me about Jr. and what kind
5 of life he had, so he could've understood where he came from before he gave 92
6 years. I know that Jr. picked the wrong friends and made bad choices. I think that
7 the things going on in our lives at home affected him, and if they did I am so sorry.
8 I was a single mother raising three kids on my own and I worked a lot in Jr.'s life
9 to support him and his sisters. I did my best, but if I had to raise my kids again, I
10 would do it a lot different.

11 14. I think Jr. is a good kid. He has a good heart and soul and spirit. I remember one
12 letter he wrote to me from prison. He was remembering the time we had studied
13 about Jehovah's witnesses when Jr. was about six or seven years old. Jr. had asked
14 me what God looks like and I had told him no one knows what God looks like
15 because his spirit is so bright that we would go blind. Jr. was trying to draw a
16 picture of God. He wanted God in his life then and he does now. I've always tried
17 to tell my kids to say thank you and appreciate what people say and do for them.
18 So I'm writing this letter hoping it can help him and help the court understand
19 where he is coming from. I just wish and pray about him coming back into our
20 lives.

21 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
22 foregoing is true and correct.

23 DATED this 9 day of December, 2011, at Centralia, Washington.

24 
25 Elizabeth Dan

APPENDIX 7

1 the Washington State Office of Public Defense for approximately nine months,
2 during which time I provided training for public defenders around the state. In my
3 role as a public defender, I have represented several juveniles who have been
4 “automatically declined” into adult court.

5 SCOPE OF OPINION

6 3. I have been retained (without fee) by Kimberly Ambrose to comment generally on
7 my approach in handling the cases of juveniles declined into the adult system, and
8 more specifically, on what steps I would have taken if representing Mr. Solis Diaz
9 in *State of Washington v. Guadalupe Solis- Diaz*, Lewis County Superior Court,
10 No. 07-1-00543-3.

11 MATERIALS REVIEWED

- 12 4. In order to render the opinion set forth below, I have reviewed the following
13 materials:
- 14 a. Judgment & Sentence/ Warrant of Commitment of Guadalupe Solis Diaz
 - 15 b. Sentencing transcripts in *State of Washington v. Guadalupe Solis-Diaz*, Lewis
16 County Superior Court, No. 07-1-00543-3
 - 17 c. Declaration of Guadalupe Solis Diaz
 - 18 d. Declaration of Rosibel Rangel
 - 19 e. Declaration of Robin Jacques

20 OPINIONS

21 5. Recent developments in law and psychology recognize that treating juveniles like
22 adults within the criminal justice system is not always the best or appropriate
23 approach. In my experience, juveniles have difficulties in many areas of
24 representation, such as understanding the charges and the proceedings;
25 understanding the risks associated with going to trial; understanding what a plea

1 means, and whether to take it; understanding the length of the sentence they face;
2 and at times understanding the different roles played by judge, prosecutor and
3 defense counsel.

4 6. Because of their youth and vulnerability, it has been my experience that "auto
5 decline" cases require counsel to spend significantly more time than she would on
6 those cases in which adults are charged with similar offenses. It has been my
7 practice, and I believe it is the standard practice, to spend additional time with
8 juvenile clients, explaining the nature of the charge(s), reviewing the discovery
9 (keeping in mind that many of them have below average reading skills), explaining
10 what will happen in each step of the court proceedings, explaining the difference
11 between a plea bargain and a trial, carefully reviewing the prosecuting attorney's
12 offer and what the consequences are between acceptance of the offer and rejection
13 of the offer, and preparing for sentencing.

14 7. To the extent possible, I keep the client's family informed and involved. In those
15 cases where the client consents and the family is supportive, I ask the family to
16 meet with me and my social worker in an effort to obtain a complete social history
17 of the client. Family members are often helpful in locating and accessing records.
18 Where applicable, the expert may also meet with the family.

19 8. My first goal in such a case would be to try to negotiate a plea bargain whereby the
20 child is remanded back into Juvenile Court. I have been able to, and I am aware of
21 cases where my colleagues have also been able to, negotiate a plea bargain in
22 which the prosecutor was willing and able to reduce the charge to a non-declinable
23 offense (for example robbery in the first degree down to robbery in the second
24 degree), before the client's 18th birthday, thereby returning the client to Juvenile
25 Court.

- 1 9. Failing that, my goal would be to negotiate for a plea and sentence that reduces the
2 child's exposure to adult prison. My practice, and what I believe is standard
3 practice, is to explore mitigation (the child's social history, education, prior
4 experience if any in the juvenile court system) and to consult with experts familiar
5 with adolescent development, fetal alcohol syndrome, addiction, trauma and other
6 psychological issues. These areas can form the basis for defenses such as
7 diminished capacity and lesser-included crimes.
- 8 a. In this case, I would have requested Mr. Solis Diaz's school records, including
9 special education records; his medical records, including anything related to
10 substance abuse and/or mental health; any records of CPS referrals for Mr.
11 Solis Diaz and his sisters; his juvenile court file; and any records pertaining to
12 his parents' criminal history. With the help of my social worker, I would
13 gather information from Mr. Solis Diaz and his family to compile a social
14 history. I would then request an expert to review his social history and his
15 records and conduct an evaluation. Typically such an expert would be a
16 psychologist who specializes in adolescent development, such as Marty Beyer,
17 Ph.D. I would also enlist the services of an expert to conduct a substance abuse
18 evaluation of Mr. Solis Diaz. Given the prevalence of alcoholism in his family,
19 I might also have had him evaluated for Fetal Alcohol Spectrum Disorder.
- 20 b. It appears from the documents that I have reviewed here that Mr. Solis Diaz
21 suffered severe trauma throughout his childhood (stemming from abandonment
22 by his father and neglect by his mother, who suffered from alcoholism). He
23 also appears to suffer from severe learning deficiencies (performing at a 5th
24 grade level in the 10th grade). He may also have a substance abuse problem.
25 All of these factors significantly impaired his ability to appreciate the

1 wrongfulness of his conduct and to conform his conduct to the requirements of
2 the law. They also likely made it difficult for him to trust adults, which means
3 it would have required a lot of time to develop a trusting attorney-client
4 relationship.

5 10. Failing attempts at negotiation, I believe the standard of practice requires counsel
6 to prepare for trial, presenting these same mitigating issues to the jury in terms of
7 defenses and/or lesser-included offenses. I would enlist the services of an
8 investigator to interview all of the witnesses in the case, as well as any potential
9 defense witnesses. Throughout the entire process, I would meet regularly (at a
10 minimum once a week), with Mr. Solis Diaz to keep him informed of the progress
11 of the case, to explain the role of the expert(s), and to discuss all of his potential
12 defenses and what each one would mean (e.g., dismissal or reduced charges/
13 sentences). During those times when I might be tied up in other cases, I would
14 make sure to explain my lack of availability to meet with him. I might also send
15 him a note or ask a paralegal or social worker to stop by if the client is in custody
16 and calls with a question, or if there is new information to relay, with an
17 explanation that I will follow up in person.

18 11. Even when clients maintain their innocence, an attorney has an obligation to
19 investigate, and if applicable, present other defenses. The Constitution does not
20 preclude inconsistent defenses. In this case, I would investigate the following
21 lesser included offenses: second degree assault, unlawful display of a weapon and
22 reckless endangerment. Because this case involves codefendants I would look at
23 Bruton issues and accomplice liability.

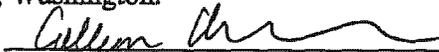
24 12. If the client is convicted, the same issues form the basis to request an exceptional
25 sentence below the standard range. The following statutory mitigating

1 circumstances are present in this case: Given the gang connections, I would
2 explore whether Mr. Solis Diaz committed the crime under duress, coercion, threat,
3 or compulsion insufficient to constitute a complete defense but which significantly
4 affected his conduct, and whether with no apparent predisposition to do so, he was
5 induced by others to participate in the crime. Second, Mr. Solis Diaz's capacity to
6 appreciate the wrongfulness of his conduct, or to conform his conduct to the
7 requirements of the law, was significantly impaired. (This is where the experts'
8 evaluations apply.) Finally, given Mr. Solis Diaz's youth, lack of criminal history
9 and the fact that no one was injured, the operation of the multiple offense policy of
10 RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light
11 of the purposes expressed in RCW 9.94A.010.

12 13. I would spend at least a few hours with Mr. Solis Diaz and his family in
13 preparation for the sentencing hearing. I would make sure to inform both him and
14 his family of the sentencing date. I would ask family members to speak on his
15 behalf at sentencing if they were available. There are cases where witnesses testify
16 at trial but are not believed. Depending on the facts of the case, their presence at
17 sentencing may still be helpful. I would also seek people outside of the family,
18 such as the defense experts and Mr. Solis Diaz's teachers or counselors, to speak at
19 sentencing. I would certainly prepare a presentence report and would likely have
20 attached the evaluation(s) and letters from his family, teachers and counselors.

21 I DECLARE under the penalty of perjury of the laws of the State of Washington that the
22 foregoing is true and correct.

23 DATED this 12 day of December, 2011, at Seattle, Washington.

24 
25 Colleen O'Connor, WSBA # 20265

**EXHIBIT A
TO APPENDIX 7**

COLLEEN E. O'CONNOR

10709 Linden Avenue N.
Seattle, WA 98133
206-367-9363

LEGAL EXPERIENCE

Senior Attorney

Society of Counsel Representing Accused Persons
1401 E. Jefferson, Suite 200
Seattle, WA 98122
January 30, 2008 through present (*and see below*)

I am currently the lead attorney on a capital case, *State v. Michele Anderson*, King County no. 07-C-08717-2.

Public Defense Services Manager

Washington State Office of Public Defense
711 Capitol Way South, suite 106
Olympia, WA 98504
April 2007 through January 16, 2008

Provided consultation to counties, cities and attorneys across the State of Washington on public defense issues. Supervised misdemeanor pilot projects in Thurston County District Court and Bellingham Municipal Court. Participated as faculty in several statewide CLEs.

Staff Attorney

Society of Counsel Representing Accused Persons
April 1996 through April 2007

Represented clients charged with a broad range of felony and misdemeanor offenses, ranging from aggravated first degree murder to driving while license suspended; also represented juvenile charged as adults in serious felony offenses, as well as clients in civil contempt of court hearings in family court. Conducted jury trials, motions hearings, bench trials, and post-sentencing review hearings, including representation of parolees in revocation of parole hearings set before the ISRB. Supervised new attorneys in felony trials.

Managing Attorney for the Misdemeanor/Contempt of Court/RALJ Unit from April 2003 through June 2006. Supervised a large group of attorneys, support staff and interns in diverse practice areas - misdemeanor, RALJ, civil contempt (for failure to pay child support), and Sexually Violent Predators. Attended court hearings, conducted annual performance evaluations for attorneys and non-attorney staff, and worked with them in developing their career goals, and attended court operations meetings where there were opportunities to advocate for clients on a broader level.

Contract Attorney

Nielsen, Broman and Koch

August 1995 through March 1996

Conducted legal research, drafting briefs and presenting oral argument in the Court of Appeals and the Washington Supreme Court on cases carried over from the Washington Appellate Defender Association (below).

Staff Attorney

Washington Appellate Defender Association

September 1991 through July 1995

Represented indigent persons on appeal of felony and juvenile convictions, exceptional sentences, and orders of dependency and/or termination of parental rights. Duties included research, writing briefs and presenting oral argument to the Washington Supreme Court and Court of Appeals.

Judicial Law Clerk

Justice Robert F. Utter, Washington State Supreme Court

September 1990 to September 1991

Prepared prehearing memoranda presenting the facts and analyzing the legal issues in cases set before the court; wrote first drafts of opinions; issues ranged from constitutional law to criminal law to torts to worker's compensation.

Legal Intern

Winston and Cashatt, P.S.C., Spokane, WA

May 1988 through September 1990

Legal research; drafted briefs, memos, pleadings, and correspondence with clients; conducted discovery.

EDUCATION

J.D., Gonzaga University School of Law, May 1990

Honors and Activities: Research Editor, Gonzaga Law Review; Linden Cup Competition (moot court)

B.A., English, University of Washington, December 1982

Honors and Activities: Dean's List, Drama, Photography

PROFESSIONAL ACCOMPLISHMENTS/ ENGAGEMENTS/ AWARDS

Member, Washington Supreme Court's list of attorneys qualified for appointment in death penalty cases at the trial level

Faculty member, King County Office of the Public Defender's Trial Advocacy Seminar, May 2009

Faculty member, Washington Defender Association's Trial Advocacy Seminar, November 2007

Faculty member, Washington State Office of Public Defense Statewide Trainings, June, July and September 2007

Recipient, WSBA's Random Acts of Professionalism Award

PROFESSIONAL ASSOCIATIONS

Washington Association of Criminal Defense Lawyers

Washington Defender Association

National Legal Aid and Defender Association

COMMUNITY OUTREACH

Volunteer "judge" for Seattle University School of Law students in presenting their second-year appellate arguments (annually since 1991).

Volunteer for the YMCA mock trial program, coordinated by Judge William Downing, in which I rate high school students on their performances. I have participated in this program nearly every Spring since 1999.

Volunteer "judge" for the University of Washington Law School's Mock Trial Competition.

Board member for El Quetzal, a non-profit organization working with indigenous women in Guatemala.

INTERESTS

Photography, Hiking, Volleyball

APPENDIX 8

APPENDIX 9

ALL RELEASES BETWEEN JANUARY 1, 2000 AND DECEMBER 31, 2010

RELEASE YEAR	RELEASE REASON				TOTAL
	Commutation	Conditional Pardon	Full Pardon	Transfer to EMP	
2000	3				3
2001	1				1
2002	1				1
2003	4				4
2004	4	1	1		6
2005	1	1			2
2006	1			1	2
2007	2				2
2008		1		2	3
2009	2			7	9
2010				10	10
TOTAL	19	3	2	19	43



Dylan Joyce Tessier <dtessier@uw.edu>

ALL RELEASES BETWEEN JANUARY 1

2 messages

Schave, Gaylene R. (DOC) <grschave@doc1.wa.gov>
To: Dylan Joyce Tessier <dtessier@uw.edu>

Tue, May 17, 2011 at 8:53 AM

Mr./Ms. Tessier:

Please see the attached statistical report regarding your request with tracking number PDU-15254. You have asked for statistics on the number of inmates released pursuant to RCW 9.94A.728 (3), (4), and (6) over the past 5 years.

<<ALL RELEASES BETWEEN JANUARY 1.docx>>

This fulfills this request and is now considered closed.

*Gaylene Schave**Public Disclosure Specialist**Washington Department of Corrections**PO Box 41118 Olympia, WA 98504**(360) 725-8852 Fax (360) 586-0287**"Ensuring effective communication and compliance with the Public Records Act"***ALL RELEASES BETWEEN JANUARY 1.docx**
13K

Dylan Joyce Tessier <dtessier@uw.edu>
To: "Schave, Gaylene R. (DOC)" <grschave@doc1.wa.gov>

Tue, May 17, 2011 at 10:39 AM

Ms. Schave,

Thank you so much for your time in gathering this data.

Dylan Tessier

[Quoted text hidden]

—

Dylan Tessier
J.D. Candidate, 2012
University of Washington School of Law
Seattle, WA
dtessier@uw.edu
[850-339-2956](tel:850-339-2956)

APPENDIX 10

State of Oregon vs. Lisandro Sanchez, Case No. 111174

FILED
CIRCUIT COURT
TILLAMOOK COUNTY STATE COURTS

7:28 PM 11/29/2011

TRIAL COURT ADMINISTRATION

nc

In the Circuit Court of the State of Oregon for Tillamook County

State of Oregon,
Plaintiff,

vs.

Lisandro Sanchez,
Defendant.

Case No.: 111174

JUDGMENT

Case File Date: 09/29/2011

DEFENDANT

True Name: Lisandro Sanchez Sex: Male
Date of Birth: 11/19/90
Fingerprint Control No (FPN): JTIL111009531

HEARING

Proceeding Date: 11/29/2011

Judge: Mari Garric Trevino

Media No.: fr102nc

Court Reporter: FTR Electronic

Defendant appeared in person and was in custody. The defendant was represented by Attorney(s) Oscar Garcia, OSB Number 95270.

Plaintiff appeared by and through Joel W Stevens, OSB Number 075380.

Defendant knowingly waived two day waiting period before sentencing.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1: Unlawful Use of a Weapon

Count number 1, Unlawful Use of a Weapon, ORS 166.220, a Class C Felony, committed on or about 09/03/2011.

Conviction is based upon a plea of Guilty on 11/29/2011.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 1 is 6 and the Criminal History Classification (CHC) is H.

email: DA, Prob 12-2-11

out v info than 1/2/11

CITNT. AHU

State of Oregon vs. Lisandro Sanchez, Case No. 74

The court finds reason(s) for a dispositional departure, as stated on the record. This departure is pursuant to the following factor(s):

- Stipulation of the parties.
- Defendant was on (parole probation) when this crime was committed.

Sentence Instructions

Defendant shall:

- Unless this order directs return of seized items to defendant, all seized items are forfeited to Tillamook Narcotics Team.

Incarceration

Defendant is sentenced to the custody of Oregon Department of Corrections for a period of 18 month(s). Defendant is remanded to the custody of the Tillamook County Sheriff for transportation to the Oregon Department of Corrections for service of this sentence.

Defendant may receive credit for time served. The defendant may be considered by the executing or releasing authority for any form of reduction in sentence authorized by law for which the defendant is otherwise eligible at the time of sentencing. The defendant may not be considered by the executing or releasing authority for any form of temporary leave from custody, work release, or program of conditional or supervised release. The defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

Post-Prison Supervision

The term of Post-Prison Supervision is 24 month(s). If defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Court finds inability to pay fines and fees other than any restitution that may be imposed. Restitution hearing set to determine restitution claim.

Count 4: Recklessly Endangering Another Person

Count number 4, Recklessly Endangering Another Person, ORS 163.195, a Class A Misdemeanor, committed on or about 09/03/2011.

Conviction is based upon a plea of Guilty on 11/29/2011.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 365 day(s). Defendant is remanded to the custody of the Tillamook County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. JAIL TIME TO BE CONCURRENT WITH COUNT 1 IN THIS CASE. The defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and defendant shall pay any required per diem fees.

Count 5: Recklessly Endangering Another Person

Count number 5, Recklessly Endangering Another Person, ORS 163.195, a Class A Misdemeanor, committed on or about 09/03/2011.

Conviction is based upon a plea of Guilty on 11/29/2011.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 365 day(s). Defendant is remanded to the custody of the Tillamook County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. JAIL TIME TO BE CONCURRENT WITH COUNTS 1 & 4 IN THIS CASE. The defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and defendant shall pay any required per diem fees.

Count 6: Recklessly Endangering Another Person

Count number 6, Recklessly Endangering Another Person, ORS 163.195, a Class A Misdemeanor, committed on or about 09/03/2011.

Conviction is based upon a plea of Guilty on 11/29/2011.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 365 day(s). Defendant is remanded to the custody of the Tillamook County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. JAIL TIME TO BE CONCURRENT WITH COUNTS 1 & 4 & 5 IN THIS CASE. The defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and defendant shall pay any required per diem fees.

Count 7: Recklessly Endangering Another Person

Count number 7, Recklessly Endangering Another Person, ORS 163.195, a Class A Misdemeanor, committed on or about 09/03/2011.

Conviction is based upon a plea of Guilty on 11/29/2011.

Incarceration

Defendant is sentenced to the custody of Jail for a period of 365 day(s). Defendant is remanded to the custody of the Tillamook County Sheriff for transportation to the Supervisory Authority for service of this sentence.

Defendant may receive credit for time served. JAIL TIME TO BE CONCURRENT WITH COUNTS 1 & 4 & 5 & 6 IN THIS CASE. The defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and defendant shall pay any required per diem fees.

COUNTS DISPOSED WITH NO CONVICTION

Count # 2, Criminal Mischief in the First Degree, is Judgment Dismissal Criminal.

Count # 3, Menacing, is Judgment Dismissal Criminal.

Count # 8, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.

State of Oregon vs. Lisandro Sanchez, Case No. 74

Count # 9, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 10, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 11, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 12, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 13, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 14, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.
Count # 15, Recklessly Endangering Another Person, is Judgment Dismissal Criminal.

If convicted of a felony or a crime involving domestic violence, you may lose the right to buy, sell, transport, receive, or possess a firearm, ammunition, or other weapons in both personal and professional endeavors pursuant to ORS 166.250, ORS 166.291, ORS 166.300, and/or 18 USC 922(g).

Court address:

Tillamook County Circuit Court
201 Laurel Avenue
Tillamook, OR 97141

Dated the 29 day of November, 2011

Signed:

Mari Garric Trevino
Mari Garric Trevino

FILED
CIRCUIT COURT
TILLAMOOK COUNTY
STATE COURTS
2011 OCT -7 AM 8:36
BY TRIAL COURT ADMINISTRATOR

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR TILLAMOOK COUNTY

STATE OF OREGON

Plaintiff,

vs.

LISANDRO SANCHEZ

Defendant,

No. 11-1174

INDICTMENT

COUNT 1

The above-named defendant is accused by the Grand Jury of Tillamook County, State of Oregon, by this Indictment of the crime of **UNLAWFUL USE OF A WEAPON (ORS 166.220 a Class C Felony) (Crime Category 6)** committed as follows:

The said defendant, on or about September 3, 2011, in Tillamook County, State of Oregon, did unlawfully and intentionally discharge a firearm within the city limits of the City of Tillamook, at or in the direction of a vehicle within the range of said weapon without having legal authority for such discharge,

COUNT 2

The above-named defendant is accused by the Grand Jury of Tillamook County, State of Oregon, by this Indictment of the crime of **CRIMINAL MISCHIEF IN THE FIRST DEGREE (ORS 164.365 a Class C Felony) (Crime Category 2)** committed as follows:

The said defendant, on or about September 3, 2011, in Tillamook

1 County, State of Oregon, did unlawfully and with intent to damage
2 property, damage a Chevrolet Blazer, in an amount exceeding one
3 thousand dollars, the property of Ivan Merino, defendant having no right
4 to do so nor reasonable ground to believe that defendant had such right,

5 **COUNT 3**

6 The above-named defendant is accused by the Grand Jury of
7 Tillamook County, State of Oregon, by this Indictment of the crime of
8 **MENACING (ORS 163.190 a Class A Misdemeanor)** committed as
9 follows:

10 The said defendant, on or about September 3, 2011, in Tillamook
11 County, State of Oregon, did unlawfully and intentionally attempt to place
12 Ivan Merino in fear of imminent serious physical injury,

13 **COUNT 4**

14 The above-named defendant is accused by the Grand Jury of
15 Tillamook County, State of Oregon, by this Indictment of the crime of
16 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
17 **Class A Misdemeanor)** committed as follows:

18 The said defendant, on or about September 3, 2011, in Tillamook
19 County, State of Oregon, did unlawfully and recklessly create a substantial
20 risk of serious physical injury to Amber McMullen,

21 **COUNT 5**

22 The above-named defendant is accused by the Grand Jury of
23 Tillamook County, State of Oregon, by this Indictment of the crime of
24 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
25 **Class A Misdemeanor)** committed as follows:

26 The said defendant, on or about September 3, 2011, in Tillamook
27 County, State of Oregon, did unlawfully and recklessly create a substantial

1 risk of serious physical injury to Thomas Hysell,

2 **COUNT 6**

3 The above-named defendant is accused by the Grand Jury of
4 Tillamook County, State of Oregon, by this Indictment of the crime of
5 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
6 **Class A Misdemeanor)** committed as follows:

7 The said defendant, on or about September 3, 2011, in Tillamook
8 County, State of Oregon, did unlawfully and recklessly create a substantial
9 risk of serious physical injury to Daniel Merino Mendoza,

10 **COUNT 7**

11 The above-named defendant is accused by the Grand Jury of
12 Tillamook County, State of Oregon, by this Indictment of the crime of
13 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
14 **Class A Misdemeanor)** committed as follows:

15 The said defendant, on or about September 3, 2011, in Tillamook
16 County, State of Oregon, did unlawfully and recklessly create a substantial
17 risk of serious physical injury to Guadalupe Silva Chavez,

18 **COUNT 8**

19 The above-named defendant is accused by the Grand Jury of
20 Tillamook County, State of Oregon, by this Indictment of the crime of
21 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
22 **Class A Misdemeanor)** committed as follows:

23 The said defendant, on or about September 3, 2011, in Tillamook
24 County, State of Oregon, did unlawfully and recklessly create a substantial
25 risk of serious physical injury to Juliana Merino Silva,

26 **COUNT 9**

27 The above-named defendant is accused by the Grand Jury of

1 Tillamook County, State of Oregon, by this Indictment of the crime of
2 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
3 **Class A Misdemeanor)** committed as follows:

4 The said defendant, on or about September 3, 2011, in Tillamook
5 County, State of Oregon, did unlawfully and recklessly create a substantial
6 risk of serious physical injury to Erika Merino Silva,

7 **COUNT 10**

8 The above-named defendant is accused by the Grand Jury of
9 Tillamook County, State of Oregon, by this Indictment of the crime of
10 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
11 **Class A Misdemeanor)** committed as follows:

12 The said defendant, on or about September 3, 2011, in Tillamook
13 County, State of Oregon, did unlawfully and recklessly create a substantial
14 risk of serious physical injury to Daniel Merino Silva,

15 **COUNT 11**

16 The above-named defendant is accused by the Grand Jury of
17 Tillamook County, State of Oregon, by this Indictment of the crime of
18 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
19 **Class A Misdemeanor)** committed as follows:

20 The said defendant, on or about September 3, 2011, in Tillamook
21 County, State of Oregon, did unlawfully and recklessly create a substantial
22 risk of serious physical injury to Ivan Merino Silva,

23 **COUNT 12**

24 The above-named defendant is accused by the Grand Jury of
25 Tillamook County, State of Oregon, by this Indictment of the crime of
26 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
27 **Class A Misdemeanor)** committed as follows:

1 The said defendant, on or about September 3, 2011, in Tillamook
2 County, State of Oregon, did unlawfully and recklessly create a substantial
3 risk of serious physical injury to Carlos Garcia Martinez,

4 **COUNT 13**

5 The above-named defendant is accused by the Grand Jury of
6 Tillamook County, State of Oregon, by this Indictment of the crime of
7 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
8 **Class A Misdemeanor)** committed as follows:

9 The said defendant, on or about September 3, 2011, in Tillamook
10 County, State of Oregon, did unlawfully and recklessly create a substantial
11 risk of serious physical injury to Miriam Nayeli Garcia,

12 **COUNT 14**

13 The above-named defendant is accused by the Grand Jury of
14 Tillamook County, State of Oregon, by this Indictment of the crime of
15 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
16 **Class A Misdemeanor)** committed as follows:

17 The said defendant, on or about September 3, 2011, in Tillamook
18 County, State of Oregon, did unlawfully and recklessly create a substantial
19 risk of serious physical injury to Carlos Garcia Merino,

20 **COUNT 15**

21 The above-named defendant is accused by the Grand Jury of
22 Tillamook County, State of Oregon, by this Indictment of the crime of
23 **RECKLESSLY ENDANGERING ANOTHER PERSON (ORS 163.195 a**
24 **Class A Misdemeanor)** committed as follows:

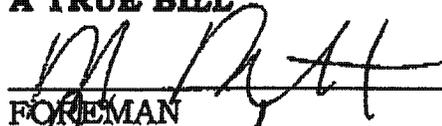
25 The said defendant, on or about September 3, 2011, in Tillamook
26 County, State of Oregon, did unlawfully and recklessly create a substantial
27 risk of serious physical injury to Leslie Garcia Merino,

1 contrary to the statutes in such cases made and provided and against the
2 peace and dignity of the State of Oregon,

3 Dated 10.6-2011

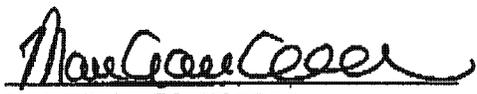
4 Witnesses examined before
5 the Grand Jury:
6 Detective Fournier, TCSO - In Person
7 Officer Olson, TCP - In Person
8 Officer Lothman, TCP - In Person
9 Ivan Merino - In Person
10 Erika Merino - In Person

A TRUE BILL

11 
12 _____
13 FOREMAN

14 
15 _____
16 Joel W. Stevens
17 Deputy District Attorney
18 OSB#01066
19 jstevens@co.tillamook.or.us

20 Security Amount \$ ~~7900⁰⁰~~ / \$ ~~7900⁰⁰~~

21 
22 _____
23 MARI G. TREVINO
24 Circuit Court Judge
25 OSB #97139

26 _____
27 JONATHAN R. HILL
28 Circuit Court Judge
29 OSB #97546

30 Defendant: Lisandro Sanchez DOB: 11-19-90
31 In Custody, Tillamook County Jail

32 Copy: Rose City Defense Consortium

UW CLINICAL LAW PROGRAM
December 14, 2011 - 12:01 PM
Transmittal Letter

Document Uploaded: prp2-420643-Reply.pdf

Case Name: In Re the Personal Restraint of Guadalupe Solis Diaz

Court of Appeals Case Number: 42064-3

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: J Mcmurtrie - Email: **dtessier@uw.edu**

A copy of this document has been emailed to the following addresses:

appeals@lewiscountywa.gov

kambrose@u.washington.edu

dtessier@uw.edu