NO. 46101-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

IRVING LYLE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable John R. Hickman, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it found the appellant had the current or future ability to pay legal financial obligations (LFOs). CP 20 (financial obligation finding 2.5).[1]

2. The trial court's conclusion appellant has the ability to pay LFOs is unsupported by the record.

3. Defense counsel was ineffective for failing to object to the trial court's imposition of discretionary LFOs.

Issues Pertaining to Assignments of Error

RCW 9.94A.753 and RCW 10.01.160 require the trial court to consider the defendant's present, past, and future ability to pay the amount ordered before imposing discretionary LFOs. The trial court ordered appellant to pay $2,300 in legal financial obligations, including $1500 in non-mandatory court appointed attorney fees. In so ordering, the trial court included generic, pre-formatted language in the Judgment and Sentence that concluded appellant had the ability or likely future ability to pay this amount. There is nothing in the record, however, indicating that the trial court ever took into account appellant's financial resources or likely future resources.

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[1] The Judgment and Sentence is attached as an Appendix.

1. Did the trial court fail to comply with RCW 10.01.160(3) when it imposed discretionary LFOs as part of appellant's sentence, thus making the LFO order erroneous and challengeable for the first time on appeal?

2. Is appellant's challenge to the validity of the LFO order ripe for review?

3. Is the remedy to remand for resentencing?

4. Was appellant's trial attorney ineffective for failing to object to the imposition of discretionary legal financial obligations?

B. STATEMENT OF THE CASE

The State charged Irving Lyle[2] with failure to register as a sex offender between September 25 and October 16, 2013 and with having two or more convictions for failure to register, which enhanced the penalty for the charge. CP 1-3; see RCW 9A.44.132(1)(b) (elevating crime to class B felony based on prior convictions).

Lyle waived his right to a jury and was found guilty following a bench trial. CP 33-41.

[2] The superior court case caption lists Mr. Lyle's name as "Irving." However, as he represented to the court below, his correct name is Irvin. CP 48.

The trial court sentenced 63-year-old Irvin to 44 months of incarceration. CP 22. The court imposed $2,300 in legal financial obligations, including $1,500 in discretionary LFOs for court appointed attorney fees. CP 20-21.

Although there was no discussion of Lyle's financial circumstances, the judgment and sentence includes a written "finding," which was pre-printed on the sentencing form. The finding reads in part that: "The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations." CP 20 (financial obligation finding 2.5).

Lyle timely appealed. CP 46. His motion for order of indigency indicates he is not employed. CP 52. Moreover, it indicates that he owns no real estate, owns no stocks or bonds, is not the beneficiary of any trust, and has no savings or substantial income. CP 49-53. The court found Irvin indigent for purposes of appeal. CP 54-56.

C. ARGUMENT

1. THE TRIAL COURT'S FAILURE TO CONSIDER LYLE'S ABILITY TO PAY BEFORE IMPOSING LFOs CONSTITUTES A SENTENCING ERROR THAT MAY BE CHALLENGED FOR THE FIRST TIME ON APPEAL.

RCW 9.94A.760 permits the court to impose costs "authorized by law" when sentencing an offender for a felony. RCW 10.01.160(3)

permits the sentencing court to order an offender to pay LFOs, but only if the trial court has first considered his individual financial circumstances and concluded he has the ability, or likely future ability, to pay. The record here does not show the trial court in fact considered Lyle's ability or future ability before it imposed LFOs. Because such consideration is statutorily required, the trial court's imposition of LFOs was erroneous and the validity of the order may be challenged for the first time on appeal.

a. The legal validity of the LFO order may be challenged for the first time on appeal as an illegal sentencing condition.

Although the general rule under RAP 2.5 is that issues not objected to in the trial court may not be raised for the first time on appeal, it is well established that illegal or erroneous sentences may be challenged for the first time on appeal. State v. Ford, 137 Wn.2d 427, 477-78, 973 P.2d 452 (1999) (citing numerous cases where defendants were permitted to raise sentencing challenges for the first time on appeal); see also State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (holding erroneous condition of community custody could be challenged for the first time on appeal). Specifically, this Court has held a defendant may challenge, for first time on appeal, the imposition of a criminal penalty on the ground the

sentencing court failed to comply with the authorizing statute. State v. Moen, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996).[3]

In Moen, the Supreme Court held that a timeliness challenge to a restitution order could be raised for the first time on appeal. It looked at the authorizing statute, which set forth a mandatory 60-day limit, and the record, which showed the trial court did not comply with that statutory directive. Specifically rejecting a waiver argument, the Court explained:

> We will not construe an uncontested order entered after the mandatory 60-day period of former RCW 9.9A.142 (1) had passed as a waiver of that timeliness requirement; *it was invalid when entered.*

Id. at 541 (emphasis added). The Court concluded the restitution was not ordered in compliance with the authorizing statute and, therefore, the validity of the order could be challenged for the first time on appeal. Id. at 543-48.

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[3] See also State v. Parker, 132 Wn.2d 182, 189, 937 P.2d 575 (1997) (explaining improperly calculated standard range is legal error subject to review); In re Personal Restraint of Fleming, 129 Wn.2d 529, 532, 919 P.2d 66 (1996) (explaining "sentencing error can be addressed for the first time on appeal even if the error is not jurisdictional or constitutional"); State v. Hunter, 102 Wn. App. 630, 9 P.3d 872 (2000) (examining for the first time on appeal the validity of drug fund contribution order); State v. Roche, 75 Wn. App. 500, 513, 878 P.2d 497 (1994) (holding "challenge to the offender score calculation is a sentencing error that may be raised for the first time on appeal"); State v. Paine, 69 Wn. App. 873, 884, 850 P.2d 1369 (1993) (collecting cases and concluding that case law has "established a common law rule that when a sentencing court acts without statutory authority in imposing a sentence, that error can be addressed for the first time on appeal").

The record shows the trial court failed to comply with the statutory requirements set forth in RCW 10.01.160(3). Lyle may therefore challenge the trial court's LFO order for the first time on appeal.

In State v. Calvin, 176 Wn. App. 1, 302 P.3d 509 (2013), motion for reconsideration granted and republished at 316 P.3d 496 (October 24, 2013), Division One of this Court originally held Calvin could challenge his LFO order for the first time on appeal. But the Court later reversed course. The reasoning supporting Division One's course change in Calvin does not apply here.

Calvin's appeal involved a challenge to the factual basis supporting the trial court's LFO order, that is, whether there was insufficient evidence to support the trial court's decision that he had the ability to pay LFOs. Calvin, 302 P.3d at 521. Here, in contrast, Lyle asserts the trial court failed to undertake the statutorily required factual analysis required under RCW 10.01.160.

The factual nature of Calvin's argument drives Division One's waiver analysis. Specifically, Division One states, "the imposition of costs under [RCW 10.01.160] is a factual matter 'within the trial court's discretion,'" and "[f]ailure to identify a factual dispute or to object to a discretionary determination at sentencing waives associated errors on appeal." Calvin, 316 P.3d at 507. Having framed the issue as a

sufficiency challenge, rather than a legal one, Calvin goes on to cite this Court's holdings in In re Personal Restraint of Goodwin[4] and In re Personal Restrain of Shale,[5] for the proposition that "failure to identify a factual dispute or to object to a discretionary determination at sentencing waives associated errors on appeal." Id.

Unlike Calvin, Lyle's challenge does not involve discretionary acts of the trial court. As discussed in detail below, compliance with the statutory directives of RCW 10.01.160 is not discretionary. Furthermore, the issue raised by Lyle is legal, not factual. See State v. Burns, 159 Wn. App. 74, 77, 244 P.3d 988 (2010) (explaining whether the trial court exceeds its statutory authority is an issue of law). Thus, Calvin's waiver analysis is not on point. Cf. State v. Blazina, 174 Wn. App. 906, 911, 301 P.3d 492, review granted, 178 Wn.2d 1010 (2013) (declining to consider an LFO challenge raised for the first time on appeal); State v. Bertrand, 165 Wn. App. 393, 404, 267 P.3d 511 (2011), review denied, 175 Wn.2d 1014 (2012) (concluding for the first time on appeal that finding Bertrand had present or future ability to pay LFOs was unsupported by the record

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[4] 146 Wn.2d 861, 874-75, 50 P.3d 618 (2002).

[5] 160 Wn.2d 489, 494-95, 158 P.3d 588 (2007).

and therefore clearly erroneous). The issue raised in this case is analogous to that raised in Moen, not Calvin.

More recently, in State v. Duncan, Division Three of this Court noted inconsistencies among the Court of Appeals divisions as to whether LFO's may be challenged for the first time on appeal. 180 Wn. App. 245, 252, 327 P.3d 699 (2014). Concluding that there was a "clear potential for abuse," the Court declined to allow Duncan to raise an LFO argument for the first time on appeal. Id. at 255. In so doing, Division Three rejected portions of similar arguments made here. Duncan recognized however, the forthcoming Supreme Court opinions in Blazina and State v. Paige-Colter[6] would ultimately clarify the issue. 180 Wn. App. at 253.

Here the record shows the trial court did not comply with the requirements of RCW 10.01.160(3). Thus, the issue should be reviewable for the first time on appeal.

b. Because the sentencing court did not comply with RCW 10.01.160(3), Lyle may challenge the LFO order for the first time on appeal.

RCW 10.01.160(3) provides:

> [t]he court *shall not* order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall

[6] Unpublished opinion noted at 175 Wn. App. 1010, review granted, 178 Wn.2d 1018 (2013).

> take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

RCW 10.01.160(3) (emphasis added). The word "shall" means the requirement is mandatory.[7] State v. Claypool, 111 Wn. App. 473, 475–76, 45 P.3d 609 (2002). Hence, the trial court was without authority to impose LFOs as a condition of Lyle's sentence if it did not first take into account his financial resources and the individual burdens of payment.

While formal findings supporting the trial court's decision to impose LFOs under RCW 10.01.160(3) are not required, the record must minimally establish the sentencing judge did in fact consider the defendant's individual financial circumstances and made an individualized determination he has the ability, or likely future ability, to pay. State v. Curry, 118 Wn.2d 911, 916, 829 P.2d 166 (1992); Bertrand, 165 Wn. App. at 393. If the record does not show this occurred, the trial court's LFO order is not in compliance with RCW 10.01.160(3) and, thus, exceeds the trial court's authority.

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[7] Comparatively, RCW 9.94A.753, a statute which addresses restitution, provides:

> The court *should* take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(Emphasis added).

The record does not establish the trial court actually took into account Lyle's financial resources and the nature of the payment burden or made an individualized determination regarding his ability to pay. 3RP 228 (absence of such finding during oral sentencing ruling). The State did not provide evidence establishing Lyle's ability to pay or ask it to make a determination under RCW 10.01.160 when it asked that LFOs be imposed.[8] 3RP 209. The trial court made no inquiry into Lyle's financial resources, debts, or employability.

The only part of the record that even remotely suggests the trial court complied with RCW 10.01.160 (3) is the boilerplate finding in the Judgment and Sentence. CP 20. However, this finding does not establish compliance with the requirements of RCW 10.01.160(3).

A boilerplate finding, standing alone, is antithetical to the notion of individualized consideration of specific circumstances. See, e.g., In re Dependency of K.N.J., 171 Wn.2d 568, 257 P.3d 522 (2011) (concluding a boilerplate finding alone was insufficient to show the trial court gave independent consideration of the necessary facts); Hardman v. Barnhart, 362 F.3d 676, 679 (10th Cir.2004) (explaining boilerplate findings in the

[8] It is the State's burden to prove the defendant's ability or likely ability to pay. State v. Lundy, 176 Wn. App. 96, 105, 308 P.3d 755 (2013).

absence of a more thorough analysis did not establish the trial court conducted an individualized consideration of witness credibility).

The Judgment and sentence form used in Lyle's case contained a pre-formatted conclusion that he had the ability to pay LFOs. It does not include a checkbox to register even minimal individualized judicial consideration. CP 20. Rather, every time one of these forms is used, there is a pre-formatted conclusion the trial court followed the requirements of RCW 10.01.160(3) regardless of what actually transpires. This type of finding therefore cannot reliably establish the trial court complied with RCW 10.01.160(3).

In sum, the record fails to establish the trial court actually took into account Lyle's financial circumstances before imposing LFOs. As such, it did not comply with the authorizing statute. Consequently, this Court should permit Lyle to challenge the legal validity of the LFO order for first time on appeal, and it should vacate the order.

2. LYLE'S CHALLENGE TO THE LFO ORDER IS RIPE FOR REVIEW.

Alternatively, the State may argue the issue is not ripe for review because the State has not yet attempted to collect the costs. This argument should be rejected, however, because it fails to distinguish between a LFO challenge based on financial hardship grounds (arguably not ripe) and a

challenge attacking the legality of the order based on statutory non-compliance (ripe).

Although there is a line of cases that holds the relevant or meaningful time to challenge an LFO order is after the State seeks to enforce it, these cases address challenges based on an assertion of financial hardship or on procedural due process principles that arise in regard to collection.[9] In contrast, this case involves a direct challenge to the legal validity of the order on the ground the trial court failed to comply with RCW 10.01.160(3). As shown below, this issue is ripe for review.

A claim is fit for judicial determination if the issues raised are primarily legal, do not require further factual development, and the challenged action is final. Bahl, 164 Wn.2d at 751. Additionally, when considering ripeness, reviewing courts must take into account the hardship to the parties of withholding court consideration. Id.

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[9] See, e.g., Lundy, 176 Wn. App. at 107-09 (holding "any challenge to the order requiring payment of legal financial obligations *on hardship grounds* is not yet ripe for review" until the State attempts to collect); State v. Ziegenfuss, 118 Wn. App. 110, 74 P.3d 1205 (2003) (determining defendant's constitutional challenge to the LFO violation process is not ripe for review until the State attempts to enforce LFO order); State v. Phillips, 65 Wn. App. 239, 243-44, 828 P.2d 42 (1992) (holding defendant's constitutional objection to the LFO order based on the fact of his indigence was not ripe until the State sought to enforce the order); State v. Baldwin, 63 Wn. App. 303, 310, 818 P.2d 1116 (1991) (concluding the meaningful time to review a constitutional challenge to the LFO order on financial hardship grounds is when the State enforces the order).

First, as discussed above, the issue raised here is primarily legal. Neither time nor future circumstances pertaining to enforcement will affect whether the trial court complied with RCW 10.01.160 prior to issuing the order. As such, Lyle meets the first prong of the ripeness test. State v. Valencia, 169 Wn.2d 782, 788, 239 P.3d 1059 (2010) (citing United States v. Loy, 237 F.3d 251 (3d Cir. 2001)).

Second, no further factual development is necessary. As explained above, Lyle is challenging the sentencing court's failure to comply with RCW 10.01.160(3). The facts necessary to decide this issue (the statute and the sentencing record) are fully developed.

Although in Valencia, 169 Wn.2d at 789, the Supreme Court previously suggested LFO challenges require further factual development, Valencia does not apply here. Valencia involved a constitutional challenge to a sentencing condition regarding pornography. In assessing the second prong of the ripeness test, the Court compared Valencia's challenge to the court-ordered proscription on pornography with a hypothetical challenge to a LFO order. The Court suggested the former did not require further factual development to support review, while the latter did.

It appears, however, the Supreme Court's hypothetical LFO challenge was predicated upon the notion that the order would be

challenged on factual financial hardship grounds, rather than on statutory non-compliance grounds. For example, the Court stated:

> [LFO orders] are not ripe for review until the State attempts to enforce them because their validity depends on the particular circumstances of the attempted enforcement.

Id. at 789. This statement certainly may be true if the offender is challenging the validity of the LFO order asserting current financial hardship. However, it is not accurate if an offender is challenging the legal validity of the LFO order based on non-compliance with RCW 10.01.160.

Either the sentencing court complied with the statute prior to imposing the order, or it did not. If it did not, the order is not valid, regardless of the particular circumstances of attempted enforcement. This demonstrates Valencia likely never contemplated the issue raised herein and is therefore distinguishable. As explained above, no further factual development is needed here, and the second prong of the ripeness test is satisfied.

Third, the challenged action is final. Once LFOs are ordered, that order is not subject to change. The fact that the defendant may later seek to modify the LFO order through the remission process does not change the finality of the trial court's original sentencing order. While a defendant's obligation to pay can be modified or forgiven in a subsequent

hearing under RCW 10.01.160(4), the order authorizing that debt in the first place is not subject to change. In other words, while the defendant's obligation to pay LFOs that have been ordered may be "conditional," the original sentencing order imposing LFOs is final.[10] As such, the third prong of the ripeness test is met.

Next, withholding consideration of an erroneously entered LFO places significant hardships on a defendant due to its immediate consequences and the burdens of the remission process. An LFO order imposes an immediate debt upon a defendant and nonpayment may subject him to arrest. RCW 10.01.180. Additionally, upon entry of the judgment and sentence, he or she is immediately liable for that debt which begins accruing interest at a 12 per cent rate. RCW 10.82.090.

The hardships that might result from the erroneous imposition of LFOs cannot be understated. A study conducted by the Washington State Minority and Justice Commission examining the impact of LFOs, concludes that for many people LFOs result in:

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[10] Division One previously concluded a trial court's LFO order is "conditional," as opposed to final, because the defendant may seek remission or modification at any time. State v. Smits, 152 Wn. App. 514, 523, 216 P.3d 1097 (2009). However, the Court did so in the context of reviewing a denial of the defendant's motion to terminate his debt on the basis of financial hardship pursuant to RCW 10.01.160(4). Thus, the Court's analysis focused on the defendant's conditional obligation to pay rather than on the legal validity of the initial sentencing order. Id.

> . . . . reducing income and worsening credit ratings, both of which make it more difficult to secure stable housing, hindering efforts to obtain employment, education, and occupational training, reducing eligibility for federal benefits, creating incentives to avoid work and/or hide from the authorities; ensnarling some in the criminal justice system; and making it more difficult to secure a certificate of discharge, which in turn prevents people from restoring their civil rights and applying to seal one's criminal record.

The Assessment and Consequences of Legal Financial Obligations in Washington State, Washington State Minority and Justice Commission at 4-5 (2008).[11]

Withholding appellate court consideration of an erroneous LFO order means the only recourse available to a person who has been erroneously burdened with LFOs is the remission process. Unfortunately, reliance on the remission process to correct the error imposes its own hardships.

First, during the remission process, the defendant is saddled with a burden he would not otherwise have to bear. During sentencing, it is the State's burden to establish the defendant's ability to pay prior to the trial court imposing any LFOs. Lundy, 176 Wn. App. at106. The defendant is not required to disprove this. See, e.g. Ford, 137 Wn. App. at 482 (stating the defendant is "not obligated to disprove the State's position" at

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[11] This report can be found at: http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf

sentencing where it has not met its burden of proof). If the LFO order is not reviewed on direct appeal and is left for correction through the remission process, however, the burden shifts to the defendant to show a manifest hardship. RCW 10.01.160(4). Permitting an offender to challenge the validity of the LFO order on direct appeal ensures that the burden remains on the State.

Second, an offender who is left to challenge his erroneously ordered LFOs though the remission process will have to do so without appointed legal representation. State v. Mahone, 98 Wn. App. 342, 346, 989 P.2d 583 (1999) (recognizing an offender is not entitled to publicly funded counsel to file a motion for remission). Given Lyle's financial hardships, he will likely be unable to retain private counsel and, therefore, have to litigate the issue pro se.

For a person unskilled in the legal field, proceeding pro se in a remission process can be a confusing and daunting prospect, especially if this person is already struggling to make ends meet. See Washington State Minority and Justice Commission, supra, at 59-60 (documenting the confusion that exists among legal debtors regarding the remission process). Indeed, some offenders are so overwhelmed, they simply stop paying, subjecting themselves to further possible penalties. Id. at 46-47. Permitting a challenge to an erroneous LFO order on direct appeal would

enable an offender to challenge his debt with the help of counsel and before the financial burden grows so overwhelming the person just gives up.

Finally, reviewing the validity of LFO orders on direct appeal, rather than waiting for the State to attempt collection and then remedying the problem during the remission process, serves an important public policy by helping conserve financial resources that will otherwise be wasted by efforts to collect from individuals who will likely never be able to pay. See State v. Hathaway, 161 Wn. App. 634, 651-52, 251 P.3d 253 (2011) (reviewing order that the defendant pay a jury demand fee because it involved a purely legal question and would likely save future judicial resources). Allowing the matter to be addressed on direct appeal will emphasize the importance of undertaking the necessary factual consideration in the first place and not rely on the remission process to remedy errors.

For the reasons stated above, this Court should hold Lyle's challenge to the legal validity of the LFO is ripe.

3. BECAUSE THE RECORD DOES NOT EXPRESSLY DEMONSTRATE THE SENTENCING COURT WOULD HAVE IMPOSED THE LFOs HAD IT UNDERTAKEN THE REQUIRED CONSIDERATIONS, THE REMEDY IS REMAND.

Where the sentencing court fails to comply with a sentencing statute when imposing a sentencing condition, remand is the remedy unless the record clearly indicates the court would have imposed the same condition anyway. State v. Chambers, 176 Wn.2d 573, 293 P.3d 1185 (2013) (citing State v. Parker, 132 Wn.2d 182, 937 P.2d 575 (1997)).

The record does not expressly demonstrate the trial court would have found the evidence sufficiently established Lyle's ability to pay the LFOs. There was no evidence establishing Lyle's future employment prospects. Indeed, the record suggests Lyle was not employed and had no significant assets. Lyle testified he lost his job. 3RP 322. Lyle's motion for order of indigency indicates he is not employed and owns no real estate, stocks or bonds, is not the beneficiary of any trust, and has no savings or substantial income of any kind. CP 49-53. Moreover, although Lyle had been employed in the past, he was born in 1951 and will be in his late 60s when he is released from prison on the current charge. CP 18, 22.

Based on the foregoing, it cannot be said this record expressly demonstrates the sentencing court would have imposed the same LFOs if it had actually taken into account Lyle's individualized financial

circumstances. As such, the remedy is remand for resentencing. Parker, 132 Wn.2d at 192-93.

4. LYLE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL COUNSEL FAILED TO OBJECT TO THE IMPOSITION OF LFOs.

The federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. 6; Const. art. 1, § 22 (amend. 10); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). Ineffective assistance of counsel is established if: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Thomas, 109 Wn.2d at 225-26 (adopting two-prong test from Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Deficient performance occurs when counsel's conduct falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). Prejudice occurs when, but for counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceeding would have differed. In re Personal Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

Lyle's counsel was ineffective for failing to object to the imposition of discretionary LFOs. Reversal is required because failure to object to the LFOs prejudiced Lyle. See Duncan, 180 Wn. App. at 255 (recognizing

ineffective assistance of counsel is "an available course for redress" when defense counsel fails to address a defendant's inability to pay LFOs).

As discussed above, RCW 10.01.160(3) permits the sentencing court to order a defendant to pay LFOs, but only if the trial court has first considered his individual financial circumstances and concluded he has the ability, or likely future ability, to pay. Here, the discretionary LFO costs imposed included $1500 in court appointed attorney fees. Blazina, 174 Wn. App. at 911 (recognizing court appointed attorney fees are "discretionary legal financial obligations").

Counsel's failure to object to this discretionary LFO fell below the standard expected for effective representation. There was no reasonable trial strategy for not requesting the trial court to comply with the requirements of RCW 10.01.160(3). Counsel simply neglected to object to the trial court's failure to comply with the statutory requirements as required by existing case law. See State v. Kyllo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009) (counsel has a duty to know the relevant law); State v. Carter, 56 Wn. App. 217, 224, 783 P.2d 589 (1989) (counsel is presumed to know court rules). Such neglect indicates deficient performance. See State v. Tilton, 149 Wn.2d 775, 784, 72 P.3d 735 (2003) (finding failure to present available defense unreasonable).

Counsel's failure to object to imposition of discretionary LFO's was also prejudicial. As discussed in argument two above, the hardships that can result from the erroneous imposition of LFOs are numerous. In a remission hearing to set aside the LFOs, Lyle is not only saddled with a burden of proof he would not otherwise have to bear, but he will also have to do without appointed legal representation.

There is a reasonable probability the outcome would be different but for defense counsel's conduct. Lyle's constitutional right to effective assistance counsel was violated.

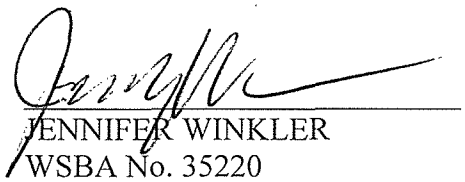
D. CONCLUSION

For the reasons stated above, this Court should permit Lyle to challenge the legal validity of the LFO order, vacate the order, and remand for resentencing.

DATED this 22nd day of August, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



JENNIFER WINKLER
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Office ID No. 91051

Attorneys for Appellant

APPENDIX

13-1-04027-3

FILED
DEPT. 22
IN OPEN COURT
MAR 14 2014
Pierce County Clerk
By ..... DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. IRVING B. LYLE Defendant. SID: WA10034668 DOB: 01/05/1951	CAUSE NO. 13-1-04027-3 JUDGMENT AND SENTENCE (FJS) [✓] Prison [ ] RCW 9.94A.712\9.94A.507 Prison Confinement [ ] Jail One Year or Less [ ] First-Time Offender [ ] Special Sexual Offender Sentencing Alternative [ ] Special Drug Offender Sentencing Alternative [ ] Alternative to Confinement (ATC) [ ] Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8 [ ]Juvenile Decline [ ]Mandatory [ ]Discretionary

I. HEARING

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 2-25-14 by [ ] plea [ ] jury-verdict [X] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	FAILURE TO REGISTER AS A SEX OFFENDER – THIRD OFFENSE (I96)	9A.44.132	NONE	09/25/13 - 10/16/13	TPD 13228 0750

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Original Information

14-9-02589-1

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[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	BURGLARY 2	08/08/72	PIERCE CO. WA	04/14/71	A	
2	ATT BURG 2	10/12/78	PIERCE CO, WA	06/30/78	A	
3	PSP 2 (X2)	03/19/85	PIERCE CO, WA	01/29/85	A	
4	FORGERY (X3)	03/19/85	PIERCE CO, WA	01/29/85	A	
5	VIOL WORK REL	06/02/87	FRANKLIN CO, WA	05/06/87	A	
6	RAPE 1	11/22/91	KING CO, WA	10/19/89	A	
7	ASLT 2	11/22/91	KING CO, WA	10/19/89	A	
8	KIDNAPPING 1	11/22/91	KING CO, WA	10/19/89	A	
9	BURG 2	11/16/98	PIERCE CO, WA	07/27/98	A	
10	FTRASO	02/21/03	PIERCE CO, WA	07/03/02	A	
11	FTRASO	04/28/04	PIERCE CO, WA	08/21/03	A	
12	FTRASO	04/14/05	PIERCE CO, WA	05/15/04	A	
13	RES BURG	04/12/05	PIERCE CO, WA	02/01/05	A	
14	FTRASO	03/19/09	PIERCE CO, WA	01/09/09	A	

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	12	II	43 – 57 MOS	NONE	43 – 57 MOS	10 YRS/ $20,000.

For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: N/A

2.4 [ ] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

[ ] within [ ] below the standard range for Count(s) _____.

[ ] above the standard range for Count(s) _____.

[ ] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[ ] Aggravating factors were [ ] stipulated by the defendant, [ ] found by the court after the defendant waived jury trial, [ ] found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [ ] Jury's special interrogatory is attached. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

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2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

_____

[ ] The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

_____

2.6 [ ] FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

[ ] whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

[ ] evidence of the defendant's propensity for violence that would likely endanger persons.

[ ] other: _____

[ ] The court decided the defendant [ ] should [ ] should not register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [ ] The court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts

_____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN $_____ Restitution to: _____

$_____ Restitution to: _____

(Name and Address—address may be withheld and provided confidentially to Clerk's Office).

PCV $ 500.00 Crime Victim assessment

DNA $ 100.00 DNA Database Fee

PUB $ 1500 Court-Appointed Attorney Fees and Defense Costs

FRC $ 200.00 Criminal Filing Fee

FCM $_____ Fine

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OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$_____ Other Costs for:_____

$_____ Other Costs for:_____

$2300 TOTAL

[ ] The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[ ] is scheduled for _____.

[ ] RESTITUTION. Order Attached

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than $Per Clerk per month commencing Per Clerk. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

[ ] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of $_____.

4.2 [X] DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

[ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 NO CONTACT

The defendant shall not have contact with_____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____years (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

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4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

LAB
per CCO
Register as a sex offender as required by law

4.4a [✓] All property is hereby forfeited

[ ] Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

44 months on Count I ____ months on Count ____

____ months on Count ____ ____ months on Count ____

____ months on Count ____ ____ months on Count ____

Actual number of months of total confinement ordered is: 44 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[ ] The confinement time on Count(s) ____ contain(s) a mandatory minimum term of ____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: ____

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers RCW 9.94A.589: ____

Confinement shall commence immediately unless otherwise set forth here: ____

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(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 148 days.

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[✓] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

Count(s) I 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

[ ] consume no alcohol.

[✓] have no contact with: per CCO

[✓] remain [ ] within [ ] outside of a specified geographical boundary, to wit: per CCO

[ ] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[✓] participate in the following crime-related treatment or counseling services: per CCO

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse [ ] mental health [ ] anger management and fully comply with all recommended treatment.

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7.3

[✓] comply with the following crime-related prohibitions: per CCO

[✓] Other conditions:

per CCO

[ ] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [ ] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

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

per CCO

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V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): _____.

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record.** (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

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

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. Offenders Who Leave the State and Return: If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within

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three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State and Leaving the State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three (3) business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three (3) business days after losing your fixed residence, you must provide signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new countywithin three (3) business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

[X] The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [ ] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

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

5.10 OTHER: per CCO

DONE in Open Court and in the presence of the defendant this date: 3-14-14

JUDGE
Print name: JOHN R. HICKMAN

Deputy Prosecuting Attorney
Print name:
WSB # 39605

Attorney for Defendant
Print name: Peter Reich
WSB # 37926

Defendant
Print name: IRVIN LYLE

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:

FILED
DEPT. 22
IN OPEN COURT
MAR 14 2014
Pierce County Clerk
By DEPUTY

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 13-1-04027-3

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

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

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

IDENTIFICATION OF COURT REPORTER

Emily Dirton

_____

Court Reporter

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

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IDENTIFICATION OF DEFENDANT

SID No. WA10034668 Date of Birth 01/05/1951
(If no SID take fingerprint card for State Patrol)

FBI No. 584913H Local ID No. 982100021

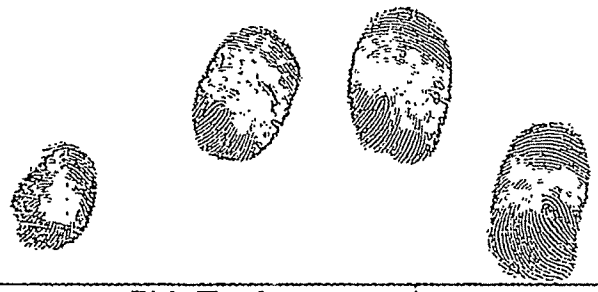
PCN No. UNKNOWN Other

Alias name, SSN, DOB: _____

Race:						Ethnicity:		Sex:	
[ ]	Asian/Pacific Islander	[ ]	Black/African-American	[X]	Caucasian	[ ]	Hispanic	[X]	Male
[ ]	Native American	[ ]	Other: :			[X]	Non-Hispanic	[ ]	Female

FINGERPRINTS

Left four fingers taken simultaneously



Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, _____ Dated: _____

DEFENDANT'S SIGNATURE: _____

DEFENDANT'S ADDRESS: _____

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

✓ sex offense
____ serious violent offense
____ assault in the second degree
____ any crime where the defendant or an accomplice was armed with a deadly weapon
____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

✓ (I) The offender shall remain within, or outside of, a specified geographical boundary: per CCO

✓ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: per CCO

✓ (III) The offender shall participate in crime-related treatment or counseling services;

____ (IV) The offender shall not consume alcohol;

✓ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

✓ (VI) The offender shall comply with any crime-related prohibitions.

✓ (VII) Other: Per CCO

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

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 46101-3-II
	)	
IRVING LYLE,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 22ND DAY OF AUGUST 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] IRVING LYLE
DOC NO. 229522
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 22ND DAY OF AUGUST 2014.

x Patrick Mayovsky

NIELSEN, BROMAN & KOCH, PLLC

August 22, 2014 - 2:20 PM

Transmittal Letter

Document Uploaded: 461013-Appellant's Brief.pdf

Case Name: Irving Lyle
Court of Appeals Case Number: 46101-3

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

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

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: Appellant's

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

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Patrick P Mayavsky - Email: mayovskyp@nwattorney.net

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

PCpatcecf@co.pierce.wa.us