

NO. 46240-1-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JEFF LEROY HARP,

Appellant.

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

APPELLANT'S OPENING BRIEF

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WASHINGTON APPELLATE PROJECT
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A. INTRODUCTION

Accepting an indivisible plea agreement, appellant Jeff Harp pled guilty to three non-violent felonies. On the most serious charge, taking of a motor vehicle without permission in the second degree, the parties and the Cowlitz County court incorrectly identified Mr. Harp's offender score as a 12.

The offender score calculation included three full points for a single prior felony arising out of Cowlitz County cause number 11-1-01032-2, alleged to have been a conviction for possession of a stolen vehicle. However, in that case Mr. Harp was convicted of illegal transfer of vehicle and that prior should have counted just once, not three times over.

Because the sentencing court relied on an erroneous offender score calculation, a resentencing is required.

B. ASSIGNMENTS OF ERROR

1. The court erred by using an incorrect offender score when imposing Mr. Harp's sentence.
2. The plea papers and judgment and sentence incorrectly show Mr. Harp to have a prior conviction for possession of a stolen vehicle.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A trial court must use the correct offender score when sentencing a defendant. Here, Mr. Harp's offender score was miscalculated because a prior case was thought to have resulted in a conviction for possession of stolen vehicle. If the actual conviction was for illegal transfer of a vehicle, a charge that does not triple when scored, is Mr. Harp entitled to a resentencing hearing?

D. STATEMENT OF THE CASE

In the spring of 2013, the Cowlitz County prosecuting attorney charged appellant Jeff Harp with several drug and property crimes. Charges were filed under two cause numbers: 13-1-00418-3 and 13-1-00589-9. CP-A 3-4; CP-B 4-5.¹

The "Prosecutor's Statement of Defendant's Criminal History" averred that at the time, Mr. Harp already had eight felony convictions on his record, including a prior for possession of a stolen vehicle under Cowlitz County cause number 11-1-0132-2. CP-A 7, CP-A 26.

¹ CP-A citations refer to Clerk's Papers for cause number 13-1-00418-3 and CP-B citations refer to Clerk's Papers for cause number 13-1-00589-9. The appeal from 13-1-00589-9 was originally given its own appellate cause number of 46244-3-II, but was then consolidated with the appeal from 13-1-00418-3 under 46240-1-II.

The parties agreed on one “global” indivisible plea bargain. CP-A 22, CP-B 16. In 13-1-00418-3, Mr. Harp admitted committing two felonies: taking a motor vehicle without permission in the second degree and VUCSA – possession of clonazepam. CP-A 12-21. In 13-1-00589-9, Mr. Harp pled guilty to a third felony, VUCSA – possession of methamphetamine. CP-B 7-17. Mr. Harp’s criminal history was a factor in the negotiations: the plea agreement form threatens that if Mr. Harp exercised his right to a jury trial and lost, the State would seek an exceptional sentence based on the “free crimes” aggravating factor of RCW 9.94A.555(2)(c). CP-A 22, CP-B 16.

The offender scoring form used in the plea papers is attached as Appendix A. CP-A 23. The “adult history” portion of the form asserts that the State identified a prior that multiplied three times over under RCW 9.94A.525(20) on the taking a motor vehicle without permission in the second degree charge. CP-A 23.² With seven “other” prior convictions and two more “current offenses” (the VUCSA counts) Mr.

² The scoring form counts Mr. Harp as having one prior felony conviction from this list: “Theft of a Motor Vehicle, Theft 1 & 2 (of a Motor Vehicle), Possession of Stolen Property 1 & 2 (of a Motor Vehicle), Possession of Stolen Vehicle, and Taking a Motor Vehicle.” CP-A 23.

Harp's offender score on the taking a motor vehicle without permission in the second degree charge was calculated as "12." CP-A 23.

Mr. Harp pled guilty on July 2, 2013, and immediately proceeded to sentencing. RP 2-5. Under the terms of the plea agreement, the prosecutor recommended Mr. Harp serve time on the three felonies concurrently. RP 5. On the most serious charge, the taking a motor vehicle without permission in the second degree, the prosecutor recommended that Mr. Harp serve 22 months in custody, the bottom of the standard range applicable to an offender score of "12." RP 5, CP-A 22, CP-B 16.

Defense counsel let the trial court know that Mr. Harp's criminal offending was caused by untreated chemical dependency and requested that Mr. Harp receive a prison-based Drug Offender Sentencing Alternative (DOSA). RP 6-7. Mr. Harp confirmed this is what he wanted: "With DOSA... they'll keep me on a leash and then let me build a foundation of recovery... I know what needs to be done, I just need help to do it." RP 8.

The trial court did not ask any questions of Mr. Harp or his counsel, but seemed to accept Mr. Harp's allocution regarding his substance addiction and need for treatment: "All right. I don't doubt

that.” RP 8. However, the trial court refused the DOSA request: “Given the length of time involved, I don’t think DOSA is appropriate.” RP 8. The trial court sentenced Mr. Harp to 24 months in prison, a term longer than even what the State had asked for. RP 8. The trial court made a finding that Mr. Harp has a chemical dependency that contributed to the offenses. RCW 9.94A.607. CP-B 19.

On August 23, 2013, Mr. Harp filed a pro se “Motion To Modify Or Correct Judgment And Sentence” under CrR 7.8. CP-A 37-41. Specifically, Mr. Harp complained that the judgment and sentence imposed against him “*incorrectly reflects prior conviction of ‘possession of a stolen vehicle.’ It was a previous conviction of ‘illegal transfer of vehicle.’*” CP-A 38. He complained that the error resulted in “*wrongful multipliers.*” CP-A 41. Mr. Harp specified that the relief he was seeking was to “*have the previous conviction record reflect the proper previous convictions.*” CP-A 38. He indicated at the time that he did not have a copy of the judgment and sentence to provide with his motion because he was in prison. CP-A 40.

On August 27, 2013, the Cowlitz County court also received Mr. Harp’s “Motion to Reconsider,” where, discussing how his offense

history is linked to untreated chemical dependency, he renewed his request for a DOSA. CP-A 42-43, 47-49.

On September 17, 2013, the trial court and prosecutor addressed Mr. Harp's motions, but only discussed the renewed request for a DOSA. RP 11-12. Mr. Harp was not present and no lawyer appeared on his behalf. RP 11. The hearing was brief.

The prosecutor told the judge: "So, it looks to me like he wrote a motion asking the Court to reconsider a DOSA sentence." RP 11. The trial court said: "I've read through his motion. It's the same issues that he had before. They are not illegitimate but I don't think it sways me so I'll deny the motion." RP 11.

Mr. Harp's request that the offender score error be corrected was not discussed on the record. The court's written denial does not address the scoring error either. CP-A 50.

Mr. Harp renewed his "Motion to Modify or Correct Judgment and Sentence" under CrR 7.8 in January of 2014. CP-A 51-54. He again made clear he wanted the trial court to correct the error in the offender scoring to reflect his true prior conviction was not for any possession of stolen vehicle, but for illegal transfer of a vehicle. CP-A 52.

In this second motion, Mr. Harp specified that the error pertained to cause number 11-1-0132-2, with an offense date of September 4, 2011, and a sentencing date of March 21, 2012. CP-A 52, CP-B 30-34. Treating this motion no different than Mr. Harp's August 2013 motion, the trial court refused to act "for the same reasons as previously announced." CP-A 55.

The judgment and sentence for Cowlitz County cause number 11-1-0232-2 is now attached as Appendix B. The offense and sentencing dates match what Mr. Harp referred to in his first pro se motion and the judgment and sentence confirms that Mr. Harp was convicted of one count of Illegal Transfer of Vehicle, in violation of RCW 46.12.750(1)(b), rather than any possession of stolen vehicle.

This document does not appear in the clerk's papers below. Under separate cover, the appellant filed a "Motion to Supplement the Record Under RAP 9.11 and in the Alternative for the Court to Take Judicial Notice of Judgment and Sentence in Related Proceeding."

E. ARGUMENT

Mr. Harp is entitled to a new sentencing hearing because the trial court relied on an incorrect offender score when imposing its sentence.

- a. Because the court relied on an incorrect offender score, the sentence lacks statutory authority and cannot stand.

An erroneous or illegal sentence may be challenged for the first time on appeal. In re Pers. Restraint of Call, 144 Wn.2d 315, 331, 28 P.3d 709 (2001) (citing State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)); see also State v. Moen, 129 Wn.2d 535, 545-46, 919 P.2d 69 (1996) (when a trial court acts beyond its statutory sentencing authority, the issue can be heard for the first time on appeal).

The law is “well settled” that a sentence based on an improperly calculated offender score lacks statutory authority and is a “fundamental defect that inherently results in a miscarriage of justice.” State v. Wilson, 170 Wn.2d 682, 688-89, 244 P.3d 950 (2010) (quoting In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 867-68, 50 P.3d 618 (2002)). “A sentence that lacks statutory authority cannot stand.” Wilson, 170 Wn.2d at 688. A trial court’s calculation of an offender score is reviewed de novo. State v. Tili, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003); see also State v. Jackson, 150 Wn.App. 877, 891, 209

P.3d 553 (2009) (citing State v. Bergstrom, 162 Wn.2d 87, 92, 169 P.3d 816 (2007)).

In this case, the State calculated Mr. Harp's offender score as 12. CP-A 23; Appendix A. However, in arriving at this offender score, the State averred that Mr. Harp had a prior conviction for possession of stolen vehicle, which they counted as scoring three full points. CP-A 23, 26; Appendix A. This was an error.

With Mr. Harp pleading to taking of a motor vehicle without permission in the second degree, only prior convictions for "Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2" could have been counted as three points. RCW 9.94A.525(20).

Mr. Harp has no prior conviction for any such offense. The 11-1-01032-2 case that appears in the State's calculation of his criminal history at CP-A 26 as a prior for possession of stolen vehicle actually resulted in a conviction for the unranked felony offense of Illegal Transfer of Vehicle, in violation of RCW 46.12.750(1)(b). See

Appendix B. CP-A 52, CP-B 30-34. This prior should have only scored as one point. The mistake below inflated Mr. Harp's offender score by two full points.

b. A resentencing using the correct offender score is required.

The wrongly calculated offender score suggested to the sentencing court that Mr. Harp was well over the threshold of the highest standard sentencing range. The parties had not agreed on a particular sentence. The court had a standard range to consider and also the option to give a DOSA sentence. However, the trial court rejected Mr. Harp's request for a DOSA sentence and imposed a term of incarceration higher than what the State sought. There is no clear basis in the record upon which to conclude the trial court would have imposed the same sentence if it had used the correct offender score. See State v. Rowland, 160 Wn.App. 316, 332, 249 P.3d 635 (2011), aff'd 174 Wn.2d 150, 272 P.3d 242 (2012). To the contrary, in the absence of the scoring error, a lower or different sentence may have been imposed.

Notably, the plea agreement below covered two separate cause numbers and multiple counts and the parties defined it as "global." CP-A 22, CP-B 16. Because plea agreements covering multiple counts are

in fact indivisible, errors on one count of a multi-count agreement require a global remedy. State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003).

Resentencing using the correct offender score is the appropriate remedy for a miscalculated offender score. Wilson, 170 Wn.2d at 691. Here, the trial court used the incorrect offender score when sentencing Mr. Harp, and this Court is obligated to correct this error. Mr. Harp is entitled to a resentencing hearing so that the court may consider the correct offender score when imposing his sentence. Furthermore, a resentencing must be held as to correct the judgment and sentence below regarding the true nature of the prior conviction under 11-1-01032-2. See Appendix B.

F. CONCLUSION

For the reasons stated above, Mr. Harp respectfully asks this Court to reverse and remand for a new sentencing hearing.

DATED this 10th day of December 2014.

Respectfully submitted,



MICK WOYNAROWSKI (WSBA 32801)
Washington Appellate Project (91052)
Attorneys for Appellant

STATE V. JEFF HARP NO. 46240-1-II

APPENDIX A:

Offender scoring sheet from 13-1-00418-3. See CP-A 23.

2013 JUL -2 P 4: 10

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY *[Signature]*

GENERAL SCORING FORM
Nonviolent Offenses

OFFENDER'S NAME JEFF LEROY HARP	OFFENDER'S DOB 07-09-77	STATE ID# WA21998602
JUDGE STEPHEN WARNING	CAUSE# 13-1-00418-3	FBI ID# 840554CB3

ADULT HISTORY:

Enter number of Theft of a Motor Vehicle, Theft 1 & 2 (of a Motor Vehicle), Possession of Stolen Property 1 & 2 (of a Motor Vehicle), Possession of Stolen Vehicle and Taking a Motor Vehicle Without Permission 1 & 2 felony convictions..... 1 x 3 = 3
 Enter number of fail to register as sex offender convictions..... x 1 =
 Enter number of other felony convictions..... 7 x 1 = 7

JUVENILE HISTORY:

Enter number of Theft of a Motor Vehicle, Theft 1 & 2 (of a Motor Vehicle), Possession of Stolen Property 1 & 2 (of a Motor Vehicle), Possession of Stolen Vehicle and Taking a Motor Vehicle Without Permission 1 & 2 felony convictions..... x 3 =
 Enter number of Vehicle Prowling 2 dispositions x 3 =
 Enter number of other serious violent and violent felony dispositions x 1 =
 Enter number of other felony dispositions x 1/2 =

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of Theft of a Motor Vehicle, Theft 1 & 2 (of a Motor Vehicle), Possession of Stolen Property 1 & 2 (of a Motor Vehicle), Possession of Stolen Vehicle and Taking a Motor Vehicle Without Permission 1 & 2 felony convictions..... x 3 =
 Enter number of Vehicle Prowling 2 dispositions x 3 =
 Enter number of other felony convictions 2 x 1 = 2
 If on community custody at time of current offense, add 1 point + 1 =

Total the last column to get the **Offender Score**
(Round down to the nearest whole number)

12

STANDARD RANGE CALCULATION*

TAKING MOTOR VEHICLE WITHOUT PERMISSION IN THE SECOND DEGREE	I	12	22	TO	29M
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE**		HIGH

(16) 23

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STATE V. JEFF HARP NO. 46240-1-II

APPENDIX B:

Judgment and sentence from Cowlitz County Superior Court 11-1-01032-2, showing conviction for illegal transfer of a vehicle.

FILED
SUPERIOR COURT

2012 MAR 21 A 11:57

COWLITZ COUNTY
EVERLY R. LITTLE, CLERK

Ag

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JEFF LEROY HARP,

Defendant.

No. 11-1-01032-2

Felony Judgment and Sentence (FJS)

- Prison RCW 9.94A.507 Prison Confinement
- Jail One Year or Less RCW 9.94A.507 Prison Confinement
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Clerk's Action Required, para 4.5 (DOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: WA21998602

If no SID, use DOB: 07-03-77

72 9 00555 5

I. Hearing

1.1 The court conducted a sentencing hearing this date 3-21-12; 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, in accordance with the proceedings in this case, the court **Finds:**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea jury-verdict bench trial: 3-21-12

Count	Crime	RCW	Date of Crime
I	ILLEGAL TRANSFER OF VEHICLE	46.12.750(1)(b)	09-04-11

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

Additional current offenses are attached in Appendix 2.1.

The **burglary** in Count _____ involved a theft or intended theft.

The jury returned a special verdict or the court made a special finding with regard to the following:

The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____ RCW 9.94A.533(9).

The offense was predatory as to Count _____, RCW 9.94A.836.

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- The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____ RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____ RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count _____ RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ RCW 9.94A.602, 9.94A.533.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____ RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crime(s) charged in Count _____, **domestic violence** was pled and proved. RCW 10.99.020.
- The offense in Count _____ was committed in a **county jail or state correctional facility**. RCW 9.94A.533(5).
- 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	SEE APPX 2.2					
2						
3						
4						
5						

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The following prior offenses require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):

SUPERIOR COURT OF WASHINGTON
 COUNTY OF COWLITZ

STATE OF WASHINGTON, Plaintiff,

v.
JEFF LEROY HARP,

Defendant.

No 11-1-01032-2

DEFENDANT'S CRIMINAL HISTORY

APPENDIX 2.2 JUDGMENT AND SENTENCE

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME V, SV, SO
1 FEL HARASS	12-04-04	COWLITZ CO., WA 04-1-00921-6	01-31-04	A	
2 DV COURT ORDER VIO	11-15-06	COWLITZ CO., WA 06-1-01172-1	09-11-06	A	
3 VUCSA POSS METH (16 MO PRISON)	11-15-06	COWLITZ CO., WA 06-1-01172-1	09-11-06	A	
4 DV COURT ORDER VIO	11-15-07	COWLITZ CO., WA 07-1-01124-0	01-01-07	A	
5 VUCSA POSS METH	03-26-09	COWLITZ CO., WA 09-1-00059-7	01-18-09	A	
6 POSS STOL PROP 2 - ACCESS DEVICE	12-08-11	COWLITZ CO., WA 09-1-00059-7	01/18/09	A	
7 POSS STOL PROP 2 -- PROPERTY (12+ 1 MO PRISON) (DEF CURRENTLY SERVING TIME IN PRISON - DEF HERE ON TRO)	12-08-11	COWLITZ CO., WA 09-1-00059-7	01/18/09	A	

*PRIOR CONVICTIONS COUNTED AS ONE OFFENSE IN DETERMINING THE OFFENDER SCORE
 (RCW 9.94A.360(11))

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

The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 Sentencing Data:

Count No.	Offender Score	Serious-ness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
1	7	UNRANKED	0 - 12 MOS			CLASS B

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

Additional current offense sentencing data is attached in Appendix 2.3.

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

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that 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.

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):

III. Judgment

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

3.2 The defendant is found NOT GUILTY of Counts _____

The court DISMISSES Counts _____

IV. Sentence and Order

It is Ordered:

4.1a The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN \$ TBD Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

PCV \$ 500.00 Victim assessment RCW 7.68.035

\$ _____ Domestic Violence assessment up to \$100 RCW 10.99.080

CRC \$ 470 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC

Witness costs \$ _____ WFR

Sheriff service fees \$ 120.00 SFR/SFS/SFW/WRF

Jury demand fee \$ _____ JFR

Extradition costs \$ _____ EXT

Incarceration fee \$ 150.00 JLR

Other \$ _____

PUB \$ 784.52 Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD \$ _____ Drug enforcement fund of Cowlitz County Prosecutor RCW 9.94A.760
NTF/SAD/SDI

MTH \$ _____ Meth/Amphetamine Clean-up fine \$3000. RCW 69.50.440,
69.50.401(a)(1)(ii).

CLF \$ _____ Crime lab fee suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee not imposed due to hardship RCW 43.43.7541

RTN/RJN \$ _____ Emergency response costs (for incidents resulting in emergency response and conviction of driving, flying or boating under the influence, vehicular assault under the influence, or vehicular homicide under the influence, \$1000 max.) RCW 38.52.430

\$ _____ Urinalysis cost

\$ _____ Other costs for: _____

\$ 1854.52 Total RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for 5/9/12 @ 11:00pm

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant Cause Number (Amount-\$)

RJN

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).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 50.00 per month commencing _____, RCW 9.94A.760.

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).

The court finds that the defendant has the means to pay, in addition to the other costs imposed herein, for the cost of incarceration and the defendant is ordered to pay such costs at the rate of \$50 per day, unless another rate is specified here: _____, (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV 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.

The defendant shall not use, own or possess any **firearm** or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120.

The firearm, to wit: _____ is forfeited to _____, a law enforcement agency.

4.4 **Other:** _____

4.5 Jail One Year or Less. The court sentences the defendant as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the county jail:

60 ~~days~~ months on Count I _____ days/months on Count _____
_____ days/months on Count _____ days/months on Count _____

Actual number of months of total confinement ordered is: _____

All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively with the sentence in cause number(s) W-1-01084-5

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

Partial Confinement. The defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

- work crew RCW 9.94A.725
- home detention RCW 9.94A.731, .190
- work release RCW 9.94A.731

Conversion of Jail Confinement (Nonviolent and Nonsex Offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.

Alternative Conversion. RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (service) (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed on a schedule established by the defendant's community corrections officer but not less than _____ hours per month

Alternatives to total confinement were not used because of: _____

- criminal history
- failure to appear (finding required for nonviolent offenders only) RCW 9.94A.680.

(b) **Confinement.** RCW 9.94A.507 (sex offense only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____	minimum term _____	maximum term _____
Count _____	minimum term _____	maximum term _____

(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 jail shall compute time served unless the credit for time served prior to sentencing is specifically set forth here by the court: _____

4.6 **Community** **Supervision** **Custody.** RCW 9.94A.505, .545. The defendant shall serve _____ months (up to 12 months) in community supervision or community custody.

The court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony

violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a).

Community Custody for count(s) _____, sentenced under RCW 9.94A.507, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

The defendant shall report to DOC, 1953 7th Avenue, Longview (360) 577-4050, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts as required by DOC to confirm compliance with the orders of the court and shall abide by any additional conditions of community custody imposed by DOC under RCW 9.94A.720. For sex offenses, the defendant shall submit to electronic monitoring if imposed by DOC. The defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence. The defendant shall:

- remain in prescribed geographic boundaries specified by the community corrections officer
- notify the community corrections officer of any change in defendant's address or employment
- not reside within 880 feet of the facilities and grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

The defendant shall undergo an evaluation for treatment for **domestic violence** **substance abuse** **mental health** **anger management** and shall fully comply with all recommended treatment.

Other conditions: _____

For sentences imposed under RCW 9.94A.507, 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.

The community supervision or community custody imposed by this order shall be served consecutively to any term of community supervision or community custody in any sentence imposed for any other offense, unless otherwise stated. The maximum length of community supervision or community custody pending at any given time shall not exceed 24 months, unless an exceptional sentence is imposed. RCW 9.94A.589.

The conditions of community supervision or community custody shall begin immediately unless otherwise set forth here: _____

4.7 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: _____

Other conditions may be imposed by the court or DOC during community custody or are set forth here: As outlined by DOC in Appendix F, if any, and additional conditions listed below:

- Submit to, and at your expense, a polygraph examination and a plethysmograph as directed by Corrections Officer or treatment provider.
- Participate in any therapy deemed necessary by your Corrections Officer.
- Have no contact with male/female/any children under the age of eighteen.
- The defendant shall not frequent parks or playgrounds or any location where minor children congregate.
- The defendant shall not live or stay in the residence where (minor child/minor females/minor males) are present unless granted specific permission by your community corrections officer or the court.
- Do not own, use, or possess firearms or ammunition.

V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move 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, you must do so 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.** If you committed your offense prior to July 1, 2000, you 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. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.503(5). **You are required to contact the Cowlitz County Collections Deputy, 312 SW First Avenue, Kelso, WA 98626 (360) 414-5532 with any change in address and employment or as directed. Failure to make the required payments or advise of any change in circumstances is a violation of the sentence imposed by the Court and may result in the issuance of a warrant and a penalty of up to 60 days in jail.** The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- This crime involves a Rape of a Child in which the victim became pregnant. The defendant shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is longer.
- 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 (DOC) 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.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Restitution Hearing.**
 I waive any right to be present at any restitution hearing (sign initials): _____.
- 5.5 Community Custody Violation.**
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 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 clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

Cross off or delete if not applicable:

5.7 Sex and Kidnapping Offender Registration. RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must

Felony Judgment and Sentence (FJS) (Appendix 2.4, Findings of Fact/Conclusions Exceptional Sentence)

(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2007))

Page _____ of _____

register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

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

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

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

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

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

7. Reporting Requirements for Persons Who Are Risk Level II or III: If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the

county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

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

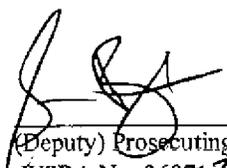
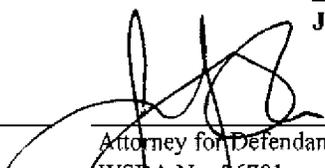
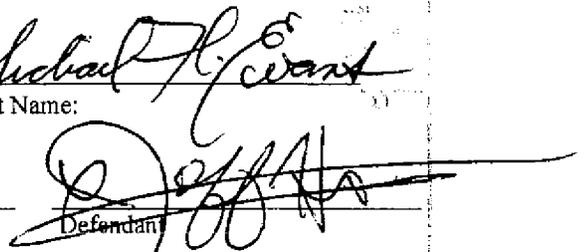
5.8 Count _____ is a felony in the commission of which you used a motor vehicle. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.9 If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.

5.10 IF AN APPEAL IS PROPERLY FILED AND APPEAL BOND POSTED, THE DEFENDANT WILL REPORT TO THE DEPARTMENT OF CORRECTIONS, WHO WILL MONITOR THE DEFENDANT DURING THE PENDENCY OF THE APPEAL, SUBJECT TO ANY CONDITIONS IMPOSED BY DOC AND/OR INCULDED IN THIS JUDGMENT & SENTENCE AND SPECIFICALLY NOT STAYED BY THE COURT.

5.11 Other: _____

Done in Open Court and in the presence of the defendant this date: 3-21-2012

		
(Deputy) Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA No. 36871 <u>36804</u>	WSBA No. 36701	
Print Name: JASON LAURINE	Print Name: JOSHUA BALDWIN	Print Name: JEFF LEROY HARP
<i>Sen Britton</i>		

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 9A.84.660.

Defendant's signature: _____

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

Interpreter signature/Print name: _____

I, _____, 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 the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

SID No. WA21998602 Date of Birth 07-03-77
 (If no SID take fingerprint card for State Patrol)

FBI No. 840554CB3 Local ID No. _____
 PCN No. _____ Other _____

Alias name, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian
 Native American Other: _____

Ethnicity: Hispanic Non-Hispanic

Sex: Male Female

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk *S. Myklebust* Dated: 3-21-12

The defendant's signature: *[Handwritten Signature]*

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



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

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	NO. 46240-1-II
v.)	
)	
JEFF HARP,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF DECEMBER, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] SUSAN BAUR	()	U.S. MAIL
[bours@co.cowlitz.wa.us]	()	HAND DELIVERY
COWLITZ COUNTY PROSECUTING ATTORNEY	(X)	E-SERVICE VIA
312 SW 1 ST AVE		COA PORTAL
KELSO, WA 98626-1739		

[X] JEFF HARP	(X)	U.S. MAIL
226 11 TH AVE	()	HAND DELIVERY
RM 13	()	_____
LONGVIEW, WA 98632		

SIGNED IN SEATTLE, WASHINGTON THIS 10TH DAY OF DECEMBER, 2014.

X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

December 10, 2014 - 3:50 PM

Transmittal Letter

Document Uploaded: 462401-Appellant's Brief.pdf

Case Name: STATE V. JEFF HARP

Court of Appeals Case Number: 46240-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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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: Maria A Riley - Email: maria@washapp.org

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

bours@co.cowlitz.wa.us