

NO. 46842-5-II-II

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

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STATE OF WASHINGTON, Respondent

v.

ALICIA OLIVARES CASTANEDA, Petitioner

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CLARK COUNTY SUPERIOR COURT CAUSE NO. 13-1-00678-2

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RESPONSE TO PERSONAL RESTRAINT PETITION

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**A. IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT**

The State of Washington is the Respondent in this matter. The defendant is restrained by the judgment and sentence entered by the Clark County Superior Court on July 11, 2013, under cause number 13-1-00678-2.

**B. ISSUE FOR REVIEW**

Did Alicia Castaneda receive ineffective assistance of counsel when she pled guilty to a reduced charge of Theft in the Second Degree?

**C. STATEMENT OF THE CASE**

The defendant and her husband were charged by information with Count One: Theft in the First Degree. The defendant was represented by Gerald Wear. Both the defendant and her husband pled guilty to an amended charge of Theft in the Second Degree–Welfare Fraud. The defendant pled guilty and was sentenced before the Honorable Robert Lewis on July 25, 2013. In her statement on plea of guilty, the defendant acknowledged that the following had been explained to her and she understood that:

If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United

States, or denial of naturalization pursuant to the laws of the United States.

Exhibit #1 at 4. It is important to note that this paragraph has a handwritten asterisk next to it.

Further, the court reviewed this information regarding the deportation consequences of her plea with the defendant and the court confirmed that the defendant understood these consequences prior to accepting the defendant's plea of guilty. Pet. Ex. C at 4. Specifically, after reviewing the deportation consequences with the defendant, the court asked the defendant, "do you understand that?" The defendant, through her interpreter, responded, "yes." Pet. Ex. C at 4.

The defendant filed a CrR 7.8 motion on July 24, 2014, alleging ineffective assistance of counsel, claiming that he was misadvised about the immigration consequences of his plea. The CrR 7.8 motion was then transferred to this court as a personal restraint petition.

**D. ARGUMENT WHY PETITION SHOULD BE DISMISSED**

Ms. Castaneda did not receive ineffective assistance of counsel because she cannot establish he was misadvised of the immigration consequences of her decision to plead guilty to a reduced charge.

In order to establish a claim of ineffective assistance of counsel, a defendant must satisfy the two-part *Strickland* test: (1) the defendant must show that his or her counsel's performance was objectively unreasonable;

and (2) the defendant must show that as a result of counsel's deficient performance, he or she suffered prejudice. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The reviewing court should presume counsel's performance was effective. *State v. Gomez Cervantes*, 169 Wn. App. 428, 434, 282 P.3d 98 (2012). The defendant's bare assertions and self-serving statements are insufficient to make a substantial showing that he was given inadequate advice by his trial counsel. See *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992); *In re Pers. Restraint of Reise*, 146 Wn.App 772, 780, 192 P.3d 949 (2008); RAP 16.7(a)(2)(i).

#### **I. IMMIGRATION CONSEQUENCES**

In *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), the Supreme Court found that deportation consequences were a direct consequence of a plea. Consequently, the court held an attorney must provide his or her client advice about deportation consequences in order for his or her performance to not be deficient. *Id.* However, the Court went on to explain that defense counsel is obligated to correctly inform his or her client that pleading guilty to a particular charge will lead to deportation only if the applicable immigration law is "truly clear" that the offense to which the defendant is pleading guilty is deportable. *Id.* at 369. On the other hand, "if the law is not succinct and

straightforward” counsel is only required to provide a general warning that "pending criminal charges may carry a risk of adverse immigration consequences.” *Id.*

The law is not succinct and straightforward under the Immigration and Nationality Act ("INA") as to whether a plea to a theft offense in Washington will be a deportable offense. *State v. Ramos*, 181 Wn.App. 743, 750-51, 326 P.3d 826 (2014) (holding when the defendant pled guilty to Theft in the First Degree, in violation of RCW 9A.56.030, the immigration consequences of the defendant's plea were ambiguous). Under the INA, "Any alien who is convicted of an aggravated felony at any time after admission is deportable." 8 U.S.C. § 1227(a)(2)(A)(iii). Further, he/she is not eligible for cancellation of removal. 8 U.S.C. § 1229b(a)(3) & (b)(1)(C). However, under the INA, a "theft offense" is considered an aggravated felony only if the defendant is sentenced to a term of imprisonment of "at least one year." 8 U.S.C. 1101(43)(G); *Ramos*, 181 Wn.App. at 752-53 (holding the defendant's first degree theft conviction did not qualify as an aggravated felony because he received only a 45 day sentence).<sup>1</sup> Next, an offense involving "fraud" is considered an aggravated

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<sup>1</sup> Former 8 U.S.C. § 1101(a)(43)(G)(1996), defined "aggravated felony" to include "a theft offense... for which the term of imprisonment imposed...is at last five years." *Ramos*, 181 Wn.App. at 831.

felony only if "the loss to the victim or victims exceeds \$10,000?" 8 U.S.C. 1101(43)(M)(i).

Lastly, under the INA, an alien convicted of a crime involving "moral turpitude" is ineligible for admission. 8 U.S.C. §1182(a)(2)(A)(i)(I). However, in order for a theft conviction to constitute a crime involving moral turpitude, a "permanent taking" must be intended. *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). Because RCW 9A.56 never defines theft as including a "permanent taking" or an intent to "permanently deprive," a conviction for theft in Washington is not a crime involving moral turpitude. RCW 9A.56.020(1)(a) ("Theft means: (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or") RCW 9A.56.010(6) ("Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs"); see e.g. *Champion v. State*, 908 P.2d 454, 464 (Alaska Ct. App. 1995) (noting that, though intent to "permanently deprive" is one of the alternative ways to commit theft in Alaska, theft under the Alaskan code can be committed without the intent to permanently deprive). On the other hand, "fraud" is generally considered a crime involving moral turpitude. *Jordan v. De George*, 341 U.S. 223, 229, 71 S.Ct. 703 (1951).

In *Ramos*, the reviewing court found, because the immigration consequences of a plea to first degree theft in Washington are not clear and succinct, the defendant's trial attorney was only required to provide "a general warning that pending criminal charges may carry a risk of adverse immigration consequences." *Ramos*, 181 Wn.App. at 752-53 (citing *Padilla*, 559 U.S. at 369). Prior to his death, Ramos' attorney provided an affidavit in which he said his "practice was simply to read the immigration warnings to his client." *Id.* at 747. The court held this practice was sufficient to provide accurate advice and to defeat the defendant's claim of ineffective assistance. *Id.*, at 754-55.

Here, the defendant supports the claim that her trial attorney failed to advise her of the immigration consequences of her plea with her own affidavit. The declaration of trial counsel, Gerald Wear, does corroborate her contention as he indicates that he does "believe [he] advised her that she would be subject to deportation, although I may not have told her that she would not be able to seek cancellation of the removal because of this conviction." Dec. of Gerald Wear at 2. Hence, this court is left with nothing more than the defendant's self-serving affidavit, which is insufficient to establish his claim of deficient performance. For this reason alone, the defendant's claim of ineffective assistance must fail.

In addition, even if the court were to assume that any of the defendant's self-serving claims were true, her claims do not establish deficient performance because the law is not clear and succinct as to the immigration consequences for a plea to the crime of second degree theft in Washington. According to the court in *Ramos*, because the law is not clear and succinct as to the consequences for a plea to theft, trial counsel was required to do nothing more than read the immigration warnings to her client in the Statement on Plea of Guilty, in order to provide proficient representation. Mr. Wear's affidavit, along with the asterisk on the immigration paragraph on the plea form, and the trial court's advisement shows that Ms. Castaneda was properly informed of the immigration consequences of her plea. Ex. #1 at 9; Pet. Ex. C at 4; Dec. of Gerald Wear at 2. Furthermore, the defendant affirmed that she understood these warnings, and the court confirmed that the defendant understood these warnings. Pet. Ex. C at 4; Pet. Ex. #4 at 22; Ex. #1 at 9. .

Moreover, this case was not as charged as or pled to as a "fraud" case. While the title of amended count referenced "welfare fraud—74.08.331," the actual charging language did not reference the elements of that crime or the statutory language of the section. Exhibit #2; Exhibit #3 - Court's Findings of Fact and Conclusions of Law at 2. Instead, the charging language alleged that the defendant "did wrongfully obtain or

exert unauthorized control over the property or services of another, to wit: United States currency of a value exceeding \$750, with intent to deprive the Department of Social and Health Services, the true owner thereof, of such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.040(1)(a) and/or was an accomplice to said crime pursuant to RCW 9A.080.020.” Ex. #2; Ex. #3 at 2. Thus, it is no surprise that the defendant's statement on plea of guilty referenced only a plea to Theft in the Second Degree and that her statement of what made her guilty in paragraph 11 tracked the language of the theft statutes rather than the welfare fraud statute. Ex. #1 at 1-9. This is also consistent with the State’s Offer of Settlement, the original information, and the first amended information, all of which referenced either Theft in the First Degree or Theft in the Second Degree and did not mention "welfare fraud.” Ex. #1 at 10; Exhibit #4; Exhibit #5.

Furthermore, in Washington, there is no crime of Theft in the Second Degree (welfare fraud) as the welfare fraud statute criminalizes when a person “who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance . . . obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public

assistance than that to which he or she is justly entitled" as a "*theft in the first degree under RCW 9A.56.030* (emphasis added). Consequently, the existence of "welfare fraud" and its statutory reference in the title of the Theft in the Second Degree count is mere surplusage and could not, legally, have turned a "theft" conviction into "fraud" conviction.<sup>2</sup>

## **II. KNOWING, VOLUNTARY, AND INTELLIGENT PLEA**

The defendant also alleges that trial counsel was ineffective for failing to discuss all her options, for failing to negotiate a better resolution, and for failing to explain the trial process to the defendant prior to the defendant entering a guilty plea. The only evidence of these allegations is the defendant's allegations contained in her affidavit. Mr. Wear's affidavit does not support these allegations.

In the context of a plea agreement, a court reviews counsel's performance to determine if his inadequate advice rendered the defendant's plea unknowing, involuntary or unintelligent. *State v. Sandoval*, 171 Wn.2d 163, 169, 249 P.3d 1015 (2011). The defendant has the burden of

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<sup>2</sup> Defendant does not contend he was misled by the surplus language in the information nor has he asserted that he has suffered prejudice as a result of said language. Thus, there is no basis for any kind of harm analysis or remedy. *State v. Sheldon*, 38 Wn.App. 195, 197, 684 P.2d 1350 (1984); CrR 2.1(a)(1) ("The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.").

showing that her counsel's ineffective assistance and to overcome the strong presumption of competence. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Ms. Castaneda cannot meet this burden and has not shown that Mr. Wear's performance rendered her plea unknowing, involuntary or unintelligent.

Ms. Castaneda gives little evidence to support her ineffective assistance of counsel claim. A review of the transcript and the court file show that she made a knowing, intelligent and voluntary plea of guilty. She received a benefit to the guilty plea by a reduction in the charge, from Theft in the First Degree to Theft in the Second Degree, and by an agreed recommendation to alternative confinement. Furthermore, a review of the transcript of the guilty plea hearing shows Ms. Castaneda properly and appropriately responded to the trial court's questions. *See* Pet. App. C. The court asked Ms. Castaneda if she had any questions, she responded no; the trial court asked her if she had had enough time to speak to her attorney and she responded yes. Pet. App. C at 2. She told the court she understood the crime charged, the penalty, and the sentencing range. Pet. App. C at 2. All the evidence before this court shows that the trial court properly informed Ms. Castaneda of her rights, and that trial counsel properly explained the process and guided Ms. Castaneda through it. She has not

established Mr. Wear's performance was deficient in negotiating an agreed recommendation for a plea to a lesser charge.

Trial counsel is presumed to provide effective representation and there is no reason to doubt that he did so in this case. For each of the above reasons, the defendant has failed to demonstrate deficient performance by her trial attorney under the first prong of the *Strickland* test.

### **III. PREJUDICE**

The court need not address the second prong of the *Strickland* test (resulting prejudice) because the defendant has failed to satisfy the first prong of the test (deficient performance). *Ramos*, 181 Wn.App. at 755. However, for the sake of argument, the State would submit that the defendant cannot demonstrate that she was prejudiced by her trial attorney's actions because it is not apparent that her plea to second degree theft will, in fact, result in deportation or prohibit the cancellation of removal under the INA. This is the case because (1) the defendant received a sentence of 30 days work crew, which is less than the one year of confinement that is required to make a theft offense an aggravated felony under the INA; (2) the defendant's crime involved a loss to the victim of \$8345.00, which is less than the \$10,000 loss that is required to elevate a crime of theft to an aggravated felony under the INA; and (3)

Washington's definition of theft does not include an element of "permanent deprivation," which is required to elevate the crime of theft to a crime involving moral turpitude under the INA.

**E. CONCLUSION**

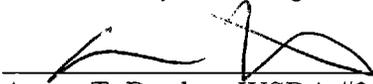
Based on the above arguments the defendant's personal restraint petition should be dismissed.

DATED this 1<sup>st</sup> day of April, 2015.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

  
\_\_\_\_\_  
Aaron T. Bartlett, WSBA #39710  
Deputy Prosecuting Attorney

# **EXHIBIT #1**

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FILED

JUL 25 2013  
3:32  
Scott G. Weber, Clerk, Clark Co

<b>Superior Court of Washington for</b>	
<u>State of Washington</u>	Plaintiff
vs.	
<u>ALICIA OLIVARES CASTANEDA</u>	Defendant

No. 13-1-00678-2

**Statement of Defendant on Plea of  
Guilty to Non-Sex Offense  
(Felony)  
(STTDFG)**

1. My true name is: Alicia Olivares Castaneda.
2. My age is: 34 years (DOB: 6-16-79).
3. The last level of education I completed was 6<sup>th</sup>: Mexico
4. **I Have Been Informed and Fully Understand That:**
  - (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
  - (b) I am charged with: Theft in the Second Degree  
 The elements are: In Clark County, Washington between May 1, 2009-May 1, 2010  
 The defendant did wrongfully obtain or exert unauthorized control over  
 the property (U.S. currency) over \$750<sup>00</sup> in value, with intent to deprive  
 Washington Department of Social and Health Services of such property.
5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**
  - (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
  - (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
  - (c) The right at trial to hear and question the witnesses who testify against me;

- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	0	0-60 days			5 years \$10,000
2					
3					

\* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney

fees and the costs of incarceration.

N/A (f)

For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

N/A [ ]

For offenses committed after July 1, 2000 but prior to July 26, 2009, the court may impose a community custody range as follows: for serious violent offenses, 24 to 36 months; for crimes against persons, 9 to 12 months; for offenses under 69.50 and 69.52, 9 to 12 months.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses	36 months
Violent Offenses	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions. If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge:

See Appendix to Statement on Plea of Guilty which is attached.

*30 days on work crew on Amended to Theft 2<sup>nd</sup> class restriction.*

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless it finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- \* (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I may not possess, own, or have under my control any firearm unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must

- immediately surrender any concealed pistol license.
- (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
  - (l) Government assistance may be suspended during any period of confinement.
  - (m) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

**Notification Relating to Specific Crimes: *If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.***

- ~~N/A~~ (n) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- — (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to two years community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- ~~N/A~~ (p) The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.
- ~~N/A~~ (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.
- ~~N/A~~ (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- ~~N/A~~ (s) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

~~N/A~~

(r)

If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

~~N/A~~

(s)

If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

~~N/A~~

(t)

The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

~~N/A~~

(u)

If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in

N/A (w) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.

N/A (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.

N/A (y) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).

N/A (z) If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.

N/A (aa) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].

N/A (bb) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

N/A (cc) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

N/A (dd) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

N/A (ee) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for

N/A (ff) unlawful possession consecutively to each other.  
If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

N/A (gg) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:  
count Theft in the Second Degree  
count \_\_\_\_\_  
count \_\_\_\_\_  
in the amended Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that make me guilty of this crime. This is my statement: In Clark County Washington between May 1, 2009 - May 1, 2010 I admit to wrongfully obtaining and exerting unauthorized controls over the property (US currency) over \$750<sup>00</sup> in value with intent to deprive Washington Department of Social and Health Services of such property.

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Signature]  
Defendant

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

EC  
Prosecuting Attorney

CULVER 35678  
Print Name WSBA No.

[Signature]  
Defendant's Lawyer

Gerald H. Ween  
Print Name WSBA No. 6315

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

**Interpreter's Declaration:** I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the SPANISH language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Vancouver, (state) WA, on (date) 7/25/13.

[Signature]  
Interpreter

CARMEN VERNIER  
Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: 7/25/13

[Signature]  
Judge

**STATE OF WASHINGTON V. ALICIA OLIVARES CASTANEDA - CAUSE NO 13-1-00678-2**

**CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT**

TO: DEFENSE ATTORNEY GERALD L WEAR, WSBA #06315

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
01	THEFT IN THE FIRST DEGREE	0	0 days – 90 days	-	0 days – 90 days

The State makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms and recommendations, unless otherwise noted. The offer is: 1) based on the accompanying Declaration of Criminal History which the defendant acknowledges is accurate, true and complete and further that the resultant offender score calculations in this offer are correct; 2) supersedes any previous offer made in this case; 3) is exclusive to the above referenced cause number(s), unless otherwise noted. Furthermore, defendant understands and agrees that the failure of the defendant to declare disputed criminal history or to disclose additional criminal history or to dispute the resultant offender score calculations prior to entering any plea of guilty constitutes a breach of this agreement by the defendant.

**This offer may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on Thursday, July 25, 2013.**

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
01	<b>AMENDING:</b> THEFT IN THE SECOND DEGREE	0	0 days – 60 days	-	0 days – 60 days

In lieu of a plea of guilty, Defendant may be referred to the CCPA Diversion Unit for screening on the above charges. Defendant must waive speedy trial and agree to a delay in setting a trial date.

The State will refer this case for Drug Court screening. Request for referral for Drug Court screening must be made not less than 30 days before the date set for trial.

**RECOMMENDATION AS TO CONFINEMENT**

Days  Months in Total Confinement, and  
30  Days  Months Partial Confinement [ 30 days Work Crew; \_\_\_\_\_ days Work Release], and  
 \_\_\_\_\_ Days Community Restitution (Service) (Eight (8) hours per day)  
 \_\_\_\_\_ Days with \_\_\_\_\_ days suspended/deferred on a misdemeanor/gross misdemeanor

If the defendant does not qualify for partial confinement program(s), the recommendation will be for total confinement.

**TERMS APPLICABLE TO ALL RECOMMENDATIONS**

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC. This offer is exclusive to the above referenced cause number(s), unless otherwise noted.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees, and any related defense costs, such as investigator fees, expert witness fees, transcription fees, etc. which have been or will be paid by order of the court. To accept this offer, defendant agrees to pay restitution (in an amount presently understood to be to be set) which could be established or modified by the court at a later date based on additional information. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

Defendant shall comply with directions of the DOC and the Clerk of the Court regarding reporting and paying any financial obligations and comply with financial monitoring as required by statute.

*Other legal financial obligations include:*

Drug Fund: \_\_\_\_\_ Lab Fee: \_\_\_\_\_ Warrant Fees: \_\_\_\_\_

DV Assessment: \_\_\_\_\_ Extradition Costs: \_\_\_\_\_ Cleanup fine: \_\_\_\_\_  
Other of fees: \_\_\_\_\_ for \_\_\_\_\_ Emergency Response Fee: \_\_\_\_\_

#### SUPERVISION

- Community Custody for \_\_\_\_\_ months.
- First Offender Option with up to two years of supervision
- \_\_\_\_\_ Years of probation/supervision on misdemeanor/gross misdemeanor.

#### MANDATORY SENTENCE REQUIREMENTS

- No possession/use/ownership of firearms/surrender concealed pistol license
- Provide biological sample for DNA identification
- HIV testing
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

#### OTHER CONDITIONS OF SUPERVISION AND AGREEMENT

*(This list is non-exclusive – the State is free to recommend other usual conditions)*

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. Defendant shall receive permission from DOC prior to moving.
- Treatment for:  substance abuse;  mental health;  anger control;  other \_\_\_\_\_
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No violations of federal, state, or local criminal laws.
- No contact with Victim(s) for \_\_\_\_\_ years.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime: \_\_\_\_\_
- Forfeiture of the following property: \_\_\_\_\_
- No possession of other people's identification.
- This agreement requires Defendant to admit relevant conduct. Absent advance notice and consent of the undersigned prosecutor, pleas which do not admit relevant conduct (Newton or Alford pleas) are not allowed. Defendant breaches this agreement if he enters such a plea without prior approval of the prosecutor.***
- OTHER Stipulated agreement. Defendant agrees to full restitution.**

If the defendant fails to appear for sentencing, commits any additional crimes between pleading guilty and sentencing, or otherwise breaches this agreement or if Defendant later moves to withdraw this plea or collaterally attack the conviction under this cause number, the defendant understands and agrees that the State will be free to make any recommendation(s) it deems appropriate or to re-file any dismissed or withheld counts, enhancements or aggravating factors but that that the defendant may not withdraw his plea of guilty in the event the State elects any of these remedies.

In the event the State, defendant or the court requests a DOSA screening, the State makes no representation as to the eligibility of the defendant for a sentence under the DOSA provisions. If found not to be eligible, defendant understands and agrees that he is still bound by his plea of guilty.

***This offer form must be attached to the Statement of Defendant on Plea of Guilty.***

\_\_\_\_\_  
Patrick Robinson  
Deputy Prosecuting Attorney, WSBA #40028

7/8/13  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
ALICIA OLIVARES CASTANEDA,  
Defendant  
Date of Birth: 6/16/1979

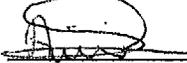
No. 13-1-00678-2  
APPENDIX 2.2  
DECLARATION OF CRIMINAL HISTORY  


COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.525 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

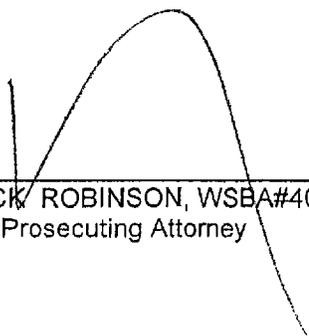
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
No known felony convictions.					

\*DV: Domestic violence was pled and proved.  
 The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 8<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Gerald L Wear, WSBA#06315,  
Attorney for Defendant

  
\_\_\_\_\_  
PATRICK ROBINSON, WSBA#40028  
Deputy Prosecuting Attorney

## **EXHIBIT #2**

**FILED**

**JUL 25 2013**

3:32  
Scott G. Weber, Clerk, Clark Co

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
ALICIA OLIVARES CASTANEDA,  
AKA ALICIA OLIVARES-VAZQUEZ  
Defendant.

**SECOND AMENDED INFORMATION**

No. 13-1-00678-2  
(DSHS W6511187)  
(DSHS W6514529)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - THEFT IN THE SECOND DEGREE - WELFARE FRAUD - 74.08.331  
/9A.08.020(3)/9A.56.040(1)(a)**

That she, ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ, together and with another, in the County of Clark, State of Washington, between May 1, 2009, and May 1, 2010, did wrongfully obtain or exert unauthorized control over the property or services of another, to-wit: United States currency of a value exceeding \$750, with intent to deprive the Department of Social and Health Services, the true owner thereof, of such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.040(1)(a) and/or was an accomplice to said crime pursuant to RCW 9A.08.020.

ANTHONY F. GOLIK  
Prosecuting Attorney in and for  
Clark County, Washington

Date: July 24, 2013

BY: \_\_\_\_\_  
Patrick Robinson, WSBA #40028  
Deputy Prosecuting Attorney

<b>DEFENDANT: ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ</b>			
<b>RACE:</b> W	<b>SEX:</b> F	<b>DOB:</b> 06/16/1979	
<b>DOL:</b> CASTAAO219LW WA		<b>SID:</b> WA27169992	
<b>HGT:</b> 502	<b>WGT:</b> 120	<b>EYES:</b> BRO	<b>HAIR:</b> BLK
<b>WA DOC:</b>		<b>FBI:</b> 662484VD3	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 8917 NE 15TH AVE APT I-97, VANCOUVER WA 98665			

AMENDED INFORMATION - 1  
ar

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

**EXHIBIT #3**

7  
④

FILED

2014 OCT -3 PM 4:24

SCOTT G. WEBER, CLERK  
CLARK COUNTY.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	NO. 13-1-00678-2
	)	
vs.	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW, AND
ALICIA OLIVARES CASTANEDA,	)	ORDER TRANSFERRING
	)	MOTION TO VACATE
Defendant.	)	JUDGMENT AND SENTENCE
	)	PURSUANT TO CrR 7.8 TO
	)	COURT OF APPEALS,
	)	DIVISION II
	)	
	)	[CrR 7.8(c) (2)]
	)	
	)	[CLERK'S ACTION REQUIRED]

This matter came on regularly before the undersigned judge of the above-entitled court on the motion of the defendant, Alicia Olivares Castaneda, for relief from judgment pursuant to CrR 7.8 (b). The court has reviewed the records and files herein, and the motion to vacate judgment and sentence (CrR 7.8), filed by the defendant on July 24, 2014. The motion was accompanied by a memorandum of law in support of the motion, a declaration of transcriptionist, a declaration of defendant Alicia Olivares Castaneda,

Page 1 of 6 – Findings of Fact, Conclusions of Law, and  
Order Transferring Motion to Vacate  
Judgment and Sentence Pursuant to  
CrR 7.8 to Court of Appeals, Division II

and a declaration of Gabriel Garcia-Murillo. The court also reviewed a declaration of Gerald Wear, filed September 11, 2014; a preliminary response to defendant's CrR 7.8 motion to vacate judgment, filed September 24, 2014; and a response to State's reply to defense motion to vacate judgment and sentence, filed October 2, 2014. Based upon this review, the court makes the following:

#### FINDINGS OF FACT

1. In Clark County Cause No. 13-1-00678-2, the defendant, Alicia Olivares Castaneda, was originally charged by information with the crime of Theft in the First Degree, a class B felony. Based on an affidavit filed in support of the issuance of a summons, the court found probable cause to believe that the defendant and an accomplice stole \$8,345.00 in cash and food assistance from the Department of Social and Health Services. The crime was alleged to have been committed between May 1, 2009 and May 1, 2010. The defendant initially entered a plea of not guilty. Throughout these proceedings, the defendant requested and received the assistance of court appointed counsel, and a court appointed Spanish interpreter.

2. On July 25, 2013, the defendant appeared before the court for the purpose of entering a plea of guilty to a reduced charge. The State agreed to amend the information to charge one count of theft in the second degree. Although the title of the count referenced "welfare fraud – 74.08.331," the charging language did not reference the elements of that crime or the statutory language of that section. The charging language alleged that the defendant "did wrongfully obtain or exert unauthorized control over the property or services of another, to wit: United States currency of a value exceeding \$750, with intent to deprive the Department of Social and Health Services, the

true owner thereof, of such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.040(1)(a) and/or was an accomplice to said crime pursuant to RCW 9A.08.020.”

3. Prior to entering a plea, the defendant met with her attorney and an interpreter to review the plea form. The interpreter, Carmen Vernier, verified that the defendant understood Spanish, and the interpreter had interpreted the entire document for the defendant. At a colloquy during the plea, the defendant acknowledged that the interpreter had read the form to her, and that she understood everything that was read to her.

4. Olivares Castaneda entered a plea of guilty to the charge of theft in the second degree, as charged in the second amended information.

5. The plea statement in this case, paragraph 6(i), provided the following specific information to the defendant:

In considering the consequences of my guilty plea, I understand that ... (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Counsel for the defendant placed a handwritten asterisk next to this paragraph.

6. The defendant was assisted by her counsel and a Spanish interpreter during the plea process in court. She indicated both in the plea form and orally that she was making an admission of guilt freely and voluntarily. The court engaged in an extended colloquy with Olivares Castaneda concerning her understanding of her rights and the consequences of her decision to plead guilty. The court specifically reviewed the portion of the plea form that warned that the defendant could be deported following

conviction. Olivares Castaneda advised the court, through the interpreter, that she understood this was a consequence of her entering a plea to the felony charge. The court concluded that the plea was knowingly, intelligently and voluntarily made, and that there was a factual basis for the plea. The court accepted the plea, and immediately proceeded to sentencing, as requested by the parties.

7. The court accepted the recommendation of the parties concerning sentencing. The defendant was sentenced to 30 days of partial confinement on a work crew. The court entered judgment and sentence in Cause No. 13-1-00678-2 on July 25, 2013.

8. On July 25, 2014, Olivares Castaneda filed a motion to vacate judgment and sentence (CrR 7.8). The basis for relief alleged in the motion is that the defendant did not receive the effective assistance of prior counsel. The specific concerns addressed by the defendant include her contentions that counsel (a) did not assure that she understood the plea process and the immigration consequences of pleading guilty to the reduced charge, and (b) did not obtain a plea offer from the prosecutor that would insulate her from those consequences. The only relief requested is vacation of the judgment and sentence, although it is implied that the defendant also wishes to withdraw her guilty plea and proceed to trial on the original charges.

Based upon the foregoing Findings of Fact, the court enters the following  
Conclusions of Law:

#### CONCLUSIONS OF LAW

1. The defendant's motion to vacate the judgment and sentence is made pursuant to CrR 7.8.

2. The motion is not time barred by RCW 10.73.090. The motion is also timely filed, pursuant to the requirements of CrR 7.8 (b).

3. The defendant has not made a substantial showing that she is entitled to relief from the judgment and sentence entered on July 25, 2013, due to ineffective assistance of counsel. The objective evidence in the record establishes that Olivares Castaneda was fully advised of the consequences of her plea, and the nature of the plea and sentencing process, both orally and in writing. Through certified interpreters, she indicated to her attorney and the court that she understood the process, and the potential immigration consequences of her actions. There is no evidence in the record that the defendant was not legally competent at any point during this case.

4. Resolution of this motion does not require a factual hearing. The factual and legal basis for accepting the defendant's plea is in the record. The plea forms reviewed by the defendant, and her colloquy with the court before the plea was accepted, is also contained in the record. The defendant's declaration that she subjectively felt or believed something other than what she affirmatively stated to counsel, the interpreter and the court does not create a factual issue that is relevant to the court's decision.

Based on the foregoing Findings of Fact and Conclusions of Law, now, therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### ORDER

1. The defendant's motion for relief from judgment, denominated a motion to vacate judgment and sentence (CrR 7.8), filed July 24, 2014, is transferred to the Court of Appeals, Division II, for consideration as a personal restraint petition, as required by CrR 7.8 (b)(2).

2. The court shall mail a copy of this order to the defendant; to the defendant's current counsel, Nicole Dalton; to the defendant's former counsel, Gerald Wear and to deputy prosecuting attorney Rachael Probstfeld.

Dated this 3<sup>rd</sup> day of October, 2014.

  
\_\_\_\_\_  
Judge Robert A. Lewis

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
	)	NO. 13-1-00678-2
Plaintiff,	)	
vs.	)	DECLARATION OF
	)	SERVICE
ALICIA OLIVARES CASTANEDA,	)	
	)	
Defendant.	)	

I declare under penalty of perjury under the laws of the State of Washington that on this date I sent by regular U.S. Mail a copy of the Findings of Fact and Conclusions of Law, and Order Transferring Motion to Vacate Judgment and Sentence Pursuant to CrR 7.8 to Court of Appeals, Division II, dated October 3, 2014, to the parties addressed below:

Nicole Dalton  
Attorney at Law  
100 E. 13<sup>th</sup> Street, #108  
Vancouver, WA 98660

Alicia Castaneda  
8917 NE 15<sup>th</sup> Avenue, Apt. I-97  
Vancouver, WA 98665

Gerald Wear  
Attorney at Law  
207 E 19<sup>th</sup> Street  
Vancouver, WA 98663

Rachael Probstfeld  
Deputy Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000  
(via courier)

DATED this 3<sup>rd</sup> day of October, 2014.

  
\_\_\_\_\_  
Judicial Assistant, Dept. 9

## **EXHIBIT #4**

Sum

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FILED

2013 MAY -9 PM 1:56

SCOTT G. WEBER, CLERK  
CLARK COUNTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
ALICIA OLIVARES CASTANEDA,  
AKA ALICIA OLIVARES-VAZQUEZ  
and  
FELIPE CASTANEDA VICTORIANO,  
AKA FELIPE VICTORIANO  
CASTANEDA  
Defendant.

**INFORMATION**  
  
No. 13-1-00678-2  
  
No. 13-1-00679-1  
  
(DSHS W6511187)  
(DSHS W6514529)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - THEFT IN THE FIRST DEGREE - 9A.08.020(3) /9A.56.020(1)(a)/9A.56.030(1)(a)**  
That they, ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ and FELIPE CASTANEDA VICTORIANO, AKA FELIPE VICTORIANO CASTANEDA, together and each of them, in the County of Clark, State of Washington, between May 1, 2009, and May 1, 2010, did wrongfully obtain or exert unauthorized control over the property or services of another, to-wit: United States currency, having a value exceeding \$5000.00, with intent to deprive the Department of Social and Health Services, the true owner thereof, of such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and/or was an accomplice to said crime pursuant to RCW 9A.08.020.

ANTHONY F. GOLIK  
Prosecuting Attorney in and for  
Clark County, Washington

Date: May 6, 2013

BY: \_\_\_\_\_  
Patrick M. Robinson, WSBA #40028  
Deputy Prosecuting Attorney

INFORMATION - 1  
ar

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

<b>DEFENDANT: ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ</b>			
<b>RACE:</b>	<b>SEX: F</b>	<b>DOB: 06/16/1979</b>	
<b>DOL: CASTAAO219LW WA</b>		<b>SID:</b>	
<b>HGT: 502</b>	<b>WGT: 120</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
<b>WA DOC:</b>		<b>FBI:</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 8917 NE 15TH AVE APT I-97, VANCOUVER WA 98665			

<b>DEFENDANT: FELIPE CASTANEDA VICTORIANO, AKA FELIPE VICTORIANO CASTANEDA</b>			
<b>RACE:</b>	<b>SEX: M</b>	<b>DOB: 04/08/1978, AKA 04/28/1980</b>	
<b>DOL: VICTOFC226JH WA</b>		<b>SID: WA24811471</b>	
<b>HGT: 502</b>	<b>WGT: 135</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
<b>WA DOC:</b>		<b>FBI:</b>	
<b>LAST KNOWN ADDRESS(ES):</b>			
HOME - 8917 NE 15TH APT I-97, VANCOUVER WA 98665			

**EXHIBIT #5**

FILED

2013 MAY 30 PM 3:05

CLARK COUNTY PROSECUTOR  
CLARK COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,  
Plaintiff,  
v.  
ALICIA OLIVARES CASTANEDA,  
AKA ALICIA OLIVARES-VAZQUEZ  
and  
FELIPE VICTORIANO CASTANEDA,  
AKA FELIPE CASTANEDA  
VICTORIANO  
Defendant.

AMENDED INFORMATION

No. 13-1-00678-2

No. 13-1-00679-1

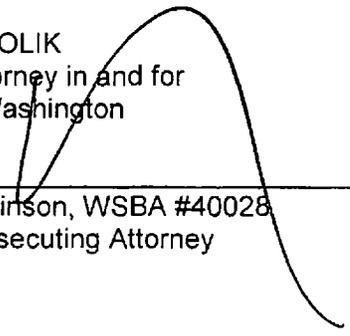
(DSHS W6511187)  
(DSHS W6514529)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

**COUNT 01 - THEFT IN THE FIRST DEGREE - 9A.08.020(3) /9A.56.020(1)(a)/9A.56.030(1)(a)**  
That they, ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ and FELIPE VICTORIANO CASTANEDA, AKA FELIPE CASTANEDA VICTORIANO, together and each of them, in the County of Clark, State of Washington, between May 1, 2009, and May 1, 2010, did wrongfully obtain or exert unauthorized control over the property or services of another, to-wit: United States currency, having a value exceeding \$5000.00, with intent to deprive the Department of Social and Health Services, the true owner thereof, of such property or services; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and/or was an accomplice to said crime pursuant to RCW 9A.08.020.

ANTHONY F. GOLIK  
Prosecuting Attorney in and for  
Clark County, Washington

Date: May 29, 2013

BY:   
Patrick Robinson, WSBA #40028  
Deputy Prosecuting Attorney

9  
AS

1 <b>DEFENDANT: ALICIA OLIVARES CASTANEDA, AKA ALICIA OLIVARES-VAZQUEZ</b>			
2 <b>RACE: W</b>	<b>SEX: F</b>	<b>DOB: 06/16/1979</b>	
3 <b>DOL: CASTAAO219LW WA</b>		<b>SID: WA27169992</b>	
4 <b>HGT: 502</b>	<b>WGT: 120</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
5 <b>WA DOC:</b>		<b>FBI: 662484VD3</b>	
6 <b>LAST KNOWN ADDRESS(ES):</b>			
7 <b>HOME - 8917 NE 15TH AVE APT I-97, VANCOUVER WA 98665</b>			

8 <b>DEFENDANT: FELIPE VICTORIANO CASTANEDA, AKA FELIPE CASTANEDA VICTORIANO</b>			
9 <b>RACE:</b>	<b>SEX: M</b>	<b>DOB: 04/08/1978, AKA 04/28/1980</b>	
10 <b>DOL: VICTOFC226JH WA</b>		<b>SID: WA21073261</b>	
11 <b>HGT: 502</b>	<b>WGT: 135</b>	<b>EYES: BRO</b>	<b>HAIR: BLK</b>
12 <b>WA DOC:</b>		<b>FBI: 662666VD6</b>	
13 <b>LAST KNOWN ADDRESS(ES):</b>			
14 <b>HOME - 8917 NE 15TH APT I-97, VANCOUVER WA 98665</b>			

# CLARK COUNTY PROSECUTOR

**April 01, 2015 - 4:43 PM**

## Transmittal Letter

Document Uploaded: 7-prp2-468425-Response.pdf

Case Name: State v. Alicia Castaneda

Court of Appeals Case Number: 46842-5

**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:

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: Abby Rowland - Email: [abby.rowland@clark.wa.gov](mailto:abby.rowland@clark.wa.gov)

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

[nicole@daltonlawoffice.net](mailto:nicole@daltonlawoffice.net)