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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 AUG 19 PM 2:50

Linda Mylre Enlow
Thurston County Clerk

1 95-1-00199-1

2 ORTR

Order of Transfer/Transferring

537085



7 SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

8 STATE OF WASHINGTON

9 Plaintiff,

10 v.

11 MARVIS J KNIGHT

12
13 Defendant.

NO. 95-1-00199-1

ORDER TRANSFERRING MOTION TO
COURT OF APPEALS FOR
CONSIDERATION AS PERSONAL
RESTRAINT PETITION UNDER CrR
7.8(c)

Clerk's action required

15 THIS MATTER came before the undersigned judge of the above entitled court
16 upon ex parte review of:

- 17
- 18 1. Motion of Exception and Objection, filed on 8/8/16,
 - 19 2. Order Setting Review Hearing and Smith Warnings, filed 7/21/16
 - 20 3. Motion to Vacate Sentence, filed 6/22/16
 - 21 4. Affidavit in Support, filed 6/22/16
 - 22 5. Judgment and Sentence, filed 4/3/95 (not found in court file due to age)
 - 23 6. Statement of Defendant on Plea of Guilty, filed 4/3/95 (not found in court
24 file due to age)
- 25

1 After reviewing the defendant's written pleadings, the court now enters the following
2 order under CrR 7.8(c)(2):

3 A. IT IS HEREBY ORDERED that this petition is transferred to the Court of
4 Appeals, Division II, to be considered as a personal restraint petition. The petition is being
5 transferred because:

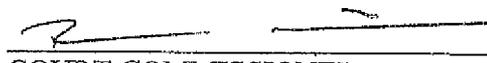
6 it appears to be time-barred under RCW 10.73.090;

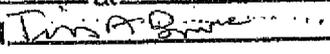
7 is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a) and
8 therefore would be denied as an untimely motion in the trial court; or

9 is not time barred but does not meet the criteria under CrR 7.8 (c)(2) to allow
10 the court to retain jurisdiction for a decision on the merits.

11 The Thurston County Superior Court Clerk shall forward a copy of this
12 order, as well as the available documents listed above to the Court of Appeals. The
13 Clerk shall strike the review hearing scheduled for 8/25.

14 DATED this 19th of August, 2016.

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17
18 
19 COURT COMMISSIONER
20 REBEKAH ZINN
21 COURT COMMISSIONER

22 I certify to be true under penalty of perjury
23 Under the laws of the State of Washington that
24 I delivered/mailed a copy of this document to:
25 James C. Powers, Office of Assigned Counsel, Forrest Wegner, and Marvis S. Knight
on 8/16 at Olympia, WA
Signed 

2

95-1-00199-1
CRSRH
Order Setting Review Hearing
450691



FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 JUL 21 AM 8:35

Linda Myhre Enlow
Thurston County Clerk

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**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

STATE
v.

MARVIS J. KNIGHT

NO. 95-1-199-1

SMITH WARNINGS AND
ORDER TO SET REVIEW HEARING

(Clerk's Action Required)

To: Defendant MARVIS KNIGHT, DOC No. 734648
1830 EAGLE CREST WAY
CLALLAM BAY, WA 98326

The Court has received your CrR 7.8 motion. The Court is notifying you that it intends to recharacterize your motion as a personal restraint petition and send it to the Court of Appeals. It appears that you have not filed a personal restraint petition before. You should understand the successive petition rule. Under RCW 10.73.140:

If a person has previously filed a petition for personal restraint, the court of appeals will not consider the petition unless the person certifies that he or she has not filed a previous petition on similar grounds, and shows good cause why the petitioner did not raise the new grounds in the previous petition. Upon receipt of a personal restraint petition, the court of appeals shall review the petition and determine whether the person has previously filed a petition or petitions and if so, compare them. If upon review, the court of appeals finds that the petitioner has previously raised the same grounds for review, or that the petitioner has failed to show good cause why the ground was not raised earlier, the court of appeals shall dismiss the petition on its own motion without requiring the state to respond to the petition.

Because of this rule, you have a right to withdraw your CrR 7.8 motion before this court transfers it to the Court of Appeals. You can also amend your motion to make sure that you have made all the arguments that you want to make.

1 Your deadline to withdraw your motion or amend it is 8/17/16 (one month after the
2 date of this order).

3 The Court Clerk shall schedule a review hearing on this matter on the Civil Miscellaneous Calendar
4 on Thursday, 8/25/16 at 9:00 a.m. At that time, the Court will review the status of the
5 pending CrR 7.8 motion and transfer it to the Court of Appeals if appropriate. **The hearing will be
6 without oral argument. Parties should not appear at the hearing.**

7 The Clerk shall strike the hearing in this case currently scheduled for 7/21/16.

8
9
10 SIGNED ON 7/20/16.

11
12 
13 _____
14 COURT COMMISSIONER REBEKAH ZINN

15 **DECLARATION OF SERVICE BY MAIL**

16 I, Tonye Moore, certify and declare under penalty of perjury under the Laws of the State of
17 Washington that on July 21st, 2016, I mailed a copy of this document to the defendant listed
18 above, as well at the Prosecuting Attorney and all other counsel of record

19
20 Tonye S. Moore
21 Print name

160

2016 JUN 22 AM 11:30

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

Linda Myhre Enlow
Thurston County Clerk

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIS J. KNIGHT,

Defendant.

No. 95-1-00199-1

MOTION TO VACATE
SENTENCE CrR 7.8

95-1-00199-1
MT
Motion
389918



I. ISSUE

The Judgment and Sentence issued by this Court in the above referenced cause number is facially invalid and must be vacated. On April 3rd, 1995 Mr. Knight went before this Court on a charge of Assault in the First Degree. During Court proceedings, the State offered to drop the Assault charge against the defendant in exchange for a guilty plea to a charge of "Attempted" Manslaughter in the First Degree, a non-existent crime. Following the advice and recommendation of Mr. Knight's court appointed counsel, an Alford plea was entered by the defendant to the negotiated agreement. When a judgement and sentence is entered that is facially invalid, and the charged crime is non-existent, the plea must be withdrawn and the judgement and sentence must be vacated.

II. UNLAWFUL RESTRAINT

Mr. Knight is being unduly held in an unlawful restraint as an indirect cause of the 1995 Judgement and Sentence in this case. In April of 2000, Mr. Knight was convicted and sentenced in this Court on two counts of Assault in the First Degree in cause #99-1-00929-4. At that time, this Court determined that Mr. Knight had a prior offense for a 1997 Robbery conviction under cause #97-1-01382-1, as well as the 1995 Attempted Manslaughter conviction under this cause. For those reasons, it was determined that Mr. Knight was a persistent offender under the Persistent Offender Accountability Act and he was sentenced to a term of life without possibility of parole - a sentence which Mr. Knight is currently serving under cause #99-1-00929-4. Due to the facial invalidity of the Judgement and Sentence in this 1995 cause, Mr. Knight's conviction of the non-existent crime of Attempted Manslaughter in the First Degree has resulted in actual and substantial prejudice of constitutional magnitude to Mr. Knight. The 1995 plea agreement, and the resulting invalidity of his J&S, has resulted in collateral consequences which are currently at stake. See PRP of Richardson, 100 Wn.2d 669, 670, 675 P.2d 209 (1983). Mr. Knight's 2000 conviction was predicated on this 1995 conviction which is facially invalid. Mr. Knight is being unlawfully restrained. In re PRP of Powell, 92 Wn.2d 882, 602 P.2d 711 (1979) and RAP 16.4(b).

III. VENUE

Thurston County Superior Court is the proper venue in which to present this motion as it is the sentencing court to which Mr. Knight's criminal cases exist.

IV. JURISDICTION

Thurston County Superior Court has jurisdiction under the Washington State Constitution which gives authority to hear post-collateral challenges under this action.

Trial Courts have concurrent jurisdiction along with appellate courts to grant post conviction relief in Washington State. See Toliver v. Olsen, 109 Wn.2nd 607, 745 P.2nd 809 (1987).

Courts also have a duty and power to correct an erroneous sentence upon its discovery. See In re Pers. Restraint of Call, 144 Wn.2nd 315, 334, 28 P.3rd 709 (2001).

V. RELEVANT FACTS

On the morning of April 3rd, 1995 Marvis Knight was present in Thurston County Superior Court with his court appointed attorney, Michael Ferrell. Present for the State was James L. Powers, Deputy Prosecuting Attorney for Thurston County. The Honorable Daniel J. Berschauer, Judge of Thurston County Superior Court presided. Mr. Knight was preparing for jury trial scheduled that same afternoon to defend against the States charge of Assault in the First Degree.

During a brief recess in the midst of jury selection, Mr. Knight was presented with a plea offer by the State through his appointed counsel, Mr. Ferrell. See attached Appendix A, Verbatim Report of Proceedings, at 27 (hereinafter VBR ___).

The State offered to amend its charging information from Assault in the First Degree to an amended charge of "Attempted" Manslaughter in the First Degree (a non-existent crime) in exchange for a plea of guilt from Mr. Knight. At the advice and recommendation of Mr. Ferrell, Mr. Knight was inclined to accept what he felt to be a wise and logical choice.

Appendix B.

Mr. Ferrell had advised his client of the charge and the elements of the offense. VBR 28. Mr. Ferrell handed Judge Berschauer an assigned Alford plea statement and an SRA score sheet for Manslaughter in the First Degree (not "Attempted"). VBR 29. Mr. Knight was 16 years of age when the offense was committed; just turned 17 years of age during these proceedings; nine years of education. VBR 30,61,62.

Judge Berschauer hits on the major points of the implications for Mr. Knight's plea - a standard sentencing range for "Attempted" Manslaughter in the First Degree. VBR 31. Mr. Knight's counsel addresses the court and informs that "Attempted" Manslaughter is a Class "B" felony. VBR 35. In addition to the Alford plea to a non-existent crime, an exceptional sentence is imposed upon Mr. Knight. VBR 43. Judge Berschauer reads the statement of Mr. Knight into the record which was written by Mr. Ferrell, Mr. Knight's counsel. With the presumption that counsel is competent and administering proper guidance, Mr. Knight adopts the statement. VBR 44. Judge Berschauer explains the Alford plea to Mr. Knight and explains his duty to find him guilty and to impose punishment

"consistent with law". VBR 45 and Appendix B.

Being a layman with no understanding of law and still in adolescence, Mr. Knight assumes that proper administration of justice is taking place during the course of the aforementioned proceedings. Mr. Knight enters an Alford plea to the non-existent crime of "Attempted" Manslaughter in the First Degree. VBR 55 and Appendix B. After Judgement and Sentence is pronounced (Appendix C), Prosecuting Attorney Powers requests an exceptional sentence to the non-existent crime. VBR 57. Mr. Powers relies on, and Mr. Knight's counsel stipulates to, an "aggravating" circumstance for enhancement of the non-existent SRA sentence. Appendix D.

Mr. Knight is further ordered to be subjected to DNA testing required by statute (statute not named) because the crime of Attempted Manslaughter (non-existent) is a "violent" offense. VBR 58. Lastly, at the end of these proceedings, Judge Berschauer informs Mr. Knight that "Attempted" Manslaughter in the First Degree carries a five year maximum term of confinement and is a Class "C" felony. VBR 60,61.

VI. ARGUMENT

a.) Withdrawal of Alford Plea

The Defendant in this motion asks this Court to allow him to withdraw his Alford plea of April 3, 1995 (Appendix B) and to vacate the judgement and sentence as it is necessary in order to correct a manifest injustice. The manifest injustice stems from the defendant being allowed to plead to the non-existent crime of Attempted Manslaughter in the

First Degree. The defendant has also suffered actual and substantial prejudice of a constitutional magnitude which requires this court to vacate.

Blacks Law Dictionary, Seventh Edition, 1999 describes a manifest injustice as "an error in the trial court that is direct, obvious, and observable...(such as a guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds). Mr. Knight's conviction was imposed without statutory authority. See PRP of Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000). As this Courts jurisdiction must only be exercised under statutory limits and prescriptions, jurisdiction is exceeded. Allowing the defendant to plead to a non-existent crime, and convicting and sentencing him to the same, without any mention of a single violation of State law or statute in the information, the plea agreement, the court proceedings, or any of the findings of fact (Appendices A, B, C, and D), is direct and obvious error.

Washington State Court Rule CrR 4.2(f) governs the procedure for allowing a defendant to withdraw a plea agreement when it is necessary to correct a manifest injustice. CrR 4.2 also allows this court to make a determination under RCW 9.94A.431 on whether the plea is consistent with the interests of justice or whether it is consistent with the prosecuting standards set forth in RCW 9.94A.401-411. It is plain under the circumstances here that a man cannot be convicted of a crime that does not exist. As this motion is being made after judgement was entered and sentence was served, the proper venue for the defendant is to bring this CrR 7.8 motion in conjunction with CrR 4.2.

b.) Voluntariness of the Plea

Due process requires that a guilty plea be voluntary, knowing, and intelligent. Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

In addition, a defendant must understand that his alleged criminal conduct satisfies the elements of the charged information. In re Pers. Restraint of Hews, 99 Wn.2d 80, 660 P.2d 263 (1983), and, McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct 1166, 22 L.Ed.2d 418 (1969) (guilty plea "cannot be truly voluntary unless defendant possesses an understanding of the law in relation to the facts"). As is clear from McCarthy, voluntariness must be cohesive with the defendants understanding of the facts.

In State v. Taylor, 83 Wn.2d 594, 521 P.2d 699 (1974) they conducted an examination of the other and connected criminal rules adopted by the Supreme Court and reveals the logic of applying a demanding test. CrR 4.2(f) also incorporates the safeguards of section (d) on voluntariness and section (e) on agreements. CrR 4.2(d) states - A trial court is not permitted to enter judgement upon a plea of guilty unless it is satisfied that there is a factual basis for the plea. There must also be an understanding of the nature of the charge - something the court could not possibly explain as being non-existent and not statutorily possible. CrR 4.2(e) on agreements states that the validity of the agreement under RCW 9.94A.431 may be determined at the same hearing at which the plea is accepted.

This court erred by accepting the plea without first determining the validity, nature, or statutory authority of the charge. There can be no understanding of the nature or the validity of an agreement to a non-

existent crime for which there is no statutory authority.

Mr. Knight had just turned 17 years old at the time of the States plea offer. VBR 30,60,61. Mr. Knight relied on th

professional expertise of his court appointed counsel who recommended that he take advantage of the offered agreement presented by the State. VBR 28. Mr. Knight had no knowledge or understanding of the law or the legislative statutes as it pertained to the alleged crime he was being told existed in fact. "If the plea was not valid when entered, the trial court must set it aside". State v DeRosia, 124 Wn.App. 138, 149, 100 P.3rd 331 (2004) (quoting State v. McDermond, 112 Wn.App. 239, 243, 47 P.3rd 600 (2002).

c.) Facial Invalidity of Plea

RCW 10.73.090 one year time limit does not apply when a defendant can show that his plea is constitutionally invalid. "Constitutionally invalid on it's face" means a conviction which, without further elaboration, evidences infirmities of a constitutional magnitude.

The phrase "on it's face" has been interrelated to mean those documents signed as part of a plea agreement. PRP of Greening, 141 Wn.2d 687, 699, 9 P.3d 206 (2000); citing State v. Ammons, 105 Wn.2d 175, 188, 713 P.2d 719, 756 (1986). Appendix B and C.

Mr. Knights Alford plea in 1995 to the non-existent crime of Attempted Manslaughter in the First Degree and the judgement and sentence is facially invalid. Mr. Knight did not receive notice of a single RCW statute that he violated. Indeed, the judgement and sentence is devoid of any RCW statute violation. Appendix C. Mr. Knights Alford plea is

devoid of a single statute violation. Appendix B. The Report of Proceedings is devoid of any mention of any violation of State law statute. Appendix A. And finally, the findings of fact for the exceptional sentence is also devoid of any RCW statute violation(s). Appendix D.

A judgement and sentence is facially invalid.....if, without further elaboration, it shows an error. In re Pers. Restraint of Benavidez, 160 Wn.App. 165, 246 P.3d 842 (2011). Where a petitioner can show a constitutionally invalid guilty plea, actual prejudice will be established. In re Montoya, 109 Wn.2d 270, 277, 744 P.2d 340 (1987). When the In re Pers. Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2001) decision was handed down, a slew of petitioners were granted relief when the court invalidated convictions for second degree felony murder predicated on assault as the underlying felony. "Because they have been convicted of non-existent crimes, they have shown fundamental constitutional error that actually and substantially prejudiced them". In re Pers. Restraint of Hinton, 152 Wn.2d 853, 857-858, 100 P.3d 801 (2004).

There is no time bar issues in this case. The time bars of RCW 10.73 do not apply to an invalid judgement and sentence. See Hinton, supra. When a sentence is imposed pursuant to a plea bargain, it must be statutorily authorized. In re Pers. Restraint of Moore, 116 Wn.2d 30, 33, 803 P.2d 300 (1991). When a sentence is not authorized by the SRA, and a plea to a non-existent crime is entered, this constitutes a fundamental defect which results in a miscarriage of justice. Thus, this motion contains both constitutional and non-constitutional issues which must be addressed and corrected.

Courts have a power and duty to correct an erroneous sentence upon it's discovery. See Gall, at 334.

Blacks Law Dictionary, supra, describes miscarriage of justice as a grossly unfair outcome in a judicial proceeding as when a defendant is convicted despite a lack of evidence on the essential element of the crime" (also termed "failure of justice").

d.) Non-existent crime

A person is guilty of Manslaughter in the First Degree when he recklessly causes the death of another person. RCW 9A.32.060.

A person is guilty of Manslaughter in the Second Degree when, with criminal negligence, he causes the death of another person. RCW 9A.32.070.

A person is guilty of attempting to commit a crime if, with intent to commit a specific crime, he does an act that is a substantial step toward the commission of that crime. RCW 9A.28.020(1).

"Where a crime is defined in terms of acts causing a particular result, a defendant charged with attempt must have specifically intended to accomplish that result." State v. Dunbar, 117 Wn.2d 587, 590, 817 P.2d 1360 (1991).

Similarly, a crime of "attempted manslaughter" is impossible:

Manslaughter is defined by a particular result: death. But the intent to cause a death is not an element of manslaughter. Rather, in manslaughter the death is caused either recklessly or negligently. Therefore, the crime of "Attempted" Manslaughter is non-existent.

"Attempted" Manslaughter is not statutorily possible. One cannot

intentionally do something unintentionally. State v. Red, 105 Wn.App. 62, 18 P.3d 615 (2001). In State v. Tarrer, 140 Wn.App. 166, 165 P.3d 35 (2007) the court reasoned that since the conviction was non-existent, he could not plead guilty to it and the judgement and sentence was set aside ("if the plea was not valid when entered, the trial court must set it aside" State v. DeRosia, 124 Wn.App. 138, 149, 100 P.3d 331 (2004)).

VII. CONCLUSION AND RELIEF REQUESTED

Due to the facial invalidity of Mr. Knights judgement and sentence, the State and this Court should concede to the facts of this unfortunate miscarriage of justice which actually and substantially prejudiced Mr. Knight. Mr. Knight has served over 16 years of his life in prison which is partially based on the collateral consequences of the non-existent predicate felony crime that this Court used to conclude that he was a persistent offender, and for which he was sentenced to a term of life w/o parole.

It is Mr. Knights position that the State simply withdrawl the plea and vacate the invalid judgement and sentence in this cause and remand back to the Superior Court. Further, Mr. Knight requests competent counsel be appointed to represent him in a factual hearing to determine how to proceed after the 1995 cause has been vacated in order to determine how to proceed in the #99-1-00929-4 conviction in 2000 in light of the past, current, and future circumstances.

Respectfully Submitted this 18th day of June, 2016.

Marvis J. Knight
Marvis J. Knight, Pro Se Defendant
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

APPENDIX A

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

STATE OF WASHINGTON,)	Case No. 95-1-00199-1
Plaintiff,)	
vs.)	
MARVIS J. KNIGHT,)	
Defendant.)	

BE IT REMEMBERED that on April 3, 1995
the above-entitled matter came on for hearing
before the HONORABLE DANIEL J. BERSCHAUER, Judge
of Thurston County Superior Court.

VERBATIM REPORT OF PROCEEDINGS

REPORTED BY: Carolyn M. Koinzan, CCR #2213
Official Court Reporter, CSR, RPR
360-786-5571

951001991_A-00_KNIGHT-MARVIS J - Page 312 of 385

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A P P E A R A N C E S

For the Plaintiff: JAMES L. POWERS,
Deputy Prosecuting Attorney

For the Defendant: MICHAEL FERRELL,
Attorney at Law

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P R O C E E D I N G S

MONDAY, APRIL 3, 1995

THE COURT: For the record, this is the case of State of Washington versus Marvis J. Night, 95-1-199-1.

Mr. Knight is present in person represented by his attorney, Mr. Michael Ferrell.

Mr. Jim Powers is here representing the State.

This matter is scheduled for trial at 1:30 this afternoon. Prior to that trial commencing, I think it imperative that we go ahead and randomly select the order in which the jurors will be numbered for purposes of jury selection. I asked the clerk to do this, that is, to randomize the names. I think she has already done so. She shuffles them around and has done that prior to this moment.

Also I will ask her to simply read the juror number and the seat position. Counsel will be

951001991 A-00 KNIGHT-MARVIS J - Page 314 of 385

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supplied with a copy with the names all placed on it, of course, and then you can utilize the juror selection questionnaires for purposes of ascertaining background information.

Before I start the jury pull, are there any other issues the Court needs to address prior to trial commencing at 1:30, other than accomplishing this jury pull?

MR. POWERS: No, Your Honor, I don't believe so.

MR. FERRELL: Your Honor, I had filed a motion in limine. I filed a motion in limine March 29. We can take that up at 1:30 this afternoon, if the Court --

THE COURT: Actually, jury selection is going to start at 1:30 this afternoon. Let's go ahead and number the jurors at this point. The clerk can then take her time and fill out those numbers. And then we can proceed, if counsel are ready to proceed with the motion in limine.

Clerk may call all of the numbers and assign them seat positions.

THE CLERK: Juror No. 38, seat No. 1; juror No. 127, seat number 2; juror No. 131, seat number 3; juror No. 112, seat No. 4; juror No. 94,

1 seat No. 5; juror No. 98, seat No. 7; juror No.
2 100, seat No. 8; juror No. 103, seat number 9;
3 juror No. 103, seat number 10; juror No. 32, seat
4 No. 11; juror No. 107, seat number 12; juror No.
5 4, seat number 13; juror No. 118, seat number 14;
6 juror No. 81, seat number 15; juror No. 147, seat
7 number 16; juror No. 149, seat number 17; juror
8 No. 9, seat No. 18; juror No. 34, seat No. 19;
9 juror No. 6, seat No. 20; juror No. 2, seat number
10 21; juror No. 87, seat number 22; juror No. 65,
11 seat No. 23; juror No. 115, seat number 24; juror
12 No. 66, seat No. 25; juror No. 62, seat number 26;
13 juror No. 60, seat number 28; juror No. 59, seat
14 number 29; juror No. 45, seat number 30; juror No.
15 86, seat number 31; juror No. 15, seat number 32;
16 juror No. 19, seat number 33; juror No. 57, seat
17 No. 34; juror No. 146, seat number 35; juror No.
18 36, seat number 36; juror No. 80, seat number 37;
19 juror No. 40, seat number 38; juror No. 41, seat
20 number 39; juror No. 116, seat number 40; juror
21 No. 44, seat No. 41; juror No. 121, seat No. 42;
22 juror No. 23, seat No. 43.

23 THE COURT: As I indicated, the clerk
24 will now have an opportunity to put names with
25 those juror numbers, fill out a roster for counsel

1 and for the Court, and that roster will be
2 submitted to counsel to assist in preparation for
3 a jury selection at 1:30 this afternoon.

4 Mr. Ferrell is correct in that a motion in
5 limine was filed by him with respect to the issues
6 that he wishes the Court to address in limine.
7 Many of the items that he indicates have to do
8 with evidence and how the Court should allow
9 argument with respect to evidence.

10 Quite frankly, the basic rule about a motion
11 in limine is that if the Court knows with
12 specificity the particular objection and that
13 particular evidence is highly prejudicial and that
14 a ruling during trial with regard to that evidence
15 would not cure any potential prejudice, then the
16 Court should in limine rule in advance.

17 May I suggest, Mr. Ferrell, many of these
18 items have to do with general areas of objections.
19 And I think that the case law you rely upon is
20 accurate, but it's impossible for the Court to
21 know with specificity in the particular context so
22 that I can make rulings. So may I suggest in
23 advance without trying to go through each and
24 every one at this moment my ruling is to say don't
25 be surprised if in my ruling that I am unable to

1 make a ruling in limine, other than perhaps to
2 give some general guidance to counsel if that is
3 necessary.

4 I think the most expeditious use of time is
5 for Mr. Powers simply to look at your motion,
6 Mr. Ferrell, and state any objections he has or
7 state agreement. And the motion is styled in
8 terms of numerical order, 1 through 17, and, Mr.
9 Powers, you can simply refer to them as 1 through
10 17 and you can tell me which ones you are willing
11 to accept, without reservation, which ones you
12 have reservations about, or which ones you totally
13 disagree with.

14 MR. POWERS: Excuse me, Your Honor. I
15 have reviewed the motions. However, I realized
16 after we started the jury selection I did not
17 bring that file with me. I just came out of the
18 hearing from the other court.

19 THE COURT: Would you like to go get it?

20 MR. POWERS: I would ask permission to
21 go get that file.

22 THE COURT: You may.

23 (Brief pause.)

24 THE COURT: Mr. Powers, have you had an
25 opportunity to look at the notes you made on your

1 copy of the motion in limine?

2 MR. POWERS: I will as we go along. I
3 can do it this way.

4 THE COURT: Item No. 1.

5 MR. POWERS: On this matter I
6 understand this Court has in the past expressed a
7 belief that some discussion of what would be
8 contained in jury instructions, such as the legal
9 terms of preponderance of the evidence, beyond a
10 reasonable doubt, that kind of thing, presumption
11 of innocence, a variety of things that fall into
12 the instructions, are appropriate to go into.

13 I think Mr. Ferrell and I both know what
14 those are. They are gone into in almost every
15 trial. I don't expect to go beyond them and start
16 discussing the mechanics of assault, what assault
17 in the first degree involves, what the definition
18 of grievous bodily harm is, that kind of thing. I
19 have no intention of doing that.

20 THE COURT: I take it you are objecting
21 or lodging a motion in limine to protect against a
22 complete discussion of all the elements of
23 assault. For example, during voir dire, I would
24 agree with you to that extent.

25 MR. FERRELL: Your Honor, I think it

1 would be inappropriate for either party to discuss
2 what the possible contents of what any
3 instructions might be. I think it would be proper
4 inquiry to inquire with the panel as to whether or
5 not a person would be able and willing to abide by
6 the Court's instructions, whatever they may be.
7 Once the Court instructs the jury at the end of
8 this case, which is a voir dire that I normally do
9 with jurors, is I ask: Would you be willing to
10 follow the law in the instructions that the judge
11 gives you, no matter what the instructions might
12 be? Would you follow those instructions, even if
13 you may disagree with that law? And I think any
14 inquiry beyond that as far as getting to the
15 contents of what the instructions might be, I
16 don't think it's appropriate.

17 And I am mindful of the fact that jurors do
18 come in and watch that video and read the juror
19 handbook and those handbooks talk about things
20 like reasonable doubt and preponderance of the
21 evidence, and there is some legal principles and
22 concepts that are being set forth in the juror
23 handbook that the people read. But I don't think
24 that should be reinforced or emphasized during the
25 voir dire. I think simply the jury should hear

1 the instructions for the very first time when the
2 Court instructs the jury when all the evidence is
3 in.

4 THE COURT: Every judge that I'm aware
5 of informs a jury in a criminal case of the burden
6 of proof and informs the jury that there will be
7 instructions with respect to the burden of proof
8 and by doing that I allow attorneys to discuss
9 concepts such as presumptions of innocence and
10 proof beyond a reasonable doubt. Those two basic
11 principles that I announced in advance of the jury
12 selection. I don't encourage but definitely allow
13 attorneys to discuss.

14 My other suggestion of jury instructions then
15 should not be done. If it is done, I'm not going
16 to try to rule in advance as to every possible
17 nuance with respect to this issue, except to say
18 this is not so highly prejudicial that there is
19 going to be a necessity of the Court to rule in
20 limine, therefore, if there are objections during
21 voir dire, you can lodge them and of course I'll
22 rule upon them in a case-by-case basis.

23 Item 2.

24 MR. FERRELL: So, Your Honor, the
25 Court's ruling is that counsel may discuss

1 reasonable doubt and presumption of innocence
2 only?

3 THE COURT: Yes, that's my ruling.

4 Item 2.

5 MR. POWERS: I have no disagreement
6 with item 2. I suppose there is always a
7 possibility that there might be disagreement about
8 whether something I'm saying is proper.

9 THE COURT: I think I understand, Mr.
10 Powers. You are saying in principal what
11 Mr. Ferrell has asked for is reasonable. However,
12 one person's interpretation of a specific comment
13 compared against the case law may be different
14 than another person's.

15 You are simply asking the Court to rule on a
16 case-by-case basis. So in principal, I'm going to
17 accept the motion in limine, but obviously, every
18 attorney is on guard for any potential
19 transgression by making an objection at an
20 appropriate time and the Court would rule on it at
21 that point.

22 Item 3.

23 MR. POWERS: And I agree. I have no
24 intention of asking the opinion of a witness
25 regarding the guilt of a defendant.

1 THE COURT: Item 3 is accepted.

2 MR. POWERS: And item 4, I have no
3 objection to that either. I don't intend to ask
4 that.

5 THE COURT: Item 4 is accepted.

6 Item 5, I assume is accepted.

7 MR. POWERS: Yes, I would ask that the
8 investigating officer, Detective Price, be allowed
9 to be with me at counsel's table.

10 THE COURT: Tradition is that the
11 detective who is the investigating officer is
12 allowed to remain.

13 MR. POWERS: And item 6, I don't have
14 any problem with that, accept that it
15 realistically -- it's really difficult to -- I
16 think the Court just has to understand. It's
17 really difficult for people to refrain from
18 discussing that completely. It happened. I have
19 had this come up with other cases. I can tell
20 people don't refer to him as a victim. People are
21 concentrating on answering a question, not on
22 every word. The term victim can come up very
23 easily. I think I can certainly go to the subject
24 of talking to people, but I think that it's also
25 very difficult for persons who never use that

1 term. I think it's always sometimes difficult for
2 attorneys, even defense attorneys sometimes of
3 forgetting and to use this term.

4 THE COURT: This "alleged victim" term
5 that is more accurate, because I don't know how to
6 use the terminology that fits within the spirit of
7 what you are saying, Mr. Ferrell, but yet
8 recognize that human beings using English language
9 are still limited, even though it's probably one
10 of the largest vocabularies in the world.

11 MR. FERRELL: Your Honor, I hear what
12 Mr. Powers says, however, Shawn Alderson has a
13 name. His name is Shawn Alderson. And he is the
14 complaining person or he is the witness, but I
15 think it would be improper to refer to him as the
16 victim, because that presumes that he is the
17 victim of a crime. And that would be a comment
18 upon Mr. Knight's guilt or innocence. And the
19 jury should determine that. I think Mr. Alderson
20 should be referred to by name or complaining
21 witness or witness, other than victim.

22 THE COURT: The motion in limine is
23 granted in part and denied in part.

24 The part I'm granting is that I am going to
25 ask, Mr. Powers, that you and State's witnesses

1 try as best you can to not use the term "victim".
2 But it's denied in part to the extent that I'm not
3 setting up a black letter rule that is so
4 important and so critical to the fair trial of
5 this case for the defendant that if someone
6 violates it that I would think it would be grounds
7 for mistrial.

8 Quite frankly, if someone uses the
9 terminology "victim" that is so highly prejudicial
10 as to cause a problem for this Court in exercising
11 its judgment as to what kinds of violations would
12 constitute a mistrial or highly prejudicial.

13 It's simply not that kind of issue.

14 Technically, what I'm doing is giving more
15 direction to the prosecutor than I am fully
16 granting the motion in limine.

17 Item 7.

18 MR. POWERS: I have no objection to
19 that.

20 THE COURT: Item 7 accepted.

21 MR. POWERS: If what's being suggested
22 in item 8 is a situation where a witness would
23 express an opinion about the believability of one
24 witness over another, I have no objection, but
25 it's not worded that way.

1 THE COURT: That is what I inferred.

2 MR. FERRELL: That is basically the
3 motion. A witness should not be able to suggest
4 believability or non believability to the jury
5 regarding testimony of another witness.

6 THE COURT: I think that follows through
7 then with every witness, not only just state
8 witnesses, but defense witnesses as well.

9 MR. FERRELL: All witnesses. So No. 8
10 is granted?

11 THE COURT: It is, as I modified it to
12 control all witnesses and testimony.

13 There are exceptions of course that may come
14 up during a trial.

15 If counsel believes an exception exists, then
16 deal with that exception outside the presence of
17 the jury.

18 MR. POWERS: I don't see a lot of
19 difference between 8 and 9. As I look at it, they
20 are the same.

21 MR. FERRELL: They are the same.

22 THE COURT: Item 9 is accepted in the
23 same context.

24 MR. POWERS: Item 10 is, as I take it,
25 a basic request that hearsay not be admitted

1 unless, I assume, it falls within one of the
2 exceptions. It is very general. I don't think it
3 is a proper -- that those in limine cannot be
4 granted. It asks the Court to apply the rules of
5 evidence.

6 THE COURT: Clearly, I'll make every
7 effort to apply the rules of evidence in a legally
8 correct manner and in a fair manner to both
9 parties. But I am not going to grant a motion for
10 limine, that simply asks the Court to for the
11 Rules of Evidence.

12 MR. POWERS: Item 11, I don't have any
13 objection to that.

14 THE COURT: Item 11 is accepted.

15 MR. FERRELL: Your Honor, I'm going to
16 withdraw the motion in limine No. 12. I had
17 anticipated that there might be witnesses that
18 would not perhaps cooperate with us, but
19 Mr. Armstrong, we've talked to a lot of people.

20 THE COURT: Item 12 is withdrawn.

21 MR. FERRELL: I can withdraw that
22 motion in limine.

23 THE COURT: Item 13.

24 MR. POWERS: I can accept that as a
25 motion in limine, which means that I won't attempt

1 to try and bring it before the jury in an opening
2 statement or without asking permission of the
3 Court beforehand.

4 I can anticipate some possible basis for
5 asking for admissibility of a conviction of this
6 defendant. It's not mentioned there, but he has a
7 conviction for assault second degree, which was a
8 gang incident. It involved him acting as a Crip
9 and pulling a gun and assaulting some Blood
10 members. He was convicted for that. He went to
11 Maple Lane for that.

12 If an issue arises in that case, I wouldn't
13 anticipate this on direct, but if it arises at
14 some point in this trial about this defendant's
15 gang allegiance and his attitudes toward Bloods,
16 that is, he is a Crip and has hostility toward
17 Bloods, the fact that was an expression of such
18 hostility, that may be that I might wish to try
19 and address the Court about the admissibility of
20 that. But as a motion in limine, I'll accept it.

21 THE COURT: Let me make sure I
22 understand what the motion raises and what your
23 comments relate to.

24 As I read this particular item 13, in the
25 motion in limine, he is asking whether you are

1 going to be attempting to introduce any evidence
2 of prior convictions in the case in chief. And
3 your answer is no, with the possibility exception
4 of an assault second that is not being admitted so
5 much for the fact that there is a conviction, but
6 for a tendency or propensity toward
7 predisposition, I assume, with respect to his
8 association with Crips and the hatred toward
9 Bloods. Is that what I heard you say?

10 MR. POWERS: His allegiance and motive
11 in this case, but it would only be an issue that
12 would come up if it was made relevant by denial of
13 the defendant, should he take the stand.

14 THE COURT: Let me ask my next question
15 then.

16 One of the uses of prior convictions is
17 impeachment. This motion I think talks about the
18 case in chief. And I think you've accurately
19 summarized your position with respect to it.

20 I want to ask Mr. Ferrell: Does part of your
21 motion also raise your impeachment if your client
22 testifies?

23 MR. FERRELL: Yes, Your Honor.

24 THE COURT: The rule doesn't state it.
25 That's evidence rule 601, I believe. So that is

1 why I ask the question if you are asking the Court
2 to consider whether prior convictions can be used
3 as impeachment. That is a separate question from
4 the one I think raised in item 13.

5 MR. FERRELL: I want to bring this
6 motion in limine then also for impeachment
7 purposes, particularly with the assault in the
8 second degree.

9 THE COURT: He may not introduce any of
10 them. I'm going to ask him now.

11 So if the defendant testifies, is it your
12 intent to attempt to impeach him by admission of
13 prior conviction by asking him whether he's been
14 convicted of X crime in X date?

15 MR. POWERS: Not in the sense that rule
16 talks about where it's the fact he's been
17 convicted, with regard to credibility.

18 THE COURT: So there are no per se
19 admissible convictions. I noticed burglary in the
20 second degree, also, and he was a juvenile when it
21 happened, would be all admissible.

22 MR. POWERS: They are all juvenile
23 convictions.

24 THE COURT: They are all juvenile?

25 MR. POWERS: Yes.

1 THE COURT: Then I think what he has
2 said, and I want to repeat for the record,
3 Mr. Ferrell, so you and I are at least aware of
4 what he is saying.

5 He is not going to utilize prior convictions
6 for purposes of impeachment, if your client
7 testifies.

8 The only possible use of a prior conviction
9 is as to the assault issue.

10 That would be done outside the presence of
11 the jury and a record would be made before that
12 ever is attempted.

13 I think that is what you are saying, Mr.
14 Powers.

15 MR. POWERS: That is correct.

16 THE COURT: Mr. Ferrell, I think in
17 substance that grants your motion in limine.

18 MR. FERRELL: Let me make sure I'm
19 clear on this issue regarding the assault in the
20 second degree.

21 Do I hear the Court and Mr. Powers say that
22 in the event the State decided that it did want to
23 utilize the assault second degree, we would have a
24 hearing outside the presence of the jury?

25 THE COURT: That's what he is saying.

1 MR. FERRELL: That's fine.

2 THE COURT: And he would not use it for
3 impeachment. There is a difference. The Court
4 has to rule in advance if a conviction is sought
5 to be used for impeachment. He's not saying this
6 at all. He is saying in the context of a trial it
7 may become relevant and he then would raise the
8 issue outside the presence of the jury. And the
9 Court would decide outside the presence of the
10 jury before anybody asks the question.

11 MR. FERRELL: He's not going to use
12 this in his case in chief.

13 MR. POWERS: That's correct.

14 THE COURT: Item 14.

15 MR. POWERS: I don't think it's
16 appropriate for either counsel to express personal
17 opinions about the veracity of any witness or the
18 witness of the evidence. But the way that's
19 worded, it causes me some concern. I think it is
20 appropriate to argue what the evidence indicates
21 regarding the credibility of various witnesses. I
22 would certainly be expecting to do that in my
23 case.

24 THE COURT: Mr. Ferrell, I would
25 prohibit you and the prosecuting attorney from

1 making any personal remarks about the credibility
2 of witnesses, however, it has been my
3 understanding that both sides are free, done
4 properly, to argue before the jury that X witness
5 or Y witness were not credible.

6 So in that context, I'll overrule the motion
7 in limine. I'll affirm it to the extent that you
8 and Mr. Powers are prohibited from the using terms
9 or comments about your personal belief of the
10 credibility of a witness.

11 But you can both argue that the evidence
12 shows somebody is not credible.

13 MR. FERRELL: I understand that, yes.
14 Parties can comment on what the evidence has been,
15 Your Honor. I just want a motion in limine that
16 prohibits the State from comparing Mr. Knight's
17 honesty with that of any other witness or law
18 enforcement official.

19 THE COURT: The prohibition is against
20 expression of a personal opinion. To say more I
21 think is improper.

22 I'll let you make objections during the case.
23 But I have heard arguments that are perfectly
24 appropriate. And that is that based upon reasons
25 in evidence as to why one witness may be telling

1 the truth and another person is not, that is
2 perfectly appropriate argument.

3 Item 15.

4 MR. POWERS: I have no objection to
5 that.

6 THE COURT: Item 15 is granted.

7 Item 16.

8 MR. POWERS: No objection to that.

9 THE COURT: Item 16 is granted.

10 Item 17.

11 MR. POWERS: Specifically as worded, I
12 have no objection. Again, this whole issue of the
13 defense gang involvement is potentially an issue
14 in this case. I don't anticipate having somebody
15 come in and saying they've heard a lot of
16 complaints about him. That wouldn't be the
17 appropriate way to do that. As worded here I have
18 no objection. I wouldn't bring in this kind of
19 evidence.

20 THE COURT: As worded here it's granted.

21 MR. FERRELL: It is very important,
22 Your Honor, because as I set forth in my motion,
23 the reports allege that the sheriff's office has
24 received numerous complaints about Mr. Knight and
25 his gang friends. And they are supposedly a

1 nuisance in this county, according to the police.
2 That would be highly improper for that kind of
3 evidence to be admitted. It's not really relevant
4 to the crime for which Mr. Knight is being
5 charged.

6 THE COURT: As phrased, number 17 is
7 granted.

8 MR. FERRELL: And I don't see any way,
9 I just don't see it, Your Honor, we can never
10 anticipate how trials will progress. But I don't
11 see how any way it could be relevant under any
12 circumstances.

13 THE COURT: It may be. That is the
14 problem with a motion in limine. Until the Court
15 has heard evidence that is offered in context, the
16 Court never knows what is admissible or
17 inadmissible.

18 MR. POWERS: I believe that completes
19 the motions in limine of the day.

20 THE COURT: I believe it does.

21 Mr. Ferrell, are there any other motions in
22 limine that have not been addressed in writing?

23 MR. FERRELL: Your Honor, I do not have
24 any other motions at this time, thank you.

25 THE COURT: Do counsel anticipate any.

1 further motions prior to jury selection in this
2 case?

3 MR. POWERS: No, Your Honor.

4 MR. FERRELL: I do not, Your Honor.

5 THE COURT: Then I take it as soon as
6 the jurors are assembled at 1:30 this afternoon,
7 Mr. Knight of course should be here, ready to
8 proceed, as well as counsel, and we will proceed
9 with jury selection immediately upon 1:30 or as
10 soon thereafter as we can start.

11 MR. FERRELL: We can proceed at 1:30,
12 Your Honor.

13 MR. POWERS: Yes.

14 THE COURT: And we'll take up this case
15 at 1:30.

16 (Discussion had off the record.)

17 (Recess taken.)

18 (The following proceedings were had in the
19 presence and hearing of the jury panel:)

20 THE COURT: Good morning. My name is
21 Dan Berschauer. I'll be the judge presiding over
22 today's jury trial.

23 I always have a comment I make at the
24 beginning of this process. I'll make it right
25 now.

1 I have an order for all of you: You are all
2 ordered to take a deep breath and relax. This
3 should not be a frightening experience. You
4 should feel that you are participating in a very
5 important project, but you should not be afraid of
6 that project.

7 As you have just observed, the two lawyers
8 were in my chambers a few seconds ago. And an
9 issue has come up that's going to cause me to stop
10 the process right now for about a half hour.

11 I apologize. Something that just came up.
12 It was unknown to the attorneys. I need to
13 address it now before we go into jury selection.

14 One of the complaints I've received over the
15 years I've been a judge from jurors is why do we
16 have to wait so much? What kind of system is this?
17 And if that is the primary complaint, the next
18 complaint is: How come we have to wait so often
19 and are never told why we have to wait?

20 I can't stop the first problem, but I can
21 hopefully address the second one.

22 I'll tell you that approximately a half hour,
23 if its longer than that, I'll inform the bailiff,
24 who will tell you exactly how much time we do
25 need.

1 Please do not speculate about why there is a
2 delay at this point in the trial. Simply accept
3 it as part of the process that I am responsible to
4 maintain.

5 I haven't told you anything about the case.
6 I guess I don't have to administer an oath or
7 anything like that. Don't talk about being a
8 juror or any particular kind of case. You can
9 talk about the weather, which is very nice and the
10 rest of those typical items, but nothing else.

11 Bailiff, would you take them back into 131,
12 please?

13 Court's in recess.

14 (Recess taken.)

15 (The following proceedings were had outside
16 the presence and hearing of the potential jurors:)

17 THE COURT: The record should reflect
18 that counsel came to chambers just prior to me
19 coming onto the bench with the jurors present.
20 They told me Mr. Knight was considering, in fact
21 had decided, to change his plea to an amended
22 charge. I informed the jurors that there would be
23 a delay, without of course explaining to them the
24 reason for that delay.

25 I now have in my possession a first amended

1 information charging Mr. Knight with attempted
2 manslaughter in the first degree. I would ask the
3 certified copy be served.

4 MR. POWERS: Your Honor, I'll ask the
5 record reflect I'm presently serving upon
6 defendant and counsel a certified copy of the
7 first amended information.

8 THE COURT: Mr. Ferrell.

9 MR. FERRELL: Your Honor, I'm handing
10 the certified copy of the first amended
11 information to Mr. Knight.

12 I have previously been provided with a copy.
13 I reviewed the information with Mr. Knight,
14 advised him of the charge, the elements of the
15 offense, and advised him of his legally
16 constitutional rights, a formal advisement of
17 rights is waived, a formal reading of the
18 information is waived.

19 My understanding is Mr. Knight will make an
20 Alford plea to the charge set forth in the first
21 amended information.

22 THE COURT: If you could pass the
23 statement to the Court.

24 MR. FERRELL: Your Honor, I have
25 prepared the statement of defendant on plea of

1 guilty. I also reviewed it with Mr. Knight. I
2 reviewed all the professors in the statement.
3 I've signed it and Mr. Powers has signed it. I am
4 handing the statement to Mr. Knight for him to
5 sign the statement.

6 THE COURT: Mr. Knight, if all that's
7 true and you wish to plead guilty, you may sign
8 that statement.

9 MR. FERRELL: Your Honor, Mr. Knight
10 has just signed the statement of the defendant on
11 plea of guilty. And with that, Your Honor, may I
12 approach the bench?

13 THE COURT: Yes, with all those
14 documents you may.

15 MR. FERRELL: I am handing up to the
16 Court the statement of the defendant on plea of
17 guilty, the SRA score sheet for manslaughter first
18 degree. I'm handing up the plea statement and the
19 SRA score sheet.

20 THE COURT: Thank you.

21 MR. POWERS: Your Honor, the Court will
22 note that there is not contained a statement of
23 criminal history in there. The defendant, as the
24 Court will recall from some comments this morning,
25 did have some juvenile criminal history. However,

1 all those offenses, except for one, were committed
2 before age 15. That was an escape. It only
3 counts as half point. It gets lopped off and
4 that's why I haven't presented it.

5 THE COURT: Thank you.

6 Is Marvis J. Knight your correct name?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Knight, I've just been
9 handed your statement of defendant on a plea of
10 guilty. That statement tells me you are 17 years
11 old and you've completed the 9th grade in school;
12 is that correct?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you have any problems
15 reading and understanding the English language?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Were you able to read, and,
18 most importantly, were you able to understand what
19 this statement says?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Did your attorney,
22 Mr. Ferrell, go over this statement with you and
23 explain to you what it means?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: If you had questions, did he

1 answer your questions to your satisfaction?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And I saw you sign the
4 statement here in open court.

5 Because you reviewed this in detail with your
6 lawyer, I'm going to hit what I call the major
7 points.

8 Mr. Knight, the major points are these: The
9 crime you are facing now and wish to plead guilty
10 to is attempted manslaughter in the first degree.
11 The maximum penalty for that crime is ten years in
12 prison and a \$20,000 fine. Are you aware of that
13 information?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you aware that in our
16 system there is a standard sentencing range? And
17 for you, based upon the crime of attempted
18 manslaughter, the actual range is at least 23 1/4
19 months, but not more than 30 3/4 months. Are you
20 aware that that is the standard sentencing range?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Are you aware if you plead
23 guilty you give up your right to a trial and of
24 course give up all the rest of the rights
25 guaranteed if you were to proceed to a trial?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: The standard sentencing
3 range sets forth a limit, both high and low, so
4 that -- Mr. Knight, you need to look at the court.

5 I realize you were looking at family and
6 friends, but you need to look at me so I can get
7 eye contact with you and make sure you are
8 understanding what I am saying; is that fair?

9 MR. FERRELL: Yes, it is, Your Honor.
10 May I make a comment for my client?

11 THE COURT: Yes.

12 MR. FERRELL: We are ready, Your Honor.

13 THE COURT: Mr. Knight, you need to
14 understand that the standard sentencing range sets
15 forth a high and a low. That means unless there
16 are substantial and compelling reasons a
17 sentencing judge cannot sentence you to more than
18 30 months, 30 3/4 months, actually, or less than
19 23 1/4 months.

20 Now, the reason I make that point for you is
21 that I see from the recommendation that's going to
22 be made by the prosecuting attorney in exchange
23 for your plea of guilty the prosecutor is going to
24 recommend 38 months in prison. That sentence is
25 outside of the standard sentencing range. It's

1 higher than the standard sentencing range.

2 There is an agreement apparently, as part of
3 this plea bargain, and the prosecuting attorney's
4 office, that you are going to agree to a sentence
5 that allows the Court to impose an exceptional
6 sentence of 38 months in prison.

7 Now, is that your understanding, as well as
8 of what you are agreeing to?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you also understand that
11 a judge does not have to follow anyone's
12 recommendation at sentencing?

13 THE DEFENDANT: Excuse me, Your Honor.
14 I couldn't hear you.

15 THE COURT: You need to concentrate
16 here. And I'm going to clear the courtroom if you
17 are not able to concentrate.

18 This is something that is very significant.
19 If you need more time to think about it, I'll give
20 you more time. But if you are ready to go ahead--

21 THE DEFENDANT: I'd like to have more
22 time, please.

23 THE COURT: How much more time would you
24 like? A few minutes or longer?

25 THE DEFENDANT: A few minutes.

1 MR. FERRELL: How about if we take five
2 minutes, Your Honor.

3 THE COURT: We'll be in recess for five
4 minutes.

5 (Recess taken.)

6 THE COURT: Mr. Knight, have you had a
7 chance to talk with anyone you wished to talk to?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is it your decision to go
10 forth and continue on this plea hearing?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Mr. Ferrell, because there
13 has been some hesitation that I sensed in
14 Mr. Knight, perhaps this is the appropriate time
15 for you to make a record of what effort you've
16 made to keep him fully advised of his choices with
17 respect to this plea or any other issues that you
18 think are important to consider?

19 MR. FERRELL: This is very important,
20 Your Honor. I appreciate the Court's opportunity
21 here to address the Court in that matter.

22 The State charged Mr. Knight originally with
23 assault in the first degree. He has zero points
24 because his criminal history as a juvenile does
25 not count for determining his standard range.

1 That has a standard range of 93 to 123 months, and
2 zero points.

3 I negotiated with the prosecutor's office
4 three or four weeks ago, requested that the
5 prosecutor's office reduce it down to assault in
6 the second degree, and I got the grid sheet out
7 for assault in the second degree, instead rounded
8 out to zero to -- it's 3 to 9 months. There is a
9 disparity between assault in the first degree and
10 second. The State was not willing at that time to
11 reduce the charge.

12 I continued on with Mr. Armstrong, my
13 investigator, to research and investigate the
14 case. The State was willing to amend the
15 information and charge Mr. Knight with attempted
16 manslaughter in the first degree, which is a Class
17 B felony. Assault in the first degree as charged
18 is a Class A felony. And if Mr. Knight is
19 convicted of assault in the first degree, he would
20 receive 15 percent off, whereas if he's convicted
21 of attempted manslaughter in the first degree, a
22 Class B felony, he would receive one third off.

23 THE COURT: For good behavior?

24 MR. FERRELL: For good behavior.

25 The prosecutor recommended 48 months if

1 Mr. Knight pled to attempted manslaughter first
2 degree and I think that was on Thursday or Friday
3 of last week. But, at any rate, I took that to
4 Mr. Knight and -- on Friday it was, at the jail.
5 I didn't hear back from him that afternoon. This
6 morning I went back to the jail. First I went and
7 talked with Mr. Powers, who was willing to reduce
8 his recommendation from 48 months to 40 months,
9 whereupon I took that recommendation to Mr. Knight
10 this morning.

11 We had the jury draw this morning and we came
12 back at 1:30 this afternoon. We had about 30
13 people in here to commence the voir dire.

14 Mr. Knight indicated to me at that time that
15 he wanted to make an Alford plea. I explained to
16 him the legal meaning of an Alford plea. In
17 essence that is saying that we have reviewed the
18 police reports, the evidence and the statements.
19 We believe if this case proceeded to a trial there
20 would be a high probability a jury would convict
21 him of attempted manslaughter in the first degree,
22 and, therefore, he would be pleading guilty to
23 take advantage of a favorable plea recommendation
24 from the prosecutor's office.

25 This was all explained to Mr. Knight. As a

1 matter of fact, I explained it to him last Friday
2 and again today. During the course of our
3 negotiation and some delay, I think we reduced
4 about 1:30 to paperwork the plea statement and Mr.
5 Powers had to reduce the -- Mr. Powers had to
6 prepare the amended information. Nonetheless, in
7 the interim, Mr. Powers was willing to reduce his
8 recommendation down again to 38 months. So we
9 went from assault first degree 93 to 123 months
10 down to attempted manslaughter. The State was at
11 40 months. The State came down to 40 months. The
12 State came down to 38 months. I've been
13 negotiating very hard here on Mr. Knight's behalf.
14 And Mr. Powers is not going to come below 38
15 months in his recommendations.

16 I made some preliminary calculations with
17 Mr. Knight and advised him that if he entered an
18 Alford plea to the attempted manslaughter first
19 degree and the Court imposed a term of 38 months
20 with one third off and credit for time served,
21 he's looking at approximately 24 to 23 months.
22 That's a rough estimate, a rough estimated
23 calculation of the time. And my advice to him has
24 been, and it still is, as I stand here, that he
25 should seriously consider the State's

1 recommendation, given the evidence in this case,
2 whereby he's looking at a maximum of about 23 to
3 24 months versus 123 months in prison and there
4 might be some possibilities of an exceptional
5 sentence in the RCW 994.390.

6 So my suggestion to Mr. Knight, and to his
7 mother, and to his girlfriend who is pregnant and
8 in court, is that I believe Mr. Knight should take
9 advantage of the State's recommendation. He's 17
10 years old. He would be released in a couple
11 years. He'll be 19. He is still a young man. He
12 would have a chance to turn his life around and do
13 something in society, get reunited with his
14 family, or he can throw the dice here and risk
15 going to prison for 10 or 15 years and get out of
16 prison in the next century. And his hair will
17 turn gray and he will be a little older than what
18 he is. And his girlfriend is pregnant. There
19 might be some complications with the pregnancy.

20 But in the event the child is born, the
21 child will be ten or eleven or fifteen years old.
22 He will be a complete stranger to this child;
23 whereupon, if he went into the Department of
24 Corrections and was out in two years, he would
25 have an opportunity to have some relation with

1 this child. And I mention this because I believe
2 in speaking with Mr. Knight and his mother and his
3 girlfriend, that one of his concerns may be that
4 his girlfriend is going to have a child and he
5 wants to parent this child. And that's good that
6 he wants to do that and be a dad and be a father.
7 That's all good. But we have to first deal with
8 this case here. And that is a priority for me.
9 And not being as sensitive to the baby and all
10 that, I sympathize with him and hope everything
11 works out. But my main priority here is
12 representing my client in this case.

13 Lastly, I say I've advised Mr. Knight of
14 this. Mr. Powers advised me this morning it was
15 that in the event Mr. Knight does not accept the
16 State's offer that has been made to date and this
17 case proceeds to trial and Mr. Knight is
18 convicted, the law requires that the Court can add
19 12 months to the range if there is a special
20 finding that the person was armed with a deadly
21 weapon.

22 Mr. Knight's been advised of that. And also
23 Mr. Powers advised me that he would recommend a
24 term of 150 months to the Department of
25 Corrections and that would be up to the Court to

1 impose that. But I've discussed these matters
2 with Mr. Knight. I'm prepared to have a trial
3 right now today and I'll represent Mr. Knight and
4 I'll use what they have, and that is that. But
5 again, I want to say to Mr. Knight: Either we try
6 this case or we do a plea here. If he doesn't
7 plead, let's get these people in here, and get
8 these people in here and stop fooling around and
9 have a trial. I'm ready to have a trial here.

10 And Mr. Knight has a critical decision.
11 I've already said what I think he should do. I've
12 said it over and over and over. I think his
13 mother might have advised him of her opinion. I
14 think her opinion was Mr. Knight should consider
15 taking the State's offer that's being made.

16 With that, Your Honor, I don't know what the
17 delay is. I'd ask the Court to ask Mr. Knight
18 what he wants to do. If he takes the plea, let's
19 plead him guilty and he can do his two years in
20 the Department of Corrections. If he says no,
21 let's get these people in and have a trial and get
22 this thing going and get this resolved. I'm ready
23 to go to trial.

24 THE COURT: Mr. Powers, was there some
25 question you had about the penalties involved?

1 MR. POWERS: Yes, I just wanted to
2 correct one thing. That is that I have not in
3 this case alleged a special regarding deadly
4 weapon, nor do I think it's appropriate in assault
5 first.

6 But I did indicate 150 months. I make that
7 recommendation based upon an allegation of
8 substantial and compelling reasons being gang
9 motivation and also some 13 juvenile offenses
10 which do not factor into the sentence.

11 THE COURT: Mr. Knight, you said -- you
12 need to give me your attention again. You can
13 look over there all day long and those people
14 can't help you make this decision because you have
15 had a chance to talk about this with, I assume,
16 lots of people. And especially your attorney, who
17 has stated his advice to you. So the first
18 question I have for you is: Is Mr. Ferrell's
19 recitation of what he told you and what he advised
20 you to do accurate? Is he relating accurately what
21 happened?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, what do you want to do?
24 Do you want to go ahead and enter the plea today,
25 or do you want to go to trial, because essentially

1 those are the two choices that you and I and
2 everyone else in this courtroom has.

3 Quite frankly, it won't make any difference
4 to me. You are the person who has to make that
5 choice.

6 Mr. Ferrell has made this clear to the Court.
7 He's prepared to try this case. He's
8 investigating it further thoroughly. He's ready
9 to go to trial. If that's what you want, he is
10 ready and willing to be your lawyer and be a
11 zealous advocate for you. He has told you here in
12 open court on the record what advice he has given
13 you.

14 But he also said something I think is
15 important. He said it's really up to Mr. Knight.
16 And it is. It's really your decision. He can't
17 make it for you. These people over here can't
18 make it for you. It's really your decision to
19 make.

20 How do you want to proceed?

21 THE DEFENDANT: Take the plea bargain.

22 THE COURT: Okay. Let's go ahead then
23 and I was, I think, at the point where we were
24 talking about the recommendation that I'm going to
25 receive as the sentencing judge.

1 The prosecutor is going to recommend 38
2 months. As I told you, that is above the range.
3 This plea bargain is an agreement between you and
4 the prosecuting attorney that you are going to
5 agree that a judge can go above the standard range
6 and find the basis for an exceptional sentence
7 sufficient to impose the 38 months in prison. Is
8 that your understanding of what you are agreeing
9 to allow the judge to do, to impose a sentence of
10 up to 38 months in prison?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that a
13 judge does not have to follow anyone's
14 recommendation at sentencing.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Let me tell you one thing
17 that is pretty critical to your decision here.

18 When I say a judge does not have to follow
19 anyone's recommendation at sentencing, that's
20 true. However, the stipulation, that is the
21 agreement that you are giving to the prosecutor,
22 is only sufficient to allow the Court to go to the
23 38 months. Anything higher than that you can
24 appeal the sentence and anything lower than that
25 or lower than I should say would be the bottom of

1 the range, the State could appeal. Do you
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is anyone threatening you
5 with any harm to cause you to enter this plea?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Other than the promise to
8 make the recommendation that Mr. Powers has
9 obligated himself to make, that is for 38 months
10 in prison, is anyone else promising you anything
11 to cause you to enter this plea?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Your statement to the Court
14 I think was written by Mr. Ferrell. I'm going to
15 read it into the record and ask if you adopt this
16 statement as your own:

17 I have reviewed the police reports,
18 statements and evidence in this case. I believe
19 if this case proceeds to trial there is a high
20 probability of a judge or a jury would find me
21 guilty of attempted manslaughter in the first
22 degree.

23 Is that your statement to the report?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Let me explain one thing

1 about this process. We call it an Alford plea.
2 That is based upon the name of a case that came
3 out of North Carolina. The case holds for this
4 proposition: We allow someone to plead guilty,
5 even if they maintain they are absolutely
6 innocent, and you can maintain your innocence.
7 You do not have to admit the facts that constitute
8 a crime. But there are safeguards set up that I
9 have to make sure you understand. The following
10 are safeguards before I can accept a plea of this
11 type.

12 First, do you understand that if you plead
13 guilty and I accept your plea, no matter how much
14 you maintain your innocence, my duty is to find
15 you guilty and impose a punishment consistent with
16 law? Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The second safeguard is
19 there must be a good reason for a person to enter
20 this kind of a plea. I take it from what
21 Mr. Ferrell has said the reason you are entering
22 this plea is to take advantage of a very favorable
23 plea offer, both in reduction of the charge and in
24 recommendation. Is that the reason you are
25 entering this kind of a plea?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: The final safeguard is I
3 must judge the facts and make sure there are facts
4 sufficient to support this kind of plea and I'll
5 allow the prosecutor to do --

6 MR. POWERS: Your Honor, had this gone
7 to trial with regard to the original charge, the
8 evidence would have been from first of all, Shawn
9 Alderson, who is the alleged victim in this case.
10 He would have testified that on the 25th of
11 January he was on a street where he lives, a
12 residential street with single-family homes on
13 either side. That he was in the yard of a
14 neighbor talking to an individual who is a member
15 of a Blood street gang. That he himself is a
16 member of what's called the DVG, which is the
17 Devious Villain Gangsters, I believe, is the name
18 that that is. That he had been -- this is an
19 organization which attempts to combine Crips and
20 Bloods into working together and to eliminate the
21 friction between them. He would testify there are
22 a number of persons including a Jenero Matthews,
23 who left this group, and who because of a
24 disagreement with that, on this particular day he
25 was in the yard talking to this Blood, being a

1 member of DVG, and the -- he would indicate -- and
2 I want to be as careful as I can here because
3 Mr. Alderson's testimony has been changing over
4 the past week. And I want to be fair about this.

5 He would indicate that an individual came by
6 in a yellow Pinto or Mustang type car, and the
7 passenger in that car flashed him a street gang
8 sign, which he took as an affront or challenge,
9 because this was occurring on his own turf, his
10 own neighborhood. And so as not to show fear or
11 cowardice in the face of this, he would indicate
12 that he flashed his own gang sign to respond to
13 the challenge on his own territory. And that he
14 then stepped out into the street.

15 The car went about a block down, turned
16 around and came back to an intersection which is
17 maybe a third of a block from where he was
18 standing at the point the car got to the
19 intersection. Mr. Alderson was in the street. It
20 came to a stop at this intersection. And that the
21 person who was in the passenger seat, who made the
22 gang sign, pulled a gun out, pointed it at
23 Mr. Anderson and began firing at him, fired a
24 number of bullets directly at him. Mr. Alderson
25 ran across a car into a yard where there were

1 bushes so that he could hide behind the bushes and
2 indicates actually he could feel a bullet whiz
3 past him and he was able to get into the area
4 where the bushes were at and the car took off down
5 the road. It was intersecting with the street he
6 was on, so it was able to take off in a separate
7 direction.

8 Now, as to the identity of the person firing
9 the shots, based upon my last conversation with
10 Mr. Alderson last week, I believe his testimony
11 would be that he is not sure who that person is.
12 I'll leave it at that: Not sure who the identity
13 of the that person is. However, there would be
14 testimony of an impeachment nature with regard to
15 him that he identified the defendant after it
16 happened to detectives and identified that person
17 to me, stated that that was who did it, but also
18 indicated both to detectives, I believe, who would
19 admit that he stated also to myself that he would
20 not testify in court about the identity of that
21 person because he was fearful of his life and
22 believed that he would be in danger of his life
23 from Jenero Matthews. Either by Mr. Matthews
24 personally, or that he had sworn that he would do
25 the job.

1 Now, the other testimony would be from a
2 neighbor, 66-year-old female who would indicate
3 that she saw Mr. Alderson in the street, went
4 inside. About a minute later, as she is talking
5 on the phone, she heard bullets fired. She ran
6 outside. Mr. Alderson was behind these bushes in
7 this area that he would testify about and he came
8 down holding his side, looking fearful, believing
9 he had been shot. In fact, he had not been, but
10 he thought that he had. That he was asking her to
11 call 911. And that he was saying in a very
12 excited tone of voice: I know who did this, and
13 was saying that he would get them.

14 The testimony of another neighbor would be
15 that this is a person whose house faced right out
16 onto this intersection. He would testify that he
17 was in his front room. He heard the squeal of
18 tires of a vehicle coming to a stop. He's really
19 concerned about the hot-rodding kind of traffic on
20 his street. He looked out to see what was going
21 on. He saw a yellow older type of vehicle, I
22 believe he thought it was a Maverick. And it was
23 stopped in the intersection, the same intersection
24 that Mr. Alderson would have been referring to.
25 That he saw the passenger in that vehicle pull a

1 gun out. He identified it as a .38 caliber, which
2 he knows from his military experience. And he saw
3 that person shoot directly at a boy which he saw
4 on property down in the area which would have been
5 the same property Mr. Alderson was referring to,
6 saw that boy running across to some bushes by the
7 property as those shots were being fired, some
8 four or five shots, and observed that vehicle take
9 off down the road. He got a partial license plate
10 on that vehicle.

11 Then there would be testimony from an
12 individual who works for the City of Lacey at the
13 other end of this street that this car proceeded
14 down on, that this maybe would be on 9th Way,
15 which is the street. This individual would be at
16 the other end of this street that the car was
17 going down.

18 He was working. He heard the shots. He's
19 experienced with firearms. He looked up and saw
20 this car coming from the location that this
21 neighbor would be talking about, observed the car
22 come all the way up to where he was at and make a
23 turn on State Route 501. He would, consistent
24 with the neighbor, identify two persons in the
25 vehicle, one driving, one passenger in the front

1 seat. And he obtained the full license number on
2 that vehicle and wrote it down and provided it to
3 the police.

4 A Mike Eaton would testify as a registered
5 owner of that vehicle that he had owned the
6 vehicle but had sold it to an individual in
7 Tacoma. That he had last seen the vehicle on the
8 evening of the 24th, just the night before this
9 happened in the possession of the person he had
10 sold it to in Tacoma and another individual.

11 Testimony would be from police officers John
12 Price and James Dunn that they engaged in an
13 investigation of this matter. That there would be
14 testimony from the Deputy Gary Daurelio that he
15 saw the same vehicle, description and license
16 number, parked by Jenero Matthews and he house
17 approximately one half hour before the shooting
18 occurred. That he took special notice of it
19 because it was parked illegally and made a
20 notation of the license number, which would be
21 part of the communication department's records.

22 There would be testimony from the detective
23 that based upon the information supplied by
24 Mr. Alderson, which I'll refer to as in terms of
25 the person who had shot him, that detectives

1 searched for Mr. Knight. That they made contact
2 with him finally up in Tacoma after a series of
3 contacts with persons, including his girlfriend.

4 And that they arrested Mr. Knight upon
5 contacting him in Tacoma, which would be a few
6 days thereafter.

7 They would testify that they informed
8 Mr. Knight of his rights and the admissibility of
9 statement was stipulated to at the time of the
10 omnibus in this case. That they took Mr. Knight
11 to the Thurston County Sheriff's Office and they
12 questioned him about this. Both officers would
13 testify that Mr. Knight acknowledged having come
14 down from Tacoma on this particular day. They
15 would testify he acknowledged coming down to
16 Jenero Matthews' house. That a person by the name
17 of Manny was driving. That he didn't know the
18 last name of Manny, didn't know where Manny lived
19 or how to find him or whether he worked or what
20 his occupation was. But just that there was this
21 Manny. That he had stayed at Jenero Matthews'
22 house for a period of time, but he had in fact
23 then gotten into the car with this individual and
24 driven to this neighborhood where the shooting
25 occurred. That he had gone to the street there

1 and had seen an individual that he knew. And that
2 he had stopped in the vehicle in this same vehicle
3 which belonged to an individual by the name of
4 Tony, who lives in Lakewood. And that all matches
5 with what Mr. Eaton would say, what he said he
6 told at that time. The vehicle was stopped and he
7 was saying something to the individual on the
8 street that shots occurred. The statement was
9 that shots occurred from somewhere behind him.
10 And that he didn't fire the shots. But then the
11 vehicle took off down the road immediately after
12 the shots were fired.

13 Again, I'd indicate that the testimony of the
14 neighbor who was right there in the intersection
15 would say it was that car that shots were fired
16 from. And there it was the person who was the
17 passenger in that vehicle who fired those shots.

18 I believe that is the evidence the State
19 would present.

20 THE COURT: First, Mr. Ferrell, do you
21 believe the State has the ability to present that
22 evidence through the testimony of witnesses and
23 other physical documentation to a jury?

24 MR. FERRELL: Your Honor, that is
25 correct. That evidence is available to the State.

1 I have to say again, for the benefit of
2 Mr. Knight, so he will know, I have Mr. Armstrong
3 as an investigator on this case. And we have
4 talked to a lot of people. As a matter of fact,
5 we might have talked to a couple of people that
6 Mr. Powers hasn't talked to, but it doesn't
7 matter. But that evidence would be available to
8 the State if this matter went to a trial before a
9 jury.

10 THE COURT: Are you satisfied from your
11 review of the evidence that you did independently
12 and with Mr. Knight, that if that evidence were
13 presented to a jury, there is a substantial
14 likelihood that he would be convicted, perhaps not
15 only of the charge he's pleading guilty to, but
16 the more serious charge that he just once faced a
17 few minutes ago.

18 MR. FERRELL: Yes, Your Honor. That is
19 my evaluation of the evidence and I want
20 Mr. Knight to either say he either agrees with my
21 evaluation or not, so the record is clear.

22 THE COURT: Mr. Knight, first, did
23 Mr. Ferrell go over the police reports with you
24 and witness statements and discuss with you what
25 the State would be able to produce as far as

1 evidence?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And were you in agreement
4 with him that if this evidence were presented to a
5 jury, and the jury believed the witnesses, that
6 there is a substantial likelihood you would be
7 found guilty of the charge?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: I agree, as well. There is
10 a factual basis to support this plea.

11 Mr. Knight, now is your opportunity to ask me
12 any questions you would like to ask me. Do you
13 have any questions for me?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Are you prepared to go ahead
16 and enter your plea now?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Could I ask you to stand,
19 please?

20 Marvis J. Knight, what is your plea to the
21 crime in the first amended information which is
22 attempted manslaughter in the first degree
23 occurring on or about the 25th day of January,
24 1995 in Thurston County, Washington? Guilty or
25 not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: A plea of guilty will be
3 entered and accepted. You may be seated.

4 I find the defendant competent to enter this
5 plea. He is doing so knowingly, voluntarily, and
6 intelligently.

7 I've already ruled on the factual basis and
8 based upon his plea, I find him guilty as charged.
9 I am signing his statement evidencing all of those
10 findings.

11 I would like to go off the record for a
12 second.

13 (Recess taken.)

14 THE COURT: Court's back in session. I
15 have just excused the assembled jurors. Obviously,
16 they were never sworn, so there was no need to do
17 anything further other than to excuse them with my
18 thanks for their willingness to serve in this
19 case.

20 Mr. Ferrell, you indicated before I recessed
21 to excuse the jurors that you and your client
22 wished to proceed with the sentencing at this
23 time. Is that true?

24 MR. FERRELL: That is correct, Your
25 Honor, yes.

1 THE COURT: Mr. Powers, are you ready to
2 proceed?

3 MR. POWERS: Yes, Your Honor.

4 THE COURT: You may proceed.

5 MR. POWERS: The State is recommending
6 in this case an exceptional sentence. As the
7 Court knows, of 38 months. With the top of the
8 range being 30.5 months.

9 The basis for that recommendation is in
10 reference to the facts here that this incident was
11 sparked by an exchange of gang signs sort of
12 challenge back and forth and response ultimately
13 with the use of a weapon and the commission of
14 this offense. And so the State feels those facts
15 provide a basis for a finding of gang motivation.
16 And that being a recognized basis for an
17 exceptional sentence, that that be the exceptional
18 sentence in this case.

19 As I understand it, the defense is prepared,
20 pursuant to the plea agreement, that to stipulate
21 there is sufficient evidence in this occasion to
22 justify those findings, a factual finding just
23 referred to, and ultimately stipulate to the
24 appropriateness in this case of the exceptional
25 factor that I've identified. So I would be asking

1 the Court to review 34-some proposed Findings of
2 Fact and Conclusions of Law which I have developed
3 and provided to the defense to read over. I
4 believe it is acceptable to them.

5 The other factors in the sentence the State
6 asks the Court adopt would be of course the
7 defendant has a right to credit for time served
8 from the time he was arrested, which I believe was
9 on February 6, and he's been in custody since that
10 time.

11 By statute he's required to provide a blood
12 sample for DNA testing because it's a violent
13 offense. There is no community placement for this
14 offense, so I won't address that. However, it is
15 appropriate that there be no contact provision as
16 a part of this case for a period of maximum, which
17 is 4 years. In this case I'd ask that that
18 involve most particularly the person of Shawn
19 Alderson, the victim in this case. That there be
20 no contact whatsoever, direct or indirect, in
21 person, in writing or by phone. And that
22 Mr. Knight not go to the vicinity of
23 Mr. Alderson's residence.

24 I also ask that same requirements be made
25 with regard to all those persons who have been

1 identified as State's witnesses in this case.

2 One other thing is that I ran into on a
3 constant basis in this case, given the nature of
4 the incident, was a concern on the part of all
5 persons, despite their willingness to testify,
6 that they be free from harassment in the future,
7 any kind of similar activity. So I'd ask that
8 this order reflect that as to all those persons,
9 that the defendant have no contact with them or go
10 into the vicinity of their residences.

11 Regarding financial obligations, the State
12 asks crime victim's assessment be added. The only
13 other amount would be restitution. One of the
14 things I did not mention in the facts, I should
15 have, I neglected to do was that the individual
16 who lived at the residence where Mr. Alderson ran
17 up to get behind the bushes, he had a car parked
18 in front of the residence. He indicated later he
19 had been able to say he knew exactly where that
20 car was parked that day because it hadn't been
21 running for some time and hadn't been moved. He
22 just recently cleaned it, just bought it used and
23 he had just cleaned it off. He had inspect every
24 part of that and hadn't seen any damage to it;
25 but, in fact, when the police looked at the car,

1 they found an area of the front, the hood of the
2 vehicle, had been creased as if a bullet had hit
3 and ricochet off. There was a taillight, it was a
4 hole in the taillight. With the owner's
5 permission, the officer went into that taillight
6 and found a .38 caliber slug inside the taillight.
7 This would have been parked. Mr. Alderson would
8 have been running across where this vehicle was to
9 get to those bushes so it was consistent with
10 bullets, fired at Mr. Alderson, and hitting the
11 car as he ran across into the yard. So there is
12 some damage to that vehicle of a fairly minor
13 nature, but we would ask for that restitution in
14 this case.

15 Those are his financial obligations.

16 I have nothing further, Your Honor.

17 THE COURT: Mr. Powers, when I advised
18 Mr. Knight of the maximum penalty, I did advise
19 him of what the form says. It's ten years. Are
20 you telling me for attempted manslaughter in the
21 first degree it's actually five years?

22 MR. POWERS: That's correct, that's
23 right. I'm sorry, Your Honor. I didn't catch
24 that. It is attempted, so it goes down to a
25 class C.

1 THE COURT: That would be five years and
2 ten thousand dollars?

3 MR. POWERS: That's correct, yes.

4 THE COURT: Mr. Knight, I actually have
5 news that is favorable to you. When I told you
6 the maximum penalty was ten years, the maximum
7 penalty, because it's an attempted crime, is
8 actually only five years in prison. That's the
9 maximum penalty the Court could impose.

10 I'm going to change your form and have you
11 initial it. Mr. Ferrell will initial it as well.

12 Mr. Ferrell, could you use this first sheet
13 and simply initial, have your client initial the
14 change I've made on it.

15 MR. FERRELL: Yes, thank you, Your
16 Honor.

17 Your Honor, I've initialed the plea statement
18 on page 1. Mr. Knight also initialed it paragraph
19 6.

20 THE COURT: Thank you.

21 Mr. Ferrell, would you like to be heard?

22 MR. FERRELL: Yes, Your Honor.

23 Mr. Knight is 17 years old. His date of birth is
24 February 6, 1978. This incident is alleged to
25 have occurred on January 25th of 1995, a time in

1 which Mr. Knight was 16. Unfortunately, he's
2 finding himself in a situation where the
3 legislature last year amended the juvenile code to
4 mandate that the Juvenile Court does not have
5 jurisdiction over juveniles who are 16 and 17
6 years old who commit certain designated, violent
7 offenses. So there is an automatic decline
8 hearing regarding this incident.

9 I was quite shocked when I went through the
10 statute and looked at this. And to find that the
11 standard range for assault first degree at zero
12 points is 92 to 123 months. So I decided maybe I
13 should look at assault second. And I figured
14 maybe the range would be 30, 40, 50 month range
15 at zero points. It turns out assault second
16 degree at zero points is 2 to 9 months. I
17 thought, gosh, there is such a wide disparity
18 between assault first and second degree. But I
19 guess that's the law that we have to work with
20 here.

21 So I commenced investigating and negotiating
22 on behalf of Mr. Knight to try to get the best I
23 could get out of a very unfortunate circumstance
24 here.

25 At any rate, Mr. Knight has entered an Alford

1 plea to the amended information. He's a young
2 fellow who completed the 9th grade in school.
3 I've advised him that when he is remanded to the
4 Department of Corrections, he should take
5 advantage of certain programs that could be
6 available to him in there. And he could enter
7 into a high school completion education program in
8 the Department of Corrections. I know that that
9 exists for people his age. He should do that.

10 Maybe for some of the older guys who are in
11 their 30s or 40s I don't know what is available
12 for them. But for a young fellow like Mr. Knight,
13 he could enter into a high school completion GED
14 program. I've advised him to do that.

15 Secondly, I've also advised him to speak with
16 counselors once he reaches the Department of
17 Corrections to avail himself of whatever training
18 opportunities, vocational opportunities that may
19 be available. And I've done a lot of cases over
20 the years and I know the Department of Corrections
21 has programs whereby a person can obtain some
22 skills. And given Mr. Knight's young age, he's at
23 the right age where he has an opportunity right
24 now to do something to change his life. He's
25 going to have one adult felony on his record. But

1 he does not need to continue committing crimes.

2 I don't think he's a bad person; Your Honor.
3 I'm not going to minimize what the allegation is
4 that's in this case. It's very important. And
5 that is some very serious stuff we are dealing
6 with here. But in working with Mr. Knight and
7 visiting him and talking with him, I don't see a
8 person who is a bad person here who has malicious
9 or maliciousness in his heart or some evil intent
10 to do anything. I know he's done an Alford plea
11 here, but if he's committed this, it's kind of
12 stupid what he's done here. There's been some
13 talk of Mr. Knight and Mr. Alderson having some
14 gang affiliations. That is a reality of something
15 that we are going to have to deal with as a
16 society here. But I see a young man who has grown
17 up. He's used the limited resources that he's
18 had. He's done the best that he could do under
19 the circumstances, under which he's had to live.

20 Fortunately, there were no physical injuries
21 to the person of any person here. Otherwise it
22 would be a more serious situation than what we
23 already have.

24 So I'm just simply saying that we have a
25 young fellow who I think has a tremendous

1 opportunity to do something for himself right now.
2 Two more years are going to go by. I'm assuming
3 that he will receive his good time credit,
4 depending upon his behavior, once he enters the
5 Department of Corrections. But I'm assuming a
6 couple years, give or take some months, he's going
7 to be released back to our society. I'm hoping at
8 this time he will get reunited with his family,
9 pick up from there and start doing some positive
10 things for himself or continue doing positive
11 things. I hope he starts that when he goes into
12 the Department of Corrections system. I know that
13 there is programs him. I've said that more than
14 once, but I want to make sure that he hears me.
15 I've said to him more than once: Please, please,
16 please, please, please, please, sir, please, when
17 you get there, let them know you want to complete
18 your high school. They will help you do it. And
19 also let them know you want to take advantage of
20 whatever training programs might be available. I
21 know that those programs exist, but it's up to
22 Mr. Knight.

23 Your Honor, when he was in the juvenile
24 system, he had to do certain planning and attend
25 certain programs. But that was mandatory. But in

1 the adult system, a person doesn't have to do
2 anything. A guy can go in Department of
3 Corrections and just sit out his time everyday and
4 do nothing. Don't attend classes, don't go in
5 work programs, don't try to complete schooling.
6 He can play basketball everyday or lift weights.
7 But I've impressed upon Mr. Knight please take
8 advantage of what's available there.

9 I think the recommendations being made are
10 appropriate for the case. I'd ask the Court to
11 adopt the recommendations. Ask the Court's order
12 with a couple of exceptions.

13 The State recommended Mr. Knight not have any
14 contact with Shawn Alderson. He's the complaining
15 witness in this case. I have no objection to
16 that. The State has also recommended that the
17 Court order that Mr. Knight not have any contact
18 with any of the State's witnesses.

19 I'd ask the Court not to impose that.
20 Mr. Knight is not charged with any misconduct
21 regarding any of the witnesses in this case.
22 There is nothing in my investigation of this case
23 and investigating with Mr. Armstrong to indicate
24 that Mr. Knight has done anything directly or
25 indirectly toward any of the State's witnesses.

1 Now, I heard what Mr. Powers said earlier about
2 the Jenero Matthews allegedly said he was going to
3 do something to Shawn Alderson. I don't have any
4 knowledge of that. I don't have any information
5 on that. In my investigations hasn't revealed
6 Mr. Matthews has done anything in that regard.

7 So if Mr. Alderson has any fears, I don't
8 know what the basis of those fears may be. But
9 any request of the Court not order Mr. Knight not
10 have contact with any of the witnesses. The
11 State's witness list has about thirteen witnesses
12 on it. Mr. Knight has not done any conduct toward
13 any of those persons.

14 THE COURT: May I interrupt? That's not
15 an unusual request. Unless there is some reason
16 that your client wants to have contact with any of
17 those people, he's friends with them or he's
18 related to them or some other reason, I'd normally
19 grant that request, and simply tell him not to
20 have contact with any of these people.

21 MR. FERRELL: And I hear what the Court
22 is saying to Mr. Knight. I think Mr. Calica is
23 about 39 years old, with 20 years in the military.
24 He's an individual who said he looked out the
25 window and saw this incident. I doubt if

1 Mr. Knight would have any contact with him, but I
2 don't want a situation to come up whereby
3 Mr. Knight could be held in noncompliance or
4 violation of any order. I'm sure. I hope he
5 doesn't have any contact with the police officers
6 who are involved in this case. And there were two
7 gentlemen who work for the City of Lacey, I think
8 it was. They were on the work crew a couple of
9 blocks over doing some work on the road, I think,
10 and they happened to hear some shots and within a
11 few moments they saw a vehicle go by. And I doubt
12 if Mr. Knight would have any contact with those
13 people. But I don't think they even know
14 Mr. Knight and Mr. Knight does not know them. I
15 just don't want an order here that will be made
16 whereby there could be some inadvertent contact on
17 Mr. Knight's part, not knowing he could.

18 I don't anticipate any time in the future
19 Mr. Knight will deliberately intentionally,
20 knowingly try to contact any of these people. But
21 as far as the no-contact order with Mr. Alderson,
22 I believe that's appropriate. He is the
23 complaining witness.

24 At any rate, Your Honor, I'd again, as I
25 said, I'd ask the Court to adopt the

1 recommendations as the Court's order. I reviewed
2 the stipulation. I think I signed it. I believe
3 it's appropriate.

4 I believe what the State is recommending is
5 appropriate for this case.

6 THE COURT: Mr. Knight, is there
7 anything you would like to say in your own behalf?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Mr. Powers, anything else
10 that you have?

11 MR. POWERS: Just on that last point.
12 I have no objection to the no-contact order
13 reflecting that defendant have no intentional
14 contact with these people. Certainly one person,
15 I thought this was what Mr. Ferrell was getting
16 at, certainly needs to be excluded from that group
17 who was identified as a state's witness and that
18 is Tanya Diaz, who is the girlfriend. I didn't
19 intend to include her.

20 THE COURT: I understand. With that
21 reservation and elimination, I will adopt that
22 recommendation as far as the no contact is
23 concerned.

24 Mr. Knight, I think what must be going
25 through your mind now is what is this judge going

1 to do to me and what I'm going to do is exactly
2 what everyone has agreed is an appropriate
3 recommendation. That hopefully reduces your
4 anxiety somewhat.

5 The most important thing is not what I do as
6 a judge, but what you do with the rest of your
7 life. You will have a choice. Mr. Ferrell has
8 outlined pretty carefully during your term of
9 incarceration in Department of Corrections you can
10 choose to be a good prisoner, a bad prisoner, one
11 who is taking advantage of whatever there is
12 positive. I admit there is not a lot of positive
13 in prison, except the educational programs and
14 some of the work programs. Or you can choose to
15 sit around and play basketball. All those things
16 are possible. I hope you do not waste your time
17 in prison.

18 One of the things that I fear, and my fear, I
19 think, has been justified with too many people, is
20 that we produce better criminals in our prison
21 system, rather than people who are rehabilitated
22 and come out ready to take a new role in society,
23 that is, as a law abiding person.

24 You are a father or soon to be a father. You
25 are going to have responsibilities with that

1 status. I hope you have made a decision to put
2 violence behind you, to put the gang activity
3 behind you, because quite frankly, you can't
4 afford the consequences. There are legal
5 consequences, but I tell people in addition to the
6 legal consequences, there are consequences out
7 there in the street that you can't afford to pay,
8 and I think you know what I mean.

9 Gang activity results in other gang activity
10 results in other gang activity, and it goes back
11 and forth. If it doesn't stop someplace, you are
12 a potential victim and may I say if you do not
13 stop this activity, you will very likely be a
14 victim yourself.

15 As I said at the start of my remarks, this
16 sentence recommendation is a fair one. I adopt it
17 by reference.

18 I find, based upon the stipulation of the
19 defense, that there are substantial and compelling
20 reasons to impose a sentence outside of the
21 guidelines and I accept the recommendation of 38
22 months in prison. I'll impose the rest of the
23 conditions as recommended by Mr. Powers, including
24 no-contact order for the maximum term of this
25 crime, which is five years.

1 Are there any other additional issues the
2 Court has to address?

3 MR. POWERS: Not that I know of, Your
4 Honor.

5 MR. FERRELL: Your Honor, I have
6 reviewed the Judgment and Sentence with
7 Mr. Knight. It is consistent with the courts
8 desires. I've also reviewed with him the appendix
9 for the findings for the exceptional sentence with
10 Mr. Knight and they are also consistent with the
11 Court's decision in this case.

12 THE COURT: You may submit them to the
13 Court.

14 MR. FERRELL: I'm handing the Court the
15 Judgment and Sentence and appendix 2.3.

16 THE COURT: Mr. Ferrell, would you
17 please accept service of a document that you will
18 give to your client and hopefully explain to him.
19 It is about post conviction relief limitation.

20 I want the record to reflect the following:
21 I'm signing the Judgment and Sentence in the
22 presence of the defendant and his counsel.

23 I also am signing the appendix to the
24 Judgment and Sentence and signing that as well,
25 based upon the stipulation reached between counsel

1 and accepted by the Court and found to be true by
2 the Court.

3 Mr. Knight, these proceedings are closed. I
4 hope you follow what your attorney has said to
5 you. I hope you talk that out while you are in
6 prison and make something positive out of a
7 negative situation.

8 Good luck to you.

9 MR. FERRELL: Your Honor, one other
10 thing. There is a notice of rights to appeal and
11 timely for collateral review. I haven't reviewed
12 that, and advised of Mr. Knight of his rights
13 under this law.

14 THE COURT: There is no right to appeal.

15 MR. FERRELL: I know there is no right
16 to appeal, but the document is notice of right to
17 appeal and for collateral relief.

18 THE COURT: Collateral relief is
19 actually the only purpose in handing it out, is so
20 that there is a notice that he has received notice
21 of it. Anything else?

22 MR. POWERS: No, Your Honor.

23 THE COURT: Court's adjourned.

24
25 (Proceedings concluded).

APPENDIX B

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DEFENDANT NAME: MARVIS J. KNIGHT
CAUSE NUMBER: 95-1-199-1

1.9 SENTENCING DATA:

Count No. I

Presumptive Sentencing Range
2-3, 2-5 - 30-75 months

II. CONCLUSIONS OF LAW

- 2.1 This court has jurisdiction over the defendant and the subject matter.
- 2.2 The defendant is guilty of the crime(s) set forth in Section I.
- 2.3 Substantial and compelling reasons exist which justify a sentence above below the standard range for Count(s) I. Findings of fact and conclusions of law are attached in Appendix 2.3.

III. SENTENCE

The defendant was asked if there was any legal cause why judgment should not be pronounced and no legal cause was shown; it is therefore ORDERED that:

3.1(a) Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections commencing immediately.

38 months total confinement on Count No. I
 _____ months total confinement on Count No. _____
 _____ months total confinement on Count No. _____
 _____ months total confinement on Count No. _____

- The terms in Counts No. _____ are concurrent consecutive.
- Credit is given for time days served. Credit for time served since 2-6-95
- This sentence shall be concurrent consecutive with the sentence in _____

- 3.1(b) The defendant's blood sample for HIV testing shall be obtained by the County Health Department.
- 3.1(c) The defendant's blood sample for DNA testing shall be obtained by the Department of Corrections.
- 3.1(d) The defendant shall have no contact with _____ for a time period of _____

DOMESTIC VIOLENCE CASES ONLY (CHECK BOX BELOW)

VIOLATION OF THE PROVISIONS OF THIS NO-CONTACT ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS COMMITTED IN VIOLATION OF THIS ORDER IS A FELONY.

3.1(e) Other crime related prohibitions and/or requirements: Defendant shall not have any contact direct or indirect, in person, in writing, or by phone with the victim or any state witness except Tanya Bice, nor go intentionally to the residence of any of those persons for five (5) years.

3.2 COMMUNITY PLACEMENT

- Defendant is sentenced to community placement for one year.
- Defendant is sentenced to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.
- Community placement shall begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150(1) and (2).

Any period of community custody actually served shall be credited against community placement. Defendant shall report to the Department of Corrections within 72 hours of the commencement of community placement and shall comply with all rules, regulations and requirements of the Department. The terms of community placement shall include the following conditions:

- (i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
JDSWC (12/94) - 2

MICROFILMED

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DEFENDANT NAME: MARVIS J. KNIGHT
CAUSE NUMBER: 95-1-199-1

- (ii) The defendant shall work at Department of Corrections--approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) If in community custody, the defendant shall not unlawfully possess controlled substances.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.

The defendant shall comply with the following special conditions:

- () Defendant shall remain within, or outside of, a specified geographical boundary:
- () Defendant shall not have direct or indirect contact with the victim or specified class of individuals:
- () Defendant shall participate in crime-related treatment or counseling services as follows:
- () Defendant shall not consume alcohol.
- () Defendant's location and living arrangement, if a sex offender, shall be subject to the prior approval of the Department of Corrections.
- () Defendant shall comply with crime-related prohibitions as follows:

3.3 (V) FINANCIAL OBLIGATIONS: The court has considered 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 ORDERS that the defendant pay the following amounts to the Clerk of this court:

(X) Restitution (according to an order to be filed at a later date) (to the following persons in the following amounts):
Defendant shall be financially responsible for the cost of repair or replacement for damage to a vehicle which occurred in the course of this offense.

() Restitution shall be paid jointly and severally with:

Name	Cause Number
	<u>DELLA T. GORD</u>

- () \$ _____ Court costs;
- (X) \$ 100.00.00 Victim assessment
- () \$ _____ Fees for court-appointed attorney;
- () \$ _____ Fine DELLA T. GORD
- () \$ _____ Thurston County Interlocal Drug fund
- () \$ _____ Other costs for:

Payments shall be made through the Clerk of the Thurston County Superior Court in accordance with the following terms:

- () Not less than _____ per month commencing on _____
- (X) According to a schedule established by the defendant's Community Corrections Officer.

THE CLERK OF SUPERIOR COURT 1200 SE 13th AVE SPOKANE

MICROFILMED

WTC 10/27/95

DEFENDANT NAME: MARVIL J. KNIGHT
CAUSE NUMBER: 95-1-199-1

PURSUANT TO LAWS 1990, CHAPTER 3, § 402, THE DEFENDANT IS REQUIRED TO REGISTER WITH THE COUNTY SHERIFF OF THE DEFENDANT'S RESIDENCE, IF THE DEFENDANT HAS BEEN CONVICTED OF ANY SEX OFFENSE.

Defendant is remanded to the custody of the Sheriff of this county to be detained and delivered into the custody of the proper officers for transportation to and confinement in the appropriate facility.

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON TO: The Sheriff of Thurston County and to the proper officers of the Department of Corrections. The court has ordered the defendant be sentenced to a term of imprisonment set forth in the Judgment and Sentence. YOU ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

DANIEL J. BERSCHAUER JUDGE

BETTY J. GOULD CLERK

By: Valerie Fure DEPUTY CLERK



CERTIFICATE

I, BETTY J. GOULD, Clerk of this court, certify that the above is a true copy of the Judgment and Sentence and Warrant of Commitment in this action on record in my office.

DATED this _____ day of _____, 19____.

BETTY J. GOULD CLERK

By: _____ DEPUTY CLERK

DATED this 3 day of April, 1995.

Fingerprints attested by:
BETTY J. GOULD CLERK
By: Valerie Fure DEPUTY CLERK

SIGNED this 3 day of April, 1995.

Dan Berschauer
JUDGE

PRESENTED BY:
BERNARDEAN BROADOUS
Prosecuting Attorney

Bernardean Broadous
Deputy Prosecuting Attorney/MSBA # 1279

APPROVED AS TO FORM:

Michael E. Fenell
Attorney for Defendant/MSBA # 16173

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
JDSWC (12/94) - 4

MICROFILMED

APPENDIX C

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty;

(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;

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100 as a victim's compensation fund assessment. 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 judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service;

(f) The prosecuting attorney will make the following recommendation to the judge: _____

38 months, \$110 court cost, \$100 crime
victim assessment, restitution, if any
+ exceptional sentence of 38 months,
Defense stipulates to an exceptional
months

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence;

(h) The crime(s) of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(i) I am being sentenced for two or more 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. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(k) 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(20). This sentence could include as much as 90 days confinement 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; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

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(m) If this crime involves a sexual offense, prostitution, or a sex offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus; (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(n) 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;

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis; (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. (If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.)

7. I plead Guilty to the crime(s) of Attempted Manslaughter 1^o

as charged in the 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 briefly in my own words what I did that makes me guilty of this crime. This is my statement:

I have reviewed the police reports, statements and evidence in this case. I believe believe, if this case proceeds to trial, there is a high probability a Judge or Jury would find me guilty of Attempted Manslaughter 1^o

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. 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.

ADDRESS:

Morris Knight
Defendant

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

[Signature]
Prosecuting Attorney (27a)

Michael E. Farrell
Defendant's Lawyer

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TRUCO001600011200325101000020057

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

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

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

DATED THIS 3 day of April, 19 95.

Danny Bernin
JUDGE

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED THIS _____ day of _____, 19 _____.

Interpreter

1200525101600020008

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APPENDIX D

1
2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
3 IN AND FOR THE COUNTY OF THURSTON

4 STATE OF WASHINGTON,)
5 Plaintiff,) NO. 95-1-199-1
6 vs.) APPENDIX 2.3 TO JUDGMENT
7 MARVIS J. KNIGHT,) AND SENTENCE: FINDINGS OF
8 Defendant.) FACT AND CONCLUSIONS OF LAW
) RE EXCEPTIONAL SENTENCE

9 A sentencing hearing was held in the above cause before the
10 Honorable Daniel J. Berschauer. Present were: Deputy
11 Prosecuting Attorney James C. Powers, the defendant, and his
12 attorney, Michael Ferrell. The defendant was sentenced to
13 38 months in prison for the offense of Attempted
14 Manslaughter in the First Degree. The presumptive sentence range
15 for that offense is 23.25 months to 30.75 months and so this is
16 an exceptional sentence. The Court set forth the following as
17 the basis for this exceptional sentence.

18 FINDINGS OF FACT

19 1. Immediately prior to the commission of this offense, the
20 defendant flashed at the victim a gang sign for a Crip street
21 gang.

22 2. The victim, who is a member of a separate street gang,
23 flashed back at the defendant the hand signs for his gang.

24 3. This exchange of hand signs caused the defendant to
25 point a firearm at the victim and to fire several shots.

26 4. The defense joins the state in stipulating that there is
27 sufficient evidence to support the Court's Findings of Fact Nos.
28 1-3 above and joins in stipulating to the existence of an

APPENDIX 2.3 TO JUDGMENT
AND SENTENCE - 1

MICROFILMED

BERNARDEAN BROADOUS
THURSTON COUNTY PROSECUTING ATTORNEY
2000 LAKERIDGE DR. S.W.
OLYMPIA, WASHINGTON 98502
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2025 RELEASE UNDER E.O. 14176

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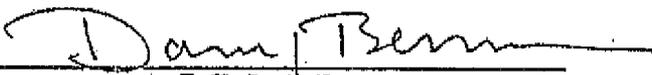
aggravating circumstance in this case sufficient to constitute a substantial and compelling basis for the exceptional sentence imposed by the court. This stipulation is made so that the defendant may take advantage of a plea bargain reducing the charge from Assault in the First Degree to Attempted Manslaughter in the First Degree and reducing the presumptive sentence range from 93 to 123 months to 23.25 to 30.75 months.

Based on the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

The defendant's gang motivation for the commission of this offense constitutes an aggravating circumstance which is a substantial and compelling reason justifying the imposition of an exceptional sentence of 38 months in prison.

DATED this 3 day of April, 1995.


J U D G E

PRESENTED BY:
BERNARDEAN BROADOUS
Prosecuting Attorney

APPROVED AS TO FORM AND
TERMS STIPULATED TO:


JAMES C. POWERS/WSBA #12791
Deputy Prosecuting Attorney


MICHAEL FERRELL/WSBA #16172
Attorney for Defendant

THURSTON COUNTY PROBATION DEPARTMENT

2

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

95-1-00199-1
AFS
Affidavit in Support
369887

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

JUN 22 AM 11:30

Linda Myhre Enlow
Thurston County Clerk



STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIS J. KNIGHT,

Defendant.

No. 95-1-00199-1

AFFIDAVIT IN SUPPORT
OF MOTION TO VACATE
SENTENCE CrR 7.8

Comes now Marvis J. Knight by Affidavit to state that the following facts as outlined in the attached Motion to Vacate Sentence under CrR 7.8 are true and correct.

The defendant now suffers an unlawful restraint due to the indirect consequences of the invalid judgement and sentence in the above referenced cause number. The facts contained in the attached motion show this court exactly how and why the 1995 plea to a non-existent crime has had collateral consequences of a constitutional magnitude for the defendant.

The defendant prays this court will act accordingly under color of State law and invalidate the judgement and sentence and plea bargain with prejudice.

I SWEAR UNDER PENALTIES OF PERJURY THAT ALL THE STATEMENTS AND FACTS CONTAINED WITHIN THIS AFFIDAVIT AND IN THE ATTACHED MOTION TO VACATE SENTENCE ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Dated this 18th day of June, 2016.

Marvis J. Knight, Pro Se Defendant
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA. 98326

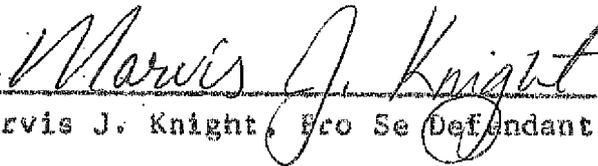
CERTIFICATE OF SERVICE

I certify that on the 19th day of June, 2016, a true and correct copy of the foregoing CrR 7.8 Motion to Vacate Sentence and attached Appendices was served upon the following individuals by depositing same in the U.S. Mail, first-class, postage prepaid:

Jon Tunheim

Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA. 98502

Thurston County Superior Court Clerk
2000 Lakeridge Drive S.W.
Olympia, WA. 98502


Marvis J. Knight, Pro Se Defendant

MICROFILMED

FILED
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
THURSTON COUNTY, WASH.

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIS J. KNIGHT,
Defendant.

SEX: MALE RACE: BLACK
DATE OF BIRTH: 2-6-78
SID NO.: _____
BOOKING NO.: B49027

95 APR 3 NO P 495331-199-1

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
(PRISON)

BY: [Signature] DEPUTY

I. FINDINGS

1.1 The above-named defendant was found guilty on April 3, 1995 by (plea)(jury verdict)(bench trial) of the following crimes:

Count I: ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE
(Count-Charge-Date of Offense)
Date of Offense: January 25, 1995
(Count-Charge-Date of Offense)

(Count-Charge-Date of Offense)

(Count-Charge-Date of Offense)

1.2 () The Court DISMISSED Count(s) _____

1.3 () A special verdict/finding of sexual motivation was returned on Count(s) _____

1.4 () A special verdict/finding for use of deadly weapon was returned on Count(s) _____

1.5 A sentencing hearing in this case was held on April 3, 1995
Present were: the above-named defendant, Michael Powell, Attorney for Defendant,
and Jarvis C. Powers, Deputy Prosecuting Attorney for Thurston County.

1.6 () Other current convictions listed under different cause numbers used in calculating the offender score are: _____

1.7 () Current offenses encompassing the same criminal conduct and counting as one crime in determining the score are (RCW 9.94A.400(1)):

1.8 () CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
<u>None</u>				

() Additional criminal history is attached in Appendix 1.8

JUDGMENT AND SENTENCE
WARRANT OF COMMITMENT
JDSWC (12/94)

JASS
4-4-95

MICROFILMED

95-9-977-1

3/p

45020901015210001000029057

7W22

STATE OF OHIO

DEFENDANT NAME: MARVIN J. KNIGHT
CAUSE NUMBER: 95-1-199-1

1.9 SENTENCING DATA:
Count No. I

Presumptive Sentencing Range
23.25 - 30.75 months

II. CONCLUSIONS OF LAW

- 2.1 This court has jurisdiction over the defendant and the subject matter.
- 2.2 The defendant is guilty of the crime(s) set forth in Section I.
- 2.3 Substantial and compelling reasons exist which justify a sentence above below the standard range for Count(s) I. Findings of fact and conclusions of law are attached in Appendix 2.3.

III. SENTENCE

The defendant was asked if there was any legal cause why judgment should not be pronounced and no legal cause was shown; it is therefore ORDERED that:

3.1(a) Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections commencing immediately.

38 months total confinement on Count No. I
 _____ months total confinement on Count No. _____
 _____ months total confinement on Count No. _____
 _____ months total confinement on Count No. _____

- The terms in Counts No. _____ are concurrent consecutive.
- Credit is given for time days served. Credit for time served since 2-6-95
- This sentence shall be concurrent consecutive with the sentence in _____

3.1(b) The defendant's blood sample for HIV testing shall be obtained by the County Health Department.

3.1(c) The defendant's blood sample for DNA testing shall be obtained by the Department of Corrections.

3.1(d) The defendant shall have no contact with _____ for a time period of _____

DOMESTIC VIOLENCE CASES ONLY (CHECK BOX BELOW)

VIOLATION OF THE PROVISIONS OF THIS NO-CONTACT ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 AND WILL SUBJECT A VIOLATOR TO ARREST. ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS COMMITTED IN VIOLATION OF THIS ORDER IS A FELONY.

3.1(e) other crime related prohibitions and/or requirements: Defendant shall not have any intentional contact direct or indirect, in person, in writing, or by phone with the victim or any state witness except Tanya Diaz, nor go to intentionally to the residence of any of these persons for five (5) years.

3.2 COMMUNITY PLACEMENT

- Defendant is sentenced to community placement for one year.
- Defendant is sentenced to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.
- Community placement shall begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150(1) and (2).

Any period of community custody actually served shall be credited against community placement. Defendant shall report to the Department of Corrections within 72 hours of the commencement of community placement and shall comply with all rules, regulations and requirements of the Department. The terms of community placement shall include the following conditions:

- (i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.

MICROFILMED

DEFENDANT NAME: MARVIS J. KNIGHT
CAUSE NUMBER: 95-1-199-1

- (ii) The defendant shall work at Department of Corrections--approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) If in community custody, the defendant shall not unlawfully possess controlled substances.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.

The defendant shall comply with the following special conditions:

- () Defendant shall remain within, or outside of, a specified geographical boundary:
- () Defendant shall not have direct or indirect contact with the victim or specified class of individuals:
- () Defendant shall participate in crime-related treatment or counseling services as follows:
- () Defendant shall not consume alcohol.
- () Defendant's location and living arrangement, if a sex offender, shall be subject to the prior approval of the Department of Corrections.
- () Defendant shall comply with crime-related prohibitions as follows:

3.3 (V) FINANCIAL OBLIGATIONS. The court has considered 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 ORDERS that the defendant pay the following amounts to the Clerk of this court:

(X) Restitution (according to an order to be filed at a later date) (to the following persons in the following amounts):
Defendant shall be financially responsible for the cost of repair or replacement for damage to a vehicle which occurred in the course of this offense.

() Restitution shall be paid jointly and severally with:

Name	Cause Number
	BELLA T CONFD

- () \$ _____ Court costs;
- (X) \$ 700.00 Victim assessment
- () \$ _____ Fees for court-appointed attorney;
- () \$ _____ Fine **BELLA T CONFD**
- () \$ _____ Thurston County Interlocal Drug Fund
- () \$ _____ Other costs for:

Payments shall be made through the Clerk of the Thurston County Superior Court in accordance with the following terms:

- () Not less than _____ per month commencing on _____
- (X) According to a schedule established by the defendant's Community Corrections Officer.

THURSTON COUNTY SUPERIOR COURT (2003) 5181600019058

WARRANT OF COMMITMENT

DEFENDANT NAME: MARVIL J. KNIGHT
CAUSE NUMBER: 95-1-199-1

PURSUANT TO LAWS 1990, CHAPTER 3, § 402, THE DEFENDANT IS REQUIRED TO REGISTER WITH THE COUNTY SHERIFF OF THE DEFENDANT'S RESIDENCE, IF THE DEFENDANT HAS BEEN CONVICTED OF ANY SEX OFFENSE.

Defendant is remanded to the custody of the Sheriff of this county to be detained and delivered into the custody of the proper officers for transportation to and confinement in the appropriate facility.

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON TO: The Sheriff of Thurston County and to the proper officers of the Department of Corrections. The court has ordered the defendant be sentenced to a term of imprisonment set forth in the Judgment and Sentence. YOU ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By direction of the Honorable:

DANIEL J. BERSCHAUER JUDGE

BETTY J. GOULD CLERK

By: Valerie Jones DEPUTY CLERK



CERTIFICATE

I, BETTY J. GOULD, Clerk of this court, certify that the above is a true copy of the Judgment and Sentence and Warrant of Commitment in this action on record my office.

DATED this _____ day of _____, 19____.
BETTY J. GOULD CLERK

By: _____ DEPUTY CLERK

DATED this 3 day of April, 1995.

Fingerprints attested by:
BETTY J. GOULD CLERK
By: Valerie Jones DEPUTY CLERK

SIGNED this 3 day of April, 1995.

Daniel Berschauer JUDGE

PRESENTED BY:
BERNARDEAN BROADBOS
Prosecuting Attorney

[Signature]
Deputy Prosecuting Attorney/WSBA # 12791

APPROVED AS TO-FORM:

Michael E. Fenell
Attorney for Defendant/WSBA # 16172

1
2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
3 IN AND FOR THE COUNTY OF THURSTON

4 STATE OF WASHINGTON,)
5 Plaintiff,) NO. 95-1-199-1
6 vs.) APPENDIX 2.3 TO JUDGMENT
7 MARVIS J. KNIGHT,) AND SENTENCE: FINDINGS OF
8 Defendant.) FACT AND CONCLUSIONS OF LAW
) RE EXCEPTIONAL SENTENCE

9 A sentencing hearing was held in the above cause before the
10 Honorable Daniel J. Berschauer. Present were: Deputy
11 Prosecuting Attorney James C. Powers, the defendant, and his
12 attorney, Michael Ferrell. The defendant was sentenced to
13 38 months in prison for the offense of Attempted
14 Manslaughter in the First Degree. The presumptive sentence range
15 for that offense is 23.25 months to 30.75 months and so this is
16 an exceptional sentence. The Court set forth the following as
17 the basis for this exceptional sentence.

18 FINDINGS OF FACT

- 19 1. Immediately prior to the commission of this offense, the
20 defendant flashed at the victim a gang sign for a Crip street
21 gang.
22 2. The victim, who is a member of a separate street gang,
23 flashed back at the defendant the hand signs for his gang.
24 3. This exchange of hand signs caused the defendant to
25 point a firearm at the victim and to fire several shots.
26 4. The defense joins the state in stipulating that there is
27 sufficient evidence to support the Court's Findings of Fact Nos.
28 1-3 above and joins in stipulating to the existence of an

APPENDIX 2.3 TO JUDGMENT
AND SENTENCE - 1

MICROFILMED

BERNARDEAN BROADOUS
THURSTON COUNTY PROSECUTING ATTORNEY
2000 LAKERIDGE DR. S.W.
OLYMPIA, WASHINGTON 98502
(360) 786-5540 FAX (360) 754-3358

65900101000112002310100029059

(b) The standard sentence range is based on the crime charged and criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty;

(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;

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100 as a victim's compensation fund assessment. 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 judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service;

(f) The prosecuting attorney will make the following recommendation to the judge: _____

38 months, \$110 court cost, \$100 crime
victim assessment, restitution, if any
+ exceptional sentence of 38 months,
Defense stipulates to an exceptional
months

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence;

(h) The crime(s) of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(i) I am being sentenced for two or more 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. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(k) 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(20). This sentence could include as much as 90 days confinement 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; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

THUC0001000011200325101000029066

(m) If this crime involves a sexual offense, prostitution, or a sex offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(n) 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;

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis; [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(p) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 10 days of establishing my new residence. If I change my residence to a new county within this state, I must register with the sheriff of the new county and I must give written notice of my change of address to the sheriff of the county where last registered, both within 10 days of establishing my new residence. [If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge.]

7. I plead Guilty to the crime(s) of Attempted Manslaughter 1^o

as charged in the 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 briefly in my own words what I did that makes me guilty of this crime. This is my statement:

I have reviewed the police reports, statements and evidence in this case. I believe, if this case proceeds to trial, there is a high probability a Judge or Jury would find me guilty of Attempted Manslaughter 1^o

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. 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.

ADDRESS:

Morris Knight
Defendant

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

[Signature]
Prosecuting Attorney (27a)

[Signature]
Defendant's Lawyer

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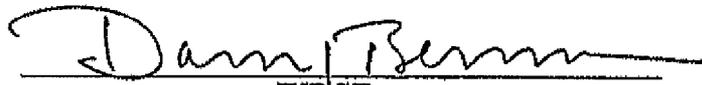
16172
Page 3 of 4

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

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

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

DATED THIS 3 day of April, 19 95.



JUDGE

* I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language which the defendant understands, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED THIS _____ day of _____, 19 _____.

Interpreter

YHJCC0009180001200325101000029068

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THURSTON SUPERIOR COURT

August 22, 2016 - 9:10 AM

Transmittal Letter

Document Uploaded: 0-noa-Knight.pdf

Case Name: State of Washington vs Marvis J Knight

County Cause Number: 95-1-00199-1

Court of Appeals Case Number:

Personal Restraint Petition (PRP) Transfer Order

Notice of Appeal/Notice of Discretionary Review

(Check All Included Documents)

Judgment & Sentence/Order/Judgment

Signing Judge: Court Commissioner Rebekah Zinn

Motion To Seek Review at Public Expense

Order of Indigency

Filing Fee Paid - Invoice No: ____

Affidavit of Service

Clerk's Papers - Confidential Sealed

Supplemental Clerk's Papers

Exhibits - Confidential Sealed

Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Administrative Record - Pages: ____ Volumes: ____

Other: Documents as outlined in the Order of Transfer

Co-Defendant Information:

No Co-Defendant information was entered.

Comments:

No Comments were entered.

Sender Name: J. Doug Bales