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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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

COA NO. 49521-0-II

6/1/2017
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IN RE THE PERSONAL RESTRAINT PETITION

OF

MARVIS J. KNIGHT,

Petitioner.

PETITIONER'S REPLY BRIEF

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

INTRODUCTION

Petitioner Marvis J. Knight, Pro Se, hereby replies to the State's Response of petitioner's PRP which Mr. Knight originally filed in Thurston County as a CrR 7.8 Motion to Vacate Sentence. Thurston County Superior Court transferred the CrR 7.8 Motion to this Court for consideration as a PRP. This Court then ordered the State to respond. Mr. Knight subsequently received the State's response which the State filed with the COA on Jan. 13, 2017. The petitioner requested, and this Court granted, an extension of time to file his reply to the State's response brief. This reply is now timely filed on or before the March 15, 2017 deadline given by this Court.

I. PROCEDURAL HISTORY

1. Petitioner's Grounds for Relief

a). April 1995 Court Proceedings

As argued in Mr. Knight's original CrR 7.8 Motion which was transferred to this Court for consideration as a PRP, Mr. Knight was before the Thurston County Superior Court on April 3, 1995. Under the cause number argued herein, Mr. Knight was facing a charge by the State of Assault First Degree. The trial court and Mr. Knight were preparing to choose a jury for trial that same day. During a brief recess, the State conferred with Mr. Knight's

appointed counsel and offered Mr. Knight a reduced charge of attempted manslaughter in exchange for a negotiated plea of guilty to said crime.

Following the advice and recommendations of his court appointed attorney, Mr. Knight entered into an Alford plea with the State by pleading guilty to the crime of attempted manslaughter first degree. Mr. Knight was sentenced that same day.

b). April 2000 Court Proceedings

Petitioner Marvis J. Knight was sentenced on April 18, 2000 in Thurston County Superior Court under cause numbers 99-1-00929-4 and under 99-1-00591-4 following a jury verdict of guilty of two counts of Assault Second Degree; two counts of Felony Harrassment; and one count of Attempting to Elude a Pursuing Police Vehicle.

Under the 99-1-00929-4 cause, Mr. Knight was also found to be a persistent offender under the Persistent Offender Accountability Act. Mr. Knight now argues that one of those prior strike convictions used, was the 1995 conviction for Attempted Manslaughter under the cause which Mr. Knight is now attacking, was and still is a non-existent crime which has resulted in an invalid judgement and sentence.

The State argues that this petitioner's PRP is time barred; and, even if it were not time barred, there was no prejudice suffered by this petitioner. The State claims that the cause number under which Mr. Knight now attacks was not used at the April 2000 POAA sentencing hearing and, therefore, even if petitioner prevailed on

the invalidity claim, it would not effect the persistent offender finding.

Mr. Knight excepts to the claims of the State's response arguments and herein shows this Court why the 1995 judgement and sentence under this cause must be withdrawn and vacated, with prejudice.

II. ARGUMENT TO STATE'S RESPONSE

Mr. Knight concedes that relief of his conviction under this cause and by way of collateral challenge is extraordinary. This Court will not be expected to disturb this "already settled" judgement unless this petitioner can meet the high standard of showing this Court by a preponderance of the evidence that there was "constitutional error that resulted in actual and substantial prejudice or non-constitutional error involving a fundamental defect that inherently resulted in a complete miscarriage of justice." In re the Per. Restraint of Coats, 173 Wn.2d 123, 267 P.3d 324 (2011).

Mr. Knight asserts that he can and will demonstrate before this Court both constitutional and non-constitutional error and prejudice and, that Mr. Knight will meet the high standard that this Court requires.

a). RAP 16.4 and Petitioner's Standing

Under RAP 16.4(a), this Court may grant relief to this petitioner as he is under unlawful restraint as defined by RAP

16.4(b) and (c).

RAP 16.4(b) defines restraint. Mr. Knight asserts he is under restraint and has limited freedom and confinement because of a court decision in a criminal proceeding under cause number 99-1-00929-4 and under cause number 95-1-00199-1.

RAP 16.4(c) defines the unlawful nature of the restraint. Mr. Knight contends that under RAP 16.4(c)(1), the decision in criminal cause 95-1-00199-1 was entered without jurisdiction over the person of this petitioner and entered without subject matter jurisdiction. That, under RAP 16.4(c)(2), the convictions in both causes, 95-1-00199-1 and 99-1-00929-4, were entered by Thurston County Superior Court in violation of both due process and ex post facto under the U.S. Constitution and the WA. State Constitution, as well as the laws of this State.

That, under RAP 16.4(c)(3), there are material facts which exist that have not been previously presented or heard which, in the interests of justice, require vacation of the conviction entered by Thurston County Superior Court.

That, under RAP 16.4(d), Mr. Knight has no other remedies which are adequate under the circumstances to address the illegalities argued herein. Relief here may certainly be granted by the appellate court under RCW 10.73.090 as the cause number Mr. Knight currently challenges is an invalid judgement and sentence according to the laws of this State.

b). RCW 10.73.090(1) and Facial Invalidity

Under RCW 10.73.090(1), no PRP can be filed more than one year after the petitioner's judgement becomes final unless the judgement is invalid on its face. The general rule is that a sentence is invalid on its face if the sentencing court lacked or exceeded its statutory authority to impose the sentence. See In re the Pers. Restraint of Stockwell, 179 Wn.2d 588, 593, 316 P.3d 1007 (2013); In re the Pers. Restraint of Scott, 173 Wn.2d 911, 916, 271 P.3d 218 (2012); and also Coats, 173 Wn.2d at 144.

As the court explained in In re the Personal Restraint of Toledo-Sotelo, 176 Wn.2d 759, 297 P.3d 51 (2013), "...for a judgement to exceed the court's statutory authority, we require more than an error that "invites the court to exceed its authority;" the sentencing court must actually pass down a sentence not authorized under the SRA." See Coats, 173 Wn.2d at 136.

c). Statutory Authority under the SRA

Mr. Knight has already argued in his CrR 7.8 Motion at section d)., page 10 that "attempted manslaughter" is not statutorily possible; that, it is a non-existent crime; and that, it is not authorized under the SRA of 1981.

Mr. Knight previously pointed to State v. Dunbar, 117 Wn.2d 587, 817 P.2d 1360 (1991) which explained that, "... 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." Id, at 590. The point to Mr. Knight's argument is that Manslaughter is defined by a particular result - recklessness

or negligence.

Further, State v. Red, 105 Wn.App. 62, 18 P.3d 615 (2001) established that attempted manslaughter is not statutorily possible. And, 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.") See State v. DeRosia, 124 Wn.App. 138, 149, 100 P.3d 331 (2004)).

d). Distinguishing State v. Majors

The State has already conceded in it's response that Mr. Knight has indeed raised authority for the invalid judgement and the non-existent crime. See Response at page 7, Appendix A. Indeed, there is overwhelming case law authority which supports Mr. Knight's invalidity claim.

However, in the same breath, the State attempts to suggest that this Court may be willing to uphold the plea in Mr. Knight's 1995 judgement because, under the circumstances here, the invalidity is not clearly apparent from the face of the judgement and sentence. In support of this argument, the State cites and relies heavily on a single state case - State v. Majors, 24 Wn.App. 481, 603 P.2d 11273 (1979).

Mr. Knight's case is substantially distinguishable from that of Majors in several respects. Primarily, the defendant in Majors pled guilty to a lesser crime for which there was statutory authority

and provision; secondly, Majors also pled guilty to the habitual criminal statute; and, the defendant in Majors argued that a supplemental information was defective and void. The Supreme Court in State v. Majors, 94 Wn.2d 354, 356-57, 616 P.2d 1237 (1980) made it clear that Majors (in 24 Wn.App. 481) did not stand for the proposition that any and all rights preceding a plea are waived by it. The Supreme Court in Majors ultimately rejected Majors claim and stated, "... inasmuch as the petitioner's attack on the supplemental information was not jurisdictional and petitioner was concededly not misled by the technical defect, we hold he must be held to the terms of the plea bargain." See Majors, 94 Wn.2d at 359.

The circumstances in Mr. Knight's 1995 judgement are clearly distinguishable and opposite from that of Majors. Mr. Knight pled to a non-existent crime for which there was no statutory authority; Mr. Knight's judgement is facially invalid - he does not complain of any "supplemental" document or "technical" defect; and, Mr. Knight's claims are certainly jurisdictional and violate due process and ex post facto under the U.S. Constitution, Amend. XIV, §1 and WA. Constitution, Art. 1, §3.

The Majors Court in our State has previously and distinctly spelled out that a defendant does not waive all claims preceding a plea bargain, which include those constitutional violations which were not inherent in the plea process. See Majors, 94 Wn.2d at 356-57.

e). Ex Post Facto - Statutory Authority

Mr. Knight points this Court to In re the Pers. Restraint of Thompson, 141 Wn.2d 712; 10 P.3d 380 (2000) which is more on point with the claims herein argued.

When there is no statutory authority for the conviction, ex post facto is violated. Thompson argued that his "... plea agreement shows that [he] was charged with first degree rape of a child, which did not become a crime until nearly two years after the offense or offenses occurred." See Thompson, 141 Wn. 2d at 719. From this fact, the court concluded: "... we find the judgement and sentence invalid on its face, and consideration of the merits of Thompson's PRP is not barred by the one-year time limit of RCW 10.73.090." The court in Thompson further found that his conviction for an offense which was not criminal at the time he committed [the crime] is unlawful and a miscarriage of justice.

The State here insists that this Court should hold Mr. Knight to the negotiated plea. Although the State admits that attempted manslaughter is a non-existent crime, they characterize it as being "technically" non-existent. See State's Response, Appendix A, at page 12.

The State also suggests that the error is not evidenced from the documents presented and offered by Mr. Knight, but then admits that the court has authority to look to charging documents, pleas, verdicts, and statements of the defendant on plea of guilty. The petitioner included in his CrR 7.8 Motion four separate appendices that clearly evidence the invalidity and jurisdictional challenges:

* App. A - Verbatim Report of Proceedings of 1995 Sentencing;

- * App. B - Judgement and Sentence of 1995;
- * App. C - Statement of Defendant on Plea of Guilty of 1995;
- * App. D - Exceptional Sentence Findings/Conclusions of 1995.

Ironically, these documents offered in Mr. Knight's CrR 7.8 Motion neither cite, speak, or point to a single statutory violation or provision for which Mr. Knight was found guilty and convicted.

Indeed, the court in Coats emphasizes that in making the facial validity determination, it historically has not limited it's review to the four corners of the judgement and sentence. Instead, the court considered "documents that reveal some fact that shows the judgement and sentence is invalid on it's face because of legal error." Coats, 173 Wn.2d at 138-39.

Mr. Knight's offered appendices are clearly evident that legal error has occurred in this case and that a miscarriage of justice has resulted. Moreover, Mr. Knight invites this Court to view the State's own appendices - particularly the Amended Information in Appendix 2 of the State's Response which evidences the illegality of the charging of "attempted" manslaughter.

Lastly, the State argues that Mr. Knight's submitted appendices A and C do not help petitioner. However, due process requires that a guilty plea be knowing, voluntary, and intelligent. Boykin v.

Alabama, 395 U.S. 238, 242, 89 S.Ct 1709, 23 L.Ed.2d 274 (1969).

Mr. Knight has already raised this issue in his opening CrR 7.8 Motion at page 6-8. Mr. Knight herein reasserts the constitutional violation of due process under the U.S. Const., Amend. XIV, §1; WA.

Const. Art. 1, §3.

The State seems to argue that the knowledge requirement for Mr. Knight's plea was satisfied by his Statement of Defendant on Plea of Guilty. See Appendix C, and above. However, as the court explained in Thompson, the knowledge requirement was heightened in a subsequent case after Majors, the case to which the State relies. In the case of In re the Pers. Restraint of Hews (Hews II), 108 Wn.2d 579, 741 P.2d 983 (1987), the court specifically rejected the State's view of the Majors holding that, "... a defendant need not be aware of the nature of the charge to which he ultimately pleads or understand that the facts he admits to constitute that offense." See Hews II, 108 Wn.2d at 590.

As a result of those holdings and clearly established law of this State, and in light of the clear invalidity of Mr. Knight's judgement in this cause, the State's arguments under Majors is not persuasive and must fail.

2. Prejudicial Effect

In the States Response at section C., pages 13-15, the State contends that even if petitioner's PRP were not time barred, petitioner could not prevail because he cannot demonstrate any prejudice from the 1995 judgement.

Mr. Knight excepts to the States contention and hereby brings forth the following prejudicial issues that demonstrate the magnitude of both constitutional and non-constitutional claims.

a). Prior Convictions

The State notes at section C., page 13 of their response that petitioner is serving a life without possibility of parole sentence due to convictions for three most serious offenses pursuant to RCW 9.94A.570 and RCW 9.94A.030(38). The State concedes that attempted manslaughter is not a most serious offense (indeed, attempted manslaughter is not statutorily possible).

The State's carefully crafted wording seems to suggest (although without full commitment) that, along with the current strike for the two assault second degrees in cause 99-1-00929-4, there was also a prior second degree assault in petitioner's criminal history. That prior offense, along with a prior robbery second degree, were the two "most serious offenses" used under RCW 9.94A.030(33) to determine that the petitioner was a persistent offender under the PDAA.

Mr. Knight attests this Court need look no further than the four corners of the 99-1-00929-4 Judgement and Sentence at page 2 that the State offers in Appendix 1 of the State's Response. The prior second degree assault of which the State speaks is a juvenile offense to which Mr. Knight was sentenced on June 30, 1992 - a time when Mr. Knight was fourteen years of age.

This conviction in juvenile court cannot be used in calculating a persistent offender score under 9.94A.030. While Mr. Knight concedes that the legislature has provided that certain "most serious offenses" of a juvenile may be counted, it may only be done when proper transfer to adult court has taken place.

Such is not the case here. The criminal history portion of the J&S here at page 2 clearly shows that conviction took place in juvenile court. Therefore, the States suggestive argument fails. If that juvenile offense was used for sentencing purposes, the illegality would require reversal.

Instead, Mr. Knight offers this Court the actual circumstances surrounding the sentencing in 2000 under cause 99-1-00929-4, argued below.

b). Persistent Offender

On March 2, 2000 Mr. Knight was found guilty by jury verdict in two separate cause numbers: 99-1-00929-4, two counts of assault second degree and two counts of felony harrasment; and, 99-1-00591-4, attempting to elude a pursuing police vehicle.

On April 18, 2000 the Honorable Gary R. Tabor, presiding Thurston County Superior Court Judge, held a sentencing hearing on behalf of Mr. Knight in regards to those cause numbers. See Sentencing Hearing of April 18, 2000, Appendix B of this reply (note: as the State has raised sentencing questions as to the use of prior convictions and the denial of prejudicial effect of petitioner's judgement in this cause, Mr. Knight now offers this sentencing transcript in rebuttal).

Present for the State was Deputy Prosecuting Attorney Jon Tunheim. Mr. Knight was also present with his court appointed counsel, Robert G. Grey. Prior to pronouncing Mr. Knight's persistent offender sentence under cause 99-1-00929-4, Judge Tabor makes the

following statement and ruling:

"It is this Court's opinion that the two prior convictions which constitute strikes in this case, that is Cause No. 95-1-00199-1, which occurred on April 3rd, 1995, attempted manslaughter in the first degree, and Cause No.

97-1-01382-1, robbery in the second degree which which occurred on October 24th, 1997, having been shown to be convictions of this defendant, Mr. Knight, are indeed qualifiers as prior convictions under Subsection (29) of RCW 9.94A.030, and that a conviction of another strike in this specific situation then brings into play the persistent offender provisions. That is the conclusion that I've reached after considering all of the authorities that have been cited to me as well as statutes and cases concerning this particular area of law."

See Appendix B, page 30, lines 4 thru 18.

Clearly, Thurston County Superior Court used the invalid judgement in this cause to find that Mr. Knight was a persistent offender in the 99-1-00929-4 cause.

The sentencing court clearly expressed that the prior convictions were "indeed qualifiers" under RCW 9.94A.030. Likewise, contrary to the State's argument's concerning documents that may be used to determine invalidity, this Court may certainly look to the sentencing hearing for determination.

Again, as Mr. Knight has already argued, the Coats court emphasized that it has not historically limited itself to the four corners of the judgement and sentence. Rather, the court may consider "documents that reveal some fact that shows the judgement and sentence is invalid on it's face because of legal error." Coats, 173 Wn.2d at 138-39.

Our Supreme Court in In re the Pers. Restraint of Carrier, 173 Wn.2d 791, 272 P.3d 209 (2012) elaborated on the Coats statements.

After discussing Coats, the court stated:

"Our precedent should not be read to impose a bright-line rule or an exhaustive list of documents that we may consider in determining whether a judgement and sentence is "valid on it's face." RCW 10.73.090(1). Rather, it permits consideration of documents that bear on the trial court's authority to impose a valid judgement and sentence."
See Carrier, 173 Wn.2d at 800.

Thus, Mr. Knight has made a showing of prejudice. The State's argument's concerning petitioner's lack in demonstrating prejudice has no merit and must necessarily fail.

c). Jurisdiction

Likewise, the State cannot stand on any jurisdictional arguments as to the invalidity of the judgement and sentence in 1995. Even if the State could somehow persuade this Court into a convincing argument on the use of the prior conviction as being valid, the jurisdictional issues would still not allow the conviction to be used.

Although Mr. Knight's juvenile conviction in adult court could in theory be used as a strike under the POAA of RCW 9.94A, the State must first show that the transfer to adult court was proper. In Mr. Knight's case, this showing could not be accomplished by the State. The State cannot show that the statutory prerequisites to transfer were met because they were in fact not met.

The importance of compliance with the requirement of declining juvenile jurisdiction are mandatory. See State v. Saenz, 175 Wn.2d

167, 283 P.3d 1094 (2011). Mr. Knight here merely informs this Court that violations of due process under the U.S. Constitution, Amend. XIV, §1 and WA. Constitutional Article 1, §3 come into play. Mr. Knight's CrR 7.8 Motion did not raise decline hearings or juvenile jurisdiction and only does so now in response to the State's assertions that no prejudice can be shown or that Mr. Knight can in no way prevail as a result of the 1995 invalid judgement.

Further, Mr. Knight's position on jurisdictional issues for reliance on further proof of prejudice is similar to that of State v. Knippling, 166 Wn.2d 93, 206 P.3d 332 (2009). Mr. Knight would contend that even though his 1995 original charging information accused Assault First Degree (which could automatically be filed in adult court), the plea to a lesser offense (the non-existent attempted manslaughter) would have mandated that he be returned to juvenile jurisdiction under the requirements of former RCW 13.40.110(1)(a).

In Mr. Knight's 1995 plea to the lesser offense (although non-existent), there was no decline hearing, and he was nevertheless sentenced in adult court. The State has no legal authority to challenge this constitutional jurisdictional violation and Mr. Knight hereby shows this Court further prejudice suffered as a result of the invalid judgement.

d). Offender Score

In addition to the actual substantial prejudice Mr. Knight has

already shown this Court, and even compounding the prejudicial effect of this cause, is the State's argument concerning Mr. Knight's offender score. See State's Response, section C., page 14. The State's submitted Appendix 1 contains an Order Amending the Judgement and Sentence in cause number 99-1-00929-4. Specifically, the two counts of Felony Harrasment were vacated pursuant to double jeopardy claims.

The State also calculated the 1995 invalid judgement and sentence of which Mr. Knight now complains; and, the State also calculated the current offense in which it was sentencing Mr. Knight - cause number 99-1-00591-4. See State's Appendix 1, Judgement and Sentence, page 1 at bottom.

Therefore, the sentencing court in 2000 not only used the prejudicial invalid 1995 conviction for purposes of the POAA, it has also miscalculated Mr. Knight's offender score with respect to the 99-1-00929-4 cause.

III. CONCLUSION

Mr. Knight refers back to the relief he requested in his original CrR 7.8 Motion to Vacate Sentence. Vacation of the invalid 1995 Judgement in this cause is proper.

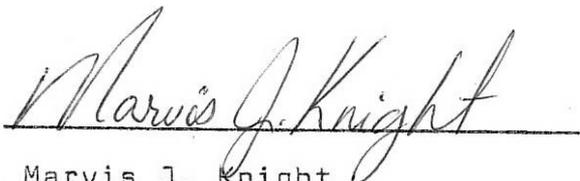
In the alternative, remand and reversal back to the Superior Court of Thurston County for a factual determination hearing on how to proceed.

Mr. Knight notes that a period of nearly 22 years has elapsed since the invalid judgement. In light of this fact, dismissal of the

charges with prejudice is well within the jurisdiction and discretion of this Court.

Lastly noting, before Mr. Knight can proceed under cause 99-1-00929-4 in terms of the POAA finding and sentence, this current cause must be fully addressed. Mr. Knight therefore reasserts this Court's ability to grant him appointed counsel upon reversal and remand in order to address the numerous issues and claims presented and raised here.

Respectfully Submitted and Dated this day of March, 2017.

A handwritten signature in cursive script that reads "Marvis J. Knight". The signature is written in black ink and is positioned above a solid horizontal line.

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

APPENDIX A

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

IN RE THE PERSONAL) NO. 49521-0-II
RESTRAINT PETITION OF:)
) RESPONSE TO
) PERSONAL RESTRAINT
MARVIS J. KNIGHT) PETITION

Comes now Jon Tunheim, Prosecuting Attorney in and for Thurston County, State of Washington, by and through Carol La Verne, Deputy Prosecuting Attorney, and files its response to petitioner's personal restraint petition pursuant to RAP 16.9.

I. BASIS OF CURRENT RESTRICTIONS ON LIBERTY

Marvis J. Knight is currently in the custody of the Washington Department of Corrections (DOC), serving a sentence of life without the possibility of parole. He was sentenced on April 18, 2000, following a jury trial in which he was found guilty of two counts of second degree assault and two counts of felony harassment. See Appendix 1, Judgment and Sentence, Thurston County Cause No. 99-1-00929-4.¹

¹ Knight has designated his appendices with letters. The State will use numbers for its appendices.

The State has no information to indicate that the waiver of the filing fee pursuant to RCW 4.24.430 is improper.

II. STATEMENT OF PROCEEDINGS

In this collateral attack, Knight is seeking to reverse his conviction in Thurston County Cause No. 95-1-00199-1. The judgment and sentence was entered on April 3, 1995, sentencing him to 38 months in prison following his plea of guilty to one count of attempted manslaughter in the first degree. Appendix B to Petition. He brought this matter as a CrR 7.8 Motion to Vacate Sentence in Superior Court, which transferred it, over Knight's objection, to this court as a personal restraint petition (PRP).

Knight was charged with one count of first degree assault on February 6, 1995. Appendix 2 at 1. While a jury panel waited to begin voir dire, the State amended the information to charge one count of attempted first degree manslaughter. Appendix 2 at 2. Knight entered an *Alford*² plea to that charge. Appendix A to Petition at 56; Appendix C to Petition. It was an exhaustively negotiated resolution. Appendix A to Petition at 34-41.

² North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

Knight has long since served his sentence in 95-1-00199-1.

He does not owe any legal financial obligations (LFOs). Appendix 3. There was no direct appeal. In a motion dated December 8, 2003, Knight brought a CrR 7.8 motion in Superior Court seeking to withdraw his guilty plea. Appendix 4. In an order entered on January 9, 2004, the Superior Court denied the motion. Appendix 5. No appeal was filed.

Knight now brings this untimely PRP in an effort to reverse the conviction for attempted manslaughter and withdraw his guilty plea. He claims per se prejudice because, since there is no such crime as attempted manslaughter, his plea was constitutionally invalid. Petition at 9-10.

III. RESPONSE TO ISSUES RAISED

A. A PRP is different from an appeal.

A personal restraint petition is not an appeal. It is a collateral challenge to a judgment and sentence, and relief granted in a collateral attack is extraordinary. In re Pers. Restraint of Coats, 173 Wn.2d 123, 132, 267 P.3d (2011). A PRP filed within one year after the judgment and sentence becomes final may raise any grounds for

relief, but the petitioner bears a higher burden than on a direct appeal.

Id. A petitioner must demonstrate by a preponderance of the evidence that he or she has suffered a constitutional violation which caused actual and substantial prejudice, or that there occurred a nonconstitutional error that inherently resulted in a complete miscarriage of justice. Id.; In re Pers. Restraint of Brett, 142 Wn.2d 868, 874, 16 P.3d 601 (2001).

A manifest constitutional error may be raised for the first time on appeal. RAP 2.5(a)(3). It may also be raised for the first time in a personal restraint petition, which is a civil action. In re Pers. Restraint of Ticeson, 159 Wn. App. 374, 383, 246 P.3d 550 (2011). However, a personal restraint petitioner does not have the presumption of prejudice, and must demonstrate that the constitutional error had “identifiable and practical consequences” on the trial. Id. If he cannot do so, a failure to raise the issue below constitutes a waiver. Id.

On direct appeal, the burden is on the State to establish beyond a reasonable doubt that any error of constitutional dimensions is harmless. . . . On collateral review, we shift the burden to the petitioner to establish that the error was not harmless.

In re Pers. Restraint of Hagler, 97 Wn.2d 818, 825-26, 650 P.2d 1103

(1982).

B. This PRP is time-barred.

RCW 10.73.090(1) provides that no collateral attack on a conviction may be brought more than one year after the judgment becomes final, providing that the judgment is valid on its face and rendered by a court of competent jurisdiction. RCW 10.73.090(3) defines "final":

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

The time bar is mandatory, unless one of the exceptions in RCW 10.73.100 applies. In re Pers. Restraint of Bonds, 165 Wn.2d 135, 140, 196 P.3d 672 (2008).

RCW 10.73.100 provides a list of six exceptions to the one-year time limit.

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the

evidence and filing the petition or motion'

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article 1, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

This list is both exclusive and mandatory. State v. Wade, 133 Wn. App. 855, 870, 138 P.3d 168 (2006).

1. This Judgment and Sentence is not facially invalid.

A facially invalid judgment and sentence is not subject to the one year time bar. RCW 10.73.090(1). A judgment is not facially invalid unless it exceeds the statutory authority of the sentencing court. "Not every error will make a judgment facially invalid." In re the

Pers. Restraint of Toledo-Sotelo, 176 Wn.2d 759, 767, 297 P.3d 51

(2013). Knight maintains that the judgement and sentence is facially invalid because the court had no authority to accept a plea to, or impose a sentence for, a crime which does not exist. Petition at 9.

There is some authority for Knight's argument. In Coats, the court noted that it has found facial invalidity where the defendant was convicted of a nonexistent crime. Coats, 173 Wn.2d at 135. The Court of Appeals has held that there is no such crime as attempted manslaughter. State v. Red, 105 Wn. App. 62, 66, 18 P.3d 615 (2001), *review denied*, 145 Wn.2d 1036, 43 P.3d 20 (2002). However, the appellate courts are willing to uphold a plea to a nonexistent crime under some circumstances, and those circumstances are not apparent from the face of the judgment and sentence.

In State v. Majors, 24 Wn. App. 481, 603 P.2d 1273 (1979), the defendant was charged with first degree murder. He pled guilty to a reduced charge of second degree murder and to a charge that he was a habitual criminal. His sentence was life in prison. Id. at 482. He appealed on the grounds that the habitual criminal information was

defective in that some convictions which formed the basis of the habitual criminal allegation actually occurred after the murder, in effect meaning that it was impossible for him to be a habitual offender at the time of the murder. Id. While acknowledging that a guilty plea did not preclude the appeal, the analysis is different when the plea results from a plea bargain. Id. at 483. The Court of Appeals said:

A guilty plea entered to a crime or crimes carrying a lesser penalty than the crime originally charged, as the result of a plea bargain, precludes review of the sufficiency of the information *or the existence of the crime charged*. The defendant bargained for the sentence imposed, not the crime, to avoid the risk of a heavier penalty.

Id., emphasis added. The court further cited to People v. Foster, 19 N.Y.2d 150, 154, 225 N.E.2d 200, 278 N.Y.S.2d 603 (1967) for this language:

While there may be question whether a plea to attempted manslaughter is technically and logically consistent, such a plea should be sustained on the ground that it was sought by the defendant and freely taken as part of a bargain which was struck for the defendant's benefit.

Majors, 24 Wn. App. at 483.

The Supreme Court affirmed. State v. Majors, 94 Wn.2d 354, 616 P.2d 1237 (1980). That court found it significant that Majors was

represented by counsel during all stages of plea bargaining and that he was aware of the consequences. "In effect, the petitioner bargained for a sentence by accepting a habitual criminal status." Id. at 358. The court further quoted Keto v. United States, 189 F.2d 247, 251 (8th Cir. 1951) for the following:

It would create an intolerable situation if defendants, after conviction, could defer their attacks upon indictments or informations until witnesses had disappeared, statutes of limitation had run, and those charged with the duty of prosecution had died, been replaced, or had lost interest in the cases.

Majors, 94 Wn.2d at 358-59.

From these authorities, it appears that even if the crime to which the defendant plead guilty is technically nonexistent, the appellate courts will nevertheless affirm a conviction where the defendant has negotiated for that result. Here it is clear that Knight's attorney negotiated tenaciously for the offer of attempted manslaughter. Appendix A to Petition at 34-41. Knight got a very good deal. He faced a recommendation of 38 months, even as an exceptional sentence upward, rather than the 93 to 123 months he was facing if convicted at trial of the original charge. Appendix A to Petition at 35. His attorney persuaded the prosecutor to recommend

38 months rather than the 48 months originally offered. Appendix A to Petition at 36. Knight said that he understood the negotiations and wanted to take the offer. Appendix A to Petition at 41-42. Under the holding of Majors, Knight should be held to his bargain.

In other circumstances, the courts have distinguished Majors. In State v. DeRosia, 124 Wn. App. 138, 100 P.3d 331 (2004), the defendant entered an *Alford* plea to second degree felony murder predicated on second degree assault of a child, as charged. The State made no concessions, promises, or reduction of the charge or sentence recommendation in exchange for his guilty plea. Id. at 141-42. While the case was on appeal, the Supreme Court decided In re Pers. Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), holding that an assault cannot be the predicate for a second degree felony murder charge. DeRosia, 124 Wn. App. at 142. DeRosia had pled to a nonexistent crime.

The court in DeRosia held that Majors did not apply because there was no plea bargain. DeRosia had pled as charged without any promises or concessions from the State. "It was not a 'negotiated plea bargain' in any meaningful sense." Id. at 145. In addition, the

court said that Majors is limited to “circumstances where the factual basis for the guilty plea . . . supports more severe charges.” Id. at 145-46. That did not apply to DeRosia. Id. at 146. The court in DeRosia further discussed the Supreme Court opinion in Majors that the defective information was a “technical defect” because the defendant had originally faced charges with much more severe penalties. DeRosia, 124 Wn. App. at 147. The Andress decision rendered the second degree felony murder charge more than a technical defect. DeRosia, 124 Wn. App. at 147.

Knight cites to State v. Dunbar, 117 Wn.2d 587, 817 P.2d 1360 (1991). In that case, the defendant was charged with attempted first degree murder by two alternative means, one of which was creating a grave risk of death by extreme indifference. Id. at 588. The trial court granted the defendant’s motion to dismiss. That dismissal was upheld on appeal because a crime which does not require an intent cannot be the basis for an attempt to commit that crime. Id. at 594-95. The differences between Dunbar and this case, of course, are that Dunbar did not negotiate for that charge and moved to dismiss in the trial court. Knight not only agreed to plead to attempted

manslaughter, he made no effort to challenge the plea on the grounds of a nonexistent crime for twenty years.

The willingness of the court to hold a defendant to a negotiated plea even though the crime to which he plead is technically a nonexistent one means that facial invalidity does not result merely from the fact of a judgment. It may or may not be error, depending on the circumstances of the manner in which the plea was reached. But facial invalidity means that the document itself evidences the invalidity, although the court has also looked to charging documents, verdicts, plea statements, and statements of the defendant on plea of guilty. Coats, 173 Wn.2d at 140. Here, the Statement of Defendant on Plea of Guilty, Appendix C to Petition, does not help Knight, and the transcript of the sentencing hearing, Appendix A to Petition, which he asks this court to consider, amply demonstrates that his plea to attempted manslaughter was vigorously negotiated. It also resulted in a very good outcome for Knight.

The bottom line is that because the judgment and sentence is not facially invalid, Knight cannot avoid the one-year time limit of RCW 10.73.090 and his petition is time-barred.

C. Knight has suffered no prejudice from his conviction for a technically nonexistent crime.

If the judgment and sentence is facially valid, a time-barred petition will be dismissed even if the petitioner demonstrates prejudice. Toledo-Sotelo, 176 Wn.2d at 769-70. Likewise, even if this PRP were not time-barred, Knight could not prevail because he cannot demonstrate any prejudice from this conviction. As noted above, he is serving a life sentence without the possibility of parole because he has been convicted of three most serious offenses pursuant to RCW 9.94A.570 and RCW 9.94A.030(38). Attempted manslaughter is not a most serious offense. RCW 9.94A.030(33). Manslaughter in the first degree is a class A felony. RCW 9A.32.060. A criminal solicitation or criminal conspiracy to commit a class A felony is a most serious offense, but an attempt to so do is not. RCW 9.94A.030(33)(a).

Knight was convicted of two counts of second degree assault in Cause No. 99-1-00929-4. Appendix 1 at 1. Second degree assault is a most serious offense. RCW 9.94A.030(33)(b). He had one prior conviction for second degree assault. Appendix 1 at 2. His prior

criminal history also included second degree robbery, which is also a most serious offense. Appendix 1 at 2; RCW 9.94A.030(33)(o). Even if his conviction for attempted manslaughter were to be reversed, he would still be in prison for life.

The attempted manslaughter conviction had no effect whatsoever on his current situation. It added one point to his offender score at the time he was sentenced as a persistent offender. At that time his score was 14 for the second degree assault charges and 10 for the felony harassment charges. Appendix 1 at 2. The standard range tops out at an offender score of nine. RCW 9.94A.510. In any event, the standard range was irrelevant because he was sentenced as a persistent offender. One less point in his offender score would have made no difference.

As a result of his conviction for attempted manslaughter Knight served 38 months less any good time he earned. It is apparent from his criminal history that he was out of prison and able to commit second degree robbery in 1997 and second degree possession of stolen property in 1999 before committing the two second degree assaults and two felony harassments that resulted in his life sentence.

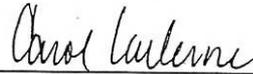
He has suffered no prejudice from a conviction for attempted manslaughter.

IV. CONCLUSION

This PRP is time-barred, but even if it were not, Knight has failed to show prejudice. For both of these reasons the State respectfully asks this court to deny and dismiss this PRP.

RESPECTFULLY SUBMITTED this 13th day of January, 2017.

JON TUNHEIM
Prosecuting Attorney



CAROL LA VERNE, WSBA #19229
Deputy Prosecuting Attorney

FILED
COURT OF APPEALS
DIVISION II

2017 FEB 28 AM 10:52

CORRECTED CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Response to Personal Restraint

Petition, on all parties or their counsel of record, on the date below as

follows:

Electronically transmitted:

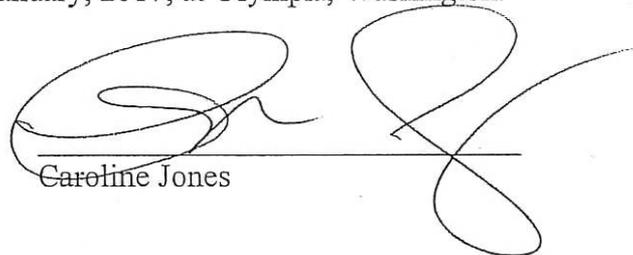
TO: DEREK M. BYRNE, CLERK
COURTS OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA, WA 98402-4454

--AND VIA US MAIL--

MARVIS J. KNIGHT, #734648
CLALLAM BAY COR CENTER
1830 EAGLE CREST WY
CLALLAM BAY, WA 98326

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

Dated this 13 day of January, 2017, at Olympia, Washington.



Caroline Jones

DECLARATION OF SERVICE BY MAILING

FILED
COURT OF APPEALS
DIVISION II

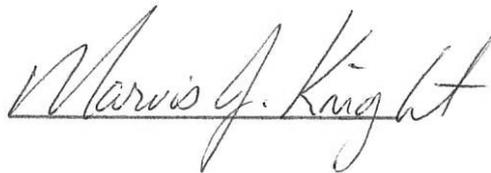
I, Marvis J. Knight, swear under the penalties of perjury of the State of Washington, that on the _____ day of March, 2017, that a true and correct copy of the foregoing Petitioner's Reply Brief was deposited in the Clallam Bay Correctional Center mail system and addressed to:

Court of Appeals, Division II
Attn: Court Clerk
950 Broadway, Suite 300
Tacoma, WA. 98402-4454

and, to:

Thurston County Prosecutors Office
Attn: Carol La Verne, Deputy Prosecutor
2000 Lakeridge Drive S.W.
Olympia, WA. 98502

Dated this 26 day of March, 2017



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

APPENDIX 1

SUPERIOR COURT OF WASHINGTON
 COUNTY OF THURSTON

APR 18 10:34
 No. 99-1-929-4

STATE OF WASHINGTON, Plaintiff, TO

vs.

MARVIS J. KNIGHT,
 Defendant.

SID.WA14370751
 DOB: 02/06/1978

JUDGMENT AND SENTENCE (JS)
 Persistent Offender

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecutor were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on ~~APRIL 2, 2000~~ MARCH 2, 2000
 (Date)
 by plea jury-verdict bench trial of:

CRIME	RCW	DATE
I. ASSAULT IN THE SECOND DEGREE	9A.36.021	4/14/99
III. FELONY HARRASMENT	9A.46.020	4/14/99
IV. ASSAULT IN THE SECOND DEGREE	9A.36.021	4/14/99
VI. FELONY HARRASMENT	9A.46.020	4/14/99

as charged in the First Amended Information.

- A special verdict/finding for use of **firearm** was returned on Count(s) _____, RCW 9.94A.125, 310
- A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _____, RCW 9.94A.125, 310
- A special verdict/finding of **sexual motivation** was returned on Count(s) _____, RCW 9.94A.127
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A. ____.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 99-1-591-4

PCN:

W.S.P. IDENT.



005835861

JAS

00-9-10490-4

R+B
 ✓ JTM

2.2 CRIMINAL HISTORY (RCW 9.94A.360):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult. Juv.	TYPE OF CRIME
1. A.T. MANSLAUGHTER 1°	4/8/95	THURSTON, WA	1/25/95	A	✓
2. ROBBERY 2°	10/24/97	THURSTON, WA	8/15/97	A	✓
3. PSP 2°	11/15/99	PIERCE, WA	10/14/99	A	NV
4. TMVWOP	6/23/90	PIERCE, WA	8/21/90	J	NV
5. RES. BURGL.	11/25/91	THURSTON, WA	11/25/91	J	NV
6. THEFT 2°	6/30/92	" "	5/20/92	J	NV
7. RES. BURGL.	6/30/92	" "	5/20/92	J	NV
8. ASSAULT 2°	6/30/92	" "	5/25/92	J	✓
9. ESCAPE 2°	11/2/93	" "	8/12/93	J	NV

[] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 SENTENCING DATA:

OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE	MAXIMUM TERM	
I.	14	IV	63-84 mo.	PERSISTANT OFF	LIFE 1/2 PAROLE	LIFE
III.	10	III	51-60 mo.	N/A	51-60 mo.	5 yrs
IV.	14	IV	63-84 mo.	PERS. OFFENDER	LIFE 1/2 PAROLE	LIFE
VI.	10	III	51-60 mo.	N/A	51-60 mo.	5 yrs

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

[] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [] above [] within [] below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):

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

III. JUDGMENT

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

3.2 [] The Court DISMISSES Counts _____ [X] The defendant is found NOT GUILTY of Counts II, V, VII, VIII

IV. SENTENCE AND ORDER

IT IS HEREBY ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

Table with columns for category (e.g., JASS CODE, RTN/RJN, PCV, CRC, PUB, WFR, FCM/MTH, CDF/LDI/PCD, NTF/SAD/SDI, CLF, EXT), amount, description, and RCW reference. Includes entries for Restitution, Victim assessment, Court costs, and a TOTAL of \$500-.

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing: [] shall be set by the prosecutor [] is scheduled for _____

[] RESTITUTION. Schedule attached, Appendix 4.1.

[] Restitution ordered above shall be paid jointly and severally with: NAME of other defendant CAUSE NUMBER (Victim name) (Amount-\$)

RJN _____

[] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless specifically set forth here: Not less than \$ _____ per month commencing _____. RCW 9.94A.145

In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

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

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

4.3 The defendant shall not have contact with LACRENA JORDAN 7/4/81 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for (10) TEN years (not to exceed the maximum statutory sentence).

Domestic Violence Protection Order or Antiharassment Order attached as Appendix 4.3.

4.4 OTHER: _____

4.5 CONFINEMENT OVER ONE YEAR: PERSISTENT OFFENDER. The defendant was found to be a Persistent Offender.

The court finds Counts I AND IV is a most serious offense and that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

The court finds Count _____ is a crime listed in RCW 9.94A.030(27)(b)(i) (e.g., rape in the first degree, rape of a child in the first degree (when the offender was sixteen years of age or older when the offender committed the offense), child molestation in the first degree, rape in the second degree, rape of a child in the second degree (when the offender was eighteen years of age or older when the offender committed the offense) or indecent liberties by forcible compulsion; or any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or an attempt to commit any crime listed in RCW 9.94A.030(27)(b)(i)), and that the defendant has been convicted on at least one separate occasion, whether in this state or elsewhere, of a crime listed in RCW 9.94A.030(27)(b)(i).

Those prior convictions are listed in Section 2.2 of this Judgment and Sentence. RCW 9.94A.030, RCW 9.94A.120

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

Life without possibility of early release	on Counts	<u>I AND IV</u>
<u>SIXTY (60)</u>	months on Count	<u>III</u>
<u>SIXTY (60)</u>	months on Count	<u>VI</u>
_____	months on Count	_____

Actual number of months of total confinement ordered is: life without the possibility of early release.

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

4.6 OTHER: SHOULD A OBTAIN RELEASE, COMMUNITY PLACEMENT IS ORDERED ON COUNTS III AND VI FOR 12 MO. A SHALL ABIDE BY RULES OF SUPERVISION, HAVE NO LAW VIOLATIONS, HAVE NO CONTACT w/ LACRESHA JORDAN.

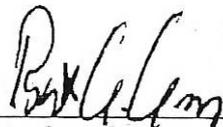
V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**
 Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.8 **BAIL EXONERATION:** Any bail previously posted in this cause is hereby exonerated and shall be returned to the person who poseted it.

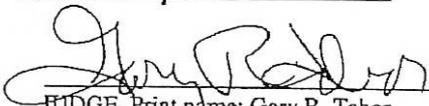
DONE in Open Court and in the presence of the defendant this date: April 18, 2007



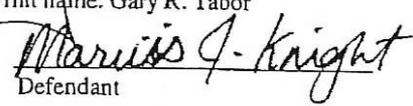
 Deputy Prosecuting Attorney
 WSBA # 19788
 Print name: Jon Tunheim



 Attorney for Defendant
 WSBA # 6604
 Print name: Robert G. Grey



 JUDGE Print name: Gary R. Tabor



 Defendant
 Print name: MARVIS J. KNIGHT

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

CAUSE NUMBER of this case: 99-1-929-4
 I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.
 WITNESS my hand and seal of the said Superior Court affixed this date: _____
 Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA14370751

Date of Birth: 02/06/1978

FBI No. 181503XA9

Local ID No. C0090941

PCN No.  W.S.P. IDENT
006835861

Other _____

Alias name, SSN, DOB: _____

Race:

Asian/Pacific Islander Black/African-American Caucasian

Ethnicity: Sex:
 Hispanic Male

Native American Other: _____

Non-Hispanic Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints

and signature thereto. Clerk of the Court: Ann Robinson, Deputy Clerk. Dated: 4-18-2021

DEFENDANT'S SIGNATURE: Marius J. Knight

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



1
2
3 **SUPERIOR COURT OF WASHINGTON**
4 **THURSTON COUNTY**

5 STATE OF WASHINGTON,

Plaintiff,

No. 99-1-591-4

6 vs.

7 **WARRANT OF COMMITMENT**

8 MARVIS J. KNIGHT,

Defendant

9
10 DOB: 2/6/78
11 SID: WA14370751
12 BOOKING # C0096941

SEX: MALE
13 RACE: BLACK

14 ***THE STATE OF WASHINGTON TO:***

15 The Sheriff of Thurston County and to the proper officer of the Department of Corrections.

16 The defendant herein has been convicted in the Superior Court of the State of Washington for the crime(s) of:
17 and the court has ordered that the defendant be sentenced to a term of imprisonment as set forth in the Judgment and Sentence.

18 ***YOU, THE SHERIFF, ARE COMMANDED*** to take and deliver the defendant to the proper officers of the Department of Corrections; and

19 ***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.

20 DATED: April 13, 2000

21 By direction of the Honorable:

22 

23 BETTY J. GOULD, CLERK

24 By: SUE ROBINSON, Deputy
25 Deputy Clerk

WARRANT OF COMMITMENT

1
2
3
4
5 **IN THE SUPERIOR COURT OF WASHINGTON**
6 **IN AND FOR THURSTON COUNTY**

NO. 99-1-00929-4

7 STATE OF WASHINGTON,

Plaintiff,

8 vs.

ORDER AMENDING
JUDGMENT AND SENTENCE

9 MARVIS J. KNIGHT,

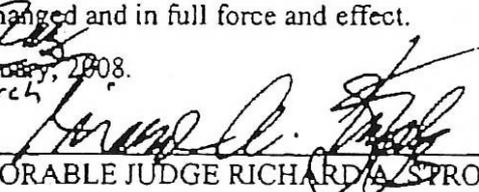
10 Defendant.

11 Having considered this matter pursuant to the request of the above-named Defendant and his
12 attorney, Robert Jimerson, and having also considered the views of the Plaintiff, State of Washington, as
13 represented by and through James C. Powers, Deputy Prosecuting Attorney for Thurston County, the
14 Court orders as follows:

15 IT IS ORDERED THAT the Judgment and Sentence entered herein on the 18th day of April,
16 2000, as to the above-named defendant is hereby AMENDED in the following respect only. The two
17 convictions for Felony Harassment, Counts III and VI, and the sentences imposed for those two counts
18 are vacated in order to preserve the defendant's right against double jeopardy. However, the convictions
19 for two counts of assault in the second degree, Counts I and IV, and the sentences imposed for those two
20 counts shall remain as originally imposed.

21 IT IS FURTHER ORDERED THAT all other aspects and provisions of the defendant's
22 Judgment and Sentence herein remain unchanged and in full force and effect.

23 DATED this 14th day of ~~February~~ ^{March}, 2008.

24 
HONORABLE JUDGE RICHARD A. STROPHY

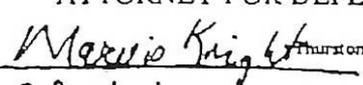
25 PRESENTED BY:

26 
JAMES C. POWERS/WSBA #12791
DEPUTY PROSECUTING ATTY

APPROVED AS TO FORM:


ROBERT JIMERSON/WSBA 26363
ATTORNEY FOR DEFENDANT.

ORDER AMENDING
JUDGMENT AND SENTENCE


Defendant

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 734-3335

0-000000028

SCANNED

APPENDIX 2

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

STATE OF WASHINGTON, '95 FEB -6) 11:26
INFORMATION
Plaintiff,)
BET.) NO.
vs.)
BY) 95 1 00199 1
MARVIS J. KNIGHT)
DOB: 2/6/78)
BM;5'8";170#;BRN;BLK)
Defendant.) JAMES C. POWERS
Deputy Prosecuting Attorney

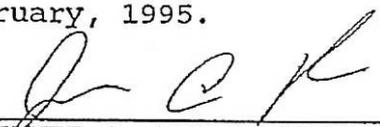
Booking No.

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant(s) with the following crime(s):

ASSAULT IN THE FIRST DEGREE, RCW 9A.36.011(1)(a)

In that the defendant, MARVIS J. KNIGHT, in the County of Thurston, State of Washington, on or about the 25th day of January, 1995, with intent to inflict great bodily harm upon the person of Shaun Alderson, did assault such person with a firearm.

DATED this 6th day of February, 1995.



JAMES C. POWERS/WSBA #12791
Deputy Prosecuting Attorney

BERNARDEAN BROADOUS
Prosecuting Attorney
2000 Lakeridge Drive SW
Olympia, WA 98502

THURCOJ001000011200325101000029144

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

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
95 APR -3 PM 2: 19

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIS J. KNIGHT,
DOB: 2/6/78

Defendant(s).

NO. 95-1-195
J. GOULD, CLERK
FIRST AMENDED
INFORMATION DEPUTY
JAMES C. POWERS
Deputy Prosecuting Attorney

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE, RCW 9A.28.020 and RCW 9A.32.060:

That the defendant, MARVIS J. KNIGHT, in the County of Thurston, State of Washington, on or about the 25th day of January, 1995, took a substantial step toward recklessly causing the death of another person, to-wit: Shaun Alderson.

DATED this 3^d day of April, 1995.



JAMES C. POWERS, #12791
Deputy Prosecuting Attorney

BERNARDEAN BROADOUS
Thurston County Prosecuting Attorney
2000 Lakeridge Dr., S.W.
Olympia, Washington 98502

FIRST AMENDED
INFORMATION - 1

THURCOU601000011200325101000029069

APPENDIX 3

CASE#: 95-1-00199-1 CRIM JUDGMENT# YES
 TITLE: STATE VS MARVIS J KNIGHT
 FILED: 02/06/1995 APPEAL FROM LOWER COURT? NO
 RESOLUTION: GP DATE: 04/03/1995 GUILTY PLEA
 COMPLETION: JODF DATE: 04/03/1995 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: CMPL DATE: 12/30/1999 COMPLETED/RE-COMPLETED
 CONSOLIDATED:
 NOTE1: *AFPRJ MCPHEE 3/31/95
 NOTE2:

144

-----PARTIES-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	ARRAIGNED
PLA01	STATE OF WASHINGTON			
DEF01	KNIGHT, MARVIS	JOJUAN		

-----ATTORNEYS-----

CONN	LAST NAME,	FIRST MI TITLE	LITIGANTS	DATE
ATP01	POWERS, JAMES C.			
ATD01	FERRELL, MICHAEL EUGENE			
ATD02	WAGNER, FORREST LEE			

-----SENTENCE-CHARGE-----

DEF01 KNIGHT, MARVIS JOJUAN

DEF. RESOLUTION CODE: GP DATE: 04/03/1995 GUILTY PLEA
 DISP. JUDGE: BERSCHAUER
 SENTENCE DATE: 04/03/1995 SENTENCED BY: JUDGE BERSCHAUER
 SENTENCING DEFERRED: NO APPEALED TO: DATE APPEALED:
 PRISON SERVED..... X : FINE.....\$
 PRISON SUSPENDED..... : RESTITUTION.....\$
 JAIL SERVED..... : COURT COSTS.....\$
 JAIL SUSPENDED..... : ATTORNEY FEES.....\$
 PROB/COMM. SUPERVISION.....
 DUE DATE: PAID:

-----SENTENCE DESCRIPTION-----

*02-10-99 ORDER ON NONCOMPLIANCE - 30 DAYS CONFINEMENT
 *01-12-00 ORDER ON NONCOMPLIANCE - 40 DAYS CONFINEMENT

-----CHARGE INFORMATION-----

RS	CNT	RCW/CODE	DESCRIPTION	INFO/VIOL. ---PCN---	DATE
			ORIGINAL		02/06/1995
	1	9A.36.011	ASSAULT 1ST DEGREE		01/25/1995
			FIRST AMENDED INFORMATION		04/03/1995
G	1	9A.32.060	MANSLAUGHTER 1ST DEGREE		01/25/1995
		9A.28.020	CRIMINAL ATTEMPT		
	901	NOTEPCN	ADDITIONAL ARREST/FINGERPRINT PCN		

3493571

THURSTON COUNTY SUPERIOR COURT

APPENDIX 4

SUPERIOR COURT OF WASHINGTON
COUNTY OF: THURSTON

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

STATE OF WASHINGTON,
Plaintiff

NO. 95-1-00199-03 DEC -8 AM 11:51

v.

MOTION OF WITHDRAWAL
OF GUILTY PLEA
(Cr 7.8, 4.2)

BETTY J. GORDON
DEPUTY

MARVIS J. KNIGHT
Defendant

I. IDENTITY

MARVIS J. KNIGHT, Pro Se, moves the court to grant the relief sought in part 3.

2. GROUNDS

The authority for the court to grant this motion is contained within Criminal Rule 7.8 of the Washington Court Rules and supported by the attached Affidavit in Support of Motion to Withdraw Guilty plea.

3. RELIEF SOUGHT

The defendant, MARVIS J. KNIGHT, pro se, asks the court to grant the defendant to withdraw his plea of guilty entered on APRIL 3rd, day of APRIL, 1995, in THURSTON County Superior Court, OLYMPIA, Washington, and enter a plea of not guilty.

Dated: 12.3.03

Signature

Presented by:

MARVIS J. KNIGHT #734648

Printed Name/DOC #
WASHINGTON STATE PENITENARY
1313 NORTH 13th Avenue

Address

Walla Walla, Wa. 98362

City/State/Zip

SUPERIOR COURT OF WASHINGTON
COUNTY OF: THURSTON

STATE OF WASHINGTON,)
Plaintiff) NO. 95-1-00199-1
v.)
MARVIS J. KNIGHT) AFFIDAVIT IN SUPPORT OF
Defendant) MOTION TO WITHDRAWAL OF
) GUILTY PLEA.
) CrR 7.8, CrR 4.2
)

I. IDENTITY

MARVIS J. KNIGHT, Pro Se, affirms under the penalty of perjury:

1) That I am acting Pro Se and make this affidavit in support of my motion to withdraw my Guilty Plea entered into the record on 3rd day of APRIL, 1995, in THURSTON County Superior Court in front of the honorable Judge DANIEL BERSCHAUER.

2). The defendant plead guilty on 3rd day of APRIL, 1995, to the charges of ATTEMPTED MANSLAUGHTER IN THE FIRST DEGREE.

3). The defendant now claims that a manifest injustice occurred, STATE v. TAYLOR, 83 Wn.2d. 594, 521 P.2d 699. The specific claims the defendant makes at this time are SEE ATTACHED SHEET

4). At the time of acceptance of the plea agreement, the defendant was questioned by the court as to whether or not understood the effect of the guilty plea and whether or not they had the consultation of counsel. The defendant now submits to the court that he did not fully understand the consequences of the plea because of _____

SEE ATTACHED SHEET

5). The defendant (did not/did) admit to the committing the acts as charged. He now makes the following statement in support this argument

SEE ATTACHED SHEET

6). The events detailed by the defendant cannot be used because of

SEE ATTACHED SHEET

7). The statement of the defendant cannot be used to support the charges of

SEE ATTACHED SHEET because of

8). The defendant, MARVIS J. KNIGHT should be permitted to withdraw his plea of guilty since there existed only an ambiguous expression of qualified guilt coupled with a statement of facts.

9). His colloquy with the court shows that the defendant was in fact declaring his innocence despite his formalistic recitations of guilt. Under these circumstances, he should be allowed to withdraw his plea and interpose a plea of not guilty.

Date: _____

signature

MARVIS J. KNIGHT # 734648

Printed Name/DOC #
WASHINGTON STATE PENITENARY
1313 NORTH 13th AVENUE

Address

WALLA WALLA, WASH. 98362

Cause No. 95-1-00199-1

The necessary factual basis for the plea was not adequately established in the record.

State V. Anya-Contreras, No. 48095-2-I

The purpose behind the factual basis requirement is to protect a defendant who is in the position of pleading guilty with an understanding of the nature of the charge but without realizing that his or her conduct does not actually fall within the charge.

In re Personal Restraint Of Keene, 95 Wn. 2d 203, 209, 622 P.2d 360 (1980). The material facts underlying the elements of the charged offense must all be included. State V. Zumwalt, 79 Wn. App. 124, 132, 901 P.2d 319 (1995).

Marvis J. Knight contends that the factual basis for accepting his guilty plea was insufficient because his Attempt toward recklessly causing the death of another person in the charged offense was not established in the record at the time of the plea hearing. In the portion of the plea statement reserved for the defendant's statements, Marvis J. Knight admitted:

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 in the first degree.

Marvis J. Knight's admissions in his plea statement, by themselves, clearly do not provide the necessary factual basis for the charged offense. Nothing in the statement itself establishes that Marvis J. Knight was legally accountable for the conduct on January 25th, 1995

Respectfully Submitted

MARVIS J. KNIGHT # 734648
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, Washington 98362

No. 93-1-00199-1

ATTACH
EXHIBITS

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

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

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

FINDINGS OF FACT

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

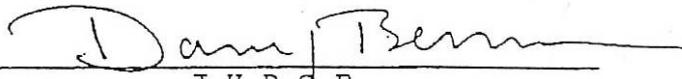
1
2 aggravating circumstance in this case sufficient to constitute a
3 substantial and compelling basis for the exceptional sentence
4 imposed by the court. This stipulation is made so that the
5 defendant may take advantage of a plea bargain reducing the
6 charge from Assault in the First Degree to Attempted Manslaughter
7 in the First Degree and reducing the presumptive sentence range
8 from 93 to 123 months to 23.25 to 30.75 months.

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

11 CONCLUSIONS OF LAW

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

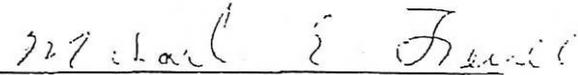
16 DATED this 3 day of April, 1995.

17 
18 J U D G E

19 PRESENTED BY:
20 BERNARDEAN BROADOUS
21 Prosecuting Attorney

22 
23 JAMES C. POWERS/WSBA #12791
24 Deputy Prosecuting Attorney

APPROVED AS TO FORM AND
TERMS STIPULATED TO:

25 
26 MICHAEL FERRELL/WSBA #16172
27 Attorney for Defendant

APPENDIX 5

FILED
SUPERIOR COURT
THURSTON COUNTY WASH

'04 JAN -9 P2:14

GETTY J. GOULD CLERK

BY _____
DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

NO. 95-1-199-1

STATE OF WASHINGTON,

Plaintiff,

vs.

ORDER DENYING MOTION FOR
WITHDRAWAL OF GUILTY PLEA

MARVIS J. KNIGHT,

Defendant.

THIS MATTER having come on before the above-entitled court upon the motion of the defendant, Marvis J. Knight, to withdraw his plea of guilty, entered in the above cause on April 3, 1995, and the court having considered the bases cited by the defendant in support of the motion, and having considered the written response submitted by the Plaintiff, State of Washington, hereby

ORDERS that the defendant's motion is denied for the following reasons:

*The defendant's motion is time-barred by RCW 10-73.090.
Even if the motion was not time-barred, it fails to allege
facts which could provide a basis for the relief requested
in the defendant's motion.*

DATED this 9th day of ~~December~~ ^{JANUARY 2004}, 2003.

Cromeroy

JUDGE

PRESENTED BY:

J.C. Powers

James C. Powers/WSBA #12791
Deputy Prosecuting Attorney

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

SCANNED SCANNED

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.: 049027

FILED
 APR 3 1995
 NO. 9:5731-199-1

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 Flynn, Attorney for Defendant,
 and James 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

DEFENDANT NAME: MAURIS J. KNIGHT
CAUSE NUMBER: 15-1-147-1

- (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 (X) 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
_____	_____
_____	_____

- () \$ _____ Court costs;
- (X) \$ 100.00 Victim assessment
- () \$ _____ Fees for court-appointed attorney;
- () \$ _____ Fine
- () \$ _____ 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.

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

STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.) NO. 95-1-00199-1
) STATEMENT OF DEFENDANT ON
Marvis J. Knight,) PLEA OF GUILTY (FELONY)
)
)
Defendant.)

1. My true name is Marvis J. Knight
2. My age is 17 D.O.B. Feb 6 1978
3. I went through the 9th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
My lawyer's name is Michael E. Ferrall
(b) I am charged with the crime(s) of Attempted manslaughter 1^o

The elements of the crime(s) are Defendant, in Thurston
County, WA on January 25, 1995 took a
substantial step toward recklessly causing
the death of another person.

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:
(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
(c) The right at trial to hear and question the witnesses who testify against me;
(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
(e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
(f) The right to appeal a determination of guilt after a trial.
6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
(a) The crime(s) with which I am charged carries a maximum sentence of 20.5 years imprisonment and a \$ 20,000 fine. The standard sentence range is from 23.25 months to 30.75 months confinement, based on the prosecuting attorney's understanding of my criminal history;

MEF
MJK

(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.]

(m) If this crime involves a sexual offense, prostitution, or a drug 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:

Marius 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 / 2791

Michael E. Freirell
Defendant's Lawyer

The foregoing statement as 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]:

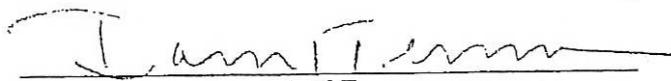
(a) The defendant had previously read; or

(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.



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

APPENDIX B

1 decision. There is sufficient evidence to support
2 that particular interpretation of the facts. Thus, I
3 will not grant the motion based on sufficiency of
4 evidence or, for that matter, order a new trial for
5 either of the other reasons that have been stated,
6 that is, the motion for arrest of judgment or for new
7 trial also indicates that substantial justice has not
8 been done.

9 As to the conviction, the Court finds that
10 there's not a sufficient showing in that regard. As
11 to matter number one that's alleged in the motion for
12 arrest of judgment or new trial the jury verdict as to
13 each strike offense is contrary to law and fact, I see
14 no basis for the argument as to law and as to fact. I
15 think I've already spoken on that. In any event, I'm
16 denying the motion for arrest of judgment or for new
17 trial.

18 That then brings us to the point of sentencing
19 for these offenses. The State is the prevailing party
20 so they have the right to go first, and I understand
21 that there may be some arguments as to the appropriate
22 sentence in light of arguments regarding criminal
23 history, and I'll hear those. Someone indicated, I
24 guess my Clerk just before I came on the bench, that
25 there might be a witness.

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Who is proposing to call a witness?

MR. TUNHEIM: Well, Your Honor, I had -- I have witnesses present on the issue of identification of the defendant. There was this challenge that had been filed to the validity of the prior convictions. I have obtained certified copies of the judgment and sentences which I asked the clerk to mark for purposes of this hearing. After reviewing the affidavit again of the defendant it appears to me in that affidavit that he is admitting that he is the person that was in fact sentenced in those prior cause numbers, and under an earlier case in the SRA, State vs. Ammons located at 105 Wn.2d 175, I believe that that would be sufficient to prove the identity of the defendant. If, however, the defendant is contesting the identity at this time, in other words, he's not the person named in those judgment and sentences, I've been prepared to call witnesses, call the Deputy Prosecutors that prosecuted those cases for purposes of identifying the defendant.

So perhaps if the Court could inquire as to the defense as to whether they are contesting identity in the prior convictions we can dispose of that issue very quickly.

THE COURT: All right. Let me add just one

1 further basis for that question being asked of the
2 defendant through his counsel, and that is the
3 proposition that if matters are stated in the
4 Presentence Investigation Report they are accepted as
5 verities and established fact unless contested.

6 So let me just ask in light of all that's been
7 said, Mr. Grey, is there any contest by the defense as
8 to Mr. Knight being the individual that was on April
9 13th, 1995, convicted of attempted manslaughter in the
10 first degree, and on October 24th, 1997, being
11 convicted of robbery in the second degree?

12 MR. GREY: Your Honor, if it please the Court,
13 and as the Court can see from Mr. Knight's affidavit
14 in support of his motions today and with regard to
15 sentencing today, he does not dispute that he was the
16 individual involved in those earlier sentencings on
17 the dates then with the cause numbers that the Court
18 just mentioned. And, of course, I think everyone in
19 the courtroom, at least all of the counsel in the
20 courtroom, have reviewed those earlier files and I
21 believe that it's factually something that cannot be
22 factually challenged that Mr. Knight was the defendant
23 and the person convicted in those two prior cases. So
24 that is not a insofar -- for the record as well, Your
25 Honor, insofar as the Presentence Investigation

1 Reports are concerned at least insofar as they address
2 those prior convictions which we're discussing right
3 now, prior so-called strike convictions, we do not
4 dispute the accuracy of what's stated in those reports
5 as well.

6 Thank you, Your Honor.

7 THE COURT: All right. With that, then, let's
8 proceed with your arguments, Mr. Tunheim.

9 MR. TUNHEIM: Your Honor, at this point, then, I
10 guess it's my belief or perception that the primary
11 issue we're dealing with is whether Mr. Knight's
12 affidavit and assertions in his affidavit somehow
13 undermine the validity of the prior conviction,
14 specifically the conviction for attempted manslaughter
15 in the first degree, and, of course, it's the State's
16 position that it absolutely does not. In the prior,
17 the case that I cited just previously, the Ammons
18 case, it was established fairly early in the
19 Sentencing Reform Act history that prior convictions
20 cannot be challenged collaterally in a sentencing, a
21 subsequent sentencing proceeding unless there is some
22 constitutional invalidity that appears on the face of
23 the conviction, and in this case there is not. The
24 conviction was by plea, and therefore all appeals as
25 to the issues of guilt were waived, the judgment and

1 sentence on that case is in appropriate form and is
2 valid on its face.

3 The only issue that may exist, then, is whether
4 somehow that conviction is invalid because the
5 defendant believed that it was not a strike and
6 indicates that there was some reliance on his part,
7 I'm not sure, he states that there was reliance in
8 terms of whether he entered the plea to the attempted
9 manslaughter, but he asserts that he relied on that
10 belief in terms of proceeding to trial in this case.

11 First of all, I would assert that a belief as to
12 whether a conviction is a strike or not is clearly a
13 collateral matter as to the consequence of the plea.
14 There's no direct consequence to a person who pleads
15 guilty to a strike unless they're pleading guilty
16 obviously to their third strike. It is a
17 classification of that crime in terms of future use in
18 a criminal history. If there's no direct consequence
19 to that person at the time of that conviction, then it
20 is a collateral matter. There is no right to be
21 advised of that conviction, or, excuse me, there's no
22 right to be advised of that consequence, and the fact
23 that the defendant may or may not have been advised of
24 that or believed otherwise is not a consideration as
25 to the validity of the plea or the validity of the

1 conviction.

2 I think the best way to illustrate that is the
3 fact that the three strikes statute actually would
4 allow a conviction that was entered prior to the
5 enactment of that statute to be used as criminal
6 history for a persistent offender; in other words, if
7 somebody had been convicted of a strike prior to the
8 enactment, prior to the enactment of the third strike
9 statute, of course, there would not be advisement of
10 that because the law had not been enacted, but that
11 conviction could be used against that as a third
12 strike after the enactment of the statute.

13 There has been case law, I believe, cited that is
14 not ex post facto because the punishment is being
15 imposed at the time of the last conviction not the
16 first conviction. I think by analogy that goes to the
17 classification of a conviction as a strike is a
18 collateral matter, it is not a direct consequence of
19 this plea or of this conviction.

20 Mr. Grey has also argued rather indirectly that
21 had the defendant known that this conviction, the
22 present conviction could constitute his third strike
23 he would never have gone to trial and there's no
24 plausible explanation for him to do that. Again, I
25 think that that in no way affects the validity of the

1 prior convictions, it does not affect the
2 classification of the prior convictions as strikes.
3 Frankly, it's really not even relevant to this. The
4 only way that it might be relevant is if the defendant
5 was somehow wanting to claim somehow ineffective
6 assistance of counsel, which he has not, and I'm
7 comfortable if that challenge was made that that could
8 be easily defended.

9 I have a memory and I haven't had a chance to
10 check with the court reporter, but I had a memory of
11 the Court actually having some dialogue with the
12 defendant about the fact that it was a potential third
13 strike. So the defendant in his affidavit has somehow
14 asserted that he ignored the advice of his lawyer time
15 and time again on some mistaken belief of his own that
16 this was not his third strike, and the fact of the
17 matter is that that's really of no consequence to the
18 sentencing in this case.

19 So as to the motion as I've perceived it
20 attacking the prior manslaughter conviction as a
21 strike, I believe that the law in this case is clear
22 that that is valid on its face, that it does count in
23 criminal history, that it does constitute a strike,
24 and therefore the Court I would ask should go forward
25 with the sentencing in this case classifying Mr.

1 Knight as a persistent offender.

2 THE COURT: Thank you. Mr. Grey.

3 MR. GREY: If it please the Court, as the Court
4 knows if it's looked at, and I'm sure the Court has,
5 these decisions following the adoption of the
6 initiative, the so-called three strikes and you're out
7 initiative, virtually every possible course of attack
8 or challenge to three strikes, third strike
9 convictions was made within the year or the
10 year-and-a-half following the adoption of that
11 initiative by the people of this state, and it has
12 been asserted that the act was an ex post facto law.
13 It was asserted on appeal that it was a bill of
14 attainder, it was asserted that it violated both due
15 process, substantive due process and procedural due
16 process. All of those challenges were rejected by
17 appellate courts and the Supreme Court as they came up
18 right down the line.

19 I cannot argue to the Court anything contrary to
20 what Mr. Tunheim is arguing because that is in fact
21 the law, if these prior convictions are valid on their
22 face say the cases, State vs. Ammons and cases that
23 follow Ammons, then collateral attacks and inquiries
24 at this point in the sentencing process on the third
25 strike are really not appropriate. So much of what is

1 being set before the Court here is set before the
2 Court by way of laying groundwork for any possible
3 appellate issues that may appear when appellate
4 counsel analyzes these matters.

5 The cases even go so far as to hold, and there's
6 a series of these, as to hold that a plea of guilty is
7 valid on its face and sufficient to count as a strike
8 even when that plea of guilty was entered without the
9 person, the defendant, being advised of the
10 constitutional rights that were being waived, let
11 alone being advised of the fact that the offense
12 constituted a strike.

13 The only distinction or difference that I have
14 been able to discern between those cases and the
15 matter presently pending before the Court is this:
16 none of those prior defendants who were raising these
17 issues on appeal ever asserted that in addition to not
18 being advised that the offense was a strike, that they
19 were being affirmatively advised by counsel that it in
20 fact was not a strike and that there were no strike
21 concerns. And if that's so, and we're submitting all
22 this I think to make a record for appeal, I don't
23 think that it's anything that the Court can determine
24 now with regard to that prior case, the manslaughter,
25 attempted manslaughter in the first degree conviction.

1 If it's so that there was affirmative advice
2 contrary to law, then I think Mr. Knight has an issue
3 which may permit him to appeal this sentence and
4 perhaps that conviction, although timeliness is
5 certainly going to be involved with regard to the
6 first conviction. But, in any event, I think it's
7 incumbent upon me to place all of these issues before
8 the Court on this record so the Court may consider
9 them for what they're worth.

10 Plainly Mr. Knight harbored a belief that was
11 contrary to what the real facts and the real law were
12 and he did that, he says, because of what he was told
13 back when that first case was adjudicated, that there
14 were no strike consequences, and, as noted, that would
15 be the only way that his subsequent behavior could be
16 explained, and for that reason I have submitted all
17 this to the Court for the purposes of this record
18 being complete when Mr. Knight appeals these
19 convictions and the Court's sentence today.

20 Thank you, Your Honor.

21 THE COURT: Mr. Grey, I just have one question
22 about the first day of trial. I have some
23 recollections of my own, but I just want to inquire of
24 you. The clerk's minutes clearly state that you
25 informed the Court that Mr. Knight was proceeding to

1 trial on the current offenses against your advice. Do
2 you recall whether or not the Court discussed with Mr.
3 Knight the potential of a third strike based on the
4 charges?

5 MR. GREY: At the initiation on our first day of
6 trial, Your Honor?

7 THE COURT: Yes.

8 MR. GREY: To be frank I don't, but I can tell
9 the Court this, and it's a matter of record so it's
10 not like I'm making a disclosure contrary to Mr.
11 Knight's interests. He was originally charged with a
12 couple of counts, I think, of assault in the fourth
13 degree, domestic violence, and there was a plea offer
14 negotiated and he rejected it. And he was then
15 arraigned, I believe, in front of Judge Berschauer,
16 and at that time I thought what Mr. Knight was doing
17 was extraordinary and I asked the Information to be
18 read to him and it was, I think Mr. Tunheim read it to
19 him, and then I'm quite certain that a record was made
20 then, four of the allegations in the what would have
21 been I think the First Amended Information would
22 constitute strike offenses were he to be convicted of
23 any of them, and I think that was all a matter of
24 record on the day that he was arraigned. I have no
25 recollection of what we did the first day of trial

1 here, but I do remember that day fairly clear.

2 THE COURT: All right. Thank you.

3 MR. GREY: Thank you.

4 THE COURT: Mr. Tunheim, anything further?

5 MR. TUNHEIM: Well, I can corroborate Mr. Grey's
6 statement. I have -- it had not occurred to me to
7 look back at the arraignment but that's true, the
8 arraignment in this case was a very, very formal
9 arraignment on the Amended Information where there was
10 a request that it be read, and it was read verbatim to
11 the defendant, and there was an advisement by Judge
12 Berschauer, I believe, that conviction of any of the
13 assault second degree convictions could constitute a
14 third strike, and so there is a clear record during
15 that proceeding.

16 And Mr. Grey proffered that there was no other
17 explanation for the defendant to go to trial facing
18 this kind of consequence and, frankly, I would submit
19 that the other explanation is that Mr. Knight simply
20 thought that he would not be convicted given the
21 status and the testimony of all of the witnesses, and
22 the jury disagreed with him, but there was clearly a
23 motive there on his part to simply believe that he
24 won't be convicted. He took his chances and now the
25 jury has convicted him, and the only sentence

1 available to the Court at this time is a persistent
2 offender.

3 THE COURT: I think that I'm going to go ahead
4 and rule for the record on what I believe the Court's
5 options for sentencing are; however, I am going to
6 give Mr. Knight the opportunity of speaking, that's
7 known as the right of allocution, prior to pronouncing
8 any sentence.

9 This Court has spent some time in looking at the
10 statutes regarding persistent offenders, so-called
11 three strikes law, as well as case authority involving
12 challenges to that law. Let me indicate for the
13 record that RCW 9.94A.030(25)(a) specifically sets
14 forth that manslaughter in the second degree, and
15 that's at Subparagraph (25)(1) is --

16 MR. GREY: Your Honor, I'm sorry to interrupt,
17 but before you proceed on making declarations about
18 manslaughter second degree, the only offense that
19 would be relevant here would be an attempted
20 manslaughter first degree. That was the first one.

21 THE COURT: Is it first degree instead of second?
22 Well, I've misspoken.

23 MR. GREY: The original conviction that's --

24 THE COURT: Yes, it was first degree and I
25 apologize. I'll get to the attempt in a moment.

1 That's at Subparagraph (k), manslaughter in the first
2 degree is specifically set forth as a most serious
3 offense.

4 In that same statute Subsection (29) defines a
5 persistent offender as one who has been convicted of a
6 most serious offense, and at Subsection (b)(i) of
7 Section (29) at (C) of that it indicates that person
8 has on a prior occasion been convicted of an attempt
9 to commit any crime listed in this subsection. Well
10 that's (29)(b)(i).

11 Let me just ask counsel about that because
12 Subsection (29), does counsel have a copy of the
13 statute in front of them?

14 MR. TUNHEIM: I don't, Your Honor.

15 MR. GREY: I don't either, Your Honor, but I've
16 reviewed it many times if the thrust of the Court's
17 remarks are that all of those statutes, persistent
18 offender statutes read together make an attempt a most
19 serious offense the same as if you'd actually
20 committed the named offense. That is what the statute
21 says.

22 THE COURT: Well, I'm looking at persistent
23 offender, Subsection (29) of .030, Subsection (b)(i)
24 sets forth some specific offenses. Manslaughter in
25 the first degree is not one of those that's set forth

1 in (b)(i). Subsection (C) indicates that an attempt
2 to commit any crime listed in this Subsection
3 (29)(b)(i) would be a persistent offense.

4 MR. GREY: Your Honor, I do have a copy of the
5 statute in my file and my Subsection (i) that appears
6 to apply is number 23, not 29. I don't know.

7 THE COURT: Well, we're obviously not on the same
8 sheet of music.

9 MR. GREY: May I approach, Your Honor?

10 THE COURT: I'm in a 1999 Adult Sentencing
11 Guideline Manual. Where are you?

12 MR. GREY: Well, I'm in RCW, but here's what I'm
13 looking at if I can approach, that might help the
14 Court. This is the subsection that I'm looking at.

15 THE COURT: It's a different designation that I
16 have in my book, so has the law been amended?

17 MR. TUNHEIM: Well, perhaps.

18 THE COURT: Let's look and see what the date of
19 your law is, then.

20 MR. GREY: I may not have a complete enough copy.

21 MR. TUNHEIM: Your Honor, under the definitions
22 of most serious offense, if the Court were to look at
23 the very beginning of that statute where it starts out
24 with "most serious offense" in quotation marks and go
25 on to say means.

1 THE COURT: That's Subsection (25).

2 MR. TUNHEIM: It's 24 in my version but I think
3 it's comparable. It does say any of the following
4 felonies or a felony attempt to commit any of the
5 following felonies, and then manslaughter is listed in
6 that list. So it's actually at the beginning of the
7 definition as opposed to the end.

8 THE COURT: Okay. Let's be clear on what
9 sections of the law we're talking about, and
10 apparently counsel have a different statute than the
11 Court. I'm looking in the pocket part of the RCW
12 9.94A.030 and it indicates that this was the 1999
13 version, so that's the most recent version,
14 Subparagraph (25) is entitled "Most serious offense."
15 That's what you have as 23, I think.

16 MR. GREY: That's correct, Your Honor.

17 MR. TUNHEIM: That's true. I have the newer
18 version that the Court is looking at and I agree it's
19 25.

20 THE COURT: Does say any of the following
21 felonies or a felony attempt to commit any of the
22 following felonies, and as I previously stated,
23 manslaughter in the first degree at Subparagraph (k)
24 is specifically mentioned.

25 MR. GREY: That's correct.

1 MR. TUNHEIM: Yes, Your Honor.

2 THE COURT: That seems clear to the Court that an
3 attempt to commit a manslaughter would be a strike and
4 that is what I've heard counsel acknowledge here
5 today.

6 Was the law any different in 1995 regarding what
7 was a strike -- What's the date of your law, Mr. Grey?

8 MR. GREY: Well, Your Honor, in parenthesis down
9 in the corner of this page which was copied from some
10 RCW it says 1998 edition, but at some point in all of
11 this that was one of the first things that I did, and
12 this most serious offense has always since 5/93 was
13 adopted, it's always contained this language, which
14 essentially make anything listed or an attempt at
15 anything listed under Subsection (23), apparently now
16 at (25), to be a strike offense unless through some
17 quirk of applicable law the attempt would reduce the
18 crime to something other than a felony, and as to each
19 one of these listed ones there isn't one that that
20 could happen on. So that law, that part of the law,
21 that paragraph and how it applies to most serious
22 offenses being characterized as strikes has never
23 changed since the initiative was adopted.

24 THE COURT: All right. That's the Court's
25 belief, that this language has always been there. I

1 bring that up because I've read Mr. Knight's affidavit
2 in which he indicates that he was positive in his own
3 mind that that kidnapping attempted, excuse me, that
4 attempted manslaughter in the first degree was not a
5 strike.

6 MR. TUNHEIM: Your Honor, I have a 1994
7 Sentencing Guidelines Commission Sentencing Manual
8 that's reciting the law as it existed at that time,
9 and I can tell the Court at that time it was
10 Subsection (21) of the same statute, but the language
11 included the felony attempt language that we've
12 indicated earlier included manslaughter in the first
13 degree in the list, so even if 1994 I believe that was
14 the state of the law.

15 THE COURT: As I've indicated that's the Court's
16 understanding, and I don't know how that could have
17 been overlooked.

18 Mr. Knight has indicated that there was some
19 discussion between himself and his attorney at the
20 time in 1995 when he entered the plea of guilty to
21 attempted manslaughter in the first degree. Now let
22 me indicate that that was based upon a plea agreement.
23 Attached to the judgment and sentence in that
24 particular case is a specific finding of fact and
25 conclusion of law dealing with an exceptional

1 sentence. That exceptional sentence was agreed to
2 because the original charge was assault in the first
3 degree and involved allegations of a firearm.
4 Standard range would have been considerably higher
5 than the standard range for first degree attempted
6 manslaughter. Let me also indicate that at the time
7 that Mr. Knight committed the crime which lead to that
8 conviction he was 16 years of age but was treated as
9 an adult because of the nature of the offense being a
10 most serious offense.

11 Mr. Tunheim indicated a few moments ago in his
12 arguments, and I have also determined this to be the
13 case, and that is that the three strikes law,
14 so-called three strikes law does allow for the
15 computation of prior convictions that occurred even
16 before the enactment of the statute. One of the
17 questions the Court is considering here today is
18 whether or not if we assume for the purposes of
19 argument that Mr. Knight did not believe that that
20 offense was a strike at the time that he pled guilty,
21 would that affect this Court's sentence here today.

22 I want to cite for the record the case of State
23 vs. Morley that is found at 134 Wn.2d 588, a 1998
24 decision of the Washington Supreme Court. In that
25 case there were two cases from the trial court that

1 were considered by the Supreme Court. One was
2 regarding Mr. Morley, the other was regarding Mr.
3 James. Each of them had a prior conviction by
4 court-martial. It's quite clear to this Court that at
5 the time that these individuals either entered pleas
6 or were convicted at court-martial they were not told
7 that that was a potential strike in that they weren't
8 dealing with Washington law. The facts of those two
9 cases that are relevant to this Court today are that
10 Mr. Morley's conviction at court-martial was
11 apparently known at the time of sentencing, and there
12 was no problem with the court once the court
13 determined that a court-martial would be looked at
14 just as any other conviction from another jurisdiction
15 in light of Washington law, and the finding was that
16 conviction would be counted as a strike and Morley's
17 sentence was life in prison without possibility of
18 parole.

19 The other individual, Mr. James, did not indicate
20 this prior conviction at the time of his plea of
21 guilty to the current offense, nor did the State know
22 about it. The unusual circumstance is that the family
23 of the victim in Mr. James' case hired a private
24 investor who found this conviction. The trial court
25 then refused to impose life without parole, indicating

1 that it would be inappropriate.

2 The matter went up on appeal, and the Supreme
3 Court said that life imprisonment without the
4 possibility of parole would be appropriate in Mr.
5 James' case if he were convicted. They, however,
6 allowed him to withdraw his plea of guilty based upon
7 the fact that he was not told at the time of
8 sentencing that this conviction existed or that he was
9 facing a potential third strike.

10 Now, I cite all that to indicate that in this
11 particular case there is no question but that Mr.
12 Knight was informed before the matter, the matters, I
13 should say, for which he is today to be sentenced went
14 to trial, that he was facing a potential third strike.
15 This Court's recollection is that there was a colloquy
16 in which I specifically indicated to Mr. Knight that
17 there was at least an allegation that he had two prior
18 strikes and that there were persistent offenses that
19 were being -- or most serious offenses, I should say,
20 that were being charged against him, and if he were
21 convicted he would face the possibility of life
22 imprisonment without possibility of parole. Mr.
23 Knight made a decision at that point to proceed
24 despite advice of counsel which was stated on the
25 record that he not proceed to trial, and the Court

1 wasn't in any position to advise him what he should or
2 should not do, only to advise him of the potential
3 consequences.

4 It is this Court's opinion that the two prior
5 convictions which constitute strikes in this case,
6 that is Cause No. 95-1-199-1, which occurred on April
7 3rd, 1995, attempted manslaughter in the first degree,
8 and Cause No. 97-1-1382-1, robbery in the second
9 degree which occurred on October 24th, 1997, having
10 been shown to be convictions of this defendant, Mr.
11 Knight, are indeed qualifiers as prior convictions
12 under Subsection (29) of RCW 9.94A.030, and that a
13 conviction of another strike in this specific
14 situation then brings into play the persistent
15 offender provisions. That is the conclusion that I've
16 reached after considering all of the authorities that
17 have been cited to me as well as statutes and cases
18 concerning this particular area of law.

19 That having been said, the Court will in a moment
20 impose the appropriate sentence. Before I do so, Mr.
21 Knight, you do have an opportunity to speak. Is there
22 anything that you wish to say before I pronounce
23 sentence?

24 MR. KNIGHT: No.

25 THE COURT: Mr. Knight, this case is a tragedy.

1 Most criminal cases that come before the Court are
2 tragedies in one way or another. They're tragedies to
3 the victims, they're tragedies to society, and often
4 they're tragedies to those that care for a defendant.
5 When I use the term tragedy, however, I'll point out
6 that a defendant is responsible for the results of his
7 or her actions.

8 I did order a Presentence Investigation Report
9 because I wanted to be sure that I carefully
10 considered your situation even though the law ties the
11 hands of a judge when a person has been convicted on a
12 third occasion of a most serious offense and is
13 identified as a persistent offender. I say that this
14 case is a tragedy because, despite your young age, you
15 have an atrocious criminal history. It takes up a
16 whole page of the Presentence Investigation Report
17 including juvenile convictions, misdemeanor
18 convictions and your adult felony record.

19 One of the purposes of the criminal justice
20 system is to hopefully rehabilitate an individual, to
21 teach them a lesson. It does not appear that you
22 learned from your prior mistakes. You were convicted
23 of attempted manslaughter in the first degree in a
24 plea bargain situation that involved the firing of a
25 weapon at another individual. Luckily, that

1 individual was not killed or injured. This was a
2 gang-related situation and a specific aggravating
3 circumstance to that effect was found. You pled
4 guilty to that crime to take advantage of a lesser
5 prison sentence than would have otherwise been the
6 case had you been convicted of assault in the first
7 degree, that is, an assault with an intent to kill.
8 That was in 1995. You were sentenced in April to 38
9 months.

10 About two years later, two years and four months,
11 you were back before the court for a crime that
12 occurred in August of 1997 and that was robbery in the
13 second degree in which by force or threat of force you
14 took property of another. I understand that this
15 involved an allegation of robbing someone who may have
16 been involved in drugs or was allegedly involved.
17 That does not take away from the fact that this was a
18 crime against a person that consisted of a threat or
19 use of force and was properly a robbery in the second
20 degree. Both of those matters are strikes.

21 You were also convicted in October of 1999 of
22 possession of stolen property in the second degree in
23 Pierce County. One hopes that an individual will
24 learn a lesson. Your indication that your attorney at
25 the first sentencing or in discussions regarding that

1 told you that this would not be a strike is to this
2 Court incredible. The statute seems clear. I don't
3 know how anyone could read the statute otherwise,
4 since it specifically says an attempt to commit one of
5 the following crimes and specifically sets forth
6 manslaughter in the first degree.

7 There has been some talk in the media about the
8 three strikes law recently and some indicate that the
9 crime, the crimes for which this three strikes law
10 applies are sometimes crimes that don't seem very
11 serious. I'm of the opinion that the victims in those
12 crimes would feel otherwise.

13 Most recently a young woman who had a serious
14 drug problem who continued to commit second degree
15 robberies of small grocery stores in which she
16 indicated that she had a weapon, indication was she
17 never had a weapon. I'm sure the victim at the time
18 they were told there was a weapon was involved would
19 argue that that really doesn't make that much
20 difference. I'll indicate that that's -- that
21 publicity is somewhat unusual in that a couple months
22 before that, I should say a few months before that,
23 there was an article in the newspaper that indicated
24 that the three strikes law really wasn't much of a
25 deterrent because it wasn't used very often.

1 I say all that to say this, the legislature has
2 created this statutory scheme. It is the
3 legislature's province to enact statutes which deal
4 with the appropriate punishment for an offense. In
5 some cases a judge is given discretion. This is a
6 case in which the judge is not given any discretion
7 whatsoever. The legislature has mandated that after a
8 third strike conviction the court must sentence to
9 life imprisonment without parole.

10 That is my duty as a judge to follow that law,
11 and I will do so in this case and impose a sentence of
12 life in prison without the possibility of parole for
13 the crimes of assault in the second degree, Count I;
14 assault in the second degree, Count IV.

15 We are here for sentencing in three other felony
16 matters, there's felony harassment, Count III. Well,
17 I may have misstated the count numbers, yes, Count
18 III; and felony harassment, Count VI in Cause No.
19 99-1-929-4. There is also attempting to elude a
20 pursuing police vehicle in 99-1-591-4, and let me
21 indicate in each of those matters I'm going to impose
22 the top of the standard range, even though that's
23 academic, for felony harassment, Count III and Count
24 VI, 60 months. For attempting to elude a pursuing
25 police vehicle in the other cause number, 29 months.

1 I must by law impose a \$500 crime victim
2 assessment in each cause number. Because of the
3 nature of the sentence in this case I'm not going to
4 impose any court-appointed attorney's fees, nor will I
5 impose a filing fee. I have the power to waive those
6 and I will do so.

7 I am not going to impose a no contact order in
8 this particular case as to the victim Thomas because
9 as I said at the time of the conviction when I ordered
10 a Presentence Investigation Report, under the
11 circumstances of this case I don't feel that that's
12 necessary, and Kyndra Thomas can have contact with Mr.
13 Knight as the father of her child if she chooses.
14 I'll order no contact with Lacrosha Jordan for the
15 maximum period which would be 10 years.

16 I believe that there is a requirement of imposing
17 community placement, is there not, even though this is
18 life without parole?

19 MR. TUNHEIM: As to the harassment charges there
20 would be community placement. The assault there would
21 not be because of the sentence, and I believe the
22 eluding there is no community placement so it would
23 only be for the harassment.

24 THE COURT: By operation of law, then, I will
25 impose that community placement for the two felony

1 harassment charges, Counts III and Count VI.

2 Are there other sentence matters that need to be

3 addressed by the Court?

4 MR. GREY: Not from the defense, Your Honor.

5 MR. TUNHEIM: Not that I can think of at this

6 point, Your Honor. I'm just completing the judgment

7 and sentences. It will be a moment for me to finish

8 the paperwork.

9 THE COURT: While we're doing that I want to

10 advice you, Mr. Knight, that because this was a

11 conviction that occurred by jury, you have the right

12 to an appeal. If you cannot afford to hire an

13 attorney, an attorney will be appointed for you for

14 the appeal.

15 I do have some paperwork in the file indicating

16 that you are going to be requesting that Mr. Knight be

17 found indigent for the purposes of appeal. Is that

18 correct, Mr. Grey?

19 MR. GREY: That's correct, Your Honor. I've

20 filed that motion and then Mr. Tunheim has just

21 approved and I will hand up to the Court an order on

22 indigency for review which I believe I've already

23 given the Court a draft of.

24 THE COURT: I'll also indicate that there are

25 time limits, and if you do not file a notice of appeal

1 within the appropriate time limits an appeal would not
2 be possible. And so I am going to approve this order
3 of indigency and the Office of Public Defender I guess
4 will, or is that the appellate court that makes that
5 appointment of an attorney for appeal?

6 MR. GREY: Your Honor, there's a mechanism in
7 place here which I've never fully understood which
8 used to involve Ms. Foster and now involves Mr. Graham
9 with regard to appellate counsel on appeal. The
10 process in the past is to have the order that the
11 Court is approving now done and then all the papers
12 are placed in the hands of Mr. Graham and then
13 ultimately it turns out usually that Mr. Quillian or
14 Mr. Doyle ends up as appellate counsel, but it's not a
15 process that occurs through our office.

16 THE COURT: It does say the Superior Court
17 Administrator is directed to make the necessary
18 arrangements for an attorney here in the language. I
19 think that is the case.

20 In any event, I have informed Mr. Knight that he
21 has the right to appeal. I have found that he would
22 be indigent and that counsel will be appointed for him
23 at his request, and I'll leave it to the appropriate
24 appointed attorney, then, to proceed in whatever
25 fashion is appropriate.

1 MR. GREY: I may, Your Honor, just for the sake
2 of matters not getting lost in the shuffle, I may file
3 the notice of appeal, but then I think from that point
4 on it will be appellate counsel that will work with
5 these matters.

6 THE COURT: There's one other thing that I want
7 to state on the record, although I think it's obvious
8 and it wasn't addressed by counsel because it's so
9 obvious, and that is as a juvenile in June of 1992 Mr.
10 Knight was convicted of assault in the second degree.
11 However, case authority clearly points out that in the
12 State of Washington a juvenile conviction, actually
13 it's called an a juvenile adjudication, does not meet
14 the definition of an offense under the SRA and does
15 not qualify as a strike. I assume that counsel agree
16 with that and that's why it wasn't addressed at all.

17 MR. GREY: We do, Your Honor, and it's a
18 nonissue.

19 MR. TUNHEIM: Yes, sir.

20 THE COURT: Mr. Knight, this Court having
21 pronounced sentence I've now been handed proposed
22 judgment and sentence in each of the two cause
23 numbers. I've reviewed those forms and they appear to
24 be consistent with my oral ruling. I note that you've
25 affixed your fingerprints to each of the judgment and

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sentence forms, you've signed each, your attorney, Mr. Grey, has signed each, and so I will now sign each of those judgment and sentence forms in open court in your presence, the presence of your attorney, the presence of Mr. Tunheim, the Deputy Prosecutor. I'll also sign in each case the warrant of commitment. Good luck to you.

Be in recess.

(Court in recess.)

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
COUNTY OF THURSTON)

I, PAMELA R. JONES, RMR, Official Reporter of the Superior Court of the State of Washington, in and for the County of Thurston, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter, as designated by Counsel to be included in the transcript, and that the transcript is a true and complete record of my stenographic notes.

Dated this the _____ day of September, 2000.

PAMELA R. JONES, RMR
Official Court Reporter
CCR No. JO-NE-SP-R474P1