

NO. 49672-1-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

CARLOS AVALOS,

Appellant.

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**BRIEF OF RESPONDENT**

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**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. ISSUES PRESENTED .....1

    1. Are there grounds here for an appeal of a standard range sentence?.....1

    2. Should this appeal be denied because the trial court did consider Avalos’ alleged “youthfulness” prior to imposing a standard range sentence? .....1

    3. Did Avalos’ trial counsel render ineffective assistance where he argued for leniency based on Avalos’ age but declined to argue that Avalos should receive an exceptional sentence based on his age given Avalos was almost 20 years-old when committed the offense?” .....2

III. STATEMENT OF THE CASE .....2

IV. ARGUMENT .....7

    A. Avalos’ Statement That Youthfulness Is A Mitigating Factor Does Not Justify Review Of His Standard Range Sentence. ....7

        1. Avalos’ youthfulness argument is waived on appeal. ....8

        2. Because Avalos was legally an adult with substantial criminal history at the time of his offense, there was no substantial or compelling evidence of youthfulness as a mitigating factor.....8

        3. Avalos’ alleged youthfulness was considered by the sentencing court.....10

    B. Trial Counsel Was Not Ineffective. ....12

V. CONCLUSION .....14

## TABLE OF AUTHORITIES

### Cases

<i>State v. Aho</i> , 137 Wn.2d 736, 975 P.2d 512 (1999).....	13
<i>State v. Avalos</i> , 195 Wn. App. 1035 (2016) (unpublished).....	1, 6
<i>State v. Calhoun</i> , 163 Wn. App. 153, 257 P.3d 693 (2011).....	8
<i>State v. Garcia–Martinez</i> , 88 Wn. App. 322, 944 P.2d 1104 (1997).....	10
<i>State v. Ha’ mim</i> , 82 Wn. App. 139, 916 P.2d 971 (1996), aff’d, 132 Wn.2d 834, 940 P.2d 633 (1997).....	11, 13
<i>State v. Houston-Sconiers</i> , ___ Wn.2d ___, 391 P.3d 409 (2017).....	9
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	13
<i>State v. O’Dell</i> , 183 Wn.2d 680, 358 P.3d 359 (2015).....	passim
<i>State v. Ramos</i> , 187 Wn.2d 420, 387 P.3d 650 (2017).....	9
<i>State v. Ronquillo</i> , 190 Wn. App. 765, 361 P.3d 779 (2015).....	9
<i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997).....	13
<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987).....	12

<i>State v. Tilton</i> , 149 Wn.2d 775, 72 P.3d 735 (2003).....	13
<i>State v. Worl</i> , 129 Wn.2d 416, 918 P.2d 905 (1996).....	8
<i>Strickland v. Washington</i> , 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984).....	12

**Statutes**

RCW 9.94A.525(5)(a)(i).....	6
RCW 9.94A.535.....	8, 14
RCW 9.94A.585(1).....	10
RCW 9A.36.021(a).....	1

## I. INTRODUCTION

Appellant, Carlos Avalos, was convicted of Second Degree Assault for intentionally stabbing a corrections officer while serving a sentence in the Clallam Bay Corrections Center. RCW 9A.36.021(a); CP at 88-98, 104-05, 311. He was later sentenced to a standard range sentence of 70 months on this offense. This is Avalos' second appeal of that sentence. CP at 8; *See also State v. Avalos*, 195 Wn. App. 1035 (2016) (unpublished).

In this appeal, Avalos claims that the sentencing court should have imposed an exceptional sentence based on his alleged youthfulness. Avalos also claims his trial counsel was ineffective in not requesting such a sentence. This Court should reject these claims and affirm Avalos' standard range sentence because there was neither ineffective assistance nor trial court error, and Avalos has failed to show any prejudice occurred during his sentencing hearing. The sentence imposed by the trial court should be affirmed.

## II. ISSUES PRESENTED

1. **Are there grounds here for an appeal of a standard range sentence?**
2. **Should this appeal be denied because the trial court did consider Avalos' alleged "youthfulness" prior to imposing a standard range sentence?**

3. **Did Avalos' trial counsel render ineffective assistance where he argued for leniency based on Avalos' age but declined to argue that Avalos should receive an exceptional sentence based on his age given Avalos was almost 20 years-old when committed the offense?"**

### III. STATEMENT OF THE CASE

On February 3, 2014, defendant Carlos Avalos (age 19, date of birth March 15, 1994) was incarcerated at Clallam Bay Corrections Center. He obtained a metal shank that was shaped like the blade of a knife and was approximately four-inches in length. CP at 311-14. During a break from an educational class, Avalos snuck up on corrections officer Eric Huether, who was seated at a computer desk. He used the shank to repeatedly stab Officer Huether in the head and neck. *Id.* Avalos was charged with and tried for Assault in the First Degree. Ultimately, the jury found him guilty of the lesser included offense of assault in the second degree. CP at 88.

Avalos testified at trial that he brought the metal shank to an education lab at prison. 02/12/15 Report of Proceedings<sup>1</sup> at 480-83, 501. When Avalos returned from a bathroom break, he snuck up behind a corrections officer and repeatedly stabbed the officer around the officer's head, neck and near his eye. *Id.* at 484-88, 509-10, 513-14. Avalos chased

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<sup>1</sup> Unless otherwise indicated, references to the Report of Proceedings are dated and listed as RP's.

after the officer with the weapon until Avalos was restrained by other officers. *Id.* at 490-94.

Avalos further testified that he stabbed the officer because he wanted to send a message to everyone in the prison not to disrespect him. *Id.* at 487, 505. The officer required stitches to close the wounds. 02/11/15 RP at 230. Due to his injuries, the officer was on medical leave for ten months. 3/10/15 RP at 9.

At the time of the current offense, Avalos was serving a 10-year exceptional sentence for earlier charges of assault in the second degree with a deadly weapon, custodial assault and second degree malicious mischief. CP at 104-05, 281-95. In that case, Avalos had been convicted of using a plastic shank to stab counselor Marshall Brockaway while detained at the Juvenile Rehabilitation Administration (JRA) in 2012. CP at 281-83. Brockaway was stabbed in the arm and the chest. Avalos was 18-years-old when he stabbed Mr. Brockaway. *Id.* Avalos was originally charged with assault in the first degree for stabbing Mr. Brockaway, but was allowed to plead guilty to assault in the second degree in exchange for a stipulated sentencing recommendation of 10 years-the statutory maximum. CP at 276-79, 294-95.

In addition to the case at bar, Avalos also has numerous other felony convictions for assaulting or destroying property belonging to corrections

staff or police officers. The current conviction is his sixth felony conviction for assaulting a corrections staff member. In addition to stabbing Officer Huether in 2014, Avalos has also been convicted of the following offenses:

- 2012: Assault in the Second Degree for stabbing JRA counselor Marshall Brockaway as described above.
- 2012: Custodial Assault for striking a security officer in the face While detained at JRA. CP at 281-83, 297-305.
- 2012: Malicious Mischief in the Second Degree for damaging his cell while detained at JRA. *Id.*
- 2010: Custodial Assault for punching a security officer in the head when the officer attempted to intervene after Avalos attacked a rival gang member. CP at 265-273.
- 2010: Custodial Assault for assaulting a second security officer who also tried to intervene in the same incident described above. *Id.*
- 2007: Escape in the First Degree for escaping from a JRA detention facility (Echo Glen) while detained on a felony conviction. CP at 244-59.
- 2006: Custodial Assault for throwing a container of his own feces at a security officer while detained at JRA. CP at 225-41.
- 2005: Malicious Mischief in the First Degree for throwing rocks at a police patrol car and damaging the car. CP at 166-89.

Avalos was sentenced on March 10, 2015. Each party submitted sentencing memoranda to the court. Avalos' trial counsel wrote, in pertinent part,

There are several mitigating factors present in this case...  
.First, Mr. Avalos is still extremely young. He was 19 when this incident happened, and is only 20 years old right now. Although he is legally an adult, there is serious question about his abilities to plan for the future and recognize the full consequences of his actions because of his youth.

CP at 101.

During the hearing, trial counsel asked whether the court had read that sentencing memorandum, and the court confirmed that it had. 3/10/15 RP at 5. Counsel also verbally argued for leniency due to Avalos' age, stating that the "second strike" was itself a substantial punishment for such a "very young man." *Id.* at 6-7. Counsel noted that Avalos has "had a lot of issues" including juvenile convictions, and that history has precluded him the opportunity to get an education or otherwise better himself in the ways many young people do. *Id.*

Counsel also disputed the offender score calculation offered by the State. The State alleged the score was "8," making Avalos' sentencing range 53-70 months of imprisonment. On the other hand, Avalos' counsel argued that two of Avalos' juvenile convictions were the "same criminal conduct." 3/10/15 RP at 14-15. Counsel argued Avalos' offender score was a "7" with a standard sentence range of 43-57 months. *Id.* at 7. The State recommended a 70-month sentence while counsel argued for 43 months. *Id.* at 3, 7.

The court determined the offender score to be 8, and then recounted the facts of the offense as produced at trial. Specifically, the court noted Avalos' trial testimony that the attack was by ambush and consisted of approaching Officer Huether from behind, stabbing him multiple times in the neck, face and throat, "and but for luck [Huether] he wasn't hit in some tremendously serious place." *Id.* at 17-18. The court concluded, "I think that the attack was cowardly and I think that the range that has been suggested by the State at the high end is entirely appropriate." *Id.* at 18-19. However, the court concluded its remarks by stating:

Mr. Avalos, I realize I've imposed the high end of the range, but I agree with all the things that your attorney said about you and your life. You're a young man. You've got your whole life ahead of you. It would be great if you could get an education when you're in prison, if you could turn your life around, get out and have a nice, long, happy, healthy life, but ultimately it's up to you.

*Id.* at 21.

The issue of Avalos' offender score was appealed. *State v. Avalos*, 195 Wn. App. 1035 (2016) (unpublished). The appellate court determined that the sentencing judge should have formally conducted a "same criminal conduct" analysis pursuant to RCW 9.94A.525(5)(a)(i), and remanded for resentencing. *Avalos* Opinion at 4.

At the second sentencing hearing, counsel again argued for age-based leniency. CP at 12-14. The court conducted the required “same criminal conduct” analysis and held:

I think we were looking at the same sentencing range earlier in March of 2015, when the original sentence was entered and the court imposed the high end then of 70 months and I think that’s the high end that the court can impose today which the court will do, **for the reasons stated in March of 2015**. I think 70 months is certainly appropriate.

11/22/16 RP at 5 (emphasis added).

Avalos now appeals. CP at 8.

#### IV. ARGUMENT

##### A. **Avalos’ Statement That Youthfulness Is A Mitigating Factor Does Not Justify Review Of His Standard Range Sentence.**

Avalos argues that his sentence was improper because the trial court allegedly did not consider his age before imposing a sentence within the standard range. His argument is without merit for three reasons. First, the “youthfulness” analysis does not apply to Avalos, who was an adult when he committed his crime. Second, the trial court did consider Avalos’ age before imposing his sentence. Finally, Avalos waived this argument by not raising it before the trial court or in his previous appeal. Thus, his appeal should be denied.

**1. Avalos' youthfulness argument is waived on appeal.**

“Once an issue is decided on appeal, it cannot be reargued unless the decision in the prior appeal is clearly erroneous.” *State v. Calhoun*, 163 Wn. App. 153, 168, 257 P.3d 693, 700 (2011) (citing *State v. Worl*, 129 Wn.2d 416, 425, 918 P.2d 905 (1996)). Here, Avalos offers no argument that his offender score or standard sentence range was clearly erroneous. He instead attempts to have this Court substitute its discretion for that of the trial court. Because age was presented and rejected as a mitigating factor at Avalos' first sentencing hearing, and Avalos did not appeal that decision, this Court need not consider that untimely claim here.

**2. Because Avalos was legally an adult with substantial criminal history at the time of his offense, there was no substantial or compelling evidence of youthfulness as a mitigating factor.**

Avalos was nearly twenty years old when he committed his crime. Nonetheless, he argues that the sentencing court was required to consider his “youthfulness” before imposing sentence. A sentencing court may only impose a sentence outside the standard sentence range for an offense if it finds “that there are substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.535. Because no such evidence exists in this case, Avalos' argument is without merit.

Avalos' claim that the sentencing court erred overstates the authority he cites. *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015) is the only cited authority that involves the sentencing of an individual who was legally an adult (i.e. age 18 or older) when s/he committed the underlying crime(s). *State v. Houston-Sconiers*, \_\_\_ Wn.2d \_\_\_, 391 P.3d 409 (2017), on the other hand, involved two defendants who were 17 and 16 years old, respectively. *Id.*<sup>2</sup>

For his part, O'Dell was 18 years and 10 days old when he committed his crime. *O'Dell* at 683. In a five-to-four decision, the *O'Dell* court held that "a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on an offender like O'Dell, who committed his offense just a few days after he turned 18." *Id.* at 696.

Here, Avalos' case fails to implicate any of the principles *O'Dell* espouses. Avalos was forty days from his twentieth birthday when he assaulted Officer Heuther. It was the sixth time he was criminally charged with assaulting custodial staff or security officers. The offense immediately preceding the Heuther assault was committed shortly after Avalos had

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<sup>2</sup> There are other Washington opinions, both published and unpublished, in which a youthfulness analysis was undertaken. However, in all other cases in which the defendant was deemed "youthful," the defendant was under age 18 when s/he committed the underlying crime(s). See e.g. *State v. Ronquillo*, 190 Wn. App. 765, 361 P.3d 779 (2015) (16-year-old defendant was in a vehicle involved in a drive-by shooting); *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017) (14-year-old defendant convicted of first degree murder).

turned eighteen, and resulted in an agreed exceptional sentence of ten years in prison. In short, regardless of his relatively young age, Avalos was uniquely and extensively experienced regarding the commission and sanctioning of staff assault when he decided to attack Officer Heuther.

Avalos was not “an offender like O’Dell,” who had just turned eighteen, was still in high school, and had an offender score of zero. *Id.*; Appendix A.<sup>3</sup> Rather, he was a nearly twenty year-old man who was before a sentencing judge for at least the ninth time. The youthfulness analysis simply does not apply. Avalos’ appeal should be denied.

**3. Avalos’ alleged youthfulness was considered by the sentencing court.**

Under the SRA, a defendant generally may not appeal a standard range sentence. RCW 9.94A.585(1). However, a defendant may appeal such a sentence if the trial court refused to exercise its discretion. *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). “A court refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances; i.e., it takes the position that it will never impose a sentence below the standard range.” *O’Dell* at 702 (Fairhurst dissenting) (citing *Garcia-Martinez, supra*).

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<sup>3</sup> The court’s judgment and sentence from the *O’Dell* case is attached hereto as Appendix A.

Such was the case in *O'Dell, supra*. There, the trial judge felt constrained by *State v. Ha'mim*, 82 Wn. App. 139, 916 P.2d 971 (1996), *aff'd*, 132 Wn.2d 834, 940 P.2d 633 (1997), and determined that it legally could not grant an exceptional sentence based on youthfulness. *O'Dell* at 686. However, the Supreme Court later clarified that:

[*Ha'mim*] did not bar trial courts from considering a defendant's youth at sentencing; it held only that the trial court may not impose an exceptional sentence *automatically* on the basis of youth, absent any evidence that youth in fact diminished a defendant's culpability.

*Id.* at 689 (*emphasis added*).

Thus, even if the *O'Dell* opinion had not been issued prior to Avalos' resentencing, counsel could have still asked for a youthfulness-based exceptional sentence based on *Ha'mim*. Likewise, the trial court could have imposed an exceptional sentence at either the 2015 or 2016 sentencing hearing if it chose to do so. The fact that an exceptional sentence was neither asked for nor received does not reflect error in the proceedings. Rather, it is a reflection of the absurdity of suggesting such an exceptional sentence has any reasonable chance of being imposed given Avalos' substantial and recent history of similar offenses.

Nonetheless, Avalos' status as a young man was at the forefront his sentencing hearing. It was argued as a mitigating factor by Avalos' trial

counsel, and that argument was fully considered by the court as reflected in its comments to Mr. Avalos:

Mr. Avalos, I realize I've imposed the high end of the range, but I agree with all the things that your attorney said about you and your life. You're a young man. You've got your whole life ahead of you. It would be great if you could get an education when you're in prison, if you could turn your life around, get out and have a nice, long, happy, healthy life, but ultimately it's up to you.

3/10/15 RP at 21.

Clearly, the trial court was presented with argument regarding Avalos' youth as a mitigating factor and rejected it. This exercise of discretion was appropriate given the full context of Avalos' case. There is no appealable error before this Court, so Avalos' appeal should be denied.

**B. Trial Counsel Was Not Ineffective.**

Avalos finally claims he was deprived of effective assistance of counsel because his attorney did not request an exceptional sentence below the standard range based on *O'Dell*. To establish ineffective assistance of counsel, a defendant must show that his attorney's performance was deficient and that he was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). The first prong is met by showing that counsel's conduct fell below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705–06, 940 P.2d 1239

(1997). The second prong is met by showing that, but for counsel's errors, the result would have been different. *State v. McFarland*, 127 Wn.2d 322, 334–35, 899 P.2d 1251 (1995). There is a strong presumption that counsel provided effective assistance. *State v. Tilton*, 149 Wn.2d 775, 784, 72 P.3d 735 (2003). If defense counsel's trial conduct can be characterized as legitimate trial strategy or tactics, it cannot provide a basis for a claim of ineffective assistance of counsel. *State v. Aho*, 137 Wn.2d 736, 745, 975 P.2d 512 (1999).

Here, Avalos' trial counsel did argue multiple times that his age should be considered a mitigating factor at sentencing. CP at 12-14, 101; 3/10/15 RP at 6-7. However, as noted above, *O'Dell* and *Ha'mim* do not permit a sentencing court to “automatically” impose an exceptional sentence based on age alone. Instead, there must be some accompanying evidence concerning whether the defendant's age diminished his capacity to appreciate the wrongfulness of his conduct or conform that conduct to the requirements of the law. *O'Dell* at 698.

In March 2015, counsel argued for a sentence at the bottom of the standard range, in part, because Avalos was “still extremely young.” CP at 12 Counsel also argued for age-based lenience during Avalos' second sentencing hearing in November 2016. CP at 12-14. However, as noted above, imposition of an exceptional sentence is only permitted where “there

are substantial and compelling reasons.” RCW 9.94A.535. Given Avalos’ history of similar offenses, it is highly likely that trial counsel made the choice not to diminish Avalos’ chances for leniency by making a baseless request for an exceptional sentence here. Considering the vigorous advocacy Avalos was afforded at all stages of the proceedings below, this Court should adhere to the strong presumption of effective assistance, and decline to hold that trial counsel was deficient in not advocating for an undoubtedly doomed exceptional sentence.

Even assuming Avalos’ counsel erred, however, there is no evidence of prejudice. Given his history of similar offenses, it is not reasonably probable the trial court would have exercised its discretion to grant a sentence below the standard range even if specifically asked to do so. Avalos’s claim should be rejected.

#### V. CONCLUSION

For the foregoing reasons, Avalos’ standard range sentence should be affirmed.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of May, 2017.

ROBERT W. FERGUSON  
Attorney General



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JOSHUA CHOATE, WSBA #30867  
Assistant Attorney General

# Appendix A

FILED  
DEBRA VAN PELT  
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13-9-001853

**Superior Court of Washington  
County of Island**

**State of Washington, Plaintiff,**

**No. 12-1-00111-2**

vs.

**AMENDED Felony Judgment and Sentence --**

Jail One Year or Less

Prison

Prison, RCW 9.94A.507

(Sex Offense and Kidnapping of a Minor Offense)

(FJS)

Clerk's Action Required, para 2,1, 4.1, 4.3a,  
4.3b, 5.2, 5.3, 5.5, 5.7 and 5.9

Defendant Used Motor Vehicle

SEAN THOMPSON O'DELL,  
Defendant.

SID: WA26648384  
DOB: 5/11/1994

M. Zick

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, Jennifer Bouwens, and the Island County Prosecuting Attorney Gregory M. Banks, or his deputy, Chris Anderson, were present.

**II. Findings**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
 jury-verdict January 18, 2012:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
1	Rape of a Child 2° Crime Code: 0082700 OIN: 12-C0675	9A.44.076	FA	5/20/2012

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

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

Additional current offenses are attached in Appendix 2.1a.

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

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

- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.839.
- The offense was predatory as to Count \_\_\_\_\_. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- This case involves **kidnapping** in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.602, 9.94A.533.
- Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.
- Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm**. The defendant was a **criminal street gang member** or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.\_\_\_\_.
- The defendant committed  **vehicular homicide**  **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crime(s) charged in Count \_\_\_\_\_, **domestic violence** was pled and proved. RCW 10.99.020.
- Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- The offense in Count(s) \_\_\_\_\_ was committed in a county jail or state correctional facility and the offense is a violation of RCW 69.50.401(2) or 69.50.410 or 69.50.4013. RCW 9.94A.533(5).
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<b>Crime</b>	<b>Cause Number</b>	<b>Court (county &amp; state)</b>	<b>DV Yes</b>
1.	N/A			

DV: Domestic Violence was pled and proved.

Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

**2.2 Criminal History (RCW 9.94A.525):**

	<b>Crime</b>	<b>Date of Crime</b>	<b>Date of Sentence</b>	<b>Sentencing Court (County &amp; State)</b>	<b>A or J Adult, Juv.</b>	<b>Type of Crime</b>	<b>DV* Yes</b>
1	None known to the State at this time.						

DV: Domestic Violence was pled and proved.

Additional criminal history is attached in Appendix 2.2.

The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) \_\_\_\_\_, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

**2.3 Sentencing Data:**

<b>Count No.</b>	<b>Offender Score</b>	<b>Seriousness Level</b>	<b>Standard Range (not including enhancements)</b>	<b>Plus Enhancements*</b>	<b>Total Standard Range (including enhancements)</b>	<b>Maximum Term</b>
1	0	XI	78-102 months		78-102 months	Life and/or \$50,000 fine

(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

Additional current offense sentencing data is attached in Appendix 2.3.

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

**2.4 [ ] Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

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

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

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

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

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

**2.5 Ability to Pay Legal Financial Obligations.** The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

[x] That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

\_\_\_\_\_

[ ] The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

### III. Judgment

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

3.2 [ ] The defendant is found **not guilty** of Counts \_\_\_\_\_ in the charging document.

3.3 [ ] The court **dismisses** Counts \_\_\_\_\_ in the charging document.

### IV. Sentence and Order

**It is ordered:**

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

(a) ~~**Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC)~~

\_\_\_\_\_ months on Count \_\_\_\_\_

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

[ ] The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for [ ] firearm [ ] deadly weapon [ ] sexual motivation [ ] VUCSA in a protected zone [ ] manufacture of methamphetamine with juvenile present [ ] sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: \_\_\_\_\_.

~~All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement 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.589.~~

~~Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_~~

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

\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

~~Actual number of months of total confinement ordered is: \_\_\_\_\_~~

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

~~The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_  
but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.~~

~~Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_~~

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

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

~~**Conversion of Jail Confinement** (Use only for unlawful imprisonment. This is not available for violent or sex offenses). RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.~~

~~The defendant shall receive credit for time served in an available county supervised community option prior to sentencing. The jail shall compute time served.~~

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

~~**Alternatives to total confinement** were not used because of: \_\_\_\_\_~~

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

(c) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 1 minimum term: 95 months maximum term: Statutory Maximum  
Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Statutory Maximum

(d) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(e)  **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

#### 4.2 Community Custody.

**Prison:** RCW 9.94A.501, .507, .663, .665, .701, .702

(A) The defendant shall be on community custody for:

For count 1, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

~~Jail: (RCW 9.94A.505, .702)~~

~~(A) The defendant shall serve \_\_\_\_\_ months in community custody.~~

~~The court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.701 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a) and for offenses after June 12, 2008 for unlawful possession of a firearm with a finding that the defendant was a member or associate of a criminal street gang.~~

~~(Sex offenses, only) **Community Custody** for Count(s) \_\_\_\_\_, sentenced under RCW 9.94A.507, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.~~

~~The defendant shall report in person to the local Department of Corrections office in the defendant's county of residence within 72 hours of sentencing. If in custody of county jail at sentencing, the defendant shall report in person within 72 hours of release. The Island County office of the Department of Corrections is located at 499 NE Midway Blvd., Suite 1, Oak Harbor, WA 98277. Toll free (888) 801-6618. (360) 675-9031.~~

~~(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) shall obey all laws; (10) for sex offenses, submit to electronic~~

monitoring if imposed by DOC; and (11) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

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

consume no alcohol.

consume no controlled substances except pursuant to lawfully issued prescriptions.

have no contact with: A.J.N.

remain  within  outside of a specified geographical boundary, to wit:

not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

participate in the following crime-related treatment or counseling services: As contained in Appendix A, attached hereto and incorporated herein by reference

undergo an evaluation for treatment for  domestic violence  substance abuse

mental health  anger management, and fully comply with all recommended treatment. \_\_\_\_\_

comply with the following crime-related prohibitions:  contained in Appendix A, attached hereto and incorporated herein by reference.

Other conditions:

Comply with the terms and conditions set forth in Appendix A, attached hereto and incorporated herein by reference.

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

(D) The conditions of community custody shall begin immediately upon release from confinement unless otherwise set forth here: \_\_\_\_\_

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

**4.3a Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

PCV \$ 500.00 Victim assessment RCW 7.68.035

PDV \$ \_\_\_\_\_ Domestic Violence assessment RCW 10.99.080

CRC \$ 217.00 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

	Criminal filing fee	\$ <u>200.00</u>	FRC	
	Witness costs	\$ _____	WFR	
	Sheriff service fees	\$ <u>17.00</u>	SFR/SFS/SFW/WRF	
	Jury demand fee	\$ _____	JFR	
	Extradition costs	\$ _____	EXT	
	Other	\$ _____		
<i>PUB</i>		\$ <u>400.00</u>	Fees for court appointed attorney	RCW 9.94A.760
<i>WFR</i>		\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
<i>FCM/MTH</i>		\$ _____	Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW, [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430	
<i>CDF/LDI/PCD</i> <i>NTF/SAD/SDI</i>		\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
<i>CLF</i>		\$ _____	Crime lab fee [ ] suspended due to indigency	RCW 43.43.690
<i>DNA</i>		\$ <u>100.00</u>	DNA collection fee	RCW 43.43.7541
<i>FPV</i>		\$ _____	Specialized forest products	RCW 76.48.140
<i>RTN/RJN</i>		\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) Agency: _____	RCW 38.52.430
<i>DFA</i>		\$ _____	Contribution to Island County Drug Fund, Revenue Code 1333921230-0351500	RCW 9.94A.030(27)
		\$ _____	Other fines or costs for: _____ Including booking fees per RCW 70.48.390	
<i>RTN/RJN</i>		\$ <u>reserved</u>	Restitution to: <u>A.J.N. – address to be provided</u>	
		\$ <u>500.00</u>	Restitution to: <u>Micah &amp; Rebecca Noack – address to be provided</u>	
		\$ <u>867.10</u>	Restitution to: crime <u>Victim's Compensation, P.O. Box 44835, Olympia, WA 98504-4835 (Claim Nos. VN35593 &amp; VR87002)</u>	
		\$ <u>515.25</u>	Restitution to: <u>ACS Recovery Services, P.O. Box 4003, Schaumburg, IL 60169-4003 (Case ID 16147567)</u>	

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ 3099.35 **Total AS PREVIOUSLY ORDERED** RCW 9.94A.760

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

[X] shall be set by the prosecutor.

is scheduled for \_\_\_\_\_ (date).

The defendant waives any right to be present at any restitution hearing (sign initials): SD.

**Restitution** Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

Name of other defendant      Cause Number      (Victim's name)      (Amount-\$)

R/JN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$50.00 per month commencing 30 days after release from confinement. RCW 9.94A.760. Any monies received while incarcerated shall be immediately applied to legal financial obligations as specified in Chapter 72.09 RCW.

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

Defendant shall meet with the Island County Collection's Clerk within 72 hours of release from custody to establish or review the appropriateness of the collections schedule.

The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

If sentenced to County jail, Defendant must meet with the County Clerk Collections Deputy prior to release from custody.

The Clerk is authorized to collect from the defendant up to \$100 per year for costs of collection services. RCW 36.18.190 and RCW 9.94A.780(5).

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

**4.3b [ ] Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$ \_\_\_\_\_.

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

**HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:** The defendant shall not have contact with A.J.N., including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE.

The defendant is excluded or prohibited from coming within 500 FT. (distance) of:

A.J.N.'s  home/ residence  work place  school  (other location(s))

\_\_\_\_\_, or  
 other location: \_\_\_\_\_,  
until \_\_\_\_\_ (which does not exceed the maximum statutory sentence).

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

**4.6 Other:** Defendnat shall comply with the terms and conditions of Appendix "A", attached hereto and incorporated herein by reference.

**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

This crime involves rape of a child in which the victim became pregnant. The defendant shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, up to a maximum of twenty-five years following defendant's release from total confinement or twenty-five years subsequent to the entry of the Judgment and Sentence, whichever period is larger.

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

#### 5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

**5.5 Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.**

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

**1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

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

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

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

**5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private

institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

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

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least five years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

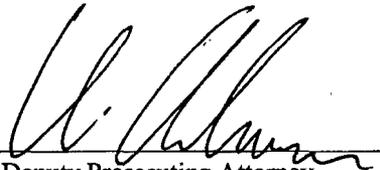
**8. Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing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

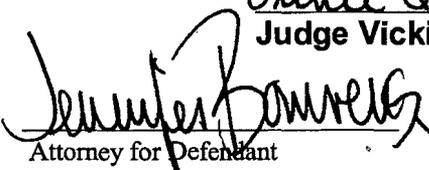
- 5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.8** If you are or become subject to court-ordered mental health or chemical dependency treatment, you must notify DOC and you must release your treatment information to DOC for the duration of your incarceration and supervision. RCW 9.94A.562.
- 5.9**  **Driver's License Notification:** The clerk of the court shall immediately forward an Abstract of Court Record to the Department of Licensing for inclusion in Department of Licensing records.

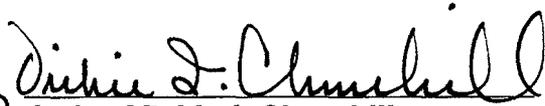
**5.10 Other** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

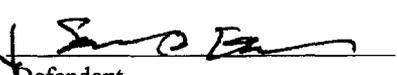
Bail is hereby exonerated in this matter if applicable.

Done in Open Court and in the presence of the defendant this date: 11-25-15

  
Deputy Prosecuting Attorney  
WSBA No. 45361  
Print Name: Chris Anderson

  
Attorney for Defendant  
WSBA No. 32768  
Print Name: Jennifer Bouwens

  
Judge Vickie I. Churchill

  
Defendant  
Print Name: Sean Thompson O'Dell

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: 

## VI. Identification of the Defendant

SID No. WA 26648384  
 (If no SID complete a separate Applicant card  
 (form FD-258) for State Patrol)

Date of Birth 5/11/1994

FBI No. 311694PDO

Local ID No. \_\_\_\_\_

PCN No.933347842

Other \_\_\_\_\_

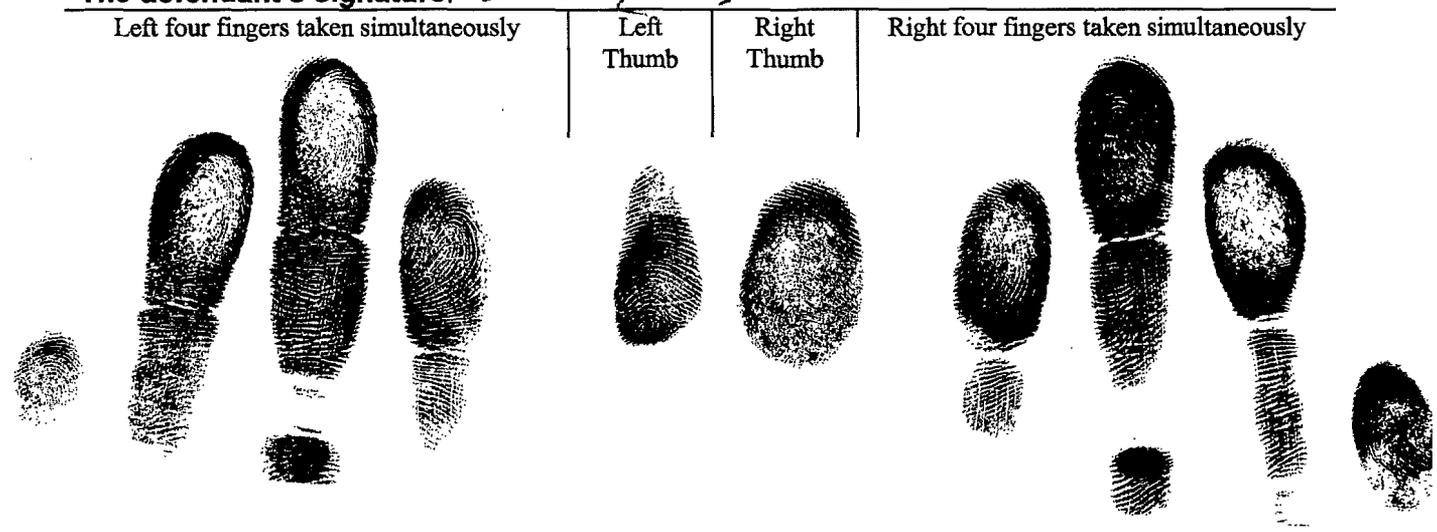
Alias name, DOB: \_\_\_\_\_

<b>Race:</b>		<b>Ethnicity:</b>	<b>Sex:</b>
<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Non-Hispanic	<input type="checkbox"/> Male
			<input type="checkbox"/> Female

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

Clerk of the Court, Deputy Clerk, *[Signature]* Dated: 11/25/13  
*Will reside in Whatcom County.*

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



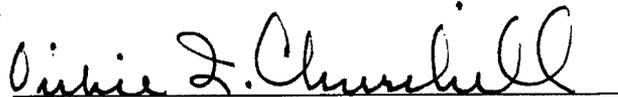
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**APPENDIX "A" TO JUDGMENT & SENTENCE**

1. Have no direct or indirect contact with A.J.N. for life.
2. Obey all laws.
3. Pay the costs of crime-related counseling and medical treatment required by A.J.N.
4. Do not initiate or prolong contact with minor children without the presence of an adult who is knowledgeable of the offense and has been approved, in advance, by a Community Corrections Officer.
5. Do not seek employment or volunteer positions, which place you in contact with or control over minor children, unless approved in advance by a Community Corrections Officer.
6. Do not enter areas where minor children are known to congregate, to include but not limited to camp grounds, parks, playgrounds, schools, pools, beaches, unless approved in advance by a supervising Community Corrections Officer.
7. Do not possess child pornography.
8. Do not date women or form relationships with families who have minor children, unless approved in advance by a Community Corrections Officer.
9. Do not remain overnight in a residence where minor children live or are spending the night, unless approved in advance by a Community Corrections Officer.
10. Do not hold employment without first notifying your employer of this conviction, unless approved in advance by a Community Corrections Officer.
11. Do not possess or consume controlled substances unless you have a lawfully issued prescription.
12. Do not possess drug paraphernalia.

- 1 13. Obtain a sexual deviancy evaluation within 30 days of release from confinement. Make  
2 reasonable progress in and successfully complete treatment. Follow all conditions  
3 outlined in your treatment contact. Do not change therapists without advanced  
4 permission of the sentencing Court and Community Corrections Officer.
- 5 14. Participate in offense related counseling programs, to include Department of Corrections  
6 sponsored offender groups, as directed by a Community Corrections Officer.
- 7 15. Participate in urinalysis, breathalyzer, polygraph examinations as directed by your  
8 Community Corrections Officer.
- 9 16. Your residence, living arrangements and employment must be approved in advance by a  
10 Community Corrections Officer.

11 Dated: November 25, 2015

12   
13 VICKIE I. CHURCHILL  
14 JUDGE OF THE SUPERIOR COURT

NO. 49672-1

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

CARLOS AVALOS,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

DECLARATION OF  
SERVICE

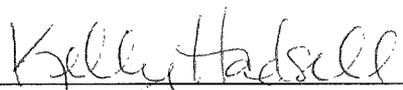
I, Kelly Hadsell, declare as follows:

On May 15<sup>th</sup>, 2017, I emailed and deposited the Brief of Respondent and Declaration of Service into the United States Mail, first-class postage prepaid and addressed as follows:

JODI R. BACKLUND  
BACKLUND & MISTRY  
P.O. BOX 6490  
OLYMPIA, WA 98507  
[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)

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

DATED this 15<sup>th</sup> day of May, 2017, at Seattle, Washington.

  
KELLY HADSELL

**WASHINGTON STATE ATTORNEY GENERAL**  
**May 15, 2017 - 2:10 PM**  
**Transmittal Letter**

Document Uploaded: 5-496721-Respondent's Brief.pdf

Case Name: Carlos Avalos v. State Of Washington

Court of Appeals Case Number: 49672-1

**Is this a Personal Restraint Petition?**    Yes     No

**The document being Filed is:**

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

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Kelly Hadsell - Email: [Kellyh1@atg.wa.gov](mailto:Kellyh1@atg.wa.gov)

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

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[backlundmistry@gmail.com](mailto:backlundmistry@gmail.com)