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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

No. 49782-4-II

BY AS
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

State of Washington, Respondent/Plaintiff,

v.

Michael Eric Nelson, Petitioner/Defendant

REPLY BRIEF OF PETITIONER

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A. INTRODUCTION

Petitioner Michael Nelson submits the following arguments and authorities in reply to the State's Response to his Personal Restraint Petition ("PRP"). In all other respects, Mr. Nelson relies upon evidence, arguments, and authorities in his PRP.

Mr. Nelson's PRP should be granted because, first, Mr. Nelson was denied effective assistance of counsel to the extent that it changed the outcome of his case.

Second, Mr. Nelson's offender score was miscalculated at sentencing and should be two points lower than calculated, resulting in a far shorter incarceration.

B. ARGUMENT

1. There are no successive PRPs in this case

The State alleges that Mr. Nelson filed a prior Personal Restraint Petition in 2014, therefore rendering the current PRP successive. Ironically, during argument on the sentencing issue in Superior Court, the State itself argued that the case should be heard as a PRP. The State's claim that the PRP is now barred is unfounded and deceptive.

Mr. Nelson filed a Motion to Show Cause in 2014 in the Pierce County Superior Court, alleging discrimination and mistreatment at the jail,

and seeking monetary damages. The Superior Court erroneously treated Mr. Nelson's motion as a CrR 7.8 motion for relief from judgment, and transferred the motion to the Division II Court of Appeals for consideration as a Personal Restraint Petition. The appellate court remanded the motion to be considered as a civil action for damages, holding, "[I]t is well settled that a demand for monetary damages is not actionable by personal restraint petition," citing, *In re Personal Restraints of Williams*, 171 Wn.2d 253, 255-56 (2011). See, *Exhibit A to State's Response*. The action was therefore never considered as a Personal Restraint Petition. RAP 16.8.1(c). The current action cannot be considered successive.

Even presuming, *arguendo*, that the Court considers the 2014 action a prior PRP, the current PRP is still not barred from consideration. The prior PRP was not heard on the merits. Dismissal of a PRP on procedural grounds is not a final judgment on the merits, and does not preclude later review of an issue. RAP 2.3(c); *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 263, 36 P.3d 1005 (2001); *To-Ro Trade Shows v Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001); *In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 704, 72 P.3d 703 (2003).

Yet even a successive may still be heard for good cause shown. RCW 10.73.140. Mr. Nelson's case was on direct appeal at the time that the Superior Court wrongly transferred his show cause motion to the Court

of Appeals. He could not have included any issues that were part of his direct appeal but still appropriate for the instant action. Further, Mr. Nelson did not intend to file a PRP, and the lower court's action in transferring the case appears to have been undertaken without notice to Mr. Nelson, potentially depriving him of his right to a later action. The superior court's invalid action should not act as a bar to the instant PRP.

Even lack of good cause is not fatal, as the Court may still transfer this action to the Supreme Court. Because RCW 10.73.140 applies only to the Court of Appeals, a PRP that is barred as successive in the Court of Appeals may still be heard before the State Supreme Court. *In re Pers. Restraint of Perkins*, 143 Wn.2d 261, 265, 19 P.3d 1027 (2001) (citing *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 566, 933 P.2d 1019 (1997)). Where the Court of Appeals is barred from reviewing a PRP under RCW 10.73.140, but the Supreme Court is not so barred, the Supreme Court has ruled that the Court of Appeals should transfer the case that Court. *Id* at 266; *See also, In re Pers. Restraint of Bell*, 387 P.3d 719 (Wash. 2017). In fact, RCW 2.06.030 explicitly requires the case shall not be dismissed but shall be transferred to the proper court.

The only question under this analysis becomes whether the issues raised in Mr. Nelson's PRP have either been heard or determined on the merits, thus barring them under RAP 16.4(d). The State has conceded that

they have not. The petition should not be considered successive or should be considered filed without good cause shown. If neither, the Court should transfer Mr. Nelson's PRP to the state Supreme Court for consideration.

2. Mr. Nelson's representation was deficient and prejudicial

There is a two-part test to determine ineffective assistance of counsel. First, the defendant must demonstrate that counsel's conduct fell below an "objective standard of reasonableness." Legitimate trial tactics cannot serve as a basis for a claim of ineffective assistance, unless those tactics would be considered incompetent by lawyers of ordinary training and skill in criminal law. *State v Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978). Strategic decisions are entitled to deference *only* if they are made after thorough investigation of law and facts or are supported by reasonable professional judgment. *Strickland v. Washington*, 466 U.S. 668, 690-91, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) [Emphasis supplied]

Second, the defendant must show that the conduct caused actual prejudice – that there is a reasonable possibility that the outcome of the proceeding would have been different if counsel had performed effectively. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S.Ct. 2052; *Pers.*

Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001). A claim for ineffective assistance of counsel is reviewed *de novo*. *State v. Shaver*, 116 Wn.App. 375, 382, 65 P.3d 688 (2003).

Even if a petitioner has raised an ineffective assistance of counsel claim on direct review, the Court may consider a new ground for an ineffective assistance of counsel claim for the first time on collateral review. *E.g. In re Pers. Restraint of Brett*, 142 Wn.2d at 873 (*rev'd on other grounds Brett*, 126 Wn.2d 136. If a petitioner has not had a previous opportunity to obtain a meaningful judicial review, the Court will not apply the heightened standard generally applied to personal restraint petitions. *Personal Restraint of Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011); *Personal Restraint of Isadore*, 151 Wash.2d 294, 299, 88 P.3d 390 (2004). Instead, a petitioner need only establish the level of prejudice required by *Strickland*.

Collateral review must be available in those cases in which petitioner is actually prejudiced by an error that may have been raised previously. *In re Haverty*, 101 Wn.2d 498, 681 P.2d 835 (1984). The mere fact that an issue was raised on appeal does not automatically bar review in a PRP. *In re Taylor*, 105 Wn.2d 683, 687 (1986). Should doubts arise as to whether two grounds are different or the same, they should be resolved in favor of the applicant. *Id.* at 688.

If the petitioner seeks renewal of an issue rejected on its merits on appeal, the petitioner must demonstrate that the ends of justice would be served by review of the issue. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 388, 972 P.2d 1250 (1999); *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 473, 965 P.2d 593 (1998). Several issues raised herein were raised to some degree on direct appeal. However, evidence to support these claims lies outside the record or was not adequately raised by appellate counsel. Thus, renewed review is in the interest of justice.

Mr. Nelson argues that his counsel was ineffective in two ways. First, for failing to bring a motion to sever charges and, second, for ineffective pre-trial representation.

a. Failure to Sever

The State attempts to divert the Court's attention by arguing that because the motion to sever was not raised below, the issue has been waived. This is a red herring. The issue at bar is *whether counsel was ineffective for failing to raise severance*. The State is incorrect in presuming that any such motion would have been denied.

A motion to sever must be granted if the court determines "that severance will promote a fair determination of the defendant's guilt or innocence of each offense." CrR 4.4(b) *State v. Orange*, 152 Wn.2d 795,

814, 100 P.3d 291 (2004) “A defendant seeking severance has the burden of demonstrating that a trial of the counts together would be manifestly prejudicial such that it would outweigh any concern for judicial economy.” *State v Cotten*, 75 Wn.App. 669, 686, 879 P.2d 971 (1994) , review denied, (citing *State v Bythrow*, 114 Wash.2d 713, 718, 790 P.2d 154 (1990)).

Refusal to sever becomes prejudicial if the jury uses

the evidence of one of the crimes charged to infer a criminal disposition on the part of the defendant from which is found his guilt of the other crime or crimes charged; or... the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find.

Bythrow, 114 Wn.2d at 718, citing *Drew v United States*, 331 F.2d 85, 88 (D.C. Cir. 1964).

A trial court’s refusal to sever charges is reviewed under a manifest abuse of discretion standard. *State v. Watkins*, 53 Wn. App. 264, 269, 766 P.2d 484 (1989). Such review does not simply consider prejudice mitigating factors, as the State argued, but must balance the prejudice that flows to the defendant against the prejudice-mitigating factors:

- (1) the strength of the State's evidence on each count,
- (2) the clarity of defenses as to each count,
- (3) jury instructions to consider the charges separately, and
- (4) the admissibility of evidence of the other crimes.

Watkins, 53 Wn. App. at 269.

All four factors must be considered in a prejudice determination; no one factor is controlling. *State v Warren*, 55 Wn.App. 645, 655, 779 P.2d 1159 (1989). While judicial economy is always a factor in a decision to join or sever a case, as the Washington State Supreme Court just emphasized “judicial economy can never outweigh a defendant's right to a fair trial...” *State v. Bluford*, 2017 Wash. LEXIS 546 (May 4, 2017)

When one case is remarkably stronger than the other, severance is proper. *State v. Russell*, 125 Wn.2d 24, 63-64, 882 P.2d 747 (1994). The State’s assessment of the charges here is erroneous; the evidence on each was not equally strong. The trial court recognized the disparity between the charges, observing, “I am separating the gun, because theft of the gun is not -- was not, never has been the State's underlying theory. The only issue is I think, whether it differentiates the gun from the other items taken.” RP 261. The State had strong evidence, including witness testimony, to establish that Mr. Nelson robbed Mr. Calloway, and that he may have used a gun while so doing. However, the State’s possession case was far weaker. The gun was found in an apartment where Mr. Nelson did not live that was trafficked by multiple people between the date of the robbery and the date the gun was found, nine or ten days later. There is no evidence Mr. Nelson touched the

gun,¹ let alone evidence he knew it was there or could exercise dominion and control over it.

The fact that a gun was used in the robbery heightened the likelihood that the jury would conflate that gun with the weapon found later. Even despite testimony from the State's investigator that he had no way of determining whether the gun was one and the same gun used in the robbery, the State continually insinuated this at trial. It is crucial to this argument that Mr. Nelson was *not* charged with unlawful possession due to the use of the gun in the robbery. He was charged with unlawful possession of what appears to be a separate weapon.

The gun found in the apartment where a woman officers claimed was Mr. Nelson's girlfriend lived was a black .38, not the chrome or faded black weapon that witnesses to the robbery claimed Mr. Nelson used in that crime. RP 188-194, 109-110, 145-146. The gun was found well over a week after the robbery, in a location where multiple people had access to it. There is no evidence that Mr. Nelson had dominion and control over the firearm. The weak evidence on this charge mitigates strongly in favor of severance, and demonstrates extreme prejudice to Mr. Nelson. Severance would significantly lower Mr. Nelson's chance of conviction for possession.

¹ No fingerprints were found on the weapon. RP 201.

Likewise, the evidence of each charge would not have been admissible in separate trials. It is inherently prejudicial for two counts to be tried together when proof of one could not have been brought forth at trial on the other. *State v. Harris*, 36 Wn. App. 746 (1984). In *State v. Ramirez*, 46 Wn. App. 223, 226, 730 P.2d 98 (1986), Division II held that where evidence of one count would not be admissible in a separate trial on the other count, denial of a defendant's motion to sever not only constituted an abuse of discretion, but also required reversal. The Court found that a new trial was warranted, despite the fact that there were no events actually prejudicing the defendant. *Ramirez*, 46 Wn. App. at 226.

The evidence of unlawful possession was only tangentially related to the evidence of the robbery. The two cases were recognized by the trial court as being distinctly separate charges. RP 261. Yet the trial court read out the parties' stipulation informing the jury Mr. Nelson had a prior drug felony, ostensibly for purposes of the possession charge without limiting to one of the counts. RP 202:2-12. The jury, in fact, sent back a question asking which count was which. *See*, Exhibit 1. The only reason that the evidence was put before the jury at the same time was the failure of counsel to move to sever the charges. The first two factors alone weigh heavily in favor of prejudice and demonstrate that there was no tactical reason for failing to move to for severance.

Finally, also contrary to the State's allegations, Mr. Nelson did not enter a general denial defense on each charge. A general denial was entered on the unlawful possession charge, but the defense to the robbery charge was more nuanced. Charged as an accomplice, Mr. Nelson testified that he was present during the robbery, and did not attempt to stop it. This is in stark contrast to the emphatic denial of the unlawful possession charge, and also mitigates in favor of severance. RP 313:9-24.

In sum, it is far from clear that any motion for the severance of charges would have been denied. To the contrary, it is likely that such a motion would have been granted, and Mr. Nelson would likely have been found not guilty of one or more of the charges against him, significantly reducing or eliminating his prison sentence in this case. The failure of counsel to move to sever fell below the minimum standards for effective representation and prejudiced Mr. Nelson by placing him in jeopardy of a far longer sentence that would like have been imposed after separate trials.

It may occur to the State to argue that the Information was eventually amended, such that the State alleged that the firearm Mr. Nelson possessed was the same as that used in the robbery, thus tying the two charges together and requiring a joint trial. Trial counsel would have had no way of knowing that the State was going to make this amendment, as it occurred on the day of trial. *See*, Exhibit 2. Further, it is clear from the

testimony elicited by counsel that he may not have understood the significance of the change of dates. The simple fact that the State amended the Information on the day of trial does not excuse trial counsel from bringing a pre-trial motion that had more than a reasonable probability of success, and that would have shortened his client's jail time by at least five years. The State's subsequent actions do not annul counsel's previous negligence.

b. Ineffective Trial Representation

Counsel has a duty to make reasonable investigations or to make a reasonable decision that particular investigations are unnecessary." *In re Rice*, 118 Wn.2d 876, 889, 828 P.2d 1086 (1992). In an ineffective assistance case, the court assesses a decision not to investigate for reasonableness under all the circumstances. *Rice*, 118 Wn.2d at 889.

A defendant seeking relief under a theory that trial counsel failed to properly investigate his case must show, at a minimum, that there is a reasonable likelihood that the investigation would have produced "useful information not already known to the defendant's counsel." *Bragg v Galaza*, 242 F.3d 1082, 1088 (9th Cir. 2001), *amended by* 253 F.3d 1150 (2001) Ignorance of the law or inadequate investigation, rather than deliberate choice resulting in the failure to present an available theory of the defense,

can lend support for the granting of a new trial. *Brubaker v. Dickson*, 310 F.2d 30 (9th Cir. 1962), *cert. denied*, 372 U.S. 978, 10 L. Ed. 2d 143, 83 S. Ct. 1110 (1963).

Counsel also has a duty to provide competent representation to a client. “Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” RPC 1.1. In the comments to this rule, the Supreme Court observed that correct handling of a matter includes adequate preparation.

Finally, pursuant to RPC 1.2(a), a lawyer has an obligation to abide by a client’s decisions “concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.”

If the relationship between lawyer and client completely collapses, the refusal to substitute new counsel violates the defendant’s Sixth Amendment right to effective assistance of counsel. *United States v. Moore*, 159 F.3d 1154, 1158 (9th Cir. 1998) (citing *Brown v. Craven*, 424 F.2d 1166, 1170 (9th Cir. 1970)). There are certain exceptions to the *Strickland* standard requiring a showing of prejudice in order to establish ineffective assistance of counsel. See *Frazer v. United States*, 18 F.3d 778, 785 (9th Cir. 1994). A defendant need not show prejudice when the breakdown of a

relationship between attorney and defendant from irreconcilable differences results in the complete denial of counsel. *Moore*, 159 F.3d at 1158.

The State alleges that Mr. Nelson has made nothing more than conclusory statements claiming he had inadequate communications with his counsel. To the contrary, Mr. Nelson established that, despite what his counsel asserted, there were no jail visits. The only time that Mr. Nelson could have met with his counsel were the few minutes prior to court hearings when Mr. Nelson was transported from the jail. This occurred exactly twice during the time Mr. Nelson was represented by trial counsel. *See*, Exhibit 3, *letters from Mr. Nelson to the Court, attached. Also See Exhibit A to PRP.*

Mr. Nelson was not shown the majority of the evidence against him, including a videotaped interview of a State witness that counsel promised – and was ordered by the Court – to review with Mr. Nelson. The trial was continued for the express purpose of this review, which counsel promised to do in the next two days prior to the trial. *See*, Exhibit 3, RP at 4:9-19, 18:14-18. Jail logs demonstrate that counsel did not visit Mr. Nelson during this time. *See Exhibit A to PRP.* It is also important to note that there was a deal on the table during the continuance, and up until trial started. RP 39:14-19. Mr. Nelson advised counsel he wanted to view the video before considering the offer.

Counsel further failed to investigate numerous issues that would have changed the outcome in this case. As argued above, counsel failed to investigate severance of the charges. Counsel failed to object to the obvious error in Mr. Nelson's offender score, as will be argued further below. Additionally, a review of the record shows that while a previous attorney appointed for Mr. Nelson reviewed discovery, Mr. Nelson's trial counsel did not complete an omnibus form attesting to such a review. *See*, Exhibit 4. Counsel did not hire an investigator, and in fact failed to retain the investigator hired by previous counsel. *Id.*

Counsel at no time even discussed trial strategy with Mr. Nelson, or prepared him for his own testimony. **Mr. Nelson had to go to trial to view the evidence against him.** He was not even shown the witness list prior to the commencement of trial. When Mr. Nelson complained of this to the Court, counsel claimed to have discussed the merits of the case with Mr. Nelson, RP 25:1-3, yet his trial performance demonstrated that no such discussion took place.

Trial counsel made several particularly glaring mistakes that stand out even in the face of his overall poor representation of Mr. Nelson. First, counsel failed to object to the amendment of the Information on the day of trial – an amendment that changed the date of possession of the firearm to the date of the robbery, rather than the date the firearm was found, altering

the entire case. RP 31:10-12, 31:21-25. Second, he failed to object when the first witness, the investigating officer, identified the handgun as that described by the victim. RP 53:7-8. Though counsel did object when the same officer described the wallet as that taken in the robbery, there was zero pushback from counsel when the Court overruled it as being offered for identification, not for the truth of the matter asserted, and a complete failure to ask for a limiting instruction. RP 66:11-25. Counsel again failed to object when witness Theo Burke identified witness Jericko Jackson as “Sucka Free,” his gang name. RP 165:1-7. In fact, counsel repeated the name in cross examination, twice. RP181:10-11, 183:5-7.

Trial counsel elicited all the evidence necessary to convict Mr. Nelson directly from Mr. Nelson. Counsel’s complete and utter failure to prepare Mr. Nelson to testify was obvious when Mr. Nelson took the stand. It was obvious he had not discussed Mr. Nelson’s testimony. Mr. Nelson immediately let the jury know he was driving even though he didn’t have a valid license, and soon after confessed to taking the victim’s gun and refusing to return it, because the victim was a snitch. RP 217:16-17. Then, he confessed to selling the gun after the robbery. RP 221:21-24.

The State, as can be expected, took full advantage of Mr. Nelson’s naiveté, ensuring that he repeated the confession and then impeaching him with letters he wrote while in jail, including a letter written to one of the

prior judges in the case, in which he had denied ever touching the gun he had just admitted stealing. RP 226:20-228:14.

A cardinal rule of trial preparation is to know the answer before asking the question. When an attorney is questioning his own client, failure to discuss the proposed testimony and its impact is inexcusable. Attorneys are likewise obligated to advise clients on the efficacy of testifying. Failing to discuss the anticipated testimony, as was done here, is ineffective.

Finally, as the court and counsel began to discuss jury instructions, defense counsel proposed a lesser included offense of theft, but first asked the Court to give the instruction for theft of a firearm. RP 249:20-250:5. Counsel backed down only after the Court questioned the decision, and the prosecuting attorney explained to him that this crime would increase, rather than decrease, his client's sentence. RP 250:6-10. A defense attorney has an obligation to understand the law, in order to protect his client from unnecessary jail time. The extended sentence Mr. Nelson is currently serving due to his counsel's failure to investigate, comprehend or object to his offender score is unconscionable. Sentencing Mr. Nelson to additional time for a crime that was not even charged would have been unforgiveable.

It is clear from the record and Mr. Nelson's letters to the trial court that there was a complete breakdown of communications and failure to

investigate the case at bar, to the point that Mr. Nelson was denied effective assistance of counsel.

3. Mr. Nelson's Offender Score is incorrect and must be corrected

Mr. Nelson's position is that the following sentences should be counted as one point each, rather than two, in his offender score:

1. One Count of Unlawful Possession of a Controlled Substance and One Count of Conspiracy to Deliver a Controlled Substance under Case No. 06-1-01679-5.
2. One Count of Unlawful Possession of a Controlled Substance and One Count of Conspiracy to Deliver a Controlled Substance under Case No. 05-1-04284-4.

The State argues that in the 2006 case, Mr. Nelson pled to possession of cocaine, and conspiracy to deliver MDMA, two separate drugs. Further, in the 2005 case, Mr. Nelson pled guilty to possession of MDMA and conspiracy to deliver marijuana, again two separate drugs. According to the State, the differing drugs render these two separate crimes for sentencing purposes. In other words, the State appears to argue that because Mr. Nelson possessed one drug but conspired to deliver a different drug, he should be assessed two points for each of the 2005 and 2006 crimes.

Therefore, the State claims, because the crimes are factually different, they cannot be counted as one crime for sentencing purposes.

Facts alone do not determine whether two crimes constitute the same course of conduct for sentencing purposes.

The State appears to conflate the *Blockburger* test for double jeopardy, which requires identical facts and law between two charges, with the current analysis. A defendant's criminal conduct may constitute multiple crimes without violating double jeopardy, but must count as one crime for purposes of calculating the statutory offender score.

Two crimes "merge" for sentencing purposes, if they encompass the same course of criminal conduct. *State v Porter*, 133 Wash.2d 177, 942 P.2d 974 (1997). Crimes encompass the same criminal conduct when they (1) require the same criminal intent, (2) are committed at the same time and place, and (3) involve the same victim. RCW 9.94A.589(1)(a). Offenses share the same criminal intent when the offender's intent, objectively viewed, does not change from one crime to the next. *State v Vike*, 125 Wn.2d 407, 411, 885 P.2d 824 (1994). The Court first examines the underlying statutes and the intent necessary to commit each crime. *Id* The Court then examines the facts. *Id*. Finally, the Court considers whether the crimes were intimately related, whether the criminal objective changed from one crime to the next, and whether one crime furthered the other. *State v. Burns*, 114 Wn.2d 314, 318, 788 P.2d 531 (1990).

Here, both of the offenses at issue allege unlawful possession and conspiracy to deliver a controlled substance. Each occurred on the same day. The victim of both crimes was the public at large. *See Porter*, 133 Wn.2d at 181. *State v. Garza-Villarreal*, 123 Wn.2d 42, 47, 864 P.2d 1378 (1993). Finally, per the Amended Information filed in both cases, the State appears to have conceded that the crimes constituted the same conduct in both instances. The only remaining issue is whether both showed the same criminal intent.

In *State v. Maxfield*, 125 Wn.2d 378, 886 P.2d 123 (1994), a search of Mr. Maxfield's house uncovered both a marijuana grow operation and a significant quantity of dried, packaged marijuana. Mr. Maxfield was charged with manufacture of an illegal substance *and* possession with intent to deliver. The Court found that the two acts were not a continuing course of conduct. The Court reasoned that the grow operation showed both a *past* and *present* intent to grow marijuana, while the presence of packaged marijuana showed an intent to sell the drug in the *future*. *Maxfield*, 125 Wn.2d at 403. The intent behind each crime thus differed, and the crimes were treated separately for sentencing purposes.

Conversely, as the defense pointed out in its opening brief, a defendant who simultaneously possesses two types of drugs has a single criminal objective of delivering the drugs sometime in the future. *Garza-*

Villarreal, 123 Wn.2d at 49. The facts of the 2006 incident appear to line up with *Garza-Villarreal*, as both marijuana and cocaine were found in Mr. Nelson's car during a traffic stop, and it was suspected he intended to deliver both in the future. The intent, not the facts, controls when addressing the same course of conduct for sentencing purposes. *See Exhibit B to CrR 7.8 Motion*

In the 2005 case, Mr. Nelson's alleged accomplice sold cocaine to an undercover agent. The State in its brief then states that when Mr. Nelson was stopped *later* by police, was found to be in possession of ecstasy. Again, it would appear that the intent was the same, and the course of conduct the same for both contacts. However, it should be clarified that the contact with Mr. Nelson and his accomplice happened instantaneously, as both were in the same car. The conduct was not significantly separated by time, such that it could be broken into two distinct acts. The offenses were both part of a continuing course of conduct. *See, Exhibit A to CrR 7.8 Motion*. It appears from a review of the facts of each case, then, that Mr. Nelson's intent was the same in each – possession of two types of drugs, with the *intent* to sell both in the future.

The State next argues that even if the offender score is incorrect, Mr. Nelson has waived the error by stipulating to the offender score in prior sentencing documents, including the instant case. Ironically, the State cites

State v. Ross, 152 Wn.2d 220, 231-232, 95 P.3d 1225, 1230 (2004), a case relied upon by the defense in its opening brief, to support its position. In *Ross*, the consolidated defendants had each stipulated in prior proceedings that their out of state convictions were comparable to Washington Crimes and were properly included in their respective offender scores. *Ross*, 152 Wn. 2d at 230. The State alleges that the *Ross* Court subsequently affirmed the sentences based on the strength of this stipulation. However, the State misconstrues the holding in *Ross*.

While it is true that the sentences of the consolidated defendants were affirmed by the *Ross* Court, it did not find that a stipulation alone would waive any further challenge to an erroneous sentence. To the contrary, the Court acknowledged that "illegal or erroneous sentences may be challenged for the first time on appeal." *Ross*, 152 Wn. 2d at 229, citing *State v Moen*, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996); *In re Pers. Restraint of Fleming*, 129 Wn.2d 529, 532, 919 P.2d 66 (1996)). The *Ross* Court observed that an erroneous sentence will spur a remand to the sentencing court for resentencing. *Id.* The Court agreed with the reasoning in *State v. Paine*, 69 Wn. App. 873, 850 P.2d 1369 (1993) where the Court of appeals stated:

A justification for the rule is that it tends to bring sentences in conformity and compliance with existing sentencing statutes and avoids permitting widely varying sentences to

stand for no reason other than the failure of counsel to register a proper objection in the trial court.

Paine, 69 Wn. App. at 884.

The decision in *Ross* was not predicated on a prior stipulation, instead, the *Ross* Court that the defendants failed to show that there were any errors, either factual or legal, committed by the sentencing court. *Ross*, 152 Wn. 2d at 232. Mr. Nelson has demonstrated factual and legal errors committed by the sentencing court, and shown that the judgment is incorrect on its face. Contrary to the State's allegations, Mr. Nelson did not stipulate that the crimes were correctly deemed separate course of conduct.

In fact, when the sentences themselves are examined, what occurred becomes clear. In the 2005 and 2006 cases, Mr. Nelson plead on both, at the same time, to possession and conspiracy. Conspiracy is an unranked offense, and the sentencing range is 0-12 months. The recommendation was for 12 months in this case, within the standard range. The offender score was irrelevant to the recommendation and, because Mr. Nelson was sentenced as recommended, to the sentence imposed. *See, Exhibits A and B to CrR 7.8 Motion*

In the 2009 matter, Mr. Nelson was charged with unlawful delivery and instead plead to two simple possession charges. The drug sentencing grid in RCW 9.94A.517 specifies three seriousness levels for drug offenses,

with varying sentences depending on the range of the defendant's offender score, 0-2, 3-5, and 6 or more. Mr. Nelson's was a seriousness level I offense, and his offender score at that time was calculated as 5. However, Mr. Nelson would have received the same sentence – in the 6+ to 18-month range – regardless of whether his offender score was a 3 or a 5 at that time. The recommendation of 183 days with credit for time served was within the standard range, and Mr. Nelson was sentenced as recommended. *See*, Exhibit 5. Thus, in the two most recent sentencing instances, Mr. Nelson's exact offender score was immaterial. We tend not to fight over things that do not matter, and it is logical that the error in Mr. Nelson's offender score did not come to light until this most recent case, where it matters greatly.

A civilized society simply does not keep a man imprisoned for years longer than justice requires based on the fact that, at some point, the court or parties counted wrong at an inconsequential time. This is why legal errors in sentencing can be argued for the first time on appeal. Anything else risks a severe miscarriage of justice that even the State should agree is contrary to the purposes of our legal system.

C. CONCLUSION

Mr. Nelson's PRP should be granted in this case, and a new trial ordered due to ineffective assistance of counsel. Alternatively, Mr. Nelson's offender score must be corrected, and his sentence shortened accordingly.

Respectfully submitted this 11th Day of May, 2017


Michael Austin Stewart, WSBA #23981
Attorney for Petitioner

EXHIBIT 1



11-1-04142-7 40120265 JYN 03-06-13



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff ,

vs

NELSON, MICHAEL ERIC,

Defendant .

Cause No 11-1-04142-7

QUESTION OF THE JURY

what is Count I?

what is Count II?

3-5-13

L. Brown

EXHIBIT 2

October 11 2011 11:19 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-04142-7

vs.

MICHAEL ERIC NELSON,

INFORMATION

Defendant.

DOB: 5/18/1986
PCN#: 540550140

SEX : MALE
SID#: 22286655

RACE: BLACK
DOL#: WA NELSOME147KQ

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ERIC NELSON of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

That MICHAEL ERIC NELSON, in the State of Washington, on or about the 1st day of October, 2011, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of T.C., the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to T.C., said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: a handgun, contrary to RCW 9A.56.190 and 9A.56.200(l)(a)(i)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and the crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(aa), the defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a

INFORMATION- 1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership, and against
2 the peace and dignity of the State of Washington.

COUNT II

3 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
4 authority of the State of Washington, do accuse MICHAEL ERIC NELSON of the crime of
5 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar
6 character, and/or a crime based on the same conduct or on a series of acts connected together or
7 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and
8 occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
9 follows:

10 That MICHAEL ERIC NELSON, in the State of Washington, on or about the 10th day of
11 October, 2011, did unlawfully, feloniously, and knowingly own, have in his possession, or under his
12 control a firearm, he having been previously convicted in the State of Washington or elsewhere of a
13 serious offense, as defined in RCW 9.41.010(16), contrary to RCW 9.41.040(1)(a), and against the peace
14 and dignity of the State of Washington.

15 DATED this 11th day of October, 2011.

16 LAKEWOOD POLICE DEPARTMENT
17 WA02723

18 MARK LINDQUIST
19 Pierce County Prosecuting Attorney

20 prc

21 By: /s/ PATRICK COOPER
22 PATRICK COOPER
23 Deputy Prosecuting Attorney
24 WSB#: 15190



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

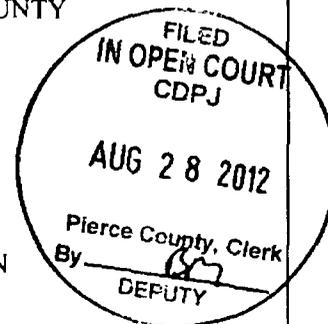
CAUSE NO. 11-1-04142-7

vs.

MICHAEL ERIC NELSON,

AMENDED INFORMATION

Defendant.



DOB: 5/18/1986
PCN#: 540550140

SEX : MALE
SID#: 22286655

RACE: BLACK
DOL#: WA NELSOME147KQ

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ERIC NELSON of the crime of ROBBERY IN THE FIRST DEGREE, committed as follows:

That MICHAEL ERIC NELSON, in the State of Washington, on or about the 1st day of October, 2011, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of Travis Calloway, the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to Travis Calloway, said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, Michael Eric Nelson was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: .38 Revolver, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: .38 Revolver, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.



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COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ERIC NELSON of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That MICHAEL ERIC NELSON, in the State of Washington, on or about the 10th day of October, 2011, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, as defined in RCW 9.41.010(16), contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

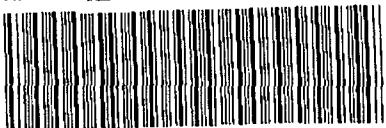
DATED this 28th day of August, 2012.

LAKWOOD POLICE DEPARTMENT
WA02723

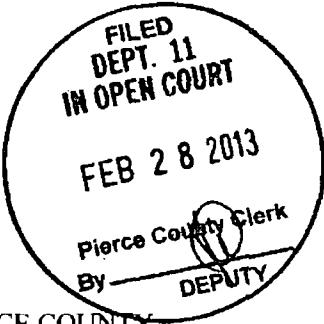
MARK LINDQUIST
Pierce County Prosecuting Attorney

jhc

By: 
JAMES H CURTIS
Deputy Prosecuting Attorney
WSB#: 36845



11-1-04142-7 40120206 AMINF2 03-06-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 11-1-04142-7

vs.

MICHAEL ERIC NELSON,

SECOND AMENDED INFORMATION

Defendant.

DOB: 5/18/1986
PCN#: 540550140

SEX : MALE
SID#: 22286655

RACE: BLACK
DOL#: WA NELSOME147KQ

COUNT 1

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That MICHAEL ERIC NELSON, in the State of Washington, on or about the 1st day of October, 2011, did unlawfully and feloniously take personal property belonging to another with intent to steal from the person or in the presence of T.C., the owner thereof or a person having dominion and control over said property, against such person's will by use or threatened use of immediate force, violence, or fear of injury to T.C., said force or fear being used to obtain or retain possession of the property or to overcome resistance to the taking, and in the commission thereof, or in immediate flight therefrom, the defendant was armed with a deadly weapon or displayed what appeared to be a firearm or other deadly weapon, to-wit: .38 Revolver, contrary to RCW 9A.56.190 and 9A.56.200(1)(a)(i)(ii), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: .38 Revolver, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

SECOND AMENDED INFORMATION- 1



ORIGINAL

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse MICHAEL ERIC NELSON of the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That MICHAEL ERIC NELSON, in the State of Washington, on or about the 1st day of October, 2011, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, he having been previously convicted in the State of Washington or elsewhere of a serious offense, as defined in RCW 9.41.010(16), contrary to RCW 9.41.040(1)(a), and against the peace and dignity of the State of Washington.

DATED this 27th day of February, 2013.

LAKESIDE POLICE DEPARTMENT
WA02723

MARK LINDQUIST
Pierce County Prosecuting Attorney

jhc

By:

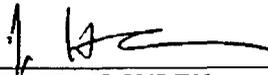

JAMES H CURTIS
Deputy Prosecuting Attorney
WSB#: 36845

EXHIBIT 3

2-7-13

Attn: Chief Judge
 Of the Superior Court for the
 State of Washington for
 the County of Pierce

Michael E. Nelson

11-1-04142-7

Issue on Hand: Conflict with My Counsel

Under *Coyler vs. Sullivan*, 446 U.S. 335, 348

Dear Judge:

My name is Michael Nelson. My case number is 11-1-04142-7. My charge is Robbery 1^o, I have been in jail since October 10th 2011. On Sept 12th Judge Grant declared a mistrial, on Sept. 17 2012 I received a lawyer by the name of Robert Quilliam. As of today, my attorney has done nothing at all on my case. Your honor im waiting to let you know that I have been in the hole for 5 1/2 months my lawyer has not come to visit me about my case not even once or even called. We have not discussed a strategy or even talked about a deal on my case. My lawyer knows that Im on phone restriction and I do not have access at the phone at all. On Sept 24 he set my court date to Jan 7th 2013 and between that period of time he did not bother to call or visit at all. At the court date Jan 7th he told me there was new evidence in my case and that he would come see me but hasn't. On Jan 13 or 14 2013 we had another court date he also said he would come to see me. Your honor I have

waited patiently, praying and humbling myself for 5 1/2 months. My trial is set for Feb 13 2013 and my lawyer has not even talked to me about my case outside of court. Also I have questions that I would like him to ask the witnesses in my case in the witnesses interview. Your honor I know under a United States Supreme Court ruling in Strickland vs. The State of Washington that all defendants on trial have constitutional right to have the assistance of not just counsel, but the assistance of effective counsel.

Your honor enough is enough please help me I feel kidnapped I cannot receive mail, visit or get on the phone I have no way to defend myself my lawyer knows the situation I'm in, my lawyer has not did anything in my behalf. This is a major conflict I'm very tired of sitting in the hole waiting for my lawyer to visit and call me it has not happened in going on 6 months. At this time, your honor, I am asking for new counsel that will work effectively on my case.

Your honor, I pray that you will help to appoint to me effective counsel that will keep me informed about my case and consult with me. I'm asking that the court files this new request and sends a copy to my Attorney, my prosecutor and sends me back a copy if possible. Thank-You

Michael Nelson

Feb-7-2013

Name Michael Nelson
Bkg. # 2011283053
Pierce County Sheriff's Department
910 Tacoma Avenue South
Tacoma, WA 98402-2168

TACOMA WA 98402
OLYMPIA WA
22 FEB 2013 PM 4 L



Judge John McCartney
~~930~~ Tacoma Avenue South
Tacoma, WA 98402

98402210410



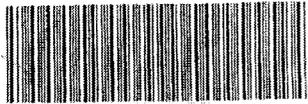
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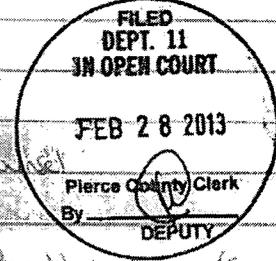


11-1-04142-7 40120204 LTRDF 03-06-13

Case NO. 11-1-04142-7

VS.

Michael Nelson



Reasoning for this letter: Notice of ineffective counsel

Your honor I would like to make it clear for the records and my files that my counsel Robert Quillion has provided me with no assistance in my case. Since the middle of September Mr. Quillion has been my lawyer since then he has not called me about my case or has not come to see me about my case. The first time he has seen me about my case was 2-26-13 which my trial was 2-21-13 and this was the day we were before you. He has not did anything I have asked him to do. Sometime before Jan 7th Mr. Quillion has known about new evidence in my case but has not brought it before me. Your honor, I'm at a disadvantage in my case I have been waiting since the middle of September 2012 for my lawyer to consult with me about my case and he waited a day before trial to come. This is not fair at all! Mr. Quillion has not interviewed no witnesses in my case at all and we have not talked about a strategy. This is a handicap battle.

Your honor, when I tried to talk to you today 2-21-13 Mr. Quillion told me I could not speak but the Correctional officer Hamilton which is my escort told me that I should bring this up for the record. Your honor next time we are in court I ask that this issue is addressed. This issue is very serious. Your honor, I know under a united state Supreme court ruling in Strickland vs. Washington that all defendants on trial have a constitutional right to have the assistance of not just counsel but the assistance of effective counsel.

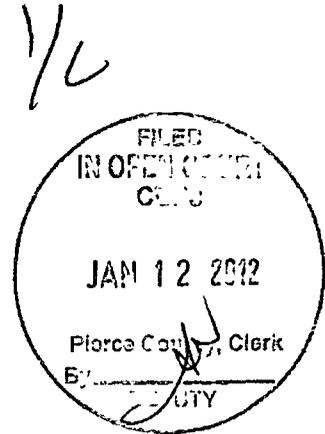
Your honor, I pray that this issue is addressed next time in court also I get a copy of this letter filed in my case.

Thank you Michael Nelson

EXHIBIT 4



11-1-04142-7 37832742 OOR 01-13-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs

Michael Nelson

Defendant.

NO 11-1-04142-7

ORDER ON OMNIBUS HEARING
CHARGE Rob 1^o; UPDF 1^o

TRIAL DATE Feb 27, 2011

OOR

THIS MATTER having come before the court for an Omnibus Hearing, the State represented by:

Jared Aussever, and the defendant being present and represented by
John Cain

1. Regarding PROSECUTOR'S OBLIGATIONS, THE DEPUTY PROSECUTING ATTORNEY STATES that at least seven days prior to this order

- The Prosecutor provided to defendant a complete list of the defendant's criminal convictions
- The Prosecutor has provided to defense all discovery in their possession or control, pursuant to CR 4.7(a);
- The Prosecutor has contacted law enforcement agencies to request and/or obtain any additional supplemental police reports, forensic tests, and evidence and has made them available to defendant or defense counsel The State is aware of the following reports, tests or evidence which has not been made available to the defendant _____
- Prosecutor has reviewed the discovery and criminal history and made an offer to the defense

If prosecutor has not checked every box in this section, the court makes the following order

2 Regarding DEFENSE ATTORNEY'S OBLIGATIONS, DEFENSE COUNSEL STATES that at least two days prior to this order.

- Defense attorney has met with the defendant about this case

- Defense attorney has received a plea offer from the State.
- Defense attorney has reviewed the discovery and the criminal history.
- Defense attorney has given discovery to prosecutor

If defense attorney has not checked every box in this section, the court makes the following order:

3. Regarding DISCOVERY The parties agree that Discovery is COMPLETE/NOT COMPLETE IN THE FOLLOWING RESPECTS as of January 12, 2012.

DISCOVERY must be completed by _____

4. Regarding GENERAL NATURE OF DEFENSE:

The Defense states that the general nature of the defense is

- General Denial Consent
- Alibi Diminished Capacity
- Insanity Self-defense
- Other (specify) _____

5 Regarding CUSTODIAL STATEMENTS by defendant, the parties agree that:

- No custodial statements will be offered in the State's case in chief, or in rebuttal
- The statements of defendant will be offered in the State's case in rebuttal only.
- The statements referred to in the State's discovery will be offered and
 - May be admitted into evidence without a pre-trial hearing, by stipulation of the parties
 - A 3 5 conference is required and is estimated to require 1/2 (min) and is set for day of trial

6. Regarding PRIOR CRIMINAL CONVICTIONS OF THE DEFENDANT, the parties agree that if defendant testifies at trial

- If the defendant testifies at trial, the prior record of convictions contained in the State's discovery
 - will will not be (stipulated to) by the defendant with the following exceptions

There are no prior known convictions at this time. State will advise defendant promptly if it learns of prior convictions

7. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that

No motion to suppress physical evidence or identification will be filed

Or, THE COURT ORDERS THAT

- Defendant's written motion to suppress shall be filed by _____ The State's response shall be filed by _____ Testimony will/will not be required.
- State's written motion to suppress shall be filed by _____ The Defendant's

response shall be filed by _____ . Testimony will/will not be required

8 Regarding OTHER PRE-TRIAL MOTIONS No additional motions are anticipated, except:

Standard Pre-Trial motions

Briefing schedule: Affidavits and briefs of the moving party must be served and filed by: _____

Responsive Brief must be served and filed by: _____

The hearing will last about _____ (min/hr)

9. Regarding TRIAL

a. The trial will be jury [] non-jury, and will last about 4-5 days.

b. Is an interpreter needed: No [] Yes Language: _____ (If an interpreter is needed, State will call interpreter services at ext 6091)

10. Regarding WITNESSES:

There will be out-of-state witnesses [] yes no

A child competency or child hearsay hearing is needed [] yes no.

State

All witnesses have been disclosed.

[] A Witness List has been filed.

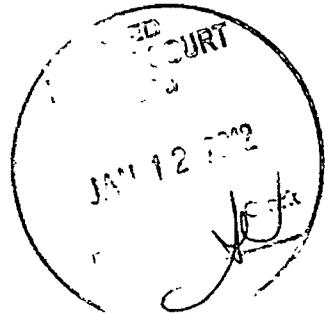
A witness list must be filed by 2 weeks prior to trial

Defense.

All witnesses have been disclosed

[] A Witness List has been filed

[] A witness list must be filed by _____



11 Other

[] Defendant needs a competency examination.

[] Defendant is applying for drug court.

[] Defendant is seeking an evaluation which may necessitate a continuance

12 The Court sets a Status Conference for _____ (date) for the purpose of _____

13 Other orders: _____

Dated January 15 2012.

[Signature]
Defendant

[Signature]
Judge

[Signature]
Defendant's Attorney/Bar # 16164

[Signature]
Prosecuting Attorney/Bar # 32719



11-1-04142-7 37998521 OOR 02-14-12

VC



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs Michael Nelson Defendant.

NO. 11-1-04142-7 ORDER ON OMNIBUS HEARING CHARGE: 1207 1st UPOV 1st TRIAL DATE: 3/19/12 OOR

THIS MATTER having come before the court for an Omnibus Hearing, the State represented by Jared Aussere, and the defendant being present and represented by John Cain

1. Regarding PROSECUTOR'S OBLIGATIONS, THE DEPUTY PROSECUTING ATTORNEY STATES that at least seven days prior to this order:

- Checked boxes: The Prosecutor provided to defendant a complete list of the defendant's criminal convictions; The Prosecutor has provided to defense all discovery in their possession or control, pursuant to CR 4.7(a); The Prosecutor has contacted law enforcement agencies to request and/or obtain any additional supplemental police reports, forensic tests, and evidence and has made them available to defendant or defense counsel. The State is aware of the following reports, tests or evidence which has not been made available to the defendant; Prosecutor has reviewed the discovery and criminal history and made an offer to the defense

If prosecutor has not checked every box in this section, the court makes the following order

2 Regarding DEFENSE ATTORNEY'S OBLIGATIONS, DEFENSE COUNSEL STATES that at least two days prior to this order.

Checked box: Defense attorney has met with the defendant about this case

- Defense attorney has received a plea offer from the State
- Defense attorney has reviewed the discovery and the criminal history.
- Defense attorney has given discovery to prosecutor

If defense attorney has not checked every box in this section, the court makes the following order

NO DISCOVERY TO BE GIVEN AT THIS TIME

3. Regarding DISCOVERY: The parties agree that Discovery is COMPLETE/NOT COMPLETE IN THE FOLLOWING RESPECTS: as of February 14, 2014

DISCOVERY must be completed by 2 weeks prior to trial

4. Regarding GENERAL NATURE OF DEFENSE

The Defense states that the general nature of the defense is

- General Denial
- Alibi
- Insanity
- Other (specify) _____
- Consent
- Diminished Capacity
- Self-defense

5. Regarding CUSTODIAL STATEMENTS by defendant, the parties agree that:

- No custodial statements will be offered in the State's case in chief, or in rebuttal
 - The statements of defendant will be offered in the State's case in rebuttal only.
 - The statements referred to in the State's discovery will be offered and
 - May be admitted into evidence without a pre-trial hearing, by stipulation of the parties
- A 3 5 conference is required and is estimated to require 1/2 (min) and is set for day of trial.

6. Regarding PRIOR CRIMINAL CONVICTIONS OF THE DEFENDANT, the parties agree that if defendant testifies at trial

- If the defendant testifies at trial, the prior record of convictions contained in the State's discovery
 - will
 - will not be (stipulated to) by the defendant with the following exceptions.

There are no prior known convictions at this time State will advise defendant promptly if it learns of prior convictions

7. Regarding SUPPRESSION OF PHYSICAL EVIDENCE OR IDENTIFICATION, the parties agree that:

- No motion to suppress physical evidence or identification will be filed

Or, THE COURT ORDERS THAT:

- Defendant's written motion to suppress shall be filed by _____ The State's response shall be filed by _____ Testimony will/will not be required.
- State's written motion to suppress shall be filed by _____ The Defendant's

response shall be filed by _____ Testimony will/will not be required

8 Regarding OTHER PRE-TRIAL MOTIONS. No additional motions are anticipated, except.

Standard Pretrial
Briefing schedule Affidavits and briefs of the moving party must be served and filed by _____

Responsive Brief must be served and filed by _____

The hearing will last about _____ (min/hr)

9. Regarding TRIAL

a The trial will be jury non-jury, and will last about 5-6 days

b Is an interpreter needed No Yes Language: _____ (If an interpreter is needed, State will call interpreter services at ext. 6091)

10. Regarding WITNESSES

There will be out-of-state witnesses yes no.

A child competency or child hearsay hearing is needed yes no.

State

All witnesses have been disclosed

A Witness List has been filed

A witness list must be filed by 2 weeks prior to trial

Defense:

All witnesses have been disclosed

A Witness List has been filed

A witness list must be filed by _____

11 Other

Defendant needs a competency examination

Defendant is applying for drug court

Defendant is seeking an evaluation which may necessitate a continuance

12. The Court sets a Status Conference for _____ (date) for the purpose of _____

13 Other orders: _____

Dated February 14 2012

[Signature]
Defendant

[Signature]
Defendant's Attorney/Bar # 16164

[Signature]
Judge KATHERINE M. STOLZ
[Signature]
Prosecuting Attorney/Bar # 32719

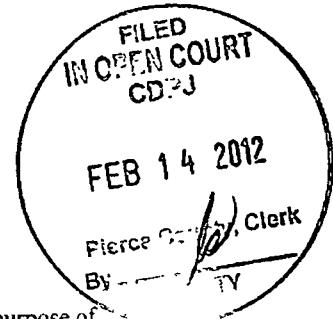
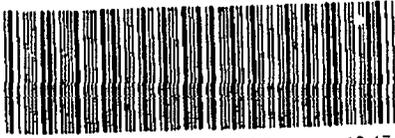
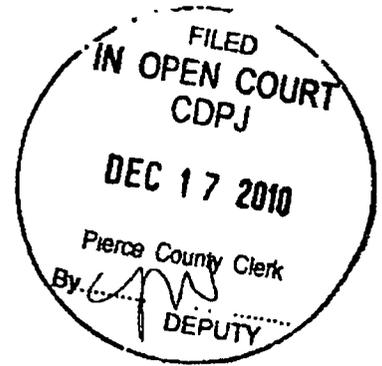


EXHIBIT 5



09-1-04220-1 35562296 STPPR 12-17-10



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

DEC 17 2010

Plaintiff,

CAUSE NO. 09-1-04220-1

vs.

MICHAEL ERIC NELSON,

STIPULATION ON PRIOR RECORD AND OFFENDER SCORE (Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE and UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, the defendant MICHAEL ERIC NELSON, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---------|------------------|--------------|---------------|----------------|------------|-------|-------|-----------------------|
| FORGERY | 03/25/05 | PIERCE, WA | 05/30/04 | A | NV | C | 1 | FELONY |
| UPCS | 09/26/06 | PIERCE, WA | 08/30/05 | A | NV | C | 1 | FELONY |
| C/UDCS | 09/26/06 | PIERCE, WA | 08/30/05 | A | NV | C | 1 | FELONY |
| UPCS | 09/26/06 | PIERCE, WA | 04/14/06 | A | NV | C | 1 | FELONY |
| C/UDCS | 09/26/06 | PIERCE, WA | 04/14/06 | A | NV | C | 1 | FELONY |

Concurrent conviction scoring: 5

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

NONE KNOWN OR CLAIMED

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

Office of Prosecuting Attorney
930 Tacoma Avenue S, Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

| COUNT NO | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|----------|----------------|-------------------|---|-------------------|---|--------------|
| III | 5 | I | 6+ to 18 MONTHS | NONE | 6+ to 18 MONTHS | 5 YRS |
| IV | 5 | I | 6+ to 18 MONTHS | NONE | 6+ to 18 MONTHS | 5 YRS |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.020, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty.
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution.
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

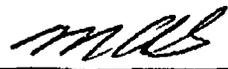
Stipulated to this on the 17 day of December, 2010.



 JOHN MACEJUNAS
 Deputy Prosecuting Attorney
 WSB # 37443



 MICHAEL ERIC NELSON

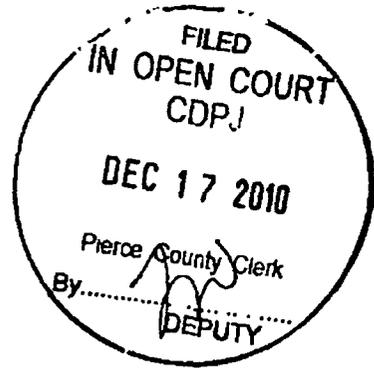


 MICHAEL A. STEWART
 WSB # 23981

kes



09-1-04220-1 35562294 STDFG 12-17-10



**Superior Court of Washington
For Pierce County**

State of Washington
Plaintiff

vs.

Michael Nelson
Defendant

No. 09-1-04220 ^{DEC 17 2010}

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

- 1 My true name is: Michael Eric Nelson
- 2 My age is: 24
- 3 The last level of education I completed was 11th

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 Stewart

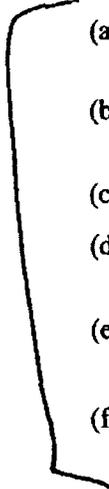
(b) I am charged with the crime(s) of:
Count I Unlawful possession of a controlled substance, cocaine
The elements are: In the State of Washington, on 9/17/2009
the unlawful possession of cocaine, knowingly
and feloniously.

~~Count II Unlawful possession of cocaine (same substance)~~
The elements are: In the State of Washington on 9/17/2009
did unlawfully and feloniously possess a controlled

Substance (Cocaine)

(c) _____ Additional counts are addressed in Attachment "B"

5. **I Understand 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 testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty,
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

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

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

| COUNT NO | OFFENDER SCORE | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancements* | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000 For crimes committed prior to July 1, 2000, see paragraph 6(f)) | MAXIMUM TERM AND FINE |
|----------|----------------|--|--------------------|--|---|-----------------------|
| 1 | 5 | 6-18 months | Ø | 6-18 months | 12 months | 5 yrs \$10,000 |
| 2 | 5 | 6-18 months | Ø | 6-18 months | 12 months | 5 yrs \$10,000 |

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, See RCW 9 94A 633(6), (VH) Veh Hom, see RCW 46 61 520, (JP) Juvenile present, See RCW 9 94A 605

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I

understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9 94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

| OFFENSE TYPE | COMMUNITY CUSTODY RANGE |
|---|--|
| Serious Violent Offenses | 24 to 48 months or up to the period of earned release, whichever is longer |
| Violent Offenses | 18 to 36 months or up to the period of earned release, whichever is longer |
| Crimes Against Persons as defined by RCW 9 94A.411(2) | 9 to 18 months or up to the period of earned release, whichever is longer |
| Offenses under Chapter 69 50 or 69.52 RCW (not sentenced under RCW 9.94A 660) | 9 to 12 months or up to the period of earned release, whichever is longer. |

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge:
- LTS 183 days \$ 500 CIVPA \$ 200 COSTS \$ 100 DNA
\$ 250 drug fund; 12 months community custody, NO USE/POSSESSION
\$ 500 CATION/DRUGS/USERS/SELLERS, maintain law abiding
behavior, forfeit items

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

- (h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
 - (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
 - (iv) The judge may also impose an exceptional sentence above the standard range if

the State has given notice that it will seek an exceptional sentence, the notice states *aggravating circumstances upon which the requested sentence will be based*, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen** of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) I understand that I will be **ineligible to vote** until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) **Public assistance will be suspended** during any period of imprisonment.
- (m) I understand that I will be required to have a **biological sample** collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.

Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.

-  (n) This offense is a **most serious offense** or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a **first-time offender** instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, 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.
- (p) If this crime involves a **kidnapping offense involving a minor**, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for

Statement on Plea of Guilty (Non-Sex Offense) (STTDFG) - Page 5 of 9
CrR 4.2(g) (7/2007)

complying with the new requirements

- MM*
- (q) If this is a crime of **domestic violence**, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
 - (r) If this crime involves **prostitution, or a drug offense associated with hypodermic needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.
 - (s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of at least one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court. As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30 00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(f). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within

the standard range.

- (t) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
-  (u) ~~If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b)~~
- (v) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a
-  (w) ~~If this crime involves a **motor vehicle**, my driver's license or privilege to drive will be suspended or revoked.~~
- (x) ~~If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(13).~~
- (y) ~~If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.~~
- (z) The crime of _____ has a **mandatory minimum sentence** of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- (aa) I am being sentenced for **two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- (bb) I understand that the offense(s) I am pleading guilty to include a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions
- (cc) I understand that the offense(s) I am pleading guilty to include a **deadly weapon or**

Statement on Plea of Guilty (Non-Sex Offense) (STTDFG) - Page 7 of 9
CrR 4.2(g) (7/2007)

MM

firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

- (dd) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.
- (ee) I understand that if I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- (ff) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

- 7. I plead guilty to count(s) III, IV in the Second Amended Information. I have received a copy of that information.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

On 9/17/2009 in the state of Washington,
I possessed 2 separate amounts of cocaine,
knowingly and unlawfully.

MM

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

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

Michael Weber
Defendant

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

Robert V. [Signature]
Prosecuting Attorney

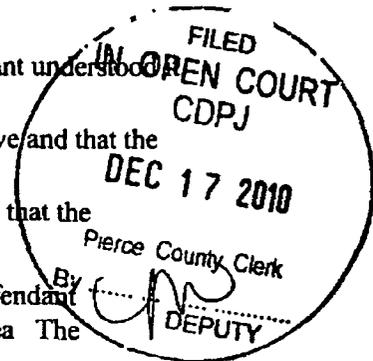
[Signature]
Defendant's Lawyer

Print Name Robert V. WSBA No. 45013

Print Name Michael Stewart 23991 WSBA No. _____

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

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



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

Dated: 12-17-10 [Signature]
Judge

Interpreter's Declaration

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 the _____ for the defendant from English into that language
(Identify document being translated)

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: _____

Interpreter

Print Name

Location: _____

Room 946
COPY RECEIVED

MAY 11 2017

PIERCE COUNTY
PROSECUTING ATTORNEY

RECEIVED

MAY 11 2017

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON
No. 49782-A-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

State of Washington, Respondent/Plaintiff,

v.

Michael Eric Nelson, Petitioner/Defendant

REPLY BRIEF OF PETITIONER

Michael Austin Stewart
Attorney for Petitioner/Defendant
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Tacoma, WA 98402
253.383.5346