

No. 49855-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL WELLS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

APPELLANT'S OPENING BRIEF

RICHARD W. LECHICH
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. INTRODUCTION

“Providing equal justice for poor and rich, weak and powerful alike is an age-old problem.” Griffin v. Illinois, 351 U.S. 12, 16, 76 S. Ct. 585, 100 L. Ed. 891 (1956). During the State’s appeal of a dismissal order, Michael Wells was jailed while awaiting resolution in a different case. Because he could not afford bail, he spent 91 days in jail before being sentenced in the second case. After this Court reversed the dismissal order in the first case, Mr. Wells pleaded guilty. When sentenced, he did not receive credit for the 91 days he spent in jail, resulting in him being incarcerated for a longer period than a rich person who could have bailed out. Because due process and equal protection principles require he receive credit for these 91 days, this Court should grant him this credit. Mr. Wells is also entitled to 34 days of additional credit and resentencing due to ineffective assistance of counsel. Finally, the court should strike the trial court’s imposition of \$2,000 against Mr. Wells for a “drug enforcement fund” because there is no evidence to support it and the trial court intended to waive all discretionary legal financial obligations.

B. ASSIGNMENTS OF ERROR

1. In violation of the guarantees of equal protection and due process as provided in the Fourteenth Amendment to the United States

Constitution and article I, §§ 3 and 12 of the Washington Constitution, the trial court failed to credit Mr. Wells 91 days for time spent in jail.

2. In violation of the Sixth Amendment to the United States Constitution and article I, § 22 of the Washington Constitution, Mr. Wells was deprived of his right to effective assistance of counsel during the sentencing phase of his case.

3. Lacking substantial evidence, without conducting a proper inquiry into ability to pay, and contrary to its own ruling that it was waiving all discretionary financial obligations due to indigence, the trial court erred in ordering Mr. Wells to pay \$2,000 for a “drug enforcement fund.”

C. ISSUES

1. Due process and equal protection requires that the rich and poor be treated alike. During the State’s appeal of a dismissal order, Mr. Wells spent 91 days in jail. After this Court reversed, Mr. Wells pleaded guilty. Although a wealthy person might have bailed out and not spent those 91 days in jail, Mr. Wells did not receive credit for this lengthy period of incarceration. Should this Court reverse with instruction that Mr. Wells be credited 91 additional days?

2. Defendants are entitled to effective assistance of counsel at sentencing. After Mr. Wells pleaded guilty, counsel did not ask to

proceed to sentencing, believing there was no rush because Mr. Wells was incarcerated in a different case. Mr. Wells was not sentenced until 34 days later. Because he was serving a sentence in a different case, he was not credited for the time spent waiting to be sentenced in this case, effectively extending his incarceration by 34 days. Given counsel's misunderstanding and the reasonable probability that the court would have sentenced Mr. Wells following his plea if requested, was Mr. Wells deprived of effective assistance of counsel?

3. The law does not authorize giving credit for time being served on other sentences. Nevertheless, in deciding what sentence to impose within the standard range, a trial court may consider this as a factor supporting a lower sentence. Although this factor supported a lower sentence, counsel failed to inform the court or advocate for a low end sentence of 20 months. Consequently, the court accepted the State's recommendation of a 24-month sentence. Does counsel's ineffective assistance require remand for a new sentencing hearing?

4. Trial courts may waive discretionary legal financial obligations. The trial court found Mr. Wells indigent and waived all discretionary legal financial obligations. Nevertheless, the judgement and sentence imposed \$2,000 against Mr. Wells for "drug fund enforcement." This type of financial obligation is discretionary and must be based on the costs of the

investigation. Should this financial obligation be stricken because no evidence supports it and the trial court expressed its intent to waive all discretionary financial obligations?

D. STATEMENT OF THE CASE

In October 2013, Michael Wells was charged with drug crimes (“the 2013 case”). CP 3, 53. While awaiting trial, Mr. Wells was accused of additional drug crimes (“the 2014 case”). CP 38-39, 49. On October 14, 2014, Mr. Wells successfully moved to suppress the evidence in the 2013 case and it was dismissed. CP 9, 55. The State appealed. CP 11.

On June 17, 2015, while the State was appealing the 2013 case, Mr. Wells pleaded guilty to the charges in the 2014 case. CP 52. He was sentenced to 40 months’ imprisonment with 121 days credit for time served. Supp. CP __ (sub. 71, p. 3).¹ Excluding “good-time,”² Mr. Wells would complete this sentence around June 2018.

On January 26, 2016, this Court reversed the trial court’s suppression order in the 2013 case. CP 7-16. Mr. Wells’ petition for

¹ This docket entry is corroborated by the judgment and sentence from the 2014 case, which is attached in the appendix.

² “Good-time” is “credit a prisoner receives for good behavior or good performance while incarcerated.” In re Talley, 172 Wn.2d 642, 647, 260 P.3d 868 (2011). It is synonymous with the terms “earned early release time” or “early release credits.” Id.

discretionary review was denied and the appellate mandate issued on August 15, 2016. CP 5, 56.

On December 2, 2016, Mr. Wells pleaded guilty to two counts of possession of controlled substance with intent to deliver in the 2013 case. CP 20-34; RP 4-12. The standard range sentence was between 20 and 60 months. CP 21. The State agreed to recommend a 24-month sentence to run concurrent with the 40-month sentence imposed in the 2014 case. CP 25, 43. Mr. Wells remained free to recommend a lower sentence. See CP 20-34.

The parties disagreed as to how much credit for time served was owed to Mr. Wells. The State argued Mr. Wells was only entitled to credit for time served prior to his case being dismissed and calculated the amount as 29 days. CP 41-42. The State acknowledged that Mr. Wells had been in custody for an additional 91 days before being sentenced in the 2014 case and while his 2013 case was on appeal. CP 42.

Mr. Wells argued that he should at least be credited with all time since August 15, 2016, which was the date of the appellate mandate. CP 48. After the mandate was issued, Mr. Wells was transferred back to Clark County Jail, where he remained because he was serving the sentence imposed in the 2014 case. CP 48.

Sentencing was set for December 23, 2016. RP 12. At the prosecutor's request, the hearing was continued to January 4, 2017, because the prosecutor who had prepared the sentencing memorandum was unavailable. RP 13-15. Mr. Wells' attorney did not object, stating it did not matter because his client was serving the sentence in the 2014 case, remarking "It's not like he's going to get out." RP 14.

At the sentencing hearing on January 4, 2017, the parties and the court discussed how many days' credit for time served was owed to Mr. Wells. RP 16-20. The matter was continued again to the next day because the court wanted more time to make a decision. RP 20-21. Mr. Wells' attorney did not object. RP 20-21.

Mr. Wells was finally sentenced on January 5, 2017. Mr. Wells accepted responsibility, explained his failings were the result of a relapse, and told the court he wanted to get back to his family, particularly his 10-year-old daughter:

I know I made a lot of mistakes in my past. I relapsed. Before that, I had eight years clean, and, you know, I messed up real bad. And I'm just trying to get back to my family. I've got to [sic] 10-year-old daughter I'm trying to get home to

RP 22.

The court accepted the State's recommendation of a 24-month sentence, to run concurrent with sentence in the 2014 case. RP 22-23, 30; CP 63. Defense counsel did not advocate for a lower sentence.

On credit for time served, the court rejected Mr. Wells' arguments. RP 29-30. The court agreed with the State and ruled that "because Mr. Wells had been sentenced on July 24th, 2015, that it would not be appropriate for him to be getting credit for time served on this case." RP 29. Although accepting the State's framework, the court disagreed with the State's calculations, and credited Mr. Wells with 25 days rather than 29 days. RP 28; CP 75.

The court waived all discretionary legal financial obligations due to Mr. Wells' indigency. RP 22-23, 30; CP 65. Still, the judgment and sentence requires Mr. Wells to pay \$2,000 for a "drug enforcement fund." CP 65.

Excluding good-time, Mr. Wells will not complete the sentence imposed in this case until around December 2018, about six months after he completes the concurrent sentence in 2014 case. See RP 28; CP 52, 63, 75; Supp. CP __ (sub. 71, p. 3).

E. ARGUMENT

1. Due process and equal protection entitled Mr. Wells to an additional 91 days of credit for time served. The Court should order he be granted this credit.

a. Due process and equal protection principles forbid arbitrary or irrational government action.

The Fourteenth Amendment commands that no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. Similar guarantees are provided by the Washington Constitution. Const. art I, § 3 (“No person shall be deprived of life, liberty, or property, without due process of law.”); Const. art I, § 12 (“No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.”).

Under due process and equal protection principles, when government action does not threaten fundamental rights and does not involve a suspect class, the action must pass rational basis review. State v. Anderson, 132 Wn.2d 203, 209, 937 P.2d 581 (1997). Government action that is arbitrary or irrational flunks rational basis review. City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 446, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). “Irrational” means unreasonable, foolish,

illogical, or absurd. Mission Springs, Inc. v. City of Spokane, 134 Wn.2d 947, 970, 954 P.2d 250 (1998).

b. Defendants must be credited for time spent in detention. To not do so is irrational and discriminates against the poor.

“Pre-trial detention is nothing less than punishment. An unconvicted accused who is not allowed or cannot raise bail is deprived of his liberty.” Reanier v. Smith, 83 Wn.2d 342, 349, 517 P.2d 949 (1974) (quoting Culp v. Bounds, 325 F. Supp. 416, 419 (W.D.N.C. 1971)). Accordingly, “considerations of due process, equal protection and the prohibition against multiple punishments dictate that presentence jail time be credited” Id. at 352. In other words, for constitutional purposes “there is no distinction between pretrial and postconviction confinement.” Anderson, 132 Wn.2d at 212. These principles help ensure that the poor—who are often unable to secure pretrial release because they cannot afford bail—are treated the same as the rich. See State v. Medina, 180 Wn.2d 282, 292-93, 324 P.3d 682 (2014) (government is “absolutely bar[red]” “from distinguishing between rich defendants and poor defendants for the purpose of credit for time served.”).

Supplementing these constitutional principles is a Washington statute, which provides sentencing courts must give offenders “credit for all confinement time served before the sentencing if that confinement was

solely in regard to the offense for which the offender is being sentenced.” RCW 9.94A.505(6). This statute is read with the foregoing constitutional principles in mind. See, e.g., State v. Lewis, 184 Wn.2d 201, 204-05, 355 P.3d 1148 (2015) (notwithstanding statute, defendant was entitled to credit for time served on assault and burglary sentences for the 387 days he was incarcerated awaiting trials on charges of assault, burglary, and failure to register as a sex offender).

c. Mr. Wells spent 91 days in jail during which time he could have bailed out. Because this time was not spent as part of a postconviction sentence, he is entitled to this credit in this case.

The trial court credited Mr. Wells with 25 days credit for time served. RP 28; CP 75. This was based on time spent by Mr. Wells in jail before the case was dismissed on October 14, 2014. RP 23-30. The trial court correctly credited Mr. Wells with this amount.

While the case was on appeal, however, Mr. Wells spent additional time in custody. In connection to the 2014 case, Mr. Wells was in custody for 18 days from October 23, 2014 to November 10, 2014. CP 44, 49-50. Also before sentencing in the 2014 case, he was in custody for 73 days from May 12, 2015 to July 24, 2015. CP 44, 51-52. Mr. Wells was unable to bail out during this time and he was ultimately credited this time (91 days) in the sentence imposed in the 2014 case. See CP 42.

Mr. Wells was also entitled to have this time counted in the 2013 case. To not count it treats him differently based on his financial status, which is unconstitutional. A rich person could have bailed out during the 91 days that Mr. Wells was incarcerated. This person's effective sentence would be less than Mr. Wells' sentence. Accordingly, the trial court should have credited Mr. Wells with 91 more days of credit. See Lewis, 184 Wn.2d at 205-06 (recognizing that pretrial detention time must be applied to multiple sentences if not doing so would result in different treatment based on an inability to make bail).

Additionally, the failure to credit Mr. Wells is based on a second irrational distinction. Mr. Wells is being treated differently because he successfully exercised his constitutional rights at the trial court level and obtained dismissal. If he had been unsuccessful and not obtained dismissal, he would have received the 91 days credit. In other words, if Mr. Wells lost his motion to suppress, he would have received credit for time served. It is not rational to treat Mr. Wells differently based on the mere fact that the judge erroneously granted his motion to suppress. See Anderson, 132 Wn.2d at 212-13 (for purposes of awarding jail time credit, no rational basis to treat differently defendants placed on pretrial electronic home detention and those serving such detention following conviction and pending their appeal). It effectively punishes Mr. Wells

for exercising his constitutional rights. See Griffin v. California, 380 U.S. 609, 614, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965) (prosecution cannot comment on the defendant’s exercise of his right to remain silent and not testify because it penalizes the exercise of a constitutional right).

Accordingly, due process and equal protection principles require that Mr. Wells be credited 91 additional days.

2. Due to trial counsel’s ineffective assistance, Mr. Wells’ sentence was increased. Remand is necessary to remedy this injustice.

a. Defendants have the right to effective assistance of counsel during the sentencing phase of the proceedings.

Criminal defendants have the right to effective assistance of counsel under our state and federal constitutions. U.S. Const. amend. VI; Const. art. I, § 22.³ This right extends to all critical stages, including sentencing. Lafler v. Cooper, 566 U.S. 156, 165, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012) (citing Glover v. United States, 531 U.S. 198, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001)).

To establish ineffective assistance of counsel, a party must show deficient performance and resulting prejudice. Strickland v. Washington,

³ “In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend. V.

“In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel.” Const. art. I, § 22.

466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Deficient performance is performance falling below an objective standard of reasonableness. Id. “Reasonable conduct for an attorney includes carrying out the duty to research the relevant law.” State v. Kyllo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). Prejudice is shown when there is a reasonable probability that absent counsel’s deficient performance, the result of the proceeding would have been different. Id.

b. Counsel provided ineffective assistance by failing to demand that Mr. Wells be sentenced as soon as possible. Counsel’s failure extended Mr. Wells’ imprisonment.

Mr. Wells pleaded guilty on December 2, 2016. RP 10-11. Rather than ask the Court to immediately proceed to sentencing, defense counsel agreed to delay sentencing until December 23, 2016. RP 11. On December 23, 2016, defense counsel acquiesced to delay sentencing further until January 4, 2017, remarking “It’s not like [Mr. Wells] is going to get out.” RP 14. On January 4, 2017, defense counsel again acquiesced to delay sentencing to January 5, 2017. RP 20-21.

As a result of defense counsel’s actions, Mr. Wells did not start serving his sentence in the 2013 case until January 5, 2017. As the trial court determined at sentencing, Mr. Wells was not entitled to credit for time served during this time because he had already been sentenced in the 2014 case. RP 29; Lewis, 184 Wn.2d at 206; State v. Watson, 63 Wn.

App. 854, 859-60, 822 P.2d 327 (1992). Accordingly, the delay in sentencing effectively extended Mr. Wells' imprisonment by 34 days.

The record shows that defense counsel thought there was no need to quickly proceed to sentencing because he thought Mr. Wells would receive credit while he waited. RP 14. He was wrong. Lewis, 184 Wn.2d at 206; Watson, 63 Wn. App. at 859-60; accord 13B Wash. Prac., Criminal Law § 3603 (2016-2017 ed.) (“[T]ime credited on a charge for which the offender has been sentenced cannot be credited towards other crimes for which sentencing has not yet occurred.”). If counsel had researched the law (and understood it), he would have concluded that it was imperative to proceed to sentencing. Defense counsel's failure needlessly resulted in his client's prison term being longer.

Reasonably competent counsel would have asked that Mr. Wells be sentenced immediately following his guilty plea. Such counsel certainly would not have acquiesced to further delay on December 23, 2016, when the State requested to continue sentencing to January 4, 2017. RP 13-14. Because sentencing was delayed again to January 5, 2017, this extended Mr. Wells' incarceration by 13 days. This was deficient performance. See Kylo, 166 Wn.2d at 862; State v. Adamy, 151 Wn. App. 583, 588, 213 P.3d 627 (2009) (trial counsel deficient in not citing

appropriate authority when arguing for court to consider a Special Sex Offender Sentencing Alternative (SSOSA)).

Had counsel asked to proceed to sentencing on December 2, 2016, there is a reasonable probability that the trial court would have done so. Thus, Mr. Wells was prejudiced by his counsel's deficient performance. See Glover, 531 U.S. at 200, 203 (deficient performance prong met where legal error increased length of incarceration); Missouri v. Frye, 566 U.S. 133, 147, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012) (prejudice from ineffective assistance includes reasonable probability of "a sentence of less prison time"). Accordingly, this Court should remand with instruction that Mr. Wells be credited 34 more days. See Adamy, 151 Wn. App. at 589 (remanding for consideration of a SSOSA due to ineffective assistance of counsel).

Alternatively, if counsel had objected to the continuance request, there is a reasonable probability that the trial court would have proceeded with sentencing on December 23, 2016. Therefore, this Court should at least remand with instruction that Mr. Wells be credited 13 more days.

c. Counsel provided ineffective assistance by failing to argue that Mr. Wells be sentenced to 20 months, the low end of the standard range.

The low end of the standard range sentence for Mr. Wells was 20 months. CP 62. Under the plea agreement, the prosecutor promised to

recommend a 24-month sentence. CP 25. The plea agreement did not forbid Mr. Wells from asking for a lower sentence. CP 20-36.

Still, counsel did not ask for a lower sentence. This was manifestly unreasonable given the equities and the odd procedural posture of the case. This Court has recognized while time served on other charges may not entitle a defendant to credit for time served on a different charge, it is a relevant factor for the sentencing court to consider in crafting an appropriate sentence:

The [Sentencing Reform Act] does not authorize giving credit for time being served on other sentences. Insofar as time served on other charges is relevant, the court may consider that factor in exercising its discretion within the standard range, or in some truly extraordinary case might consider it a reason for an exceptional sentence.

Watson, 63 Wn. App. at 859-60 (emphasis added).

Here, due to the unusual procedural posture, the 2014 case was resolved sooner than the 2013 case. After the 2013 case was revived in 2016 by the appellate mandate, Mr. Wells could not gain credit for time served subsequently because he was already serving the sentence in the 2014 case. Further, due to the odd facts, sentencing was delayed. Under Watson, the trial court had discretion to take the foregoing into account in crafting a sentence.

Defense counsel, however, did not inform the trial court that it had authority to take these factors into account. There was no legitimate strategic reason not to. Had the trial court been aware of its authority, there is a reasonable probability that Mr. Wells would have received a lower sentence. This was ineffective assistance. See Glover, 531 U.S. at 200; Adamy, 151 Wn. App. at 588-89.

Accordingly, this Court should reverse and remand. On remand, the trial court should consider whether Mr. Wells should receive a lower standard range sentence in light of the time he served in the 2014 case.

3. The trial court erred by ordering Mr. Wells to pay \$2,000 in legal financial obligations for a “drug enforcement fund.” It should be stricken.

a. The trial court stated it was waiving all discretionary financial obligations based on Mr. Wells’ indigency, but the judgment and sentence orders him to pay \$2,000 for a discretionary financial obligation.

As part of the plea agreement, the State disclosed that it would recommend the trial court impose legal financial obligations (LFOs) against Mr. Wells. CP 25. Among the recommended LFOs was a \$2,000 “drug fund fee.” CP 25.

At sentencing, the trial court found Mr. Wells indigent and waived imposition of nonmandatory legal financial obligations. RP 22 (“I will make a finding that you’re presently indigent, that there is [sic] limitations

and ability to pay. So I'll waive the nonmandatory financial obligations for you in that regard."); CP 65. There was no discussion about the State's recommended "drug fund fee." RP 15-32.

Nevertheless, the judgment and sentence states that Mr. Wells owes \$2,000 as part of a "drug enforcement fund." CP 65.⁴ Despite the trial court's oral ruling stating its intention to waive all nonmandatory fees due to indigence, a box on the judgment and sentence states that Mr. Wells "is anticipated to be able to pay financial obligations in the future." CP 62.

b. Before ordering payment for a drug enforcement fund contribution, there must be evidence to support it and the defendant must have the ability to pay it.

The judgment and sentence cites RCW 9.94A.760 as authority for the "drug enforcement fund" legal financial obligation (LFO). CP 65. This statute provides that "the court may order the payment of a legal financial obligation as part of the sentence." RCW 9.94A.760(1). A different statute provides that a "legal financial obligation" includes "county or interlocal drug funds." RCW 9.94A.030(1).

Based on these provisions, this Court has held that a trial court may order payment of drug enforcement fund contributions as part of a

⁴ A box with the number # 1015 is checked next to this. CP 65. It is unclear what this refers to.

defendant's LFOs. State v. Hunter, 102 Wn. App. 630, 635, 9 P.3d 872 (2000). But RCW 9.94A.760(1) uses the permissive language "may," making the imposition of this LFO discretionary. See State v. Blazina, 182 Wn.2d 827, 838, 344 P.3d 680 (2015) (contrasting words "shall" and "may"); State v. Mathers, 193 Wn. App. 913, 916, 376 P.3d 1163 (2016) (DNA and Victim Penalty Assessment fees are mandatory because the statutes authorizing these fees use mandatory language). The imposition of a drug fund contribution LFO is reviewed for an abuse of discretion. Hunter, 102 Wn. App. at 640.

LFOs for drug fund contributions are limited to drug-related crimes. Id. at 639. The amount of the contribution must be based on the costs of the investigation. Id.

Before imposing discretionary LFOs, a trial must make an individualized inquiry into the defendant's current and future ability to pay. Blazina, 182 Wn.2d at 838. As part of this inquiry, the court must consider the defendant's incarceration and debts. Id. The court should also examine whether the defendant is indigent under GR 34. Id.; City of Richland v. Wakefield, 186 Wn.2d 596, 606-07, 380 P.3d 459 (2016). If a person meets the GR 34 standard for indigency, the trial court "should seriously question that person's ability to pay LFOs." Blazina, 182 Wn.2d at 839.

c. The trial court did not intend to impose discretionary financial obligations, the record does not support the one imposed, and the court did not properly find that Mr. Wells has the ability to pay it.

The trial court erred in imposing the \$2,000 drug fund LFO against Mr. Wells. First, it appears that the trial court mistakenly imposed this LFO because the court stated it was waiving all discretionary LFOs. RP 22. The court crossed off proposed amounts for other discretionary LFOs in the judgment and sentence, but inexplicably left this one. CP 65 (crossing off and initialing proposed LFOs for criminal filing fee and fees for court appointed attorney). Second, the record does not show that the amount of \$2,000 is linked to the costs of an investigation into drug crimes. State v. Allen, 195 Wn. App. 1001 (2016) (unpublished) (trial court abused discretion in imposing drug enforcement fund contribution because there was no evidence of a drug investigation or related costs).⁵ And third, in finding that Mr. Wells was anticipated to be able to pay financial obligations in the future, the trial court failed to engage in the individualized inquiry required by Blazina and Wakefield. To the extent it considered his financial circumstances, it concluded he was indigent. Thus, the record does not show Mr. Wells has the ability to pay \$2,000.

⁵ This case is not precedential and is cited only for persuasive authority as this Court deems appropriate. GR 14.1; Crosswhite v. Washington State Dep't of Soc. & Health Servs., 197 Wn. App. 539, 544, 389 P.3d 731 (2017).

The judgment and sentence also left blank the total amount owed. This violates the statute, which instructs the trial court to “designate the total amount of a legal financial obligation.” RCW 9.94A.760(1).

Given these deficiencies, this Court should reverse and remand for the trial court to strike the drug enforcement fund contribution. The trial court should also designate the total amount owed.

F. CONCLUSION

Mr. Wells was improperly denied credit for time served. Defense counsel was ineffective by failing to demand the court quickly proceed to sentencing and in not advocating for a sentence at the low end of the standard range. The trial court also improperly imposed LFOs as part of a drug enforcement fund. This Court should reverse and remand with instruction that Mr. Wells be credited 91 more days. Due to counsel’s ineffectiveness, he should also be credited 34 additional days and a new sentencing hearing, where the court will consider a lower sentence. The drug enforcement fund LFO should be stricken.

DATED this 1st day of August 2017.

Respectfully submitted,

/s Richard W. Lechich
Richard W. Lechich – WSBA #43296
Washington Appellate Project
Attorney for Appellant

Appendix

15
9/2/15 C Steven Rucker

S1

CCSDA2

FILED
JUL 24 2015 10:58
Scott G. Weber, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

MICHAEL FREDERICK WELLS,
Defendant.

SID: WA17682374
If no SID, use DOB: 10/6/1972

No. 14-1-00959-3

**Felony Judgment and Sentence --
Prison
(FJS)**

15-9-02739-4

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline Mandatory Discretionary

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the deputy prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **Finds:**

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
 guilty plea 6/17/2015 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	FC	10/17/2013
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - SCHEDULE III	69.50.401(1),(2)(c)	FC	10/17/2013
03	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - HEROIN	69.50.401(1),(2)(a)	FB	5/9/2014
04	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	69.50.401(1),(2)(b)	FB	5/9/2014

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

The defendant used a **firearm** in the commission of the offense in Count _____, RCW 9.94A.825, 9.94A.533.

*Felony Judgment and Sentence (FJS) (Prison)(Nonsex Offender)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))*

- The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ . RCW 9.94A.825, 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** and 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.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

	Crime	Cause Number	Court (county & state)
1.			

- 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):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	DV?*	Type
1	See attached criminal history						

*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 for _____ are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions for _____ are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term	Maximum Fine
01	3	I - D3-5	6 MONTHS to 12 MONTHS		6 MONTHS to 12 MONTHS	5 YEARS	\$10,000.00
02	3	I - D3-5	6 MONTHS to 12 MONTHS		6 MONTHS to 12 MONTHS	5 YEARS	\$10,000.00
03	3	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS	\$25,000.00
04	3	II - D	20 MONTHS to 60 MONTHS		20 MONTHS to 60 MONTHS	10 YEARS	\$25,000.00

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

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:

- 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.

within the standard range for Count(s) _____, but served consecutively to Count(s) _____.

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:

That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

That the defendant is indigent and disabled and is not anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

Other: _____ . 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 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):

12 months on Count 01 12 months on Count 02
40 months on Count 03 40 months on Count 04

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 VUCSA in a protected zone manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 40 months

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 any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Credit for Time Served:** The defendant shall receive 121 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures

(c) **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 the balance of the defendant's remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

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

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) _____, 36 months for Serious Violent Offenses

Count(s) _____, 18 months for Violent Offenses

Count(s) 1,2,3,4, 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

Count(s) _____, _____ months. RCW 9.94A.701(9)

(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 on 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; and (9) 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 on community custody.

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

- consume no alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____
- not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.
- participate in the following crime-related treatment or counseling services:
AS DIRECTED BY D.O.C.
- 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:
AS DIRECTED BY D.O.C.
- Additional conditions are imposed in Appendix 4.2, if attached or are as follows:

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.

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

JASS CODE

RTN/RJN	\$ _____	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
PDV	_____	Domestic Violence assessment	RCW 10.99.080
CRF	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00 DS</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT

PUB \$ 1,000.00 ¹⁰⁰ Other Fees for court appointed attorney RCW 9.94A.760
 WFR _____ Court appointed defense expert and other defense costs RCW 9.94A.760
 \$ _____ DUI fines, fees and assessments
 FCM/MTH \$ 500.00 Fine RCW 9A.20.021; VUCSA chapter 69.50 RCW, VUCSA additional fine deferred due to indigency RCW 69.50.430
 CDF/LDI/FCD \$ 2,000.00 Drug enforcement Fund # 1015 1017 (TF) RCW 9.94A.760
 NTF/SAD/SDI
 \$ 100.00 DNA collection fee RCW 43.43.7541
 CLF \$ 100.00 Crime lab fee suspended due to indigency RCW 43.43.690
 FPV \$ _____ Specialized forest products RCW 76.48.140
 RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) RCW 38.52.430
 \$ _____ Other fines or costs for: _____
 \$ _____ **Total** RCW 9.94A.760

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:

shall be set by the prosecutor.

is scheduled for _____ (date).

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

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount

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 \$ _____ per month commencing _____.
RCW 9.94A.760.

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).

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.

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.

4.4 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 _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

_____ (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____,

for _____ years (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: _____

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: _____

4.8 For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

4.9 If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

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).

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.633.

(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.

5.5a 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 and RCW 9.41.047.

5.5b Felony Firearm Offender Registration. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved

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 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) _____ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030.(31)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 7/24/15

[Signature]
Judge/Print Name:

[Signature]
Deputy Prosecuting Attorney
WSBA No. 35626
Print Name: Daniel A. Gasperino

[Signature]
Attorney for Defendant
WSBA No. 20407
Print Name: Steven J. Rucker

[Signature]
Defendant
Print Name:
MICHAEL FREDERICK WELLS

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: [Signature]

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at Vancouver, Washington on (date): _____

Interpreter Print Name

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

MICHAEL FREDERICK WELLS

14-1-00959-3

SID No: WA17682374

Date of Birth: 10/6/1972

(If no SID take fingerprint card for State Patrol)

FBI No. 286495RA2

Local ID No. 128014

PCN No. _____

Other _____

Alias name, DOB:

Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk,

Kathryn Kralik

Dated:

7/24/15

The defendant's signature: *X* 

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

MICHAEL FREDERICK WELLS,

Defendant.

SID: WA17682374

DOB: 10/6/1972

NO. 14-1-00959-3

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	69.50.4013(1)	10/17/2013
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - SCHEDULE III	69.50.401(1),(2)(c)	10/17/2013
03	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - HEROIN	69.50.401(1),(2)(a)	5/9/2014
04	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	69.50.401(1),(2)(b)	5/9/2014

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
		40 months

COUNT	CRIME	TERM
01	POSSESSION OF A CONTROLLED SUBSTANCE - METHAMPHETAMINE	12 Days Months
02	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - SCHEDULE III	12 Days Months
03	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - HEROIN	40 Days Months
04	POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - METHAMPHETAMINE	40 Days Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 121 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable [Signature]

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 7/24/15



SCOTT G. WEBER, Clerk of the
Clark County Superior Court

By: Kaitlynn Kmalik
Deputy

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

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 MICHAEL FREDERICK WELLS,

13 Defendant

14 Date of Birth: 10/6/1972

No. 14-1-00959-3

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY



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

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
POSSESS CONTROLLED SUBSTANCE - MARIJUANA (<2 OZS)	WICHITA/TX UNKNOWN	3/1/1991	3/25/1991		
NO VALID OPERATOR LICENSE WITHOUT ID	CLARK/WA 59563	8/1/1994	8/29/1995		
THEFT 3	CLARK/WA 222880	2/5/1995	8/29/1995		
POSSESS CONTROLLED SUBSTANCE - METHAMPHETAMINE	CLARK/WA 95-1-01404-6	8/28/1995	10/19/1995		wash
POSSESS CONTROLLED SUBSTANCE - METHAMPHETAMINE	CLARK/WA 96-1-01459-1	10/24/1996	11/22/1996		wash
POSSESS CONTROLLED SUBSTANCE - MARIJUANA	CLARK/WA 222154	9/18/1997	10/14/1997		

28
29
DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
HIT AND RUN UNATTENDED (PROPERTY DAMAGE)	CLARK/WA 28073	9/18/1997	10/14/1997		
POSSESS CONTROLLED SUBSTANCE - MARIJUANA	CLARK/WA 254432	10/11/1997	10/14/1997		
THEFT 2	CLARK/WA 97-1-01633-9	10/8/1997	11/13/1997		wash
BURGLARY 2	CLARK/WA 97-1-01633-9	10/10/1997	11/13/1997		1
THEFT	CLARK/WA 10184	10/19/1999	7/31/2000		
DRIVING WHILE SUSPENDED 3	CLARK/WA 10185	10/19/1999	7/31/2000		
RECKLESS DRIVING	CLARK/WA 10185	10/19/1999	7/31/2000		
FORGERY	CLARK/WA 00-1-00918-6	4/2/2000	8/24/2000		wash
FORGERY	CLARK/WA 00-1-00918-6	4/5/2000	8/24/2000		wash
FORGERY	CLARK/WA 00-1-00918-6	4/5/2000	8/24/2000		wash
FORGERY	CLARK/WA 00-1-00918-6	4/12/2000	8/24/2000		wash
FORGERY	CLARK/WA 00-1-00918-6	4/14/2000	8/24/2000		wash
POSSESS CONTROLLED SUBSTANCE - METHAMPHETAMINE	CLARK/WA 02-1-00763-5	4/15/2002	8/2/2002		wash
POSSESS STOLEN PROPERTY 2	CLARK/WA 02-1-00763-5	4/15/2002	8/2/2002		wash
POSSESS STOLEN PROPERTY 2	CLARK/WA 02-1-01384-8	7/12/2002	8/2/2002		wash
POSSESS CONTROLLED SUBSTANCE - MARIJUANA (<40 GRAMS)	CLARK/WA 53920	11/5/2004	6/6/2005		
POSSESS STOLEN PROPERTY 3	CLARK/WA 57166	12/9/2004	6/6/2005		
BAIL JUMPING	CLARK/WA 53920	5/6/2005	6/6/2005		
BAIL JUMPING	CLARK/WA 57166	5/18/2005	6/6/2005		

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
POSSESS CONTROLLED SUBSTANCE - METHAMPHETAMINE	CLARK/WA 05-1-00906-3	4/20/2005	6/24/2005		wash

*DV: Domestic violence was pled and proved.

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

DATED this 24th day of July, 2015.



 Defendant

 Steven Rucker, WSBA#20407,
 Attorney for Defendant



 Daniel A. Gasperino, WSBA#35626
 Deputy Prosecuting Attorney

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 49855-3-II
v.)	
)	
MICHAEL WELLS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF AUGUST, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ANNE CRUSER, DPA	()	U.S. MAIL
[Anne.cruser@Clark.wa.gov]	()	HAND DELIVERY
[prosecutor@clark.wa.gov]	(X)	E-SERVICE VIA PORTAL
[CntyPA.GeneralDelivery@clark.wa.gov]		
CLARK COUNTY PROSECUTOR'S OFFICE		
PO BOX 5000		
VANCOUVER, WA 98666-5000		

[X] MICHAEL WELLS	(X)	U.S. MAIL
742827	()	HAND DELIVERY
COYOTE RIDGE CORRECTIONS CENTER	()	_____
PO BOX 769		
CONNELL, WA 99326-0769		

SIGNED IN SEATTLE, WASHINGTON THIS 1ST DAY OF AUGUST, 2017.

x 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

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