

No. 50091-4-II
Clallam County No. 16-1-00519-4

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

STATE OF WASHINGTON,

Respondent,

v.

ALEXANDER JAMES HUCKINS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON,
CLALLAM COUNTY

The Honorable Judge Eric S. Rohrer
(pretrial release proceedings)
and
The Honorable Judge Brian P. Coughenour
(trial and sentencing)

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. The superior court erred, abused its discretion and violated CrR 3.2 as well as state and federal due process and the presumption of innocence by failing to apply the rule's mandatory presumption of release on personal recognizance.
2. The mandatory presumption of release on personal recognizance of CrR 3.2 was not rebutted and there was insufficient evidence to support the preprinted "finding" on "Order Setting Conditions Pending Trial," which declared:

THE COURT HAVING DETERMINED that release on personal recognizance will not reasonably assure his/her appearance, or there is a danger that Defendant will commit a violent crime or interfere with the administration of justice, IT IS ORDERED that:

- [x] Release is authorized upon posting of cash bail or execution of security bond in the amount of \$ 1000. **Bail/bond is posted to guarantee compliance with all conditions of release herein and may be forfeited upon a violation of conditions and/or a failure to appear.**

Supp. CP __ (Order Setting Conditions, sub no. 7, filed November 16, 2016)¹ (emphasis in original).

3. Article 1, § 10, the Eighth Amendment and the state and federal guarantees of equal protection and due process are violated when a person cloaked with the presumption of innocence is kept in physical custody despite a presumption of release and because he is too impoverished to be able to pay financial conditions or "bail."
4. The issues surrounding the violations of CrR 3.2 and constitutional rights in relation to pretrial release are likely to evade review but of great public importance

¹A supplemental designation of clerk's papers for the document has been filed and a copy of the document is attached hereto as Appendix A.

and should be addressed by the Court.²

5. Appellant assigns error to condition of community custody 4.2(1), which provides, “[y]ou shall comply with the statutory requirements of community placement, RCW 9.94A.120(8)(b)(c).” CP 17.³
6. The sentencing court abused its discretion in holding that it had no discretion to deny imposition of a sentencing requirement that an indigent defendant must pay costs of supervision of community custody.
7. The written judgment and sentence controls and costs of supervision were not imposed.

B. QUESTIONS PRESENTED

1. Under CrR 3.2, those charged with but not convicted of a crime are entitled to a presumption of release on personal recognizance. Did the superior court err, abuse its discretion and violate due process and the presumption of innocence in failing to apply the presumption?
2. The presumption of pretrial release without conditions can only be overcome if the trial court finds either the particular defendant presents a risk of failing to appear given specifics regarding his background, case and history, or that there is a substantial danger that the particular defendant will commit a violent crime, intimidate a witness or otherwise interfere with the administration of justice if released without conditions, given a number of factors set forth in the rule.

Did the superior court err, abuse its discretion and violate fundamental principles including the due process presumption of innocence in failing to consider the relevant factors and making only an insufficient, preprinted “boilerplate” finding unsupported by substantial evidence?
3. Did the superior court improperly decide to impose bail where the court primarily relied on the nature of the allegations alleged but unproven by the state?

²A copy of CrR 3.2 is attached hereto for convenience as Appendix B.

³A copy of the Judgment and Sentence is attached hereto as Appendix C.

4. Were the presumption of innocence, due process, the prohibitions against excessive bail and equal protection violated when the superior court first failed to apply a mandatory presumption of release without conditions, then set a financial condition of pretrial release based on the nature of the charged crime so that the indigent defendant could not meet it, thus keeping him in pretrial custody based solely on his poverty?
5. Should the Court address the significant questions presented on the constitutionality of the pretrial errors in this case where the issues are likely to evade review and are of great public importance due to their tremendous negative impact and the important rights involved?
6. Should a condition of community custody referring to a repealed statute be stricken?
7. Does a sentencing court abuse its discretion by finding it did not have discretion to refuse to impose a condition of community custody where the condition in question is statutorily “waiveable” by that court?
8. Does a written judgment and sentence control over an oral order of a condition of community custody?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Alexander James Huckins was charged in Clallam County with second-degree assault with a deadly weapon, also charged with a domestic violence allegation. CP 39; RCW 9A.36.021; RCW 10.99.020.

After proceedings before the Honorable Judge Erik S. Rohrer on November 16, December 2 and 23, 2016, and the Honorable Christopher Melly on December 30, 2016, on January 3, 2017, the Honorable Brian P. Coughenour accepted a plea under North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), to

an amended information reducing the charge to felony harassment. CP 26-31; RCW 9A.46.020(1)(a)(I); RCW 9A.46.020(2)(b).

Judge Coughenour imposed a first-offender waiver sentence of 54 days in custody. CP 13. Huckins appealed and this pleading follows. CP 8.

2. Overview of allegations

The police report submitted with the charging documents indicates that officers were dispatched to “threat” calls at a residence and when they responded, Alex Evans claimed Alexander Huckins had said he was going to stab Evans “in the gut” with a knife. CP 42-43. Huckins was upset about someone having hacked his “Facebook” social media account. CP 43. Evans said Huckins had a fixed-blade knife he carried in a sheaf and officers recovered a knife from Huckins’ belt which fit the description. CP 43.

The report also indicated that Huckins admitted he had been very angry about the hacking that day and had made efforts to relax but could not recall some events because he was “in the black.” CP 43.

More detailed discussion facts relevant to the issues is contained in the argument section, *infra*.

D. ARGUMENT

1. MR. HUCKINS WAS DENIED HIS RIGHTS UNDER CRIMINAL RULE 3.2, ARTICLE 1, § 10 AND THE EIGHTH AMENDMENT; DUE PROCESS AND EQUAL PROTECTION WERE VIOLATED WHEN THE COURT SET FINANCIAL CONDITIONS OF PRETRIAL RELEASE WHICH KEPT HUCKINS IN CUSTODY BASED ON POVERTY

It is a fundamental rule in our criminal justice system that, before proven guilty by the state, all people accused of crimes are cloaked with the presumption of innocence. State ex rel Wallen v. Judges Noe, Towne, Johnson, 78 Wn.2d 484, 487, 475 P.2d 787 (1970); Coffin v. United States, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed 481 (1895). It is also fundamental that the state may not accuse someone of a crime and then keep them in custody pretrial based solely on that unproven accusation. Hudson v. Parker, 156 U.S. 277, 285, 15 S. Ct. 450, 39 L. Ed. 424 (1895).

As a result, pretrial release and liberty is supposed to be “the norm,” and “detention prior to trial or without trial . . . the carefully limited exception.” United States v. Salerno, 481 U.S. 739, 742, 107 S. Ct. 2095, 96 L. Ed. 2d 697 (1987); see State v. Barton, 181 Wn.2d 148, 331 P.3d 50 (2014).

In Washington, Article 1, § 10, the federal Eighth Amendment and CrR 3.2 apply when the government tries to keep someone accused - but not yet convicted - in custody. Barton, 181 Wn.2d at 152-54. The Eighth Amendment prohibits “excessive bail.” Article 1, § 20, goes further, ensuring a right to bail “by sufficient sureties” in all cases except a very few, while Article 1, § 10 guarantees the right to

be free from “excessive bail.” CrR 3.2, the relevant criminal rule, goes yet further, providing for a presumption of release on personal recognizance in most cases.

All of these provisions were violated in this case. Further, the trial court violated the constitutional guarantees of equal protection and due process by setting a financial condition for pretrial release which forced Mr. Huckins to be deprived of his pretrial liberty for being too poor to pay bail. He’s not alone; these issues involve more than just Mr. Huckins. They are likely to evade review, so this Court should address them. On review, this Court should reject and condemn what occurred in this case and remind the superior courts of their duties to follow the mandates of the criminal rules as well as the state and federal constitutions.

a. Relevant facts

The crime was alleged to have occurred on November 15, 2016. CP 39. Huckins first appeared on November 16, the day the first information was filed. CP 39; RP 3. Judge Rohrer, who was presiding, began by establishing that Huckins wanted appointed counsel. RP 3. After Huckins said he did, the judge said that would be done. RP 3.

The judge then moved on, asking the prosecutor’s “thought on the conditions of release.” RP 3. The prosecutor responded:

Your Honor, the State is asking for \$5,000 bail in this matter. The basis for that is Mr. Huckins doesn’t have extensive criminal history but the theory, recent criminal history that he does have, is concerning along the allegations in this matter. He does have an Assault 4, a domestic violence

conviction from April 10, coming out of this case. The case at hand also involves allegations of an assault, an assault involving a knife on a roommate in his home so (inaudible) so that does cause the State some concern. So that's the basis for the \$5,000 request.

RP 3-4.

In addition, the prosecutor asked for a domestic violence no-contact order. RP 4. Because the incident had occurred at the home where both parties lived, the prosecutor argued that Huckins should not to be allowed to go back to that address. RP 4. Instead, the state urged the court to require Huckins to provide an alternate physical address before he would be allowed to be released pretrial. RP 4.

It appears that a public defender was present and was thus essentially appointed when the judge said appointment would occur. See RP 5. After Judge Rohrer asked the prosecutor about the "domestic violence" part of the charge, the judge turned to that defender, asking, "anything you'd like to say?" RP 6. The attorney, Harry Gasnick responded, "I may not end up being involved in the case." RP 6. There was a brief pause while he spoke to his client for the first time. RP 6-7. Back on the record, counsel denied the allegations on his new client's behalf, said he would be investigating an alibi defense and questioned whether the victim was really a "household member." RP 5.

Regarding the issue of bail, counsel noted that briefly that Huckins had a history of "having been the subject of restraint orders" as a juvenile and of also being a "protected party" himself. RP 8. Counsel argued, however, that this was evidence that Huckins would

comply with court orders such as an order to appear. RP 8. Counsel noted there was no evidence that Huckins had failed to appear or violated any court orders or restraining orders in the past. RP 8. Counsel also noted it appeared Huckins had participated in “district court mental health court,” suggesting it might be “good” to think about that as a pretrial release condition. RP 9-10.

At that point, the judge turned to the issue of money, and the following exchange occurred:

THE COURT: Does your client have any money? Could he post any amount of bail? I am noticing there’s some basis - what’s your source of income?

MR. HUCKINS: I have SSI, that’s it.

THE COURT: Was that for disability?

MR. HUCKINS: Yes.

THE COURT: And what is the nature of your disability, sir?

MR. HUCKINS: Mental disability, that’s why I’m so sick.

RP 10.

Counsel then argued that the trial court had to consider that Huckins was indigent, disabled, had no job and “virtually no money to post bail,” and that the court could not legally order Huckins to use his federal disability payments to pay state bail. RP 10. The prosecutor admitted she had no evidence bail was required based on a risk of future “failure to appear,” and that this was one basis for “imposing bail.” RP 10-11. The prosecutor argued, however, that bail was also proper “if there’s some concern in regards to the safety

aspect.” RP 10. Her focus was the nature of “the allegations here,” although she thought there might have been a district court domestic violence assault conviction in another court a year or so before. RP 11. The judge agreed, “[t]hat’s the Court’s concern as well,” but it was unclear if the judge was referring to the nature of the charges or the alleged prior crime or both. RP 11.

Huckins had no probation violations for the prior case. RP 12-13. Judge Rohrer nevertheless raised questions about the prior offense possibly being a domestic violence assault and this case involving current charges which the judge thought were similar. RP 13. As a result of this, the judge said, he was “a little bit nervous about just releasing” Huckins. RP 12-13.

The judge was especially concerned about the allegations of the current case. RP 12. The judge said, “it did involve, allegedly, somebody being told that he was going to get stabbed in the gut with a knife that was pulled on him,” and that this alleged incident “does not sound good to the Court.” RP 12.

Judge Rohrer then set bail at \$1,000:

I may change my mind on this but at this point I’m going to set a small amount of bail. I know it’s less than the State is seeking but I’m going to set bail at \$1,000.00. I think to Mr. Huckins that would be a lot of money and I might give some thought to the special report calendar, especially if I knew a little more about what Mr. Huckins was doing, if he’s actively engaged in some sort of treatment or counseling.

RP 12.

On the “Order Setting Conditions Pending Trial,” was the following preprinted language:

THE COURT HAVING DETERMINED that release on personal recognizance will not reasonably assure his/her appearance, or there is a danger that Defendant will commit a violent crime or interfere with the administration of justice, IT IS ORDERED that:

- [x] Release is authorized upon posting of cash bail or execution of security bond in the amount of § 1000. **Bail/bond is posted to guarantee compliance with all conditions of release herein and may be forfeited upon a violation of conditions and/or a failure to appear.**

Supp. CP __ (App. A).

Mr. Huckins did not make bail and remained in jail until he entered his plea and was sentenced. See RP 23-27.

- b. The trial court erred in failing to follow CrR 3.2 and the presumption of release on personal recognizance

Pretrial release issues in this state are governed by both constitution and rule. Starting with the latter first, the trial court's decision below violated CrR 3.2, the rule governing the court's authority regarding bail and pretrial release. The rule is lengthy and best understood broken down into parts. First, under the rule, unless a person is charged with a crime for which they could face the death penalty, the rule provides a presumption that all accused will be released without any conditions pretrial. Butler v. Kato, 137 Wn. App. 515, 154 P.3d 259 (2007). CrR 3.2 provides:

- (a) **Presumption of Release in Noncapital Cases.** Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance . . . be ordered released on the accused's personal recognizance pending trial unless
 - (i) the court determines that such recognizance will not reasonably assure the accused's

- appearance, when required, or
- (2) there is shown a likely danger that the accused:
 - (a) will commit a violent crime, or
 - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

CrR 3.2(a)⁴ (emphasis in original). “Personal recognizance” release generally means “[t]he release of a defendant in a criminal case in which the court takes the defendant’s word he or she will appear for a scheduled matter” or “pretrial release of an arrested person who promises, usually in writing but without supplying a surety or posting bond, to appear.” BLACKS LAW DICTIONARY (10th ed. 2014).

Thus, under the plain language of CrR 3.2, Mr. Huckins was entitled to a presumption that he would be released pretrial without any conditions, financial or otherwise, unless and until the superior court made the required findings that the presumption had been rebutted. See CrR 3.2; State v. Rose, 146 Wn. App. 439, 450-51, 191 P.3d 83 (2008). Put another way, unless the lower court made the required findings, it had no authority to impose any conditions of release. Rose, 146 Wn. App. at 450-51. The presumption of release may be “overcome” but the court is still then limited in its authority and must impose the least restrictive conditions under the rule.

⁴A copy of CrR 3.2 is attached hereto for convenience as Appendix B. It does not appear that Clallam County has a local version of CrR 3.2. See http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=superior&set=supcll.

Butler, 137 Wn. App. at 521; see App. B.

The superior court here failed to follow multiple requirements of the rule. A second part of CrR 3.2 provides a mandatory - but not exclusive - list of factors upon which the deciding court such as the superior court in this case “shall” rely. CrR 3.2(a) provides, in relevant part, that,

[i]n making the determination herein, the court shall, on the available information, consider all the relevant facts including, but not limited to, those in subsections © and (e) of this rule.

CrR 3.2(c) then provides the following factors for “Future Appearance:”

- (1) The accused’s history of response to legal process, particularly court orders to personally appear;
- (2) The accused’s employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;
- (3) The accused’s family ties and relationships;
- (4) The accused’s reputation, character and mental condition;
- (5) The length of the accused’s residence in the community;
- (6) The accused’s criminal record;
- (7) The willingness of responsible members of the community to vouch for the accused’s reliability and assist the accused in complying with conditions of release;
- (8) The nature of the charge, if relevant to the risk of nonappearance;

- (9) Any other factors indicating the accused's ties to the community.

CrR 3.2(c); see App. B.

CrR 3.2(e) provides the relevant factors for determining the second grounds upon which the presumption of release may be found rebutted - a "showing of substantial danger that the accused will commit a violent crime[,] . . . seek to intimidate witnesses or otherwise unlawfully interfere with the administration of justice" - as follows:

- (1) The accused's criminal record;
- (2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;
- (3) The nature of the charge;
- (4) The accused's reputation, character and mental condition;
- (5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;
- (6) Whether or not there is evidence of present threats or intimidation directed to witnesses;
- (7) The accused's past record of committing offenses while on pretrial release, probation or parole; and
- (8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victim's [sic] or witnesses.

See App. B.

In this case, both the lower court and the prosecutor admitted that the imposed financial conditions had nothing to do with any

evidence that Mr. Huckins would fail to appear. RP 10-12. Indeed, the prosecutor specifically admitted she had no evidence to indicate such a risk. RP 10-11.

The Order signed below, however, includes a potential finding on that factor, providing in relevant part:

THE COURT HAVING DETERMINED that release on personal recognizance will not reasonably assure his/her appearance, or there is a danger that Defendant will commit a violent crime or interfere with the administration of justice, IT IS ORDERED that:

[a number of listed conditions are imposed].

Supp. CP ___ (App. A). There was no evidence, as the prosecutor admitted, that Huckins would not appear in court when necessary. There was thus not “information before the court sufficient to rebut the presumption of release.” See, e.g., Butler, 137 Wn. App. at 522. As a result, to the extent the lower court’s Order could be deemed to make a finding of likelihood of failure to appear, that preprinted finding was not supported by sufficient evidence, and the state “failed to rebut the presumption of release with a showing that personal recognizance” would not be “sufficient to ensure [the accused’s] . . . future appearance.” See id. Any conditions imposed on Huckins’ release were thus not properly imposed to ensure his presence at future court proceedings. See id.

As the preprinted “finding” of the court is set forth in the alternative, based on the record, discussion and concession here, the Court may reasonably assume that the lower court likely meant to find the second part of the alternative clause, that “there is a danger

that Defendant will commit a violent crime or interfere with the administration of justice[.]” Supp. CP ___ (App. A). But that finding is itself neither sufficient nor supported by sufficient evidence in the record.

The finding is insufficient, in several ways. CrR 3.2(a) allows the presumption to be rebutted if there is a finding of likely danger to “commit a violent crime” or that the accused “will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.” See App. B. The Order entered below does not make any findings about intimidating witnesses. Supp. CP ___ (App. A). Thus, only the crime or interference prongs were relied on, at least in the Order, in imposing the conditions below.

The Order, however, is insufficient to support rebuttal of the presumption of release, because the Order did not make the required findings. CrR 3.2 does not require proof of just any degree of “danger;” it requires a “**substantial danger.**” See App. B (emphasis added). See Rose, 146 Wn. App. at 452 (“[t]he trial court may impose conditions for pretrial release on a showing “that a substantial danger exists”).⁵ Thus, to rebut the presumption of release without

⁵While CrR 3.2(a)(2) refers to the required danger as “likely danger,” the rule then uses the term “substantial danger” throughout - including in the section listing the factors required to be considered in making the determination. CR 3.2(d) refers to the conditions of release to be used upon a “[s]howing of substantial danger,” if there is proof “there exists a substantial danger that the accused will commit a violent crime” or seek to intimidate a witness or unlawfully interfere with the administration of justice. See App. B. CrR 3.2(e) refers to the “Relevant Factors” for “Showing of Substantial Danger,” and again, under CrR 3.2(a) is to be used in determining if the presumption of release without conditions was rebutted. CrR 3.2(a); see Rose, 146 Wn. App. at 446.

conditions, there had to be “available” information before the superior court to prove a “substantial” danger that Huckins would engage in a violent crime or otherwise interfere with the administration of justice. See Butler, 137 Wn. App. at 524 (trial court made finding of “substantial danger”).

The Order, however, did not find a “substantial” danger of such potential harm. The preprinted language on the Order signed below finds only “a danger” of that harm - not a “substantial danger.” Supp. CP __ (App. A). This distinction is essential. A court has declined to find evidence sufficient to prove a “substantial danger” even where the defendant is charged with four counts of first-degree unlawful possession of a firearm, has a previous kidnaping conviction and had previously skipped bail on an offense. Rose, 146 Wn. App. at 443-44.

Further, holding to the actual standard of the rule is vital to ensuring the rights of those only accused and not yet convicted of a crime. Pretrial detention has a significant negative impact on people who are kept in custody - “warehoused” despite not having been convicted of the crime:

The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time.

Barker v. Wingo, 407 U.S. 514, 532-33, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972). There is also strong evidence that pretrial detention correlates to increased likelihood of conviction and higher sentence.

See Andrew D. Leipold, *How the Pretrial Process Contributes to Wrongful Convictions*, 42 AM. CRIM. L. REV. 1123, 1165 (2005); Christopher T. Lowenkamp et. al, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Arnold Foundation (Nov. 2013).⁶

There can be no question that a person still cloaked with the presumption of innocence suffers significant negative impact on their lives - and their case - when deprived of the presumption of release on personal recognizance set forth in CrR 3.2.

Here, in imposing the financial and non-financial conditions, the superior court was focused primarily on the nature of the charged crime. The judge was concerned that the allegations “did involve, allegedly, somebody being told that he was going to get stabbed in the gut with a knife that was pulled on him.” RP 12. The judge stated that this alleged incident “does not sound good to the Court.” RP 12.

But it is improper to rely on the nature of a charge as the primary or sole basis for determining issues of pretrial release. See Stack v. Boyle, 342 U.S. 1, 5-6, 72 S. Ct. 1, 96 L. Ed. 3 (1951). It violates the presumption of innocence. As the Supreme Court has held, “[t]o infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act” itself - one which would inject into “our own system of government the very principles of

⁶Available at <https://csgjusticecenter.org/courts/publications/investigating-the-impact-of-pretrial-detention-on-sentencing-outcomes/>

totalitarianism[.]” 342 U.S. at 6.

Notably, Huckins has *no* prior SRA convictions in any jurisdiction. That’s why he later qualified for a first-time offender waiver. See CP 13-20; App. C. There was no evidence of any prior threats to intimidate or harm witnesses. There was no evidence of any violation of any pretrial orders. There was no evidence of any other use of a deadly weapon except the alleged incident, not yet proven at the time but only charged. He did not have a bunch of prior violent crimes or convictions. Thus, there was not sufficient evidence to rebut the presumption of release without conditions, on personal recognizance, on the grounds that Huckins presented a “substantial danger” of committing a violent crime or unlawfully interfere with the administration of justice.

The lower court’s decision violated the requirements of CrR 3.2 in yet another way. Under CrR 3.2(d), even if there is sufficient proof of a showing of “substantial danger” rebutting the presumption of release without conditions and the court is thus authorized to impose *some* conditions, there are limits. CrR 3.2(d)(6) provides that the court may require a financial condition, but only if certain requirements are met:

[The court may] [r]equire the accused to pose a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. **This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community.** If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused’s financial resources for the purposes of setting a

bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.

CrR 3.2(d)(6) (emphasis added).

Below, the superior court did not make any findings that a financial condition was required because “no less restrictive condition or combination of conditions would reasonably assure the safety of the community.” Supp. CP __ (App. A); RP 10-15. Again, the major concern of the judge was that there appeared to be a prior conviction involving a plea and now another one, both appearing to involve “domestic violence” assaults. RP 12-13.

The court, however, was already ordering that Mr. Huckins refrain from going back to his home. RP 16. Indeed, it entered a restraining order and indicated that, if he was going to try to get his property, he could get in trouble. RP 16 (“don’t traipse over there because you’ll get busted”). It did not explain why an additional financial condition appeared to be required despite the mandates of CrR 3.2(d)(6).

It appears the lower court was willing to consider eliminating bail if Huckins provided evidence to show that he was getting mental health treatment, with the judge saying he might change his mind if he “knew a little more” about what Huckins was doing in relation to mental health care. RP 14. But such concern is not a valid basis for setting bail. If the presumption of release upon personal recognizance had actually been rebutted, the court would have been

authorized under CrR 3.2(d) to impose conditions “other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.” CrR 3.2(d)(10); App. B. The only authorization to use mental concerns in relation to pretrial detention is in CrR 3.2(f), which provides for limited delay of release under limited conditions, including:

- (2) If the person’s mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05[.]

CrR 3.2(f)(2). Such detention, however, is short and “a person detained pursuant to” CrR 3.2(f) “must be released from detention not later than 24 hours after the preliminary appearance.” CrR 3.2(f)(3); see App. B.

The superior court’s decision below violated CrR 3.2 again and again. It ignored the presumption of release on personal recognizance, even though it applied. It failed to make the required findings to rebut the presumption, but imposed conditions anyway. It relied on improper grounds and entered preprinted “boilerplate” Order which failed to establish the required burden of proof to rebut the presumption had been met, and did not discuss any of the relevant factors other than the current crime and a possible prior conviction in making its decision. It then failed to apply the mandates of CrR 3.2 about applying financial conditions only as a last resort if other conditions would not reasonably assure the safety of the community, and then only in the amount reasonably required.

These errors did not just violate the Rule. They violated fundamental constitutional rights, including due process, equal protection and the state and federal rights to be free of excessive bail. The federal and state constitutions protect against the state depriving any person of “life, liberty or property, without due process of law.” Hardee v. Dep’t. of Soc. & Health Svcs., 172 Wn.2d 1, 256 P.3d 339 (2011); Salerno, supra. These protections apply pretrial. Salerno, 481 U.S. at 744. And it is an essential part of pretrial due process - even “implicit in the concept of ordered liberty” - that every person is presumed innocent unless and until proven guilty by the state, beyond a reasonable doubt. See Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 368 (1970).

As a result, being a pretrial detainee is far different and due process provides far greater protection for such detainees as compared with those being detained *after* conviction, either in custody or on parole. See Bell v. Wolfish, 441 U.S. 520, 535 n. 16, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1997); State v. Hartzog, 96 Wn.2d 383, 635 P.2d 694 (1981). Here, however, Mr. Huckins was kept in custody for the full term of his sentence - before he was convicted of the crime, because he was denied the clear protections of a state court rule.

The state violates due process when it discriminates on the basis of wealth. Reanier v. Smith, 83 Wn.2d 342, 517 P.2d 949 (1974). In Reanier, the state’s highest Court recognized that, under the system as it existed then, wealthy defendants were treated differently

and secured release (except where no bail was allowed), while indigent defendants did not. 83 Wn.2d at 349. Put bluntly, the Court declared, based on the existing “present (especially state) bail procedures,” the wealthy “are able to remain out of prison until conviction and sentencing; the poor stay behind bars.” 83 Wn.2d at 349. And the Court held that finding that “[p]re-trial detention is nothing less than punishment. An unconvicted accused who is not allowed or cannot raise bail is deprived of his liberty.” Rainier, 83 Wn.2d at 349, quoting, Culp v. Bounds, 325 F. Supp. 416 (D. N.C. 1971).

The lower court’s decisions also violated the prohibitions against “excessive bail” contained in the state and federal constitutions. That prohibition is violated when bail is set “at a figure higher than an amount reasonably calculated” to ensure the presence of the accused in court. Stack, 342 U.S. at 5. In our state, Article 1, § 20,⁷ of the Washington Constitution provides a right to bail in all but the most extreme case, while Article 1, §10 prohibits “excessive bail.” State v. Heslin, 63 Wn.2d 957, 959-60, 389 P.3d 892 (1964); Barton, 181 Wn.2d at 152-53.

⁷Before 2010, that meant a trial court had no authority to deny bail in any case unless the defendant was accused of a capital (i.e. death penalty) crime. See Barton, 181 Wn.2d at 152-53. After 2010 amendments, Article 1, § 20, now provides, in relevant part, “[a]ll persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evidence or the presumption great,” and that bail may be denied for offenses punishable with possible life without parole, “upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any person.” See Barton, 181 Wn.2d at 153; see ESHJ Res. 4220, 61st Leg., Reg. Sess. (Wash. 2010) (amending Article 1, § 20).

The function of bail is “limited” so that fixing of it for “any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant.” Id. Further, bail “is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial[.]” Stack, 342 U.S. at 7-8 (Jackson, J, and Frankfurter, J, concurring). In this respect, the right to be free from “excessive” bail reflects a principle of proportionality, requiring that the court setting bail must consider the specific situation of the individual involved and set bail only at the amount required for the relevant purpose, in light of the situation of the accused. Stack, supra; see also, Salerno, supra, 481 U.S. at 744-47.

Here, the amount set was not done for the purposes of ensuring the presence of the accused. Nor was there discussion of why the amount was necessary in order to ensure against some perceived general danger that someone accused of a similar crime, with virtually no criminal history, no prior felonies and no evidence of a current danger of violence to the public in general, given that his alleged crime involved domestic violence at home. RP 10-13.

This is true even though the court set an amount of bail which may seem relatively low to the Court. The superior court judge himself admitted that \$1,000 “to Mr. Huckins. . . would be a lot of money.” RP 14. The judge was well aware that Mr. Huckins had not only no income but had *never* had a job due to his mental disabilities. RP 10-13. The judge knew that Mr. Huckins was indigent

and entitled to appointed counsel. But further, and significantly, the judge also knew that Huckins' only source of income was federal benefits, which were halted due to his being in custody - and would remain so until he was released. RP 10-13.

Thus, the court knew in setting the bail amount at \$1,000 that it was an amount Mr. Huckins would not be able to afford. Indeed, the judge also said he was willing to reconsider if Huckins met a burden of proving he was doing counseling or something, to ease the judge's mind. RP 14. Thus, again, the judge seemed to be relying on the alleged and yet unproven facts the state had claimed, rather than a real need for bail at \$1,000 to protect society due to a real risk of Mr. Huckins being truly likely to commit a violent crime or interfere unlawfully with the administration of justice.

Finally, incarcerating people because they are unable to pay to be freed, whether based on "fines" or a particular type of bond, violates equal protection. See, e.g., Tate v. Short, 401 U.S. 395, 398, 91 S. Ct. 668, 28 L. Ed. 2d 130 (1971); Bearden v. Georgia, 461 U.S. 660, 672-73, 103 S. Ct. 2016, 76 L. Ed. 2d 221 (1983). Equal protection requires that similarly situated individuals receive similar treatment under the law. State v. Simmons, 152 Wn.2d 450, 458, 98 P.3d 789 (2004). Even applying the most deferential standard of review, "rational basis," to the superior court's practices below, the violation here is still clear. There is no legitimate or rational difference between a person in Mr. Huckins' situation who is indigent and the same person with money - they present exactly the same risk. Yet

Huckins had to remain in custody pretrial, despite the presumption of innocence, despite the principles of CrR 3.2, simply because he was too poor to pay for his release.

This failure to adjust bail to fit the individual case created not only a violation of excessive bail but a problem of equal protection, as impoverished suspects like Mr. Huckins are kept in jail pending trial while those with money are not. The existence of a separate “second class” system of accused in jail despite the presumption of innocence, based on inability to post monetary bail has been discussed with concern for years. See, e.g., John S. Goldkamp, *Two Classes of the Accused: A Study of Bail and Detention in American Justice* (Ballinger Publishing Co., 1979) (Cambridge, Ma); see also, Ram Subramanian et al, *Incarceration’s Front Door: The Misuse of Jails in America*, Vera Institute of Justice) (Feb. 2015).⁸

Exacerbating this issue, the private “bail bonds” industry, outlawed in all but one other country in the world, has enjoyed staggering growth. See Subramanian et al, supra. The average length of pretrial stay also increased during this time, from 14 to 23 days, but in Washington state it is usually far, far longer. See, e.g., Caseloads of the Courts, Superior Courts, Criminal Case Management (2016).⁹

⁸Available at <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.

⁹Available at <http://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=s&freq=a&tab=trend&fileID=Crimcm>.

Over this same time, there has been a stark increase in the use of “financial” conditions upon people presumed innocent, awaiting trial. From 1990 to 1998, “non-financial” release in state courts dropped from 40% of all those released to 28%. See Thomas H. Cohen and Brian A. Reaves, Bureau of Justice Statistics, Special Report, *Pretrial Release of Felony Defendants in State Courts* (Nov. 2007).¹⁰ In 2009, the percentage of pretrial release involving financial conditions had grown to an estimated average in large urban counts of 61 percent of all cases involving felonies. See Brian A. Reaves, Bureau of Justice Statistics, State Court Processing Statistics, *Felony Defendants in Large Urban Counties, 2009 - Statistical Tables* (Dec. 2013).¹¹

There has been a concurrent rise in costs not only to the accused and his or her family but to society itself. Just a few years ago, then-U.S. Attorney General Eric Holder acknowledged that the cost of increased pretrial detention of the accused was an estimated 9 billion taxpayer dollars. Eric Holder, Attorney General of the United States, Speech at the National Symposium on Pretrial Justice (June 1, 2011).¹² Closer to home, the Honorable Theresa Doyle of King County Superior Court in our state has noted, “[s]ociety bears the non-economic costs of lost employment, housing, family support,

¹⁰Available at <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.

¹¹Available at <https://www.bjs.gov/content/pub/pdf/fdluco9.pdf>.

¹²Available at <http://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-national-symposium-pretrial-justice>.

public benefits, and financial and emotional security for the children of the incarcerated person.” Hon. Theresa Doyle, *Fixing the Money Bail System*, KING COUNTY BAR BULL. (KCBA, Seattle, WA) (April 2016).

Today, it is estimated that, like Mr. Huckins, pretrial, three out of five people sitting in jail in our country are legally presumed innocent, awaiting trial or plea resolution, too poor to afford bail. See Timothy R. Schnacke, *Fundamentals of Bail: a Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, U.S. Dept. Of Justice, Nat’l Inst. of Corrections (2014).¹³ More than half of the people in our nation’s local jails - in 2012, an estimated 60 percent - are estimated to be presumed innocent but simply too poor to make bail. See *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail*, Justice Policy Institute (Sept. 2012).¹⁴ There is some evidence that this even impacts whether a person is convicted and how long their later sentence will be. See Lowenkamp et. al, supra.

It is worth noting that, in fact, the portions of CrR 3.2 limiting use of financial conditions of pretrial release to only those limited situations and amounts truly needed were added in 2002, for the very purpose of reducing the unconstitutional, unfair disparities between

¹³ Available at <http://www.pretrial.org/download/research/Fundamentals%20of%20Bail%20-%20NIC%202014.pdf>.

¹⁴ Available at <http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>.

the treatment of those with resources and those without. See *In the Matter of the Adoption of the Amendments to CrR 3.2, CrR 3.2.1, CrRLJ 3.2 and CrRLJ 3.2.1*, Order No. 25700-A-721 (WSR 02-01-025) (Dec. 6, 2001).¹⁵ The Commission proposed amendments to CrR 3.2 after receiving a study which “concluded the criteria established by court rule for pretrial release may discriminate against persons who are economically disadvantaged. Id; see, George Bridges, *A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington*, Washington State Minority and Justice Commission (Oct. 1997).¹⁶ These proposed amendments included a requirement for both the “secure future appearance” and “substantial danger” means of disproving the presumption of pretrial release without conditions, relating to financial conditions, so that CrR 3.2(b) included a requirement that, if the court determines that a bond is required, the court “shall consider, on the available information, the accused’s financial resources for the purposes of setting bond that will reasonably assure the accused’s appearance,” and amended CrR 3.2(d)(6) to create the same requirement of a court considering “on the available information, the accused’s financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the

¹⁵Available at <http://apps.leg.wa.gov/documents/laws/wsr/2002/02/02-01-025.htm>.

¹⁶Available at http://www.courts.wa.gov/committee/pdf/1997_ResearchStudy.pdf.

defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.” See id.

In response, the prosecution may urge the Court to decline to discuss the issue as “moot,” because Mr. Huckins entered a plea and is of course no longer suffering from the improperly set bail. This Court should reject any such claim and should address this issue. The superior court’s refusal to apply the presumption of personal recognizance and the other provisions and limits of CrR 3.2, and the constitutional implications of those failures, are issues of continuing and substantial interest, likely to arise again but evade review. See, e.g., Federated Publ’ns, Inc. v. Swedberg, 96 Wn.2d 13, 16, 633 P.2d 74 (1981), cert. denied, 456 U.S. 984 (1982); United States v. Sanchez-Gomez, 859 F.3d 649 (9th Cir. 2017) (pretrial policy of shackling all detainees in courtroom without individualized determination of need met “capable-of-repetition-yet-evading-review” mootness exception). This Court should address the issue, should roundly decry the lower court’s violations of CrR 3.2 and should hold that the procedures here used violated due process, the right to the presumption of innocence, the state and federal prohibitions against excessive bail, and equal protection.

2. THE TRIAL COURT ERRED IN HOLDING IT HAD NO AUTHORITY TO REFRAIN FROM IMPOSING COSTS OF COMMUNITY CUSTODY AND OTHER CONDITIONS OF THE SENTENCE MUST BE STRICKEN

Under the Sentencing Reform Act, a sentencing court’s authority to impose conditions of a sentence is limited to only those

conditions authorized by statute. State v. Zimmer, 146 Wn. App. 405, 414, 190 P.2d 121 (2008), review denied, 165 Wn.2d 1035 (2009). An unauthorized condition is considered void and in excess of the sentencing court's authority. State v. Hale, 94 Wn. App. 46, 53, 971 P.3d 88 (1988). As such, it must be stricken. See State v. O'Cain, 144 Wn. App. 772, 775, 184 P.3d 1262 (2008).

In this case, the trial court erred and abused its discretion in holding that it had to impose supervision fees on Mr. Huckins. Indeed, because its written judgment and sentence controls, the court actually failed to order such fees. The Court should also strike a condition referring to a non-existent statute and one requiring Huckins to pay for costs of any random drug tests a DOC officer wishes to request, despite Huckins' indigence.

a. Relevant facts

On January 3, 2017, Judge Coughenour accepted the Alford plea to the amended information. RP 27. The prosecutor recommended 54 days of incarceration, 12 months of community custody and "[l]egal financial obligations other than restitution of \$1,300." RP 23, 25. The prosecutor also asked for the court to order mental health evaluation and treatment. RP 26.

Regarding legal financial obligations, the prosecutor asked for "the mandatory \$500 Victim Assessment Fee, the \$200 court costs and \$100 DNA fee," and, if the court found "current and/or future ability to pay," \$500 for the court-appointed counsel costs. RP 26. She argued the court should order that Huckins must be "on a

payment plan of not more than \$40 per month” starting about 3 months from the current date. RP 26.

Huckins had been in custody since the incident occurred on November 15, 2016, 49 days before. RP 27. Because of additional “good time,” that amounted to 54 days of credit. RP 27. Regarding legal financial obligations, counsel pointed out that Huckins only had limited income which was from Social Security Disability payments and food stamps, possibly about \$900 per month. RP 27. Huckins was concerned, in fact, that he had been in custody for so long his Social Security benefits had been terminated and he would have to find a way to reinstate them. RP 28.

Counsel objected to imposition of any legal/financial obligations, costs of supervision or testing or evaluation arguing that Mr. Huckins cannot be required to pay any of his federal disability benefit payments towards such obligations. RP 28. Counsel also argued that the court did not have authority to require Huckins to pay costs of supervision, evaluation and testing and participating in treatment. RP 28.

Judge Coughenour then queried Huckins, establishing that he was 23 years old, had never had a job, had graduated from high school and was trying to get sufficient treatment for PTSD to “hopefully obtain some form of job in the future.” RP 29. Huckins had been on disability his entire life with “bipolar and various other mental health” issues, even as a child. RP 29. Up until incarceration he was receiving free therapy services through a local clinic. RP 29-

30. Huckins told the court he received about \$733 per month in SSI payments and would be homeless when released. RP 30. He was hoping to get housing possibly with an old friend who might have a room for rent. RP 31.

The prosecutor argued that certain “mandatory” LFOs could not be waived, and the trial court agreed. RP 33-34. The judge then noted, however, that Huckins would receive only \$733 a month and that was only if Huckins “got back on” disability after his release. RP 34. Given that and because Huckins was also homeless, the court thought it would be “extremely questionable” whether Huckins could ever meet those obligations. RP 34. The judge said “all it would be is a financial burden on someone who doesn’t have the ability” to pay. RP 34. The judge waived the victim’s fee, court costs and DNA fees “because they would have to come out of his Social Security Disability benefits.” RP 35.

The judge was unsure, however, if he had the authority to waive the DOC supervision costs. RP 34. He had not previously seen the issue. RP 34. He found that Huckins was homeless, on disability, has never worked and was mentally ill. RP 35-36. Indeed, Huckins was so impoverished that the judge decided to waive all of the legal financial obligations rather than have them come out of Huckins’ federal benefits, essentially his sole source of income. RP 35-36.

Ultimately, however, the court ordered Huckins “to be liable for supervision fees,” with Judge Coughenour stating he did not think he had authority to waive those fees. RP 43. Counsel sought a stay

of the imposition of costs of supervision and testing and “associated costs” through DOC. RP 42.

Written on the judgment and sentence was the following:

THE COURT IS NOT IMPOSING ANY LEGAL FINANCIAL OBLIGATIONS ON THE DEFENDANT, EVEN THE MANDATORY ONES, SINCE THE DEFENDANT HAS BEEN ON S[.]S[.]D[.] ALL HIS LIFE, HAS NEVER WORKED, HAS ONLY \$733 A MONTH INCOME FROM S.S.D., HAS NO ASSETS AND HAS HAD MENTAL HEALTH ISSUES INCLUDING PTSD AND BI-POLAR DISORDER WHICH PRECLUDES FUTURE EMPLOYMENT

CP 21.

b. The sentencing court abused its discretion

The sentencing orders below are confusing. For example, trial counsel appears to have been laboring under the mistaken impression that the court ordered a substance abuse evaluation and treatment at Huckins’ expense. See CP 9-10. It did not. CP 13-27.

This Court can also easily dispense with condition of community custody 4.2(1), which provides, “[y]ou shall comply with the statutory requirements of community placement, RCW 9.94A.120(8)(b)(c).” CP 17. RCW 9.94A.120(8)(c) does not exist. It has not since 2001. See Laws of 2001, ch. 10, § 6.

Instead, conditions of community custody (no longer called “community placement”), are now contained in RCW 9.94A.703. For Mr. Huckins, who received a first-time offender waiver, the sentence was imposed under RCW 9.94A.650. That statute provides that conditions of community custody to be ordered “may” be any of those authorized in RCW 9.94A.703. RCW 9.94A.650(4).

Thus, even though RCW 9.94A.703 creates “mandatory” conditions, it is arguable whether a court imposing a first-time offender waiver sentence such as the one in this case is actually required to impose those conditions.

In any event, however, none of the conditions set forth in RCW 9.94A.703 require the sentencing court to order that a defendant must pay supervision fees even if he is indigent, as the sentencing court here believed. See RP 35, 43. The “mandatory” conditions set forth in RCW 9.94A.703(1) are

- (a) Require the offender to inform the department of court-ordered treatment upon request by the department;
- (b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;
- (c) If the offender was sentenced under RCW 9.94A.507 for an offense listed in RCW 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone;
- (d) If the offender was sentenced under RCW 9A.36.120, prohibit the offender from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen

None of those conditions mandate supervision fees. Nor do the “waiveable” conditions under RCW 9.94A.703(2), which provides:

Waiveable conditions. Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

- (a) Report to and be available for contact with the assigned community corrections officer as directed;
- (b) Work at department-approved education, employment, or community restitution, or any combination thereof;

- (c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;
- (d) Pay supervision fees as determined by the department; and
- (e) Obtain prior approval of the department for the offender's residence location and living arrangements.

RCW 9.9A.703(2). By its very terms, “waiveable” condition (d) **allows** the sentencing court the authority to order a defendant to pay supervision fees but that condition is not **required**.

A court abuses its discretion when it acts on untenable grounds, for untenable reasons, or based on a misunderstanding of the law. State v. Shirts, 195 Wn. App. 849, 860, 381 P.3d 1223 (2016). Judge Coughenhour wrongly believed he was without discretion to waive the condition requiring a defendant in a criminal case to pay supervision fees. RP 43. He was wrong as a matter of law under RCW 9.94A.650(4) and RCW 9.94A.703.

But the judge - and counsel - also were wrong that such a condition was, in fact, imposed. The condition is not contained anywhere in the judgment and sentence. CP 13-28; see App. C. While the judge orally discussed whether he was allowed to “waive the DOCs supervision cost,” RP 34, 36, an order imposing such a cost was not included in any of the written parts of the judgment and sentence. CP 13-28. A trial court’s written order controls over its oral findings, even if they contradict. See State v. Bryant, 78 Wn. App. 805, 821-13, 901 P.2d 1046 (1995); State v. Martinez, 76 Wn. App. 1, 3 n. 3, 884 P.2d 3 (1994), review denied, 126 Wn.2d 1011 (1995).

The trial court did not, in fact, order Mr. Huckins to pay any supervision cost for DOC. If it had, however, reversal of that condition would be required, because the court had the authority to waive the condition but believed it did not.

E. CONCLUSION

For the reasons stated herein, this Court should grant appellant relief.

DATED this 11th day of September, 2017.

Respectfully submitted,

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(206) 782-3353

DECLARATION OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Opening Brief to opposing counsel VIA this Court's upload service, at jespinoza@co.wa.clallam.us, and to appellant Mr. Huckins, at 1202 E. Georgiana Street, Port Angeles, WA. 98362.

DATED this 11th day of September 2017,

/S/Kathryn A. Russell Selk
KATHRYN RUSSELL SELK, No. 23879
1037 Northeast 65th St., Box 176
Seattle, WA. 98115
(206) 782-3353

APPENDIX A

IN THE SUPERIOR COURT OF STATE OF WASHINGTON, IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,

vs.

Alexander James Hutchins

Plaintiff
2016 NOV 16 PM 3:11
Defendant
BARBARA CHRISTENSEN

FILED 16-1-00519-4

CLALLAM CO CLERK

ORDER SETTING CONDITIONS

TRIAL SENTENCING

APPEAL HEARING

THE COURT HAVING DETERMINED that release on personal recognizance will not reasonably assure his/her appearance, or there is a danger that Defendant will commit a violent crime or interfere with the administration of justice, IT IS ORDERED that:

1. Release is authorized upon posting of cash bail or execution of security bond in the amount of \$ ~~5000~~ 1000. Bail/bond is posted to guarantee compliance with all conditions of release herein and may be forfeited upon a violation of conditions and/or a failure to appear.
2. Defendant shall be held without bail.
3. Defendant shall maintain physical residence at: provide to court
4. Defendant's travel is restricted to: Western Washington _____
5. Defendant shall maintain curfew within his/her residence from: _____
6. Defendant shall not contact/have any communication with: Alexander Evans
7. Defendant shall not drive unless licensed and insured, and equipped with ignition interlock.
8. Defendant shall not possess any firearms or other deadly weapons.
9. Defendant shall not drink/possess alcohol and remain out of places where it is the chief item of sale.
10. Defendant shall not use/possess any controlled substances except as prescribed by a physician.
11. Defendant shall not commit any criminal violation of law.
12. Defendant shall maintain contact with his/her attorney and appear in Court as directed.
13. Defendant shall be placed on day reporting: _____
14. Defendant is placed on EHM VICAP SCRAM
15. DEFENDANT SHALL TIMELY APPEAR: Arraignment 12/2/16 9AM
AND AS FURTHER ORDERED BY THE COURT IN THESE PROCEEDINGS. Defendant is remanded for:
 Booking and release Custody pursuant to above conditions.

DATED this 16th day of November, 2016.

Presented by:

[Signature]

(Deputy) Prosecuting Attorney

WSBA# 45863

[Signature]

JUDGE

I understand that having been released by the court or admitted to bail, I am required to appear as ordered and that my failure to appear as required constitutes the crime of Bail Jumping (RCW 9A.76.170), and may result in the immediate forfeiture of any posted bail pursuant to CrR 3.2(o).

Defendant's signature: *[Signature]*

APPENDIX B

West's Revised Code of Washington Annotated
Title 10 Appendix. Criminal Procedure
Superior Court Criminal Rules (CRR) (Refs & Annos)
3. Rights of Defendants

Superior Court Criminal Rules, CrR 3.2

RULE 3.2. RELEASE OF ACCUSED

Currentness

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 or CrRLJ 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

(1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or

(2) there is shown a likely danger that the accused:

(a) will commit a violent crime, or

(b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

For the purpose of this rule, “violent crimes” are not limited to crimes defined as violent offenses in RCW 9.94A.030.

In making the determination herein, the court shall, on the available information, consider the relevant facts including, but not limited to, those in subsections (c) and (e) of this rule.

(b) Showing of Likely Failure to Appear--Least Restrictive Conditions of Release. If the court determines that the accused is not likely to appear if released on personal recognizance, the court shall impose the least restrictive of the following conditions that will reasonably assure that the accused will be present for later hearings, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;

(2) Place restrictions on the travel, association, or place of abode of the accused during the period of release;

(3) Require the execution of an unsecured bond in a specified amount;

(4) Require the execution of a bond in a specified amount and the deposit in the registry of the court in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release or forfeited for violation of any condition of release. If this requirement is imposed, the court must also authorize a surety bond under section (b)(5);

(5) Require the execution of a bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;

(6) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(7) Impose any condition other than detention deemed reasonably necessary to assure appearance as required. If the court determines that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the accused's appearance.

(c) Relevant Factors--Future Appearance. In determining which conditions of release will reasonably assure the accused's appearance, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's history of response to legal process, particularly court orders to personally appear;

(2) The accused's employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government;

(3) The accused's family ties and relationships;

(4) The accused's reputation, character and mental condition;

(5) The length of the accused's residence in the community;

(6) The accused's criminal record;

(7) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(8) The nature of the charge, if relevant to the risk of nonappearance;

(9) Any other factors indicating the accused's ties to the community.

(d) Showing of Substantial Danger--Conditions of Release. Upon a showing that there exists a substantial danger that the accused will commit a violent crime or that the accused will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice, the court may impose one or more of the following nonexclusive conditions:

- (1) Prohibit the accused from approaching or communicating in any manner with particular persons or classes of persons;
- (2) Prohibit the accused from going to certain geographical areas or premises;
- (3) Prohibit the accused from possessing any dangerous weapons or firearms, or engaging in certain described activities or possessing or consuming any intoxicating liquors or drugs not prescribed to the accused;
- (4) Require the accused to report regularly to and remain under the supervision of an officer of the court or other person or agency;
- (5) Prohibit the accused from committing any violations of criminal law;
- (6) Require the accused to post a secured or unsecured bond or deposit cash in lieu thereof, conditioned on compliance with all conditions of release. This condition may be imposed only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community. If the court determines under this section that the accused must post a secured or unsecured bond, the court shall consider, on the available information, the accused's financial resources for the purposes of setting a bond that will reasonably assure the safety of the community and prevent the defendant from intimidating witnesses or otherwise unlawfully interfering with the administration of justice.
- (7) Place the accused in the custody of a designated person or organization agreeing to supervise the accused;
- (8) Place restrictions on the travel, association, or place of abode of the accused during the period of release;
- (9) Require the accused to return to custody during specified hours or to be placed on electronic monitoring, if available; or

(10) Impose any condition other than detention to assure noninterference with the administration of justice and reduce danger to others or the community.

(e) Relevant Factors--Showing of Substantial Danger. In determining which conditions of release will reasonably assure the accused's noninterference with the administration of justice, and reduce danger to others or the community, the court shall, on the available information, consider the relevant facts including but not limited to:

(1) The accused's criminal record;

(2) The willingness of responsible members of the community to vouch for the accused's reliability and assist the accused in complying with conditions of release;

(3) The nature of the charge;

(4) The accused's reputation, character and mental condition;

(5) The accused's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(6) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(7) The accused's past record of committing offenses while on pretrial release, probation or parole; and

(8) The accused's past record of use of or threatened use of deadly weapons or firearms, especially to victims or witnesses.

(f) Delay of Release. The court may delay release of a person in the following circumstances:

(1) If the person is intoxicated and release will jeopardize the person's safety or that of others, the court may delay release of the person or have the person transferred to the custody and care of a treatment center.

(2) If the person's mental condition is such that the court believes the person should be interviewed by a mental health professional for possible commitment to a mental treatment facility pursuant to RCW 71.05, the court may delay release of the person.

(3) Unless other grounds exist for continued detention, a person detained pursuant to this section must be released from detention not later than 24 hours after the preliminary appearance.

(g) Release in Capital Cases. Any person charged with a capital offense shall not be released in accordance with this rule unless the court finds that release on conditions will reasonably assure that the accused will appear for later hearings, will not significantly interfere with the administration of justice and will not pose a substantial danger to another or the community. If a risk of flight, interference or danger is believed to exist, the person may be ordered detained without bail.

(h) Release After Finding or Plea of Guilty. After a person has been found or pleaded guilty, and subject to RCW 9.95.062, 9.95.064, 10.64.025, and 10.64.027, the court may revoke, modify, or suspend the terms of release and/or bail previously ordered.

(i) Order for Release. A court authorizing the release of the accused under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions imposed, if any, shall inform the accused of the penalties applicable to violations of the conditions of the accused's release and shall advise the accused that a warrant for the accused's arrest may be issued upon any such violation.

(j) Review of Conditions.

(1) At any time after the preliminary appearance, an accused who is being detained due to failure to post bail may move for reconsideration of bail. In connection with this motion,

both parties may present information by proffer or otherwise. If deemed necessary for a fair determination of the issue, the court may direct the taking of additional testimony.

(2) A hearing on the motion shall be held within a reasonable time. An electronic or stenographic record of the hearing shall be made. Following the hearing, the court shall promptly enter an order setting out the conditions of release in accordance with section (i). If a bail requirement is imposed or maintained, the court shall set out its reasons on the record or in writing.

(k) Amendment or Revocation of Order.

(1) The court ordering the release of an accused on any condition specified in this rule may at any time on change of circumstances, new information or showing of good cause amend its order to impose additional or different conditions for release.

(2) Upon a showing that the accused has willfully violated a condition of release, the court may revoke release and may order forfeiture of any bond. Before entering an order revoking release or forfeiting bail, the court shall hold a hearing in accordance with section (j). Release may be revoked only if the violation is proved by clear and convincing evidence.

(l) Arrest for Violation of Conditions.

(1) *Arrest With Warrant.* Upon the court's own motion or a verified application by the prosecuting attorney alleging with specificity that an accused has willfully violated a condition of the accused's release, a court shall order the accused to appear for immediate hearing or issue a warrant directing the arrest of the accused for immediate hearing for reconsideration of conditions of release pursuant to section (k).

(2) *Arrest Without Warrant.* A law enforcement officer having probable cause to believe that an accused released pending trial for a felony is about to leave the state or has violated a condition of such release under circumstances rendering the securing of a warrant impracticable may arrest the accused and take him forthwith before the court for reconsideration of conditions of release pursuant to section (k).

(m) Evidence. Information stated in, or offered in connection with, any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(n) Forfeiture. Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(o) Accused Released on Recognizance or Bail--Absence--Forfeiture. If the accused has been released on the accused's own recognizance, on bail, or has deposited money instead thereof, and does not appear when the accused's personal appearance is necessary or violated conditions of release, the court, in addition to the forfeiture of the recognizance, or of the money deposited, may direct the clerk to issue a bench warrant for the accused's arrest.

Credits

[Amended effective July 1, 1976; September 1, 1983; September 1, 1986; September 1, 1991; September 1, 1995; April 3, 2001; September 1, 2002; September 1, 2015; February 28, 2017.]

Editors' Notes

COMMENT--1973

Supersedes RCW 10.16.190; RCW 10.19.010, .020, .025, .050, .070, .080; RCW 10.40.130; RCW 10.46.170; RCW 10.64.035.

Notes of Decisions (76)

CrR 3.2, WA ST SUPER CT CR CrR 3.2

Annotated Superior Court Criminal Rules, including the Special Proceedings Rules -- Criminal, Criminal Rules for Courts of Limited Jurisdiction, and the Washington Child Support Schedule Appendix are current with amendments received through 3/15/17. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Other state rules are current with amendments received through 3/15/17.

APPENDIX C

FILED
CLALLAM CO CLERK

2017 JAN -3 A 9 54

BARBARA CHRISTENSEN

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

STATE OF WASHINGTON, Plaintiff,

vs.

ALEXANDER JAMES HUCKINS 06/23/1993

Defendant. DOB

PCN: 966157283

SID: WA25730909

PAPD No. 16-24197

NO. 16-1-00519-4

FELONY JUDGMENT AND SENTENCE

First-Time Offender (FJS)

- Clerk's Action Required, 2.1, 3.2, 4.1, 4.3, 4.7, 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

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon guilty plea jury-verdict bench trial 1/3, 2017 (date):

I	HARASSMENT -- THREATS TO KILL	RCW 9A.46.020	C	On or about the 15th day of November, 2016
---	-------------------------------	---------------	---	--

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:

GV For the crime(s) charged in Count _____ **domestic violence** was pled and proved. RCW 10.99.020.

This case involves **unlawful imprisonment** as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).

FELONY JUDGMENT AND SENTENCE (FJS)
(First-Time Offender) (RCW 9.94A.500, .505)
(WPF CR 84.0400 (07/2013)) Page 1 of 13

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469



Record Certification: I Certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control.
Clallam County Clerk, by AS Deputy #pages: 13



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)	DV* Yes
1			
2			
3			

* DV: Domestic Violence was pled and proved.

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

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J adult, juvenile	Type of Crime	DV* Yes
1	no SRA history					
2						
3						
4						
5						

* DV: Domestic Violence was pled and proved.

2.3 Sentencing Data:

Count	Offender Score	Seriousness level	Standard range (not including enhancements)	Plus enhancements*	Total standard range (including enhancements)	Maximum term
1	0	III	1-3m	N/A	1-3m	5 years
2				N/A		
3				N/A		
4				N/A		

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 First-Time Offender Waiver. The court finds that the defendant qualifies for waiver of a standard range sentence.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's 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. (RCW 10.01.160). The court makes the following specific findings:

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.

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.

2.6 **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010

- 1 The court considered the following factors:
- 2 the defendant's criminal history.
- 3 whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
- 4 evidence of the defendant's propensity for violence that would likely endanger persons.
- 5 other: _____
- 6 The court decided the defendant should should not register as a felony firearm offender.

III. JUDGMENT

- 7 3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 8 3.2 The court **dismisses** Counts _____ in the charging document.

IV. SENTENCE AND ORDER

9 **It is ordered:**

10 **4.1 First-Time Offender Waiver of Standard Sentence.** RCW 9.94A.030, RCW 9.94A.650. The defendant is a first-time offender. The court waives imposition of a sentence within the standard sentence range and imposes the following sentence:

- 11 (a) **Confinement.** The court sentences the defendant to the following term of total confinement in the custody of the county jail:

12 54 days total confinement (up to 90 days). RCW 9.94A.650.

13 Other: _____

14 Confinement shall commence immediately unless otherwise set forth here: _____

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

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

- 17 work crew RCW 9.94A.725 home detention RCW 9.94A.731, .190
- 18 work release RCW 9.94A.731

19 **Alternative Conversion.** RCW 9.94A.680. _____ days of total confinement ordered above are hereby converted to _____ hours of community restitution (service) (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections (DOC) to be completed:

- 20 on a schedule established by the defendant's community corrections officer.
- 21 as follows: _____

22 **Conversion of Jail Confinement (Nonviolent and Nonsex Offenses).** RCW 9.94A.680(3). The county jail is authorized to convert jail confinement to an available county supervised community option, to reduce the time spent in the community option

by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

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

Alternatives to total confinement were not used because of: _____

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

(b) **Community Restitution (Service)**. RCW 9.94A.650. The defendant shall perform _____ hours of community restitution (service) as approved by the defendant's community corrections officer to be completed.

on a schedule established by the defendant's community corrections officer.

as follows: _____

This community restitution is in addition to the ordered total confinement.

4.2 Community Custody. RCW 9.94A.650. The defendant shall serve 12 months in community custody under the supervision of DOC. (Up to 12 months if treatment is ordered and up to 6 months if treatment is not ordered.)

The defendant shall report to the DOC not later than 72 hours after release from custody at the address provided in open court or by separate document. The defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community custody. The defendant shall obey all laws, perform affirmative acts as required by DOC to confirm compliance with the orders of the court. The defendant shall comply with any other conditions of community custody stated in this Judgment and Sentence or imposed by DOC under RCW 9.94A.704 and .706 during community custody. While under supervision, the defendant shall not own, use, or possess firearms or ammunition. The court orders that during the period of supervision the defendant shall:

pay all court-ordered legal financial obligations

undergo available outpatient treatment for a period not to exceed two years, or inpatient treatment not to exceed the standard range for this offense

notify the community corrections officer in advance of any change in defendant's address or employment

report as directed to a community corrections officer

remain within prescribed geographical boundaries

devote time to specific employment or occupation

Other conditions: _____

continue w/ PBH MH services
~~obtain mental health evaluation~~
follow recommended treatment
(DOC shall waive eval requirement & accept A current trmt plan PBH.)

1 You shall comply with the statutory requirements of community placement, RCW 9.94A.120(8)(b)(c), and other conditions as set forth in Judgment and Sentence.

2. You shall report as directed to the Office of Community Corrections or the Court.

- 1 3. You shall notify the Superior Court Clerk and Office of Community Corrections prior to any change of address or employment.
- 2 4. You shall pay monetary obligations as set forth in the Judgment and Sentence.
- 3 5. You shall remain within prescribed geographical boundaries, as follows: _____
- 4 6. You shall not contact or communicate with: _____
- 5 7. You shall not have direct or indirect contact with the following specified class of individuals: _____
- 6 8. You shall abstain from the use of alcohol and remain out of places where alcohol is the chief item of sale.
- 7 9. You shall abstain from the possession or use of ~~drugs~~ ^{controlled substances} unless prescribed by a medical professional, and shall provide copies of all prescriptions to Community Corrections Officer within seventy-two (72) hours.
- 8 10. During term of community supervision, you shall submit to ~~physical and/or psychological~~ ^{drug / UA} testing whenever requested by Community Corrections Officer, at your own expense, to assure compliance with Judgment and Sentence or Department of Corrections requirements.
- 9 11. You shall undergo out-patient treatment as prescribed by the Court or the Office of Community Corrections as follows: ~~_____~~ ^{recommended treatment by PBIT follow}
- 10 12. You shall undergo in-patient/out-patient sex offender treatment as set forth below or attached hereto and incorporated by reference: _____
- 11 13. Do not use or possess firearms.
- 12 14. Do not drive a motor vehicle.
- 13 15. Refrain from further violations of the law.
- 14 16. You shall pay the cost of counseling to the victim which is required as a result of your crime or crimes.
- 15 17. Your residence and living arrangements shall be subject to the prior approval of DOC.
- 16 18. You must consent to allow home visits by the Department to monitor compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which the offender lives or has exclusive or joint control or access.
- 17 19. Other crime-related prohibitions as follows: Defendant shall not carry any fixed blade knife on their person

Violations of these conditions will result in additional punishment.

The conditions of community custody shall begin immediately unless otherwise set forth here: _____

1 Court-Ordered Treatment: If any court orders mental health or chemical dependency
 2 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.

3 **4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

4 JASS CODE

4	PCV	\$ 500.00	Victim assessment (\$500.00 for felony and gross misdemeanor; \$250.00 for misdemeanor)	RCW 7.68.035
5	PDV	\$	Domestic Violence assessment	RCW 10.99.080
6	CRC	\$ 200.00	Court costs, including:	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
7			Criminal filing fee	\$ 200.00 FRC
8			Witness costs	\$ WFR
9			Sheriff's service fees	\$ SFR/SFS/SFW/WRF
10			Jury demand fee	\$ JFR
11			Extradition costs	\$ EXT
11	PUB	\$	Other	\$
12	PUB	\$	Fees for court appointed attorney	RCW 9.94A.760
13	WRF	\$	Court appointed defense expert and other defense costs	RCW 9.94A.760
14	FCM/ MTH	\$	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
15	CDF/LDI/ FCD NTF /SAD/SDI	\$	Drug enforcement fund of _____	RCW 9.94A.760
16	CLF	\$	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
17		\$ 100.00	DNA collection fee	RCW 43.43.7541
18	FPV	\$	Specialized forest products	RCW 76.48.140
19		\$	Other fine or costs for: _____ i.e., Interpreter costs (CIS) Evaluations--court ordered (EVA) Lab/blood test (BBS) Investigator services (INS) Drug Court Program (DCT) Meth lab clean-up (MTH)	
20			(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
21	RTN solely /	\$	Restitution to:	
22	RJN joint & several	\$	Restitution to:	
23		\$	Restitution to:	
24		\$	Restitution to:	

\$	
\$	
\$	

Statutory assessment:

Drug enforcement fund of Olympic Peninsula Narcotics Enforcement Team (OPNET)
 County Code 118.000.010 Bars Code 351.50.01
 VUCSA chapter 69.50 RCW,
 VUCSA additional fine deferred due to indigency

Costs of:

Clallam County Jail for costs medical treatment rendered while incarcerated in County Jail:

\$	pre- + post-conviction medical costs (RCW 70.48.130)
\$	Other costs:
\$	

hearing to be held _____, 20__
 with review every three months thereafter.
 Dept code 001.840.000 Bars Code 349.23.00.00.20

\$ ~~0~~ **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 _____, 20__ (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:

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

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 \$ 40.00 per month commencing April 2017.~~ 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. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

1 The financial obligations imposed in this judgment shall bear interest from the date of the
2 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.

3 **4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA
4 identification analysis and the defendant shall fully cooperate in the testing. The appropriate
5 agency shall be responsible for obtaining the sample prior to the defendant's release from
6 confinement. This paragraph does not apply if it is established that the Washington State
Patrol crime laboratory already has a sample from the defendant for a qualifying offense.
RCW 43.43.754. .

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

7 **4.5 No Contact:**

The defendant shall not have contact with _____
_____ (name) including, but not limited to,
8 personal, verbal, telephonic, written or contact through a third party until _____
(which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within _____ (distance) of:
9 _____ (name of protected person(s))'s home/ residence
10 work place school (other location(s)) _____ or
11 other location _____
until _____ (which does not exceed the maximum statutory sentence).

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

14 **4.6 Other:** THE COURT IS NOT IMPOSING ANY LEGAL
FINANCIAL OBLIGATION ON THE DEFENDANT, EVEN
15 THE MANDATORY ONE, SINCE THE DEFENDANT HAS
16 BEEN ON SSD ALL HIS LIFE, HAS NEVER WORKED,
17 HAS ONLY A \$733 A MONTH INCOME FROM S.S.D., HAS
18 NO ASSETS AND HAS HAD MENTAL HEALTH ISSUES
INCLUDING PTSD AND BI-POLAR DISORDER WHICH
19 PRECLUDES FUTURE EMPLOYMENT

20 **4.7 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance
21 conditions.

22 **V. NOTICES AND SIGNATURES**

23 **5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this
24 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.

1 **5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain
2 under the court's jurisdiction and the supervision of the Department of Corrections for a
3 period up to 10 years from the date of sentence or release from confinement, whichever is
4 longer, to assure payment of all legal financial obligations unless the court extends the
5 criminal judgment an additional 10 years. If you committed your offense on or after July 1,
6 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with
7 payment of the legal financial obligations, until you have completely satisfied your obligation,
8 regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).
9 The clerk of the court has authority to collect unpaid legal financial obligations at any time
10 while you remain under the jurisdiction of the court for purposes of your legal financial
11 obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4)

12 **5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of
13 payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC)
14 or the clerk of the court may issue a notice of payroll deduction without notice to you if you
15 are more than 30 days past due in monthly payments in an amount equal to or greater than
16 the amount payable for one month. RCW 9.94A.7602. Other income-withholding action
17 under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

18 **5.4 Community Custody Violation.**

19 (a) If you are subject to a first or second violation hearing and DOC finds that you committed
20 the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW
21 9.94A.633.

22 (b) If you have not completed your maximum term of total confinement and you are subject to
23 a third violation hearing and DOC finds that you committed the violation, DOC may return you
24 to a state correctional facility to serve up to the remaining portion of your sentence. RCW
25 9.94A.714

1 **5.5a Firearms. You may not own, use or possess any firearm, and under federal law any
2 firearm or ammunition, unless your right to do so is restored by the court in which you
3 are convicted or the superior court in Washington State where you live, and by a federal
4 court if required. You must immediately surrender any concealed pistol license. (The
5 clerk of the court shall forward a copy of the defendant's driver's license, identicaid, or
6 comparable identification to the Department of Licensing along with the date of conviction
7 or commitment.) RCW 9.41.040, 9.41.047**

8 **5.5b Felony Firearm Offender Registration.** The defendant is required to register as a felony
9 firearm offender. The specific registration requirements are in the "Felony Firearm Offender
10 Registration" attachment.

11 **Delete or cross off if not applicable:**

12 **5.6 Offender Registration. (Unlawful Imprisonment Involving a Minor) RCW 9A.44.128,
13 9A.44.130, 10.01.200.**

14 **1. General Applicability and Requirements:** Because this crime involves a sex offense or
15 kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to
16 register.

17 If you are a resident of Washington, you must register with the sheriff of the county of the
18 state of Washington where you reside. You must register within three business days of being
19 sentenced unless you are in custody, in which case you must register at the time of your
20 release with the person designated by the agency that has jurisdiction over you. You must

1 also register within three business days of your release with the sheriff of the county of the
state of Washington where you will be residing.

2 If you are not a resident of Washington but you are a student in Washington or you are
3 employed in Washington or you carry on a vocation in Washington, you must register with the
4 sheriff of the county of your school, place of employment, or vocation. You must register within
5 three business days of being sentenced unless you are in custody, in which case you must
6 register at the time of your release with the person designated by the agency that has
7 jurisdiction over you. You must also register within three business days of your release with the
8 sheriff of the county of your school, where you are employed, or where you carry on a vocation.

9 **2. Offenders Who are New Residents or Returning Washington Residents:** If you move to
10 Washington or if you leave this state following your sentencing or release from custody but
11 later move back to Washington, you must register within three business days after moving to
12 this state. If you leave this state following your sentencing or release from custody but later
13 while not a resident of Washington you become employed in Washington, carry on a vocation in
14 Washington, or attend school in Washington, you must register within three business days after
15 starting school in this state or becoming employed or carrying out a vocation in this state.

16 **3. Change of Residence Within State:** If you change your residence within a county, you
17 must provide, by certified mail, with return receipt requested or in person, signed written
18 notice of your change of residence to the sheriff within three business days of moving. If you
19 change your residence to a new county within this state, you must register with the sheriff of
20 the new county within three business days of moving. Also within three business days, you
21 must provide, by certified mail, with return receipt requested or in person, signed written
22 notice of your change of address to the sheriff of the county where you last registered.

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

1 **5. Notification Requirement When Enrolling in or Employed by a Public or Private
2 Institution of Higher Education or Common School (K-12):** You must give notice to the
3 sheriff of the county where you are registered within three business days:

- 4 i) before arriving at a school or institution of higher education to attend classes;
5 ii) before starting work at an institution of higher education; or
6 iii) after any termination of enrollment or employment at a school or institution of higher
7 education.

8 **6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not
9 have a fixed residence, you are required to register. Registration must occur within three
10 business days of release in the county where you are being supervised if you do not have a
11 residence at the time of your release from custody. Within three business days after losing your
12 fixed residence, you must send signed written notice to the sheriff of the county where you last
13 registered. If you enter a different county and stay there for more than 24 hours, you will be
14 required to register with the sheriff of the new county not more than three business days after
15 entering the new county. You must also report weekly in person to the sheriff of the county

1 where you are registered. The weekly report shall be on a day specified by the county sheriff's
2 office, and shall occur during normal business hours. You must keep an accurate accounting of
3 where you stay during the week and provide it to the county sheriff upon request. The lack of a
4 fixed residence is a factor that may be considered in determining an offender's risk level and
5 shall make the offender subject to disclosure of information to the public at large pursuant to
6 RCW 4.24.550.

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

13 **5.7** **Department of Licensing Notice:** The court finds that Count _____ is a felony
14 in the commission of which a motor vehicle was used. **Clerk's Action** -The clerk shall
15 forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's
16 driver's license. RCW 46.20.285

17 **5.8 Other:** _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____

25 **DONE IN OPEN COURT** and in the presence of Defendant this date: 1/3, 2017.

Print Name: _____

B.P. Cavanaugh JUDGE

Sarah Acker
SARAH ACKER
(Deputy) Prosecuting Attorney
WBA No. 45863
(print name)

Loren Oakley
LOREN OAKLEY
Attorney for Defendant
WBA No. 18574
(print name)

Alexander J. Huckins
ALEXANDER JAMES HUCKINS
Defendant
(print name)

SA:ds

FELONY JUDGMENT AND SENTENCE (FJS)
(First-Time Offender) (RCW 9.94A.500, .505)
(WPF CR 84.0400 (07/2013))

Page 11 of 13

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

VI. IDENTIFICATION OF THE DEFENDANT

If no SID, complete a separate Applicant card (form FD-258) for State Patrol

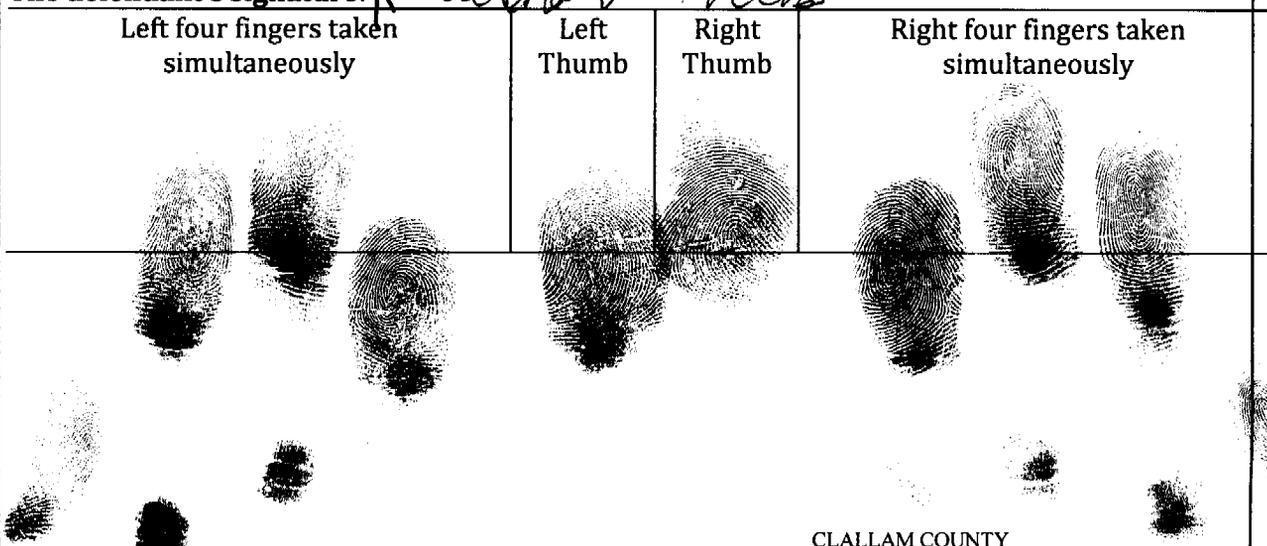
SID No.	<u>WA25730909</u>	Date of Birth	<u>06/23/1993</u>
FBI No.	<u>84283RD5</u>	Date of Arrest	<u>11/15/2016</u>
DOL No. (for traffic convictions)	<u>HUCKIAJ071L3</u>	Local ID No. (pick one):	<input type="checkbox"/> WA0050000 (CCSO) <input checked="" type="checkbox"/> WA0050100 (PAPD) <input type="checkbox"/> WA0050200 (Forks PD) <input type="checkbox"/> WA0050300 (Sequim PD) <input type="checkbox"/> WAWSP8000 (WSP)
PCN No.	<u>966157283</u>	Other	<u>16-24197</u>
Alias name, DOB:	<u>5'06", 160 lbs., Brown hair, Blue eyes</u>		
LKA:	<u>1202 E. Georgiana St., Port Angeles, WA 98362</u>		

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

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

Clerk of the Court: *Summa Jones* Deputy Clerk. Dated: 1-3- ²⁰¹⁷~~2016~~

The defendant's signature: *Alexander Herkins*



1 **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.

2 My right to vote is provisionally restored as long as I am not under the authority of DOC (not
3 serving a sentence of confinement in the custody of DOC and not subject to community custody as
4 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.

5 My right to vote may be permanently restored by one of the following for each felony conviction:
6 a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order
7 issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge
8 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.

9 Defendant's signature: Alexander Ferrelia

10 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.

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

13 Signed at _____, _____ on _____, 20____
(city) (state) (date)

14 _____
Interpreter (print name)

RUSSELL SELK LAW OFFICE

September 11, 2017 - 1:35 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
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Appellate Court Case Title: State of Washington, Respondent v. Alexander J. Huckins, Appellant
Superior Court Case Number: 16-1-00519-4

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