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

IN RE THE PERSONAL RESTRAINT PETITION OF:

AARON G. CLOUD,

PETITIONER.

PERSONAL RESTRAINT PETITION

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A. STATUS OF PETITIONER

Aaron Cloud (hereinafter “Cloud”) challenges his Kitsap County judgment of conviction (Case No. 13-1-00824-4) for assault, drive by shooting, and unlawful possession of a firearm. Mr. Cloud (DOC # 895154) is currently incarcerated at Stafford Creek Correctional Center in Aberdeen, Washington.

This is Mr. Cloud’s first collateral attack on his judgment

B. FACTS

Procedural History

Mr. Cloud was charged by an information filed on August 9, 2013, in Kitsap County, Washington. An amended information was filed on October 9, 2013. Mr. Cloud was tried and convicted by a jury on October 22, 2013. He was sentenced and appealed.

This Court affirmed Cloud’s judgment by an unpublished opinion issued on September 1, 2015. *State v. Cloud*, 189 Wash.App. 1048 (2015). Cloud sought review by the Washington Supreme Court which was denied on March 13, 2016. 185 Wash.2d 1010, 368 P.3d 17 (2016).

The mandate was issued on April 14, 2015.

This petition timely follows.

Facts from Trial

On direct appeal, the facts were described as follows:

Michele Ross was driving her Volkswagen Jetta in Bremerton. Ross’s Jetta was silver with black wheels. Cloud, who lived with Ross at the time, sat

in the front passenger seat. Brandon Egeler sat in the backseat behind Ross: The windows were rolled down in Ross's car.

Ross was in the left turn lane at a stoplight when a truck, driven by Kyle Fortuna, approached to the right. Cloud had a "verbal confrontation" with Fortuna. 3 VRP at 84. Ross turned left, and the truck followed, chasing the Jetta through traffic. As the truck approached the Jetta on the right, Ross slammed her brakes to let the truck pass. As Ross stopped, Cloud raised his arm and there was "a pop." 3 VRP at 88. Ross turned onto another street "to get away from the truck." 3 VRP at 90.

Fortuna called 911 and reported he was shot at by a white male with a shaved head in a silver Jetta with black rims. Fortuna arranged to meet police officers at a nearby gas station. Police officers retrieved one bullet from the driver's panel of Fortuna's truck.

Bremerton Police Officer Jonathan Meador responded to the report of a drive-by shooting. Officer Meador saw Ross's car and blocked the road with his patrol car. Officer Meador saw Cloud "[m]oving around frantically." 4 VRP at 152-53. When Ross stopped at Officer Meador's car, Cloud opened his door and ran away. Officer Meador heard gunshots as Cloud began to run from the Jetta, and Officer Meador ordered Cloud to stop, but Cloud kept running. Cloud fell as he ran and was eventually stopped. Police searched the area and found a gun near where Cloud fell. The bullet found in Fortuna's truck matched the caliber of the gun found. Test results of the gun and bullet were inconclusive as to whether the gun found fired the bullet found in Fortuna's truck.

The State charged Cloud with drive-by shooting, first degree unlawful possession of a firearm, and first degree assault. The State moved to excluded evidence that Cloud fled from police because of an outstanding Department of Correction (DOC) warrant, arguing that the evidence was self-serving hearsay. The State also moved to exclude evidence of other suspects, such as Egeler.

1. Hearings Outside the presence of the jury.

During voir dire of Fortuna outside the presence of the jury, the State played a recording of the 911 call. The caller in the 911 call identified himself as Fortuna, and gave his name, address, and make and model of his vehicle, and location. Fortuna testified that the information in the recording was accurate. The 911 call also indicated that Fortuna arranged to meet police officers at a nearby parking lot, and officers testified that they

actually met Fortuna at a nearby parking lot. The State moved to admit portions of the 911 call related to the identification of the shooter and the vehicle.

Also, at a hearing outside the presence of the jury, Cloud sought to introduce evidence of his outstanding DOC warrant through testimony of a police officer. The State objected, arguing that the evidence was self-serving hearsay and that the trial court had previously granted the State's motion to excluded the evidence. Cloud argued that the evidence was being offered as a motive for flight. Cloud stated that the evidence would rebut the State's argument that he fed because of a consciousness of guilt. The trial court asked, "[D]o you anticipate offering any evidence aside from the fact there was a DOC warrant, any other evidence connecting that DOC warrant to the issue of flight?" 7 VRP at 527.

Subsequently, again outside the presence of the jury, Cloud sought to admit testimony from the arresting officer, Officer Forbragd, that Cloud made a statement upon arrest to the effect of: "Okay guys. It's just a DOC warrant. It's only a warrant." 7 VRP at 546. The State objected on the basis of self-serving hearsay and the trial court's prior ruling on motion to exclude the evidence. Cloud, however, argued that the statement was not hearsay. Cloud argued that the statement went "to the state of mind of the defendant at the time of his arrest and his actions prior to his arrest, which is not hearsay. It is offered for the truth of the matter asserted. In fact, I don't care really that – whether there was a warrant or not a warrant." 7 VRP at 547. The trial court allowed Officer Frobragd's testimony. The State moved to prohibit further explanation or argument about the DOC warrant. The State argued that Officer Forbragd's statement was admitted, but requested that "no evidence be added to that statement to further explain what a DOC warrant is, and why it would be a lesser reason for them to run, anything about thirty-day sanctions." 8 VRP at 586-87. Cloud responded, "I agree, Your Honor." 8 VRP at 587.

2. Trial

At trial, Ross testified that on the day of the shooting, Cloud was "on edge" and "[u]neasy," and that she was concerned after Cloud and Fortuna's "verbal confrontation." 3 VRP at 78, 84. Ross testified that she never saw a gun, and denied telling Officer Floyd May that "[t]he driver of the truck and [Cloud] got into a dispute, and he pulled a handgun and began shooting at the truck." 3 VRP at 99.

For purposes of impeachment, the trial court allowed Officer May to testify that Ross told him that Cloud and Fortuna “got into a dispute, and Cloud pulled out a handgun and began shooting at the truck” and that she did not know that Cloud had a gun before he started shooting. 4 VRP at 208. The trial court instructed the jury that the testimony could be considered only for the purposes of impeachment.

Fortuna testified at trial. However, he repeatedly testified that he did not recall the events and that he did not want to testify.

During the State’s direct examination of Fortuna before the jury, the State played portions of the 911 call that the trial court ruled admissible. Fortuna testified that he remembered being shot at and that he recognized the silver Jetta as the car involved. Fortuna testified that he identified Cloud at the scene, but that he felt pressure to do so. Fortuna did not recall telling officers that he saw a passenger’s arm stick out of the Jetta’s window and shoot at him. Fortuna also denied telling the officers that he saw a gun in Cloud’s hand. Fortuna saw the “silhouette of a gun,” heard a gunshot, and “ducked.” 4 VRP at 135. This was a scary and traumatic event for Fortuna.

Officer Meador testified that Cloud was the only white male with a shaved head at the scene, and that Egeler had a “medium haircut” but was not “a shaved head.” 4 VRP at 190. Officer Michael Nelson testified that Fortuna identified Cloud the evening of the shooting.

After the State and Cloud rested, Cloud informed that court that he intended to argue that there were two people in the car who matched the physical description of the suspect. The State objected. Cloud argued that the evidence could “go toward the issue of reasonable doubt. Rather than saying there’s another suspect, it goes to the issue of reasonable doubt as to whether they got the right suspect.” 8 VRP at 583. Cloud claimed that he was entitled to “argue any fact in evidence and bring whatever inferences we can bring to those facts during the course of argument, even if the argument would be that another person is in the position to, meets the description of, and had the opportunity to commit the crime.” 8 VRP at 583-84. The trial court ruled Cloud could

argue based on what’s been presented at trial regarding identity, specifically the testimony of Mr. Fortuna regarding identity, and other evidence related to identity of those persons in the car. I’m not going to, [defense counsel] allow you to argue at this point that – or make a statement indicating that [Egeler] must have been the shooter

because I don't believe the evidence at this point, applying that evidence to *Mak*, that you can argue he's the other shooter or wasn't.

8 VRP at 585-86. During Cloud's closing argument, he argued there was another passenger who may fit the description of the shooter and that the physical description was vague.

The trial court instructed the jury that

[a] person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that death or a serious physical injury to another person may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness is required to establish an element of a crime, the element is also established if a person act intentionally.

Clerk's Papers (CP) at 103 Jury Instruction 10).

Additional relevant facts appear below.

C. ARGUMENT

1. Mr. Cloud was Denied the Constitutional Right to Effective Assistance of Counsel When Trial Counsel Invited Error by Failing to Offer a DOC Warrant to Rebut the Prosecutor's Argument that Cloud's Flight was Due to His Consciousness of Guilt for the Assault/Drive by Shooting.

Introduction

This is a claim of ineffective assistance of counsel premised on the state and federal constitutions and founded on the failure of trial counsel to offer evidence of Cloud's warrant as proof of a competing inference for his flight.

On direct appeal, appellate counsel argued that Cloud's due process right to present exculpatory evidence was violated when he was precluded from presenting

evidence that he ran from the police because of the existence of an outstanding warrant, and not as evidence of culpability for the offense charged.

But, there was a fatal flaw in that claim. Cloud elicited testimony from Officer Forbragd that when Cloud was arrested he made the following comment: “Gee, guys, it’s just a DOC warrant period. All I have is a warrant.” 7 VRP at 558. But, defense counsel then took the position that the statement was admissible as evidence only of Cloud’s state of mind when he was arrested, expressly disclaiming: “It is not offered for the truth of the matter asserted. In fact, I don't care really that—whether there was or was not a warrant. It has to do with his state of mind at the time he was arrested.” 7 VRP at 547.

As a result, Cloud’s claim that he was prevented from presenting exculpatory evidence at trial was rejected as invited error:

Essentially, Cloud is arguing that although he explicitly told the trial court that he was not offering his statement about the DOC warrant for the truth of the matter asserted, he should have been allowed to prove the truth of the matter asserted. We reject Cloud's argument based on invited error.

Under the invited error doctrine, a defendant may not make a tactical decision and later rely on that decision as the basis for reversal. *State v. Mercado*, 181 Wn.App. 624, 629–30, 326 P.3d 154 (2014). Moreover, Cloud “cannot change theories of admissibility on appeal.” *State v. Pavlik*, 165 Wn.App. 645, 651, 268 P.3d 986 (2011), review denied, 174 Wn.2d 1009 (2012). Accordingly, Cloud's argument that the trial court erred by excluding evidence that Cloud expressly stated he was not offering fails.

To the extent that Cloud argues the trial court erred by not allowing him to elicit testimony from Detective Gray regarding Cloud's DOC warrant, that argument also fails. During cross-examination of Detective Crystal Gray, Cloud sought to admit evidence from Detective Gray that Cloud was arrested and booked for the charges in this case and because of an outstanding DOC warrant. The State objected, and Cloud argued that the

testimony should be admissible “for purpose of intent on flight.” 7 VRP at 526. The trial court asked Cloud: “To what extent are you going to tie in the fact that there was a warrant to that being the causation of flight? ... do you anticipate offering any evidence aside from the fact that there was a DOC warrant, any other evidence connecting that DOC warrant to the issue of flight?” 7 VRP at 526–27. Cloud responded: “No.” 7 VRP at 527. The trial court sustained the State's objection, and ruled that “if the only information the jury has is that your client had a DOC warrant to argue that that was the basis of the reason he ran, without any other evidence, is speculative.” 7 VRP at 527.

Cloud argues that the trial court erred by not allowing him to offer evidence connecting the DOC warrant to the issue of flight, even though Cloud told the court that beyond Detective Gray's testimony, he was not planning on offering evidence connecting the DOC warrant to the issue of flight. Thus, Cloud complains that the trial court excluded evidence that Cloud said he was not offering. Cloud's argument fails. See *Mercado*, 181 Wn.App. at 629; see also *Pavlik*, 165 Wn.App. at 651.

Mr. Cloud's Flight was a Material Fact at Trial

While the failure to offer the DOC warrant as evidence of the reason for Cloud's flight may have been invited error on direct appeal, Cloud casts the issue as ineffective assistance of counsel in this PRP. Cloud contends that it was deficient performance for counsel to fail to offer the warrant. There was no tactical downside to offering the warrant. Offering the warrant would have rebutted the prosecutor's “flight = consciousness of guilt” argument and would have corroborated the admitted statement by Cloud.

Cloud's flight and the reason for it was a material fact at trial.

The State relied heavily on Cloud's flight as proof of guilt. The State called several police officers who described the defendant's flight from his vehicle and through blackberries causing blisters, to the point where he was finally

cornered and gave up exhausted. During closing argument, the state spent a significant amount of time arguing why Cloud's flight was proof of his consciousness of guilt.

Trial Counsel was Ineffective for Failing to Offer the Warrant as Evidence

To prevail on a claim of ineffective assistance, the defendant must show that his trial counsel's representation was deficient, and that the deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Thomas*, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987). Representation is deficient if it falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.3d 1239 (1997) *cert. denied*. 523 U.S. 1008 (1998). Prejudice occurs when, but for the deficient performance, there is a reasonable probability the outcome would have been different. *In re Pirtle*, 136 Wn.2d 467, 487, 965 P.2d 593 (1998).

Applying the *Strickland* standard, counsel's performance was deficient because no reasonable counsel would fail to introduce the warrant. Cloud was prejudiced because that evidence both bolstered his defense and undermined a prominent theme advanced by the State. A criminal defendant can rebut the presumption of reasonable performance by demonstrating that "there is no conceivable legitimate tactic explaining counsel's performance." *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). Cloud has done so, here.

Caselow Repeatedly Recognizes that Flight May Be Indicative of Guilt, But that Inference is Undermined Where there is Evidence of a Competing Reason

Offering the warrant would have also bolstered the defense argument against the consciousness of guilt argument advanced by the State. *People v. Duran*, 16 Cal.3d 282, 127 (1976) (defendant entitled to present innocent explanation for flight, to rebut inference that flight shows consciousness of guilt); *People v. Green*, 27 Cal.3d 1, 39, fn. 26 (1980) (“if evidence of flight is admitted the defendant is entitled to explain it and show the jury that it is wholly consistent with innocence.”).

However, without the warrant in the trial record, the jury had no substantive facts upon which to infer that reason proffered by the defense, rather than to infer that Cloud ran because he knew he was guilty.

Caselow also recognizes the significance that jurors may attach to flight as indicative of guilt. Courts have repeatedly recognized that the consciousness of guilt inference can be “pushed too far” and can lead a jury to convict a defendant based on their character and not the facts. *See People v. May*, 290 N.Y. 369, 373-74 (1943) (discussing how the jury “may well have been influenced” by “consciousness of guilt” evidence). *See also United States v. Robinson*, 560 F.2d 507, 514 (2d Cir. 1977) (citing *United States v. Leonard*, 524 F.2d 1076, 1091 (2d Cir. 1975) (holding that evidence, such as consciousness of guilt, that elicits “a strong emotional or inflammatory impact” and lacks probative value “may pose a risk of unfair prejudice because it ‘tends to distract’ the jury from the issues in the

case and ‘permits the trier of fact to reward the good man and punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.’’); *Herring v. State*, 501 So.2d 19, 20 (Fla. 1986) (“A defendant's behavior is circumstantial evidence probative of his consciousness of guilt, and ultimately guilt itself, only when it can be said that behavior is ‘susceptible of no *prima facie* explanation except consciousness of guilt.’”).

For these reasons,

Appellate Counsel was Ineffective for Failing to Challenge the Instruction on Due Process Grounds

The United States Supreme Court has recognized that a criminal defendant has a right to have effective assistance of counsel on his first appeal of right. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). A criminal defendant's first opportunity to raise an ineffective assistance of appellate counsel claim is often on collateral review. See, e.g., *Maxfield*, 133 Wash.2d 332, 945 P.2d 196. This court has held that:

[i]n order to prevail on an appellate ineffective assistance of counsel claim, petitioners must show that the legal issue which appellate counsel failed to raise had merit and that they were actually prejudiced by the failure to raise or adequately raise the issue.

Id. at 344. Failure to raise all possible non-frivolous issues on appeal is not ineffective assistance, and the exercise of independent judgment in deciding what issues may lead to success is the heart of the appellate attorney's role. Yet if a petitioner can show that his appellate counsel failed to raise an issue with

underlying merit, then the first prong of the ineffective assistance test is satisfied. *Maxfield*, 133 Wash.2d at 344.

Cloud has met that standard. Appellate counsel failed to raise an issue fully supported by state law. Appellate counsel obviously recognized the importance of the flight issue. But, rather than raising a meritorious claim supported by precedent, appellate counsel raised a related, but procedurally barred claim.

In *Smith v. Robbins*, 528 U.S. 259 (2000), the United States Supreme Court reiterated that the proper standard for evaluating claims of ineffective assistance of appellate counsel derives from the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Smith*, 528 U.S. at 285. The Court held that Robbins was required to demonstrate prejudice, “[t]hat is, he must show a reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he would have prevailed *on his appeal*.” *Smith*, 528 U.S. at 285–86.

Applying the standard of review on direct appeal, Cloud was prejudiced. The improper instruction provided support for the prosecutor’s argument and permitted jurors to attach great weight to this single fact.

Conclusion

Because Cloud has shown deficient performance and prejudice this Court should either reverse and remand for a new trial or should remand for either an evidentiary hearing or a determination on the merits after an evidentiary hearing.

2. Mr. Cloud was Denied His Right to Effective Assistance of Counsel When Counsel Disclaiming Any Interest in Arguing that the Passenger Was the Shooter.

Introduction

Similar to the first claim of error, this Court held that Cloud was precluded from arguing that his right to present exculpatory evidence was unfairly infringed because counsel had invited the error. Cloud does not re-raise that rejected claim. Instead, he frames his claim as ineffective assistance of counsel for disclaiming Cloud's right to argue that the passenger, not Cloud, was the shooter.

Additional Factual Support for Claim

After the close of the defense case, counsel moved for permission to argue the existence of another perpetrator for the offenses charged. RP 581-586. The defense took this step because the court had previously granted a pretrial motion precluding any such argument. RP 6-22. The court again denied the defendant's request and affirmed its decision to preclude the defense from arguing that Mr. Egeler was the shooter. RP 581-586. The court stated as follows on this issue:

THE COURT: I'm going to allow Mr. Houser to argue based on what's been presented at trial regarding identity, specifically the testimony of Mr. Fortuna regarding identity, and the other evidence related to identity of those persons in the car. I'm not going to, Mr. Houser, allow you to argue at this point that - or make a statement indicating that Brandon Egeler must have been the shooter because I don't believe the evidence at this point, applying that evidence to *Mak*, that you can argue that he's the other shooter or he wasn't - I think you catch my drift on that.

RP 581-586.

On direct appeal, this Court summarized:

In closing arguments, Cloud argued that there was another passenger who may fit the description of the shooter and that the physical description was vague. On appeal, Cloud argues that the trial court erred by not allowing him to argue that Egeler was the shooter. However, Cloud represented to the trial court that he was not going to argue that Egeler was the shooter. Thus, Cloud claims that the trial court erred by excluding argument that he represented to the trial court that he did not want to argue. Therefore, Cloud invited the trial court's alleged error.

Like with the previous claim, defense counsel voluntarily stopped short.

The trial testimony established that Egeler was in the same car as Cloud, and he was also on the same side of the car in the backseat. Furthermore, the two men had a similar description, and, although Egeler did not flee when the police stopped the vehicle, he did lie to the police about his identity when taken into custody.

Finally, the gun that was recovered was not that far from the vehicle where Mr. Egeler was sitting.

Counsel's decision to voluntarily impose a limitation on the defense of Cloud was ineffective. As a result, Cloud was denied his constitutional right to present relevant, exculpatory evidence in his own defense. If this issue had been argued, there is a reasonable likelihood that doubt would have arisen, especially when the other passenger had the same description as Cloud and the victim's memory was questionable.

The Constitutional Right to Argue an Exculpatory Theory

A criminal defendant has a due process right under both Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, to present all admissible evidence in his defense and argue the

reasonable inferences therefrom. *State v. Rehak*, 67 Wn.App. 157, 834 P.2d 651 (1992). Under our court rules evidence is admissible if it is relevant (i.e., when it has “any tendency to make the existence of any fact... of consequence... more... or less probable.” ER 401. Whether or not evidence that another person perpetrated the offense to which the defendant is charged is relevant and admissible depends upon the substance of the evidence and the reasonable inferences that can be drawn from it. *Rehak*, 67 Wn.App. at 162 (citing *State v. Drummer*, 54 Wn.App. 751, 755, 775 P.2d 981 (1989)). In *State v. Mak*, 105 Wn.2d 692, 718 P.2d 407 (1986), the court puts the proposition as follows:

Before such testimony can be received, there must be such proof of connection with the crime, such as a train of facts or circumstances as tend clearly to point out someone besides the accused as the guilty party.

Mak, 105 Wn.2d at at 858 (quoting *State v. Downs*, 168 Wn. 664, 667, 13 P.2d 1 (1932)).

The State will likely defend counsel’s failure argue that Egeler must have been the shooter by positing that it was reasonable for counsel, “[r]ather than saying there's another suspect,” argue “there are potentially more suspects” because both argument pertain “to the issue of reasonable doubt as to whether they got the right suspect.” 8 VRP at 583. But, the two positions can be easily harmonized and are not mutually exclusive.

Conclusion

As with the previous claim, this Court should either grant relief or remand for an evidentiary hearing.

- 3(a). Instructing Jurors They Could Infer Recklessness from the Mere Fact of Discharging a Firearm from a Moving Vehicle Violated Due Process.
- 3(b). Mr. Cloud Was Denied His Right to Effective Assistance of Appellate Counsel for Failing to Raise this Claim on Direct Appeal.

Jury Instruction Number 13 provided that a person who discharges a firearm from a moving vehicle “may be inferred to have acted recklessly.” Because this permissive inference requires only proof of the discharge of a firearm and a moving vehicle violates, it violates due process and impermissibly lowers the State’s burden of proof.

A permissive inference thus is unconstitutional “unless it can be said with substantial assurances that the presumed fact is more likely than not to flow from the proved fact.” *Leary v. United States*, 385 U.S. 6, 36 (1969). *Accord Ulster County Court v. Allen*, 442 U.S. 140, 165, (1979). Courts “determine the constitutionality of a permissive inference instruction on a case-by-case basis” by reviewing the record evidence to see if the court can say with substantial assurance that the inferred fact flows more probably than not from the facts proven in the particular case. *See, e.g., Ulster County*, 442 U.S. at 162-67, (finding instruction constitutional only after concluding that inference more probably than not flowed from specific facts proven to jury at trial).

Permissive inference instructions generally are disfavored because they tend to take the focus away from the elements that must be proved. *See Hanna v. Riveland*, 87 F.3d 1034, 1037 (9th Cir. 1996); *State v. Hanna*, 123 Wash. 2d 704, 710–11, 871 P.2d 135 (1994).

In *Schwendeman v. Wallenstein*, 971 F.2d 313 (9th Cir. 1992), Schwendeman was convicted of vehicular assault, which required proof the defendant drove in a reckless manner. Recklessness was defined as a wanton or willful disregard for the safety of persons or property. The trial court instructed the jury a person who drives in excess of the maximum speed limit

“may be inferred to have driven in a reckless manner. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.”

Id., at 315.

In reviewing his habeas petition, the Ninth Circuit repeated the Supreme Court standard that a permissive inference is constitutional only if it can be said with substantial assurance that the inferred fact is more likely than not to flow from the proved facts. “Although it is certainly true that excessive speed is probative of a jury's determination of recklessness, here we cannot say with substantial assurance that the inferred fact of reckless driving more likely than not flowed from the proved fact of excessive speed. *Under Ulster County* [], the instruction was constitutionally defective. [Cits.]”*Id.*, at 316.

While the Court noted there was “plenty of evidence of reckless driving, the instruction isolated speed “as the only circumstance the jury needed to find to permit the jury to find reckless driving and thereby convict. “The jury was told in effect that it could ignore all the other evidence, consider only the evidence of Schwendeman's speed, and if it found Schwendeman was exceeding the speed

limit, that was enough to convict him -- not of speeding, but of reckless driving. By focusing the jury on the evidence of speed alone, the challenged instruction erroneously permitted the jury to find an element of the crime of which Schwendeman was convicted without considering all the evidence presented at trial. We cannot say there is no reasonable possibility that the instruction did not materially affect the verdict. Accordingly, the error cannot be excused as harmless.” *Id.* (citations omitted). See also *Hanna v. Riveland*, 87 F.3d 1034 (9th Cir. 1996) (State argued *Schwendeman* was not controlling because the defendant's speeding was more egregious. While noting the evidence on that issue was in conflict, *Hanna* explained that under the challenged instruction, the jury only needed to find that Hanna had been speeding to infer reckless driving). \

A permissive inference undermines due process where the instruction tells the jury to focus on just specified facts, and thereby avoid wrestling with all the facts and contradictory evidence. “Permissive inferences... permit juries to avoid assessing the myriad facts which make specific cases unique. [Cit.] Of particular concern is the possibility that a jury may ignore exculpatory evidence [by focusing on just the factors highlighted in the instruction].” *United States v. Rubio-Villareal*, 967 F.2d 294, 299 (9th Cir. 1992). Accord *United States v. Chu*, 988 F.2d 981, 983-984 (9th Cir. 1993). Further, such instructions communicate that the judge “has weighed the evidence in his own mind and believes [the facts highlighted in the challenged instruction are] sufficient to convict.” *Rubio-Villareal*, 967 F.2d at 299. Accord *United States v. Warren*, 25 F.3d 890, 899 (9th

Cir. 1994). Therefore, unless the reviewing court concludes “with substantial assurance” that the fact to be inferred fact is “more likely than not to follow from the proved fact, the instruction is unconstitutional. *Ulster County*, 442 U.S. at 166, n. 28.

Due process requires the State bear the “burden of persuasion beyond a reasonable doubt of every essential element of a crime.” *Francis v. Franklin*, 471 U.S. 307, 313, (1985); *In re Winship*, 397 U.S. 358 (1970). Moreover, in the instruction here undermines the State’s reasonable doubt requirement because it fails to specify any degree of proof for the jury to employ the inference. *See e.g.*, *State v. Delmarter*, 68 Wash.App. 770, 784–85, 845 P.2d 1340 (1993).

Not only does the inference not follow from the singular fact of a moving vehicle, the instruction permits jurors to find an element of the crime (the mens rea) from that single fact.

Coincidentally, this and other courts have found that “flight = consciousness of guilt” instructions violate due process for reasons similar to the one advanced herein and despite a much stronger factual basis for the inference in that situation. *State v. Reed*, 25 Wash.App. 46, 604 P.2d 1330, 1333 (1979). *Reed* held:

Mr. Reed contends it was error for the court to give a “flight” instruction. We agree.

Evidence is admissible that, after the commission of crime, the accused fled and concealed himself as if to elude justice or endeavor to avoid arrest; or, after arrest, attempted to effect his escape. *State v. Lew*, 26 Wash.2d 394, 401, 174 P.2d 291, 294 (1946); *State v. Bruton*, 66 Wash.2d 111, 112, 401

P.2d 340 (1965). While there is evidence to support an inference of flight arising from the defendant's unexplained departure from the Joy farm, and his alleged participation in an attempt to escape from jail, we are persuaded by the court in *State v. Jefferson*, 11 Wash.App. 566, 571, 524 P.2d 248 (1974), that evidence of “flight” should not be the subject of an instruction. As the court observed at 571, 524 P.2d at 251:

Instructions of this ilk, though time-honored, should be discarded. At best, they merely sanction the use of circumstantial evidence. At worst, they place undue emphasis upon that evidence. Instructions on circumstantial evidence should be expressed in the abstract. We also agree with the District of Columbia Circuit Court of Appeals that evidence of flight tends to be only marginally probative as to the ultimate issue of guilt or innocence. The interest of justice is perhaps best served if this matter is reserved for counsel's argument, with little if any comment by the bench. *United States v. Robinson*, 154 U.S.App.D.C. 265, 273, 475 F.2d 376, 384 (D.C. Cir. 1973).

Reed at 49-50.

Since *Reed*, several states have followed suit. See *Hadden v. State*, 42 P.3d 495, 508 (Wyo.2002) (determining that the giving of a flight instruction is reversible error because it impermissibly emphasizes a single piece of circumstantial evidence); *Dill v. State*, 741 N.E.2d 1230, 1233 (Ind.2001) (concluding that the flight instruction should not be given because it is “confusing, unduly emphasizes specific evidence, and is misleading”); *State v. Hall*, 297 Mont. 111, 991 P.2d 929, 937 (1999) (holding that flight instructions should not be given because of the limited probative value of the evidence); *Fenelon v. State*, 594 So.2d 292, 295 (Fla.1992) (determining that “the better policy in future cases where evidence of flight has been properly admitted is to reserve comment to counsel” due to the disagreement over what kind and what amount of evidence will support the giving of a flight instruction); *Renner v. State*, 260 Ga. 515, 397

S.E.2d 683, 686 (1990) (holding that “while the state may offer evidence of and argue flight, it shall be reversible error for a trial court in a criminal case to charge the jury on flight” because the instruction could be interpreted by the jury as implying that the trial court believes there to be evidence of flight that indicates a consciousness of guilt of the defendant); *State v. Cathey*, 241 Kan. 715, 741 P.2d 738, 748–49 (1987) (disapproving of flight instructions because it “emphasize[s] and single [s] out certain evidence admitted at a criminal trial”); *State v. Grant*, 275 S.C. 404, 272 S.E.2d 169, 171 (1980) (holding that flight instructions are either an unnecessary “sanction [of] the use of circumstantial evidence” or improper comment that “place[s] undue emphasis upon that evidence”); *State v. Stilling*, 285 Or. 293, 590 P.2d 1223, 1230 (1979) (stating that the “significance of flight should be left to argument”); *State v. Fleming*, 523 S.W.2d 849, 854 (Mo.Ct.App.1975) (noting that the Missouri Supreme Court had prospectively barred flight instructions).

This Court should apply the reasoning of *Reed* and reverse.

Ineffective Assistance of Appellate Counsel

The United States Supreme Court has recognized that a criminal defendant has a right to have effective assistance of counsel on his first appeal of right. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). A criminal defendant's first opportunity to raise an ineffective assistance of appellate counsel claim is often on collateral review. See, e.g., *Maxfield*, 133 Wash.2d 332, 945 P.2d 196. The Washington Supreme Court has held that:

[i]n order to prevail on an appellate ineffective assistance of counsel claim, petitioners must show that the legal issue which appellate counsel failed to raise had merit and that they were actually prejudiced by the failure to raise or adequately raise the issue.

Id. at 344, 945 P.2d 196. If a petitioner can show that his appellate counsel failed to raise an issue with underlying merit, then the first prong of the ineffective assistance test is satisfied. *Maxfield*, 133 Wash.2d at 344.

Cloud has made that showing here.

Conclusion

Based on the above, this Court should reverse Cloud's drive by shooting conviction and remand for either a new trial or dismissal and resentencing.

4(a). Mr. Cloud Was Denied His Right to Effective Assistance of Trial Counsel When Counsel Failed to Object to the Court's Instructions and Failed to Propose Instructions that Made the State's Proof Requirement on Recklessness Clear.

4(b). Mr. Cloud was Denied His Right to Effective Assistance of Appellate Counsel for Failing to Raise this Issue on Appeal.

As noted previously, Mr. Cloud was convicted of drive by shooting. Drive by shooting requires proof of recklessly discharging a firearm. Cloud's jury was instructed that drive by shooting required proof of the following elements:

- (1) That on or about July 24, 2013, the defendant recklessly discharged a firearm;
- (2) That the discharge created a substantial risk of death or serious physical injury to another person;
- (3) That the discharge was either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge; and

(4) That this act occurred in the State of Washington.

Cloud's jury was given an instruction on recklessness which stated:

Jury Instruction Number 10:

A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that death or a serious physical injury to another person may occur and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

When recklessness is required to establish an element of the crime, the element is also established if the person acts intentionally.

Read as a whole, these instructions impermissibly lowered the State's burden of proving recklessness. The first problem, as the comment to the WPIC states, is that for drive by shooting recklessness should be defined as including a disregard of the substantial risk that discharge of a firearm may occur. The recklessness instruction did not include that requirement. Instead, the instruction equates recklessness with an awareness of the risk of serious bodily harm or death. In other words, by defining recklessness as an appreciation of the degree of harm, rather than a substantial risk of discharge of a firearm, the instruction impermissibly lowers the State's burden of proof.

The second problem is that under the statute, a separate element that must also be proven is the substantial risk of death or injury that was actually created by that "wrongful act." The commentary to the drive by shooting WPIC provides:

Thus, the risk of death or injury should not be incorporated into the definition of recklessness as it might be with differently phrased crimes. See, Comment to WPIC 10.03.

Reading this instruction together with the permissive inference instruction serves to further lower the State's burden of proof.

Like with the previous claim, there was no reason for appellate counsel not to raise the issue. Cloud was prejudice because he would have prevailed, if raised on direct appeal.

D. CONCLUSION AND PRAYER FOR RELIEF

This Court should reverse and remand for a new trial.

DATED this 13th day of April, 2017.

Respectfully Submitted:

/s/Jeffrey E. Ellis
Jeffrey E. Ellis #17139
Attorney for Mr. Cloud
Law Office of Alsept & Ellis
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Portland, OR 97205
JeffreyErwinEllis@gmail.com

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	No. 13-1-00824-4
)	
Plaintiff,)	JUDGMENT AND SENTENCE
)	
v.)	
)	
AARON GUSTER CLOUD,)	
Age: 29; DOB: 12/11/1983,)	
)	
Defendant.)	

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence. The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>	RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I Drive-By Shooting	9A.36.045	07/24/2013	07/24/2013	
II Unlawful Possession of a Firearm in the First Degree	9.41.040.1A	07/24/2013	07/24/2013	
III Assault in the First Degree	9A.36.011.1A	07/24/2013	07/24/2013	
III Armed With Firearm	9.94A.533.3A	07/24/2013	07/24/2013	X

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
VUCSA	5/08/09	11/05/09	Kitsap Superior 09-1-00783-5	
Burglary 2 nd	6/05/09	11/05/09	Kitsap Superior	



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2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
			09-1-00783-5	
UPF 1 st	1/28/09	11/05/09	Kitsap Superior 09-1-01207-3	
Assault 2 DV	8/18/09	11/05/09	Kitsap Superior 09-1-01207-3	
UPF 1 st	3/06/06	7/07/06	Kitsap Superior 06-1-00373-8	
Burglary 2 nd	2/02/06	7/07/06	Kitsap Superior 06-1-00373-8	
Burglary 2 nd	10/01/05	12/13/05	Kitsap Superior 05-1-01547-9	
Residential Burglary	9/12/05	12/13/05	Kitsap Superior 05-1-01574-6	

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	13	VII	87 to 116	-	X				10 years
II.	11	VII	87 to 116	-	X				10 years
III.	13	XII	240 to 318	-	X	F	60	300 to 378	Life

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

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (9.94A.836); <15=Victim Under 15 (9.94A.837); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); CSG=Criminal Street Gang Involving a Minor (9.94A.833); AE=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY-The Court finds the Defendant has a chemical dependency that contributed to the offense(s).
- 4.5-PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible



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and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.

- 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence above below the standard range, within the standard range for Count ___ but served consecutively to Count(s) ___, or warranting exceptional conditions of supervision for Count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender and is sentenced to life without the possibility of early release. RCW 9.94A.570.

Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.

COURT'S SENTENCE:

COUNT I <u>11e</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.
COUNT II <u>11e</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ Days with _____ Days Suspended for _____ Years	
COUNT III <u>378</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ Days with _____ Days Suspended for _____ Years	
COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	

IF MULTIPLE COUNTS-Total confinement ordered: 378 Days Months. (per DOSA sentence)

COUNTS SERVED- Concurrent Consecutive Firearm and Deadly Weapon enhancements served consecutive; the remainder concurrent. Sexual Motivation enhancements served consecutive; the remainder concurrent. VUCSA enhancements served consecutive concurrent; the remainder consecutive.

- 4.4-CONFINEMENT ONE YEAR OR LESS-Defendant shall serve a term of confinement as follows:
- JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found eligible, the confinement ordered may be converted to--Work Release, RCW 9.94A.731 (*Note: the Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail or Peninsula Work Release*), Home Detention, RCW 9.94A.731, 190, or Supervised Community Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.
- STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if applicable under RCW 9.94A.190(3) in the Department of Corrections.
- 4.5-CONFINEMENT OVER ONE YEAR-Defendant is sentenced to the above term of total confinement in the custody of the Department of Corrections.
- OTHER SENTENCES -This sentence shall be served consecutive concurrent to sentence(s) ordered in cause number(s) _____
- CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to sentencing solely for this cause number as computed by the jail unless specifically set forth- _____ days.
- 4.3-NO CONTACT ORDER-Defendant shall abide by the terms of any no contact order issued as part of this Judgment and Sentence.



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SUPERVISION

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2 [X] 4.6-COMMUNITY CUSTODY - SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP. RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody (and supervised probation if ordered). First Offenders-RCW 9.94A.650. If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 6 months; and if treatment is ordered, community supervision may include up to the period of treatment but not exceed 1 year.

Community Custody Is Ordered for the Following Term(s):
For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):
[X] COUNT(S) III 36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
[X] COUNT(S) I 18 months for Violent Offense
[] COUNT(S) 12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)
For offenders sentenced to a term of one year or less :
[] COUNT(S) 12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions).
• Community custody for sex offenders may be extended for up to the statutory maximum term.
• For sex offenses, defendant shall submit to electronic home detention if imposed by DOC
Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:
[] COUNT(S) [] 12 months [] 24 months [] months

23 [] 4.6-WORK ETHIC CAMP-COMMUNITY CUSTODY. RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

26 [] 4.6- PRISON-BASED DOSA-COMMUNITY CUSTODY. RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

4.7-ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS-If DOC finds



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1 that the Defendant has willfully violated the conditions of the drug offender sentencing alternative
2 program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence.
3 In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC
4 finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60
5 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not
6 completed his or her maximum term of total confinement and is subject to a third violation hearing
7 and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state
8 correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW
9 9.94A.714.

10 **4.5—ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**
11 **FROM THE DOSA PROGRAM**—If the defendant fails to complete, or is administratively terminated
12 from, the drug offender sentencing alternative program, the court imposes a term of community
13 custody under RCW 9.94A.701, to begin upon the defendant's release from custody, and during this
14 term of community custody, the defendant shall comply with all conditions stated in this Judgment and
15 Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed
16 by the court or DOC.

17 **4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY.**
18 RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached
19 ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the
20 ADDENDUM are hereby imposed.

21 **—ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY**
22 **TREATMENT-BASED DOSA SENTENCE CONDITIONS**—If the court finds that the Defendant has
23 willfully violated the conditions of the drug offender sentencing alternative program, the court may
24 order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard
25 range or a term of total confinement up to the top of the standard range. The court may also impose a
26 term of community custody. In addition, as with any case, if the Defendant is subject to a first or
27 second violation hearing and DOC finds that the Defendant committed the violation, the Defendant
28 may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in
29 any case, if the Defendant has not completed his or her maximum term of total confinement and is
30 subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC
31 may return the Defendant to a state correctional facility to serve up to the remaining portion of the
Defendant's sentence. RCW 9.94A.714.

COMMUNITY CUSTODY VIOLATIONS. In any case in which community custody is imposed, if the
Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed
the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation.
RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term
of total confinement and is subject to a third violation hearing and DOC finds that the Defendant
committed the violation, DOC may return the Defendant to a state correctional facility to serve up to
the remaining portion of the Defendant's sentence. RCW 9.94A.714.



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SUPERVISION SCHEDULE: The Defendant Shall-

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- STANDARD**
 - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
 - Report to and be available for contact with assigned CCO as directed.
 - Obey all no-contact orders including any in this judgment.
 - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
 - Notify CCO within 48 hours of any new arrests or criminal convictions.
 - Pay DOC monthly supervision assessment.
 - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (NON-DOSA)**
 - Work only at DOC-approved education, employment and/or community service.
 - Possess or consume no controlled substances without legal prescription.
 - Reside only at DOC-approved location and arrangement.
 - Consume no alcohol, if so directed by the CCO.
- FIRST OFFENDER**
 - Obey all laws.
 - Devote time to specific employment or occupation.
 - Pursue a prescribed secular course of study or vocational training.
 - Participate in DOC programs and classes, as directed.
- Undergo available outpatient treatment for up to one year, or inpatient treatment not to exceed standard sentence range.**
- FINANCIAL GAIN**
 - Commit no thefts.
 - Possess no stolen property.
 - Have no checking account or possess any blank or partially blank checks.
 - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
 - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
 - Possess no identification in any other name other than Defendant's true name.
 - Possess no credit cards or access devices belonging to others or with false names.
 - Cause no articles to be refunded except with the written permission of CCO.
 - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
- ALCOHOL/DRUGS**
 - Possess or consume no alcohol.
 - Enter no bar or place where alcohol is the chief item of sale.
 - Possess and use no illegal drugs and drug paraphernalia.
 - Submit to UA and breath tests at own expense at CCO request.
 - Submit to searches of person, residence or vehicles at CCO request.
 - Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
 - Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.
- EVALUATIONS**- Complete an evaluation for:
 - substance abuse
 - anger management
 - mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
- DOSA**
 - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
 - Devote time to a specific employment or training.
 - Perform community service work.
- 4.8-OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020**- The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

- PROGRAMS / ASSAULT**
 - Have no assaultive behavior.
 - Successfully complete a certified DV perpetrators program.
 - Successfully complete an anger management class.
 - Successfully complete a victim's awareness program.
- TRAFFIC**
 - Commit no traffic offenses
 - Do not drive until your privilege to do so is restored by DOL.
- HAVE NO CONTACT WITH: KYLE FORTUNA**
- OTHER:**



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FINANCIAL OBLIGATIONS

4.1-LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760. The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> \$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<input checked="" type="checkbox"/> \$1135 Court-appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
<input checked="" type="checkbox"/> \$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$ _____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> \$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/other defense costs
<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Mandatory fine for drug crimes, RCW 69.50.430	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
\$ _____ Contribution to SIU, RCW 9.94A.030, 9.94A.760.	<input checked="" type="checkbox"/> \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
<input checked="" type="checkbox"/> \$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	\$100 Contribution-Anti-Profitteering Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82.110
Emergency Response Costs -- DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$200 DUC-DUI/DP Account Fee -- Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

RESTITUTION-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted- RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. **INTEREST WAIVED FOR TIMELY PAYMENTS**-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-**HIV TESTING**-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-**DNA TESTING**-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law

JUDGMENT AND SENTENCE; Page 7

[Form revised January 29, 2010]



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enforcement agency unless otherwise stated.

- 4.10-COMPLIANCE WITH SENTENCE-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.
- JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.
- EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

NOTICES AND SIGNATURES

5.1-COLLATERAL ATTACK ON JUDGMENT-Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

5.2-LENGTH OF SUPERVISION-The court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3-NOTICE OF INCOME-WITHOLDING ACTION-If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.5-ANY VIOLATION OF JUDGMENT AND SENTENCE-Is punishable by up to 60 days of confinement per violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW 9.94A.633.

5.6-FIREARMS-You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Clerk's Action Required-The court clerk shall forward a copy of the Defendant's driver's license, identicard, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable-

5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION- LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements:

Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010, CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.

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

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

2. Offenders Who are New Residents or Returning Washington Residents:

If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State:

If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you



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1 change your residence to a new county within this state, you must register with the sheriff of the new county within
2 three business days of moving. Also within three business days, you must provide, by certified mail, with return
3 receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you
4 last registered.

4 **4. Leaving the State or Moving to Another State:**

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

7 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher
Education or Common School (K-12):**

8 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you
9 are required to notify the sheriff of the county of your residence of your intent to attend the institution within three
10 business days prior to arriving at the institution. If you become employed at a public or private institution of higher
11 education, you are required to notify the sheriff for the county of your residence of your employment by the institution
12 within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or
13 private institution of higher education is terminated, you are required to notify the sheriff for the county of your
14 residence of your termination of enrollment or employment within three business days of such termination. If you
15 attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are
16 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the
17 sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the
18 principal of the school.

14 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

14 Even if you do not have a fixed residence, you are required to register. Registration must occur within three
15 business days of release in the county where you are being supervised if you do not have a residence at the time of your
16 release from custody. Within three business days after losing your fixed residence, you must send signed written
17 notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than
18 24 hours, you will be required to register with the sheriff of the new county not more than three business days after
19 entering the new county. You must also report weekly in person to the sheriff of the county where you are registered.
20 The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business
21 hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff
22 upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level
23 and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

20 **7. Application for a Name Change:**

20 If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of
21 your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If
22 you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of
23 your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

23 **5.8-PERSISTENT OFFENDER-**

23 "Three Strike" Warning-You have been convicted of an offense that is classified as a "most serious offense"
24 under RCW 9.94A.030. A third conviction in Washington state court, regardless of whether the first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

24 "Two Strike" Warning-In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
25 rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
26 molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
27 first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
28 degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in
29 the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW
30 9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,
31 federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

29 **Persistent Offender Sentence**-A persistent offender shall be sentenced to a term of total confinement for life
30 without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
31 the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

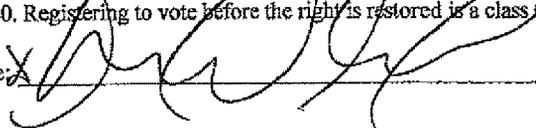
30 **5.8-DEPARTMENT OF LICENSING NOTICE**-The court finds that Count 1 is a felony in the

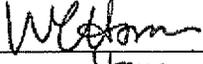
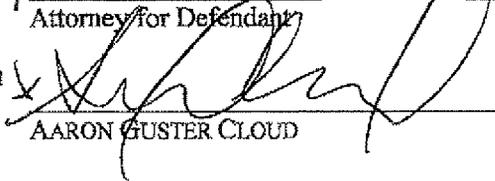


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1 commission of which a motor vehicle was used. Clerk's Action-The clerk shall forward an Abstract
2 of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW
3 46.20.285. Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular
4 Assault, or Vehicular Homicide (ACR information):
5 BAC The defendant had an alcohol concentration of breath or blood within two hours after driving
6 or being in physical control of ____ ;
7 No BAC test.
8 BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
9 Drug Related. The defendant was under the influence of or affected by any drug.
10 THC.
11 Mental Health.
12 Passenger under age 16. The defendant committed the offense while a passenger under the age of
13 sixteen was in the vehicle.
14 Vehicle Information: Commercial Vehicle Yes No; 16 Passenger Yes No; Hazmat Yes
15 No.

16 s.s-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or
17 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
18 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

19 **Voting Rights Statement:**
20 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter
21 registration will be cancelled.
22 My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence
23 in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before
24 voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial
25 obligations or an agreement for the payment of legal financial obligations.
26 My right to vote may be permanently restored by one of the following for each felony conviction: a) A certificate of
27 discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the
28 right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050;
29 or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C
30 felony, RCW 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.
31 Defendant's Signature: 

23 **SO ORDERED IN OPEN COURT.**
24 DATED 11/4/13 
25 JUDGE
26  WSBA No. 38917 
27 Deputy Prosecuting Attorney Attorney for Defendant
28  (initials) 
29 Defendant has previously, through their plea agreement, waived
30 his or her presence at any future restitution hearing.
31 AARON GUSTER CLOUD



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VERIFICATION BY PETITIONER

I, A. C., declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

03/24/17
Date and Place

Aaron B. Cloud
Aaron Cloud

ALSEPT & ELLIS LAW OFFICE
April 13, 2017 - 2:53 PM
Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20170413~3.pdf

Case Name: In re PRP of Aaron Cloud

Court of Appeals Case Number:

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Refiling to correct earlier error.

Sender Name: Jeffrey Ellis - Email: jeffreyerwinellis@gmail.com

2cc

13-9-02457-5

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IN OPEN COURT
NOV 04 2013
DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 13-1-00824-4
 Plaintiff,)
) JUDGMENT AND SENTENCE
 v.)
)
 AARON GUSTER CLOUD,)
 Age: 29; DOB: 12/11/1983,)
 Defendant.)

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence. The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>		RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I	Drive-By Shooting	9A.36.045	07/24/2013	07/24/2013	
II	Unlawful Possession of a Firearm in the First Degree	9.41.040.1A	07/24/2013	07/24/2013	
III	Assault in the First Degree	9A.36.011.1A	07/24/2013	07/24/2013	
III	Armed With Firearm	9.94A.533.3A	07/24/2013	07/24/2013	X

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>		Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
VUCSA		5/08/09	11/05/09	Kitsap Superior 09-1-00783-5	
Burglary 2 nd		6/05/09	11/05/09	Kitsap Superior	



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2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
			09-1-00783-5	
UPF 1 st	1/28/09	11/05/09	Kitsap Superior 09-1-01207-3	
Assault 2 DV	8/18/09	11/05/09	Kitsap Superior 09-1-01207-3	
UPF 1 st	3/06/06	7/07/06	Kitsap Superior 06-1-00373-8	
Burglary 2 nd	2/02/06	7/07/06	Kitsap Superior 06-1-00373-8	
Burglary 2 nd	10/01/05	12/13/05	Kitsap Superior 05-1-01547-9	
Residential Burglary	9/12/05	12/13/05	Kitsap Superior 05-1-01574-6	

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	13	VII	87 to 116	-	X				10 years
II.	11	VII	87 to 116	-	X				10 years
III.	13	XII	240 to 318	-	X	F	60	300 to 378	Life

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

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (9.94A.836); <15=Victim Under 15 (9.94A.837); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); CSG=Criminal Street Gang Involving a Minor (9.94A.833); AE=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY-The Court finds the Defendant has a chemical dependency that contributed to the offense(s).
- 4.5-PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible

JUDGMENT AND SENTENCE; Page 2

[Form revised January 29, 2010]



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and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.

- 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence above below the standard range, within the standard range for Count ___ but served consecutively to Count(s) ___, or warranting exceptional conditions of supervision for Count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender and is sentenced to life without the possibility of early release. RCW 9.94A.570.

Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.

COURT'S SENTENCE:		
COUNT I <u>11e</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.
COUNT II <u>11e</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ Days with _____ Days Suspended for _____ Years	
COUNT III <u>378</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ Days with _____ Days Suspended for _____ Years	
COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	
PRISON-BASED DOSA - COUNT _____ Months	Actual Time to be served- _____ Months	
IF MULTIPLE COUNTS-Total confinement ordered: <u>378</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Months. (<input type="checkbox"/> per DOSA sentence)		
COUNTS SERVED- <input checked="" type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Firearm and Deadly Weapon enhancements served consecutive; the remainder concurrent. <input type="checkbox"/> Sexual Motivation enhancements served consecutive; the remainder concurrent. <input type="checkbox"/> VUCSA enhancements served <input type="checkbox"/> consecutive <input type="checkbox"/> concurrent; the remainder consecutive.		

- 4.4-CONFINEMENT ONE YEAR OR LESS-Defendant shall serve a term of confinement as follows:
 - JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found eligible, the confinement ordered may be converted to--Work Release, RCW 9.94A.731 (*Note: the Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail or Peninsula Work Release*), Home Detention, RCW 9.94A.731, 190, or Supervised Community Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.
 - STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if applicable under RCW 9.94A.190(3) in the Department of Corrections.
- 4.5-CONFINEMENT OVER ONE YEAR-Defendant is sentenced to the above term of total confinement in the custody of the Department of Corrections.
- OTHER SENTENCES -This sentence shall be served consecutive concurrent to sentence(s) ordered in cause number(s) _____
- CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to sentencing solely for this cause number as computed by the jail unless specifically set forth- _____ days.
- 4.3-NO CONTACT ORDER-Defendant shall abide by the terms of any no contact order issued as part of this Judgment and Sentence.



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SUPERVISION

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2 [X] 4.6-COMMUNITY CUSTODY - SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP. RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody (and supervised probation if ordered). First Offenders-RCW 9.94A.650. If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 6 months; and if treatment is ordered, community supervision may include up to the period of treatment but not exceed 1 year.

Community Custody Is Ordered for the Following Term(s):
For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):
[X] COUNT(S) III 36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
[X] COUNT(S) I 18 months for Violent Offense
[] COUNT(S) 12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)
For offenders sentenced to a term of one year or less :
[] COUNT(S) 12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions).
• Community custody for sex offenders may be extended for up to the statutory maximum term.
• For sex offenses, defendant shall submit to electronic home detention if imposed by DOC
Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:
[] COUNT(S) [] 12 months [] 24 months [] months

23 [] 4.6-WORK ETHIC CAMP-COMMUNITY CUSTODY. RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

26 [] 4.6- PRISON-BASED DOSA-COMMUNITY CUSTODY. RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

4.7-ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS-If DOC finds



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1 that the Defendant has willfully violated the conditions of the drug offender sentencing alternative
2 program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence.
3 In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC
4 finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60
5 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not
6 completed his or her maximum term of total confinement and is subject to a third violation hearing
7 and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state
8 correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW
9 9.94A.714.

10 **4.5—ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**
11 **FROM THE DOSA PROGRAM**—If the defendant fails to complete, or is administratively terminated
12 from, the drug offender sentencing alternative program, the court imposes a term of community
13 custody under RCW 9.94A.701, to begin upon the defendant's release from custody, and during this
14 term of community custody, the defendant shall comply with all conditions stated in this Judgment and
15 Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed
16 by the court or DOC.

17 **4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY.**
18 RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached
19 ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the
20 ADDENDUM are hereby imposed.

21 **—ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY**
22 **TREATMENT-BASED DOSA SENTENCE CONDITIONS**—If the court finds that the Defendant has
23 willfully violated the conditions of the drug offender sentencing alternative program, the court may
24 order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard
25 range or a term of total confinement up to the top of the standard range. The court may also impose a
26 term of community custody. In addition, as with any case, if the Defendant is subject to a first or
27 second violation hearing and DOC finds that the Defendant committed the violation, the Defendant
28 may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in
29 any case, if the Defendant has not completed his or her maximum term of total confinement and is
30 subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC
31 may return the Defendant to a state correctional facility to serve up to the remaining portion of the
Defendant's sentence. RCW 9.94A.714.

COMMUNITY CUSTODY VIOLATIONS. In any case in which community custody is imposed, if the
Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed
the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation.
RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term
of total confinement and is subject to a third violation hearing and DOC finds that the Defendant
committed the violation, DOC may return the Defendant to a state correctional facility to serve up to
the remaining portion of the Defendant's sentence. RCW 9.94A.714.



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SUPERVISION SCHEDULE: The Defendant Shall-

- STANDARD**
 - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
 - Report to and be available for contact with assigned CCO as directed.
 - Obey all no-contact orders including any in this judgment.
 - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
 - Notify CCO within 48 hours of any new arrests or criminal convictions.
 - Pay DOC monthly supervision assessment.
 - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (NON-DOSA)**
 - Work only at DOC-approved education, employment and/or community service.
 - Possess or consume no controlled substances without legal prescription.
 - Reside only at DOC-approved location and arrangement.
 - Consume no alcohol, if so directed by the CCO.
- FIRST OFFENDER**
 - Obey all laws.
 - Devote time to specific employment or occupation.
 - Pursue a prescribed secular course of study or vocational training.
 - Participate in DOC programs and classes, as directed.
 - Undergo available outpatient treatment for up to one year, or inpatient treatment not to exceed standard sentence range.
- FINANCIAL GAIN**
 - Commit no thefts.
 - Possess no stolen property.
 - Have no checking account or possess any blank or partially blank checks.
 - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
 - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
 - Possess no identification in any other name other than Defendant's true name.
 - Possess no credit cards or access devices belonging to others or with false names.
 - Cause no articles to be refunded except with the written permission of CCO.
 - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
- ALCOHOL/DRUGS**
 - Possess or consume no alcohol.
 - Enter no bar or place where alcohol is the chief item of sale.
 - Possess and use no illegal drugs and drug paraphernalia.
 - Submit to UA and breath tests at own expense at CCO request.
 - Submit to searches of person, residence or vehicles at CCO request.
 - Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
 - Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.
- EVALUATIONS**- Complete an evaluation for:
 - substance abuse
 - anger management
 - mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
- DOSA**
 - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
 - Devote time to a specific employment or training.
 - Perform community service work.
- 4.8-OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020**- The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

- PROGRAMS / ASSAULT**
 - Have no assaultive behavior.
 - Successfully complete a certified DV perpetrators program.
 - Successfully complete an anger management class.
 - Successfully complete a victim's awareness program.
- TRAFFIC**
 - Commit no traffic offenses
 - Do not drive until your privilege to do so is restored by DOL.
- HAVE NO CONTACT WITH: KYLE FORTUNA**
- OTHER:**



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FINANCIAL OBLIGATIONS

4.1-LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760. The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> \$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<input checked="" type="checkbox"/> \$1135 Court-appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
<input checked="" type="checkbox"/> \$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$ _____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> \$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/other defense costs
<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Mandatory fine for drug crimes, RCW 69.50.430	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
\$ _____ Contribution to SIU, RCW 9.94A.030, 9.94A.760.	<input checked="" type="checkbox"/> \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
<input checked="" type="checkbox"/> \$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	\$100 Contribution-Anti-Profitteering Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82.110
Emergency Response Costs -- DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$200 DUC-DUI/DP Account Fee -- Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

RESTITUTION-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted- RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160.

INTEREST WAIVED FOR TIMELY PAYMENTS-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-**HIV TESTING**-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-**DNA TESTING**-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law

JUDGMENT AND SENTENCE; Page 7

[Form revised January 29, 2010]



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enforcement agency unless otherwise stated.

- 4.10-COMPLIANCE WITH SENTENCE-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.
- JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.
- EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

NOTICES AND SIGNATURES

5.1-COLLATERAL ATTACK ON JUDGMENT-Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

5.2-LENGTH OF SUPERVISION-The court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3-NOTICE OF INCOME-WITHOLDING ACTION-If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.5-ANY VIOLATION OF JUDGMENT AND SENTENCE-Is punishable by up to 60 days of confinement per violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW 9.94A.633.

5.6-FIREARMS-You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Clerk's Action Required-The court clerk shall forward a copy of the Defendant's driver's license, identicard, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable-

5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION- LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements:

Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010, CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.

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

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

2. Offenders Who are New Residents or Returning Washington Residents:

If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State:

If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you



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1 change your residence to a new county within this state, you must register with the sheriff of the new county within
2 three business days of moving. Also within three business days, you must provide, by certified mail, with return
3 receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you
4 last registered.

4 **4. Leaving the State or Moving to Another State:**

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

7 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher
8 Education or Common School (K-12):**

8 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you
9 are required to notify the sheriff of the county of your residence of your intent to attend the institution within three
10 business days prior to arriving at the institution. If you become employed at a public or private institution of higher
11 education, you are required to notify the sheriff for the county of your residence of your employment by the institution
12 within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or
13 private institution of higher education is terminated, you are required to notify the sheriff for the county of your
14 residence of your termination of enrollment or employment within three business days of such termination. If you
15 attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are
16 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the
17 sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the
18 principal of the school.

14 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

14 Even if you do not have a fixed residence, you are required to register. Registration must occur within three
15 business days of release in the county where you are being supervised if you do not have a residence at the time of your
16 release from custody. Within three business days after losing your fixed residence, you must send signed written
17 notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than
18 24 hours, you will be required to register with the sheriff of the new county not more than three business days after
19 entering the new county. You must also report weekly in person to the sheriff of the county where you are registered.
20 The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business
21 hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff
22 upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level
23 and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

20 **7. Application for a Name Change:**

20 If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of
21 your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If
22 you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of
23 your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

23 **5.8-PERSISTENT OFFENDER-**

23 "Three Strike" Warning-You have been convicted of an offense that is classified as a "most serious offense"
24 under RCW 9.94A.030. A third conviction in Washington state court, regardless of whether the first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

24 "Two Strike" Warning-In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
25 rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
26 molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
27 first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
28 degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in
29 the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW
30 9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,
31 federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

29 **Persistent Offender Sentence**-A persistent offender shall be sentenced to a term of total confinement for life
30 without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
31 the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

30 **5.8-DEPARTMENT OF LICENSING NOTICE**-The court finds that Count 1 is a felony in the



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1 commission of which a motor vehicle was used. Clerk's Action-The clerk shall forward an Abstract
 2 of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW
 3 46.20.285. Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular
 4 Assault, or Vehicular Homicide (ACR information):
 5 BAC The defendant had an alcohol concentration of breath or blood within two hours after driving
 6 or being in physical control of ____ ;
 7 No BAC test.
 8 BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
 9 Drug Related. The defendant was under the influence of or affected by any drug.
 10 THC.
 11 Mental Health.
 12 Passenger under age 16. The defendant committed the offense while a passenger under the age of
 13 sixteen was in the vehicle.
 14 Vehicle Information: Commercial Vehicle Yes No; 16 Passenger Yes No; Hazmat Yes
 15 No.

16 s.s-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or
 17 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
 18 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

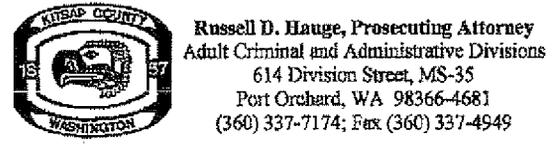
19 **Voting Rights Statement:**
 20 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter
 21 registration will be cancelled.
 22 My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence
 23 in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before
 24 voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial
 25 obligations or an agreement for the payment of legal financial obligations.
 26 My right to vote may be permanently restored by one of the following for each felony conviction: a) A certificate of
 27 discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the
 28 right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050;
 29 or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C
 30 felony, RCW 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.
 31 Defendant's Signature: [Signature]

SO ORDERED IN OPEN COURT.

DATED 11/4/13 [Signature]
 JUDGE

[Signature], WSBA No. 38917 [Signature], WSBA No. _____
 Deputy Prosecuting Attorney Attorney for Defendant

Defendant has previously, through their plea agreement, waived
 his or her presence at any future restitution hearing.
[Signature] (initials) [Signature]
 AARON GUSTER CLOUD



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ALSEPT & ELLIS LAW OFFICE
April 13, 2017 - 1:52 PM
Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20170413.pdf

Case Name: In re PRP of Aaron Cloud

Court of Appeals Case Number:

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Jeffrey Ellis - Email: jeffreyerwinellis@gmail.com

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