

IN THE COURT OF APPEALS ^{2017 NOV 30 AM 11:53} DIV. II
FOR THE STATE OF WASHINGTON WASHINGTON
IN AND FOR THE COUNTY OF CLARK
BY _____
DEPUTY

STATE OF WASHINGTON
Respondant,

V.

JOHN TYLER
Defendant,

CAUSE No. 02-1000419-9
APP. Ct. 50434-1-11

ORDER: MOTION TO SUBMIT
ADDITIONAL GROUNDS (SAG)

(Clerks Action Required)

IDENTITY:

COMES NOW, JOHN TYLER, known hereafter as Defendant, in the the above cause numbers, submitting his STATEMENT OF ADDITIONAL GROUNDS (SAG), in support of his claim to the Superior Court Judge, during Mr. Tyler's re-sentencing hearing, violated his "CONSTITUTIONAL FIFTH (5), and SIXTH (6), AMENDMENTS AND DUE PROCESS RIGHTS, UNDER THE EQUIL PROTECTION CLAUSE OF THE UNITED STATES OF AMERICA. ALSO UNDER THE WASHINGTON STATUTORY LAWS.

RELIEF SOUGHT:

- (1) Re-sentencing shall be made invalid for aggravating sentencing for exceptional consecutive sentencing;
- (2) Superior Court Judge had no jurisdiction to recalculate former Superior Court sentences without appointed jury to review evidence of crimes for aggravating circumstances, imposing consecutive sentences; and
- (3) Reverse and remand defendant back to Superior Court for re-sentencing with the appointment of a jury to review the facts of the evidence to the crimes.

Respectfully submitted this 27 Day of Nov, 2017.

I do certify under the penalty of perjury within the State of Washington, that all in this Petition and cause, are true and correct to the best of my knowledge.

JOHN TYLER - DOC #
AIRWAY HEIGHTS CORRECTION CENTER
PO BOX 2049
AIRWAY HEIGHTS, WA 99001

John Tyler
Signature of Defendant. Pro Se

ARGUMENT OF ISSUES

MAY 16, 2017 -- MOTION HEARING

RULING BY JUDGE: JOHN FAIRGRIEVE, PRESIDING.

SENTENCE HEARING -- June 9, 2017.

RULING BY JUDGE: DEREK VANDERWOOD, PRESIDING.

Following are the transcripts of the sentence hearing on June 9, 2017
(Page 81, Ln.23-25) Quoting Judge Vanderwood.

"Currently, the statute of RCW 9.94A.535 gets into the issue about basis for determining the exceptional sentence based on aggravating factors."

"The State has...(Page 82, Ln.1-25) ...requested that I adopt those findings and conclusions entered by Judge Wulle, in 2002, arguing that BLAKELY is not retroactive and should be applicable in this case, especially since the issue had not been raised or considered by the court previously."

"From my perspective, we are here within the scope of resentencing based on the circumstances that were identified in the Court of Appeals. The finding of Blakely, as to the constitutionality and the basis for it, I think, is significant for my consideration." "Within that context, my perspective is that it would be inappropriate for me to simply adopt the findings of the court regarding these aggravating circumstances. I don't think that that would be appropriate. I'm not going to take that approach in this particular case."

"That gets us to the issue, though, as to whether or not, in light of the policy goals of the Sentencing Reform Act, whether or not an exceptional sentence is appropriate and particularly then, for me, within the judicial realm based on RCW 9.94A.535(2), whether or not there is a basis for me to make a determination of aggravating circumstances. I do find that based on that statute, particularly (2)(c), and language that the defendant has committed multiple current offenses and the defendants...(Page 83, Ln.1-20) ...high offender score results in some of the current offenses going unpunished."

"I find that is applicable in this case. I've already reviewed the counts that were in place, 15 findings of separate counts, the offender score as I've identified as 47." "These circumstances, to me, make this one where an exceptional sentence is appropriate, in that that finding is appropriate and

needed in this case. I think there are clear evidence of multiple offenses, an exceptional sentence is needed to take the conduct into account."

"Simply to disregard that and not take it into account would not be within the reasoning of the Sentencing Reform Act, and would not be appropriate."

"So I find on that basis an exceptional sentence is appropriate. Exceptional sentence would include running time consecutively, as opposed to concurrently."

"With all of those factors taken into account, I do impose that exceptional sentence, and I think running time for some of the counts on a consecutive basis, based on that, is appropriate as well."

----- ARGUMENT -----

Under: Jones v. U.S. 526 U.S.227,143 L.Ed.2d 311,119 S.Ct.1215 (1999)

"Under the Due Process Clause of the Fifth Amendment, and the notice and jury trial guarantee of the Sixth Amendment, any fact (other than the prior conviction) that increases the maximum penalty for the crime must be charged in the indictment, submitted to a jury, and proven beyond a reasonable doubt." Id. at 243 n.6 143 L.Ed.2d 311,119 S.Ct.1215

According to the 2002, trial transcripts for the indictment against Mr.Tyler, given to the jury at the time of trial, did not include the exceptional sentence to be proven beyond a reasonable doubt that an aggravating circumstance, or that there would be an exceptional sentence above the maximum statutory requirements.

Judge Wulle, determined on his own validity that an excessive aggravating circumstance raising the statutory requirements appropriate for exceptional sentencing by using charges of the same nature calculating them as consecutive and not concurrent. (See sentencing history — Ex. 1)

At the 2002, trial of John Tyler, the Superior Court used RCW 9.94A.589(1)(a) as the sentencing statute which states:

9.94A.589(1)(a). Except as provided in (B), (c), and (d), of this subsection, when ever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, that if the court enters a finding that some or all of the current offenses encompass the same

criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently.

Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "same as criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involves the same victim. This definition applies in the case involving vehicular assault or vehicle homicide even if the victims occupied the same vehicle: RCW 9.94A.589(1)(d).

As stated under the Judge Wulle Court, *State v. Tyler*, 2002, the court erred in by sentencing Mr. Tyler, in two ways. (1) The jury never ruled on the aggravating circumstances for exceptional sentencing, in fact Judge Wulle, advised the jury that it was not their concern to what happened after the verdict; and (2) Judge Wulle used the former statute to sentence Mr. Tyler, RCW 9.94A.589(1)(d) to enhance his sentence outside the maximum range for exceptional sentencing by calculating consecutive sentence instead of concurrent. The statute he used only pertained to vehicle assault or homicide, in which this case was not about.

The jury in the Wulle Court, 2002, never received an indictment to find the Defendant, Mr. Tyler, guilty for aggravating circumstances to enhance his sentence beyond the maximum range, thereby giving him an exceptional sentence.

On April, 15, 2005, the Washington State statutory Laws changed under the Sentence Reform Act. (SRA), concerning exceptional sentences in Chapter 68, Laws of 2005, requiring exceptional sentencing under RCW 9.94A.535.

Under *State v. Kinsey*, 207 Wn.App. Lexis 2640, September 17, 2007

Overview: Defendant's sentence, which took the form of consecutive standard range sentences, was based on the Superior Court's finding that the multiple offense policy resulted in a presumptive sentence that was clearly too lenient. On review, defendant contended the Superior Court's finding and sentences were unconstitutional under *Blakely*.

The Appellate Court agreed, finding that the Washington State Supreme Court had ruled that such sentences; including exceptional sentences imposed in the form of consecutive sentences were constitutionally invalid.

Further, the 2005 statutory amendments authorizing such sentencing did not apply when, as here, defendant pled guilty prior to effective date of the amendments.

Outcome: The judgment was reversed and the case was remanded for resentencing. (other ref.) State v. Hughes, 154 Wn.2d 118,110 P.3d 192 (2005)

"At the resentencing hearing of John Tyler, on June 9, 2017, the ruling by Judge Derek Vanderwood presiding. He starts the hearing by quoting on page 81 (23-25) "currently, the statute of RCW 9.94A.535 gets into the issue about basis for determining the exceptional sentence, based on aggravating factors."

"The State requested that the court adopt those findings and conclusions entered by Judge Wulle in 2002, arguing that Blakely is not retroactive and should not be applicable in this case." Pg.82 (1-5)

Quoting: State v. Pillatos, 150 P.3d 1130 (2007)

"The Washington Supreme Court held that the changes made to the Sentencing Reform Act. (SRA), concerning exceptional sentences in chapter 68, laws of 2005, do not apply to cases where trials had already begun or guilty pleas had already been entered prior to the effective date of the act on april 15, 2005.

The Legislature intends that the Superior Court shall have the authority to impanel juries to find aggravating circumstances in all cases that come before the courts for trial or sentencing, regardless of the date of the original trial or sentencing." [2007 c 205 §1.]

IN the 2017, re-sentencing, of John Tyler, before the Superior Court of Judge Derek Vanderwood, Mr. Tyler was resentenced under RCW 9.94A.535(2)(c), and where he concluded his own facts and conclusions without impaneling a jury to conclude the basis for establishing an exceptional sentencing by reviewing the individual evidence and proving beyond a reasonable doubt.

Judge Vanderwood stated; "I do find that bases on that statute, particularly (2)(c), and language that the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished." Needing an exceptional sentence to take the conduct into account. However, the facts are that under Judge Wulle, 2002, he imposed a

sentencing of 876 months to be served consecutively.

Looking at the issue of re-sentencing, where no jury received an indictment to prove beyond a reasonable doubt of the evidence in the 2002 trial, nor was a jury impaneled during the 2017 re-sentencing, to review the evidence and conclude that the offenses warranted an exceptional sentence outside the statutory maximum range beyond a reasonable doubt, thereby, giving the sentencing judge jurisdiction to impose the exceptional sentence through consecutive sentence. United States Constitution Sixth Amendment.

In *State v. Bruno*, No.74647-2-I, The Supreme Court ruled that the trial Court violated the Sixth Amendment Right to the jury trial when it improperly relied on aggravating factors that had not been found by the jury to impose an exceptional sentence. Because the trial court explicitly incorporated its findings during its oral ruling, including the improper aggravating factors, into findings of fact supporting its exceptional sentence, we agree. (*State v. Bruno*)

Criminal defendant's have a constitutional right to a jury trial. U.S. Const. VI. Amend. A defendant's right to a jury trial requires that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.

Apprendi v. New Jersey, 530 U.S. 466,490,120 S.Ct.2348,147 L.Ed.2d 435 (2000) The "statutory maximum" is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Blakely v. Washington*, 542 U.S. 296,303,124 S.Ct.2531,159 L.Ed.2d 403 (2004). An exceptional sentence based on facts not stipulated to by the defendant or found beyond a reasonable doubt by a jury violated BLAKELY.

State v. Hagar, 158 Wn.2d 369,374,144 P.3d 298 (2006)

This is such a case found in the *State v. John Tyler*. Both court's, "the 2002 trial court, and the 2017 re-sentencing court," violated the defendant's U.S Const. 5th, and 6th, Amendment rights to a fair and unbiased trial.

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

STATE OF WASHINGTON,
Plaintiff,
v.
JOHN THOMAS TYLER,
Defendant
Date of Birth: 9/30/1966

No. 02-1-00419-9

APPENDIX 2.2
~~DECLARATION OF~~ CRIMINAL HISTORY



CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
BURGLARY 2	CLARK/WA Juvenile 016074 R015	12/4/1980	1/27/81		1/2
THEFT 3	CLARK/WA Juvenile 016074 R040	3/19/1982	6/18/1982		
TAKING A MOTOR VEHICLE	CLARK/WA Juvenile 016074 R050	3/21/1983	5/23/1983		1/2
THEFT 3	CLARK/WA Juvenile 016074 R060	5/3/1983	6/22/83		
THEFT 2 (NOT FIREARM)	CLARK/WA 84-1-00130-5 (juvenile decline from 016074 R085)	2/23/1984	5/1/1985 (deferred sentence revoked)		1
ATTEMPTED ROBBERY 1 <i>Class B Felony</i>	CLARK/WA 85-1-00202-4	3/7/1985	5/1/1985		1
ESCAPE 2	CLARK/WA 86-1-00623-1	7/28/1986	9/11/1986		1
UNLAWFUL CARRY/ DISPLAY OF A WEAPON	CLARK/WA 88-1-00533-8	5/27/1988	7/15/1988		
FORGERY	CLARK/WA 88-1-00930-9	9/12/1988 to 9/13/1988	10/12/1988		1

*DV: Domestic violence was pled and proved.

DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

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

Exhibit 1

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HARP

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OCT 23 2002

VANCOUVER CENTRAL

FILED

OCT 22 2002

JoAnne McEnde, Clerk, Clark Co.

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Liberty

901014

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

JOHN THOMAS TYLER

aka

Defendant.

SID: WA12559344

DOB: 09/30/1966

No 02-1-00419-9

JUDGMENT AND SENTENCE (JS)

PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY

NON PERSISTENT OFFENDER -
RCW 9.94A.712

Clerk's action required Paragraph 5.7

I. HEARING

02 9 05557 4

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS.

2.1 CURRENT OFFENSE(S) The defendant was found guilty on August 22, 2002
(Date)

by plea jury-verdict bench trial of.

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	09/25/1992 to 01/31/1995
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	09/25/1992 to 01/31/1995
03	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	01/01/1995 to 02/28/1995
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	02/01/1995 to 09/24/2000
06	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	02/01/1995 to 09/24/2000

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JUDGMENT AND SENTENCE (JS) (PRISON - COMMUNITY PLACEMENT
NONPERSISTENT OFFENDER) - Page 1 of 17
REVISED 8/12/02

OCT 28 2002

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DEPARTMENT OF CORRECTIONS
EAST VANCOUVER OFFICE

Exhibit 2

08	CHILD MOLESTATION IN THE FIRST DEGREE	9A 44.083	02/01/1995 to 09/24/2000
10	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	02/01/2002 to 02/16/2002
11	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	02/01/1995 to 09/24/2000
14	RAPE OF A CHILD IN THE SECOND DEGREE	9A 44.076	09/25/2000 to 02/16/2002
15	RAPE OF A CHILD IN THE FIRST DEGREE	9A 44.073	02/15/2002 to 02/16/2002
16	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	01/01/1995 to 02/14/2002
17	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	01/01/1995 to 02/14/2002
18	RAPE OF A CHILD IN THE FIRST DEGREE	9A 44.073	01/01/1995 to 02/14/2002
19	CHILD MOLESTATION IN THE FIRST DEGREE	9A 44.083	01/01/1996 to 02/16/2002
20	RAPE OF A CHILD IN THE FIRST DEGREE	9A 44.073	01/01/1996 to 02/18/2002

as charged in the (Second Amended) Information

The court finds that the Defendant is subject to sentencing under RCW 9.94A.712.

- A special verdict/finding for use of firearm was returned on Count(s) _____
RCW 9 94A.602, 510
- A special verdict/finding for use of deadly weapon other than a firearm was returned on
Count(s) _____, RCW 9 94A.602
- A special verdict/finding of sexual motivation was returned on Count(s) _____
RCW 9 94A 835
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on
Count(s) _____, RCW 69.50.401 and
RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school
grounds or within 1000 feet of a school bus route stop designated by the school district, or in a public
park, public transit vehicle, or public transit stop shelter, or in, or within 1000 feet of the perimeter of,
a civic center designated as a drug-free zone by a local government authority, or in a public housing
project designated by a local governing authority as a drug-free zone
- The defendant was convicted of vehicular homicide which was proximately caused by a person
driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a
vehicle in a reckless manner and is therefore a violent offense. RCW 9 94A 030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful
imprisonment as defined in chapter 9A 40 RCW, where the victim is a minor and the offender is not
the minor's parent RCW 9A 44.130

Exhibit 2

- The court finds that the offender has a chemical dependency that has contributed to the offense(s) RCW 9.94A 607.
- The crimes charged in Count(s) _____ is/are Domestic Violence offense(s) as that term is defined in RCW 10 99 020
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____ RCW 9 94A, RCW 69.50 401(a), RCW 69.50.440.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____ RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.2 CRIMINAL HISTORY (RCW 9 94A 525)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv	TYPE OF CRIME
1. BURGLARY II	1/27/81	CLARK/WA	12/10/80	J	
2. THEFT II	4/13/84	CLARK/WA	3/1/84	A	
3. ATTEMPTED ROBBERY I	5/1/85	CLARK/WA	3/7/85	A	
4. ESCAPE II	9/11/86	CLARK/WA	7/28/86	A	
5. FORGERY	10/12/88	CLARK/WA	9/13/88	A	

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A 525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9 94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61 520. _____
- The State has moved to dismiss count(s) 05 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 4) , 07 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 6) , 09 (CHILD MOLESTATION IN THE SECOND DEGREE – alternative to Count 8) , 12 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 11) , 13 (RAPE OF A CHILD IN THE FIRST DEGREE – alternative to Count 14)

EXhibit 2

2.3 SENTENCING DATA

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
02	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
03	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
04	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
06	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
08	9	X	149 MONTHS to 198 MONTHS			LIFE \$50000
10	9	XI	210 MONTHS to 280 MONTHS			LIFE \$50000
11	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
14	9	XI	210 MONTHS to 280 MONTHS			LIFE \$50000
15	9	XII	240 MONTHS to 318 MONTHS			LIFE \$50000
16	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
17	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
18	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000
19	9	X	149 MONTHS to 198 MONTHS			LIFE \$50000
20	9	XII	210 MONTHS to 280 MONTHS			LIFE \$50000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61 520

Additional current offense sentencing data is attached in Appendix 2.3.

2.4 EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) 1, 2, 3, 4, 6, 8, 10, 11, 14, 15, 16, 17, 18, 19, 20. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A 750/753

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows _____ . If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

45

CONFINEMENT OVER ONE YEAR The defendant is sentenced as follows.

(a) **CONFINEMENT.** RCW 9A4A.589 Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections

280 months on Count 01

280 months on Count 02

280 months on Count 03

280 months on Count 04

280 months on Count 06

198 months on Count 08

280 months on Count 10

280 months on Count 11

280 months on Count 14

Counts 1, 2, 3, 4, 6, 8, 10, 11, and 14 to run concurrent to each other, but consecutive to Counts 15, 16, 17, 18, 19, and 20. (Total, 280 months on first 9 convictions)

318 months on Count 15

280 months on Count 16

280 months on Count 17

280 months on Count 18

Counts 15, 16, 17, and 18 to run concurrent to each other, but consecutive to Counts 1, 2, 3, 4, 6, 8, 10, 11, 14, 19, and 20. (Total, 318 months on next 4 convictions)

198 months on Count 19

280 months on Count 20

Count 19 and 20 to run concurrent to each other, but consecutive to Counts 1, 2, 3, 4, 6, 8, 10, 11, 14, 15, 16, 17, and 18 (Total, 280 months on last 2 convictions).

Actual number of months of total confinement ordered is: 878

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively **SEE ABOVE**

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

Exhibit 2

Confinement shall commence immediately unless otherwise set forth here.

- (b) CONFINEMENT 9 94A 712 The Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections.

?

280 months to LIFE on Count 10

Count 10 shall run concurrent with Counts 1, 2, 3, 4, 6, 8, 11, and 14, but consecutive to Counts 15, 16, 17, 18, 19, and 20

?

318 months to LIFE on Count 15

Count 15 shall run concurrent with Counts 16, 17, and 18, but consecutive to Counts 1, 2, 3, 4, 6, 8, 10, 11, 14, 19, and 20.

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9 94A 505.

Credit for 247 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4 6 COMMUNITY PLACEMENT is ordered on Counts 1, 2, 3, 4, 6, 8, 11, 16, 17, and 18 for 24 months

COMMUNITY PLACEMENT is ordered on Counts 19 and 20 for 36 months

COMMUNITY CUSTODY for Counts 10 and 15, sentenced under RCW 9 94A 712 is ordered for any period of time the Defendant is released from total confinement before the expiration of the maximum sentence

COMMUNITY CUSTODY is ordered on Count 14 for a range from 36 to 48 months or for the period of earned release awarded pursuant to RCW 9.94A 728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9 94A 700/705(9) for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69 50 or 69 52 RCW offenses not sentenced under RCW 9 94A 660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses which include sex offenses not sentenced under RCW 9.94A 712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -RCW 9.94A 505. Use paragraph 4.7 to impose community custody following work ethic camp. Community placement/custody shall be for 12 months or for the period of earned early release, whichever is longer, for sex offenses or serious violent offenses committed between 7/1/88 and 7/1/90, Assault 2, Assault of a Child 2, deadly weapon enhancements and drug offenses under RCW 69.50 or 69.52, 24 months or for the period of early release, whichever is longer, for sex offenses occurring between 7/1/90 and 6/6/96, serious violent offenses, and vehicular homicides or vehicular assaults; 36 months or for the period of earned early release, whichever is longer, for sex offenses committed after 6/6/96]

The defendant shall be on community supervision/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations

Exhibit 2



FILED
JUN 09 2017

Scott G. Weber, Clerk, Clark Co.
5:45

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

vs.

JOHN THOMAS TYLER,
Defendant.

SID: WA12559344
If no SID, use DOB: 9/30/1966

17-9-02070-1

No. 02-1-00419-9

Felony Judgment and Sentence --
Prison

RCW 9.94A.507 Prison Confinement
(Sex Offense and Kidnapping of a Minor)
(FJS)

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

Defendant Used Motor Vehicle

Juvenile Decline Mandatory Discretionary

I. Hearing

1.1 The court conducted a ^{re-}sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
 guilty plea jury-verdict 8/22/2002 bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	9/25/1992 to 1/31/1995
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	9/25/1992 to 1/31/1995
03	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/1995 to 2/28/1995
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	2/1/1995 to 9/24/2000
06	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	2/1/1995 to 9/24/2000
08	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	2/1/1995 to 9/24/2000

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (07/2015))
Page 1 of 16

Exhibit 3

10	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	FA	2/1/2002 to 2/16/2002
11	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	2/1/1995 to 9/24/2000
14	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	FA	9/25/2000 to 2/16/2002
15	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	2/15/2002 to 2/16/2002
16	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/1995 to 2/14/2002
17	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/1995 to 2/14/2002
18	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/1995 to 2/14/2002
19	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	1/1/1996 to 2/16/2002
20	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/1996 to 2/16/2002

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

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

Additional current offenses are attached in Appendix 2.1a.

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

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

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

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

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____, RCW 9.94A.825, 9.94A.533.

Count _____, is aggravated murder in the first degree committed while the defendant was under 16 years of age 16 or 17 years of age when the offense was committed.

Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.

The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.

In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.

The offense was predatory as to Count _____. RCW 9.94A.836.

The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.

The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.

*Felony Judgment and Sentence (FJS) (Prison)
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- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A._____.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	Crime	Cause Number	Court (county & state)	DV* Yes
1.				

*DV: Domestic Violence was pled and proved

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

2.2 Criminal History (RCW 9.94A.525):

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

*DV: Domestic Violence was pled and proved

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
02	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
03	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
04	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
06	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
08	47	X	149 MONTHS to 198 MONTHS		149 MONTHS to 198 MONTHS	LIFE
10	47	XI	210 MONTHS to 280 MONTHS		210 MONTHS to 280 MONTHS	LIFE
11	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
14	47	XI	210 MONTHS to 280 MONTHS		210 MONTHS to 280 MONTHS	LIFE
15	47	XII	240 MONTHS to 318 MONTHS		240 MONTHS to 318 MONTHS	LIFE
16	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
17	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
18	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE
19	47	X	149 MONTHS to 198 MONTHS		149 MONTHS to 198 MONTHS	LIFE
20	47	XII	210 240 MONTHS to 280 318 MONTHS		210 240 MONTHS to 280 318 MONTHS	LIFE

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

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3.2 The court **dismisses** Counts 05 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 4), 07 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 6), 09 (CHILD MOLESTATION IN THE SECOND DEGREE – alternative to Count 8), 12 (RAPE OF A CHILD IN THE SECOND DEGREE – alternative to Count 11), 13 (RAPE OF A CHILD IN THE FIRST DEGREE – alternative to Count 14) in the charging document.

IV. Sentence and Order

It is ordered:

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

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

<u>280</u> months on Count 01	<u>280</u> months on Count 02
<u>280</u> months on Count 03	<u>280</u> months on Count 04
<u>280</u> months on Count 06	<u>173.5</u> months on Count 08
<u>280</u> months on Count 14	<u>280</u> months on Count 11
<u>280</u> months on Count 16	<u>280</u> months on Count 17
<u>280</u> months on Count 18	<u>173.5</u> 280 months on Count 18 19
<u>280</u> months on Count 20	

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 732.5

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Count 15 to run consecutive to Counts 8 and 19 (Counts 8 and 19 to run

Concurrent to each other only)

and to counts 1, 2, 3, 4, 6, 10, 11, 14, 16, 17, 18, 20 (to run conc those counts to run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)):

run concurrently to each other only)

Confinement shall commence immediately unless otherwise set forth here: _____

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

Count: 10	minimum term:	<u>280 months</u>	maximum term:	Statutory Maximum (1.5)
Count: 15	minimum term:	<u>279 months</u>	maximum term:	Statutory Maximum (1.5)

(c) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count _____ minimum term: _____ maximum term: _____

FILED
COURT OF APPEALS
DIVISION II

DECLARATION OF MAILING

2017 DEC -1 AM 11:49

STATE OF WASHINGTON

I, (name) Tyler, John, declare that, on the 27 day of
(month) November, 2017, I placed the foregoing (name of
motion[s] and/or papers) Motion: Submitting (SAG) Statement of
Additional Grounds (6) pages / and Exhibits 1, 2, and 3 (11) pages
_____, or copy thereof, in the internal legal
mail system of the (name of institution) Air Way Heights
Corrections Center, with appropriate postage, addressed to:

(list all addresses):

Court of Appeals DIV II
950 Broadway Suite 300
Tacoma, WA 98402

Backlund & Mistry
Attorney at Law
PO Box 6490
Olympia, Wash
98507

C.C. Self

I swear in accordance with the laws of the State of Washington that the
foregoing is true and correct to the best of my knowledge.

DATED this 27 day of (month) November, 2017

John Tyler
(signature)

Tyler John
(printed name/address)