

No. 50442-1-11

Superior court No. 06-1-01930-0

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

STATE OF WASHINGTON Respondent,

Vs.

RAMON TREVINO HERNANDEZ Appellant.

ADDITIONAL GROUNDS FOR REVIEW (SAG)
PURSUANT TO R.A.P. 10:10

RAMON TREVINO HERNANDEZ# 314712

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW (SAG)

PURSUANT TO R.A.P. 10.10

Comes now appellant RAMON TREVINO HERNANDEZ, and upon all files, records and proceedings respectfully moves the court to take in consideration present statement of additional grounds for review, pursuant to R.A.P. 10.10

ADDITIONAL GROUND NUMBER ONE

I RAMON TREVINO HERNANDEZ Appellant certify here, that arrived to Washington state on 1987 then, on October started to go School to learn E.S.L. and in the same month I met thereat my future wife (Sarina). From the very first moment I saw her, I felt in love with her. I was amazed with her beauty, her smile, and the way she would carry herself. Then, the next month we had our first date. We went to a nearby restaurant and eat something sample. She did the talking because I did not speak English and some times it was embarrassing, however, Sarina with her smile will shine up everything around. I tried to learn English fast to communicate better with her but I couldn't because I was working long hours so had not enough time to study. Suddenly, she just quit from School so could not see her for the following few weeks. I felt so upset. I wanted to ask her if she want to be my girlfriend and that I was in love with her. I began driving around by the entire county, so street by street looked for her. I had to tell her how much I loved her and how much I missed her. Finally, one Saturday morning I spotted her station wagon, parked in front of a nice house which had a huge yard. Because it was time for I go to work, I decided to coming back on the next morning of the day which will be my day off from the chinesse restaurant at which I was working full time six days per week. Then, the next day I drove to that place where I had seen her vehicle parked. When I arrived there, Sarina was mowing the yard. Then, I walked towards the fence to meet her, and as soon as she saw me, she turned off the mower machine and headed towards me with her beautiful smile. I felt like mute because could not speak and just smiled back waving my hand. Now I could see her perfect teeth and the beauty of her smile. Then, she invited me into her house.

and I accepted, Then, we were drinking a cup of coffee for some time. Then, I asked her using body Language, if she would allowed me to do the yard for her, She happily say okay, and I walked toward the back of the house passing close to her three sons room where I heard their voices playing video-games I knew Sarina was divorced and got three sons because while in the E.S.L. room she was telling all of that and some of my friends had translated it for me in Spanish. I started to mowed the yard and it took me a couple of hours to finished it. Then, Sarina asked me if I wanted to eat a special dish that she had prepared for me. I said yes, and she started to put a lot of food on the table, since I had a big appetite after mowing all the yard, eat whatever she put on the table for me. Then, we chat for some time, where she was the talker and I was the listener and could say only yes, and okay. Then, she asked me if I wanted to go shopping with her to a gigantic shopping center. I say yes, then we and the kids got in the station wagon and took-off. When we arrived there, she begun to tried on some clothes however didn't buy them instead she bought a big plant which was attached to a contained apparently plastic made which was for the roots of the same. It was about five feet high and I had to carried it for hours while Sarina was doing her shopping. Finally, she said that it was time to go home. then I placed the plant on my shoulder, and we walked to the wagon, then I put the plant on the wagon and on the rack of the same, then tied well so it wont fall. As soon as we arrived to her house, she put the plant in a corner of the kitchen. Then, The youngest of her sons David, who was seven years old at that time, asked her, "is this your new boyfriend?" and she shouted to him "go back to your room" then he went to joined his brothers who were playing video games again. I thought Sarina acted like that because the kids had to go School early on the next day and therefore had to sleep well. Sarina and I will continue trying to communicate in English and watching T.V. That was the very first night in which my wife and I had sexual intercourse all night and upon which we sworn everlasting love to each other and from that day on, we begun to walk through life together therefore building a promising future united. For me, all of that was surreal. It was like if I was living an incredible dream, from which i did not want to wake-up. Even though Sarina was from another country (thailand) and therefore she had different customs, habits, beliefs, tradition, culture and Religion.

on the other hand I was a poor Mexican who could say had find a nice and beautiful queen, because she loved to dress well, was strong and lean therefore it was very difficult to figure out about her age because she would looks like twenty three when she was thirty three. Sarina seemed like a model coming out from a beauty contest. Then, the fruit of our love was born in June 26, 1991. I was working full time in a brush company and Sarina will continue doing house-wife up until our Daughter was six years old. Because then Sarina will start to work full time as well. I will continue teaching good habits to our kids, however, my step-sons were rebellious all the way, so they would not listen to my advises and continued missing School very often. They will hung-out with their friends and were making lots of troubles, therefore, many times they went to jail. Every one of them will have his own friends and some of those friends were drug addicts. thus, I became very angered when I learned that my step-sons wanted my Daughter to hung-out with them and with their friends, because she could become one of them. I begun to protect my Daughter and tried all along doing my very best to restraint my step-sons from taking my Daughter with them so she won't be a drug addict. Maybe I over protected her, however, at the end I could accomplished my goal, which was my Daughter to continue with her Education while I was providing for her care, guidance, love and attention all along. Then, Sarina begun to work overtime. Apparently she wanted to stay away from home and therefore away from problems my step-sons were making along with their friends. This time my step-son David, went to prison for stealing cars. He went to coyote ridge booth camp and he got out when he was eighteen, and I think that was the last time he was booked. My Daughter was twelve at that time. Then, a year latter we moved to a duplex in which my step-sons could not stay with us anymore because the landlord of said duplex did not allow us to live together in the same place because there were only two bedrooms in said duplex, so one bedroom for my Daughter and the other for my wife and I. Therefore, there was no other choice for my step-sons but to look for some other place to live. My wife was disappointed with said decision. In spite of that , we resided in that place for one year. My Daughter was now fourteenth years old and very often she will hung-out with her friends, will do School-homework on time, and was very happy.

In fact, she was progressing academically beyond average and successfully gaining skills during the time she was under my care and supervision going throughout Academy learning showing no trauma nor abuse of any kind. therefore I never thought of being charged with a crime of sexual nature because that in between my Daughter and I, it never occur whatsoever. Citing Presentence investigation report (P.I) 03-05-2008, page (1) second paragraph, line (7) where she "did not recall digital penetration" Quoting State V. Land 172 Wn App. 593 (2012) "however reape of a child requires proof of sexual intercourse"

ADDITIONAL GROUND NUMBER TWO

I have the belief here, that it is normal to joke around with your own kids occasionally and hereby I clarify that I joked around with my Daughter A.T.Y. sporadically with the hope that she may perpetuate on progress and therefore on the road which leads to success thus she could accomplish sooner her master degree in medicine which was her main goal, and she was proudly and academically, one year ahead. Citing yearly W.A.S.O.L: And I certainly assure you that the mentioned joking around it was only that. Occasionally and fully clothed playing around the house. Citing Presentence Investigation Report P.I. (2008) pages (1) and (2), where A.T.Y.'s ability to detail material fact as required by Law, it was virtually inconsistent. when she was exceedingly suggestive while responding to questions and she will change her version a number of times depending of the questions and who was questioning her. Although she (A.T.Y.), remarkable remembered the year (2005) because she was factually mentioning said year for as long as the interviewing continued and even at trial session, A.T.Y. will continue stating that there was not penetration and that I never reaped her. Citing (P.I.) (2008) page (2) paragraph (8) lines (2) and (3), where A.T.Y firmly declared that she did not get reape, and that her father never put anything into her privates... Citing RCW 9A.44.010 (a) where by its plain and ordinary meaning expresses "it must be some kind of penetration in order to charge a person with sexual intercourse" Now, going back to (P.I.) page (2) paragraph (5) A.T.Y. said she was made look at the penis, while her breasts and buttocks were fondled, then a hand ran across her vagina and the year (2005) she mentioned again... Thereinafter, the pages (1) and (2) were flipped back and forth, while uncommonly the same were filed with a number of whimsical allegations.

Yet, those imaginary allegations equaled molestation, in contrast to Judgment and Sentence where I was arbitrarily charged with 3 counts of reape of a child in the first and second degree (two 9A.44.073) and (one 9A.44.076) then, on the top of that I was charged with 3 counts of child molestation (two 9A.44.083) and (one 9A.44.086).

Although on re-sentencing of May 19th (2017) counts (1) and (3), were VOIDED by the court, and only the following counts will remained active; COUNT (2) which was allegedly committed between September 02, (2001) and June 25, (2003).

COUNT (4) which was allegedly committed between September 02, (2001) and June 25, (2003).

COUNT (5) which was allegedly committed between June 26, (2003) and June 01, (2005).

COUNT (6) which was allegedly committed between June 26, (2003) and June 01, (2005);

Nonetheless, Investigation Report (P.I.) page (1) upper left corner shows "date of offense was from June 01, (2005) to September 01, (2006)" consequently, (P.I.) report 03 05 (2008), is virtually contradicting Judgment and Sentence because on July (2006) I went to Texas for to begin working in the Truck Industry.

ADDITIONAL GROUND NUMBER THREE

- (1) Was misconduct from appointed counsel (Mr. Rucker) where he refused to CONVEY regarding Constitutional violations which harmed my character my dignity and myself including the loss of my Liberty, before sentencing and when Mr. Rucker allowed prosecution unlawfully withheld exculpatory evidence from declarations of plaintiff from formal interviews regarding present matter (07-16-2006) (07-19-2006) (07-20-2006) and (08-21-2006) which is reflected on (P.I.) Report?(2008); And thence at Re-sentencing where Mr. Rucker committed similar Constitutional violations, same as at the beginning of Judicial proceedings on present matter when he refused to meeting with me before the date of the court hearing?
- (2) Was my inalienable right to ALLOCUTION denied at sentencing?
- (3) Was my inalienable right to ALLOCUTION denied at Re-sentencing?

By the facts above, I believe this is a total miscarriage of justice which must be cured by this court, since Judgment and Sentence still remains in error. See decision of Washington state Supreme Court on present matter;

RCW 9.94A.090 (1); In Re Pers. Restraint of Coats, 173 Wn. 2d 123, 135-36, 267 P.3d 324 (2011) "under that statute, the sentencing scheme for several sex offenses (including those in this case) was altered so as to require the trial court to impose an indeterminate minimum term within the standard range (or outside the standard range if reasons exist for imposing an exceptional sentence) and a maximum sentence at the statutory maximum for the crime. Former RCW 9.94A.712 (3) (2001). Further, whenever an offender was released from his minimum term, he was subject to community custody for the length of the maximum sentence. Former RCW 9.94A.712 (5) (2001). The statute by its terms applied only to crimes committed on or after September 1, 2001; Former RCW 9.94A.712 (1) (2001) here, the charging period during which the crimes in counts one and three were allegedly committed ended that date" (Order from Washington state supreme Court) Therefore, and as it is clearly stipulated above "sentencing scheme for several sex offenses (included those in this case) was altered" consequently was remanded to Clark county Courthouse to being re-sentenced and thus, to be cured from factual miscarriage of Justice. However, trial court still needs to complete order of Supreme court by correcting judgment and sentence from miscarriage of justice accordingly.

ADDITIONAL GROUND NUMBER FOUR

(A) Trial attorney (Mr. Rucker) acted with callous indifference regarding my case, where he had plenty of time to professionally advice on the same however, he made the incomprehensible decision to refusing provide me with professional assistance. Consequently I was denied Constitutional right to ALLOCUTION repeatedly. First at sentencing, and second at re-sentencing by Mr. Rucker's refusal to met me prior to both hearings therefore, Legal Arguments could not be presented there at the Re-sentencing court hearing. In fact, I suffered ineffective assistance of counsel on a number of issues from the beginning of Judicial proceedings pertained to my case, when Mr. Rucker's performance fell below the objective standards of reasonableness in the light of all circumstances whereas any rational person could infer that in the absence of Mr. Rucker's deficient performance, there is a reasonable probability that the result of said court proceeding regarding present matter, could have been totally different when...

(b) At the beginning of the trial and during the opening statement, the prosecutor firmly and adamantly declared the "lack of evidence to convict the accused" State Vs. Campbell, 103 Wn. 2d 1, (1984) states that;

"prosecutor's opening statement should be confined to a brief statement of issues of the case, an outline of the anticipated material evidence, then reasonable inference to be drawn therefrom"

"the trial court has a wide discretion in determining the good faith of the prosecutor, then burden of showing bad faith is upon the defendant"

Here, Mr. Rucker should have motion for dismissal on all charges or for mistrial, on the grounds that bad faith was clearly manifested from prosecution where she admitted did not have any evidence to convict, then why was the misconduct to place me at risk of my dignity, reputation, and freedom, if no evidence was available? Mc Guire Vs. United states 152 F. 2d 577 (8th cir 1945) well established Law stated;

"where the opening statement of the prosecution in a criminal case, and after a full opportunity for the correction of any ambiguity, error, or omission in the statement, a fact is clearly and deliberately admitted which must necessarily prevent a conviction that require an acquittal.

Then the court may upon its own motion or that by counsel, close the case by directing a verdict for the accused"

It is manifested then that the combination error of ineffective counsel and misconduct from prosecution, virtually denied me a fair and an impartial Jury trial. Consequently, I was placed at risk of my Liberty been revoked, when dismissal on all counts is what was needed.

Here, the ineffective representation it is clearly evident. For throughout my trial, Mr. Rucker's performance failed below an objective standard of reasonableness as stated in Strickland V. Washington, 466 U.S. 668, 687, 104 S. ct. 2052, 80 L.Ed 2d 674 (1984). Because during the opening statement, the prosecution was in possession of exculpatory evidence on my behalf, by which I could prove that only an inferior offense was commit, and that being the official documents from statements of plaintiff (A.T.) where she declared that I had never put anything into her body ever.

State V. Knutson 121 Wash. 2d. 766 (1993) Rule states - The Due Process analysis of a discovery issue starts from the premise that due process affords a criminal defendant a right of access to evidence that is- "both favorable for the accused and material to guilt or punishment" at least where the court or prosecution is in possession of the evidence, quoting Ritchie, 480 U.S. at 57, 107 S. ct. at 1001 (citing United States V. Argus, 427 U.S.96, 97, S. ct. 2392, 49 L.Ed. 2d 432 (1976) Bradly V. Maryland 373 U.S. 83,87, 83, S. ct. 1194 1196-97, 10 L.Ed. 2d 215 (1963)

Consequently here, evidence pertained to my innocence of charges of sexual nature on present case, it is blatantly plain. Because when I was wrestling and dancing with (A.T.) I was just joking around and nothing else.

In Apprendi V. New Jersey 530 U.S. 466-490 120 S. ct. 2348, 147 L. Ed. 2d 433 (2000). Expresses "under Due Process clause of the Fifth Amendment and the notice and jury trial guarantees of the sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt"

Then in State v. Tili 148 Wash. 368 (2003). It expresses the purposes of the S.R.A. "(1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history. (2) Promote respect for the Law by providing punishment which is just. (3) Be commensurate with the punishment imposed on others committing similar offenses and (4) Protect the public" RCW 9.94A.010.

Here, and according to ~~embedded trial record~~ I was arbitrarily convicted by trial court to sexual intercourse with my minor Daughter (A.T.) although (A.T.) at a number of interviews with different specialists and even at Trial, she declared that I had never put anything into her body. And even though the statute RCW 9A.44.010 (1)(a) by its plain Language expresses that there must be some kind of penetration in order to convict a person of such a crime. Then is the legislature here failing to accomplish its main goal with respect to a fair and impartial retribution pertained to Law and fair justice? Rule of State V. Corey 181 Wn App. 272 (2004) states "the trial court should give a requested Jury instruction on a lesser-degree offense if evidence would permit a jury to rationally find a defendant guilty of the lesser offense and acquit him of the greater"

CRIMINAL DEFENSE TECHNIQUES VOLUME 1, (a) Ch & 22.02 THE PRIMARY EFFECT
"Scholars have studied the impact of the first thing seen or heard on humans recalls and decision making. Uniformly, the conclusion have seen and heard first, is remembered the longest and it shapes the perception of what is heard latter" Mr. Rucker should have objected to the prosecutorial misconduct during opening statement. Because nothing could have emphasized the misconduct of the prosecutor worse than leveling me as a "criminal" just at the commencement of the Trial.

Essentially the prosecutor gives the first opening of the trial, therefore Prejudicial effects on the jury by means of casting defamatory aspersions to my good character could affect the entire trial thereupon. thus, appointed counsel failing to object hard-hitting words without foundation upon the state's opening statement it is a real prove of his ineptitude, where by his callously indifference he was putting in peril my good character and furnishing prosecution violating my right to Presumption of Innocence.

Moreover, Mr. Rucker failed to petition the court for a "motion in limine" by which he could had preclude prosecutor from mentioning matters which were questionable and seek an advance ruling from trial court to restrict, or forbid prosecutor from addressing any character, reputation or prior wrongs or acts as specified in evidence rule ER 404 (3) (b) from being used.

At this point on time, the prejudicial effects on the jury were catastrophic. For I am a first time offender who had no criminal record and therefore, at the commencement of the trial, prosecution had no legal reason to treat me as a "criminal" because then, she was leading jury to believe this trial was another offense for which I have being tried on.

"the prospective value of a prosecutor's opening statement tend to led the view of the jurors where there are types of crimes has happened before."
"CRIMINAL DEFENSE TECHNIQUES VOLUME 1, (a) CHAPTER & 22.02 THE PRIMARY EFFECTS"

Citing further into the criminal defense techniques chapter & 22.02.
"since the opening statement carries with it the force of a lasting first impression, be vivid, lucid and direct while using simple terms the jurors will remember" Then, prosecution leveling me as a "criminal" at the beginning of trial, carried a force of a lasting permanent impression on the jury. Then, refusal from Mr. Rucker to object upon this derogatory remark,

was a clear violation to his Ethical duties since any trial attorney should know the value, purpose, and the primary crucial effects opening statement has on the jury. Consequently, failure to object or motion for mistrial, or to file for dismissal on all charges thereupon, denied me the needed effective assistance of counsel due to the fact that without objection by the defense attorney the court record fails to be preserved then, "appellant court will not consider the same on appeal." Citing In Re personal restraint of Lui 2017 Wash. Lexus 639 02-02 (2017).⁸ Yet, the drafters of our State Constitution not only granted the right to a fair and impartial jury Trial, State Constitution Article 1 & 22 (3) they expressly declared it shall... remain inviolate.⁹ Wash. Constitution Art. 1 & 21.

Additionally Washington has adopted Strickland Vs. Washington two prog test for evaluating whether a defendant has Constitutionally sufficient representation. Under Strickland, the defendant must show both;

- (1) Deficient performance. And
- (2) Resulting prejudice to prevail in an ineffective assistance claim.

"Performance is deficient if it fails below an objective standard of reasonableness based on consideration of all circumstances. Prejudice exist if there is a reasonable probability that but for the counsel's deficient performance, the outcome of the proceedings would have been different" Yet, Mr. Rucker incomprehensibly did not object when at opening statement the prosecutor informed jury panel that I was a "criminal" therefore, and by failing to object thereupon, Mr. Rucker demonstrated without doubt, his lack of professionalism, because he was inappropriately here, putting in peril beyond doubt the outcome of the entire trial, while misconduct from prosecution was violating thereat my Constitutional rights from RULE OF EVIDENCE 404 where at subsection (a) REPUTATION CHARACTER or a trait of character is not admissible for the purpose of providing action in conformity therewith on a particular occasion except;

- (1) CHARACTER OF ACCUSED. Evidence of a pertinent trait of his character offered by an accused or prosecution to rebut the same.

Then, prosecutorial misconduct at opening statement tainted and highly prejudiced jury panel by leveling me as a "criminal" furthermore, by this defamatory remarks, prosecution was steering outcome of the trial, away from fairness and justice.

By the fact that in every criminal case, an accused is presumed to be innocent throughout the trial and the burden resides with the state to overcome said presumption by evidence and prove beyond a reasonable doubt, the contrary.

Rule of State v. Tello Gonzalez, 129, Wn App 895, 120 P.3d 645 states "in every criminal case a defendant is presumed to be innocent through the trial and the burden resides with the state to overcome that presumption by evidence that is convincing beyond a reasonable doubt"

The presumption of innocence guarantees every criminal defendant all physical indicia of innocence including that of being brought before the court with the appearance dignity and self-respect of a free and innocent man U.S. Constitution Fourteenth Amendment.

Yet, an opening statement is little discussed in legal academic literature thus it is not often long remembered in the course of a criminal trial, although the opening statement argument is the first opportunity to present the most important aspect on any jury trial for example, what the case will be truly about.

Here, Mr. Rucker's performance of duties at trial failed below standards of reasonableness, where he allowed prosecutor to spoil the jury by leveling me as a "criminal" therefore biasing and prejudicing jury panel by persuaded it maliciously with her baseless judgment as the Trial by Jury session began. Consequently, and after the prosecutor had leveled me as a criminal, nothing could be said that could cure the atrocious prejudice on the jury, therefore, chances thereat, for I being acquitted by jury, were very slim, because the psychological influence on the jury, must not be underestimated and thus it is an important lesson to be aware of, by a defense attorney. Here, Mr. Rucker's professional duties failed below acceptable and/or reasonable standards since no strategic theory could possibly be conceived and justify him from objecting...

The jury trial will continue and precisely on the very first day, January 07-(2008) @ 1:56 PM, plaintiff (A.T.) was called so to give her sworn statement and she raised at five feet three inches, 140Lbs. and walked confident toward the witness stand where she was questioned for exactly one hour and five minutes by the prosecution and by the appointed counsel from direct examination and all the way to re-cross examination, and where (A.T.) asserted that only brushing, caress and patting had been occur.

And even though she did not mention all of that light-touching occurred while joking around, she (A.T.) comprehensible declared thereat (same as upon all officials interviews she had prior to trial), that I had never put anything into her privates area. Consequently and according to said declarations from key witness (A.T.); I am not guilty to any count of sexual intercourse regarding the entire case, by the fact that; "in general terms, sexual intercourse is sexual touching that includes penetration" RCW 9A.44.010 (1)(a) quoting State V. Mc Night, 54 Wn App. 521 (1989). In addition and pertained to molestation charges, and taking on count that brush-past and patting occur while I was joking around with my Daughter (A.T.) and therefore inadvertently, thence, I should not be subject to criminal liability for the same, because then, it results in a cruel and unusual punishment by which the Washington Judicial System is not accomplishing any goals towards retribution and fairness because for being just joking around, none of the above should apply.

Furthermore, my plea on all counts, was totally involuntary and/or illegal for I did not have the knowledge nor the counsel advice pertained to critical elements to alleged counts of sexual nature. Consequently, I signed the deceptive plea without knowing and thus, said plea is virtually invalid.

ADDITIONAL GROUND NUMBER FIVE

(a) My inalienable right to ALLOCUTION was literally and repeatedly denied by the clark County's Judicial System.

FIRST: at Sentencing held on 03-14-(2008), when I was not allow to met with appointed counsel (Mr. Rucker) prior to said hearing consequently I had no idea how to ask the court to correct manifest Constitutional errors which occurred even before trial. And thence at trial as declared on additional ground number four (b).

SECOND at Re-sentencing held on May 19th (2017) where I was denied access and/or meaningful and effective communication opportunity with Mr. Rucker and thus, could not confer with him prior to Re-sentencing. Consequently, solutions to court violations which were committed at clark county courthouse even from the beginning of Judicial proceedings on present matter and thence at sentencing, could not be properly addressed at Re-sentencing.

Consequently here, manifest Constitutional errors above harmed my dignity, reputation, good character and intrinsic rights, when my freedom was taken away by erroneous Judgment and sentence by the following;

- (I) I was incompletely and/or erroneously advised pertained disastrous consequences of the plea.
- (II) Counsel's deficient advise virtually impaired my judgment pertaining to when and where do plea guilty. And what the deal was about.

Whence any reasonable person may conclude that; (i) I am here in prison by whimsical allegations, paying for a crime that never occur whatsoever. And (ii) That I had no chance to convey with attorney about plea offer prior to trial. Therefore, could not make a fully informed decision on my future in contrast to many other people non-Hispanics and/or non in poverty, whose successfully communicate with their attorneys in their own Language and before trail. Consequently, all those persons favorably obtain informed and asserted resolutions on plea bargains and subsequently, get knowledgeable decisions and take pleas at the precise stage of Judicial Proceedings.

U.S. CONSTITUTION FOURTEENTH AND SIXTH AMENDMENTS

REQUESTED RELIEF

By all legal arguments stated above, and referring to the fact that I was misled by counsel pertained to allegations of sexual nature, when I was literally compelled to take an unlawful plea by mixture error from ineffective counsel and/or misconduct from prosecution and then by being denied my Constitutional right to Allocution, I hereby respectfully ask the court for dismissal on counts 1,2,3,4,5, and 6. pertaining to my entire case, or permit the withdrawal of plea on all counts therefore to be tried ANEW on original charges, hence the ends of Justice might be served accordingly.

UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF WASHINGTON I DECLARE THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Dated this first day of February, 2018

RESPECTFULLY SUBMITTED BY: Ramon Trevino

RAMON TREVINO HERNANDEZ# 314712

AHCC P.O.BOX 2049 K-A- 51L

AIRWAY HEIGHTS WASHINGTON, 99001

Pro se

DECLARATION OF MAILING

I RAMON TREVINO HERNANDEZ, declare that, on the 1st day of February, (2018), I placed the foregoing documents;

- (1) STATEMENT OF ADDITIONAL GROUNDS. (SAG)
- (2) JUDGMENT AND SENTENCE (from re-sentencing on May 19th (2017)
- (3) ORDER FROM WA, SUPREME COURT.

Or copy thereof, in the internal legal mail system of the AIRWAY HEIGHTS CORRECTION CENTER, with appropriate postage, addressed to:

1. WASHINGTON STATE COURT OF APPEALS DIVISION TWO
950 Broadway Ste. 300 Tacoma Washington, 98402

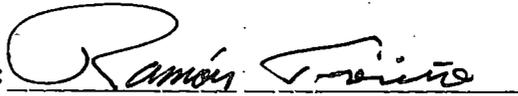
2. MR. TONY GOLIK
CLARK CO. PROSECUTING ATTORNEY
1013 Franklin Street
Vancouver Washington 98666-5000

3. JOHN A. HAYS ATTORNEY AT LAW
1402 Broadway suite 103
Longview Washington 98632

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 1st day of February, (2018)

RESPECTFULLY SUBMITTED BY:



RAMON TREVINO HERNANDEZ# 314712

AHCC P.O. BOX 2049 K-A- 51L

AIRWAY HEIGHTS WASHINGTON 99001

Pro se

APPENDIX A

15
GM

Steven Rucker

S3



FILED

MAY 19 2017

Scott G. Weber, Clerk, Clark Co.

4:30

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

vs.

RAMON TREVINO-HERNANDEZ,
Defendant.

SID: WA21586951
If no SID, use DOB: 9/28/1960

No. 06-1-01930-0

Felony Judgment and Sentence (as to Counts
1 and 3 only) -- Prison

RCW 9.94A.507 Prison Confinement

(Sex Offense and Kidnapping of a Minor)

(FJS)

08-9-01784-1

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 Upon remand from the Court of Appeals, the court conducted a re-sentencing hearing this date as to Counts 1 and 3 only; 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 (as to counts 1 and 3 only), based upon guilty plea 1/8/2008 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	9/1/1996 to 8/31/2001
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	9/1/1996 to 8/31/2001

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:

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.

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 13

- 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.
- 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 (none known)						

*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	15	XII	240 MONTHS to 318 MONTHS		240 MONTHS to 318 MONTHS	LIFE
03	15	X	149 MONTHS to 198 MONTHS		149 MONTHS to 198 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) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

- Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows: _____

2.4 Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

- below the standard range for Count(s) _____.
- above the standard range for Count(s) _____.

- The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.
- within the standard range for Count(s) _____ but served consecutively to Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.
- In the case of more than one aggravating factor, the Court finds that the same sentence would be imposed if any one of the aggravating factors is not upheld on appeal.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

- That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.
- That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.
- That the defendant is indigent and disabled and is not anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.
- Other: _____ . RCW 9.94A.753.
- The following extraordinary circumstances exist that make restitution inappropriate. (RCW 9.94A.753):

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

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

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

III. Judgment

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

IV. Sentence and Order

It is ordered:

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

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

318 months on Count 01

198 months on Count 03

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 on Counts 1 and 3 is: _____.

All counts (1, 2, 3, 4, 5, and 6) 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: _____.

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____.

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	minimum term	maximum term	Statutory Maximum
Count _____	_____	_____	_____
Count _____	_____	_____	_____
Count _____	_____	_____	_____

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

Count _____ minimum term: _____ maximum term: _____

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

(e) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

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

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

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

Count(s) 1, 3, 36 months for sex Offenses

Count(s) _____, 18 months for Violent Offenses

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

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

(Sex offenses, only) For count(s) _____, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

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

- not possess or consume alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____
- not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- participate in an education program about the negative costs of prostitution.
- participate in the following crime-related treatment or counseling services: _____
- undergo an evaluation for treatment for domestic violence chemical dependency mental health anger management, and fully comply with all recommended treatment. _____
- comply with the following crime-related prohibitions: _____
- Other conditions: _____

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of a crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.
- (iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court the amounts previously ordered in the Judgment and Sentence entered on March 14, 2008.

JASS CODE

PCV	\$ _____	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
	\$ _____	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
FRC	\$ _____	Criminal filing fee, RCW 10.46.190	
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Witness costs \$ _____ WFR	
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF	
		Jury demand fee \$ _____ JFR	
		Extradition costs \$ _____ EXT	
		Other \$ _____	
PUB	\$ _____	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/PCD NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ _____	DNA collection fee	RCW 43.43.7541
FPV	\$ _____	Specialized forest products	RCW 76.48.140
PPI	\$ _____	Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.) RCW 9A.40.100, 9A.88.120, 9.68A.105	
	\$ _____	Fee for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (\$1,000 fee for each separate conviction)	RCW 9.68A.070
	\$ _____	Other fines or costs for: _____	
DEF	\$ _____	Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012)	RCW 38.52.430
		Agency: _____	
RTN/RJN	\$ _____	Restitution to: (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
	\$ _____	Total	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor.

is scheduled for _____ (date).

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

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

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

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$_____ per month commencing_____. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$_____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760: (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$_____.

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

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

4.5 No Contact:

The defendant shall not have contact with A.Y.T. (female, DOB 6/26/1991) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

A.Y.T. (female, DOB 6/26/1991) (name of protected person(s))'s

home/ residence work place school .

(other location(s)) person

other location _____

for life (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

4.7 **Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 **Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions. Unit, if not on Community Custody for supervision:

V. Notices and Signatures

5.1 **Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

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

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

5.4 **Community Custody Violation.**

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

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

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

5.6 Sex and Kidnapping Offender Registration Laws of 2010, ch. 367 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, 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.

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where you reside.

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, Temporary 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. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

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

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

5. Travel Outside the United States: If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling in or Employed by a Public or Private

Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

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

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

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

5.7 Department of Licensing Notice: The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**

- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
- No BAC test result.
- BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- Drug Related. The defendant was under the influence of or affected by any drug.
- THC level was _____ within two hours after driving.
- Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: Commercial Veh.; 16 Passenger Veh.; Hazmat Veh.

5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 1, 3 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) 1, 3 is/are one of the listed offenses in RCW 9.94A.030.(37)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Identification of the Defendant

RAMON TREVINO-HERNANDEZ

06-1-01930-0

SID No: WA21586951
(If no SID take fingerprint card for State Patrol)

Date of Birth: 9/28/1960

FBI No. 262792AC6

Local ID No. 168595

PCN No. _____

Other _____

Alias name, DOB:



Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk, Jim Mares Dated: 5-19-17

The defendant's signature:

Ramon Trevino

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,
 v.
 RAMON TREVINO-HERNANDEZ,
 Defendant.
 SID: WA21586951
 DOB: 9/28/1960

NO. 06-1-01930-0

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

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

GREETING:

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

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	9/1/1996 to 8/31/2001
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	9/1/1996 to 8/31/2001

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

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

COUNT	CRIME	TERM
01	RAPE OF A CHILD IN THE FIRST DEGREE	318 Months
03	CHILD MOLESTATION IN THE FIRST DEGREE	198 Months

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

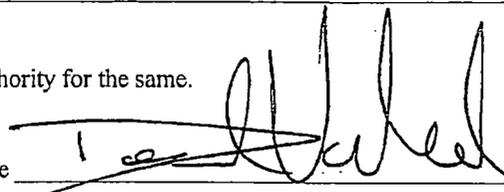
The defendant has credit for 3.566 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

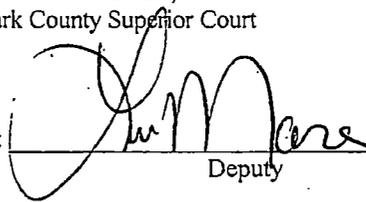
WITNESS, Honorable



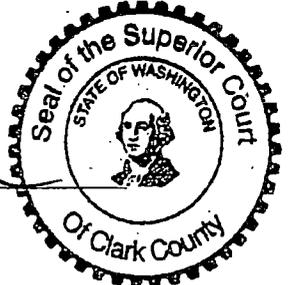
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 5/19/17

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

By:



Deputy



FILED

MAY 19 2017

Scott G. Weber, Clerk, Clark Co.

3:14

06-1-01930-0

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

STATE OF WASHINGTON,
Plaintiff,

No. 06-1-01930-1

Ramon Trevino HERNANDEZ
Defendant.

MEMORANDUM OF DISPOSITION

Count 1: Rape of child 1 / child MOLEST 1 / ~~Rape of child 1~~
CRIME(S): count 3:

The defendant shall be released from custody today on the above-captioned case(s) only. ~~Child Molester~~

The defendant is hereby remanded to custody: Hold without Bail Bail is set at \$ _____

The defendant has been sentenced to confinement totaling 318 days/months, to be served as follows:

3566 days credit for time served DOC to calculate days of additional total confinement
_____ days of additional partial confinement on:

work/educational release work crew community service

Defendant shall report within 24 hours of this order/release from custody

Defendant shall be screened while in custody.

(If found to be medically unfit for work crew, refer to original sentencing orders for instructions)

The defendant is hereby Ordered to return to court on _____ at _____ am/pm.

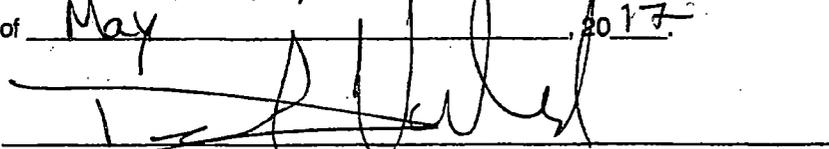
The defendant shall report to the Department of Corrections within 24 hours of this order/release from custody.

The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. Report to the CCSO within 24 hours to submit sample.

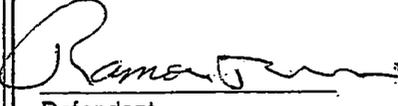
FAILURE TO REPORT TO JAIL, WORK RELEASE OR WORK CREW MAY CONSTITUTE THE CRIME OF ESCAPE AND COULD SUBJECT THE DEFENDANT TO IMMEDIATE ARREST. FAILURE TO RETURN TO COURT AS ORDERED MAY CONSTITUTE THE CRIME OF BAIL JUMP.

Other: This sentence pertains to counts 1 and 3 only; the sentence from 3/14/2008 imposed on counts 2, 4, 5, and 6 remains in effect; the sentences on counts 1, 2, 3, 4, 5, and 6 shall run concurrently.

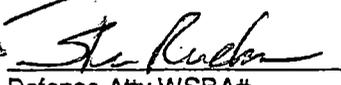
Dated this 19 day of May, 2017.



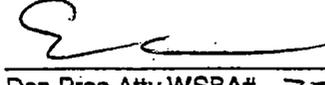
Judge of the Superior Court



Defendant



Defense Atty WSBA#



Dep Pros Atty WSBA# 35678

98

LJM

THE SUPREME COURT OF WASHINGTON

In re the Personal Restraint of)	No. 93922-5
)	
RAMON TREVINO-HERNANDEZ,)	ORDER
)	
Petitioner.)	Court of Appeals
)	No. 48914-7-II
)	

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered this matter at its March 7, 2017, Motion Calendar. The Department unanimously agreed that the Petitioner's sentence is facially invalid as to counts one and three because the underlying criminal acts occurred before former RCW 9.94A.712 went into effect, thus making the Petitioner's claim of facial sentencing error exempt from the one-year time limit on collateral relief. RCW 9.94A.090(1); *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135-36, 267 P.3d 324 (2011). Under that statute, the sentencing scheme for several sex offenses (including those in this case) was altered so as to require the trial court to impose an indeterminate minimum term within the standard range (or outside the standard range if reasons exist for imposing an exceptional sentence) and a maximum sentence at the statutory maximum for the crime. Former RCW 9.94A.712(3) (2001). Further, whenever an offender was released from his minimum term, he was subject to community custody for the length of the maximum sentence. Former RCW 9.94A.712(5) (2001). The statute by its terms applied only to crimes committed on or after September 1, 2001. Former RCW 9.94A.712(1) (2001). Here, the

charging period during which the crimes in counts one and three were allegedly committed ended before that date. Thus, as the State acknowledges, Trevino-Hernandez should have been sentenced to determinate standard range terms on counts one and three. Since such terms are determinate and not subject to increase as are indeterminate minimum terms, and since the applicable community custody terms for those crimes is the longer of a specified range or the period of earned early release, not life, see former RCW 9.94A.715(1) (2001), Trevino-Hernandez is entitled to sentencing relief on those convictions. *See In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 818, 272 P.3d 209 (2012).

But a facial sentencing error does not exempt from the time limit a claim that a guilty plea was involuntary due to misinformation as to sentencing consequences. *In re Pers. Restraint of Snively*, 180 Wn.2d 28, 32, 320 P.3d 1107 (2014). Nor does a facial sentencing error permit the assertion of an otherwise untimely claim of ineffective assistance of counsel. *In re Pers. Restraint of Adams*, 178 Wn.2d 417, 426-27, 309 P.3d 451 (2013). Thus, Trevino-Hernandez's sole remedy is correction of the sentence. *Snively*, 180 Wn.2d at 32.

IT IS ORDERED:

That the Petitioner's Personal Restraint Petition is granted only as to the validity of the sentencing on Counts I and III, and is remanded to the Superior Court for resentencing on these counts.

DATED at Olympia, Washington, this 8th day of March, 2017.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE