

Court of Appeals No. _____

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

In Re the Personal Restraint of:

NICHOLAS NATHANIEL MARTIN,

Petitioner.

PERSONAL RESTRAINT PETITION
WITH LEGAL ARGUMENT AND AUTHORITIES

Pierce County Superior Court No. 14-1-03264-3

Corey Evan Parker
Attorney for Petitioner
1275 12th Ave NW, Suite 1B
Issaquah, Washington 98027
Ph: 425-221-2195
Fax: 1-877-802-8580
corey@coreyevanparkerlaw.com

TABLE OF CONTENTS

I. STATUS OF PETITIONER.....1

II. GROUNDS FOR RELIEF1

III. STATEMENT OF THE CASE2

IV. STANDARD OF REVIEW.....4

V. ARGUMENT.....6

 A. Newly Discovered Evidence Exception To The One Year
 Requirement Under RCW 10.73.100 Applies Here..... 6

 B. Doctrine Of Equitable Tolling Applies To Filing An Untimely
 PRP..... 11.

 C. Mr. Martin Is Entitled To This Personal Restraint Petition Based
 On Ineffective Assistance Of Counsel 17

VI. CONCLUSION21

TABLE OF AUTHORITIES

Cases

<u>In re Becker</u> , 143 Wn.2d 491, 20 P.3d 409 (2001)	6
<u>In re Bonds</u> , 165 Wn.2d 135, 196 P.3d 672 (2008).	11
<u>In re Copland</u> , 176 Wn. App. 432, 309 P.3d 626 (2013)	6
<u>In re Crace</u> (2012) 174 Wash.2d 835, 280 P.3d 1102.....	5
<u>In re Crace</u> , 157 Wn. App. 81, 236 P.3d 914 (2010), rev'd, 174 Wn.2d 835, 280 P.3d 1102 (2012)	5
<u>In re Cross</u> , 180 Wn.2d 664, 327 P.3d 660 (2014)	18
<u>In re Khan</u> , 184 Wn.2d 679, 363 P.3d 577 (2015).....	13, 18
<u>In re Monschke</u> , 160 Wn. App. 479, 251 P.3d 884 (2010).....	4, 5
<u>In re Pers. Restraint of Brett</u> , 142 Wash.2d 868, 16 P.3d 601(2001) .	13, 18
<u>In re Pers. Restraint of Davis</u> , 152 Wash.2d 647, 101 P.3d 1 (2004)	5
<u>In re Pers. Restraint of Gay</u> , 142 Wn. App. 1001 (2007)	6, 8, 9
<u>In re Pers. Restraint of Hews</u> , 99 Wash.2d 80, 660 P.2d 263 (1983)	15
<u>In re Pers. Restraint of Hoisington</u> , 99Wash.App. 423, 993 P.2d 296 (2000)	11
<u>In re Personal Restraint of Gentry</u> , 137 Wash.2d 378, 972 P.2d 1250 (1999)	6
<u>In re Personal Restraint of Rice</u> , 118 Wash.2d 876, 828 P.2d 1086 (1992)	5
<u>In re Reise</u> , 146 Wn. App. 772, 192 P.3d 949 (2008).....	12, 16

TABLE OF AUTHORITIES

Cases (Cont'd)

<u>In re Stockwell</u> , 179 Wn.2d 588, 316 P.3d 1007 (2014)	12, 15
<u>In re Toledo-Sotelo</u> , 176 Wn.2d 759, 297 P.3d 51 (2013).....	15
<u>In re Yates</u> , 177 Wn.2d 1, 296 P.3d 872 (2013)	18
<u>Old Chief v. United States</u> , 519 U.S. 172 (1997)	19
RCW 9.41.040(1).....	19
<u>State v. A.N.J.</u> , 168 Wn.2d 91, 225 P.3d 956 (2010)	13
<u>State v. Crawford</u> , 159 Wash.2d 86, 147 P.3d 1288 (2006)	17
<u>State v. Duvall</u> , 86 Wash. App. 871, 940 P.2d 671 (1997), <u>review denied</u> , 134 Wash.2d 1012, 954 P.2d 276 (1998).....	11
<u>State v. Estes</u> , 193 Wn. App. 479, 372 P.3d 163 (2016), <u>review granted</u> , 186 Wn.2d 1016, 380 P.3d 522 (2016)	18
<u>State v. Goldberg</u> , 123 Wn. App. 848, 99 P.3d 924 (2004).....	17
<u>State v. Hamilton</u> , 179 Wn. App. 870, 320 P.3d 142 (2014).....	17
<u>State v. Johnson</u> , 90 Wn. App. 54, 950 P.2d 981 (1998).....	19
<u>State v. McCollum</u> , 88 Wn. App. 977, 947 P.2d 1235 (1997).....	12, 18
<u>State v. McFarland</u> , 127 Wn.2d 322, 899 P.2d 1251 (1995), <u>as amended</u> (Sept. 13, 1995).....	17
<u>State v. Robinson</u> , 104 Wn. App. 657, 17 P.3d 653 (2001).....	11
<u>State v. Ross</u> , 129 Wash.2d 279, 916 P.2d 405 (1996).....	15

TABLE OF AUTHORITIES

Cases (Cont'd)

State v. S.M., 100 Wash.App. 401, 996 P.2d 1111(2000)..... 13

State v. Shelmidine, 166 Wn. App. 107, 269 P.3d 362 (2012)..... 18

State v. Walsh, 143 Wash.2d 1, 17 P.3d 591 (2001) 12

Strickland v. Washington, 466 U.S. 668 (1984)..... 18

Statutes

CrR 4.2(f)..... 16

RAP 16.4(a) 8

RAP 16.4(c) 8

RAP 16.7(a)(2)(i)..... 9

RCW 10.73.090 15

RCW 10.73.100(1)..... 10

RCW10.73.100 5, 9, 19

U.S. Const. amend. VI 22

Wash. Const. art. I, § 22..... 22

I. STATUS OF PETITIONER

Nicholas Nathaniel Martin (“Mr. Martin”) was convicted of assault in the second degree, felony harassment, and unlawful possession of a firearm in the second degree, all with a firearm enhancement. The Superior Court of Washington for Pierce County sentenced Petitioner upon a guilty plea for a total confinement for 192 months in the custody of the Department of Corrections (DOC). *See Appendix, Exhibit “A,” Judgment and Sentence, p.6, June, 26, 2015.* Counts I-V were to be run concurrently and sentence enhancements in Counts I-III were to be run consecutively to each other. *Id.* All charges were based on a shooting that occurred in August 15, 2014. Petitioner claims relief based on the newly discovered evidence exception under RCW10.73.100 and equitable tolling. Further, Petitioner claims ineffective assistance by counsel who represented Petitioner while entering the guilty plea.

II. GROUNDS FOR RELIEF

GROUND NUMBER ONE: Petitioner is entitled to file an untimely Personal Restraint Petition based on the newly discovered evidence exception under RCW10.73.100, for his convictions for assault in the second degree, felony harassment, and unlawful possession of a firearm in the second degree, all with a firearm enhancement.

GROUND NUMBER TWO: Petitioner is entitled to file an untimely Personal Restraint Petition based on equitable tolling and a facially invalid plea.

GROUND NUMBER THREE: Petitioner was denied proper assistance by trial counsel.

III. STATEMENT OF THE CASE

The case relates to Mr. Martin's sentencing and conviction on June 26, 2015, for assault in first degree (two counts), assault in the second degree, felony harassment, and unlawful possession of a firearm in the second degree, all with a firearm enhancement, by the Superior Court of Washington for Pierce County. The incident is related to domestic violence, as defined in RCW 10.99.020. *See Appendix, Exhibit "B," Information, p. 2:2-5, August 20, 2014.* Law enforcement received a person with a weapon call on August 15, 2014. When law enforcement arrived at the apartment complex, Mr. Martin allegedly fired shots towards the deputy's vehicle and the vehicle of his wife, Conchata Gaston-Martin ("Conchata"). *See Appendix, Exhibit "C," Probable Cause, 1, August 20, 2014.*

There was a verbal argument between Mr. Martin and his wife, Conchata. *Id.* at 1. When Mr. Martin tried to leave in their Cadillac, his

wife cut him off with her Tahoe. Id. Mr. Martin exited his Cadillac and started pounding on the window of her Tahoe. Id. Thereafter, Mr. Martin had a verbal altercation with Andrew Wanger (“Wanger”), a resident of the apartment complex. Id. Conchata managed to grab the keys to the Cadillac and left in her Tahoe. Later, she returned with her son, Richard Young (“Young”) to retrieve the Cadillac. Id. After Young left with the Tahoe, Conchata was sitting in the parking lot when she was approached by Deputy Guerrero. She denied hearing any gunshots and said that she owns a .45 caliber Ruger. Id.

Upon interviewing Young, he confirmed to Detective Sgt. Adamson that he heard two gunshots, but did not associate it with Mr. Martin. Id. And he stated that sometimes Mr. Martin carries a .45 caliber Ruger. Id. Thereafter, Wanger was interviewed by Detective Sgt. Adamson. Wanger informed him that while he was visiting his children and girlfriend, he saw the Tahoe blocking the path of the Cadillac. Id. Further, he observed Mr. Martin exit the Cadillac and punch the window of the Tahoe at least 10 times. Id.

Wanger’s girlfriend called 911. Id. at 2. When Wanger informed Mr. Martin about her intent to call the police, Mr. Martin turned to Wanger and threatened to shoot and kill him. Id. Meanwhile, Conchata took the Cadillac and Mr. Martin started towards it. Wanger watched both

the Cadillac and the Tahoe drive away and a patrol vehicle enter the parking lot. Id. Wanger states that he saw Mr. Martin firing two rounds at the vehicles, but did not confirm which vehicle Mr. Martin shot. Id. Likewise, Deputy Guerrero confirmed that he saw Mr. Martin about 100 feet away with a pistol in his hand and also saw Mr. Martin shooting two rounds of fire toward him. Id. Later, Mr. Martin was detained by the Deputies and admitted that he owned the gun.

Mr. Martin plead guilty to all the charges against him. During his plea proceedings, Mr. Martin was represented by attorney Laura M. Groves (“counsel”). *See Appendix, Exhibit “D,” Verbatim Trans. of Proceedings Plea and Sentence, 4:2-4, June 26, 2015.* Accordingly, on June 26, 2015, Mr. Martin was sentenced to a total confinement for 192 months in the custody of the Department of Corrections (DOC). *See Appendix, Exhibit “A,” Judgment and Sentence, p.6.* Counts I-V were to be run concurrently and sentence enhancements in Counts I-III were to be run consecutively to each other. Id.

IV. STANDARD OF REVIEW

“A petitioner may request relief through a PRP when he is under an unlawful restraint.” *In re Monschke*, 160 Wn. App. 479, 488, 251 P.3d 884, 890 (2010) (citing RAP 16.4(a)–(c)). “Generally, in a PRP, the petitioner must demonstrate by a preponderance of the evidence that a

constitutional error resulted in actual and substantial prejudice or a nonconstitutional error resulted in a complete miscarriage of justice.” Id. (citing In re Pers. Restraint of Davis, 152 Wash.2d 647, 672, 101 P.3d 1 (2004)). Further, “[t]he petitioner must support the petition with facts or evidence and may not rely solely on conclusory allegations.” Id. at 488 (citing RAP 16.7(a)(2)(i)).

“[A] petitioner need not “satisfy a heightened prejudice requirement under actual and substantial prejudice that exceeds the showing of prejudice necessary to successfully establish the *Strickland* prejudice prong’ when the PRP is based on ineffective assistance of counsel. Id. at 490–91 (quoting In re Crace, 157 Wn. App. 81, 236 P.3d 914 (2010), rev’d, 174 Wn.2d 835, 280 P.3d 1102 (2012)). The Supreme Court of Washington has “employed the ‘reasonable probability’ prejudice standard in resolving an ineffective assistance of counsel claim in a personal restraint petition.” In re Crace (2012) 174 Wash.2d 835, 846–47 [280 P.3d 1102, 1108] (citing In re Personal Restraint of Rice, 118 Wash.2d 876, 890, 828 P.2d 1086 (1992)). Therefore, “if a personal restraint petitioner makes a successful ineffective assistance of counsel claim, he has necessarily met his burden to show actual and substantial prejudice.” Id.

V. ARGUMENT

A. Newly Discovered Evidence Exception To The One Year Requirement Under RCW 10.73.100 Applies Here.

Generally, “[p]ersonal restraint petitions must raise new points of fact and law that were not or could not have been raised in the principal action.” In re Becker, 143 Wn.2d 491, 495–96, 20 P.3d 409, 411–12 (2001) (citing In re Personal Restraint of Gentry, 137 Wash.2d 378, 388, 972 P.2d 1250 (1999)). It is settled that, “[t]he time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds: (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion[.]” In re Pers. Restraint of Gay, 142 Wn. App. 1001 (2007) (citing RCW 10.73.100(1)). Further, “[t]he petitioner must show that the evidence was discovered after trial and could not have been discovered before trial in the exercise of due diligence.” In re Copland, 176 Wn. App. 432, 450, 309 P.3d 626, 635 (2013)

The Washington Court of Appeals granted an untimely filed PRP upon finding that the petitioner relied on the erroneous advice of his attorney in deciding to plead guilty. In In re Pers. Restraint of Gay, 142 Wn. App. 1001 (2007), the Court of Appeals found that, “there is no dispute that [appellant] did not file his personal restraint petition within

one year of the conviction.” Id. In that case, after the incident, appellant informed his attorney that “he was willing to take whatever steps were necessary to participate in his family and community life.” Id.

Accordingly, the attorney advised that “if he pleaded guilty to assault in the third degree and misdemeanor harassment, the convictions would be vacated and removed from his record if he complied with the terms of his judgment and sentence and stayed out of trouble for five years.” Id. The court found that appellant’s counsel erroneously advised him and his “family that he could get his [assault] conviction vacated.” Id. The court concluded that, “[c]ontrary to his attorney's representation, the pertinent statutes specifically except third degree assault from those felonies that may be vacated.” Id. Appellant materially relied upon his attorney’s advice and entered the guilty plea. Id.

The court opined that: “[t]he fact that [appellant] waited the five years his counsel told him he should wait before seeking to vacate his convictions shows that he believed counsel's advice and followed it. [Appellant] also contacted an attorney soon after five years had elapsed in order to vacate the convictions.” Id. Further, “[he] did not discover that he could not vacate the assault conviction until he contacted an attorney. And the trial court specifically found that he acted diligently in pursuing this personal restraint petition.” Id. Moreover, the court found that,

“[appellant] did not know at the time he pled guilty that he could not have his convictions vacated later. This was due to no fault on his part; rather, due to his attorney's express advice” Id. “Under these facts, [the Court of Appeals] conclude[d] that this case falls within the statutory exception to the one year requirement.” Id.

The present case is analogous to In re Pers. Restraint of Gay. Here, Mr. Martin was advised by his counsel that if he went to trial, the prosecution could name his specific prior criminal offenses in front of the jury in order to prove his unlawful possession of a firearm charge. Contrary to his attorney's representation, it is settled that to convict a defendant of unlawful possession of a firearm, the prosecution has to prove a defendant's prior conviction is of a serious offense, however, the evidence of a prior conviction does not require “naming the particular offense.” Thus, instead of advising Mr. Martin that he could just stipulate that he had a prior felony, and that his actual felonies could not be told to the jury, his attorney misadvised him. Additionally, his attorney advised Mr. Martin and his family that if he went to trial, he would not get a fair trial because he is black and the jury would be middle class and white; therefore, he should accept the plea deal. *See Appendix, Exhibit “E,” Declaration of Conchata Gaston-Martin, ¶ 5, January 14, 2017; See Appendix, Exhibit “F,” Declaration of Nicholas Martin ¶ 5; See*

Appendix, Exhibit “G,” Declaration of Annette Green, ¶ 4, January 18, 2017; See Appendix, Exhibit “H,” Declaration of Camille Bea, ¶ 4, February 21, 2017. Moreover, as in In Pers. Restraint of Gay, for Mr. Martin his “family is the most important thing . . . my wife and my kids,” so he relied on his attorney’s advice to limit his time away from his family. *See Appendix, Exhibit “D,” Verbatim Trans. of Proceedings Plea and Sentence, 15:4-8.*

The fact that Mr. Martin plead guilty clearly shows that he acted consistently with counsel's advice and followed it, thus, could not have discovered before entering his guilty plea in the exercise of due diligence that the information given was not correct. Importantly, Mr. Martin did not know at the time he pled guilty that to convict someone for unlawful possession of a firearm, the prosecution is required to prove only that a defendant’s prior conviction of a serious offense and not “naming the particular offense.” Like, In re Pers. Restraint of Gay, here, the guilty plea was the result of no fault of Mr. Martin’s; rather, it was due to his attorney's express erroneous advice.

Moreover, Mr. Martin has exercised due diligence in pursuing his personal restraint petition as found in In Pers. Restraint of Gay. After the plea, Mr. Martin and his wife, Conchata, repeatedly tried to contact his counsel, Ms. Groves, to request that she file a notice of appeal. But the

counsel “did not return any phone calls or emails.” *See Appendix, Exhibit “E,” Declaration of Conchata Gaston-Martin*, ¶ 7. Subsequently, Conchata proactively appeared at Ms. Groves’ office to speak with her about filing a notice of appeal; however, “she never made herself available.” *See Appendix, Exhibit “E,” Declaration of Conchata Gaston-Martin*, ¶ 8.

Like In Pers. Restraint of Gay, it was only recently when Mr. Martin was able to consult with and hire his current personal restraint petition counsel that he realized he was misadvised by his attorney and that his plea was not knowingly, intelligently and voluntarily made. *See Appendix, Exhibit “F,” Declaration of Nicholas Martin*.

Therefore, Mr. Martin is entitled to the statutory exception to the one year because he discovered once he spoke to his current counsel that an error was made and this was based on no fault on his part; rather, due to his trial attorney's express advice. Upon discovering this information, Mr. Martin and his current counsel promptly filed this personal restraint petition.

B. Doctrine Of Equitable Tolling Applies To Filing An Untimely PRP.

i. Standard of review for equitable tolling

“Equitable tolling ‘permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.’” State v. Robinson, 104 Wn. App. 657, 667, 17 P.3d 653, 659 (2001) (quoting State v. Duvall, 86 Wash. App. 871, 874, 940 P.2d 671 (1997), review denied, 134 Wash.2d 1012, 954 P.2d 276 (1998)). A petitioner who seeks to benefit from the equitable tolling doctrine must demonstrate that the petition was untimely due to “bad faith, deception, or false assurances by the defendant, and the exercise of diligence by the plaintiff.” Id. at 667 (quoting Duvall, 86 Wash. App. at 875).

“Under RCW 10.73.090 the time limit for [PRP] of a criminal judgment and sentence is one year after the judgment becomes final.” In re Bonds, 165 Wn.2d 135, 139–40, 196 P.3d 672, 675 (2008). Further, “RCW 10.73.090 functions as a statute of limitation and not as a jurisdictional bar, and is thus subject to the doctrine of equitable tolling.” Id. at 140 (citing In re Pers. Restraint of Hoisington, 99 Wash. App. 423, 431, 993 P.2d 296 (2000)).

ii. Mr. Martin's plea was obtained in violation of due process

“A petitioner who pleaded guilty and who subsequently seeks relief from personal restraint, on the basis of newly discovered evidence, must show that his plea was coerced or obtained in violation of due process.” In re Reise, 146 Wn. App. 772, 785, 192 P.3d 949, 956 (2008). “[D]ue process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily.” In re Stockwell, 179 Wn.2d 588, 594–95, 316 P.3d 1007, 1011(2014).Further, “[a]n involuntary plea constitutes a manifest injustice.” Id. at 594–95 (citing State v. Walsh, 143 Wash.2d 1, 6, 17 P.3d 591 (2001)). “Under CrR 4.2(f), a court must allow a defendant to withdraw a guilty plea where withdrawal is necessary to correct a manifest injustice.” Id. at 594–95.

“There are four possible indicia of ‘manifest injustice:’(1) **the denial of effective counsel**, (2) the plea was not ratified by the defendant or one authorized by him to do so, (3) the plea was involuntary, or (4) the plea agreement was not kept by the prosecution.” State v. McCollum, 88 Wn. App. 977, 981,947 P.2d 1235, 1238 (1997) (emphasis added). Moreover, “[p]rejudice is established when there is a reasonable probability that, but for counsel's [unprofessional] errors, the result of the trial would have been different.” In re Khan, 184 Wn.2d 679, 688, 363

P.3d 577, 581 (2015) (quoting In re Pers. Restraint of Brett, 142 Wash.2d 868, 873, 16 P.3d 601(2001)).

It is settled that, “[e]ffective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial.” State v. A.N.J., 168 Wn.2d 91, 111–12, 225 P.3d 956, 966 (2010) (citing State v. S.M., 100 Wash.App. 401, 413, 996 P.2d 1111(2000)). “[A]t the very least, counsel must reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.” Id.

In the present case, Mr. Martin was advised by his counsel that if he went to trial his prior criminal record would come into evidence to prove his unlawful possession of a firearm charge. *See Appendix, Exhibit “F,” Declaration of Nicholas Martin.* Additionally, trial counsel advised Mr. Martin and his family that if he went to trial, he would not get a fair trial because he is black and the jury would be all white and middle class; therefore, he should accept the plea deal. *See Appendix, Exhibit “E,” Declaration of Conchata Gaston-Martin, ¶ 5; See Appendix, Exhibit “F,” Declaration of Nicholas Martin ¶ 5; See Appendix, Exhibit “G,” Declaration of Annette Green, ¶ 4; See Appendix, Exhibit “H,”*

Declaration of Camille Bea, ¶ 4. As a result, Mr. Martin acted consistently with his counsel's advice and pleaded guilty.

But contrary to his attorney's representation, it is settled that to charge for an unlawful possession of a firearm the evidence of prior conviction does not require "naming the particular offense," rather it requires the prosecution to only prove a defendant's prior conviction of a serious offense. This clearly shows that Mr. Martin's counsel was ineffective while assisting him in making an informed decision as to whether to plead guilty or to proceed to trial. Moreover, the facts establish that it was because of his counsel's erroneous advice that Mr. Martin plead guilty. In addition, Mr. Martin's counsel coerced him to accept the plea, by advising him definitively that he would not get a fair trial, because he is a black and the jury would be all white and middle class. Mr. Martin's counsel's advice should have been based on the law and evidence related to Mr. Martin's case, not her best guess as to the color of the jury panel's skin. Thus, the guilty plea was not made intelligently and voluntarily by Mr. Martin; rather, it was in violation of due process.

Moreover, at the time of entering his guilty plea, Mr. Martin did not know that to charge for an unlawful possession of a firearm, the prosecution requires to prove only a defendant's prior conviction of a serious offense and not "naming the particular offense," as advised by his

counsel. This shows that the guilty plea was the result of no fault on his own; rather, it was due to his attorney's express erroneous advice. Here, there is a reasonable probability that Mr. Martin would not have pleaded guilty, but for counsel's errors. Thus, prejudice is established due to ineffective assistance, establishing a manifest injustice requiring the court to allow Mr. Martin to withdraw his guilty plea by applying the doctrine of equitable tolling to the unique facts of this case.

iii. The guilty plea/judgment and sentence is invalid because the guilty plea was based on erroneous advice from the counsel.

“A challenge to a guilty plea may be raised for the first time in a personal restraint petition.” In re Toledo-Sotelo, 176 Wn.2d 759, 770, 297 P.3d 51, 56–57 (2013) (citing In re Pers. Restraint of Hews, 99 Wash.2d 80, 87, 660 P.2d 263 (1983)). “However, an allegedly involuntary plea is not an error of facial invalidity and cannot be raised on an untimely petition absent a RCW 10.73.100 exception.” Id. “[A]n untimely personal restraint petition may be heard if the judgment and sentence was not valid on its face, or if certain statutory conditions are met, RCW 10.73.100.” Id. at 764. “[D]ue process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily.” In re Stockwell, *supra*, 179 Wn.2d at 594–95 (quoting State v. Ross, 129 Wash.2d 279, 284, 916 P.2d 405 (1996)). “A petitioner who pleaded guilty and who subsequently

seeks relief from personal restraint, on the basis of newly discovered evidence, must show that his plea was coerced or obtained in violation of due process.” In re Reise, supra, 146 Wn. App. at 785.

In the present case, Mr. Martin was erroneously advised by his counsel that if he went to trial his prior criminal record would come into evidence before the jury to prove his unlawful possession of a firearm charge. Mr. Martin acted consistently with his counsel’s advice and plead guilty erroneously believing that he had no chance of prevailing at trial for that reason. He discovered recently though when conferring with his current counsel that the evidence of prior conviction does not require “naming the particular offense.” Further, Mr. Martin’s trial counsel coerced him to accept the plea, by advising that he would not get a fair trial, because he is a black and the jury would be all white and middle class. This was clearly unfounded advice and coercion. As such, Mr. Martin’s guilty plea can be challenged for facial invalidity for violation of due process.

Therefore, Mr. Martin’s guilty plea/judgment and sentence are invalid.

C. Mr. Martin Is Entitled To This Personal Restraint Petition Based On Ineffective Assistance Of Counsel.

i. Standard of review for ineffective assistance of counsel

“To prevail on a claim of ineffective assistance of counsel, a defendant must establish both ineffective representation and resulting prejudice.” State v. Goldberg, 123 Wn. App. 848, 851, 99 P.3d 924, 926 (2004). Further, “[t]o establish ineffective representation, the defendant must show that counsel's performance fell below an objective standard of reasonableness.” Id. at 852. “To establish prejudice, a defendant must show that but for counsel's performance, the result would have been different.” Id. “Competency of counsel is determined based upon the entire record below.” State v. McFarland, 127 Wn.2d 322, 334–35, 899 P.2d 1251, 1256–57 (1995), as amended (Sept. 13, 1995). Further, “[t]he remedy for a lawyer's ineffective assistance is to put the defendant in the position in which he or she would have been had counsel been effective.” State v. Hamilton, 179 Wn. App. 870, 879, 320 P.3d 142, 148 (2014) (citing State v. Crawford, 159 Wash.2d 86, 107–08, 147 P.3d 1288 (2006)).

ii. Mr. Martin received ineffective assistance of counsel while entering guilty plea.

It is settled that, “[t]hose charged with a crime have a constitutional right to effective assistance of counsel.” In re Khan, *supra*,

184 Wn.2d at 688 (citing In re Pers. Restraint of Brett, 142 Wash.2d at 873). “To establish deficient performance, the defendant must overcome ‘a strong presumption that counsel’s conduct’ was reasonable. Conduct is evaluated by its reasonableness at the time it was undertaken.” In re Yates, 177 Wn.2d 1, 36, 296 P.3d 872, 889 (2013) (citing Strickland v. Washington, 466 U.S. 668 (1984) (internal citation omitted). Additionally, “[an] attorney’s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance.” State v. Estes, 193 Wn. App. 479, 489, 372 P.3d 163, 168–69 (2016), review granted, 186 Wn.2d 1016, 380 P.3d 522 (2016).

Further, “[a] criminal defendant has a right to effective assistance of counsel at every critical stage of a criminal proceeding.” State v. Shelmidine, 166 Wn. App. 107, 111–12, 269 P.3d 362, 364–65 (2012) (citing U.S. Const. amend. VI; Wash. Const. art. I, § 22). “In the context of a guilty plea, the defendant must show that counsel failed to substantially assist him in deciding whether to plead guilty and that but for counsel’s failure to properly advise him, he would not have pleaded guilty.” In re Cross, 180 Wn.2d 664, 705–06, 327 P.3d 660, 685 (2014) (citing State v. McCollum, 88 Wash.App. 977, 982, 947 P.2d 1235 (1997)).

a. Erroneous advice regarding prior criminal record

Under the possession statute, “[t]o prove the charge of unlawful possession of a firearm, the State had to establish that [the defendant] previously had been convicted of a serious offense.” State v. Johnson, 90 Wn. App. 54, 62, 950 P.2d 981, 985–86 (1998) (citing RCW 9.41.040(1)). However, “[the]recognition that the prosecution with its burden of persuasion needs evidentiary depth to tell a continuous story has, [] virtually no application when the point at issue is a defendant’s legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him.” Id. at 62-63 (quoting Old Chief v. United States, 519 U.S. 172, 198 (1997)).

Further, “[t]he choice of evidence for a prior conviction element is not between eventful narrative and abstract proposition, but between propositions of slightly varying abstraction, either a record saying that conviction for some crime occurred at a certain time or a statement admitting the same thing without naming the particular offense....” Id. at 63(emphasis added) (quoting Old Chief, 519 U.S. at 190).

In the present case, Mr. Martin was charged for unlawful possession of a firearm. It is settled that to charge for an unlawful possession of a firearm the prosecution has to prove a defendant’s prior

conviction of a serious offense; however, the evidence of prior conviction does not require “naming the particular offense.” But, Mr. Martin was advised by his counsel that if he went to trial, his specific prior criminal record would come into evidence to prove his unlawful possession of a firearm charge. Here, instead of advising Mr. Martin that he could just stipulate that he had a prior felony, and that his actual felony could not be told to the jury, his attorney misadvised him. Mr. Martin materially relied upon his counsel’s advice and entered the guilty plea.

The underlying facts clearly show that his counsel failed to substantially assist Mr. Martin in deciding whether to plead guilty and that but for counsel's failure to properly advise him, he would not have plead guilty. Moreover, counsel’s ignorance of a point of law, here, the State’s burden to prove the charge of unlawful possession of a firearm, was an issue fundamental to Mr. Martin’s case. This combined with counsel’s failure to perform basic research on that point is a quintessential example of unreasonable performance. Therefore, Mr. Martin’s counsel was ineffective and Mr. Martin was prejudiced as a result by entering a plea that was not knowingly, intelligently, and voluntarily made.

b. Erroneous advice regarding jury trial

Here, Mr. Martin’s counsel also advised him and his family that if he went to trial, he would not get a fair trial because he is black and the

jury would be all white and middle class; therefore, he should accept the plea deal. *See Appendix, Exhibit “E,” Declaration of Conchata Gaston-Martin, ¶ 5; See Appendix, Exhibit “F,” Declaration of Nicholas Martin ¶ 5; See Appendix, Exhibit “G,” Declaration of Annette Green, ¶ 4; See Appendix, Exhibit “H,” Declaration of Camille Bea, ¶ 4.* This was based on nothing other than counsel’s assumption. Mr. Martin, however, relied on counsel’s advice and plead guilty with the belief instilled by his attorney that he would not receive a fair trial. This clearly shows that Mr. Martin’s counsel coerced him to accept the plea, and thus, his guilty plea was not made intelligently and voluntarily. Rather it was in violation of due process. These facts establish another reason Mr. Martin received ineffective assistance of counsel.

VI. CONCLUSION

For the foregoing reasons, this Court should grant the petition and at a minimum afford Mr. Martin an evidentiary hearing.

Respectfully submitted this 30th day of June, 2017.

LAW OFFICE OF COREY EVAN PARKER

Corey Evan Parker

Corey Evan Parker, WSBA #40006
Attorney for Petitioner, Nicholas Nathaniel Martin

OATH

I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Respectfully submitted this 30th day of June, 2017.

LAW OFFICE OF COREY EVAN PARKER

By Corey Evan Parker
Corey Evan Parker, WSBA #40006
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on June 30, 2017, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

Attorney for Respondent:

Pierce County Prosecuting Attorney's
Office- Appellate Unit
pcpatcecf@co.pierce.wa.us

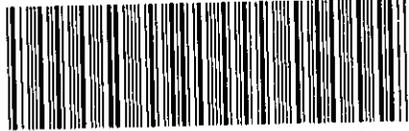
- By Email
- By Fax
- By Fed Express
- By Hand Delivery
- By Messenger

Corey Evan Parker

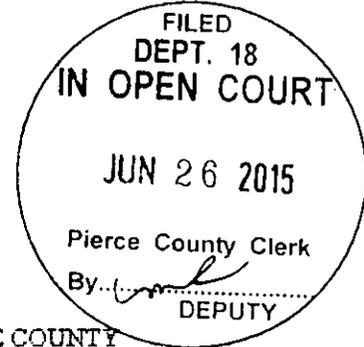
Corey Evan Parker
WSBA #40006
1275 12th Ave. NW Suite 1B
Issaquah, WA 98027
(425) 221-2195

APPENDIX

Exhibit “A”



14-1-03264-3 44906100 JDSWCD 06-29-15



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 14-1-03264-3

vs.

NICHOLAS NATHANIEL MARTIN,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

- [] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- [✓] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

[] 3 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: JUNE 26, 2015

By direction of the Honorable

[Signature]

JUDGE
KEVIN STOCK

CLERK

By: *[Signature]*

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUN 29 2015 *[Signature]* Deputy

STATE OF WASHINGTON

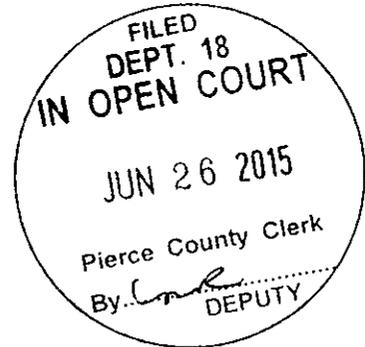
ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office. IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____.

KEVIN STOCK, Clerk
By: _____ Deputy

PC



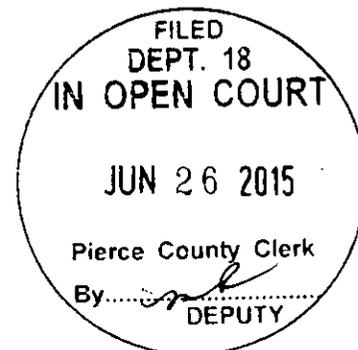
6/29/2015 7:39:11 PM

FILE

FILE

FILE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-03264-3

vs.

JUDGMENT AND SENTENCE (JS)

NICHOLAS NATHANIEL MARTIN

Defendant.

- Prison
- RCW 9.94A.712/9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: 15620884
 DOB: 02/27/1970

I. HEARING

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 JUNE 26, 2015 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE SECOND DEGREE (E28)	9A.36.021(1)(c) 9.41.010 9.94A.530 9.94A.533	F	08/15/14	142271024 PCSD
II	ASSAULT IN THE SECOND DEGREE/DV (E28)	9A.36.021(1)(c) 9.41.010 9.94A.530 9.94A.533 10.99.020	F	08/15/14	142271024 PCSD

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 1 of 12

15-9-05847-0

III	ASSAULT IN THE SECOND DEGREE (E28)	9A.36.021(1)(c) 9.41.010 9.94A.530 9.94A.533	F	08/15/14	142271024 PCSD
IV	FELONY HARASSMENT (KK32A)	9A.46.020(2)(b) 9A.46.020(1)(a)(i), 2(b)		08/15/14	142271024 PCSD
V	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)	9.41.010 9.41.040(2)(a)		08/15/14	142271024 PCSD

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

[X] A special verdict/finding for use of firearm was returned on Count(s) I,II, III RCW 9.94A.602, 9.94A.533.

[X] The State has pleaded and proved that the crime charged in Count(s) II involve(s) domestic violence.

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[] 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	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	DRIVING UNDER SUSPENSION	07-15-1998	NORTH CHARLESTON, SC	05-31-1998	A	MISD
2	OPEN CONTAINER	07-06-1998	WALTERBORO, SC	06-07-1998	A	MISD
3	OBST LAW ENF OFCR		FEDERAL WAY MUNICIPAL COURT	09-04-2000	A	MISD
4	PISTOL - LOADED IN VEHICLE		FEDERAL WAY MUNICIPAL COURT	10-20-2006	A	MISD
5	USE/DELIVER DRUG PARA		FEDERAL WAY MUNICIPAL COURT	10-20-2006	A	MISD
6	DWLS 3		MILTON MUNICIPAL COURT	09-24-2012	A	MISD
7	DUI		DISTRICT COURT 1 (TACOMA)	11-22-2012	A	MISD
8	ROBBERY 1	02-26-1993	JEFFERSON CO, AL	03-12-1992	A	V
9	UPOF 2	12-27-2007	SUPERIOR CT - PIERCE CTY	04-04-2007	A	NV
10	DANG DRUGS - POSS/RECPT CONT	02-26-1993	JEFFERSON CO, AL	03-12-1992	A	NV
11	14-1-03264-3 ASSAULT 2 ND DV	OTHER CURRENT	PIERCE, WA	08/15/14	A	V
12	14-1-03264-3 ASSAULT 2 ND	OTHER CURRENT	PIERCE, WA	08/15/14	A	V
13	14-1-03264-3 FELONY HARASS	OTHER CURRENT	PIERCE, WA	08/15/14	A	NV

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 2 of 12

14	14-1-03264-3 UPOF 2 ND	OTHER CURRENT	PIERCE, WA	08/15/14	A	NV
----	--------------------------------------	------------------	------------	----------	---	----

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9	IV	63 - 84 MONTHS		63 - 84 MONTHS	10 YRS
II	9	IV	63 - 84 MONTHS		63 - 84 MONTHS	10 YRS
III	9	IV	63 - 84 MONTHS		63 - 84 MONTHS	10 YRS
IV	7	III	33 - 43 MONTHS		33 - 43 MONTHS	5 YRS
V	7	III	33 - 43 MONTHS		33 - 43 MONTHS	5 YRS

2.4 **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence:

within 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.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

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

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9A.10.010.

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.
- 3.2 [] The court DISMISSES Counts _____ [] The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN	\$ _____	Restitution to: _____
	\$ _____	Restitution to: _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office).	
FCV	\$ 500.00	Crime Victim assessment
DNA	\$ 100.00	DNA Database Fee
PUB	\$ _____	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ 200.00	Criminal Filing Fee
FCM	\$ _____	Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 800.00 TOTAL

- The above total does not include all restitution 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 _____
- [] RESTITUTION. Order Attached

- [] 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, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ 30.00 per month commencing 90 DAYS. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

in fact shall be waived if no missed payments

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)

- [] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST 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

COSTS ON APPEAL. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.1b **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 \$ _____.

4.2 **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.3 **NO CONTACT** *No hostile contact w/ Conchata Gaston Martin*
The defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

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

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b **BOND IS HEREBY EXONERATED**

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>Concurrent</u>	<u>84</u> months on Count <u>I</u>	<u>43</u> months on Count <u>IV</u>
	<u>84</u> months on Count <u>II</u>	<u>43</u> months on Count <u>V</u>
	<u>84</u> months on Count <u>III</u>	_____ months on Count _____

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>Consecutive</u>	<u>36</u> months on Count No <u>I</u>	_____ months on Count No _____
	<u>36</u> months on Count No <u>II</u>	_____ months on Count No _____
	<u>36</u> months on Count No <u>III</u>	_____ months on Count No _____

~~I-III~~

Sentence enhancements in Counts _____ shall run
 concurrent consecutive to each other.
 Sentence enhancements in Counts ~~I-III~~ shall be served
 flat time subject to earned good time credit

Actual number of months of total confinement ordered is: 192 MONTHS

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

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

⊛ Sentence on Counts run concurrent

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(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. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: Per DOC calculation

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701) * Δ already sentenced to stat. max

The defendant shall be on community custody for

Count(s) _____ 36 months for Serious Violent 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)

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

(B) While on community placement or 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 in 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) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[] consume no alcohol.

[] have no contact with: _____

[] remain [] within [] outside of a specified geographical boundary, to wit: _____

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[] participate in the following crime-related treatment or counseling services: _____

[] undergo an evaluation for treatment for [] domestic violence [] substance abuse

[] mental health [] anger management and fully comply with all recommended treatment.

[] comply with the following crime-related prohibitions: _____

[] Other conditions: _____

[] For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an

emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than 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.

PROVIDED: That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 [] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 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: _____

V. NOTICES AND SIGNATURES

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

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant 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. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her 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 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 may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 RESTITUTION HEARING.
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 14-1-03264-3

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

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

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

CAROL FREDERICK

Court Reporter

6.29.2015 7:00:13 PM

1
2 5.10 OTHER: _____
3 _____
4 _____

5 DONE in Open Court and in the presence of the defendant this date: JUNE 26, 2015

6 JUDGE

7 Print name

[Signature]

Stanley J. Rumbaugh

[Signature]

8 Deputy Prosecuting Attorney

9 Print name:

10 WSB #

40013

[Signature]

11 Attorney for Defendant

12 Print name:

13 WSB #

Laura M Groves
36809

[Signature]

14 Defendant

15 Print name: Nicholas Nathaniel Martin

16 **Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

17 My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

18 My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

19 Defendant's signature:

[Signature]

20
21
22
23
24
25
26
27
28
FILED
DEPT. 18
IN OPEN COURT

JUN 26 2015

Pierce County Clerk
By... *[Signature]* ...
DEPUTY

VOTING RIGHTS STATEMENT

RCW 10.64.140: After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520 after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by a) A certificate of discharge issued by the sentencing court, RCW 9.9A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is either provisionally or fully restored is a class C felony, RCW 92A.84.660.

I acknowledge receipt and understanding of this information:

Defendant's signature: Nicholas W. Martin 6/26/15

6/29/2015 73980134

IDENTIFICATION OF DEFENDANT

SID No. 15620884
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/27/1970

FBI No. 820818NA2

Local ID No. 20070952016

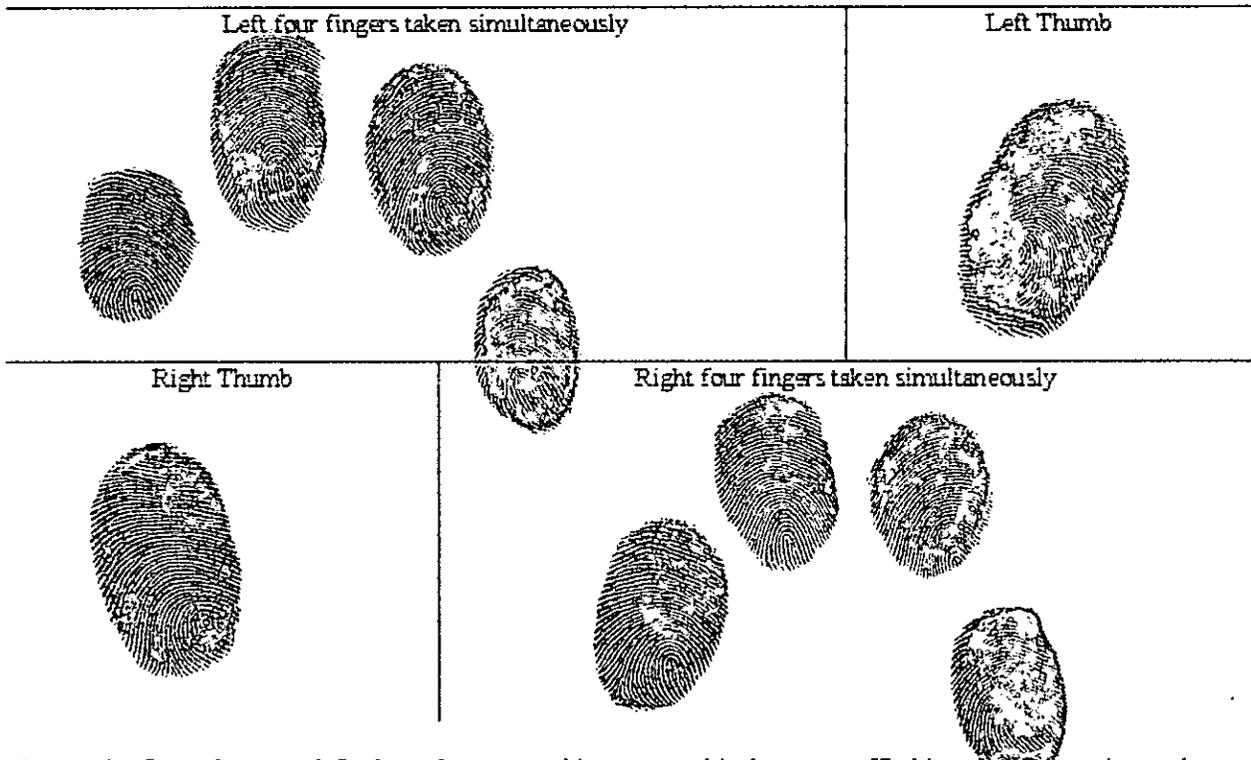
PCN No. 541251952

Other

Alias name, SSN, DOB: 249-51-5864 2/27/70

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

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, [Signature] Dated: 6/26/15

DEFENDANT'S SIGNATURE: Nicholas M. M...

DEFENDANT'S ADDRESS: 7525 9th AVE. E D+301
TACOMA, WA. 98404

8/20/2015 11:11 73080135

Exhibit “B”

August 20 2014 10:17 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-03264-3

vs.

NICHOLAS NATHANIEL MARTIN,

INFORMATION

Defendant.

DOB: 2/27/1970
PCN#: 541251952

SEX : MALE
SID#: 15620884

RACE: BLACK
DOL#: WA MARTINN309C7

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day of August, 2014, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault Pierce County Sheriff's Deputy Andrew Guerrero with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: .45 caliber Ruger pistol, that being a firearm as defined in RCW 9.41.010, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530 and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of ASSAULT IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, INFORMATION- 1

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate
2 proof of one charge from proof of the others, committed as follows:

3 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
4 of August, 2014, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally
5 assault Conchata Gaston Martin with a firearm or deadly weapon or by any force or means likely to
6 produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), a domestic violence incident as
7 defined in RCW 10.99.020, and in the commission thereof the defendant, or an accomplice, was armed
8 with a firearm, to-wit: .45 caliber Ruger pistol, that being a firearm as defined in RCW 9.41.010, and
9 invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as
10 provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

11 COUNT III

12 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
13 authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of
14 ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based
15 on the same conduct or on a series of acts connected together or constituting parts of a single scheme or
16 plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to
17 separate proof of one charge from proof of the others, committed as follows:

18 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
19 of August, 2014, did unlawfully and feloniously, under circumstances not amounting to assault in the first
20 degree, intentionally assault Andrew Wanger-bindara with a deadly weapon, to-wit: .45 caliber Ruger
21 pistol, contrary to RCW 9A.36.021(1)(c), that being a firearm as defined in RCW 9.41.010, and invoking
22 the provisions of RCW 9.94A.530 and adding additional time to the presumptive sentence as provided in
23 RCW 9.94A.533, and against the peace and dignity of the State of Washington.

24 COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of
FELONY HARASSMENT, a crime of the same or similar character, and/or a crime based on the same
conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
so closely connected in respect to time, place and occasion that it would be difficult to separate proof of
one charge from proof of the others, committed as follows:

That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
of August, 2014, without lawful authority, did unlawfully, knowingly threaten Andrew Wanger-bindara
to cause bodily injury, immediately or in the future, to that person or to any other person, and by words or
INFORMATION- 2

1 conduct place the person threatened in reasonable fear that the threat would be carried out, and that
 2 further, the threat was a threat to kill the person threatened or any other person, thereby invoking the
 3 provisions of RCW 9A.46.020(2)(b) and increasing the classification of the crime to a felony, contrary to
 4 RCW 9A.46.020(1)(a)(i), 2(b), that being a firearm as defined in RCW 9.41.010, and invoking the
 5 provisions of RCW 9.94A.530 and adding additional time to the presumptive sentence as provided in
 6 RCW 9.94A.533, and against the peace and dignity of the State of Washington.

6 COUNT V

7 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
 8 authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of
 9 UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, a crime of the same or
 10 similar character, and/or a crime based on the same conduct or on a series of acts connected together or
 11 constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and
 12 occasion that it would be difficult to separate proof of one charge from proof of the others, committed as
 13 follows:

14 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
 15 of August, 2014, did unlawfully, feloniously, and knowingly own, have in his possession, or under his
 16 control a firearm, having been previously convicted in the State of Washington or elsewhere of a felony
 17 that is not a serious offense as defined in RCW 9.41.010, contrary to RCW 9.41.040(2)(a), and against the
 18 peace and dignity of the State of Washington.

19 DATED this 20th day of August, 2014.

20 PIERCE COUNTY SHERIFF
 21 WA02700

22 MARK LINDQUIST
 23 Pierce County Prosecuting Attorney

24 aw

By: /s/ ANGELICA WILLIAMS
 ANGELICA WILLIAMS
 Deputy Prosecuting Attorney
 WSB#: 36673

Exhibit “C”

August 20 2014 10:17 AM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-03264-3

vs.

NICHOLAS NATHANIEL MARTIN,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

Defendant.

ANGELICA WILLIAMS, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 142271024;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 15th day of August, 2014, the defendant, NICHOLAS NATHANIEL MARTIN, did commit the crimes of Assault in the First Degree (two counts), Assault in the Second Degree, Felony Harassment, and Unlawful Possession of a Firearm in the Second Degree.

On August 15, 2014, law enforcement was dispatched to a person with a weapon call. When Deputy Andrew Guerrero arrived at the apartment complex an individual, later identified as the defendant, fired shots towards the deputy's vehicle and the vehicle of the defendant's wife Conchata Gaston-Martin.

Detective Sgt. Chris Adamson interviewed Conchata who stated that she got into a verbal argument with the defendant because he was driving drunk. The defendant tried to leave in their Cadillac but she got into her Tahoe and cut him off. The defendant exited the Cadillac and started pounding on the window of her Tahoe. The defendant then got into a verbal altercation with a resident of the apartment complex, later identified as Andrew Wanger. Conchata grabbed the keys to the Cadillac from the defendant's hand and left in the Tahoe. She returned with her son, Richard Young, to retrieve the Cadillac from its location. Young left in the Tahoe and as Conchata was exiting the parking lot, Deputy Guerrero pulled in. Conchata denied hearing any gun shots. Conchata said she owns a .45 caliber Ruger that she keeps in a safe.

Detective Sgt. Adamson also interviewed Richard Young. Young confirmed that his mother asked him to help her retrieve the Cadillac because the defendant was driving drunk. Young confirmed that he heard two gunshots but did not associate them with the defendant. Young stated that he knew the defendant sometimes carried a .45 Ruger pistol.

Detective Sgt. Adamson then interviewed Andrew Wanger. Wanger stated that he was at the apartment complex visiting his children and girlfriend. He said he saw the Tahoe blocking the path of the Cadillac and observed the defendant exit the Cadillac and start punching the window of the Tahoe. Wanger said the defendant punched the window at least 10 times while yelling "Bitch you

DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

1 better let me in.” Wanger told his girlfriend to call 911. Wanger informed the defendant the police
2 were on the way. The defendant turned his attention to Wanger and told him to get back inside the
3 house, that he was going to kill him, and that he was going to shoot him. The defendant continued to
4 advance and Wanger said he froze in fear but that he also did not want to retreat because he did not
5 want the defendant to follow him and harm his family. Wanger said the defendant came within
6 several feet and then pulled a pistol from his belt, pointed it at Wanger’s face and said he was “going
7 to blow his fucking brains out and he was going to put his brains on the wall and he should have
8 minded his own business.” Wanger stated he believed he was going to die and was able to flee into
9 his apartment. Wanger continued watching the defendant. He stated he saw Conchata get into the
10 Cadillac and that the defendant began moving toward the Cadillac making threats. He watched both
11 the Cadillac and the Tahoe drive away and a patrol vehicle, later identified as Deputy Guerrero’s
12 vehicle, enter the parking lot. Wanger saw the defendant draw the pistol and fire two rounds at the
13 vehicles. Wanger could not confirm which vehicle the defendant was shooting at because they were
14 so close together. Another witness also observed the defendant take aim and fire at the vehicles.

8 Deputy Guerrero reported that he responded to the call and as he entered the apartment
9 complex with his emergency lights activated he saw both the Tahoe and the Cadillac approaching.
10 Deputy Guerrero stated that he saw the defendant about 100 feet away with a pistol in his hand.
11 Deputy Guerrero saw the defendant raise the pistol toward him and fire two rounds. Deputy
12 Guerrero immediately ducked below his dashboard and accelerated the patrol vehicle to within ten
13 feet of the defendant. Deputy Guerrero drew his weapon and ordered the defendant to put his hands
14 up. The defendant responded “fuck you” and said “you better kill me.” Tacoma Police Officer Paul
15 Jagodinski arrived on the scene to assist.

13 Deputy Guerrero and Officer Jagodinski approached the defendant to detain him. Although
14 the gun was already on the ground, the defendant ignored the orders from law enforcement to get on
15 the ground. It appeared to Officer Jagodinski that the defendant was leaning towards his gun so the
16 officers grabbed the defendant and pulled him to the ground. Even while on the ground, the
17 defendant did not voluntarily put his arms behind his back. The defendant admitted the gun on the
18 ground was his gun. When the defendant was placed inside of Deputy Guerrero’s vehicle, the
19 defendant began to kick the passenger side window. Law enforcement removed the defendant from
20 the vehicle and hobbled him with a cord. The defendant then began spitting inside of the patrol
21 vehicle and yelling derogatory statements at the officers.

17 Law enforcement confirmed that the defendant has a felony conviction for unlawful
18 possession of a firearm.

19 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
20 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

21 DATED: August 20, 2014

22 PLACE: TACOMA, WA

23 /s/ ANGELICA WILLIAMS
ANGELICA WILLIAMS, WSB# 36673

24 DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171
Main Office (253) 798-7400

Exhibit “D”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

STATE OF WASHINGTON,)
)
 Plaintiff,) Superior Court
) No. 14-1-03264-3
 vs.)
)
 NICHOLAS NATHANIEL MARTIN,)
)
 Defendant.)

**VERBATIM TRANSCRIPT OF PROCEEDINGS
PLEA & SENTENCE**

**JUNE 26, 2015
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE STANLEY J. RUMBAUGH**

Carol Frederick, CCR, 2406
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 18
Tacoma, Washington 98402

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFF:

**ROBERT YU
Deputy Prosecuting Attorney**

FOR THE DEFENDANT:

**LAURA M. GROVES
Attorney at Law**

1 BE IT REMEMBERED that on the 26th of June, 2015, the
2 following proceedings were held before the **HONORABLE**
3 **STANLEY J. RUMBAUGH**, Judge of the Superior Court in and for
4 the County of Pierce, State of Washington, sitting in
5 Department 18.

6 WHEREUPON the following proceedings were had, to wit:

7
8 * * * *

9
10 MR. YU: The parties are ready on the Nicholas Martin
11 matter, Your Honor.

12 THE COURT: State vs. Martin, 14-1-03264-3. This comes
13 on for Plea. And I have been handed an Amended
14 Information.

15 Go ahead, Mr. Yu.

16 MR. YU: Thank you, Your Honor.

17 That's correct. This is on for Plea. I have handed
18 forward an Amended Information charging Mr. Martin in
19 Counts I through III with Assault in the Second Degree all
20 with a firearm enhancement. Count IV is Felony Harassment.
21 Count V is Unlawful Possession of a Firearm in the Second
22 Degree.

23 I'm asking the Court to accept the Amended Information
24 contingent on Mr. Martin's change of plea to those counts.
25 Thank you.

1 THE COURT: Ms. Groves.

2 MS. GROVES: Good afternoon, Your Honor. For the
3 record, Laura Groves representing Nicholas Martin who is
4 here today to my right.

5 I have gone over the Amended Information with
6 Mr. Martin as well as the Statement of Defendant on Plea of
7 Guilty. I have gone over the statement paragraph by
8 paragraph with Mr. Martin. He has indicated to me that he
9 understands fully the rights that he is waiving and the
10 recommendations made to the Court and that Your Honor
11 doesn't have to follow those recommendations.

12 He has indicated to me that he is making this statement
13 freely and voluntarily and that he understands. And I
14 believe that he does understand what he has signed. Thank
15 you.

16 THE COURT: Thank you, Ms. Groves.

17 The Court has reviewed the Declaration for
18 Determination of Probable Cause along with the original and
19 the Amended Information, the prosecutor's statement on the
20 Amended Information. The Court has reviewed the Statement
21 of Defendant on Plea of Guilty.

22 Paragraph 11 asks the Defendant to state in his own
23 words what he did to make him guilty of the crime. And
24 Mr. Martin refers back to the Probable Cause Declaration.

25 With that review, the Court will find that there are

1 facts alleged which, if proven, would support the
2 allegations in Counts I, II, III, IV and V of the Amended
3 Information. And on that basis, the State's motion to
4 amend will be granted subject to plea.

5 Good afternoon, Mr. Martin.

6 MR. MARTIN: Good afternoon.

7 THE COURT: Mr. Martin, you realize that you are here
8 to plead guilty to what is known as a strike offense?

9 MR. MARTIN: Yes.

10 THE COURT: You realize if you accumulate three strike
11 offenses in your lifetime you will be sentenced to a period
12 of incarceration with a minimum term of life of
13 imprisonment without the possibility of parole.

14 And at least the way the law currently is, there is
15 nothing that I or any other judge can do that about that.
16 Do you understand that?

17 MR. MARTIN: Yes.

18 THE COURT: Do you understand that when you plead
19 guilty to a felony crime, you are giving up some rights
20 that extend just beyond the time that you get and the fines
21 that you are imposed with?

22 MR. MARTIN: Yes.

23 THE COURT: You lose your right to vote or possess
24 firearms, to live in a home or be in a car where firearms
25 or ammunition are present. Do you understand that?

1 MR. MARTIN: Yes.

2 THE COURT: Do you understand that you are going to
3 lose your right to vote and your right to serve on a jury?

4 MR. MARTIN: Yes.

5 THE COURT: Those rights will be restored to you after
6 you are released from prison and complete any period of
7 community custody. However, you do have to reregister.

8 Do you understand that?

9 MR. MARTIN: Yes.

10 THE COURT: If you are on some sort of public
11 assistance, you will lose your right to public assistance
12 for any period of time you are incarcerated. That may be
13 restored to you, but you will probably have to reapply.

14 Do you understand that?

15 MR. MARTIN: Yes.

16 THE COURT: Ms. Groves told me that she went over your
17 Statement on Plea of Guilty with you in this case. Is that
18 correct?

19 MR. MARTIN: Yes, sir.

20 THE COURT: Paragraph by paragraph?

21 MR. MARTIN: Yes, sir.

22 THE COURT: And did Ms. Groves go over it with you line
23 by line?

24 MR. MARTIN: Yes, sir.

25 THE COURT: Was Ms. Groves able to answer to your

1 satisfaction questions that you had when you went over the
2 statement with her?

3 MR. MARTIN: Yes, sir.

4 THE COURT: Do you need any more time to speak with
5 Ms. Groves before we go ahead with your plea today?

6 MR. MARTIN: Absolutely not.

7 THE COURT: All right.

8 Sir, you understand that you have the right to remain
9 silent at this hearing. If you chose to go to trial on the
10 charges that the State brought against you, you would have
11 the right to remain silent at trial.

12 Your silence would not in any way be interpreted as
13 evidence of guilt. But to perform a plea, you have to
14 waive your right to remain silent.

15 Do you understand you're doing that?

16 MR. MARTIN: Yes.

17 THE COURT: Do you understand that you have the right
18 to be tried by a jury right here in Pierce County on the
19 charges that the State has brought against you? However,
20 when you plead guilty to the crime, you don't receive a
21 jury trial. You waive that right.

22 Do you understand that?

23 MR. MARTIN: Yes.

24 THE COURT: You are presumed to be innocent of the
25 crimes that you have been charged with, Mr. Martin. That

1 means that you could require the State, if you went to
2 trial, to prove every element of each crime that you are
3 charged with having committed and to prove each element
4 beyond a reasonable doubt or you wouldn't be found guilty
5 of that offense.

6 Do you understand you're giving that right up?

7 MR. MARTIN: Yes.

8 THE COURT: Do you understand that if you chose to go
9 to trial on the charges the State has brought against you,
10 your lawyer would have the right to cross-examine, you
11 know, to ask questions of the witnesses that the State
12 brought in to testify against you?

13 MR. MARTIN: Yes.

14 THE COURT: And you would have the right to bring in
15 witnesses who might provide favorable testimony for you and
16 the Court make them come, even if they didn't want to.

17 Do you understand you're giving that right up?

18 MR. MARTIN: Yes.

19 THE COURT: Do you understand that when you plead
20 guilty to a crime, you are giving up the right to appeal,
21 to have another Court review some of the decisions that I
22 might make, or if you chose to go to trial, some of the
23 decisions that the trial judge might make? But when you
24 plead guilty, you give those rights up as well?

25 Do you understand that?

1 MR. MARTIN: Yes.

2 THE COURT: There may be a recommendation from the
3 State or from your lawyer or from both of them to the Court
4 for your sentence. You understand that I'm not obliged to
5 follow any kind of recommendation. I'm going to do
6 whatever I think the law requires.

7 Do you understand that?

8 MR. MARTIN: Yes.

9 THE COURT: Has anybody promised you anything in return
10 for your plea today?

11 MR. MARTIN: No.

12 THE COURT: Have you been threatened? Has anybody
13 tried to coerce you, manipulate you, somehow twist your arm
14 into making this plea?

15 MR. MARTIN: No.

16 THE COURT: Mr. Martin, as to Count I in the Amended
17 Information charging you with the crime of Assault in the
18 Second Degree, Count II in the Amended Information charging
19 you with the crime of Assault in the Second Degree, Count
20 III in the Amended Information charging you with the crime
21 of Assault in the Second Degree, Count IV in the Amended
22 Information charging you with the crime of Felony
23 Harassment, and Count V in the Information charging you
24 with the crime of Unlawful Possession of a Firearm in the
25 Second Degree, what is your plea?

1 MR. MARTIN: Guilty.

2 THE COURT: The Court will find that Mr. Martin's plea
3 of guilty to Counts I, II, III, IV and V as set forth in
4 the Amended Information is a voluntary plea. This plea has
5 been made with a full understanding of the rights that have
6 been given up with the entry of such a plea and with a full
7 explanation by both the Court and Counsel of what those
8 rights were.

9 On that basis, a plea of guilty to Counts I, II, III,
10 IV and V as set forth in the Amended Information will be
11 entered for Mr. Martin.

12 We'll go ahead with sentencing.

13 MR. YU: Thank you, Your Honor.

14 This is an agreed recommendation. On Count I, the
15 agreed recommendation is 84 months at the high end of the
16 range with a 36-month firearm enhancement.

17 Count II is 84 months with a 36-month firearm
18 enhancement to run consecutive.

19 THE COURT: Consecutive?

20 MR. YU: Consecutive, Your Honor.

21 Count III is 84 months with another 36-month firearm
22 enhancement to also be run consecutive.

23 Count IV is 43 months concurrent.

24 Count V is also 43 months concurrent.

25 And I should clarify the consecutive. The parts that

1 are running consecutive are just the 36-month firearm
2 enhancements on Counts I through III, so his total sentence
3 is 192 months.

4 THE COURT: It is 84 months on the underlying offense,
5 and three times 36.

6 MR. YU: Yes, Your Honor.

7 That he pay \$500 in the Crime Victim Penalty
8 Assessment, \$200 in court costs, a \$100 DNA fee. The State
9 is requesting a no-contact order with one of the victims.
10 And I believe that one victim was Andrew Wanger-Bindara.

11 The State is requesting a no hostile contact order with
12 his wife Conchata Martin -- and I can explain that in a
13 moment -- and that he maintain law-abiding behavior.

14 This agreement came after a lot of back and forth
15 between myself and Ms. Groves. This was an incident where
16 Mr. Martin was intoxicated. He was in an altercation with
17 his wife in a parking lot. He had a firearm which he is
18 not supposed to possess.

19 An individual came out of one of the apartments hearing
20 the commotion. He was with his two children, his two young
21 children, to bring them on a walk at which time he was
22 confronted by Mr. Martin and was threatened with a firearm.
23 This was Andrew. He genuinely thought he was going to get
24 shot and die that day.

25 He retreats to an apartment. The police are called.

1 They're on their way there. At some point as the police
2 are about to enter the parking lot and Mr. Martin's wife is
3 leaving, he points the firearm and shoots approximately
4 three shots at the vehicles.

5 It's not clear who he was aiming at, whether it was the
6 officer or his wife. Those shots were witnessed by several
7 individuals completely unrelated to law enforcement or
8 Mr. Martin.

9 If Mr. Martin was convicted at trial, his sentence
10 would have been some 36 years. It was around there. So
11 really the question was: What is an appropriate sentence?

12 It seems like Mr. Martin had no intention of taking
13 this to trial. I obtained jail reportings of him after he
14 was booked. He has been remorseful since this happened.
15 So there is an agreed upon sentence of 16 years. I think
16 that is appropriate, given what happened.

17 The reason why we're not asking for a no-contact order
18 with the wife but just no hostile contact is that would
19 have lasted ten years. He is going to be in prison beyond
20 the life of that order anyway. So I have agreed to no
21 hostile contact so that she can visit him when he is in
22 prison.

23 She is here. And I believe her son is here too. I
24 don't know if they want to speak or not.

25 THE COURT: Any statements from other victims?

1 MR. YU: No. And that is the State's recommendation.
2 Thank you.

3 THE COURT: Ms. Groves.

4 MS. GROVES: Thank you, Your Honor.

5 Nicholas Martin is a family man. He has been a
6 faithful husband to Conchata Martin for 14 and a half
7 years. He has helped raise her son from a previous
8 relationship, Tyrese, who is here today, his stepson. And
9 he has two other children with Mrs. Martin. From
10 everything that I gather he is a wonderful father, and this
11 incident is well out of character for him.

12 He does have previous criminal history, but the last
13 crime that he committed was seven years ago. And
14 Mr. Martin has struggled with many things in his life,
15 including poverty, discrimination, serious medical threats
16 to his health, and drug and alcohol addiction.

17 He has never had any successful treatment for his drug
18 and alcohol addiction. And this incident stemmed out of a
19 day of drinking. And he made choices that I do not believe
20 are in his character that day because of the alcohol. And
21 I have known him to be respectful, thoughtful, polite,
22 humble.

23 He cares very much for his family. He cares very much
24 about what this has done to his family. He is very -- he
25 takes his family and his faith and the law very seriously.

1 And he regrets the decision that he made that day, Your
2 Honor.

3 And we would ask Your Honor to accept the
4 recommendation. This has been -- well, with regards to
5 Ms. Martin and the no-contact order, this has been
6 devastating for him to not have his family and not be able
7 to see them. So it is very important that Your Honor enter
8 something where Mr. Martin can see his family at least.
9 That would be very important to him.

10 He has played a very strong role in his children's
11 lives, and he would like to continue to be able to
12 coparent. And without being able to communicate with her,
13 he simply can't do that.

14 So again we're asking that the Court accept the
15 recommendations and allow this family to move forward and
16 begin to heal from this incident.

17 THE COURT: Mr. Martin.

18 MR. MARTIN: I agree with everything she said. You
19 know what happened was -- like she said, it was a bad
20 decision I made that day.

21 Of course, it wasn't actually like the prosecutor said.
22 But I pleaded guilty already. But I'm saying I never
23 pointed a gun at anyone at any time. And nor did I fire
24 any shots at my wife or the officer. But that's neither
25 here nor there. God was there, so he knows that I didn't.

1 But I pleaded guilty. And I understand that.

2 THE COURT: Well, there were shots fired. They can go
3 anywhere.

4 MR. MARTIN: Yes, yes. But I didn't fire at anyone.
5 But, as I said, my family is the most important thing to
6 me, my wife and my kids. Like I said, on that particular
7 day I was drunk, high, intoxicated, tired, exhausted and
8 everything.

9 I wasn't thinking clearly. And I made a terrible
10 mistake. Like I said, I'm sorry for anybody who got hurt
11 by it. But I actually physically didn't touch anyone.
12 But, as I said, the gentleman -- Mr. Wanger or whatever his
13 name was. I can't recall his name. But I didn't threaten
14 him. He actually threatened me first.

15 But that's, like I said, neither here nor there. But,
16 like I said, I'm sorry for the whole situation that even
17 happened. It's just one day that I wish I had never got
18 out of bed.

19 THE COURT: I believe that. Sixteen years, and a fair
20 bit of that is going to be hard time with no credit for
21 early release on the aggravators.

22 I accept your explanation. I think that is probably
23 what happened. You got intoxicated. It got out of
24 control. And then things got away from you.

25 What do you do for a living, Mr. Martin?

1 MR. MARTIN: Cement finisher.

2 THE COURT: Before this all went down, were you
3 regularly employed?

4 MR. MARTIN: I was on my way back from work.

5 THE COURT: How far did you go in school?

6 MR. MARTIN: I got to the 9th grade. And then I got my
7 GED, and so I quit school to go to work.

8 THE COURT: Okay. That will be the judgment and
9 sentence of the Court. I will adopt the recommendation.

10 I wish you well, Mr. Martin. I actually do feel that
11 this was probably a situation that got out of control
12 because of your choices. We can both agree to that.

13 MR. MARTIN: Yes, sir.

14 THE COURT: And I hope you can get through this okay.
15 How old are you?

16 MR. MARTIN: I'm 45.

17 THE COURT: You come out on the other side and carry
18 on.

19 MR. MARTIN: Yes, sir.

20 THE COURT: Good luck, sir.

21 MR. MARTIN: Thank you.

22 THE COURT: Interest will be waived on the LFOs pending
23 90 days following release.

24 MS. GROVES: Thank you, Your Honor.

25 THE COURT: As long as Mr. Martin pays \$30 a month on

1 his legal financial obligations, no interest will accrue
2 except for on the restitution which I can't do anything
3 about.

4 The Court is entering the order requiring a biological
5 sample draw. The Court is signing off the Advice of Right
6 to Appeal and notes that Mr. Martin and Ms. Groves have
7 also signed.

8 Ms. Groves, do you mind if I date your signature for
9 today?

10 MS. GROVES: Yes, please.

11 THE COURT: As far as the no-contact order on
12 Mr. Wanger-Bindara, that will be a ten-year order. I'm
13 going to give that back to you, Ms. Groves. And I want you
14 to acknowledge that Mr. Martin has been served with this
15 order.

16 As for the family, I'm not going to enter any kind of
17 an order.

18 MS. GROVES: Thank you, Your Honor. We do have a -- I
19 might be nitpicking here, but I want to make sure
20 Mr. Martin is not in any way violating any orders.

21 I know that the domestic violence no-contact order says
22 pending disposition. But then it also states August 20 --
23 it expires August 20th, 2019.

24 Do we need to enter an order terminating this
25 particular order? I just want to make sure that there's

1 not --

2 THE COURT: I think that's probably just as well so we
3 have a paper trail.

4 MS. GROVES: Thank you, Your Honor.

5 MR. YU: Your Honor, the one piece that I missed was
6 the amount and per month that Your Honor ordered to be paid
7 for --

8 THE COURT: The amount of what?

9 MR. YU: The amount of the LFOs to be paid per month,
10 Your Honor.

11 THE COURT: It was \$30 a month.

12 MR. YU: And did you say 90 days after release, Your
13 Honor?

14 THE COURT: Yes, 90 days after release. And as long as
15 he doesn't miss any payments, there won't be any interest.

16 MR. YU: For the record, I'm serving Mr. Martin with a
17 no-contact order prohibiting him from contact with Andrew
18 Wanger-Bindara for a period of ten years.

19 THE COURT: The record will so reflect

20 The Court has signed the Judgment and Sentence. The
21 Court has entered the Warrant of Commitment.

22 Good luck, Mr. Martin.

23 MR. MARTIN: Thank you.

24 THE COURT: Thank you, sir. And I'm also going to sign
25 this terminating the no-contact order with your wife and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

your child, so you can get a call in to them or something.

MR. MARTIN: Thank you, Your Honor.

MS. GROVES: Thank you, Your Honor.

MR. YU: Thank you, Your Honor.

THE COURT: Thank you very much.

(Proceeding concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

STATE OF WASHINGTON,)
)
Plaintiff,) Superior Court
) No. 14-1-03264-3
vs.)
)
NICHOLAS NATHANIEL MARTIN,)
)
Defendant.)

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Carol Frederick, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 4th day of September, 2016.

Carol Frederick

CAROL FREDERICK, CCR
Official Court Reporter

Exhibit “E”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON,

Plaintiff,

vs.

NICHOLAS MARTIN,

Defendant.

CAUSE NO. 14-1-03264-3

DECLARATION OF CONCHATA
GASTON-MARTIN

I, Conchata Gaston-Martin, declare as follows:

1. I am over the age of 18 and competent to testify to the facts contained in this declaration.
2. Nicholas Martin ("Mr. Martin"), the petitioner, is my husband.
3. Throughout the case, Mr. Martin's attorney, Laura Groves communicated with me about the status of the case.
4. Ms. Groves informed my friend Camille Bea and I during a meeting that if we go to trial, Nicholas would be facing a jury of not-his-peers and it would be middle-class whites that would for sure take the word of a police officer.
5. Ms. Groves informed me that my husband would not get a fair trial because he is black and the jury would be white and therefore he should accept the plea deal.

DECLARATION OF CONCHATA GASTON-MARTIN

- 1

LAW OFFICE OF COREY EVAN PARKER
1275 12th Ave NW, Suite 1B
Issaquah, WA 98027
[PH] 425.221.2195 [FX] 1.877.802.8580
corey@coreyevanparkerlaw.com

Exhibit “F”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON,

Plaintiff,

vs.

NICHOLAS MARTIN,

Defendant.

CAUSE NO. 14-1-03264-3

DECLARATION OF NICHOLAS MARTIN

I, Nicholas Martin, declare as follows:

1. On August 20, 2014, I was charged with three counts of Assault in the Second Degree, Felony Harassment, and Unlawful Possession of a Firearm in the Second Degree.
2. I retained attorney Laura Marie Groves (“Ms. Groves”) to represent me on September 26, 2014.
3. While discussing my case with me, Ms. Groves informed me that if I proceeded to a jury trial, all of my specific prior felonies would come into evidence, including my Robbery in the First Degree from 1993.
4. Ms. Groves informed my wife, Conchata Martin, and her friend, Camille Bea, that if I go to trial, I would be facing a jury of not-my-peers and it would be middle-class whites that would for sure take the word of a police officer.
5. Ms. Groves also informed my wife that I would not get a fair trial because I am black and the jury would be white, therefore, I should accept the plea deal.

- 1 6. Although I believed I was innocent of the charges against me and had a strong case for
2 trial, I believed that the jury would make judgments about me due to my specific prior
3 criminal history and find me guilty for that reason.
- 4 7. I relied on my attorney's advice and plead guilty believing my attorney's advice that in
5 order to prove the Unlawful Possession of a Firearm charge against me, the State could
6 inform the jury about all of my specific prior felony history.
- 7 8. It was only in November of 2016 when I conferred with my appellate counsel that I was
8 informed my specific prior felonies could not come into evidence. I was educated that
9 the State could reference that I had been convicted of a felony that barred me from
10 carrying a firearm, but could not list off what those felonies were specifically.
- 11 9. After I plead guilty, even before this knowledge, I requested that Ms. Groves file a
12 notice of appeal on my behalf and she failed to do so.
- 13 10. During my incarceration, I was not appointed appellate counsel because my trial
14 attorney never filed the notice of appeal. My wife was not able to obtain the funds until
15 recently to hire appellate counsel and unfortunately it took more than a year for her to
16 come up with these funds.
- 17 11. As soon as I realized that I was misadvised, I requested that my retained appellate
18 attorney file a personal restraint petition. Through reasonable diligence, I could not have
19 obtained this information about my priors coming into evidence before because I relied
20 on my trial attorney's advice and I was incarcerated after I plead guilty and had no
21 ability to consult with an attorney. Had my trial attorney filed a notice of appeal as I had
22 23 24 25 26

1 requested, I could have been afforded appointed counsel. However, I did not have this
2 opportunity.
3

4
5 I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing
6 is true and correct.
7

8
9 Dated this 27th day of Dec., 2016 at CLALLAM PAW, Washington.

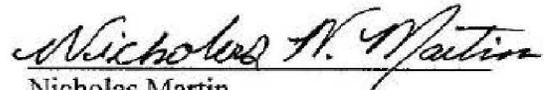
10
11 
12 Nicholas Martin
13 Petitioner
14
15
16
17
18
19
20
21
22
23
24
25
26

Exhibit “G”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON,

Plaintiff,

vs.

NICHOLAS MARTIN,

Defendant.

CAUSE NO. 14-1-03264-3

DECLARATION OF ANNETTE GREEN

I, Annette Green, declare as follows:

1. I am over the age of 18 and competent to testify to the facts contained in this declaration.
2. Nicholas Martin (“Mr. Martin”), the petitioner, is my brother.
3. In early June of 2015, I spoke with Mr. Martin’s attorney, Laura Groves (“Ms. Groves”) on the telephone about Mr. Martin’s case.
4. On that phone call, Ms. Groves told me that Mr. Martin would not get a fair trial because he was black and the jury of his peers would be white and for that reason he should take a plea deal.
5. I questioned Ms. Groves on her statement and she maintained that she would be advising him to take a plea bargain because he would not receive a jury of his peers due to his race.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated this 19th day of January, 2017 at 3:37, Washington.


Annette Green
Petitioner's Sister

Exhibit “H”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON,

Plaintiff,

vs.

NICHOLAS MARTIN,

Defendant.

CAUSE NO. 14-1-03264-3

DECLARATION OF CAMILLE BEA

I, Camille Bea, declare as follows:

1. I am over the age of 18 and competent to testify to the facts contained in this declaration.
2. Nicholas Martin ("Mr. Martin"), the petitioner, is my friend, Conchata Gaston-Martin's husband and I was present for some of Mr. Martin's court hearings.
3. On one occasion, Mr. Martin's attorney, Laura Groves met with Conchata Gaston-Martin and I after a court appearance at the courthouse. She informed us that if we go to trial, Nicholas would be facing a jury of not-his-peers and it would be middle-class whites that would for sure take the word of a police officer.
4. Ms. Groves also told Ms. Conchata Gaston-Martin and I that Mr. Martin would not get a fair trial because he is black and the jury would be white and therefore he should accept the plea deal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated this 21st day of February, 2017 at Tacoma, Washington.


Camille Bea

LAW OFFICE OF COREY EVAN PARKER

June 30, 2017 - 10:50 AM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Martin, Nicholas Nathaniel
Trial Court Case Number: 14-1-03264-3
Trial Court County: Pierce County Superior Court
Signing Judge:
Judgement Date:

The following documents have been uploaded:

- 0-PRP_Personal_Restraint_Petition_20170630104823D2675410_2187.pdf
This File Contains:
Personal Restraint Petition
The Original File Name was Nicholas Martin - PRP - Final.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@co.pierce.wa.us

Comments:

Sender Name: Corey Parker - Email: corey@coreyevanparkerlaw.com
Address:
1230 ROSECRANS AVE STE 300
MANHATTAN BEACH, CA, 90266-2494
Phone: 425-221-2195

Note: The Filing Id is 20170630104823D2675410