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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

NICHOLAS NATHANIEL MARTIN,

Petitioner.

NO. 50516-9-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should this petition be dismissed as time-barred where it was filed more than one year after entry of the last judgment and where the judgment and sentence is facially valid?

2. Should this petition be dismissed where petitioner fails to establish an exception to the RCW 10.73.090 statute of limitation applies?

3. Should this petition be dismissed where petitioner fails to provide an adequate record on which to base his claims of pre-plea ineffective assistance of counsel?

4. Should this petition be dismissed as mixed?

1 B. STATUS OF PETITIONER:

2 Petitioner, Nicholas Nathaniel Martin, is restrained pursuant to a Judgment and
3 Sentence entered in Pierce County Cause Number 14-1-03264-3. Appendix A. On June 26,
4 2015, petitioner pleaded guilty to an amended information which charged him with three
5 (3) counts of assault in the second degree with firearm sentencing enhancements, one (1)
6 count of felony harassment, and one (1) count of unlawful possession of a firearm in the
7 second degree. Appx. B; Appx. C. Petitioner was 45 years old at the time of the plea and
8 completed his GED. Appx. C at 1. He averred understanding the charges to which he pled
9 and the rights he was giving up by pleading guilty. *Id.* at 1-2. *See also*, RP¹ 5-10.
10

11 In his statement on plea of guilty, petitioner agreed that the trial court could review
12 the statement of probable cause to establish a factual basis for his plea. Appx. C at 9.

13 According to the Declaration for Determination of Probable Cause,

14 On August 15, 2014, law enforcement was dispatched to a person with a
15 weapon call. When Deputy Andrew Guerrero arrived at the apartment
16 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.

17 Detective Sgt. Chris Adamson interviewed Conchata who stated that she
18 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
19 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
20 verbal altercation with a resident of the apartment complex, later identified
as Andrew Wanger. Conchata grabbed the keys to the Cadillac from the
21 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
22 and as Conchata was exiting the parking lot, Deputy Guerrero pulled in.
Conchata denied hearing any gun shots. Conchata said she owns a .45
23 caliber Ruger that she keeps in a safe.
24

25

¹ "RP" refers to the verbatim report of proceedings attached to petitioner's PRP as Exhibit D.

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

6 Detective Sgt. Adamson then interviewed Andrew Wanger. Wanger stated
7 that he was at the apartment complex visiting his children and girlfriend.
8 He said he saw the Tahoe blocking the path of the Cadillac and observed
9 the defendant exit the Cadillac and start punching the window of the
10 Tahoe. Wanger said the defendant punched the window at least 10 times
11 while yelling "Bitch you better let me in." Wanger told his girlfriend to
12 call 911. Wanger informed the defendant the police were on the way. The
13 defendant turned his attention to Wanger and told him to get back inside
14 the house, that he was going to kill him, and that he was going to shoot
15 him. The defendant continued to advance and Wanger said he froze in fear
16 but that he also did not want to retreat because he did not want the
17 defendant to follow him and harm his family. Wanger said the defendant
18 came within several feet and then pulled a pistol from his belt, pointed it at
19 Wanger's face and said he was "going to blow his fucking brains out and
20 he was going to put his brains on the wall and he should have minded his
21 own business." Wanger stated he believed he was going to die and was
22 able to flee into his apartment. Wanger continued watching the defendant.
23 He stated he saw Conchata get into the Cadillac and that the defendant
24 began moving toward the Cadillac making threats. He watched both the
25 Cadillac and the Tahoe drive away and a patrol vehicle, later identified as
Deputy Guerrero's vehicle, enter the parking lot. Wanger saw the
defendant draw the pistol and fire two rounds at the vehicles. Wanger
could not confirm which vehicle the defendant was shooting at because
they were so close together. Another witness also observed the defendant
take aim and fire at the vehicles.

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

Deputy Guerrero and Officer Jagodinski approached the defendant to
detain him. Although the gun was already on the ground, the defendant
ignored the orders from law enforcement to get on the ground. It appeared

1 to Officer Jagodinski that the defendant was leaning towards his gun so
2 the officers grabbed the defendant and pulled him to the ground. Even
3 while on the ground, the defendant did not voluntarily put his arms behind
4 his back. The defendant admitted the gun on the ground was his gun.
5 When the defendant was placed inside of Deputy Guerrero's vehicle, the
6 defendant began to kick the passenger side window. Law enforcement
7 removed the defendant from the vehicle and hobbled him with a cord. The
8 defendant then began spitting inside of the patrol vehicle and yelling
9 derogatory statements at the officers.

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

12 Appx. D.

13 Petitioner's written statement on plea of guilty also provided the following:

14 8. I make this plea freely and voluntarily.

15 9. No one has threatened harm of any kind to me or to any other
16 person to cause me to make this plea.

17 10. No person has made promises of any kind to cause me to enter this
18 plea except as set forth in this statement.

19 ...

20 12. My lawyer has explained to me, and we have fully discussed, all of
21 the above paragraphs...I understand them all. I have been given a
22 copy of this "Statement of Defendant on Plea of Guilty." I have no
23 further questions to ask the judge.

24 Appx. C at 9. Petitioner's signature appears directly below paragraph 12. *Id.* Defense
25 counsel also signed, consistently representing, "I have read and discussed this statement
with the defendant. I believe that the defendant is competent and fully understands the
statement." *Id.* at 10. Accordingly, Honorable Stanley J. Rumbaugh found:

[D]efendant's plea of guilty to be knowingly, intelligently and voluntarily
made. Defendant understands the charges and the consequences of the
plea. There is a factual basis for the plea. The defendant is guilty as
charged.

Id.

1 On June 26, 2015, petitioner received a standard range sentence of 84 months on
2 all three counts of assault in the second degree and 43 months on the counts of felony
3 harassment and unlawful possession of a firearm in the second degree, to be served
4 concurrently, plus an additional 108 months of firearm sentencing enhancements, for a
5 total of 192 months confinement. Appx. A. This sentence was the joint recommendation
6 of the parties. Appx. C at 4; RP 10-11, 14, 16. Petitioner did not file a direct appeal. Two
7 years later, on June 30, 2017, petitioner filed this personal restraint petition. This response
8 follows.

9
10 C. ARGUMENT:

11 Personal restraint procedure came from the State's habeas corpus remedy, which is
12 guaranteed by article 4, § 4 of the Washington State Constitution. *In re Pers. Restraint of*
13 *Hagler*, 97 Wn.2d 818, 823, 650 P.2d 1103 (1982). Collateral attack includes personal
14 restraint petitions, motions to vacate judgment, and motions to withdraw guilty plea. RCW
15 10.73.090(2). Collateral attack by personal restraint petition is not, however, a substitute
16 for direct appeal. *In re Hagler*, 97 Wn.2d. at 824. "Collateral relief undermines the
17 principles of finality of litigation, degrades the prominence of the trial, and sometimes
18 costs society the right to punish admitted offenders." *In re Hagler*, 97 Wn.2d at 824 (citing
19 *Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are
20 significant and require that collateral relief be limited in state as well as federal courts. *In*
21 *re Hagler*, 97 Wn.2d at 824.

22
23 In a collateral action, the petitioner must prove constitutional error resulted in
24 actual prejudice. Mere assertions are inadequate to demonstrate actual prejudice. The rule
25 constitutional error must be proven harmless beyond a reasonable doubt has no application.

1 *In re Pers. Restraint of Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987); *In re*
2 *Hagler*, 97 Wn.2d at 825. A petitioner must show a fundamental defect resulted in a
3 complete miscarriage of justice to obtain collateral relief for alleged nonconstitutional
4 error. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a
5 higher standard than actual prejudice. *Id.* at 810. Inferences must be drawn in favor of the
6 judgment's validity. *In re Hagler*, 97 Wn.2d at 825-826.

7
8 Reviewing courts have three options in evaluating personal restraint petitions:

- 9 1. If a petitioner fails to meet the threshold burden of showing actual
10 prejudice from constitutional error or a fundamental defect resulting
11 in a miscarriage of justice, the petition must be dismissed;
- 12 2. If a petitioner makes a prima facie showing of actual prejudice or a
13 miscarriage of justice, but the merits cannot be determined on the
14 record, the court should remand for a hearing on the merits or for a
15 reference hearing pursuant to RAP 16.11(a) and RAP 16.12;
- 16 3. If the court is convinced a petitioner has proven actual prejudice
17 arising from constitutional error or a miscarriage of justice, the
18 petition should be granted.

19 *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

- 20 1. THE PETITION SHOULD BE DISMISSED WHERE IT IS TIME
21 BARRED.

22 Because of the costs and risks involved, there is a time limit in which to file a
23 collateral attack. RCW 10.73.090(1) subjects petitions to a one-year statute of limitation.

24 The statute provides:

25 No petition or motion for collateral attack on a judgment and sentence in a
criminal case may be filed more than one year after the judgment becomes
final if the judgment and sentence is valid on its face and was rendered by
a court of competent jurisdiction.

RCW 10.73.090(1). The Supreme Court has addressed what made a judgment facially
invalid under RCW 10.73.090:

1 Under this statute, the “facial invalidity” inquiry is directed to the judgment
2 and sentence itself. “Invalid on its face” means the judgment and sentence
evidences the invalidity without further elaboration.

3 ***In re Pers. Restraint of Hemenway***, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *see also*, ***In***
4 ***re Pers. Restraint of Goodwin***, 146 Wn.2d 861, 50 P.3d 618 (2002) (court could properly
5 consider petitioner’s challenge to offender score because judgment was facially invalid by
6 inclusion of washed out juvenile convictions).

7 A claimed facial invalidity must be “...a more substantial defect than a technical
8 misstatement that had no actual effect on the rights of the petitioner.” ***In re Pers. Restraint***
9 ***of Benavidez***, 160 Wn. App. 165, 170, 246 P.3d 842 (2011) (quoting ***In re Pers. Restraint***
10 ***of McKiearnan***, 165 Wn.2d 777, 783, 203 P.3d 375 (2009)). In ***McKiearnan***, the court
11 held that a misstatement of the maximum sentence on the judgment and sentence did not
12 render the judgment and sentence facially invalid. ***In re McKiearnan***, 165 Wn.2d 777.

14 The general rule is that a judgment and sentence is invalid on its face, if it
15 demonstrates that the trial court did not have the power or statutory authority to impose the
16 judgment or sentence. ***In re Pers. Restraint of Scott***, 173 Wn.2d 911, 916-17, 271 P.3d
17 218 (2012). Examples of a sentence unauthorized by statute include: (1) a sentence
18 exceeding the statutory maximum, (2) a sentence for a nonexistent crime, and (3) a
19 sentence that included a washed out prior offense. *See* ***In re Pers. Restraint of Coats***, 173
20 Wn.2d 123, 135-36, 267 P.3d 324 (2011).

21 The Washington Supreme Court recently conducted a helpful review of what
22 documents other than the judgment and sentence courts have looked to when finding
23 facial invalidity. ***In re Coats***, 173 Wn.2d at 143.

1 While the court does not limit its review for facial invalidity to the four corners of
2 the judgment and sentence, it only considers other documents to the extent that they reveal
3 some fact that shows the judgment and sentence is invalid on its face because of a legal
4 error. *In re Coats*, 173 Wn.2d. at 138-39. The court has found invalidity based upon
5 charging documents, verdicts, and plea statements of petitioners on plea of guilty. *See In*
6 *re Pers. Restraint of Carrier*, 173 Wn.2d 791, 799, 727 P.3d 209 (2012). While the court
7 may consult verdict forms, it may not consult the jury instructions, trial motions, and other
8 documents that relate to whether the petitioner received a fair trial. *In re Scott*, 173 Wn.2d
9 at 917. Further, “[a] judgment and sentence may be valid on its face even if the petitioner
10 can show some error that might have received relief if brought on direct review or in a
11 timely personal restraint petition.” *Id.*

12 Although the court will examine a plea statement to evaluate a claim that a
13 judgment and sentence is not valid on its face, the court will not examine the judgment and
14 sentence to determine whether the plea was voluntary. *In re Coats*, 173 Wn.2d at 142. An
15 involuntary plea does not render a judgment and sentence facially invalid. *Id.* at 141. “[A]n
16 invalid plea agreement cannot on its own overcome the one year time bar or render an
17 otherwise valid judgment and sentence invalid.” *In re McKiearnan*, 165 Wn.2d at 782.
18 Plea documents are only relevant to the extent they reveal how a judgment was entered in
19 excess of a court’s authority. *Id.*

20 For the reasons argued below, the petitioner has not established a facially invalid
21 judgment under this standard. In addition to the exceptions listed within RCW 10.73.090,
22 there are other specific exceptions to the one-year time limit for collateral attack:
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24

25 The 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 (1) Newly discovered evidence, if the [petitioner] acted with reasonable
2 diligence in discovering the evidence and filing the petition or motion;
- 3 (2) The statute that the [petitioner] was convicted of violating was
4 unconstitutional on its face or as applied to the [petitioner's] conduct;
- 5 (3) The conviction was barred by double jeopardy under Amendment V of
6 the United States Constitution or Article I, section 9 of the state
7 Constitution;
- 8 (4) The [petitioner] pled not guilty and the evidence introduced at trial was
9 insufficient to support the conviction;
- 10 (5) The sentence imposed was in excess of the court's jurisdiction; or
- 11 (6) There has been a significant change in the law, whether substantive or
12 procedural, which is material to the conviction, sentence, or other order
13 entered in a criminal or civil proceeding instituted by the state or local
14 government, and either the legislature has expressly provided that the
15 change in the law is to be applied retroactively, or a court, in interpreting a
16 change in the law that lacks express legislative intent regarding retroactive
17 application, determines that sufficient reasons exist to require retroactive
18 application of the changed legal standard.

19 RCW 10.73.100.

20 Personal restraint petitions are also governed by the rules of appellate procedure,
21 which work in conjunction with the statutes. Under RAP 16.4, the court will grant
22 appropriate relief under a personal restraint petition where a petitioner is under restraint,
23 and that restraint is unlawful for one of seven specified reasons. RAP 16.4(a)-(c).

24 However, even where a valid ground exists under RAP 16.4, the court will only
25 grant relief if such relief can be granted under RCW 10.73.090, .100 and .130. RAP
16.4(d), provides, in part:

The appellate court will only grant relief by a personal restraint petition if
other remedies which may be available to petitioner are inadequate under
the circumstances and if such relief may be granted under RCW 10.73.090
or .100.

1 If the Court independently reviews a petition filed more than one year after finality,
2 the issues within it must necessarily fall within one of three categories: 1) no exception
3 applies, and the issue is time barred; 2) the issue is allowed under an exception listed in
4 RCW 10.73.100; 3) the issue is allowed under an exception listed in RCW 10.73.090(1).

5 If an issue does not fall into any exception, the entire petition is dismissed. *In re*
6 *Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 350-51, 5 P.3d 1240 (2000) (*Stoudmire I*).
7 The petitioner bears the burden of proving that an exception to the RCW 10.73.090 statute
8 of limitation applies. *Shumway v. Payne*, 136 Wn.2d 383, 399-400, 964 P.2d 349 (1998);
9 *State v. Schwab*, 141 Wn. App. 85, 90, 167 P.3d 1225 (2007).

10 Here, petitioner was sentenced on June 26, 2015. Appx. A. As a result, this
11 personal restraint petition is well beyond the one-year collateral attack time limit. *See*
12 RCW 10.73.090(1), (3). Petitioner argues that the “newly discovered evidence” exception
13 under RCW 10.73.100(1) and the doctrine of equitable tolling apply to his untimely
14 petition. *See* PRP at 6, 10, 11, 15. However, as argued below, petitioner uses the newly
15 discovered evidence exception as a guise to present a time barred ineffective assistance of
16 counsel claim, and he fails to establish that his are the “narrowest of circumstances” that
17 justify equitable tolling. Accordingly, petitioner has not met his burden of proving that the
18 issue(s) in his petition fall within a recognized exception to the one-year time limit.

19 *Shumway*, 136 Wn.2d at 399-400.

20
21 Petitioner is therefore only entitled to relief if he can show a facial invalidity in the
22 judgment and sentence. However, he cannot do so because his claimed error cannot be
23 established from the face of the judgment and sentence. For example, in *In re Hemenway*,
24 147 Wn.2d at 531, the defendant claimed that no one informed him that a consequence of
25

1 his guilty plea was mandatory community placement. As a result, the defendant argued that
2 his plea was not knowing, intelligent, and voluntary, thereby rendering his plea “invalid on
3 its face.” *Id.* The Washington Supreme Court rejected Hemenway’s argument, noting,
4 “The question is not, however, whether the plea documents are facially valid, but rather
5 whether the judgment and sentence is invalid on its face. The plea documents are relevant
6 only where they may disclose invalidity in the judgment and sentence.” *Id.* at 533. The
7 defendant’s judgment and sentence correctly reflected that he was sentenced to the period
8 of community placement authorized by law. *Id.* at 532. Because the defendant’s judgment
9 and sentence was facially valid, his petition was subject to the one-year limitation for
10 collateral review. *Id.* at 531-33.

12 Here, petitioner claims his judgment and sentence is facially invalid based on the
13 trial advice he received from his attorney and relied upon in deciding to plead guilty. PRP
14 at 15-16. Again, however, an involuntary plea does not render a judgment and sentence
15 facially invalid and cannot on its own overcome the one-year limitation for collateral
16 review. *In re Coats*, 173 Wn.2d at 141; *In re McKiernan*, 165 Wn.2d at 782.

17 Petitioner cannot establish his judgment and sentence is facially invalid. The trial
18 court had the authority to render judgment and impose the sentence. Petitioner is time
19 barred and not entitled to relief where his judgment and sentence is facially valid.
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1 2. PETITIONER FAILS TO PROVE AN EXCEPTION TO THE RCW
2 10.73.090 STATUTE OF LIMITATION APPLIES.

- 3 a. Petitioner’s guilty plea bars collateral attack based on his
4 claimed newly discovered evidence. Moreover, trial advice
5 does not constitute newly discovered evidence.

6 Petitioner relies on the newly discovered evidence exception to the RCW 10.73.090
7 statute of limitation to argue his petition is not time barred. PRP at 6-10. That exception
8 provides that the time limit specified in RCW 10.73.090 does not apply if the petition is
9 based [solely] on “[n]ewly discovered evidence, if the defendant acted with reasonable
10 diligence in discovering the evidence and filing the petition or motion.” RCW
11 10.73.100(1). Under this rule, the petitioner must show that the new evidence (1) will
12 probably change the result of the trial; (2) was discovered since the trial; (3) could not have
13 been discovered before trial by the exercise of due diligence; (4) is material and
14 admissible; and (5) is not merely cumulative or impeaching. *In re Pers. Restraint of Lord*,
15 123 Wn.2d 296, 319-20, 868 P.2d 835 (1994); *In re Pers. Restraint of Faircloth*, 177 Wn.
16 App. 161, 165-66, 311 P. 3d 47 (2013); *In re Pers. Restraint of Reise*, 146 Wn. App. 772,
17 781, 192 P.3d 949 (2008) (citing *State v. Williams*, 96 Wn.2d 215, 223, 634 P.2d 868
18 (1981)). The absence of any one of the five factors is grounds for the denial of relief.
19 *Williams*, 96 Wn.2d at 223; *In re Faircloth*, 177 Wn. App. at 166.

20 “Factors one through three and factor five presume or require that the challenged
21 conviction was the result of a *trial*, not a guilty plea. The factors are difficult, if not
22 impossible to apply when the moving party pleaded guilty instead of standing trial.” *In re*
23 *Reise*, 146 Wn. App. 781-82 (emphasis in original).

24 Here, petitioner pleaded guilty. Appx. C. “[A] guilty plea waives or renders
25 irrelevant all constitutional violations that occurred before the guilty plea, except those

1 related to the circumstances of the plea or to the government’s legal power to prosecute
2 regardless of factual guilt.” *In re Pers. Restraint of Bybee*, 142 Wn. App. 260, 268, 175
3 P.3d 589 (2007). *See also*, *Menna v. New York*, 423 U.S. 61, 63 n. 2, 96 S. Ct. 241, 46 L.
4 Ed. 2d 195 (1975); *State v. Wilson*, 162 Wn. App. 409, 415-16, 253 P.3d 1143 (2011);
5 *State v. Brandenburg*, 153 Wn. App. 944, 947-48, 223 P.3d 1259 (2009), *review denied*,
6 170 Wn.2d 1009, 236 P.3d 207 (2010). This is because a defendant who pleads guilty
7 admits factual and legal guilt for the charged crime. *See e.g.*, *United States v. Broce*, 488
8 U.S. 563, 570, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989). The guilty plea thus provides a
9 sufficient and independent factual basis for conviction and punishment. *See Haring v.*
10 *Prosise*, 462 U.S. 306, 321, 103 S. Ct. 2368, 76 L. Ed. 2d 595 (1983); *Menna*, 423 U.S. at
11 63 n. 2.

13 A claim that the potential trial evidence, never presented because the defendant
14 pleaded guilty, would have been constitutionally insufficient is therefore irrelevant and
15 precluded by the guilty plea. *See State v. Carrier*, 36 Wn. App. 755, 757–58, 677 P.2d 768
16 (1984). By pleading guilty, a defendant gives up the right to force the State to prove its
17 case with the potential evidence, weak or strong, and instead provides an alternate
18 sufficient factual basis for guilt. *In re Bybee*, 142 Wn. App. at 268.

19 In Washington, a defendant pleading guilty specifically waives the presumption of
20 innocence, the right to remain silent, and the right to force the State to prove guilt beyond a
21 reasonable doubt at a trial. CrR 4.2(g)(5). A guilty plea also waives the right to test the
22 State’s trial evidence by cross-examining State witnesses or presenting defense witnesses.
23 *Id.* Any defendant, including petitioner, who waives these rights and enters a guilty plea
24 gives up the right to force the State to prove guilt and to challenge the State’s evidence of
25

1 guilt. *In re Bybee*, 142 Wn. App. at 268. Here, petitioner waived all of these rights in his
2 written guilty plea as well as his colloquy with the superior court. Appx. C at 2; RP 7-9.

3 Here, petitioner's "newly discovered evidence" claim essentially challenges the
4 trial advice he received from his attorney below.² See PRP at 8-10. He claims his attorney
5 advised him that "if he went to trial, the prosecution could name his specific prior criminal
6 offenses in front of the jury in order to prove his unlawful possession of a firearm charge,"
7 and the "newly discovered evidence" is that "he could just stipulate that he had a prior
8 felony." PRP at 8. He also argues that his "attorney advised [him] and his family that if he
9 went to trial, he would not get a fair trial because he is black and the jury would be middle
10 class and white."³ *Id.*

11
12 The case, however, did not proceed to trial. "The general rule is...that *any* valid
13 guilty plea bars collateral attack based on newly discovered evidence, just as a guilty plea
14 bars other attacks on the facts or evidence supporting conviction." *In re Reise*, 146 Wn.
15 App. at 785 (emphasis in original). Petitioner argues that his plea was obtained in violation
16 of due process, thereby allowing withdrawal of his guilty plea to correct a manifest
17

18 ² Petitioner relies on *In re Pers. Restraint of Gay*, Nos. 57834-1-I, 57870-7-I, 2007 WL 4226697 (Wash. Ct.
19 App. December 3, 2007) (unpublished), in support of his argument. PRP at 6-10. Petitioner cites to the case
20 as "*In re Pers. Restraint of Gay*, 142 Wn. App. 1001 (2007)" and fails to identify it as an unpublished
21 opinion. *Id.* GR 14.1 provides, "Unpublished opinions of the Court of Appeals have no precedential value
22 and are not binding upon any court. However, unpublished opinions of the Court of Appeals filed on or after
23 March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party... ." Petitioner
24 improperly cites to the unpublished opinion as it was filed well before 2013. Therefore, *In re Gay* is not
25 properly before this Court and should not be considered. To the extent this Court does consider the
unpublished opinion, the facts of *In re Gay* are distinguishable from the present matter.

³ It is unclear if petitioner is relying on this advice as part of his newly discovered evidence claim. To the
extent that he is, petitioner fails to identify what evidence was "newly discovered" regarding this advice, and
he fails to establish how such advice constitutes error. Arguments unsupported by applicable authority and
meaningful analysis should not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801,
809, 828 P.2d 549 (1992); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990); *Saunders v. Lloyd's of
London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); *In re Disciplinary Proceeding against Whitney*, 155
Wn.2d 451, 467, 120 P.3d 550 (2005) (citing *Matter of Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755
(1998) (declining to scour the record to construct arguments for a litigant)); RAP 10.3(a). See also, *State v.
Stubbs*, 144 Wn. App. 644, 652, 184 P.3d 660 (2008), reversed by 170 Wn.2d 117 (2010) ("[p]assing
treatment of an issue or lack of reasoned argument is insufficient to allow for our meaningful review").

1 injustice. See PRP at 12-15 (quoting *In re Reise*, 146 Wn. App. at 785 (“A petitioner who
2 pleaded guilty and who subsequently seeks relief from personal restraint, on the basis of
3 newly discovered evidence, must show that his plea was coerced or obtained in violation of
4 due process.”)). Petitioner’s argument, however, applies to a *timely* filed motion to
5 withdraw guilty plea. See CrR 7.8(b); RAP 16.4(d); RCW 10.73.090; RCW 10.73.100. A
6 claim that a plea was involuntary does not impact the facial validity of the judgment and
7 sentence, nor does it fall under one of the exceptions in RCW 10.73.100. See *In re*
8 *Hemenway*, 147 Wn.2d at 531-33; *In re Coats*, 173 Wn.2d at 141-42. By pleading guilty,
9 petitioner gave up the right to force the State to prove guilt, challenge the State’s evidence
10 of guilt, and exercise any trial strategy. See *In re Bybee*, 142 Wn. App. at 268. Petitioner
11 cannot rely on the newly discovered evidence exception to the statutory time bar in this
12 case.
13

14 Moreover, the allegedly erroneous trial advice from petitioner’s former attorney is
15 not evidence. Rather, it is legal advice that goes to trial strategy. Petitioner is attempting to
16 frame what he considers bad legal advice as newly discovered evidence to defeat RCW
17 10.73.090’s statute of limitations. See PRP 17-21 (arguing the same legal advice
18 constitutes ineffective assistance of counsel). Petitioner is not entitled to withdraw his
19 guilty plea in order to test out a trial strategy based on new legal advice.
20

21 “[Petitioner] cannot use the newly discovered evidence exception as a guise to
22 present a time barred ineffective assistance of counsel claim or to get a second opportunity
23 to pursue a trial strategy which the defendant originally abandoned or chose not to pursue.
24 Evidence is not newly discovered when it strengthens an argument or defense that could
25 have been presented at trial but was not.” *In re Faircloth*, 177 Wn. App. at 170 n. 6. See

1 also, *In re Pers. Restraint of Yates*, 183 Wn.2d 572, 576, 353 P.3d 1283 (2015) (newly
2 discovered evidence exception under RCW 10.73.100(1) did not permit review of
3 defendant’s untimely petition, where new attorney’s “new idea for a claim” was not
4 “newly discovered evidence”).

5 Finally, petitioner fails to address the five prongs of the “newly discovered
6 evidence” test, and he fails to meet all five prongs. See *Williams*, 96 Wn.2d at 223; *In re*
7 *Yates*, 183 Wn.2d at 576. Again, his former attorney’s trial advice is not “evidence,” and
8 his new attorney’s new trial advice is not “newly discovered evidence.” Any new legal
9 advice about his ability to stipulate to prior criminal history would not change the result of
10 the trial, because there was no trial. Petitioner waived the right to exercise any trial strategy
11 by pleading guilty. If any one factor of the five part “newly discovered evidence” test is
12 absent, then the court need not consider whether the other factors are present. *Williams*, 96
13 Wn.2d at 223; *In re Faircloth*, 177 Wn. App. at 166.

15 Petitioner fails to demonstrate that his collateral challenge falls within the newly
16 discovered evidence exception. Therefore, the one year time bar precludes any relief.

18 b. Ineffective Assistance of Counsel is not a recognized
19 exception to the time bar.

20 Petitioner argues he is entitled to relief based on his claim of ineffective assistance
21 of counsel. See PRP at 17-21. The claim of ineffective assistance of counsel, however, is
22 not among the exceptions to the time bar. See RCW 10.73.100; *In re Yates*, 183 Wn.2d at
23 577. As held by the Washington Supreme Court in *In re Pers. Restraint of Adams*, 178
24 Wn.2d 417, 426-27, 309 P.3d 451 (2013),

25 We...conclude that...ineffectiveness claims are time barred because they
do not fit within any of the exceptions listed in chapter 10.73 RCW. This

1 conclusion is consistent with the complete statutory framework applicable
2 to untimely PRPs...Here, we conclude that a proper analysis of RCW
3 10.73.090 and .100 requires dismissal of Adams's ineffectiveness of trial
4 counsel claim as time barred.

5 Petitioner attempts to piggyback his ineffective assistance of counsel claim onto his
6 claim of newly discovered evidence under RCW 10.73.100(1).⁴ However, “[u]nder RCW
7 10.73.100, there is no notion of a claim serving as a gateway for consideration of other
8 claims that do not fit within one of the enumerated exceptions.” *In re Coats*, 123 Wn.2d at
9 169 (Stephens, J., concurring). RCW 10.73.100 expressly provides, “The time limit
10 specified in RCW 10.73.090 does not apply to a petition or motion that is based *solely* on
11 one or more of the following [enumerated] grounds[.]” (emphasis added).

12 Here, petitioner's ineffective assistance of counsel claims are time barred and his
13 petition should be dismissed as untimely.

14 c. The doctrine of equitable tolling does not apply.

15 Petitioner claims that equitable tolling prevents application of RCW 10.73.090's
16 one-year time bar. *See* PRP at 11-16. Petitioner's equitable tolling argument is without
17 merit, because that remedy applies only in the narrowest of circumstances.

18 Equitable tolling “permits a court to allow an action to proceed when justice
19 requires it, even though a statutory time period has elapsed.” *In re Pers. Restraint of*
20 *Bonds*, 165 Wn.2d 135, 141, 196 P.3d 672 (2008). A petitioner who seeks to benefit from
21 the equitable tolling doctrine must demonstrate that the petition or amended petition was
22 untimely due to another's bad faith, deception, or false assurances. *Id.* at 141-42, 144. *See*
23 *also, In re Pers. Restraint of Haghghi*, 178 Wn.2d 435, 448-49, 309 P.3d 459 (2013)

24 _____
25 ⁴ As argued in the preceding section, however, petitioner uses the newly discovered evidence exception to the
statutory time bar as a guise to present an ineffective assistance of counsel claim.

1 (“Consistent with the narrowness of the doctrine's applicability, principles of finality, and
2 the multiple avenues available for postconviction relief, we apply the civil standard [for
3 equitable tolling] and require the predicates of bad faith, deception, or false assurances.”).

4 Courts are, however, “reluctant to apply exceptions to legislative time limits.” *In re*
5 *Bonds*, 165 Wn.2d at 143. Equitable tolling is allowed only in “the narrowest of
6 circumstances” and “where justice requires.” *In re Pers. Restraint of Carter*, 172 Wn.2d
7 917, 928-29, 263 P.3d 1241 (2011).

8 Here, petitioner claims equitable tolling applies to his untimely petition, because
9 his “guilty plea was the result of...his attorney’s express erroneous legal advice” and
10 “prejudice is established due to ineffective assistance, establishing a manifest injustice
11 requiring the court to allow [petitioner] to withdraw his guilty plea.” PRP at 15. However,
12 counsel’s alleged “erroneous legal advice” did not affect petitioner’s ability to file a timely
13 petition or motion to withdraw guilty plea.
14

15 Petitioner was advised of the following in his judgment and sentence:

16 5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion
17 for collateral attack on this Judgment and Sentence, including but not
18 limited to any personal restraint petition, state habeas corpus petition,
19 motion to vacate judgment, motion to withdraw guilty pleas...or
20 motion to arrest judgment, must be filed within one year of the final
21 judgment in this matter, except as provided for in RCW 10.73.100.
22 RCW 10.73.090.

23 Appx. A at 8. Petitioner signed the judgment and sentence. *Id.* at 10. Petitioner also signed
24 the Advice of Right to Appeal, which informed him of the following:

25 1.1 You have the right to appeal your conviction(s). If you have entered
a guilty plea, you have waived your right to raise certain issues, as
discussed in your guilty plea statement, in an appeal...

1.2 **Unless a notice of appeal is filed with the clerk of the court
within thirty (30) days from the entry of judgment or the order**

1 **appealed from, you have irrevocably waived your right of**
2 **appeal.**

3 1.3 **The clerk of the Superior Court will, if requested by you, file a**
4 **notice of appeal on your behalf.**

5 1.4 If you cannot afford the cost of an appeal, you have the right to have
6 a lawyer appointed to represent you on appeal and to have such parts
7 of the trial record as are necessary for review of errors assigned
8 transcribed for you, both at public expense.

9 Appx. E (emphasis added). Petitioner was thus advised of the time limit in which to file a
10 notice of appeal, personal restraint petition and/or motion to withdraw guilty plea, and he
11 failed to timely file any of the above. Petitioner was advised that the Clerk of the Superior
12 Court would file a notice of appeal on his behalf, and he apparently decided not make such
13 a request.

14 Written notice in the judgment and sentence satisfies RCW 10.73.110's
15 requirement that the court advise a defendant of the one-year time limit. *State v. Robinson*,
16 104 Wn. App. 657, 664, 17 P.3d 653 (2001). Petitioner received that notice.

17 Petitioner claims he asked his defense attorney to file a notice of appeal on his
18 behalf and she failed to do so. PRP at 9-10; Ex. F, ¶ 9. However, petitioner does not
19 indicate when he made this request (i.e., whether it was before or after the 30 day time
20 limit), and he fails to explain why (1) he did not ask the Clerk of the Superior Court to file
21 a notice of appeal on his behalf and (2) he did not file a motion to withdraw guilty plea or
22 personal restraint petition on his own. By his own admission, petitioner intended to pursue
23 an appeal *before* he conferred with appellate counsel regarding the admissibility of his
24 prior felony convictions. *See* PRP Ex. F, ¶¶ 8, 9. Moreover, petitioner attempts to justify
25 the late filing of his petition by asserting his "wife was not able to obtain the funds until
recently to hire appellate counsel" which "took more than a year." PRP Ex. F, ¶ 10.

1 Petitioner does not address how bad faith, deception, or false assurances caused the
2 filing of his late petition. Petitioner fails to establish that his are “the narrowest of
3 circumstances” where “justice requires” the application of equitable tolling. *See In re*
4 *Carter*, 172 Wn.2d at 928-29. Therefore, equitable tolling does not apply.

5 Petitioner fails to prove an exception to the RCW 10.73.090 statute of limitation
6 applies. Accordingly, the petition should be dismissed.

7
8 3. THE PETITION SHOULD BE DISMISSED AS PETITIONER
9 PROVIDES AN INADEQUATE RECORD ON WHICH TO
10 SUPPORT HIS CLAIMS.

11 Ineffective assistance of counsel must be proved by more than a petitioner's self-
12 serving allegations. *See In re Pers. Restraint of Connick*, 144 Wn.2d 442, 451, 28 P.3d
13 729 (2001); *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1984). Personal restraint
14 petitions must include a statement of facts on which the claim of unlawful restraint is based
15 and the evidence available to support the factual allegations. RAP 16.7(a)(2); *In re Pers.*
16 *Restraint of Williams*, 111 Wn.2d 353, 364, 759 P.2d 436 (1988). They must be supported
17 by affidavits stating particular facts, certified documents, certified transcripts and the like.
18 *In re Williams*, 111 Wn.2d at 364. If a petitioner's allegations are based on matters outside
19 the existing record, the petitioner must demonstrate he has competent, admissible evidence
20 to establish the facts entitling him to relief. *In re Connick*, 144 Wn.2d at 451; *In re Pers.*
21 *Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

22 Bare assertions petitioner would not have pleaded guilty but for counsel's alleged
23 deficiency is not sufficient to establish prejudice. *In re Pers. Restraint of Rice*, 118 Wn.2d
24 876, 886, 828 P.2d 1086 (1992); *In re Pers. Restraint of Riley*, 122 Wn.2d 772, 782, 863
25 P.2d 554 (1993). Courts appreciate “[i]t is all too tempting for a [petitioner] to second-
guess counsel’s assistance after [an] adverse sentence....” *Strickland v. Washington*, 466

1 U.S. 668, 689, 104 S. Ct. 2052 (1984). If the petitioner's evidence is based on knowledge
2 of others, he must present their affidavits or other corroborative evidence. Affidavits must
3 contain matters to which the affiants may competently testify. This is because the petitioner
4 must prove factual allegations are based on more than speculation, conjecture or
5 inadmissible hearsay. *In re Rice*, 118 Wn.2d at 886. A mere statement of evidence the
6 petitioner *believes* will prove his allegations is not sufficient. *Id.* Petitions should be
7 dismissed when insufficient evidence is adduced to support their claims. *In re Williams*,
8 111 Wn.2d at 364; *In re Pers. Restraint of Crace*, 174 Wn.2d 835, 840, 280 P.3d 1102
9 (2012).

10 This Court cannot accurately assess counsel's performance from petitioner's one-
11 sided, self-serving version of a record he inexcusably failed to perfect. An inadequate
12 record precludes meaningful review. *State v. Vazquez*, 66 Wn. App. 573, 583, 832 P.2d
13 883 (1992); *State v. Locati*, 111 Wn. App. 222, 226, 43 P.3d 1288 (2002). As courts
14 cannot decide the significance of omissions unless they are credibly informed of the
15 missing content. *See State v. Jury*, 19 Wn. App. 256, 265, 576 P.2d 1302 (1978). Petitioner
16 failed to adduce admissible evidence in support of his conclusory allegations of plea-
17 invalidating failures on the part of his trial counsel, such as an affidavit from the attorney
18 he accuses of ineffectiveness.⁵ Petitioner cannot successfully fill the resulting evidentiary
19 void by repeatedly quoting himself, for a petitioner may not support an ineffective
20 assistance of counsel claim through his or her own self-serving affidavits. *Osborne*, 102
21 Wn.2d at 97; *In re Pers. Restraint of Reise*, 146 Wn. App. 772, 789, 192 P.3d 949 (2008).

22
23
24 ⁵ The declarations that petitioner does provide do not substantiate his claims. Aside from petitioner's own
25 declaration, none of the other "witness" declarations discuss counsel's alleged advice regarding the
admissibility of petitioner's prior convictions. *See* PRP Ex. E, F, G, H. Moreover, petitioner's own
declaration does not substantiate his claim that his attorney advised *him* that he would not get a fair trial
because he is black. *Compare* PRP at 20-21 with PRP Ex. F, ¶¶ 4-5.

1 Petitioner’s inadequately supported claims of pre-plea ineffective assistance of
2 counsel should be dismissed.

3
4 4. THE PETITION SHOULD BE DISMISSED AS AN
5 UNREVIEWABLE MIXED PETITION.

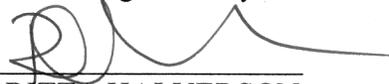
6 As argued above, petitioner claims he is entitled to relief based on the “newly
7 discovered evidence” exception to RCW 10.73.100 as well as ineffective assistance of
8 counsel. Petitioner’s ineffective assistance of counsel claim fails to trigger an RCW
9 10.73.100 exception, thus transforming the collateral attack into an unreviewable mixed
10 petition. “A petition which relies upon RCW 10.73.100 to overcome the one-year time bar
11 in RCW 10.73.090 cannot be based upon any grounds other than the six grounds in RCW
12 10.73.100.” *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003)
13 (citing *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 349, 5 P.3d 1240 (2000)
14 (*Stoudmire I*)). “[I]f a personal restraint petition claiming multiple grounds for relief is
15 filed after the one year period of RCW 10.73.090 expires, and the court determines ... at
16 least one of the claims is time barred, the petition must be dismissed” without any analysis
17 of which claims are timely and which are not. *Id.* (citing *In re Pers. Restraint of*
18 *Hankerson*, 149 Wn.2d 695, 702, 72 P.3d 703 (2003)). *See also, Stoudmire I*, 141 Wn.2d
19 at 350-51 (if an issue does not fall into any exception, the entire petition is dismissed). The
20 petition here should therefore be dismissed as mixed.
21
22
23
24
25

1 D. CONCLUSION:

2 This Court should dismiss the petition because it is time barred without a valid
3 claim to a RCW 10.73.100 exception. Additionally, the petition should be dismissed as
4 inadequately presented for review and mixed.

5
6 DATED: January 31, 2018.

7 MARK LINDQUIST
8 Pierce County
9 Prosecuting Attorney

10 
11 BRITTA HALVERSON
12 Deputy Prosecuting Attorney
13 WSB #44108

14 Certificate of Service:

15 The undersigned certifies that on this day she delivered by *efile* ~~US mail~~ or
16 ABC-LMI delivery to the attorney of record for the appellant and appellant
17 c/o his or her attorney or to the attorney of record for the respondent and
18 respondent c/o his or her attorney true and correct copies of the document to
19 which this certificate is attached. This statement is certified to be true and
20 correct under penalty of perjury of the laws of the State of Washington. Signed
21 at Tacoma, Washington, on the date below.

22 *1/31/18*
23 *[Signature]*
24 Date Signature

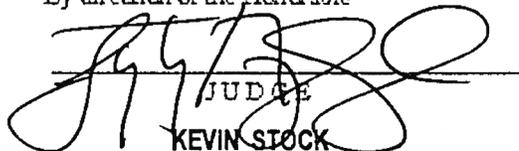
APPENDIX “A”

Judgment and Sentence

[] 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).

By direction of the Honorable

Dated: JUNE 26, 2015



JUDGE
KEVIN STOCK

CLERK

By: 

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

JUN 29 2015 By  Deputy

STATE OF WASHINGTON

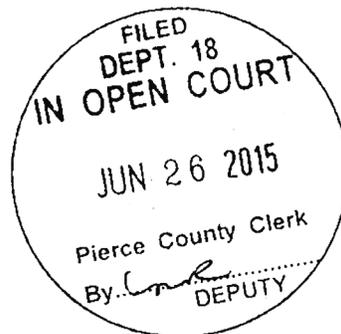
ss:

County of Pierce

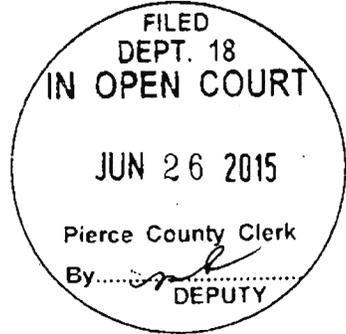
I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____.

KEVIN STOCK, Clerk
By: _____ Deputy

PC



6/29/2015 7:39:01 AM



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 14-1-03264-3

vs.

JUDGMENT AND SENTENCE (FJS)

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

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

73-080123

6/29/2015

FILE

FILE

FILE

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

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

14-1-03264-3
 08/15/14
 142271024
 PCSD

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 9.41.010.

The court considered the following factors:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____

The court decided the defendant should should not register as a felony firearm offender.

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 12

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

Table with columns for JASS CODE and amount. Rows include RTNRJN, PCV, DNA, PUB, FRC, FCM with corresponding amounts and descriptions like 'Restitution to:', 'Crime Victim assessment', 'DNA Database Fee', etc.

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

Other Costs for: \$ _____
Other Costs for: \$ _____
\$ 800.00 TOTAL

- [X] 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: [X] 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).

interest shall be waived if no missed payments

[X] 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.

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.

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 4 of 12

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/ Corchata 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**

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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 _____ 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): _____

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- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
N/A
- 5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.
- 5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

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2 **CERTIFICATE OF CLERK**

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

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

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

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

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9 **IDENTIFICATION OF COURT REPORTER**

10 **CAROL FREDERICK**

11 Court Reporter

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JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 11 of 12

Office of Prosecuting Attorney
930 Tacoma Avenue S. Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

14-1-03264-3

Case Number: 14-1-03264-3 Date: January 29, 2018
SerialID: F1A1BFD2-8938-47CD-83C66AC7E3E86909
Certified By: Kevin Stock Pierce County Clerk, Washington

State v. Martin

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 M. 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

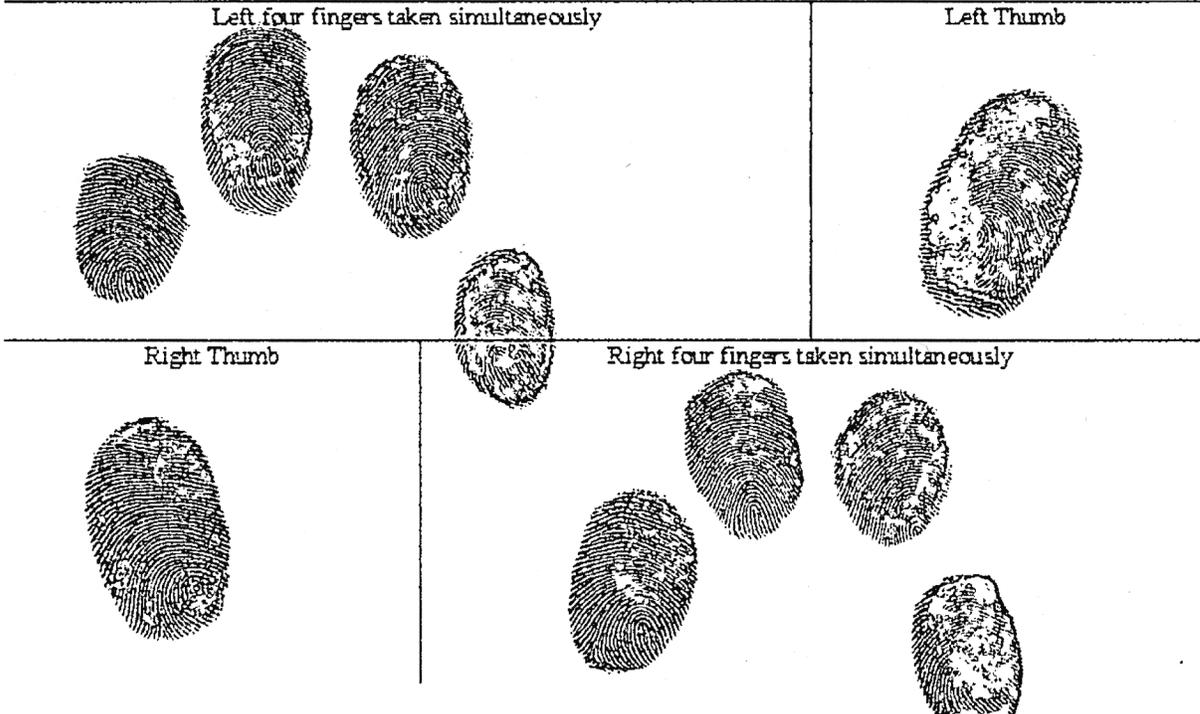
PCN No. 541251952

Other

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

Race: Asian/Pacific Islander Black/African-American Caucasian Hispanic Male
 Native American Other: Non-Hispanic 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... [Signature]

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

6/29/2015 11:11:35

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 29 day of January, 2018



Kevin Stock, Pierce County Clerk

By /S/David Booker, Deputy.

Dated: Jan 29, 2018 12:50 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

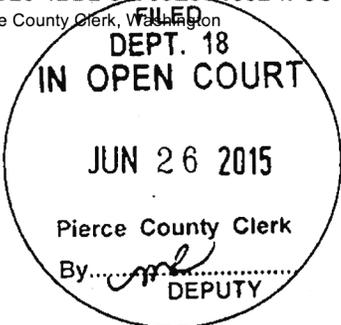
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: F1A1BFD2-8938-47CD-83C66AC7E3E86909.

This document contains 15 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Amended Information

6/29/2015 7:39:01.04



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 14-1-03264-3

vs.

NICHOLAS NATHANIEL MARTIN,

AMENDED 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 SECOND 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, under circumstances not amounting to assault in the first degree, intentionally assault Andrew Guerrero with a deadly weapon, to-wit: a .45 caliber Ruger pistol, contrary to RCW 9A.36.021(1)(c), 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 SECOND 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, 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:

AMENDED INFORMATION- 1

ORIGINAL

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

8/29/2015 7:30:01 AM

1 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
2 of August, 2014, did unlawfully and feloniously, under circumstances not amounting to assault in the first
3 degree, intentionally assault Conchata Gaston Martin with a deadly weapon, to-wit: a .45 caliber Ruger
4 pistol, contrary to RCW 9A.36.021(1)(c), a domestic violence incident as defined in RCW 10.99.020, and
5 in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a .45 caliber
6 Ruger pistol, 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 III

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 ASSAULT IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based
10 on the same conduct or on a series of acts connected together or constituting parts of a single scheme or
11 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:

12 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
13 of August, 2014, did unlawfully and feloniously, under circumstances not amounting to assault in the first
14 degree, intentionally assault Andrew Wanger-Bindara with a deadly weapon, to-wit: a .45 caliber Ruger
15 pistol, contrary to RCW 9A.36.021(1)(c), 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 IV

16 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the
17 authority of the State of Washington, do accuse NICHOLAS NATHANIEL MARTIN of the crime of
18 FELONY HARASSMENT, a crime of the same or similar character, and/or a crime based on the same
19 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or
20 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:

21 That NICHOLAS NATHANIEL MARTIN, in the State of Washington, on or about the 15th day
22 of August, 2014, without lawful authority, did unlawfully, knowingly threaten Andrew Wanger-Bindara
23 to cause bodily injury, immediately or in the future, to that person or to any other person, and by words or
24 conduct place the person threatened in reasonable fear that the threat would be carried out, and that
further, the threat was a threat to kill the person threatened or any other person, thereby invoking the
provisions of RCW 9A.46.020(2)(b) and increasing the classification of the crime to a felony, contrary to
RCW 9A.46.020(1)(a)(i), 2(b), and against the peace and dignity of the State of Washington.

73980106

6/29/2015

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COUNT V

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 UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND 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, 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, did unlawfully, feloniously, and knowingly own, have in his possession, or under his control a firearm, having been previously convicted in the State of Washington or elsewhere of a felony that is not a serious offense as defined in RCW 9.41.010, contrary to RCW 9.41.040(2)(a), and against the peace and dignity of the State of Washington.

DATED this 25th day of June, 2015.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

ry

By: Robert Yu
ROBERT YU
Deputy Prosecuting Attorney
WSB#: 40013

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 29 day of January, 2018



Kevin Stock, Pierce County Clerk

By /S/David Booker, Deputy.

Dated: Jan 29, 2018 12:50 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: 3C9B2A91-AD26-4BD2-94703E3C185B4FCC.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “C”

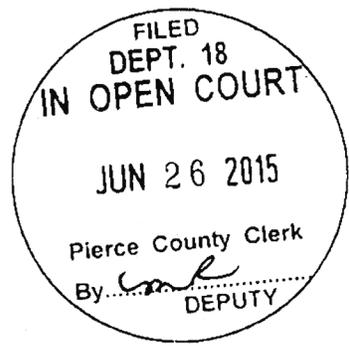
Statement of Defendant on Plea of Guilty

6/29/2015 7:39:0108



14-1-03264-3 44906098 STDFG 06-29-15

Case Number: 14-1-03264-3 Date: January 29, 2018
SerialID: D42E41E5-51AE-4A81-856FE5099DE03E1B
Certified By: Kevin Stock Pierce County Clerk, Washington



Superior Court of Washington For Pierce County	
<u>State of Washington</u>	Plaintiff
vs.	
<u>Nicholas Nathaniel Martin</u>	Defendant

No. 14-1-03264-3
**Statement of Defendant on Plea of
 Guilty to Non-Sex Offense**
(Felony)
(STDFG)

1. My true name is: Nicholas Nathaniel Martin
2. My age is: 45
3. The last level of education I completed GED
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Laura M. Groves WSBA #36809
 - (a) I am charged with the crime(s) of: Count I: Assault 2 w/FASE, Count II: Assault 2 w/FASE, Count III: Assault 2 w/FASE, Count IV: Felony Harassment, Count V: UPOF 2 as set out in the Amended Information, dated 6/26/15, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

The elements of this crime X these crimes are as set out in the Amended Information, dated 6-26-15 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]
(Defendant's initials)

Additional counts are addressed in Attachment "B"

6/29/2015 73958109

N.K. [Signature]

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (a) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (b) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

N.K. [Signature]

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
I	9	63-84	36	18 Months	10 years/\$20,000
II	9	63-84	36	18 Months	10 years/\$20,000
III	9	63-84	36	18 Months	10 years/\$20,000
IV	7	33-43	0	12 Months	5 years/\$10,000
V	7	33-43	0	12 Months	5 years/\$10,000

* The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal Street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (SM) Sexual Motivation, RCW 9.94A. 53 3(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P 16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's

statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.729 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category

of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

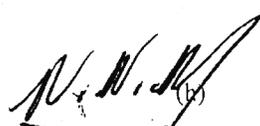
If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.


(g)

The prosecuting attorney will make the following recommendation to the judge:

84 months plus 108 months for firearm enhancements; Credit calculated by DOC; \$500 CVPA, \$200 costs, \$100 DNA, \$500 DAC recoupment; DV eval and follow up txmt, substance abuse eval and follow up txmt; Forfeit any contraband in property, law abiding behavior; no contact order with victim, Wagner and Guerrero; restitution, if any.

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.


(h)

The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more

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than nine.
(iii) The judge may also impose an exceptional sentence above the standard range if

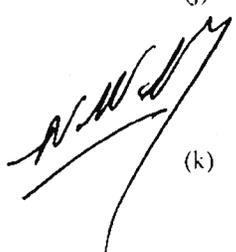
the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

(iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a hearing, either the State or I can appeal the sentence.

(i) **If am not a citizen of the United States**, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) **I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition**, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

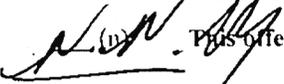


(k) I acknowledge that my right to vote has been lost due to a felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote will be provisionally restored if, after release from confinement by the Department of Corrections and any community custody, I reregister. That provisional right may be revoked if I fail to pay legal financial obligations as required. 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.

(l) **Government assistance may be suspended** during any period of confinement.

(m) **I will be required to have a biological sample collected** for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraph that DO APPLY.



(n) This offense is a most serious offense or "strike" as defined by RCW 994A.030, and if I

have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

- 6/20/2015 7:39:01:13
- ~~___ (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (c). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~
 - ~~___ (p) The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.~~
 - ~~___ (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.~~
 - ~~___ (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~
 - ~~___ (s) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.~~
 - ~~___ (t) The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.~~

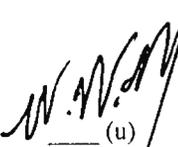
If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a

comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of **three to six months**, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

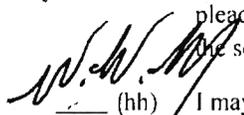
-  (u) If am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- ___ (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).
- ___ (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- ___ (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a **motor vehicle in the commission of this felony**.
- ___ (y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after

January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).

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- ___ (z) If I am pleading guilty to ~~felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control~~ of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.
- ___ (aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.6 1.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.6 1.522, or for any felony driving under the influence (RCW 46.6 1.502(6)), or felony physical control under the influence (RCW 46.6 1.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.
- ___ (bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.
- ___ (cc) The crime of _____ has a mandatory **minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- ___ (dd) I am being sentenced for **two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- ___ (ee) The offense(s) I am pleading guilty to include(s) a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- ___ (ff) The offense(s) I am pleading guilty to include(s) a **deadly weapon, firearm, or sexual motivation enhancement**. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

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 (gg) If I am pleading guilty to **(1) unlawful possession of a firearm(s) in the first or second degree and (2) felony theft of a firearm or possession of a stolen firearm**, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to **unlawful possession of more than one firearm**, I must serve each of the sentences for unlawful possession consecutively to each other.



 (hh) I may be required to register as a felony firearm offender under RCW 9.4 I.330 and RCW 9.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

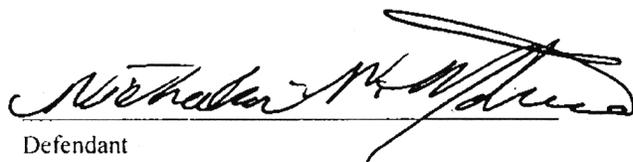
 (ii) If I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

 (jj) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

- 7. I plead guilty to count(s) I, II, III, IV & V as charged in the Amended Information, Dated 6-26-15. I have received a copy of that information and reviewed it with my lawyer.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state what I did in my own words that make me guilty of this crime. This is my statement:

X Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

- 12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" and/or "Felony Firearm Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.



Defendant

73080117

6/29/2015

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

[Signature]
Prosecuting Attorney

[Signature]
Defendant's Lawyer

Print Name _____ WSBA No. 40013

Print Name Laura M. Groves WSBA No. 36889

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full; The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (b) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.
- (c)

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

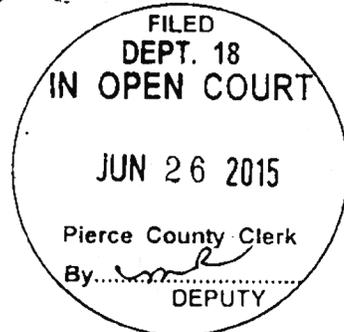
Signed at (city) _____, (state) _____, on (date) _____

Interpreter _____ Print Name _____

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: JUNE 26, 2015

[Signature]
Stephan J. Rumbaugh



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 29 day of January, 2018



Kevin Stock, Pierce County Clerk

By /S/David Booker, Deputy.

Dated: Jan 29, 2018 12:50 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: D42E41E5-51AE-4A81-856FE5099DE03E1B.

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APPENDIX “D”

Declaration for Determination of Probable Cause

August 20 2014 10:17 AM

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN STOCK
COUNTY CLERK

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
 24 ANGELICA WILLIAMS, WSB# 36673

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

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 29 day of January, 2018



Kevin Stock, Pierce County Clerk

By /S/David Booker, Deputy.

Dated: Jan 29, 2018 12:50 PM



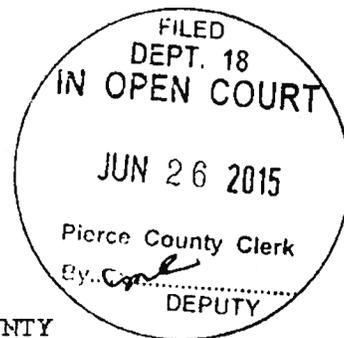
Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 94B0770E-047F-44B4-932AE3FA00EC5DDE.

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APPENDIX “E”

Notice/Advice of Collateral Attack



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 14-1-03264-3

vs.

NICHOLAS NATHANIEL MARTIN

ADVICE OF RIGHT TO APPEAL

Defendant

RIGHT TO APPEAL

Judgment and Sentence having been entered, you are now advised that:

- 1.1 You have the right to appeal your conviction(s). If you have entered a guilty plea, you have waived your right to raise certain issues, as discussed in your guilty plea statement, in an appeal. You have a right to appeal any sentence that is outside the standard sentence range. You also have a right to appeal rulings on other post convictions motions as listed in Rules of Appellate Procedure 2.2.
- 1.2 Unless a notice of appeal is filed with the clerk of the court within thirty (30) days from the entry of judgment or the order appealed from, you have irrevocably waived your right of appeal.
- 1.3 The clerk of the Superior Court will, if requested by you, file a notice of appeal on your behalf.
- 1.4 If you cannot afford the cost of an appeal, you have the right to have a lawyer appointed to represent you on appeal and to have such parts of the trial record as are necessary for review of errors assigned transcribed for you, both at public expense.

7398 Q136

6/29/2015

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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned 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 herunto set my hand and the Seal of said
Court this 29 day of January, 2018



Kevin Stock, Pierce County Clerk

By /S/David Booker, Deputy.

Dated: Jan 29, 2018 12:50 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

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PIERCE COUNTY PROSECUTING ATTORNEY

January 31, 2018 - 1:15 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50516-9
Appellate Court Case Title: Personal Restraint Petition of: Nicholas Martin
Superior Court Case Number: 14-1-03264-3

The following documents have been uploaded:

- 505169_Personal_Restraint_Petition_20180131131511D2122201_0918.pdf
This File Contains:
Personal Restraint Petition - Reply to Response to PRP/PSP
The Original File Name was Martin PRP Response.pdf

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