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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_

No. \_\_\_\_\_

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

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STATE OF WASHINGTON

V.

AUSTIN R. MOORES-NELSON

---

IN RE PERSONAL RESTRAINT OF NELSON

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Austin R. Moores-Nelson #393654  
Washington State Penitentiary  
1313 N. 13th Avenue  
Walla Walla, Wa 99362

(Pro Se)

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A. STATUS OF PETITIONER

i. I Austin Richard Moores-Nelson DOC# 393654, 1313 N. 13th Avenue, Walla Walla, Wa 99362, hereby apply for relief from confinement. I am now in custody serving a sentence upon conviction of a crime. I was sentenced in the Superior Court of Pierce County Washington upon Plea of Guilt to: Murder in the First Degree, Burglary in the First Degree, Animal Cruelty in the First Degree, and Malicious Mischief in the Second Degree. I was sentenced by Judge Edmund Murphy on September 9, 2016. I was represented by Edward DeCosta from the Department of Assigned Counsel. I have not previously filed any appeal or action in this case.

B. QUESTIONS OF LAW

1. SHOULD THE SENTENCING COURT HAVE IMPOSED A WEAPON ENHANCEMENT ON AN UNRANKED FELONY?
  
2. DOES A VICTIM IMPACT STATEMENT PROVIDED BY THE VICTIMS CO-WORKER, (WHO IS ALSO A DISTRICT COURT CLERK IN THE W.D.WASH-TACOMA, AS THE VICTIM WAS), CONSTITUTE A CROSS BETWEEN A QUASI JUDICIAL MINISTERIAL OFFICER AND A SUBSTANTIAL ARM OF THE PROSECUTION THAT RISES TO THE LEVEL OF A VIOLATION OF THE APPEARANCE OF FAIRNESS DOCTRINE AND OR CREATE AN ISSUE OF POTENTIAL BIAS THAT VIOLATES DUE PROCESS?

3. DID THE COURT ABUSE ITS DISCRETION BY IMPOSING CONCURRENT SENTENCES WITH MULTIPLE WEAPONS ENHANCEMENTS THAT RUN CONSECUTIVELY TO THE UNDERLYING OFFENSE AND EACH OTHER CONSTITUTING AN EXCEPTIONAL SENTENCE WITHOUT ENTERING WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW?
  
4. FOR THE PURPOSES OF OFFENDER SCORE CALCULATION AND SENTENCING DO ANY OF COUNTS CONSTITUTE SAME CRIMINAL CONDUCT?
  
5. DOES THE COERCIVENESS OF COUNSEL, FAILURE TO OBJECT TO A WEAPON ENHANCEMENT ON AN UNRANKED FELONY, FAILURE TO OBJECT TO AN EXCEPTIONAL SENTENCE, FAIL TO REQUEST WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW, OR ALLOW A PLEA TO GO FORWARD IN A CASE WHERE HIS CLIENT RECEIVED ZERO BENEFIT AND ARGUABLY MORE TIME THAN THE COURT HAD AUTHORITY TO IMPOSE CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?
  
6. IS NELSON'S PLEA OF GUILT, IN LIGHT OF THE ISSUES AND ARGUMENTS HEREIN AND THE JUDGEMENTS FACIAL INVALIDITY STILL CONSIDERED VOLUNTARY?
  
7. SHOULD NELSON BE ALLOWED TO DEMAND THE SPECIFIC PERFORMANCE AND OR THE WITHDRAWAL OF HIS PLEA?

\* Nelson provides an Affidavit in Support of his PERSONAL RESTRAINT PETITION that applies to some of the issues herein. See Appendice (A)

C. PROCEDURAL FACTS

i. On January 18th 2016, (19) year old Austin Nelson was arrested and charged with Murder °1, Burglary °1, Animal Cruelty °1, and Malicious Mischief °2. The Court appointed Edward DeCosta from the Office of Assigned Counsel to represent him. A STIPULATION ON PRIOR RECORD AND OFFENDER SCORE (Plea of Guilty) was proposed by the State. On September 9th 2016, the Court accepted Nelson's Plea of Guilt and sentenced him to 374 months on Count 1 Murder in the First, with Count 2 Burglary in the First, Count 3 Animal Cruelty in the First, and Count 4 Malicious Mischief in the Second running Concurrently to the 374 months. The Court however imposed (3) weapons enhancements, 60 months on Count 1 Murder °1, 60 months on Count 2 Burglary °1, and 18 months on Count 3 Animal Cruelty °1, with all enhancements running Consecutively for a total of 512 months. Nelson now Timely Appeals.

\* A Victim Impact Statement was given at Sentencing and no Findings of Fact and Conclusions of Law were entered. Nelson provides a Summary of procedures at sentencing in his Affidavit in Support of PERSONAL RESTRAINT PETITION. See Appendice (A).

D. GROUNDS AND ARGUMENT

1. SHOULD THE SENTENCING COURT HAVE IMPOSED A WEAPON ENHANCEMENT ON AN UNRANKED FELONY?

i. Nelson contends that it was err for the court to impose a weapons enhancement on Court 3, Animal Cruelty °1 and that this was an abuse of discretion that renders his judgement facially invalid and void. " because the firearm enhancement does not apply to unranked offenses, the trial court's 18 month increase of the defendant's sentence imposed for the animal cruelty conviction, which had no seriousness level assigned to it, was unauthorized and void." State v. Soto, 177 Wn. App. 706, 309 P.3d 396, (2013).

2. DOES A VICTIM IMPACT STATEMENT PROVIDED BY THE VICTIMS CO-WORKER, (WHO IS ALSO A DISTRICT COURT CLERK IN THE W.D. WASH-TACOMA, AS THE VICTIM WAS), CONSTITUTE A CROSS BETWEEN A QUASI JUDICIAL MINISTERIAL OFFICER AND A SUBSTANTIAL ARM OF THE PROSECUTION THAT RISES TO THE LEVEL OF A VIOLATION OF THE APPEARANCE OF FAIRNESS DOCTRINE AND OR CREATE AN ISSUE OF POTENTIAL BIAS THAT VIOLATES DUE PROCESS?

i. Nelson contends that victim impact statement provided by a clerk of the court was a strategic tactic that unduly prejudiced him and requires judicial analysis.

ii. A clerk of the court is recognised as a Ministerial Officer of the court, *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 66 P.2d 842, 1937 WASH. LEXIS 524 (Wash. 1937)., and a Quasi Judicial Officer is a substantial arm of the prosecution, *State v. MacDonald*, 183 Wn.2d 1, 346 P.3d 748, Wash. LEXIS 416 (Wash. 2015), modified, No. 89912-6, 2015 Wash. LEXIS 427 (Wash. Apr. 13, 2015).

iii. Under the state and federal constitutions, a criminal defendant has the right to be tried and sentenced by an impartial court, U.S. Const. amends. VI., XIV., Wash. Const. art. 1 § 22. Pursuant to the appearance of fairness doctrine, a judicial proceeding is valid if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing. The law requires more than an impartial judge; it requires the judge also appear to be impartial. A party asserting a violation of the appearance of fairness must show the judges actual or potential bias.

iv. The test for determining whether the judges impartiality might reasonably be questioned is an objective test that assumes a reasonable observer knows and understands all the relevant facts. State v. Solis-Diaz, 187 Wn.2d 535 (December 8, 2016).

v. Nelson contends that the risk for potential bias in this case was already a relevant factor requiring caution and that the victim impact statement provided in this case by a clerk of any court violated his right to due process..Nelson further asserts that should the court agree with his argument it should consider whether he should be remanded to the same judge. "But where review of facts in the records shows the judges impartiality might reasonably be questioned, the appellate court should remand the matter to another Judge. See Sherman, 128 Wn.2d at 206."

3. DID THE COURT ABUSE ITS DISCRETION BY IMPOSING CONCURRENT SENTENCES WITH MULTIPLE WEAPONS ENHANCEMENTS THAT RUN CONSECUTIVELY TO THE UNDERLYING OFFENSE AND EACH OTHER CONSTITUTING AN EXCEPTIONAL SENTENCE WITHOUT ENTERING WRITEN FINDINGS OF FACTS AND CONCLUSIONS OF LAW?

i. Nelson contends that it was err to impose multiple weapons enhancements to run Consecutively to each other and the underlying offense.

ii. Multiple weapons enhancements are to run consecutively to the underlying sentence for the crime to which they apply. However, whether the weapons enhancements run consecutively to each other will depend on whether the total sentences run consecutively or concurrently according to the rules of the sentencing guidelines. See RCW 9.9A.400; Charles, 135 Wn.2d at 254., State v. Lewis, 135 Wn.2d 239.

iii. Nelson contends that this plea and sentence required much more consideration, first and foremost by the state and Nelson's attorney, but also ultimately by the sentencing court itself. Nelson ultimately seeks to withdraw his plea, however he still asserts that were he to enforce the specific performance of his plea, that his multiple weapons enhancements should have run concurrently with each other as the multiple offenses did.

4. FOR THE PURPOSES OF OFFENDER SCORE CALCULATION AND SENTENCING DO ANY OF THE COUNTS CONSTITUTE SAME CRIMINAL CONDUCT?

i. Nelson contends that this case encompassed the same criminal intent, committed at the same time and place, and involved the same victim.

ii. The state's theory of this case is that Nelson either went to the victims residence to commit a burglary or he went to the residence to commit a murder. The state charged Nelson with Malicious Mischief for causing damage to the residence as he entered to commit burglary. The victim and her pet were killed there at the home whether inside or outside. Nelson asserts that he should have been sentenced with these offenses counting as only a single point or in the alternative Two Points.

iii. "For sentencing purposes, two or more crimes constitute same criminal conduct when they.. Require the same criminal intent, are committed at the same time and place, and... involve the same victim" State v. Saunders, 120 Wn. App. 800, 824, 86 P.3d 232 (2004), RCW 9.94A.589(1)(a).

5. DOES THE COERCIVENESS OF COUNSEL, FAILURE TO OBJECT TO A WEAPON ENHANCEMENT ON AN UNRANKED FELONY, FAILURE TO OBJECT TO AN EXCEPTIONAL SENTENCE, FAIL TO REQUEST WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW, OR ALLOW A PLEA TO GO FORWARD IN A CASE WHERE HIS CLIENT RECEIVED ZERO BENEFIT AND ARGUABLY MORE TIME THAN THE COURT HAD AUTHORITY TO IMPOSE CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL?

i. Nelson provides the court with an Affidavit in Support of his PRP in which he contends that Mr. Decosta was pressuring him to hurry and sign a plea deal offered by the state. The plea was presented more than a week prior to sentencing and as the court can tell, Mr. DeCosta made changes to the document prior to the sentencing day. Nelson asserts that on sentencing day DeCosta showed up in a rush and told him to hurry up and initial a bunch of spots and they would go get sentenced. See Appendice (A) Affidavit, and Appendice (B) Judgement and Sentence & Plea Agreement.

ii. Mr. DeCosta was accused of this very same behavior in State v. Watson, 138 Wn. App. 1027, 2006 Wash App. LEXIS 398 (2006). Mr. DeCosta also provided the statement of guilt in which Nelson only signed. "A guilty plea is involuntary and invalid if the record shows that it was obtained by mental coercion overbarring the defendants will. Brady, 397 U.S. at 750, Palmer v. Branor, 45 Wn.2d 278, 282, 273 P.2d 985 (1954)."

\* Nelson was a nineteen (19) year old young adult, he is a first time offender and has never been in trouble before and had no reasonable knowledge of his rights.

iii. Nelson requests that the court consider his Affidavit in Support of his PRP, the facts discernable from the Judgement and Sentence & Plea paperwork, and all the issues presented herein to decide if counsels assistance fell below an objectively reasonable standard. Strickland v. Washington, 466 U.S. 668 (1984). The United States Supreme Court has recently decided that Counsel and appellate counsel can be ineffective on plea bargain cases. Lee v. United States, No. 16-327 (June 23, 2017).

6. IS NELSON'S PLEA OF GUILT, IN LIGHT OF ALL THE ISSUES AND ARGUMENTS HEREIN AND THE JUDGEMENTS FACIAL INVALIDITY STILL CONSIDERED VOLUNTARY?

i. Nelson contends that he did not knowingly, intelligently, or voluntarily enter into the plea and asks this court to consider all of the issues and facts presented herein to decide. "A defendant who pleaded guilty to a charge is not thereby precluded from raising a collateral challenge to the validity of the conviction if, on the face of the record, the trial court did not have the power to enter the conviction or sentence." IN RE Pers. Restraint of Thompson, 141 Wn.2d 712 (2000)

7. SHOULD NELSON BE ALLOWED TO DEMAND THE SPECIFIC PERFORMANCE AND OR THE WITHDRAWAL OF HIS PLEA?

i. Nelson contends that his signature was coerced, his initialing was rushed, and that his meek yes's to the Judges questions on voluntariness in a Courtroom full of the victim's family did not constitute voluntariness. Nelson asserts that in light of the issues presented herein he should be allowed to demand the specific performance and or the withdrawal of his plea. Isadore, 151 Wn.2d 294, 88 P.3d 390.

E. CONCLUSIONS AND RELIEF SOUGHT

i. Nelson asserts that he has presented sufficient facts and argument to conclude he is entitled to relief from his restraint.

ii. He respectfully asks the court to rule in his favor upon considering each one of his issues and to appoint counsel so that Nelson may appeal any unfavorable decision as Nelson was provided a one time assistance from another inmate per DOC Policy 590.500.

Per DOC Policy 590.500, Offenders may receive help and assistance from other offenders in a designated area. Nothing precludes Offenders from finding help, but it is few and far between and lacking in skill.

F. STATEMENT OF FINANCES

i. Nelson was represented by the Department of Assigned Counsel during this case and asserts that he cannot afford to pay the filing fee. Nelson requests this court to wave the filing fee's and any other cost associated with this action. He provides the following information:

1. I do ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have a spendable balance of 0 in my institutional account.

3. I do ask the court to appoint me an attorney for me because I am so poor I cannot afford to pay a lawyer.

4. I am not employed.

5. During the past 12 months I have not received any money from any buisness, profession or other for of employment.

6. During the past 12 months I did not receive any form of rent payments.

did not receive any dividends,

did not get any other money.

7. did not have any cash.

did not have any checking or savings accounts.

did not own any stocks, bonds, or other notes.

8. I possess no real estate, properties, or things of value in which I have an interest.
9. I am not married.
10. I have no persons that need me to support them.
11. All the bills I have are related to restitution.

G. OATH OF PETITIONER

After being duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

*[Handwritten Signature]*

Subscribed and sworn before me this 13 day of July 2017.

*[Handwritten Signature]*

Notary Public in and for the State of Washington in the county of Walla Walla. My commission expires April 4, 2021



(Afterword by Ghost Writer)

Dear judiciary, are we the convicted still people worthy of society's forgiveness? In today's system society has no afterword in the matter. Strong adversarial competition and strenuous interpretations of the law has closed all doors. There's no parole, restoration is non-existent, and there are no more advocates of mercy. Rarely have I met, him without remorse and regret. I know total impartiality is impossible, but as a lawyer, prosecutor, or Judge, it is your duty and it is what is required of you. Justice requires no emotion and demands no victim. I am surrounded by the crippled, old and dying, as well as the changed, self taught, self reformed, and the innocent. Should a certain lady appellate Judge and an appellate Division Chief be so close of friends that the Judge leans in favor of her friends arguments? Vigorous Prosecution and fair adversarial competition requires a solid

seperation of powers. I am the wrongly accused, currently awaiting this courts decision in my own matter. The young man in this case took responsibility for his actions and the court embarrassed itself by committing obvious errors in its haste to avenge. Someone needs to fix this broken system and you are in the position to do it. Were all people, and we can do better. My sincerest falicitations, Mr. O.

#### Effective Counsel

I believe effective counsel would have discovered that his client had been high on (Phencyclidine) also known as PCP or "Angel Dust". Would have determined if he could put Nelson on the stand, could get him to stand up and address the court as in Ferguson v. Georgia, or found a way to admit an out of court statement or affidavit like State v. Fisher, 185 Wn.2d 836. would have then moved to instruct the jury on volutary intoxication and presented an expert witness and or Doctor testimony on the delusional and hallucinational effects of this powerful drug as in Volk v. Deneerleer, 184 Wn. App. 389, at 54. Would then have argued that Nelson was a 19 year old kid who made the worst mistake of his life but that at worst it was 2° murder or even Voluntary Manslaughter 1°. Were Nelson a deranged killer and parents worst nightmare, he'd belong in a mental hospital. Are the lives of the defendants any less precious then those of the slain?

Appendice (A)

STATE OF WASHINGTON )

v. )

AUSTIN R. MOORES-NELSON )

AFFIDAVIT IN SUPPORT )

OF PRP )

I Austin R. Moores-Nelson, affiant, hereby depose, declare and swear to the following:

On January 17<sup>th</sup> 2016, I contacted an acquaintance to purchase Bho oil, which is marijuana - The oil, I met up with him and he sold me some clear Gel Pills that had liquid similar to what I had seen in marijuana stores. late that evening at around 10pm I took a pill, thinking id just get sleep, At 3Am I was still awake and feeling odd so I took another, By 7:30 or 8Am I was paranoid, and scared because I was hallucinating and hearing noises, Everything was brightly colored and I felt I had to get away from my home, ~~Paranoid~~ I got in my car and drove, Thinking of my Ex-girlfriend and wanting to get my stuff I drove to her house, Paranoid about her neighbors who have slashed my tires before, I parked always away, AS I walked the short distance to her house the hallucinations and other effects intensified, I became Paranoid and wanted to get inside somewhere, I knocked on the door but there was no answer. At this point my vision was tilted and spinning, At some point I turned

At the sound of a loud noise and saw a shape coming towards me. I raised my gun and fired. I ran to the back of the house and busted in. As I entered another large shape making horribly loud and vicious sound ran at me. So I fired at it to, and fled from that place, in the time period after I was running from everything and in a total panick, it wasn't until I had been arrested and in custody that I started to come down from the drug. While in Jail I remembered hearing that the drug dealer also sold PCP. I can't believe what happened. I've never been in trouble before and never would have killed ~~somebody~~, it was not my intention to kill anyone, however I felt like a price must be paid. I believe that I mistakenly consumed PCP - Angel dust.

I was appointed Ed Decosta as my Attorney from the Department of Assigned Counsel because I have no money. He came to see me a few times always pressuring me to plead guilty. on August 30, 2016, he brought a plea deal and told me I should sign it. It was no bargain, it was basically plea guilty as charged. on 9/9/2016 I went to get sentenced and met with Ed. He told me to initial a bunch of spots and was in a rush. I did what I was told. At sentencing I was told to answer yes and made no further statements. A victim impact statement was given in court by A

Woman who was Announced as a friend and Co-Worker of the victim who was a court clerk, The Judge then said he was giving me the Maximum Allowable instead of the lower or mid range and for multiple (3) weapons Enhancements Consecutively, Ed looked At me and Said "Sorry dude" and walked away.

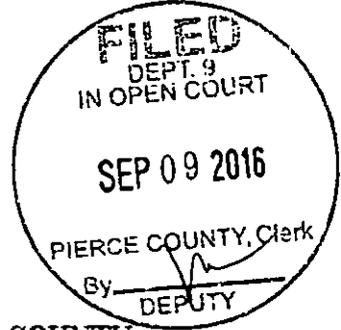
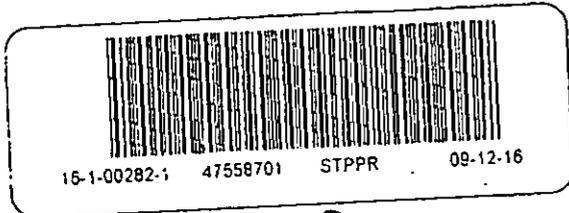
before I took my Plea ED Decosta had been contacting my family, Pressuring them to tell me to take a deal.

I swear under penalty of perjury of the laws of the state of Washington that the foregoing is a true and accurate statement to the best of my recollection.

Subscribed and sworn before me this 13 day of July 2017.

  
Notary Public in and for  
the State of Washington  
in the county of Walla  
Walla, My commission  
Expires April 4, 2021.





Appendix (B-1)

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. AUSTIN RICHARD MOORES NELSON, Defendant.

CAUSE NO. 16-1-00282-1 STIPULATION ON PRIOR RECORD AND OFFENDER SCORE (Plea of Guilty)

Upon the entry of a plea of guilty in the above cause number, charge MURDER IN THE FIRST DEGREE; BURGLARY IN THE FIRST DEGREE; ANIMAL CRUELTY IN THE FIRST DEGREE; MALICIOUS MISCHIEF IN THE SECOND DEGREE, the defendant AUSTIN RICHARD MOORES NELSON, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions. The defendant further stipulates that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Table with 10 columns: Count, Crime, Date of Sentence, Sentencing Court (County & State), Date of Crime, A or J Adult Juv, Type of Crime, Class, Score by Ct, Felony or Misdemeanor. Rows I, II, III detailing convictions for Murder, Burglary, and Animal Cruelty.

IV	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9/09/16	PIERCE, WA	1/15/16	A	NV	C		FELONY
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The defendant committed a current offense while on community placement (adds one point to score).  
RCW 9.94A.525.

**OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)**

None Known or Claimed, or:

**PRIOR CONVICTIONS INCLUDED IN OFFENDER SCORE (if any)**

None Known or Claimed, or:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4	XV	281-374 MONTHS	60 MONTHS (FASE)	341-434 MONTHS	LIFE
II	4	VII	36-48 MONTHS	60 MONTHS (FASE)	96-108 MONTHS	LIFE
III	3	UNRANKED	0-12 MONTHS	18 MONTHS (FASE)	18-30 MONTHS	5 YRS
IV	3	I	2-6 MONTHS	NONE	2-6 MONTHS	5 YRS

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

The defendant further stipulates:

- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;

1  
2  
3  
4) That none of the above criminal history convictions have "washed out" under  
5 RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated. If sentenced within the  
6 standard range, the defendant further waives any right to appeal or seek redress via any collateral  
7 attack based upon the above stated criminal history and/or offender score calculation.

8 Stipulated to this on the 9<sup>th</sup> day of Sept, 2016.

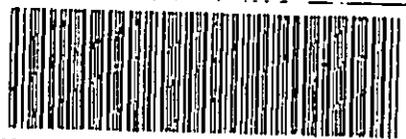
9  
10   
11 JOHN M. SHEERAN  
12 Deputy Prosecuting Attorney  
13 WSB # 26050

10   
11 AUSTIN RICHARD MOORES NELSON

12   
13 EDWARD J. DECOSTA  
14 WSB # 21673

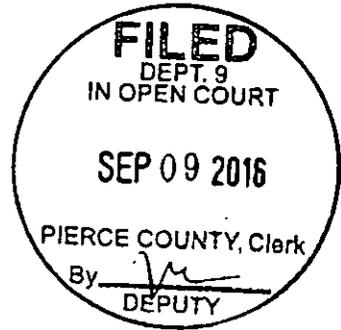
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16-1-00282-1 47558700 STDFG 08-12-16

Appendix (B-2)



**Superior Court of Washington  
For the County of Pierce**

No. 16-1-00282-1

State of Washington  
Plaintiff  
vs.  
Austin Richard Moores Nelson,  
Defendant

**Statement of Defendant on Plea of  
Guilty to Non-Sex Offense  
(Felony)  
(STDFG)**

1. My true name is Austin Richard Moores Nelson.
2. I am 20 years of age.
3. The last level of education I completed was the 10th grade.
4. **I Have Been Informed and Fully Understand That:**
  - (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
  - (b) I am charged with murder in the first degree with a firearm sentencing enhancement, burglary in the first degree with a firearm sentencing enhancement, animal cruelty in the first degree with a firearm sentencing enhancement, and malicious mischief in the second degree. The elements of those crimes are set forth in the Amended Information, and I have received a copy of the Amended Information.
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;

EN

EN

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- En
- (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;
  - (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
  - (f) The right to appeal a finding of guilt after a trial.

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:

En

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	4	281 – 374 mos	60 mos	36 mos	Life / \$50 K
2	4	36 – 48 mos	60 mos	18 mos	Life / \$50 K
3	3	0-12 mos	18 mos		5 yrs / \$10 K
4	3	2 – 6 mos			5 yrs / \$10 K

\*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, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Veh. Hom, see RCW 46.61.520, (P16) Passengér(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 agreement. 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 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 committed the above crime(s) while under age 18 and am sentenced to more than 20 years of confinement:
  - (i) As long as my conviction is not for aggravated first degree murder or certain sex crimes, and I have not committed any crimes after I turned 18 or committed a major violation in the 12 months before the petition is filed, I may petition the Indeterminate Sentence Review Board (Board) for early release after I have served 20 years.

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- (ii) If I am released early because my petition was granted or by other action of the Sentence Review Board, I may be subject to community custody under the supervision of the DOC for a period of time determined by the Board. I will be required to comply with any conditions imposed by the Board.
  
- (e) 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.
  
- (f) 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.
  
- (g) 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.

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OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses	36 months
Violent Offenses	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.

- (h) The prosecuting attorney will make the following recommendation to the judge:

**Count I:** 374 months confinement plus 60 months confinement for the firearm sentencing enhancement; 36 months community custody; no contact with any Ryan family members; forfeit evidence/contraband in property room; register as a felony firearm offender; defendant to pay \$500 CVPA, \$200 filing fee, \$100 DNA testing fee and restitution by later order of the Court. Defendant may ask for 281 months confinement plus 60 months confinement for the firearm sentencing.

**Count II:** 41 months confinement plus 60 months confinement for the firearm sentencing enhancement; 18 months community custody; abide by conditions imposed in Count I.

**Count III:** 12 months confinement plus 18 months confinement for the firearm sentencing enhancement; abide by conditions imposed in Count I.

**Count IV:** 6 months confinement; abide by conditions imposed in Count I.

*Total in-custody time recommended by the State: 512 months (374 standard range plus 138 firearm sent. enh.)*

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

- (i) 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.

AN

- (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 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) If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

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(j) If I 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.

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(k) 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.

EN  
(l) Loss of voting rights—Acknowledgment, 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 (i) a certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637; (ii) a court order issued by the sentencing court restoring the right, as provided in RCA 9.92.066; (iii) a final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or (iv) a certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Voting before the right is either provisionally or fully restored is a class C felony under RCW 29A.84.660.



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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.

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- (v) If I 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.
- (w) 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).
- (x) 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.
- (y) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the

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judge finds I used a motor vehicle in the commission of this felony.

- (z) 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).
- (aa) 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 the Department of Licensing 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.
- (bb) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(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.
- (cc) 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, or vehicular assault 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.
- (dd) The crime of aggravated murder in the first degree has a mandatory minimum sentence of life in prison without the possibility of parole. The law does not allow any reduction of this sentence. RCW 10.95.030.
- (ee) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts I, II and III will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- (ff) 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.
- (gg) 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

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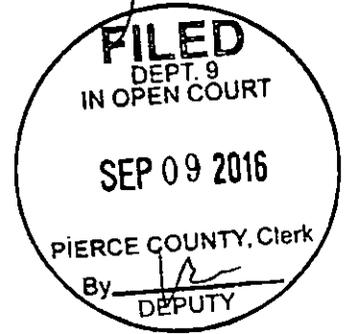
State vs. Austin Nelson  
16-1-00282-1

Dated: 9-9-16



Judge

EDMUND MURPHY

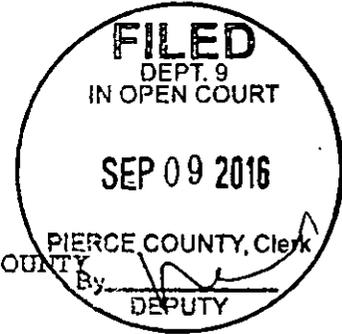


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9/13/2016

Appendice (B-3)



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 16-1-00282-1

vs.

AUSTIN RICHARD MOORES NELSON

Defendant.

SID: 28256711  
DOB: 09/04/1996

JUDGMENT AND SENTENCE (FJS)

- 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

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 9/09/2016 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	MURDER IN THE FIRST DEGREE (D1/FASE)	9A.32.030(1)(a) 9.41.010 9.94A.530 9.94A.533	(F) FIREARM	1/18/2016	PCSD 1601800371
II	BURGLARY IN THE FIRST DEGREE (G1/FASE)	9A.52.020(1)(a) 9.41.010 9.94A.530 9.94A.533	(F) FIREARM	1/18/2016	PCSD 1601800371

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 1 of 11

16-9-07568-2

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
III	ANIMAL CRUELTY IN THE FIRST DEGREE (O23A/FASE)	16.52.205(1)(b)(c) 9.41.010 9.94A.530 9.94A.533	(F) FIREARM	1/18/2016	PCSD 1601800371
IV	MALICIOUS MISCHIEF IN THE SECOND DEGREE (HS3/DV)	9A.48.080(1)(a)(2) 10.99.020	NONE	1/15/2016	PCSD 1601500537

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Harm, 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) IV 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):

NONE KNOWN OR CLAIMED

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	4	XV	281-374 MONTHS	60 MONTHS (FASE)	341-434 MONTHS	LIFE
II	4	VII	36-48 MONTHS	60 MONTHS (FASE)	96-108 MONTHS	LIFE
III	3	UNRANKED	0-12 MONTHS	18 MONTHS (FASE)	18-30 MONTHS	5 YRS
IV	3	I	2-6 MONTHS	NONE	2-6 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.

JUDGMENT AND SENTENCE (JS)

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:

*Indigent, lengthy prison sentence*

2.6 [X] FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9.41.010.

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

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

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

[ ] other: \_\_\_\_\_

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

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

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

RTNRJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_  
(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ \_\_\_\_\_ Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ \_\_\_\_\_ Fine

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 11

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 800 TOTAL

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

shall be set by the prosecutor.

is scheduled for 10/7/16

RESTITUTION. Order Attached

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

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_ 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.

~~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 10.62.090~~ E79

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  
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.

JUDGMENT AND SENTENCE (JS)

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.

No Contact with any member of victim's family
See Appendix F

4.4a 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 unless forfeited by agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

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

<u>374</u> months on Count	<u>I</u>	<u>6</u> months on Count	<u>IV</u>
<del>41</del> <u>41</u> months on Count	<u>II</u>	_____ months on Count	_____
<u>12</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>60</u> months on Count No	<u>I</u>	_____ months on Count No	<u>IV</u>
<u>60</u> months on Count No	<u>II</u>	_____ months on Count No	_____
<u>18</u> months on Count No	<u>III</u>	_____ months on Count No	_____

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

1  
2  The confinement time on Count(s) I contain(s) a mandatory minimum term of 20 years  
3 CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served  
4 concurrently, except for the portion of those counts for which there is a special finding of a firearm, other  
5 deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with  
6 juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served  
7 consecutively: \_\_\_\_\_  
8 \_\_\_\_\_

9  
10 The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to  
11 the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony  
12 sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for  
13 the following cause numbers. RCW 9.94A.589: \_\_\_\_\_  
14 \_\_\_\_\_

15 Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_  
16 \_\_\_\_\_

17 (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely  
18 under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the  
19 credit for time served prior to sentencing is specifically set forth by the court: To be computed by  
20 PCS & DOC

21 4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

22 Count \_\_\_\_\_ for \_\_\_\_\_ months;

23 Count \_\_\_\_\_ for \_\_\_\_\_ months;

24 Count \_\_\_\_\_ for \_\_\_\_\_ months;

25  COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community  
26 custody see RCW 9.94A.701)

27 The defendant shall be on community custody for:

28 Count(s) I 36 months for Serious Violent Offenses

Count(s) II 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.

[X] have no contact with: Victim's Family

[X] remain [X] within [X] outside of a specified geographical boundary, to wit: Per CCO

[ ] 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): A.V.
- 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.

5.10 OTHER: \_\_\_\_\_

FILED  
DEPT. 9  
IN OPEN COURT

DONE in Open Court and in the presence of the defendant this date: 9/9/16

SEP 09 2016

PIERCE COUNTY, Clery

JUDGE

Print name

EDMUND MURPHY

By

DEPUTY

[Signature]  
Deputy Prosecuting Attorney

Print name: John M. Sheeran

WSB # 26050

[Signature]  
Attorney for Defendant

Print name: E. DECOSTA

WSB # 21673

[Signature]  
Defendant

Print name: Austin Nelson

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

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

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

Defendant's signature: [Signature]

1  
2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 16-1-00282-1

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

5 WITNESS my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

6 Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

7  
8  
9 **IDENTIFICATION OF COURT REPORTER**

10 ANGELA McDOUGALL  
11 Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

(I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Ryan Family

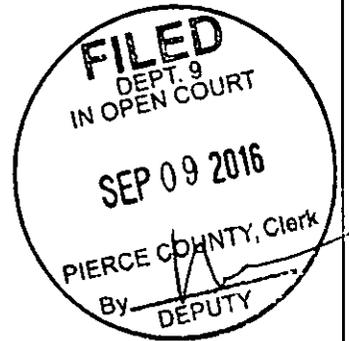
(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol;

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: \_\_\_\_\_



IDENTIFICATION OF DEFENDANT

SID No. 28256711  
(If no SID take fingerprint card for State Patrol)

Date of Birth 09/04/1996

FBI No. V1LVJ49TD

Local ID No. CHRI #20160192001

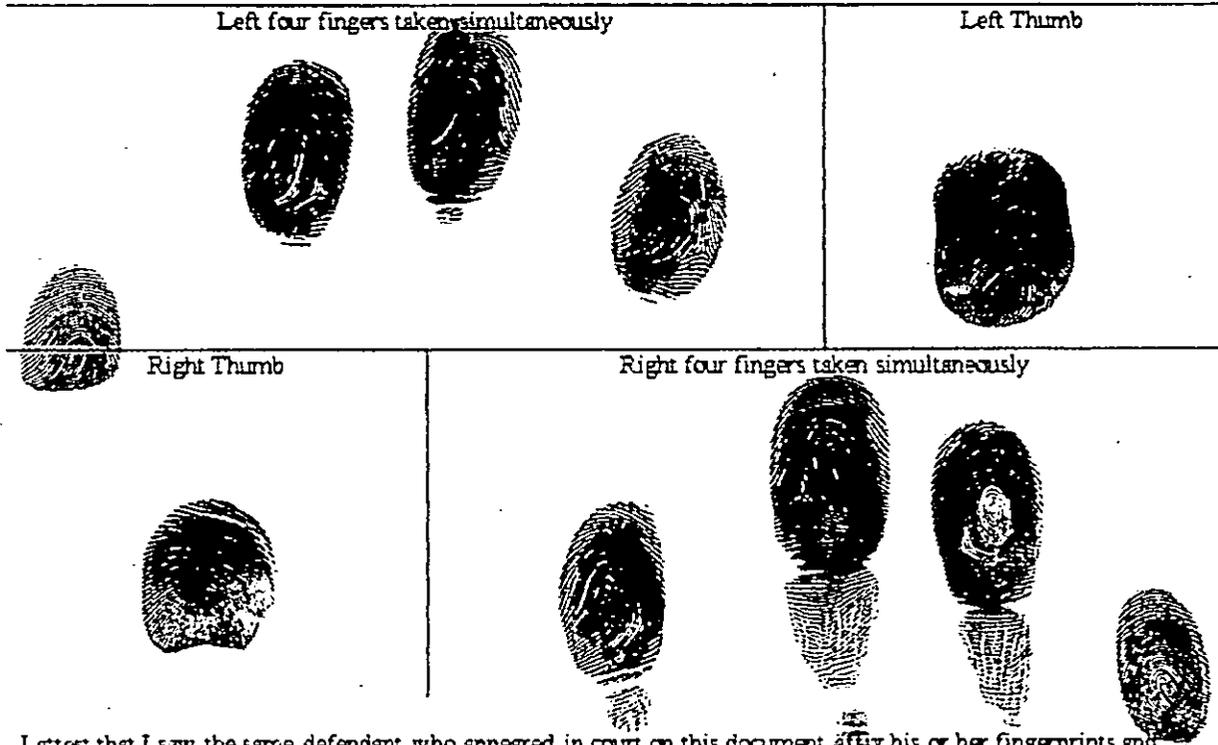
PCN No. 541536442

Other

Alias name, SSN, DOB: \_\_\_\_\_

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

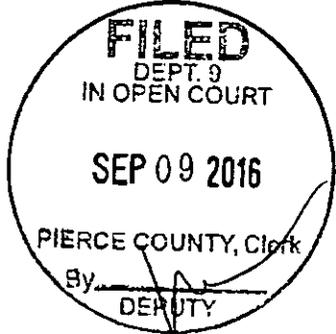
FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Michelle Evans Dated: 9-9-16

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: \_\_\_\_\_



Appendice (B-11)

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 16-1-00282-1

vs.

AUSTIN RICHARD MOORES NELSON,

Defendant.

WARRANT OF COMMITMENT

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

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

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

[ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

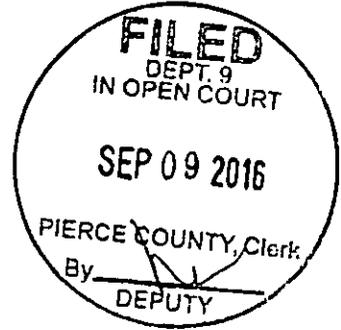
[ ] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 9/9/16

By [Signature] of the Honorable  
JUDGE  
KEVIN STOCK  
CLERK EDMUND MURPHY

By: [Signature]  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF  
SEP 12 2016 By [Signature] Deputy



STATE OF WASHINGTON

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



mac

07/12/2017  
LMKRUPKAT

Department of Corrections  
WASHINGTON STATE PENITENTIARY

PAGE : 01 OF 01  
OIRPLRAR  
10.2.1.18

PLRA IN FORMA PAUPERIS STATUS REPORT  
FOR DEFINED PERIOD : 12/31/2016 TO 06/30/2017

DOC# : 0000393654      NAME : NELSON AUSTIN      ADMIT DATE : 09/15/2016  
DOB : 09/04/1996      ADMIT TIME : 12:08

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
40.86	8.17	10.58	2.12

*Appendix (4)*

FILED  
COURT OF APPEALS  
DIVISION II  
2017 JUL 19 PM 1:07  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

State of Washington )  
 )  
v. )  
Austin R Moore, Nelson )

NO.  
AFFIDAVIT OF SERVICE  
BY MAILING

I, Austin R Moore, Nelson, being first sworn upon oath, do hereby certify that I have served the following documents:

Personal Restraint Petition  
Judgment and sentencing

Upon: Washington Court of Appeals  
division ~~two~~ TWO  
950 Broadway, Suite 300  
Tacoma WA, 98402

Pierce County Prosecutor  
936 Tacoma Ave S, Rm. 948  
Tacoma Washington 98402

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY  
1313 NORTH 13<sup>TH</sup> AVENUE  
WALLA WALLA, WA. 99362

On this 15 day of July, 2017.

Austin Moore  
Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.