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Court of Appeals
Division II
State of Washington
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT PETITION OF: AUSTIN MOORES-NELSON, Petitioner.	NO. 50608-4-II STATE'S RESPONSE TO SUPPLEMENTAL PERSONAL RESTRAINT PETITION

A. ISSUE PERTAINING TO PERSONAL RESTRAINT PETITION:

Whether this petition should be dismissed where the petitioner has not sustained his burden of proof as to any of the grounds for relief and has not satisfied the constitutional and non-constitutional standards for relief via personal restraint petition.

B. STATUS OF PETITIONER:

Petitioner Austin Richard Moores Nelson ("petitioner") is being restrained pursuant to a Pierce County judgment entered on September 9, 2016. Appendix 1-14. Petitioner's convictions and sentences were the result of a plea agreement in which petitioner pleaded guilty as charged to four offenses charged in an amended information. App. 15-19. The amended charges consisted of first degree murder, first degree burglary, first degree animal cruelty, and second degree malicious mischief. *Id.* The first three counts included a firearm sentence enhancement allegation. *Id.*

Petitioner's plea agreement included several significant terms. First, petitioner was entitled to argue in favor of the low end of the standard range and the State was entitled to argue for a higher sentence. App. 20-30. Second, petitioner admitted facts in support of his guilty pleas. *Id*. Petitioner and the State also entered into a written stipulation as to the offenders score, base standard range, and sentence enhanced standard range for each count. App, at 31-33. At the plea and sentence hearing, no issue was brought before the trial court as to any of scoring or standard range for any of the four counts. Pet.'s App. A.[1]

Petitioner did not file a direct appeal. He filed a pro se personal restraint petition on July 19, 2017. Petitioner filed his instant supplemental petition on January 10, 2020. The State's response follows.

C. ARGUMENT:

THIS PETITION SHOULD BE DISMISSED WHERE PETITIONER HAS NOT SUSTAINED HIS BURDEN OF PROOF AS TO ANY OF THE GROUNDS FOR RELIEF AND HAS NOT SATISFIED THE CONSTITUTIONAL AND NON-CONSTITUTIONAL STANDARDS FOR RELIEF VIA PERSONAL RESTRAINT PETITION.

Personal restraint procedure has its origins in the State's habeas corpus remedy, guaranteed by article 4, section 4 of the State constitution. Fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal. *In re Personal Restraint of Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." *Id*. (citing *Engle v. Isaac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are significant and require that collateral relief be limited in state as well as federal courts. *Id*.

[1] References to "Pet's App." refer to the appendices attached to petitioner's supplemental petition.

In a collateral action, the petitioner must prove constitutional error resulted in actual prejudice. *In re Personal Restraint of Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987). Mere assertions are inadequate to demonstrate actual prejudice. The rule that constitutional error must be proven harmless beyond a reasonable doubt has no application. *Id.*; *In re Hagler*, 97 Wn.2d at 825. A petitioner must show a fundamental defect resulted in a complete miscarriage of justice to obtain collateral relief for alleged non-constitutional error. *In re Personal Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than actual prejudice. *Id.* at 811. Inferences must be drawn in favor of the judgment's validity. *In re Hagler*, 97 Wn.2d at 825-826.

Reviewing courts have three options in evaluating personal restraint petitions:

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

See In re Personal Restraint of Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

In a personal restraint petition, "naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." *In re Personal Restraint of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988) (citing *In re Personal Restraint of Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986), which quoted *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). That phrase means "more is required than that the petitioner merely claim in broad general terms that the prior convictions were unconstitutional." *In re Williams*, 111 Wn.2d at 364.

The evidence presented to an appellate court to support a claim in a personal restraint petition must also be in proper form. On this subject, the Washington Supreme Court has stated "[i]t is beyond question that all parties appearing before the courts of this State are required to follow the statutes and rules relating to authentication of documents. This court will in future cases accept no less." *In re Personal Restraint of Connick*, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). The petition must include a statement of the facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2); *In re Williams*, 111 Wn.2d at 365. Affidavits, transcripts, and clerk's papers are readily available forms of evidence that a petitioner may employ to support his claims. *Id*. at 364-365. Bald assertions and conclusory allegations will not support the holding of a hearing, rather they require the dismissal of the petition. *In re Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992); *In re Williams*, 111 Wn.2d at 364-365. If the petitioner fails to provide sufficient evidence to support his challenge, the petition must be dismissed. *In re Williams*, 111 Wn.2d at 364.

The discussion of petitioner's grounds for relief is offered with the foregoing principles in mind. Petitioner has not sustained his burden of proof as to the applicable personal restraint standards.

1. <u>Petitioner entered a valid guilty plea predicated on a correct application of the firearm sentence enhancements</u>.

Petitioner challenges his guilty plea and sentence on the ground that such a plea was involuntary because he was misinformed that his sentence would be increased based on an "unlawful" firearm sentence enhancement. Specifically, petitioner argues that because firearm sentence enhancements do not apply to "unranked" offenses, the application of such an enhancement to his "unranked" crime of first degree animal cruelty resulted in both an involuntary plea and an illegal sentence. Petitioner asserts that either he is entitled to withdraw his plea or that this Court must vacate his sentence and resentence

him without the "illegal" firearm sentence enhancement. Pet. Supp. Pet. at 9-13. Petitioner's argument should be rejected.

Petitioner's claim for relief here concerns only his sentence for Count Three – first degree animal cruelty. On that count, the trial court imposed an eighteen-month firearm sentence enhancement because it was an "unranked" offense. Petitioner cites *State v. Soto*, 177 Wn. App. 706, 714, 309 P.3d 596 (2013), as invalidating the firearm sentence enhancement because Count Three was an "unranked" offense.

Petitioner is correct that *Soto* held that, "Reading all subsections of RCW 9.94A.533 in the context of the statute, we conclude that the statute does not apply to unranked offenses." *Soto*, 177 Wn. App. at 714. That court, however, analyzed discrete parts of the firearm enhancement provisions and discounted legislative intent. *Id.* The decision is inconsistent with the plain terms of the statute not to mention its legislative history and respectfully should not be given effect in this case.[2]

The firearm sentence enhancements in this case were enacted as a result of an initiative in 1995 known as hard time for armed crime. Laws 1995, Ch. 129. The specific provision at issue here was originally an amendment to the standard range sentencing table now codified as the Table 1 sentencing grid in RCW 9.94A.510. Former RCW 9.94A.310. As originally enacted, the sentence enhancements stated explicitly that they applied to the "presumptive sentence for felony crimes committed after the effective date of this section. . . ." Laws 1995, Ch. 129§ 2(3). This broad reference to "felony crimes" leaves little room for argument that they would not apply to *all* felony crimes.

If there had been any question about legislative intent as to the enhancements applying to all crimes, the statute explicitly stated that they do. A subsection stated then

[2] Cf. *State v. Vasquez*, 200 Wn. App. 220, 402 P.3d 276 (2017) (Division Three of the Court of Appeals finding the reasoning of *Soto* persuasive).

and states now that firearm sentence enhancements apply to all felony offenses except certain offenses that can only be committed by the use of or possession of a firearm:

> (f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possession a stolen firearm, reckless endangerment in the first degree, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony.

Laws 1995, Ch.129, §2(3)(f). *See* RCW 9.94A.533(3)(f).[3]

The findings and intent section of the statutory enactment adds further support for broad application. That section states:

> (1) The people of the state of Washington find and declare that:
> (a) Armed criminals pose an increasing and major threat to public safety and can turn *any crime* into serious injury or death,
> (b) Criminals carry deadly weapons for several key reasons including: Forcing the victim to comply with their demands; injuring or killing anyone who tries to stop the criminal acts; and aiding the criminal in escaping. . .
>
> * * * *
>
> (2) By increasing the penalties for carrying and using deadly weapons by criminals and closing loopholes involving armed criminals, the people intend to:
> (a) Stigmatize the carrying and use of any deadly weapons *for all felonies* with proper deadly weapon enhancements.
> (b) Reduce the number of armed offenders by making the carrying and use of the deadly weapon not worth the sentence received upon conviction.
> (c) Distinguish between the gun predators and criminals carrying other deadly weapons and provide greatly increased penalties for gun predators and for those offenders committing crimes to acquire firearms.

Laws 1995, Ch. 129, § 1(a), (b) and 2(a)-(c) (emphasis supplied).

The references to what crimes were intended to be covered by hard time for armed crime could hardly be more clearly, broadly, and universally stated. The initiative was intended to apply to "any crime" and "all felonies" according to its explicit statement of legislative intent.

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[3] This statute was amended on June 11, 2020, to add several more exclusions and now reads:

> (f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun or bump-fire stock, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun or bump-fire stock in a felony;

In 1995 there were, just as there are now, crimes categorized as unranked felonies. Sentencing of unranked felonies was determinate because the Sentencing Reform Act ("SRA") included a zero to twelve month catch-all standard range for such crimes. Former RCW 9.94A.120(1)(b). *See* Laws 2000, Ch. 28, § 5(1)(b). The same catch-all provision is currently found in RCW 9.94A.505(2)(b). In the re-enactments of this section there has been little change to sentencing of such offenses.

In the years since enactment of hard time for armed crime the legislature has taken pains not to change the original intent and reach of the SRA's sentencing provisions. In 2000 it was observed that:

> The sentencing reform act has been amended many times since its enactment in 1981. While each amendment promoted a valid public purpose, some sections of the act have become unduly lengthy and repetitive. The legislature finds that it is appropriate to adopt clarifying amendments to make the act easier to use and understand.
>
> The legislature does not intend this act to make, and no provision of this act shall be construed as making, a substantive change in the sentencing reform act.

Laws 2000, Ch. 28, § 1.

The current codification of the firearm sentence enhancements in a section separate from Table 1 dates from 2002. Laws 2002, Ch. 290. The primary purpose of the 2002 amendment was to "increase the use of effective substance abuse treatment for defendants and offenders in Washington. . . ." *Id.*, § 1. There is no indication that substantive changes were intended to be made to firearm sentence enhancements despite those provisions having been moved to their own statutory subsection. *Id.,* § 10 and 11. The 2002 amendment included for the first time a cross-reference to the sentencing grid, Table 1, because of the move of the enhancements into a separate section. *Id.* This inconsequential change was the primary evidence relied upon by the *Soto* court of legislative intent to discontinue applying firearm sentence enhancements for all felony crimes. *See Soto*, 177

Wn. App. at 710-11. The court did not discuss the fact that the 2002 amendment was primarily aimed at substance abuse treatment, not sentence enhancements.

Since 2002, the current firearm sentence provision has been amended more than a dozen times. RCW 9.94A.533. In none of those amendments has the legislature expressed an intent to limit or restrict the felony crimes to which the enhancements apply. In short, there is no evidence of legislative intent to change the original application of the enhancements to "any crime" and "all felonies." Laws 1995, Ch. 129, § 1(a) and 2(a).

Turning to the *Soto* decision, there is much that the State has no quarrel with. For instance, the *Soto* court correctly observed that, "Sentencing is a legislative power, not a judicial power. . . A trial court's discretion to impose sentence is limited to that granted by the legislature." *Soto*, 177 Wn. App. at 713, citing *State v. Bryan*, 93 Wn.2d 177, 181, 606 P.2d 1228 (1980), and *State v. Ammons*, 105 Wn.2d 175, 713 P.2d 719, 718 P.2d 796 (1986). However, when it comes to the *Soto* court's analysis of legislative intent, the analysis declined to credit the history of firearm enhancements dating to 1995 as having any bearing on the question.

The State acknowledges that the cross reference to Table 1 that was made necessary by the 2002 amendment does not specifically refer to unranked offenses. But that cross reference was only included in the statute when the firearm enhancements were moved within the codification to a separate section. The reorganization however was not evidence of a legislative intent to change sentence enhancement policy; it was merely a reorganization of one of a multitude of sentencing provisions that had been adopted since hard time for armed crime was first enacted.

The *Soto* court dispensed with the need to give effect to legislative intent by characterizing the statute as clear on its face. *Soto*, 177 Wn. App. at 713-14. This characterization can hardly be the case where the statute includes both the cross reference

but also explicitly states that "The firearm enhancements in this section shall apply to all felony crimes except [those crimes requiring the possession or use of a firearm]. . . ." RCW 9.94A.533(3)(f). At the very least, the explicitly broad application of the enhancements to "any felony defined by law" as a class A, B, or C felony creates ambiguity because the SRA, from 1981 on, has included a "standard sentence range" for unranked offenses as well as ranked offenses. *See* RCW 9.94A.505(2)(b). In short, respectfully, *Soto* gave too little credit to the express intent of the legislature that "The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995. . . ." RCW 9.94A.533(3).

This Court should decline to follow *Soto* and should give effect to the legislative intent underpinnings of hard time for armed crime. That intent had its genesis in an initiative of the people. It should not be circumvented merely because the SRA is complex and has undergone amendment and reorganization down through the years. The express legislative intent from 1995 that decried gun violence and created harsh penalties as a response to such violence continues to have vitality in the present. It can hardly be reasonably argued that when it comes to gun violence today legislative intent would call for less broad application of gun laws.

If this Court were to follow *Soto*, there is still the question of remedy. Petitioner appears to request either that he be allowed to withdraw his plea or that he be resentenced without the firearm sentencing enhancement attached to Count Three. Apart from the alleged "illegality" of petitioner's complained-of firearm sentence enhancement, he offers no evidence of his guilty plea being involuntary. Therefore, without conceding that *Soto* was correctly decided, if *Soto* were to be applied, the firearm sentence enhancement allegation in Count Three would need to be dismissed. Since petitioner makes no further challenge to his sentence, the remainder of the sentence should be upheld.

2. The ineffective assistance ground for relief should be dismissed because petitioner has failed to establish deficient performance and prejudice under the *Strickland* standard.

Petitioner's next ground for relief is based on alleged ineffective assistance of counsel during the plea bargaining process. Pet.'s Supp. Pet. at 13-21. Ineffective assistance in general "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). This standard is especially stringent where a collateral attack alleges ineffective assistance. Petitioner fails to meet this standard.

The right to effective assistance of counsel is the right "to require the prosecution's case to survive the crucible of meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When such a true adversarial proceeding has been conducted, even if defense counsel made demonstrable errors in judgment or tactics, the testing envisioned by the Sixth Amendment of the United States Constitution has occurred. *Id.* "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." *Kimmelman v. Morrison*, 477 U.S. 365, 374, 106 S. Ct. 2574, 2582, 91 L. Ed. 2d 305 (1986).

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-prong test laid out in *Strickland*, 466 U.S. at 687; *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987). First, a defendant must demonstrate that his attorney's representation fell below an objective standard of reasonableness. Second, a defendant must show that he or she was prejudiced by the deficient representation. Prejudice exists if "there is a reasonable probability that, except for counsel's unprofessional errors, the result

of the proceeding would have been different." *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *see also Strickland*, 466 U.S. at 695 ("When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt"). There is a strong presumption that a defendant received effective representation. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996); *Thomas*, 109 Wn.2d at 226.

The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that defendant received effective representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). An appellate court is unlikely to find ineffective assistance on the basis of one alleged mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

Judicial scrutiny of a defense attorney's performance must be "highly deferential in order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. The reviewing court must judge the reasonableness of counsel's actions "on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

> What decision [defense counsel] may have made if he had more information at the time is exactly the sort of Monday-morning quarterbacking the contemporary assessment rule forbids. It is meaningless...for [defense counsel] now to claim that he would have done things differently if only he had more information. With more information, Benjamin Franklin might have invented television.

Hendricks v. Calderon, 70 F.3d 1032, 1040 (9th Cir. 1995).

The reviewing court will defer to counsel's strategic decision to present, or to forego, a particular defense theory when the decision falls within the wide range of professionally competent assistance. *Strickland,* 466 U.S. at 489; *Campbell v. Knicheloe*, 829 F.2d 1453, 1462 (9th Cir. 1987), *cert. denied*, 488 U.S. 948 (1988). When the

ineffectiveness allegation is premised upon counsel's failure to litigate a motion or objection, defendant must demonstrate not only that the legal grounds for such a motion or objection was meritorious, but also that the verdict would have been different if the motion or objections had been granted. *Kimmelman*, 477 U.S. at 375; *United States v. Molina*, 934 F.2d 1440, 1447-48 (9th Cir. 1991). An attorney is not required to argue a meritless claim. *Cuffle v. Goldsmith*, 906 F.2d 385, 388 (9th Cir. 1990).

The fact that a particular strategy was ultimately unsuccessful does not establish ineffective assistance of counsel. "While it is easy in retrospect to find fault with tactics and strategies that failed to gain an acquittal, the failure of what initially appeared to be a valid approach does not render the action of trial counsel reversible error." *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737, *cert. denied*, 459 U.S. 842 (1982). Counsel is presumed to be effective, and petitioner must show an absence of legitimate strategic reasons to support his counsel's challenged conduct. *McFarland*, 127 Wn.2d at 335-36; *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) ("[T]his court will not find ineffective assistance of counsel if 'the actions of counsel complained of go to the theory of the case or to trial tactics'" (quoting *Renfro*, 96 Wn.2d at 909)).

The United States Supreme Court has reiterated just how strong a presumption of competence exists under *Strickland*: "The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 131 S. Ct. 770, 778, 178 L. Ed. 2d 624 (2011) (*citing Strickland*, 466 U.S. at 690). The Sixth Amendment guarantees reasonable competence, not perfection, and counsel can make demonstrable mistakes without being constitutionally ineffective. *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1, 157 L. Ed. 2d 1 (2003). A petitioner carries the burden of demonstrating that there was no legitimate strategic or tactical rationale for the challenged

attorney conduct. *McFarland*, 127 Wn.2d at 336. The standard of review for effective assistance of counsel is whether, after examining the whole record, the court can conclude that defendant received effective representation and a fair trial. *Ciskie*, 110 Wn.2d at 263.

A petitioner must demonstrate both prongs of the *Strickland* test, but a reviewing court is not required to address both prongs of the test if the petitioner makes an insufficient showing on either prong. *Thomas*, 109 Wn.2d at 225-26. In the present case, petitioner does not attach any affidavits or declarations in support of his ineffective-assistance-of-counsel arguments.

Petitioner's main ineffective assistance claim is actually a re-packaging of his argument regarding the firearm sentence enhancement being improperly applied to his conviction for first degree animal cruelty. As has been shown above, that argument is not valid and thus it follows that defense counsel's performance as to those claims was not deficient, nor did such performance prejudice petitioner.

As to whether petitioner's counsel misadvised petitioner regarding the range of punishment he faced under the charges in the original information and "pressured" him into pleading guilty to the charges in the amended information, petitioner fails to show deficient performance and prejudice. Even if petitioner's trial counsel incorrectly informed petitioner that the low-end range for the charges set forth in the original information was 47.5 years, such a "mistake" is irrelevant as the State validly amended the information to add a charge of malicious mischief as soon as it became aware that petitioner also committed that crime. App. at 34. Petitioner tacitly admits that he was correctly informed of the sentencing ranges under the amended information prior to his guilty plea to the charges in the amended information.

Under CrR 2.1(d), the trial court may permit the prosecutor to amend the information at any time before the verdict or finding if the amendment will not

substantially prejudice the defendant. Here, as the prosecutor had a valid basis to amend the information by adding the malicious mischief charge, petitioner's trial counsel had no basis to object to such an amendment. If counsel would have objected, this objection would have been overruled.

And the addition of this charge did not substantially prejudice petitioner. The amendment was valid based on the information available to the State and, importantly, petitioner suffered no additional sentencing consequences as the penalty for the malicious mischief was run concurrent to the sentence on petitioner's conviction for murder. App. at 1-14. Petitioner was able to argue for the low end of the standard sentencing range and offers no support for his allegation that he could have pled guilty to the charges in the original information and that the State would have accepted a plea more favorable to petitioner.

After the fact, in self-serving allegations, petitioner claims that he felt pressured into pleading guilty. These claims are directly contradicted by the record from the plea and sentencing hearing. Pet's App. A. In that court appearance there is no hint of undue influence. Petitioner relied upon his attorney and voiced no objection to the quality of his attorney's representation. Had there been any of the misconduct alleged here petitioner surely would have voiced a complaint of some kind, if not during the proceeding then immediately afterward. But no post-conviction motion, *pro se* or otherwise was filed.

Petitioner has failed to show that his trial counsel performed deficiently during the plea bargaining process and, even if counsel had, that any prejudice resulted from this performance. Accordingly, as to ineffective assistance, this petition should be dismissed as insufficiently supported.

3. The risk of bias ground for relief should be dismissed where it is not supported by sufficient evidence and where, on the merits, it is invalid.

Petitioner claims that he was deprived of his due process right to be sentenced by an unbiased judge in a neutral tribunal and is entitled to a new sentencing hearing. Specifically, petitioner argues that the circumstances of being sentenced by a Pierce County judge in the same building where the decedent had worked and who considered victim impact statements from Pierce County court employees created an unconstitutional risk of bias. Pet.'s Supp. Pet. at 22-27. Petitioner bears the burden of proof as to this issue: "After establishing the appropriateness of collateral review, a petitioner will be entitled to relief only if he can meet his ultimate burden of proof, which, on collateral review, requires that he establish error by a preponderance of the evidence." *Matter of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990), citing *In re Hews*, 99 Wn.2d at 89; *In re Personal Restraint of Borrero*, 161 Wn.2d 532, 536, 167 P.3d 1106 (2007). Petitioner's claim should be rejected as he cannot overcome this burden.

Due process requires a judge to disqualify himself if he is biased against a party or if his impartiality "may reasonably be questioned." CJC 2.11(A)(1); *State v. Witherspoon*, 171 Wn. App. 271, 290, 286 P.3d 996 (2012), aff'd, 180 Wn.2d 875 (2014) ("Viewing the evidence objectively, the trial judge's impartiality may not be reasonably questioned under these circumstances."); *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996), citing *In re Matter of Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955). The appearance of fairness doctrine protects not only against actual bias and prejudice, but also against perceived bias and prejudice. *State v. Mandry*, 8 Wn. App. 61, 70, 504 P.2d 1156 (1972) ("The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.").

In such a challenge, the trial judge is presumed to have acted without bias or prejudice. *State v. Chamberlin*, 161 Wn.2d 30, 38, 162 P.3d 389 (2007). The party challenging impartiality bears the burden of presenting evidence of actual or potential bias. *State v. Dugan*, 96 Wn. App. 346, 354, 979 P.2d 885 (1999), citing *State v. Post*, 118 Wn.2d 596, 619 n. 9, 826 P.2d 172, 837 P.2d 599 (1992). Whether a trial judge has exhibited bias is determined by how "it would appear to a reasonably prudent and disinterested person." *Id*., quoting *Brister v. Tacoma City Council*, 27 Wn. App. 474, 486–87, 619 P.2d 982 (1980), *review denied*, 95 Wn.2d 1006 (1981).

In this case, petitioner has not sustained the burden of proving a risk of bias. The trial judge articulated for the parties the connection that he had with the victim and her co-workers. Pet's App. A. The connection can be summed up as that they all worked for the judicial branch of government. They did not work for the same court. The trial judge did not know the victim or her co-workers or ever work directly with them. There was nothing that bespoke actual personal relationship or professional relationship bias. *Id.*

Nor was there anything suggestive of institutional bias. Petitioner's argument amounts to a claim that because the trial court and the victim's co-worker worked in the judicial branch of government and in close proximity, that therefore there must have been an affinity of interest between them. This is absurd. Under such reasoning no judge could preside over a trial involving a court staff member as a victim or witness.

Petitioner cites to *State v. Daigle*, 241 So. 3d 999 (La. 2018) and *In re Dependency of A.E.T.H.*, 9 Wn. App. 2d 502, 446 P.3d 667 (2019) as support for his argument. Those cases are in inapposite. In *Daigle,* the trial judge worked with the victim's widow, who was a penalty phase witness in a capital case and was a court employee in the same court in which the judge worked. The judge also had a social media relationship with this witness, which he initially denied. *Daigle*, 241 So. 3d at 1000. In *In re A.E.T.H.*, the court of

appeals found that the proceedings violated the right to a neutral tribunal "because of the involvement of superior court employees working against the parents in this case." *In re A.E.T.H.*, 9 Wn. App. 2d at 517. In the instant case, the victim's coworkers who submitted victim impact statements worked in a *separate* court from that of the trial judge and did not work directly with him.

No due process error occurred here. As to this ground for relief, Petitioner has not sustained his burdens of production and proof. His petition should be dismissed.

D. CONCLUSION:

The State respectfully requests that this Court deny petitioner's claim and dismiss his Petition.

DATED: June 29, 2020

MARY E. ROBNETT
Pierce County Prosecuting Attorney

s/ *THEODORE M. CROPLEY*
State Bar Number 27453/OID 91121
Pierce County Prosecuting Attorney's Office
930 Tacoma Ave. S., Room 946
Tacoma, WA 98402-2171
Telephone: (253) 798-6708
E-mail: theodore.cropley@piercecountywa.gov

Certificate of Service:
The undersigned certifies that on this day she delivered by
to the attorney true and correct copies of the document to
which this certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

6/29/20 s/Therese Kahn
Date Signature

APPENDIX

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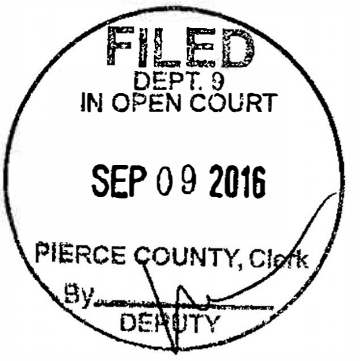

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. AUSTIN RICHARD MOORES NELSON, Defendant.	CAUSE NO: 16-1-00282-1 WARRANT OF COMMITMENT 1) ☐ County Jail 2) ☒ Dept. of Corrections 3) ☐ Other Custody

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

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

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

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

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

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

[ ] 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 direction of the Honorable

JUDGE

KEVIN STOCK

CLERK ~~EDMUND MURPHY~~

By: DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

Date SEP 12 2016 By Deputy

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
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

SEAL OF THE SUPERIOR COURT OF PIERCE COUNTY WASHINGTON

mac

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

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. **AUSTIN RICHARD MOORES NELSON** Defendant. SID: 28256711 DOB: 09/04/1996	CAUSE NO. 16-1-00282-1 **JUDGMENT AND SENTENCE** (FJS) [X] 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 [X] 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

169-07568-2

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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 (H53/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. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the AMENDED Information

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

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

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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 prior 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		
RTN/RJN	$ _____	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

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OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

$_____ Other Costs for:_____

$_____ Other Costs for:_____

$ 800 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:

[ ] shall be set by the prosecutor.

[X] 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).

[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 $_____ 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 10.82.090~~ EM

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 [X] **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.

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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):

374	months on Count	I	6	months on Count	IV
41	months on Count	II		months on Count	
12	months on Count	III		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:

60	months on Count No	I		months on Count No	IV
60	months on Count No	II		months on Count No	
18	months on Count No	III		months on Count No	

Sentence enhancements in Counts _ shall run
[ ] concurrent [X] consecutive to each other.
Sentence enhancements in Counts _ shall be served
[X] 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).

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[X] The confinement time on Count(s) I contain(s) a mandatory minimum term of 20 years

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: _____

_____.

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: To be computed by PCJ & DOC

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

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[X] **COMMUNITY CUSTODY** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

The defendant shall be on community custody for:

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

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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: _____

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Telephone: (253) 798-7400

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): AJY

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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5.10 **OTHER:** _____

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By _____ DEPUTY

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

JUDGE
Print name ~~EDMUND MURPHY~~

Deputy Prosecuting Attorney
Print name: John M. Sheeran
WSB # 26050

Attorney for Defendant
Print name: E. DECOSTA
WSB # 21673

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: _____

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930 Tacoma Avenue S. Room 946
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Telephone: (253) 798-7400

CERTIFICATE OF CLERK

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

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

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

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

IDENTIFICATION OF COURT REPORTER

ANGELA McDOUGALL
_____
Court Reporter

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

APPENDIX "F"

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

____ sex offense
X 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:

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

X (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:

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By DEPUTY

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:

[ ] Asian/Pacific Islander
[ ] Black/African-American
[X] Caucasian
[ ] Native American
[ ] Other: :

Ethnicity:

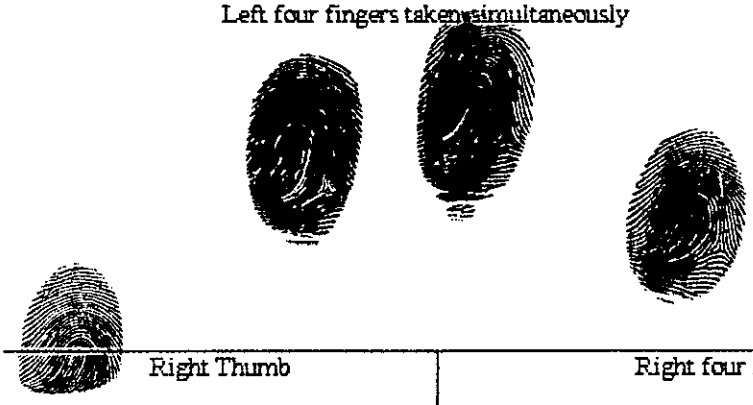
[ ] Hispanic
[X] Non-Hispanic

Sex:

[X] Male
[ ] Female

FINGERPRINTS

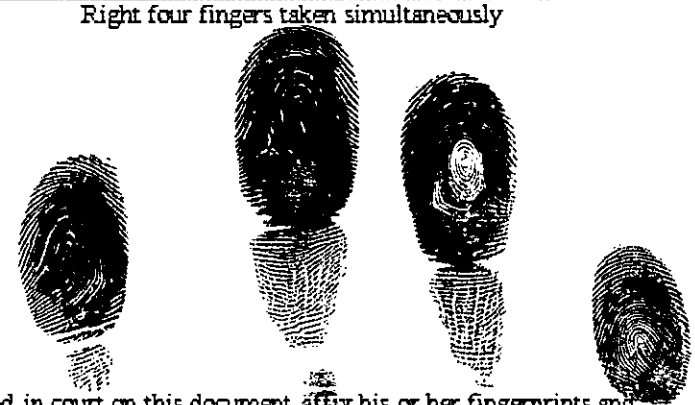
Left four fingers taken simultaneously



Left Thumb

Right Thumb

Right four fingers taken simultaneously



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: _____

DEFENDANT'S ADDRESS: _____

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

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

January 19 2016 2:00 PM

KEVIN STOCK
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. AUSTIN RICHARD MOORES NELSON, Defendant.	CAUSE NO. 16-1-00282-1 INFORMATION

DOB: 9/4/1996	SEX : MALE	RACE: WHITE
PCN#: 541536442	SID#: 28256711	DOL#: WA MOOREAR040OD

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse AUSTIN RICHARD MOORES NELSON of the crime of MURDER IN THE FIRST DEGREE, committed as follows:

That AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 18th day of January, 2016, did unlawfully and feloniously, with premeditated intent to cause the death of another person, cause the death of such person or a third person, Teresa Ann Ryan, a human being, on or about the 18th day of January, 2016, contrary to RCW 9A.32.030(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, 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 AUSTIN RICHARD MOORES NELSON of the crime of BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, 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 AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 18th day of January, 2016, did unlawfully and feloniously, with intent to commit a crime against a person or property

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therein, enter or remain unlawfully in a building, located at 12015 – 142nd St. Ct. East, Puyallup, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a handgun, a deadly weapon, contrary to RCW 9A.52.020(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, 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

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse AUSTIN RICHARD MOORES NELSON of the crime of ANIMAL CRUELTY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, 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 AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 18th day of January, 2016, did unlawfully, feloniously, and intentionally inflict substantial pain on, cause physical injury to, or kill an animal, to-wit: a dog, by means causing undue suffering, or force a minor to inflict unnecessary pain, injury, or death on the animal, contrary to RCW 16.52.205(1)(b)(c), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, 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.

DATED this 19th day of January, 2016.

PIERCE COUNTY SHERIFF
WA02700

MARK LINDQUIST
Pierce County Prosecuting Attorney

jms

By: /s/ JOHN M. SHEERAN
JOHN M. SHEERAN
Deputy Prosecuting Attorney
WSB#: 26050

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

16-1-00282-1 47558695 AMINF 09-12-16

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. AUSTIN RICHARD MOORES NELSON, Defendant.	CAUSE NO. 16-1-00282-1 AMENDED INFORMATION

DOB: 9/4/1996 SEX : MALE RACE: WHITE
PCN#: 541536442 SID#: 28256711 DOL#: WA MOOREAR040OD

COUNT I

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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 AUSTIN RICHARD MOORES NELSON of the crime of BURGLARY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or

ORIGINAL

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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 AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 18th day of January, 2016, did unlawfully and feloniously, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building, located at 12015 – 142nd St. Ct. East, Puyallup, and in entering or while in such building or in immediate flight therefrom, the defendant or another participant in the crime was armed with a handgun, a deadly weapon, contrary to RCW 9A.52.020(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, 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

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse AUSTIN RICHARD MOORES NELSON of the crime of ANIMAL CRUELTY IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, 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 AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 18th day of January, 2016, did unlawfully, feloniously, and intentionally inflict substantial pain on, cause physical injury to, or kill an animal, to-wit: a dog, by means causing undue suffering, or force a minor to inflict unnecessary pain, injury, or death on the animal, contrary to RCW 16.52.205(1)(b)(c), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: a handgun, 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

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse AUSTIN RICHARD MOORES NELSON of the crime of MALICIOUS MISCHIEF 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 AUSTIN RICHARD MOORES NELSON, in the State of Washington, on or about the 15th day of January, 2016, did unlawfully, feloniously, knowingly, and maliciously 1) cause physical damage

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to an item of property of another in an amount that exceeds $750, but that does not exceed $5,000, or 2) did, as part of a common scheme or plan, cause physical damage to more than one item of property of another and the damage to any individual property is less than $750 in value, but the sum of the value of all the physical damages exceeds $250, contrary to RCW 9A.48.080(1)(a)(2), a domestic violence incident as defined in RCW 10.99.020, and against the peace and dignity of the State of Washington.

DATED this 8th day of September, 2016.

PIERCE COUNTY SHERIFF
WA02700

mac

MARK LINDQUIST
Pierce County Prosecuting Attorney

By: _____
JOHN M. SHEERAN
Deputy Prosecuting Attorney
WSB#: 26050

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

16-1-00282-1 47558700 STTDFG 09-12-16

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By DEPUTY

Superior Court of Washington
For the County of Pierce

State of Washington, Plaintiff

vs.

Austin Richard Moores Nelson, Defendant

No. 16-1-00282-1

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

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;

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(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:

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) 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 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.

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:

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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. enhan)

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

A.W
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(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:

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(*i*) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.

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(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.

(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.

(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.

(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.

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

(n) 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 paragraphs that DO APPLY.***

_X_ (o) This offense is a most serious offense or "strike" as defined by RCW 9.94A.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.

_____ (p) 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 (e). 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.

_____ (q) 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.

_____ (r) 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.

_____ (s) 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.

_____ (t) 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.

_____ (u) 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.

A.M. __X__ (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

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.

__X__ (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

any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

____ (hh) 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.

AN X (ii) I am required to register as a felony firearm offender under RCW 9.41.330 (c)(3). The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

____ (jj) 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.

____ (kk) 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.

7. I plead guilty to 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.

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 makes me guilty of this crime. This is my statement:

AN

In Pierce County, Washington, on January, 18, 2016, with premeditated intent to cause the death of another person, I did cause the death of such person, Teresa Ryan, when I shot her with firearm; after shooting Ms. Ryan, I unlawfully entered her house with a firearm intending to commit a crime therein, and I did intentionally shoot and kill the Ryan's dog once inside the house.

In Pierce County, Washington, on January, 15, 2016, I unlawfully, knowingly and maliciously caused more than $750 worth physical damage to the property of another.

The property I damaged was owned by a person with whom I had been in a dating relationship

AN

☐ 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" 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.

X _____
Defendant

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

_____
Prosecuting Attorney

_____
Defendant's Lawyer

DPA John Sheeran	26050	E. DeCosta	21673
Print Name	WSBA No.	Print Name	WSBA No.

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;

☒ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

☐ (c) 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.

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 interpreted this document for the defendant from English into that language. 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.

9/13/2016 13:56 0189

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

Dated: 9-9-16

Judge

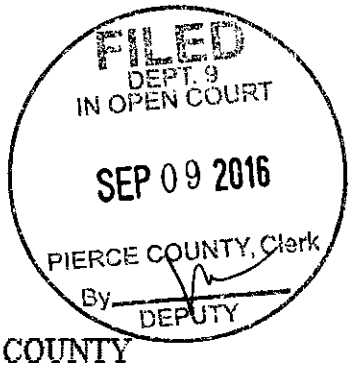
EDMUND MURPHY

FILED
DEPT. 9
IN OPEN COURT

SEP 09 2016

PIERCE COUNTY, Clerk
By _____ DEPUTY

0190
13656
9/13/2016



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

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
I	MURDER IN THE FIRST DEGREE (FASE)	9/09/16	PIERCE, WA	1/18/16	A	SV	A		FELONY
II	BURGLARY IN THE FIRST DEGREE (FASE)	9/09/16	PIERCE, WA	1/18/16	A	V	A		FELONY
III	ANIMAL CRUELTY IN THE FIRST DEGREE (FASE)	9/09/16	PIERCE, WA	1/18/16	A	NV	C		FELONY

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

IV	MALICIOUS MISCHIEF IN THE SECOND DEGREE	9/09/16	PIERCE, WA	1/15/16	A	NV	C		FELONY

[ ] 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)
[X] None Known or Claimed, or:

PRIOR CONVICTIONS INCLUDED IN OFFENDER SCORE (if any)
[X] 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;

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

Stipulated to this on the 9th day of Sept, 2016.

JOHN M. SHEERAN
Deputy Prosecuting Attorney
WSB # 26050

AUSTIN RICHARD MOORES NELSON

EDWARD J. DECOSTA
WSB # 21673

mac

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

16-1-00282-1 47558698 STPATTY 09-12-16

FILED
DEPT. 9
IN OPEN COURT
SEP 09 2016
PIERCE COUNTY, Clerk
By DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff vs. Austin R. Moores Nelson Defendant	Cause No: 16-1-00282-1 ~~ORDER~~ Prosecutor's Statement regarding ~~[illegible]~~ Amended Information

The Amended Information adds count IV, Malicious Mischief in the Second Degree. The State was unaware of this when original Information was filed. The victim's family has been notified of the Amendment

DATED this 9th day of Sept, 2016.

JUDGE

Attorney for Plaintiff/Petitioner
WSBA# 26050

Attorney for Defendant/Respondent
WSBA#

PIERCE COUNTY PROSECUTING ATTORNEY

June 29, 2020 - 11:12 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	50608-4
Appellate Court Case Title:	Personal Restraint Petition of Austin Richard Moores Nelson
Superior Court Case Number:	16-1-00282-1

The following documents have been uploaded:

- 506084_Personal_Restraint_Petition_20200629111225D2987851_2746.pdf
  This File Contains:
  Personal Restraint Petition - Reply to Response to PRP/PSP
  The Original File Name was Moores Nelson Supp PRP Final.pdf

A copy of the uploaded files will be sent to:

- richard@washapp.org
- wapofficemail@washapp.org

Comments:

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us
Filing on Behalf of: Theodore Michael Cropley - Email: Theodore.Cropley@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20200629111225D2987851