

FILED
Court of Appeals
Division II
State of Washington
4/3/2018 1:49 PM
NO.

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re Post-Sentence Review of:

RICKY LEON CARROLL,

Respondent.

DEPARTMENT OF
CORRECTIONS' POST
SENTENCE PETITION

The Department of Corrections (Department or DOC) petitions the Court pursuant to RCW 9.94A.585(7) for review of the sentence imposed in *State of Washington v. Ricky Leon Carroll*, Clark County Superior Court Cause No. 17-1-00443-0. The sentencing court imposed prison plus community custody for Carroll's conviction of attempted failure to register as a sex offender. However, *attempted* failure to register is not a sex offense or a crime against persons, therefore it does not qualify for community custody under RCW 9.94A.701.

The DOC requests that the Court remand this case to the Superior Court for correction of the judgment and sentence.

I. ISSUE

Was the superior court without authority to order community custody for attempted failure to register, where RCW 9.94A.701 only authorizes community custody for the completed offense?

II. STATEMENT OF THE CASE

On January 4, 2018, Carroll pleaded guilty to one count of attempted failure to register as a sex offender with two or more prior convictions. Exhibit 1, Judgment and Sentence, *State of Washington v. Ricky Leon Carroll*, Clark County Superior Court Cause No. 17-1-00443-0. The trial court sentenced Carroll to 36 months confinement and 24 months of community custody. *Id.* at 4-5.

After reviewing Carroll's judgment and sentence, the Department sent an email to the parties requesting an amended judgment and sentence because "attempted failure to register" is not eligible for community custody under RCW 9.94A.701. Exhibit 2, Email Chain, at 3-4. The Department did not receive a response to this e-mail.

A month later, Counsel for the Department followed up with the trial court, the deputy prosecutor, and defense counsel by e-mail. Exhibit 2, at 2-3. The e-mail explained that following a review of the applicable statutes, it appeared that attempted failure to register is not an offense for which community custody is authorized. *Id.* Counsel also explained that the Department recently filed a post sentence petition in Division II of the Court of Appeals on the same issue in *In re Post Sentence Review of Michael P. Thompson*, 50767-6-II. *Id.* at 2. The Clark County Prosecutor's office responded, taking the position that the office believes attempted failure to

register is a Class C sex offense under RCW 9.94A.030(47)(a)(iv) and/or (a)(v). *Id.* at 2.

On March 28, 2017, Counsel sent a final notification e-mail to the prosecutor's office and defense counsel notifying them that the deadline to file a post sentence petition was coming up shortly. *Id.* at 1. As of the deadline for filing a petition in this matter, Counsel and the prosecuting attorney were unable to reach a consensus on the correct legal analysis. *Id.*

III. CERTIFICATION

The Department certifies that it made all reasonable efforts to resolve this dispute at the superior court level. Despite the best of intentions, counsel for the Department and the prosecuting attorney discussed the legal arguments supporting each position and were unable to reach an agreement on the correct interpretation of the statutes in question.

RCW 9.94A.585(7) does not require formal filing of a petition or motion in the trial court. *In re Chatman*, 59 Wn. App. 258, 264, 796 P.2d 755 (1990).

IV. STANDARD OF REVIEW

This case involves only legal issues. The Court reviews purely legal issues de novo. RAP 16.18; *Fluke Corp. v. Hartford Accident & Indem. Co.*, 145 Wn.2d 137, 143, 34 P.3d 809 (2001).

V. ARGUMENT

A. **Because Attempted Failure to Register is not a Sex Offense or Crime Against Persons, Community Custody is not Authorized under RCW 9.94A.701**

A trial court may only impose a sentence authorized by statute. *In re Postsentence Review of Leach*, 161 Wn.2d 180, 184, 163 P.3d 782, 784 (2007). RCW 9.94A.701 sets out the criteria for a court's imposition of community custody terms. Depending on the circumstances, the *completed* crime of failure to register may qualify under RCW 9.94A.701(1) or .701(3) for either a three-year or a one-year term of community custody:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507 ...

...

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);
[or]

...

(d) A felony violation of RCW 9A.44.132(1) (failure to register) that is the offender's first violation for a felony failure to register.

Carroll has three prior convictions for failure to register as a sex offender. Exhibit 1 at Appendix 2.2. Because of his prior convictions,

subsection (3)(d) does not apply. Thus unless “attempted” failure to register is a sex offense or a crime against a person, RCW 9.94A.701 does not authorize the superior court to impose a term of community custody for that crime. As discussed below, “attempted failure to register” is neither “a sex offense,” nor a “crime against a person”, consequently subsections (1)(a) and (3)(a) do not apply.

1. Attempted Failure to Register is not a Sex Offense for Purposes of RCW 9.94A.701(1)(a)

The relevant parts of RCW 9.94A.030(47) define a “sex offense” as follows:

- (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;
- (ii) A violation of RCW 9A.64.020;
- (iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;
- (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or
- (v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion; . . .

While the statute includes “attempts” for “such crimes” listed in RCW 9.94A.030(47)(a)(i) through (iii), the crime of failure to register by itself is not “such crimes.” *See Jepson v. Department of Labor and Industries*, 89 Wn.2d 394, 404, 573 P.2d 10 (1977) (The word “such” in a statute refers back to and identifies something of like kind *previously* spoken of) (emphasis added). The subsection for “attempted” crimes comes

before the subsection for felony failure to register with a prior conviction. Thus, failure to register by itself is explicitly excluded from the definition of a sex offense in RCW 9.94A.030(47)(a)(i)-(iv). If “failure to register” by itself is not a sex offense in 9.94A.030(47)(a)(i)-(iv), then “attempted failure to register” by itself cannot be a sex offense because it is not “such crimes.”

While a completed offense of failure to register may meet the criteria in 9.94A.030(47)(a)(v) *if* the offender has a prior conviction for failure to register, an attempted failure to register does not meet the statutory definition of a “sex offense.” The Washington Supreme Court has held that an inchoate or anticipatory offense (attempt, solicitation, conspiracy) is not the same as a violation of the completed crime. *See In re Hopkins*, 137 Wn.2d 897, 976 P.2d 616 (1999); *In re Leach*, 161 Wn.2d 180, 163 P.3d 782 (2007).

In *Hopkins*, the Washington Supreme Court considered an analogous issue of statutory interpretation of whether a conviction for “solicitation to deliver cocaine” constituted “an offense under RCW 69.50” so as to double the statutory maximum sentence. *Hopkins*, 137 Wn.2d at 899-900. The court held the anticipatory offense of “solicitation” to deliver cocaine was not a violation under the drug statute but was instead a violation under RCW 9A.28.010. *Id.*

In *Leach*, the Washington Supreme Court applied reasoning similar to *Hopkins*, and expressly held that an attempted crime is not the same as the completed crime for purposes of deciding whether a statute authorized community custody. The Washington Supreme Court held that although the crime of assault was a “crime against persons” authorizing the superior court to impose a term of community custody under former RCW 9.94A.715, the crime of “attempted assault” was not a “crime against persons,” and did not authorize a term of community custody under the statute. *Leach*, 161 Wn.2d at 184-88. The Washington Supreme Court noted that the Legislature had expressly included certain attempted crimes as eligible for community custody (*e.g.*, attempted class A felonies in former RCW 9.94A.715 and attempted drug offenses in former RCW 9.94A.545), but had omitted other types of attempted crimes. *Id.*

As in *Leach*, both the community custody statute applicable here, RCW 9.94A.701, and the statute authorizing the Department to supervise community custody, RCW 9.94A.501, include the completed crime of failure to register. However, neither statute expressly includes the anticipatory crime of “attempted failure to register.” The absence of the anticipatory crime of “attempted failure to register” indicates the Legislature did not intend to include this particular attempted crime. This exclusion is especially apparent since the Legislature did specifically authorize community custody for other types of attempted crimes. *See*,

e.g., RCW 9.94A.702(1)(d) (authorizing community custody for an attempted drug crime).

It is significant when interpreting the relevant provisions of RCW 9.94A.701, and RCW 9.94A.501, to consider that the crime of “attempted failure to register” is arguably not even a crime in Washington. Criminal attempt requires that a person “does any act which is a *substantial step* towards the commission of that crime.” See RCW 9A.28.020(1) (emphasis added). “Mere preparation” is not sufficient to be guilty of an attempted crime. *State v. Workman*, 90 Wn.2d 443, 449, 584 P.2d 382 (1978). Failure to register is an act of omission, one either registers as a sex offender or they do not. See *State v. Williams*, 47,242 (La. App. 2 Cir. 7/18/12); 103 So. 3d 412, 414.

In Washington, a person commits the crime of failure to register if the person “has a duty to register” and “knowingly fails to comply.” See RCW 9A.44.132(1). Thus, similar to the discussion in *Williams*, in Washington one either registers as a sex offender or does not. “Attempted failure to register” is illogical because the State does not have to prove the person intended not to register. The state must only prove the person knew of the duty to register, and did not register. See *In re Richey*, 162 Wn.2d 865, 175 P.3d 585 (2008) (Holding that crime of “attempted felony murder” does not exist and burdens the State with proving defendant intended to commit a crime that does not have an intent element).

The Legislature expressly excluded “attempted failure to register” from the definition of a sex offense. Thus, the Superior Court lacks authority to order community custody pursuant to RCW 9.94A.701(1)(a).

2. Attempted Failure to Register is Not a “Crime Against Persons” for Purposes of RCW 9.94A.701(3)(a)

RCW 9.94A.701(3)(a) provides that a one-year term of community custody is required for offenders convicted of “[a]ny crime against persons under RCW 9.94A.411(2),” assuming that crime does not fall under RCW 9.94A.701(1) (three-year term for sex offenses not sentenced under RCW 9.94A.507 or serious violent offenses) or RCW 9.94A.701(2) (18-month term for violent offenses that are not serious violent offenses).

The completed crime of failure to register is not included among the statutory enumeration of crimes against persons. *See* RCW 9.94A.411(2). The statutory list is the exclusive list of offenses that qualify as crimes against persons, and courts are not free to add to the list. *See In re Postsentence Review of Leach*, 161 Wn.2d 180, 185-86, 163 P.3d 782 (2007). *See also State v. Arlene’s Flowers, Inc.*, 187 Wn.2d 804, 829, 389 P.3d 543 (2017) (When faced with a question of statutory interpretation, we “must not add words where the legislature has chosen not to include them”). It is the Legislature’s prerogative to add to the list, and if the particular crime is not listed in RCW 9.94A.411, the crime is not a “crime against persons.” *Leach*, 161 Wn.2d. at 186-87. Moreover, even if the completed crime of failure to register were on that list, an attempted crime is not treated the

same as a completed crime for purposes of the crimes against persons list in RCW 9.94A.411. *Id.* at 185-89 (attempted second-degree assault of a child is not a “crime against persons” and therefore not eligible for community custody); *see also* Section (A)(1) *supra*.

In short, attempted failure to register is not a “crime against persons.” Thus, attempted failure to register is not a qualifying offense under RCW 9.94A.701(3)(a) and the Superior Court lacks authority to order community custody.

VI. CONCLUSION

For the reasons stated above, the Court should grant this petition and remand this matter to the Superior Court for correction of the judgment and sentence.

RESPECTFULLY SUBMITTED this 3rd day of April, 2018.

ROBERT FERGUSON
Attorney General

s/ Sarah W. Chaplin
SARAH W. CHAPLIN, WSBA #51642
SarahC8@atg.wa.gov

s/ Annie L. Yu
ANNIE L. YU, WSBA #45365
AnnieY@atg.wa.gov
Assistant Attorneys General
Attorneys for Petitioner
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the POST-SENTENCE PETITION with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service, postage prepaid, the document to the following non electronic filing participant:

WHITNEY HAWKE
VANCOUVER DEFENDERS
2300 MAIN STREET
VANCOUVER WA 98660

ERIN K CULVER
DEPUTY PROSECUTING ATTORNEY
CLARK COUNTY PROSECUTOR'S OFFICE
1013 FRANKLIN STREET
VANCOUVER WA 98660-3039

RICKY LEON CARROLL DOC #297088
COYOTE RIDGE CORRECTIONS CENTER
PO BOX 769
CONNELL WA 99326-0769

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

EXECUTED this 3rd day of April, 2018, at Olympia, Washington.

s/ Katrina Toal

KATRINA TOAL
Legal Assistant 3
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
KatrinaT@atg.wa.gov

Exhibit 1



297088
1-5-18

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Scott G. Weber, Clerk, Clark Co.

3.22

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

vs.

RICKY LEON CARROLL,
Defendant.

SID: WA11391185

If no SID, use DOB: [REDACTED]

No. 17-1-00443-0

Felony Judgment and Sentence --
Prison

RCW 9.94A.507 Prison Confinement

(Sex Offense and Kidnapping of a Minor)

(FJS)

Clerk's Action Required, para 2,1, 4.1, 4.3a, 4.3b,
5.2, 5.3, 5.5 and 5.7

Defendant Used Motor Vehicle

Juvenile Decline Mandatory Discretionary

18-9-00037-7

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea 1/4/2018 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ATTEMPTED FAIL TO REGISTER AS A SEX OFFENDER (OCCURRING ON OR AFTER 6/10/2010 - WITH TWO OR MORE PRIOR CONVICTIONS)	9a.44.132(1)(b)/9A.28.0 20(3)(c)	FC	1/24/2017 to 2/15/2017

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV For crime(s) charged in Count _____ **domestic violence** as defined in:

RCW 10.99.020(3)

RCW 9A.36.041(4)

The defendant used a **firearm** in the commission of the offense in Count _____, RCW 9.94A.825, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____, RCW 9.94A.825, 9.94A.533.

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
Page 1 of 15

- Count _____, is aggravated murder in the first degree committed while the defendant was under 16 years of age 16 or 17 years of age when the offense was committed.
- Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.
- In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.____.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang-related** felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang member or associate** when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY** In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080

- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes
1.			

*DV: Domestic Violence was pled and proved

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
1 See attached criminal history						

*DV: Domestic Violence was pled and proved

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	9*	II-75%	32.25 MONTHS to 42.75 MONTHS		32.25 MONTHS to 42.75 MONTHS	5 YEARS

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VII) Veh: Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

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

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

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

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

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))

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

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

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

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

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

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

III. Judgment

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

IV. Sentence and Order

It is ordered:

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

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

36 months on Count 01

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

The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: _____.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____.

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

Confinement shall commence immediately unless otherwise set forth here: _____.

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01 minimum term _____ maximum term Statutory Maximum

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

Count _____ minimum term: _____ maximum term: Life

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

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

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

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

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

Count(s) 1, ²⁷ ~~30~~ months for ~~Serious Violent Offenses~~ ^{SEX OFFENSE} (TOTAL CONFINEMENT PLUS COMM. CUST. = 60 MO)
Count(s) _____, 18 months for Violent Offenses
Count(s) _____, 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)
Count(s) _____, _____ months. RCW 9.94A.701(9)

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

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

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

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

not possess or consume alcohol.

have no contact with: _____

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

not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

participate in an education program about the negative costs of prostitution.

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

undergo an evaluation for treatment for domestic violence chemical dependency mental health anger management, and fully comply with all recommended treatment. _____

comply with the following crime-related prohibitions: _____

Other conditions:

AS DIRECTED BY DEPARTMENT OF
CORRECTIONS AND AS OUTLINED IN
ATTACHED APPENDIX "A"

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

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

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

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

(iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
	\$ _____	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
FRC	\$ 200.00	Criminal filing fee, RCW 10.46.190	
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ 1,000.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	<input type="checkbox"/> Fine RCW 9A.20.021	
		<input type="checkbox"/> VUCSA fine RCW 69.50.430	
		<input type="checkbox"/> Deferred due to indigency	
CDF/LDI/PCD NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ 100.00	DNA collection fee	RCW 43.43.7541
FPV	\$ _____	Specialized forest products	RCW 76.48.140
PPI	\$ _____	Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.)	RCW 9A.40.100, 9A.88.120, 9.68A.105
	\$ _____	Fee for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (\$1,000 fee for each separate conviction)	RCW 9.68A.070
	\$ _____	Other fines or costs for: _____	
DEF	\$ _____	Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012)	RCW 38.52.430
		Agency: _____	
RTN/RJN	\$ _____	Restitution to: _____	
		(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
	\$ _____	Total	RCW 9.94A.760

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

shall be set by the prosecutor.

is scheduled for _____ (date).

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

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

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

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

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

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

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

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

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

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

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

4.5 No Contact:

The defendant shall not have contact with _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party until _____ (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

_____ (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____

until _____ (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

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

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

V. Notices and Signatures

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

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

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

5.4 **Community Custody Violation.**

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

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

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

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

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

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

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

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

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

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

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

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

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

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You

must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

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

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

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

- 5.7 **Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**
- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
 - No BAC test result.
 - BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
 - Drug Related. The defendant was under the influence of or affected by any drug.
 - THC level was _____ within two hours after driving.
 - Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

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

5.8 **Department of Licensing Notice – Defendant under age 21 only.**

Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

Clerk's Action –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

5.9 Other: _____

Done in Open Court and in the presence of the defendant this date: 1/4/18

DAH
Judge/Print Name

[Signature]
Deputy Prosecuting Attorney
WSBA No. 35678
Print Name: Erin K. Culver

[Signature]
Attorney for Defendant
WSBA No. 48239
Print Name: Whitney Hawke

[Signature]
Defendant
Print Name:
RICKY LEON CARROLL

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

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

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

Defendant's signature: [Signature]

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

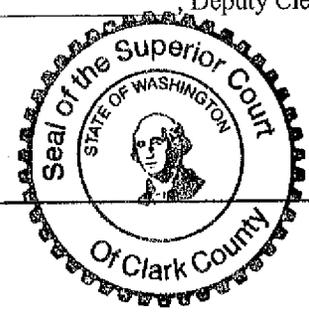
Signed at Vancouver, Washington on (date): _____

Interpreter Print Name

I, Scott G. Weber, 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: 1-4-2018

Clerk of the Court of said county and state, by: [Signature] Deputy Clerk



Identification of the Defendant

RICKY LEON CARROLL

17-1-00443-0

SID No: WA11391185

Date of Birth: [REDACTED]

(If no SID take fingerprint card for State Patrol)

FBI No. 529780V10

Local ID No.

PCN No. _____

Other _____

Alias name, DOB:

Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk

[Handwritten Signature]

Dated:

1-4-18

The defendant's signature:

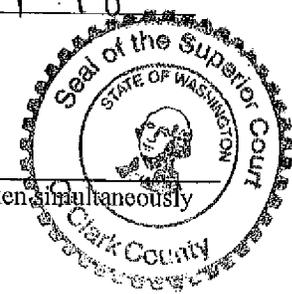
Ricky L. Carroll

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



1
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6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF CLARK

9 STATE OF WASHINGTON,
10 Plaintiff,
11 v.
12 RICKY LEON CARROLL,
13 Defendant

No. 17-1-00443-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



14 Date of Birth: [REDACTED]

15 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.525 that to the best of
16 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
17 defendant has the following undisputed prior criminal convictions:

18 CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
19 THEFT 3	COWLITZ/WA UNKNOWN	10/11/1978	10/11/1978		-
20 ROBBERY 2	GRAYS HARBOR/WA CR482	11/5/1979	3/7/1980		1
21 FORGERY	COWLITZ/WA 7063	1/31/1980	4/1/1980		-
22 DRIVING UNDER THE INFLUENCE	CLARK/WA UNKNOWN	4/4/1983	6/14/1983		-
23 FAIL TO COMPLY	CLARK/WA UNKNOWN	9/6/1983	9/7/1983		-
24 UNLAWFUL ISSUANCE OF BANK CHECKS	CLARK/WA 83-1-00514-1	9/6/1983	10/18/1983		1
25 FORGERY	CLARK/WA 85-1-000227-0	3/21/1985	4/5/1985		1
26 FORGERY	CLARK/WA 85-1-000227-0	3/21/1985	4/5/1985		1
27 UNLAWFUL ISSUANCE OF BANK CHECKS	CLARK/WA 83009	11/24/1984	6/19/1985		-

28
29
DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

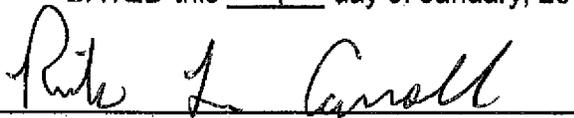
CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
THEFT 3	CLARK/WA 80914	4/24/1986	5/14/1986		-
PROBATION VIOLATION	CLARK/WA 85-1-000227-0		12/8/1986		-
CRIMINAL IMPERSONATION	COWLITZ/WA CR16123	11/17/1989	1/11/1990		-
UNLAWFUL ISSUANCE OF BANK CHECKS	CLARK/WA 89054	11/17/1989	1/12/1990		-
RAPE 2	COWLITZ/WA 89-1-00531-7	11/24/1989	2/8/1990		3
ROBBERY 2	COWLITZ/WA 89-1-00531-7	11/24/1989	2/8/1990		1
THEFT 3	CLARK/WA 13615	4/18/1988	9/10/1990		-
THEFT 3	CLARK/WA 13615	4/18/1988	9/10/1990		-
MALICIOUS MISCHIEF 3	COWLITZ/WA 6000806	12/27/1997	6/18/1998		-
DRIVING WHILE SUSPENDED 3	CLARK/WA 191379	2/11/1999	2/12/1999		-
DRIVING WHILE SUSPENDED 3	CLARK/WA 257764	2/11/1999	2/12/1999		-
THEFT 2 (NOT FIREARM)	CLARK/WA 98-1-00732-0	4/28/1998	2/23/1999		1
DRIVING WHILE SUSPENDED 3	CLARK/WA 264103	1/15/2001	4/16/2001		-
PROBATION VIOLATION	CLARK/WA 98-1-00732-0		9/20/2001		-
ATTEMPT TO ELUDE	CLARK/WA 01-1-01354-8	8/1/2001	9/20/2001		1
REFUSAL TO COOPERATE WITH OFFICER	CLARK/WA 01-1-01354-8	8/1/2001	9/20/2001		-
FORGERY	CLARK/WA 04-1-00952-9	5/6/2004	5/24/2004		1
FORGERY	COWLITZ/WA 04-1-00423-1	2/27/2004	7/6/2004		1
FORGERY	COWLITZ/WA 04-1-00423-1	2/27/2004	7/6/2004		1
FAIL TO REGISTER AS A SEX OFFENDER	CLARK/WA 06-1-01507-0	5/31/2006	9/20/2006		1

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
OBSTRUCT LAW ENFORCEMENT OFFICER	CLARK/WA 101737	1/11/2007	2/22/2007		-
FAIL TO REGISTER AS A SEX OFFENDER	CLARK/WA 06-1-02434-6	10/17/2006	3/22/2007		1
FAIL TO REGISTER AS A SEX OFFENDER	CLARK/WA 12-1-01319-5	5/4/2012	9/20/2012		1
UNLAWFUL IMPRISONMENT	CLARK/WA 12-1-01370-5	5/13/2012	10/19/2012		1
BURGLARY 2	CLARK/WA 12-1-01370-5	5/13/2012	10/19/2012		1
THEFT 3	CLARK/WA 6Z0973949	10/2/2016	9/5/2017		-

*DV: Domestic violence was pled and proved.

The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

DATED this 4 day of January, 2018.



Defendant



Whitney Hawke, WSBA#48239,
Attorney for Defendant



Erin K. Culver, WSBA#35678
Deputy Prosecuting Attorney

“APPENDIX A”

STIPULATED CONDITIONS OF SENTENCE AND OF COMMUNITY CUSTODY

1. You shall commit no law violations. You shall notify your community corrections officer within 48 hours of any arrest or citation for an alleged violation of the law.
2. You shall register as a sex offender as required under RCW 9A.44.130.

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

RICKY LEON CARROLL,

Defendant.

SID: WA11391185

DOB: [REDACTED]

NO. 17-1-00443-0

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

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

GREETING:

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

COUNT	CRIME	RCW	DATE OF CRIME
01	ATTEMPTED FAIL TO REGISTER AS A SEX OFFENDER (OCCURRING ON OR AFTER 6/10/2010 - WITH TWO OR MORE PRIOR CONVICTIONS)	9a.44.132(1)(b)/9A.28.020(3)(c)	1/24/2017 to 2/15/2017

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.02, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

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

COUNT	CRIME	TERM
01	ATTEMPTED FAIL TO REGISTER AS A SEX OFFENDER (OCCURRING ON OR AFTER 6/10/2010 - WITH TWO OR MORE PRIOR CONVICTIONS)	36 Days Months

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

Department of Corrections to determine any credit for time served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

D. A. Tolson

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

1/4/18

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

By:

S. Bugger
Deputy



Exhibit 2

From: [Chaplin, Sarah \(ATG\)](#)
To: "Culver, Erin"; "whawke@barrarlaw.com"
Cc: [Yu, Annie \(ATG\)](#); [Stigall, Wendy S. \(DOC\)](#); [Jones, Bridgett L. \(DOC\)](#)
Subject: RE: 297088 CARROLL, Ricky Leon (Clark 17-1-00443-0) – First Notification – Please Respond – TIME SENSITIVE
Date: Wednesday, March 28, 2018 3:08:03 PM

Good afternoon:

The deadline to file a post-sentence petition in this matter is coming up on 4/5. As the parties have not reached an agreement on the correct interpretation of the statutes in question, I am planning on filing a post-sentence petition in this matter next week. Please let me know as soon as possible if my understanding is incorrect or if the parties plan on amending this J&S.

Feel free to contact me with any questions or concerns.

Sincerely,

Sarah W. Chaplin

Assistant Attorney General, Corrections Division
Attorney General of Washington
P.O. Box 40116
Olympia, WA 98504-0116
Phone: (360) 586-2302 / Fax (360) 586-1319
SarahC8@atg.wa.gov

From: Chaplin, Sarah (ATG)
Sent: Tuesday, March 06, 2018 4:02 PM
To: Culver, Erin <Erin.Culver@clark.wa.gov>; whawke@barrarlaw.com
Cc: Yu, Annie (ATG) <AnnieY@ATG.WA.GOV>; Stigall, Wendy S. (DOC) <wsstigall@doc1.wa.gov>; Jones, Bridgett L. (DOC) <bljones@DOC1.WA.GOV>
Subject: RE: 297088 CARROLL, Ricky Leon (Clark 17-1-00443-0) – First Notification – Please Respond – TIME SENSITIVE

Hi Ms. Culver,

Thanks for your response and the clarification. DOC's deadline to file a post-sentence petition in this case is coming up on 4/5, so I will discuss with DOC and see how they would like to proceed.

Sincerely,
Sarah

From: Culver, Erin [<mailto:Erin.Culver@clark.wa.gov>]
Sent: Tuesday, March 06, 2018 3:57 PM
To: Chaplin, Sarah (ATG) <SarahC8@ATG.WA.GOV>; whawke@barrarlaw.com
Subject: RE: 297088 CARROLL, Ricky Leon (Clark 17-1-00443-0) – First Notification – Please Respond

– TIME SENSITIVE

Hi, Ms. Chaplin –

You are correct that the State’s position on this matter is the same as outlined in the case that is currently pending review, specifically: “Our office believes that the community custody imposed in the Judgment and Sentence is correct because Attempted Failure to Register as a Sex Offender with 2 or more priors is a class C sex offense under RCW 9.94A.030(47)(a)(iv) and/or(a)(v). Accordingly, community custody must be imposed.”

Thanks for your communication on this –

Erin Culver

Deputy Prosecuting Attorney
Clark County, WA
Erin.culver@clark.wa.gov
(360) 397-2261 (x5788)

From: Chaplin, Sarah (ATG) [<mailto:SarahC8@ATG.WA.GOV>]
Sent: Tuesday, February 20, 2018 12:23 PM
To: Culver, Erin; whawke@barrarlaw.com
Cc: Stahnke, Daniel; Yu, Annie (ATG); Stigall, Wendy S. (DOC); Jones, Bridgett L. (DOC)
Subject: RE: 297088 CARROLL, Ricky Leon (Clark 17-1-00443-0) – First Notification – Please Respond – TIME SENSITIVE
Importance: High

Dear Ms. Culver and Ms. Hawke,

This email is a follow-up to a January 25, 2018 email from the Washington Department of Corrections (Department) regarding Clark County Cause #17-1-00443-0. The Court is cc’d here in order for the Department to comply with RAP 16.18’s directive to include “any response of the superior court regarding the Department’s administrative efforts to resolve the issue.” RAP 16.18(d) (10). Thank you for your attention to this matter – I know you have a lot of other responsibilities and these matters can fall low on the priority list. The Department respectfully requests that the parties move to amend this judgment and sentence to indicate that Mr. Carroll is not eligible for community custody for this offense.

Mr. Carroll was sentenced to 24 months of community custody supervised by the Department for his conviction for attempted failure to register as a sex offender. However, upon review of the applicable statutes, it appears the Department is not authorized to supervise Mr. Carroll for this offense. The Department recently filed a post-sentence petition in Division II of the Court of Appeals on this same issue in *In re Post Sentence Review of Michael P. Thompson*, 50767-6-II. I’ve attached the Department’s briefing, which contains a detailed analysis of this issue. I understand that because *Thompson* is also a Clark County case, the parties may not be open to amending this J&S. However, I would appreciate it if you would still respond to let me know your position and whether you will be amending. The Department will likely want to file a PSP in this case to preserve this issue

on appeal.

Under the post-sentence petition process in RCW 9.94A.585(7) the Department of Corrections is required to first contact the sentencing court to resolve any perceived sentencing errors. If the error is not fixed within 90 days of the Department's receipt of the terms of the sentence, the statute authorizes the Department to petition the Court of Appeals for an order of reversal. If the judgment and sentence is not corrected within 90 days and the Department fails to petition for review, the Department forfeits its ability to obtain a correction. RCW 9.94A.585; see also RAP 16.18. In almost all cases where the judgment and sentence is not corrected, the Department is bound by the plain language of a judgment and sentence, even if legally flawed. See *In re Davis*, 67 Wn. App. 1 (1992).

If you agree with the analysis discussed in the attached briefing, please respond and let me know when you anticipate you will be able to file a motion and order modifying the J&S. If you disagree, please respond so that the Department and the AGO may proceed with the post sentence petition process. **Please respond with your position as soon as possible**, as the deadline for filing of post-sentence petition on behalf of the Department is coming up in April. Please feel free to contact me if you have any questions, or if I can be of any assistance to you in this matter. I can be reached at (360) 586-2302 or at SarahC8@atg.wa.gov.

Sincerely,

Sarah W. Chaplin

Assistant Attorney General, Corrections Division
Attorney General of Washington
P.O. Box 40116
Olympia, WA 98504-0116
Phone: (360) 586-2302 / Fax (360) 586-1319
SarahC8@atg.wa.gov

From: Hedgers, Gladys M. (DOC)
Sent: Thursday, January 25, 2018 3:27 PM
To: 'Erin.Culver@clark.wa.gov' <Erin.Culver@clark.wa.gov>
Cc: 'whawke@barrarlaw.com' <whawke@barrarlaw.com>
Subject: 297088 CARROLL, Ricky Leon (Clark 17-1-00443-0) – First Notification – Please Respond – TIME SENSITIVE
Importance: High

Dear DPA Culver and Attorney Hawke,

Carroll's judgment and sentence was received by the Department on 1/5/2018. Upon review, the Department discovered that the sentence requires clarification or correction.

Per RCW 9.94A.701 Count 1, Attempted Failure to Register is not eligible for community custody but 24 months of community custody was ordered.

We request that you please respond within fourteen days (By: 2/8/2018). Please advise as to whether the Prosecuting Attorney's Office agrees with the Department's analysis and will have the judgment and sentence amended. If your office disagrees and/or will not move for an amended judgment and sentence, please provide us a response by the above date as well. If we do not receive a response, we will assume that the Prosecuting Attorney's Office will not be moving for an amended judgment and sentence. In that case, the Department will refer this judgment and sentence along with any correspondence to the Attorney General's Office. The Attorney General's Office will then review the case and file a post sentence petition (PSP) in the court of appeals pursuant to RCW 9.94A.585(7).

The Attorney General's Office must file a post sentence petition within 90 days of actual notice of the error, so your timely response is appreciated by the Department of Corrections and the Attorney General's Office.

We are looking forward to hearing from you.

*Gladys Hedgers
Correctional Records Technician
Sentence Structure
Washington Corrections Center
2321 West Dayton Airport Road
PO Box 900
Shelton, WA 98584
(360) 427 - 4631*

This e-mail and related attachments and any response may be subject to public disclosure under state law.

Exhibit 3

NO.

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re Post-Sentence Review of:

RICKY LEON CARROLL,

Respondent.

DECLARATION OF
WENDY STIGALL

I, WENDY STIGALL, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts.

2. I am currently employed by the Department of Corrections (Department or DOC) as the Correctional Records Program Administrator. I have held this position since February 2012. I have worked in records management for the Department for over thirty-three years.

3. The Department maintains an inmate central file for each offender. This file contains information on an inmate's sentence structure and documents relevant to his incarceration. As the Correctional Records Program Administrator, I am a custodian of records kept by the Department in the ordinary course of business.

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4. Upon request of the Attorney General's Office, the Department provided true and correct copies of documents from the central file of inmate Ricky Leon Carroll, DOC #297088, to be used as exhibits:

Exhibit 1: *State of Washington v. Ricky Leon Carroll*, Clark County Superior Court Cause No. 17-1-00443-0

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 3rd day of April, 2018 at Tumwater, Washington.



WENDY STIGALL

Exhibit 4

NO.

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re Post-Sentence Review of:

RICKY LEON CARROLL,

Respondent.

DECLARATION OF
SARAH W. CHAPLIN

I, SARAH W. CHAPLIN, make the following declaration:

1. I am an Assistant Attorney General with the Corrections Division of the Attorney General's Office in Olympia, Washington. I have been employed in this position since December 2017.

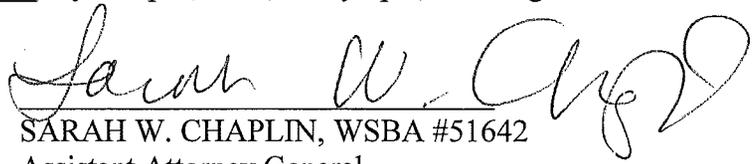
2. I printed correct copies of the following emails to be used as exhibits:

Exhibit 2: Email Chain

3. Ultimately, the deputy prosecutor and I were unable to reach an agreement regarding how to interpret the relevant statutes.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 3rd day of April, 2018, at Olympia, Washington.


SARAH W. CHAPLIN, WSBA #51642
Assistant Attorney General
Attorney for Petitioner

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

April 03, 2018 - 1:49 PM

Filing Post Sentence Review

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: Carroll, Ricky Leon
Trial Court Case Number: 17-1-00443-0
Trial Court County: Clark Superior Court
Signing Judge: Daniel Stahnke
Judgment Date: 01/04/2018

The following documents have been uploaded:

- PSR_Post_Sentence_Review_20180403133945D2859876_9575.pdf
This File Contains:
Post Sentence Review
The Original File Name was PSP-Carroll.pdf

A copy of the uploaded files will be sent to:

- erin.culver@clark.wa.gov
- whawke@barrarlaw.com

Comments:

Sender Name: Katrina Toal - Email: katrinat@atg.wa.gov

Filing on Behalf of: Sarah Walker Chaplin - Email: Sarahc8@atg.wa.gov (Alternate Email:)

Address:
Attorney General's Office, Corrections Division
PO Box 40116
Olympia, WA, 98504-0116
Phone: (360) 586-1445

Note: The Filing Id is 20180403133945D2859876