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

IN RE THE PERSONAL RESTRAINT
PETITION OF:

JAMES ELLIS CROCKETT,

Petitioner.

NO. 51084-7-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

I. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Were certain text messages not made a part of the record below? Were the remaining text messages cumulative consistent statements pertaining to matters freely admitted by the alleged victim on cross examination?
2. Was adequate evidence of ER 901(a) authentication presented to the trial court for any text message?
3. Was petitioner's appellate counsel's performance deficient because he failed to assert error based on the exclusion of any text message?
4. Has petitioner demonstrated that an appellate court would have (a) found error in the exclusion of any text message had petitioner appellate counsel claimed such

1 error; and (b) has petitioner demonstrated that an appellate court would have reversed the
2 judgment of the Superior Court based on any such claimed error?

3 5. Did petitioner's appellate counsel properly reject a claim of error based
4 upon reputation evidence where the record below does not show that such reputation
5 evidence was sufficiently presented to the trial court? Does the personal restraint petition
6 adequately reference the record regarding this issue?

7 6. Should petitioner's reputation evidence claim be rejected pursuant to RAP
8 10.3(a)(5),(6) by this court because petitioner has failed to present an adequate citation to
9 the record below?

10 7. Were prior consistent statements of the alleged victim properly admitted at
11 trial?

12 8. Was petitioner's trial counsel ineffective when he failed to object to
13 properly admitted prior consistent statements?

14 II. STATUS OF PETITIONER:

15 Petitioner, James Ellis Crockett, is restrained pursuant to a Judgment and Sentence
16 (Appendix "A") entered in Pierce County Cause No. 13-1-04758-8.

17 On December 19, 2014, petitioner was found guilty of four counts of rape of a child
18 in the second degree. He/she now collaterally attacks his sentence.

19 III. FACTS¹

20 M.W. was 12 years old² when her mother, Rhonda Crockett, married petitioner and
21 he moved into their family home. 8RP 343. Shortly after petitioner moved in, he began to
22 touch M.W. inappropriately. 8RP 343-344. M.W. described the abuse: "First he was just
23 rubbing my back, and then he put his shirt – or his hand under my shirt and was rubbing
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25 ¹ The fact section here is taken from respondent's brief on direct appeal.

² M.W.'s date of birth is December 31, 1995. 8RP 332.

1 my shoulder and then went to my breast.” 8RP 346. Petitioner continued touching M.W.’s
2 breasts, then he started to touch her vagina. 8 RP 348. At first, petitioner touched M.W.
3 over her clothes, then he went inside her pants and underwear and inserted his fingers into
4 her vagina. 8RP 348. M.W. estimated that petitioner did this fifteen to twenty times. 8RP
5 349–350. Each time, the abuse lasted ten to thirty minutes. 8RP 350.

6 After one instance of petitioner inserting his fingers into M.W.’s vagina, he told
7 M.W. “not to tell anyone because he would get in trouble and that he was just like wanting
8 to be married to [M.W.’s] mom or he like was good for her and wanted to provide for her.”
9 8RP 350. M.W. would sometimes try to push petitioner away during the attacks: 8RP
10 350.

11 Petitioner also touched M.W. in the car on the way home from church. 8RP 352.
12 Petitioner had M.W. sit in the front seat next to him, he would lift her skirt, and he would
13 touch her vagina over her underwear while he drove. 8RP 353. M.W.’s younger sister,
14 L.C., was in the back seat. 8RP 353.

15 On Thanksgiving Day of 2008, M.W. disclosed the abuse to her mother. 8RP 355–
16 356. Her mother confronted petitioner and he initially denied touching M.W., but then
17 Petitioner fearfully admitted he had touched M.W. 8RP 358. Rhonda Crockett decided to
18 not call the police, and petitioner did not leave the home. 8RP 358. According to Rhonda
19 Crockett, petitioner admitted to touching M.W. that day but not “in a sexual way.” 9RP
20 533. Rhonda Crockett testified that, after the disclosure, she put in safety measures to
21 insure her daughters were not home alone with petitioner, and she asked M.W. many times
22 afterwards if petitioner was touching her inappropriately. 9RP 541.

23 Years later in August 2013, Rhonda Crockett and M.W. got into a fight over M.W.
24 driving Rhonda Crockett to an appointment. 8RP 364. Rhonda Crockett hit M.W.,
25 punched M.W., grabbed M.W.’s hair, and pulled M.W. to the ground by her ponytail. 8RP

1 365. M.W. expressed her frustration on Facebook a few days later saying, “Just that I was
2 tired of having to live in the same house and remember and see that my – like the man –
3 because my mom’s husband raped me, and something about my mom breaking my neck.
4 And then at the end of it, I just posted ‘I’m a dead girl walking.’” 8RP 362. Police arrived
5 at the Crockett house after a concerned person saw the Facebook post and notified police.
6 8RP 363; 8RP 546.

7 Officers Puccio and Chell arrived to check on the welfare of M.W. 8RP 456–457.
8 Petitioner answered the door, Puccio spoke to M.W. outside while Chell spoke to
9 Petitioner inside. 8RP 457.

10 M.W. shook and cried while begging Puccio to get her out of the house, telling him
11 she was concerned about physical violence if she stayed. 8RP 458. Puccio called Child
12 Protective Services (CPS) after M.W. disclosed the sexual abuse and her feelings of danger
13 in the house. 8RP 462. The officers took M.W. back to the police station for the night and
14 then to a residential center for youth. 8RP 363. M.W. has not since been home. 8RP 363.

15 Mara Campbell was the CPS agent assigned to M.W.’s case. 9RP 660. Campbell
16 and Detective Cynthia Brooks went to the group home where M.W. was staying to
17 interview her. 9RP 662. M.W. disclosed to Campbell and Brooks that petitioner touched
18 her breasts and penetrated her vagina with his fingers ten to twenty times. 9RP 665–668;
19 10RP 728. M.W. also disclosed an incident where petitioner rubbed M.W.’s foot on his
20 bare penis while they sat on the couch. 9RP 665; 10RP 731.

21 L.C. and petitioner testified in the defense case-in-chief. See 10RP 781, 800. L.C.
22 testified that Rhonda Crockett was not always home when L.C. and M.W. were home with
23 Petitioner. 10RP 189. L.C. never saw petitioner inappropriately touch M.W. in the living
24 room or the car. 10RP 791–92.

1 Petitioner claimed that he at one point had a conversation with M.W. and L.C.
2 about how to react if someone were to try to touch them inappropriately to best protect
3 themselves. 10RP 825. In this conversation, Petitioner “accidentally” made contact with
4 M.W.’s leg and then her stomach. 10RP 828. This was the touching Petitioner claimed
5 that he was admitting to on Thanksgiving Day of 2008 when M.W. disclosed to her
6 mother. 10RP 835.

7 A. APPELLATE COUNSEL WAS NOT INEFFECTIVE

8 Petitioner claims ineffective assistance of appellate counsel in a personal restraint
9 petition. Accordingly, petitioner “must show the merit of the underlying legal issues his
10 appellate counsel failed to raise or raised improperly and then demonstrate actual
11 prejudice.” *In re Lord*, 123 Wn.2d 296, 314, 868 P.2d 835, 848 (1994), *decision clarified*
12 *sub nom. In re Lord*, 123 Wn.2d 737, 870 P.2d 964 (1994).

13 1. Petitioner’s trial counsel had ample ability to cross examine the
14 alleged victim about her desire to leave her home and her physical
15 discipline at the hands of her adoptive mother.

16 Petitioner’s trial counsel effectively cross-examined the alleged victim (M.W.) on
17 bias relating to her perception of her adoptive mother’s discipline and her desire to leave
18 her home. Petitioner’s trial counsel was not permitted to argue further consistent
19 cumulative evidence on those issues. Petitioner’s appellate counsel properly declined to
20 argue that the cumulative evidence should have been presented. An examination of trial
21 counsel’s effective examination of M.W. demonstrates that any further evidence on these
22 points would have been merely cumulative.

23 M.W.’s adoptive mother paid more attention to her birth child than to M.W., and
24 this made M.W. sad and depressed. 8 VRP 373. M.W. was not happy about her mother
25 marrying petitioner. 8 VRP 374. M.W.’s adoptive mother made her wear only dresses,

1 not pants. 8 VRP 376. M.W.'s adoptive mother made M.W. deactivate her Facebook
2 page. 8 VRP 378, 393-94. M.W. could not date and could not have boyfriends. 8 VRP at
3 379. M.W. could not talk to boys on the telephone. *Id.* M.W. was frustrated by such
4 restrictions. *Id.* M.W. became "mad" because her mother would tell M.W. that M.W. was
5 going to the prom alone. 8 VRP 382. M.W. would break her mother's rules. 8 VRP 384.
6 M.W.'s adoptive mother would discipline M.W. with physical punishment in the form of
7 the belt, the switch, the shoe, the extension cord, and the hand. 8 VRP 387-88. M.W.'s
8 adoptive mother would also pull M.W.'s hair. 8 VRP 388. M.W. would also get whooped
9 when she "got what was called an attitude," when she didn't do her chores, when she
10 argued with her sister, or when she pushed her sister. 8 VRP 389. M.W. also got whooped
11 after lying to her adoptive mother on a couple occasions. 8 VRP 389-90. Getting
12 whooped with the cord or the switch left welts on M.W.'s legs. 8 VRP 391. All of these
13 forms of punishment were applied between 2008-2013. 8 VRP 388-89. (Petitioner raped
14 M.W. in 2008). Appendix A at 1. M.W. got whooped a lot for lying. 8 VRP 391. At the
15 time she made her disclosure, M.W. was angry with her adoptive mother, and her mother
16 was inflicting more physical violence on her. 8 VRP 395-97. One of the reasons M.W.
17 made the disclosure was because she felt that her adoptive mother did not care about her
18 any more. 8 VRP 397. Prior to making her disclosures, M.W. told no person about the
19 whooping, or the raping—including her doctor. 8 VRP 398-99. M.W. waited five years
20 before making her disclosure.³ 8 VRP 400. At about the time of the disclosure, M.W. also
21 said "Me and my brother have a plan to get justice." 8 VRP 430. M.W. stated that her
22 plan to get justice was her plan to get away from her adoptive mother. 8 VRP at 434. At
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³ This was the disclosure that prompted the disclosure that resulted in the instant case. M.W. also testified that she disclosed the rape to her adoptive mother when she was twelve years old, in 2008. 8 VRP 408.

1 about the time of the disclosure, M.W. stated that she was so mad at her mother that she
2 “feel [sic] like driving a knife through her sometimes.” 8 VRP 431-32.

3 Petitioner claims that this impeachment was insufficient for the following reasons:

4 Here, the evidence was of more than minimal value. Evidence that M.W.
5 wanted out of the house, wanted to go live with her biological family, wanted
6 the money being paid to Rhonda for herself, and was being physically
disciplined by Rhonda was relevant to whether M.W. made up the allegations
against James to get back at Rhonda and get out of the house.

7 PRP at 12. All of these avenues (except the avarice causing bias argument) were
8 successfully developed by defense counsel on cross examination.⁴ Anything more would
9 have been cumulative and properly within the trial court’s discretion to exclude—
10 notwithstanding *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974) and
11 *Chambers v. Mississippi*, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973) . *State v.*
12 *French*, 157 Wn.2d 593, 603-06, 141 P.3d 54 (2006). Petitioner has failed to
13 demonstrate actual prejudice. The avarice causing bias argument is addressed next.
14

15 2. Petitioner’s claim that his appellate counsel should have raised an
16 avarice causing bias argument on appeal is unfounded, because the
17 supposed evidence supporting that argument cannot be found in the
18 record below.

18 A careful examination of the record below reveals that no avarice causing bias
19 argument was ever advanced before the trial court. Petitioner’s trial counsel never sought
20 to cross-examine M.W. about any supposed desire for money. 8 VRP at 370-432. The
21 trial court never limited petitioner’s trial counsel in this regard. *Id.* Petitioner appears to
22 claim support for this bias through avarice argument in the PRP Appendices at 37-48,⁵ but
23 the text contained in the PRP Appendices at 37-48 was never introduced into the record
24

25 ⁴ M.W. freely admitted that she wanted out of the house. 8 VRP 434-35. M.W. freely admitted that she was
being physically disciplined by Rhonda. 8 VRP 387-91, 395-97.

⁵ PRP at 5.

1 below. PRP Appendix 26-28. The trial court specifically asked petitioner's trial lawyer:
2 "Okay. Like I said, if you'll bring those that you think are relevant forward, we'll have
3 them marked." 8 VRP at 294. See Exhibit Record – Trial attached to PRP as Appendix
4 26-28. Petitioner then presented what were marked as Exhibits 12-19 (PRP Appendices
5 29-36). None of those exhibits addressed the social security money that M.W.'s adoptive
6 money was receiving on M.W.'s behalf. Petitioner never presented an offer of proof to
7 show that M.W. ever perceived a money source that she could actually access, or an offer
8 of proof that demonstrated her desire to access that hypothetical available money source.
9

10 Petitioner cannot claim his appellate counsel's performance was deficient for
11 failing to make a bias through avarice argument when the record below failed to support
12 that argument.⁶

13 3. Alternatively, petitioner's trial counsel never made a sufficient offer
14 of proof regarding authentication of any of the text messages.
15 petitioner's appellate counsel was not ineffective when he
16 recognized that fact.

17 Petitioner's trial counsel sought to admit extrinsic evidence relating to the alleged
18 victim in this case. PRP Appendix at 22-25. Petitioner claims that his motion
19 demonstrated "how and why that evidence was admissible." PRP at 3. That statement is
20 only partially correct. Petitioner's trial counsel argued relevance (via motive to lie and
21 bias) and the ER 403 prejudice—probativity balance. PRP at 23-25. However,
22 petitioner's trial counsel never made an offer of proof that expressed just how he would
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25 ⁶ Reference to PRP Appendix 43 demonstrates a resentfulness about the money, or at least some of it, but the thrust of the statement is that M.W. wanted to be independent and her mother was so controlling that she wouldn't even let M.W. get a job. This just reinforces the point that M.W. really wanted to get out of the house—something M.W. freely admitted on cross examination. 8 VRP 434-35.

1 authenticate those text messages, as required by ER 901(a). The closest petitioner's trial
2 counsel ever came to making an offer of proof regarding authenticity was this statement:

3 One of the ways we propose to establish a foundation would be to have
4 [M.W.] confirm that these were, in fact, her text messages that she sent or
5 reasonable representations of the text messages, and that she did, in fact,
make those statements.

6 3 VRP at 74. That was no offer of proof that M.W. would testify that those messages were
7 her messages. *Id.* Nor was that an offer of proof that M.W. would testify that those
8 messages were "reasonable representations" of her messages. *Id.* When appellant's trial
9 counsel said "propose," he meant "hope," and petitioner's appellate counsel would have
10 been hamstrung arguing otherwise, because petitioner's trial counsel never asked M.W.
11 about the authenticity of those text messages when he interviewed her. *See* PRP
12 Appendices 51-117.

13 ER 901(a) establishes the requirement of authentication:

14 The requirement of authentication or identification as a condition precedent
15 to admissibility is satisfied by evidence sufficient to support a finding that the
16 matter in question is what its proponent claims.

17 ER 901(a). A review of all the passages cited in the PRP relating to the text messages
18 indicates no attempt by petitioner's trial counsel to inform the trial court pretrial how the
19 text messages at issue would be authenticated.⁷ The trial record itself indicates no attempt
20 to introduce the text messages. *See* 8 VRP and 9 VRP.

21 "In order to obtain appellate review of the trial court's exclusion of evidence, an
22 offer of proof must be made which fairly advises the trial court whether the evidence is
23 admissible. *Northern State Construction Co. v. Robbins*, 76 Wn.2d 357, 366, 457 P.2d

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⁷ The motion was presented, and addressed by the trial court in the pretrial context. See 4 VRP 118-131,
163-66; 8 VRP 288-310.

1 187, 193 (1969) (citing *Smith v. Seibly*, 72 Wn.2d 16, 431 P.2d 719 (1967); *Sutton v.*
2 *Mathews*, 41 Wn.2d 64, 247 P.2d 556 (1952) and *Sutton v. Mathews*, 41 Wn.2d 64, 247
3 P.2d 556 (1952)).

4 [I]t is the duty of a party to make clear to the trial court what it is that he
5 offers in proof, and the reason why he deems the offer admissible over the
6 objections of his opponent, so that the court may make an informed ruling. If
the party fails to so aid the trial court, then the appellate court will not make
assumptions in favor of the rejected offer.

7 *Sturgeon v. Celotex Corp.*, 52 Wn. App. 609, 617, 762 P.2d 1156, 1161 (1988) (quoting
8 *Tomlinson v. Bean*, 26 Wn.2d 354, 361, 173 P.2d 972 (1946)). While petitioner
9 appropriately notes that “the trial judge got it wrong” by basing its decision on ER 404(b),⁸
10 “a trial court’s determination to exclude evidence may be sustained on any proper basis
11 within the record and will not be reversed simply because the trial court gave a wrong or
12 insufficient reason for its determination. *State v. Markle*, 118 Wn.2d 424, 438, 823 P.2d
13 1101, 1109 (1992) (citing *Pannell v. Thompson*, 91 Wn.2d 591, 603, 589 P.2d 1235
14 (1979)).

15
16 In this case, petitioner’s trial counsel never informed the trial court how he
17 proposed to prove that the subject text messages were authentic and accurate statements of
18 the alleged victim in this case. Petitioner’s appellate counsel was saddled with that
19 impossible-to-get-around problem. This personal restraint petition asserts that petitioner’s
20 appellate counsel was incompetent because he did not “argue that the trial court erred in
21 excluding text messages...” PRP at 3. That assertion lacked merit on direct appeal, and it
22 lacks merit now. To prevail on a claim of ineffective assistance of appellate counsel,
23 petitioner must demonstrate the merit of any legal issue appellate counsel raised
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⁸ PRP at 10. Essentially, though, the question was an ER 403 prejudice—probativity balance.

1 inadequately or failed to raise and also show she was prejudiced. *In re Netherton*, 177
2 Wn.2d 798, 801, 306 P.3d 918, 920 (2013) (citing *In re Lord*, 123 Wn.2d 296, 314, 868
3 P.2d 835 (1994)). Petitioner has failed to demonstrate deficient performance. Petitioner's
4 appellate counsel properly rejected the defective argument petitioner now presents.⁹

5 ER 613 is not mentioned in the personal restraint petition. Nor was it mentioned in
6 petitioner's brief to the trial court. PRP Appendix at 22-25. Petitioner does not assert that
7 his ability to cross examine for bias was materially limited—or that his ER 613 ability to
8 introduce extrinsic evidence pursuant to ER 613(b) was compromised in any way.

9 Petitioner was not prejudiced by the exclusion of the written text messages.

10
11 B. PETITIONER'S APPELLATE COUNSEL HAD NO VALID
12 ARGUMENT THAT THE TRIAL COURT ERRED BY EXCLUDING
13 PETITIONER'S REPUTATION WITNESSES.

14 The trial court made a tentative pretrial ruling regarding the purported reputation
15 testimony of Rhonda Crockett and Charles Harris:¹⁰

16 THE COURT: Counsel, unless you can find something that is different than
17 what *State v. Mercer / Drummer* states, I'm going to grant the State's motion.
18 I'll make sure that I read that to make sure it's exactly what the State says it
19 is, but --

20 4 VRP 103. That ruling is tentative. Later on, the trial court clarifies the tentativeness of
21 the motion:

22 He can deny that he did it, but I don't see anything that would allow a good
23 guy defense or I've never been charged or have no prior criminal history that
24 could be admitted as reputation evidence. I'll read 128 Wn. App 625. So at
25 this point in time I'm granting that motion.

(emphasis added) 4 VRP at 104.

If the trial court has made a definite, final ruling, on the record, the parties
should be entitled to rely on that ruling without again raising objections
during trial. When the trial court refuses to rule, or makes only a tentative

⁹ Respondent does not seek to defend the trial court's ruling on an alternative basis of timeliness.

¹⁰ See PRP at 15-16.

1 ruling subject to evidence developed at trial, the parties are under a duty to
2 raise the issue at the appropriate time with proper objections at trial.

3 When a ruling on a motion in limine is tentative, any error in admitting or
4 excluding evidence is waived unless the trial court is given an opportunity to
5 reconsider its ruling.

6 (internal quotation marks, braces, and citations omitted) *State v. Powell*, 126 Wn.2d 244,
7 256, 893 P.2d 615, 623 (1995).

8 In the course of the trial, petitioner's trial counsel noted the tentativeness of the trial
9 court's pretrial reputation rulings. 9 VRP 495. As to Charles Harris, who would testify to
10 petitioner's reputation for truthfulness in their shared church community, the trial court
11 remained tentative. 9 VRP 495-97. The trial court wanted to see whether petitioner
12 testified, and how petitioner's testimony developed. *Id.* Appellant did not present Charles
13 Harris as a witness and did not seek further ruling from the Court regarding Mr. Harris'
14 testimony. *See* 10 VRP and 11 VRP. Rhonda Crockett's testimony remained unaddressed.
15 The tentative pretrial ruling remained the only ruling on the record. Petitioner waived any
16 claim of error on this issue. His appellate counsel's failure to present that waived error
17 was not deficient performance.

18 Petitioner asserts that Rhonda Crockett would have testified that no one else had
19 ever accused petitioner of sexual assault. PRP at 15. However, the record yields only the
20 tentative pretrial ruling of 4 VRP 103 and 4 VRP 104. Petitioner's trial counsel waived
21 any claim of error relating to the asserted reputation testimony of Rhonda Crockett because
22 he neither sought clarification of the tentative ruling, nor sought to admit the subject
23 testimony. His appellate counsel's failure to present that waived error was not deficient
24 performance.

25

1 In the personal restraint petition, petitioner presents a third witness, Regina Harris.
2 PRP at 15-16. Petitioner claims that he “wanted to call” Ms. Harris to testify as to
3 petitioner’s “reputation for sexual morality and for truthfulness in the community.” *Id.*
4 The personal restraint petition identifies no offer of proof in the trial record as to Regina
5 Harris’ reputation evidence and only cites an October 29, 2017 declaration of appellant’s
6 trial counsel.¹¹ The record indicates that the trial court excluded Regina Harris’ from
7 testifying regarding M.W.’s behavior in Sunday School class, but that exclusion is not
8 challenged in this personal restraint petition. 4 VRP 142, 143-44. The trial court explicitly
9 made no pretrial ruling regarding Ms. Harris’ testimony as to reputation as to truthfulness
10 evidence. *Id.*

12 In the course of the trial, petitioner’s trial counsel revisited the trial court’s tentative
13 pretrial rulings:

14 MR. KANNIN: On our pretrial trial rulings with our witnesses, some of them
15 were cancelled and some of them, they were left open on these character
16 witnesses. I just wanted to clarify which ones. I think you said Ms. Harris
could not testify; is that right?

17 THE COURT: Is she the Sunday schoolteacher?

18 MR. KANNIN: She's the Sunday schoolteacher.

19 THE COURT: Right.

20 9 VRP 495. This Court should conclude that in this exchange, the trial court was only
21 referring to its prior ruling excluding testimony regarding M.W.’s behavior in Sunday
22 School class (4 VRP 142, 143-44), and not to any potential testimony she might have
23 regarding petitioner’s character for truthfulness. First, this conclusion is appropriate
24

25 ¹¹ That declaration only says that “Regina would have testified to James [sic] reputation for sexual morality
in their shared church community.” PRP Appendix 3, paragraph 14. It does not say that Regina Harris
would have testified to petitioner’s reputation for truthfulness in the community.

1 because appellant's trial counsel only asked the judge about the pretrial ruling that "Ms.
2 Harris could not testify..."¹², and the judge had never ruled pretrial that Regina Harris
3 could not testify as to truthfulness. Second, this conclusion is appropriate because during
4 trial the trial court explicitly again reserved ruling on Mr. Harris's reputation testimony for
5 petitioner's truthfulness and it could only be expected that the trial Court would have
6 treated Regina Harris' reputation for truthfulness testimony in the same manner. See 9
7 VRP 495-96. Furthermore, even if this Court concludes that the record is unclear at this
8 point, petitioner cannot benefit from this lack of clarity because his trial counsel never
9 made an offer of proof regarding what Regina Harris would testify to (thereby waiving the
10 issue). Given these facts, it cannot be said that petitioner's appellate counsel was deficient
11 in not raising that issue.
12

13 Respondent cannot find anything in the record that supports the proposition that
14 Regina Harris would testify as to petitioner's reputation for "sexual morality," or even
15 what "sexual morality" means. Proper reputation testimony does not allow the witness to
16 define what sexual morality means to her and then say: "Yes, the defendant has a
17 reputation for sexual morality." Alternatively, any argument relating to reputation for
18 sexual morality was waived because no offer of proof was made as to the proffered
19 testimony, or alternatively any such evidence was properly refused because of the absence
20 of foundational testimony regarding the meaning of "sexual morality." ER 608(a).
21 Petitioner's appellate counsel appropriately elected not to delve into this issue on appeal.
22 The trial record simply was not sufficient.
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¹² 9 VRP 45.

1 Alternatively, the PRP only presents one citation to the record on this issue: 4 VRP
2 138. Appellant’s Brief at 15. That reference is not enough to establish that an adequate
3 offer of proof was made, that appellant asked the trial court to rule on the admissibility of
4 that evidence, and that error should be predicated upon the trial court’s ruling, or failure to
5 rule, on that request. This claim should be rejected for failure to adequately cite authority.
6 RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809 and 819,
7 828 P.2d 549 (1992).

8 C. PETITIONER’S TRIAL COUNSEL RAISED THE INFERENCE THAT
9 M.W. TOLD “THE POLICE” ONE THING AND TOLD THE JURY
10 ANOTHER. THE STATE REBUTTED THAT BY DEMONSTRATING
11 THAT M.W.’S STATEMENTS TO THE POLICE AND STATEMENTS
 TO THE JURY WERE CONSISTENT.

12 On August 26, 2013, M.W. first spoke to the police. 8 VRP 401. This was the
13 same day she made her Facebook posting disclosing her rape. *Id.* On August 29, 2013,
14 M.W. was interviewed by Tacoma Police Detective Brooks and Mara Campbell a C.P.S.
15 worker. 9 VRP 661-62; 10 VRP 722. At trial, on October 7, 2014, Appellant’s trial
16 counsel cross-examined M.W. regarding her statements to law enforcement. 8 VRP 402-
17 408, 424. That portion of her cross examination was a very pointed effort to infer that
18 M.W. was telling a different story to the jury than the story M.W. told to police. *Id.*
19 Petitioner’s trial counsel was explicit: “I’m just going to ask her questions about what she
20 said to the police.” 8 VRP 404.

21 Prior to 8 VRP 404, it was fairly clear that petitioner’s trial counsel’s cross
22 examination about her interaction with the police involved asking M.W. about her
23 statements to the police on August 26, 2013. From 8 VRP 404 to 8 VRP 407, the
24 questioning is ambiguous—it appears directed to the police officers of August 26, 2013,
25

1 but several of the questions are unlinked to a specific interrogation and are open-ended.¹³
2 The questions asked at 8 VRP 408 could relate to both the 8/26/13 interview and the
3 8/29/13 interview. The question at 8 VRP 414 clearly related to all interviews.¹⁴ Viewed
4 in total, the record demonstrates that petitioner's trial counsel was inferring that M.W. did
5 not tell "the police" many of the things she later testified to in court. The State was
6 permitted, by ER 801(d)(1)(ii), to introduce M.W.'s prior consistent statements to police to
7 demonstrate that M.W. did tell "the police" the things she later testified to in court.
8

9 ER 801(d)(1)(ii) allows the admission of consistent statements "offered to rebut an
10 express or implied charge against the declarant of recent fabrication or improper influence
11 or motive." If the defendant raises an inference of recent fabrication, the State is entitled to
12 rebut that inference with prior consistent statements. *State v. Thomas*, 150 Wn.2d 821,
13 856, 83 P.3d 970 (2004); *State v. McWilliams*, 177 Wn. App. 139, 148, 311 P.3d 584, 588
14 (2013). Moreover, where the defendant alleges ineffective assistance for counsel's failure
15 to object, he must show that the objection would have been sustained and that the trial's
16 outcome would have been different. *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 909,
17 952 P.2d 116 (1998); *State v. Price*, 127 Wn.App. 193, 203, 110 P.3d 1171 (2005).
18

19 The most that can be said for petitioner's proposed objection to the prior consistent
20 statements is that the question might be perceived as close. The admission of prior
21 consistent statements is a discretionary decision of the trial court subject to reversal only if
22 manifest abuse is shown. *State v. Dictado*, 102 Wn.2d 277, 290, 687 P.2d 172, 181
23 (1984) (citing *State v. Epton*, 10 Wn.App. 373, 518 P.2d 229 (1974)). The failure to
24

25 ¹³ "And you don't recall telling them that he did not expose his penis to you? 8 VRP 405-06.

"You don't remember being asked that by the police?" 8 VRP 404.

"You never told the police that any of this ever happened in any car, did you?" 8 VRP 407.

¹⁴ "And you didn't say anything about that to the police, did you?" 8 VRP 414.

1 object in this case can fairly be characterized as trial counsel's implicit recognition of the
2 inference he was actually trying to create and the ER 801(d)(1)(ii) consequence of that
3 inference. If trial counsel's conduct can be characterized as legitimate trial strategy or
4 tactics, it cannot serve as a basis for a claim that the defendant received ineffective
5 assistance of counsel. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280, 285 (2002)
6 (citing *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)).

7
8 IV. CONCLUSIONS:

9 Petitioner's appellate counsel was not ineffective. The text messages petitioner
10 complains about could never have been shaped into a viable appellate issue. Every text
11 was either cumulative to other testimony, or was never made a part of the record. None of
12 the texts were demonstrated as authentic to the trial court pursuant to ER 901(a).

13 Petitioner's appellate counsel could never have framed an argument about the
14 exclusion of reputation evidence, because the trial record was not preserved well enough
15 for such an argument. Petitioner doesn't cite to the record sufficiently enough on this issue
16 for this court to evaluate the validity of his factual assertions.

17 Petitioner's trial counsel was not ineffective for failing to object to the State's ER
18 801(d)(1)(ii) consistent statement evidence because petitioner's trial counsel created the
19 inference that the alleged victim's story changed between the time she talked to "the
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1 police” and the time she testified. The consistent statements admitted into evidence
2 rebutted that inference.

3 This personal restraint petition should be dismissed.

4 DATED: March 1, 2018.

5 MARK LINDQUIST
6 Pierce County Prosecuting Attorney

7 

8 Mark von Wahlde
9 Deputy Prosecuting Attorney
10 WSB # 18373

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APPENDIX "A"

Judgment and Sentence



13-1-04758-8 43831985 JDSWCD 12-22-14



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 13-1-04758-8

vs.

JAMES ELLIS CROCKETT,

Defendant.

WARRANT OF COMMITMENT

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

DEC 22 2014

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).

WARRANT OF COMMITMENT -1

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113. 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: 12/19/14

By direction of the Honorable

[Signature]
JUDGE

KEVIN STOCK
CLERK

By:

[Signature]
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF

Date: DEC 22 2014 By: *[Signature]* Deputy

STATE OF WASHINGTON

ss.

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

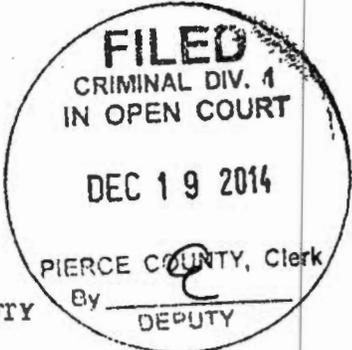
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____

KEVIN STOCK, Clerk

By: _____ Deputy

mrp





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-04758-8

DEC 22 2014

vs.

JAMES ELLIS CROCKETT

Defendant.

JUDGMENT AND SENTENCE (J/S)

- Prison
- RCW 9A.71A.070, 9A.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, 5.5 and 5.8
- Juvenile Decline Mandatory Discretionary

SID: 22746244
 DOB: 05/05/1948

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 10/10/14 by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	RAPE OF A CHILD IN THE SECOND DEGREE/DV (137)	9A.44.076 & 10.99.020		08/01/08 - 11/30/08	132381111 TACOMA PD
II	RAPE OF A CHILD IN THE SECOND DEGREE/DV (137)	9A.44.076 & 10.99.020		06/01/08 - 11/30/08	132381111 TACOMA PD
III	RAPE OF A CHILD IN THE SECOND DEGREE/DV (137)	9A.44.076 & 10.99.020		08/01/08 - 11/30/08	132381111 TACOMA PD

JUDGMENT AND SENTENCE (J/S)
 (Felony) (1/2007) Page 1 of 13

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COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
IV	RAPE OF A CHILD IN THE SECOND DEGREE/DV (137)	9A.44.076 & 10.99.020		08/01/08 - 11/30/08	132321111 TACOMA PD

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

as charged in the ORIGINAL Information

- (X) The State has pleaded and proved that the crime charged in Count(s) I; II; III; 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

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

[] The following prior convictions 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
I	9	XI	210 - 280 MOS		210 - 280 MOS	LIFE/ \$50,000
II	9	XI	210 - 280 MOS		210 - 280 MOS	LIFE/ \$50,000
III	9	XI	210 - 280 MOS		210 - 280 MOS	LIFE/ \$50,000
IV	9	XI	210 - 280 MOS		210 - 280 MOS	LIFE/ \$50,000

2.4 [] EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence:

- [] within [] below the standard range for Count(s) _____
- [] above the standard range for Count(s) _____

[] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[] Aggravating factors were [] stipulated by the defendant, [] found by the court after the defendant waived jury trial, [] found by jury by special interrogatory.

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

JUDGMENT AND SENTENCE (JS)

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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:

2.6 [] FELONY FIREARM OFFENDER REGISTRATION. The defendant committed a felony firearm offense as defined in RCW 9A.1010.

[] The court considered the following factors:

[] the defendant's criminal history.

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

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

[] other: _____

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTNRJN \$ 157.98 Restitution to: Health Care Authority # 101596017 WA

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

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

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

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 13

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____

\$ _____ Other Costs for: _____

\$ 957.48 TOTAL

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

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

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

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

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

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

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

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

4.3 NO CONTACT

The defendant shall not have contact with M.L.W (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

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

JUDGMENT AND SENTENCE (JS)

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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.

- LAB
- Appendix H, AS AMENDED
- Psychosexual eval + Fu/TX

4.4a All ^{contraband} ~~property~~ is hereby forfeited
 Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

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

..... months on Count	210 months on Count	210
..... months on Count	210 months on Count
..... months on Count	210 months on Count

CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

- Count <u>I</u>	Minimum Term	<u>210</u>	Months	Maximum Term	<u>Life</u>
- Count <u>II</u>	Minimum Term:	<u>210</u>	Months	Maximum Term:	<u>Life</u>
- Count <u>III</u>	Minimum Term	<u>210</u>	Months	Maximum Term:	<u>Life</u>
- Count <u>IV</u>	Minimum Term	<u>210</u>	Months	Maximum Term:	<u>Life</u>

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

Actual number of months of total confinement ordered is: 210 months to life

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

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

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other

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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: 70 days

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

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

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

The defendant shall be on community custody for:

Count(s) _____ 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

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

[X] COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

- Count I until _____ years from today's date [X] for the remainder of the life
- Count II until _____ years from today's date [X] for the remainder of the Defendant's life.
- Count III until _____ years from today's date [X] for the remainder of the Defendant's life.
- Count IV until _____ years from today's date [X] for the remainder of the Defendant's life.

(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

JUDGMENT AND SENTENCE (JS)

(Felony) (1/2007) Page 6 of 13

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affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

consume no alcohol.

have no contact with: victim or any minors

remain within 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 ~~17 years of age~~ any

participate in the following crime-related treatment or counseling services: psychosocial eval & FU Tx

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: LAB, per cco

Other conditions:

as set forth in Appendix H & F

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:

JUDGMENT AND SENTENCE (JS)

(Felony) (1/2007) Page 7 of 13

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CONFINEMENT. RCW 9.94A.712. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections (DOC):

<u>I</u>	Count <u>I</u>	Minimum Term: <u>210</u>	Months	Maximum Term: <u>Life</u>
<u>II</u>	Count <u>II</u>	Minimum Term: <u>210</u>	Months	Maximum Term: <u>Life</u>
<u>III</u>	Count <u>III</u>	Minimum Term: <u>210</u>	Months	Maximum Term: <u>Life</u>
<u>IV</u>	Count <u>IV</u>	Minimum Term: <u>210</u>	Months	Maximum Term: <u>Life</u>

The Indeterminate Sentencing Review Board may increase the minimum term of confinement.

COMMUNITY CUSTODY is Ordered for counts sentenced under RCW 9.94A.712, from time of release from total confinement until the expiration of the maximum sentence:

- Count I until _____ years from today's date for the remainder of the Defendant's life
- Count II until _____ years from today's date for the remainder of the Defendant's life.
- Count III until _____ years from today's date for the remainder of the Defendant's life
- Count IV until _____ years from today's date for the remainder of the Defendant's life

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.7606.

5.4 RESTITUTION HEARING:

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

JUDGMENT AND SENTENCE (JS)

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5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, 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.

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., 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 defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington 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 immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) 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 out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. **Change of Residence Within State and Leaving the 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 (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon 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 (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) 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. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three (3) business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three (3) business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three (3) business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 9 of 13

attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. 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 (3) 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 (3) business days after losing your fixed residence, you must provide 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 in the new county within three (3) 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 may be required to provide a list the locations where you have stayed during the last seven days. 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.

7. 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 (3) business days of the entry of the order. RCW 9A.44.130(7).

The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.712.

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER: Appendix H & F

DCNE in Open Court and in the presence of the defendant this date. 12/19/14

M. S. A. N. H. 12
Deputy Prosecuting Attorney
Print name: M. S. A. N. H. 12
WSB # 35503

JUDGE John R. Hickman
Print name JOHN R. HICKMAN
Attorney for Defendant [Signature]
Print name: _____
WSB # 22480

[Signature]
Defendant
Print name: _____

FILED
CRIMINAL DIV. 1
IN OPEN COURT
DEC 19 2014
PIERCE COUNTY, Clerk
By [Signature]
DEPUTY

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VOYING RIGHTS STATEMENT: RCW 10 64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: 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 92A.84.660.

Defendant's signature *Samuel M. Cudde*

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2 **CERTIFICATE OF CLERK**

3 CAUSE NUMBER of this case: 13-1-04758-8

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

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

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

8
9 **IDENTIFICATION OF COURT REPORTER**

10 Emily Dirton
11 Court Reporter

APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

- (I) The offender shall remain within, or outside of, a specified geographical boundary: per cco
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: victim and any minors
- (III) The offender shall participate in crime-related treatment or counseling services; per cco
- (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: per cco

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IDENTIFICATION OF DEFENDANT

SID No. 22746244
(If no SID take fingerprint card for State Patrol)

Date of Birth 05/05/1948

FBI No. 831205HC4

Local ID No. UNKNOWN

PCN No. 541281517

Other

Alias name, SSN, DOB:

Race:		Ethnicity:		Sex:	
<input type="checkbox"/>	Asian/Pacific Islander	<input checked="" type="checkbox"/>	Black/African-American	<input type="checkbox"/>	Caucasian
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other :	<input checked="" type="checkbox"/>	Non-Hispanic
				<input checked="" type="checkbox"/>	Hispanic
				<input type="checkbox"/>	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, _____ Dated: 12/19/14

DEFENDANT'S SIGNATURE

DEFENDANT'S ADDRESS:

0102
4725
12/22/2014

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 28 day of February, 2018



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Feb 28, 2018 4:26 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 7D0542EF-FB3B-404C-AFEED3F0A6FCD91B.

This document contains 16 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "B"

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(a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:

- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
- (2) Work at Department of Corrections' approved education, employment, and/or community service.
- (3) Not consume controlled substances or alcohol, except pursuant to lawfully issued prescriptions;
- (4) While on community custody do not unlawfully possess controlled substances;
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition.
- (8) Notify community corrections officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.

(b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:

10. Reside at a residence and under living arrangements approved of in advance by your community corrections officer. You shall not change your residence without first obtaining the authorization of you community corrections officer.
11. Enter and complete, following release, a state approved sexual deviancy treatment program (if Court-Ordered) through a certified sexual deviancy counselor. You are to sign all necessary releases to ensure your community corrections officer will be able to monitor your progress in treatment.
12. You shall not change sexual deviancy treatment providers without prior approval from the Court and your community corrections officer.
13. You shall not possess or consume any controlled substances without a valid prescription, to include Marijuana.
14. Do not purchase, possess, or consume alcohol.
15. Do not enter into any location where alcohol is the primary product, such as taverns, bars, and/or liquor stores.
16. Have no contact with the victim (MW), or with any minors, without prior approval of the Court. This includes but is not limited to personal, verbal, written or contact through a third party.
17. Hold no position of authority or trust involving children under the age of 18.
18. Do not initiate, or have in any way, physical contact with children under the age of 18 for any reason, to include in employment, social, and recreational situations.
19. Have no contact with any minors or children under the age of 18 without prior approval from your community corrections officer and sexual deviancy treatment provider.

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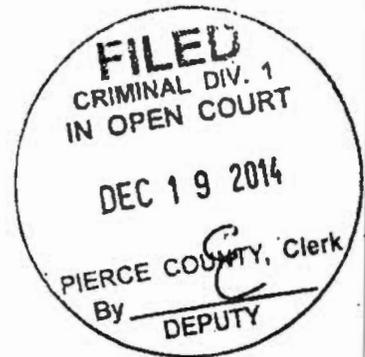
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- ~~20. Inform your community corrections officer of any romantic relationships to verify there is no victim-age children involved.~~
- 21. Submit to polygraph testing upon direction of your community corrections officer and/or therapist at your expense.
- 22. Register as a sex offender in your county of residence, per sentencing statute.
- 23. Do not go to or frequent places where children congregate, (I.E. Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks, etc.) unless otherwise approved by the Court. *Defendant may attend church but no unsupervised contact with minors at church*
- 24. Submit to testing for DNA purposes, and for an HIV test also.
- 25. Obtain both a Psychosexual Evaluation (already completed) and a Mental Health Evaluation, and successfully complete any and all recommended treatment. Follow all conditions imposed by your sexual deviancy treatment provider and CCO.
- 26. Obey all laws. *for purpose of contacting any minors*
- 27. You are prohibited from joining or perusing any public social websites (Face book, Myspace, Craigslist, etc.). ~~You are not to access the Internet in any medium by any means for any reason, and you are not to own, use, or possess cameras, camcorders, or any type of video recording device in any form (on a cell phone, via computer, etc.).~~

DATE 12/19/14

[Signature]
JUDGE, PIERCE COUNTY SUPERIOR COURT



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 28 day of February, 2018



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: Feb 28, 2018 4:26 PM



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

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 603AA7C4-04D4-45EF-A77A7D80527B83C4.

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PIERCE COUNTY PROSECUTING ATTORNEY

March 01, 2018 - 10:38 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51084-7
Appellate Court Case Title: Personal Restraint Petition of James Crockett, Sr.
Superior Court Case Number: 13-1-04758-8

The following documents have been uploaded:

- 510847_Motion_20180301103706D2497451_7105.pdf
This File Contains:
Motion 1 - Other
The Original File Name was CROCKETT TRANSFER.pdf
- 510847_Personal_Restraint_Petition_20180301103706D2497451_2767.pdf
This File Contains:
Personal Restraint Petition - Response to PRP/PSP
The Original File Name was CROCKETT PRP RESPONSE.pdf

A copy of the uploaded files will be sent to:

- karim@suzanneelliottlaw.com
- suzanne-elliott@msn.com

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Tacoma, WA, 98402
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