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NO. 51349-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

HAROLD STATEN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Gregory Gonzales, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant received ineffective assistance of counsel at sentencing.

2. The trial court erred in failing to enter written findings of fact and conclusions of law after a bench trial, in violation of CrR 3.5(c).

3. The Judgment and Sentence contains a scrivener's error that must be corrected.¹

4. The DNA fee should be stricken under the Supreme Court's recent decision in State v. Ramirez.²

Issues Pertaining to Assignments of Error

1. The conduct leading to appellant's convictions for second degree kidnapping with sexual motivation and indecent liberties, involved the same time, same place, same complaining witness, and same intent. Yet, at sentencing, these crimes were treated as separate offenses when calculating appellant's offender score and standard range sentences because defense counsel failed to argue the crimes constituted the same criminal conduct. Where the evidence and verdict supported a finding that appellant kidnapped the complaining witness in order to engage in sexual contact with her, was defense counsel ineffective for failing to argue that

¹ The judgment and sentence is attached as an appendix.

² State v. Ramirez, ___ Wn.2d, ___ P.3d ___, 2018 WL 4499761 (Sept. 20, 2018).

these crimes should have been scored as a single offense under the “same criminal conduct” provisions of RCW 9.94A.589(1)(a)?

2. CrR 3.5(c) requires entry of written findings of fact and conclusions of law following a hearing on the admissibility of appellant's statements to police. Is remand required for entry of these required written findings and conclusions?

3. Appellant was convicted by a jury of second degree kidnapping and indecent liberties. Section 2.1 of the judgment and sentence incorrectly indicates however that appellant plead guilty to those offenses. Must this Court remand for correction of this scrivener's error?

4. Under the Supreme Court's recent Ramirez decision, should the \$100 DNA fee be stricken?

B. STATEMENT OF THE CASE

1. Procedural History

The Clark county prosecutor charged appellant Harold Staten by amended information with one count each of first degree kidnapping, second degree kidnapping, second degree rape, and indecent liberties with forcible compulsion. The State further alleged that the kidnappings were committed with sexual motivation and that each of the charged offenses

was committed against a family or household member. CP 8-11; RP³ 29-30.

The trial court found Staten's statements to police admissible at trial following a CrR 3.5 hearing. RP 60-61. No written findings of fact and conclusions of law were entered.

A jury found Staten not guilty of first degree kidnapping and not guilty of second degree rape. CP 91-92; RP 344-45. Staten was convicted of second degree kidnapping and indecent liberties by forcible compulsion. CP 90, 93; RP 344-45. The jury also returned special verdicts finding that the kidnapping was committed with sexual motivation and that Staten and E.B. were members of the same family or household. CP 94-95; RP 345.

Based on an offender score of 10, Staten was sentenced to concurrent prison sentences of 114 months on the second degree kidnapping conviction and 149 months on the indecent liberties conviction. CP 124-44; RP 393-96. The trial court also imposed a consecutive 18 month sexual motivation enhancement for a total prison sentence of 167 months. CP 124-44; RP 402-03.

³ This brief refers to the consecutively paginated verbatim reports of proceedings as follows: July 10, 11, 12, 2017 and December 12, 2017.

The court also ordered that Staten pay \$700 in legal financial obligations including the \$500 crime victim assessment,⁴ a \$100 DNA database fee,⁵ and a \$100 domestic violence assessment fee.⁶ CP 130.

Staten timely appeals. CP 144-70. He submitted a declaration indicating he had no source of income and no money saved. CP 170-72. The superior court found Staten to be indigent and ruled that he was entitled to counsel on appeal at public expense. CP 172-75.

2. Trial Testimony

Staten and E.B. were the parents of a child who was born critically ill in June 2016. RP 84, 88-89, 184. Sadly, their son died just three months later. RP 90, 184. The day after their son passed away, E.B. called Staten and asked him to come down and visit her in Vancouver, Washington. RP 90-91, 184-85.

Staten drove down to Vancouver and spoke with E.B. Staten talked with, consoled, and occasionally cried with E.B. as they mourned the loss of their son. Staten's tone and demeanor during their conversation

⁴ RCW 7.68.035 authorizes crime victim penalty assessments. In relevant part, RCW 7.68.035(1)(a) provides: "The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor."

⁵ RCW 43.43.7541

⁶ RCW 10.99.080

was normal. RP 95-96, 184-85. During their conversation, E.B.'s mother, Cynthia, came out of the house she shared with E.B. and told Staten to leave. RP 97-98, 185-86, 221, 234. The conversation between Staten and E.B. ended when E.B. followed Cynthia inside the house. RP 97-98.

Staten text messaged E.B. later that same evening and asked her to get something to eat with him. E.B. refused but offered to meet Staten the following day. RP 98, 186.

When E.B. went outside to smoke a cigarette several hours later that night she saw Staten parking his car. RP 98-99, 186. E.B. could smell alcohol on Staten when he approached her. RP 99-100. E.B. spoke with Staten who remarked, "let's make another baby." RP 101, 185. E.B. refused and started to head inside the house. RP 101-02. Staten grabbed E.B. by the arm, pushed her against the car, and said "let's go for a drive." RP 103. E.B. told Staten no and tried to pull away. RP 103.

Staten pushed E.B. into the car seat and closed the car door. RP 103-05, 189-90. Staten closed the car door again when E.B. tried to open it. RP 104-05, 190. Staten told E.B. he was going to drive the car to a place where Cynthia could not see it. RP 105.

E.B. tried to open the car door as Staten was driving. E.B. pulled the car over and said he would take E.B. home. RP 106-07, 191. Instead

of then driving E.B. home however, Staten then said he was taking her to a motel where they used to have sexual intercourse. RP 84, 107-08, 191.

Instead of stopping at the motel however, Staten drove the car to a park. RP 113-15. After parking the car, Staten retrieved a pair of shoes from the trunk and told E.B. to put them on so they could take a walk. RP 115-16, 192. No one else was in the park at the time. RP 116. E.B. told Staten no and instead walked to a corner of the park and called a friend she had previously text messaged to ask for help. RP 110-13, 117-18, 191-94, 208.

Staten approached E.B. and they began walking back toward the car. RP 118. Staten made a remark about having another baby and then began kissing E.B. RP 118-120, 209. Staten put his hand down E.B.'s pants and penetrated her vagina with his fingers. RP 119-20, 124, 210-11. E.B. tried to push Staten away and told him to stop. RP 121. Staten asked E.B. to go into the park with him and make a baby. RP 119-21, 124-25. Staten did not show E.B. a weapon or threaten to harm her. RP 217.

About this time Cynthia called E.B. E.B. did not answer the call knowing that Cynthia would recognize something was wrong. E.B. answered a second telephone call from Cynthia however and told her mother where she was. RP 121, 125-26, 194-96, 213, 223-25. Cynthia could hear Staten hollering in the background. RP 236-39. E.B. told

Cynthia that Staten had taken her and asked her mother to come and get her. RP 224-26, 237. Cynthia told E.B. she would call 911 and then headed toward the park. RP 195-96, 227.

When Cynthia arrived at the park, Staten got into his car and pulled up alongside her. RP 12-29, 196, 228. Cynthia threatened to call the police if Staten did not stay away from E.B. RP 129, 196, 228, 239. E.B. did not tell Cynthia what had happened. RP 130, 197, 230.

Cynthia called 911 when they arrived back at the house. RP 130-31, 139-43, 232-33. E.B. did not tell police that Staten had put his hands down her pants or penetrated her vagina. RP 198-200, 241. E.B. acknowledged that she did not feel great about calling 911 because she believed what had happened with Staten was just his way of processing their son's death. RP 148.

E.B. told police where she thought Staten might have headed from the park. RP 233. When police arrived at the address provided by E.B. they saw a car parked out front with its brake lights on. RP 242-43. Staten was sleeping in the driver's seat of the car. RP 244-45. After being woken up, Staten denied forcing E.B. to have sexual contact with him. RP 245-49. As Staten explained, he drove down from Tacoma to provide moral support to E.B. RP 247-48. Staten denied forcing E.B. into the car,

preventing her from leaving, or making her do anything she did not want to do. RP 245-49.

E.B. text messaged Staten the following day and asked him whether they were still going to meet up to get something to eat. RP 200-01. E.B. also sent Staten a couple pictures of their deceased son. RP 146, 201. Staten did not respond, but E.B. received a response from his brother that indicated Staten was in jail. RP 148, 201. E.B. text messaged Staten and told him to get in touch with her when he got his phone back. RP 201-04. Several weeks later, E.B. text messaged Staten and told him, "I need you right now." RP 204.

C. ARGUMENT

1. STATEN RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO ARGUE THAT SECOND DEGREE KIDNAPPING WITH SEXUAL MOTIVATION AND INDECENT LIBERTIES CONSTITUTED THE SAME CRIMINAL CONDUCT FOR SENTENCING PURPOSES.

The state and federal constitutions guarantee criminal defendants reasonably effective representation by counsel at all critical stages of a case. U.S. Const. amend. 6; Wash. Const. art. 1 § 22; Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Mierz, 127 Wn.2d 460, 471, 901 P.2d 286 (1995). Sentencing is a

critical stage of a criminal case. State v. Bandura, 85 Wn. App. 87, 97, 931 P.2d 174, rev. denied, 132 Wn.2d 1004 (1997).

To obtain relief based on a claim of ineffective assistance of counsel, a criminal defendant must show that: 1) counsel's performance was deficient "and not a matter of trial strategy or tactics;" and 2) the deficient performance prejudiced the defendant's case. State v. Mannering, 150 Wn.2d 277, 75 P.3d 961 (2003) (citing State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996) and Strickland, 466 U.S. at 687-89). A tactical decision will be found deficient if it is not reasonable. Hendrickson, 29 Wn.2d at 77-78; Roe v. Flores-Ortega, 528 U.S. 470, 481, 145 L. Ed. 2d 985, 120 S. Ct. 1029 (2000).

- a. Kidnapping with Sexual Motivation and Indecent Liberties Constitute the Same Criminal Conduct and Counsel's Failure to Argue this Point at Sentencing was Deficient.

When a person is sentenced for two or more current offenses, "the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score" unless the crimes involve the "same criminal conduct." RCW 9.94A.589(1)(a). Offenses that encompass "the same criminal conduct" are counted as one crime for sentencing purposes. RCW 9.94A.589(1)(a). "Same criminal conduct" means crimes that

involved the same victim, were committed at the same time and place, and involved the same criminal intent. Id.

In making this determination, “trial courts should focus on the extent to which the criminal intent, as objectively viewed, changed from one crime to the next.” State v. Dunaway, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987). This analysis includes whether the crimes were “intimately related or connected to another criminal event,” whether the objective substantially changed between the crimes, whether one crime furthered the other, and whether both crimes were part of the same scheme or plan. Id. at 214-15 (quoting State v. Adcock, 36 Wn. App. 699, 706, 676 P.2d 1040 (1984)); State v. Burns, 114 Wn.2d 314, 318, 788 P.2d 531 (1990). Thus, “Intent, in this context, is not the particular mens rea element of the particular crime, but rather is the offender’s objective criminal purpose in committing the crime.” State v. Phuong, 174 Wn. App. 494, 546, 299 P.3d 37 (2013) (quoting State v. Adame, 56 Wn. App. 803, 811, 785 P.2d 1144 (1990)), rev. denied, 182 Wn.2d 1022, 347 P.3d 458 (2015). But see State v. Chenoweth, 185 Wn.2d 218, 223, 370 P.3d 6 (2016) (comparing statutory intents to preclude same criminal conduct finding).

Counsel provides ineffective assistance of counsel when he or she fails to argue two or more offenses constitute the same criminal conduct where the argument is factually and legally supported. State v. Saunders,

120 Wn. App. 800, 825, 86 P.3d 232 (2004). Had defense counsel argued that the kidnapping with sexual motivation and indecent liberties constituted the same criminal conduct, as demonstrated below, the trial court would have been compelled to find the offenses constituted the same criminal conduct for sentencing purposes.

There can be no dispute that Staten's kidnapping with sexual motivation and indecent liberties offenses involved the same victim: E.B. The jury convicted Staten of the indecent liberties against E.B. for the alleged touching that occurred while he was secreting E.B. Thus, the crimes also occurred at the same time and place: at the park between September 26 and 27, 2016.

The only real question is whether the two offenses involved the same intent. The answer is necessarily yes. "The standard is the extent to which the criminal intent, objectively viewed, changed from one crime to the next." State v. Vike, 125 Wn.2d 407, 411, 885 P.2d 824 (1994). Stated differently, "if one crime furthered another, and if the time and place of the crimes remained the same, then the defendant's criminal purpose or intent did not change and the offenses encompass the same criminal conduct." State v. Lessley, 118 Wn.2d 773, 777, 827 P.2d 996 (1992). See, e.g., State v. Anderson, 72 Wn. App. 453, 464, 864 P.2d 1001, rev. denied, 124 Wn.2d 1013 (1994) (same criminal conduct where

defendant assaulted officer in order to escape custody); State v. Longuskie, 59 Wn. App. 838, 847, 801 P.2d 1004 (1990) (same criminal conduct where defendant kidnapped victim in order to molest her).

Here, the kidnapping and indecent liberties offenses involved a “continuing, uninterrupted sequence of conduct.” State v. Porter, 133 Wn.2d 177, 186, 942 P.2d 974 (1997); see also State v. Mandanas, 168 Wn.2d 84, 86-87, 228 P.3d 13 (2010) (second degree assault and felony harassment were same criminal conduct where defendant punched victim in the face, hit him in the head with a gun, and then pointed the gun at him and threatened to kill him). The offenses were based on the same set of circumstances between Staten and E.B. Staten's intent did not change from when he arrived at E.B.'s residence, to when he put her in his car, to when he drove her to the park. Indeed, as E.B. explained, from the moment Staten arrived at her house the second time, Staten's goal was to "make another baby." RP 101, 119-21, 124-25, 185. Thus, the overarching criminal objective was sexual contact with E.B. The indecent liberties occurred in the midst of the kidnapping. The kidnapping occurred for the purpose of effectuating sexual contact. See State v. Taylor, 90 Wn. App. 312, 321-22, 950 P.2d 526 (1998) (simultaneous kidnapping and second degree assault shared same objective intent because assault furthered the kidnapping). The jury

also found Staten committed the kidnapping with sexual motivation. CP 94-95; RP 345.

Consistent with this theory, the State argued to the jury that Staten's intent in kidnapping E.B. was to facilitate sexual contact:

The question is, when he kidnapped -- when he intentionally abducted [E.B.], did he, in his mind, have the intent to facilitate the rape in the third degree? Nonconsensual sexual intercourse. Yes. By the time he put her in that car she had told him, no, I don't want to make another baby.

Her testimony yesterday was they were sitting outside the apartment the second time he came at 11 o'clock. They're talking, all of sudden he says, "Let's go make -- I want to go make another baby." And she says, "No that's it. I'm going back inside." And it's at that point that he grabs her.

And even so, when he's at the park, when he has still got her at the park where no one else is, he's saying, "Let's go into the park, let's make another baby." His intent was clear. His intent was expressed by words and his conduct. And eventually he physically starts down that road of making another baby, at least in his mind, by putting his down -- hands down her pants and kissing her.

RP 297-98.

Longuskie is directly on point and strongly supports the argument that the kidnapping and indecent liberties offenses involve the same criminal conduct. Longuskie was convicted of first degree kidnapping and molesting one of his students, 12-year-old J.D. The state's evidence showed that on the same day Longuskie took sick leave from school, J.D.'s grandmother reported J.D. missing. During the next week,

Longuskie and J.D. stayed at several hotels including the Starlite Motel, where J.D. later claimed sexual contact occurred. Longuskie, 59 Wn. App. at 841, 844.

On appeal, the court held the offenses should have been calculated as same criminal conduct:

Here, child molestation was the objective intent. The kidnapping furthered that criminal objective and the crimes were committed at the same time and place. As noted in [State v. Dunaway, 109 Wn.2d 207, 217, 743 P.2d 1237 (1989)], it is the underlying felony which enables the State to elevate the kidnapping charge to first degree. Thus, the child molestation and first degree kidnapping should be treated as one crime for determining the offender score.

Longuskie, at 847.

Just as child molestation was the objective intent in Longuskie, sexual contact was the objective intent here. As in Longuskie, the kidnapping furthered that criminal intent, and the crimes were committed at the same time and place.

State v. Kloepper, 179 Wn. App. 343, 317 P.3d 1088, rev. denied, 180 Wn.2d 1017, 327 P.3d 55 (2014), is also instructive by way of contrast. In Kloepper, the trial court soundly exercised its discretion in not treating a rape and assault as the same criminal conduct because the evidence allowed the court "to view the rape as a crime of opportunity that

presented itself after the assault rather than as the object of the attack." 179 Wn. App. at 358.

There D.W. was struck repeatedly on the head with a metal bar in her apartment by an unknown man. When asked why he was attacking her, the man responded "[B]ecause Obama was elected president." Kloepper, 179 Wn. App. at 347. D.W. then told the man that if he was there to rape her, "just do it and get it over with." Id. The man then raped D.W.

As Division Three noted, the man never expressed any intent to engage in sexual intercourse until D.W. broached the subject. Kloepper, 179 Wn. App. at 358. As the Court explained, "Repeatedly striking a person on the head with a metal bar evinces an intent to cause serious physical injury rather than to facilitate sexual intercourse. More commonly, the threat to use force is at least initially made in order to obtain a victim's cooperation; that did not happen here." Id.

As outlined above, the evidence in Staten's case is not susceptible to such an interpretation. The evidence definitively shows that sexual contact was the object of the kidnapping. The kidnapping furthered the indecent liberties or alternatively was part of the overarching plan to engage in sexual contact with E.B.

Despite the clear holding of Longuskie, the State may nonetheless argue the offenses do not encompass the same criminal conduct because of the differing statutory intents, relying on the supreme court's decision in Chenoweth, 185 Wn.2d 218, 370 P.3d 6 (2016). There, looking to the "statutory criminal intent," the court held first degree incest and third degree child rape were not the same criminal conduct because "[t]he intent to have sex with someone related to you differs from the intent to have sex with a child." Id. at 223.

The holding of Chenoweth does not change the objective criminal purposes standard articulated in Dunaway. Both incest and child rape are strict liability offenses with no mens rea elements. RCW 9A.64.020(1)(a); RCW 9A.44.079(1). This demonstrates the "same criminal intent" required for same criminal conduct under RCW 9.94A.589(1)(a) must mean the defendant's criminal purpose rather than the statutory intent, because many crimes do not have statutory intents, like those at issue in Chenoweth. Indeed, the Chenoweth court noted the same criminal conduct analysis is distinct from a double jeopardy analysis, where differing statutory intents would be dispositive. 185 Wn.2d at 222.

Moreover, the Washington Supreme Court does not overrule binding precedent sub silentio. Lunsford v. Saberhagen, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009); State v. Studd, 137 Wn.2d 533, 548, 973 P.2d 1049

(1999). The objective criminal purpose test established in Dunaway has been the law for 30 years and numerous Washington courts have applied it where crimes have different statutory intents. The Chenoweth majority neither discussed nor overruled Dunaway. Reading Chenoweth in a narrow fashion therefore harmonizes the two cases and does not assume the supreme court wished away the longstanding Dunaway rule without saying so.⁷

Staten's criminal purpose in committing the kidnapping and indecent liberties was the same: to engage in sexual acts with E.B. The offenses involved a “continuing, uninterrupted sequence of conduct.” Porter, 133 Wn.2d at 186. This Court should remand for resentencing to score Staten's second degree kidnapping and indecent liberties convictions as a single offense. Dunaway, 109 Wn.2d at 217-18.

b. The Failure to Argue Same Criminal Conduct at Sentencing Prejudiced Staten.

Counsel’s deficient performance prejudiced Staten because there is a reasonable likelihood the trial court would have found same criminal conduct had counsel made the argument above. There was no legitimate

⁷ This Court explained in an unpublished opinion, State v. Sims, noted at 193 Wn. App. 1034, 2016 WL 1627862, at *2 n.5 (Apr. 25, 2016), that considering the facts of two offenses where their statutory intents are unclear is “not inconsistent with Chenoweth.” Under GR 14.1, as an unpublished decision, Sims has no precedential value, is not binding on any court, and is cited only for such persuasive value as this Court deems appropriate.

reason for defense counsel not to pursue a lower offender score for Staten, which a same criminal conduct finding would achieve.

The convictions for second degree kidnapping with sexual motivation and indecent liberties with forcible compulsion each counted as three points toward each other pursuant to RCW 9.94A.525(17). RP 378-79, 391-92, 394-95. Thus, for each offense, Staten's offender score rose from 7.5 to over 10. A finding of same criminal conduct would have lowered the applicable standard range sentence, for second degree kidnapping from 72-96 months to 51-68 months. It would also have lowered the standard range sentence on indecent liberties from 149-198 months to 108-144 months. RCW 9.94A.525.

Given the facts of this case, and the supporting legal authority, there is a reasonable probability that the trial court would have found the two current offenses encompassed the same criminal conduct. Similarly, given the trial court's imposition of a sentence at the low end of the standard range sentence, there is a reasonable probability that Staten's prison term would have been shortened by 41 months. As the trial court explained when imposing the standard range sentence:

So we just proved nine-plus points. And I don't make up the law. I follow the law. If there's facts that would support a deviation, I would obviously grant a deviation. In my heart I wish I could do more for you, but I can't. that's the problem I have. I can assure

you that if it was -- if there was no standard range based upon the facts, I would probably take a look at it a bit differently, but I can't.

RP 392.

Applying "same criminal conduct" analysis, Staten's offender score is 7.5 instead of 10. This Court should hold counsel was ineffective for failing to argue same criminal conduct and remand for resentencing. Saunders, 120 Wn. App. at 825.

2. THE TRIAL COURT ERRED IN FAILING TO ENTER WRITTEN CrR 3.5 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

After a CrR 3.5 hearing, the court must set forth in writing "(1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor." CrR 3.5(c). The court's failure to do so in Staten's case is error.

Written findings are essential to permit meaningful and accurate appellate review. State v. Mewes, 84 Wn. App. 620, 621-22, 929 P.2d 505 (1997). "A court's oral opinion is not a finding of fact." State v. Hescoek, 98 Wn. App. 600, 605, 989 P.2d 1251 (1999). Rather, an oral opinion is no more than a verbal expression of the court's informal opinion at the time rendered and "has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." State v. Head,

136 Wn.2d 619, 622, 964 P.2d 1187 (1998) (quoting State v. Mallory, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)). "An appellate court should not have to comb an oral ruling to determine whether appropriate 'findings' have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction." Head, 136 Wn.2d at 624. Written findings "allow the appealing defendant to know precisely what is required in order to prevail on appeal." State v. Smith, 68 Wn. App. 201, 209, 842 P.2d 494 (1992). The State, as the prevailing party, has the responsibility to present written findings to the trial court. State v. Portomene, 79 Wn. App. 863, 865, 905 P.2d 1234 (1995).

Remand for entry of written findings of fact and conclusions of law is the ordinary remedy. Head, 136 Wn.2d at 623. Reversal is appropriate if a defendant is able to show "prejudice resulting from the lack of written findings and conclusions," such as when there is a "strong indication that findings ultimately entered have been 'tailored' to meet issues raised on appeal." Id. at 624-25. Findings and conclusions may be submitted and entered while an appeal is pending if there is no appearance of unfairness and the defendant is not prejudiced. State v. Hillman, 66 Wn. App. 770, 773-74, 832 P.2d 1369 (1992). Staten reserves the right to challenge any written findings and conclusions entered after the filing of

this brief. Further, an amended brief may be filed in response to such findings and conclusions.

3. REMAND IS REQUIRED TO CORRECT A SCRIVENER'S ERRORS IN THE JUDGMENT AND SENTENCE

Section 2.1 of Staten's judgment and sentence correctly indicates that he was found guilty of second degree kidnapping and indecent liberties. The judgment and sentence however, incorrectly indicates that he plead guilty to these offenses rather than being found guilty by a jury. CP 124. This scrivener's error requires remand for correction.

Under CrR 7.8(a), clerical errors in judgments, orders, or other parts of the record may be corrected by the court at any time of its own initiative or on the motion of any party. See State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (illegal or erroneous sentences may be challenged for the first time on appeal). This Court should therefore remand to correct the judgment and sentence. See State v. Moten, 95 Wn. App. 927, 929, 935, 976 P.2d 1286 (1999) (remand appropriate to correct scrivener's error referring to wrong statute on judgment and sentence form). Remand for correction of the scrivener's error is necessary.

4. THE \$100 DNA FEE SHOULD BE STRICKEN UNDER *STATE V. RAMIREZ*.

Staten is indigent under the applicable statutory criteria. The DNA fee should be stricken under the recent Ramirez decision.

In Ramirez, an appellant challenged discretionary legal financial obligations (LFOs) on the grounds that the trial court had not engaged in an appropriate inquiry regarding his ability to pay under State v. Blazina, 182 Wn.2d 827, 839, 344 P.3d 680 (2015). Ramirez, 2018 WL 4499761 at *2.

The Supreme Court agreed, setting forth detailed instructions regarding the appropriate inquiry. Id. at *4-6.

But, based on watershed statutory amendments that took effect while Ramirez's appeal was pending, the Supreme Court ultimately granted relief on statutory grounds.

The Court explained that Laws of 2018, ch. 269, § 6(3) ("House Bill 1783") made substantial modifications to several facets of Washington's LFO system. In doing so, the legislature "address[ed] some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction." Ramirez, 2018 WL 4499761 at *6.

For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, establishes that the DNA database fee is

no longer mandatory if the offender's DNA has been collected because of a prior conviction, and provides that a court may not sanction an offender for failure to pay LFOs *unless* the failure to pay is willful. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, §§ 1, 18, 7.). As it pertains to the DNA fee, RCW 43.43.7541 now provides that:

Every sentence imposed for a crime specified in RCW 43.43.754 must include a fee of one hundred dollars *unless the state has previously collected the offender's DNA as a result of a prior conviction.*

RCW 43.43.7541 (emphasis added.); Laws of 2018, ch. 269, § 18.

It amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 6(3)). It also prohibits imposing the \$200 filing fee on indigent defendants. Ramirez, 2018 WL 4499761 at *6 (citing Laws of 2018, ch. 269, § 17).

As Ramirez further noted, a trial court “shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” Ramirez, 2018 WL 4499761 at *7 (quoting Laws of 2018, ch. 269, § 6(3)). Thus, indigency may be established by three objective criteria. “Under RCW 10.101.010(3)(a) through (c), a person is ‘indigent’ if the person receives certain types of public assistance, is involuntarily committed to a public

mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level.” Ramirez, 2018 WL 4499761 at *7.⁸

Crucially to this case, the Court also held that the House Bill 1783 amendments applied prospectively to cases not yet final on appeal. Ramirez, 2018 WL 4499761 at *7-8 (citing State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1213 (1997)).

The Supreme Court concluded that the trial court impermissibly imposed discretionary LFOs on Ramirez. The Court remanded for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs. Ramirez, 2018 WL 4499761 at *8.

Here, the record indicates Staten is indigent under RCW 10.101.010(3). Staten also has a prior criminal history as demonstrated by his offender score of 10. Clearly, the State has previously collected his DNA. Because Staten's case is not yet final, the new statute applies prospectively. Ramirez, 2018 WL 4499761 at *7-8. As a result, the DNA fee must be considered a discretionary LFO, which may not be imposed on an indigent defendant. Thus, this Court should remand for the \$100 DNA fee to be stricken.

⁸ If none of these criteria apply, only then must the trial court engage in an individualized inquiry into current and future ability to pay. Ramirez, 2018 WL 4499761 at *7.

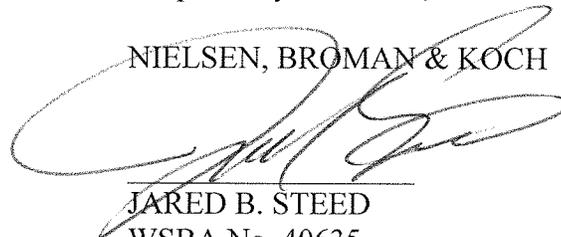
D. CONCLUSION

For the reasons discussed above, this Court should remand Staten's case for resentencing, to enter written findings of fact and conclusions of law, and to correct the scrivener's error in Staten's judgment and sentence. This Court should also remand for the \$200 criminal filing fee and the \$100 DNA fee to be stricken.

DATED this 25th day of September, 2018.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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APPENDIX

20
 JM
 CC50
 C John Terry

S3
 16-1-02020-8

FILED
 DEC 12 2017
 Scott G. Weber, Clerk, Clark Co.
 830

**Superior Court of Washington
 County of Clark**

State of Washington, Plaintiff,
 vs.
 HAROLD CURTIS STATEN III,
 Defendant.
 SID: WA15985764
 If no SID, use DOB: 7/24/1980

No. 16-1-02020-8
**Felony Judgment and Sentence --
 Prison**
 **RCW 9.94A.507 Prison Confinement
 (Sex Offense and Kidnapping of a Minor)
 (FJS) 17-9-04377-9**
 **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**

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 7/12/2017 jury-verdict bench trial:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	KIDNAPPING IN THE SECOND DEGREE - DOMESTIC VIOLENCE WITH SEXUAL MOTIVATION	10.99.020/9A.40.030	FB	9/26/2016
04	INDECENT LIBERTIES (WITH FORCIBLE COMPULSION) - DOMESTIC VIOLENCE	10.99.020/9A.44.100(1)(a)	FA	9/26/2016

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 01, 04 **domestic violence** was pled and proved. **RCW 10.99.020**.

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.

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.

*Felony Judgment and Sentence (FJS) (Prison)
 (Sex Offense and Kidnapping of a Minor Offense)
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (07/2015))
 Page 1 of 14*

- 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 01. 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	10	V	72-96 months	(SM) 18 mon.	90-114 months	LIFE ;
04	10	X	149-198 months		167-216 months	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) 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) _____.
- 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. **86**
 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 and Appendix 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):

114 months on Count 01 167 months on Count 04

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
 The confinement time on Count 01 includes +04 18 months 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: 167 months

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	<u>114 months</u>	maximum term	Statutory Maximum
Count	<u>04</u>	minimum term	<u>167 months</u>	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) _____, 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)
Count(s) _____, _____ months. RCW 9.94A.701(9)

(Sex offenses, only) For count(s) 01 and 04, 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~~ ^{stroke} chemical dependency mental health anger management, and fully comply with all recommended treatment. _____
- comply with the following crime-related prohibitions: _____
- _____
- _____
- Other conditions: _____
- _____
- _____

(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	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
PDV	\$ <u>100.00</u>		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	\$ TO BE SET	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	\$ 2,200.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ 400.00	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/MTH	\$ _____	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/FCD 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
	\$ <u>100.00</u>	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: _____	

*LEAIVED
6 mos*

RTN/RJN \$ TO BE SET 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 ELISABETH ANN BOYLE including, but not limited to, personal, verbal, telephonic, written or contact through a third party until August 18, 2027 (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

ELISABETH ANN BOYLE (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____

until August 18, 2027 (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: Conditions of sentence in Appendix F (attached) -

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.

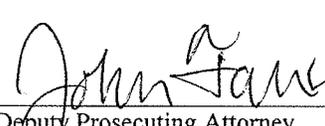
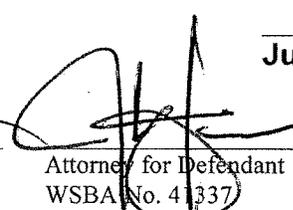
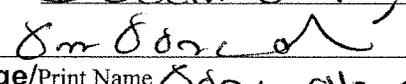
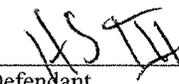
5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 01 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030.(37)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: December 12, 2017

 Deputy Prosecuting Attorney WSBA No. 45627 Print Name: John Farra	 Attorney for Defendant WSBA No. 41337 Print Name: John C Terry	 Judge/Print Name <u>Statens</u>  Defendant Print Name: HAROLD CURTIS STATENS III
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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: Harold Statens III

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
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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: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

NIELSEN, BROMAN & KOCH P.L.L.C.

September 25, 2018 - 9:57 AM

Transmittal Information

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Appellate Court Case Title: State of Washington, Respondent v Harold Curtis Staten, Appellant
Superior Court Case Number: 16-1-02020-8

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