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 Court of Appeals
 Division II
 State of Washington
 2/6/2018 2:28 PM



FILED
 JAN 26 2015
 3:33pm
 Scott G. Weber, Clerk, Clark Co.

Superior Court of Washington
 County of Clark

State of Washington, Plaintiff,

vs.

JAVIER GONZALEZ-GONZALEZ, aka
 JAVIER GONZALEZ GONZALEZ,
 Defendant.

SID: WA27320435
 If no SID, use DOB: 1/20/1959

No. 13-1-01744-0

Felony Judgment and Sentence --
 Prison

15-9-00314-2

RCW 9.94A.507 Prison Confinement
 (Sex Offense and Kidnapping of a Minor)

(FJS)

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

Defendant Used Motor Vehicle

Juvenile Decline Mandatory Discretionary

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

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **Finds:**

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea 8/1/2014 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	FA	1/1/1998 to 9/13/2004
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	1/1/1998 to 9/13/2004

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:

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- 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.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- 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 _____, **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._____.
- 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.
- 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.
- 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.
- For crime(s) charged in Count _____ **domestic violence** was pled and proved. **RCW 10.99.020**.
- 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)
1.			

- 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.	DV?*	Type
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 for _____ are one offense for purposes of determining the offender score (RCW 9.94A.525).
- The prior convictions for _____ 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	Maximum Fine
01	3	XI	102 MONTHS to 136 MONTHS		102 MONTHS to 136 MONTHS	LIFE	\$50,000.00
02	3	VII	31 MONTHS to 41 MONTHS		31 MONTHS to 41 MONTHS	10 YEARS	\$20,000.00

* (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, 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.

- 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.

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

- That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

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):

136 months on Count 01 41 months on Count 02

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 136 Month

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: _____

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

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

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

Count	<u>01</u>	minimum term	<u>136 months</u>	maximum term	<u>life</u>	Statutory Maximum
Count	<u>02</u>	minimum term	<u>41 months</u>	maximum term	<u>life</u>	Statutory Maximum <u>life</u>

(c) **Credit for Time Served:** The defendant shall receive 497 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.

(d) **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) 02, 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, 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. life

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:

consume no alcohol.

have no contact with: Minors

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 the following crime-related treatment or counseling services:

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

comply with the following crime-related prohibitions: _____

Additional conditions are imposed in Appendix 4.2, if attached or are as follows:

ATTACHED APPENDIX A AND APPENIDX F

(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.

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

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RTN/RJN	\$ <u>TBS</u>	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ 9250.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
FCM/MTH	\$ 500.00	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/PCD NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
	\$ <u>100.00</u>	DNA collection fee	RCW 43.43.7541
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
FPV	\$ _____	Specialized forest products	RCW 76.48.140

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) RCW 38.52.430
Agency: _____

\$ _____ Other fines or costs for: _____
\$ _____ **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.

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. 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 ~~LUCERO GONZALEZ-MENDOZA, DALIA MENDOZA-GONZALEZ, DALILA AGUILAR-GONZALEZ, LUCERO MENDOZA-GONZALEZ, LUCERO MENDOZA-GONZALEZ~~ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 100 years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

~~LUCERO GONZALEZ-MENDOZA, DALIA MENDOZA-GONZALEZ, DALILA AGUILAR-GONZALEZ, LUCERO MENDOZA-GONZALEZ, LUCERO MENDOZA-GONZALEZ~~ (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____,

for 100 years (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

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

4.8 For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

4.9 If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections 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 first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third 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.714.

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 a kidnapping offense involving a minor as defined in Laws of 2010, ch. 367 § 1, 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.

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 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 or Returning Washington Residents: If you move to Washington or if you leave the 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.

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 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. 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 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 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 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 attend the school. You must notify the sheriff within three 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 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.

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

8. Length of Registration:

Class A felony – Life; Class B Felony – 15 years; Class C felony – 10 years

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 1 & 2 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) 1 & 2 is/are one of the listed offenses in RCW 9.94A.030.(31)(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: January 26 2015

[Signature]
Judge/Print Name Barbara Johnson

[Signature]
Deputy Prosecuting Attorney
WSBA No. 33835
Print Name: Camara L. Banfield

[Signature]
Attorney for Defendant
WSBA No. 41337
Print Name: John C Terry

[Signature]
Defendant
Print Name:
JAVIER GONZALEZ-GONZALEZ

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: Javier Gonzalez

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

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

Signed at Vancouver, Washington on (date): _____

Interpreter Print Name

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

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

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

Identification of the Defendant

JAVIER GONZALEZ-GONZALEZ

13-1-01744-0

SID No: WA27320435

Date of Birth: 1/20/1959

(If no SID take fingerprint card for State Patrol)

FBI No. 578957WD4

Local ID No. 215944

PCN No. _____

Other _____

Alias name, DOB: , aka JAVIER GONZALEZ GONZALEZ, JAVIER GONZALEZ GONZALEZ, 1/20/1959

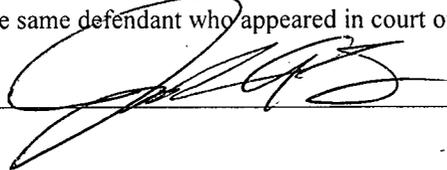
Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk, _____



Dated: _____

1-26-15

The defendant's signature: _____

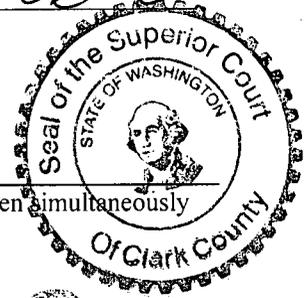
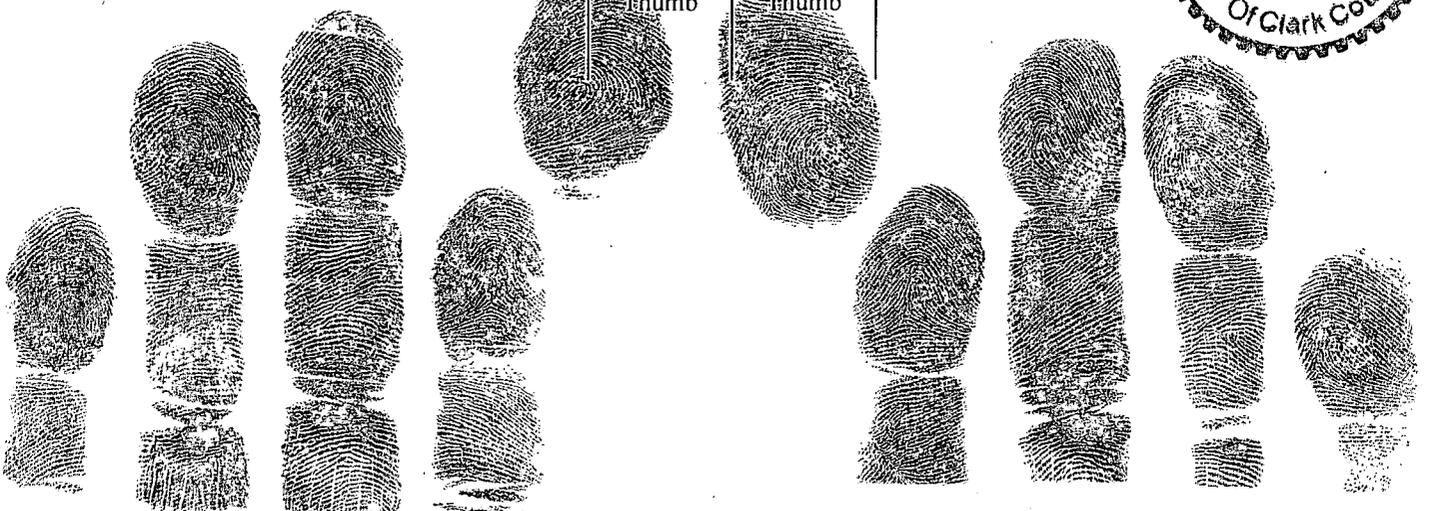
Javier Gonzalez

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

JAVIER GONZALEZ-GONZALEZ,

Defendant.

SID: WA27320435

DOB: 1/20/1959

NO. 13-1-01744-0

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

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

GREETING:

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

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	1/1/1998 to 9/13/2004
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	1/1/1998 to 9/13/2004

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

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

COUNT	CRIME	TERM
01	RAPE OF A CHILD IN THE SECOND DEGREE	136 Days Months
02	CHILD MOLESTATION IN THE SECOND DEGREE	41 Days Months

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

The defendant has credit for 497 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

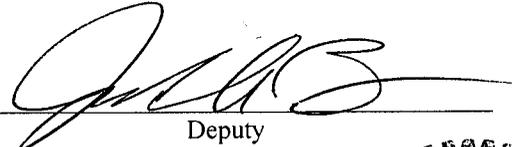
WITNESS, Honorable



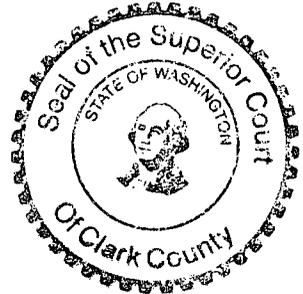
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1-26-15

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

By:



Deputy



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

8 STATE OF WASHINGTON,
9 Plaintiff,
10 v.
11 JAVIER GONZALEZ-GONZALEZ,
Defendant
Date of Birth: 1/20/1959

No. 13-1-01744-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



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

15 CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
16 No known felony history.					

17 *DV: Domestic violence was pled and proved.

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

20 DATED this 26 day of January, 2015.

21 Javier Gonzalez
Defendant

22 Maggie Evans
23 ~~Maggie Evans~~, WSBA#30014,
Attorney for Defendant 041337
24 John Perry

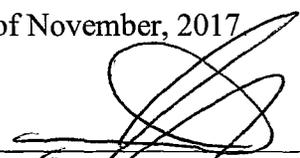
22 Camara L. Banfield
23 Camara L. Banfield, WSBA#33835
Senior Deputy Prosecuting Attorney

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Defendant timely filed a CrR 7.8(b) Motion to Withdraw Guilty Plea and Vacate Judgment and Sentence on January 22, 2016. To date, there has been no response from the prosecuting attorney nor has the court given any indication of having considered the motion. Mr. Gonzalez Gonzalez is currently incarcerated in connection with this matter.

To prevent further, unnecessary delay in justice, and based on the facts and authorities cited herein, Defendant requests that this motion be granted.

Respectfully submitted this 21st day of November, 2017



NICOLE T. DALTON, WSBA#38230
Attorney for Defendant

CERTIFICATION

I hereby certify that on this 21st day of November, 2017, I delivered a copy of the foregoing MOTION TO SET BRIEFING SCHEDULE ON MOTION TO WITHDRAW GUILTY PLEA AND VACATE JUDGMENT AND SENTENCE CrR 7.8.

- by US mail, postage prepaid,
- by hand delivering the copy,
- by courier
- by facsimile

to the following person at the address listed below:

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver, WA 98666



 Nicole T. Dalton, WSBA#38230
 Maria Garcia

E-FILED

01-05-2018, 16:10

**Scott G. Weber, Clerk
Clark County**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

JAVIER GONZALEZ-GONZALEZ,

Defendant.

No. 13-1-01744-0

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO WITHDRAW HIS GUILTY
PLEA

COMES NOW the State of Washington, by and through its attorney, Kelly M. Ryan, Deputy Prosecuting Attorney, and responds to Defense's motion to withdraw his guilty plea pursuant to CrR 7.8 and requests this court transfer the matter to the Court of Appeals to be addressed as a Personal Restraint Petition as the defendant has not made a substantial showing that he is entitled to relief and resolution of the matter does not require a factual hearing.

FACTUAL AND PROCEDURAL HISTORY

According to the police reports in this matter, L.G.-M was sexually abused by her father, Javier Gonzalez-Gonzalez. The abuse of L.G.-M began when she was 7 or 8 and lived in Mexico. L.G.-M's two sisters also reported that they had been abused by Gonzalez-Gonzalez

1 while they lived in Mexico. While L.G.-M was living in Mexico, Gonzalez-Gonzalez would
2 spend time working in the United States and when he called home he would make sexual
3 comments and remark on the attractiveness of her vagina. He would also make these grooming
4 comments in person to L.G.-M.

5 The family moved to Vancouver when L.G.-M was 13 and in eighth grade. The first
6 instance of abuse in Vancouver occurred when L.G.-M came home from school. Gonzalez-
7 Gonzalez was the only person home, and he told her to stay on the couch in the living room and
8 for L.G.-M to perform oral sex on him. Gonzalez-Gonzalez directed L.G.-M to take her pants off
9 and he put two fingers in her vagina. He then took his erect penis out of his pants and told L.G.-
10 M to start touching him. L.G.-M ran upstairs to her bedroom and locked the door. Gonzalez-
11 Gonzalez then slipped money under the door and “kept swooshing it back and forth.”

12 The abuse of L.G.-M continued during her teenage years, and she reported that “every
13 time he made me touch his penis, stuff came out. It would go on my breasts. I would go to the
14 shower. He only put his penis inside my vagina two times. Most the time he put his fingers in my
15 vagina. He would always try to put his penis in. But I would push him because it hurt. He would
16 tell me not to move, then I would like it.” Gonzalez-Gonzalez would touch L.G.-M at every
17 opportunity they were alone in the house, and he repeatedly touched her breasts and penetrated
18 her vagina with his fingers. Gonzalez-Gonzalez had L.G.-M perform oral sex on him numerous
19 occasions, and he would make her penetrate his anus with her fingers.

20 L.G.-M’s mother and Gonzalez-Gonzalez divorced and she moved out of his home.
21 L.G.-M and her sisters later came forward to law enforcement and disclosed the abuse when they
22

1 heard Gonzalez-Gonzalez was living with a 4 year old girl. They were concerned that she would
2 also be abused. Law enforcement investigated and ultimately arrested Gonzalez-Gonzalez.

3 Gonzalez-Gonzalez was charged in the original information, filed on September 19,
4 2013, with two counts of rape of a child in the second degree, and four counts of child
5 molestation in the second degree for the abuse of L.G.-M. *See* Appendix A (original
6 information). John Terry was privately retained by Gonzalez-Gonzalez as trial counsel and Mr.
7 Terry entered his notice of appearance on September 25, 2013.

8 Mr. Terry was provided with 86 pages of discovery from the State that included: multiple
9 police interviews with the victim and her sisters; statements from the victim's brother-in-law
10 stating that his wife (one of the sisters abused by Gonzalez-Gonzalez) had told him about the
11 abuse and that Gonzalez-Gonzalez had made incriminating statements to him; statements from
12 the victim's mother and Gonzalez-Gonzalez's ex-wife who had found Gonzalez-Gonzalez nude
13 in bed with the victim and had been told of some of the abuse by the victim; and statements from
14 the victim's husband that the victim had disclosed the abuse to him several years earlier but did
15 not want others to know at that time because she was afraid.

16 Mr. Terry has stated that he spent an estimated 50 hours working on this case. *See*
17 Appendix B (declaration of Kelly M. Ryan). He only interviewed the charged victim, because he
18 felt any other interviews would cause the State to pull their offer. *See* Appendix B. He did not
19 hire an investigator because, in his experience, an investigator would not provide any additional
20 assistance he could not provide himself. *See* Appendix B. He spoke with Gonzalez-Gonzalez in
21 and out of court with the aid of an interpreter. *See* Appendix B. He spent two days going over the
22 change of plea with Gonzalez-Gonzalez and an interpreter. *See* Appendix B. He also spoke at

1 length with Gonzalez-Gonzalez over the SSOSA screening process. *See* Appendix B. He spoke
2 with Gonzalez-Gonzalez's family members, but none of them were present during the incidents
3 of abuse. *See* Appendix B. Mr. Terry met with Gonzalez-Gonzalez an estimated 10-15 times for
4 15 minutes to an hour each time. *See* Appendix B.

5 Trial was first set for November 18, 2013, and Mr. Terry moved to continue the trial on
6 October 28, 2013 in order to conduct further negotiations and to have more time to prepare for
7 trial or potential motions. *See* Appendix C (motion to continue). This motion was granted and
8 trial was re-set to February 3, 2014. On January 30, 2014 trial was stricken and the matter was
9 set for a change of plea on February 5, 2014.

10 However, on February 6, 2014 a competency evaluation of Gonzalez-Gonzalez was
11 ordered. An evaluation conducted by Western State Hospital (WSH) was completed on February
12 27, 2014 that found that defendant was not competent because he did not understand the nature
13 of the proceedings and was unable to assist in his own defense. However, restoration treatment
14 was ordered by the court and on June 20, 2014 an order was entered finding that Gonzalez-
15 Gonzalez had been restored by WSH where he could now understand the nature of the
16 proceedings and assist in his own defense.

17 On July 31, 2014 Mr. Terry cited the case on for a change of plea. On August 1, 2014
18 Gonzalez-Gonzalez entered a change of plea to an amended information of one count of rape of a
19 child in the second degree and one count of child molestation in the second degree before Judge
20 John Nichols. *See* Appendix D (guilty plea statement and plea agreement). The change of plea
21 form and offer were read to Gonzalez-Gonzalez with the aid of an interpreter, and the interpreter
22 signed on page 10 affirming that he read the entire statement to Gonzalez-Gonzalez and that

1 Gonzalez-Gonzalez understood it in full. *See* Appendix D. On page 5 of the guilty plea statement
2 at subsection 6(g), it indicated that “the prosecutor will recommend as stated in the plea
3 agreement, which is incorporated by reference.” *See* Appendix D. The plea agreement was
4 attached to the guilty plea statement, and it indicated on page 2 that:

5 The State shall be free to recommend any sentence, but the defendant may
6 argue for Special Sex Offender Sentencing Alternative (SSOSA) with the
following stipulated preconditions:

- 7 A) **If the SSOSA option is requested, the Prosecuting Attorney,**
8 **defense attorney, and defendant stipulate that the**
9 **minimum term sentence recommendation will be 136**
10 **MONTHS and the maximum term sentence will be LIFE.**
11 The above-listed minimum term sentence will be suspended
upon successful entry and completion of all phases of a state
12 licensed sex offender treatment program, to be entered into by
the sentencing date if out of custody, or within 30 days of
release from custody.
13 B) 365 days of local jail to be served...

14 *See* Appendix D. Gonzalez-Gonzalez signed off on the plea agreement on page 4 twice; once on
15 July 23, 2014 and again on August 1, 2014. *See* Appendix D. Gonzalez-Gonzalez signed off on
16 the plea agreement both times after having gone through it with the aid of an interpreter.

17 In court during the guilty plea, Gonzalez-Gonzalez indicated that he understood: the
18 charges against him; that he was waiving his right to a jury trial and all the rights associated with
19 it; the potential consequences of the charges, including 102-136 months or life in prison; and that
20 the judge was not bound by the pretrial agreement. RP 5-8. He also admitted to the conduct that
21 made him guilty of the charges. RP 11-12. Gonzalez-Gonzalez acknowledged on the record that
22 it was his signature on the guilty plea statement. RP 12. The court had the following colloquy
with Gonzalez-Gonzalez:

1 The court: Knowing all these rights are being waived and the
2 consequences you face, do you still wish to plead guilty to both these
charges?

3 Defendant: Yes.

4 The court: Okay. Are you making this plea of guilty freely and
voluntarily?

5 Defendant: Yes.

6 The court: Has anyone made any threats against you or promises to you to
force you to plead guilty?

7 Defendant: No.

8 RP 10. The court accepted the guilty plea and set sentencing over to September 17, 2014. RP 12-
9 13.

10 The September 17, 2014 sentencing hearing was stricken on agreement of both parties
11 and on November 5, 2014 Mr. Terry requested a second SSOSA evaluation. RP 14. The State
12 had no objection and indicated that it did not believe a second evaluation would change the
13 outcome based on the nature of Gonzalez-Gonzalez's crimes and the amount of victims. RP 15.
14 Sentencing was then set over to December 12, 2014. RP 15.

15 A psychosexual evaluation as part of the SSOSA screening was completed on October
16 27, 2014 by Dr. Wendy Hartinger. *See* Appendix E at page 10-11 (Presentence investigation).
17 Dr. Hartinger noted that Gonzalez-Gonzalez had a moderate risk to re-offend and that his four
18 year old daughter was at a high risk of being abused. *See* Appendix E at page 10-11.

19 On December 1, 2014, Mr. Terry filed a motion and declaration requesting Dr. Landon
20 Poppleton to be approved for the second SSOSA evaluation. *See* Appendix F (Motion and
21 declaration for approval of second SSOSA evaluator). In the declaration, Mr. Terry stated that in
22 the first SSOSA evaluation Gonzalez-Gonzalez's statements were translated correctly but were
not accurately conveyed to the evaluator because of Gonzalez-Gonzalez's "rural" manner of

1 speaking Spanish. *See* Appendix F at page 3. Mr. Terry stated: “I have looked for a Spanish
2 evaluator. I have asked the County’s Indigent Defense office if they knew of one. I have not
3 located such an evaluator.” *See* Appendix F at page 3. He then requests for Dr. Poppleton to be
4 appointed because Dr. Poppelton is an evaluator that speaks Spanish. *See* Appendix F at page 3.

5 On December 5, 2014 Mr. Terry cited the case into court and indicated that he could not
6 find a Spanish speaking SSOSA certified evaluator locally, and the only one he could confirm
7 was located in the State was in Bellevue. RP 17-18. There was potentially a certified evaluator
8 based in Portland, Oregon, and the court and Mr. Terry agreed that Mr. Terry would try to set up
9 an evaluation with the Portland based evaluator, or Dr. Poppleton, or any evaluator who spoke
10 Spanish. RP 23-26. Mr. Terry then stated that “I guess we’re taking no action except me to do
11 some more investigation on...those new leads I have and we’ll come back next week.” RP 26.

12 A hearing was held on December 23, 2014 where Gonzalez-Gonzalez appeared with Mr.
13 Terry and with Nicole Dalton (Gonzalez-Gonzalez’s current attorney for this CrR 7.8 motion). A
14 motion and declaration signed by Gonzalez-Gonzalez was filed with the court by Ms. Dalton’s
15 office the day of the hearing. *See* Appendix G (motion to substitute counsel). In the typed
16 declaration from Gonzalez-Gonzalez prepared by Ms. Dalton’s office, dated December 22, 2014,
17 he stated that he was unhappy with Mr. Terry’s representation, specifically Mr. Terry’s Spanish
18 speaking skills, and wanted to hire Ms. Dalton in his place. *See* Appendix G

19 At the hearing, Ms. Dalton told the court that Gonzalez-Gonzalez wanted to substitute
20 Ms. Dalton in as his attorney. RP 29. Ms. Dalton stated that Gonzalez-Gonzalez had told her he
21 did not have a good understanding of what was going on and thought he would be released soon
22 or in the alternative get “something like a five-year sentence.” RP 30-31. Ms. Dalton then asked

1 the court to grant Gonzalez-Gonzalez's pro se motion to substitute counsel and grant her a
2 "significant continuance." RP 32. Ms. Dalton indicated that she had already received a fee in
3 trust from Gonzalez-Gonzalez. RP 33.

4 The State objected to the continuance and substitution based on the age of the case. RP
5 34. The State argued that Ms. Dalton was correct in that Gonzalez-Gonzalez thought he would
6 get out soon, because if Gonzalez-Gonzalez had qualified for SSOSA he would have been let out
7 soon. RP 34. The State further clarified that Gonzalez-Gonzalez's indication he might get a five
8 year sentence was in fact because Mr. Terry had made that request to the State when it appeared
9 Gonzalez-Gonzalez would not qualify for SSOSA. RP 34-35. The State also noted that
10 Gonzalez-Gonzalez had an interpreter present for all stages of the proceedings in court, including
11 for the plea. RP 35. Mr. Terry stated at this hearing that during his representation he noticed
12 Gonzalez-Gonzalez did not fully understand everything so Mr. Terry took his time in explaining
13 things to him. RP 40. He specifically stated that "we had to read the plea for him – with him I
14 think three or four times." RP 40.

15 The court stated that Gonzalez-Gonzalez's plea was validly done. RP 44. The trial court
16 noted that a presentencing report was still required, and that it would take one or two weeks to
17 complete. RP 37-38. In response to Ms. Dalton's requested eight week continuance, the court
18 stated that: "But she's not going to get eight weeks. I wouldn't – eight weeks is way too long in
19 this situation. And the reasons for that are (sic) that this has been pending for a long, long time."
20 RP 39. The court stated that it would grant a continuance for a maximum of four weeks. RP 43-
21 44. The court asked Ms. Dalton if she would be prepared for a sentencing hearing on January 26,
22 2015, but Ms. Dalton was not sure and she still wanted eight weeks. RP 49. The court then ruled

1 that Mr. Terry would continue as Gonzalez-Gonzalez's attorney, and if there was a motion filed
2 before January 26, 2015 the court would consider it, but at this time "Miss Dalton has indicated
3 that she needs more time and she's not willing to substitute in, so he still has Mr. Terry." RP 51.
4 The State then asked if the court would ask Gonzalez-Gonzalez if he understood the interpreters,
5 and Gonzalez-Gonzalez said "yes." RP 52-53.

6 Gonzalez-Gonzalez wrote three letters addressed to the court (two on December 24, 2014
7 and one on December 30, 2014) indicating he was unhappy with Mr. Terry and did not want Mr.
8 Terry to continue as his attorney. *See* Appendix H at pages 4-6 (letters filed on January 8, 2015).
9 Two separate letters dated December 29, 2014 indicated that Gonzalez-Gonzalez was happy with
10 Mr. Terry's representation, and only asked for a new attorney because of advice from friends and
11 family. *See* Appendix H at pages 1-2.

12 Ms. Dalton did not substitute in as counsel for Gonzalez-Gonzalez before the sentencing
13 hearing on January 26, 2015 held before Judge Barbara Johnson. At the hearing, Mr. Terry
14 highlighted the difficulties in the SSOSA evaluation, and that the SSOSA evaluation contained
15 too many risk factors, one of which was the lack of a Spanish speaking treatment provider
16 locally in Washington. RP 58. However, Mr. Terry indicated that there was a provider in
17 Portland and requested that the court allow Gonzalez-Gonzalez to enter SSOSA with the Oregon
18 provider. RP 61. The court denied this request and sentenced Gonzalez-Gonzalez to 136 months
19 in prison and stated that SSOSA was not appropriate in this case, even without the interpreter
20 difficulties. RP 63; *See* Appendix I (judgement and sentence).

21 On January 22, 2016 a motion to withdraw his guilty plea was timely filed by Gonzalez-
22 Gonzalez.

1 **ARGUMENT**

2 Gonzalez-Gonzalez has filed a motion to withdraw his guilty plea, citing to CrR 7.8 for
3 support. A motion to withdraw a guilty plea made after the judgment has been entered is
4 governed by CrR 7.8. CrR 4.2(f); *State v. Lamb*, 175 Wn.2d 121, 128, 285 P.3d 27 (2012).
5 Gonzalez-Gonzalez filed his motion to withdraw his guilty plea after the judgment was final, and
6 therefore CrR 7.8 governs his motion. *See* Appendix I (Judgment and Sentence); CrR 4.2(f).

7 In order to succeed on a motion to withdraw a guilty plea post-judgment, a defendant
8 must show a basis for the withdrawal pursuant to CrR 7.8. CrR 7.8(b) provides:

9 “On motion and upon such terms as are just, the court may relieve
10 a party from a final judgment, order, or proceeding for the
following reasons:

- 11 1) Mistakes, inadvertence, surprise, excusable neglect or
12 irregularity in obtaining a judgment or order;
13 2) Newly discovered evidence which by due diligence
could not have been discovered in time to move for a new
14 trial under CrR 7.5;
15 3) Fraud (whether heretofore denominated intrinsic or
16 extrinsic), misrepresentation, or other misconduct of an
adverse party;
17 4) the judgment is void; or
18 5) any other reason justifying relief from the operation of
19 the judgment....”

20 CrR 7.8(b). The trial court shall transfer any CrR 7.8 motion to the Court of Appeal if the court
21 finds the motion is time-barred or if the Court finds the defendant has not made a substantial
22 showing that he is entitled to relief. CrR 7.8(c).

23 Gonzalez-Gonzalez does not argue there is any basis pursuant to CrR 7.8 to relieve him
24 from enforcement of the judgment. Gonzalez-Gonzalez does not allege mistake, inadvertence,
surprise, excusable neglect or irregularity, newly discovered evidence or fraud or misconduct,

1 nor does he argue the judgment is void. The only possible basis under CrR 7.8 for relief is
2 pursuant to CrR 7.8(b)(5) which allows for relief for “any other reason justifying relief from the
3 operation of the judgment.”

4 Relief from a judgment pursuant to CrR 7.8(b)(5) is limited to extraordinary
5 circumstances not covered by any other section of the rule. *State v. Brand*, 120 Wn.2d 365, 369,
6 842 P.2d 470 (1992). And final judgments “may be vacated or altered only in those limited
7 circumstances where the interests of justice most urgently require.” *State v. Shove*, 113 Wn.2d
8 83, 88, 776 P.2d 132 (1989). A defendant must meet the requirements of CrR 7.8 before he may
9 obtain relief via a motion to withdraw. *Lamb*, 175 Wn.2d at 129. If a plea was not voluntarily
10 given it creates a manifest injustice allowing withdrawal of the guilty plea. *State v. DeClue*, 157
11 Wn. App. 787, 792, 239 P.3d 377 (2010). However, the injustice must be “obvious, directly
12 observable, overt and [not] obscure.” *DeClue*, 157 Wn. App. at 792; quoting *State v. Taylor*, 83
13 Wn.2d 594, 596, 521 P.2d 633 (1974). A defendant has a demanding burden to meet when
14 seeking to withdraw a guilty plea because ample safeguards exist to protect his rights before the
15 trial court will accept a guilty plea. *Taylor*, 83 Wn.2d at 596-97.

16 Gonzalez-Gonzalez argues that this court should allow him to withdraw his guilty plea
17 for two reasons. First, that his trial counsel, Mr. Terry, was ineffective for not conducting a
18 reasonable investigation. Second, that his trial counsel was ineffective for failing to properly
19 communicate with him, thus rendering his guilty plea not knowing, intelligent, or voluntary.
20 Finally, Gonzalez-Gonzalez argues that the trial court’s denial of his motion to substitute counsel
21 is also a basis to withdraw his guilty. However, Gonzalez-Gonzalez cannot show he is entitled to
22 relief pursuant to CrR 7.8, because he fails to establish that trial counsel’s performance was

1 deficient. Furthermore, his argument in regards to the denial of the motion to substitute counsel
2 is meritless because there are no grounds under CrR 7.8 to grant relief for this alleged error.

3 1. Gonzalez-Gonzalez Had the Benefit of Effective Counsel

4 Gonzalez-Gonzalez alleges his counsel was ineffective for failing to conduct a reasonable
5 investigation and for failing to sufficiently communicate the consequences of the guilty plea to
6 him. However, trial counsel conducted a reasonable investigation and the consequences of the
7 plea were effectively communicated to Gonzalez-Gonzalez. Gonzalez-Gonzalez's claims fail.

8 Ineffective counsel is a manifest injustice that allows a defendant to withdraw a guilty
9 plea. *DeClue*, 157 Wn. App. at 792. To prevail on a claim of ineffective assistance of counsel a
10 defendant must overcome the presumption of effective representation and demonstrate that his
11 attorney's performance was deficient, and that the deficient performance prejudiced him.

12 *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Counsel
13 is presumed effective. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

14 There is a strong presumption of effective representation of counsel, and the defendant
15 has the burden to show that based on the record, there are no legitimate strategic or tactical
16 reasons for the challenged conduct. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251
17 (1995). "Deficient performance is not shown by matters that go to trial strategy or tactics." *State*
18 *v. Cienfuegos*, 144 Wn.2d 222, 227, 25 P.3d 1011 (2001) (quoting *State v. Hendrickson*, 129
19 Wn.2d 61, 77-78, 917 P.2d 563 (1996)).

20 As the Supreme Court explained in *Strickland v. Washington*, 466 U.S. 668, 690, 104 S.
21 Ct. 2052, 80 L. Ed. 2d 674 (1984):

1 Judicial scrutiny of counsel's performance must be highly
2 deferential. It is all too tempting for a defendant to second-guess
3 counsel's assistance after conviction or adverse sentence, and it is
4 all too easy for a court, examining counsel's defense after it has
5 proved unsuccessful, to conclude that a particular act or omission
6 of counsel was unreasonable.

7 *Id.* at 689.

8 A. Gonzalez-Gonzalez fails to establish trial counsel's investigation was not
9 reasonable.

10 In the context of a guilty plea, there is effective assistance when counsel actually and
11 substantially assists a client in deciding whether or not to plead guilty. *State v. Osborne*, 102
12 Wn.2d 87, 99, 684 P.2d 683 (1984); quoting *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d
13 901 (1981). In order to prove prejudice in the context of a guilty plea, a petitioner must show that
14 but for counsel's errors, there is a reasonable probability he or she would not have pleaded guilty
15 and would have gone to trial. *In re Pers. Restraint of Riley*, 122 Wn.2d 772, 780-81, 863 P.2d
16 554 (1993). In regards to a pretrial investigation, there is no binding opinion of the Washington
17 Supreme Court requiring an investigation. *State v. A.N.J.*, 168 Wn.2d 91, 109, 225 P.3d 956
18 (2010). However, counsel "cannot properly evaluate the merits of a plea offer without evaluating
19 the State's evidence." *Id.* The determination of whether or not counsel has sufficient information
20 to provide competent advice is to be done on a case by case basis. *State v. Shelmidine*, 166 Wn.
21 App. 107, 114 n.4, 269 P.3d 362 (2012).

22 The extent of the required investigation will vary in each case depending on the specific
23 facts and issues. *A.N.J.*, 168 Wn.2d at 111. At the very least, counsel is required to reasonably
24 evaluate the evidence against the accused and the likelihood of conviction at trial so that a
25 defendant can make a meaningful decision whether or not to plead guilty. *Id.* at 111-12.

1 In *A.N.J.*, the court held that the defendant was entitled to withdraw his guilty plea,
2 because his counsel's ineffective performance resulted in the defendant being misinformed as to
3 the consequences of his plea. *Id.* at 117. The juvenile defendant in *A.N.J.* pleaded guilty to a sex
4 offense under the incorrect assumption that the conviction could later be vacated. *Id.* at 116-17.
5 His defense attorney signed a declaration that he incorrectly told the defendant and his parents
6 that he believed the offense could be vacated at some point. *Id.* The court held that it would not
7 be a manifest injustice if the attorney had failed to inform the defendant that the conviction
8 would remain on his record forever. *Id.* at 116. But if A.N.J. was misinformed as to the
9 consequences it would be a basis to withdraw a plea. *Id.* The court held that based on the
10 misinformation, along with the attorney spending limited time with the defendant both before
11 and while going over the plea (only 55 minutes in total), the attorney failing to return the
12 defendant's parents' phone calls, A.N.J. filing a motion to withdraw his plea 5 weeks after
13 learning of the consequences, and the attorney working under a constrained public defender
14 contract, A.N.J. was entitled to withdraw his plea. *Id.* at 100-02, 116-17.

15 In *Shelmidine*, defense counsel was alleged to have provided ineffective assistance
16 because the State refused to provide counsel with the name of a confidential informant if the
17 defendant wanted to accept the State's offer. 166 Wn. App. at 109. The court held that there was
18 sufficient evidence available to the attorney, even without the name of the informant, to
19 reasonably evaluate the evidence and effectively assist the defendant in making the decision to
20 plead guilty or go to trial. *Id.* at 114. The court based its ruling on the fact that the attorney
21 received everything of significance from the State, and the only thing that was missing was the
22 name of the informant. *Id.* at 113. This evidence included multiple police reports, and the court

1 found that the attorney had the ability to interview multiple eyewitnesses. *Id.* In sum, all of these
2 factors resulted in the court finding there was sufficient information to advise the defendant
3 whether or not to accept the plea and that counsel complied with the RPCs. *Id.* at 114.

4 In the present case, trial counsel conducted an adequate investigation and thoroughly
5 informed Gonzalez-Gonzalez of the consequences of the guilty plea. Trial counsel spent two
6 days going over the guilty plea statement with Gonzalez-Gonzalez, including reading it to him
7 three to four times, and that statement included nothing but accurate information in regards to the
8 SSOSA screening and his maximum range. RP 40 *See Appendix B.; See Appendix D.* At all
9 stages of going over the decision to plead guilty, Gonzalez-Gonzalez was assisted with an
10 interpreter. RP 5-12; *See Appendix D; See Appendix B.* Gonzalez-Gonzalez was fully informed
11 of the consequences he is now facing, because unlike in *A.N.J.*, he was never told incorrect
12 information in regards to the SSOSA screening. In fact, his trial counsel spoke endlessly about
13 SSOSA with Gonzalez-Gonzalez. *See Appendix B.* Also unlike in *A.N.J.*, trial counsel did not
14 spend limited time with Gonzalez-Gonzalez before he entered his plea. Trial counsel met with
15 Gonzalez-Gonzalez 10-15 times for at least 15 minutes to an hour while working on the case. *See*
16 *Appendix B.* Furthermore, just as in *Shelmidine*, the State provided trial counsel with ample
17 evidence, over 80 pages of discovery including police reports and witness and victim statements,
18 thus showing that trial counsel had sufficient evidence to evaluate and assist Gonzalez-Gonzalez.
19 Trial counsel here did a reasonable investigation that allowed Gonzalez-Gonzalez a meaningful
20 decision to either plead guilty or go to trial.

21 In regards to conducting pretrial interviews, effective assistance of counsel does not
22 require defense counsel to interview every conceivable witness. *In re Pers. Restraint of Davis*,

1 152 Wn.2d 647, 739, 101 P.3d 1 (2004). The decision on whether or not to call a particular
2 witness is a matter for differences of opinion and presumed to be a matter of legitimate trial
3 tactics. *Id.* at 742. “A defendant seeking relief under a ‘failure to investigate’ theory must show a
4 reasonable likelihood that the investigation would have produced useful information not already
5 known to [counsel]”. *Id.* at 739. Any prejudice from a ‘failure to investigate’ claim must be
6 considered in light of the strength of the State’s case. *Id.*

7 Here, trial counsel actually conducted a pretrial interview, unlike in *Shelmidine* where the
8 court found that the attorney’s ability to interview a witness was part of his ability to provide
9 reasonable and competent advice. 166 Wn.App. at 113. Trial counsel only interviewed the victim
10 in this case, because he did not want the State to pull its offer to dismiss 4 of the 6 charged
11 counts. *See Appendix B.* This was a legitimate tactical decision, and it is not this court’s place to
12 second guess it in hindsight. *Strickland*, 466 U.S. at 689. Furthermore, trial counsel was not
13 required to interview every possible witness, and Gonzalez-Gonzalez has failed to show that
14 interviewing any other witness would have produced useful information not already known.
15 *Davis*, 152 Wn.2d at 739. Trial counsel did speak with other family members, but they did not
16 have any useful information. *See Appendix B.* Gonzalez-Gonzalez has only offered mere
17 speculation that additional interviews would have uncovered something useful, which is
18 insufficient to establish prejudice. Especially in light of the strong evidence from the State of the
19 abuse of L.G.-M., corroborated by the abuse of her other two sisters and other witness
20 statements. The record establishes that trial counsel conducted a reasonable investigation.
21 Gonzalez-Gonzalez has failed to meet his burden proving trial counsel’s performance was
22 deficient. His claim fails.

1 Gonzalez-Gonzalez's reference to ABA and other professional standards for defense
2 attorneys does not establish the Sixth Amendment standards for effective representation that this
3 court must consider. *A.N.J.*, 168 Wn.2d at 110. These standards are not binding, but they can be
4 useful to courts when evaluating ineffective assistance of counsel claims. *Id.* at 110; citing *In re*
5 *Brett*, 142 Wn.2d 868, 879–80, 16 P.3d 601 (2001). They can only be considered along with
6 other evidence regarding the effective assistance of counsel. *A.N.J.*, 168 Wn.2d at 110. Here,
7 when evaluating trial counsel's conduct in relation to the standards cited by Gonzalez-Gonzalez,
8 it does not support the conclusion that trial counsel's performance was deficient. As stated
9 above, trial counsel only interviewed the named victim as part of a legitimate tactical decision.
10 *See* Appendix B. He also spent around 50 hours working on the case, including reviewing all of
11 the State's evidence provided in discovery and meeting with Gonzalez-Gonzalez 10-15 times for
12 at least 15 minutes to an hour. *See* Appendix B. Furthermore, he spent three to four days going
13 over the guilty plea with the aid of an interpreter. *See* Appendix B. RP 40. He sought beneficial
14 witnesses when he spoke with members of Gonzalez-Gonzalez's family, but they were of no
15 help because they were not present during the times of the alleged abuse. *See* Appendix B. By
16 any metric Gonzalez-Gonzalez wants to cite to, trial counsel performed a reasonable
17 investigation. Trial counsel was only required to reasonably evaluate the evidence against
18 Gonzalez-Gonzalez and the likelihood of conviction at trial and then provide Gonzalez-Gonzalez
19 with a meaningful decision whether or not to plead guilty. *A.N.J.*, 168 Wn.2d at 111-12. Trial
20 counsel did just that in this case.

21 Gonzalez-Gonzalez has failed to meet his burden establishing that trial counsel's
22 investigation constituted deficient performance. Gonzalez-Gonzalez's claim fails.

1 B. Gonzalez-Gonzalez fails to establish that trial counsel did not effectively
2 communicate with him.

3 A defendant’s guilty plea must be knowing, voluntary, and intelligently made. *Henderson*
4 *v. Morgan*, 426 U.S. 637, 644-45, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976); *McCarthy v. U.S.*,
5 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); *In re Pers. Restraint of Barr*, 102
6 Wn.2d 265, 269, 684 P.2d 712 (1984). Voluntariness of a guilty plea means a plea free from
7 coercion. *See Woods v. Rhay*, 68 Wn.2d 601, 605, 414 P.2d 601, *cert. denied*, 385 U.S. 905, 87 s.
8 Ct. 215, 17 L. Ed. 2d 135 (1966); *State v. Swindell*, 22 Wn. App. 626, 630, 590 P.2d 1292
9 (1979). In order for a plea to be made knowingly and intelligently, it must be made with a correct
10 understanding of the charge and the consequences of pleading guilty. CrR 4.2(d); *State v. Walsh*,
11 143 Wn.2d 1, 6, 17 P.3d 591 (2001); *State v. Wakefield*, 130 Wn.2d 464, 472, 925 P.2d 183
12 (1996); *State v. Paul*, 103 Wn. App. 487, 494-95, 12 P.3d 1036 (2000).

13 “When a defendant fills out a written statement on plea of guilty in compliance with CrR
14 4.2(g) and acknowledges that he or she has read it and understands it and that its contents are
15 true, the written statement provides prima facie verification of the plea’s voluntariness.” *State v.*
16 *Perez*, 33 Wn. App. 258, 261, 654 P.2d 708 (1982). Once a judge goes over various criteria of
17 voluntariness with the defendant orally on the record, “the presumption of voluntariness is well
18 nigh irrefutable.” *Id.* at 262.

19 The record is clear that Gonzalez-Gonzalez’s guilty plea was made knowingly,
20 voluntarily, and intelligently. Trial counsel went over the plea and its consequences with
21 Gonzalez-Gonzalez over the course of two days, reading it to him three to four times, and he
22 signed off that he understood the pretrial agreement twice, on July 23, 2014 and on August 1,

1 2014. *See* Appendix D. That agreement contained the specific and correct details of the SSOSA
2 screening process. *See* Appendix D at page 2 of the plea agreement. An interpreter signed off on
3 the guilty plea statement after having read it in full to Gonzalez-Gonzalez on July 23, 2014. *See*
4 Appendix D at page 10 of the guilty plea statement. Gonzalez-Gonzalez also signed that he fully
5 understood the guilty plea statement. *See* Appendix D at page 10 of the guilty plea statement.
6 Finally, there is prima facie evidence that the plea was voluntary, because the court, orally on the
7 record and with an interpreter, went over the plea, the offer, the potential sentencing range, and
8 Gonzalez-Gonzalez's rights on the record. RP 5-12. Gonzalez-Gonzalez expressed no confusion,
9 affirmatively acknowledged he understood his rights and the consequences, and he pleaded
10 guilty to the charges. RP 12. At the hearing on December 23, 2014, Gonzalez-Gonzalez was
11 asked directly if he understood the interpreter and he said yes. RP 52-53. This all shows that
12 Gonzalez-Gonzalez had a correct understanding of the charge and consequences of the plea.
13 Gonzalez-Gonzalez has failed to present sufficient evidence to show he was not advised of his
14 rights and the consequences of his plea. His claim fails.

15 Gonzalez-Gonzalez cites to federal cases dealing with counsel who communicated with a
16 non-native speaking client without the aid of an interpreter.¹ These cases deal with situations
17 where defendants are advised of rights without the aid of a certified court interpreter. This is not
18 the situation in the present case. Trial counsel utilized interpreters both in and of court when
19 speaking with Gonzalez-Gonzalez. *See* Appendix B. While trial counsel did speak in Spanish to
20 Gonzalez-Gonzalez without the aid of interpreters at some points, when the guilty plea and

21 ¹ Gonzalez-Gonzalez also cites to Washington, California, New York, and Utah State Bar advice for dealing with
22 non-native speaking clients. These documents are not binding on this court and offer little to no guidance, because
23 they are inapplicable to the Gonzalez-Gonzalez's current claim. This is because trial counsel utilized interpreters in
24 and out of court when going through the guilty plea and SSOSA process.

1 pretrial offer were discussed a certified court interpreter was present in the jail and in court. *See*
2 Appendix B; RP 5-12; *See* Appendix D. Thus, those cases, while neither binding nor persuasive,
3 are wholly inapplicable to the present case and do not support the claim that trial counsel's
4 performance was deficient.

5 Gonzalez-Gonzalez's reliance on ineffective assistance of counsel cases in the context of
6 informing a defendant of immigration consequences is misplaced. In *State v. Sandoval*, 171
7 Wn.2d 163, 174, 249 P.3d 1015 (2011), a defendant was able to withdraw his guilty plea because
8 his attorney gave him *incorrect* advice in regards to immigration consequences. There, counsel
9 told the defendant he would not be deported when the offense he was pleading to was deportable,
10 and the warnings in the guilty plea statement were nullified by the incorrect advice. *Id.* at 173-
11 74. A similar situation occurred in *State v. Martinez*, 161 Wn. App. 436, 442, 253 P.3d 445
12 (2011), where a defendant claimed his attorney only discussed the possibility of deportation
13 (when deportation was mandated by the conviction) and the attorney did not remember what
14 exactly he discussed with the defendant but admitted that he knew little about immigration law.
15 These cases are wholly inapplicable to the current case, because Gonzalez-Gonzalez's trial
16 counsel accurately and completely explained the entire guilty plea and SSOSA screening to him.
17 As stated above, trial counsel utilized interpreters and multiple visits with Gonzalez-Gonzalez to
18 adequately go over the guilty plea. Furthermore, all the evidence shows that trial counsel
19 provided *correct* information to Gonzalez-Gonzalez in regards to SSOSA and his range.
20 Gonzalez-Gonzalez has failed to provide support to his claimed lack of communication.

21 Gonzalez-Gonzalez now claims that he was unsure of SSOSA and his potential sentence,
22 but he has failed to support those claims. He has only presented his own statements and letters

1 that he was confused about the plea. Bald assertions and conclusory allegations are insufficient
2 to support a claim of ineffective assistance of counsel. *In re Pers. Restraint of Rice*, 118 Wn.2d
3 876, 886, 828 P.2d 1086 (1992). There is no corroborative evidence of defense counsel's alleged
4 ineffectiveness. *See State v. Gomez Cervantes*, 169 Wn. App. 428, 434, 282 P.3d 98 (2012).
5 Gonzalez-Gonzalez has presented no evidence that establishes he was not properly advised of the
6 consequences of his guilty plea. The affidavits of his family members and a purported expert
7 defense investigator do not contain any direct evidence about trial counsel's actual
8 communications with Gonzalez-Gonzalez (with and without interpreters), nor do they contain
9 any evidence about the actual investigation that was done. Furthermore, the affidavit from
10 Gonzalez-Gonzalez's appellate counsel contains speculation and opinion as to what trial counsel
11 should have done and it should not be considered as evidence. Gonzalez-Gonzalez has presented
12 no evidence whatsoever that his trial counsel's performance in communicating the consequences
13 of the guilty plea, including the SSOSA screening, fell below the requisite standard. He has also
14 failed to produce evidence that shows that trial counsel's investigation was not reasonable. These
15 bald assertions without sufficient corroborative evidence do not support withdrawal of his guilty
16 plea.

17 Gonzalez-Gonzalez has failed to present evidence or authority to establish his guilty plea
18 was not made knowingly, voluntarily, or intelligently. Gonzalez-Gonzalez's claim fails.

19 2. The Trial Court's denial of Gonzalez-Gonzalez's continuance motion was not in error
20 and is not reviewable in a CrR 7.8 motion.

21 Gonzalez-Gonzalez claims that the trial court erred when it denied his motion to
22 substitute counsel on December 20, 2014. He argues that this denial falls under CrR 7.8(b)(5) as
23 an extraordinary circumstances not covered under the rule. However, the trial court did not err

1 when it denied Gonzalez-Gonzalez's motion to for a continuance to substitute counsel. The trial
2 court properly ruled that it would not allow Ms. Dalton to substitute in and then receive an eight
3 week continuance. Furthermore, Gonzalez-Gonzalez has failed to provide any support for the
4 claim that this denial of the motion provides a ground for relief under CrR 7.8.

5 Gonzalez-Gonzalez has failed to provide any authority under CrR 7.8 to allow
6 withdrawal of his guilty plea based on the trial court's denial of his motion to continue
7 sentencing. He fails to articulate how this action was an "extraordinary circumstance not covered
8 by any other section of the rule." The only case cited by defense, *State v. Olivera-Avila*, 89 Wn.
9 App. 313, 949 P.2d 824 (1997) is wholly inapplicable. *Olivera-Avila* dealt with the trial court
10 failing to warn a defendant of mandatory community placement during a guilty plea. *Id.* at 320.
11 However, the court held that this failure did not justify vacation of a plea under CrR 7.8(b)(5).
12 *Id.* The case is completely silent as to the denial of a motion of continue sentencing, Thus,
13 Gonzalez-Gonzalez has failed to provide any authority under CrR 7.8(b)(5) that would allow
14 vacation for the denial of the continuance. He has failed to meet his burden to prove the interests
15 of justice urgently require withdrawal of his guilty plea. His claim fails.

16 If this court does entertain Gonzalez-Gonzalez's claim under CrR 7.8(b)(5), it is
17 foreclosed by *State v. Quy Dinh Nguyen*, 179 Wn. App. 271, 319 P.3d 53 (2013). In *Quy Dinh*
18 *Nguyen* the defendant pleaded guilty to the State's offer during a trial and the defendant then
19 attempted to withdraw his guilty plea at sentencing. *Id.* at 273. The defendant argued that he did
20 not understand everything when he signed the plea, so the court appointed him a new attorney.
21 *Id.* at 276. The new attorney moved for a four to six moth continuance in order to go through the
22 discovery and consult with experts. *Id.* at 277. The court denied the continuance motion and the

1 motion to withdraw the plea was set out one month. *Id.* The Court reasoned that only issue for
2 the motion to withdraw the pleas was if the plea was entered knowingly, intelligently, and
3 voluntarily. *Id.* The trial court denied the motion to withdraw the guilty plea, and the Court of
4 Appeals affirmed the trial court and held the trial court did not err and the defendant was not
5 prejudiced. *Id.* at 281. The Court of Appeals found that trial court did not err in denying the
6 continuance, because the defendant was provided with effective assistance of counsel at the
7 hearing to withdraw the guilty plea. *Id.* at 287. The Court of Appeals relied on the fact that in the
8 one month the defendant's new counsel was able to receive a transcript of the plea colloquy, hire
9 an expert to assess the defendant's mental health, and interview the defendant and his former
10 attorneys. *Id.*

11 The actions of the trial court in *Quy Dinh Nguyen* are almost directly on point with the
12 trial court in this case. Here, the trial court would not allow an eight week continuance in order to
13 determine the same, basic issue as in *Quy Dinh Nguyen*, namely whether or not the plea was
14 entered knowingly, intelligently, and voluntarily. Here, Ms. Dalton had already met with
15 Gonzalez-Gonzalez and helped him prepare a hyper technical motion to substitute counsel based
16 on his alleged confusion. She was already apprised of the basic issues, so the court granting a
17 one month set over was not improper. Furthermore, the court did not outright deny Gonzalez-
18 Gonzalez's motion to substitute counsel, because the trial court stated on the record that if there
19 was a motion filed before January 26, 2015 the court would consider it, but at this time "Miss
20 Dalton has indicated that she needs more time and she's not willing to substitute in, so he still
21 has Mr. Terry." RP 51. Ms. Dalton chose to file a motion. The trial court's actions in denying the
22 continuance were not in error and did not prejudice Gonzalez-Gonzalez. His claim fails.

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CONCLUSION

Gonzalez-Gonzalez’s motion to withdraw his guilty plea is without merit. Gonzalez-Gonzalez has not met his burden of making a substantial showing that he is entitled to relief. Gonzalez-Gonzalez plea was knowingly, voluntarily and intelligently made after advice of his rights and advice of counsel. The record shows Gonzalez-Gonzalez was fully advised of the consequences, and made a knowing, intelligent, and voluntary decision to proceed with a guilty plea. Trial counsel was able to effectively communicate with him, and conducted a reasonable investigation. Buyer’s remorse is not a basis to withdraw a plea. Furthermore, the trial court did not err in denying Gonzalez-Gonzalez’s motion to substitute counsel, and Gonzalez-Gonzalez has provided this court with no authority to withdraw his plea on these grounds. The State respectfully requests this court transfer this matter to the Court of Appeals to be addressed as a Personal Restraint Petition pursuant to CrR 7.8(c).

RESPECTFULLY SUBMITTED this 5th day of January, 2018.



Kelly M. Ryan, WSBA #50215
Deputy Prosecuting Attorney

Appendix A

FILED
2013 SEP 19 PM 3:54
SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,
v.

JAVIER GONZALEZ-GONZALEZ, AKA
JAVIER GONZALEZ GONZALEZ

Defendant.

INFORMATION

No. 13-1-01744-0

(VPD 13-2309)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - RAPE OF A CHILD IN THE SECOND DEGREE - 9A.44.076

That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the County of Clark, State of Washington, between January 1, 1998 and September 13, 2004, on an occasion separate and distinct from that charged in count 2, did have sexual intercourse with L.G.-M., who was at least twelve years old but less than fourteen years old and not married to the defendant and not in a state registered domestic partnership with the defendant, and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.076.

This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time RCW 9.94A.535(3)(g).

The defendant used his or her position of trust and/or confidence to facilitate the commission of the current offense. RCW 9.94A.535(3)(n).

COUNT 02 - RAPE OF A CHILD IN THE SECOND DEGREE - 9A.44.076

That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the County of Clark, State of Washington, between January 1, 1998 and September 13, 2004, on an occasion separate and distinct from that charged in count 1, did have sexual intercourse with L.G.-M., who was at least twelve years old but less than fourteen years old and not married to

INFORMATION - 1
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Arthur D. Curtis Children's Justice Center
P.O. Box 61992
Vancouver Washington 98666
(360) 397-6002

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1 the defendant and not in a state registered domestic partnership with the defendant, and the
2 defendant was at least thirty-six months older than the victim; contrary to Revised Code of
Washington 9A.44.076.

3 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
4 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

5 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
6 standard sentencing range based upon the following aggravating circumstance(s):

7 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
eighteen years manifested by multiple incidents over a prolonged period of time RCW
8 9.94A.535(3)(g).

9 The defendant used his or her position of trust and/or confidence to facilitate the commission of
10 the current offense. RCW 9.94A.535(3)(n).

11 **COUNT 03 - CHILD MOLESTATION IN THE SECOND DEGREE - 9A.44.086**

12 That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the
County of Clark, State of Washington, between January 1, 1999 and September 13, 2004, on
13 an occasion separate and distinct from that charged in counts 4, 5 and 6, did have sexual
contact with L.G.-M., who was at least twelve (12) years old but less than fourteen (14) years
14 old, not married to the defendant and not in a state registered domestic partnership with the
defendant, and the defendant was at least thirty-six months older than the victim; contrary to
15 Revised Code of Washington 9A.44.086.

16 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
(RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

17 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
18 standard sentencing range based upon the following aggravating circumstance(s):

19 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
20 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

21 The defendant used his or her position of trust and/or confidence to facilitate the commission of
22 the current offense. RCW 9.94A.535(3)(n).

23 **COUNT 04 - CHILD MOLESTATION IN THE SECOND DEGREE - 9A.44.086**

24 That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the
County of Clark, State of Washington, between January 1, 1999 and September 13, 2004, on
25 an occasion separate and distinct from that charged in counts 3, 5 and 6, did have sexual
contact with L.G.-M., who was at least twelve (12) years old but less than fourteen (14) years
26 old, not married to the defendant and not in a state registered domestic partnership with the
defendant, and the defendant was at least thirty-six months older than the victim; contrary to
27 Revised Code of Washington 9A.44.086.

28 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
29 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

1 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
2 standard sentencing range based upon the following aggravating circumstance(s):

3 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
4 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

5 The defendant used his or her position of trust and/or confidence to facilitate the commission of
6 the current offense. RCW 9.94A.535(3)(n).

7 **COUNT 05 - CHILD MOLESTATION IN THE SECOND DEGREE - 9A.44.086**

8 That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the
9 County of Clark, State of Washington, between January 1, 1999 and September 13, 2004, on
10 an occasion separate and distinct from that charged in counts 3, 4, and 6, did have sexual
11 contact with L.G.-M., who was at least twelve (12) years old but less than fourteen (14) years
old, not married to the defendant and not in a state registered domestic partnership with the
defendant, and the defendant was at least thirty-six months older than the victim; contrary to
Revised Code of Washington 9A.44.086.

12 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
13 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

14 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
15 standard sentencing range based upon the following aggravating circumstance(s):

16 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
17 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

18 The defendant used his or her position of trust and/or confidence to facilitate the commission of
19 the current offense. RCW 9.94A.535(3)(n).

20 **COUNT 06 - CHILD MOLESTATION IN THE SECOND DEGREE - 9A.44.086**

21 That he, JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ, in the
22 County of Clark, State of Washington, between January 1, 1999 and September 13, 2004, on
23 an occasion separate and distinct from that charged in counts 3, 4, and 5, did have sexual
24 contact with L.G.-M., who was at least twelve (12) years old but less than fourteen (14) years
old, not married to the defendant and not in a state registered domestic partnership with the
defendant, and the defendant was at least thirty-six months older than the victim; contrary to
Revised Code of Washington 9A.44.086.

25 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
(RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

26 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
27 standard sentencing range based upon the following aggravating circumstance(s):

28 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
29 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

1
2 The defendant used his or her position of trust and/or confidence to facilitate the commission of
3 the current offense. RCW 9.94A.535(3)(n).

4 ANTHONY F. GOLIK
5 Prosecuting Attorney in and for
6 Clark County, Washington

7 Date: September 19, 2013

8 BY: 
9 Camara L. J. Banfield, WSBA #33835
10 Senior Deputy Prosecuting Attorney

DEFENDANT: JAVIER GONZALEZ-GONZALEZ, AKA JAVIER GONZALEZ GONZALEZ			
RACE: W	SEX: M	DOB: 01/20/1959, AKA 01/20/1959	
DOL: GONZAJ*414B0 WA		SID: WA27320435	
HGT: 504	WGT: 180	EYES: GRN	HAIR: BLK
WA DOC:		FBI: 578957WD4	
LAST KNOWN ADDRESS(ES):			
HOME - 104 NE 252ND AV, CAMAS WA 98607			
OTHR - 17810 NE 96TH AV, BATTLE GROUND WA			

Appendix B

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

9 STATE OF WASHINGTON,

10 Respondent/Plaintiff,

11 v.

12 JAVIER GONZALEZ-GONZALEZ,

13 Petitioner/Defendant.

No. 13-1-01744-0

DECLARATION OF KELLY M. RYAN

14 STATE OF WASHINGTON)

15 : ss.

16 COUNTY OF CLARK)

17 I, Kelly M. Ryan, being first duly sworn, upon oath, depose and state:

- 18 1. That I am a Deputy Prosecuting Attorney with the Clark County Prosecuting
19 Attorney's Office.
- 20 2. I have been assigned to respond the above captioned defendant's CrR 7.8 motion to
21 withdraw his guilty plea.
- 22 3. As part of my work on this case I spoke with the defendant's former counsel of
23 record, John Terry, over the phone on December 28, 2017.
- 24 4. On the phone call, Mr. Terry told me he was comfortable answering my questions in
25 regards to his representation of the defendant, and he told me the following things:
- 26 a. He spoke with the defendant outside of court both with and without
27 interpreters.
- 28 b. He spent around 50 hours working on this case.

- 1 c. He spent a lot of time with the defendant, and met with him an estimated 10-
2 15 times for anywhere between 15 minutes to an hour.
- 3 d. He thoroughly reviewed all of the State's evidence provided to him.
- 4 e. He only interviewed the victim because he felt conducting any further
5 interviews would cause the State to pull its offer.
- 6 f. He did not hire an investigator on the case because he did not believe an
7 investigator would provide any additional help that he was not already capable
8 of providing.
- 9 g. He spent two separate days going over the guilty plea with the defendant
10 outside of court, and he used an interpreter when doing so.
- 11 h. He spoke endlessly about SSOSA with the defendant.
- 12 i. He spoke with several members of the defendant's family, but they were not
13 present during any of the alleged incidents.
- 14 j. At one point he asked the defendant's family for additional money for his
15 work on the case, but they did not provide it.

16 5.

17
18 DECLARATION: I declare and certify under penalty of perjury under the laws of the
19 State of Washington that the preceding is true and correct to the best of my knowledge.

20 Executed at Vancouver, Washington on this 5th day of January, 2018.

21
22 
23 Kelly M. Ryan, WSBA #50215
24 Deputy Prosecuting Attorney
25 Clark County Prosecuting Attorney's Office

Appendix C

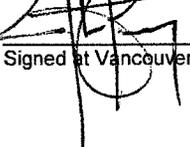
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SCOTT G. WEBER, CLERK
CLARK COUNTY

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CERTIFICATE OF SERVICE

I hereby certify that on this date, October 28, 2013, I sent a true copy of this document via 1st class mail / courier / personal service / email on the opposing party to this action or his/her attorney of record.



Signed at Vancouver, WA, on October 28, 2013

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

STATE OF WASHINGTON,

Plaintiff,

vs

JAVIER GONZALEZ-GONZALEZ,

Defendant.

No. 13-1- 01744-0

**MOTION AND DECLARATION FOR
CONTINUANCE OF TRIAL**

MOTION

Comes now the Defendant, by and through counsel, and hereby moves this Court for a continuance of trial in the above-captioned case. This motion is based on the declaration of counsel which follows, the laws and court rules of the State of Washington.

Respectfully submitted October 28, 2013:

MORSE BRATT ANDREWS & FOSTER PLLC



JOHN TERRY, WSBA # 41337
Of Attorneys for Defendant

///
///

MORSE BRATT ANDREWS & FOSTER
108 E. Mill Plain Blvd.
Vancouver, WA 98660
Phone: (360) 213-2040 | Fax: (360) 213-2040

Original

Appendix D

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Scott G. Weber, Clerk, Clain Co. *1040a*

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

STATE OF WASHINGTON,	No. 13-1-01744-0
	Statement of Defendant on Plea of
vs.	Guilty to Sex Offense
	(Felony)
JAVIER GONZALEZ-GONZALEZ	(STTDFG)
Defendant.	

- 1. My true name is: JAVIER GONZALEZ-GONZALEZ
- 2. My age is: ~~50~~ 55
- 3. The last level of education I completed was 4th Grade.

4. I Have Been Informed and Fully Understand That:

- (a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.
- (b) I am charged with:

Count 1: Rape of a Child in the Second Degree - RCW 9a.44.076. The elements are as follows:

- (1) That between 08/13/2002 and 08/12/2004 , the defendant had sexual intercourse with L.G.-M.;
- (2) That L.G.-M. was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse and was not married to the defendant and not in a State registered domestic partnership with the defendant;
- (3) That L.G.-M. was at least thirty-six months younger than the defendant;
- and
- (4) That this act occurred in the State of Washington.

40
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Count 2: Child Molestation in the Second Degree - RCW 9A.44.086

- (1) That between 08/13/2002 and 08/12/2004 , the defendant had sexual contact with L.G.-M.;
- (2) That L.G.-M. was at least twelve years old but was less than fourteen years old at the time of the sexual contact and was not married to the defendant and not in a State registered domestic partnership with the defendant;
- (3) That L.G.-M. was at least thirty-six months younger than the defendant; and
- (4) That this act occurred in the State of Washington.

5. I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial.

6. In Considering the Consequences of My Guilty Plea, I Understand That:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a Standard Sentence Range as follows:

Count No.	Offender Score	Seriousness Level	Standard Range	Plus Enhancements	Community Custody	Indeterminate Sentencing Review Board Authority	Maximum Term and Fine
1	3	XI	102-136 months	Life	Life	Yes	Life; \$50,000
2	3	VII	31-41 months	10 Years	36 months → 10 yrs	Yes	10 Years; \$20,000

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete.

1 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
2 to tell the sentencing judge about those convictions.

3 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history
4 is discovered, both the standard sentence range and the prosecuting attorney's recommendation may
5 increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if
6 additional criminal history is discovered even though the standard sentencing range and the
7 prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment
8 without the possibility of parole is required by law.

9 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a
10 victim's compensation fund assessment and any mandatory fines, fees, assessments, or penalties that
11 apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the
12 judge will order me to make restitution, unless extraordinary circumstances exist which make
13 restitution inappropriate. The amount of restitution may be up to double my gain or double the
14 victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of
15 incarceration.

16 ~~(f) For sex offenses committed prior to July 1, 2000: In addition to sentencing me to
17 confinement, the judge may order me to serve up to one year of community custody if the total
18 period of confinement ordered is not more than 12 months. If the period of confinement is more
19 than one year, the judge will order me to serve three years of community custody or up to the period
20 of earned early release, whichever is longer. During the period of community custody, I will be
21 under the supervision of the Department of Corrections, and I will have restrictions and
22 requirements placed upon me.~~

23 ~~For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001: In addition to
sentencing me to confinement, the judge may order me to serve up to one year of community
custody if the total period of confinement ordered is not more than 12 months. If the period of
confinement is over one year, the judge will sentence me to community custody for 36 months or
up to the period of earned release, whichever is longer. During the period of community custody to
which I am sentenced, I will be under the supervision of the Department of Corrections, and I will
have restrictions and requirements placed upon me.~~

For sex offenses committed on or after September 1, 2001: (i) Sentencing under RCW 9.94A.507:
If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a
maximum term of confinement consisting of the statutory maximum sentence of the offense and a
minimum term of confinement either within the standard range for the offense or outside the
standard range if an exceptional sentence is appropriate. The minimum term of confinement that is
imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by
a preponderance of the evidence that it is more likely than not that I will commit sex offenses if
released from custody. In addition to the period of confinement, I will be sentenced to community
custody for any period of time I am released from total confinement before the expiration of the
maximum sentence. During the period of community custody I will be under the supervision of the
Department of Corrections and I will have restrictions and requirements placed upon me, which
may include electronic monitoring, and I may be required to participate in rehabilitative programs.

1 (aa) If the current offense is any of these offenses or attempt to commit any of these
2 offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

3 (bb) If the current offense is any sex offense and I have a prior conviction for any of
4 these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

5 (ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to
6 sentencing me to a term of confinement, the judge may order me to serve up to one year of
7 community custody if the total period of confinement ordered is not more than 12 months.
8 If the period of confinement is over one year, or if my crime is failure to register as a sex
9 offender, and this is my second or subsequent conviction of that crime, the judge will
10 sentence me to community custody for 36 months or up to the period of earned release,
11 whichever is longer. During the period of community custody to which I am sentenced, I
12 will be under the supervision of the Department of Corrections, and I will have restrictions
13 and requirements placed upon me, which may include electronic monitoring.

14 For sex offenses committed on or after March 20, 2006: For the following offenses and
15 special allegations, the minimum term shall be either the maximum of the standard
16 sentence range for the offense or 25 years, whichever is greater:

17 1) If the offense is rape of a child in the first degree, rape of a child in the second degree
18 or child molestation in the first degree and the offense includes a special allegation that the
19 offense was predatory.

20 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by
21 forcible compulsion, or kidnapping in the first degree with sexual motivation and the
22 offense includes special allegation that the victim of the offense was under 15 years of age
23 at the time of the offense.

3) If the offense is rape in the first degree, rape in the second degree with forcible

1 compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree
2 with sexual motivation and this offense includes a special allegation that the victim of the
3 offense was, at the time of the offense, developmentally disabled, mentally disordered, or a
4 frail elder or vulnerable adult.

5 Community Custody Violation: If I violate the conditions of my community custody, the
6 Department of Corrections may sanction me up to 60 days confinement per violation and/or
7 revoke my earned early release, or the Department of Corrections may impose additional
8 conditions or other stipulated penalties. The court also has the authority to impose sanctions
9 for any violation.

10 (g) The prosecuting attorney will make the following recommendation to the judge:

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

13 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must
14 impose a sentence within the standard range unless the judge finds substantial and compelling
15 reasons not to do so (except as provided in paragraph 6(f)). I understand the following regarding
16 exceptional sentences:

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

19 (ii) The judge may impose an exceptional sentence above the standard range if I am being
20 sentenced for more than one crime and I have an offender score of more than nine.

21 (iii) The judge may also impose an exceptional sentence above the standard range if the State
22 and I stipulate that justice is best served by imposition of an exceptional sentence and the
23 judge agrees that an exceptional sentence is consistent with and in furtherance of the
24 interests of justice and the purposes of the Sentencing Reform Act.

25 (iv) The judge may also impose an exceptional sentence above the standard range if the State
26 has given notice that it will seek an exceptional sentence, the notice states aggravating
27 circumstances upon which the requested sentence will be based, and facts supporting an
28 exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge
29 if I waive a jury, or by stipulated facts.

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

32 (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under
33 state law is grounds for deportation, exclusion from admission to the United States, or denial of
34 naturalization pursuant to the laws of the United States.

35 (j) I may not possess, own, or have under my control any firearm, and under federal law any firearm or
36 ammunition, unless my right to do so is restored by the court in which I am convicted or the
37 superior court in Washington State where I live, and by a federal court if required. I must
38 immediately surrender any concealed pistol license.

39 (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered
40 to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079,
41 29A.08.520.

- 1 (l) Government assistance may be suspended during any period of confinement.
- 2 (m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.
- 3 (n) I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay a \$100.00 DNA collection fee.
- 4
- 5 (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

6 Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.

7

8 *gbb* (p) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

14 *gbb* (q) Special sex offender sentencing alternative: In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

17 ~~For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.~~

22 For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge

23

1 suspends execution of the standard range term of confinement for a sex offense that is not listed in
2 paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or
3 three years, whichever is greater. If the judge suspends execution of the minimum term of
4 confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for
5 the length of the statutory maximum sentence of the offense. In addition to the term of community
6 custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime
7 prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after
8 July 1, 2005; I will be ordered to participate in sex offender treatment; I will have restrictions and
9 requirements placed upon me, which may include electronic monitoring; and I will be subject to all
10 of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote
11 time to a specific occupation and to pursue a prescribed course of study or occupational training. If
12 a violation of the sentence occurs during community custody, the judge may revoke the suspended
13 sentence.

7 ~~966~~ (r) If this is a crime of domestic violence, the court may order me to pay a domestic violence
8 assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may
9 order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

9 ~~966~~ (s) If I am subject to community custody and the judge finds that I have a chemical
10 dependency that has contributed to the offense, the judge may order me to participate in
11 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the
12 circumstances of the crime for which I am pleading guilty.

11 ~~_____~~ (t) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
12 judge finds I used a motor vehicle in the commission of this felony.

13 ~~_____~~ (u) If I am pleading guilty to felony driving under the influence of intoxicating liquor, or any
14 drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating
15 liquor, or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to
16 undergo alcohol or chemical dependency treatment services during incarceration. I will be required
17 to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be
18 suspended, revoked, or denied. Following the period of suspension, revocation, or denial, I must
19 comply with the Department of Licensing ignition interlock device requirements. In addition to any
20 other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per
21 month.

18 ~~_____~~ (v) For the crimes of vehicular homicide committed while under the influence of intoxicating
19 liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under
20 the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony
21 driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence
22 (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child
23 passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements
shall be mandatory, shall be served in total confinement, and shall run consecutively to all other
sentencing provisions.

22 ~~_____~~ (w) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for
23 vehicular homicide while under the influence of intoxicating liquor, or any drug, or vehicular
assault while under the influence of intoxicating liquor, or any drug, the court may order me to
reimburse reasonable emergency response costs up to \$2,500 per incident.

1 ~~(x) The crime of _____ has a mandatory minimum sentence~~
2 ~~of at least _____ years of total confinement. This law does not apply to crimes committed~~
3 ~~on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court~~
4 ~~jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum~~
5 ~~sentence is not the same as the mandatory sentence of life imprisonment without the possibility of~~
6 ~~parole described in paragraph 6[p].~~

5 ~~(y) I am being sentenced for two or more serious violent offenses arising from separate and~~
6 ~~distinct criminal conduct and the sentences imposed on counts 1 and 2 will run consecutively unless~~
7 ~~the judge finds substantial and compelling reasons to do otherwise.~~

6 ~~(z) I may be required to register as a felony firearm offender under RCW 9A.41. _____. The~~
7 ~~specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.~~

8 ~~(aa) The offense(s) I am pleading guilty to include a deadly weapon, firearm or sexual~~
9 ~~motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are~~
10 ~~mandatory, they must be served in total confinement, and they must run consecutively to any other~~
11 ~~sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.~~

10 ~~(bb) For crimes committed on or after July 22, 2007: If I am pleading guilty to rape of a child in~~
11 ~~the first, second, or third degree or child molestation in the first, second or third degree, and I~~
12 ~~engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or~~
13 ~~if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in~~
14 ~~sexual intercourse or sexual contact for a fee, then a one year enhancement shall be added to the~~
15 ~~standard sentence range. If I am pleading guilty to more than one offense, the one year~~
16 ~~enhancement must be added to the total period of total confinement for all offenses, regardless of~~
17 ~~which underlying offense is subject to the enhancement.~~

14 ~~(cc) If I am pleading guilty to patronizing a prostitute or commercial sexual abuse of a minor, a~~
15 ~~condition of my sentence will be that I not be subsequently arrested for patronizing a prostitute or~~
16 ~~commercial sexual abuse of a minor. The court will impose crime related geographical restrictions~~
17 ~~on me, unless the court finds they are not feasible. If this is my first offense, the court will order me~~
18 ~~to attend a program designed to educate me about the negative costs of prostitution.~~

17 7. I plead guilty to:

18 count 1: Rape of a Child in the Second Degree
19 count 2: Child Molestation in the Second Degree

20 in the Amended Information. I have received a copy of that Information.

21 8. I make this plea freely and voluntarily.

22 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

23 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

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This is my statement:

I am Javier Gonzalez-Gonzalez. Between 08/13/2002 and 08/12/2004 , in Clark County, Washington:

(1) I had sexual intercourse with L.G.-M., who was at least twelve years old but was less than fourteen years old at the time of the sexual intercourse. I was not married or in a State registered domestic partnership with L.G.-M. Further, L.G.-M. was at least thirty-six months younger than me at that time. L.G.-M. is my biological daughter, and we resided in the same home at that time. I used such position of power and trust to facilitate this crime. This act was part of an ongoing pattern of sexual abuse of the same victim, and said victim was under 18 years of age.

(2) I had sexual contact with L.G.-M.; who was at least twelve years old but was less than fourteen years old at the time of the sexual contact. I was not married or in State registered domestic partnership with L.G.-M. Further, L.G.-M. was at least thirty-six months younger than me at that time. L.G.-M. is my biological daughter, and we resided in the same home at that time. I used such position of power and trust to facilitate this crime. This act was part of an ongoing pattern of sexual abuse of the same victim, and said victim was under 18 years of age.

/// /// ///

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Javier Gonzalez-Gonzalez
Javier Gonzalez-Gonzalez
Defendant

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

CR2
Camara Banfield, WSBA # 33835
Prosecuting Attorney

John C. Terry
John C. Terry, WSBA # 41337
Defendant's Lawyer

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret, in the Spanish language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Vancouver, (state) WA, on (date) 7-23-14.

Interpreter Signature

Print Name Victor Morano

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: *[Signature]* Aug 1, 2014

[Signature]
Judge of Superior Court

INDETERMINATE SENTENCE REVIEW BOARD (RCW 9.94A.507)
FREE-TO-ARGUE SSOA PRETRIAL SETTLEMENT AGREEMENT

STATE v. JAVIER GONZALEZ-GONZALEZ

CAUSE NUMBER: 13-1-01744-0

DATE: January 29, 2014

PROSECUTOR: Camara L. Banfield, WSBA# 33835

The following is the pretrial settlement agreement between the Clark County Prosecuting Attorney's Office, defense counsel, and the defendant. In entering into this agreement, all parties stipulate to its terms unless otherwise noted. It is based on the attached State of Washington Declaration of Criminal History, which all parties stipulate is accurate, true and complete. The Prosecuting Attorney's agreement may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: February 20, 2014. This agreement supersedes any previous settlement agreements considered in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history renders this offer null and void.

This form shall be attached to the Statement of Defendant on Plea of Guilty and Judgment and Sentence.

The Defendant is charged with:

Count	Charge	Offender Score	Seriousness Level	Minimum Term (Standard Range)	Maximum Term (Statutory Maximum)	Indeterminate Sentencing Review Board Authority	Community Custody
01	RAPE OF A CHILD IN THE SECOND DEGREE	9+	XI	210-280 months	LIFE	Yes	LIFE
02	RAPE OF A CHILD IN THE SECOND DEGREE	9+	XI	210-280 months	LIFE	Yes	LIFE
03	CHILD MOLESTATION IN THE SECOND DEGREE	9+	VII	87-116 months	10 YEARS	Yes	LIFE
04	CHILD MOLESTATION IN THE SECOND DEGREE	9+	VII	87-116 months	10 YEARS	Yes	36 months
05	CHILD MOLESTATION IN THE SECOND DEGREE	9+	VII	87-116 months	10 YEARS	Yes	36 months
06	CHILD MOLESTATION IN THE SECOND DEGREE	9+	VII	87-116 months	10 YEARS	Yes	36 months

Should the Defendant plead guilty to amended information alleging:

Count	Charge	Offender Score	Seriousness Level	Minimum Term (Standard Range)	Maximum Term (Statutory Maximum)	Indeterminate Sentencing Review Board	Community Custody
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						Authority	
01	RAPE OF A CHILD IN THE SECOND DEGREE	3	XI	102-136 months	LIFE	Yes	LIFE
02	CHILD MOLESTATION IN THE SECOND DEGREE	3	VII	31-41 months	10 YEARS	Yes	36 months

Because the defendant is subject to sentencing under RCW 9.94A.507, the court shall impose a sentence to a maximum term and a minimum term.

The maximum term shall consist of the statutory maximum sentence for the offense.

The minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence. The prosecuting attorney is is not alleging factors that would make the defendant eligible for a minimum term sentence outside the standard range.

The court shall sentence the defendant to community custody under the supervision of the Department of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

The State shall be free to recommend any sentence, but the defendant may argue for Special Sex Offender Sentencing Alternative (SSOSA) with the following stipulated preconditions:

- A) **If the SSOSA option is requested, the Prosecuting Attorney, defense attorney, and defendant stipulate that the minimum term sentence recommendation will be 136 MONTHS and the maximum term sentence will be LIFE.** The above-listed minimum term sentence will be suspended upon successful entry and completion of all phases of a state licensed sex offender treatment program, to be entered into by the sentencing date if out of custody, or within 30 days of release from custody.
- B) 365 days of local jail to be served. The State has no objection to work release (if qualified an accepted).
- C) The defendant shall follow all conditions as set by the Pre-Sentence Investigator and the SSOSA evaluator that do not conflict with conditions of supervision/community custody as set forth herein.
- D) The Court finds the defendant amenable to treatment and safe to be at large after a state licensed sexual offender treatment evaluation which shall include, in addition to the requirements of RCW 9.94A.670(3), a full disclosure sexual history polygraph by a polygrapher who has obtained a Post-Conviction Sex Offender Certificate through the American Polygrapher's Association. A plethysmograph may be included if requested by the SSOSA evaluator. Failure to provide the entire full disclosure sexual history polygraph will result in the State exercising its right pursuant to RCW 9.94A.670(3)(c) to demand a second evaluation.

- E) Defense shall provide to the Prosecutor's Office, no later than 7 days prior to sentencing, a complete SSOSA evaluation, full polygraph report, pre- and post-test polygraph interview, and sexual history questionnaire and responses.
- F) The defendant's Plea of Guilty pursuant to this agreement constitutes a Waiver of Confidentiality Regarding Sex Offender Evaluation.
- G) The State reserves the right pursuant to RCW 9.94A.670(4) to request a second SSOSA evaluation. If the State makes such a request, the defense stipulates such evaluation shall include a full disclosure sexual history polygraph.

The Prosecuting Attorney, defense attorney, and defendant stipulate to the following costs, fines, fees and restitution:

Filing Fee	\$ 200.00
Victim's Comp. Fee:	\$ 500.00
Court Appointed Attorney Fee:	\$ TO BE SET
Court Appointed Investigator Fee:	\$ TO BE SET
Restitution for Victim:	\$ TO BE SET
Rape Exam (if applicable)	\$ TO BE SET
SSOSA Evaluation Fee:	\$ TO BE SET
Fine	\$ 500.00
Sheriff's Office Service Fee:	\$ TO BE SET
DNA Sample Fee:	\$100.00
Other: _____	\$
_____	\$

Should additional criminal history be discovered prior to sentencing, the defendant stipulates to the corresponding higher standard ranges and the alteration to this recommendation.

A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: rape in the first or second degree; rape of a child in the first, second, or third degree; child molestation in the first, second, or third degree; sexual misconduct with a minor in the first or second degree; indecent liberties; incest; luring; any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses. If the defendant is convicted of an offense not included in the above list and place don release conditions prior to sentencing and violates any of those conditions, then the agreed recommendation is null and void and the State shall be free to make any recommendation authorized by law.

The defendant stipulates to a waiver of the 180 day deadline under RCW 9.94A.753 for the setting of restitution and waives the defendant's presence at any restitution hearing. Restitution shall include loss of wages, costs of counseling, and other related expenses for the victim and their immediate family as a result of this criminal act. The parties stipulate that the hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

The defendant stipulates to the conditions of sentence/community custody as set forth in the attached "Appendix A."

This stipulated agreement is binding on the Prosecuting Attorney, defense attorney, and defendant only.

The defense attorney shall use the most current Statement of Defendant on Plea of Guilty form for Sex Offenses. The defense shall also attach to the Statement of Defendant on Plea of Guilty a copy of the most current Sex Offender Registration Requirements. Both forms are found at the Washington Courts website at <http://www.courts.wa.gov/forms/>.

The defense attorney shall provide the assigned deputy prosecuting attorney with a completed copy of the defendant's Statement on Plea of Guilty for review no less than 24 hours prior to the scheduled change of plea.

By signing this Pretrial Settlement Agreement, I hereby acknowledge a full understanding of the terms and conditions herein and acknowledge that I enter into this agreement knowingly, voluntarily and intelligently. Further, I hereby stipulate to said terms and conditions.

7-23-2014 / 8-1-2014
Date
2-3-2014
Date
1/30/14
DATE

[Signature]
JAVIER GONZALEZ-GONZALEZ
[Signature]
John C Terry, WSBA # 41337
[Signature]
Camata L. Banfield, WSBA# 33835

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY CUSTODY

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from the community corrections officer, the therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 100 years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 7.90 RCW AND 26.50 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST.

7. You shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.
10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
11. You must consent to allow home visits by Department of Corrections to monitor compliance with supervision. This includes search of the defendant's person, residence, automobile, or other personal property, and home visits include access for the purposes of inspection of all areas the defendant lives or has exclusive/joint control or access. RCW 9.94A.631

12. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
13. You shall not possess, use, or own any firearms or ammunition.
14. You shall not possess or consume alcohol.
15. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
16. You shall not possess any paraphernalia for the use of controlled substances.
17. You shall not be in any place where alcoholic beverages are the primary sale item.
18. You shall take antabuse per community corrections officer's direction.
19. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
20. You shall enter into, cooperate with, fully attend and successfully complete all inpatient and outpatient phases of a Washington State certified sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. You shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor and community corrections officer and shall not change providers without court approval after a hearing if the prosecutor and/or community corrections officer object to the change. "Cooperate with" means you shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
21. The sex offender therapist shall submit quarterly reports on your progress in treatment to the court, Department of Corrections, and prosecutor and you shall execute a release of information to the community corrections officer, prosecutor and the court so that the treatment provider can discuss the case with them. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, your compliance with requirements, treatment activities, and your relative progress in treatment.
22. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the community corrections officer and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.

23. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecuting Attorney's Office upon request.
24. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
25. You shall not use/possess sexually explicit material as defined in RCW 9.68.130(2).
26. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney, to monitor your compliance with any of the conditions of this Judgment and Sentence. And, you shall stipulate that the Prosecuting Attorney can disseminate copies of any psychosexual evaluations and polygraph tests in this matter to the ISRB.
27. If the offense was committed on or after July 24, 2005, you may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030
28. If you are in the SSOSA program you shall enter into sex offender treatment with a State certified provider within thirty (30) days of sentencing or release from custody, whichever comes first.
29. If you are in the SSOSA program, your treatment plan shall include polygraph exams as set forth in condition number 22. Your treatment provider and/or the defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

Case Name: State of Washington v. Javier Gonzalez-Gonzalez

Cause No.: 13-1-01744-0

“Offender Registration” Attachment: Sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.128. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements: Because this crime involves sexual misconduct with a minor in the second degree, communication with a minor for immoral purposes, or attempt, solicitation or conspiracy to commit a sex offense, or a kidnapping offense involving a minor, as defined in RCW 9A.44.128, I will be required to register.

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

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

2. Offenders Who are New Residents or Returning Washington Residents: If I move to Washington or if I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state.

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

4. Leaving the State or Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I 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 I move out of the state, I 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 I 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): I must give notice to the sheriff of the county where I am 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.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if I do not have a fixed residence, I am required to register. Registration must occur within three business days of release in the county where I am being supervised if I do not have a residence at the time of my release from

Statement on Plea of Guilty (“Offender Reg” Attachment) - Page 1 of 2

CrRLJ-04.0200 (12/2011) - CrRLJ 4.2(g), RCW 10.01.200, 9A.44.128, .130

custody. Within three business days after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register with the sheriff of the new county not more than three business days after entering the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I must keep an accurate accounting of where I 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 a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

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

Date: 8-1-2014


Defendant's signature

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

8 STATE OF WASHINGTON,
9 Plaintiff,

v.

10 JAVIER GONZALEZ-GONZALEZ,
11 Defendant

Date of Birth: 1/20/1959

No. 13-1-01744-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



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

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV*? YES	PTS.
No known felony history.					

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17 *DV: Domestic violence was pled and proved.

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

19 DATED this _____ day of September, 2013.

20
21 _____
Defendant

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23 _____
Maggie Evansen, WSBA#30014,
Attorney for Defendant

24 _____
Camara L. Banfield, WSBA#33835
Senior Deputy Prosecuting Attorney

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DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

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

Appendix E

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FILED
2015 JAN 12 PM 2:08
SCOTT G. WEBER, CLERK
CLARK COUNTY



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION

TO:	The Honorable John F. Nichols Clark County Superior Court	DATE OF REPORT:	08/20/14
NAME:	GONZALEZ-GONZALEZ, Javier	DOC NUMBER:	376294
ALIAS(ES):		COUNTY:	Clark
CRIME(S):	Ct 01: Rape of a Child in the Second Degree Ct 02: Child Molestation in the Second Degree	CAUSE #:	13-1-01744-0
DATE OF OFFENSE:	Between 01/01/98 and 09/13/04	SENTENCING DATE:	01/26/15
L.K. ADDRESS:	104 NE 252 nd Av. Camas, WA 98607	DEFENSE ATTORNEY:	John Terry

I. OFFICIAL VERSION OF OFFENSE:

On 08/01/14, a Pre-Sentence Investigation request was received by the Department of Corrections for the Court's consideration at sentencing on 01/26/15. A summary report of the psychosexual evaluation was completed by Dr. Wendy Hartinger and received by the Department of Corrections on 11/03/14. A full disclosure polygraph examination conducted by Steven Norton, Certified Polygraph Examiner, was received on 11/03/14. Case material for the following report was received from: Vancouver Police Department (Incident No. 13-2309); Western State Hospital; Court documents and filings.

On 09/19/13, Javier Gonzalez-Gonzalez was charged with two counts of Rape of a Child in the Second Degree and four counts of Child Molestation in the Second Degree.

On 07/23/14, Javier Gonzalez-Gonzalez entered a guilty plea to the following offenses:

Count 01: Rape of a Child in the Second Degree – 9A.44.076

That he, Javier Gonzalez-Gonzalez, in the County of Clark, State of Washington, between January 1, 1998 and September 13, 2004, did have sexual intercourse with L.G.-M., who was at least twelve years old but less than fourteen years old and not married to

the defendant and not in a state registered domestic partnership with the defendant, and the defendant was at least thirty-six months old than the victim; contrary to Revised Code of Washington 9A.44.073.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

Ct 02: Child Molestation in the Second Degree – 9A.44.086

That he, Javier Gonzalez-Gonzalez, in the County of Clark, State of Washington, between January 1, 1998 and September 13, 2004, did have sexual contact with L.G.-M., who was at least twelve (12) years old but less than fourteen (14) years old, and not married to the defendant and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.086.

This crime is a "most serious offense" pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

The following information is taken from official reports regarding this incident:

On 02/12/13, D.A.-G., D.G.-M. and L.G.-M. (DOB: 08/13/90) all reported that their father **Javier Gonzalez-Gonzalez (DOB: 01/20/57)** sexually abused them during the time they lived in Mexico. LG-M reported her father continued to sexually assault her after they moved to the Vancouver, Washington area while she was in the eighth grade, approximately nine years ago. The girls recently learned their father now has a four year-old daughter in his household and they are concerned he may abuse her, as well.

DA-G said her abuse started when she was eight years old and continued until she was 12 years old. The family lived in Mexico at the time. She stated that her father, Javier, had sex with her almost every night. He made her believe this behavior was normal between a father and daughter. He also told her that if she did not do what he asked, he would rape her two sisters. He told her no one would want to marry her anyway, because she was "loose" now (which she indicated by pointing to her groin area).

DA-G reported that on one occasion, Javier touched her and her twin sister (DG-M) on their "private parts" at the same time while they slept in the same bed. DA-G told her mother about this and the girls began to sleep in separate rooms away from their father. Javier no longer had sex with her, but he continued to touch her inappropriately.

DA-G was 17 when the family moved to the United States. They first lived with Javier's brother in Battle Ground, Washington where the girls' bedroom door had a lock. The next residence in Vancouver did not have a lock on the bedroom door so DA-G slept on the floor in front of the door so that her father could not enter the room. On numerous occasions, Javier would attempt to open the door while they slept and would ask if they were awake or say he was looking for the bathroom.

DA-G reported that her parents divorced and she had not seen her father since approximately 2004. She recently learned that Javier remarried and has a four year-old daughter in the home. She was concerned for the child's welfare.

DG-M reported that her father abused her in Mexico when she was 11 or 12 years old. She stated that Javier had sex with her at least once. She said that most of the time, he touched or inserted his fingers in her vagina and touched her breasts.

DG-M stated that Javier did not assault her after moving to the United States. She confirmed her sister's account that DA-G slept on the floor in front of their bedroom door to keep him out. She estimated last seeing her father in 2003.

LG-M reported her father began abusing her in Mexico when she was seven or eight years old. He began by calling her vagina "stupid" names when they were alone together and would say, "You're vagina's so pretty". Javier traveled back and forth between Mexico and the United States and called the family while he was away. When he spoke with LG-M on the phone, he would ask "how her vagina is looking". The first time he touched her in Mexico, he got into bed with her and tried to wake her; touching her vagina and buttocks. The first time Javier tried to put his penis in her vagina, she told him not to do it. He told her it was ok and it wasn't going to hurt. She tried to push him away but he did it anyway. He told her that she should let him put his sperm on her vagina and breasts because it would make her breasts grow. He told her to not tell anyone and that they weren't doing anything wrong. LG-M stated, "Every day in Mexico. I would try to be out of the house or try to be late because I knew what was going to happen."

LG-M was 12 years old when the family moved to the United States. They moved from Battle Ground to Vancouver when she was 13 years old and in the eighth grade.

On the first occasion after they moved to Vancouver, she returned home from school and Javier had been drinking in the living room. They were alone in the house. He told her to stay on the couch and wanted her to perform oral sex. He directed her to take her pants off and he put two fingers inside her vagina. He took his erect penis out of his unzipped pants and told her to "start touching him", "go up and down" and "then this and that" and told her to "let the sperm fall on [her] breasts". LG-M said when he started to take his pants down, she knew what was going to happen and she ran upstairs and locked the bedroom door. He slipped money under the door and "kept swooshing it back and forth" under the door.

LG-M recalled, "Every time he made me touch his penis, stuff came out. It would go on my breasts. I would go to the shower. He only put his penis inside my vagina two times. Most the time he put his fingers in my vagina. He would always try to put his penis in. But I would push him because it hurt. He would tell me not to move, then I would like it."

LG-M reported that Javier was always drinking and he would touch her at every opportunity they were alone in the house. "At every opportunity..." She recalled being in the shower and he put money under the door; she recalled when she walked by him, he would put his hand on her breast. He touched her vagina and penetrated it with his fingers. He had her perform oral sex on him on numerous occasions. She also reported that Javier would have her penetrate his anus with her fingers.

All three sisters came forward to report the abuse out of concern for their four year-old half-sister.

II. VICTIM CONCERNS:

The following unedited (with the exception of using initials rather than their names) written statements were e-mailed to the Department of Corrections on 09/13/14. The first statement was prepared by L.G.-M., the victim relevant to this cause. The second and third statements were written by LG-M's sisters, DA-G and DG-M.

"September 11, 2014

To whom it may concern.

Dear judge,

I, [L.G.-M.] would like to express my feelings and thoughts on what has been a long tough struggle with me as a result of what this man did to me for such a long time.

At first I was very afraid at what would happen if I decided to speak up, it was such an embarrassing and disgusting experience that I probably would've never been able to come out of, if it wasn't for the support of my close family (husband, mom, brothers, sisters and brother in-law). Now I see that all the tough moments that I went through were worth it, being able to speak up was one of best decisions I could've done. Knowing that he is in jail makes me feel so much better and safe. Meanwhile I am trying my best to heal from inside.

I just want to ask you dear judge to help us by keeping him in jail the time he deserves and by not giving him the opportunity to attend the program SSOSA. The reason is because it wouldn't be fare for me and my sisters; we want to see him pay for what he did to us for so many years. He didn't give us the opportunity to have a normal childhood and now we have to deal with all the emotional issues. One more thing, when he gets out of jail we don't want him near us. If all this is granted this nightmare will finally be coming to an end.

Sincerely,
[L.G.-M.]”

D.A.-G. writes:

“Dear judge, my name is [D.A.], I am the oldest sister of [L.G.] and [D.M.] and the daughter of the criminal that this letter refers to, Javier Gonzalez that unfortunately is my father. Please judge I ask you not to let that person out of jail, not for a long time. Don't let that criminal ruin more childrens life's just like mine and my two sisters.

Please consider that he has never shown any repent or remorse for what he did to us, and not only that but he has tried to play as the victim with the rest of his family, one thing he is good at.

I also don't want his 6 years old daughter to go through the same ordeal that me and my sisters did, because if he did not respected any of us he is sure not going to respect her or any other children that might get to be around.

Please consider that in many occasions he has acted violently against many people of my native town including relatives of my husband and my husband himself as well threaten us with weapons, he has no respect for nobody.

And also just the simple idea of thinking of him being release out of jail and walking on the same streets that I am walking makes me feel like the same little child I was, helpless, hopeless, scared and unsafe, and I am even more scare for my children because he tried before to run us over with a big truck and he might tried to do that again or he can do worst.

Those are just only some of the reasons I beg you to please serve justice against this criminal so that he gets punished for so much damage, pain and suffering that he caused to us.”

D.G.-M. writes:

9/12/2014

“Dear judge,

My name is [D.M.T.] I am the victim of sexual assault of Javier Gonzalez who is my father. He sexually abused me and my two sisters. He is also a physical abuser person. I want to ask you not

to let him out, I am afraid he could hurt my family and other people around him. I am asking not to let him out because I don't want what happened to me and my sisters to happen to any other kid.

In the interest of safety of our community, I am asking you to keep him in jail for much longer time if possible for life.

Sincerely,

[D.M.T.]
Listed phone number
DOB 12/09/1984”

III. DEFENDANT'S STATEMENT REGARDING OFFENSE:

On 09/11/14, Gonzalez-Gonzalez signed the following statement, referenced from court documents (Exhibit 1, Item 4):

“On one occasion, I told her to remove her pants and touch my penis, which she did. I did this for my sexual gratification. On at least one occasion, I penetrated her vagina with my finger(s) for my sexual gratification. This was over ten years ago and unfortunately, my memory is not completely intact as to when and where these events occurred. However, I do not doubt my daughter's version of the facts and I am guilty as indicated in my guilty plea. I am forever remorseful and regretful of these acts.”

IV. CRIMINAL HISTORY:

No identified criminal history.

SOURCES:

1. National Crime Information Center (NCIC)
2. The Washington Crime Information Center (WACIC)
3. The Superior Court Operations and Management Information System (SCOMIS)
4. Washington State District Court Information System (DISCIS)
5. Washington Access To Criminal History (WATCH) –Washington State Patrol
6. Federal Bureau of Investigation (FBI)
7. Offender Management Network Information (OMNI)

<u>Juvenile Felony:</u>	None Identified
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<u>Adult Felony:</u>	None Identified
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<u>Misdemeanor:</u>	None Identified
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V. SCORING:			
	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I	XI	3	From 102 to 136 months
Count II	VII	3	From 31 to 41 months

VI. COMMUNITY CUSTODY:			
	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I			
Count II	VII	3	36 months

VII. COMMUNITY CUSTODY BOARD:			
	SERIOUSNESS LEVEL	OFFENDER SCORE	SENTENCE RANGE
Count I	XI	3	Min: 102 to 136 months Max: Life
Count II			

VIII. RISK/NEEDS ASSESSMENT:

A risk/needs assessment interview was completed with the offender. The following risk/needs area(s) and strengths have implications for potential risk, supervision, and interventions. **Unless otherwise noted, the following information was provided by the offender and has not been verified.**

The defendant was interviewed in the presence of his attorney. Spanish translation service was provided by Certified Court Interpreter Andrea Levin.

Family/Marital:

*** Gonzalez-Gonzalez proved a poor historian of personal events and timelines. Collection of information over the course of the interview became a very disjointed process making a coherent summary difficult to present. ***

Javier Gonzalez-Gonzalez was born 01/20/59 in Reforma Agraria, Municipio de San Blas, Nayarit, Mexico to homemaker Isabel Gonzalez-Hernandez and her husband, a farmer, Solomen Gonzalez-Rodriguez. The defendant has six brothers and three sisters, some living in Washington and others still residing in Mexico. Javier's parents continue to live in Mexico and visited with him in the Clark County jail about six months prior to this interview (which took place on 08/19/14). They also had telephone contact during his stay at Western State Hospital in Lakewood, Washington.

The defendant was 21 years old when he came alone to the United States to live with a brother here in Vancouver. After a short time, he moved to Wenatchee, Washington where he worked in the fruit orchards for about 15 years. Gonzalez-Gonzales said he continued to go back and forth between here and Mexico. He married his first wife, Guadalupe Mendoza, in Mexico in October 1982. They have five adult children; three

daughters (to include the victim of the instant offense) and two sons. Guadalupe and the defendant divorced in May 2007.

Gonzalez-Gonzales met his second wife, Martha Sanchez, in Mexico. They were married in Pasco, Washington "about two to three years ago". Martha brought one son to the marriage (now 14 years old) and the couple has a five year-old daughter together. Martha moved to the United States about 1½ years ago and speaks no English. According to the defendant, Martha and the children are currently living with her brother in Camas, Washington and works each Friday making and selling tamales.

Education/Employment:

Gonzalez-Gonzalez left school in the fourth grade to join his family at work in the agriculture industry. He continued that work until he moved to the United States. After arriving here in 1980, he initially obtained employment in a factory but soon moved to Wenatchee where he worked in the orchards for about 15 years. The defendant said he has been employed doing sheetrock in Tri Cities, Washington and here in Vancouver over the past 15-20 years.

Financial:

Gonzalez-Gonzales has never held a mortgage and reported no consumer debt. He recalled that his child support payment for his older children was around \$400 or \$500 per month. He no longer has that responsibility. He denied social assistance in any form.

Accommodation:

Gonzalez-Gonzalez stated that he would like to live with his sister and her husband in Battle Ground, Washington if he is granted a Special Sex Offender Sentencing Alternative. They have one 15 year-old son living in the home.

Leisure/Recreation:

The defendant said he spent very little time on leisure activities; reporting that he was always a very hard worker and spent many hours at his job. When he did have free time, he enjoyed going to the beach or to farmers markets.

Companions:

Gonzalez-Gonzalez reported no companions or work associates. He stated that he is a family man.

Alcohol/Drug Use:

The defendant reported he began drinking when he was 17 or 18 but has not consumed alcohol for the past two years. He acknowledged that he "used to drink a lot". When

asked the definition of "a lot" he replied, "All day; but that was in Mexico. Here, not as much." He went on to clarify that here in the United States, he drank "after work" and averaged "15 or 23" beers when he was working in Tri Cities. He continued, "I'd say I was a heavy drinker for ten years." Gonzalez-Gonzales said he did not drink to the point of passing out; but rather just drank until he fell asleep.

Gonzalez-Gonzalez denied any other drug use, including marijuana, and denied any misuse of prescription medication.

Emotional/Personal:

The following information is derived from the defendant's forensic mental health assessment completed by Richard W. Yocum, Ph.D., Licensed Clinical Psychologist at Western State Hospital. The evaluation was conducted on 02/19/14 at the Clark County Jail for the purpose of evaluating the defendant's competency to proceed to trial in his defense on this matter.

Dr. Yocum noted that Gonzalez-Gonzalez "frequently made incongruous statements that had no apparent connection to the question asked" and "was somewhat tangential and rambling". The defendant denied any feelings of suicidal or homicidal ideation.

Dr. Yocum's Diagnostic Impression included the following:

"Records from Clark County Jail indicate Mr. Gonzalez-Gonzalez has a history of receiving treatment for depression. Notable, the defendant psychiatrically decompensated during the first week of February and was described as sitting naked in his cell, speaking rapidly and making nonsensical statements in Spanish. The defendant was subsequently prescribed antipsychotic medication, which he has not taken consistently. Also, a CCJ progress note indicates Mr. Gonzalez-Gonzalez was prescribed the antipsychotic medication Haldol prior to his incarceration. A review of the MHD indicated Mr. Gonzalez-Gonzalez has had no contact [with] Regional Support Networks in Washington State.

During this evaluation Mr. Gonzalez-Gonzalez presented as depressed, with disorganized and delusional thought processes. The defendant had difficulty focusing, or remaining, on the task at hand. He denied auditory or visual hallucinations and did not appear to be responding to internal stimuli. Mr. Gonzalez-Gonzalez described himself as having "head trauma" which the Spanish interpreter indicated meant emotional trauma and not physical trauma to his head."

It was the opinion of the evaluator that the defendant had neither the capacity to understand the nature of the proceedings nor the capacity to assist in his defense. Inpatient psychiatric treatment for competency restoration was recommended.

On 03/07/14, Gonzalez-Gonzalez was court ordered to Western State Hospital for up to 90 days for competency restoration. On 04/23/14, the defendant was admitted to Western State Hospital. On 06/20/14, Ray Hendrickson, J.D., Ph.D., Licensed Psychologist / Supervisor at Western State Hospital, authored a Forensic Mental Health Report.

For the purposes of this Presentence Investigation report, selected segments relevant to the defendant's amenability for a Special Sex Offender Sentencing Alternative have been selected from Dr. Hendrickson's findings. The invested reader may view his report in its entirety. Dr. Hendrickson writes:

"[H]is immediate memory showed some issues in that he could only remember four numbers forward and three numbers in reverse... Long term memory was considered generally intact. His estimated level of intellectual functioning was average to below average based on what information I ascertained from the interview through the interpreter. His attention span and concentrative ability were generally intact... His insight was limited... His judgment remained impaired."

Dr. Hendrickson assessed the defendant for his level of intellectual functioning and offered the following DSM-5 diagnoses:

"Because of his difficulties speaking and understanding the English language, a non-verbal assessment protocol was chosen... Mr. Gonzalez-Gonzalez's results indicated [he] functions in the range of borderline intellectual functioning (IQ range of 70-84)."

- Other Specified Schizophrenia Spectrum and Other Psychotic Disorder, *provisional*, per reported history, with no current symptoms
- Adjustment Disorder with depressed mood, resolved
- Substance Use Disorder (alcohol, cocaine), per reported history, in institutional remission

On 10/27/14, Dr. Wendy Hartinger completed a psychosexual evaluation of the defendant. In sum, Dr. Hartinger concludes in part:

"Evaluation of Mr. Gonzalez-Gonzalez in terms of the appropriateness for the SSOSA program requires thorough consideration of two primary factors: a) the level of community risk the individual poses, and b) whether he would benefit from treatment. Mr. Gonzalez-Gonzalez appears to be an individual with moderate risk of re-offense, according to risk assessments of his past behaviors. He acknowledges he has had inappropriate sexual urges in the past and believes those behaviors were wrong. He has not, however, sought treatment for his sexual deviancies and tends to minimize his behaviors. He does not believe that he

will ever sexually offend again and appeared as though questions that suggest the contrary were absurd. He does not feel that returning to live with his current wife and children, including daughter, would pose any risk for re-offense.”

Dr. Hartinger noted that based on the defendant’s previous behavior, his “four year-old daughter is at a high risk of being abused”.

Attitude/Orientation:

During the Presentence interview, Gonzalez-Gonzalez was asked his thoughts concerning the offense behavior and his current circumstances. He stated, “I’m truly repentant of the past. I would like to recover and get out with my family. Try to live in a better way. Try to be a successful member of society, a useful person.” He was asked his thoughts concerning his daughter’s welfare. He stated, “I love her so much and I miss them. I do regret what I have done and I wish that I could give them the best of me. One day, they grant me to be with my family. It’s important for me to get help and I’m willing to do my part the best I can.”

IX. CONCLUSIONS:

Javier Gonzalez-Gonzalez is before the Court for sentencing on one count of Rape of a Child in the Second Degree and one count of Child Molestation in the Second Degree. It was reported the defendant sexually abused his three older daughters during their youth while the family lived in Mexico. LG-M reported that her abuse began when she was eight years old. The family moved to the United States when LG-M was twelve and her abuse continued at that time.

Gonzalez-Gonzalez is a native Spanish speaker and his mastery of English is very limited. His comprehension, even through an interpreter, also appeared limited. The defendant came to the United States from Mexico at age 21 and has worked primarily in the agriculture and construction industries. His formal education ended in the fourth grade.

The defendant was evaluated by Dr. Richard Yocum and Dr. Ray Hendrickson, each associated with Western State Hospital to assess and restore his ability to participate in his defense of this matter. Gonzalez-Gonzales was also evaluated by Dr. Wendy Hartinger for his amenability to a Special Sex Offender Sentencing Alternative. These summary reports suggest that Gonzalez-Gonzalez is not an appropriate candidate for community based treatment and supervision at this time.

Gonzalez-Gonzalez’s daughters each suffered sexual abuse by their father. They are rightfully very concerned that the defendant now has another minor-aged daughter in the home. The defendant should not be allowed contact with any minor under the age of eighteen years old.

Targeted Risk Areas:

- Contact with minors under the age of eighteen
- Victim contact
- Untreated sex offenses
- Alcohol consumption

Recommendations:

- No contact with minors under the age of eighteen
- No victim contact
- Complete a certified sex offender treatment program
- No possession or consumption of alcohol
- Submit to urinalysis and/or breath screening at the direction of the Community Corrections Officer
- Submit to polygraph examinations at the direction of the Community Corrections Officer

X. SENTENCE OPTIONS:

- Confinement within the Standard Range Sentence
- Work Ethic Program
- Exceptional Sentence
- First-time Offender Waiver (FTOW)
- Drug Offender Sentencing Alternative (DOSA)
- Special Sex Offender Sentencing Alternative (SSOSA)
- Community Custody Board (CCB) RCW 9.94A.507
- Family Offender Sentencing Alternative (FOSA)

XI. RECOMMENDATIONS:

The Department of Corrections recommends 136 months, the high end of the sentencing range.

The conditions found on Appendix F are available to the Court when imposing a standard range sentence and will assist the Department of Corrections in effectively monitoring the defendant's behavior during the period of Community Custody.

Sentence Type/Option: Prison

Confinement: 136 months

OAA Cases: Non-Prison Length of Community Custody: 36 months

Community Custody Board: Minimum Term: 102-136 months Maximum Term: Life

Conversions: None

Conditions of Supervision: (See attached DOC 09-130 Appendix F – FELONY Additional Conditions of Sentence)

XII. MONETARY OBLIGATIONS:

Restitution: TBD
Victim Penalty: \$500.00
Drug Fund: \$0.00

Court Costs: \$200.00 **Other:** TBD
Attorney Fees: TBD
Fine: TBD

Submitted By:

Approved By:

<i>Elizabeth Campbell</i>		<i>for [Signature]</i>		<i>1-07-2015</i>
Elizabeth Campbell	Date	Brian Ford	Date	
Community Corrections Officer II		Community Corrections Supervisor		
Department of Corrections		Department of Corrections		
9105-B NE Highway 99		9105-B NE Highway 99		
Vancouver, WA 98665		Vancouver, WA 98665		
(360) 571-4314		(360) 571-4370		

Distribution: **ORIGINAL** - Court **COPY-** Judge John F. Nichols; Camara Banfield, Prosecuting Attorney;
John Terry, Defense Attorney; File, WCC/RC (Prison)

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON	)	Cause No.: 13-1-01744-0
)	
Plaintiff)	
v.	)	JUDGMENT AND SENTENCE (FELONY)
GONZALEZ-GONZALEZ, Javier	)	APPENDIX F
Defendant	)	ADDITIONAL CONDITIONS OF SENTENCE
)	
DOC No. 376294)	

CRIME RELATED CONDITIONS:

- No contact with minors under the age of eighteen
- No victim contact
- Complete a certified sex offender treatment program
- No possession or consumption of alcohol
- Submit to urinalysis and/or breath screening at the direction of the Community Corrections Officer
- Submit to polygraph examinations at the direction of the Community Corrections Officer

DATE

JUDGE, CLARK COUNTY SUPERIOR COURT

cc/cc/09-130.rtf
0820/14

Page 1 of 1

Appendix F

B
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FILED

2014 DEC -1 PM 3:55

SCOTT G. WEBER, CLERK
CLARK COUNTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

STATE OF WASHINGTON,

No. 13-1-01744-0

Plaintiff,

**MOTION AND DECLARATION FOR
APPROVAL OF SECOND SSOSA
EVALUATOR**

vs.

JAVIER GONZALEZ GONZALEZ,

Defendant.

MOTION

Comes the defendant through counsel and moves for approval of Dr. Landon Poppleton for the second SSOSA evaluation herein. This motion is based on the declaration of counsel which follows, and further upon RCW 9.94A.670(13), which reads in relevant part:

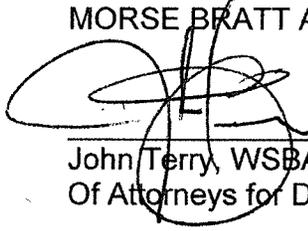
Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

- (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or
- (b) (i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and
(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

1 In the current case, though other treatment providers are within the geographical
2 distance of the Clark County Jail, no licensed Spanish speaking provider appears to be
3 available. As such, the defendant so moves to permit Dr. Poppleton to conduct the
4 second evaluation.

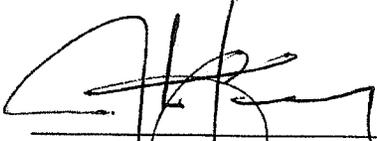
5 Submitted: December 1, 2014

6
7 MORSE BRATT ANDREWS & FOSTER PLLC

8 
9 _____
10 John Terry, WSBA # 41337
11 Of Attorneys for Defendant

1 I declare under penalty perjury the foregoing to be true and correct to the best of
2 my knowledge, memory, and belief.

3 Signed at Vancouver, WA, on 11/25/2014:

4 
5 _____
6 John C. Terry, WSBA # 41337
Of Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document on the opposing party to this action, or his or her attorney of record, via the following method of service:

[] by causing a full, true and correct copy thereof to be MAILED in a sealed, postage-paid envelope, at the last-known address for the party's office, and deposited with the U.S. Postal Service at Vancouver, Washington, on the date set forth below;

Address used:

[x] By causing a full, true and correct copy thereof to be HAND-DELIVERED to the party, at the last-known address for the party's office, on the date set forth below;

[] By causing a full, true and correct copy thereof to be FAXED to the party, at the last-known fax number for the party's office, on the date set forth below.

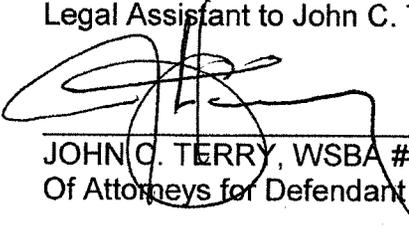
[x] By causing a full, true and correct copy thereof to be EMAILED to the party, at the last-known email address for the party's office, on the date set forth below.

Certified this date: December 1, 2014

[]

DEBORAH ROCK
Legal Assistant to John C. Terry

[x]


JOHN C. TERRY, WSBA # 41337
Of Attorneys for Defendant

CURRICULUM VITAE

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LICENSES

Oregon State

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Washington State

Psychologist (No. PY 60041144)

EDUCATION

Ph.D., Clinical Psychology

Brigham Young University; Provo, Utah
American Psychological Association approved program
Graduated 2008

Dissertation: Mediators and Moderators of Cognitive Behavioral
Telephone Treatment of Depression

Emphasis: Child, Adolescent and Family & Clinical Research

Internship: Portland VA Medical Center; Portland, Oregon
American Psychological Association approved program

Ph.D. Minor, Statistics

Brigham Young University; Provo, Utah
Graduated 2008

B.S., Psychology/B.A., Economics

Brigham Young University; Provo, Utah
Graduated 2002

B.A. Minor, Spanish

Brigham Young University; Provo, Utah
Graduated 2002

CLINICAL

NW Family Psychology; Portland, OR/Vancouver, WA Jan 2009- Present
Director/Psychologist

Work with children, adolescents, adults, and families to overcome the negative effects of divorce and other life challenges. Primarily provide bilateral custody evaluations, psychological assessments, parenting risk assessment, parent coordination services, work product review, consultation, psychotherapy, and reunification services.

Virginia Garcia Memorial Health Center; Portland, OR Feb 2009–June 2010
Program Coordinator/Resident

Coordinated and supervised the behavioral health program in four clinics while providing treatment and consultation in behavioral medicine. Developed programs for chronic pain management, management of depression, violence risk assessment, and management of drug seeking and other behaviorally disordered clients. Provided services in both English and Spanish. Was part of a team to develop standards of care and program evaluation protocol.

Lifeworks NW; Portland OR Sept 2008 – Aug 2009
Resident

Provided psychological services to adults and families including individual adult psychotherapy, family psychotherapy, dialectical behavior group therapy for personality disorders, and group treatment for depression.

Portland VA Medical Center; Portland, OR Apr 2008 – Aug 2008
Internship

Provided a combination of psychotherapy, group psychotherapy, psychological assessment, neuropsychological assessment, and consultation in mental health, substance abuse, and neuropsychology clinics. This included a rotation at Doernbecher Children's Hospital doing child/adolescent neuropsychological evaluations in oncology. Was a member of the Disruptive Behavior Committee that met monthly to review threats and acts of violence, assessed for future violence risk, and made recommendations for intervention. Provided disruptive behavior assessment and management training.

Family Academy; Provo, UT Mar 2001 – Aug 2007
Externship

Worked with families of divorce in multiple capacities, including supervision, individual and conjoint psychotherapy, supervision training, and therapeutic reunification. Conducted psychological and parent time evaluations. Consulted family and juvenile courts, case managers, and parent coordinators/special masters on divorce cases.

Jay P. Jensen, PhD; Provo UT Jan 2005 – Aug 2007
Clerkship
Conducted child custody evaluations.

Assessment and Polygraph Associates; Draper, UT Sept 2006 – Aug 2007
Externship
Conducted psychological, risk, and psycho-sexual assessments on juvenile offenders. Provided consultation to probation officers regarding level of risk and treatment needs.

Mountain Lands Community Health; Provo, UT July 2004 – Aug 2006
Externship
Worked in primary care providing psychological services to children, adolescents, adults, and families for a variety of mental health problems. Consulted primary care physicians about treatment planning. Treated patients in both English and Spanish.

BYU Comprehensive Clinic; Provo, Utah Jan 2004 – Jun 2006
Practicum
Provided individual, family, group, and couples psychotherapy. Conducted neuro-psychological, developmental, and personality assessments on adults and children.

Erin Bigler, PhD; Provo, Utah May 2005 – Aug 2005
Practicum
Child neuropsychological assessments.

Utah State Prison; Salt Lake City, Utah Nov 2004
Clerkship
Evaluated inmates using a variety of methods (viz., record review, psychological testing, interviews, and collateral contacts) to determine malingering and/or treatment needs.

Utah State Mental Hospital; Provo, Utah July 2004 – Aug 2004
Clerkship
Provided treatment in cognitive-remediation.

RESEARCH AND PRESENTATIONS

Manuscripts:

Tutty, S. Spangler, D., & Poppleton, L. E., (2010). Treatment Outcomes of Cognitive Behavioral Telephone Treatment for Depression on a Rural Adult Population. *Journal of Clinical and Consulting Psychology*.

Layne, C. M., Saltzman, W. R., Poppleton, L. E., Burlingame, G. M., Pa'Ali, A., Durakovic, E., Music, M., Campara, N., Apo, N., Arslanagic, B., Steinberg, A. M., & Pynoos, R. S. (2008). Effectiveness of School-Based Group Psychotherapy Program for War-Exposed Adolescents: A Randomized Controlled Trial. *Journal of the American Academy of Child and Adolescent Psychiatry*.

Harris, M., Lauritzen, M., Poppleton, L., Bubb, R. R., and Brown, B. L. (2007). How many factors? A strategy for identifying latent structure in factor analysis. American Statistical Association 2007 Proceedings.

Poppleton, L., Harris, M., Lauritzen, M., Bubb, R. R., and Brown, B. L. (2007). The central limit theorem and structural validity in factor analysis. American Statistical Association 2007 Proceedings.

Lauritzen, M., Hunsaker, N., Poppleton, L., Harris, M., Bubb, R. R., and Brown, B. L. (2007). Measurement error in factor analysis: The question of structural validity. American Statistical Association 2007 Proceedings.

Bishop, M. J., Bybee, T. S., Lambert, M. J., Burlingame, G. M., Wells, G., & Poppleton, L. E. (2005). Accuracy of a Rationally Derived Method for Identifying Treatment Failure in Children and Adolescents. *Journal of Child and Family Studies*.

Presentations:

DSM-5 in Dependency Matters (December 2013). Presented to Vancouver, DSHS

Prevention and Management of Disruptive Behavior (October 2013). Presented to Longview DSHS.

Forensic Mental Health Assessment (June 2013). Presented to Clackamas DHS with Dr. Jeff Lee.

Joint Parenting-Time Schedules (May 2013). Presented to the Clark County Bar Association.

Dealing with Drug and Alcohol Affected Clients when Developing Parenting Plans (March 2013). Presented to The Oregon Academy of Family Law Practitioners.

Assessing Violence Risk in Youth in Child Custody Evaluation (April 2012). Presenter at the Washington Chapter Association of Family and Conciliation Courts Conference. With Dr. Steve Tutty

Utilizing and Critiquing Empirical Research in Custody Assessments (April 2012). Presenter at the Washington Chapter Association of Family and Conciliation Courts Conference. With Dr. Jeff Lee and Ms. Lyons, B.S.

Parenting Coordination (April 2012). Presented as panel of attorneys and psychologists to the Clark County Bar Association, Vancouver WA as a follow-up to that presented in February 2011. Model order, forms, and procedures provided that resulted from a work group that formed out of the prior meeting.

Fundamentals of Forensic Mental Health Evaluations in Child Dependency Cases (April, 2012). Presented to the Clark County DSHS.

Managing Difficult Clients in Dependency Matters (March 2012). Presented to Clark County DSHS.

Assessing Violence Risk in Youth in Child Custody Evaluation (October 2011). Workshop at the Regional Association of Family and Conciliation Courts Conference on Domestic Violence. Presented with Dr. Steve Tutty.

Parent Coordination (October 2011). Panel Member at the Washington Chapter Association of Family and Conciliation Courts Conference.

Managing Difficult Clients in Dependency Matters (September 2011). Clark County Bar.

Fundamentals of Forensic Parenting Evaluations (Sept 2011). Clark County CASA

Assessment of Parental Alienation (May, 2011). Presented to the Clark County Guardian Ad Litem group.

Fundamentals of Parenting Coordination (Feb 2011). Presented with Dr. Harry Dudley to the Clark County Bar Association, Vancouver WA.

Forensic Mental Health Evaluations and Child Development (Oct 2010). Presented to the Clark County CASA.

Psychological Testing in Family Law Matters (June 2010). Presented with Dr. Daniel Rybicki and Dr. Kirk Johnson. WA State Bar Association Mid-Year Conference, Vancouver, WA.

Integrating Behavioral Health in Primary Care. (March, 2009). Oyemaya, J., Poppleton, L.E. First Annual Primary Care Convention, Portland, Oregon

Parenting Behavior May Mediate the Link between Postwar Adversities and Adolescent Mental Health: Preliminary Evidence from Bosnian Youths (April, 2008). Packard, A., Poppleton, L. E., & Layne, C.M. Presented at the Rocky Mountain Psychological Association convention, Boise, Idaho.

Interneceine Conflict and Recovery of War-Traumatized Adolescents in Bosnia-Herzegovina (February, 2008). In C. Maida (Chair), *Global Ecologies of Danger: Living Through Extreme Times*. Layne, C.M., Olsen, J., Land, A., Poppleton, L.E., Legerski, J.P., Isakson, B., Djapo, N., Saltzman, W.R., Burlingame, G.M., Pynoos, R.S. Symposium presented at the Annual Meeting of the American Academy for the Advancement of Science, Boston, Massachusetts.

How Many Factors? A Strategy for Identifying Latent Structure in Factor Analysis (August 2007). Harris, M., Lauritzen, M., Poppleton, L., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

The Central Limit Theorem and Structural Validity in Factor Analysis (August 2007). Poppleton, L., Harris, M., Lauritzen, M., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

Measurement Error in Factor Analysis: The Question of Structural Validity (August 2007). Lauritzen, M., Poppleton, L., Harris, M., Hunsaker, N., Bubb, R. R., & Brown, B. L. Paper presented at the Joint Statistical Meetings 2007: "Statistics: Harnessing the Power of Information" (American Statistical Association, International Biometric Society, Institute of Mathematical Statistics), Salt Lake City, Utah.

Building Bridges Among Resilience-Related Theory, Research, and Practice: War-Exposed Youths and Their Families (August 2007). Layne, C. M., Poppleton, L. E., Packard, A., & Land, A. APA Convention, San Francisco, California.

Links Between Childhood Physical Abuse and Psychosocial Adjustment in Adulthood (November 2005). Killpack, J. T., Poppleton, L. E., Layne, C. M., Cloitre, M., Gordon, T., & Rosenberg, A. Poster presented at the 21st Annual Meeting of the International Society for Traumatic Stress Studies, Toronto, Canada.

Treatment of Traumatic Bereavement in Adolescents: Conceptualization, Assessment, and Intervention Strategies (June 2005). Layne, C. M., Saltzman, W. S., Turner, S., Anderson, A., Hartly, S., Killpack, J. T., Nelson, J., Miles, N.,

Brown, R., Lynes, L., Bylund, J., Bigham, M., Lambert, K., Anderton, K., Queiroz, A., & Poppleton, L. E. Workshop presented at the 2nd Annual West Coast Child & Adolescent Therapy Conference, Los Angeles, California.

Grants:

Poppleton, L. E., Layne, C. M. (2007). Measuring Maladaptive Grief in Traumatically Bereaved Adolescents: Test Construction, Theory Building, Research Design, and Intervention. National Center for Child Traumatic Stress, University of California Los Angeles. \$8,000, Provo, Utah

Poppleton, L. E., Layne, C. M. (2006). Evaluation of Formative Indicators of Traumatic Grief. National Center for Child Traumatic Stress, University of California Los Angeles. \$3,500, Provo, Utah

Poppleton, L. E., Layne, C. M. (2006) Mechanisms of Change in a Randomized Control Trial of Bosnian Youth with Post-Traumatic Stress. National Center for Child Traumatic Stress, University of California Los Angeles. \$3,000, Provo, Utah

Kilpack, J., Zenger, N., **Poppleton, L. E.,** Layne, C. M. (2006) Links Between Childhood Physical Abuse and Psychosocial Adjustment in Adulthood. Family Studies Center, Brigham Young University. \$5,000, Provo, Utah

Poppleton, L. E., Carter, B., Layne, C. M. (2005) A Bosnian Treatment Evaluation Study. National Center for Child Traumatic Stress, University of California Los Angeles. \$5,000, Provo, Utah

Poppleton, L. E., Spangler, D. (2004) Evaluation of Mediators and Moderators in Cognitive Behavioral Telephone Treatment of Depression. Office of Graduate Studies, Brigham Young University. \$1000, Provo, Utah

TEACHING

Pacific University; Hillsboro Campus, OR <i>Course Instructor- Program Evaluation</i>	Sept 2012- Dec 2012
Washington State University; Vancouver Campus, WA <i>Course Instructor- Personality Theory</i>	Sept 2009- April 2010
Brigham Young University; Provo, Utah <i>Course Instructor- Measurement and Psychometrics</i>	Sept 2004 – Aug 2007
<i>Course Instructor- Statistics in Psychology</i>	May 2007 – Jun 2007
Brigham Young University; Provo, Utah <i>Teaching Assistant- Research Measurement</i>	Jan 2005 – April 2005
<i>Teaching Assistant- Abnormal Psychology</i>	Jan 2002 – April 2002

RESEARCH CONSULTATION

Co-Director

Mensura Research Solutions, LLC
Research and statistical consultation.

Aug 2007 – Dec 2011

Independent Consultant

Research Consultation Pros

Provided statistical, research and editing consultation for myriad of research questions on dozens of projects.

Nov 2008 – Dec 2009

COMMUNITY INVOLVEMENT

Consortium Member

Parent Coordination Clark County, WA

Part of a group of attorneys and psychologists to develop a standard parent coordination order to meet the needs of high conflict families of divorce/separation in Clark County

2011- 2012

Consortium Member

Alternative Dispute Resolution Clark County District Court, Vancouver, WA

Part of a group with the objective to develop a protocol to increase the utilization of alternative dispute resolution procedures in family law cases.

2010

Consortium Member

Fourth District Juvenile Court, Provo, UT

Provided consultation on risk assessment and program evaluation as a member of a multidisciplinary team with the aim to efficiently reunify children with their parents

July 2006 – Dec 2006

PROFESSIONAL MEMBERSHIPS

Association of Family and Conciliation Courts

American Psychological Association (past member)

Washington State Psychological Association (past member)

American Statistical Association (past member)

American Group Psychological Association (past member)

Appendix G

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FILED

DEC 23 2014

3:32am

Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

STATE OF WASHINGTON,)	Case No. 13-1-01744-0
)	
Plaintiff,	)	MOTION TO
	)	DISCHARGE/SUBSTITUTE
vs.	)	COUNSEL AND CONTINUE
	)	SENTENCING AND ALL OTHER
JAVIER GONZALEZ GONZALEZ,	)	PROCEEDINGS HEREIN
)	
Defendant.	)	(IN CUSTODY)
)	

COMES NOW the above named JAVIER GONZALEZ GONZALEZ and hereby moves the Court for an Order to continue the date for Sentencing in this matter from the currently scheduled date and to allow discharge of current defense counsel and substitution. This Motion is made pursuant to CrR 3.1(e), CrR 3.3(f)(2), RCW 2.44.040, the attached certification, and the court files and records herein.

DATED this 22 day of December, 2014.

Javier Gonzalez Gonzalez
JAVIER GONZALEZ GONZALEZ
Defendant

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CERTIFICATION

I, JAVIER GONZALEZ GONZALEZ, declare to the best of my knowledge and belief as follows:

- 1) I am the defendant, JAVIER GONZALEZ GONZALEZ, in this matter. I have been charged with 2 counts of Rape of a Child in the Second Degree, under RCW 9A.44.076, a Class A Felony, and four counts of Child Molestation in the Second Degree under RCW 9A.44.086, a Class B Felony. Both charges are serious offenses and I am informed that I face a maximum sentence of life in prison, if convicted.
- 2) I previously hired John Terry to represent me as counsel in this matter. Recently, a plea hearing was held and I am awaiting sentencing on the charge. Mr. Terry, however, rarely used a certified interpreter to communicate with me outside of court, other than to read through some papers. I do not believe that the plea offer was read for me. Mr. Terry Spanish language skills are imperfect and I did not understand all of my rights, the proceedings or the full implications or consequences of the documents he had me sign. I subsequently sought and consulted with other counsel. I am not satisfied with my current counsel and do not believe that Mr. Terry is able to adequately defend me or represent my interests in this matter.
- 3) I am hereby asking the court to allow me to discharge Mr. Terry and allow me to hire another lawyer to represent me in this matter. I am also asking the court to grant me a substantial continuance to give new counsel the opportunity to obtain and fully review all police reports and discovery in the matter as well as all court documents and to help me make an informed decision about how to proceed at this point.

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- 5) I have contacted alternative counsel, Nicole Dalton. She is willing to help me with this matter if the court will grant me sufficient time for her to obtain all documents from my previous counsel, review the materials, and make any appropriate motions before the new sentencing date. She believes that a continuance of approximately eight weeks would likely be sufficient to review all discovery, conduct needed investigation and make any necessary motions.
- 6) I do not wish to make any more statements to any government authorities and am hereby invoking my right to remain silent and to have an attorney present during any questioning or interviews in regards to this matter and the underlying or related allegations.

DATED AND SIGNED in Vancouver, Washington, on this 22 day of December, 2014.

Javier Gonzalez Gonzalez
 JAVIER GONZALEZ GONZALEZ
 Defendant

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the Spanish language, which the defendant understands. I have interpreted the foregoing document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Vancouver, (state) WA, on (date) 12-22-14

Korinne O. Wells
 Print Name

Korinne O. Wells
 Interpreter

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CERTIFICATION

I hereby certify that on this 23 day of December, 2014, I delivered a copy of the foregoing MOTION TO DISCHARGE/SUBSTITUTE COUNSEL AND CONTINUE SENTENCING AND ALL OTHER PROCEEDINGS HEREIN

- by US mail, postage prepaid,
- by hand delivering the copy/courier,
- by fax

to the following person at the address listed below:

Clark County Prosecuting Attorney
Superior Court Division
1013 Franklin Street
P.O. Box 5000
Vancouver, WA 98666-5000



 Nicole T. Dalton, WSBA#38230
 Veronica Carranza

Appendix H

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FILED

JAN 08 2015

Scott G. Weber, Clerk, Clark Co.
3:23 pm

12-29-2014

Dear Judge Nichols, 131-017440

I am very nervous and confused about my legal case. I took the advice of family and friends and in a state of panic I told you I wanted a new attorney. I have discussed my case at length with Mr. Terry, and I wish to have him continue as my attorney. Thank you for your patience with me and I apologize for any inconvenience.

Sincerely,

Javier González Glez
Javier Garcia - Garcia

12-29-2014

Dear Judge Nichols,

COPY

I am very nervous and confused about my legal case. I took the advice of family and friends and in a state of panic I told you I wanted a new attorney. I have discussed my case at length with Mr. Terry, and I wish to have him continue as my attorney. Thank you for your patience with me and I apologize for any inconvenience.

Sincerely,

Javier González González

Javier Garcia - Garcia

MORSE
BRATT
ANDREWS
& FOSTER ^{PLLC}

LAWYERS

John Morse Douglas Bratt Philip Andrews Teresa Foster Beckie Pettis John Terry

December 29, 2014

VIA HAND DELIVERY

Honorable John Nichols
Clark County Superior Court
1200 Franklin Street
Vancouver, WA 98660

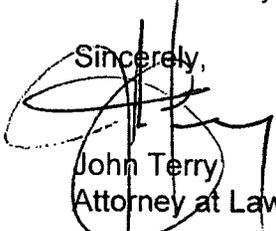
Re: *State v. Gonzalez-Gonzalez*, Case no. 14-1-01451-1
Letter from Defendant re Counsel

Dear Your Honor,

Please find attached a letter executed by Mr. Gonzalez-Gonzalez in regards to recent confusion about his choice of counsel. He asked that I provide this to you promptly so that previous correspondence is disregarded.

Thank you.

Sincerely,



John Terry
Attorney at Law

JCT/jt

ENCLOSURES (1)

Cc: Camara Banfield
Nicole Dalton

Dear Judge JOHN F NICKOLS

With all respect I do not want Jon Terry as my attorney any longer. My attorney told me many times that I would be released in one year with the SUSA program, of all the times he came to visit me he told me everything was going good but it wasn't true he didn't do as he was telling me. He didn't do the necessary things like show up at Court appearances. He has constantly been lying to me, he said to plead guilty and I would get the SUSA program. I want to take back my plea because John Terry told me I would get SUSA. I gave John Terry \$7000⁰⁰ dollars to get me the SUSA program. John Terry promised me that I would get the SUSA program. Now I want to fire John Terry and I will pay for another attorney, but I want to take back my plea of Guilty. Please.

Sincerely,

Javier Gonzalez Glez

December 24, 2014

CEN: 215944 FI-5

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atentamente

Javier González González

diciembre 24 2014

CFN 219 ~~219~~

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Dept. 3

13-1-01744-0

senor juez

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FILED

DEC 30 2014

Scott G. Weber, Clerk, Clark Co.

11:48

30 diciembre 2014

Caso numero 13-1-01744-0

Javier Gonzalez Gonzalez

Appendix I

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 John Terry
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FILED
 JAN 26 2015
 3:33 PM
 Scott G. Weber, Clerk, Clark Co.

**Superior Court of Washington
 County of Clark**

State of Washington, Plaintiff,

vs.

JAVIER GONZALEZ-GONZALEZ, aka
 JAVIER GONZALEZ GONZALEZ,
 Defendant.

SID: WA27320435

If no SID, use DOB: 1/20/1959

No. 13-1-01744-0 ✓

**Felony Judgment and Sentence --
 Prison**

15-9-00314-2

RCW 9.94A.507 Prison Confinement
 (Sex Offense and Kidnapping of a Minor)

(FJS)

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

Defendant Used Motor Vehicle

Juvenile Decline Mandatory Discretionary

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

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court **Finds:**

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

guilty plea 8/1/2014 jury-verdict bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	FA	1/1/1998 to 9/13/2004
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	1/1/1998 to 9/13/2004

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:

*Felony Judgment and Sentence (FJS) (Prison)
 (Sex Offense and Kidnapping of a Minor Offense)
 (RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))
 Page 1 of 12*

666
 MM

- 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.
- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- 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 _____, **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._____.
- 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.
- 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.
- 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.
- For crime(s) charged in Count _____ **domestic violence** was pled and proved. **RCW 10.99.020**.
- 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)
1.			

- 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.	DV?*	Type
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 for _____ are one offense for purposes of determining the offender score (RCW 9.94A.525).
- The prior convictions for _____ 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	Maximum Fine
01	3	XI	102 MONTHS to 136 MONTHS		102 MONTHS to 136 MONTHS	LIFE	\$50,000.00
02	3	VII	31 MONTHS to 41 MONTHS		31 MONTHS to 41 MONTHS	10 YEARS	\$20,000.00

* (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, 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.

- 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.

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

- That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

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):

136 months on Count 01 41 months on Count 02

- The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.
- The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 136 Month

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: _____

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

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

- (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>136 months</u>	maximum term	<u>life</u>	Statutory Maximum
Count	02	minimum term	<u>41 months</u>	maximum term		Statutory Maximum <u>life</u>

(c) **Credit for Time Served:** The defendant shall receive 497 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.

(d) **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) 2, 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, 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. life

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:

consume no alcohol.

have no contact with: Minors

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 the following crime-related treatment or counseling services:

undergo an evaluation for treatment for domestic violence substance abuse mental health anger management, and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Additional conditions are imposed in Appendix 4.2, if attached or are as follows:

ATTACHED APPENDIX A AND APPENIDX F

(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.

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

JASS CODE

RTN/RJN	\$ <u>TBS</u>	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ <u>500.00</u>	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ _____	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u>	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ 2,500.00	Fees for court appointed attorney	RCW 9.94A.760
WFR	_____	Court appointed defense expert and other defense costs	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
FCM/MTH	\$ 500.00	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
	\$ <u>100.00</u>	DNA collection fee	RCW 43.43.7541
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
FPV	\$ _____	Specialized forest products	RCW 76.48.140

RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) RCW 38.52.430
Agency: _____

\$ _____ Other fines or costs for: _____

\$ _____ **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.

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. 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 ~~LUCERO GONZALEZ-MENDOZA, DALIA MENDOZA-GONZALEZ, DALILA AGUILAR-GONZALEZ, LUCERO MENDOZA-GONZALEZ, LUCERO MENDOZA-GONZALEZ~~ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 100 years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

LUCERO GONZALEZ-MENDOZA, DALIA MENDOZA-GONZALEZ, DALILA AGUILAR-GONZALEZ, LUCERO MENDOZA-GONZALEZ, LUCERO MENDOZA-GONZALEZ (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____

for 106 years (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

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

4.8 For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

4.9 If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections 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 first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third 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.714.

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 a kidnapping offense involving a minor as defined in Laws of 2010, ch. 367 § 1, 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.

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 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 or Returning Washington Residents: If you move to Washington or if you leave the 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.

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 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. 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 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 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 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 attend the school. You must notify the sheriff within three 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 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.

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

8. Length of Registration:

Class A felony – Life; Class B Felony – 15 years; Class C felony – 10 years

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 1 & 2 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) 1 3 2 is/are one of the listed offenses in RCW 9.94A.030.(31)(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: January 26 2015

Judge/Print Name Barbara Johnson

[Signature]
Deputy Prosecuting Attorney
WSBA No. 33835
Print Name: Camara L. Banfield

[Signature]
Attorney for Defendant
WSBA No. 41337
Print Name: John C Terry

[Signature]
Defendant
Print Name:
JAVIER GONZALEZ-GONZALEZ

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: Javier Gonzalez

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

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

Signed at Vancouver, Washington on (date): _____

Interpreter Print Name

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

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

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

Identification of the Defendant

JAVIER GONZALEZ-GONZALEZ

13-1-01744-0

SID No: WA27320435

Date of Birth: 1/20/1959

(If no SID take fingerprint card for State Patrol)

FBI No. 578957WD4

Local ID No. 215944

PCN No. _____

Other _____

Alias name, DOB: , aka JAVIER GONZALEZ GONZALEZ, JAVIER GONZALEZ GONZALEZ, 1/20/1959

Race: W

Ethnicity:

Sex: M

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

Clerk of the Court, Deputy Clerk, _____

Dated: _____

1-26-15

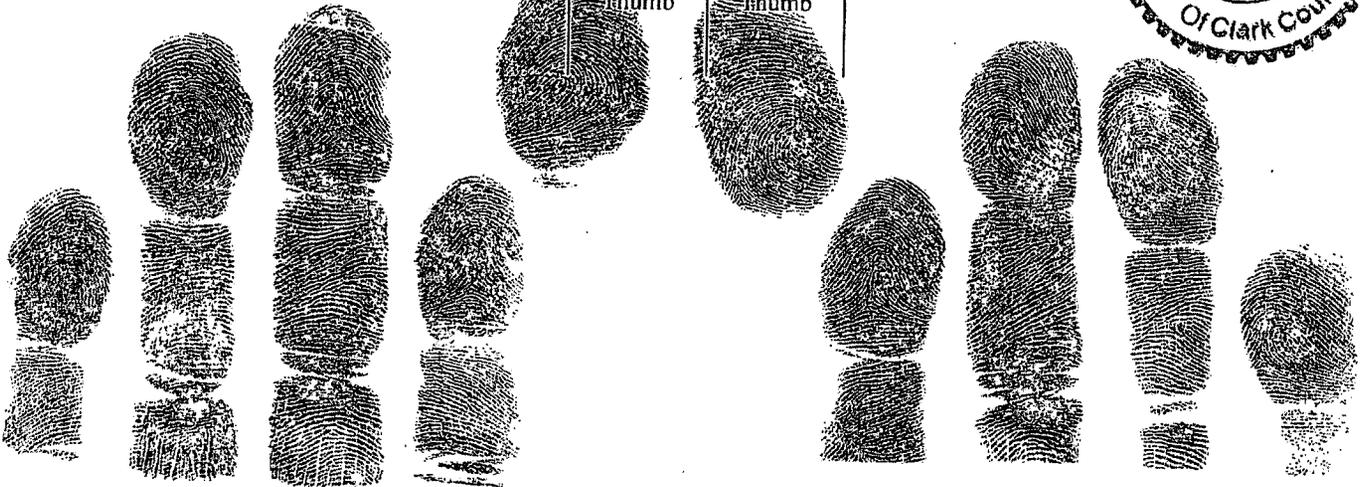
The defendant's signature: Javier Gonzalez

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

JAVIER GONZALEZ-GONZALEZ,

Defendant.

SID: WA27320435

DOB: 1/20/1959

NO. 13-1-01744-0

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

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

GREETING:

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

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A.44.076	1/1/1998 to 9/13/2004
02	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	1/1/1998 to 9/13/2004

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

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

COUNT	CRIME	TERM
01	RAPE OF A CHILD IN THE SECOND DEGREE	136 Days Months
02	CHILD MOLESTATION IN THE SECOND DEGREE	41 Days Months

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

The defendant has credit for 497 days served.

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

And these presents shall be authority for the same.

HEREIN FAIL NOT.

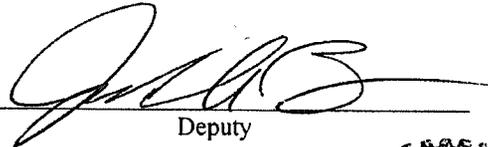
WITNESS, Honorable



JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1-26-15

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

By:



Deputy



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

8 STATE OF WASHINGTON,
9 Plaintiff,

10 v.

11 JAVIER GONZALEZ-GONZALEZ,
12 Defendant

13 Date of Birth: 1/20/1959

No. 13-1-01744-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



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

17 CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV? YES	PTS.
18 No known felony history.					

*DV: Domestic violence was pled and proved.

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

20 DATED this 26 day of January, 2015.

21 Javier Gonzalez
Defendant

22 [Signature]
23 ~~Maggie Evensen~~, WSBA#~~30014~~
Attorney for Defendant 7041337
24 John Perry

25 [Signature]
26 Camara L. Banfield, WSBA#33835
Senior Deputy Prosecuting Attorney

J. ...

FILED

FEB 01 2018

Scott G. Weber, Clerk, Clark Co.

348pm

AW

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

<p>THE STATE OF WASHINGTON,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JAVIER GONZALEZ-GONZALEZ,</p> <p style="text-align: right;">Defendant.</p>	<p>No. 13-1-01744-0</p> <p>ORDER RE CrR 7.8 MOTION</p> <p>CLERK'S ACTION REQUIRED</p> <p>Copies to Defendant and Prosecuting Attorney</p>
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THIS MATTER having come before the Court for initial consideration on the motion and affidavit(s) of Defendant herein, pursuant to Criminal Rule 7.8, and the Court being fully advised in the premises, the Court:

Having determined that the motion is barred by RCW 10.73.090 as the Defendant filed the motion more than one year after the judgment and sentence was final, hereby transfers this matter to the Court of Appeals for its consideration as a personal restraint petition.

The judgment and sentence was final on _____ (date judgment and sentence was filed, or date mandate disposing of the appeal was issued, or date petition for certiorari to the U.S. Supreme Court was denied, whichever is latest), and the motion was filed on _____.

Having determined that the motion is not barred by RCW 10.73.090 (motion was filed within one year of date judgment and sentence became final or judgment and sentence is invalid on its face), but having determined that the Defendant has not made a substantial showing that s/he is entitled to relief or that an evidentiary hearing will be necessary to resolve the motion on the merits, hereby transfers this matter to the Court of Appeals for its consideration as a personal restraint petition.

- Having determined that the motion is not barred by RCW 10.73.090, and, either:
- having determined that the Defendant has made a substantial showing that s/he is entitled to relief; or
 - determination of this matter will require an evidentiary hearing to resolve the motion on the merits;

hereby directs the Clark County Prosecuting Attorney to appear on _____ at _____ and show cause as to why the relief requested should not be granted.

DATED this 31ST day of January, 2018.

JUDGE *[Signature]*

CLARK SUPERIOR COURT

February 06, 2018 - 2:28 PM

Filing PRP Transfer Order

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: Gonzalez-gonzalez, Javier
Trial Court Case Number: 13-1-01744-0
Trial Court County: Clark Superior Court
Signing Judge: Barbara Johnson
Judgment Date: 01/26/2015

The following documents have been uploaded:

- PTO_PRP_Transfer_Order_Plus_20180206142631D2113167_5031.pdf

This File Contains:

Judgment and Sentence/Order/Judgment - Signing Judge:
PRP Transfer Order

The Original File Name was 131017440Gonzalez-Gonzalez.pdf

Comments:

Sender Name: Christina M White - Email: christina.white@clark.wa.gov

Note: The Filing Id is 20180206142631D2113167

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SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

13-1-01744-0

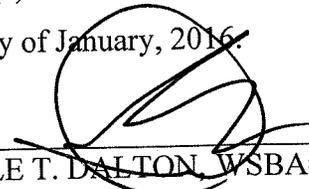
STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
JAVIER GONZALEZ GONZALEZ,)
)
Defendant.)

Case No. ~~12-1-00514~~
MOTION TO WITHDRAW
GUILTY PLEA AND VACATE
JUDGMENT AND SENTENCE
CrR 7.8 AND SUPPORTING
MEMORANDUM OF LAW

MOTION

The above-named defendant, Javier Gonzalez Gonzalez, by and through counsel, Nicole T. Dalton, respectfully moves for this court to vacate the judgment and sentence entered on or about July 25, 2013, in this case. After vacating, the court should dismiss the charge with prejudice or set the matter for trial. This motion is based on CrR 7.8, the United States Constitution, the attached Memorandum of Law in Support of this Motion to Vacate Judgment and Sentence, the authorities cited therein, attachments, the recording of court proceedings (on file with the Superior Court and hereby incorporated by reference), and on the court file and record in this case. If the court does not vacate the judgment in the first instance, this Court should issue an order of discovery, compelling the state to disclose all relevant evidence upon which it may rely, set a briefing schedule, and set the matter for hearing under CrR 7.8(c).

Respectfully submitted this 22nd day of January, 2016.



NICOLE T. DALTON, WSBA#38230
Attorney for Defendant

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ISSUES PRESENTED

Should the court allow the defendant to withdraw the guilty plea and vacate judgement and sentence because:

1. Mr. Gonzalez did not receive effective assistance of counsel where counsel failed to conduct a reasonable investigation?
2. Mr. Gonzalez did not receive effective assistance of counsel where counsel did not communicate with him sufficiently to allow him to make a knowing, intelligent, and informed decision about whether to plead guilty or go to trial?
3. Mr. Gonzalez sought to substitute counsel because of grave concerns about counsel’s performance, lack of investigation, and inability to communicate adequately, and the court improperly refused to inquire or make a well-founded decision regarding that request?

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1 Omnibus hearing was held. On January 30, 2014, a change of plea was scheduled for
2 February 5, 2014.

3 4. However, on February 5, 2014, after Mr. Gonzalez appears to have had a
4 mental breakdown at the hearing scheduled for change of plea, the court entered orders
5 for a Western State Hospital (hereinafter "WSH") competency evaluation of Mr.
6 Gonzalez-Gonzalez. Utilizing a Spanish speaking, certified court interpreter, Dr. Richard
7 Yocum, a licensed clinical psychologist for WSH, conducted a clinical/forensic interview
8 of Mr. Gonzalez-Gonzalez. *See Court File (Sealed 2/27/14 Forensic Mental Health*
9 *Report)*. Counsel, John Terry, was present during the interview. Dr. Yocum noted in his
10 report that:
11

12 a. Mr. Gonzalez-Gonzalez indicated that he had four years of primary
13 education in Mexico and did not graduate from high school nor attend any
14 colleges, universities or technical schools; when asked if he was experiencing any
15 current mental health issues, Mr. Gonzalez-Gonzalez stated, "no, just sometimes I
16 get confused. But I don't have any problems." Subsequently, he reported that he
17 did have a history of receiving treatment for psychiatric illness, indicating that he
18 had been given medications and reported being hospitalized in Vancouver five
19 days before with hallucinations. He denied any history of receiving inpatient or
20 outpatient mental health services but reported "head trauma," which the doctor,
21 after discussion with the interpreter, believed was a reference to his current
22 symptoms.
23

24 b. Jail records indicated that Mr. Gonzalez-Gonzalez had been found
25 sitting naked in a cell, refused medication, was speaking rapidly and making
26

1 nonsensical statements in Spanish, that he allegedly tried to drown himself in the
2 toilet, and that his family members brought in medications to the jail, including
3 Haldol and Fluoxetine.¹

4 c. Dr. Yocum reported that Mr. Gonzalez-Gonzalez' thought
5 processes were disorganized and delusional, though he denied experiencing
6 auditory or visual hallucinations. Mr. Gonzalez-Gonzalez was unable to
7 accurately report the date, and on a task of recent memory, he correctly recalled
8 three out of three words immediately but was unable to recall any of the words
9 after a brief delay. Dr. Yocum reported that Mr. Gonzalez-Gonzalez' judgment
10 and insight were poor and somewhat concrete, that he had head trauma, but that
11 he was not compliant with his psychotropic medication. Dr. Yocum reported that
12 Mr. Gonzalez-Gonzalez presented as lethargic and confused and difficulty
13 focusing and remaining on task during interview.

14 d. Dr. Yocum concluded that, in his current psychiatric condition,
15 Mr. Gonzalez-Gonzalez would be unable to apply any factual legal knowledge he
16 may already have, and unable to acquire any new information he may need, in the
17 adjudication of his charge and that he would be unable to focus appropriately on
18 court proceedings. He also concluded that Mr. Gonzalez-Gonzalez' symptoms
19 would interfere with his ability to engage in dialogue with counsel regarding the
20 instant offense, plea options, and other defense strategy. Dr. Yocum found Mr.
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26 ¹ *Haldol* is an antipsychotic drug and *Fluoxetine* is an antidepressant. See
<https://www.nlm.nih.gov/medlineplus/druginfo/meds/a682180.html>;
<https://www.nlm.nih.gov/medlineplus/druginfo/meds/a689006.html>;

1 Gonzalez-Gonzalez incompetent to stand trial and recommended inpatient
2 psychiatric treatment for competency restoration.

3 5. Mr. Gonzalez-Gonzalez was admitted to WSH on April 23, 2014. On
4 June 20, 2014, Dr. Ray Hendrickson, WSH staff psychologist, reported on his
5 examination and opinion regarding the mental condition of Mr. Gonzalez Gonzalez, as
6 follows:
7

8 a. WSG assessed Mr. Gonzalez-Gonzalez' level of intellectual
9 functioning, with a culturally reduced test, estimating competence by evaluating
10 an individual's skill at solving novel, abstract/figural problems. The results
11 indicated a percentile rank of 8 and that Mr. Gonzalez-Gonzalez function in the
12 range of borderline intellectual functioning (IQ range of 70 to 84). Dr.
13 Hendrickson noted that this test result suggests that Mr. Gonzalez may have some
14 cognitive difficulties. After treatment, including a small dosage of an
15 antipsychotic medication, Dr. Hendrickson found his mental status, including
16 affect and ability to form and interpret concepts in the normal range. He found
17 his memory intact and found his fund of information average. The doctor noted,
18 however, that his attention span and ability to concentrate were somewhat limited,
19 but within normal limits.
20

21
22 b. Although Mr. Gonzalez, after participating in competency
23 restoration including legal orientation classes, Dr. Hendrickson opined that Mr.
24 Gonzales possessed the ability to have a factual and rational understanding of the
25 charges and court proceedings and the capacity to consult with his attorney with a
26 reasonable degree of rational understanding. It is interesting to note, however,

1 that at the time he was interviewed by Dr. Hendrickson, he stated he did not know
2 what the police had alleged he had done to be charged with his current offenses
3 but “stated that he would ‘find out in court,’ and added he could ‘ask my
4 attorney.” This statement was made after Mr. Terry had initially scheduled him
5 for a change of plea, potentially showing a profound lack of understanding about
6 his individual case.
7

8 6. After further proceedings, Mr. Gonzalez-Gonzalez was found incompetent
9 to stand trial on March 14, 2014 and he was subsequently transported to WSH for
10 competency restoration.

11 7. On June 24, 2014, Mr. Gonzalez was found competent and assigned a new
12 trial date of August 11, 2014.
13

14 8. On July 31, 2014, the case was cited on for change of plea.

15 9. On August 1, 2014, Mr. Gonzalez entered a change of plea accompanied
16 by his attorney, Mr. Terry and a court interpreter. As the judge reviewed the plea
17 petition, it appears that Mr. Gonzalez answered some, but not all of the court’s questions
18 regarding the entry of plea. *See* Transc. 8/1/2014. Although the judge does review the
19 standard range for confinement, community custody and fines for each of the charges, he
20 does not appear to specifically discuss the nature of the plea offer and sentencing
21 recommendation with Mr. Gonzalez on the record.
22

23 10. The plea petition signed by Mr. Gonzalez and court interpreter, Victor
24 Montano, on 7/23/14, contains a phrase indicating that, “the prosecutor will recommend
25 as stated in the plea agreement, which is incorporated by reference.” The certification of
26 interpreter at the end of the plea agreement, however, indicates that “An interpreter has

1 previously read to the defendant the entire statement above and that the defendant
2 understood it in full.” The declaration does not specify whether the interpreter was asked
3 to read or whether the interpreter read the entire pre-trial settlement agreement, which is
4 attached after the declaration of the interpreter.
5

6 11. In the plea colloquy conducted by the court, the only related inquiry is
7 “and you’ve been over this Statement of Plea of Guilty with your attorney and the
8 interpreter.” No English language response to the question is given by the interpreter on
9 the recording, although the defense attorney and the interpreter appear to speak to him in
10 Spanish after the question is asked and he says “sí.” The Spanish language comments are
11 mostly unintelligible. During the course of the plea hearing, the defendant hesitates in
12 answering the judge’s questions and appears non-responsive on a number of occasions.
13 His attorney appears to speak with him repeatedly in Spanish but those comments are
14 mostly unintelligible.
15

16 12. Sentencing was scheduled for 10/13/14, however, on that date the hearing
17 was continued to 11/5/14. On 11/5/14, Mr. Terry moved for a second SSOSA evaluation
18 and one was ordered. The scheduling order notes that the defendant waived his right to
19 be sentenced within 40 days of conviction.
20

21 13. On November 5, 2013, Omnibus hearing was held and the court granted
22 authority to take deposition of witnesses that refuse to discuss the case with defendant’s
23 attorney. Defense counsel indicated that the defendant would rely on alibi and would
24 provide a list of alibi witnesses and indicated that the defense would not rely on a defense
25 of insanity or diminished capacity at the time of the offense.
26

1 14. On 11/5/14, the sentencing date was moved to 12/12/14. On 12/1/14, Mr.
2 Terry filed a Motion and Declaration for Approval of Second SSOSA Evaluator, citing
3 the need for a Spanish speaking evaluator and noting Mr. Gonzalez' "rural speech" and
4 the likelihood of inaccurate conveyance of his statements, though translated correctly.
5 *See Court File.* It is my understanding that Clark County Indigent Defense was unwilling
6 to authorize payment for these services directly and that Mr. Gonzalez did not have his
7 own funds to pay for a second SSOSA evaluation.
8

9 15. The 12/12/14 hearing on the motion regarding a second SSOSA evaluator
10 was stricken and another hearing scheduled for 12/23/14.

11 16. Mr. Gonzalez' family retained me to speak with him regarding his
12 situation on or about 12/17/2014. Around that time Mr. Gonzalez, was extremely
13 confused about the status of his case. I obtained court documents from the court file and
14 met with Mr. Gonzalez. I have worked with hundreds of uneducated Spanish speakers in
15 the criminal courts over the last twenty or so years, as a certified court interpreter and as a
16 licensed attorney. I spoke with Mr. Gonzalez and was able to discuss, using appropriate
17 terminology, his situation with him. I have no difficulties whatsoever with understanding
18 Mr. Gonzalez in his native Spanish language.
19

20 17. Mr. Gonzalez, before the hearing on 12/23/14, was surprised about what
21 had transpired and had grave concerns about his situation. He had not understood the
22 ramifications or the real nature of the plea agreement and was not aware that he would be
23 likely be facing an agreed 136 months if SSOSA was not approved by the court. At the
24 time of the plea, Mr. Gonzalez believed he would likely get one year and at some point,
25 after the plea, understood from John Terry that he could end up with five years or so. At
26

1 that point, he was also seriously concerned about the apparent lack of investigation in the
2 matter.

3 18. On December 23, 2014, Mr. Gonzalez filed a pro se motion to
4 discharge/substitute counsel and continue sentencing. His declaration, bearing a
5 declaration by court certified interpreter Korinne Wells that she interpreted the document
6 for the defendant into his own language, indicates that Mr. Gonzalez did not believe the
7 plea offer was read to him, that Mr. Terry's Spanish language skills were imperfect and
8 that he did not understand all of his rights, the proceedings or the full implications or
9 consequences of the documents that Mr. Terry had him sign. *See* Court File. He
10 indicated that he was not satisfied with Mr. Terry as counsel and did not believe he was
11 able to adequately defend him or represent his interests. Mr. Gonzalez indicated that he
12 wanted to hire the undersigned and asked for a substantial continuance, of eight weeks, to
13 give new counsel the opportunity to fully review and prepare the case and help him make
14 an informed decision about how to proceed.

15 19. On 12/23/14, a hearing was held and the undersigned counsel, Nicole
16 Dalton, appeared and requested the opportunity to be heard, as a courtesy, and without
17 filing notice of appearance. I informed the court that Mr. Gonzalez was not fully aware
18 of the import of the things that had happened in his case, including the entry of plea and
19 that he was fairly confused about what would be going on from that point forward. I
20 indicated that I would be willing to represent him in the matter but only if the court
21 granted his pro se motion and granted a continuance sufficient to obtain full materials,
22 investigate the case, and determine how to proceed, at least six to eight weeks. Mr. Terry
23 indicated that he believed it was a "mandatory withdrawal" and did not object. However,
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1 the prosecution objected. Mr. Terry at one point indicated that he thought it would
2 “behoove the court to give them eight weeks because Mr. Gonzalez-gonzalez is very slow
3 to understand things... that would be fair... because... he has a third grade education and
4 he did go to Western State Hospital.” Mr. Terry also indicated that he doesn’t understand
5 things as quickly as other people. He stated, “we had to read the plea for him, with him I
6 think three or four sessions” and referenced initially going in to do a change of plea and
7 Mr. Gonzalez Gonzales having a breakdown at the first change of plea.

9 After continued argument by the prosecutor and discussion with the court, the
10 court stated that four weeks would be the maximum they would continue the matter, in
11 part, due to the judge’s pending retirement. Although I suggested to the court that the
12 court engage in a colloquy with Mr. Gonzalez to determine whether to grant his motion to
13 discharge counsel, the court never engaged in a meaningful colloquy with him regarding
14 his request. After I indicated that I was not willing to substitute in with only a four week
15 continuance and a pending vacation, the court indicated that he could not release Mr.
16 Terry unless he was being fired. I again suggested that the court speak with Mr.
17 Gonzalez. I also indicated that I would need the six to eight weeks to figure out whether
18 there was an issue with having entered into the plea. After indicating I would need more
19 than four weeks, the court addressed Mr. Gonzalez, stating:

21
22 “At this time you have indicated to me through your motion, your pro se motion –
23 that you do not wish to have Mr. Terry continue to represent you. Miss Dalton has
24 indicated to me at this time that as she is not prepared to substitute in and
25 represent you your options are to continue with Mr. Terry or you’d have to retain
26 someone else to represent you or you’d have to represent yourself. Now I have
scheduled the sentencing on this matter, which has been continued since October,
or August and I’m not willing to continue it beyond January 20th, this matter must
be resolved. That’s a Tuesday. Yeah. Yeah but just (inaudible) docket, it’s a
Tuesday. Oh.”

1
2 (punctuation and spacing modified for clarity). The prosecutor then discusses the time
3 and the date, then the discussion is as follows:

4 Judge: "So that's, those, that's the date you will be continued to is January 26th at
5 1:30. Now, Mr. Gonzalez, you understand your options here?"

6 Mr. Gonzalez "No."

7 Judge: "No. You want Mr. Terry to continue to represent you?"

8 Mr. Gonzalez (through the interpreter): "He's had a, he's had a lapse or problem
9 or something that I'd like to get cleared, if possible."

10 Judge: "What's the problem?"

11 Mr. Gonzalez (through the interpreter): That there's a, that there's a charge that's
12 not correct and I'd like to get it set aside.

13 Judge: Well, do you want Mr. Terry to represent you or not?

14 Mr. Gonzalez (through the interpreter): She's not going to be able to, right?

15 Judge: Apparently, she's not willing to do so.

16
17 I then interrupted and again requested eight weeks, sufficient time to review everything.
18 Then, the prosecutor complained about the delay and the Judge stated:

19 "Well, yes. And he pled guilty to that. The presumption that he's plead guilty by
20 statute, we have to have the sentencing within 40? Uh 45 days. 45 days and it's
21 been way beyond that. And there's reasons for that. But the bottom line is if you
22 cannot commit to that, his options are to proceed with Mr. Terry hoping that you
23 get up to speed or proceed on his own. At this time I'm not inclined to release
24 Mr. Terry from representation.

25 Mr. Terry: "I'm willing to still represent him your honor, that's not an issue."

26 Judge: "Yeah. Uh, Mr. Terry is still his attorney unless Mr. Gonzalez says he
wants to represent himself, which I would not recommend."

Mr. Gonzalez (through the interpreter): "I'd just like a, I'd just like a, um, it's
like a, you know, fault on my part --"

Mr. Terry: "Your Honor, if I could talk to him real quick."

Judge: "Okay."

Mr. Terry and Mr. Gonzalez appear to talk at length but the conversation is
unintelligible on the recording.

Mr. Terry: "Yeah, don't talk about the facts in the case (more Spanish language
conversation between the two).

Dalton: One question for the court, your Honor. Um, at this point in order to
make a final decision about whether that grants me enough time, I would need to
be able to review documents and get some idea what I'm going to do.

1 Judge: "Based upon, uh, not hearing any objection from Mr. Gonzalez, as Mr.
2 Terry is still his attorney, if there's a motion prior to the 26th, that would have to
3 be considered but now Mr. Terry is his attorney. Ms. Dalton indicated that she
4 needs more time and she's not willing to substitute in, so he still has Mr. Terry.
5 Now, Mr. Terry can proceed to move to have the change of plea set aside or not.
6 Ms. Banfield will get the presentence report done and I anticipate on January 26th
7 we will proceed to sentencing, unless something else comes up before then.
8 That's all we can do.

9 Mr. Gonzalez was not given another chance to speak during the hearing but the judge
10 indicates that, apparently in regards to the scheduling notice, "the defendant was given
11 the opportunity to sign and has declined to do so." The prosecutor requests that the court
12 ask Mr. Gonzalez whether he understood the court interpreter and he responded
13 affirmatively.

14 20. A letter was filed with the court in Mr. Gonzalez own hand, in the Spanish
15 language, bearing his signature, on December 30, 2014, wherein he advised the court
16 that: no investigation was conducted and he was worried about the investigation; and Mr.
17 Terry had been given letters of character reference to investigate but that he did not speak
18 with anyone; he stated he was not happy with Mr. Terry's lack of investigation and that
19 he had been told that the prosecutor gave him an offer and that's why he agreed to
20 continue. No written translation of the document exists in the court file.

21 21. A pre-sentence investigation took place and was filed with the court on
22 January 12, 2015. The report contains the content of letters submitted by the victim and
23 her two sisters, who also claim victimization. It does not appear that Mr. Terry provided
24 any letters, statements or materials to the writer of the report as the report contains no
25 reference to any such materials. The report indicates that Mr. Gonzalez Gonzalez was
26

1 interviewed in person with Mr. Terry and a certified court interpreter present. The writer
2 notes that:

3 Gonzalez Gonzalez proved a poor historian of personal events and timelines.
4 Collection of information over the course of the interview became a very
5 disjointed process making a coherent summary difficult to present.

6 *See Court File, Pre-Sentence Investigation.* The report writer concluded that Mr.
7 Gonzalez Gonzalez was not an appropriate candidate for community based treatment and
8 supervision at that time and recommended the high end of the sentencing range.

9 22. Sentencing took place on January 26, 2015. The court appears to have
10 made no inquiries as to whether Mr. Gonzalez was still dissatisfied with counsel's
11 performance. At sentencing, although the plea agreement specified that the defense was
12 free to argue for SSOSA, Mr. Terry filed no sentencing memorandum, called no
13 witnesses, and filed no materials in support of his request that the court grant Mr.
14 Gonzalez Gonzalez the SSOSA sentencing option. His remarks were brief.

15 23. Despite the fact that Mr. Terry had more than 19 character reference
16 letters in his file, he provided none to the court for the purpose of sentencing. The court
17 file contains only a pre-sentence report and three letters from the alleged victim and her
18 two sisters, urging the court to refuse to grant SSOSA.
19

20 24. Mr. Terry made limited comments during sentencing. He indicated that
21 lack of Spanish treatment providers was a problem with SSOSA. He attributed the
22 failure to obtain a second evaluation to a provider in Bellevue indicating that treatment
23 would not be effective without an interpreter. Focusing on a apparent request that the
24 court allow an Oregon provider if the court orders SSOSA, characterized the Hardinger
25

1 report as being based on “the risk factor” of a lack of viable treatment option “absent the
2 court allowing that exception.”

3 He spoke of the mental deterioration, stated Mr. Gonzalez Gonzalez wanted to
4 take responsibility right away, noted he passed the polygraph even though his version of
5 facts did not align with the alleged victim’s version, and spoke of mental health affecting
6 his memory. Mr. Terry referenced alcohol use during the time the abuse occurred and
7 indicated that he had stopped drinking several years ago. Mr. Terry noted that Mr.
8 Gonzalez Gonzalez came from a “humble background” and attended school through the
9 third grade but didn’t have any formal education. He commented that he “wasn’t
10 exposed to social norms... wasn’t... given the moral compass that the majority of our
11 world’s population receives through... public education” and that he grew up in Mexico.
12 Mr. Terry also indicated that Mr. Gonzalez Gonzalez had revealed during the polygraph
13 that he was himself a victim of abuse at an early age and asked the court to consider the
14 SSOSA or the low end of the range, given the “tragic circumstances.” At sentencing, the
15 judge imposed the high end of the range and denied the SSOSA request.
16
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18 25. Mr. Terry did not obtain a full, independent psychological evaluation of
19 Mr. Gonzalez Gonzalez, after the competency examination had revealed that he had
20 borderline intellectual functioning. Later, only during the polygraph, Mr. Terry
21 discovered that he was also a victim of child sexual abuse at a young age. That fact very
22 well may have been revealed if an independent psychological evaluation had been
23 sought. Thus, no such independent, defense oriented evidence could be presented to the
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1 court. As RCW 9.94A.535(1)(e)² provides for the court to sentence below the standard
2 range under mitigating circumstances, a full psychological evaluation with this aim
3 would likely have been at least helpful at sentencing and would have enabled defense
4 counsel to request a sentence below the standard range, despite a possible inability to
5 qualify for SSOSA.
6

7 B. Investigation of the Underlying Incidents

8 26. After providing legal release and requesting all documents relating to Mr.
9 Gonzalez' case, Mr. Terry provided a copy of his file in digital format. The documents
10 and materials provided included the following materials:

- 11 a. 86 pages of discovery;
12
13 b. A character reference letter signed by Jose de Jesus Bramasco
Espinoza;
14
15 c. Character reference letters by: 1) Cipriano Cruz; 2) Bavila Rivas
Flores; 3) Rosalio Gonzalez Lopez; 4) Gloria Lopez Rodriguez;
16 5) Roberto Huizar Ruiz; 6) Ana Vianey Leon Castro; 7) Gilberto
Gonzalez; 8) Angelita Ramirez Lopez; 9) Araceli Gonzalez; 10)
17 Rubicelia Carlos; 11) Maria Azucena Gonzalez; 12) Mariela Ibarra
Gonzalez; 13) Martha Sanchez; 14) Silvia Sanchez; 15) Elia
18 Sanchez; 16) Melquiades Carlos; 17) Ramon Samaniego Ibarra;
18) Valentin Gonzalez Fidela Gonzalez;
19
20 d. 9/11/2014 DOC intake sheet;
21
22 e. 1/29/2014 prosecution offer of resolution;
23
24 f. San Blas, Mexico, official criminal history, stating none;
25
26 g. Letter from Mr. Gonzalez' niece;

² The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded. RCW 9.94A.535(1)(e).

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- h. Sentencing grid, RCW 9.94A.537, and 9.94A.535 printouts;
- i. Dr. Hartinger's SSOSA evaluation;
- j. Prosecutor's public disclosure request response to Maggie Smith Evansen regarding Mr. Gonzalez;
- k. Six pages of scheduling e-mails for interpreter services, including:
 - 1) 1/30/14 request for interpreter for jail meeting for 2/3/14 without response;
 - 2) 7/21/14 request for interpreter at the jail and affirmative response for 7/23/14; and
 - 3) 7/11/14 request for interpreter at the jail for 9am and response stating that 9:45 could be scheduled.
- l. Draft change of plea (signed only by court interpreter Victor Montano on 2/3/2014);
- m. February 27, 2014, WSH evaluation;
- n. June 20, 2014 WSH evaluation;
- o. October 10, 2014 polygraph results;
- p. Polygraph bill;
- q. Video of Children's Justice Center (CJC) room interview with alleged victim;
- r. Video of CJC interview with Lexany Gonzalez, four year old daughter of Mr. Gonzalez. The transcript is a total of 37 pages.
- s. E-mail correspondence with Indigent Defense Coordinator, Ann Christian, regarding requesting funds for investigative services.
- t. Letters to current counsel regarding my inquiries.

27. I inquired of Mr. Terry on June 3, 2015 whether a defense investigator was retained in this matter, and requested all notes and correspondence relating to the investigation, as well as file notes to establish what work was done and when it was done.

1 Mr. Terry responded by noting that no indigent defense authorization was ever obtained
2 because “first, he is a landowner in Mexico, and I was not sure he would qualify.
3 Second, he wanted a good deal and was adamant that he did not want a trial. He wanted
4 me to pursue SSOSA. I did explore this with Ann Christian for a short time, but given
5 instructions from Javier, I did not obtain the authorization.” Nonetheless, Ms. Christian
6 indicates in her e-mail of 9/30/13 that “[s]ince judges determine ‘indigence’, I appreciate
7 you filing a motion with the court, requesting he be determined to be indigent for
8 purposes of non-attorney services being paid by the county. Once the court signs an
9 order, just submit a Request for investigator to me.” Mr. Terry provided no handwritten
10 file notes or memoranda relating to investigation.
11

12
13 28. The court file shows no request for a determination of indigence by Mr.
14 Terry. It is my understanding that Ms. Christian will make the appropriate forms
15 available to those who ask for the purpose of requesting *Punsalan* funds. Whether or not
16 Mr. Terry believed he would qualify for indigent defense funds because of property in
17 Mexico, to which Mr. Gonzalez had no direct access, Mr. Gonzalez was incarcerated and
18 unemployed at the time.

19 29. From the materials provided, it also does not appear that Mr. Terry ever
20 documented investigation he may have conducted on his own. Mr. Terry simply failed to
21 obtain the services of a professional investigator to aid in the investigation of the charges
22 and does not appear to have conducted investigation beyond interviewing the alleged
23 victim, and obtaining the few documents, letters of character reference and statement of
24 criminal history, that were provided by Mr. Terry from his file.
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30. It appears that Mr. Terry never conducted interviews or depositions with the listed state’s witnesses in the police report, other than the alleged victim, nor did he attempt to interview outside defense witnesses.

31. It appears that on November 1, 2014, Mr. Terry interviewed the alleged victim in this matter, L.G.M.. The transcript of that interview appears to be contained in the discovery provided by the prosecutor in this matter. The video recording of the interview with the alleged victim in this matter, L.G.M., contained a very detailed description of multiple alleged acts of abuse. It appears that Mr. Terry never sought to transcribe this video as no transcript was ever provided with the requested file contents.

32. Transcripts of video interviews are an extremely important tool for a defense attorney or investigator as it is crucial to test the complaining witness’ version of events against that originally reported to law enforcement. Contradictions between statements in the original interview with law enforcement, the defense interview, and statements at trial are powerful impeachment tools. Obtaining transcripts of law enforcement interview videos is standard practice for use in interviewing state’s witnesses. It appears that the prosecution obtained a transcript of Mr. Terry’s interview, yet Mr. Terry never obtained a transcript of the law enforcement interviews with witnesses.

33. The law enforcement interview at times referenced an earlier, apparently unrecorded interview with the alleged victim, and prompts the witness more than once to repeat earlier statements, for example: “Do you remember telling me that, you were in a car, you were in the front seat and he reached out and touched you? Yeah, I remember

1 that.” (CJC Video, Oct. 14, 2013 at 13:20). Nonetheless, it appears that Mr. Terry never
2 questioned the state’s law enforcement witnesses regarding the case and never attempted
3 to explore the possible use of leading or suggestion in the context of obtaining
4 statements, an appropriate and crucial defense tactic.
5

6 34. The alleged victim, when asked by the detective for details, at one point
7 states that everything gets mixed up and states that it gets mixed up because it happens so
8 many times. Mr. Terry does not appear to have questioned her about being mixed up
9 about details, which would have been an appropriate and important defense tactic, given
10 the prior statement.

11 35. During the 10/14 interview, when asked about counseling, the alleged
12 victim states that she spoke with an attorney about the issue but couldn’t remember her
13 name. Mr. Terry does not appear to have questioned her about being further about those
14 details or about whether she had, in fact retained or spoken with an attorney, which
15 would have been an appropriate and important defense tactic going to possible motive,
16 given the prior statement.
17

18 36. Rather than using open-ended questions about the age or dates on which
19 the alleged victim lived at residences in Washington and allegedly experienced incidents
20 of abuse, Mr. Terry used leading questions, apparently referencing time frames already
21 given in police reports, such as: “Okay and um, how old were you when you ah – so th-
22 and by then you had turned 12.” She answered, “Yeah I had turned 12 when we were at
23 the Battle Ground house.” This type of leading question tends to reaffirm the witness’
24 earlier version of events, rather than independently testing the veracity of claims made
25 earlier to law enforcement or others.
26

1 37. Mr. Terry did not obtain the services of an independent investigator to aid
2 in interviewing witnesses nor did he obtain the agreement of the prosecution to stipulate
3 to the admissibility of the tape recorded interview. This is problematic, because if the
4 witness contradicted statements made during interview, and denied that she had made
5 them, Mr. Terry may not have been able to impeach her regarding the prior inconsistent
6 statement without testifying himself, thus, impermissibly becoming a witness in the case.
7 Failing to properly assure the evidentiary value of an interview with a material, key
8 witness, creates unnecessary risk and fails to take advantage of a key defense tool
9 available in Washington. In sum, a review of the interview of the alleged victim
10 conducted by Mr. Terry reveals an ineffective approach that falls short of appropriate
11 investigative technique.
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14 I certify or declare, under penalty of perjury under the laws of the State of
15 Washington that, to the best of my knowledge, information, and belief, the foregoing is
16 true and correct.

17 SIGNED AND DATED this 22nd day of January, 2016, in Vancouver, Washington.



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19 _____
NICOLE T. DALTON, WSBA#38230
Attorney for Defendant

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ARGUMENTS

A. This Motion is Timely

This case is being submitted for consideration within the one year time limit on collateral attack established by RCW 10.73.090.

B. Washington Court Rule CrR 7.8 Allows the Court to Vacate the Judgment and Sentence in this Case

Pursuant to CrR 7.8(b), Mr. Gonzalez has moved this court to withdraw the guilty plea and vacate the judgment and sentence entered against him. “A motion in the trial court under CrR 7.8(b) is the functional equivalent of a personal restraint petition in the Court of Appeals.” *State v. Madsen*, 153 Wn. App. 471, 475, 228 P.3d 24 (2009), *rev. denied* 168 Wn.2d 1064 (2010).

1. The Court Should Hold a Fact Finding Hearing to Determine the Nature and Effectiveness of Counsel’s Communications and Explanations to Mr. Gonzalez Gonzalez

The Washington Supreme Court rejected an attempt by the Court of Appeals to channel all post-conviction remedies into the PRP process, holding that the Supreme Court, the Court of Appeals and the superior court have concurrent original jurisdiction for determining post-conviction petitions. *Toliver v. Olsen*, 109 Wn.2d 607, 746 P.2d 809 (1987); *see also Madsen, supra* (rejecting argument that a trial court does not have authority under CrR 7.8 to grant post-conviction relief). CrR 7.8(c)(2) does allow for transfer to the Court of Appeals in a sub-set of cases. The rule indicates that where the motion is not time barred and either, “(i) the defendant has made a substantial showing

1 that he or she is entitled to relief or (ii) resolution of the motion will require a factual
2 hearing.”

3 Regardless of whether the court determines that the defendant has not made a
4 substantial showing that he or she is entitled to relief, the clear meaning of the statute is
5 that if resolution of the matter cannot be had on the facts in the court record, i.e. questions
6 of fact remain outside of the record crucial to the determination of the motion on the
7 merits, the court is not required to transfer the motion to the Court of Appeals.
8 Additionally, CrR 7.8(c)(3) requires that if the court does not transfer the motion to the
9 court of appeals, that the court “shall enter an order fixing a time and place for hearing
10 and directing the adverse party to appear and show cause why the relief asked for should
11 not be granted.” Thus, if questions of fact remain outside of the record, crucial to the
12 determination of the motion, the court is obligated to schedule a time and place for
13 hearing.
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16 A court may relieve a party from a final judgment on the following grounds:

17 On motion and upon such terms as are just, the court may
18 relieve a party from a final judgment, order, or proceeding for the
19 following reasons:

- 20 (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity
in obtaining a judgment or order;
- 21 (2) Newly discovered evidence which by due diligence could not have
been discovered in time to move for a new trial under rule 7.5;
- 22 (3) Fraud (whether heretofore denominated intrinsic or extrinsic),
misrepresentation, or other misconduct of an adverse party;
- 23 (4) The judgment is void; or
- 24 (5) Any other reason justifying relief from the operation of the
judgment.

25 CrR 7.8(b). The court may vacate a judgment under CrR 7.8(b)(5) under “extraordinary
26 circumstances not covered by any other section of the rule.” *State v. Olivera-Avila*, 89

1 Wn. App 313, 319, 949 P.2d 824 (1997) (*citing State v. Brand*, 120 Wn.2d 365, 369, 842
2 P.2d 470 (1992)). These circumstances must relate to fundamental, substantial
3 irregularities in the court's proceedings or to irregularities extraneous to the court's
4 action." *Olivera-Avila*, 89 Wn. App at 319 (citations omitted).

5
6 Relief will be granted if the Petitioner establishes actual and substantial prejudice
7 resulting from a violation of his or her constitutional rights or a fundamental error of law.
8 *In the Matter of the Personal Restraint of Brett*, 142 Wn.2d 868, 16 P.3d 601 (internal
9 cites omitted). Ineffective assistance of counsel constitutes a violation of a defendant's
10 constitutional Sixth Amendment right and results in a manifest injustice warranting plea
11 withdrawal and relief under CrR 7.8(b). *Id.* at 674; *see also State v. Jamison*, 105 Wn.
12 App. 572, 590, 20 P.3d 1010, *review denied*, 144 Wn.2d 1018 (2001); *State v. Taylor*, 83
13 Wn.2d 594, 596, 521 P.2d 699 (1974); *State v. Martinez*, 161 Wn. App. 436, 440-441,
14 253 P.3d 445 (2011) (Ineffective assistance of counsel justifies relief under CrR
15 7.8(b)(5)).

16
17 Under CrR 7.8(b)(5), the court may grant relief from judgment for "[a]ny other
18 reason justifying relief from the operation of the judgment." *Martinez*, 161 Wn. App. at
19 441 (*quoting* CrR 7.8(b)(5)). "[A] defendant's counsel cannot properly evaluate the
20 merits of a plea offer without evaluating the State's evidence." *State v. A.N.J.*, 168 Wn.2d
21 91, 109 (2010) (*citing State v. Bao Sheng Zhao*, 157 Wn.2d 188, 205, 137 P.3d 835
22 (2006) (Sanders, J., concurring); *see also State v. Sandoval*, 171 Wn.2d 163, 169, 249
23 P.3d 1015 (2011) (Counsel's ineffective assistance justifies relief because counsel's faulty
24 advice can render a defendant's guilty plea involuntary or unintelligent.) Here, counsel
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1 was ineffective and Mr. Gonzalez Gonzalez valid request to substitute counsel was
2 ignored. Either of these grounds may serve as a basis to grant relief under CrR 7.8(b).

3 C. Ineffective Assistance of Counsel Impermissibly Violated Mr. Gonzalez’
4 Constitutional Rights under *Strickland v. Washington*

5 An accused person is constitutionally guaranteed reasonably effective
6 representation by counsel. U.S. Const. Amend. 6; *In re Brett*, 142 Wn.2d at 674;
7 *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
8 The purpose of the requirement for effective assistance of counsel is to ensure a fair and
9 impartial trial.” *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). Denial
10 of the constitutional right to effective assistance of counsel constitutes a fundamental and
11 substantial irregularity in the proceedings that warrants redress pursuant to CrR 7.8.
12 *State v. Martinez*, 161 Wn. App. at 440-441 (2011).

13 A claim of ineffective assistance presents a mixed question of fact and law
14 reviewed *de novo*. *Martinez*, 161 Wn. App. at 441 (2011) (citing *State v. Sutherby*, 165
15 Wn.2d 870, 883, 204 P.3d 916 (2009)); *Strickland*, 466 U.S. at 687; *Thomas*, 109 Wn.2d
16 at 226. A defendant possesses the right to effective assistance of counsel in criminal
17 proceedings. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 684-86, 104 S. Ct. 2052,
18 80 L. Ed. 2d 674 (1984)). Counsel is presumed effective. *Id.* (citing *State v. McFarland*,
19 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)).

20 To prove ineffective assistance of counsel, the Petitioner must show that: (1)
21 defense counsel's representation was deficient, falling below an objective standard of
22 reasonableness; and (2) the deficient performance prejudiced the defendant. *Id.* (citing
23 *Sutherby*, 165 Wn.2d at 883; *Strickland*, 466 U.S. at 687). The first prong is met by
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1 showing that defense counsel's performance was not reasonably effective under
2 prevailing professional norms. The second prong is met by showing that, but for
3 counsel's errors, the result would have been different. *State v. McFarland*, 127 Wn.2d
4 322, 334-35, 899 P.2d 1251 (1995). "To demonstrate [prejudice], 'a defendant need not
5 show that counsel's deficient conduct more likely than not altered the outcome in the
6 case.'" *Strickland*, 466 U.S. at 693; *United States v. Kwan*, 407 F.3d 1005, 1017 (9th Cir.
7 2005). The burden of proof is a preponderance of the evidence. *Brett* 142 Wn.2d at 674;
8 *In re Personal Restraint of Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990).

9
10 The inquiry in determining whether counsel's performance was constitutionally
11 deficient is whether counsel's assistance was reasonable considering all of the
12 circumstances. *Brett*, 142 Wn. App. at 873 (citing *Strickland*, 466 U.S. at 689-90). To
13 provide constitutionally adequate assistance, "counsel must, at a minimum, *conduct a*
14 *reasonable investigation* enabling [counsel] to make informed decisions about how to
15 best represent [the] client." *Id.* (citing *Strickland*, 466 U.S. at 689-90); *see also Hendricks*
16 *v. Vasquez*, 974 F.2d 1099, 1109 (9th Circuit) (1992) (vacating conviction); *U.S. v.*
17 *Burrows*, 872 F.2d 915, 918 (9th Cir.) (1989) (reversing conviction for failure to
18 investigate a mental defense); *Evans v. Lewis*, 855 F.2d 631, 637 (9th Cir.) (1988).

19
20 A criminal defendant has the right under U.S. Const, amends. 6 & 14 and Wash.
21 Const, art. 1, § 22, to effective assistance of counsel. *Strickland v. Washington*, 466 U.S.
22 668, 685-90, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). While counsel is not expected to
23 perform flawlessly, counsel is required to meet an objectively reasonable minimum
24 standard of performance. *Id.* Evidence of ineffective assistance includes the failure to
25 conduct appropriate investigations. *Strickland*, 466 U.S. at 691 ("[C]ounsel has a duty to
26

1 make reasonable investigations or to make a reasonable decision that makes particular
2 investigations unnecessary. In any ineffectiveness case, a particular decision not to
3 investigate must be directly assessed for reasonableness [under] all the circumstances ").
4 *See also Duncan v. Ornoski*, 528 F.3d 1222, 1234-35 (9th Cir. 2008) (citing cases).
5

6 These duties exist regardless of counsel's personal feelings as to the guilt or
7 innocence of his or her client. A lawyer who believes his or her client will certainly be
8 convicted still must investigate before trial. *See National Legal Aid and Defender*
9 *Association, Performance Guidelines for Defense Representation, Guideline 4.1(a)*
10 ("Counsel has a duty to conduct an independent investigation regardless of the accused's
11 admissions or statements to the lawyer of facts constituting guilt."); *American Bar*
12 *Association, The Defense Function, Standard 4- 4.1* ("Defense counsel should conduct a
13 prompt investigation of the circumstances of the case and explore all avenues leading to
14 facts relevant to the merits of the case and the penalty in the event of conviction. The
15 investigation should include efforts to secure information in the possession of the
16 prosecution and law enforcement authorities. The duty to investigate exists regardless of
17 the accused's admissions or statements to defense counsel of facts constituting guilt or the
18 accused's stated desire to plead guilty.").

19
20
21 While considerable discretion is given to lawyers to make strategic decisions
22 about what to investigate, [w]hen defense counsel merely believes certain testimony
23 might not be helpful, no reasonable basis exists for deciding not to investigate." *Duncan*
24 *v. Ornoski*, 528 R3d at 1234-35 (emphasis in original). Accordingly, no deference is
25 required to tactical decisions made by counsel where counsel fails to conduct appropriate
26

1 investigations prior to making the tactical decision. *Rios v. Rocha*, 299 F.3d 796, 805-11
2 (9th Cir, 2002).

3 Here, Mr. Terry simply failed to conduct an adequate investigation. From the file
4 provided by Mr. Terry, it appears that only one state's witness was ever interviewed, the
5 alleged victim. This falls far short of a reasonable investigation and deprived Mr.
6 Gonzalez of the ability to make a knowing, intelligent and informed plea. Had counsel
7 conducted an appropriate investigation, it would very likely have shown substantial
8 doubts regarding Mr. Gonzalez' involvement in the allegations and trial would have been
9 a reasonable alternative. Mr. Gonzalez would have chosen to go to trial, rather than plead
10 guilty, had his counsel indicated that he had a reasonable chance of prevailing. Due to
11 the lack of investigation, Mr. Gonzalez had no confidence in his lawyer and was told he
12 could not even retain another lawyer to replace counsel. Thus, he felt trapped and
13 accepted the plea out of fear.
14
15

16 D. Defense Attorneys Have Both A Right And An Obligation To Conduct Interviews
17 Of Witnesses In Preparation For Trial

18 A defendant has a constitutional right to a fair trial. U.S. Const. Amend. 6;
19 Washington State Const. Art. 1, sect. 22; *State v. Burri* 87 Wn.2d 175, 550 P.2d 507
20 (Wash. 1976). "A fair trial contemplates the defendant will not be prejudiced by the
21 denial to him of his right to counsel and compulsory attendance of witnesses." *Burri*, 87
22 Wn.2d at 180, 550 P.2d at 510. "...[T]hese rights include the opportunity to prepare for
23 trial." *Id.* Further, "[t]he constitutional right to have the assistance of counsel . . . carries
24 with it a reasonable time for consultation and preparation." The *Burri* court found it "the
25 duty of appointed counsel to make a full and complete investigation of both the facts and
26

1 the law in order to advise his client and prepare adequately and efficiently to present any
2 defenses he might have to the charges against him.” Id. at 180, 550 P.2d at 510-11.

3 “The right to offer the testimony of witnesses, and to compel their attendance, if
4 necessary, is in plain terms the right to present a defense, the right to present the
5 defendant’s version of the facts as well as the prosecution’s to the jury so it may decide
6 where the truth lies...This right is a fundamental element of due process of law.” Id. at
7 180-81, 550 P.2d 511-12 (citations omitted). “The guaranty of compulsory process is a
8 ‘fundamental right and one ‘which the courts should safeguard with meticulous care.’”
9 Id. “Moreover, ... the defendant’s right to compulsory process includes the right to
10 interview a witness in advance of trial.” Id.

11
12 The attorney for the defendant not only had the right, but it was his plain
13 duty towards his client, to fully investigate the case and to interview and
14 examine as many as possible of the eye-witnesses to the assault in
15 question, together with any other persons who might be able to assist him
16 in ascertaining the truth concerning the event in controversy...The
17 defendant...has the constitutional right to have compulsory process for
obtaining witnesses to testify in his behalf, he has also the right either
personally or by attorney to ascertain what their testimony will be.

18 Id. at 181, 550 P.2d at 512-13. Once interviewed, the witness is then subject to cross-
19 examination and impeachment at trial should his testimony be at odds with his prior
20 statements. See State v. Campbell, 103 Wn.2d 1, 19, 691 P.2d 929 (Wash. 1984) (En
21 Banc).

22 Failure to conduct an adequate investigation deprives the defendant of the ability
23 to make a knowing and intelligent plea. “The degree and extent of investigation required
24 will vary depending upon the issues and facts of each case, but we hold that at the very
25 least, counsel must reasonably evaluate the evidence against the accused and the
26

1 likelihood of a conviction if the case proceeds to trial so that the defendant can make a
2 meaningful decision as to whether or not to plead guilty.” *State v. A.N.J.*, 168 Wn.2d at
3 111-112 (2010).

4 Here, from the time defense counsel filed notice of appearance on September 25,
5 2013, to the date of plea on August 1, 2014, a period of approximately nearly one year,
6 only one witness was ever interviewed by the defense. The record does not appear to
7 indicate that defense counsel ever requested funds to an investigator appointed to assist
8 with this extremely serious matter. Even though counsel was hired by Mr. Gonzalez
9 Gonzalez, he may well have a constitutional right to expert investigation services in
10 support of his defense.
11

12 Justice cannot be equal if, as a result of poverty, a defendant is unable to
13 participate meaningfully in the judicial proceeding that determines whether he or she
14 remains at liberty or is confined. *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985).
15 See *State v. Hoffman*, 116 Wn.2d 51, 804 P.2d 577 (1991); *State v. Cunningham*, 18
16 Wn.App. 517, 569 P.2d 1211 (1977). Mr. Gonzalez Gonzalez was incarcerated,
17 unemployed, and quite possible indigent, with no access to any alleged property outside
18 of the country. The plain language of CrR 3.1(f) makes no distinction between appointed
19 and private counsel. *State v. Punsalan*, 156 Wn.2d 875, 878 (2006). CrR 3.1(f) provides:
20 “A lawyer for a defendant who is financially unable to obtain investigative, expert or
21 other services necessary to an adequate defense in the case may request them by a motion
22 to the court.”
23
24

25 Additionally, despite having the power under court rules to obtain permission to
26 conduct depositions of those witnesses, in the event they would not cooperate with the

1 defense, the defense here never attempted to obtain such permission or subpoena
2 witnesses to deposition. *See* CrR 4.6(a). Instead of following established procedures to
3 seek available help, the defense simply failed to investigate by seeking evidence,
4 interviewing key witnesses or searching for potential defense witnesses.
5

6 1. *Where A Defense Attorney Fails To Conduct Adequate Investigation His*
7 *Performance May Constitute Ineffective Assistance Of Counsel*

8 Both the Sixth Amendment to the United States Constitution as well as Article I,
9 Section 22 of the Washington State Constitution guarantee the right to effective
10 assistance of counsel in criminal proceedings. *Strickland v. Washington*, 466 U.S. 668,
11 684-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Hendrickson*, 129 Wn.2d 61, 77,
12 917 P.2d 563 (Wash. 1996). Courts find counsel ineffective when his or her performance
13 falls below an objective standard of reasonableness, and the defendant thereby suffers
14 prejudice. *Strickland v. Washington*, 466 U.S. at 687-88. Courts find prejudice when
15 “there is a reasonable probability that, but for counsel’s errors, the result of trial would
16 have been different.” *State v. Hendrickson*, 129 Wn.2d at 78 (citing *State v. Thomas*, 109
17 Wn.2d 22, 226, 743 P.2d 816 (1987)).
18

19 If trial counsel’s conduct can be characterized as legitimate trial strategy or
20 tactics, it cannot serve as a basis for a claim that the defendant received ineffective
21 assistance of counsel. *State v. Goldberg*, 123 Wn. App 848, 99 P.3d 924 (Division 3.
22 2004); *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002) (citing *State v. Adams*,
23 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)).
24

25 /// /// ///

1 However, the deference owed to strategic judgments is cemented in the adequacy
2 of the investigation supporting those judgments:

3 [S]trategic choices made after thorough investigation of law and facts
4 relevant to plausible options are virtually unchallengeable; and strategic
5 choices made after less than complete investigation are reasonable
6 precisely to the extent that reasonable professional judgments support the
7 limitations on investigation. In other words, counsel has a duty to make
8 reasonable investigations or to make a reasonable decision that makes
9 particular investigations unnecessary. In any ineffectiveness case, a
particular decision not to investigate must be directly assessed for
reasonableness in all the circumstances, applying a heavy measure of
deference to counsel's judgments.

10 *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (quoting
11 *Strickland v. Washington*, 466 U.S. at 690-691, 104 S.Ct. 2052).

12 To provide constitutionally adequate assistance, “counsel must, at a minimum,
13 *conduct a reasonable investigation* enabling [counsel] to make informed decisions about
14 how best to represent [the] client.” *In Re Brett*, 142 Wn.2d 868, 16 P.2d 601, 604 (2001)
15 (*emphasis in the original*); *see also State v. Visitacion*, 55 Wn.App. 166, 776 P.2d 986
16 (1989) (trial counsel’s failure to interview witnesses based upon their police statements
17 fell below the prevailing professional norms).

18 The Washington State Supreme Court has described the duties of a criminal
19 defense attorney, particularly in regards to the attorney’s obligations in regards to
20 entering a plea:
21

22 A criminal defense attorney, whether appointed or retained, has a duty to
23 zealously and diligently defend his or her client. This includes openly and
24 honestly communicating with the client, investigating the circumstances
25 surrounding the charges, filing motions, interviewing and subpoenaing witnesses,
26 and preparing a defense. Most importantly, the attorney needs to make sure the
client is properly advised of his or her rights when entering a plea of guilty. In

1 doing this, the attorney needs to make sure that a plea is entered knowingly and
2 voluntarily and that the defendant is aware of any rights he or she is giving up.

3 *In re Michels*, 150 Wn.2d 159, 169, 75 P.3d 950 (2003).

4 The Washington Defender Association, an association of Washington State
5 defense attorneys and public defenders, social workers, investigators and those
6 committed to improving indigent defense, publishes Standards for Public Defense
7 Services. These standards have been endorsed by the Washington State Bar Association.
8 *See* Washington State Bar Assn., Standards for Indigent Defense Services (2011);
9 [http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/C](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx)
10 [ouncil%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Serv](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx)
11 [ices%20\(2011\).ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx).
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13 The standards were established “drawing on the practical experience of defense
14 attorneys around the state and on existing national standards which set forth the
15 objectives and minimum requirements for public defender and assigned counsel
16 programs” and are “intended to help the government establish public defense systems
17 which operate efficiently and meet the constitutional requirements for effective assistance
18 of counsel.” *Id.* at 1. The standards require that defense services be provided to all
19 clients in a manner consistent with, among other sources of law, the minimum standards
20 set forth by the American Bar Association, applicable state bar association standards. *Id.*
21 at p. 8. *Id.* The WDA Standards emphasize the importance of ABA Standards requiring
22 a representation plan providing for “investigatory, expert, and other services necessary to
23 quality legal representation.” *Id.* at 50. The Standards also quote the Washington
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1 Supreme Court regarding the use of experts and investigation, *Personal Restraint of*
2 *Brett*, 142 Wn.2d 868, 881 (2001). There, the Court cited a Ninth Circuit Case holding:

3 Counsel have an obligation to conduct an investigation which will allow a
4 determination of what sort of experts to consult. Once that determination has been
5 made, counsel must present those experts with information relevant to the
6 conclusion of the expert.

7 *Personal Restraint of Brett*, 142 Wn.2d 868, 881 (2001).³

8 The American Bar Association has clear standards regarding the duty to
9 investigate and engage investigators:

10 Standard 4-4.1 Duty to Investigate and Engage Investigators

11 (a) Defense counsel has a duty to investigate in all cases, and to determine
12 whether there is a sufficient factual basis for criminal charges.

13 (b) The duty to investigate is not terminated by factors such as the apparent
14 force of the prosecution's evidence, a client's alleged admissions to others of facts
15 suggesting guilt, a client's expressed desire to plead guilty or that there should be
16 no investigation, or statements to defense counsel supporting guilt.

17 ³ (*citing Caro v. Calderon*, 165 F.3d 1223, 1226 (9th Cir.), *cert. denied*, 527 U.S. 1049, 119 S. Ct. 2414,
18 144 L. Ed. 2d 811 (1999), 165 F.3d at 1226; *see also Bloom v. Calderon*, 132 F.3d 1267, 1277 (9th Cir.
19 1997), *cert. denied*, 523 U.S. 1145, 140 L. Ed. 2d 1104, 118 S. Ct. 1856 (1998); *Bean v. Calderon*, 163
20 F.3d 1073, 1079 (9th Cir. 1998) (failure to develop penalty phase presentation is a deficiency in trial
21 preparation, not trial strategy), *cert. denied*, 528 U.S. 922, 145 L. Ed. 2d 239, 120 S. Ct. 285 (1999)); *see*
22 *also Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. Cal. 1994) (“[C]ounsel must, at a minimum, conduct a
23 reasonable investigation enabling him to make informed decisions about how best to represent his client,”
24 thus, “we have found counsel to be ineffective where he neither conducted a reasonable investigation nor
25 made a showing of strategic reasons for failing to do so”; citing *Strickland* 466 U.S. at 691 (“Counsel has a
26 duty to make reasonable investigations or to make a reasonable decision that makes particular
investigations unnecessary.”); *Hendricks v. Vasquez*, 974 F.2d 1099, 1109 (9th Cir. 1992) (vacating the
judgment of the district court where it is not possible to “determine if counsel's decision was a strategic
one, and, if so, whether the decision was a sufficiently informed one”); *U.S. v. Burrows*, 872 F.2d 915, 918
(9th Cir. 1989) (holding counsel's conduct deficient where he failed to investigate a possibility of a mental
illness defense and the “district court's assumptions that the attorney must have considered an insanity
defense and might have rejected it for strategic reasons appear not to have been based on the record”);
Deutscher v. Whitley, 884 F.2d 1152, 1160 (9th Cir. 1989) (holding that counsel did not make a strategic
decision where the defense was based on petitioner's psychiatric problems, yet counsel failed to “even
consider investigating evidence which would have bolstered that defense”), *vacated on other grounds*, 113
S. Ct. 367 (1992); *Evans v. Lewis*, 855 F.2d 631, 637 (9th Cir. 1988) (holding that a failure to investigate a
possibility of mental impairment “cannot be construed as a trial tactic” where he did not even bother to
view relevant documents that were available).

1 (c) Defense counsel's investigative efforts should commence promptly and
2 should explore appropriate avenues that reasonably might lead to information
3 relevant to the merits of the matter, consequences of the criminal proceedings, and
4 potential dispositions and penalties. Although investigation will vary depending
5 on the circumstances, it should always be shaped by what is in the client's best
6 interests, after consultation with the client. Defense counsel's investigation of the
7 merits of the criminal charges should include efforts to secure relevant
8 information in the possession of the prosecution, law enforcement authorities, and
9 others, as well as independent investigation. Counsel's investigation should also
10 include evaluation of the prosecution's evidence (including possible re-testing or
11 re-evaluation of physical, forensic, and expert evidence) and consideration of
12 inconsistencies, potential avenues of impeachment of prosecution witnesses, and
13 other possible suspects and alternative theories that the evidence may raise.

9 (d) Defense counsel should determine whether the client's interests would be
10 served by engaging fact investigators, forensic, accounting or other experts, or
11 other professional witnesses such as sentencing specialists or social workers, and
12 if so, consider, in consultation with the client, whether to engage them. Counsel
13 should regularly re-evaluate the need for such services throughout the
14 representation.

13 (e) If the client lacks sufficient resources to pay for necessary investigation,
14 counsel should seek resources from the court, the government, or donors.
15 Application to the court should be made ex parte if appropriate to protect the
16 client's confidentiality. Publicly funded defense offices should advocate for
17 resources sufficient to fund such investigative expert services on a regular basis.
18 If adequate investigative funding is not provided, counsel may advise the court
19 that the lack of resources for investigation may render legal representation
20 ineffective.

18 American Bar Association, Criminal Justice Section Standards, Defense Function,
19 Standard 4-4.1, *Duty to Investigate and Engage Investigators*, (available at
20 [http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEd](http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html)
21 [ition.html](http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html)).⁴

24 ⁴ No materials were presented here nor was investigation performed specifically with regards to
25 sentencing. Whether to present mitigating evidence is a strategic decision. *In re Pers. Restraint of Elmore*,
26 162 Wn.2d 236, 257-258 (2007); *State v. Woods*, 143 Wn.2d 561, 609, 23 P.3d 1046 (2001). Mitigating
evidence includes any relevant factors that do not constitute a legal excuse for the offense but which, in
fairness and mercy, may justify a less severe punishment. *Id.* (citing *State v. Pirtle*, 127 Wn.2d 628, 671,
904 P.2d 245 (1995); *In re Pers. Restraint of Rupe*, 115 Wn.2d 379, 397, 798 P.2d 780 (1990)). There is a

1 In-person interviews are critical to evaluating the credibility of witnesses. The
2 credibility of witnesses is often, as in this case, key and given the time frame of alleged
3 events, from approximately 9 to 15 years prior, testing the credibility and veracity of the
4 accounts of alleged abuse is critical. Here, the alleged victim's two sisters also testified to
5 similar abuse and would be expected to be called for purposes of ER 404(b) evidence. The
6 defendant indicated to counsel that he likely had helpful defense witnesses in relation to the
7 time frame of events. Law enforcement officers here appear to have interviewed the alleged
8 victim and other witnesses off camera and on-camera and were never questioned about the
9 off-camera conversations.
10

11 The 9th Circuit recognized, in *Lord v. Wood*, 184 F.3d 1083, 1095 (9th Cir. 1999), the
12 varied means people use when evaluating the credibility and content of a person's statement:
13

14 A witness's testimony consists not only of the words he speaks or the story
15 story he tells, but of his demeanor and reputation. A witness who appears
16 shifty or biased and testifies to X may persuade the jury that not-X is true,
17 and along the way cast doubt on every other piece of evidence proffered by
18 the lawyer who puts him on the stand. But counsel cannot make such
19 judgments about a witness without looking him in the eye and hearing him
20 tell his story.

21 *Lord v. Wood*, 184 F.3d 1083, 1095 (9th Cir. 1999). Any alleged unwillingness of witnesses
22 to cooperate with interviews, although no indication of such unwillingness exists here,
23 would not constitute a good reason for a failure to conduct interviews. CrR 4.6 allows for a
24 deposition where "a witness refuses to discuss the case with either counsel and the
25 witness' testimony is material and necessary, or (3) there is good cause shown to take the
26 deposition," implicitly recognizing the importance of speaking with material witnesses.

strong presumption that trial counsel's performance was adequate, and exceptional deference must be given
when evaluating counsel's strategic decisions. *Id.* (citing *Strickland*, 466 U.S. at 689).

1 In the instant case, the record indicates that no effort was made to procure
2 interviews with state's witnesses, other than the alleged victim. Defense counsel did not
3 procure the services of a professional investigator and there is no evidence in the record
4 that defense counsel ever attempted direct contact with the additional state's witnesses or
5 that counsel ever sought depositions if the state failed to timely respond to initial requests
6 for interview. CrR 4.6 provides a method to take the deposition on witnesses who refuse
7 to cooperate. Unfortunately, defense counsel made no record indicating that the
8 witnesses personally refused to cooperate and never sought depositions so the power of
9 the court could not provide Mr. Gonzalez Gonzalez with help to secure available
10 guarantees for right to an adequate investigation.
11

12 Here, counsel's failed to conduct hardly any investigation. An adequate
13 investigation would have included interviewing or deposing all state's witnesses who
14 could be located and conducting an independent investigation, seeking outside
15 information regarding the state's civilian witnesses and seeking, locating and
16 interviewing potentially helpful defense witnesses. This lack of investigation was
17 unreasonable and prevented the defendant from making an informed decision about
18 whether to accept a guilty plea or proceed to trial. Thus, Mr. Gonzalez Gonzalez' plea
19 could not have been knowing and intelligent.
20

21 Additionally, counsel's failure to adequately inform Mr. Gonzalez Gonzalez of
22 the results of any investigation that could have been performed deprived him of the
23 ability to form an independent opinion about the strength of the state's case and make an
24 informed decision about how to proceed. Counsel induced Mr. Gonzalez to take a plea
25 offer, with grossly inadequate investigation, that resulted in a prison sentence of more
26

1 than 11 years. In doing so, counsel unreasonably failed to offer Mr. Gonzalez Gonzalez
2 alternatives respecting his right to make an informed choice about whether or not to go to
3 trial or whether to accept a plea.

4 E. Defense Counsel Violated Minimum Standards of Representation When He
5 Failed to Communicate with Mr. Gonzalez in Language He Could Understand

6 One of the most basic duties of counsel is the duty to keep the client adequately
7 informed. Washington's Rule of Professional Conduct 1.4 provides, in relevant part, as
8 follows:

9 (a) A lawyer shall; (1) promptly inform the client of any decision of circumstance
10 with respect to which the client's informed consent, as defined in Rule 1.0A(e), is
11 required by these Rules;

12 (2) reasonably consult with the client about the means by which the client's objectives
13 are to be accomplished;

14 (3) keep the client reasonably informed about the status of the matter;

15 (4) promptly comply with reasonable requests for information; and

16 ...

17 (b) A lawyer *shall explain a matter to the extent reasonably necessary to permit the*
18 *client to make informed decisions regarding the representation.*

19 RPC 1.4. Under the rules of professional conduct, it is incumbent upon the lawyer to
20 engage in effective communications with his client. Implicit in these obligations is to
21 make an ongoing effort to evaluate and consider whether the chosen methods of
22 communication are effective.

23 ABA Standard 4-3.1 Establishes a framework for counsel's ability to communicate and
24 represent the client where the client appears to have a mental impairment or other
25 disability, which would include a language barrier. The standard instructs as follows:

26 (c) Counsel should consider whether the client appears to have a mental
impairment or other disability that could adversely affect the representation. Even

1 if a client appears to have such a condition, this does not diminish defense
2 counsel's obligations to the client, including maintaining a normal attorney-client
3 relationship in so far as possible. In such an instance, defense counsel should also
4 consider whether a mental examination or other protective measures are in the
5 client's best interest.

6 (d) In communicating with a client, defense counsel should use language and
7 means that the client is able to understand, which may require special attention
8 when the client is a minor, elderly, or suffering from a mental impairment or other
9 disability.

10 ABA Criminal Justice, Defense Function Standard 4-3.1

11 [http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEd
12 ition.html](http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html).

13 In addition to the standard requiring that the lawyer use appropriate means to
14 communicate, a lawyer has a duty to keep the client informed:

15 **Standard 4- 3.8 Duty to Keep Client Informed**

16 (a) Defense counsel should keep the client informed of the developments in the
17 case and the progress of preparing the defense and should promptly comply with
18 reasonable requests for information.

19 (b) Defense counsel should explain developments in the case to the extent
20 reasonably necessary to permit the client to make informed decisions regarding
21 the representation.

22 ABA Criminal Justice, Defense Function Standard 4-3.8

23 [http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEd
24 ition.html](http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html). A lawyer also has a duty to appropriately advise the client:

25 **Standard 4-5.1 Advising the Client**

26 (a) Defense counsel should exercise independent professional judgment when
advising a client.

(b) Defense counsel should keep the client reasonably and regularly informed
about the status of the case. Before significant decision-points, and at other times
if requested, defense counsel should advise the client with candor concerning all
aspects of the case, including an assessment of possible strategies and likely as
well as possible outcomes. Such advisement should take place after counsel is as
fully informed as is reasonably possible in the time available about the relevant
facts and law. Counsel should act diligently and, unless time does not permit,

1 advise the client of what more needs to be done or considered before final
2 decisions are made.

3 ABA Criminal Justice, Defense Function Standard 4-5.1.

4 http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEd

5 [ition.html](#). Taken together, these standards require that counsel evaluate counsel's own
6 ability to communicate, the client's ability to understand, that counsel communicate
7 informed so as to allow client to make informed decisions regarding the representation.

8 Where a client has a language barrier as well as mental impairments, this duty still exists.

9 Although perhaps the problem poses difficulties for counsel, difficulties in representation
10 do not absolve counsel of the obligation to attempt to present an adequate defense despite
11 those difficulties. Thus, counsel's difficulties in communicating or simple ignorance of
12 his client's remediable lack of understanding do not absolve counsel of the obligation to
13 assure that communication is adequate and that client is informed.
14

15 The due process clause prohibits trying the criminal defendant who lacks capacity
16 to understand the proceedings, to consult with counsel or to assist in the preparation of
17 his defense. *Drope v. Missouri*, 420 U.S. 162, 43 L. Ed. 2d 103, 95 S. Ct. 896 (1975);
18 *Pate v. Robinson*, 383 U.S. 375, 15 L. Ed. 2d 815, 86 S. Ct. 836 (1966); *United States v.*
19 *Mosquera*, 816 F. Supp. 168, 173 (E.D.N.Y. 1993). This prohibition refers not only to
20 mental incompetents, but also to those who are hampered by their inability to
21 communicate in the English language. See *United States ex rel. Negron v. State of New*
22 *York*, 434 F.2d 386 (2d Cir. 1970); *Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984) (due
23 process requires that the Immigration and Naturalization Service furnish an alien faced
24 with deportation with "an accurate and complete translation of official proceedings");
25
26

1 *United States v. Martinez*, 616 F.2d 185, 188 (5th Cir. 1980), *cert. denied*, 450 U.S. 994,
2 68 L. Ed. 2d 193, 101 S. Ct. 1694 (1981); *United States v. Carrion*, 488 F.2d 12, 14 (1st
3 Cir. 1973), *cert. denied*, 416 U.S. 907, 40 L. Ed. 2d 112, 94 S. Ct. 1613 (1974) ("The
4 right to an interpreter rests most fundamentally . . . on the notion that no defendant should
5 face the Kafkaesque spectre of an incomprehensible ritual which may terminate in
6 punishment."); cf. *Rex v. Lee Kun*, 1 K.B. 337, 343 (1916) (although inconvenient and
7 more time-consuming, supplying an interpreter is "in consonance with the scrupulous
8 care of the interests of the accused which has distinguished the administration of justice
9 in our [English] criminal Courts."); *Mosquera*, 816 F. Supp. 168, 173 (E.D.N.Y. 1993).
10 As the court of appeals for the Second Circuit described the matter: "Particularly
11 inappropriate in this nation where many languages are spoken is a callousness to the
12 crippling language handicap of a newcomer to this shores, whose life and freedom the
13 state by its criminal processes chooses to put in jeopardy." (*citing United States ex rel.*
14 *Negron v. State of New York*, 434 F.2d 386, 390 (2d Cir. 1970)).

17 The California State Bar's Standing Committee on Professional Responsibility
18 and conduct has published guidance relating to communications between the lawyer and
19 client with inadequate English skills. While noting the importance of obtaining the
20 services of an interpreter, the Committee specifically addresses the possibility of limited
21 direct communications with the client:
22

23 The client may have selected the attorney knowing that direct communication may be
24 limited, or even not possible. However, this does not reduce the attorney's duty to
25 communicate adequately. If direct communication in a language clearly understood
26 by the client is not possible, the attorney must take into account the fact that means
other than direct communication will be required to discuss the client's case and to
meet the responsibilities noted above. Although relevant, the means used are not

1 controlling with respect to the issue of lawyer competency; however, adequate
2 communication is necessary in order to render "competent" legal services.

3 ...
4 On any matter which requires client understanding, the attorney must take all
5 reasonable steps to insure that the client comprehends the legal concepts involved and
6 the advice given, irrespective of the mode of communication used, so that the client is
7 in a position to make an informed decision. Appreciation of the client's language may
8 have a substantial bearing on the capability of the attorney to communicate with the
9 client concerning such facts, legal concepts and advice. The attorney may need to
10 communicate in a particular language or dialect and for this purpose may need to use
11 an interpreter skilled in a particular language or dialect.

12 California State Bar Standing Committee On Professional Responsibility and Conduct,
13 Formal Opinion Number 1984-77, Issue: Is An Attorney Acting Competently If The
14 Attorney Undertakes Representation Of A Client When The Attorney Is Not Able To
15 Communicate Directly With The Client In A Language Clearly Understood By That
16 Client? (1984). Although the Committee suggests the use of bilingual attorneys to bridge
17 the language gap, the Committee did not specifically discuss the matter of the attorney
18 evaluating his or her own language abilities.

19 The Utah State Bar also addressed the question, providing a stronger mandate for
20 the attorney, communicating without the aid of an interpreter:

21 A language barrier does not reduce the attorney's duty to communicate adequately
22 with the client, as required by Rule 1.4. If direct communication in a language
23 clearly understood by the client is not possible, the attorney must take into
24 account the fact that means other than direct communication will be required to
25 discuss the client's case and to meet the attorney's responsibilities. The means by
26 which an attorney may do this are varied.

*On any matter that requires client understanding, the attorney must take all
reasonable steps to insure that the client comprehends the legal concepts involved
and the advice given by the attorney. The attorney must take all reasonable steps
to insure that the attorney understands what the client is saying, so that the
attorney can make intelligent judgments about the case and so that the client can
make informed decisions. If the attorney cannot communicate fluently in the
client's own language, the attorney should communicate through an interpreter
skilled in the client's particular language or dialect.*

1
2 Utah State Bar Ethics Advisory Opinion Committee, Opinion Number 96-06 (July 3,
3 1996) (emphasis added). However, the Utah State Bar did not provide, and is
4 presumptively lacking in professional training to provide, guidance on what constitutes
5 sufficient language skills to proceed in the client's language without using a competent
6 interpreter. Importantly, however, the Utah Committee also recognized the potential for
7 problems arising from lack of sufficient social and cultural foundation:

8
9 Finally, attorneys should be sensitive to the possibility that non-English speaking
10 clients may not readily understand legal principles described by the attorney, because
11 the non-English speaking client may interpret communications based on a different
12 social and cultural foundation than that assumed by the attorney. Attorneys should,
13 therefore, take greater care in explaining complex legal communications to clients
14 who are non-English speaking, because the client may have no social or cultural
15 background or understanding of the United States, so as to put the attorney's
16 communications into proper context.

17
18 *Id.* The Bar of the City of New York also issued a formal opinion, discussing the need
19 for adequately bridging language barriers between lawyer and client:

20
21 Moreover, the lawyer may not passively leave the decision as to the need for or
22 the securing of an interpreter entirely to the client's discretion. Once it is evident
23 that, without an interpreter, effective lawyer-client communications are
24 questionable or not possible, failure of a lawyer to take steps to help the client
25 understand the significance of the interpreter for adequate communication and to
26 take, when necessary, steps to secure interpreter services may violate the lawyer's
duty to represent the client zealously.

The Association Of The Bar Of The City Of New York, Committee On Professional And
Judicial Ethics, Formal Opinion 1995-12 (July 6, 1995).

ABA Standards for Language Access in Courts, Standard 8.2 provide:

Where bilingual staff are providing language services directly to LEP [limited
English proficiency] persons, courts should determine the level of fluency needed
for the position, and assess the language fluency of the bilingual staff member in
both English and the other language(s) in which they are communicating. The
level of language fluency needed by bilingual staff to communicate directly with

1 LEP persons depends upon the setting. In some court services and programs, the
2 level of complex legal terminology or subject matter required may be nearly equal
3 to that used in the courtroom. In such instances, courts should assign staff to these
4 positions who are able to speak the language with sufficient accuracy and
5 vocabulary to participate effectively in most formal and informal conversations on
6 practical, social and professional topics. For example, a bilingual staff member
conducting an interview, assisting with paperwork, or teaching a class, would
need to have a near native - speaker level of fluency in order to ensure that
communication is effective.

7 ABA Standards for Language Access in Courts, Standard 8.2, (February 2012) Available
8 online at:

9 http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/sclaid_standards_for_language_access_proposal.authcheckdam.pdf

10 Although the standards do not include guidance for attorneys in assessing their own
11 language skills, the need is obvious and consistent with the ABA's recommendation that
12 courts use a comprehensive system for credentialing interpreters, bilingual staff, and
13 translators:

14
15 Assessment tools are helpful in determining a language services provider's fluency;
16 however, using such tools alone will not ensure that interpreters, bilingual staff, and
17 translators are competent. A comprehensive credentialing system should include both
18 evaluation and training in areas not typically included in the language skills
19 assessment processes. Establishing a thorough and comprehensive credentialing
system allows courts to be confident that providers will possess the skills and
knowledge needed, that their competency continues at a consistent level, and can be
monitored over time.

20 ABA Standards for Language Access in Courts, Standard 8.4, (February 2012) Available
21 online at:

22 http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/sclaid_standards_for_language_access_proposal.authcheckdam.pdf

23 The need for credentialing and skill assessment for court interpreters is a fairly
24 recent phenomenon and has not been formally extended to lawyers using their own
25 abilities in a non-native language. Self assessment tools for those interested in becoming
26

1 court interpreters, however, may be useful in establishing the level of fluency that may be
2 needed to realize effective communication with clients.

3 The Judicial Council of California suggests the skills needed before attempting to
4 become a certified court interpreter include that the candidate:

- 5 • possess educated, native-like mastery of both English and a second language;
- 6 • display wide general knowledge characteristic of what a minimum of two
- 7 years of general education at a college or university would provide; and
- 8 • perform the three major types of court interpreting: consecutive interpreting,
simultaneous interpreting, and sight translation.

9 Judicial Council of California, Court Language Access Support Program, Qualifications
10 and Self-Assessment for Court Interpreting Certification Exam. Available at:
11 <http://www.courts.ca.gov/documents/cip-Self-Assessment-Qualifications.pdf>

12 While little jurisprudence regarding a lawyer's language abilities exist, a few courts have
13 examined the issue of the lawyer's linguistic competency.

14 In *United States v. Bailon-Santana*, 429 F.3d 1258 (9th Cir. Cal. 2005), the
15 deendant's lawyer had interpreted an English language jury waiver form for his client.
16 The district court asked the defendant whether he had waived his jury trial right and the
17 defendant answered in the affirmative. The court of appeals, however, invalidated the
18 jury waiver based, largely, on the fact that the record contained no information regarding
19 the lawyer's actual ability to speak Spanish. The court noted that Bailon-Santana's
20 lawyer was not a certified Spanish-English interpreter, or at least the record did not
21 reflect that he was. *Bailon-Santana*, 429 F.3d at 1260-1261.⁵

22
23
24 ⁵ See also *State v. Gonzalez-Hernandez*, 122 Wn. App. 53, 56, 92 P.3d 789 (2004) (Washington's Division
25 Two overturned a conviction where a detective had interviewed the defendant, the detective's Spanish
26 skills were imperfect and the statements made by the defendant were used against him at trial. The court
held that the detective's testimony was inherently unreliable and, therefore, inadmissible.); *United States v.*
Shorty, 741 F.3d 961, 969 (9th Cir. Ariz. 2013) (In determining whether a defendant's waiver is knowing
and voluntary, it also identified "the extent of the particular defendant's ability to understand courtroom
discussions regarding jury waiver" as a consideration. The defendant's low I.Q. and learning disability

1 The record there only contained a signed statement filed by the attorney that he
2 was "fluent in written and spoken English and Spanish languages" and that he "accurately
3 translated this entire waiver from English into Spanish to defendant Gilberto Bailon-
4 Santana." *Id.* The lawyer also stated that he had "carefully discussed this waiver of jury
5 trial with [his] client," that he had "fully advised [his] client of his right to a jury trial and
6 of the consequences of entering into this waiver," and that his "client's decision to enter
7 into this waiver [was] an informed and voluntary one, and one in which [he] joined."
8 *Bailon-Santana*, 429 F.3d at 1260-1261.
9

10 The court went on to discuss the reasons behind the practice in federal courts of
11 using certified experts to provide translations for criminal defendants and witnesses who
12 are not fluent in English. *Id.* at 1260 (citing Court Interpreters Act, 28 U.S.C. §§ 1827-
13 28). The court noted that many people "claim 'fluency' in a foreign language, but 'there
14 are few persons in the United States who can interpret with the degree of precision and
15 accuracy required at the Federal court level.'" *Bailon-Santana*, 429 F.3d at 1260-1261
16 (citing H.R. Rep. No. 100-889, at 58 (1988), reprinted in 1988 U.S.C.C.A.N. 5982,
17 6019). "Because the judge and other participants in the courtroom usually have no way
18 of confirming whether the translation is accurate, training and certification by an
19 authority qualified to test these skills provides an objective verification that everyone in
20 the courtroom is on the same page." *Bailon-Santana*, 429 F.3d at 1260.
21
22

23 Applying the concept of requiring solid evidence that the lawyer was qualified to
24 translate the waiver, despite the verbal colloquy in court, the court remarked:
25

26 undoubtedly made it more difficult for him than to follow courtroom discussions and the court invalidated a
jury trial waiver, reversing and remanding.)

1 The record here reflects only the defense lawyer's self-assessment. While we don't
2 doubt that he was entirely truthful, we have no way of knowing whether he is
3 even familiar with the standard used to certify interpreters, and thus we cannot be
4 sure that his Spanish-speaking ability is as good as he believes it to be. We do not
5 hold that an individual's self-assessment can never be a sufficient basis for a
6 finding that he has the requisite fluency to serve as an interpreter. Rather, HN3any
7 self-assessment, if it is to be sufficient, must reflect a familiarity with the
8 applicable standard, and must also reveal the basis for the assessment--such as a
9 description of the training received in order to gain the requisite level of fluency.
10 And, of course, the district court must make a finding that the interpreter is
11 qualified as an expert witness and is competent to serve as an interpreter in a
12 federal criminal proceeding. None of this happened here. Rather, the district court
13 seems to have accepted the lawyer's self-certification at face value. **We treat this
14 as a finding by the district court that the lawyer properly translated the
15 form, and reverse that finding as not supported by the record.**

16 *United States v. Bailon-Santana*, 429 F.3d 1258, 1261 (9th Cir. Cal. 2005) (emphasis
17 added).

18 Although defense counsel does not appear to claim to have translated the forms in
19 this matter, the court's concern with the validity of the value of the lawyer's self-
20 certification as to language ability merits serious consideration. Washington's published
21 Standards for Indigent Defense Services include a provision for adequate and competent
22 interpreters:

23 Each agency or attorney providing public defense services should have access to
24 adequate and competent interpreters to facilitate communication with non-English
25 speaking and hearing-impaired clients for attorneys, investigators, social workers,
26 and administrative staff.

27 *See* Washington State Bar Assn., Standards for Indigent Defense Services (2011),
28 Standard 7, Subsection 5, p. 6 (*available at* [http://www.wsba.org/~
29 /media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Publi
30 c%20Defense/Standards%20for%20Indigent%20Defense%20Services%20\(2011\).ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx);
31 (*citing* American Bar Association, Standards for Criminal Justice, 4-8.1 and 5-1.4;

1 National Advisory Committee on Criminal Justice Standards and Goals, Task Force on
2 Courts, Standard 13.14; National Legal Aid and Defender Association, Standards for
3 Defender Services, Standard IV-3; National Legal Aid and Defender Association,
4 Guidelines for Negotiating and Awarding Indigent Defense Contracts, 1984, Standard III-
5 8; Seattle-King County Bar Association Indigent Defense Services Task Force,
6 Guidelines for Accreditation of Defender Agencies, 1982, Guideline Number 7.

8 When the lawyer himself, or herself, acts as his or her own interpreter, it does not
9 somehow cancel out the requirement that the facilitator of communications be “adequate
10 and competent.” The lawyer who takes it upon himself or herself to facilitate his own
11 communications to the client in a non-native language is effectively taking on both roles.
12 Although the lawyer clearly formulates what will be said, choosing the tone and register
13 of the language she will use, the lawyer still has the obligation to effect clear and cogent
14 communication in a language the client can understand.

16
17 *1. The Statutory Warnings In the Plea Petition and the Recital Given by the
18 Court Here Cannot Save Failure of Counsel to Give Adequate Advice*

19 Although the basis of this motion is not failure to warn regarding immigration
20 consequences, case law related to those failures is helpful in analyzing the relationship
21 between the in-court colloquy and counsel’s obligation to explain consequences outside
22 of the courtroom. In *State v. Sandoval*, the plea agreement contained the following
23 warning about immigration consequences:

24 “If I am not a citizen of the United States, a plea of guilty to an offense punishable
25 as a crime under state law is grounds for deportation, exclusion from admission to
26 the United States, or denial of naturalization pursuant to the laws of the United
States.”

1 *State v. Sandoval*, 171 Wn.2d at 167 (2011). The record also indicated that Mr. Sandoval
2 affirmed that his counsel had reviewed the entire plea statement with the defendant with
3 an interpreter's help. Despite this language in the petition, that was adequately reviewed
4 by counsel and interpreted into Spanish, the appeals court concluded that Mr. Sandoval
5 had received ineffective assistance of counsel.
6

7 The Washington Court of Appeals in *State v. Martinez* also reached the same conclusion
8 on the issue: "[T]he guilty plea statement warnings required by RCW 10.40.200(2)
9 cannot save the advice that counsel gave." *State v. Martinez*, 161 Wn. App. 436, 442
10 (Wash. Ct. App. 2011) (citing *Sandoval*, 171 Wn.2d at 173, 171 Wn.2d at 173). There,
11 Mr. Martinez claimed that his counsel "solely discussed the *possibility* of deportation"
12 while his counsel could not "remember exactly how he advised Mr. Martinez but
13 admit[ted] he knew little about immigration law." *Id.* Applying *Sandoval*, the court
14 found counsel's performance was deficient. *Id.*
15

16 Despite the warnings given in the plea petitions in both *Sandoval* and *Martinez*,
17 the court found ineffective assistance where neither counsel had specifically warned the
18 defendant that they would be subject to deportation as a direct consequence of the guilty
19 pleas. The *Martinez* court touched directly on the defendant's understanding of the plea
20 statement. Thus, despite verbal, in-court warnings and plea petition language,
21 Washington courts have found a lack of adequate communication regarding the
22 consequences of the plea is sufficient reason to invalidate the plea.
23

24 Here, Mr. Gonzalez-Gonzalez indicates he did not specifically understand that
25 pleading guilty to the charge would mean that he could qualify for SSOSA, but that the
26 other alternative was that the judge might impose 136 months in prison. Here, the record

1 shows that Mr. Gonzalez-Gonzalez had ongoing confusion, and that he was slow and had
2 difficulties understanding. Although an interpreter was present during the hearings, Mr.
3 Gonzalez-Gonzalez Spanish language skills are limited. When evaluated by Western
4 State Hospital for competency, he was diagnosed with borderline intellectual functioning
5 and his IQ quotient was estimated at a percentile rank of 8. Mr. Gonzalez has only a third
6 grade education and went to work in the fields after the third grade.
7

8 For a defendant's guilty plea to be deemed voluntary and valid, the defendant
9 must understand the sentencing consequences of his plea. *State v. Bisson*, 156 Wn.2d
10 507, 517, 130 P.3d 820 (2006) (quoting *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d
11 122 (1988); *State v. Turley*, 149 Wn.2d 395, 398-99, 69 P.3d 338 (2003)). To be valid, a
12 guilty plea must be voluntarily and intelligently made and with full knowledge that
13 certain rights are waived. *State v. Branch*, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996).
14 Whether a plea is knowingly, intelligently, and voluntarily made is determined from a
15 totality of the circumstances. *Branch*, 129 Wn.2d at 642.
16

17 A guilty plea which is invalid due to the State's failure to adequately inform a
18 defendant of his rights constitutes actual prejudice. *In re Garcia*, 35 Wn. App. 837, 839,
19 670 P.2d 672 (1983). The *Garcia* court recognized that a signature on the plea petition
20 form normally satisfy the requirement of advisement of rights. *In re Garcia*, 35 Wn. App.
21 837, 839 (1983) (citing *State v. Chervenell*, 99 Wn.2d 309, 313 (1983)).
22

23 However, in *Garcia*, where the defendant did not read, write or understand the
24 English language, the court's failure to ask the defendant through the interpreter whether
25 the defendant had read through and understood the form constituted actual prejudice
26 because he was not adequately advised of his right to confront his accusers. *In re Garcia*,

1 35 Wn. App. at 839. Washington appellate courts have held that the immigration
2 warnings contained in the plea petition are not sufficient to satisfy the requirements of
3 *Padilla*, and neither the warnings given in the plea here, nor the perfunctory colloquy in
4 open court, were adequate to overcome the lack of understanding rooted in
5 communication difficulties with Mr. Gonzalez Gonzalez' lawyer.
6

7 F. A Perfunctory Colloquy with Yes and No Responses is Insufficient to Overcome
8 Doubts Regarding Mr. Gonzalez Gonzalez's Competency and His
9 Comprehension of the Legal Process and Options

10 The prosecution in this matter may rely on the plea colloquy that took place in
11 open court to establish that the Mr. Gonzalez Gonzalez make a knowing and intelligent
12 waiver of his rights and that he was adequately informed about the plea. Federal courts,
13 however, have found that a perfunctory colloquy with "yes" or "no" responses at a plea
14 hearing are insufficient to overcome some doubts regarding competency. In *Miles v.*
15 *Stainer*, the 9th Circuit Court of Appeals found that a plea colloquy was not sufficient to
16 establish the competency of a defendant who had gone off his medication before the time
17 of plea:

18 The state-court plea colloquy consisted almost entirely of yes or no questions
19 which shed little light on complex reasoning ability. *See United States v.*
20 *Christensen*, 18 F.3d 822 (9th Cir. 1994) (short, perfunctory colloquy is
21 inadequate basis for waiver of right to jury trial when judge is on notice of
22 defendant's possible mental or emotional instability); *see also Godinez*, 972 F.2d
at 265 (monosyllabic responses at plea hearing are insufficient to overcome doubt
raised by medication).

23 *Miles v. Stainer*, 108 F.3d 1109, 1112-1113 (9th Cir. Cal. 1997).

24 In the case at hand, the prosecution seeks to use monosyllabic responses at a plea
25 hearing as proof to overcome serious doubts about complex matters: the Defendant's
26

1 mental abilities, and his understanding of the explanations she may have been given
2 outside of court by counsel, across a language barrier, using an unidentified interpreter.

3 The court here should find that an evidentiary hearing is needed to establish: 1)
4 Mr. Gonzalez Gonzalez's mental competency; 2) whether counsel provided the necessary
5 explanations of the judicial system and process to effectively facilitate his ability to make
6 a knowing and intelligent choice; and 3) whether the interpreter used by counsel outside
7 of court, to discuss his options, effectively communicated the content of counsel's
8 explanations. Additionally, the hearing is needed to establish whether the explanations of
9 the justice system given to Mr. Gonzalez Gonzalez by counsel, through interpreter, could
10 have reasonably formed the basis of a knowing and intelligent plea in this matter.
11

12 In *State v. Holley*, Division II of the Washington Court of Appeals, prior to the
13 *Padilla* decision, considered the burden of proof in the context of post-conviction relief
14 where counsel was alleged to have failed to provide adequate immigration advice:
15

16 The affidavit evidence in the record before this court is insufficient to permit
17 resolution of the issues raised by Holley on appeal. **However, Holley's affidavit**
18 **evidence, when viewed in the light most favorable to Holley, would disprove**
19 **the presumed fact: that he was advised of the potential deportation**
20 **consequences associated with his guilty pleas. Thus, he is entitled to a hearing**
21 **to attempt to persuade the trial court, by a preponderance of the evidence,**
22 **that he did not receive the statutory warnings and that, further, conviction of**
23 **the offenses to which he pleaded guilty may have the consequence of**
24 **deportation. RCW 10.40.200(2).**

25 *State v. Holley*, 75 Wn. App. 191, 200 (1994) (emphasis added). Though the plea
26 agreement there contained required advisements, the *Holley* Court held that "the court is
not required to infer that the defendant was advised of the relevant plea consequences
upon a showing that he signed a plea agreement containing such an advisement,

1 regardless of contrary evidence.” See *State v. Johnson*, 100 Wn.2d 607, 674 P.2d 145
2 (1983); *State v. Delmarter*, 68 Wn. App. 770, 845 P.2d 1340 (1993).” *Id.* at 200 (1994).

3 Although the case at bar is not immigration centered, the precedent still provides strong
4 undergirding for the need for hearing on this matter.

5 A defendant must be able to contest his prior admission of guilt in his motion to
6 withdraw, or the purpose of the motion would be meaningless. *United States v. Leung*,
7 783 F. Supp. 357, 360 (N.D. Ill. 1991) (citing *Menna v. New York*, 423 U.S. 61, 62, N.2
8 (1975)). A counseled plea of guilty is only a reliable admission of factual guilt when
9 intelligently and voluntarily made. *Id.* In *Leung*, the court reversed the defendant’s
10 guilty plea, citing to linguistic and cultural differences that interfered with his ability to
11 understand the import of his plea and indicated that something more than yes or no
12 responses was needed to assure understanding:
13
14

15 **Defendant Leung's claim of linguistic and cultural differences causing a lack**
16 **of understanding constitutes a fair and just reason for withdrawal of his**
17 **prior plea of guilty.** In determining whether a plea should be withdrawn on the
18 ground that it was not given voluntarily or intelligently, a trial court must of
19 necessity turn to its colloquy with the defendant at his plea hearing. *Ellison*, 835
20 F.2d at 693; *Fountain*, 777 F.2d at 355 (more meticulously Rule 11 is adhered to,
21 the more it discourages frivolous attacks on constitutionality of pleas). The extent
22 of the dialogue required between the court and the defendant to establish an
23 intelligent and voluntary plea varies from case to case, but in all cases it must be a
24 meaningful dialogue. **Simple yes or no answers, or answers which merely**
25 **mimic the indictment will not suffice. The court should question the**
26 **defendant in a way that provokes a narrative response.** *Fountain*, 777 F.2d at
356.

23 *U.S. v. Leung*, 783 F. Supp. 357, 360 (N.D. Ill. 1991) (emphasis added).

24 Courts have also found the need for an evidentiary hearing where the defendant
25 indicates lack of understanding, even where the record shows a significant exchange on
26 the record:

1 The questions posed by the court prior to its acceptance of the guilty plea appear
2 to be simple and straightforward. **The defendant does not claim nor does the**
3 **record suggest that he required an interpreter or that he was mentally**
4 **deficient.** Although most of the factual assertions in the defendant's offer of proof
5 are vague, conclusory and oblique, the record of the plea proceedings does not
6 conclusively refute the defendant's assertion that he did not fully understand the
7 plea proceedings either because the questions were rapid or because there was not
8 sufficient interchange between court and accused. If in fact there was a sufficient
9 lack of understanding of the plea proceedings for either of these reasons, then the
10 plea cannot truly be said to be voluntary. Because we cannot say on the basis of
11 the present record that under no circumstances could the defendant establish a
12 basis for relief under § 721; *see Fontaine v. United States, supra*; the defendant
13 was entitled to an evidentiary hearing on the extent to which he understood the
14 plea proceedings.

15 *State v. Torres*, 182 Conn. 176, 187 (Conn. 1980) (emphasis added). Unlike the
16 defendant in *Torres*, there are indications here that the defendant is mentally challenged
17 or deficient, which suggests an even greater need for an evidentiary hearing.

18 In *Valencia v. United States*, the federal appeals court succinctly affirmed the
19 need for courts to examine the defendant's understanding of the essential elements of the
20 charges, despite the entry of a plea:

21 We cannot think that the interests of justice would be served by a rule which deems a
22 guilty plea a waiver of the right to challenge an essential element of the crime
23 charged even though it was never explained to the defendant.

24 923 F.2d 917, 922 (1st Cir. P.R. 1991).

25 Here, Mr. Gonzalez Gonzalez has presented uncontroverted testimony that he
26 could not understand his attorney very well, he was confused about his options, he did
not understand the implications of the plea or plea agreement and he wanted new counsel.
The court failed to conduct an appropriate fact-finding hearing on the issue when raised
but the concerns are valid and require a fact-finding hearing.

1 In this case, a *pro forma* plea was entered and a colloquy requiring almost
2 exclusively “yes” or “no” answers from the defendant was conducted. No evidence in
3 the record shows that the charges and rights were *explained* to the defendant in language
4 and terminology that he could understand, rather than just reading the formal, codified
5 warnings. Mr. Gonzalez Gonzalez did not make a knowing and intelligent plea, with any
6 real consciousness of the rights he was giving up or the options that existed for his in the
7 American justice system.
8

9
10 G. Linguistically Marginalized Immigrants Face Greater Challenges in
11 Understanding their Options and Counsel’s Efforts to Clarify Understanding are
Necessary to Ensure Knowing and Intelligent Pleas

12 Immigrants who speak a different language and who are raised without education
13 or in countries of original with very different legal system face particular barriers in
14 comprehending legal proceedings in the United States. The National Institute of Justice
15 conducted a national survey regarding access to justice in the criminal justice system for
16 immigrants. *See* National Institute of Justice: Research in Brief, *Immigrant Populations*
17 *as Victims: Toward a Multicultural Criminal Justice System*. May 1998. Available at
18 <https://www.ncjrs.gov/pdffiles/167571.pdf>.
19

20 In the first phase, a survey was sent to police chiefs, prosecutor, and court
21 administrators from the fifty largest U.S. cities and 61 percent of officials who received
22 the survey responded. *Id.* In the second phase of the study, researchers interviewed
23 samples of victims in areas with high immigrant populations. *Id.* Researchers in the
24 study found that barriers beyond language barriers created increased difficulties for those
25 involved in the system:
26

1 About two-thirds of the respondents believed that recent immigrants face greater
2 hardships when reporting crimes to the police. Language poses the greatest hardship,
3 said 47 percent. Respondents also named other hardships such as cultural differences
4 in conceptions of justice (22 percent) and lack of knowledge of the criminal justice
5 system (15 percent).

6 Recent immigrants face greater hardships in coming to court as well, said two-thirds
7 of the responding officials. Again language was named most often (39 percent of
8 respondents) as a hardship in involvement with court. Respondents indicated that the
9 language barrier poses no problem in communicating with officials because
10 interpreters are often available. Rather, they stated that immigrants have trouble
11 understanding court proceedings conducted in English even when they are translated.

12 *Id.*

13 Other scholarly writers have examined the difficulties in obtaining justice for
14 persons who are linguistically and culturally marginalized. In many cases, the obstacles
15 are not simply overcome by providing an interpreter.

16 Many individuals born and raised in foreign countries confront other practical
17 obstacles [in addition to language barriers] to obtaining justice. Some lived in a
18 country where police and authority figures terrorize its citizens. Immigrants from
19 these countries often distrust and fear the police in the United States. Many
20 immigrants lack familiarity with our legal system or have limited, if any,
21 understanding of constitutional rights and other procedures.

22 Some defendants, victims, or witnesses by other cultures may be misunderstood,
23 or their actions, appearance, or demeanor misinterpreted by police, parties, jurors,
24 or the court itself. This is because social and behavioral norms of persons from a
25 foreign country may appear suspect because they are not within the common
26 experience of native-born Americans.

27 Cole & Maslow-Armand, *The Role of Counsel and the Courts in Addressing Foreign*
28 *Language and Cultural Barriers at Different Stages of a Criminal Proceeding*, 19 W.
29 New Eng. L. Rev. 193, 195 (1997). A defendant's level of sophistication, the quality,
30 content and extent of formal education, and cultural behavioral norms can cause real
31 barriers to understanding.

1 Cultural language barriers may affect whether a defendant is able to make a
2 voluntary confession, knowingly and voluntarily consent to a search, waive the
3 right to trial by jury, or fully understand the elements of the charge, the rights
4 waived, and the effect of the plea in the plea bargaining process. Lack of
5 knowledge of the American legal system, rights under the Constitution, English
6 language difficulties, and cultural background differences, along with other
7 factors, have been considered in judicial assessments of whether there is a
8 voluntary and knowing waiver of such rights.

9 *Id.* at 196. Because of these difficulties, when dealing with clients from a different
10 cultural background, defense counsel faces additional challenges to provide thorough and
11 adequate counsel:
12

13 Defense counsel should also explore with the defendant any cultural biases or
14 barriers that could affect his or her representation, including the preparation and
15 presentation of the defendant's case ... Defense counsel should take the time to
16 explain the nature of the criminal justice system, the jury system, the role of
17 police and prosecutors, and the rights of a criminal defendant.

18 Cole & Maslow-Armand, *The Role of Counsel and the Courts in Addressing Foreign*
19 *Language and Cultural Barriers at Different Stages of a Criminal Proceeding*, 19 W.
20 New Eng. L. Rev. at 200 (1997).

21 Although the state would like the court to use the existence of a colloquy to
22 negate the defendant's claims here, the court should hold a fact finding hearing to allow
23 for consideration of factors analyzed by other courts in the context of validity of waivers.
24 When courts examine whether waivers are made knowingly and intelligently, an
25 appropriate inquiry should cover all circumstances, including the defendant's age,
26 experience, education, background, and intelligence. *See U.S. v. Nakhoul*, 596 F.Supp.
1398 (D.Mass. 1984), *aff'd sub nom* by *U.S. v. El-Debeib*, 802 F.2d 442 (1st Circuit 1986)
(Waiver of Miranda rejected where the defendant was locked up alone in a windowless

1 room and questioned by two unfamiliar investigators, due to limitations on his
2 understanding of American law, customs, and constitutional rights).

3 In a quick proceeding with only a completed plea petition and a colloquy of “yes”
4 and “no” questions, the judge has little ability to ascertain the defendant’s experience,
5 background and intelligence. “Any translation is inevitably a screen placed between the
6 witness and the jury, affecting the jury’s ability to assess credibility from demeanor,
7 inflection of voice, nuances of language, and details of testimony.” *State v. Casipe*, 686
8 P.2d 28, 33 (Haw. Ct. App. 1984); *State v. Fung*, 907 P.2d 1192, 1194 (Utah Ct. App.
9 1995). Just as translation may functionally act as a screen for the trier of fact, so may that
10 translation create a real barrier to understanding between the court or counsel and the
11 defendant.
12

13
14 Typically, with the brief nature of plea proceedings, it would be incumbent upon
15 counsel to point it out to the court if counsel were aware of any concerns about cultural or
16 intellectual barriers to the defendant’s ability to understand. Where counsel does not
17 inform the court of these issues, and without substantial questioning outside of the basic
18 “yes” or “no” colloquy, the judge is not in a position to independently evaluate those
19 factors. Counsel, however, should conduct an investigation reasonably calculated to
20 ascertain the extent of such cultural impediments to communications and make efforts to
21 provide the defendant with a real understanding of options.
22

23 In the matter at hand, Mr. Gonzalez Gonzalez indicates that he was unfamiliar
24 with the justice system, American or otherwise, and did not understand the concept of a
25 jury trial, the burden of proof, the concept of *mens rea*, or the availability of a process to
26 effectively contest the charges against him. Although a basic colloquy took place on the

1 record, the colloquy is not a comprehensive explanation of the process, but rather, a
2 streamlined recitation of certain procedural and substantive guarantees, with mostly “yes”
3 or “no” responses. Without a more basic understanding of the structure and function of
4 the trial system, this recitation was devoid of meaning for Mr. Gonzalez Gonzalez, his
5 plea was not knowing or intelligently made, and prior counsel failed to provide
6 explanations to overcome the lack of understanding.
7

8
9 H. The Court Should Have Permitted Substitution of Counsel and Sufficient Time
for Mr. Gonzalez’ New Counsel to Effectively Represent Him

10 The court may also vacate a conviction and allow withdrawal of the plea under
11 CrR 7.8(b)(5) under “extraordinary circumstances not covered by any other section of the
12 rule.” *State v. Olivera-Avila*, 89 Wn. App 313, 319, 949 P.2d 824 (1997) (citing *State v.*
13 *Brand*, 120 Wn.2d 365, 369, 842 P.2d 470 (1992)). Here, the circumstances may also
14 show fundamental, substantial irregularities in the court’s proceedings that justify this
15 motion. *Olivera-Avila*, 89 Wn. App at 319 (citations omitted).
16

17 In open court, on December 23, 2014, Mr. Gonzalez Gonzalez filed a motion for
18 substitution of counsel, citing his concerns about his inability to understand counsel and
19 the proceedings as well as his desire for alternative counsel. *See* Court File, Motion to
20 Discharge/Substitute Counsel and Continue Sentencing and All Other Proceedings
21 Herein. At that point, the court had received an unfavorable SSOSA recommendation
22 and Mr. Terry had not obtained an alternative SSOSA evaluation, as he had indicated was
23 his intent, apparently due to his inability to obtain authorization for indigent funds for the
24 same. The court addressed the motion, yet failed to engage in any meaningful colloquy
25
26

1 with Mr. Gonzalez regarding the reasons for his dissatisfaction with counsel or
2 the extent of the communication failure.

3 Among the components of the constitutional right to counsel is the right to a
4 reasonable opportunity to select and be represented by chosen counsel, but the essential
5 aim of the Sixth Amendment is to guarantee an effective advocate for each criminal
6 defendant. *State v. Price*, 109 P.3d 27, 126 Wash.App. 617, review denied 124 P.3d 659,
7 155 Wash.2d 1018. (2005). Factors to be considered in a decision to grant or deny a
8 motion to substitute counsel are (1) the reasons given for the dissatisfaction, (2) the
9 court's own evaluation of counsel, and (3) the effect of any substitution upon the
10 scheduled proceedings. *State v. Stark*, 48 Wash.App. 245, 253, 738 P.2d 684 (1987).
11 *State v. Stenson*, 132 Wn.2d 668, 940 P.2d 1239 (1997). The Sixth Amendment right to
12 defense counsel for the accused includes both the right to retain an attorney of choice and
13 the right to be represented by an attorney who is free from conflicts of interest. *State v.*
14 *McDonald*, 95 P.3d 1248, 122 Wash.App. 804, review denied 103 P.3d 1247, 153
15 Wash.2d 1006 (2004).

16 When a defendant raises a factual claim of ineffectiveness or a conflict with
17 counsel, the superior court must conduct a thorough examination of the circumstances to
18 determine whether the court must appoint new counsel. *See State v. Dougherty*, 33 Wn.
19 App. 466, 471, 655 P.2d 1187 (1982), *review denied*, 99 Wn.2d 1023 (1983). "[A] trial
20 court conducts adequate inquiry by allowing the defendant and counsel to express their
21 concerns fully." *State v. Schaller*, 143 Wn. App. 258, 271, 177 P.3d 1139 (2007) (citing
22 *Varga*, 151 Wn.2d at 200-01; *In re Stenson*, 142 Wn.2d at 731), *review denied*, 164
23 Wn.2d 1015 (2008).

1 Here, although Mr. Gonzalez Gonzalez raised serious concerns in writing,
2 through his replacement counsel of choice, and attempted to address the regarding the
3 problems he felt existed, the court did not allow him the time to explain nor did the court
4 engage in an adequate inquiry, as required. Instead, the court focused on time frame and
5 used the imposition of a relatively short time frame for the setover to snuff out Mr.
6 Gonzalez Gonzalez' ability to acquire new counsel.
7

8 “The court in *State v. Hartwig*, 36 Wn.2d 598, 601, 219 P.2d 564 (1950), said:
9 When the court recognized the constitutional right of appellant to have counsel and
10 appointed an attorney to represent him, it then became the duty of the court to allow the
11 appointed attorney a reasonable time within which to consult his client and make
12 adequate preparation for trial.” *State v. Sain*, 34 Wn. App. 553, 558, 663 P.2d 493 (1983).
13 The constitutional right to have the assistance of counsel, Art. I, § 22, carries with it a
14 reasonable time for consultation and preparation, and a denial is more than a mere abuse
15 of discretion; it is a denial of due process of law in contravention of Art. I, § 3 of our
16 constitution. *Id.* (citing *Commonwealth v. O'Keefe*, 298 Pa. 169, 148 Atl. 73; *Jones v.*
17 *Commonwealth of Kentucky*, 97 F. (2d) 335; 14 Am. Jur. 886, Criminal Law, § 172; 16
18 C. J. S. 1187, Constitutional Law, § 591; Annotation, 84 A. L. R. 544).
19
20

21 In a decision subsequent to *Stenson*, the Ninth Circuit Court of Appeals applied
22 the test for assessing whether a trial court erred in failing to substitute counsel to the
23 determination of whether an irreconcilable conflict exists. *United States v. Moore*, 159
24 F.3d 1154, 1158 n.3 (9th Cir. 1998). The factors in the test are (1) the extent of the
25 conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion. *Id.* at 1158-
26 59. Here, the court conducted virtually no inquiry and did not apply the required test.

1 Having already plead guilty, but with counsel of choice advising the court of the
2 possibility of withdrawal of the plea, Mr. Gonzalez Gonzalez had already waived his
3 right to the statutory time frame for sentencing. He had voiced clear concerns about Mr.
4 Terry's ability to adequately represent him.
5

6 A letter was filed in Mr. Gonzalez own hand, bearing his signature on December
7 30, 2014, in the Spanish language, wherein he attempted to advise the court that: no
8 investigation was conducted and he was worried about the investigation; and Mr. Terry
9 had been given letters of character reference to investigate but that he did not speak with
10 anyone; he indicated he was not happy with Mr. Terry's lack of investigation and that he
11 had been told that the prosecutor gave him an offer and that's why he agreed to continue.
12 No written translation of the document exists in the court file. *See Court File.* The letter
13 contains multiple spelling and grammatical errors, is at times a bit nonsensical and
14 evidences a profound lack of education and ability to communicate.
15

16 Subsequently, the court file indicates that another handwritten letter appears on
17 January 8, 2015, in English and in handwriting distinct from that contained in the prior
18 letter, dated 12-29-2014, and apparently bearing Mr. Gonzalez Gonzalez' signature,
19 stating as follows:
20

21 I am very nervous and confused about my legal case. I took the advice of family
22 and friends and in a state of panic I told you I wanted a new attorney. I have
23 discussed my case at length with Mr. Terry, and I wish to have him continue as
24 my attorney. Thank you for your patience with me and I apologize for any
inconvenience. Sincerely,
Javier Gonzalez Glez
Javier Garcia Garcia

25 *See Court File.* No certification or declaration regarding translation appears in
26 connection with the letter. Also contained in the court file is a letter from John Terry,

1 dated December 29, 2014, stating: Please find attached letter executed by Mr. Gonzalez
2 Gonzalez in regards to recent confusion about his choice of counsel. He asked that I
3 provide this to you promptly so that previous correspondence is disregarded.”
4 Additionally, the court file contains another handwritten letter, dated December 24, 2014,
5 in handwriting that appears different from the other two, stating:
6

7
8 With all respect I do not want Jon Terri as my attorney any longer. My attorney
9 told me many times that I would be released on one year with the SOUSA
10 program, of all the times he came to visit me he told me everything was going
11 good but it wasn't true he didn't do as he was telling me. He didn't do the
12 necessary things like show up at court appearances. He has constantly been lieing
13 to me, he said to plead guilty and I would get the SOSA program. I want to take
14 back my plea because John Terry told me I would get SOSA. I gave John Terry
15 \$7000.00 dollars to get me the SOSA program. John Terry promised me that I
16 would get the SOSA program. Now I want to fire John Terry and I will pay for
17 another attorney, but I want to take back my plea of Guilty. Please.

18 Sincerely,

19
20 Javier Gonzalez Glez
21 December 24, 2014
22 CFN: 215944 F1-5

23
24 *See Court File.* Mr. Gonzalez Gonzalez clearly expressed serious concerns about the
25 effectiveness of counsel on multiple occasions and these concerns were ignored by the
26 court.

As the court failed to conduct the required inquiry, Mr. Gonzalez Gonzalez had
grave concerns about counsel and the record supports the lack of effective investigation,
the court should consider allowing Mr. Gonzalez Gonzalez to withdraw his guilty plea
and vacate the judgment and sentence in this matter, in the interest of justice and to
protect Mr. Gonzalez Gonzalez' right to counsel of choice and effective representation.
Allowing the withdrawal of plea on these grounds would not necessitate a finding of

1 ineffective assistance, just a determination that counsel and Mr. Gonzalez Gonzalez were
2 no longer able to communicate, that he had valid concerns about Mr. Terry's ability to
3 properly represent him, and that he wished to retain alternate counsel to guide him in the
4 defense of these criminal charges.

5
6 I. Mr. Gonzalez Gonzalez has Stated With Particularity, Facts which, If Proven,
7 Would Entitle Him to Relief

8 The state may argue that Mr. Gonzalez Gonzalez is relying on a "self-serving
9 affidavit" are insufficient to make a substantial showing justifying relief. However, the
10 typically cited *In re Rice*, 118 Wn.2d 876, 828 P.2d 1086 (1992), (*writ denied* at 491 U.S.
11 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989)) as support for that argument, does not
12 stand for that proposition, but rather the court there simply requires a statement of facts
13 sufficient to entitle him to relief. The language used by the *Rice* court is follows:

14 Bald assertions and conclusory allegations will not support the holding of a
15 hearing. *See In re Williams*, 111 Wn.2d 353, 364-65, 759 P.2d 436 (1988).
16 Rather, with regard to the required factual statement, the petitioner must state with
particularity facts which, if proven, would entitle him to relief.

17 *In re Rice*, 118 Wn.2d 876, 886 (1992). The standard of proof is not a high barrier, even
18 in the context of review of personal restraint petitions. *In re Pers. Restraint of Yates*, 177
19 Wn.2d 1, 18 (2013), the court clarified the standard in that context, quoting *Rice*:

20
21 To establish a prima facie showing required for a reference hearing, a petitioner
22 must offer "the facts underlying the claim of unlawful restraint and the evidence
23 available to support the factual allegations." *In re Pers. Restraint of Rice*, 118
24 Wn.2d 876, 885-86, 828 P.2d 1086 (1992) (PRP of Rice). Mere "[b]ald assertions
25 and conclusory allegations" are insufficient to justify a reference hearing. *Id.* at
26 886. For "matters outside the existing record, the petitioner must demonstrate that
he has competent, admissible evidence to establish the facts that entitle him to
relief"; if the "evidence is based on knowledge in the possession of others," the
petitioner may either "present their affidavits" or present evidence to corroborate
what the petitioner believes they will reveal if subpoenaed. n2 *Id.* **The
corroboration must be more than mere speculation or conjecture. *Id.***

1 *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 18 (2013) (emphasis added). Here, Mr.
2
3 Gonzalez Gonzalez's prior declarations are competent and admissible. The allegations
4 herein are fact specific and substantive and current counsel's declaration, along with
5 attached exhibits, tend to support his assertions as independent corroboration. No
6 speculation or conjecture has been put forth in the matter at hand and Mr. Gonzalez
7 Gonzalez has made the required showing.

8
9 Neither the court record nor materials submitted by the defense contain any
10 evidence to contradict Mr. Gonzalez Gonzalez' assertion that he did not understand his
11 counsel's explanations or the consequences of his plea. Mr. Gonzalez Gonzalez had no
12 real knowledge of his options.

13 Here, applying the proper standard, the assertions made by the defendant are not
14 bald or lacking in specificity. Mr. Gonzalez Gonzalez has made a specific showing that
15 he suffers from mental challenges, in the form of an affidavit from a third party, and he
16 has specifically described the information that prior counsel did not provide that would
17 have caused him to make a different decision, and not accept the proposed plea.
18

19 In the case at hand, as in almost any other criminal matter, no one besides prior
20 counsel and the defendant is in a position to provide information about the content of
21 communications between defense counsel and the defendant. The problem of proof
22 posed by the legal requirements of confidentiality should not be used by the state as a
23 sword to prevent a defendant from presenting competent evidence of irregularities or
24 insufficient performance.
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determine whether he should be allowed to withdraw his plea of guilty and whether the judgment and sentence should be vacated.

RESPECTFULLY SUBMITTED this 22rd day of January, 2015



NICOLE T. DALTON, WSBA#38230
Attorney for Defendant

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CERTIFICATION

I hereby certify that on this 22nd day of January, 2016, I delivered a copy of the foregoing MOTION TO WITHDRAW GUILTY PLEA AND VACATE JUDGMENT AND SENTENCE CrR 7.8 AND SUPPORTING MEMORANDUM OF LAW

- by US mail, postage prepaid,
- by hand delivering the copy,
- by courier
- by facsimile

to the following person at the address listed below:

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver, WA 98666



- Nicole T. Dalton, WSBA#38230
- Tory M. Stewart
- Sabel Vazquez

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SCOTT G. WEBER, CLERK
CLARK COUNTY

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR CLARK COUNTY

STATE OF WASHINGTON,)	Case No. 13-1-01744-0
)	
Plaintiff,)	
	)	DECLARATION OF JOSE
vs.	)	DELEON
)	
JAVIER GONZALEZ-GONZALEZ,)	
)	
Defendant..)	
)	

I, Jose DeLeon, hereby declare, for the record in this case, the following:

1. I am currently a licensed investigator in the State of Oregon for 23 years and in my second year as a licensed investigator in the State of Washington. I met and surpassed the State of Oregon Department of Safety and Standards, DPSST, thirty-two (32) hour requirement, every two (2) years, for continuing education for investigators. My experience as an investigator ranges from defending persons who have been charged with aggravated murder, major felony, and misdemeanor offenses.

2. I am a current member of the Oregon Criminal Defense Lawyers Association and Capital Defenders. I have attended the annual Death Penalty conference sponsored by OCDLA since 2003, which focuses on the representation of defendants facing the death

DECLARATION: JOSE DELEON— 1

DALTON LAW OFFICE, PLLC
2904 MAIN STREET
VANCOUVER, WA 98663
PHONE (360) 213-0013 FAX (360) 213-0714

1 penalty. I have worked on capital murder cases since 2001 with; eight (8) cases as lead
2 fact investigator, five (5) cases as assistant investigator, four (4) cases as lead mitigation
3 specialist, and two (2) cases as assistant mitigation specialist. I have investigated
4 hundreds of cases in my twenty three (23) year career as an investigator.

5
6 3. On April 28, 2015 I was asked to review the State's case against the Defendant
7 herein, Javier Gonzalez-Gonzalez (Clark County Cause No. 13-1-01744-0). My primary
8 focus on the case was to investigate whether Mr. Gonzalez-Gonzalez's defense attorney,
9 John Terry, conducted any investigation into the above-mentioned case that would have
10 provided support for a defense against the sex abuse charges. Mr. Gonzalez-Gonzalez
11 plead guilty to Rape of a Child in the First Degree, pursuant to what he understood to be
12 the assurance of counsel that he would only serve one (1) year sentence.

13
14 4. Mr. Gonzalez-Gonzalez indicates that although defense counsel spoke Spanish, it
15 was difficult for him to understand what counsel was conveying to him. Mr. Gonzalez-
16 Gonzalez has limited education and had no understanding of the United States court
17 system.

18 5. During my years working as an investigator, I have frequently worked with
19 Spanish speaking individuals and those with little formal education. Spanish was spoken
20 in my home, growing up as a child, and I have spoken Spanish during most of my life
21 with speakers of varying levels of education. In speaking with Mr. Gonzalez-Gonzalez, it
22 is apparent to me that Mr. Gonzalez-Gonzalez is extremely unsophisticated and has a
23 very limited command of his native Spanish language. To communicate with him
24 regarding legal issues, I found it necessary to break concepts down into simplistic terms
25 and give thorough explanations.
26

1 6. In my experience, native Spanish speakers with little formal education often have
2 great difficulties understanding Spanish spoken with a strong Anglo accent. I spoke at
3 length with Mr. Gonzales about his understanding of communications with his lawyer
4 and he indicated generally that he was not able to understand much of what Mr. Terry
5 said to him.
6

7 7. In attempting to discuss Mr. Gonzalez-Gonzalez' communications with his lawyer
8 in greater detail, he was unable to articulate the exact nature of the communication
9 problems with Mr. Terry, but he repeated over and over again that he did not understand
10 the things he said to him and that he was scared and just relying on him to take care of
11 things. He indicated that Mr. Terry did not explain things to him in a way he could
12 understand and that he didn't understand words that he was using. Mr. Gonzalez-
13 Gonzalez was not able to communicate to me much of what Mr. Terry communicated to
14 him.
15

16 8. To my knowledge and in my years of experience, when interpreters are used to
17 communicate with clients, they are not typically allowed to explain. They simply repeat
18 the language being used by the lawyer. If the lawyer does not break down legal decisions
19 and concepts into explanations that can be understood by a person with no cultural
20 context and no experience with the system, Spanish speakers with limited education
21 typically have a very difficult time understanding the meaning of the communications.
22

23 9. When I speak with native Spanish speaking clients and witnesses, I frequently ask
24 if they are understanding what I am saying. I listen to them to evaluate their level of
25 language and provide explanations when I think they may not be understanding. For
26 example, if they don't understand the concept of a jury trial, I will provide an explanation

1 starting something like: “Here in the United States you have twelve people that make up
2 the jury. You’ll have a judge and he is the person makes decisions in court. The
3 government’s lawyer will have witnesses talk and then your lawyer can have witnesses
4 talk to help you.” Many times I will have to explain what the word prosecutor means and
5 explain the process of a trial and how it works.
6

7 10. Thus when counsel spoke with Mr. Gonzalez-Gonzalez about the state’s against
8 him, Mr. Gonzalez-Gonzalez indicates that he did not understand what counsel was
9 telling him. He indicates that counsel did not explain or go into detail what the legal
10 terms meant and the possible implications of the plea.

11 11. I have extensive experience investigating criminal matters and work under the
12 direction of lawyers and using my own judgment to conduct a thorough investigation. It
13 is my professional opinion that the following errors and omissions constituted serious
14 insufficiencies in the investigation conducted in Mr. Gonzalez-Gonzalez’ matter. Had
15 trial counsel not made the following errors and omissions, it is my opinion that Mr.
16 Gonzalez-Gonzalez would have had more options available and the results in his case
17 likely would have been different.
18

19 12. Trial counsel did not hire an investigator to interview any of the witnesses
20 mentioned by Mr. Gonzalez-Gonzalez that would have testified on behalf of Mr.
21 Gonzalez-Gonzalez. It also does not appear that trial counsel personally conducted
22 necessary and appropriate investigation. Based on my review of the record and the
23

24 /// /// ///

1 independent investigation I conducted, I believe the following errors and omissions were
2 made in the investigation of the charges against Mr. Gonzalez:

- 3 A. Trail counsel failed to hire an investigator to interview any of the witnesses
4 mentioned by Mr. Gonzalez Gonzalez that would have testified on behalf of Mr.
5 Gonzalez Gonzalez.
6
- 7 B. It is standard procedure in an investigation to interview all of the state's
8 witnesses, which was not done here.
- 9 C. From my investigation, it appears that the timeline around the alleged incidents
10 that are the basis of the charges in this case, is a critical issue that should have
11 been explored by the defense. Police reports indicate that the alleged victim in
12 this matter claimed that the kind of sexual contact forming the basis of the charges
13 here commenced while the family still lived in Mexico and continued for some
14 time.
15
- 16 D. Several witnesses were interviewed by police, who gave information relating to
17 the timeline and the whereabouts of the defendant and the alleged victim at
18 different times.
- 19 E. From trial counsel's file, it appears that the only witness interview was the alleged
20 victim. I reviewed the transcript of the interview conducted by counsel. Counsel
21 appears to have provided her with much information, regurgitating the
22 information contained in the police report. The police reports were rather vague
23 in terms of the timeline and time frame of the alleged incidents. Counsel did not
24 make an effort to get the witness to independently establish critical timelines.
25
26 This was an extremely ineffective investigative technique because, rather than

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searching for full information from the witness and he failed to try to test the information against other sources and the information that she had provided previously. This defeats an important goal of testing consistency and veracity.

- F. Throughout the interview, the interviewer uses leading questions, asking the alleged victim to confirm, rather than asking her for an independently remembered version of events.
- G. During the defense interview, counsel allowed the prosecuting attorney to also pose leading questions, suggesting the answers. This is an extremely ineffective interviewing technique because it only reinforces the original statements made to law enforcement, rather than independently testing and further exploring the witness' version of events.
- H. During the defense interview, counsel failed to question the witness about the events and circumstances surrounding the alleged incidents. He did not ask her to go into any level of detail regarding the dynamics of the household.
- I. Additionally, it is standard, good investigation practice to ask alleged victims in sexual assault cases to provide an, independent detailed version of the alleged incidents. This is for the purpose of assessing the witness' demeanor, looking for discrepancies, and variations from previously recounted versions. Leading questions are not appropriate in this context.
- J. Counsel's inquiry into this area consisted of him summarizing the version of events in the police reports, apparently quoting some passages, and asking for agreement with that version of events. Few additional details were solicited.

- 1 K. Additionally, counsel does not appear, from the file provided, to have attempted
2 to conduct interviews with any of the other state's witnesses. The police report
3 names: the alleged victim, L.M.G, Mr. Gonzalez-Gonzalez' daughter; D.A.G. her
4 older sister, also called "victim" in police reports; D.M.G. another older sister,
5 also called "victim" in police reports; M.G.M. the mother of Mr. Gonzalez-
6 Gonzalez' three daughters; M.E.S. Mr. Gonzalez-Gonzalez' girlfriend and the
7 mother of other, minor children; L.X.G.S., Mr. Gonzalez-Gonzalez' daughter with
8 M.E.S.
9
- 10 L. Specifically, the alleged victim's two older sisters regarding similar allegations of
11 sexual abuse. Counsel never interviewed the sisters with respect to this potential
12 prior bad act testimony or with respect to timelines.
13
- 14 M. Although police interviewed the mother of the alleged victim and her sisters,
15 police did not establish firm timelines. Counsel failed to interview the mother
16 and, thus, was unable to test her version of events.
- 17 N. Counsel failed to discover through appropriate investigation that witness
18 Valentine Gonzalez would have testified that Mr. Gonzalez Gonzalez was not
19 living in Vancouver, WA during the time of the alleged offense, and that in fact
20 he was living and working in Pasco, WA. Valentine would have testified that Mr.
21 Gonzalez Gonzalez was living in Mexico and returned to the United States in
22 2004, contradicting the States theory that the alleged offenses began in U.S. in
23 2002, and that he did not live with his family.
- 24 O. Mr. Gonzalez Gonzalez and his wife Maria Mendoza separated shortly after
25 arriving in the United States. When Mr. Gonzalez Gonzalez would travel from
26

1 Pasco, WA to Vancouver to pay child support to his wife, Ms. Mendoza, Mr.
2 Gonzalez Gonzalez stayed with Valentine and his family. In addition, Valentine
3 was present when Vavila Riva told the family that she had spoken to a woman
4 who knows Maria Mendoza. Ms. Riva was told that Ms. Mendoza would have
5 Mr. Gonzalez released from jail if Mr. Gonzalez would give her property owned
6 in Mexico by Mr. Gonzalez and his family. If I had been hired to investigate this
7 matter, it would have been appropriate to seek funding to attempt to identify and
8 speak with the person who communicated Ms. Mendoza's possible blackmail
9 attempt to Ms. Riva.
10

11 P. Mr. Gonzalez Gonzalez sisters Araceli and Maria Gonzalez will testify to the
12 same possible blackmail attempt. Araceli spoke in more detail with Ms. Riva.
13 Vavila Riva spoke with Kenda, who is the sister of Vaula Gomez, who is best
14 friends with Maria "Lupe" Mendoza in Mexico, and understood that Ms.
15 Mendoza indicated she would have Mr. Gonzalez released from jail if Mr.
16 Gonzalez would turn over property owned by Mr. Gonzalez and his family to Ms.
17 Mendoza.
18

19 Q. Another witness not interviewed was Elvia Samaniego. Ms. Samaniego husband
20 is Jesus and his brother is Juan. Juan is married to victim's (Lucero) sister Dalila.
21 Elvia and Luceo have known each other since they were children. Elvia and
22 Lucero grew up together on the ranch in Mexico. When Elvia moved to the
23 United States (2004), the girls stayed in touch. Elvia and Lucero would talk on the
24 phone about what was going on in their life almost every day, mostly about boys.
25 Elvia describes her relationship Lucero as being inseparable; they talked about
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everything in their lives. Elvia believes that if Lucero had been abused by her father, Lucero would have disclosed that to her. Elvia indicated she believes that Lucero was a person that would not have put herself in situation to be molested.

R. Felipe Gonzalez-Hernandez would have testified that Mr. Gonzalez-Gonzalez, at or around the time of the alleged incident, was residing in Pasco, Washington. About every two (2) weeks Mr. Gonzalez-Gonzalez would come into town to pay his wife child support. On occasions Mr. Gonzalez-Gonzalez would leave the child support money with Felipe if he was unable to locate his wife. If Mr. Gonzalez-Gonzalez was staying the night or weekend, Felipe offered his home for logging. Felipe has a grown daughter that lived in the residence. Felipe was never told of any inappropriate behavior or comments from Mr. Gonzalez-Gonzalez. In fact, Felipe's wife and daughter said that Mr. Gonzalez-Gonzalez was always welcome in their home.

13. It is my professional opinion, as an experienced and licensed investigator in the State of Washington, that the investigation conducted in this case, or lack thereof, is inadequate and does not meet the minimum standards of a professional criminal defense investigation.

14. Given the aforementioned issues with the investigation in this matter, and based on my years training and experience as a licensed investigator in the State of Oregon and Washington, in my opinion, had Mr. Gonzalez-Gonzalez' trial counsel, John Terry, hired an investigator to conduct a complete and thorough investigation, an adequate investigation would likely have provided Mr. Gonzalez-Gonzalez and Mr. Terry with

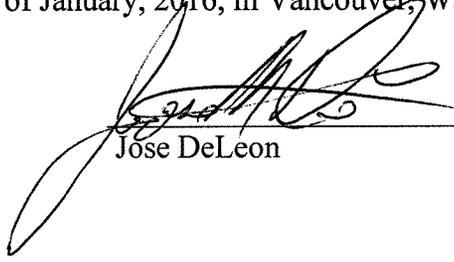
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important additional facts to aid in his defense in this case. This would likely have given counsel more tools to work with either at trial or in the plea bargaining process, which is the ultimate goal of conducting a thorough investigation.

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

D A T E D this 15th day of January, 2016, in Vancouver, Washington.



Jose DeLeon

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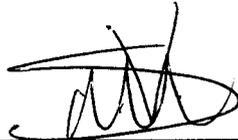
CERTIFICATION

I hereby certify that on this 19th day of February, 2016, I delivered a copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW GUILTY PLEA AND VACATE JUDGMENT AND SENTENCE CrR 7.8: TRANSCRIPTS OF HEARINGS 8/1/2014, 11/5/2014, 12/5/2014, 12/23/2014, 1/26/2015.

- by US mail, postage prepaid,
- by hand delivering the copy,
- by courier
- by facsimile

to the following person at the address listed below:

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver, WA 98666



-
- Nicole T. Dalton, WSBA#38230
 - Tory M. Stewart
 - Sabel Vazquez

1 APPEARANCES (cont.):

2 FOR THE APPELLANT: NICOLE DALTON
3 Attorney at Law
4 2904 Main Street
5 Vancouver, WA 98663-2772

6 ALSO PRESENT: Certified Spanish Interpreter

7 *****

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THE COURT: Okay. Thank you.

MS. BANFIELD: I, I just want to make certain that the amended *Information* was filed the last time we were in Court. We were going to change a plea and we realized that there were some issues with competency at that time. It should be a two-count *Information*, one with rape of child in the second degree and child molest in the second degree.

CLERK: No, there was not an amended *Information* (inaudible - away from mic)

THE COURT: Okay. I didn't find it in the file.

MS. BANFIELD: Thank you, Your Honor.

THE COURT: Okay, sir, would you state your full name?

DEFENDANT (via interpreter): Javier Gonzalez-Gonzalez.

THE COURT: Okay. And, Mr. Gonzalez-Gonzalez, you are 55 years old?

DEFENDANT: Yes.

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THE COURT: Been through four years of education?

DEFENDANT: Yes.

THE COURT: And you've been over this statement of plea of guilty with your attorney and the interpreter?

DEFENDANT: Yes.

THE COURT: Okay. If you have any questions, you'll let me know?

DEFENDANT: (no audible response)

THE COURT: Okay. And you understand you're now being charged pursuant to the amended *Information* with rape of a child in the second degree, two counts of rape of a child in the second degree allegedly taking place between August -- excuse me, September... January 1st 1998 and September 13th 2004. Are you familiar with those charges?

DEFENDANT: (no audible response)

THE COURT: Do you understand the charges being made against you?

DEFENDANT: Yes.

THE COURT: Okay. Now you do have a right to a trial

1 by jury, the right to remain silent, the presumption of
2 innocence, the right to question the witnesses that testi-
3 fy against you, the right to bring forth witnesses on your
4 own behalf, and also the right to an appeal. By pleading
5 guilty at this time you give up all those rights, do you
6 understand that?
7

8 DEFENDANT: Yes.

9 THE COURT: Rape of a child in the second degree car-
10 ries with it a maximum term of life imprisonment without
11 the possibility of parole and a \$50,000.00 fine. Based
12 upon your offender score of three, the standard range for
13 confinement is 102 to 136 months in prison. In addition
14 to that, you would be subject to a lifetime on community
15 custody.
16

17 Child molestation in the second degree has a
18 maximum term of ten years in prison and a \$20,000.00 fine.
19 The standard range would be between 31 and 41 months with
20 a 10-month -- 10 years of... Two years (unintelligible)
21 enhancements?
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1 MS. DALTON: I think that was reversed, Your Honor,
2 I'm sorry, 36 months of enhancement and, I believe, 10
3 years' community custody, is that correct?

4 MS. BANFIELD: Let me look at your paper, I'm sorry.
5 Community custody life, 36 months. There's no... There's
6 no enhancements, those just need to be scratched out.
7

8 THE COURT: Yeah.

9 MS. BANFIELD: Sorry.

10 THE COURT: With ten years' community custody.

11 MS. DALTON: Yeah.
12

13 THE COURT: Okay.

14 In addition to that, you'll also be subject to
15 certain fines, fees and costs. Do you understand the con-
16 sequences you're facing?

17 DEFENDANT: Yes.
18

19 THE COURT: At the time of sentencing, the parties
20 will make a recommendation as to your sentence, and you
21 understand that I do not have to follow anyone's recommen-
22 dation?
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1 Now, this does --

2 DEFENDANT: Yes.

3 THE COURT: This crime does constitute a strike, as
4 it is a most serious offense. Two or more similar situa-
5 tions, similar case convictions would result in an auto-
6 matic mandatory sentence of life imprisonment without the
7 possibility of parole, you understand that?
8

9 DEFENDANT: Yes.

10 THE COURT: Okay, if you're not a citizen of the
11 United States, this would results in grounds for being de-
12 ported and exclusion from any readmission to the United
13 States. You'll also be giving up any right you may have
14 to own, possess, control any firearms or ammunition, and
15 that would continue until restored to you by an actual
16 Court order. You lose your eligibility to vote until the
17 sentence is fully served. You will be required to regis-
18 ter your reside (sic), study or work as a sexual offender.
19 You will be required to give a biological sample for DNA
20 identification purposes and undergo testing for HIV virus.
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1 MS. BANFIELD: Your Honor, I think it should be noted
2 under the most serious offense, this is also his second
3 strike offense, so...

4 MS. DALTON: Two.

5 THE COURT: This is his second strike?

6 MS. BANFIELD: Yes. No, I mean, this...
7

8 MS. DALTON: There's two strikes.

9 MS. BANFIELD: You said that if he has two or more,
10 but if he has one more.

11 THE COURT: Well, he had two total.

12 MS. BANFIELD: Yeah.
13

14 THE COURT: That's what I mean. Okay. But any addi-
15 tional conviction, any additional conviction would result
16 in that automatic sentence that we talked about.

17 MS. DALTON: Thank you for clarifying.

18 THE COURT: You'll also be assessed up to \$100.00 for
19 domestic violence, and since you are subject to community
20 custody, if there's any finding of chemical dependency,
21 you would be ordered to undergo treatment for that.
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MS. BANFIELD: It's not a domestic violence case.

THE COURT: Yeah.

THE COURT: Thanks, though, but that was (inaudible - away from mic) there. Okay.

Since you are being sentenced for two or more serious violent offenses rising from separate and distinct criminal conduct, the sentences on Counts I and II will run consecutively, unless we find compelling reasons to do otherwise. So you're looking at consecutive sentences.

Knowing all these rights are being waived and the consequences you face, do you still wish to plead guilty to both these charges?

DEFENDANT: Yes.

THE COURT: Okay. Are you making this plea of guilty freely and voluntarily?

DEFENDANT: Yes.

THE COURT: Has anyone made any threats against you or any promises to you to force you to plead guilty?

DEFENDANT: No.

1 THE COURT: Okay.

2 Now, paragraph 11 is your statement as to what
3 you did to make you guilty of these charges. Could you...
4 I'll have your attorney read that out loud. You can fol-
5 low it on your papers.

6 MS. DALTON: I'm Javier Gonzalez-Gonzalez. Between
7 the dates of August 13th 2002 and August 12th 2014 in
8 Clark County, Washington, one, I had sexual intercourse
9 with LGM, who was at least twelve years old but was less
10 than 14 years at the time of the sexual intercourse. I was
11 not married or in a state-registered domestic partnership
12 with LGM. Further, LGM was at least 36 months younger
13 than me at that time. She was my biological daughter. We
14 resided in the same home at that time. I used such posi-
15 tion of power and trust to facilitate this crime. The act
16 was part of an ongoing pattern of sexual abuse of the same
17 victim and said victim was under age of 18 (sic).
18
19
20

21 Also, I had sexual contact with LGM, who was at
22 least twelve years old but was less than 14 years old at
23
24

1 the time of the sexual contact. I was not married or in a
2 state-registered domestic partnership. LGM was at least
3 36 months younger than me, my biological daughter, and we
4 reside in the same home at that time. I used such posi-
5 tion of power and trust to facilitate this crime. The sex
6 was part of an ongoing pattern of sexual abuse of the same
7 victim and said victim was under age 18.

9 THE COURT: Okay, sir, is that a true statement?

10 DEFENDANT: Yes.

11 THE COURT: And is that your signature at the top of
12 the page?

13 DEFENDANT: Yes.

14 THE COURT: Okay, I'll accept that plea of guilty.

15 MS. BANFIELD: Your Honor, we're looking for a sen-
16 tencing date at least six weeks out.

17 THE COURT: Okay. Jennifer, give us a date for that.

18 (CONVERSATION BETWEEN COURT AND JA)

19 MS. BANFIELD: Can we get a special set, Your Honor?

20 THE COURT: (no audible response)

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Jo L. Jackson, Transcriptionist
P. O. Box 914
Waterville, WA 98858
509-745-9507/509-630-1705

1 MS. BANFIELD: We don't have to, but there are three
2 members of the family that will want to speak.

3 (FURTHER CONVERSATION BETWEEN COURT AND JA)

4 MS. BANFIELD: Can we go to the end of the docket on
5 September 17th?

6 THE COURT: Yeah, that's what I'm thinking
7

8 MS. BANFIELD: Great. So three o'clock on September
9 17th.

10 MS. BANFIELD: You can step over here to sign.

11 Thank you, Your Honor.
12

13 THE COURT: Okay.

14 (END OF HEARING - 10:38:03 a.m.)
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Wednesday, November 5, 2014 at 2:40 p.m.

1
2 INTERPRETER: Good afternoon, Your Honor, (unintelli-
3 gible) Raul, Washington Court certified Spanish interpret-
4 er.

5 THE COURT: Okay. Thank you.

6 MS. DALTON: Good afternoon, Your Honor. We're here
7 for sentencing. We received the SSOSA evaluation on Mon-
8 day, two days ago. I haven't had a chance to brief it,
9 first of all, and second of all, Your Honor, I wanted to
10 move the Court for a second opinion, which is permitted
11 under the statute. It doesn't appear that the State is in
12 opposition to that motion, so we're just asking for a new
13 sentencing date and to draft a memo to that effect.

14 THE COURT: Okay. Well, number one, I haven't re-
15 ceived the SSOSA evaluation.

16 MS. BANFIELD: Yes. And, Your Honor, there also
17 hasn't -- the pre-sentence report hasn't been completed
18 because they were waiting for the SSOSA evaluation before
19 they could do -- write their report, so we were going to
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1 be asking for a set over anyway. It sounds like it's go-
2 ing to need to be a little bit longer if the Court accom-
3 modates the Defense counsel with the second evaluation.

4 THE COURT: Okay.

5 MS. BANFIELD: We have no, we have no objection, we
6 don't think it's going to change the outcome of the situa-
7 tion. We think that the nature of the crimes and the
8 amount of victims Defendant has had in the past will like-
9 ly create an exact same return.
10

11 THE COURT: Okay. Well, how far out do we need? You
12 think a month?
13

14 MS. DALTON: I think a month, Your Honor. I've al-
15 ready chosen the -- discussed the evaluation with the psy-
16 chologist.
17

18 THE COURT: About about December 12? That work, De-
19 cember 12?

20 MS. DALTON: Yeah.

21 THE COURT: December 12 at 1:30?

22 MS. DALTON: And then one other thing I discussed,
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1 Your Honor, was the filing of the SSOSA evaluation under
2 seal due to privacy issues, and it doesn't sound like the
3 State has any objection, so can I put that on the memo, as
4 well?

5 THE COURT: Sure.

6 MS. DALTON: Okay.

7 THE COURT: I don't think there's any issue about
8 that.

9 MS. BANFIELD: No, Your Honor.

10 (CONVERSATION BETWEEN COUNSEL AND DEFENDANT)

11 MS. DALTON: Thank you, Your Honor. Thank you, Coun-
12 sel.

13 MS. BANFIELD: Thank you.

14 (END OF HEARING - 2:43:31 p.m.)
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Friday, December 5, 2014 at 10:56 a.m.

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2 PROSECUTOR: Your Honor, this is cause 13-1-01744-0.
3 The matter was last before the Court November 5th, it was
4 set over to the 12th of December at 1:30 for a presentence
5 investigation, and then a second evaluator. So the State
6 is unclear as to what the basis of the motion is today.
7

8 THE COURT: Did you get a copy of the motion?

9 PROSECUTOR: No, I don't think I got a copy of the
10 motion. I'm not sure (inaudible over Court)

11 THE COURT: This says sent to Miss Banfield.

12 MS. DALTON: Yeah, I, I did, Your Honor, and I spoke
13 with Miss Banfield yesterday on the phone as well.
14

15 THE COURT: What did she say?

16 MS. DALTON: It sounded like she had no objection.
17 The issue is not a second evaluator, but the fact that
18 there is no Spanish-speaking SSOSA certified evaluator in
19 our geography. I was able to locate one in Bellevue, and
20 this was a conversation I had with her yesterday on the
21 phone, and she said that she does not believe that -- she
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1 thought she was the only one in the state and she's in
2 Bellevue. There's potentially another one I found in
3 Wenatchee. She said there may be a third one at
4 Marylhurst University in Portland.

5 THE COURT: Uh-huh (affirmative).

6 MS. DALTON: So it's been a really hard search to
7 find somebody.
8

9 THE COURT: And you're requesting Mr. -- Dr. Popple-
10 ton.

11 MS. DALTON: Dr. Poppleton. I spoke with Dr. Popple-
12 ton and I found out later than he actually doesn't have
13 this license to do a SSOSA evaluation --
14

15 THE COURT: Right.

16 MS. DALTON: -- but as this would be a second evalua-
17 tion, and because the statute actually allows for a non-
18 licensed person to do it if someone's not in the jurisdic-
19 tion, I'd ask Your Honor to allow Dr. Poppleton to do it.
20

21 One thing I was going to comment was is in
22 speaking with the psychologist in Bellevue, she said that
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1 she thinks that treatment would not work if it was not in
2 his native language. So what I -- hoping to convey that
3 to the Court is, is (sic) that maybe the evaluation is
4 likewise, so we're hoping that Dr. Poppleton can do a sec-
5 ond evaluation, and Dr. Poppleton also indicated he had
6 some ideas as to how to treat Mr. Gonzalez-Gonzalez, ei-
7 ther with an interpreter or, or had some other people that
8 may be able to do the treatment. So I'd ask Your Honor to
9 allow Dr. Poppleton to do a second evaluation, despite his
10 lack of that special license.
11

12 THE COURT: And Miss Banfield said she had no objec-
13 tions to it?
14

15 MS. DALTON: I believe she did, Your Honor. I can't
16 quote her word for word. I think she said that she didn't
17 see a problem with it. She didn't say the words, "I don't
18 have an objection."
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20 THE COURT: She didn't see problem with it.

21 PROSECUTOR: So we're not going to count that as a
22 she doesn't have an objection. She didn't give me --
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THE COURT: What are you going to count it as?

PROSECUTOR: Well, I don't know that she... She didn't give me the instruction. I didn't get --

THE COURT: Well, that's weird.

PROSECUTOR: -- information regarding what her position on --

MS. DALTON: And I don't have an e-mail from her.

PROSECUTOR: -- and so...

MS. DALTON: Maybe it was a no, no position type thing, I'm not sure.

PROSECUTOR: So it's kind of a moving target at this point. I, I'm not familiar enough with it, Your Honor, it just showed up on the docket, it had previously been set -

THE COURT: Well, I -- Yeah.

PROSECUTOR: -- for the 12th at 1:30.

THE COURT: Well, that was a different motion. I mean, I did receive the motion, an affidavit and declarations and CV.

1 PROSECUTOR: Well, there is, there is a copy of the
2 citation in here, but whether she had a chance to review
3 it or not, I don't know.

4 THE COURT: I just kind of -- Usually she would be
5 over here for this type of thing.

6 PROSECUTOR: She would have an opinion on it.

7 THE COURT: She would have an opinion.

8 PROSECUTOR: (inaudible - away from mic) are guaran-
9 teed. So I'd ask the matter be set over to the 12th that
10 she could be present and... Because that's what she has
11 for the PSI and a second evaluator, so I, I think she's
12 under the impression it's on for the 12th. (inaudible
13 over Counsel)

14 MS. DALTON: I think, I think, when she read my mo-
15 tion I, come to think it, I'm not sure she quite under-
16 stood what it was and I had to explain to her what it was,
17 because, because it's not a motion for a second evaluator,
18 it's a -- that's already been granted, it's a motion for
19 Dr. Poppleton --
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THE COURT: Poppleton.

MS. DALTON: -- to be the second evaluator.

THE COURT: -- the second evaluator. So there was an order already entered allowing a separate, second evaluation?

MS. DALTON: Yeah, you already entered that order.

THE COURT: Oh, I did? What was I thinking?

MS. DALTON: It's on a... That was not opposed by the --

THE COURT: Oh, I see, and so the --

PROSECUTOR: Was that on November 5th?

MS. DALTON: I believe November 5th.

PROSECUTOR: That's the date that it looks like it appeared in Court --

THE COURT: Oh, here we go.

PROSECUTOR: -- set it over to the 12th.

THE COURT: Okay. On motion of the Defendant, a second SSOSA evaluation is ordered. The Defendant acknowledges his right to be sentenced within 40 days and he

1 agrees to waive that. So we did allow a second SSOSA
2 evaluation.

3 MS. DALTON: The problem is is there's there's no one
4 -- And the purpose of that --

5 THE COURT: Right.

6 MS. DALTON: -- was to have it done in Spanish, Your
7 Honor --

8 THE COURT: Right.

9 MS. DALTON: -- but there was nobody, despite Belle-
10 vue, possibly Wenatchee and possibly Clackamas.

11 THE COURT: Okay, or Marylhurst.

12 MS. DALTON: Which which is Marylhurst, yeah.

13 THE COURT: Portland, yeah.

14 MS. DALTON: Yeah.

15 And I haven't, that's a Dr. King at Marylhurst
16 and I --

17 THE COURT: Why don't you check that out, too? I
18 mean, is he willing to do it, or her?

19 MS. DALTON: The person at Marylhurst?

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THE COURT: Yes.

MS. DALTON: I don't -- I haven't -- This is information I found out --

THE COURT: Okay.

MS. DALTON: -- last night.

THE COURT: Okay. Why don't you check that out? I mean, my preference would be someone, obviously Spanish-speaking, two, that has background in SSOSA. If it's in Portland, I think that would relieve Dr. Poppleton of the, the situation, because he doesn't have that. This would qualify for all the -- hit all the points that we'd want to hit.

MS. DALTON: Right.

The one concern I would have is is that if the person did it who was in Portland, that person would not be able to provide the treatment, absent a Court order because it's conflict of interest, so...

THE COURT: What's a conflict of interest?

MS. DALTON: Because you're saying, "Yeah, this per-

1 son needs treatment," so -- The statute says the person
2 that does the evaluation cannot do the treatment.

3 THE COURT: Oh.

4 MS. DALTON: Absent Court order.

5 PROSECUTOR: Well that would happen, in any event.

6 THE COURT: We -- Yeah, I think we always do that,
7 don't we?
8

9 PROSECUTOR: I don't know.

10 THE COURT: Yeah, Dr. Johnson always does the evalua-
11 tions, and we said, "Okay, work with Dr. Johnson."
12

13 MS. DALTON: Okay. Well, then that's fine if --

14 THE COURT: Yeah.

15 MS. DALTON: That's fine.

16 THE COURT: So why don't we do -- I mean, I hate to
17 put this out, but --

18 MS. DALTON: Why don't we come back next week --

19 THE COURT: The 12th.

20 MS. DALTON: -- I'll look into some more things, and
21 maybe we can get a more firmer position.
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THE COURT: Yeah. Yeah, check with Dr. King.

MS. DALTON: Yeah. And, then --

THE COURT: And, then, we'll have options.

MS. DALTON: Okay. Very good. And, then, probably
end up sentencing on the 23rd with that other case.

THE COURT: Okay?

MS. DALTON: Okay.

THE COURT: Excellent.

MS. DALTON: Thank you, Your Honor.

PROSECUTOR: So it's no longer on for the 12th?

THE COURT: Yes, it is.

MS. DALTON: No, we're keeping it on for the 12th.

PROSECUTOR: We're keeping it on for the 12th? Okay.
Well, I just --

MS. DALTON: I guess we're taking no action except me
to do some more investigation on that --

THE COURT: Right.

MS. DALTON: -- those new leads I have, and we'll
come back on next week (sic).

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THE COURT: On the 12th.

MS. DALTON: Yeah.

THE COURT: At 1:30.

MS. DALTON: Thank you, Your Honor.

THE COURT: Yep.

(END OF HEARING - 11:03:45 a.m.)

Tuesday, December 23, 2014 at 3:04 p.m.

1
2 THE COURT: You may be seated.

3 Well, what is going on?

4 MS. BANFIELD: Good afternoon, Your Honor.

5 There are -- Well, I guess it's probably let
6 defense speak, but this was the date that for sentencing
7 after the date that -- we were continued out to this date
8 on several different occasions for different purposes.
9 The State has not objected to allow defense to try and
10 find...
11

12 MS. DALTON: Your, Your Honor, my client is not hav-
13 ing anything interpreted, may I have him come over to the
14 --
15

16 THE COURT: Yeah, absolutely.

17 MS. DALTON: -- or our, Mr. Terry's client at this
18 point. If he can sit here and --
19

20 THE COURT: That'd be fine.

21 MS. DALTON: Thank you.

22 THE COURT: Mr. Gonzalez-Gonzalez, you may come up
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1 here to the table.

2 MS. BANFIELD: I guess maybe we should address the
3 substitution of Counsel first.

4 THE COURT: Okay.

5 MS. DALTON: And Your Honor, I'm here as a courtesy
6 today. Obviously I'm not prepared to substitute in until
7 the Court addresses Mr. Gonzalez' concerns.
8

9 THE COURT: And what concerns do we have? All it had
10 -- This is a change of -- or not a change of plea but a
11 sentencing and I was concerned about having the proper pa-
12 perwork for this sentencing. What is going on? Would
13 someone please tell me? What are we doing? Is there a
14 request for a change in attorney?
15

16 MR. TERRY: Yes, Your Honor.

17 THE COURT: And, okay, and... But you are not ready
18 to step in as the attorney.
19

20 MS. DALTON: I can speak with the Court as a courtesy
21 to explain the situation if the Court would, would agree,
22 but I'm not prepared to enter an NOA with the circumstanc-
23

1 es at this point.

2 THE COURT: Okay. So --

3 MS. DALTON: Would the Court like me to --

4 THE COURT: So the question is, the question is that
5 Mr. Gonzalez-Gonzalez wishes to have a new attorney.

6 INTERPRETER: It, it's -- I can't hear it. Sorry.

7
8 (CONVERSATION BETWEEN INTERPRETER/COUNSEL/DEFENDANT)

9 MS. DALTON: Okay.

10 THE COURT: Okay. So I've just been handed this mo-
11 tion at this time to discharge slash substitute Counsel
12 and continue sentencing and all other proceedings herein.
13 So I guess, number one, he wants to have a new attorney.

14 MS. DALTON: That's correct, Your Honor.

15 THE COURT: And the basis for that?

16 MS. DALTON: I was recently contacted by Mr. Gonza-
17 lez-Gonzalez with concerns about how his case was pro-
18 gressing. He did not have a good understanding of what
19 was going on. He was under the impression that he was go-
20 ing to be released very soon. He was confused and thought
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1 maybe that in the alternative he was going to get some-
2 thing like a five-year sentence, but he, he had great dif-
3 ficulties to really understanding what was, what was hap-
4 pening here. In my conversation -- I agreed to, to speak
5 with him and met with him for quite some time, Your Honor,
6 and regarding his concerns about communications, I think
7 he feels like the communications have been significantly
8 lacking in terms of his attorney and explanations that
9 were given to him about the process.
10

11 It is my understanding that there was at one
12 point a finding of incompetence. I am not at the point in
13 this case, Your Honor, where I can form independent opin-
14 ions. I have not had access to all the materials in the
15 case. What I have done is examine the records on file
16 through Liberty. I've gone over some of those things with
17 Mr. Gonzalez-Gonzalez and he has expressed that he was not
18 aware of the full import of the things that have happened
19 in his case, including the entry of plea, and that he was
20 fairly confused about what would be going on from this
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1 point forward.

2 He did indicate that he's able to understand me
3 much better than prior attorneys that he has had involved
4 in this matter. I know certainly I have a background as a
5 Court-certified interpreter and it's typically easier for
6 me to communicate directly, Your Honor. He and his family
7 did express a significant amount of concern with what was
8 happening, and Mr. Gonzalez has definitely expressed a de-
9 sire to release current Counsel and to hire me in this
10 matter. I am willing to do that, but only on the condi-
11 tion that the Court is willing to grant his *pro se* motion
12 and grant a significant continuance so that I can obtain
13 full materials. I, of course, have not had access to any
14 of the privileged materials, I don't have Mr. Terry's
15 file, I don't have any SSOSA reports and there's no way
16 that I could proceed as scheduled at this point.

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20 If the Court wants to engage in a colloquy with
21 Mr. Gonzalez and determine whether the Court would like to
22 grant his motion to discharge Counsel and allow me to sub-
23

1 MS. DALTON: As long as I am granted sufficient time,
2 yes.

3 THE COURT: Yeah, I understand that.

4 MS. BANFIELD: Your Honor, I, I would have an objec-
5 tion. The State would have an objection. So if I could
6 be heard, please.
7

8 This case is extremely old.

9 THE COURT: Uh-huh (affirmative).

10 MS. BANFIELD: Even since plea it's, it's extremely
11 old. Our victims have been put on hold this entire time.
12 What Counsel has indicated was that he thought he was go-
13 ing to be getting out sometime soon originally because he
14 thought he was going to -- would qualify for SSOSA, and so
15 he actually would have gotten out sometime soon if he'd
16 qualified for SSOSA.
17

18 THE COURT: Yeah.
19

20 MS. BANFIELD: Or that he thought perhaps they were
21 seeking to get a five -- a deal that put them place of
22 somewhere in the five-year period of time. Well, that was
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1 actually a request that the Defense Counsel was making
2 since it's become quite clear SSOSA's not appropriate in
3 this case.

4 This Court, you, have made it, made it very
5 clear to the Defendant every step along the way what he
6 was doing. He had an interpreter for those matters, in-
7 cluding plea. It sounds as if what's they're requesting is
8 they're going to substitute counsel in and then ask to
9 withdraw the plea because that's the only option in this
10 case for there to be a different outcome than the, the di-
11 rection we're going. I think Defendant is unhappy with
12 the direction the case has gone because it's been deemed
13 that he is completely inappropriate for SSOSA for several
14 different reasons, of which is just they didn't think he
15 was a good candidate, two, they don't think that he has
16 the ability to get up to treatment, you know, to facili-
17 tate treatment, and that happens in SSOSA cases all the
18 time. Sometimes they think someone doesn't -- won't have
19 the full ability to pay, they don't have the support sys-
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1 tem they need. They won't have the transportation --

2 INTERPRETER: If you could slow down just a bit?

3 Thank you.

4 MS. BANFIELD: Oops. Sorry.

5 INTERPRETER: If you can back up a couple steps,
6 please? Thank you.

7
8 MS. BANFIELD: But that they won't -- they won't have
9 the ability to complete SSOSA appropriately, and that,
10 just based on the fact that they don't have the resources,
11 meaning the ability to travel or the --

12 THE COURT: Can I interrupt a second?

13 MS. BANFIELD: Yes.

14 THE COURT: One of the things in going to the file, I
15 didn't see a pre-sentence report.

16 MS. BANFIELD: We, we didn't do a pre-sentence re-
17 port, so let me -- If I could give you the timeline, what
18 happened was the Court -- he entered a plea with the Court
19 to -- before they do the presentence report they had to
20 get the psychosexual evaluation.
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THE COURT: Okay.

MS. BANFIELD: Okay? They got the psychosexual evaluation. The evaluator said, absolutely not appropriate for SSOSA.

THE COURT: I, I read it.

MS. BANFIELD: Right. And then, but then Mr. Terry had asked us to put that on hold so that he could go ahead and get a second evaluation.

THE COURT: With the Spanish --

MS. BANFIELD: Right.

THE COURT: -- speaking.

MS. BANFIELD: I don't think there was a determination until maybe last week that that was not the direction this was going to go, and so they -- we -- they haven't had a chance to finish the presentence -- They haven't been given the opportunity to do the presentence report.

THE COURT: But would you agree that it's, it's mandatory that we do a presentence in these cases?

MS. BANFIELD: Yes, I, I would agree that the statute

1 requests a presentence report in these cases, yeah.

2 THE COURT: Yeah. So --

3 MS. BANFIELD: But I don't under --

4 THE COURT: How long would it take them to do that?

5 MS. BANFIELD: They have all of the -- They have it
6 all now, they have everything, they were just waiting for
7 the go-ahead. They've interviewed the witnesses, they --

8 THE COURT: Okay.

9 MS. BANFIELD: -- they've done everything.

10 THE COURT: So, in theory, I would still have to get
11 the presentence report, it may take them a week, two weeks
12 to do it, right?

13 MS. BANFIELD: (no audible response)

14 THE COURT: So we'd have to have that before I pro-
15 ceed to sentencing.

16 MS. BANFIELD: Correct.

17 THE COURT: Correct? So if I allow the change of at-
18 torneys, we still -- she would have two weeks.

19 MS. BANFIELD: But she's asking for eight.

1 THE COURT: But she's not going to get eight weeks.
2 I wouldn't -- Eight weeks is, is way too long in this
3 situation. And the reasons for that is that this has been
4 pending for a long, long time. Did I do the change of
5 plea?

6 MS. BANFIELD: Yes, I believe so, Your Honor.

7 THE COURT: Well, then, I know it was done correctly.

8 MS. BANFIELD: Yes, you did the change of plea on Au-
9 gust 1st.

10 THE COURT: Okay, that's probably why I don't recall.

11 MS. BANFIELD: Yeah, it's very old in the tooth.

12 THE COURT: And I, I can see some --

13 MR. TERRY: Your Honor, if I may?

14 THE COURT: I can see a little time beyond two weeks,
15 but eight weeks is really way too long.

16 MR. TERRY: Your Honor, if I may?

17 THE COURT: Sure.

18 MR. TERRY: I'm not wanting to make any comments
19 which may --

1 THE COURT: And that's -- I was going to caution you
2 about that.

3 MR. TERRY: Yeah. But Mr. Gonzalez-Gonzalez indi-
4 cates that he's not fully understood everything. I would
5 tell the Court that that's something I've noticed and
6 we've taken our time in that regards, and so if they're
7 asking for eight weeks, I think it would behoove the Court
8 to give them eight weeks because Mr. Gonzalez-Gonzalez is
9 very slow to understand things. And I, I think that, I
10 think that would be fair, uh, only because he has a third
11 grade education, he did go to Western State Hospital in
12 this, there is apparently a history of mental health, so
13 I, I think it would... I think it wouldn't hurt to give
14 defense a little extra time if you, if you allow the sub-
15 stitution simply because he is slow, and that's why this
16 is taking forever. He doesn't understand things as quick-
17 ly as other people. We had to read the plea for him --
18 with him I think three or four sessions.

19 THE COURT: I'm kind of recalling that, it could be
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1 another case, but I'm recalling that there was kind of
2 take a break and come back and it took some time to do the
3 change of plea.

4 MS. BANFIELD: We initially went in to do a change of
5 plea and he had a breakdown at that time, so that was the
6 first change of plea.

7 THE COURT: Okay. Maybe that's what I was thinking -
8 -

9
10 MS. BANFIELD: Which was way back with -- and that's
11 when he went to Western. And, then, he came back, he was
12 very clear with the Court, communicated with the Court,
13 said he understood what he was doing, was actually very
14 vocal during that plea and everything went well. Now,
15 it's possible he's, you know, losing some of his faculties
16 at this -- I don't, I'm not certain, but --
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18 THE COURT: You're not making that allegation?
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20 MS. BANFIELD: No --

21 MR. TERRY: Your Honor --

22 MS. BANFIELD: -- I'm not making an allegation, but I
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1 will say that I -- since the time that they've received
2 the psychosexual evaluation, which indicated he wasn't ap-
3 propriate for SSOSA, we've completely put the brakes on
4 this process, at the expense of the victims.

5 THE COURT: Well, I would, I would, I would indicate
6 that the evaluation was done in October, so it's been
7 pending for two months since the evaluation was done.

8 MR. TERRY: That's not entirely his fault. That's --

9 THE COURT: No, I understand.

10 MR. TERRY: -- that's in regards to the complete lack
11 of Spanish-speaking SSOSA evaluators.

12 THE COURT: I understand that that's --

13 MR. TERRY: And our investigation in that regards
14 (sic).

15 THE COURT: -- that's when the evaluation was done, I
16 think did an appropriate request for the second evalua-
17 tion, for a number of reasons, that was withdrawn.

18 MR. TERRY: Well, I wouldn't say it's withdrawn.

19 THE COURT: What happened?

1 MR. TERRY: We came to the -- I think a, a tentative
2 agreement about something that later turned out would not
3 work, and so I was going to report to the Court what was
4 going on today, but the motion to substitute has been
5 filed, so...

6 THE COURT: We've got another issue, too, but it's
7 not mandatory, is that I won't, I won't be around after
8 January 16. And though I took the plea, anyone could do
9 the sentencing, frankly, but that's been our policy. But,
10 yeah, this is frustrating on all sorts of different lev-
11 els. I'm just glancing at this motion. Indication is
12 that he... "Do not believe offer was read to me." Well, I
13 went over the plea offer. It was read to him. There was
14 an interpreter involved. And I don't recall, and I'd have
15 to review the tape, but I don't recall at any time that
16 there was a question that he didn't understand that. But
17 we do have to have a continuance on the sentencing.
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21 Yeah, I, I think four weeks would be the maximum
22 that we would do this and I, I think that we can accom-
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1 plish this, I think we can get it done. The fact of the
2 matter is, we do have a valid change of plea in my mind if
3 we go into that, so I don't see... I'd be hard pressed to
4 find that it was not adequately done.

5 INTERPRETER: If the Interpreter may, Judge, it was
6 very hard for her to hear you.

7 THE COURT: I'm mumbling.

8 INTERPRETER: Thank you.

9 THE COURT: That's my prerogative.

10 I'd, I'd have to be hard pressed to find that it
11 wasn't properly done, but we'd have to review the tape,
12 see what happened if that's going to be the motion because
13 right now the motion is just to substitute attorneys and
14 continue this, this sentencing, that's what in front of
15 me, which I just got, which I assume the prosecution just
16 got also.

17 So, so let's set it up for review. Let's put it
18 on a Tuesday, the 20th or the 27th, do you care?

19 MS. BANFIELD: January 20th.

1 THE COURT: 20th or the 27th. I think the 20th is
2 the day after MLK.

3 MS. BANFIELD: That would be fine, Your Honor.

4 THE COURT: Okay. Let's set it for the 20th, then.
5 At that time -- Well, I guess I'd better ask Miss Dalton.
6 Are you going to substitute in at this time?
7

8 MS. DALTON: Your Honor, I'm not sure at this point.

9 THE COURT: Okay.

10 MS. DALTON: I'm going to have to speak with Mr. Gon-
11 zalez. I don't know that --
12

13 THE COURT: I don't know --

14 MS. DALTON: -- if that gives me enough time to re-
15 view everything adequately and come up to speed on the
16 case. I would hope, but I have to --
17

18 THE COURT: But I can't release Mr. Terry unless he's
19 being fired. If he's a retained attorney, well, I can
20 still hold, hold him with his feet to the fire. I can
21 still hold Mr. Terry to be the attorney, but he's indicat-
22 ed that he does not wish to retain or keep Mr. Terry, so I
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1 don't know what he wants to do.

2 MS. DALTON: All I can suggest is the Court speak
3 with Mr. Gonzalez. I had indicated to him that I believed
4 I would really need at least six to eight weeks to ade-
5 quately come up to speed, to deal with whether or not, and
6 at this point I don't know, whether there is an issue with
7 having entered into the plea. I don't know whether it's
8 possible to engage in further negotiations, and I have no
9 idea what the SSOSA says. I would need to review the en-
10 tire file, including the competency issues, all of that
11 background and all of the discovery and make a determina-
12 tion and review in the discovery whether I believe an ade-
13 quate investigation has been conducted. In terms of eval-
14 uating whether that plea was, was, was proper, I need to
15 do a, a pretty full investigation on the case, Your Honor
16 and, and I don't see being able to do that within four
17 weeks. Puts me in a difficult position. This is the rea-
18 son why, based on Mr. Gonzalez' desire to hire me to take
19 over this case, I helped him to do a *pro se* motion and to
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1 attempt to obtain sufficient time for me to conduct a full
2 investigation to figure out what all of his options and
3 needs are. I feel like four weeks, particularly given the
4 holiday schedule, Your Honor, I'm scheduled to be out for
5 a week next week, I don't know how long it would even take
6 me for Mr. Terry to get me the entire file.
7

8 THE COURT: I think it'd take about -- About two
9 seconds?

10 MS. DALTON: But, Your Honor, I, I, I would be hard-
11 pressed to do this with my schedule --
12

13 THE COURT: Well, you've answered the question --

14 MS. DALTON: -- in such a short time period --

15 THE COURT: -- I'm going to schedule it, I'm going to
16 schedule it January 20th.

17 Mr. Gonzalez, Mr. Gonzalez, at this time you
18 have indicated to me, through your motion, your *pro se* mo-
19 tion, that you do not wish to have Mr. Terry continue to
20 represent you. Miss Dalton has indicated to me at this
21 time that as she is not prepared to substitute in and rep-
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23

1 resent you. Your options are you continue with Mr. Terry
2 or you'd have to retain someone else to represent you or
3 you'd have to represent yourself.

4 Now I have scheduled the sentencing on this mat-
5 ter, which has been continued since October -- August, and
6 I'm not willing to continue it beyond January 20th. This
7 matter must be resolved.

8
9 (CONVERSATION BETWEEN COURT AND CLERK)

10 THE COURT: January 26th.

11 MS. BANFIELD: At what time, Your Honor?

12 THE COURT: Make it the 26th at 1:30. So that's --
13 those -- that's the date you will be continued to is Janu-
14 ary 26th at 1:30.

15
16 Now, Mr. Gonzalez, you, you understand your op-
17 tions here? Dou don't have him sign it -- Well, I guess
18 you do. Do you understand your options, Mr. Gonzalez?

19
20 DEFENDANT: No.

21 THE COURT: No? Do you want Mr. Terry to continue
22 represent you?

1 DEFENDANT: He's had a, he's had a lapse or problem
2 with something that I'd like to get cleared up. If possi-
3 ble.

4 THE COURT: What's the problem?

5 DEFENDANT: That there's a, that there's a charge
6 that's not correct and I'd like to get it set aside.
7

8 THE COURT: Well, do you want Mr. Terry to represent
9 you on that or not?

10 DEFENDANT: She's not going to be able to, right?

11 THE COURT: Apparently she's not willing to do so.
12

13 MS. DALTON: Your Honor, if I may, for the record, I
14 don't know. I would have to review everything and see if
15 I can do it, I may be able to try, but I, I can't guaran-
16 tee that at this point. Our request would be for eight
17 weeks, and in, in regards to the issue with the alleged
18 victims in this case, Your Honor, this charge, it has been
19 between 1998 and 2004 that the allegations were alleged to
20 have occurred. It's been many, many years and he does
21 have a constitutional right to a defense.
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1 THE COURT: Well, yes, and he pled guilty to that,
2 and the presumption that he's pled guilty, by statute we
3 have to have the sentencing within, what, 40?

4 MS. BANFIELD: 45 days.

5 THE COURT: 45 days, and it's been way beyond that,
6 and there's reasons for that, but the bottom line is if
7 you cannot commit to that, his options are to proceed with
8 Mr. Terry, hoping that you get up to speed, or proceed on
9 his own. At this time, I'm not inclined to release Mr.
10 Terry from representation.
11

12 MR. TERRY: I'm willing to still represent him, Your
13 Honor. That's not an issue.
14

15 THE COURT: Yeah. Well, Mr. Terry's still his attor-
16 ney, unless Mr. Gonzalez says he wants to represent him-
17 self, which I would not recommend.
18

19 DEFENDANT: I'd just like a -- It's like, you know,
20 a fault on my part, and it --

21 MR. TERRY: Your Honor, if I could talk to him real
22 quick?
23

1 THE COURT: Okay.

2 (MS. DALTON CONVERSATION WITH DEFENDANT)

3 MR. TERRY: Yeah, don't talk about the facts in the
4 case in here, okay?

5 (MS. DALTON FURTHER CONVERSATION WITH DEFENDANT)

6 MS. DALTON: One question for the Court, Your Honor,
7 at this point in order to make a final decision about
8 whether that grants me enough time, I would need to be
9 able to review documents and get some idea.

10 THE COURT: What I'm going to do, based upon not
11 hearing any objection from Mr. Gonzalez, as Mr. Terry is
12 still his attorney, if there's a motion prior to the 26th
13 that would have to be considered, but right now Mr. Terry
14 is his attorney. Miss Dalton has indicated that she needs
15 more time and she's not willing to substitute in, so he
16 still has Mr. Terry.

17 Now, Mr. Terry can proceed to move to have the
18 change of plea set aside or not, Miss Banfield will get
19 the presentence report done, and I anticipate on January
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1 26th we will proceed to sentencing, unless something else
2 comes up before then. That's all we can do because
3 there's not an attorney available to substitute in.

4 You concur, Miss Banfield?

5 MS. BANFIELD: Yes.

6 THE COURT: And Mr. Terry's indicated that he's will-
7 ing to serve as his attorney.
8

9 MR. TERRY: January 26th?

10 MS. BANFIELD: Yes.

11 THE COURT: Yes.

12 MS. BANFIELD: Do you want to sign?
13

14 DEFENDANT: (no audible response)

15 THE COURT: Okay. I've advised the Defendant of the
16 proceedings, has been signed by his attorney, Mr. Terry.
17 The defendant was given the opportunity to sign, has de-
18 clined to do so, but we will proceed on January 26.
19

20 MS. BANFIELD: Judge, prior to going off the record
21 can you check to make sure the Defendant is understanding
22 the interpreters?
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THE COURT: Mr. Gonzalez, you understand what the interpreter's been telling you at this time?

DEFENDANT: Yes.

THE COURT: Okay. Thank you.

MS. BANFIELD: Thank you, Your Honor.

(END OF HEARING - 3:32:42 p.m.)

1 MS. BANFIELD: I've handed forward statements of the
2 victim and her two sisters who were also victims of the
3 Defendant but not charged in this case. I believe they
4 are the same statements that were within the presentence
5 report, so the Court probably has already read those.
6

7 THE COURT: Oh, alright, let's see. Okay, I'll just
8 briefly review them again here. I did receive them -- re-
9 ceive the presentence, reviewed that earlier.

10 Alright, and I have reviewed those again.

11 MS. BANFIELD: Thank you, Your Honor. They're not
12 present, but they gave -- they obviously gave us the
13 statements for the court to review. They are asking for
14 the absolute high end in this, this case, as much time as
15 can be given by the Court.
16

17 Originally they had agreed the Defendant could
18 be referred to SSOSA, not that they would necessarily
19 choose that he would get SSOSA, they hadn't made up their
20 mind yet. I know one of the main concerns at that time
21 was that the main -- the victim, the charged victim, that
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1 she, she did not want to go to trial. This was a very
2 difficult process for her. Finally talking about it, ad-
3 mitting that this is something that happened to her was a
4 pretty significant impact on her life. So they're asking
5 for 136 months on Count I and 41 months on Count II, and
6 the State is joining them in that recommendation.
7

8 We did indicate that we would allow the -- this,
9 this to be free to argue, and that was for many reasons.
10 One is this was an odd case where the SSOSA had some dif-
11 ferent hiccups, and I'll let the defense talk about that,
12 and the Defendant's been in custody now at this point for
13 497 days, I believe? We're asking for a second assault
14 protection order that would last for a lifetime in this
15 case, all standard sentencings -- all standard fines and
16 fees and conditions, that he register as a sex offender
17 for life. That he be tested for HIV. Of course, he would
18 no longer be able to have a firearm.
19
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21 We're asking for restitution, and we don't have
22 a figure for the Court at this time, but we're asking that
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1 that figure be set at a later date. And that is all.

2 THE COURT: Thank you, Miss Banfield.

3 And, Mr. Terry?

4 MR. TERRY: Good afternoon, Your Honor. Thank you.
5 Thank you, Miss Banfield.

6 Your Honor, this is a case that was referred for
7 SSOSA and, Your Honor, the, the SSOSA evaluator does not
8 speak Spanish, and then something that I found to be
9 shocking was that there's one SSOSA evaluator that speaks
10 Spanish in the State of Washington and she resides and has
11 an office in Bellevue. And I understand from DOC that
12 they would not allow him to go to Bellevue for that treat-
13 ment or relocate to Bellevue without any family ties
14 there.
15

16 On top of that, in speaking with the SSOSA eval-
17 uator and the Spanish-speaking SSOSA evaluator in Belle-
18 vue, who did not do an evaluation, Your Honor, treatment
19 would be ineffective with an interpreter, essentially. So
20 that's the, the major hiccup to SSOSA and mainly the rea-
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1 son why sentencing was delayed and that we could get a
2 second opinion. All that the defense was able to do was
3 locate an Oregon sexual offender treatment provider in
4 Portland, who indicated his willingness to treat Mr. Gon-
5 zalez-Gonzalez, should the court adopt a recommendation
6 for SSOSA.
7

8 So what that would potentially do, Your Honor,
9 under the statute is that a non-licensed provider is per-
10 mitted in cases where there's not someone in their geo-
11 graphical boundaries. So the Court would have to make an
12 exception and allow an Oregon-licensed sex offender treat-
13 ment provider, should, the Court order SSOSA. And that's
14 one of the concerns in regards to Miss Hardinger's (pho-
15 netici) report. She did the evaluation and it indicated
16 that, that that though she thought there were too many
17 risk factors, another risk factor was is that there wasn't
18 really a viable treatment option absent the Court allowing
19 that exception.
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21

22 Your Honor, I wanted to point out some consider-
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1 ations about Mr. Gonzalez-Gonzalez. This case was also
2 delayed because of a somewhat lengthy stay at Western
3 State Hospital. Towards the beginning of the case, he was
4 ready to plead guilty and when he came in his mental
5 health had deteriorated to the point that he didn't recog-
6 nized who I was and was seeing people and things and non-
7 responsive to any logical discussion whatsoever. Accord-
8 ing to his family, that's not the first time that that has
9 happened, and I bring this up for two reasons, is that
10 fairly early on in the case, Your Honor, he wanted to take
11 responsibility. Second of all -- But has not -- The
12 reason he's been in custody for over a year is was not be-
13 cause his delay in taking responsibility, but for the
14 1077, the SSOSA evaluation and various other factors.

17 Also, Your Honor, I - While he appears to have,
18 you know, he, he, he, he's admitted guilt in this and did
19 so with a -- the polygraph, what I found to be very inter-
20 esting is that he passed the polygraph, even though his
21 version of the facts does not align with his daughter's.
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1 And our theory is that, Your Honor, is is that I imagine
2 there were times when his mental health was affecting him
3 to the -- to an extent that he might not have remembered.

4 In addition to that, Your Honor, he, he reported
5 essentially being a -- completely under the influence of
6 alcohol for nearly all day every day for 10 years, during
7 which time the abuse occurred. Somehow, Your Honor, he
8 was able to stop drinking alcohol several years ago and
9 has lived a sober life since then. And of special note,
10 Your Honor, is that the incidents reported to the Court
11 were the last incidents reported on the polygraph and
12 that's something that he passed, as well. So I'd men-
13 tioned that when the alcohol abuse stopped, so did the
14 abuse.
15

16
17 Mr. Gonzalez-Gonzalez comes from a, a humble
18 background. He attended up to the beginning of third
19 grade, at which time he was asked to no longer go to
20 school so he could bring his father lunch on the farm or
21 what job he was having, and he doesn't have any formal ed-
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1 ucation. He wasn't exposed to social norms, he wasn't
2 given the moral compass that the majority of our world's
3 population receives through public education. This, this
4 was in Mexico, Your Honor, where he grew up. Neverthe-
5 less, you know, only having a third grade education, he's
6 definitely at a disadvantage. Add to that a very long-
7 term alcohol addiction and potential mental health issues.
8 Your Honor, I, I see Mr. Gonzalez-Gonzalez as having some
9 mitigation (sic) -- mitigatory factors (sic).
10

11 the polygraph also revealed that he was himself
12 abused at a very early age. And, again, the polygraph in-
13 dicates no other victims no longer -- Not just that noth-
14 ing's occurred since, but there were no other victims; the
15 three victims were his three daughters. And, so, Your
16 Honor, we're -- he's asking that Your Honor consider the
17 SSOSA with the Oregon provider. If that's not in the
18 cards for the Court, Your Honor, he's asking for the low
19 end of the range, given the tragic circumstances. He rec-
20 ognizes how tragic the circumstances are for the victims,
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1 and I think if there were no restraining order in place
2 he'd probably want to apologize, but I don't think that's
3 ever going to happen or ever be possible for him.

4 So, with that, Your Honor, we'd just ask that
5 you sentence him to SSOSA or the low end of the range.

6 THE COURT: And thank you, Mr. Terry.

7 And, Mr. Gonzalez-Gonzalez, is there anything
8 that you would like to say?
9

10 DEFENDANT (via interpreter): That I am a remorse
11 (sic) about the past.
12

13 MR. TERRY: I think he said repented?

14 INTERPRETER: Repented --

15 MR. TERRY: Yeah.

16 INTERPRETER: About the past.

17 THE COURT: Alright. Was there something else you
18 wanted to say? I'm not sure if that was...
19

20 DEFENDANT: (no audible response)

21 THE COURT: Alright.

22 Well, this certainly is a, a sad case to read
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1 through what has happened here. Certainly Mr. Gonzalez-
2 Gonzalez did not have many advantages in his growing up,
3 but this was certainly a nightmare for the children in-
4 volved, all three of them reporting extended abuse at the
5 hands of Mr. Gonzalez-Gonzalez. So I do not think it is
6 appropriate for the SSOSA option, even without the diffi-
7 culties that would be presented if he were to be expected
8 to be in treatment and to find a qualified provider for
9 that purpose. Based on the facts of the case and the
10 overall circumstances, I do not think that would be appro-
11 priate.
12

13
14 So I am going to impose, as both the Department
15 of Corrections recommends and also the State here and the
16 children, taking into account the victim's preferences,
17 the high end of the standard range of 136 months as to
18 Count I and 41 months as to Count II, with those to run
19 concurrently, and there is an extended period of time that
20 has already been served in custody, understand 497 days
21 credit for time served.
22

1 Conditions will include those that have been
2 recommended here, and that includes no contact with chil-
3 dren and does requires supervision under the Department of
4 Corrections for up to the period of time of life (sic),
5 and also participating in treatment and no contact with
6 children. I believe we have an attachment for the --
7

8 MS. BANFIELD: And that is attached to the form al-
9 ready, Your Honor.

10 THE COURT: Alright.

11 MS. BANFIELD: Thank you.

12 THE COURT: Very good.

13 MR. TERRY: What were the credit (sic) for time
14 served, I'm sorry?
15

16 MS. BANFIELD: 497 days.

17 THE COURT: I'm also entering no contact orders with
18 each of the victims, and do that at this time. Or, actu-
19 ally... Actually, there was only one victim --
20

21 MS. BANFIELD: Yes.

22 THE COURT: -- charged here, but also no contact with
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1 minor children.

2 MS. BANFIELD: Thank you.

3 (CONVERSATION WITH COUNSEL AND DEFENDANT)

4 MS. BANFIELD: I'm also distributing to the Defendant
5 notice of his reporting instructions, his instructions on
6 collections and where he goes for HIV testing. They don't
7 do it while he's in prison. He's been given a notice of
8 his sex offender registration, as well as his HIV testing.
9

10 THE COURT: I'm not seeing Appendix A --

11 MS. BANFIELD: Is that on the --

12 THE COURT: -- to be attached here.

13
14 MS. BANFIELD: Your Honor, if you'll pass that down
15 to me. I thought Appendix A was on there. I was certain
16 that I put it on there. Right here.

17 Oh, it says Appendix F. It's because it says
18 the wrong appendix, I don't know, so if the Court will
19 just allow me to write Appendix A on there where it says
20 Appendix F?
21

22 THE COURT: Oh, alright.
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1 MS. BANFIELD: That's the Appendix A. That lists the
2 other conditions. And I did not catch that and I do not
3 why it would say F. I apologize.

4 THE COURT: Let's see. I thought it said both A and
5 F, so...

6 MS. BANFIELD: I don't know where Appendix A would
7 be.
8

9 MR. TERRY: On the judgment and sentence?

10 MS. BANFIELD: Yeah.

11 CLERK: And notification to register, do you have
12 that?
13

14 MR. TERRY: I was getting that.

15 (INAUDIBLE CONVERSATION BETWEEN CLERK AND COUNSEL)

16 THE COURT: Alright, hopefully we have it all there.

17 (INAUDIBLE CONVERSATION BETWEEN CLERK AND COUNSEL)

18 THE COURT: Did you find the sex offender registra-
19 tion?
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21 MR. TERRY: I have a copy of it, Your Honor.

22 MS. BANFIELD: I found it.
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THE COURT: Oh, okay.

CLERK: I just noticed it was missing, so...

MS. BANFIELD: Oh, he signed it. I must've put it
back in the file.

THE COURT: Alright, very good.

And that concludes our docket. Thank you.

MS. BANFIELD: Thank you, Your Honor.

(END OF HEARING - 3:26:33 p.m.)

CERTIFICATE

1 STATE OF WASHINGTON)
2) ss.
3 County of Douglas)

4 I, Jo L. Jackson, I certify (or declare) under penal-
5 ty of perjury under the laws of the State of Washington
6 that the following is true and correct:

7 1. That I am a certified court reporter (or author-
8 ized transcriptionist);

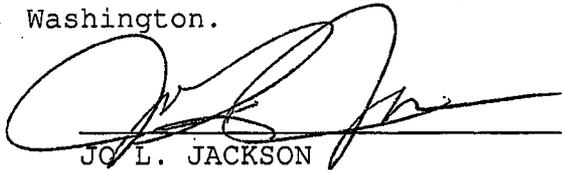
9 2. I received the electronic recording directly from
10 the trial court conducting the hearing;

11 3. This transcript is a true and correct record of
12 the proceedings to the best of my ability, including any
13 changes made by the trial judge reviewing the transcript;

14 4. I am in no way related to or employed by any party
15 in this matter, nor any counsel in the matter; and

16 5. I have no financial interest in the litigation.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 affixed my official seal this 4th day of February 2016 in
19 Waterville, Washington.

20 
21 _____

22 JO L. JACKSON
23 Notary Public in and for the State of
24 Washington, residing at Waterville.

25 My commission expires on March 19, 2016.