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

STATE OF WASHINGTON, Respondent

v.

JAVIER GONZALEZ-GONZALEZ, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-01744-0

RESPONSE TO PERSONAL RESTRAINT PETITION

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IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT

The State of Washington is the Respondent in this matter. The petitioner, Javier Gonzalez-Gonzalez (hereafter “Gonzalez-Gonzalez”) is restrained by the judgment and sentence entered by the Clark County Superior Court on January 26, 2015 under cause number 13-1-01744-0. *See* Appendix I.

ISSUES FOR REVIEW

Did petitioner receive the effective assistance of counsel?

Did petitioner make his guilty plea knowingly, voluntarily, and intelligently?

Did the trial court err in denying petitioner’s motion to continue?

STATEMENT OF THE CASE

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

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

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

Gonzalez-Gonzalez about the SSOSA screening process. *See* Appendix B. He spoke with Gonzalez-Gonzalez's family members, potential witnesses for the defense, but none of them were present during the incidents of abuse, and therefore had little to offer Gonzalez-Gonzalez by way of a defense to the charges. *See* Appendix B. Mr. Terry met with Gonzalez-Gonzalez an estimated 10-15 times for 15 minutes to an hour each time. *See* Appendix B.

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

However, on February 6, 2014 a competency evaluation of Gonzalez-Gonzalez was ordered. *See* Appendix K (Competency evaluation order). An evaluation conducted by Western State Hospital (WSH) was completed on February 27, 2014 that found that defendant was not competent because he did not understand the nature of the proceedings and was unable to assist in his own defense. *See* Appendix L (Order finding defendant incompetent). However, restoration treatment was ordered by the court, and on June 20, 2014 an order was entered

finding that Gonzalez-Gonzalez had been restored by WSH where he could now understand the nature of the proceedings and assist in his own defense. *See* Appendix M (Order finding defendant competent).

On August 1, 2014 Gonzalez-Gonzalez entered a change of plea to an amended information of one count of rape of a child in the second degree and one count of child molestation in the second degree. *See* Appendix D (guilty plea statement and plea agreement). The change of plea form and offer were read to Gonzalez-Gonzalez with the aid of an interpreter, and the interpreter signed on page 10 affirming that he read the entire statement to Gonzalez-Gonzalez and that Gonzalez-Gonzalez understood it in full. *See* Appendix D. On page 5 of the guilty plea statement at subsection 6(g), it indicated that “the prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.” *See* Appendix D. The plea agreement was attached to the guilty plea statement, and it indicated on page 2 that:

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...

See Appendix D (emphasis added). Gonzalez-Gonzalez signed off on the plea agreement twice; once on July 23, 2014 and again on August 1, 2014.

See Appendix D. Gonzalez-Gonzalez signed off on the plea agreement both times after having gone through it with the aid of an interpreter. *Id.*

In court during the guilty plea, Gonzalez-Gonzalez indicated that he understood: the charges against him; that he was waiving his right to a jury trial and all the rights associated with it; the potential consequences of the charges, including 102-136 months or life in prison; and that the judge was not bound by the pretrial agreement. RP 5-8¹. He also admitted to the conduct that made him guilty of the charges. RP 11-12. Gonzalez-Gonzalez acknowledged on the record that it was his signature on the guilty plea statement. RP 12. The trial court had the following colloquy with Gonzalez-Gonzalez:

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

Gonzalez-Gonzalez: Yes.

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

¹ The Verbatim Report of Proceedings (hereafter "RP") was filed in the Superior Court and transferred to this Court as part of Gonzalez-Gonzalez's petition.

Gonzalez-Gonzalez: Yes.

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

Gonzalez-Gonzalez: No.

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

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

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

On December 1, 2014, Mr. Terry filed a motion and declaration requesting Dr. Landon Poppleton to be approved for the second SSOSA evaluation. *See* Appendix F (Motion and declaration for approval of

second SSOSA evaluator). In the declaration, Mr. Terry stated that in 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 speaking Spanish. *See* Appendix F at page 3. Mr. Terry stated: "I have looked for a Spanish evaluator. I have asked the County's Indigent Defense office if they knew of one. I have not located such an evaluator." *See* Appendix F at page 3. He then requested for Dr. Poppleton to be appointed, because Dr. Poppleton was an evaluator that spoke Spanish. *See* Appendix F at page 3.

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

A hearing was held on December 23, 2014 where Gonzalez-Gonzalez appeared with Mr. Terry and with Nicole Dalton (Gonzalez-

Gonzalez's current attorney for this PRP). A motion and declaration signed by Gonzalez-Gonzalez was filed with the court by Ms. Dalton's office the day of the hearing. *See* Appendix G (motion to substitute counsel). In the typed declaration from Gonzalez-Gonzalez prepared by Ms. Dalton's office, dated December 22, 2014, he stated that he was unhappy with Mr. Terry's representation, specifically Mr. Terry's Spanish speaking skills, and wanted to hire Ms. Dalton in his place. *See* Appendix G.

At the hearing, Ms. Dalton told the court that Gonzalez-Gonzalez wanted to substitute Ms. Dalton in as his attorney. RP 29. Ms. Dalton stated that Gonzalez-Gonzalez had told her he did not have a good understanding of what was going on and thought he would be released soon or in the alternative get "something like a five-year sentence." RP 30-31. Ms. Dalton then asked the court to grant Gonzalez-Gonzalez's pro se motion to substitute counsel and grant her a "significant continuance." RP 32. Ms. Dalton indicated that she had already received a fee in trust from Gonzalez-Gonzalez. RP 33.

The State objected to the continuance and substitution based on the age of the case. RP 34. The State argued that Ms. Dalton was correct that Gonzalez-Gonzalez thought he would get out soon, because if Gonzalez-Gonzalez had qualified for SSOSA he would have been let out soon. RP

34. The State further clarified that Gonzalez-Gonzalez's indication he might get a five year sentence was in fact because Mr. Terry had made that request to the State when it appeared Gonzalez-Gonzalez would not qualify for SSOSA. RP 34-35. The State also noted that Gonzalez-Gonzalez had an interpreter present for all stages of the proceedings in court, including for the plea. RP 35. Mr. Terry stated at this hearing that during his representation he noticed Gonzalez-Gonzalez did not fully understand everything said to him, so Mr. Terry took his time in explaining things to him. RP 40. He specifically stated that "we had to read the plea for him – with him I think three or four times." RP 40.

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

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

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

Ms. Dalton did not substitute in as counsel for Gonzalez-Gonzalez before the sentencing hearing on January 26, 2015. At the hearing, Mr. Terry highlighted the difficulties in the SSOSA evaluation, and that the SSOSA evaluation contained too many risk factors, one of which was the lack of a Spanish speaking treatment provider locally in Washington. RP 58. However, Mr. Terry indicated that there was a provider in Portland and requested that the court allow Gonzalez-Gonzalez to enter SSOSA

with the Oregon provider. RP 61. The court denied this request and sentenced Gonzalez-Gonzalez to 136 months in prison and stated that SSOSA was not appropriate in this case, even without the interpreter difficulties. RP 63; *See* Appendix I (judgement and sentence). Gonzalez-Gonzalez filed a timely motion to withdraw his guilty plea under CrR 7.8 which was transferred to this Court.

RAP 16.9 STATEMENT

RAP 16.9 (a) says the Respondent “should also identify in the response all material disputed questions of fact.” The State hereby declares that if any fact averred by the defendant would in any way dispute, refute, rebut, negate, undermine, or undercut any fact in the record or verdict of the jury, it is a disputed question of fact. Unless the State *specifically disavows* a fact adduced at trial, the State should be viewed as adhering to the settled record in total and to the extent anything said or averred by the defendant would stand in contrast with any fact from the record, the State disagrees with and disputes that fact. This includes any “opinion,” be it by expert or lay person, which purports to dispute, refute, rebut, negate, undermine, or undercut any fact adduced at trial or any verdict rendered by the jury. If the fact in question is germane to this Court’s consideration of the personal restraint petition such that the

petition cannot be decided without settling the matter, this Court is then required by RAP 16.11 to remand this matter to the Superior Court for a reference hearing, wherein a proper trier of fact can settle the dispute. An appellate court is not a trier of fact and cannot settle factual disagreements. See e.g. *State v. Rafay*, 168 Wn.App. 734, 285 P.3d 83 (2012), *State v. Macon*, 128 Wn.2d 784, 911 P.2d 1004 (1996). A party is not required to specifically request a reference hearing to trigger the appellate Court's duty to hold one in the event this Court determines there is a disputed fact that must be settled.

ARGUMENT WHY PETITION SHOULD BE DISMISSED

A personal restraint petition is not a substitute for a direct appeal. *In re Hagler*, 97 Wn.2d 818, 650 P.2d 1103 (1982). A personal restraint petitioner must prove either a constitutional error that caused actual and substantial prejudice or a nonconstitutional error that caused a complete miscarriage of justice. *In re Coats*, 173 Wn.2d 123, 267 P.3d 324 (2011); *In re Cook*, 114 Wn.2d 802, 792 P.2d 506 (1990). Moreover, because a personal restraint petition is not a second bite at a direct appeal, "new issues must meet a heightened showing before a court will grant relief." *In re Yates*, 177 Wn.2d 1, 296 P.3d 872, 880 (2013); *Coats*, 173 Wn.2d at 132 (holding that relief "by way of a collateral challenge to a conviction is

extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment”) (citation omitted). Moreover, the petitioner “must make these heightened showings by a preponderance of the evidence.” *Yates*, 177 Wn.2d at 17.

In evaluating personal restraint petitions, the Court can: (1) dismiss the petition if the petitioner fails to make a prima facie showing of constitutional or nonconstitutional error; (2) remand for a full hearing if the petitioner makes a prima facie showing but the merits of the contentions cannot be determined solely from the record; or (3) grant the personal restraint petition without further hearing if the petitioner has proven actual and substantial prejudice or a complete miscarriage of justice. *Cook*, 114 Wn.2d at 810-11; *In re Hews*, 99 Wn.2d 80, 660 P.2d 263 (1983). A petitioner’s bare assertions and self-serving statements are insufficient to justify a reference hearing, let alone to establish actual and substantial prejudice or a complete miscarriage of justice. *Yates*, 177 Wn.2d at 18; *See also In re Rice*, 118 Wn.2d 876, 828 P.2d 1086 (1992); *In re Reise*, 146 Wn.App 772, 192 P.3d 949 (2008); RAP 16.7(a)(2)(i). Moreover, 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. *Yates*, 177 Wn.2d at 18 (internal quotations omitted). This corroboration “must be more than mere speculation or conjecture.” *Id.* (citation omitted).

I. THE PETITIONER RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Gonzalez-Gonzalez claims his counsel was ineffective for failing to conduct a reasonable investigation and for failing to sufficiently communicate the consequences of the guilty plea to him. *See* PRP. However, trial counsel conducted a reasonable investigation and the consequences of the plea were effectively communicated to Gonzalez-Gonzalez. Furthermore, Gonzalez-Gonzalez cannot show prejudice. His claims fail.

A criminal defendant has a right to the effective assistance of counsel at every critical stage of a criminal proceeding. *State v. Shelmidine*, 166 Wn.App. 107, 269 P.3d 362 (2012) (citations omitted). In order to prove ineffective assistance of counsel, the defendant must show that (1) counsel’s performance fell below an objective standard of reasonableness and (2) counsel’s performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674

(1984); *State v. McFarland*, 127 Wn.2d 322, 899 P.2d 1251 (1995).

Moreover, a “fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *State v. Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011) (internal quotation omitted).

A. GONZALEZ-GONZALEZ FAILS TO ESTABLISH TRIAL COUNSEL’S INVESTIGATION WAS NOT REASONABLE.

The analysis of whether a defendant’s counsel’s performance was deficient starts from the “strong presumption that counsel’s performance was reasonable.” *State v. Kyлло*, 166 Wn.2d 856, 215 P.3d 177 (2009); *State v. Hassan*, 151 Wn.App. 209, 211 P.3d 441 (2009) (holding that “[j]udicial scrutiny of counsel’s performance must be highly deferential”) (quotation and citation omitted). Thus, “given the deference afforded to decisions of defense counsel in the course of representation” the “threshold for the deficient performance prong is high.” *Grier*, 171 Wn.2d at 33. When counsel’s actions or decisions can be characterized as “legitimate trial strategy or tactics, performance is not deficient.” *Grier*, 171 Wn.2d at 33 (citing *Kyлло*, 166 Wn.2d at 863).

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

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

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

In *Shelmidine*, defense counsel was alleged to have provided ineffective assistance because the State refused to provide counsel with the name of a confidential informant if the defendant wanted to accept the

State's offer. 166 Wn. App. at 109. The court held that there was sufficient evidence available to the attorney, even without the name of the informant, to reasonably evaluate the evidence and effectively assist the defendant in making the decision to plead guilty or go to trial. *Id.* at 114. The court based its ruling on the fact that the attorney received everything of significance from the State, and the only thing that was missing was the name of the informant. *Id.* at 113. This evidence included multiple police reports, and the court found that the attorney had the ability to interview multiple eyewitnesses. *Id.* In sum, all of these factors resulted in the court finding there was sufficient information to advise the defendant whether or not to accept the plea and that counsel complied with the RPCs. *Id.* at 114.

Here, the trial counsel conducted an adequate investigation and thoroughly informed Gonzalez-Gonzalez of the consequences of the guilty plea. Trial counsel spent two days going over the guilty plea statement with Gonzalez-Gonzalez, including reading it to him three to four times, and that statement included nothing but accurate information in regards to the SSOSA screening and his maximum range. RP 40 *See Appendix B.*; *See Appendix D.* At all stages of going over the decision to plead guilty, Gonzalez-Gonzalez was assisted with an interpreter, one he told the court he understood. RP 5-12, 52-53; *See Appendix D.*; *See Appendix B.* Gonzalez-Gonzalez was fully informed of the consequences he is now

facing, because unlike in *A.N.J.*, he was never told incorrect information in regards to the SSOSA screening. In fact, his trial counsel spoke endlessly about SSOSA with Gonzalez-Gonzalez. *See* Appendix B. Also unlike in *A.N.J.*, trial counsel did not spend limited time with Gonzalez-Gonzalez before he entered his plea. Trial counsel met with Gonzalez-Gonzalez 10-15 times for at least 15 minutes to an hour while working on the case. *See* Appendix B. Furthermore, just as in *Shelmidine*, the State provided trial counsel with ample evidence, over 80 pages of discovery including police reports and witness and victim statements, thus showing that trial counsel had sufficient evidence to evaluate and assist Gonzalez-Gonzalez. Trial counsel here did a reasonable investigation that allowed Gonzalez-Gonzalez a meaningful decision to either plead guilty or go to trial.

In regards to conducting pretrial interviews, effective assistance of counsel does not require defense counsel to interview every conceivable witness. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 101 P.3d 1 (2004). The decision on whether or not to call a particular witness is a matter for differences of opinion and presumed to be a matter of legitimate trial tactics. *Id.* at 742. “A defendant seeking relief under a ‘failure to investigate’ theory must show a reasonable likelihood that the investigation would have produced useful information not already known

to [counsel]”. *Id.* at 739. Any prejudice from a ‘failure to investigate’ claim must be considered in light of the strength of the State’s case. *Id.*

Here, trial counsel actually conducted a pretrial interview, unlike in *Shelmidine* where the court found that the attorney’s ability to interview a witness was part of his ability to provide reasonable and competent advice. 166 Wn.App. at 113. Trial counsel only interviewed the victim in this case, because he did not want the State to pull its offer to dismiss 4 of the 6 charged counts. *See Appendix B.* This was a legitimate tactical decision, and it is not this court’s place to second guess it in hindsight. *Strickland*, 466 U.S. at 689. Furthermore, trial counsel was not required to interview every possible witness, and Gonzalez-Gonzalez has failed to show that interviewing any other witness would have produced useful information not already known. *Davis*, 152 Wn.2d at 739. Trial counsel did investigate other potential witnesses by speaking with family members, but they did not have any useful information and would not be helpful to mounting a defense. *See Appendix B.* Gonzalez-Gonzalez has only offered mere speculation that additional interviews would have uncovered something useful, which is insufficient to establish prejudice. Especially in light of the strong evidence from the State of the abuse of L.G.-M., corroborated by the abuse of her other two sisters and other witness statements. The record establishes that trial counsel conducted a

reasonable investigation. Gonzalez-Gonzalez has failed to meet his burden proving trial counsel's performance was deficient. His claim fails.

Gonzalez-Gonzalez's reference to ABA and other professional standards for defense attorneys does not establish the Sixth Amendment standards for effective representation that this court must consider. *A.N.J.*, 168 Wn.2d at 110. These standards are not binding, but they can be useful to courts when evaluating ineffective assistance of counsel claims. *Id.* at 110 (citing *In re Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001)). They can only be considered along with other evidence regarding the effective assistance of counsel. *A.N.J.*, 168 Wn.2d at 110. Here, when evaluating trial counsel's conduct in relation to the standards cited by Gonzalez-Gonzalez, it does not support the conclusion that trial counsel's performance was deficient. As stated above, trial counsel only asked the State to set up an interview of the named victim as part of a legitimate tactical decision. *See* Appendix B. He also spent around 50 hours working on the case, including reviewing all of the State's evidence provided in discovery and meeting with Gonzalez-Gonzalez 10-15 times for at least 15 minutes to an hour each time. *See* Appendix B. Furthermore, he spent three to four days going over the guilty plea with the aid of an interpreter. *See* Appendix B. RP 40. He sought beneficial witnesses when he spoke with members of Gonzalez-Gonzalez's family, but they were of no help

because they were not present during the times of the alleged abuse. *See* Appendix B. By any metric Gonzalez-Gonzalez wants to cite to, trial counsel performed a reasonable investigation. Trial counsel was only required to reasonably evaluate the evidence against Gonzalez-Gonzalez and the likelihood of conviction at trial and then provide Gonzalez-Gonzalez with meaningful advice to help him make the decision whether or not to plead guilty. *A.N.J.*, 168 Wn.2d at 111-12. Trial counsel did just that in this case.

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

B. GONZALEZ-GONZALEZ FAILS TO SHOW PREJUDICE.

In order to prove that deficient performance prejudiced the defense, the defendant must show that "counsel's errors were so serious as to deprive [him] of a fair trial. . . ." *Strickland*, 466 U.S. at 687. In other words, "the defendant must establish that there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different." *Kyllo*, 166 Wn.2d at 862 (internal quotation omitted).

If a petitioner fails one prong of the *Strickland* test, a reviewing court need not consider the other. *In re Crace*, 174 Wn.2d 835, 280 P.3d 1102, 1108 (2012). As argued above, trial counsel's performance was not deficient. Therefore, this Court does not need to address prejudice under Gonzalez-Gonzalez's ineffective assistance of counsel claim.

If this Court were to consider the prejudice prong, Gonzalez-Gonzalez has failed to address how trial counsel's alleged deficient performance prejudiced him. The only reference to prejudice in his briefing is that he was inadequately informed of his constitutional rights. *See* Appellant's Motion to Vacate, p. 51. For this claim, Gonzalez-Gonzalez relies on *In re Garcia*, 35 Wn. App. 837, 670 P.2d 672 (1983). However, *Garcia* discussed prejudice in the context of a petitioner's general burden in a PRP, and it did not involve a claim of ineffective assistance of counsel. *Id.* at 838-39. Gonzalez-Gonzalez's briefing is completely silent as to prejudice in an ineffective assistance of counsel claim in assisting a defendant in deciding whether or not to plead guilty.

For purposes of plea bargaining, an attorney "has a duty to assist the defendant 'actually and substantially' in determining whether to plead guilty[,] ... aid the defendant in evaluating the evidence against him and in discussing the possible direct consequences of a guilty plea." *State v. S.M.*, 100 Wn. App. 401, 996 P.2d 1111 (2000) (quoting *State v. Osborne*, 102

Wn.2d at 99). In order to show prejudice in this context, Gonzalez-Gonzalez must show that but for his attorney's deficient performance, he would not have pleaded guilty and would have insisted on going to trial. *In re PRP of Riley*, 122 Wn.2d at 780-81 (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). Gonzalez-Gonzalez has not even claimed he would not have pleaded guilty and insisted on trial but for his attorney's performance. In *Lockhart, supra*, the United States Supreme Court found a habeas petitioner's failure to even claim he would have rejected the plea offer and insisted on trial but for his attorney's performance, and failure to allege any other circumstances or present any other evidence that might support the conclusion he would have insisted on trial instead of pleading guilty meant there was no prejudice. *Lockhart*, 474 U.S. at 60.

Even if Gonzalez-Gonzalez had claimed he would have insisted on trial but for Mr. Terry's performance, "[a] bare allegation that a petitioner would not have pleaded guilty" but for counsel's deficient performance is not sufficient to establish prejudice under the *Strickland* standard. *Riley*, 122 Wn.2d at 782 (citing *In re Peters*, 50 Wn.App. 702, 750 P.2d 643 (1988)). Gonzalez-Gonzalez does not allege any actual prejudice from Mr. Terry's performance. He does not indicate he would have gone to trial on six counts of rape of a child and child molestation instead of taking the

offer to plead to a significant reduction of only two charges. Gonzalez-Gonzalez has failed to show or even allege any prejudice in this context. Therefore, he fails to meet his burden show that trial counsel's performance prejudiced him. His claim should be dismissed.

II. THE PETITIONER MADE HIS GUILTY PLEA KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.

Gonzalez-Gonzalez claims that he did not understand his rights or the consequences of his guilty plea when he made it. *See* PRP. He argues his trial counsel did not adequately communicate with him, so he did not understand his rights. However, Gonzalez-Gonzalez offers only self-serving statements as to his lack of understanding of his plea. He fails to show how his plea was not made knowingly, voluntarily, and intelligently. His claim fails.

A defendant's guilty plea must be knowing, voluntary, and intelligently made. *Henderson v. Morgan*, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976); *McCarthy v. U.S.*, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969); *In re Pers. Restraint of Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984). Voluntariness of a guilty plea means a plea free from coercion. *See Woods v. Rhay*, 68 Wn.2d 601, 414 P.2d 601, *cert. denied*, 385 U.S. 905, 87 S. Ct. 215, 17 L. Ed. 2d 135 (1966); *State v. Swindell*, 22

Wn. App. 626, 590 P.2d 1292 (1979). In order for a plea to be made knowingly and intelligently, it must be made with a correct understanding of the charge and the consequences of pleading guilty. CrR 4.2(d); *State v. Walsh*, 143 Wn.2d 1, 17 P.3d 591 (2001); *State v. Wakefield*, 130 Wn.2d 464, 925 P.2d 183 (1996); *State v. Paul*, 103 Wn. App. 487, 12 P.3d 1036 (2000).

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

Here, Gonzalez-Gonzalez fails to show that his trial counsel failed to communicate with him, causing him to enter a guilty plea that was not made knowingly, voluntarily, and intelligently. Trial counsel went over the plea and its consequences with Gonzalez-Gonzalez over the course of two days, reading it to him three to four times, and he used an interpreter when doing so. RP 40; *See* Appendix B; *See* Appendix D. Gonzalez-Gonzalez signed that he understood the pretrial agreement twice, on July 23, 2014 and on August 1, 2014. *See* Appendix D. That agreement

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

Gonzalez-Gonzalez cites to federal cases dealing with counsel who communicated with a non-native speaking client without the aid of an

interpreter.² These cases deal with situations where defendants are advised of rights without the aid of a certified court interpreter. This is not the situation in the present case. Trial counsel utilized interpreters both in and out of court when speaking with Gonzalez-Gonzalez. *See* Appendix B. While trial counsel did speak in Spanish to Gonzalez-Gonzalez without the aid of interpreters at some points, when the guilty plea and pretrial offer were discussed a certified court interpreter was present in the jail and in court. *See* Appendix B; RP 5-12; *See* Appendix D. Thus, those cases, while neither binding nor persuasive, are wholly inapplicable to the present case and do not support the claim that trial counsel failed to communicate with him.

Gonzalez-Gonzalez's reliance on cases in the context of informing a defendant of immigration consequences is misplaced. In *State v. Sandoval*, 171 Wn.2d 163, 249 P.3d 1015 (2011), a defendant was able to withdraw his guilty plea because his attorney gave him *incorrect* advice in regards to immigration consequences. There, counsel told the defendant he would not be deported when the offense he was pleading to was deportable, and the warnings in the guilty plea statement were nullified by

² Gonzalez-Gonzalez also cites to Washington, California, New York, and Utah State Bar advice for dealing with non-native speaking clients. These documents are not binding on this court and offer little to no guidance, because they are inapplicable to Gonzalez-Gonzalez's current claim. This is because trial counsel utilized interpreters in and out of court when going through the guilty plea and SSOSA process.

the incorrect advice. *Id.* at 173-74. A similar situation occurred in *State v. Martinez*, 161 Wn. App. 436, 253 P.3d 445 (2011), where a defendant claimed his attorney only discussed the possibility of deportation (when deportation was mandated by the conviction) and the attorney did not remember what exactly he discussed with the defendant but admitted that he knew little about immigration law. These cases are wholly inapplicable to the current case because Gonzalez-Gonzalez's trial counsel accurately and completely explained the entire guilty plea and SSOSA screening process to him. As stated above, trial counsel utilized interpreters and multiple visits with Gonzalez-Gonzalez to adequately go over the guilty plea. Furthermore, all the evidence shows that trial counsel provided *correct* information to Gonzalez-Gonzalez in regards to SSOSA and his sentencing range. Gonzalez-Gonzalez has failed to provide support to his claimed lack of communication.

Gonzalez-Gonzalez now claims that he was unsure of SSOSA and his potential sentence, but he has failed to support those claims. He has only presented his own statements and letters that he was confused about the plea. Bald assertions and conclusory allegations are insufficient to support a claim of ineffective assistance of counsel. *Rice*, 118 Wn.2d at 886. There is no corroborative evidence of defense counsel's alleged ineffectiveness. *See State v. Gomez Cervantes*, 169 Wn. App. 428, 282

P.3d 98 (2012). Gonzalez-Gonzalez has presented no evidence that establishes he was not properly advised of the consequences of his guilty plea. The affidavits of his family members and a purported expert defense investigator do not contain any direct evidence about trial counsel's actual communications with Gonzalez-Gonzalez (with and without interpreters), nor do they contain any evidence about the actual investigation that was done. Furthermore, the affidavit from Gonzalez-Gonzalez's appellate counsel only contains speculation and opinion as to what trial counsel should have done. These speculative statements are irrelevant and should not be considered as evidence in this petition. Gonzalez-Gonzalez has presented no evidence whatsoever that his trial counsel failed to communicate the consequences of the guilty plea, including the SSOSA screening. These bald assertions without sufficient corroborative evidence are insufficient to justify a reference hearing, let alone to establish actual and substantial prejudice or a complete miscarriage of justice. *Yates*, 177 Wn.2d at 18; *See Rice*, 118 Wn.2d at 828; *Reise*, 146 Wn.App 772; RAP 16.7(a)(2)(i).

Gonzalez-Gonzalez has failed to present evidence or authority to establish his guilty plea was not made knowingly, voluntarily, or intelligently. He fails to meet his burden and his petition should be dismissed.

III. THE TRIAL COURT'S DENIAL OF GONZALEZ-GONZALEZ'S CONTINUANCE MOTION WAS NOT IN ERROR.

Gonzalez-Gonzalez claims that the trial court erred when it denied his motion to continue in order to substitute counsel on December 20, 2014. However, the trial court did not err when it denied Gonzalez-Gonzalez's motion for a continuance to substitute counsel. The trial court properly ruled that it would not allow Ms. Dalton to substitute in and then receive an eight week continuance. Furthermore, the trial court did in fact grant Gonzalez-Gonzalez's continuance motion when it allowed a four week continuance. Gonzalez-Gonzalez has failed to provide any support for the claim that the denial of the eight week continuance provides a ground for relief from his sentence.

Gonzalez-Gonzalez has failed to provide any authority for his claim. The only case cited by Gonzalez-Gonzalez, *State v. Olivera-Avila*, 89 Wn. App. 313, 949 P.2d 824 (1997) is wholly inapplicable to his petition. *Olivera-Avila* dealt with the trial court failing to warn a defendant of mandatory community placement during a guilty plea. *Id.* at 320. The case is completely silent as to the denial of a motion to continue sentencing. Thus, Gonzalez-Gonzalez has failed to provide any authority for this claim. He has failed to meet his burden to prove this was either a

constitutional error that caused actual and substantial prejudice or a nonconstitutional error that caused a complete miscarriage of justice. *In re Coats*, 173 Wn.2d 123; *In re Cook*, 114 Wn.2d 802. His claim fails.

If this Court does entertain Gonzalez-Gonzalez's claim, it is foreclosed by *State v. Quy Dinh Nguyen*, 179 Wn. App. 271, 319 P.3d 53 (2013). In *Quy Dinh Nguyen* the defendant pleaded guilty to the State's offer during a trial and the defendant then attempted to withdraw his guilty plea at sentencing. *Id.* at 273. The defendant argued that he did not understand everything when he signed the plea, so the court appointed him a new attorney. *Id.* at 276. The new attorney moved for a four to six month continuance in order to go through the discovery and consult with experts. *Id.* at 277. The trial court denied the continuance motion and the motion to withdraw the plea was set out one month. *Id.* The trial court reasoned that the only issue for the motion to withdraw the plea was if the plea was entered knowingly, intelligently, and voluntarily. *Id.* The trial court denied the motion to withdraw the guilty plea, and Division I of this Court affirmed the trial court and held the trial court did not err and the defendant was not prejudiced. *Id.* at 281. Division I found that trial court did not err in denying the continuance, because the defendant was provided with effective assistance of counsel at the hearing to withdraw the guilty plea. *Id.* at 287. Division I relied on the fact that in the one

month the defendant's new counsel was able to receive a transcript of the plea colloquy, hire an expert to assess the defendant's mental health, and interview the defendant and his former attorneys. *Id.*

The actions of the trial court in *Quy Dinh Nguyen* are almost directly on point with the trial court in this case. Here, the trial court would not allow an eight week continuance in order to determine the same, basic issue as in *Quy Dinh Nguyen*, namely whether or not the plea was entered knowingly, intelligently, and voluntarily. At the time of the motion to continue in this case, the potential substitute attorney had already met with Gonzalez-Gonzalez and helped him prepare a hyper-technical motion to substitute counsel based on his alleged confusion. The attorney was already apprised of the basic issues, so the court granting a one month set over was not improper. Furthermore, the trial court did not outright deny Gonzalez-Gonzalez's motion to substitute counsel, because the trial court granted a four week continuance. RP 43-44. The trial court also stated on the record that if there was a motion filed before January 26, 2015 the court would consider it, but at this time the potential substitute counsel "has indicated that she needs more time and she's not willing to substitute in, so he still has Mr. Terry." RP 51. Substitute counsel was given an opportunity to substitute in for four weeks but never did. The trial

court's actions in denying the eight week continuance were not in error and did not prejudice Gonzalez-Gonzalez.

Gonzalez-Gonzalez has failed to meet his burden in proving the trial court's denial of his eight week continuance motion was any type of error or that it resulted in actual prejudice or a complete miscarriage of justice. His claim fails.

CONCLUSION

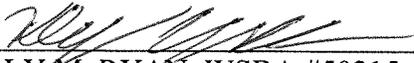
Based on the above arguments, the defendant's personal restraint petition should be dismissed.

DATED this 12th day of June, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


KELLY M. RYAN, WSBA #50215
Deputy Prosecuting Attorney
OID# 91127

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):

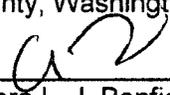
28 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
29 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

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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).

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

Date: September 19, 2013

BY: 
Camara L. J. Banfield, WSBA #33835
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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6
7 IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

8 DIVISION II

9 STATE OF WASHINGTON,

10 Respondent/Plaintiff,

11 v.

12 JAVIER GONZALEZ-GONZALEZ,

13 Petitioner/Defendant.

No. 51438-9-II

DECLARATION OF KELLY M. RYAN

14
15 STATE OF WASHINGTON)

: 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. I reviewed the 86 pages of discovery provided to Mr. Terry and it included:

- 17 a. Multiple police interviews with the victim and her sisters who had also been
18 abused by Gonzalez-Gonzalez.
- 19 b. Statements from the victim's brother-in-law stating that his wife (one of the
20 sisters abused by Gonzalez-Gonzalez) had told him about the abuse and that
21 Gonzalez-Gonzalez had made incriminating statements to him.
- 22 c. Statements from the victim's mother and Gonzalez-Gonzalez's ex-wife who
23 had found Gonzalez-Gonzalez nude in bed with the victim and had been told
24 of some of the abuse by the victim.
- 25 d. Statements from the victim's husband that the victim had disclosed the abuse
26 to him several years earlier but did not want others to know at that time
27 because she was afraid.
- 28
- 29

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

3
4 Executed at Vancouver, Washington on this 12th day of June, 2018.

5
6 

7 _____
8 Kelly M. Ryan, WSBA #50215
9 Deputy Prosecuting Attorney
10 Clark County Prosecuting Attorney's Office
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Appendix C

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1 **CERTIFICATE OF SERVICE**

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

5 Signed at Vancouver, WA, on October 28, 2013

FILED
2013 OCT 28 PM 2:32
SCOTT G. WEBER, CLERK
CLARK COUNTY

6 **SUPERIOR COURT OF WASHINGTON**
7 **COUNTY OF CLARK**

8 **STATE OF WASHINGTON,**

No. 13-1- 01744-0

9 **Plaintiff,**

**MOTION AND DECLARATION FOR
CONTINUANCE OF TRIAL**

10 **vs**

11 **JAVIER GONZALEZ-GONZALEZ,**

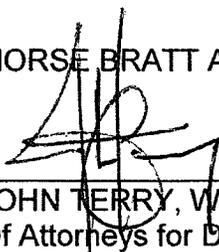
12 **Defendant.**

13 **MOTION**

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

18 Respectfully submitted October 28, 2013:

19 **MORSE BRATT ANDREWS & FOSTER PLLC**

20 
21 **JOHN TERRY, WSBA # 41337**
22 **Of Attorneys for Defendant**

23 **///**

///

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

Appendix D

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FILED

AUG 01 2014

Scott G. Weber, Clerk, Clark Co. *1040*

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

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

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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

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8 (bb) If the current offense is any sex offense and I have a prior conviction for any of
9 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

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

23
For sex offenses committed on or after March 20, 2006: For the following offenses and
special allegations, the minimum term shall be either the maximum of the standard
sentence range for the offense or 25 years, whichever is greater:

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

2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by
forcible compulsion, or kidnapping in the first degree with sexual motivation and the
offense includes special allegation that the victim of the offense was under 15 years of age
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
 interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State
 has given notice that it will seek an exceptional sentence, the notice states aggravating
 circumstances upon which the requested sentence will be based, and facts supporting an
 exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge
 if I waive a jury, or by stipulated facts.

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

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

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

 (k) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered
 to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079,
 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 *266* (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 *266* (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.~~

23 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

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 *Jbb* (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 9.41. _____. 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.

20 8. I make this plea freely and voluntarily.

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

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

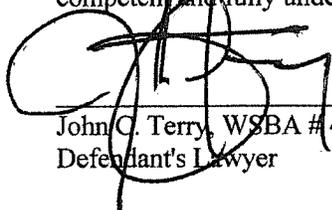
/// /// ///

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

4 
5 Javier Gonzalez-Gonzalez
6 Defendant

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

10 
11 Camara Banfield, WSBA # 33835
12 Prosecuting Attorney

13 
14 John C. Terry, WSBA # 41337
15 Defendant's Lawyer

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

- 18 (a) The defendant had previously read the entire statement above and that the defendant understood it
19 in full;
20 (b) The defendant's lawyer had previously read to him or her the entire statement above and that the
21 defendant understood it in full; or
22 (c) An interpreter had previously read to the defendant the entire statement above and that the
23 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.

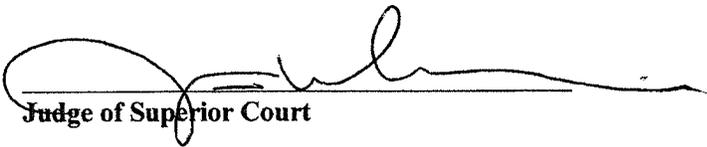
Signed at (city) Vancouver, (state) WA, on (date) 7-23-14.

Interpreter Signature

Print Name
Victor Machado

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: Aug 1, 2014


Judge of Superior Court

INDETERMINATE SENTENCE REVIEW BOARD (RCW 9.94A.507)
FREE-TO-ARGUE SSOSA 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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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 placed on 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

Javier Gonzalez-Gonzalez
JAVIER GONZALEZ-GONZALEZ

John C Terry
John C Terry, WSBA # 41337

Camara L. Banfield
Camara 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

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

DAVID GARDNER
Defendant's signature

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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
Date of Birth: 1/20/1959

No. 13-1-01744-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.525 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the 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.					

*DV: Domestic violence was pled and proved.

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

DATED this _____ day of September, 2013.

Defendant

Maggie Evansen, WSBA#30014,
Attorney for Defendant

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

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>01/07/15</i>	<i>Brian Ford</i>	<i>1-07-2015</i>
Elizabeth Campbell	Date	Brian Ford	Date
Community Corrections Officer H		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	)	JUDGMENT AND SENTENCE (FELONY)
v.	)	APPENDIX F
GONZALEZ-GONZALEZ, Javier	)	ADDITIONAL CONDITIONS OF SENTENCE
Defendant)	
)	
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

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Page 1 of 1

Appendix F

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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
vs.	MOTION AND DECLARATION FOR
JAVIER GONZALEZ GONZALEZ,	APPROVAL OF SECOND SSOSA
Defendant.	EVALUATOR

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:

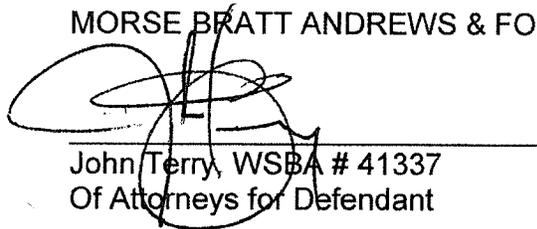
Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

- (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.

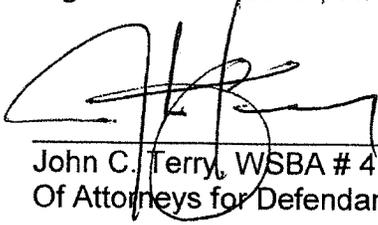
5 Submitted: December 1, 2014

6
7 MORSE BRATT ANDREWS & FOSTER PLLC

8 
9 John Terry, WSBA # 41337
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
7 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:

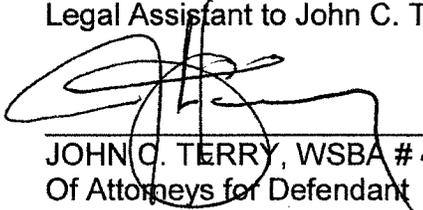
By causing a full, true and correct copy thereof to be HAND-DELIVERED to the party, at the last-known address for the party's office, on the date set forth below;

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.

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



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

CURRICULUM VITAE

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LICENSES

Oregon State

Psychologist (No. 1999)

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.

Interneccine 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., Harty, 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> <i>Course Instructor- Statistics in Psychology</i>	Sept 2004 – Aug 2007 May 2007 – Jun 2007
Brigham Young University; Provo, Utah <i>Teaching Assistant- Research Measurement</i> <i>Teaching Assistant- Abnormal Psychology</i>	Jan 2005 – April 2005 Jan 2002 – April 2002

RESEARCH CONSULTATION

- Co-Director**
Mensura Research Solutions, LLC Aug 2007 – Dec 2011
Research and statistical consultation.
- Independent Consultant** Nov 2008 – Dec 2009
Research Consultation Pros
Provided statistical, research and editing consultation for myriad of research questions on dozens of projects.

COMMUNITY INVOLVEMENT

- Consortium Member** 2011- 2012
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
- Consortium Member** 2010
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.
- Consortium Member** July 2006 – Dec 2006
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

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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- 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.
3:23pm

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 Gonzalez Gonzalez

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 Glez

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

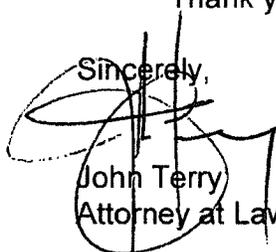
Re: *State v. Gonzalez-Gonzalez*, Case no. 14-1-01451-1
Letter from Defendant re Counsel

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 SOSA 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 SOSA program. I want to take back my plea because John Terry told me I would get SOSA. I gave John Terry \$7000⁰⁰ dollars to get me the SOSA program. John Terry promised me that I would get the SOSA 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 GANZALEZ GLEZ

December 24, 2014

CEN: 215944 FI-5

señor jves

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atentamente

Javier Gonzalez Gonzalez

diciembre 24 2014

CFN 219844

(PI 5)

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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.

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Javier Gonzalez Gonzalez

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
 3:30pm
 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 -- 15-9-00314-2
 Prison
 RCW 9.94A.507 Prison Confinement
 (Sex Offense and Kidnapping of a Minor)
 (FJS)
 Clerk's Action Required, para 2,1, 4.1, 4.3a,
 4.3b, 5.2, 5.3, 5.5 and 5.7
 Defendant Used Motor Vehicle
 Juvenile Decline Mandatory Discretionary

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

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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	01	minimum term:	<u>136 months</u>	maximum term	<u>life</u>	Statutory Maximum
Count	<u>02</u>	minimum term	<u>41 month</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) 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	\$ TBS	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ 500.00	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 \$ 200.00	FRC
		Witness costs \$ _____	WFR
		Sheriff service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ 4,500.00	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/PCD NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
	\$ 100.00	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

Judge/Print Name Barbara Johnson

CB
Deputy Prosecuting Attorney
WSBA No. 33835
Print Name: Camara L. Banfield

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

Javier Gonzalez
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
(If no SID take fingerprint card for State Patrol)

Date of Birth: 1/20/1959

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,

[Handwritten Signature]

Dated:

1-26-15

The defendant's signature:

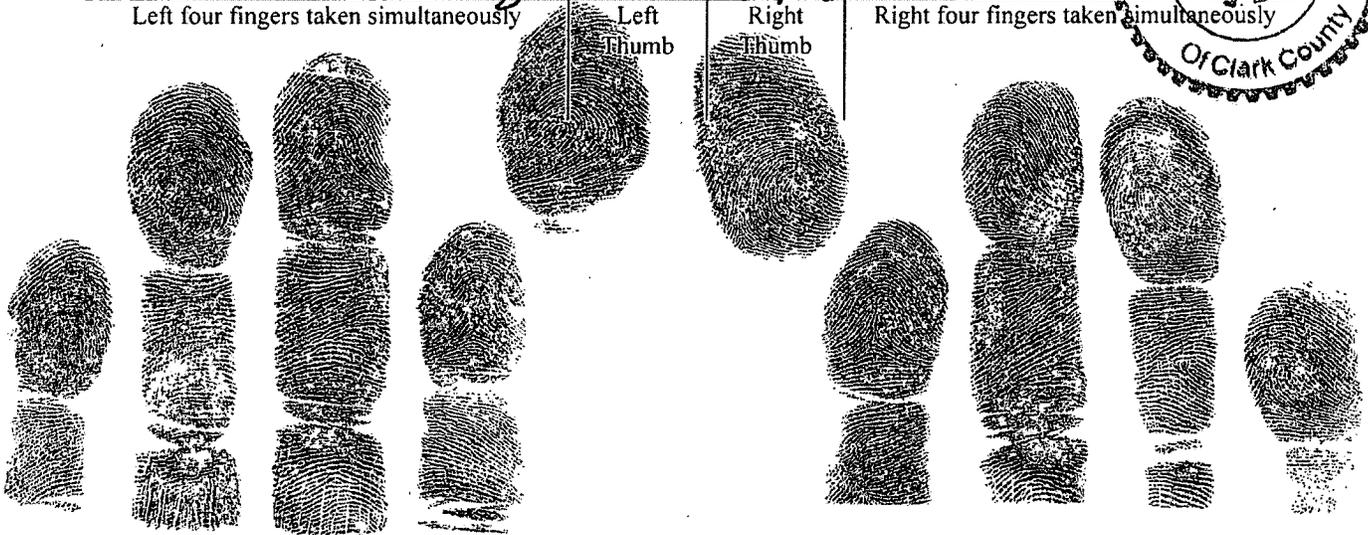
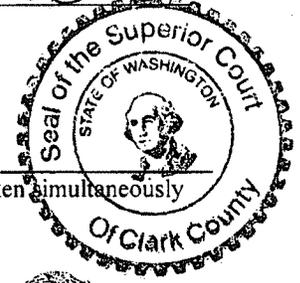
Javier Gonzalez

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.

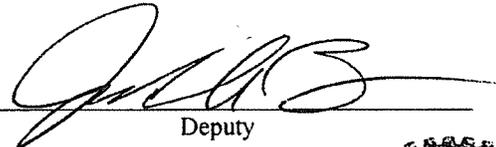
WITNESS, Honorable



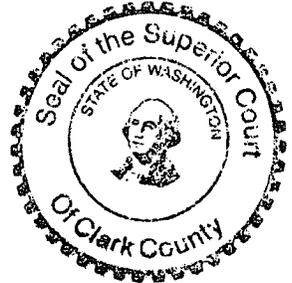
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1-26-15

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

By:



Deputy



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 A
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

1/26/15

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0820/14

JUDGE, CLARK COUNTY SUPERIOR COURT

Barbara Johnson

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
Date of Birth: 1/20/1959

No. 13-1-01744-0

APPENDIX 2.2
DECLARATION OF CRIMINAL HISTORY



COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.525 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the 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.					

*DV: Domestic violence was pled and proved.

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

DATED this 26 day of January, 2015.

Javier Gonzalez
Defendant

Maggi Evenson, WSBA#30004
Attorney for Defendant
John Perry 41337

Camara L. Barfield
Senior Deputy Prosecuting Attorney

Appendix J

9

CERTIFICATE OF SERVICE

I hereby certify that on this date, 9-25-2012, I sent a true copy of this document via 1st class mail / courier / personal service on the opposing party to this action or his/her attorney of record.

(Signature)

FILED

2013 SEP 25 PM 4:14

SCOTT G. WEBER, CLERK
CLARK COUNTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

STATE OF WASHINGTON,

Plaintiff,

No. 13-1-01744-0

vs.

**NOTICE OF APPEARANCE /
LETTER OF REPRESENTATION
AND DEMAND FOR DISCOVERY**

**JAVIER GONZALEZ-GONZALEZ, AKA
JAVIER GONZALEZ GONZALEZ,**

Defendant.

TO: The Plaintiff and your attorney of record, the Clerk of the above-entitled Court, and to the assigned Judge:

YOU AND EACH OF YOU PLEASE TAKE NOTICE that the appearance of the Defendant, is hereby entered in the above-entitled matter(s) by JOHN TERRY, of MORSE BRATT ANDREWS & FOSTER, PLLC. Please direct all correspondence to the address listed below. Further, the Defendant denies all allegations and reserves all rights and defenses due to him or her under the laws of the United States of America and the State of Washington.

FURTHER, to the Plaintiff, please take note of this formal demand made pursuant to rule CrR 4.7 to provide all discoverable materials, including, but not limited to police reports, photographs, videos, a witness list, containing the names, addresses, and phone numbers, of all witnesses the Plaintiff intends to call at trial, and all future correspondence to the following attorney:

**John Terry, of Morse Bratt Andrews & Foster, PLLC
108 E Mill Plain Blvd., Vancouver, WA 98660
Phone: (360) 213-2040 | Fax: (360) 213-2030
jterry@mbavancouverlaw.com**

Submitted this 25 day of September, 2013.

MORSE BRATT ANDREWS & FOSTER PLLC

JOHN TERRY, WSBA # 41337
Of Attorneys for Defendant

ORIGINAL

6

MORSE BRATT ANDREWS & FOSTER, PLLC.
108 E. Mill Plain Blvd.
Vancouver, WA 98660
Phone: (360) 213-2040 | Fax: (360) 213-2030

Appendix K

CCW
v. F

FILED

2014 FEB -7 AM 11:56

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,
vs.
JAVIER GONZALEZ-GONZALEZ,
Defendant

No. 13-1-01744-0

ORDER TO EXAMINE DEFENDANT FOR
COMPETENCY PURSUANT TO RCW
10.77

ORDER FOR TRANSPORT TO
WESTERN STATE HOSPITAL

THIS MATTER having come before the Court on the Motion of STATE, alleging a reason to doubt the defendant's competence, and the Court being duly advised, now, therefore, IT IS HEREBY

ORDERED, under the authority of RCW 10.77.060, that the defendant JAVIER GONZALEZ-GONZALEZ, who is charged with the crime(s) of RAPE OF A CHILD IN THE SECOND DEGREE, CHILD MOLESTATION IN THE SECOND DEGREE, , , , be examined by a qualified expert or professional person, who shall be approved by the prosecuting attorney. The examination may include psychological and medical tests and treatment, and shall be completed as specified below:

DEVELOPMENTAL DISABILITIES PROFESSIONAL: The court has been advised by a party to the proceedings that the defendant may be developmentally disabled and hereby orders that the expert qualify as a developmental disabilities professional.

1 **PLACE OF EXAMINATION**

2 A. PRELIMINARY EXAMINATION AT CLARK COUNTY JAIL, IT IS HEREBY
3 ORDERED that the examination shall take place in the Clark County Jail. If the evaluator
4 determines that the examination should take place at Western State Hospital, the Clark
5 County Sheriff's Department shall transport the defendant to Western State Hospital for a
6 period of confinement not to exceed fifteen days from the time of admission to the hospital.
7 At the end of such period of examination and testing the defendant shall be returned to the
8 custody of the Clark County Jail. The report is to be submitted to this Court in writing within
9 two working days following the final evaluation of the defendant, unless the Court grants
10 further time. If the defendant is released from jail prior to the examination, the defendant
11 shall contact the staff at Western State Hospital at (253) 761-7565 within the next working
12 day following his/her release from jail to schedule an appointment for examination at a
13 facility.

14
15 In the event the defendant is committed to the hospital for evaluation, all parties
16 agree to waive the presence of the defendant or to his/her remote participation at a
17 subsequent competency hearing or the presentation of an agreed order if the
18 recommendation of the evaluator is for continuation of the stay of criminal proceedings
19 or if the defendant remains incompetent and there is no remaining restoration period,
20 and the hearing is held prior to the expiration of the authorized commitment period.

21 B. PRELIMINARY EVALUATION OUT OF CUSTODY. HAVING DETERMINED
22 THE DEFENDANT IS OUT OF CUSTODY, IT IS HEREBY ORDERED that the defendant
23 and/or his/her attorney shall contact the staff at Western State Hospital at (253) 761-7565
24 within the next working day following the date of this order to schedule an appointment for
25 examination at a facility. The examination shall occur, and the report submitted to this Court,
26 within twenty-one days of the receipt of the order, the charging documents and the discovery
27 by Western State Hospital, unless the Court grants further time.

28 C. PRELIMINARY EVALUATION AT WESTERN STATE HOSPITAL. HAVING
29 DETERMINED THAT ONE OF THE FOLLOWING FACTORS ARE PRESENT, IT IS
HEREBY ORDERED that the competency evaluation is to occur at Western State Hospital

1 and the defendant is hereby committed to the care of the Division of Social and Health
2 Services for up to fifteen days from the date of admission to the hospital. Following
3 examination the defendant is to be returned to the Clark County Jail for further proceedings
4 in this matter. The report shall be furnished to the Court within two working days following
5 the final evaluation of the defendant.

6 The Court may order the defendant to Western State Hospital without a preliminary
7 assessment at the Clark County jail only if one or more of the following criteria are met:

8 [] 1. The defendant is charged with murder in the first degree or murder in the second
9 degree;

10 [] 2. The court finds that it is more likely than not that an evaluation in the jail will be
11 inadequate to complete an accurate evaluation; or

12 [] 3. The court finds that an evaluation outside the jail setting is necessary for the
13 health, safety, or welfare of the defendant.

14 HAVING DETERMINED THAT THE PRELIMINARY EVALUATION SHOULD BE
15 CONDUCTED AT WESTERN STATE HOSPITAL, IT IS FURTHER ORDERED that the
16 Clark County Sheriff's Department shall transport the defendant to Western State Hospital
17 for the purposes set forth above in section C, and at the end of such period of examination
18 and testing return the defendant to the custody of the Clark County Jail to be held pending
19 further proceedings against the defendant.

20 IT IS FURTHER ORDERED that the staff of Western State Hospital shall file the report
21 with the undersigned Court, and provide copies to the Prosecuting Attorney, Defense
22 Counsel and others as designated in RCW 10.77.060 and 10.77.065. The report of the
23 examination shall include the following pursuant to RCW 10.77.060:

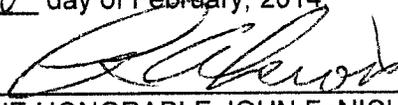
- 24 1. A description of the nature of the evaluation.
- 25 2. A diagnosis or description of the current mental status of the defendant.
- 26 3. An opinion as to the defendant's competency.
- 27 4. An opinion as to whether the defendant should be examined by a County
28 Designated Mental Health Professional under RCW 71.05.

1 IT IS FURTHER ORDERED that the staff of Western State Hospital is granted access
2 to the defendant's medical records, whether they are located at the Clark County Jail, at
3 Western State Hospital or any other clinic or hospital for the purpose of conducting the
4 examination.

5 IT IS FURTHER ORDERED that this action be stayed during the examination period
6 and until this Court enters an order finding the defendant competent to proceed.

7 This matter shall be brought before the Court again for review on *Ad*
8 Thursday, February 27, 2014
9 *at 9:00am*

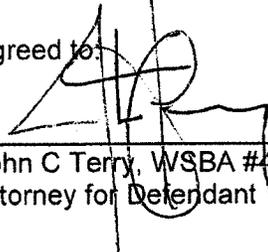
10 DONE IN OPEN COURT this 6 day of February, 2014.

11 
12 THE HONORABLE ~~JOHN E. NICHOLS~~ Robert Lewis
13 JUDGE OF THE SUPERIOR COURT

14 Presented by:

15 
16 _____
17 Camara L. Banfield, WSBA #33835
18 Deputy Prosecuting Attorney

19 Agreed to:

20 
21 _____
22 John C Terry, WSBA #41337
23 Attorney for Defendant

Appendix L

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FILED

2014 MAR 14 PM 3:19

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,

Defendant.

No. 13-1-01744-0

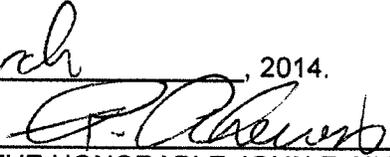
ORDER FINDING DEFENDANT
INCOMPETENT TO STAND TRIAL



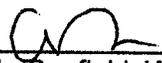
THIS MATTER having come before the Court upon Motion of the State of Washington, being represented by Camara L. Banfield, Deputy Prosecuting Attorney, for an Order Finding Defendant Incompetent to stand trial in the above-entitled matter, based upon the report dated February 27, 2014 submitted by the staff of Western State Hospital indicating that the defendant does not understand the nature of the proceedings and the defendant is unable to assist in his own defense, now, therefore,

IT IS HEREBY ORDERED that the defendant is found incompetent to stand trial in the above-entitled proceeding.

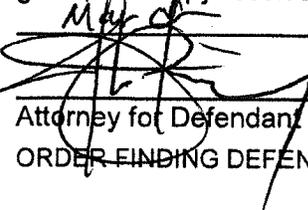
DATED this 7 day of March, 2014.


THE HONORABLE JOHN F. NICHOLS
JUDGE OF THE SUPERIOR COURT

Presented by:


Camara L. Banfield, WSBA #33835
Deputy Prosecuting Attorney

Notice of presentation waived, consent to entry given, and copy received this 7 day of March, 2014.


Attorney for Defendant

ORDER FINDING DEFENDANT INCOMPETENT - 1

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



Appendix M

FILED

JUN 24 2014

9:57
Scott G. Weber, Clerk, Clark Co.

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

ORDER FINDING DEFENDANT
COMPETENT TO STAND TRIAL



THIS MATTER having come before the Court upon Motion of the State of Washington, being represented by Camara L. Banfield, Deputy Prosecuting Attorney, for an Order Finding Defendant Competent to Stand Trial in the above-entitled matter, based upon the report dated June 20, 2014 submitted by the staff of Western State Hospital indicating that the defendant understands the nature of the proceedings and the defendant is able to assist in his own defense, now, therefore,

IT IS HEREBY ORDERED that the defendant is found competent to stand trial in the above-entitled proceeding.

DATED this 24 day of June, 2014.

THE HONORABLE JOHN F. NICHOLS
JUDGE OF THE SUPERIOR COURT

Presented by:

Camara L. Banfield, WSBA #33835
Deputy Prosecuting Attorney

Notice of presentation waived, consent to entry given, and copy received this 24 day of June, 2014.

Attorney for Defendant
ORDER FINDING DEFENDANT COMPETENT - 1

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

CLARK COUNTY PROSECUTING ATTORNEY

June 12, 2018 - 2:17 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51438-9
Appellate Court Case Title: In re the Personal Restraint Petition of Javier Gonzalez-Gonzalez
Superior Court Case Number: 13-1-01744-0

The following documents have been uploaded:

- 514389_Personal_Restraint_Petition_20180612141603D2349279_8296.pdf
This File Contains:
Personal Restraint Petition - Response to PRP/PSP
The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- legalassistant@daltonlawoffice.net
- nicole@daltonlawoffice.net

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Sender Name: Ashley Smith - Email: ashley.smith@clark.wa.gov

Filing on Behalf of: Kelly Michael Ryan - Email: kelly.ryan@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

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PO Box 5000

Vancouver, WA, 98666-5000

Phone: (360) 397-2261 EXT 5686

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