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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY NS

DEPUTY

### CERTIFICATE SERVICE BY MAIL

I, Darrell Pamel, Berrian, hereby and certificate deposited in the mail of the United States of America, Postage Office prepaid a property directed to prison staff at Coyote Ridge Correction Center, P.O. Box 769 Connell, WA 99326, Mr. Berrian containing a copy of the original; copy to the Pierce County Prosecutor's Office 930 Tacoma Avenue South Room 946, Tacoma, WA 98402; original to the Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402 a true copy of the document to which this certificate is ~~is~~ affixed on June 27, 2018.

Service was made by mail. I, certificate under penalty of perjury of the laws, that the foregoing is true and correct to the best of my knowledge and belief.

DATED June 27, 2018.

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2018 JUL -2 PM 1:37

STATE OF WASHINGTON

No. 51484-2

BY [Signature]  
DEPUTY

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 Darrell Parnel Berrian )  
 (your name) )  
 )  
 Appellant. )

I, Darrell Berrian, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

See Next Page

Additional Ground 2

See Next Page

If there are additional grounds, a brief summary is attached to this statement.

Date: 6/27/18

Signature: Darrell Berrian

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FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

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WASHINGTON, D.C.

COMMUNICATIONS SECTION

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Additional Ground 1

Berrian's offender score was miscalculated in violation of the BRA.

CLERK OF COURT OF APPEALS CIVIL  
STATE OF WASHINGTON

The court reviews issues of statutory interpretation de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Of paramount importance in such analysis is the legislature's intent in adopting the statute. Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 536, 199 P.3d 393 (2009).

In analyzing a statute this court looks first to its plain language. Armendariz, 160 Wn.2d at 110. Under the "plain meaning rule," this court examines the language of the statute, other provisions of the same act, and related statutes. City of Seattle v. Allison, 148 Wn.2d 75, 87, 59 P.3d 85 (2009).

This court examines the statute as a whole. In re Detention of Williams, 147 Wn.2d 476, 490, 55 P.3d 597 (2002). If a plain language of the statute is unambiguous, the ~~remaining~~ inquiry ends, and the statute is enforced "in accordance with its plain meaning." Armendariz, 160 Wn.2d at 110.

The statutes at issue here is RCW 9.94A.525 and RCW 9.94A.589, the statutes are plain on their face; so the statutes need to be enforced "in accordance with its plain meaning."

RCW 9.94A.525 (1) provides:

- (1) A prior conviction is a conviction which exists before the date of sentencing ~~which~~ for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction

computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

RCW 9.94A.589 (1)(a) provides:

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offenses shall be determined by using all other current and prior convictions as if the were prior convictions for the purpose of the offender score.

Based on the plain meaning of the statutes an offender who is being sentenced for one offense should only have his prior convictions included in his offender score, not his current offense.

According to Berrians judgment and sentence he has three (3) prior adult convictions and one (1) prior juvenile conviction.

Attachment 1 at 2. So Berrians offender score should be three and a half ( $3\frac{1}{2}$ ), rounded down to three (3), instead of four.

There is also a clerical error on the face of Berrians judgment and sentence, Berrians judgment and sentence still list his juvenile conviction as an adult conviction, from 1999. This is the same conviction that was included in Berrians original judgment and sentence and counted as a whole point, that this court remanded Berrian for resentencing because it was a juvenile offense and should have been counted as a half point. Attachment 2 at 2-3; Attachment 3 at 1-2.

In sum Berrian's offender score is miscalculated. Berrian's offender score is listed as four, when it should be three and a half (3½), rounded down to three (3). Attachment 1 at 2.

### Additional Ground 2

Berrian argues that the trial court erred when it increased his offender score based on two Georgia convictions for sale of cocaine.

We review a trial court's calculation of a defendant's offender score de novo. State v. Olsen, 180 Wn.2d 468, 472, 325 P.3d 187, cert. denied, 135 S.Ct. 287 (2014). A defendant's offender score may be increased for an out-of-state conviction if the State meets its burden to prove the existence of the out-of-state conviction and can establish that the out-of-state conviction is "comparable" to a Washington offense. RCW 9.94A.525(3); Olsen, 180 Wn.2d at 472. When determining whether a foreign conviction is comparable to a similar Washington offense, we apply a two-part test. State v. Thieffault, 160 Wn.2d 409, 415, 158 P.3d 580 (2007).

First, the court analyzes legal comparability by comparing the elements of the out-of-state offense to the most comparable Washington offense. State v. Morley, 134 Wn.2d 588, 605-06, 952 P.2d 167 (1998). When the crimes' elements are not the same, the offenses are not legally comparable. Id. at 606. If the crimes are legally comparable, our analysis ends here and the crime is included in the offender score.

Second, if the offenses are not legally comparable, the court analyzes factual comparability. Wang v. Olsen, 180 Wn.2d at 472. Offenses are factually

comparable when the defendant's conduct would have violated a Washington statute. Morley, 134 Wn.2d at 606.

("The key inquiry is under what Washington statute could the defendant have been convicted if he or she had committed the same act in Washington." quoting State v. McCorkle, 88 Wn.App. 485, 495, 945 P.2d 736 (1997), aff'd, 137 Wn.2d 490, 973 P.2d 461 (1999)). To comply with Apprendi, the court may rely only on facts that were admitted, stipulated, or proved to the fact finder beyond a reasonable doubt. Olsen, 180 Wn.2d at 473. Any other "[F]acts or allegations contained in the record, if not directly related to the elements of the charged crime, may not have been sufficiently proven in the trial." Morley, 134 Wn.2d at 606.

Here, the trial court calculated Berrian's offender score using two out-of-state convictions but it failed to perform a comparability analysis.

Berrian did not affirmatively acknowledge at sentencing that his foreign convictions were properly included in his offender score. He merely failed to object to their inclusion. Therefore, he did not waive his right to challenge whether his offender score was miscalculated. see State v. Ross, 152 Wn.2d 220, 231-33, 95 P.3d 1225 (2004).

### Legal Comparability

Here, the State claimed that Berrian's Georgia convictions for sale of cocaine, Ga. Code Ann. § 16-13-30 (b), should be used to increase his offender score because it is comparable to Washington's Uniform Controlled Substances Act of Delivery, RCW 69.50.401 (1)(a). Berrian argues that the Georgia

Statute is not legally comparable to Washington's statute because Washington requires that the delivery be committed with delivered and knew the substance was controlled while Georgia requires either an intentional or a knowing sell a controlled substance.

We review de novo the comparability of two statutes, beginning with a legal comparability analysis. Olsen, 180 Wn.2d at 472. In Georgia, a person is guilty of sale of cocaine when he "intentionally or knowingly sell a controlled substance." Ga. Code Ann., § 16-13-30 (b).

### Factual Comparability

#### RCW 69.50.401

Proof of intent to deliver, necessary to support a conviction. The State had to prove that Berrian (1) delivered a controlled substance and (2) knew the delivered substance was controlled. State v. Evans, 80 Wn.App. 806, 814 <sup>n. 17, 911</sup> ~~PROBATION REPORT~~ P.2d 1344, review denied, 129 Wn.2d 1032 (1996); RCW 69.50.401 (a).

Washington's Uniform Controlled Substances Act provides: "'Deliver' or delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship." RCW 69.50.10(f). Because the statute does not define "transfer," we look to its common dictionary meaning. Citing the dictionary, we have previously interpreted "transfer" to mean "to cause to pass from one person or thing to another," as well as "to carry or take from

one person or place to another." State v. Campbell, 59 Wn.App. 61, 64, 795 P.2d 750 (1990). Delivery does not require the exchange of money for the substance, as the sale of cocaine in Georgia does. Since sale is not defined in the statute, this court to determine the meaning of an undefined term, may look to the dictionary. Estate of Haselwood v. Bremerton ice arena, inc., 166 Wn.2d 489, 498, 210 P.3d 308 (2009). And "sell" is defined as to transfer (property) by sale. Black's Law Dictionary Tenth edition at 567. "Sale" is defined as the transfer of property or title for a price. Black's Law Dictionary Tenth edition at 1537.

The crime of delivery of cocaine is distinguishable from the crime of Sale of cocaine, Thus, Berrians sentence should be VACATED and REMANDED for RESENTENCE with the two Georgia conviction deleted, It should be ORDERED.

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

6/27/18 Connell WA 99326

Darrell Berrian

# ATTACHMENT 1

Judgment and sentence



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DIVISION II

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STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-03133-9

vs.

JUDGMENT AND SENTENCE (J/S)

DARRELL PARNEL HERRIAN

Defendant.

- Prison
- RCW 9.94A.712/9.94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline  Mandatory  Discretionary

SID: WA27230532

DOB: 12/09/1981

I HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 8.11.14  
by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a)	DWSE	09/05/13	LAKEWOOD PD 123180029

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the JURY VERDICT Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	PURCHASE/POSSESS CONTROLLED SUBSTANCE	06/24/1999	LOWNDES CO. SUPERIOR CT, GA	05/07/1999	A	
2	SALE OF COCAINE	08/16/2011	LOWNDES CO. SUPERIOR CT, GA	05/18/2010	A	
3	ATT. ROBBERY 1 W/ FASE	02/14/2014	PIERCE, CO	07/07/2013	A	
4	UPOF 1	02/14/2014	PIERCE, CO	07/07/2013	A	

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

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	4	XII	129-171 MONTHS	48 MONTHS	177-219 MONTHS	LIFE

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

- within  below the standard range for Count(s) \_\_\_\_\_
- above the standard range for Count(s) \_\_\_\_\_
- The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

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

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

- The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

- The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

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

[ ] The court considered the following factors:

[ ] the defendant's criminal history.

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

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

[ ] other: \_\_\_\_\_

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

III. JUDGMENT

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

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

IV. SENTENCE AND ORDER

IT IS ORDERED:

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

JASS CODE

RTNRJN \$ 27,705.40 Restitution to: see order filed Sept. 12, 2014

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

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

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

FRC \$ 200.00 Criminal Filing Fee

FCM \$ \_\_\_\_\_ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for: \_\_\_\_\_

\$ 28505.40 TOTAL

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

[ ] shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

RESTITUTION. Order Attached filed on Sept. 12, 2014

[ ] 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).

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ Per DOC per month commencing Per DOC. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

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

[ ] COSTS OF INCARCERATION. In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

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

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

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

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

4.3 NO CONTACT  
The defendant shall not have contact with Tavaris Lamar Moriel 3.18.86 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).

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

4.4 OTHER: Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.


1  
2 4.4a Property may have been taken into custody in conjunction with this case. Property may be returned to the  
3 rightful owner. Any claim for return of such property must be made within 90 days unless forfeited by  
4 agreement in which case no claim may be made. After 90 days, if you do not make a claim, property may  
5 be disposed of according to law.

6 4.4b BOND IS HEREBY EXONERATED

7 4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

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

10 \_\_\_\_\_ 150 months on Count \_\_\_\_\_ months on Count  
11 \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count  
12 \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count

13 A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the  
14 following additional term of total confinement in the custody of the Department of Corrections:

15 \_\_\_\_\_ 48 months on Count No I \_\_\_\_\_ months on Count No  
16 \_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No  
17 \_\_\_\_\_ months on Count No \_\_\_\_\_ months on Count No

18 Sentence enhancements in Counts \_\_\_\_\_ shall run  
19 [ ] concurrent [ ] consecutive to each other.  
20 Sentence enhancements in Counts I shall be served  
21 [X] flat time [ ] subject to earned good time credit

22 Actual number of months of total confinement ordered is: 198 months consecutive to 13-1-02707

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

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

26 CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served  
27 concurrently, except for the portion of those counts for which there is a special finding of a firearm, other  
28 deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with  
juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served  
consecutively: \_\_\_\_\_

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to  
the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony  
sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for  
the following cause numbers. RCW 9.94A.589: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

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

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

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months;

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

The defendant shall be on community custody for:

Count(s) I 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_ 18 months for Violent Offenses

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

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

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

Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[ ] consume no alcohol.

have no contact with: see §4.3

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

[ ] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

[ ] 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: \_\_\_\_\_

Other conditions: \_\_\_\_\_

For sentences imposed under RCW 9.94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

**PROVIDED:** That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7  **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER (known drug trafficker)** RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

**V. NOTICES AND SIGNATURES**

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the

offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): AB

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

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

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

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

1  
2 5.10 OTHER: \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 DONE IN OPEN COURT and in the presence of the defendant this date: 2/16/18

6 JUDGE Jerry Curtis  
7 Print name \_\_\_\_\_

8 J. Will.  
9 Deputy Prosecuting Attorney  
10 Print name: Jesse Williams  
11 WSB # 35513

8 Kent W. Underwood  
9 Attorney for Defendant  
10 Print name: Kent W. Underwood  
11 WSB # 27250

12 Without Prejudice UCC-308  
13 Defendant  
14 Print name: DARRELL BERRIAN

15 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.

16 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

17 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.

21 Defendant's signature: DARRELL BERRIAN

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 13-1-03133-9

I, KEVIN STOCK 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 said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

\_\_\_\_\_  
Court Reporter

IDENTIFICATION OF DEFENDANT

SID No. WA27230532  
(If no SID take fingerprint card for State Patrol)

Date of Birth 12/09/1981

FBI No. 675845JB1

Local ID No. 20131892041

PCN No. UNKNOWN

Other

Alias name, SSN, DOB: \_\_\_\_\_

<b>Race:</b>		<b>Ethnicity:</b>		<b>Sex:</b>	
<input type="checkbox"/>	Asian/Pacific Islander	<input checked="" type="checkbox"/>	Black/African- American	<input type="checkbox"/>	Hispanic
<input type="checkbox"/>	Native American	<input type="checkbox"/>	Other :	<input checked="" type="checkbox"/>	Non- Hispanic
				<input checked="" type="checkbox"/>	Male
				<input type="checkbox"/>	Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb

Right Thumb

Right four fingers taken simultaneously

I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, \_\_\_\_\_

Dated: \_\_\_\_\_

DEFENDANT'S SIGNATURE:

*X. Darrell Berrigan*  
*Without prejudice UCC -1-308*

DEFENDANT'S ADDRESS: \_\_\_\_\_

APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

(I) The offender shall remain within, or outside of, a specified geographical boundary: \_\_\_\_\_

per DOC

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: \_\_\_\_\_

Sec 54.3

(III) The offender shall participate in crime-related treatment or counseling services;

(IV) The offender shall not consume alcohol; \_\_\_\_\_

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(VI) The offender shall comply with any crime-related prohibitions.

(VII) Other: \_\_\_\_\_

APPENDIX F

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-03133-9

vs.

DARRELL PARNEL BERRIAN,

Defendant.

ORDER PROHIBITING CONTACT  
AS A CONDITION OF SENTENCE

Physical description: SEX MALE; RACE  
BLACK ; EYES BROWN; WEIGHT 200;  
HEIGHT 5'9"; DATE OF BIRTH 12/09/81

(Clerk's Action Required)

THIS MATTER having come before the undersigned Judge of the above-entitled court, and the court having considered the records and files herein and being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED, pursuant to RCW 9A.46, that the defendant shall have no contact, directly or indirectly, in person, in writing, by telephone, or electronically, either personally or through any other person, with TAVARIS LAMAR MORRIEL DOB: 03/18/1986

- Expires: Non-Expiring (Class A)
- Expires: Ten (10) years (Class B)
- Expires: Five (5) years (Class C)
- Expires: Two (2) years (Gross Misdemeanor), or until modified or terminated by the court. No contact shall occur at the home, workplace, school or any other place where the person(s) named above may be found. It is further ordered that the Clerk of the Court shall forward a copy of this order on or before the next judicial day to the Law Enforcement Support Agency (LESA) who shall enter it in the computer-based intelligence system available in this state used by law enforcement to list outstanding warrants. [ ] See attached Appendix on Surrender of Weapons/Firearms.

\*\*\*\*\*WARNINGS TO THE DEFENDANT\*\*\*\*\*

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 9A.46 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

DATED this 16<sup>th</sup> day of ~~December~~, 2017. <sup>February, 2018</sup>

JUDGE/COMMISSIONER

Copy Received:

Darrell Berrian  
Defendant Without Prejudice CCC 1-308  
cjc

1  
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7 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

8  
9 STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-03133-9

10  
11 vs

DARRELL PARNEL BERRIAN

Defendant.

ORDER FOR BIOLOGICAL SAMPLE DRAW  
FOR DNA IDENTIFICATION ANALYSIS

12  
13  
14 THIS MATTER having come on regularly before the undersigned Judge for sentencing following  
15 defendant's conviction for:

16 [ ] A felony sex offense, which occurred after July 1, 1990, as defined by RCW  
17 9.94A.030, to wit:

\_\_\_\_\_ and/or

18 [X] A violent offense, which occurred after July 1, 1990, as defined by RCW  
19 9.94A.030, to wit:

Assault 1<sup>o</sup> w/DWSE and/or

20 [X] Any felony offense for which a conviction was obtained after July 1, 2002, to  
21 wit:

Assault 1<sup>o</sup> w/DWSE

22 Pursuant to RCW 43.43.754, therefore, it is hereby ordered that the defendant provide a biological sample  
23 to be used for DNA identification analysis as follows:

24 PLACE TO BE TESTED

25 [ ] (Out-of-Custody) Report immediately to the Pierce County Sheriff's Office located on  
26 the 1<sup>st</sup> Floor of the County City Building, 930 Tacoma Ave S, Tacoma, Washington for a  
27 biological sample draw.

28  
ORDER FOR BIOLOGICAL SAMPLE DRAW  
FOR DNA IDENTIFICATION ANALYSIS -1

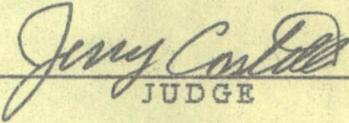
Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

1  
2 [ ] (Out-of-Custody) Contact your CCO or other DOC representative to make an  
3 appointment to submit a DNA sample. Your sample must be submitted within 60 days of  
4 today's date or the date you are released from jail, whichever comes later.

4 [X] (In-Custody DOC) Submit to the biological sample draw by the Department of  
5 Corrections.

5 [ ] (In-Custody PC Jail) Submit to biological sample draw by the Pierce County Jail.

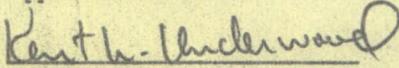
6 DONE IN OPEN COURT this 16<sup>th</sup> <sup>February, 2018</sup> day of ~~December~~, 2017.

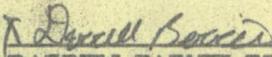
7  
8   
JUDGE

9 Presented by:

10   
11 JESSE WILLIAMS  
12 Deputy Prosecuting Attorney  
WSB# 35543

13 Approved as to form:

14   
15 KENT W. UNDERWOOD  
16 Attorney for Defendant  
WSB# 27250

17   
18 DARRELL PARNEL BERRIAN  
19 Defendant *without Prejudice UCC 1-308*

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-03133-9

vs

DARRELL PARNEL BERRIAN

Defendant.

ADVICE OF RIGHT TO APPEAL

RIGHT TO APPEAL

Judgment and Sentence having been entered, you are now advised that:

- 1.1 You have the right to appeal your conviction(s). If you have entered a guilty plea, you have waived your right to raise certain issues, as discussed in your guilty plea statement, in an appeal. You have a right to appeal any sentence that is outside the standard sentence range. You also have a right to appeal rulings on other post convictions motions as listed in Rules of Appellate Procedure 2.2.
- 1.2 Unless a notice of appeal is filed with the clerk of the court within thirty (30) days from the entry of judgment or the order appealed from, you have irrevocably waived your right of appeal.
- 1.3 The clerk of the Superior Court will, if requested by you, file a notice of appeal on your behalf.
- 1.4 If you cannot afford the cost of an appeal, you have the right to have a lawyer appointed to represent you on appeal and to have such parts of the trial record as are necessary for review of errors assigned transcribed for you, both at public expense.

ACKNOWLEDGMENT

Regarding the foregoing advice of my "Right to Appeal":

- 1. I understand these rights, and
- 2. I waive formal reading of these rights, and
- 3. I acknowledge receipt of a true copy of these rights.

DATE: 12-8-17

DEFENDANT: Darrell Benjamin

DEFENDANT'S ATTORNEY: Kent W. Underwood  
27250

DATE: 2.16.18

JUDGE: Jerry Cantello

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8 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

9 STATE OF WASHINGTON,

10 Plaintiff,

CAUSE NO: 13-1-03133-9

11 DARRELL PARNEL BERRIAN,

12 Defendant.

13 WARRANT OF COMMITMENT

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

15  
16 THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

17  
18 WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of  
19 Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and  
20 Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is  
21 attached hereto.

22 [ ] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for  
classification, confinement and placement as ordered in the Judgment and Sentence.  
(Sentence of confinement in Pierce County Jail).

23 [X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to  
24 the proper officers of the Department of Corrections, and

25 YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS,  
26 ARE COMMANDED to receive the defendant for classification, confinement and  
27 placement as ordered in the Judgment and Sentence. (Sentence of confinement in  
Department of Corrections custody).

28 WARRANT OF COMMITMENT -1

1  
2 13. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for  
3 classification, confinement and placement as ordered in the Judgment and Sentence.  
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

4  
5 Dated: 2.16.18

By direction of the Honorable

*Jung Cantello*  
JUDGE

CLERK

By: \_\_\_\_\_  
DEPUTY CLERK

6  
7  
8  
9 CERTIFIED COPY DELIVERED TO SHERIFF

10 Delivered By \_\_\_\_\_ Deputy

11  
12 STATE OF WASHINGTON

ss:

13 County of Pierce

14 I, Kevin Stock, Clerk of the above entitled  
15 Court, do hereby certify that this foregoing  
instrument is a true and correct copy of the  
16 original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
17 hand and the Seal of Said Court this  
\_\_\_\_\_ day of \_\_\_\_\_

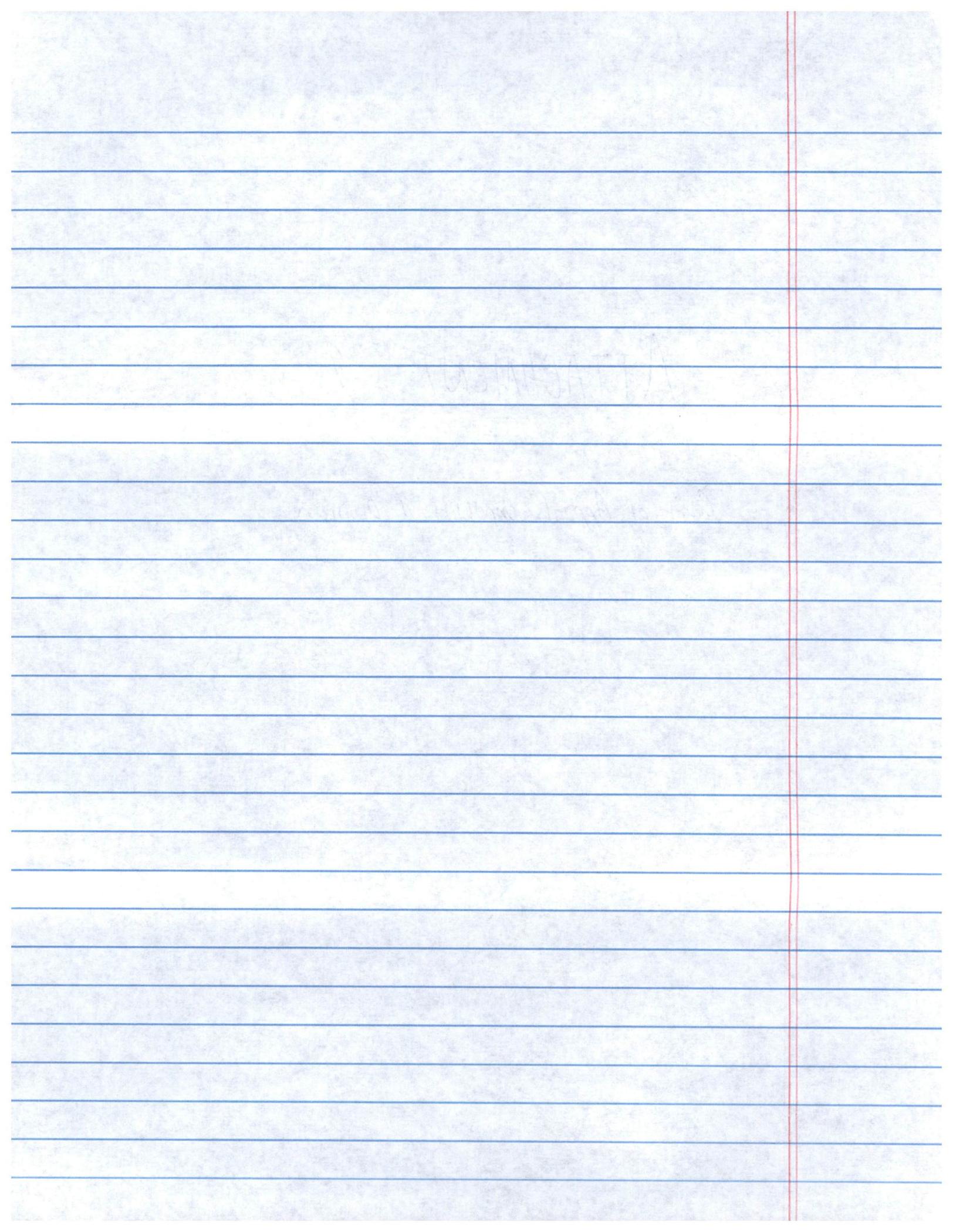
18 KEVIN STOCK, Clerk

By: \_\_\_\_\_ Deputy

19 cjc

# ATTACHMENT 2

Court of Appeals Unpublished Opinion



August 22, 2017

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

In the Matter of  
the Personal Restraint Petition of  
  
DARRELL P. BERRIAN.

No. 48069-7-II  
Consolidated with No. 49119-2-II and No.  
49139-7-II

UNPUBLISHED OPINION

JOHANSON, P.J. — Darrell Berrian seeks relief from personal restraint imposed following his 2014 conviction for first degree assault with a deadly weapon and his deadly weapon sentencing enhancement. In his first petition, No. 48069-7-II, he argues that (1) the deadly weapon sentencing enhancement was improperly imposed because the knife he employed had a blade less than three inches in length and so did not meet the definition of a deadly weapon, and (2) his offender score was improperly calculated because he committed his first Georgia prior conviction when he was a juvenile and so that conviction should have counted as ½ point toward his offender score, not 1 point. In his second petition, No. 49119-2-II, he argues that (1) the photomontage used to identify him was impermissibly suggestive, (2) his first Georgia prior conviction should have washed out of his offender score, and (3) he received ineffective assistance of counsel for not arguing that the prior conviction should have washed out. And in his third petition, No. 49139-7-



II, he again argues that his first Georgia prior conviction should have washed out of his offender score.<sup>1</sup>

RCW 10.73.090(1) requires that personal restraint petitions be filed within one year of the petitioner's judgment and sentence becoming final, with exceptions not applicable here. Berrian's judgment and sentence became final on June 7, 2016, when we issued the mandate from his direct appeal. RCW 10.73.090(3)(b). He filed his petitions on September 28, 2015 and July 11, 2016, making each timely filed.

After filing his petitions, Berrian moved to dismiss his deadly weapon and photomontage arguments. We grant his motion. We also grant his motion to dismiss his earlier motion to supplement cause number 48069-7-II.

As to Berrian's offender score arguments, the State concedes that the trial court erred in counting his first Georgia prior conviction as 1 point instead of as ½ point, that his offender score of 4½ should have been rounded down to 4 under RCW 9.94A.525, and that Berrian is entitled to be resentenced under the correct offender score and standard sentence range. Because the State concedes that Berrian's offender score should have been 4, not 5, we need not address whether his first Georgia conviction should have washed out of his offender score or whether he was denied effective assistance of counsel.

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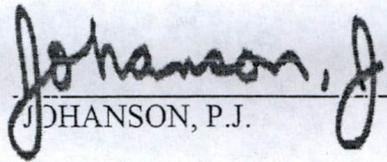
<sup>1</sup> Berrian filed a motion to modify his judgment and sentence in the trial court. That court transferred his motion to us under CrR 7.8(c) to be considered as a personal restraint petition.

De lls al ynicos

Consolidated Nos. 48069-7-II / 49119-2-II / 49139-7-II

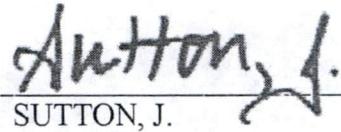
We accept the State's concession and remand to the trial court for resentencing. In all other regards, we dismiss Berrian's petitions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
JOHANSON, P.J.

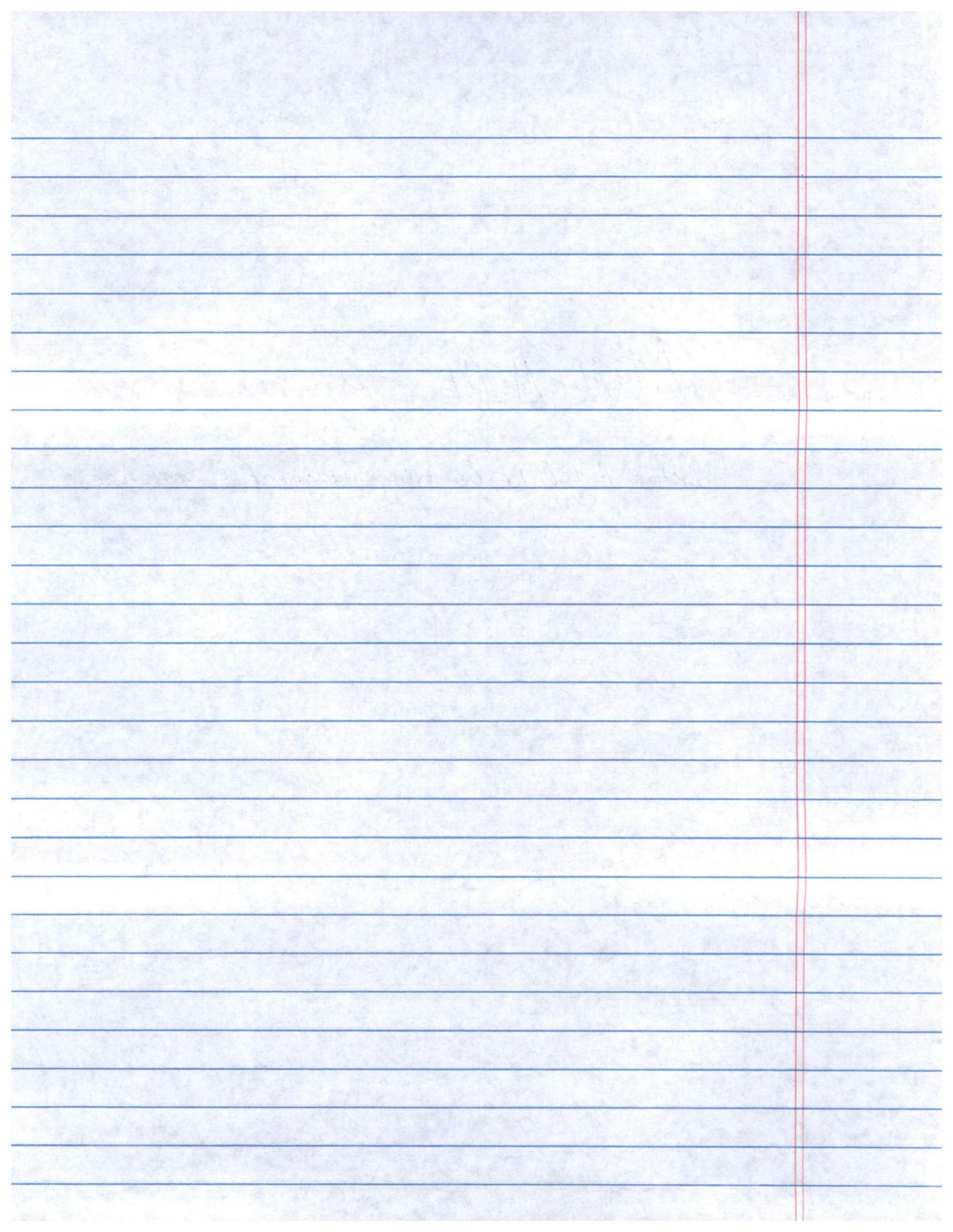
We concur:

  
\_\_\_\_\_  
MELNICK, J.

  
\_\_\_\_\_  
SUTTON, J.

# ATTACHMENT 3

Motion And Order Correcting Judgment & Sentence





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-03133-9

vs.

DARRELL PARNEL BERRIAN,

MOTION AND ORDER CORRECTING  
JUDGMENT AND SENTENCE

Defendant.

**CLERKS ACTION REQUIRED**

PCN: 541016554

THIS MATTER coming on regularly for hearing before the above-entitled court on the Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order correcting Judgment and Sentence heretofore granted the above-named defendant on 09/12/2014, pursuant to defendant's plea of guilty to the charge(s) of ASSAULT IN THE FIRST DEGREE, as follows:

- 1) That Page 2 of the Judgment and Sentence, 2.2 reflects Count 1 with the letter "A" and should note Count 1 with the letter "J" for juvenile offense;
- 2) That all other terms and conditions of the Judgment and Sentence are to remain in full force and effect as if set forth in full herein; and the court being in all things duly advised, Now, Therefore, It is hereby

ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on 09/12/2014, be and the same is hereby corrected as follows:

- 1) Page 2 of the Judgment and Sentence, 2.2 is corrected as follows:



a) Count 1 with the letter "A" is deleted; and

b) Count 1 with the letter "J" for juvenile offense is inserted in its stead.

2) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein. IT IS FURTHER

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on 09/12/2014 so that any one obtaining a certified copy of the judgment will also obtain a copy of this order.

DONE IN ~~OPEN~~ COURT this 15<sup>th</sup> day June, 2018. NUNC PRO TUNC to 09/12/2014.

*Jerry Costello*  
\_\_\_\_\_  
J U D G E / C O M M I S S I O N E R

JERRY T. COSTELLO

Presented by:

*J. Williams*

\_\_\_\_\_  
JESSE WILLIAMS  
Deputy Prosecuting Attorney  
WSB# 35543

Approved as to form and Notice  
Of Presentation Waived:

Δ in DOC / copy to be sent

Attorney for Defendant  
WSB#

