

FILED
Court of Appeals
Division II
State of Washington
2/5/2019 9:17 AM

No. 51897-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

SOPHEAP CHITH,
Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THE COURT VIOLATED MR. CHITH'S DUE PROCESS RIGHT TO BE PRESENT AT A CRITICAL STAGE OF THE PROCEEDING BY AMENDING THE JUDGMENT AND SENTENCE IN HIS ABSENCE

“A criminal defendant has a fundamental right to be present at all critical stages of a trial.” *State v. Irby*, 170 Wash.2d 874, 880, 246 P.3d 796 (2011). This right derives from the Sixth and Fourteenth Amendments to the federal constitution. *Irby*, 170 Wash.2d at 880–81.

A defendant has a constitutional right to be present at sentencing, including resentencing. *State v. Rupe*, 108 Wash.2d 734, 743, 743 P.2d 210 (1987). The right to be present applies at resentencing if the court has discretion to determine the terms of a new sentence. See *State v. Davenport*, 140 Wn. App. 925, 932, 167 P.3d 1221 (2007); *Rupe*, 108 Wn.2d 734, 743, 743 P.2d 210 (1987). Initially, “the due process right to be present is not absolute.” *Irby*, 170 Wn.2d at 881, 246 P.3d 796. A defendant has no right to be present at proceedings involving “‘legal’ ” or “‘ministerial’ ” matters. *Irby*, 170 Wn.2d at 881–82 (quoting *In re Pers. Restraint of Pirtle*, 136 Wn.2d 467, 484, 965 P.2d 593 (1998)). When a hearing on remand involves only a ministerial correction and no exercise of discretion, the defendant has no constitutional right to be present. See *Davenport*, 140 Wn.App. at 931–32; *State v. Ramos*, 171 Wn.2d 46, 48,

246 P.3d 811 (2011).

In general, a stage of trial is “critical” if it presents a possibility of prejudice to the defendant. *State v. Hawkins*, 164 Wash.App. 705, 715, 265 P.3d 185 (2011), review denied, 173 Wash.2d 1025, 272 P.3d 851 (2012); *State v. Valentine*, 132 Wash.2d 1, 16, 935 P.2d 1294 (1997).

In *State v. Davenport*, *supra*, this Court held the defendant had a constitutional right to be present at sentencing where the court's entry of a new sentence on remand involved the exercise of discretion and was not merely a ministerial act. *Id.*, 140 Wn. App. at 932. In that case, the trial court exercised its discretion not to hear sentencing issues raised by counsel without Davenport being present or having the opportunity to be heard. *Id.* Although a defendant need not be present when his presence would be useless or “the benefit but a shadow,” Davenport did have a right to be present because the court's decision not to consider issues related to a correct determination of his sentence amounted to more than a ministerial act. *Id.* (quoting *State v. Rice*, 110 Wn.2d 577, 616, 757 P.2d 889 (1988)).

Here, the case came on for resentencing on January 12, 2018, and February 9, 2018. Report of Proceedings (RP) at 2-10, 2RP at 12-27. Following the hearing, the parties entered a Motion and Order Correcting Judgment and Sentence on February 9, 2018, correcting numerous errors. Clerk’s Paper 84-87 (Attachment A).

The parties entered a second Motion and Order Correcting Judgment and Sentence on February 14, 2018. CP 99-101. (Attachment B). The corrected order provides that page 8 of the Judgment and Sentence, Section 4.5, that stated confinement was 206 months is corrected to reflect that the “[a]ctual number of months in total confinement ordered is: 202 months.” CP 99-101.

The parties entered a third Motion and Order Correcting Judgment and Sentence on September 12, 2018, this time increasing Mr. Chith’s DOC confinement from 202 months as amended on February 14 to 204 months. CP 170-72. (Attachment C).

Mr. Chith’s due process right to be present was violated when the court amended his Judgment and Sentence in his absence. The amended orders modified a key element of the Judgment and Sentence—the overall length of Mr. Chith’s sentence. Although Mr. Chith may not have found fault with a reduction of his sentence to 202 months by virtue of the second modification (February 14, 2018), which was ostensibly in Mr. Chith’s favor, the third modification decidedly was not in his favor. The court’s imposition of additional punishment amounted to more than a ministerial act; Mr. Chith may very have objected to the two month increase and argued why the February 14 modification was correct. Mr. Chith’s due process right to be present at a critical stage of the proceeding

was violated; accordingly, the order increasing the sentencing from 202 to 204 months, after the sentence was decreased in on February 14, 2018, must be vacated.

2. INSUFFICIENT EVIDENCE SUPPORTS THE UNLAWFUL POSSESSION OF A FIREARM CONVICTION AND FIREARM ENHANCEMENTS BECAUSE THE STATE FAILED TO PROVE THE USE OF AN OPERABLE GUN

Constitutional due process requires that in any criminal prosecution every fact necessary to constitute the crime charged must be proven beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970); Wash, Const. Art. 1, § 3; U. S. Const., Fourteenth Amendment. A conviction must be reversed where, viewing the evidence in the light most favorable to the State, no rational trier of fact could find all elements of the charged crime beyond a reasonable doubt. *State v. Vasquez*, 178 Wn.2d 1, 6, 309 P.3d 318 (2013).

Here, the State failed to prove that the alleged handgun, which was the basis of second degree assault, second degree unlawful possession of a firearm, and the firearm enhancements, was operable.

Gabriel Colbern testified that he was sitting at a stoplight and saw a man outside of a Honda Civic stopped at the light in the opposite lane. 4RP at 284. The man was “screaming and yelling” at someone behind

him. 4RP at 284. He stated that the man got back into his vehicle and turned right and drove to the next light and Mr. Colbern followed him and then he saw “erratic movement in the front seat” of the car and it appeared the driver was shaking his fist or yelling at someone next to him in the passenger seat. 4RP at 285. He said that the driver’s side window “flew out of the car” and landed in the middle of the road. 4RP 486. He stated that as he followed the car, the driver “stuck a pistol out the window and took two shots at me.” 4RP at 289. He stated that bullets went toward a Junior high school, and that the driver had fired five to six rounds overall. 4RP at 289, 293, 294.

Although Mr. Colbern testified that Mr. Chith discharged a gun and that he reported hearing gunshots, and he opined the gun was real based on his observation while following the Honda Civic, a gun was not recovered. Other evidence of operability was also absent; no bullets, bullet holes, or shell casings were found.

To prove Mr. Chith committed unlawful possession of a firearm or impose a firearm enhancement, the State had the burden of proving that Mr. Chith or an accomplice was armed during commission of the crime with a “firearm,” i.e., “a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.” RCW 9.41.010(9); *State v. Pierce*, 155 Wn. App. 701, 714, 230 P.3d 237 (2010)

(quoting *State v. Recuenco*, 163 Wn.2d 428, 437, 180 P.3d 1276 (2008) (quoting 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 2.10.01 (Suppl. 2005)).

The State must present the jury with sufficient evidence to find a firearm operable under this definition. *Recuenco*, 163 Wn.2d at 437 (citing *State v. Pam*, 98 Wn.2d 748, 754-55, 659 P.2d 454 (1983), overruled in part on other grounds by *State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988)). “Firearm,” was defined as “a weapon or device from which a projectile may be fired by an explosive such as gunpowder.” (Instruction 16); RCW 9.41.010(9).

In *State v. Pam*, the Supreme Court held that, to prove a gun is a “firearm” for purposes of the statute, the State must prove the gun is “deadly in fact.” 98 Wn.2d at 753-55. To prove a firearm is “deadly in fact,” the State must prove the firearm is operable. *Id.* The Court concluded a rational jury could have a reasonable doubt as to whether the State proved the firearm in question was operable because the weapon fell apart as Pam ran from the scene, police recovered only the wooden stock of “what appeared to be a shotgun,” and no shots were fired or bullets recovered. *Pam*, 98 Wn.2d at 754-55.

In *Pierce*, *supra*, this Court held the State failed to present evidence from which a reasonable jury could find the firearm Pierce

allegedly used during the commission of certain crimes was operable. During the incident supporting most of Pierce's enhancements, the victims noticed that an intruder, later determined to be Pierce, was holding "what appeared to be" a handgun. *Pierce*, 155 Wn. App. at 705. The intruder directed the victims to cover their heads and then ransacked and robbed their home. *Id.*

The State argued it was not required to produce the weapon used to support a firearm enhancement. This Court did not disagree. However, the Court observed:

This may be true when there is other evidence of operability, such as bullets found, gunshots heard, or muzzle flashes. Although the evidence is sufficient to prove an element of the offense of robbery or burglary or a deadly weapon enhancement, where proof of operability is not required, the evidence here is insufficient to support the imposition of a firearm sentencing enhancement where proof of operability is required.

Pierce, 155 Wn. App. at 714 n.11 (citing *Recuenco*, 163 Wn.2d at 437; *Pam*, 98 Wn.2d at 754-55). Finding the evidence of operability insufficient, the Court remanded to the superior court with directions that it dismiss the firearm enhancements and resentence Pierce without them. *Pierce*, 155 Wn. App. at 715.

Mr. Chith's case is similar to the opinion in *Pierce*. No physical evidence supported Mr. Colbern's opinion that the gun was real. The State

presented no evidence of any tell-tale characteristics of an operable firearm, such as gunshot residue from inside the Honda Civic, spent bullets, gunshot wounds, or shell casings. Mr. Chith's declaration filed in support of his petition states that the "gun" described by Mr. Colbern in his testimony was a toy pistol that he later threw out the window of the Honda, and that he broke the window of the Honda using a lug wrench and then pushed the window out of the frame onto the street. Declaration of Chith at 1.

Given the evidence presented, a finding that an operable gun was used necessarily rests on speculation. There was insufficient evidence to show the alleged gun was a firearm for purposes of providing the elements of unlawful possession or the firearm enhancement because there was no evidence of a gun other than Mr. Colbern's testimony.

3. THE STATE FAILED TO PROVE ALL OF THE ELEMENTS OF THE CRIME OF SECOND DEGREE ASSAULT

a. Mr. Chith's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, was violated where the state failed to prove all of the elements of the offense

As noted above, the State must prove every element of the crime charged beyond a reasonable doubt. Const. art. I, § 3; U.S. Const. amend. XIV; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368

(1970).

Here, the State charged Mr. Chith with assault in the second degree, alleging that he intentionally assaulted Mr. Colbern with a deadly weapon. See also RCW 9A.36.021(c). Because no statute defines the term assault, the common law definition is applied to the crime. *State v. Aumick*, 126 Wn.2d 422, 426 n. 12, 894 P.2d 1325 (1995). A person commits second degree assault by assaulting another with a deadly weapon. RCW 9A.36.021(1)(c). Based on the common law, there are three definitions of “assault”: “(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm.” *State v. Abuan*, 161 Wn. App. 135, 154, 257 P.3d 1 (2011) (quoting *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009)).

Assault by attempt to cause fear and apprehension of injury requires proof that the defendant had specific intent to create reasonable fear and apprehension of injury in the charged victim. *State v. Eastmond*, 129 Wn.2d 497, 500, 919 P.2d 577 (1996); *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995); *Abuan*, 161 Wn. App. at 158 (adhering to rule).

“Specific intent” means “intent to produce a specific result, as opposed to intent to do the physical act that produces the result.” *Elmi*,

166 Wn.2d at 215. Specific intent to create fear in the charged victim may be inferred when a defendant points a gun at the person, unless the person knows the gun is unloaded. *Eastmond*, 129 Wn.2d at 500; *State v. Callahan*, 87 Wn. App. 925, 930 n.1, 943 P.2d 676 (1997). The mere display of a gun, however, is insufficient to infer specific intent. *Id.* The defendant may, in the words of the statute prohibiting the unlawful display of weapons, only have “an intent to intimidate.” RCW 9.41.270(1). Unlawful display of a weapon is a misdemeanor, not a felony. RCW 9.41.270(2)

b. There was no evidence that Mr. Colbern had an apprehension and fear of future bodily injury

The evidence did not prove that Mr. Chith created fear and apprehension in Mr. Colbern. At trial, Mr. Colbern initially testified that for a “split second” he had “fear or, you know, apprehension” [4RP at 300-01], but later testified that he was not that worried and stated that pointing what he testified was a gun directly at him “would have been his last mistake” and testified that he carr[ies] a weapon himself” and that he would have shot Mr. Chith “if I felt like my life was threatened, yes, I would have.” 4RP at 331. He then said that he did not feel like his life was threatened. 4RP at 331.

In *State v. Bland*, 71 Wn. App. 345, 860 P.2d 1046 (1993), the

defendant shot at an individual in a car. The bullet entered the window of a nearby home, shattering glass on the occupant sleeping in his living room. The occupant "was shocked and startled after the shot was fired, realizing how close he had come to being hit." *Id.* at 349. The jury was instructed on three alternative means of committing assault. *Bland*, 71 Wn.App. at 349-52. Division One held that the conviction could not be upheld under this assault theory because there was no evidence that the victim "feared future injury after the bullet came through his window." *Bland*, 71 Wn.App. at 355. The Court concluded that common law assault requires that the victim have a "fear about the future; a presentiment of danger." *Id.*, at 356.

Therefore, *Bland* holds that there must be a reasonable factual basis to support the victim's fear of future harm. At best, the victim in *Bland* was upset because he realized he could have been harmed; there was no reason for him to believe that he would be harmed in the future.

Similarly, in this case, there is no evidence to show that Mr. Colbern actually and reasonably fearful of future bodily injury, as shown by testimony, and that he in fact expressed his willingness to use his gun to shoot Mr. Chith if he had felt threatened. The fact that he did not do so is compelling evidence that Mr. Colbern was not in fear, which is supported by his own testimony. 4RP at 331. Accordingly, the conviction

for second degree assault must be reversed and dismissed.

B. CONCLUSION

For the reasons discussed above and in his opening brief, Mr. Chith respectfully requests this court remand his case for re-sentencing.

Alternatively, for the above reasons and the reasons in the Personal Restraint Petition and accompanying brief of petitioner and supplemental brief, this Court should remand the case for a new trial.

DATED: February 4, 2019.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read 'Peter B. Tiller', is written over a horizontal line.

PETER B. TILLER-WSBA 20835
Of Attorneys for Sopheap Chith

CERTIFICATE

I certify that I sent by JIS a copy of the Reply Brief of Appellant to Clerk of Court of Appeals and to Mr. James Schacht, Deputy Prosecuting Attorney, and mailed copies, postage prepaid on February 4, 2019, to appellant, Sopheap Chith:

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DATED: February 4, 2019

THE TILLER LAW FIRM


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Of Attorneys for Appellant

ATTACHMENT A

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00554-1

vs.

SOPHEAP CHITH,

Defendant.

MOTION AND ORDER CORRECTING JUDGMENT AND SENTENCE

CLERKS ACTION REQUIRED

PCN: 540795681

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 entered as to the above-named defendant on April 15, 2016, pursuant to defendant's convictions to the charges of ASSAULT IN THE SECOND DEGREE WITH A FIREARM-SENTENCING ENHANCEMENT, DRIVE-BY SHOOTING, UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, VIOLATION OF A PROTECTIVE ORDER WITH A FIREARM SENTENCING ENHANCEMENT, and TAKING A MOTOR VEHICLE IN THE FIRST DEGREE WITH A FIREARM SENTENCING ENHANCEMENT, as follows:

- 1) That Page 3 of the Judgment and Sentence, Section 2.3 reflects that Count VIII has a maximum term of "10YRS/\$20,000" and should reflect that "5YRS/\$10,000".
- 2) That Page 4 of the Judgment and Sentence, Section 3.2 reflects an unchecked boxed with the following, "The court DISMISSES w/o prejudice Count III, the jury verdict for Poss. Stolen Vehicle w/FASE, on double jeopardy grounds given the

conviction for Count IX, TMVWOP 1° w/FASE," and should reflect a checked boxed with the following "The court vacates Count III, the jury verdict for Poss. Stolen Vehicle w/FASE, on double jeopardy grounds given the conviction for Count IX, TMVWOP 1° w/FASE".

2A) ● That Page 5 of JS reflects the sentence for Count II as 116 months and should reflect the sentence for Count II as 114 months.

3) That Page 5 of the Judgment and Sentence, Section 4.5 reflects the sentence for Count VIII as "60 months," and should reflect the sentence for Count VIII as "42 months".

4) That page 5 of the Judgment and Sentence, Section 4.5 reflects the sentence for Count IX as "96 months," and should reflect the sentence for Count IX as "84 months".

5) That Page 6 of the Judgment and Sentence, Section 4.6 reflects an unchecked box for "COMMUNITY CUSTODY," and should reflect that this box is checked.

6) That Page 6 of the Judgment and Sentence, Section 4.6 reflects an 18 month term of community custody for Count I and should reflect no term of community custody for that count.

7) That Page 6 of the Judgment and Sentence, Section 4.6 reflects a 12 month term of community custody for Count VIII and should reflect no term of community custody for that count.

8) That Page 6 of the Judgment and Sentence, Section 4.6 reflects an 18 month term of community custody for Count II and should reflect that the term is 6 months.

9) 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;

1
2 The court being in all things duly advised, Now, Therefore, It is hereby ORDERED,
3 ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on April 15,
4 2016, be and the same is hereby corrected as follows:

- 5 1) Page 3 of the Judgment and Sentence, Section 2.3 is corrected to reflect that
6 Count VIII has a maximum term of "5YRS/\$10,000".
- 7 2) Page 4 of the Judgment and Sentence, Section 3.2, the box is checked and reads
8 "The court vacates Count III, the jury verdict for Poss. Stolen Vehicle w/FASE,
9 on double jeopardy grounds given the conviction for Count IX, TMVWOP 1°
10 w/FASE"
- 11 2) Page 5 of the J&S, Section 4.5 is corrected to reflect the sentence for Count II
12 3) Page 5 of the Judgment and Sentence, Section 4.5 is corrected to reflect the is 114
13 sentence for Count VIII as "42 months". months
- 14 4) Page 5 of the Judgment and Sentence, Section 4.5 is corrected to reflect the
15 sentence for Count IX as "84 months".
- 16 5) Page 6 of the Judgment and Sentence, Section 4.6 is corrected to reflect a checked
17 box for "COMMUNITY CUSTODY."
- 18 6) Page 6 of the Judgment and Sentence, Section 4.6 is corrected to reflect no term
19 of community custody for Count I.
- 20 7) Page 6 of the Judgment and Sentence, Section 4.6 is corrected to reflect not term
21 of community custody for Count VIII.
- 22 8) Page 6 of the Judgment and Sentence, Section 4.6 is corrected to reflect a term of
23 6
24 months community custody for Count II.
- 25 9) Page 3 of the Judgment and Sentence, 2. is corrected to follows: the box for
26 "EXCEPTIONAL SENTENCE" is checked and following it reflects, "The court
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imposed an exceptional sentence below the standard range for Counts VIII and IX due to the statutory maximum sentences for those counts and solely to accommodate the mandatory firearm-sentencing enhancements. Pursuant to RCW 9.94A.701(9), the court also imposed an exceptional sentence downward for the terms of community custody for Counts I, II, and VIII, due to the statutory maximum sentences for those counts and solely to accommodate the mandatory firearm-sentencing enhancements and standard range sentences.”

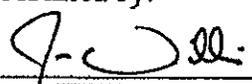
10) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein. IT IS FURTHER

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on April 15, 2016 so that any one obtaining a copy of the judgment will also obtain a copy of this order.

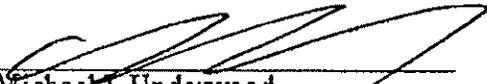
DONE IN OPEN COURT this 9th day Feb., 2018. NUNC PRO TUNC to April 15, 2016.



JUDGE
TIMOTHY L. ASHCRAFT

Presented by:


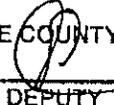
Jesse Williams
Deputy Prosecuting Attorney
WSB# 35543

Approved as to form and Notice
Of Presentation Waived:


Michael J. Underwood
Attorney for Defendant
WSB# 13218

FILED
DEPT. 2
IN OPEN COURT

FEB 09 2018

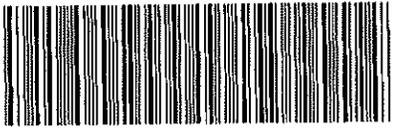
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ATTACHMENT B

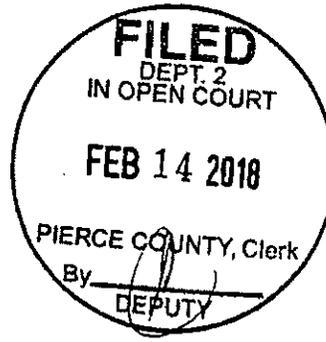
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13-1-00554-1 5079E007 ORCJS 02-20-18



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00554-1

vs.

SOPHEAP CHITH,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant.

CLERKS ACTION REQUIRED

PCN: 540795681

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 entered as to the above-named defendant on April 15, 2016, and supplementing the order correcting Judgment and Sentence filed on February 9, 2018, pursuant to defendant's convictions to the charges of ASSAULT IN THE SECOND DEGREE WITH A FIREARM-SENTENCING ENHANCEMENT, DRIVE-BY SHOOTING, UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, VIOLATION OF A PROTECTIVE ORDER WITH A FIREARM SENTENCING ENHANCEMENT, and TAKING A MOTOR VEHICLE IN THE FIRST DEGREE WITH A FIREARM SENTENCING ENHANCEMENT, as follows:

- 1) That Page 8 of the Judgment and Sentence, Section 4.5 reflects "Actual number of months of total confinement order is: 206 months" and should reflect "Actual number of months of total confinement order is: 202 months."

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- 1) That Page 8 of the Judgment and Sentence, Section 4.5 reads "Actual number of months of total confinement order is: 202 months."
- 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

*as well as the order
correcting judgment
and sentence* JCW

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on April 15, 2016 so that any one obtaining a copy of the judgment will also obtain a copy of this order.

DONE IN OPEN COURT this 14th day Feb., 2018. NUNC PRO TUNC to April 15, 2016.

[Handwritten Signature]

JUDGE

Presented by:
[Handwritten Signature]

Jesse Williams
Deputy Prosecuting Attorney
WSB# 35543

Approved as to form and Notice
Of Presentation Waived:
[Handwritten Signature]

Michael J. Underwood
Attorney for Defendant
WSB# 13218



ATTACHMENT C

0206
9/17/2018 7400



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00554-1

vs.

SOPHEAP CHITH,

MOTION AND ORDER CORRECTING
JUDGMENT AND SENTENCE

Defendant.

CLERKS ACTION REQUIRED

PCN: 540795681

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 entered as to the above-named defendant on April 15, 2016, and supplementing the order correcting Judgment and Sentence filed on February 9, 2018, and fixing the order correcting Judgment and Sentence filed on February 14, 2018, pursuant to defendant's convictions to the charges of ASSAULT IN THE SECOND DEGREE WITH A FIREARM-SENTENCING ENHANCEMENT, DRIVE-BY SHOOTING, UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE, VIOLATION OF A PROTECTIVE ORDER WITH A FIREARM SENTENCING ENHANCEMENT, and TAKING A MOTOR VEHICLE IN THE FIRST DEGREE WITH A FIREARM SENTENCING ENHANCEMENT, as follows:

- 1) That Page 8 of the Judgment and Sentence, Section 4.5 reflects "Actual number of months of total confinement order is: 206 months" and should reflect "Actual number of months of total confinement order is: 204 months."

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1 2) That all other terms and conditions of the Judgment and Sentence filed on April
2 15, 2016, and the order correcting Judgment and Sentence filed on February 9, 2018,
3 are to remain in full force and effect as if set forth in full herein;

4 The court being in all things duly advised, Now, Therefore, It is hereby ORDERED,
5 ADJUDGED and DECREED that the Judgment and Sentence granted the defendant on April 15,
6 2016, be and the same is hereby corrected as follows:

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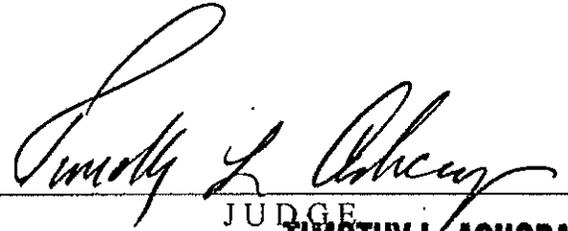
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1) That Page 8 of the Judgment and Sentence, Section 4.5 reads "Actual number of months of total confinement order is: 204 months."

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 April 15, 2016 so that any one obtaining a copy of the judgment will also obtain a copy of this order.

DONE IN OPEN COURT this 12 day Sept, 2018. NUNC PRO TUNC to April 15, 2016.



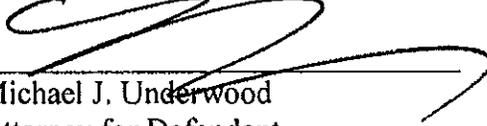
JUDGE
TIMOTHY L. ASHCRAFT

Presented by:



Jesse Williams
Deputy Prosecuting Attorney
WSB# 35543

Approved as to form and Notice
Of Presentation Waived:



Michael J. Underwood
Attorney for Defendant
WSB# 13218



THE TILLER LAW FIRM

February 05, 2019 - 9:17 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51897-0
Appellate Court Case Title: State of Washington, Respondent v. Sopheap Chith, Appellant
Superior Court Case Number: 13-1-00554-1

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