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Division II
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NO. 51904-6-II

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

STATE OF WASHINGTON, Respondent

v.

SHERYL JEAN MARTIN, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.07-1-01592-2

RESPONSE TO PERSONAL RESTRAINT PETITION

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

RACHAEL A. ROGERS, WSBA #37878
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (564) 397-2261

TABLE OF CONTENTS

IDENTITY OF RESPONDENT.....	1
STATEMENT OF THE CASE.....	1
RAP 16.9 STATEMENT	6
ARGUMENT AS TO WHY MARTIN’S PETITION SHOULD BE DISMISSED	8
I. Martin has not shown her attorney was ineffective.....	11
CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<i>Hill v. Lockhart</i> , 474 U.S. 52, 106 S. Ct. 366, 88 L.Ed.2d 203 (1985)	13
<i>In re Pers. Restraint of Cook</i> , 114 Wn.2d 802, 792 P.2d 506 (1990)...	8, 10
<i>In re Pers. Restraint of Davis</i> , 152 Wn.2d 647, 101 P.3d 1(2004).....	20
<i>In re Pers. Restraint of Hagler</i> , 97 Wn.2d 818, 650 P.2d 1103 (1982)..	8, 9
<i>In re Pers. Restraint of Hews</i> , 99 Wn.2d 80, 660 P.2d 263 (1983)	9
<i>In re Pers. Restraint of Martin</i> , COA No. 46036-0-II	6
<i>In re Pers. Restraint of McCready</i> , 100 Wn.App. 259, 996 P.2d 658 (2000).....	13
<i>In re Pers. Restraint of Monschke</i> , 160 Wn.App. 479, 251 P.3d 884 (2010)	9, 10
<i>In re Pers. Restraint of Rice</i> , 118 Wn.2d 876, 828 P.2d 1086 (1992)10, 12, 19, 20	
<i>In re Pers. Restraint of Stockwell</i> , 161 Wn. App. 329, 254 P.3d 899 (2011)	8
<i>In re Pers. Restraint of Williams</i> , 111 Wn.2d 353, 759 P.2d 436 (1988)8, 9	
<i>State v. Brune</i> , 45 Wn.App. 354, 725 P.2d 454 (1986)	9, 10
<i>State v. Cameron</i> , 30 Wn.App. 229, 633 P.2d 901 (1981)	13
<i>State v. Gomez Cervantes</i> , 169 Wn. App. 428, 282 P.3d 98 (2012).....	12
<i>State v. Henrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996).....	13
<i>State v. Holm</i> , 91 Wn.App. 429, 957 P.2d 1278 (1998), <i>rev. denied</i> , 137 Wn.2d 1011, 978 P.2d 1098 (1999).....	12, 13
<i>State v. James</i> , 48 Wn.App. 353, 739 P.2d 1161 (1987)	12, 13
<i>State v. Klingler</i> , 96 Wn.App. 619, 980 P.2d 282 (1999).....	12
<i>State v. Macon</i> , 128 Wn.2d 784, 911 P.2d 1004 (1996).....	7
<i>State v. Martin</i> , 169 Wn.App. 620, 281 P.3d 315 (2012)	1, 6
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	12
<i>State v. Osborne</i> , 102 Wn.2d 87, 684 P.2d 683 (1984)	13
<i>State v. Rafay</i> , 168 Wn.App. 734, 285 P.3d 83 (2012).....	7
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....	12
<i>United States v. Frady</i> , 456 U.S. 152, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982).....	9

Rules

GR 14.1	17
RAP 16.11	7

RAP 16.7(a)(2)(i)..... 8, 10
RAP 16.9 (a) 6

Unpublished Opinions

In re Personal Restraint of Garland, 193 Wn.App. 1027 (2016). 17, 18, 21

IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this matter. Sheryl Martin (hereafter 'Martin') is restrained under the authority of the judgment and sentence entered by the Clark County Superior Court for Attempted Murder in the First Degree, Domestic Violence, with a firearm enhancement, in Cause Number 07-1-01592-2.

STATEMENT OF THE CASE

Martin was convicted of Attempted Murder in the First Degree, Domestic Violence, with a firearm enhancement, and Assault in the First Degree after a jury trial held in Clark County Superior Court. The facts underlying the crime are summarized as follows: Between the evening of September 7, 2007 and early morning of September 8, 2007, during a verbal altercation, Martin's husband told her he had been having an affair. *State v. Martin*, 169 Wn.App. 620, 623, 281 P.3d 315 (2012). Divorce was mentioned during this argument. *Id.* The argument took place in the shop on the couple's property. *Id.* At one point, Martin grabbed a knife and a shotgun that were in the shop, but her husband pried the weapons from her hands and she then left the shop. *Id.* Martin's husband then went into a camper on the property and went to sleep. *Id.* After that, Martin went to the camper and used a 16 gauge shotgun to shoot at her husband; she shot

him twice in the legs. *Id.* As she shot him, Martin said something to the effect of “if I can’t have you, nobody can.” *Id.* Martin then left the camper only to return within five minutes and shot her husband two more times, this time hitting both of his arms. *Id.*

During pre-trial proceedings and at trial Martin was represented by attorney David McDonald. Then prosecutor John Fairgrieve handled the case for the Clark County Prosecuting Attorney’s Office. *See* Appendix E – Declaration of John Fairgrieve. In early fall of 2008, the prosecutor and defense counsel spoke extensively about potential plea offers in the case. *Id.* On October 6, 2008, the prosecutor sent Mr. McDonald a plea offer in which the State would agree to dismiss the attempted murder charge in exchange for Martin’s plea to Assault in the First Degree with a firearm enhancement and a recommendation of 153 months in prison. *Id.* at pp. 7-9. Two days prior to that offer being made, Martin’s attorney, Mr. McDonald, had e-mailed the prosecutor about plea negotiations. *See* Appendix C – E-mails between State and Defense, p. 1. In that e-mail, Mr. McDonald indicated that he had sat down with Martin and her family and “discussed the possibility of attempting to come to mutually acceptable pre-trial resolution. I spoke with her on Friday and she has authorized me to send a proposal to you that outlines a settlement proposal.” *Id.* Two days later, the State sent the offer of settlement to Mr. McDonald, who

received it, as evidenced by an e-mail he sent to the prosecutor on October 15, 2008. *Id.* at 2.

On November 20, 2008, the prosecutor, defense counsel, and Martin appeared in Clark County Superior Court on Martin's motion to continue the trial date. *See* Appendix D – Transcript of November 20, 2008 Hearing, p. 3-4. During that hearing, the prosecutor told the court the following, in the presence of Martin and her attorney:

Well, yes, Your Honor, I just wanted to give the Court a little bit of an idea of the back ground.

This case has been around for a while, as the Court is aware.

In wake of the Court's 3.5 and 3.6 rulings on this matter I think both the State and counsel had a little bit better idea of what the nature of the evidence that would probably be offered and admitted at trial was going to be.

In wake of that, the State made an offer to the defendant, a plea offer in this matter, which the defendant has declined. I have had some discussions with Mr. McDonald about, you know, possible negotiate a settlement in this case. And I – my impression is the two parties are just too far apart in terms of their view of the case at this point. So I'd say there's a high probability that we'll proceed to trial, absent some change in the circumstances that's not predictable right now.

Counsel had some time ago indicated that, you know, where are we going to be and this sort of posture that they were considering a diminished capacity defense. They hadn't made a – my recollection from the omnibus hearing is that they hadn't made a final decision at that point.

I know counsel was waiting until after the Court's ruling on the 3.5 and 3.6 issues to make that decision. But apparently he has now, so certainly we'd like to have Ms. Martin evaluated by an expert at Washington State Hospital so we have a better idea of what – or we have an expert opinion on that issue, Your Honor.

See Appendix D, pp. 4-6. Martin and Mr. McDonald were present in court when the prosecutor made those statements to the judge, out loud, in open court. Neither Martin nor Mr. McDonald felt the need to correct the prosecutor.

A few days after that November 20, 2008 hearing, the prosecutor handling the case sent an e-mail to his supervisors updating them on the status of the case. *See* Appendix C, p. 3. In that e-mail the prosecutor outlined that he made an offer to defense in early October, and that Mr. McDonald indicated he had had a number of conversations with his client and that she was not willing to do more than 3 years in prison (while the State's offer was for more than 12 years) and had rejected the State's offer of settlement. *Id.*

In a declaration attached as Appendix E, the prosecutor who handled the case indicates that he discussed the case with Mr. McDonald on or near September 29, 2008 and that Mr. McDonald told him he would find out what kind of plea offer Martin would accept and get back to him. *See* Appendix E, p. 1. The prosecutor took notes on September 29, 2008,

attached to his declaration, which show he had a conversation with Mr. McDonald, and that he met with his superiors and received authorization to make the offer that was then made on October 6, 2008 to Martin. *Id.* at pp. 1-2. The prosecutor's declaration states that he

...engaged in extended plea negotiations with Mr. McDonald in this case, including sending him a written offer. He told me he discussed the offer with the defendant and that she refused the offer. I relayed this information to the trial court during a hearing on November 20, 2008 during which both Mr. McDonald and the defendant were present. Neither objected to the accuracy of the information I provided to the court.

Id. at 2-3.

The case eventually went to trial in 2010, with the main issue being Martin's defense of diminished capacity. The jury convicted Martin of both Attempted Murder in the First Degree and Assault in the First Degree, both with special verdicts finding a firearm was used during the commission of the crime. *See* Appendix F – Verdict Forms. The trial court vacated the Assault in the First Degree conviction and sentenced Martin to a standard range sentence on the Attempted Murder in the First Degree conviction with 60 months for the firearm enhancement. *See* Appendix A.

Martin appealed her conviction, arguing the trial court improperly suppressed evidence of betrayal trauma theory from her expert, erred in excluding evidence of the victim's prior bad acts, and that the search

warrant was insufficient. *See Martin*, 169 Wn.App. at 623-25. Finding no error, the Court of Appeals affirmed Martin's conviction and sentence. *Id.* at 631-32.

Subsequently, Martin filed a personal restraint petition with this Court, alleging the trial court erred by failing to suppress evidence of an illegal search, erred by excluding evidence of the victim's prior alleged abuse of Martin, that the prosecutor committed misconduct in closing and in its charging decision, and that her attorney was ineffective. *In re Pers. Restraint of Martin*, COA No. 46036-0-II. This Court found the first two issues had already been addressed on the merits in her direct appeal, that the prosecutor did not commit misconduct, and that Martin had presented no other evidence other than her "own conclusory allegation" that her counsel failed to confer with her regarding her defense prior to trial, and they therefore would not consider her claim. *Id.* Accordingly, Martin's petition was dismissed on November 20, 2014.

Martin then filed this, her second personal restraint petition on May 22, 2018. The State now submits this response to Martin's petition.

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 AS TO WHY MARTIN'S PETITION SHOULD BE DISMISSED

A personal restraint petition is not a substitute for a direct appeal. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). The petitioner must prove either a constitutional error that caused actual prejudice, or a nonconstitutional error that caused a complete miscarriage of justice. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). The petitioner must state the facts on which she bases her claim of unlawful restraint and describe the evidence available to support the allegations; conclusory allegations alone are insufficient. RAP 16.7(a)(2)(i); *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988); *In re Pers. Restraint of Stockwell*, 161 Wn. App. 329, 254 P.3d 899 (2011).

In evaluating a personal restraint petition, the Court may: (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 prejudice or a miscarriage of justice. *Cook*, 114 Wn.2d at 810-11; *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263

(1983). Any inferences must be drawn in favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825-26.

A mere showing of error is not enough in a personal restraint petition. The petitioner must show that “more likely than not, he was actually prejudiced by the claimed error.” *Hews*, 99 Wn.2d at 89. The test for determining whether a Court should grant a petition is stated in *Hagler*, *supra* as:

[The petitioner] must shoulder the burden of showing, not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.

Hagler, 97 Wn.2d at 825 (citing *United States v. Frady*, 456 U.S. 152, 170, 102 S. Ct. 1584, 71 L. Ed. 2d 816 (1982)). A petitioner must do more than simply claim a conviction is unconstitutional. More is required. *In re Pers. Restraint of Williams*, 111 Wn.2d at 364. A personal restraint petition must be supported by affidavits or declarations stating particular facts, certified documents, certified transcripts, and the like. *Id.* The petitioner bears the burden of showing prejudicial error. *State v. Brune*, 45 Wn.App. 354, 363, 725 P.2d 454 (1986); *In re Pers. Restraint of Monschke*, 160 Wn.App. 479, 489, 251 P.3d 884 (2010). Bare allegations unsupported to citation to authority, references to the record, or persuasive

reasoning cannot sustain this burden of proof. *Brune* at 363. The petitioner must support the petition with the facts upon which the claim of unlawful restraint, and she may not rely solely on conclusory allegations.

Monschke, 160 Wn.App. at 488; *Cook*, 114 Wn.2d at 813-14; RAP 16.7(a)(2)(i). When the allegations are based on matters outside the existing record, the petitioner must demonstrate that she has competent, admissible evidence to establish the facts that entitle him to relief.

Monschke, 160 Wn.App. at 488; *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). If the petitioner fails to make this threshold showing then she cannot bear her burden of showing prejudicial error. *Monschke*, 160 Wn.App. at 489. In that case, the petition must be dismissed. *Cook*, 114 Wn.2d at 813-14.

In this case, Martin presents only “bare allegations” with no other factual or evidentiary support. She cannot meet the burden of showing her attorney was ineffective, nor can she meet the threshold required to obtain a reference hearing on the matter. To establish a prima facie showing required for a reference hearing, the petitioner must submit “the facts underlying the claim of unlawful restraint and the evidence available to support the factual allegations.” *Rice*, 118 Wash.2d at 885–86. Mere “[b]ald assertions and conclusory allegations” are insufficient to justify a reference hearing. *Id* at 886, 828 P.2d 1086. To meet this burden of

establishing a prima facie showing to obtain a reference hearing, the petitioner can submit affidavits or show the existence of other evidence that corroborates her claim; however, the corroboration must be more than speculation or conjecture. *Id.* Martin presents only her own bare claim and two affidavits of family members claiming they never heard about something happening, which is clearly speculation or conjecture about whether something did or did not occur. Martin's petition should be dismissed as she has not shown she is entitled to relief and has not made a prima facie showing that would entitle her to a reference hearing.

I. Martin has not shown her attorney was ineffective

Martin claims her trial attorney failed to communicate an offer of settlement to her that she would have accepted had she been advised of it. To support her claim, Martin offers her own affidavit saying she never was informed of an offer of settlement from her attorney, and affidavits from two of her family members who say that Martin never told them about an offer to settle the case. However, significant evidence shows Martin's claim is not true. Martin has not met her burden of showing facts exist which would support her claim; her claim is based entirely on her own "bald assertions and conclusory allegations," which are insufficient to justify relief or a reference hearing. Martin's petition should be dismissed.

To prevail on a claim of ineffective assistance of counsel, Martin must overcome the presumption of effective representation and demonstrate that his attorney's performance was deficient, and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Klinger*, 96 Wn.App. 619, 622, 980 P.2d 282 (1999). Counsel is presumed effective. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). To support her claim she received ineffective assistance of counsel surrounding her decision to go to trial, Martin must show her attorney failed to adequately assist her in the decision on whether to accept the State's offer of settlement, or failed to provide her with sufficient information to make an informed decision on whether or not to plead guilty. *State v. Holm*, 91 Wn.App. 429, 435, 957 P.2d 1278 (1998), *rev. denied*, 137 Wn.2d 1011, 978 P.2d 1098 (1999); *State v. James*, 48 Wn.App. 353, 362, 739 P.2d 1161 (1987). A petitioner's bald assertions and conclusory allegations are insufficient to support a claim of ineffective assistance of counsel. *Rice*, 118 Wn.2d at 886. Here, there is no corroborative evidence of defense counsel's alleged ineffectiveness, and significant evidence exists that contradict Martin's factual claims. *See State v. Gomez Cervantes*, 169 Wn. App. 428, 434, 282 P.3d 98 (2012).

Defense counsel are under an ethical obligation to discuss plea negotiations with their clients. *In re Personal Restraint of McCready*, 100 Wn.App. 259, 263, 996 P.2d 658 (2000) (citing to *State v. James*, 48 Wn.App. 353, 362, 739 P.2d 1161 (1987)). Further, defense counsel must provide their clients with sufficient information to make an informed decision on whether or not to plead guilty, *Holm*, 91 Wn.App. at 435, and must “actually and substantially [assist] his [or her] client in deciding whether to plead guilty.” *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (quoting *State v. Cameron*, 30 Wn.App. 229, 232, 633 P.2d 901 (1981)). Failing to communicate a plea offer, failing to give adequate information regarding the plea offer, or failing to assist the defendant in deciding whether to plead guilty could constitute deficient performance. *See James*, 48 Wn.App. at 363. If that is shown, the inquiry becomes whether there is a reasonable probability that but for the attorney’s deficient performance, the defendant would have accepted the plea offer. *Id* (citing to *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)).

An attorney’s performance is presumed to have been adequate. *State v. Henrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). And an attorney is not deficient simply because his or her client was convicted at trial. *Id*. Despite Martin’s claim she was never made aware of a plea offer

from the State, the irrefutable evidence from discussions on the record in court and in e-mail communications among the attorneys involved in the case at the time of the proceedings evidence the falsity of Martin's claim. The plea offer that Martin claims she was never made aware of is dated October 6, 2008. *See* PRP, p. 7; *see also* Appendix B. Two days prior to that offer being made, Martin's attorney, Mr. McDonald, e-mailed the prosecutor about plea negotiations. *See* Appendix C, p. 1. In that e-mail, Mr. McDonald indicated that he had sat down with Martin and her family and "discussed the possibility of attempting to come to mutually acceptable pre-trial resolution. I spoke with her on Friday and she has authorized me to send a proposal to you that outlines a settlement proposal." *Id.* Two days later, the State sent the offer of settlement to Mr. McDonald, who received it, as evidenced by an e-mail he sent to the prosecutor on October 15, 2008. *Id.* at 2.

On November 20, 2008, the prosecutor, defense counsel, and Martin appeared in Clark County Superior Court on Martin's motion to continue the trial date. *See* Appendix D, p. 3-4. During that hearing, the prosecutor told the court the following, in the presence of Martin and her attorney:

Well, yes, Your Honor, I just wanted to give the Court a little bit of an idea of the back ground.

This case has been around for a while, as the Court is aware.

In wake of the Court's 3.5 and 3.6 rulings on this matter I think both the State and counsel had a little bit better idea of what the nature of the evidence that would probably be offered and admitted at trial was going to be.

In wake of that, the State made an offer to the defendant, a plea offer in this matter, which the defendant has declined. I have had some discussions with Mr. McDonald about, you know, possible negotiate a settlement in this case. And I – my impression is the two parties are just too far apart in terms of their view of the case at this point. So I'd say there's a high probability that we'll proceed to trial, absent some change in the circumstances that's not predictable right now.

Counsel had some time ago indicated that, you know, where are we going to be and this sort of posture that they were considering a diminished capacity defense. They hadn't made a – my recollection from the omnibus hearing is that they hadn't made a final decision at that point.

I know counsel was waiting until after the Court's ruling on the 3.5 and 3.6 issues to make that decision. But apparently he has now, so certainly we'd like to have Ms. Martin evaluated by an expert at Washington State Hospital so we have a better idea of what – or we have an expert opinion on that issue, Your Honor.

See Appendix D, pp. 4-6. Martin and Mr. McDonald were present in court when the prosecutor made those statements to the judge, out loud, in open court. Neither Martin nor Mr. McDonald felt the need to correct the prosecutor.

Additionally, a few days after that November 20, 2008 hearing, the prosecutor handling the case sent an e-mail to his supervisors updating them on the status of the case. *See* Appendix C, p. 3. In that e-mail the prosecutor outlined that he made an offer to defense in early October, and that Mr. McDonald indicated he had had a number of conversations with his client and that she was not willing to do more than 3 years in prison (while the State's offer was for more than 12 years) and had rejected the State's offer of settlement. *Id.*

The prosecutor who handled the case and spoke directly with Mr. McDonald about the matter has authored a declaration attached as Appendix E to the State's response. Now Judge John Fairgrieve, indicates that he discussed the case with Mr. McDonald on or near September 29, 2008 and that Mr. McDonald told him he would find out what kind of plea offer Martin would accept and get back to him. *See* Appendix E, p. 1. The prosecutor took notes on September 29, 2008, attached to his declaration, which show he had a conversation with Mr. McDonald, and that he met with his superiors and received authorization to make the offer that was then made on October 6, 2008 to Martin. *Id.* at pp. 1-2. The prosecutor's declaration states that he

...engaged in extended plea negotiations with Mr. McDonald in this case, including sending him a written offer. He told me he discussed the offer with the defendant

and that she refused the offer. I relayed this information to the trial court during a hearing on November 20, 2008 during which both Mr. McDonald and the defendant were present. Neither objected to the accuracy of the information I provided to the court.

Id. at 2-3.

From this evidence - the e-mails between the prosecutor and Mr. McDonald, and between the prosecutor and his superiors, along with the then prosecutor's declaration and the transcript of the proceedings wherein the prosecutor told the court that it had made an offer to the defendant which she had rejected, without any objection or comment from either the defendant or Mr. McDonald - it is clear that Ms. Martin did receive the offer of settlement from her attorney, that they discussed it and the possibility of resolving the case short of trial in general, and that Ms. Martin chose not to accept the offer.

The situation presented to the Court by Martin's petition is similar to that presented to Division I of this Court in the unpublished opinion of *In re Personal Restraint of Garland*, 193 Wn.App. 1027 (2016).¹ In *Garland*, the defendant filed a personal restraint petition claiming his defense attorney did not communicate an offer of settlement to him prior to trial, and that had he been aware of that offer he would have pleaded

¹ GR 14.1 allows citation to unpublished opinions of the Court of Appeals issued on or after March 1, 2013. This opinion is not binding and may be accorded as much persuasive value as this Court sees fit.

guilty instead of going to trial. *Garland*, 193 Wn.App. at 4. The evidence presented to the Court of Appeals in considering the petition included e-mail communications between the defense attorney and the prosecutor in which they discuss an offer of settlement extended by the State that contemplated a guilty plea to murder in the second degree, to which defense counsel proposed a counter-offer that was not accepted by the state. *Id.* at 4-5. There was no e-mail exchange in which defense counsel expressly rejected the offer made by the State. *Id.* In a declaration, defense counsel asserted that Garland told her he would never plead to a murder charge, and that the only offer made was one that he had adamantly rejected, however, the declaration referred to a plea offer from the year after the actual offer was made, so it was unclear if counsel was referring to the case on review or a different case Garland had. *Id.* at 5. Counsel did not expressly state in her declaration whether she had communicated the offer to Garland. *Id.*

Garland argued the e-mail communications show that the defense attorney did not communicate the plea offer to him, nor did they show she ever intended to communicate the offer to him. *Id.* Garland also presented evidence of jail visit and phone logs showing little contact between Garland and his attorney after the offer was made, and the investigator's billing record which does not specify any discussion of a plea agreement

occurring; Garland also presented declarations from family members stating they were not aware of the plea offer until after the trial. *Id.* The attorney's phone records show at least one phone call between Garland and herself that occurred after the state extended the plea offer; no details on the phone record show whether the attorney did or did not discuss the offer with Garland. *Id.* at 6. Based on his interpretation of the e-mails, the lack of specificity in the attorney's declaration, and the other evidence he presented, Garland argued he was entitled to a reference hearing in superior court. *Id.* at 5.

The Court in *Garland* noted that a petitioner must state facts underlying his claim and the evidence available to support those factual allegations in order to support a request for a reference hearing. *Id.* (citing *Rice*, 118 Wn.2d at 885-86. But, the Court noted,

[t]his does not mean that every set of allegations which is not meritless on its face entitles a petitioner to a reference hearing. Rather, the petitioner must state with particularity facts which, if proven, would entitled [*sic*] him to relief. The purpose of a reference hearing is to resolve genuine factual disputes, not to determine whether the petitioner actually has evidence to support his allegations. Thus, a mere statement of evidence that the petitioner believes will prove his factual allegations is not sufficient.

Id. (citing *Rice*, 118 Wn.2d at 886). In analyzing the evidence before it, Division I of this Court noted that nothing showed the defense attorney expressly rejected the State's plea offer prior to communicating it to

Garland, and that to infer this from the evidence would be an improper and unsupported assumption. *Id.* at 6. The fact of a phone call between counsel and Garland leaves open the possibility that the offer was communicated to Garland and he rejected it. *Id.* The Court also noted that the absence of details in the defense investigator's billing records about whether a plea offer was discussed does not give rise to the inference that the plea offer was not actually discussed. *Id.* Therefore, the investigator's records do not prove that the defense attorney never discussed the plea offer with Garland. *Id.*

The Court declared that Garland had only presented "bald assertions, conclusory allegations, and speculative evidence that" his attorney did not communicate the offer of settlement to him. *Id.* Keeping in mind that reviewing courts are to strongly presume that counsel's representation was effective, the Court found Garland failed to show that he was entitled to a reference hearing to prove that his attorney never communicated the offer to him and that her performance was deficient. *Id.* (citing *In re Davis*, 152 Wn.2d 647, 101 P.3d 1(2004) and *Rice*, 118 Wn.2d at 886).

Martin presented substantially less evidence than Garland did to support her claim that her attorney was ineffective by failing to communicate a plea offer to her. Just as Garland did, Martin presented her

own declaration saying the offer was not communicated, and a declaration from family members saying they did not learn about the offer until after trial. Martin presented no other evidence. On the contrary, the State has presented a transcript from a hearing in which the prosecutor told the court that he had presented an offer of settlement to Mr. McDonald and that Martin had rejected that offer; Martin and Mr. McDonald were present when the prosecutor made those statements and did not object or correct the prosecutor's recitation of the facts surrounding plea negotiations. *See* Appendix D, pp. 4-6. In addition, a declaration from now Judge John Fairgrieve, who was the prosecutor handling this case, indicates he had "extended plea negotiations" with Mr. McDonald and that Mr. McDonald told him he discussed the offer with the defendant and that she refused to accept the offer. *See* Appendix E, pp. 1-2. Finally, there are e-mails and hand-written notes which were written during the time of the plea negotiations and directly following which corroborate the prosecutor's declaration and the statements the prosecutor made in court. *See* Appendix E.

It is clear that Martin has presented no more than "bald assertions and conclusory allegations" to support her claim that her attorney did not communicate the offer of settlement to her. She presented significantly less evidence than the defendant did in *Garland, supra*. Under the

standard for obtaining relief or even a reference hearing, Martin has fallen far short of meeting her burden. No evidence aside from her own bald assertion supports her claim and all the other evidence that appears to exist refutes her claim. Martin has not made a showing that she is entitled to a reference hearing on this matter and she has not shown that her trial attorney was ineffective by not communicating a plea offer. Buyer's remorse does not establish that trial counsel was ineffective. Here, Martin now clearly wishes she had chosen a different course of action because of the jury's verdict. That remorse, however, is simply not a basis for relief from the judgment. Martin's claim her attorney was ineffective by failing to communicate a plea offer is without any evidentiary support. This claim fails. Accordingly, Martin's petition should be dismissed.

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CONCLUSION

Martin has failed to meet the threshold of showing ineffective assistance and has failed to show a prima facie case of ineffectiveness so as to obtain a reference hearing. Accordingly, Martin's petition should be dismissed.

DATED this 24 day of September, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


RACHAEL A. ROGERS, WSBA #37878 for
Senior Deputy Prosecuting Attorney
OID# 91127

APPENDIX A

Jail
David McDonald

FILED

NOV 23 2010

Sherry W. Parker, Clark, Clark Co.

**Superior Court of Washington
County of Clark**

State of Washington, Plaintiff,

vs.

SHERYL JEAN MARTIN,
Defendant.

SID: _____
If no SID, use DOB: 1/30/1956

No. 07-1-01592-2 ✓

**Felony Judgment and Sentence –
Prison
(FJS)**

- Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7
- Defendant Used Motor Vehicle
- Juvenile Decline Mandatory Discretionary

I. Hearing 10-9-07748-0

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 jury-verdict 10/25/2010 bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ATTEMPTED MURDER IN THE FIRST DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.32.030(1)(a)/9A.28.020(3)(a)	FA	9/8/2007

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 jury returned a special verdict or the court made a special finding with regard to the following:

The defendant used a **firearm** in the commission of the offense in Count 01. 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

185
SV

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.
- The crime(s) charged in Count 01 involve(s) domestic violence. 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	0	XV-75%	180 MONTHS to 240 MONTHS	60 MONTHS	240 MONTHS to 300 MONTHS	LIFE	\$50,000.00

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, see RCW 46.61.520, (JP) Juvenile present, (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 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 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):

240 months on Count 01
 The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

- The confinement time on Count 01 includes 60 months as enhancement for firearm deadly weapon VUCSA in a protected zone
 manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: 240

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: _____

(b) **Credit for Time Served:** The defendant shall receive 29 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

(c) **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 the balance of the defendant's remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on 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) 1 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)

(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; and (9) 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.

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

- consume no alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____

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:

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

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.

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

JASS CODE

<i>RTN/RJN</i>	<u>\$5,077.12</u>	Restitution to: <u>CVCP (\$5,077.12)</u> (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
<i>PCV</i>	<u>\$ 500.00</u>	Victim assessment	RCW 7.68.035
<i>PDV</i>	<u>100.00</u>	Domestic Violence assessment	RCW 10.99.080
<i>CRC</i>	<u>\$</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee <u>\$ 200.00</u>	FRC
		Witness costs <u>\$</u>	WFR
		Sheriff service fees <u>\$</u>	SFR/SFS/SFW/WRF
		Jury demand fee <u>\$250.00</u>	JFR
		Extradition costs <u>\$</u>	EXT
		Other <u>\$</u>	
<i>PUB</i>	<u>\$</u>	Fees for court appointed attorney	RCW 9.94A.760
	<u>\$</u>	Trial per diem, if applicable.	
<i>WFR</i>	<u></u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
	<u>\$</u>	DUI fines, fees and assessments	
<i>FCM/MTH</i>	<u>\$ 500.00</u>	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	
<i>CDF/LDI/FCD</i> <i>NTF/SAD/SDI</i>	<u>\$</u>	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
	<u>\$ 100.00</u>	DNA collection fee	RCW 43.43.7541

CLF \$ _____ Crime lab fee 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

\$ _____ 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 not applicable DMZ JH (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.

4.4 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 EDDIE E MARTIN including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life 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:

EDDIE E MARTIN (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____

other location _____,
for _____ 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.

5.5 Firearms. You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, 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, 9.41.047.

5.6 Reserved

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: _____

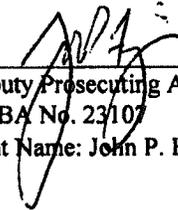
5.9 Persistent Offense Notice

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

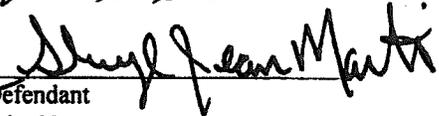
The crime(s) in count(s) _____ is/are one of the listed offenses in RCW 9.94A.030.(31)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: November 23, 2010


Judge/Print Name: Barbara Jensen


Deputy Prosecuting Attorney
WSBA No. 23107
Print Name: John P. Fairgrieve


Attorney for Defendant
WSBA No. 18446
Print Name: David T. McDonald

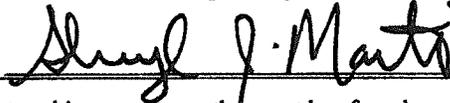

Defendant
Print Name:
SHERYL JEAN MARTIN

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: _____



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, Sherry Parker, 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

SHERYL JEAN MARTIN

07-1-01592-2

SID No: _____
(If no SID take fingerprint card for State Patrol)

Date of Birth: 1/30/1956

FBI No.

Local ID No. 189779

PCN No. _____

Other _____

Alias name, DOB:

Race: W

Ethnicity:

Sex: F

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: November 23, 2010

The defendant's signature:

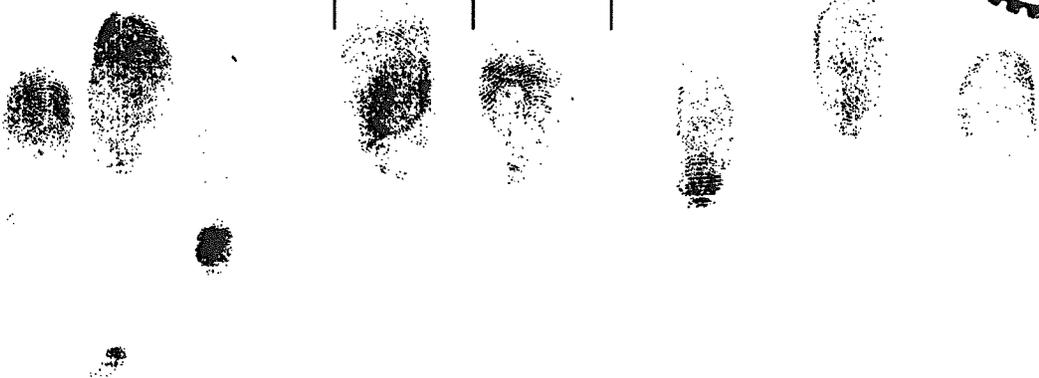
[Handwritten Signature: Sheryl J Martin]

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.

SHERYL JEAN MARTIN,

Defendant.

SID: _____

DOB: 1/30/1956

NO. 07-1-01592-2

**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	ATTEMPTED MURDER IN THE FIRST DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.32.030(1)(a) /9A.28.020(3)(a)	9/8/2007

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	ATTEMPTED MURDER IN THE FIRST DEGREE - DOMESTIC VIOLENCE	240 Days/Months

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

The defendant has credit for 29 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.

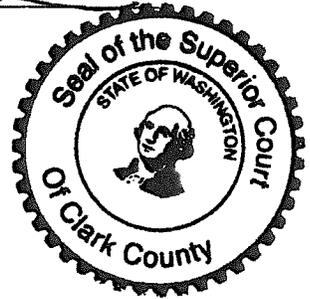
HEREIN FAIL NOT.

WITNESS, Honorable 

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: November 23, 2010

SHERRY W. PARKER, Clerk of the
Clark County Superior Court

By  Deputy



APPENDIX B



ARTHUR D. CURTIS
PROSECUTING ATTORNEY

CURT WYRICK
CHIEF DEPUTY

DENNIS M. HUNTER
CHIEF CRIMINAL DEPUTY

E. BRONSON POTTER
CHIEF CIVIL DEPUTY

SHARI JENSEN
ADMINISTRATOR

October 6, 2008

David T. McDonald
Attorney at Law
510 SW 3rd Ave, Suite 400
Portland OR 97204

RE: STATE OF WASHINGTON V. SHERYL JEAN MARTIN
Cause No. 07-1-01592-2

Dear Mr. McDonald:

I met with Art Curtis and Dennis Hunter last Monday to discuss this case and the issues that you and I had discussed on September 25. We also discussed the case more generally and decided to make the enclosed plea offer in the case.

Our impression is that this was a premeditated, intentional shooting. Your client's intent can be argued, but we feel that there is a strong inference from the act itself that she intended to kill the victim. Although your client has been a law abiding member of society throughout her life this does not change the fact that she shot her husband four times after finding out he had been unfaithful. The enclosed offer reflects the seriousness of her conduct.

The enclosed offer will expire on Friday, October 24, 2008 at the close of business. Please contact me if you have any questions.

Sincerely,

John P. Fairgrieve
Deputy Prosecuting Attorney

/CC
Enclosure

STATE OF WASHINGTON V. SHERYL JEAN MARTIN - CAUSE NO 07-1-01592-2

CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT

TO: DEFENSE ATTORNEY DAVID T. MCDONALD, WSBA #18446

The defendant is charged with the following:

Count	Charge	Score	Range	Enhancement	Total Range
01	ATTEMPTED MURDER IN THE FIRST DEGREE	0	180-240	60	240-300 months
02	ASSAULT IN THE FIRST DEGREE	0	93-123	60	153-183 months

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying Declaration of Criminal History which the defendant acknowledges is accurate, true and complete and further that the resultant offender score calculations in this offer are correct. This offer may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: October 24, 2008. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history or to dispute the resultant offender score calculations prior to any plea of guilty constitutes a breach of this agreement by the defendant.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Count	Charge	Score	Range	Enhancement	Total Range
01	DISMISS				
02	ASSAULT IN THE FIRST DEGREE	0	93-123	60	153-183 months

In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action:

- Defendant may be referred to the CCPA Diversion Unit for screening on the above charges.
- The State will refer this case for Drug Court screening.

RECOMMENDATION AS TO CONFINEMENT

153 Days Months in Total Confinement, and
 _____ Days Months Partial Confinement [_____ days Work Crew; _____ days Work Release], and
 _____ Days Community Service (Eight (8) hours per day)
 _____ Days with _____ days suspended/deferred on a misdemeanor/gross misdemeanor

If the defendant does not qualify for partial confinement program(s), the recommendation will be for total confinement.

TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of _____ restitution of _____ or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

Other legal financial obligations include:

Drug Fund of _____
 Warrant Fees of _____
 Lab Fee of _____
 DV Penalty Assessment _____

Emergency Response Fee of _____
 Extradition Costs of _____
 Other of _____ for _____

SUPERVISION

- First Offender Option with up to two years of supervision
- Community Custody for _____ months or for a range of 24 to 48 months.
- _____ Years of probation/supervision on misdemeanor/gross misdemeanor.

SPECIAL SENTENCE OPTIONS

- If recommended by PSI, the state will recommend/consider DOSA.

MANDATORY SENTENCE REQUIREMENTS

- No possession/use/ownership of firearms/surrender concealed pistol license
- Provide biological sample for DNA identification
- HIV testing
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

OTHER CONDITIONS OF SUPERVISION

(This list is non-exclusive – the State is free to recommend other usual conditions)

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for: substance abuse; mental health; anger control; other _____
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with victim for 0 years.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime: _____
- Forfeiture of the following property: _____
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER The defendant is free to argue for an exceptional sentence down below the the standard

sentencing range. However, RCW 9.94A.540 requires a statutory mandatory minimum sentence of 60 months if the defendant used force or means likely to result in death or intended to kill the victim. Additionally the firearm enhancement runs consecutive to any underlying sentence and the State's position is that it is not subject to being reduced by the court as part of an exceptional sentence down.

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

John P. Fairgrieve
Deputy Prosecuting Attorney, WSBA #23107
Prosecutor's Offer of Settlement – 12/02 – Page 2
SHERYL JEAN MARTIN 07-1-01592-2

Date

APPENDIX C

Fairgrieve, John

From: David McDonald [david@mcdonaldpc.com]
Sent: Saturday, October 04, 2008 9:52 AM
To: Fairgrieve, John
Subject: State v. Martin

John:

Per our discussions, I sat down with my client and her family and discussed the possibility of attempting to come to mutually acceptable pre-trial resolution. I spoke with her on Friday and she has authorized me to send a proposal to you that outlines a settlement proposal. As you may recall, I begin a four week trial on Tuesday in federal court here in Portland. Yesterday at the status conference, the government seemed to believe that the case would be to the jury by October 31st but could be completed sooner. We shall see.

However, there are a couple of days that we are not in trial during the month due to the court's schedule and holidays so I will try and work on the settlement proposal during those times and attempt to get you something solid within the next three weeks.

This is also to confirm, as we previously discussed, that if we are unable to settle this matter, then I will be filing a notice of intent to rely on diminished capacity defense and you, I assume, will then want to have Ms. Martin evaluated and we will need to r/s the trial. I think it would be realistic to put the new date towards the end of January.

I am going to send you this information in a formal letter for your file but just wanted to give you a heads up as to what direction I think we are headed.

Best Regards,

David

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 400
510 SW Third Avenue
Portland, Oregon 97204
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

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10/6/2008

Fairgrieve, John

From: David McDonald [david@mcdonaldpc.com]
Sent: Wednesday, October 15, 2008 6:00 PM
To: Fairgrieve, John
Subject: martin update

John:

My trial in federal court has become pretty all consuming and I have not had a chance to speak with, much less meet with, Ms. Martin since I received your offer. However, it looks now as if the judge in this case may try to push through and finish the case by the 28th or 29th rather than November 5 or 6th as previously anticipated. So, I think I can speak with you at end of month and, if necessary, return to you with a counter proposal.

Best Regards,

David

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 400
310 SW Third Avenue
Portland, Oregon 97204
503-226-0188 (o)
503-226-1136 (f)
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10/16/2008

Fairgrieve, John

From: Fairgrieve, John
Sent: Monday, November 24, 2008 10:18 AM
To: Curtis, Art; Hunter, Dennis
Subject: St v Sheryl Martin, No. 07-1-01592-2

Art and Denny:

This is the case involving the woman who shot her husband multiple times after finding out he was cheating on her. Pursuant to our conversation about this case I made an offer to the defense in early October of Assault 1 with a firearm enhancement and a recommendation of 153 months, the low end of the range. I have had a number of conversations with David McDonald and he has told me his client is not willing to do more than about three years in prison, and has rejected our offer.

We were in court last Thursday for review, and the defense told the court that it may rely on a diminished capacity defense. I then moved for a diminished capacity evaluation by WSH, and also moved for disclosure of any existing psychological evaluations done of the defendant by the defense. Judge Johnson reserved on discovery request. The defense also moved for an additional continuance, which was granted. Although both parties asked for a January trial setting the trial was reset for March 9. My impression is that this is a pretty firm trial date at this point, and that this case will go to trial. While the defense does not have any fact witnesses it apparently plans on calling a series of what appear to be character witnesses. I will attempt to get Judge Johnson to exclude most of this testimony at a pre-trial hearing.

John

John P. Fairgrieve
Senior Deputy Prosecuting Attorney
Team Leader, Major Crimes Unit
Clark County Prosecuting Attorney's Office
1013 Franklin St., P.O. Box 5000
Tacoma, WA 98666
(t) 360.397.2261 x4923
(f) 360.759.5370
(e) john.fairgrieve@clark.wa.gov

APPENDIX D

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

STATE OF WASHINGTON,) Court of Appeals
) No. 41588-7-II
)
Plaintiff,) Clark County
v.) Superior Court
) No. 07-1-01592-5
SHERYL JEAN MARTIN,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
VOLUME 5
(Pages 191 - 205)

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Honorable Barbara D. Johnson, Judge of the Circuit Court for the County of Clark, State of Washington, commencing on the 20th day of November, 2008.

Appearances:

Appearing in behalf of the Plaintiff
John P. Fairgrieve, Prosecuting Attorney

Appearing in behalf of the Defendant
David T. McDonald, Attorney at Law

TRANSCRIBED FROM ELECTRONIC RECORDING BY:
ROBYN M. ANDERSON
3351 SW REDFERN PLACE
GRESHAM, OREGON 97080

ANDERSON ASSISTANCE
OFFICIAL TRANSCRIBER
(503) 618-9938

GENERAL INDEX

VOLUME 5 - PROCEEDINGS OF NOVEMBER 20, 2008.....191
Pretrial Hearing/Scheduling.....191

1 November 20, 2008

2 (Judge Johnson)

3 3:08 p.m.

4 **P R O C E E D I N G S**

5 **PRETRIAL HEARING/SCHEDULING**

6 THE COURT: Thank you, please be seated.

7 MR. MCDONALD: Good afternoon, Your Honor.

8 THE COURT: Good --

9 MR. FAIRGRIEVE: Good afternoon --

10 THE COURT: -- afternoon -

11 MR. FAIRGRIEVE: -- Your Honor.

12 THE COURT: -- Mr. McDonald and certainly Mr.
13 Fairgrieve as well. And are we in agreement on the motion
14 here this afternoon as I understand?

15 MR. MCDONALD: Yes, Your Honor.

16 MR. FAIRGRIEVE: Yes, Your Honor. The State
17 doesn't object to it, it -- there's some background, but
18 there's no -- the State is not objecting, no, Your Honor.

19 THE COURT: Go ahead, Mr. McDonald.

20 MR. MCDONALD: It's pretty much set forth in the
21 motion we have given the State the notice that we're --
22 we'll be possibly raising the defense of diminished
23 capacity, which triggers the statute, which allows for the
24 State to an independent investigation and that includes an
25 evaluation.

1 Mr. Fairgrieve has prepared an order for the
2 Court to sign, I've reviewed it, it appears to comport
3 with the statutory requirements. As part of that order I
4 will be in contact and Western States will be in contact
5 with me so that we can orchestrate and coordinate an
6 appointment and get that evaluation completed. We don't
7 know the timing of it, but what we are suggesting is that
8 we set this case into January with the understanding that
9 if the evaluation is not completed by then and they have
10 not gotten the report to Mr. Fairgrieve that we would move
11 to do it, but we'd prefer to stay on a slower -- on a more
12 narrow track than a wider track, if that's appropriate
13 with the Court.

14 If you want to go longer, we would do that, but
15 we think that it might be better if we have the ability to
16 tell the people at Western that this is the timeframe for
17 the trial and therefore they should get this done.

18 THE COURT: And what's our current trial date
19 here, it's --

20 MR. MCDONALD: December 1st.

21 THE COURT: -- December 1st, all right -- yes, I
22 see that.

23 And, Mr. Fairgrieve, anything you wish to add?

24 MR. FAIRGRIEVE: Well, yes, Your Honor, I just
25 wanted to give the Court a little bit of an idea of the

1 background.

2 This case has been around for a while, as the
3 Court is aware.

4 In wake of the Court's 3.5 and 3.6 rulings on
5 this matter I think both the State and counsel had a
6 little bit better idea of what the nature of the evidence
7 that would probably be offered and admitted at trial was
8 going to be.

9 In wake of that, the State made an offer to the
10 defendant, a plea offer in this matter, which the
11 defendant has declined. I have had some discussions with
12 Mr. McDonald about, you know, possible negotiate a
13 settlement in this case. And I -- my impression is the
14 two parties are just too far apart in terms of their view
15 of the case at this point. So I'd say there's a high
16 probability that we'll proceed to trial, absent some
17 change in the circumstances that's not predictable right
18 now.

19 Counsel had some time ago indicated that, you
20 know, where are we going to be and this sort of posture
21 that they were considering a diminished capacity defense.
22 They hadn't made a -- my recollection from the omnibus
23 hearing is that they hadn't made a final decision at that
24 point.

25 I know counsel was waiting until after the

1 Court's ruling on the 3.5 and 3.6 issues to make that
2 decision. But apparently he has now, so certainly we'd
3 like to have Ms. Martin evaluated by an expert at
4 Washington State Hospital so we have a better idea of what
5 -- or we have an expert opinion on that issue, Your Honor.

6 THE COURT: Very well, then. I'll go ahead and
7 enter the order appointing psychiatric expert.

8 We have been -- had a considerable back log on
9 evaluations and so I'm looking at the form of the order
10 you have in mind that the defendant would be transported
11 to Clark County and that arrangements will be made with
12 counsel for that to take place and I'll just encourage you
13 to be proactive concerning that because we've had quite
14 some delays and difficulties in getting these evaluations
15 completed.

16 In connection then with the trial date, Ms.
17 Martin, you have previously waived your speedy trial
18 rights, do you understand those rights?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And do you wish to waive them again
21 to allow a continuance of your trial date?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And let me see I'll bring Donelle in

24 --

25 MR. MCDONALD: I apologize --

1 THE COURT: -- to --

2 MR. MCDONALD: -- for not getting a date in
3 advance, Your Honor.

4 THE COURT: Oh, no, that's all right. We were
5 in trial and so on and I probably would have also pursued
6 it.

7 We're looking to mid-January, would that be
8 correct, what we might have available --

9 MR. MCDONALD: Yes, Your Honor --

10 THE COURT: -- as trial date?

11 MR. MCDONALD: -- the only date -- I have bad
12 dates January 14th through 18th and the 23rd through the
13 25th. And I believe Mr. Fairgrieve is out of town at some
14 point and time in January.

15 MR. FAIRGRIEVE: Yes, I'm sorry, Your Honor, the
16 last week of January and the first week in February I'm on
17 active duty with the military.

18 THE COURT: Well, I don't know what we have.

19 MR. FAIRGRIEVE: Yeah, doesn't leave much --

20 THE COURT: May --

21 MR. FAIRGRIEVE: -- January.

22 THE COURT: -- eliminate January.

23 (Court/clerk confer)

24 THE COURT: What are our trial dates in January
25 do we have any?

1 THE CLERK: January 5, January 20 would be
2 available for three days and that's a Tuesday because of
3 Martin Luther King holiday and --

4 THE COURT: How many days do we anticipate,
5 counsel?

6 MR. FAIRGRIEVE: I'd say the State's case, Your
7 Honor, will probably take about two to two and a half
8 days. And then I'm a little unclear on defense case?

9 MR. MCDONALD: Probably I would say total of
10 four --

11 THE COURT: Mm-hmm.

12 MR. MCDONALD: -- to plan on --

13 THE COURT: Well, we would have January 5th
14 otherwise we -- it doesn't look like we'd have enough time
15 and would put us into March probably.

16 MR. MCDONALD: All right , let's do that. I
17 don't want to go to too far deep into March. Can we do it
18 the -- the -- do you have -- is the calendar -- the first
19 week of March available?

20 THE CLERK: The week of the 9th is open.

21 MR. FAIRGRIEVE: That's fine with the State --

22 MR. MCDONALD: That's --

23 MR. FAIRGRIEVE: -- Your Honor.

24 MR. MCDONALD: -- fine with me.

25 THE COURT: All right. And what did you wish to

1 make your commencement date on --

2 MR. MCDONALD: I've agreed with the State that
3 we'd make the commencement date the date of the trial. So
4 let's make it --

5 THE COURT: The trial date then --

6 MR. MCDONALD: -- March 9th.

7 THE COURT: -- all right. Then we'll make it
8 3/9 of '09 and is that acceptable to you, Ms. Martin?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right, I'll go ahead and fill
11 that in, sign the order for the waiver of speedy trial,
12 and we should have a new schedule and order here shortly.

13 MR. MCDONALD: And for the Court's information
14 on a different matter I'm probably -- and my apologies to
15 the Court for not having the opportunity to do the
16 findings based upon your ruling in September. But I will
17 do that and Mr. Fairgrieve and I will probably ask to cite
18 that back in for entry unless we're not -- if were not
19 able to agree on the findings themselves.

20 THE COURT: All right, very well. And I hand
21 down then the motion in order regarding the psychiatric
22 experts, the new scheduling order.

23 The rest I have here are copies.

24 MR. MCDONALD: And for the record, Your Honor,
25 we'll acknowledge receipt of a new scheduling order

1 showing a readiness of 3/5/09 at 1:30 and 3/9/09 at nine
2 o'clock, I have signed it and Ms. Martin has also signed
3 it.

4 THE COURT: All right, thank you.

5 MR. FAIRGRIEVE: I'm sorry, Your Honor --

6 THE COURT: Oh --

7 MR. FAIRGRIEVE: -- there's just --

8 THE COURT: -- was there any other matter --

9 MR. FAIRGRIEVE: -- one other matter.

10 THE COURT: Oh, I'm sorry.

11 MR. FAIRGRIEVE: Thank you. Your Honor, at the
12 time that we did the omnibus hearing in this matter, which
13 was back in May the State had filed, I believe, a motion
14 for additional or supplement discovery, that had
15 specifically to do with information from the defense
16 concerning whether they've had Ms. Martin evaluated by a
17 defense psychiatric or psychological expert.

18 The State's motion basically is -- it's asking
19 that the defense be ordered to provide the State with any
20 of that type of information, specifically any sort of
21 evaluations, copies of evaluations, or documentation,
22 respecting tests that may have been done on Ms. Martin
23 during that particular evaluation. I don't know if an
24 evaluation has been done or not.

25 In this particular matter I would think it might

1 have been, but I don't have any evidence on it. I believe
2 the actual motion should be in the Court's file; however,
3 I have a copy of it here.

4 I think counsel --

5 THE COURT: Yes, I have turned back to that file
6 May 7th of 2008 --

7 MR. FAIRGRIEVE: Yes, ma'am --

8 THE COURT: -- was that the --

9 MR. FAIRGRIEVE: -- I believe that was the date
10 --

11 THE COURT: -- correct one?

12 MR. FAIRGRIEVE: -- of the omnibus.

13 THE COURT: All right, yes. And I do recall we
14 discussed that and essentially delayed on it --

15 MR. FAIRGRIEVE: Right, Your Honor, I believe
16 it's a discretionary ruling on the part of the Court, I
17 don't think it's mandatory. I think it's within the
18 Court's authority to grant such a request, but is not
19 required.

20 THE COURT: And response?

21 MR. MCDONALD: Yes, Your Honor, I have several.

22 First, the exchange of reciprocal discovery is,
23 of course, controlled by the court rule, in this case it's
24 4.7(h)(7)(i) or (1). We are required as part of the
25 defense to give up information to the State when three

1 things happen: number one, I intend to call a person as a
2 witness at trial; number two, if I have the -- intend to
3 call that witness if that witness is an expert and has
4 completed a final report that I intend to offer at trial;
5 and, number three, if I intend to offer impeachment of the
6 State's witness, if that information is in writing from
7 somewhere else.

8 Right now I am -- I've raised the notice of
9 intent to offer the defense of diminished capacity, which
10 triggers the State's ability to evaluate Ms. Martin. But
11 I have not given notice that I intend to call any
12 witnesses because potentially if the State's evaluation is
13 favorable to the defense then there may need -- be no need
14 to call anyone else.

15 So until I see that evaluation I can't make a
16 determination.

17 I do not have a final report or a final
18 evaluation from any expert at this particular time.

19 Once I have a final of -- and I think the case
20 law is pretty clear under the Supreme Court case of State
21 versus Hutchinson, which is 111 Wa 2d 872. I'm able and
22 required to give up any reports that I have that I intend
23 to offer through an expert witness, but until that becomes
24 a final report the Court doesn't have the ability to order
25 me to order my expert or any witness to create a report to

1 then give to the government. So there's really nothing
2 final to give to them at this time.

3 Moreover, I think that when the government is
4 evaluating Ms. Martin, they should do so based upon their
5 own set of testing and whatever information that they have
6 as anyone else would. So they'll take in Ms. Martin as
7 she is and make their determinations independent of
8 anything else.

9 So at this point there's really nothing to give
10 up.

11 If that changes, obviously I will immediately
12 notify Mr. Fairgrieve and give him copies in advance of
13 the trial date.

14 If the Court wants to set a cutoff date for me
15 to make that decision after the evaluation of Ms. Martin,
16 I'd be happy to comply with that date also.

17 THE COURT: Mr. Fairgrieve, response?

18 MR. FAIRGRIEVE: Well, Your Honor, I think that
19 the reason for -- or one of the reasons for Hutchinson and
20 there are two other cases State versus Hamlet and State
21 versus Lopez that the State cited to. I think one of the
22 reasons for the rulings in these cases was to provide
23 information upon which the State's expert can base his
24 opinion.

25 The experts in these types of evaluations take

1 into account often a fairly broad data base and one of the
2 things they certainly take into account are any prior
3 evaluations done by other experts in coming to their
4 opinion.

5 Now, I'm aware that a -- an increasingly common
6 defense tactic is to retain experts and then to counsel
7 them not to write any reports so that they can avoid their
8 discovery obligations in just such a situation.

9 So I would say to the Court, you know, if
10 counsel has actually received a preliminary oral ruling or
11 oral opinion from an expert that it's not difficult for
12 the expert to reduce to that to an actual report.

13 I think the question is, you know, we're looking
14 for an accurate evaluation of Ms. Martin's mental state at
15 the time that she's alleged to have committed these
16 offenses. Certainly the State's expert would be in a
17 better position to make that sort of a determination, if
18 he had access to any testing that's been done, certainly
19 testing closer to the event or interviews closer to the
20 event are probably more relevant on the issue of what the
21 defendant's mental state was, when she actually is alleged
22 to have committed these offenses.

23 So I think that, you know, for defense to come
24 forward and say, "Well, we haven't gotten a final report
25 in this matter," that may be accurate, but I would suggest

1 that the defense clearly is -- you know, if in fact the
2 defense has had the defendant evaluated, they've received
3 an oral preliminary report. That oral or preliminary
4 report could easily be reduced to writing and would be of
5 value to the evaluation -- or the evaluator who would
6 eventually do Ms. Martin's evaluation for the State.

7 So I would suggest to the Court that it's an
8 appropriate discovery request and it should be granted.
9 Thank you.

10 MR. MCDONALD: If I may, Your Honor, just to
11 quote you --

12 THE COURT: Mm-hmm.

13 MR. MCDONALD: -- paragraph from State versus
14 Hutchinson.

15 This is at page 877 so it would be 111 Wa 2nd 872
16 at 877. It says the clear language of the rule referring
17 back to the discovery rule does not authorize the trial
18 court to require the defendant's experts to prepare
19 written reports for the State, when they've not been
20 prepared for the defendant. So until I have -- until I
21 request a final draft or final report from a witness that
22 I intend to call then there's nothing for me to comply
23 with.

24 THE COURT: Well, counsel may have advised me
25 that this motion was going to be raised today, but I was

1 not aware of it so I have not reviewed the cases in
2 question here. And I know we've had some previous delays,
3 when the Court took something under advisement. I don't
4 want to do that again, but I'm afraid I would be very ill-
5 informed if I didn't read those cases. So I'll go ahead
6 and read the cases and then advise counsel of a ruling as
7 to the motion.

8 MR. MCDONALD: Would the Court like for me to --
9 I haven't filed a written response to Mr. --

10 THE COURT: I think I have the -- the substance
11 of it and Mr. Fairgrieve did cite the same cases is in his
12 memorandum --

13 MR. MCDONALD: Yeah.

14 THE COURT: -- so I have those citations.

15 MR. MCDONALD: I was just going to say that
16 under Hamlet -- the Hamlet case just deals with the
17 admissibility of evidence not necessarily the broad
18 discovery obligations with the defense. And Hutchinson I
19 still think is the, shall we say the mother lode case?

20 MR. FAIRGRIEVE: I think that's probably
21 accurate, Your Honor.

22 THE COURT: All right, well, I'll review those
23 and advise you further. Anything --

24 MR. FAIRGRIEVE: Thank you, Your Honor --

25 THE COURT: -- anything else --

1 MR. FAIRGRIEVE: -- and I apologize for not
2 bringing this matter --

3 THE COURT: -- for you?

4 MR. FAIRGRIEVE: -- to your attention.

5 THE COURT: Oh, no you may very well have and I
6 -- as I say we were tied up in trial. So I'll just take a
7 look at it.

8 MR. MCDONALD: Thank you, Your Honor.

9 MR. FAIRGRIEVE: Thank you, Your Honor.

10 THE COURT: All right, thank you. I'll keep the
11 file --

12 (Recess)

13

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APPENDIX E

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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.

SHERYL MARTIN

Defendant.

No. 07-1-01592-2

Declaration of John P. Fairgrieve

Declaration of John P. Fairgrieve

1. I am fifty-eight years old and I represented the State of Washington as a deputy prosecuting attorney in this case.
2. I declare: In 2007 I was employed as a senior deputy prosecuting attorney in the Clark County, Washington Prosecuting Attorney's Office. In September of 2007 I was assigned the case of State of Washington v. Sheryl Martin, No. 07-1-01592-5. Ms. Martin was charged with attempted murder in the first degree and assault in the first degree for shooting her husband multiple times on or about September 8, 2007.

On or about September 29, 2008 I was engaged in plea negotiations with Mr. McDonald and he told me he would talk to his client, find out what type of a plea offer she would accept, and get back to me on Wednesday of that week. See Attachment 1, a copy of

1 my notes dated September 29, 2008. Also on September 29, 2008 I met with Art Curtis,
2 the prosecuting attorney, and Dennis Hunter, the chief criminal deputy prosecuting
3 attorney. They authorized me to offer Ms. Martin the opportunity to plead guilty to assault
4 in the first degree with a deadly weapon enhancement and a recommendation by the
5 state of 153 months in prison. Ms. Martin was free to argue for an exceptional sentence
6 below the standard sentencing range. A copy of the offer is attached. See Attachment 2.
7

8 On October 4, 2008 Mr. McDonald sent me an e-mail indicating that he had discussed
9 the possibility of mutually acceptable pre-trial resolution with his client, and that she had
10 authorized him to send me a settlement proposal. See Attachment 3. I sent the offer to
11 defense attorney David McDonald on October 6, 2008. I documented both my
12 discussion with my superiors and sending the offer to Mr. McDonald in my chronological
13 notes in the case file. See Attachment 4. The offer expired on October 24, 2008.
14

15 On November 20, 2008 I appeared in court for a hearing in this case. Both the defendant
16 and Mr. McDonald were present. At that hearing I informed the court that the state had
17 made an offer and that the defendant had declined to accept it. Neither the defendant
18 nor Mr. McDonald disagreed with my characterization of what had occurred. See
19 Attachment 5, pp. 193-194. On November 24, 2008 I wrote an e-mail to Art Curtis and
20 Dennis Hunter where I told them that I have had a number of conversations with Mr.
21 McDonald and he told me his client was not willing to do more than about three years in
22 prison and has rejected the state's plea offer. See Attachment 6.
23

24 In summary, I engaged in extended plea negotiations with Mr. McDonald in this case,
25 including sending him a written offer. He told me he discussed the offer with the
26 defendant and that she refused the offer. I relayed this information to the trial court
27 during a hearing on November 20, 2008 during which both Mr. McDonald and the
28
29

1 defendant were present. Neither objected to the accuracy of the information I provided
2 the court.

3
4 I declare under penalty of perjury under the laws of the state of Washington that the facts I have
5 provided on this form and any attachments are true. I have attached 33 pages.

6
7 Signed at (city and state): Vancouver, WA Date: August 29, 2018

8
9 
10 _____
11 John P. Fairgrieve

Attachment 1

St v. Martin

9/29/08

Mtg w ADC, DH

o 3.5 / 3.6 results

- findings / conclusions

o Knopstad vs to att murder

o Defendant to decide on DC def

o o to get us what she would accept by way of this wk

Att murder 10

190 - 240

76 60

240 - 300

Att murder 20

92.75 - 165

60

152.75 - 245

Assault H

93 - 123

60

(153) 183

- mitigating

- except count

Assault 2

3 - 9

36

39 - 45

V status as of 2 wks ago -

- elbow still a problem - pass addl

surgery - staff infection

- on board, reluctant

- 5-6 yr range?

o Offer 11.5 yrs = 139 mos

Attachment 2



ARTHUR D. CURTIS
PROSECUTING ATTORNEY

CURT WYRICK
CHIEF DEPUTY

DENNIS M. HUNTER
CHIEF CRIMINAL DEPUTY

E. BRONSON POTTER
CHIEF CIVIL DEPUTY

SHARI JENSEN
ADMINISTRATOR

October 6, 2008

David T. McDonald
Attorney at Law
510 SW 3rd Ave, Suite 400
Portland OR 97204

RE: STATE OF WASHINGTON V. SHERYL JEAN MARTIN
Cause No. 07-1-01592-2

Dear Mr. McDonald:

I met with Art Curtis and Dennis Hunter last Monday to discuss this case and the issues that you and I had discussed on September 25. We also discussed the case more generally and decided to make the enclosed plea offer in the case.

Our impression is that this was a premeditated, intentional shooting. Your client's intent can be argued, but we feel that there is a strong inference from the act itself that she intended to kill the victim. Although your client has been a law abiding member of society throughout her life this does not change the fact that she shot her husband four times after finding out he had been unfaithful. The enclosed offer reflects the seriousness of her conduct.

The enclosed offer will expire on Friday, October 24, 2008 at the close of business. Please contact me if you have any questions.

Sincerely,

John P. Fairgrieve
Deputy Prosecuting Attorney

/CC
Enclosure

STATE OF WASHINGTON V. SHERYL JEAN MARTIN - CAUSE NO 07-1-01592-2

CLARK COUNTY PROSECUTING ATTORNEY'S OFFICE OFFER OF SETTLEMENT

TO: DEFENSE ATTORNEY DAVID T. MCDONALD, WSBA #18446
The defendant is charged with the following:

Table with 6 columns: Count, Charge, Score, Range, Enhancement, Total Range. Row 01: ATTEMPTED MURDER IN THE FIRST DEGREE, Score 0, Range 180-240, Enhancement 60, Total Range 240-300 months. Row 02: ASSAULT IN THE FIRST DEGREE, Score 0, Range 93-123, Enhancement 60, Total Range 153-183 months.

The state makes the following Offer of Settlement. In accepting this offer, the defendant is agreeing to stipulate to its terms, unless otherwise noted. It is based on the accompanying Declaration of Criminal History which the defendant acknowledges is accurate, true and complete and further that the resultant offender score calculations in this offer are correct. This offer may be withdrawn at any time prior to the entry of a guilty plea, or it otherwise expires on: October 24, 2008. It supersedes any previous offer made in this case. Failure of the defendant to declare disputed criminal history or to disclose additional criminal history or to dispute the resultant offender score calculations prior to any plea of guilty constitutes a breach of this agreement by the defendant.

If the defendant pleads guilty to the following, the State will recommend confinement, costs, conditions and supervision as outlined in this offer.

Table with 6 columns: Count, Charge, Score, Range, Enhancement, Total Range. Row 01: DISMISS. Row 02: ASSAULT IN THE FIRST DEGREE, Score 0, Range 93-123, Enhancement 60, Total Range 153-183 months.

- Options for plea conditions: In lieu of a plea, and as a condition precedent, the defendant must waive speedy trial and agree to a delay in setting the trial date, and the state will take the following action: Defendant may be referred to the CCPA Diversion Unit for screening on the above charges. The State will refer this case for Drug Court screening.

RECOMMENDATION AS TO CONFINEMENT

153 Days Months in Total Confinement, and Days Months Partial Confinement [days Work Crew; days Work Release], and Days Community Service (Eight (8) hours per day) Days with days suspended/deferred on a misdemeanor/gross misdemeanor

If the defendant does not qualify for partial confinement program(s), the recommendation will be for total confinement.

TERMS APPLICABLE TO ALL RECOMMENDATIONS

This offer includes credit for time served in custody solely on this case, up to the date of sentencing. It also includes standard conditions of supervision including reporting to DOC.

All recommendations include court costs of \$200.00; crime victim's compensations fee of \$500; fine of \$500; biological collection fee of \$100.00; appointed attorney's fees and related defense costs of restitution of or in an amount to be set by the court at a later date. The defendant agrees to pay restitution to victims of uncharged crimes contained in the discovery, and/or dismissed counts.

Other legal financial obligations include:

Drug Fund of Warrant Fees of Lab Fee of DV Penalty Assessment

Emergency Response Fee of Extradition Costs of Other of for

SUPERVISION

- First Offender Option with up to two years of supervision
- Community Custody for _____ months or for a range of 24 to 48 months.
- _____ Years of probation/supervision on misdemeanor/gross misdemeanor.

SPECIAL SENTENCE OPTIONS

- If recommended by PSI, the state will recommend/consider DOSA.

MANDATORY SENTENCE REQUIREMENTS

- No possession/use/ownership of firearms/surrender concealed pistol license
- Provide biological sample for DNA identification
- HIV testing
- Revocation/suspension of driver's license per RCW 46.20.285, RCW 69.50.420
- Register as Sex/Kidnapping Offender per RCW 9A.44.130 and RCW 10.01.200
- Domestic Violence Perpetrator's Program

OTHER CONDITIONS OF SUPERVISION

(This list is non-exclusive – the State is free to recommend other usual conditions)

- The defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections (DOC) and shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision/custody. The defendant shall receive permission from DOC prior to moving.
- Treatment for: substance abuse; mental health; anger control; other _____
- A chemical dependency screening report shall be ordered unless the defendant stipulates to having a chemical dependency that contributed to his/her offense.
- No contact with victim for 0 years.
- No violations of federal, state, or local criminal laws.
- Notify community corrections officer within 48 hours of any arrest or citation.
- No contact with other participants in the crime: _____
- Forfeiture of the following property: _____
- No use/ possession of alcohol and controlled substances. U/A and BA testing authorized.
- No possession of other people's identification.
- OTHER The defendant is free to argue for an exceptional sentence down below the the standard sentencing range. However, RCW 9.94A.540 requires a statutory mandatory minimum sentence of 60 months if the defendant used force or means likely to result in death or intended to kill the victim. Additionally the firearm enhancement runs consecutive to any underlying sentence and the State's position is that it is not subject to being reduced by the court as part of an exceptional sentence down.

If a defendant fails to appear for sentencing or commits any additional crimes before sentencing, but after a Statement of Defendant on Plea of Guilty is executed, it will be considered a breach of this agreement and the State will be free to make any recommendation(s) it deems appropriate.

John P. Fairgrieve
Deputy Prosecuting Attorney, WSBA #23107
Prosecutor's Offer of Settlement – 12/02 – Page 2
SHERYL JEAN MARTIN 07-1-01592-2

Date

1
2
3
4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

5 STATE OF WASHINGTON,
6 Plaintiff,
7 v.
8 SHERYL JEAN MARTIN,
Defendant

No. 07-1-01592-2

APPENDIX 2.2

DECLARATION OF CRIMINAL HISTORY

9 COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of
10 the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the
defendant has the following undisputed prior criminal convictions:

11

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
NO KNOWN FELONIES				

12
13

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

16 DATED this _____ day of December, 2007.

17 _____
18 Defendant

19 _____
20 David T. McDonald, WSBA#18446
Attorney for Defendant

John P. Fairgrieve, WSBA#23107
Deputy Prosecuting Attorney

21
22
23
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26
27
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29
DECLARATION OF CRIMINAL HISTORY
Revised 9/14/2000

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET
PO BOX 5000
VANCOUVER WA 98666-5000
(360) 397-2261

MURDER, FIRST DEGREE

**(RCW 9A.32.030)
CLASS A FELONY
SERIOUS VIOLENT**

(If sexual motivation finding/verdict for conspiracy or solicitation, use form on page III-16)

I. OFFENDER SCORING (RCW 9.94A.525(9))

ADULT HISTORY:

Enter number of serious violent felony convictions

x 3 =

Enter number of violent felony convictions

x 2 =

Enter number of nonviolent felony convictions

x 1 =

JUVENILE HISTORY:

Enter number of serious violent felony dispositions

x 3 =

Enter number of violent felony dispositions

x 2 =

Enter number of nonviolent felony dispositions

x ½ =

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of violent felony convictions

x 2 =

Enter number of nonviolent felony convictions

x 1 =

STATUS:

Was the offender on community placement on the date the current offense committed? (if yes),

+ 1 =

Total the last column To get the **Offender Score** (Round down To the nearest whole number)

II. SENTENCING RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL XV)	240 - 320 months	250 - 333 months	261 - 347 months	271 - 361 months	281 - 374 months	291 - 388 months	312 - 416 months	338 - 450 months	370 - 493 months	411 - 548 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).
- C. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 24 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-6 or III-7 to calculate the enhanced sentence.

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

ASSAULT, FIRST DEGREE

(RCW **9A.36.011**)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict for conspiracy or solicitation, use form on page III-16)

I. OFFENDER SCORING (RCW 9.94A.525(9))

ADULT HISTORY:

Enter number of serious violent felony convictions

x 3 =

Enter number of violent felony convictions

x 2 =

Enter number of nonviolent felony convictions

x 1 =

JUVENILE HISTORY:

Enter number of serious violent felony dispositions

x 3 =

Enter number of violent felony dispositions

x 2 =

Enter number of nonviolent felony dispositions

x ½ =

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other violent felony convictions

x 2 =

Enter number of nonviolent felony convictions

x 1 =

STATUS:

Was the offender on community placement on the date the current offense committed? (if yes),

+ 1 =

Total the last column To get the **Offender Score** (Round down To the nearest whole number)

II. SENTENCING RANGE

A. OFFENDER SCORE:

	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE (LEVEL XII)	93 - 123 months	102 - 136 months	111 - 147 months	120 - 160 months	129 - 171 months	138 - 184 months	162 - 216 months	178 - 236 months	209 - 277 months	240 - 318 months

B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.595).

C. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 24 to 48 months, or to the period of earned release, whichever is longer (RCW 9.94A.715).

D. Statutory minimum sentence is 60 months if the offender used force or means likely to result in death or intended to kill the victim (RCW 9.94A.540).

E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets in pages III-6 or III-7 to calculate the enhanced sentence.

• The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules

Attachment 3

Fairgrieve, John

From: David McDonald [david@mcdonaldpc.com]
Sent: Saturday, October 04, 2008 9:52 AM
To: Fairgrieve, John
Subject: State v. Martin

John:

Per our discussions, I sat down with my client and her family and discussed the possibility of attempting to come to mutually acceptable pre-trial resolution. I spoke with her on Friday and she has authorized me to send a proposal to you that outlines a settlement proposal. As you may recall, I begin a four week trial on Tuesday in federal court here in Portland. Yesterday at the status conference, the government seemed to believe that the case would be to the jury by October 31st but could be completed sooner. We shall see.

However, there are a couple of days that we are not in trial during the month due to the court's schedule and holidays so I will try and work on the settlement proposal during those times and attempt to get you something solid within the next three weeks.

This is also to confirm, as we previously discussed, that if we are unable to settle this matter, then I will be filing a notice of intent to rely on diminished capacity defense and you, I assume, will then want to have Ms. Martin evaluated and we will need to r/s the trial. I think it would be realistic to put the new date towards the end of January.

I am going to send you this information in a formal letter for your file but just wanted to give you a heads up as to what direction I think we are headed.

Best Regards,

David

David T. McDonald
David T. McDonald, P.C.
Courtroom Lawyer
Suite 400
510 SW Third Avenue
Portland, Oregon 97204
503-226-0188 (o)
503-226-1136 (f)
Admitted To Practice In Oregon and Washington
State and Federal Courts

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10/6/2008

Attachment 4

DEFENDANT: Masha, Sheryl DOB: 1 1

DATE	JUDGE	FILE NOTES
7/3/08		D/C w- C 3.5/3.6 oral argument JF
		mot to cont - granted ST waived
		New Trial 12/1/08
		Readiness 11/26/08 1:30
9/24/08		Mtg w- ADC & DH. Offer: Asst 1 JF + DW state rec low end 153 mess, D FTA for exceptional down, will make offer by Friday if D does not make an offer first.
10/6/08		Offer at JF
11/20/08	#6	D/C w- C mot to cont. granted. ST waived New Trial 3/9/09 Readiness 3/5/09
		Stakes motion for supplemental discovery
11/21/08		Sent order, info & reports to WSA. JF
2/19/09	#9	D/C w- C. motion to continue JF (joint) granted Trial 6/1/09 Readiness
5/21/09	#5	D/C w- C D motion to continue JF (not opposed) granted ST waived New trial 8/10/09 Readiness 8/6/09

Attachment 5

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

STATE OF WASHINGTON,) Court of Appeals
) No. 41588-7-II
)
Plaintiff,) Clark County
) Superior Court
v.) No. 07-1-01592-5
)
SHERYL JEAN MARTIN,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS

VOLUME 5

(Pages 191 - 205)

BE IT REMEMBERED that the above-entitled matter came on for hearing before the Honorable Barbara D. Johnson, Judge of the Circuit Court for the County of Clark, State of Washington, commencing on the 20th day of November, 2008.

Appearances:

Appearing in behalf of the Plaintiff
John P. Fairgrieve, Prosecuting Attorney

Appearing in behalf of the Defendant
David T. McDonald, Attorney at Law

TRANSCRIBED FROM ELECTRONIC RECORDING BY: **ANDERSON ASSISTANCE**
ROBYN M. ANDERSON **OFFICIAL TRANSCRIBER**
3351 SW REDFERN PLACE
GRESHAM, OREGON 97080 **(503) 618-9938**

GENERAL INDEX

VOLUME 5 - PROCEEDINGS OF NOVEMBER 20, 2008.....191
Pretrial Hearing/Scheduling.....191

1 November 20, 2008

2 (Judge Johnson)

3 3:08 p.m.

4 **P R O C E E D I N G S**

5 **PRETRIAL HEARING/SCHEDULING**

6 THE COURT: Thank you, please be seated.

7 MR. MCDONALD: Good afternoon, Your Honor.

8 THE COURT: Good --

9 MR. FAIRGRIEVE: Good afternoon --

10 THE COURT: -- afternoon -

11 MR. FAIRGRIEVE: -- Your Honor.

12 THE COURT: -- Mr. McDonald and certainly Mr.
13 Fairgrieve as well. And are we in agreement on the motion
14 here this afternoon as I understand?

15 MR. MCDONALD: Yes, Your Honor.

16 MR. FAIRGRIEVE: Yes, Your Honor. The State
17 doesn't object to it, it -- there's some background, but
18 there's no -- the State is not objecting, no, Your Honor.

19 THE COURT: Go ahead, Mr. McDonald.

20 MR. MCDONALD: It's pretty much set forth in the
21 motion we have given the State the notice that we're --
22 we'll be possibly raising the defense of diminished
23 capacity, which triggers the statute, which allows for the
24 State to an independent investigation and that includes an
25 evaluation.

1 Mr. Fairgrieve has prepared an order for the
2 Court to sign, I've reviewed it, it appears to comport
3 with the statutory requirements. As part of that order I
4 will be in contact and Western States will be in contact
5 with me so that we can orchestrate and coordinate an
6 appointment and get that evaluation completed. We don't
7 know the timing of it, but what we are suggesting is that
8 we set this case into January with the understanding that
9 if the evaluation is not completed by then and they have
10 not gotten the report to Mr. Fairgrieve that we would move
11 to do it, but we'd prefer to stay on a slower -- on a more
12 narrow track than a wider track, if that's appropriate
13 with the Court.

14 If you want to go longer, we would do that, but
15 we think that it might be better if we have the ability to
16 tell the people at Western that this is the timeframe for
17 the trial and therefore they should get this done.

18 THE COURT: And what's our current trial date
19 here, it's --

20 MR. MCDONALD: December 1st.

21 THE COURT: -- December 1st, all right -- yes, I
22 see that.

23 And, Mr. Fairgrieve, anything you wish to add?

24 MR. FAIRGRIEVE: Well, yes, Your Honor, I just
25 wanted to give the Court a little bit of an idea of the

1 background.

2 This case has been around for a while, as the
3 Court is aware.

4 In wake of the Court's 3.5 and 3.6 rulings on
5 this matter I think both the State and counsel had a
6 little bit better idea of what the nature of the evidence
7 that would probably be offered and admitted at trial was
8 going to be.

9 In wake of that, the State made an offer to the
10 defendant, a plea offer in this matter, which the
11 defendant has declined. I have had some discussions with
12 Mr. McDonald about, you know, possible negotiate a
13 settlement in this case. And I -- my impression is the
14 two parties are just too far apart in terms of their view
15 of the case at this point. So I'd say there's a high
16 probability that we'll proceed to trial, absent some
17 change in the circumstances that's not predictable right
18 now.

19 Counsel had some time ago indicated that, you
20 know, where are we going to be and this sort of posture
21 that they were considering a diminished capacity defense.
22 They hadn't made a -- my recollection from the omnibus
23 hearing is that they hadn't made a final decision at that
24 point.

25 I know counsel was waiting until after the

1 Court's ruling on the 3.5 and 3.6 issues to make that
2 decision. But apparently he has now, so certainly we'd
3 like to have Ms. Martin evaluated by an expert at
4 Washington State Hospital so we have a better idea of what
5 -- or we have an expert opinion on that issue, Your Honor.

6 THE COURT: Very well, then. I'll go ahead and
7 enter the order appointing psychiatric expert.

8 We have been -- had a considerable back log on
9 evaluations and so I'm looking at the form of the order
10 you have in mind that the defendant would be transported
11 to Clark County and that arrangements will be made with
12 counsel for that to take place and I'll just encourage you
13 to be proactive concerning that because we've had quite
14 some delays and difficulties in getting these evaluations
15 completed.

16 In connection then with the trial date, Ms.
17 Martin, you have previously waived your speedy trial
18 rights, do you understand those rights?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And do you wish to waive them again
21 to allow a continuance of your trial date?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And let me see I'll bring Donelle in

24 --

25 MR. MCDONALD: I apologize --

1 THE COURT: -- to --

2 MR. MCDONALD: -- for not getting a date in
3 advance, Your Honor.

4 THE COURT: Oh, no, that's all right. We were
5 in trial and so on and I probably would have also pursued
6 it.

7 We're looking to mid-January, would that be
8 correct, what we might have available --

9 MR. MCDONALD: Yes, Your Honor --

10 THE COURT: -- as trial date?

11 MR. MCDONALD: -- the only date -- I have bad
12 dates January 14th through 18th and the 23rd through the
13 25th. And I believe Mr. Fairgrieve is out of town at some
14 point and time in January.

15 MR. FAIRGRIEVE: Yes, I'm sorry, Your Honor, the
16 last week of January and the first week in February I'm on
17 active duty with the military.

18 THE COURT: Well, I don't know what we have.

19 MR. FAIRGRIEVE: Yeah, doesn't leave much --

20 THE COURT: May --

21 MR. FAIRGRIEVE: -- January.

22 THE COURT: -- eliminate January.

23 (Court/clerk confer)

24 THE COURT: What are our trial dates in January
25 do we have any?

1 THE CLERK: January 5, January 20 would be
2 available for three days and that's a Tuesday because of
3 Martin Luther King holiday and --

4 THE COURT: How many days do we anticipate,
5 counsel?

6 MR. FAIRGRIEVE: I'd say the State's case, Your
7 Honor, will probably take about two to two and a half
8 days. And then I'm a little unclear on defense case?

9 MR. MCDONALD: Probably I would say total of
10 four --

11 THE COURT: Mm-hmm.

12 MR. MCDONALD: -- to plan on --

13 THE COURT: Well, we would have January 5th
14 otherwise we -- it doesn't look like we'd have enough time
15 and would put us into March probably.

16 MR. MCDONALD: All right , let's do that. I
17 don't want to go to too far deep into March. Can we do it
18 the -- the -- do you have -- is the calendar -- the first
19 week of March available?

20 THE CLERK: The week of the 9th is open.

21 MR. FAIRGRIEVE: That's fine with the State --

22 MR. MCDONALD: That's --

23 MR. FAIRGRIEVE: -- Your Honor.

24 MR. MCDONALD: -- fine with me.

25 THE COURT: All right. And what did you wish to

1 make your commencement date on --

2 MR. MCDONALD: I've agreed with the State that
3 we'd make the commencement date the date of the trial. So
4 let's make it --

5 THE COURT: The trial date then --

6 MR. MCDONALD: -- March 9th.

7 THE COURT: -- all right. Then we'll make it
8 3/9 of '09 and is that acceptable to you, Ms. Martin?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right, I'll go ahead and fill
11 that in, sign the order for the waiver of speedy trial,
12 and we should have a new schedule and order here shortly.

13 MR. MCDONALD: And for the Court's information
14 on a different matter I'm probably -- and my apologies to
15 the Court for not having the opportunity to do the
16 findings based upon your ruling in September. But I will
17 do that and Mr. Fairgrieve and I will probably ask to cite
18 that back in for entry unless we're not -- if were not
19 able to agree on the findings themselves.

20 THE COURT: All right, very well. And I hand
21 down then the motion in order regarding the psychiatric
22 experts, the new scheduling order.

23 The rest I have here are copies.

24 MR. MCDONALD: And for the record, Your Honor,
25 we'll acknowledge receipt of a new scheduling order

1 showing a readiness of 3/5/09 at 1:30 and 3/9/09 at nine
2 o'clock, I have signed it and Ms. Martin has also signed
3 it.

4 THE COURT: All right, thank you.

5 MR. FAIRGRIEVE: I'm sorry, Your Honor --

6 THE COURT: Oh --

7 MR. FAIRGRIEVE: -- there's just --

8 THE COURT: -- was there any other matter --

9 MR. FAIRGRIEVE: -- one other matter.

10 THE COURT: Oh, I'm sorry.

11 MR. FAIRGRIEVE: Thank you. Your Honor, at the
12 time that we did the omnibus hearing in this matter, which
13 was back in May the State had filed, I believe, a motion
14 for additional or supplement discovery, that had
15 specifically to do with information from the defense
16 concerning whether they've had Ms. Martin evaluated by a
17 defense psychiatric or psychological expert.

18 The State's motion basically is -- it's asking
19 that the defense be ordered to provide the State with any
20 of that type of information, specifically any sort of
21 evaluations, copies of evaluations, or documentation,
22 respecting tests that may have been done on Ms. Martin
23 during that particular evaluation. I don't know if an
24 evaluation has been done or not.

25 In this particular matter I would think it might

1 have been, but I don't have any evidence on it. I believe
2 the actual motion should be in the Court's file; however,
3 I have a copy of it here.

4 I think counsel --

5 THE COURT: Yes, I have turned back to that file
6 May 7th of 2008 --

7 MR. FAIRGRIEVE: Yes, ma'am --

8 THE COURT: -- was that the --

9 MR. FAIRGRIEVE: -- I believe that was the date
10 --

11 THE COURT: -- correct one?

12 MR. FAIRGRIEVE: -- of the omnibus.

13 THE COURT: All right, yes. And I do recall we
14 discussed that and essentially delayed on it --

15 MR. FAIRGRIEVE: Right, Your Honor, I believe
16 it's a discretionary ruling on the part of the Court, I
17 don't think it's mandatory. I think it's within the
18 Court's authority to grant such a request, but is not
19 required.

20 THE COURT: And response?

21 MR. MCDONALD: Yes, Your Honor, I have several.

22 First, the exchange of reciprocal discovery is,
23 of course, controlled by the court rule, in this case it's
24 4.7(h)(7)(i) or (1). We are required as part of the
25 defense to give up information to the State when three

1 things happen: number one, I intend to call a person as a
2 witness at trial; number two, if I have the -- intend to
3 call that witness if that witness is an expert and has
4 completed a final report that I intend to offer at trial;
5 and, number three, if I intend to offer impeachment of the
6 State's witness, if that information is in writing from
7 somewhere else.

8 Right now I am -- I've raised the notice of
9 intent to offer the defense of diminished capacity, which
10 triggers the State's ability to evaluate Ms. Martin. But
11 I have not given notice that I intend to call any
12 witnesses because potentially if the State's evaluation is
13 favorable to the defense then there may need -- be no need
14 to call anyone else.

15 So until I see that evaluation I can't make a
16 determination.

17 I do not have a final report or a final
18 evaluation from any expert at this particular time.

19 Once I have a final of -- and I think the case
20 law is pretty clear under the Supreme Court case of State
21 versus Hutchinson, which is 111 Wa 2d 872. I'm able and
22 required to give up any reports that I have that I intend
23 to offer through an expert witness, but until that becomes
24 a final report the Court doesn't have the ability to order
25 me to order my expert or any witness to create a report to

1 then give to the government. So there's really nothing
2 final to give to them at this time.

3 Moreover, I think that when the government is
4 evaluating Ms. Martin, they should do so based upon their
5 own set of testing and whatever information that they have
6 as anyone else would. So they'll take in Ms. Martin as
7 she is and make their determinations independent of
8 anything else.

9 So at this point there's really nothing to give
10 up.

11 If that changes, obviously I will immediately
12 notify Mr. Fairgrieve and give him copies in advance of
13 the trial date.

14 If the Court wants to set a cutoff date for me
15 to make that decision after the evaluation of Ms. Martin,
16 I'd be happy to comply with that date also.

17 THE COURT: Mr. Fairgrieve, response?

18 MR. FAIRGRIEVE: Well, Your Honor, I think that
19 the reason for -- or one of the reasons for Hutchinson and
20 there are two other cases State versus Hamlet and State
21 versus Lopez that the State cited to. I think one of the
22 reasons for the rulings in these cases was to provide
23 information upon which the State's expert can base his
24 opinion.

25 The experts in these types of evaluations take

1 into account often a fairly broad data base and one of the
2 things they certainly take into account are any prior
3 evaluations done by other experts in coming to their
4 opinion.

5 Now, I'm aware that a -- an increasingly common
6 defense tactic is to retain experts and then to counsel
7 them not to write any reports so that they can avoid their
8 discovery obligations in just such a situation.

9 So I would say to the Court, you know, if
10 counsel has actually received a preliminary oral ruling or
11 oral opinion from an expert that it's not difficult for
12 the expert to reduce to that to an actual report.

13 I think the question is, you know, we're looking
14 for an accurate evaluation of Ms. Martin's mental state at
15 the time that she's alleged to have committed these
16 offenses. Certainly the State's expert would be in a
17 better position to make that sort of a determination, if
18 he had access to any testing that's been done, certainly
19 testing closer to the event or interviews closer to the
20 event are probably more relevant on the issue of what the
21 defendant's mental state was, when she actually is alleged
22 to have committed these offenses.

23 So I think that, you know, for defense to come
24 forward and say, "Well, we haven't gotten a final report
25 in this matter," that may be accurate, but I would suggest

1 that the defense clearly is -- you know, if in fact the
2 defense has had the defendant evaluated, they've received
3 an oral preliminary report. That oral or preliminary
4 report could easily be reduced to writing and would be of
5 value to the evaluation -- or the evaluator who would
6 eventually do Ms. Martin's evaluation for the State.

7 So I would suggest to the Court that it's an
8 appropriate discovery request and it should be granted.
9 Thank you.

10 MR. MCDONALD: If I may, Your Honor, just to
11 quote you --

12 THE COURT: Mm-hmm.

13 MR. MCDONALD: -- paragraph from State versus
14 Hutchinson.

15 This is at page 877 so it would be 111 Wa 2nd 872
16 at 877. It says the clear language of the rule referring
17 back to the discovery rule does not authorize the trial
18 court to require the defendant's experts to prepare
19 written reports for the State, when they've not been
20 prepared for the defendant. So until I have -- until I
21 request a final draft or final report from a witness that
22 I intend to call then there's nothing for me to comply
23 with.

24 THE COURT: Well, counsel may have advised me
25 that this motion was going to be raised today, but I was

1 not aware of it so I have not reviewed the cases in
2 question here. And I know we've had some previous delays,
3 when the Court took something under advisement. I don't
4 want to do that again, but I'm afraid I would be very ill-
5 informed if I didn't read those cases. So I'll go ahead
6 and read the cases and then advise counsel of a ruling as
7 to the motion.

8 MR. MCDONALD: Would the Court like for me to --
9 I haven't filed a written response to Mr. --

10 THE COURT: I think I have the -- the substance
11 of it and Mr. Fairgrieve did cite the same cases is in his
12 memorandum --

13 MR. MCDONALD: Yeah.

14 THE COURT: -- so I have those citations.

15 MR. MCDONALD: I was just going to say that
16 under Hamlet -- the Hamlet case just deals with the
17 admissibility of evidence not necessarily the broad
18 discovery obligations with the defense. And Hutchinson I
19 still think is the, shall we say the mother lode case?

20 MR. FAIRGRIEVE: I think that's probably
21 accurate, Your Honor.

22 THE COURT: All right, well, I'll review those
23 and advise you further. Anything --

24 MR. FAIRGRIEVE: Thank you, Your Honor --

25 THE COURT: -- anything else --

1 MR. FAIRGRIEVE: -- and I apologize for not
2 bringing this matter --

3 THE COURT: -- for you?

4 MR. FAIRGRIEVE: -- to your attention.

5 THE COURT: Oh, no you may very well have and I
6 -- as I say we were tied up in trial. So I'll just take a
7 look at it.

8 MR. MCDONALD: Thank you, Your Honor.

9 MR. FAIRGRIEVE: Thank you, Your Honor.

10 THE COURT: All right, thank you. I'll keep the
11 file --

12 (Recess)

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Attachment 6

Fairgrieve, John

From: Fairgrieve, John
Sent: Monday, November 24, 2008 10:18 AM
To: Curtis, Art; Hunter, Dennis
Subject: St v Sheryl Martin, No. 07-1-01592-2

Art and Denny:

This is the case involving the woman who shot her husband multiple times after finding out he was cheating on her. Pursuant to our conversation about this case I made an offer to the defense in early October of Assault 1 with a firearm enhancement and a recommendation of 153 months, the low end of the range. I have had a number of conversations with David McDonald and he has told me his client is not willing to do more than about three years in prison, and has rejected our offer.

We were in court last Thursday for review, and the defense told the court that it may rely on a diminished capacity defense. I then moved for a diminished capacity evaluation by WSH, and also moved for disclosure of any existing psychological evaluations done of the defendant by the defense. Judge Johnson reserved on discovery request. The defense also moved for an additional continuance, which was granted. Although both parties asked for a January trial setting the trial was reset for March 9. My impression is that this is a pretty firm trial date at this point, and that this case will go to trial. While the defense does not have any fact witnesses it apparently plans on calling a series of what appear to be character witnesses. I will attempt to get Judge Johnson to exclude most of this testimony at a pre-trial hearing.

John

John P. Fairgrieve
Senior Deputy Prosecuting Attorney
Team Leader, Major Crimes Unit
Clark County Prosecuting Attorney's Office
1013 Franklin St., P.O. Box 5000
Tacoma, WA 98666
(t) 360.397.2261 x4923
(f) 360.759.5370
(e) john.fairgrieve@clark.wa.gov

APPENDIX F

FILED

OCT 25 2010

1:00
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

SHERYL JEAN MARTIN,

Defendant.

No. 07-1-01592-2

VERDICT

We, the jury, find the above-named defendant, GUILTY
WRITE IN "GUILTY" OR "NOT GUILTY"

of the crime of **ATTEMPTED MURDER IN THE FIRST DEGREE.**

DATED this 25 day of OCTOBER, 2010.

Swara Johnson
PRESIDING JUROR

Jury polled
12-0

164
AS

FILED
OCT 25 2010
1:00
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

SHERYL JEAN MARTIN,

Defendant.

No. 07-1-01592-2

SPECIAL VERDICT FORM – FIREARM

We, the jury, return a special verdict by answering as follows:

QUESTION: Was the defendant Sheryl Jean Martin armed with a firearm at the time of the commission of the crime of Attempted Murder in the First Degree?

ANSWER: YES (Write "yes" or "no")

DATED this 25 day of OCTOBER, 2010.

Swan Johnson
PRESIDING JUROR

Jury polled
12-0

165
AS

FILED

OCT 25 2010

1:50
Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

SHERYL JEAN MARTIN,

Defendant.

No. 07-1-01592-2

VERDICT

We, the jury, find the above-named defendant, GUILTY
WRITE IN "GUILTY" OR "NOT GUILTY"

of the crime of **ASSAULT IN THE FIRST DEGREE.**

DATED this 25 day of OCTOBER, 2010.

Swan Johnson
PRESIDING JUROR

Jury polled
12-0

1164
AS

FILED

OCT 25 2010

Sherry W. Parker, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

SHERYL JEAN MARTIN,

Defendant.

No. 07-1-01592-2

SPECIAL VERDICT FORM -- FIREARM

We, the jury, return a special verdict by answering as follows:

QUESTION: Was the defendant Sheryl Jean Martin armed with a firearm at the time of the commission of Assault in the First Degree?

ANSWER: YES (Write "yes" or "no")

DATED this 25 day of OCTOBER, 2010.

Swan Johnson
PRESIDING JUROR

Jury polled
12-0

167
AS

CLARK COUNTY PROSECUTING ATTORNEY

September 25, 2018 - 8:17 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51904-6
Appellate Court Case Title: Personal Restraint Petition of Sheryl Jean Martin
Superior Court Case Number: 07-1-01592-2

The following documents have been uploaded:

- 519046_Personal_Restraint_Petition_20180925081557D2898028_9840.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:

- ellis_jeff@hotmail.com
- jeffreyerwinellis@gmail.com

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