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Court of Appeals No. _____

In the
Court of Appeals for the State of Washington
Division Two

In Re the Personal Restraint of:

LA'JUANTA L. CONNER,

Petitioner.

**PERSONAL RESTRAINT PETITION WITH LEGAL ARGUMENT
AND AUTHORITIES**

Kitsap County Superior Court No. 11-1-00435-8

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TABLE OF CONTENTS

I. STATUS OF PETITIONER..... 1

II. GROUNDS FOR RELIEF 1

III. STATEMENT OF THE CASE 2

A. PROCEDURAL BACKGROUND..... 2

B. RESENTENCING ON REMAND..... 4

C. MR. CONNER’S CRR 7.8 MOTION. 10

D. RETURN TO THE APPELLATE COURT FOLLOWING
RESENTENCING..... 11

E. NEW EVIDENCE REGARDING MR. LONGACRE’S
REPRESENTATION. 12

IV. STANDARD OF REVIEW 16

V. ARGUMENTS AND AUTHORITY 18

A. NEW EVIDENCE ESTABLISHES THAT MR. CONNER
RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.
18

1. Mr. Conner was deprived of effective assistance of counsel. 19

2. Mr. Conner’s claim of ineffective assistance is timely raised and
supported by good cause..... 25

3. The appropriate remedy is to direct the State to reoffer the 150
month plea offer on remand..... 27

4. Alternatively, Mr. Conner was deprived effective assistance of
counsel when his trial counsel on remand and/or appellate counsel
failed to investigate and raise the foregoing issue within one year of
the initial appellate court mandate..... 28

B. THE SENTENCING COURT ABUSED ITS DISCRETION IN
FAILING TO MEANINGFULLY CONSIDER MR. CONNER’S
YOUTH WHEN IMPOSING HIS SENTENCE 29

C. THE SENTENCING COURT ABUSED ITS DISCRETION
AND/OR VIOLATED MR. CONNER’S CONSTITUTIONAL RIGHTS
IN FAILING TO CONSIDER CONCURRENT IMPOSITION OF THE
FIREARM ENHANCEMENTS..... 35

1. Mandatory consecutive imposition of Mr. Conner’s firearm
enhancements violated his Eighth Amendment rights. 35

2. Mandatory consecutive imposition of Mr. Conner’s firearm enhancements violated his Article I, Section 14 rights.	37
3. Mandatory consecutive imposition of Mr. Conner’s firearm enhancements constituted an abuse of discretion under McFarland and the Concurring Opinion in Houston-Sconiers.	40
D. MR. CONNER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING ON REMAND.....	44
E. THE TRIAL COURT ERRED IN CONCLUDING IT LACKED DISCRETION TO CONDUCT A SAME CRIMINAL CONDUCT ANALYSIS.	46
F. THE TRIAL COURT ERRED IN IMPOSING 13 FIREARM ENHANCEMENTS	48
G. MR. CONNER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL	49
V. CONCLUSION	50

TABLE OF AUTHORITIES

Cases

<u>Graham v. Florida</u> , 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)	32
<u>Hews v. Evans</u> , 99 Wn.2d 80, 660 P.2d 263 (1983)	17
<u>In re Bar App. of Simmons</u> , 190 Wash. 2d 374, 414 P.3d 1111 (2018) ...	23
<u>In re Brown</u> , 143 Wn.2d 431, 21 P.3d 687 (2001).....	49
<u>In re Cashaw</u> , 123 Wash.2d 138, 866 P.2d 8 (1994)	17
<u>In Re Discipline of Longacre</u> , 155 Wn.2d 723, 122 P.3d 710 (2005)	13
<u>In re Jeffries</u> , 114 Wn.2d 485, 789 P.2d 731 (1990).....	18
<u>In re Monschke</u> , 160 Wn. App. 479, 251 P.3d 884 (2010).....	16, 17
<u>In re Pers. Restraint of Davis</u> , 152 Wash.2d 647, 672, 101 P.3d 1 (2004)	16
<u>In re Pers. Restraint of Gentry</u> , 170 Wash.2d 711, 714-15, 245 P.3d 766 (2010)	17
<u>In re Pers. Restraint of Johnson</u> , 131 Wn.2d 558, 933 P.2d 1019 (1997).	18
<u>In re Pers. Restraint of Light-Roth</u> , 200 Wash. App. 149, 401 P.3d 459 (2017), <i>review granted</i> , 189 Wash. 2d 1030, 408 P.3d 1094 (2017) ...	30, 33, 43
<u>In re Pers. Restraint of Martinez</u> , 171 Wn.2d 354, 256 P.3d 277 (2011)	18, 26
<u>In re Pers. Restraint of Mulholland</u> , 161 Wn.2d 322, 166 P.3d 677 (2007)	41
<u>In re Pierce</u> , 173 Wn.2d 372, 377, 268 P.3d 907, 909 (2011)	16, 17
<u>In re Turner</u> , 74 Wn. App. 596, 875 P.2d 1219 (1994).....	17

<u>In re Yates</u> , 177 Wn.2d 1, 296 P.3d 872 (2013)	17
<u>Lafler v. Cooper</u> , 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012)	19, 20, 27, 28
<u>Miller v. Alabama</u> , 567 U.S. 460, 132 S. Ct. 2455 (2012)	32, 37
<u>Missouri v. Frye</u> , 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012)	20
<u>Roper v. Simmons</u> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)	32
<u>State v. A.N.J.</u> , 168 Wn.2d 91, 225 P.3d 956 (2010)	20, 22, 24
<u>State v. Bunker</u> , 144 Wn. App. 407, 183 P.3d 1086 (2008), aff'd, 169 Wn.2d 571, 238 P.3d 487 (2010)	40, 47
<u>State v. Chenoweth</u> , 185 Wash. 2d 218, 370 P.3d 6 (2016)	48
<u>State v. Edwards</u> , 171 Wn. App. 379, 294 P.3d 708 (2012)	21
<u>State v. Estes</u> , 188 Wash. 2d 450, 395 P.3d 1045 (2017)	21, 22, 25
<u>State v. Fain</u> , 94 Wn.2d 387, 397, 617 P.2d 720 (1980).....	39, 40
<u>State v. French</u> , 157 Wn.2d 593, 141 P.3d 54 (2006).....	47
<u>State v. Ha'mim</u> , 132 Wn.2d 834, 940 P.2d 633 (1997)	31
<u>State v. James</u> , 48 Wash. App. 353, 739 P.2d 1161 (1987).....	21
<u>State v. Jones</u> , 183 Wn.2d 327, 352 P.3d 776 (2015).....	19
<u>State v. Law</u> , 154 Wash.2d 85, 94, 110 P.3d 717 (2005).	30, 31
<u>State v. Manussier</u> , 129 Wash. 2d 652, 921 P.2d 473, 483 (1996).....	38
<u>State v. Maynard</u> , 183 Wash. 2d 253, 351 P.3d 159 (2015).....	27
<u>State v. Moretti</u> , No. 47868-4-II, at *16 (Wash. Ct. App. Oct. 31, 2017).	37, 39

<u>State v. O'Dell</u> , 183 Wn.2d 680 358 P.3d 359 (2015) . 6, 7, 8, 9, 10, 29, 30, 31, 32, 33, 37, 38, 39, 40, 43, 44, 45, 46	
<u>State v. Phuong</u> , 174 Wn. App. 494, 299 P.3d 37 (2013).....	44
<u>State v. Ronquillo</u> , 190 Wn. App. 765, 361 P.3d 779 (2015),.....	31
<u>State v. Thorne</u> , 129 Wn.2d 736, 921 P.2d 514 (1996)	38
<u>State v. Tili</u> , 139 Wn.2d 107, 985 P.2d 365 (1999)	48
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)	19, 21
<u>United States v. Morrison</u> , 449 U.S. 361, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981)	27

Statutes

RCW 10.73.100	26, 27
RCW 13.40.300	27
RCW 9.41.040	41, 42
RCW 9.94A.533.....	36, 39, 40, 42
RCW 9.94A.589.....	41, 43
RCW 92A.52.050.....	47

Rules

CrR 7.8.....	10, 11, 12
RAP 16.11.....	17
RAP 16.4.....	1, 16, 17
RAP 16.7.....	17

Constitutional Provisions

U.S. Const. Amend. VI 19, 27
Wash. Const. Art. I, § 14 37, 39, 40
Wash. Const. Art. I, § 22 19

Secondary Sources

MIT Young Adult Development Project: Brain Changes, Mass. Inst. of
Tech., <http://hrweb.mit.edu/worklife/youngadult/brain.html> (last visited
Aug. 4, 2015)..... 33
Terry A. Maroney, The False Promise of Adolescent Brain Science in
Juvenile Justice, 85 Notre Dame L. Rev. 89, 152 & n.252 (2009) 33

I. STATUS OF PETITIONER

La' Juanta L. Conner ("Mr. Conner") is currently in the custody of the Department of Corrections, serving an effective life sentence of 1,148.5 months (95.7 years) for one count of Conspiracy to Commit First Degree Burglary, five counts of First Degree Burglary, eight counts of First Degree Robbery, four counts of Second Degree Theft, and one count of Theft of a Firearm. Thirteen of these offenses carried firearm enhancements, contributing a total of 780 months (65 years) to his sentence.

II. GROUNDS FOR RELIEF

Mr. Conner's continued restraint is unlawful because his convictions and sentence violate the Constitutions of the United States and Washington and the laws of the State of Washington. RAP 16.4(c)(2). Mr. Conner seeks relief from his restraint on the basis of the following legal claims:

GROUND ONE: Mr. Conner's convictions and sentence are unlawful and unconstitutional because he was deprived effective assistance of trial counsel in light of counsel's failure to competently advise and represent Mr. Conner in the plea bargaining process.

GROUND TWO: Alternatively to ground one, Mr. Conner's trial and appellate counsel following remand were ineffective for failing to investigate and raise the issue of ineffectiveness in plea bargaining within one year of the mandate following the first appellate order.

GROUND TWO: Mr. Conner's sentence is unlawful because the trial court erred in failing to meaningfully consider Mr. Conner's youth as a

mitigating factor upon resentencing. Because this error has resulted in a miscarriage of justice, Mr. Conner should be resentenced.

GROUND THREE: Mr. Conner's sentence is unlawful and unconstitutional because the sentencing court failed to consider running the firearm sentencing enhancements concurrently to the base sentence. Justice requires that Mr. Conner be resentenced in light of changes in law in this respect as well.

GROUND FOUR: Mr. Conner's sentence is unlawful and unconstitutional because his trial counsel on remand was ineffective for failing to present evidence supporting his request for a downward exceptional sentence on the basis of Mr. Conner's youth as a mitigating factor.

GROUND FIVE: Mr. Conner's sentence is unlawful because the court abused its discretion on remand in failing to conduct a same criminal conduct analysis.

GROUND SIX: Mr. Conner's sentence is unlawful because the court on remand violated the appellate court's mandate by imposing 13 firearm enhancements, instead of 12.

GROUND SEVEN: Mr. Conner's sentence is unlawful and unconstitutional because his appellate counsel following resentencing was ineffective for failing to appeal the issues of (1) whether the trial court erred in failing to impose an exceptional sentence based on the mitigating factor of youth; (2) whether the trial court erred in failing to consider concurrent imposition of the firearm enhancements; (3) whether trial counsel was ineffective for failing to put on evidence of Mr. Conner's youth at sentencing; and (4) whether the trial court erred in failing to treat various offenses as comprising the same criminal conduct.

III. STATEMENT OF THE CASE

A. Procedural Background.

On June 8, 2011, the Kitsap County Prosecuting Attorney charged appellant La'Juanta Conner with conspiracy to commit first degree

burglary and first degree robbery, and second degree unlawful possession of a firearm. *See App., Attach. "A,"* Information. The information was amended twice before trial and Conner went to trial on 26 counts, all arising from a series of home invasions occurring between September and November 2010. *See App., Attach. "B,"* Second Amended Information. The State alleged that Conner was armed with a firearm during the burglaries and robberies. *Id.* At trial, the jury found Mr. Conner guilty of 24¹ of the charged offenses, and that firearm enhancements applied to 13 of those offenses. *See App., Attach. C,* J. and Sentence. On July 27, 2012, the Kitsap County Superior Court sentenced Mr. Conner to an effective life sentence of 1,148.5 months (95.7 years) in prison. *Id.* The sentence included 14 60-month firearm enhancements. *Id.*

Mr. Conner was 21 years old at the time of these offenses, and his criminal history consisted of only one prior conviction for first degree theft. *Attach. C* at 1, 5. Following sentencing, Mr. Conner appealed from his conviction and sentence on multiple grounds. *See App., Attach. "D,"* June 4, 2015, Unpublished Opinion at 1. In addition to the issues raised in

¹ The 24 convictions consisted of one count of conspiracy to commit burglary in the first degree, two counts of unlawful possession of a firearm in the second degree, two counts of possession of a stolen firearm, eight counts of robbery in the first degree, five counts of burglary in the first degree, four counts of theft in the second degree, one count of theft in the third degree, and one count of theft of a firearm. *Attach. C.*

the appellate brief, Mr. Conner also submitted a *pro se* statement of additional grounds and a personal restraint petition. Id. at 1-2.

In adjudicating the direct appeal, statement of additional grounds, and first personal restraint petition, the Court vacated one count of third degree theft on double jeopardy grounds, and also vacated one firearm enhancement that was not proven. Id. at 2. The Court further determined that the trial court erred in allowing the State to bring a preemptory challenge to a juror after she was sworn in, and in giving a missing witness instruction. Id. at 2. However, the Court determined that these errors were harmless because “[*t*]he record contains overwhelming evidence of Conner's guilt” and there was no showing that the improper use of the preemptory challenge resulted in prejudice. Id. at 10, 16 (emphasis added). The Court affirmed the remaining 23 convictions and remanded for resentencing on these convictions and on twelve remaining firearm enhancements. Id. at 2. The appellate court mandate issued on February 1, 2016.

B. Resentencing on remand.

On remand, Mr. Conner’s counsel moved to continue the resentencing hearing twice, in response to which the court reset the hearing for May 18, 2016. *See App., Attach. “E,”* Case Docket. In his second motion to continue, dated August 3, 2015, Mr. Conner’s counsel

sought a continuance “in order to allow counsel sufficient time to prepare factual and legal arguments against the de facto sentence of life in prison without possibility of release that Mr. Conner is facing for property and gun crimes that did not invoke actual physical injury to any person.” *See App., Attach. “F,”* 2nd Mot. to Cont. Counsel further noted that a case was pending before the Supreme Court of Washington that could allow for downward exceptional sentences on the basis of a defendant’s youth. *Id.* He specifically requested additional time to research factual and legal issues related to various same criminal conduct and double jeopardy theories regarding the 23 convictions that remained. *Id.*

With respect to the issue of downward exceptional sentences for youthful offenders, counsel advised “I have been working diligently to research these factual and legal issues” and that “I would be seeking public funds for an expert witness to assess any developmental issues that may exist as they relate to arguments at sentencing,” referring to the issue of whether Mr. Conner may have diminished culpability as a result of his age at the time of the offenses. *Id.*

On March 25, 2016, some seven months following the Second Motion to Continue, and an hour before the thrice rescheduled resentencing hearing, defense counsel submitted a two and a half page Sentencing Memorandum. *See App., Attach. “G,”* Sentencing Mem. In his

memorandum, counsel argued that, pursuant to State v. O’Dell, 183 Wn.2d 680, 358 P.3d 359 (2015), Mr. O’Conner is entitled to a downward exceptional sentence based on his youth. *Id.* Defense counsel further argued for a downward exceptional sentence on the grounds that the degree of Mr. Conner’s culpability was less than that of his co-defendants and an effective life sentence would be disproportional. *Id.* Defense counsel also argued that the burglary and robbery convictions were the “same criminal conduct,” for purposes of sentencing. *Id.*

An hour after the filing of the memorandum, the parties appeared before the trial court for resentencing. *See App., Attach. “H,”* 03.25.2016 Resentencing VRP (“RP,” hereinafter). Mr. Conner’s counsel began the hearing by apologizing to the court for failing to appear for the hearing originally scheduled for March 18, 2016, and for filing his sentencing memorandum late, stating “there’s no specific rule that says when it needs to be in, but an hour before the hearing is not enough -- early enough.” RP 6-7. He added “there are very serious issues here at play, as I’ve written not too -- not too eloquently perhaps, but just pretty much bare bones”, which he indicated was unfortunate because “my client is looking at literally the rest of his life in prison if things go the way they are appearing.” RP 7. He also advised that he was not asking for a

continuance, but he would not object if the State wanted one in light of his light filing. RP 6.

Turning to the substantive issue of sentencing, defense counsel began by advising the court that the prosecutor “says again, quite reasonably, that the Court should and certainly may simply impose the sentence that the Court imposed last time. For the record, *I don't disagree.*” RP 10 (emphasis added).

In discussing the implications of the O'Dell opinion, counsel noted “for the record, for the Court's benefit, I discussed with Counsel the luxury that I have today of not being bound, if we're in a civil case, by Rule 11,” adding “I can make arguments that perhaps an inquiry that I spent more time on may -- if there are things that – if I'm wrong, I'm able to be wrong without fear of sanctions because of the potential chilling effect that that would have.” RP 10-11.

The court interjected at this point and invited counsel “to articulate for the record not just that [youth as a mitigating factor] exists in general [...] But how specifically there was evidence presented to the Court that would indicate that Mr. Conner fits within that criteria.” RP 11. Counsel proceeded to advise in response that he had contemplated obtaining an expert witness to testify on the issue of the role Mr. Conner's youth may have played in the commission of the offenses, but advised “candidly, I

don't have that, Your Honor.” RP 11-12. In lieu of this expert testimony, counsel stated to the court “I fear the Court cannot take judicial notice of it, but the fact that cognitively, all of our brains physically are still developing until we're in our mid-20s.” RP 12. In then requesting the downward exceptional sentence, counsel informed the court “I'll be explicit in acknowledging I'm thinking on my feet here,” before asserting “I think even the O'Dell case allows the Court to consider simply my client's youth without any specific evidence.” RP 12. He then apologized for the statement thereafter, stating “I don't mean to be churlish or presumptuous by saying that,” before again stating that the court can impose a downward exceptional sentence simply on the strength of the fact that he was 21 years old.” RP 12.

In further arguing that the effective life sentence was disproportionate and for application of the anti-merger statute to remove some of the firearm enhancements, counsel again advised he was “continuing to think on [his] feet,” and that he was merely an attorney, “not a scholar.” RP 12-13. With respect to the disproportionality argument, counsel conceded that “there's a reasonable argument that these sentences are proportional.” RP 13. With respect to the anti-merger argument, counsel went through the various incidents charged and argued that various offenses occurring in the course of the incidents should merge

for sentencing purposes. RP 14-15. The court again interjected, stating the court of appeals already “directly addressed [and rejected] the issue of same criminal conduct and double jeopardy in their opinion.” RP 15-16.

The State in response advised that it was not familiar with the O’Dell opinion, but that it would not apply because Mr. Conner was “of age” at the time of the offenses. RP 21. Mr. Conner then spoke, lamenting the fact that his co-defendants received substantially lower sentences for the same conduct, and adding that “[i]f [original trial counsel] said, ‘Mr. Conner, you’re looking at 65 years and gun enhancements, period,’ I would have asked for a deal, period,” and “[t]here’s no way I would have went to trial, knowing I’m looking at life in prison, guilty or not guilty, period.” RP 24-25. Defense counsel did not call any further witnesses or make any kind of factual record supporting his requests for a downward exceptional sentence, beyond his own arguments and Mr. Conner’s statements. At the original sentencing, by contrast, multiple witnesses took the stand and testified to Mr. Conner’s redeemable characteristics, including specific examples of positive community service activities in which he engaged, in addition to caring for his family members. *See App., Attach. “I,”* 07.27.2012 Sentencing VRP.

With respect to Mr. Conner’s same criminal conduct argument, the court stated that this issue had already been addressed and rejected by the

appellate court, and that the trial court had no discretion to reconsider this argument on resentencing. RP 30-31. On the issue of youth as a mitigating factor, the court purported to distinguish the holding in O'Dell, stating “the record with respect to O'Dell is not the same kind of record that was presented here in terms of the robberies. In O'Dell, it *was a juvenile*, an unsophisticated individual.” RP 31 (emphasis added). In the court’s view, Mr. Conner, on the other hand, appeared to be a sophisticated adult, citing Mr. Conner’s repeatedly voiced concern for his children as evidence of his maturity. RP 31-32. The court then imposed a mid-range sentence of 1,148.5 months, the same sentence that was originally imposed. RP 35.

The sentence imposed included 13 firearm enhancements of 60 months each, accounting for 780 months of the total sentence. *See App., Attach. “J,”* Amended J. and Sentence.

C. Mr. Conner’s CrR 7.8 motion.

On remand, prior to the resentencing hearing, Mr. Conner, acting *pro se*, filed a handwritten Motion for Relief from Judgment under CrR 7.8(b)(2) along with a handwritten sworn declaration alleging ineffective assistance of counsel for failure to convey the State’s plea offer and advise regarding the applicable standard ranges and firearm enhancements. *See App., Attach. “K,”* CrR 7.8 Motion. Mr. Conner’s supporting declaration stated that Clayton Longacre (“Mr. Longacre”), Mr. Conner’s trial counsel

in the initial proceedings, never informed Mr. Conner: (1) of any plea offers from the State, (2) that he was facing a standard range of 95 years, and (3) that he was facing firearm enhancements totaling a mandatory sentence of 65 years. *Id.* The declaration further provided that Mr. Conner would have accepted that offer had it been presented to him, in light of “the overwhelming evidence” against him. *Id.* However, Mr. Conner failed to note his motion for a specific time and date, as required by Kitsap County Superior Court local rules, so the court declined to hear the motion until it was properly noted for hearing. RP 30.

D. Return to the appellate court following resentencing.

Following sentencing, Mr. Conner filed a notice of appeal from the court’s amended judgment and sentence, expressly raising the issues of same criminal conduct, double jeopardy, the court’s decision to apply the burglary anti-merger statute, Mr. Conner’s request for an exceptional sentence based on his youth, and the disproportionality of the effective life sentence for what amount to property crimes. *See App., Attach. “L,”* Notice of Appeal. In his appellate brief, however, Mr. Conner appealed only the issues of whether the trial court erred in declining to hear the improperly noted CrR 7.8 motion. *See App. Attach. “M,”* Unpublished Opinion. The appellate court denied the appeal on May 30, 2017, inviting counsel to simply properly note the matter before the trial court and

proceed from there, as the trial court had done previously. The appellate court mandate issued on July 17, 2017.

Following the appellate decision, the matter eventually was set for a show cause hearing, in which Mr. Conner appeared *pro se*. *See App., Attach. “N,”* Order Transfer. CrR 7.8 Mot. Following the hearing, on August 11, 2017, the trial court entered an order transferring Mr. Conner’s CrR 7.8 motion to the appellate court as a personal restraint petition. *Id.* The trial court stated in its order that the record contradicted Mr. Conner’s claims, because, according to the court, the record showed references to the applicable standard sentencing ranges and firearm enhancements made in open court. *Id.* The court also accepted an email exchange in which Mr. Longacre advised that Mr. Conner chose to reject the State’s plea offer of 150 months. *Id.*; *see App., Attach. “O,”* email exchange between counsel. On February 28, 2018, this Court dismissed Mr. Conner’s *pro se* petition, also concluding that the record contradicted his claims. *See App., Attach. “P,”* Order Dismissing Pet.

E. New evidence regarding Mr. Longacre’s representation.

On December 20, 2012, less than five months following Mr. Conner’s sentencing, Mr. Longacre was disbarred by the Supreme Court of Washington. *See App., Attach. “Q,”* Order of disbarment. The disbarment followed from a hearing officer’s written findings and

recommendations that were filed approximately one month following Mr. Conner's sentencing. *See App., Attach. "R,"* FOFCOL & Recommendations. The complaints that led to his ultimate disbarment involved failures to communicate with clients, along with financial misconduct. *Id.* The hearing officer concluded that Mr. Longacre was unfit to practice law for, among other reasons, "*repeatedly failing to communicate with clients.*" *Id.*

Mr. Longacre was previously disciplined in 2005 for *failing to advise a client of plea offers from the State and of applicable standard sentencing ranges.* *See App., Attach. "S,"* In Re Discipline of Longacre, 155 Wn.2d 723, 122 P.3d 710 (2005). In suspending Mr. Longacre's license for 60 days, the Supreme Court of Washington concluded "*Longacre failed to keep Tripp "reasonably informed" about the status of his case and did not allow Tripp to make informed decisions because Longacre did not effectively communicate all plea offers and sentencing implications to his client.*" *Id.*

Recently, Mr. Conner, through newly retained counsel, contacted Mr. Longacre regarding his representation of Mr. Conner. *See App., Attach. "T,"* Declaration of Clayton Longacre. Mr. Longacre stated in his declaration that he believed that the statements of Jarell Smith, a co-defendant who became a State witness, "became increasingly inconsistent

and seemingly given to satisfy his need to have his charges substantially reduced,” which reduction he ultimately received. Id. at 1-2, ¶ 5. Mr. Longacre also believed that Mr. Conner was innocent, stating with respect to the traffic stop leading to Mr. Conner’s arrest that “Mr. Conner was getting a rid[e] across town, no more,” when he was caught in a vehicle on the way to commit a robbery, as reported by an informant. Id. at 3, ¶ 9.

With respect to the witness who gave officers the tip that led to the traffic stop, Mr. Longacre believed that he “owed Perez a substantial amount of money for drugs fronted to him,” and that “[t]he witness needed the police to get rid of Perez as he could not repay the debt [and] Mr. Conner got caught in the crossfire.” Id. at 3, ¶ 10. Mr. Longacre purportedly advised Mr. Conner that trial would be an “uphill battle,” not based on the facts of the case, but rather because Mr. Conner is black and a Kitsap County jury was likely to be white. Id. at 3, ¶ 11.

With respect to the State’s other co-defendant turned witness, Mr. Longacre believed his “statements and Smith’s statements seriously contradicted the facts and each other when it came to Mr. Conner’s involvement.” Id. at 4, ¶ 12. Based on these weaknesses, despite difficulties, Mr. Longacre “felt we had a chance at showing the jury their statements were contrived in the interest of self-preservation, that they

were constructed and/or changed to make sure they were let off the big hook they were facing.” Id. at 4-5, ¶ 13.

In regards to plea negotiations, Mr. Longacre stated that, although he does advise clients of the consequences of going to trial rather than accepting a plea, “[w]hen a client maintains their innocence, as Mr. Conner has, I do not try to talk them into a plea”. Id. at 5, ¶ 15. Mr. Longacre also makes no reference to any attempt at plea negotiation, and the record reveals no such attempts.

Mr. Longacre attributes Mr. Conner’s loss at trial to adverse evidentiary rulings of the judge, wrongful removal of the sole black juror from the jury panel, and wrongful designation of a favorable juror as the alternate. Id. at 5-6, ¶¶ 14-17. After stating “[i]t was obvious the Judge played into the prosecutor camp,” Mr. Longacre concluded his thoughts on the trial stating:

“In my opinion, with the judge keeping her thumb on the state's side of the scales, Mr. Conner didn't have a chance at a fair trial. This is the same judge, that before her election to the bench, I witnessed get on her knees in the hallway in the court house and beg the sheriff for his endorsement of her campaign for Superior Court Judge. That vision has always haunted me as I think about Mr. Conner.”

Id. at 6, ¶ 17.

In an interview with the Kitsap Sun following his disbarment, Mr. Longacre told the reporter that *“I'm not the one who has my clients lay*

down and plead guilty.” *See App., Attach. “U,”* Kitsap Sun article. This echoed a statement he had made previously in this case, telling the court during Mr. Conner’s initial sentencing “It’s my position, Your Honor, that when somebody comes to me and says they are innocent, I fight as hard as I can.” *Attach. I* at 13.

Mr. Conner now submits this Petition seeking relief from his effective life sentence, based on constitutional errors resulting in actual and substantial prejudice, nonconstitutional errors resulting in a complete miscarriage of justice, and on the basis of newly discovered evidence.

IV. STANDARD OF REVIEW

“A petitioner may request relief through a PRP when he is under an unlawful restraint.” In re Monschke, 160 Wn. App. 479, 488, 251 P.3d 884, 890 (2010) (citing RAP 16.4(a)-(c)). “Generally, in a PRP, the petitioner must demonstrate by a preponderance of the evidence that a constitutional error resulted in actual and substantial prejudice or a nonconstitutional error resulted in a complete miscarriage of justice.” Id. (citing In re Pers. Restraint of Davis, 152 Wash.2d 647, 672, 101 P.3d 1 (2004)). “But when a petition ‘raises issues that were afforded no previous opportunity for judicial review, ... the petitioner need not make the threshold showing of actual prejudice or complete miscarriage of justice.’” In re Pierce, 173 Wn.2d 372, 377, 268 P.3d 907, 909 (2011) (quoting In re

Pers. Restraint of Gentry, 170 Wash.2d 711, 714-15, 245 P.3d 766 (2010)). “It is enough if the petitioner can demonstrate unlawful restraint under RAP 16.4.” Id. (citing In re Pers. Restraint of Gentry, 170 Wash.2d at 715).

“‘Unlawful restraint’ includes restraint accomplished in violation of state laws or administrative regulations.” In re Turner, 74 Wn. App. 596, 598, 875 P.2d 1219, 1221 (1994) (citing In re Cashaw, 123 Wash.2d 138, 148-49, 866 P.2d 8 (1994) (internal citation omitted). In re Monschke, 160 Wn. App. at 488 (citing RAP 16.7(a)(2)(i)). “[A] hearing is appropriate where the petitioner makes the required prima facie showing ‘but the merits of the contentions cannot be determined solely on the record.’” In re Yates, 177 Wn.2d 1, 18, 296 P.3d 872, 880-81 (2013) (quoting Hews v. Evans, 99 Wn.2d 80, 88, 660 P.2d 263, 268 (1983) and citing RAP 16.11(b)). “Granting the petition is appropriate if the petitioner has proved actual prejudice [from a constitutional violation] or a fundamental defect resulting in a complete miscarriage of justice.” In re Yates, 177 Wn.2d 1 at 18.

RCW 10.73.140 and RAP 16.4(d) govern successive personal restraint petitions. RAP 16.4(d) requires good cause. RCW 10.73.140 “divests the Court of Appeals, but not the Supreme Court, of jurisdiction to decide PRPs presenting the “same grounds for review.” In re Pers.

Restraint of Johnson, 131 Wn.2d 558, 565, 933 P.2d 1019 (1997). The only bar to a successive petition in the Supreme Court is the abuse of writ doctrine, which will not be found if the petition raises issues based on new law, new evidence, or otherwise could not have been raised before. In re Jeffries, 114 Wn.2d 485, 492, 789 P.2d 731 (1990). The abuse of writ doctrine also does not apply where the prior petition was filed *pro se*. In re Pers. Restraint of Martinez, 171 Wn.2d 354, 363, 256 P.3d 277 (2011).

V. ARGUMENTS AND AUTHORITY

A. NEW EVIDENCE ESTABLISHES THAT MR. CONNER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.

Mr. Conner previously argued *pro se* that he received ineffective assistance of counsel from Mr. Longacre due to Mr. Longacre's alleged failures to forward the State's plea offers and properly advise him regarding the sentencing implications of going to trial. **Attach. K**. This argument was rejected by the trial and appellate courts, which both concluded that the record undermines Mr. Conner's claims. **Attach. N, P**. However, new evidence has arisen regarding Mr. Longacre's ineffectiveness during the plea bargaining process. Specifically, Mr. Longacre has now admitted that he believed they could win at trial, that Mr. Conner was actually innocent, that he did "not try to talk [Mr. Conner] into a plea", and that Mr. Conner was convicted only because the trial

judge “played into the prosecutor camp” and the jury held racial bias.

Attach. T. The failure to advise Mr. Conner to accept a plea and the failure to attempt to negotiate a better plea, coupled with Mr. Longacre’s strange assessment of the case (i.e. that the State’s witnesses lacked credibility, but the risk was bias from the judge and jury), fell below an objective standard of reasonableness, effectively costing Mr. Conner life in prison, instead of the 150 months or less he could have obtained through plea negotiations.

1. Mr. Conner was deprived of effective assistance of counsel.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. See U.S. Const. Amend. VI; Const. Art. I, § 22. To show ineffective assistance of counsel, a defendant must demonstrate (1) that his attorney's performance was deficient and (2) that this deficient performance prejudiced him. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Claims of ineffective assistance of counsel are reviewed de novo. State v. Jones, 183 Wn.2d 327, 338-39, 352 P.3d 776 (2015).

The right to effective assistance of counsel extends to the plea bargaining stage of a criminal prosecution. Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 1384, 182 L. Ed. 2d 398 (2012); see also Missouri

v. Frye, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012). In Lafler, a defendant was found to be prejudiced by trial counsel's deficient performance in advising him to reject a plea offer and go to trial. Under these facts, the Court held “[e]ven if the trial itself is free from constitutional flaw, the defendant who goes to trial instead of taking a more favorable plea may be prejudiced from either a conviction on more serious counts or the imposition of a more severe sentence.” Lafler, 566 U.S. at 166. The Court held that if a defendant's right to effective assistance of counsel in considering whether to accept a plea bargain is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in conviction on more serious charges or on the imposition of a more severe sentence. Lafler, 132 S. Ct. at 1387.

Similarly, the Supreme Court of Washington has held that effective assistance includes “assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial.” State v. A.N.J., 168 Wn.2d 91, 111, 225 P.3d 956 (2010). The Court in A.N.J. elaborated on this standard, holding that effective representation requires counsel, at a minimum, to “reasonably evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as

to whether or not to plead guilty.” Id. at 111-12; see also State v. Edwards, 171 Wn. App. 379, 394, 294 P.3d 708 (2012).

The Court of Appeals recently applied these standards to a set of facts materially similar to those presented in the case *sub judice*. See State v. Estes, 188 Wash. 2d 450, 463-64, 395 P.3d 1045, 1052 (2017). In Estes, defense counsel appeared to have been unaware that the deadly weapon enhancements at play in the case would elevate the defendant’s convictions to third strike offenses, triggering life imprisonment. Based on this misapprehension of the nature of the case, defense counsel declined to negotiate a plea agreement that could have avoided a third strike offense.

Although the defendant could not show for certain how plea negotiations would have transpired had defense counsel properly understood the gravity of going to trial, the Court held “we need not be 100 percent sure that the outcome would have been different to find prejudice here: the Strickland Court clarified that a defendant need not even make his showing on a more-likely-than-not basis.” Id. (citing Strickland, 466 U.S. at 693); see also State v. James, 48 Wash. App. 353, 363, 739 P.2d 1161, 1167 (1987) (“As to the uncertainty of whether plea bargain negotiations would have resulted in a consummated bargain, uncertainty should not prevent reversal where “confidence in

the outcome" is undermined"). The Court in Estes reasoned that "it is reasonably probable that had Estes known that there was a much higher chance that he would be spending life in prison, the result of the proceeding would have differed." Id. Under these facts, the Court held the defendant "was denied the ability to 'mak[e] an informed decision' about whether to plead guilty, and we find that defense counsel's conduct prejudiced Estes." Id. (citing A.N.J., 168 Wn.2d at 111).

As has already been recognized by this Court, "[t]he record contains overwhelming evidence of Conner's guilt" in this case. ***Attach. D*** at 10. Two co-defendants testified as to Mr. Conner's guilt, and the victims corroborated their testimony. Id. Mr. Conner was caught in a vehicle with firearms apparently en route to a burglary, with regards to which law enforcement had received a tip in advance. Id. Stolen property from the burglaries was recovered from Mr. Conner's girlfriend's apartment. Id.

Against this and other evidence, Mr. Longacre has now admitted that, despite some difficulties with the case (in his view, primarily Mr. Conner's race), he believed the State's witnesses would not be credible and he "had a chance of showing the jury their statements were contrived," and that he believed Mr. Conner was just "getting a rid[e]" when he was arrested. ***Attach. T.*** Based on this deluded assessment of the

facts of the case, Mr. Longacre declined to advise Mr. Conner to accept a plea and declined to negotiate further with the State, even though the State had made a plea offer of 150 months, and, by the time of trial with the second amended information having been filed, Mr. Conner was facing an effective life sentence should he lose at trial.

This reckless approach was consistent with Mr. Longacre's stated philosophy of criminal defense, that "I do not try to talk [defendants] into a plea", "I'm not the one who has my clients lay down and plead guilty", "It's my position, Your Honor, that when somebody comes to me and says they are innocent, I fight as hard as I can." *Attach I, T, U*. Judicial notice can be taken of the fact that people charged with crimes often proclaim their innocence at the outset, even though they are in fact guilty. See In re Bar App. of Simmons, 190 Wash. 2d 374, 397 n.12, 414 P.3d 1111, 1121 (2018) (taking judicial notice of a fact well known within legal community).

To decline to negotiate a plea bargain and to refrain from advising a client regarding whether to accept a plea offer on the basis of one's client's initial proclamation of innocence falls well below an objective standard of reasonableness. Defense counsel has a duty to objectively evaluate the evidence and advise one's client accordingly. Under the facts and circumstances of this case, no reasonable defense counsel would have

ceased plea negotiations and failed to advise his client to accept a plea, even though he was looking at an effective “trial penalty” of well over 75 years. In light of counsel’s abject failure to negotiate with the State or advise his client, Mr. Conner “was denied the ability to ‘mak[e] an informed decision’ about whether to plead guilty,” and Mr. Conner was severely prejudiced by this advice, which resulted in a sentence of 998.5 months (83.2 years) greater than the plea offer. *Id.* (citing *A.N.J.*, 168 Wn.2d at 111).

Only one month after sentencing, a hearing officer for the Disciplinary Board of the Washington State Bar Association entered written findings declaring that Mr. Longacre was unfit to practice law and recommending that he be disbarred, a recommendation that was accepted by the Supreme Court. This followed on prior disciplinary proceedings in which Mr. Longacre was punished specifically for failing to properly advise and communicate with a client during the plea bargaining process. Mr. Longacre clearly demonstrated this unfitness to practice in the manner in which he represented Mr. Conner, culminating in the tragic result of an effective life sentence for a young man, whose children will likely never see their father outside of a prison visiting room.

With respect to whether proper advice and further negotiations would have resulted in a consummated plea bargain, it is “reasonably

probable” that Mr. Conner would have accepted a plea had he been properly advised throughout the process. See Estes, 188 Wash. 2d at 463-64. Indeed, he emphasized repeatedly during resentencing that he would have accepted a plea deal had he been properly advised, regardless of his actual guilt. RP 24-25. Based on the facts of this case and the unbearable risks of going to trial, reasonable counsel would have given his client the hard truth that the State’s evidence is “overwhelming,” and that accepting a plea would be in the client’s best interest. Mr. Longacre has now admitted that no such conversation ever took place. To the extent Mr. Conner remained adamant about his innocence, competent counsel would have explored the possibility of a no-contest (*Alford*) plea with the State.

It is difficult to conceive of more ineffective and prejudicial representation in the plea bargaining process than that provided to Mr. Conner during the initial trial proceedings. Accordingly, his convictions should be reversed and the matter remanded, following an evidentiary hearing if the Court deems necessary.

2. Mr. Conner’s claim of ineffective assistance is timely raised and supported by good cause.

Although Mr. Conner has challenged the effectiveness of his representation at trial in other respects, he has not previously raised the issue set forth herein. To the extent the State claims the foregoing argument is barred by the abuse of writ doctrine, this doctrine is

inapplicable because Mr. Conner's prior personal restraint petitions were filed *pro se*. See In re Pers. Restraint of Martinez, 171 Wn.2d at 363 (abuse of writ defense unavailable where petitioner proceeded *pro se* in previous postconviction challenge).

The only issue, then, is whether this claim is supported by an exception to the one-year time bar on personal restraint petitions. RCW 10.73.100 provides that the one-year time bar does not apply in the case of “[n]ewly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion.” Until recently, Mr. Conner was investigating, researching, and briefing challenges to his conviction in his *pro se* capacity, with no assistance from counsel. Previously he did not have the financial resources to hire counsel. Having now retained counsel, his counsel promptly hired an investigator to look into issues surrounding this case. This petition is being filed only shortly after the discovery of new evidence in the form of Mr. Longacre's declaration. Mr. Longacre's recent admissions are of great significance given that, in their absence, Mr. Conner would only be left with his own self-serving statements, which this Court has already found to lack credibility. In light of Mr. Longacre's admissions, Mr. Conner now has clear evidence for the first time that he was deprived effective assistance

of counsel in the plea bargaining process. This issue is therefore timely raised under RCW 10.73.100.

3. The appropriate remedy is to direct the State to reoffer the 150 month plea offer on remand.

“When confronting deprivations under the Sixth Amendment to the United States Constitution, ‘remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests.’” State v. Maynard, 183 Wash. 2d 253, 262, 351 P.3d 159 (2015) (quoting United States v. Morrison, 449 U.S. 361, 364, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981)). Thus, the Supreme Court of Washington has held “[i]n the plea bargain context, when ineffective assistance of counsel causes a plea offer to lapse, an appropriate remedy could require the prosecutor to reoffer the plea.” Maynard, 183 Wash. 2d at 262 (citing Lafler, 566 U.S. at 170-72).

In Maynard, where defense counsel was ineffective for failing to move to extend the juvenile court’s jurisdiction before the defendant turned 18, pursuant to RCW 13.40.300(1)(a), causing the defendant to lose the benefit of a juvenile plea offer, the only appropriate remedy was to remand to the juvenile court and direct the State to make the original offer.

Id. Maynard followed the holding in Lafler that:

In some situations it may be that resentencing alone will not be full redress for the constitutional injury. If, for example, an offer was for a guilty plea to a count or

counts less serious than the ones for which a defendant was convicted after trial, or if a mandatory sentence confines a judge's sentencing discretion after trial, a resentencing based on the conviction at trial may not suffice. In these circumstances, the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal.

Lafler, 566 U.S. at 171 (internal citations omitted). In Mr. Conner's case, resentencing alone would not be full redress for the constitutional injury, as he was convicted of 24 offenses at trial, thirteen of which contained firearm enhancements. Had he been properly advised to accept the plea agreement, he would have pled guilty to only the three offenses originally charged, with no enhancements, which would have carried a standard range of 129-171 months. *Attach. O*. Under these extreme circumstances, simply remanding for resentencing would be grossly inadequate to remedy the constitutional deficiency. Instead, Mr. Conner's convictions should be vacated and the State should be directed on remand to again present its original offer of 150 months.

4. Alternatively, Mr. Conner was deprived effective assistance of counsel when his trial counsel on remand and/or appellate counsel failed to investigate and raise the foregoing issue within one year of the initial appellate court mandate.

To the extent the Court finds that the issue of ineffective assistance of counsel in the plea bargaining process has not been timely brought before this Court, it necessarily follows that Mr. Conner was deprived of effective assistance of trial counsel and appellate counsel on remand for

failing to investigate, research, and raise this issue. Mr. Conner had legal representation during the one-year time frame on resentencing, and, to the extent reasonable diligence required earlier discovery of the evidence relied upon herein, the failure to discover this evidence constitutes ineffective assistance by trial counsel and appellate counsel following the initial remand. Thus, in the alternative, reversal of Mr. Conner's convictions is warranted due to ineffective assistance of trial and appellate counsel following remand.

B. THE SENTENCING COURT ABUSED ITS DISCRETION IN FAILING TO MEANINGFULLY CONSIDER MR. CONNER'S YOUTH WHEN IMPOSING HIS SENTENCE

After Mr. Conner's initial sentence was imposed and following denial of his direct appeal and first PRP, the Supreme Court held, for the first time, that Washington law allows for consideration of youth as a mitigating factor justifying downward departures from standard sentencing ranges established by the SRA. O'Dell, 183 Wn.2d at 693. The Court further recognized that these differences do not magically disappear on one's eighteenth birthday, and accordingly determined that a downward departure can be appropriate for young adults. Id. at 695 ("we now know that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18"). Based on this new law, Mr.

Conner's counsel on remand requested a downward exceptional sentence on the basis of in light of Mr. Conner's youth.

In response, the State advised it was not familiar with the case, but indicated O'Dell was distinguishable because Mr. Conner was "of age." The court likewise clearly misunderstood the facts and holding of O'Dell, reasoning that O'Dell was distinguishable because "[i]n O'Dell, it *was a juvenile*, an unsophisticated individual." RP 31 (emphasis added). The court proceeded to describe Mr. Conner as a sophisticated adult on the basis of the court's observations of Mr. Conner in the year 2016, nearly six years following the commission of the offenses.

In fact, the defendant in O'Dell was an adult, not a juvenile, and the relevant time for evaluating the impact Mr. Conner's youth may have had on the offenses is the time of the offenses, not six years later. The court's clear misunderstanding and misapplication of the holding in O'Dell, and concomitant refusal to meaningfully consider Mr. Conner's youth as a mitigating factor, resulted in a "fundamental defect" in Mr. Conner's sentence "that inherently results in a miscarriage of justice." In re Pers. Restraint of Light-Roth, 200 Wash. App. 149, 165, 401 P.3d 459 (2017), *review granted*, 189 Wash. 2d 1030, 408 P.3d 1094 (2017).

In general, a trial court must impose a sentence that falls within the standard range. State v. Law, 154 Wash.2d 85, 94, 110 P.3d 717 (2005). A

court has discretion to depart from the standard range either upward or downward, However “this discretion may be exercised only if: (1) the asserted aggravating or mitigating factor is not one necessarily considered by the legislature in establishing the standard sentence range, and (2) it is sufficiently substantial and compelling to distinguish the crime in question from others in the same category.” State v. Ronquillo, 190 Wn. App. 765, 780-83, 361 P.3d 779 (2015), citing Law, 154 Wash.2d at 95, 110 P.3d 717. The Court in Law held that a factor is sufficiently substantial and compelling to justify departure from a standard sentence only if it relates “directly to the crime or the defendant's culpability for the crime committed.” Law, 154 Wash.2d at 95, 110 P.3d 717.

In O'Dell, the Supreme Court rejected the “sweeping conclusion” in prior cases that “[t]he age of the defendant *does not relate to the crime* or the previous record of the defendant.”” Id. at 695. (emphasis in original) (quoting State v. Ha'mim, 132 Wn.2d 834, 847, 940 P.2d 633 (1997).). Instead, the Court held that youth may justify a downward departure from the SRA so long as there is evidence “that youth in fact diminished a defendant's culpability.” O'Dell, 183 Wn.2d at 689. This change in thinking was effectuated by recent U.S. Supreme Court opinions relying on psychological studies regarding “adolescents' cognitive and emotional development,” that have established “a clear connection between youth

and decreased moral culpability for criminal conduct.” Id. at 695 (citing Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455 (2012) (mandatory life sentences without parole violate the Eighth Amendment when applied to juveniles); Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) (prohibiting sentences of life without parole for juveniles convicted of crimes other than homicide); Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (juveniles may not be sentenced to death because of their immaturity and heightened capacity for reform)). The Court further noted that these studies “reveal fundamental differences between adolescent and mature brains in the areas of risk and consequence assessment, impulse control, tendency toward antisocial behaviors, and susceptibility to peer pressure.” O'Dell, 183 Wn.2d at 692 (footnotes omitted).

Following the reasoning of these U.S. Supreme Court decisions, and their scientific underpinnings, the Court held that, while “age is not a per se mitigating factor,” youth is “far more likely to diminish a defendant's culpability than” the Court indicated in Ha'mim. O'Dell, 183 Wn.2d at 695-96. Thus, “a trial court *must* be allowed to consider youth as a mitigating factor when imposing a sentence on a[young] offender.” Id. at 696 (emphasis added).

The Court further outlined what it considers “youth” for purposes of imposing a downward exceptional sentence. It cited with approval multiple studies concluding that the effects of youthfulness on culpability may remain in place until “closer to 25” or “the early 20s.” *Id.* at 692 n. 5.² Because the trial court did not “meaningfully consider youth as a possible mitigating factor,” the matter was remanded for resentencing. *Id.* at 689.

In *Light-Roth*, the appellate court, applying *O’Dell*, concluded that a 19 year-old defendant convicted of murder “deserve[d] an opportunity to have a sentencing court meaningfully consider whether his youthfulness justifies an exceptional sentence below the standard range” on remand. *Id.* at 461. To put the unjust nature of Mr. Conner’s sentence into context, *Light-Roth was sentenced to only 335 months for an actual murder, whereas Mr. Conner received an effective life sentence and no one was*

² (citing Terry A. Maroney, The False Promise of Adolescent Brain Science in Juvenile Justice, 85 Notre Dame L. Rev. 89, 152 & n.252 (2009) (collecting studies); MIT Young Adult Development Project: Brain Changes, Mass. Inst. of Tech., <http://hrweb.mit.edu/worklife/youngadult/brain.html> (last visited Aug. 4, 2015) (“The brain isn’t fully mature at ... 18, when we are allowed to vote, or at 21, when we are allowed to drink, but closer to 25, when we are allowed to rent a car.”); Jay N. Giedd, Structural Magnetic Resonance Imaging of the Adolescent Brain, 1021 Ann. N.Y. Acad. Sci. 77 (2004) (“[t]he dorsal lateral prefrontal cortex, important for controlling impulses, is among the latest brain regions to mature without reaching adult dimensions until the early 20s” (formatting omitted)).

shot or seriously injured. Id. at 462. *The Court in Light-Roth imposed the maximum standard range sentence for shooting the victim to death and that was nearly 70 years shorter than Mr. Conner's sentence. Id.* The unjust nature of Mr. Conner's sentence is shown not only by the fact that he was deprived of the argument of youth as a mitigating factor for sentencing, but by this example of how the previous interpretation of the SRA resulted in an unjust sentence for Mr. Conner.

The facts of this case provide strong indications that Mr. Conner's culpability was diminished by his youth at the time of committing the offenses. At his initial sentencing, numerous witnesses testified to Mr. Conner's redeemable qualities as a friend and a father, taking care of his family and also engaging in positive community service activities. *See Attach. I* at 14-21. The disconnect between this testimony and the criminal activity of which Mr. Conner has been convicted provides strong evidence that Mr. Conner's criminal behavior was the result of transitory characteristics that can be overcome as Mr. Conner continues to mature.

Based on the foregoing, Mr. Conner is entitled to have his case remanded to the trial court for resentencing, with instructions to the court to meaningfully consider whether Mr. Conner's culpability was diminished by his youth and to impose a sentence that properly takes this mitigating factor into consideration.

C. THE SENTENCING COURT ABUSED ITS DISCRETION AND/OR VIOLATED MR. CONNER’S CONSTITUTIONAL RIGHTS IN FAILING TO CONSIDER CONCURRENT IMPOSITION OF THE FIREARM ENHANCEMENTS

At sentencing, the court sentenced Mr. Conner to an additional 780 months for the firearm enhancements, despite counsel’s request for a downward departure with respect to the enhancements. *See Attach. H* at 12-13. In imposing this sentence, the court advised that its intent was to “do exactly the same thing” as the original sentencing court in imposing a sentence of 1148.5 months. RP 34. In the original sentencing proceedings, the court stated that consecutive imposition of the firearm enhancements “are absolutely mandatory”. *Attach. I*. Based on new interpretations of relevant statutes, however, it is apparent that this assertion was a manifest legal and constitutional error.

1. Mandatory consecutive imposition of Mr. Conner’s firearm enhancements violated his Eighth Amendment rights.

Since Mr. Conner’s sentencing on remand, it has been established that the mandatory nature of the firearm enhancement statutes violates the Eighth Amendment to the Constitution of the United States when applied to juveniles. In Houston-Sconiers, the Court in held:

sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline hearing or not. To the extent our state statutes have been interpreted to bar such discretion with

regard to juveniles, they are overruled.

188 Wash. 2d at 21. The defendants in Houston-Sconiers were 17 and 16 years old at the time of the offenses, but tried and convicted as adults. Id. at 8. They committed a series of robberies of Halloween trick-or-treaters, threatening their young victims at gun point while wearing Halloween masks. Id. at 10-11. The firearm enhancement penalties totaled 372 months and 312 months for the respective defendants. Id. at 8. The court imposed the full statutory penalties, as it felt it had no discretion to impose firearm enhancement penalties concurrently. Id. at 9. In reversing the sentences, the Washington Supreme Court held that the “mandatory nature” of RCW 9.94A.533, the deadly weapon enhancement statute, violates the Eighth Amendment’s prohibition on cruel and unusual punishments when applied to juvenile offenders. Id. at 24.

In Mr. Conner’s case, the sentencing court failed to exercise discretion either as to the base sentence or the enhancements based upon his youth, apparently believing that the SRA prohibited it from doing so. While Houston-Sconiers considers only sentencing enhancements as applied to juvenile offenders, Mr. Conner asserts that it, and the cases it relies upon, necessarily apply to youthful defendants, not just juveniles.

Recently, in his dissent to an unpublished opinion, Chief Judge Bjorgen considered Miller, 567 U.S. 460, O'Dell, 183 Wn.2d 680, and Houston–Sconiers, 188 Wn.2d 1, in reviewing “whether our law consigns one to imprisonment without hope of release, with no whisper of human discretion and no consideration of the characteristics of youth, based in part on a crime committed when our law recognizes those characteristics persist.” State v. Moretti, No. 47868-4-II, at *16 (Wash. Ct. App. Oct. 31, 2017). He ultimately concluded that the reasoning in those cases precluded the mandatory imposition of the sentencing enhancement without the sentencing Court exercising its discretion to determine whether youth was a mitigating factor.

Mr. Conner submits that based upon the holding in Houston-Sconiers and the dissent’s reasoning in Moretti, the firearm enhancement statute that added 780 months to Mr. Conner’s sentence violates the Eighth Amendment prohibition against cruel and unusual punishment by virtue of its “mandatory nature”.

2. Mandatory consecutive imposition of Mr. Conner’s firearm enhancements violated his Article I, Section 14 rights.

Even if Houston-Sconiers does not extend to adult offenders under the Eighth Amendment, adults must be afforded this protection under Article I, section 14 of Washington’s Constitution, by operation of current law. Washington interprets its Constitution as providing greater

protections than its federal counterpart, including with respect to protections from cruel punishment. See State v. Manussier, 129 Wash. 2d 652, 674, 921 P.2d 473, 483 (1996); State v. Thorne, 129 Wn.2d 736, 772-73, 921 P.2d 514 (1996).

In Houston-Sconiers, trial counsel failed to present a challenge under Washington's Constitution at the trial court level, and thus was precluded from doing so for the first time on appeal. Houston-Sconiers, 188 Wash. 2d at 21 n.6. Therefore, the Court did not address how the constitutionality of the firearm enhancements under Washington's Constitution, which, again, provides greater protection than its federal counterpart.

Nonetheless, the Court in Houston-Sconiers proceeded undeterred, entering its sweeping constitutional ruling striking down even low mandatory minimum sentences for juvenile offenders only on Eighth Amendment grounds, without needing to even invoke the greater level of protection afforded by Washington's Constitution. Id. at 24. It thus stands to reason that the Washington Constitution necessarily applies the principles announced in Houston-Sconiers to young offenders over the age of 18, particularly in light of O'Dell's rejection of the arbitrary bright line of eighteenth birthdays. O'Dell, 183 Wn.2d at 695 ("we now know that age may well mitigate a defendant's culpability, even if that defendant

is over the age of 18”); see also Moretti, 47868-4-II at *16-18 (C.J. Bjorgen, dissenting) (discussing the implications of O’Dell’s acceptance of science and rejection of the arbitrary bright line of eighteenth birthdays).

In analyzing whether a statute or sentence violates Article I, section 14 of Washington’s Constitution, Washington courts look to four factors:

(1) the nature of the offense, (2) the legislative purpose behind the statute, (3) the punishment the defendant would have received in other jurisdictions, and (4) the punishment meted out for other offenses in the same jurisdiction.

State v. Fain, 94 Wn.2d 387, 397, 617 P.2d 720 (1980). The fourth factor is dispositive in this case because O’Dell and Houston-Sconiers dramatically changed the punishment meted out for other offenses in Washington. Under these decisions restoring judicial discretion to impose appropriate sentences on young offenders, RCW 9.94A.533(3)’s mandatory consecutive enhancements now result in completely disproportionate sentences for young offenders over 18 facing weapon enhancements.

Pursuant to O’Dell, courts “*must* be allowed to consider youth as a mitigating factor” when sentencing under the SRA. O’Dell, 183 Wn.2d at 696 (emphasis added). If this holding is limited to all offenses *except* those

involving weapons (or, stated more accurately, except those where the prosecution uses *its* discretion to seek a weapon enhancement),³ courts would have broad discretion when sentencing young offenders for every other offense, but would still be required to impose draconian sentences under RCW 9.94A.533(3).

Accordingly, application of the proportionality analysis under Fain, 94 Wn.2d at 397, in light of Houston-Sconiers and O'Dell, establishes that the consecutive imposition of 780 months of firearm enhancements on Mr. Conner's sentence under RCW 9.94A.533(3) violates Article I, section 14 of Washington's Constitution.

3. Mandatory consecutive imposition of Mr. Conner's firearm enhancements constituted an abuse of discretion under McFarland and the Concurring Opinion in Houston-Sconiers.

Even if the Court does not accept the constitutional analysis set forth hereinabove, Mr. Conner's sentencing court had discretion to run the enhancements concurrently to the base sentence in light of Mr. Conner's youth, and its failure to recognize the availability of that discretion constitutes an abuse of discretion. See State v. Bunker, 144 Wn. App. 407,

³ See Ian Weinstein, Fifteen Years After the Federal Sentencing Revolution: How Mandatory Minimums Have Undermined Effective and Just Narcotics Sentencing, 40 Am. Crim. L. Rev. 87, 88 (2003) ("The profusion of new narcotics and gun proscriptions, almost all of which carry mandatory minimum prison sentences, transformed the traditional prosecutorial power to charge into the contemporary prosecutorial power to determine the length of the sentence the defendant will serve.").

421, 183 P.3d 1086 (2008), aff'd, 169 Wn.2d 571, 238 P.3d 487 (2010)

(failure to recognize discretion is abuse of discretion).

In McFarland the defendant was sentenced to 1 count of burglary, 10 counts of theft of a firearm, and 3 counts of unlawful possession of a firearm. State v. McFarland, 189 Wn.2d 47, 49, 399 P.3d 1106 (2017). At sentencing, defense counsel conceded that the firearm-related sentences were required to run consecutively, pursuant to RCW 9.41.040(6) and 9.94A.589(1)(c), and thus did not make a request to run the sentences concurrently. Id. at 50-51. The sentencing court also stated that it did not have discretion to run the sentences concurrently. Id. at 51. The Supreme Court disagreed and remanded the matter back to the trial court for resentencing with instructions to consider concurrent imposition of the firearm-related sentences. Id. at 55-56.

The Court began its analysis by discussing the holding in In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 166 P.3d 677 (2007), in which it was established that sentencing courts have discretionary authority to grant exceptional downward sentences by running sentences for serious violent offenses concurrently. McFarland, 189 Wn. 2d at 52-53 (citing Mulholland, 161 Wn.2d at 329-30). It went on to reason that there was no substantive difference between RCW 9.94A.589(1)(b), presuming consecutive sentences for serious violent offenses, and RCW

9.94A.589(1)(c), presuming consecutive sentences for firearm-related offenses. McFarland, 189 Wn.2d at 53-54. Given the lack of a meaningful distinction between the statutes, the Court held:

in a case in which standard range consecutive sentencing for multiple firearm-related convictions ‘results in a presumptive sentence that is clearly excessive in light of the purpose of [the SRA],’ a sentencing court has discretion to impose an exceptional, mitigated sentence by imposing concurrent firearm-related sentences.

Id. at 55 (citing RCW 9.94A.535(1)(g)).

In arriving at this holding, the Court found that the language in RCW 9.41.040(6), providing “[n]otwithstanding any other law, if the offender is convicted [of a firearm-related offense] then the offender shall serve consecutive sentences,” did not deprive the sentencing court of discretion to impose an exceptional downward sentence. Id. The language at issue in McFarland is substantively the same as that set forth in RCW 9.94A.533(3)(e), the firearm enhancement statute implicated in Mr. Conner’s sentence, which provides “[n]otwithstanding any other provision of law, all firearm enhancements [...] shall run consecutively to all other sentencing provisions.” RCW 9.94A.533(3)(e).

McFarland purports to address only sentences for firearm convictions under RCW 9.41.040(6), and not firearm enhancements under 9.94A.533(3)(e). However, for reasons articulated in the concurring opinion in Houston-Sconiers, this attempt to hold the line at firearm

convictions, rather than enhancements, relies entirely on a distinction without a difference. There is no reason whatsoever, based on either the plain language of the statutes or their public policy underpinnings, for holding that the exceptional sentence provisions set forth in RCW 9.94A.535 would apply only to firearm convictions under RCW 9.94A.589, but not to firearm enhancements under RCW 9.94A.533.

Indeed, the concurring opinion of Justice Madsen, joined by Justice Johnson in Houston-Sconiers makes exactly this point. Houston-Sconiers, 188 Wash. 2d. at 34-40 (J. Madsen, concurring). She argued in her opinion that Houston-Sconiers should have been decided on the nonconstitutional grounds that nothing in 9.94A.533 exempts its provisions from exceptional sentences under RCW 9.94A.535. *Id.* at 36.

McFarland's holding, which necessarily implies that sentencing courts have discretion to run firearm enhancements concurrently, must also be applied retroactively "because it announced a new interpretation of the SRA." Light-Roth, 200 Wash. App. at 160-61. By failing to recognize that it had discretion to consider concurrent imposition of Mr. Conner's firearm enhancements, which under O'Dell is appropriate based on Mr. Conner's youth, the Court abused its discretion. Mr. Conner is therefore entitled to resentencing to provide the court an opportunity to correct his manifestly unlawful sentence.

D. MR. CONNER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING ON REMAND

On remand, defense counsel appropriately requested a downward exceptional sentence on the basis of O'Dell. However, he was woefully unprepared at resentencing, and failed to put on any evidence whatsoever, much less evidence that would support his request for a downward exceptional sentence. In the event the Court determines that the trial court did not err on remand in declining to consider Mr. Conner's youth as a mitigating factor because there is insufficient evidence in the record to prove that Mr. Conner's youthfulness diminished his culpability for the offenses, Mr. Conner was deprived of effective assistance of counsel at resentencing.

Defense counsel's obligation to provide effective assistance applies at sentencing. State v. Phuong, 174 Wn. App. 494, 547, 299 P.3d 37 (2013). RCW 9.94A.535(1) grants a trial court discretion to impose an exceptional sentence below the standard range if it finds, by a preponderance of the evidence, mitigating circumstances to do so. As set forth above, O'Dell held that a defendant's youth can be treated as a mitigating factor. The Court further elaborated on what evidence must be presented at trial to support an exceptional sentence based on youth. Specifically, the Court held that "a defendant need not present expert testimony to establish that youth diminished his capacities for purposes of

sentencing.” O’Dell, 183 Wash. 2d at 697. However, a defendant should provide “lay testimony that a trial court [c]ould consider in evaluating whether youth diminished a defendant’s culpability.” Id.

Rather than presenting evidence, Mr. Conner’s trial counsel relied on his assertion that “I think even the O’Dell case allows the Court to consider simply my client’s youth without any specific evidence.” RP 12. Cursory preparation in reviewing the O’Dell decision would have revealed that this assertion was in error. To the contrary, the O’Dell decision stated “[i]t remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence.” Id. at 695.

In light of the language in O’Dell, defense counsel’s decision to argue that Mr. Conner’s youth should be considered “without any specific evidence”, in lieu of presenting evidence showing how Mr. Conner’s youth related to the crimes, fell below an objective standard of reasonableness. Having requested an exceptional sentence based on youth, reasonable counsel would have provided supporting evidence at least in the form of lay testimony regarding the defendant’s immaturity. In his supporting affidavit, Mr. Conner has sworn that his criminal activities at the age of 21 were influenced by his immaturity, susceptibility to peer pressure, lack of impulse control, and inability to assess risk and consequences. *See App., Attach “V,”* Affidavit of La’Juante Conner. He

further asserts that the witnesses who testified at his initial sentencing could have provided supporting evidence on this point. Id. For counsel to fail to present such evidence at resentencing, despite ample time to prepare, instead electing to rely upon a blatant misstatement of O'Dell's holding, constituted deficient performance. The conclusion that counsel's performance was deficient is also supported by his obvious complete lack of preparation and reluctance to advocate for his client detailed above.

The prejudice Mr. Conner suffered as a result cannot be overstated. He has been given an effective sentence of life in prison for a series of property crimes in which no one was seriously hurt, much less killed. Evidence should have been presented to prove that Mr. Conner's youth related to his crimes. Had this evidence been presented, it is reasonably probable that a more reasonable sentence would have been imposed, such as the 150 month sentence that the State believed was reasonable at the outset of the case. Mr. Conner was therefore deprived of effective assistance of counsel on resentencing, and is entitled to resentencing with the assistance of effective counsel.

E. THE TRIAL COURT ERRED IN CONCLUDING IT LACKED DISCRETION TO CONDUCT A SAME CRIMINAL CONDUCT ANALYSIS.

On remand, defense counsel asked the court to treat various offenses as the same criminal conduct for sentencing purposes, and to

exercise its discretion to decline to apply RCW 92A.52.050, the anti-merger statute. The court refused the invitation, stating that the appellate order “directly addressed the issue of same criminal conduct and double jeopardy in their opinion” and that “they've already factored in your argument and rejected it.” RP 15-16. The court advised that addressing this issue would “run afoul of the Court of Appeals' directive”. RP 16. This belief that it lacked discretion to conduct a same criminal conduct analysis constitutes an abuse of discretion, because this Court expressly left the issue of whether offenses constituted the same criminal conduct to be determined by the trial court on remand. See Bunker, 144 Wn. App. at 421 (failure to recognize discretion is abuse of discretion).

In its order, this Court conducted a double jeopardy analysis and, on that basis, vacated a third degree theft conviction. The Court did not conduct a same criminal conduct analysis, but instead held “[b]ecause we remand for resentencing, *we do not reach Conner's same criminal conduct claim.*” *Attach. D* at 23 (emphasis added). In concluding that the order on appeal disposed of the same criminal conduct issue, the court on remand wrongly conflated the distinct issues of double jeopardy and same criminal conduct. See State v. French, 157 Wn.2d 593, 611-12, 141 P.3d 54 (2006) (holding that double jeopardy and same criminal conduct analyses are distinct and separate inquiries). In articulating the difference

between these two analyses, the Supreme Court has held “a determination that a conviction does not violate double jeopardy does not automatically mean that it is not the same criminal conduct.” State v. Chenoweth, 185 Wash. 2d 218, 222, 370 P.3d 6, 8-9 (2016); see also State v. Tili, 139 Wn.2d 107, 124, 985 P.2d 365 (1999) (finding defendant's three first degree rape convictions did not violate double jeopardy but were part of the same criminal conduct, the court held that Tili's criminal intent to commit several rapes did not change from one act of penetration to the next).

On remand, the court had discretion to consider whether various offenses constituted the same criminal conduct. It abused that discretion by misinterpreting the appellate order as having ruled on the issue. Mr. Conner was prejudiced by this abuse of discretion because many of his convictions arose out of the same criminal conduct, as set forth by counsel at resentencing. RP 14-15. Were they treated as such, multiple firearm enhancements would have been eliminated and offender scores and standard ranges would have been reduced. Mr. Conner is entitled to resentencing for this reason as well.

F. THE TRIAL COURT ERRED IN IMPOSING 13 FIREARM ENHANCEMENTS

On the first direct appeal, after setting forth its conclusions, the appellate court stated “We remand for resentencing on the remaining

convictions and *twelve firearm enhancements.*” *Attach. D* at 2, 30.

However, on remand, the court imposed 13 firearm enhancements. *Attach.*

J. This constitutes a clear violation of the appellate mandate on remand, even though it appears the appellate court may have made a counting error. Accordingly, one firearm enhancement should be vacated and 60 months removed from Mr. Conner’s sentence.

G. MR. CONNER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Mr. Conner also received ineffective assistance at the appellate stage following remand. To demonstrate ineffective assistance of appellate counsel, a petitioner must show that counsel's representation fell below an objective standard of reasonableness, and that there is a reasonable probability that but for counsel's unprofessional errors, appellant would have prevailed on appeal. See *In re Brown*, 143 Wn.2d 431, 452, 21 P.3d 687 (2001) (“[T]o prevail on the appellate ineffectiveness claim, [Petitioner] must show the merit of the underlying legal issues his appellate counsel failed to raise”). Appellate counsel's failures to raise meritorious issues, each of which would have resulted in a lesser sentence for Mr. Conner, constitutes deficient performance.

Specifically, appellate counsel following remand failed to raise the issues of (1) whether the trial court erred in failing to impose an exceptional sentence based on the mitigating factor of youth; (2) whether

the trial court erred in failing to consider concurrent imposition of the firearm enhancements; (3) whether trial counsel was ineffective for failing to put on evidence of Mr. Conner's youth at sentencing; and (4) whether the trial court erred in failing to conduct a same criminal conduct analysis.

As set forth hereinabove, each of these issues has merit, and entitle Mr. Conner to some form of relief. Because each of these issues have merit, failing to raise them on appeal falls below an objective standard of reasonableness. Mr. Conner was prejudiced by this deficient performance to the extent Mr. Conner is denied relief as to any of these issues on the grounds that the issue should have been raised in the direct appeal or that the issue is now deemed untimely.

V. CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court grant the PRP, vacate Mr. Conner's convictions, and direct the State to present its original plea offer of 150 months. Alternatively, it is requested that this matter be remanded for resentencing consistent with the legal authority provided herein.

Respectfully submitted this 17th day of July, 2018.

LAW OFFICE OF COREY EVAN PARKER


Corey Evan Parker, WSBA #40006
Attorney for Petitioner, La'Juanta L. Conner

CERTIFICATE OF SERVICE

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on July 17, 2018, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

Attorney for Respondent:

Kitsap County Prosecuting Attorney
kcpa@co.kitsap.wa.us

- By Email
- By Fax
- By Fed Express
- By Hand Delivery
- By Messenger

Petitioner:

Via Legal Mail
La'Juanta Conner - DOC #359680
Washington Corrections Center
PO Box 900
Shelton, WA 98584

Corey Evan Parker

Corey Evan Parker
WSBA #40006
1275 12th Ave. NW Suite 1B
Issaquah, WA 98027
(425) 221-2195

APPENDIX

Attachment “A”

ORIGINAL

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	No. 11 1 00435 8
)	
Plaintiff,)	
)	INFORMATION
v.)	
)	(Total Counts Filed - 3)
LA'JUANTA LE'VEAR CONNER,)	
Age: 21; DOB: 04/22/1989,)	
)	
Defendant.)	

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney, CAMI G. LEWIS, WSBA NO. 30568, Deputy Prosecuting Attorney, and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in such cases made and provided, and against the peace and dignity of the STATE OF WASHINGTON, the above-named Defendant did commit the following offense(s)-

Count I
Burglary in the First Degree

On or about November 18, 2010, in the County of Kitsap, State of Washington, the above-named Defendant, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in the building or in immediate flight therefrom, the Defendant or another participant in the crime was armed with a deadly weapon and/or did assault any person therein, contrary to the Revised Code of Washington 9A.52.020.
(MAXIMUM PENALTY--Life imprisonment and/or a \$50,000.00 fine pursuant to RCW



Russell D. Hauge, Prosecuting Attorney
Adult Criminal and Administrative Divisions
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Port Orchard, WA 98366-4681
(360) 337-7174; Fax (360) 337-4949
www.kitsapgov.com/pros

1 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

2 (If the Defendant has previously been convicted on two separate occasions of a "most serious
3 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
4 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
5 to RCW 9.94A.030 and 9.94A.570.)

5 JIS Code: 9A.52.020 Burglary 1

7 Mode of Commission—Criminal Conspiracy

8 TO COMMIT THIS CRIME, the Defendant, with intent that conduct constituting this crime
9 be performed, did agree with one or more persons who were not necessary participants in the
10 crime to engage in or cause the performance of such conduct, and any one of them did take a
11 substantial step in pursuance of such agreement; contrary to Revised Code of Washington
12 9A.28.040(1) and *State v. Miller*, 131 Wn.2d 78, 88-89, 929 P.2d 372 (1997).

13 (MAXIMUM PENALTY—The maximum penalty for criminal attempt, criminal solicitation and
14 criminal conspiracy is based upon the underlying crime that is charged, pursuant to RCW
15 9A.28.020(3), 9A.28.030(2), and 9A.28.040(3).)

Underlying Charged Crime	Resulting Classification of the Crime if the Mode of Commission is:		
	Attempt	Solicitation	Conspiracy
Murder in the First Degree	Class A Felony	Class A Felony	Class A Felony
Arson in the First Degree	Class A Felony	Class B Felony	Class A Felony
Child Molestation in the First Degree; Indecent Liberties by Forcible Compulsion; Rape in the First or Second Degrees; or Rape of a Child in the First or Second Degrees.	Class A Felony	Class B Felony	Class B Felony
Other Class A Felony	Class B Felony	Class B Felony	Class B Felony
Class B Felony	Class C Felony	Class C Felony	Class C Felony
Class C Felony	Gross Misdemeanor	Gross Misdemeanor	Gross Misdemeanor
Gross Misdemeanor or Misdemeanor	Misdemeanor	Misdemeanor	Misdemeanor

27 **Count II**
28 **Robbery in the First Degree**

29 On or about November 17, 2010, in the County of Kitsap, State of Washington, the
30 above-named Defendant did, with intent to commit theft thereof, unlawfully take personal
31 property that Defendant did not own from the person of another, or in said person's presence



1 against said person's will by the use or threatened use of immediate force, violence, or fear of
2 injury to said person or the property of said person or the person or property of another, and in the
3 commission of said crime or in immediate flight therefrom, the Defendant was armed with a
4 deadly weapon and/or displayed what appeared to be a firearm or other deadly weapon; contrary
5 to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

6 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
7 and 9A.20.021(1)(a), plus restitution and assessments.)

8 (If the Defendant has previously been convicted on two separate occasions of a “most serious
9 offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
10 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
11 to RCW 9.94A.030 and 9.94A.570.)

11 JIS Code: 9A.56.200 Robbery 1

12
13 Mode of Commission—Criminal Conspiracy

14 TO COMMIT THIS CRIME, the Defendant, with intent that conduct constituting this crime
15 be performed, did agree with one or more persons who were not necessary participants in the
16 crime to engage in or cause the performance of such conduct, and any one of them did take a
17 substantial step in pursuance of such agreement; contrary to Revised Code of Washington
18 9A.28.040(1) and *State v. Miller*, 131 Wn.2d 78, 88-89, 929 P.2d 372 (1997).

19 (MAXIMUM PENALTY—The maximum penalty for criminal attempt, criminal solicitation and
20 criminal conspiracy is based upon the underlying crime that is charged, pursuant to RCW
21 9A.28.020(3), 9A.28.030(2), and 9A.28.040(3).)

Underlying Charged Crime	Resulting Classification of the Crime if the Mode of Commission is:		
	Attempt	Solicitation	Conspiracy
Murder in the First Degree	Class A Felony	Class A Felony	Class A Felony
Arson in the First Degree	Class A Felony	Class B Felony	Class A Felony
Child Molestation in the First Degree; Indecent Liberties by Forceful Compulsion; Rape in the First or Second Degrees; or Rape of a Child in the First or Second Degrees.	Class A Felony	Class B Felony	Class B Felony
Other Class A Felony	Class B Felony	Class B Felony	Class B Felony
Class B Felony	Class C Felony	Class C Felony	Class C Felony
Class C Felony	Gross Misdemeanor	Gross Misdemeanor	Gross Misdemeanor
Gross Misdemeanor or Misdemeanor	Misdemeanor	Misdemeanor	Misdemeanor

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CHARGING DOCUMENT; Page 3 of 5



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Count III
Unlawful Possession of a Firearm in the Second Degree

On or about November 17, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did knowingly own, possess, or have in his or her control a firearm, after having been previously convicted of THEFT 1ST DEGREE IN KING COUNTY SUPERIOR COURT CAUSE NO. 08-1-04937-6; contrary to the Revised Code of Washington 9.41.040(2)(a)(i). (MAXIMUM PENALTY—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW 9.41.040(2)(b) and 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9.41.040.2A Firearm Possession Unlawful-2

I certify (or declare) under penalty of perjury under the laws of the State of Washington that I have probable cause to believe that the above-named Defendant committed the above offense(s), and that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: June 7, 2011
PLACE: Port Orchard, WA

STATE OF WASHINGTON



CAMI G. LEWIS, WSBA No. 30568
Deputy Prosecuting Attorney

All suspects associated with this incident are—

Jerrell Eugene Smith
Joe Louis Perez
La'Juanta Le'Vear Conner



4

Attachment “B”

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)	
)	No. 11-1-00435-8
Plaintiff,)	
)	SECOND AMENDED INFORMATION
v.)	
)	(Total Counts Filed - 26)
LA'JUANTA LE'VEAR CONNER,)	
Age: 22; DOB: 04/22/1989,)	
)	
Defendant.)	

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney, CAMI G. LEWIS, WSBA NO. 30568, Deputy Prosecuting Attorney, and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in such cases made and provided, and against the peace and dignity of the STATE OF WASHINGTON, the above-named Defendant did commit the following offense(s)-

Count I
Burglary in the First Degree

On or about November 17, 2010, in the County of Kitsap, State of Washington, the above-named Defendant, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in the building or in immediate flight therefrom, the Defendant or another participant in the crime was armed with a deadly weapon; contrary to the Revised Code of Washington 9A.52.020.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000.00 fine pursuant to RCW 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)



ORIGINAL

1330

1 (If the Defendant has previously been convicted on two separate occasions of a "most serious
2 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
3 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
4 to RCW 9.94A.030 and 9.94A.570.)

4 JIS Code: 9A.52.020 Burglary 1

6 Mode of Commission—Criminal Conspiracy

7 TO COMMIT THIS CRIME, the Defendant, with intent that conduct constituting this crime
8 be performed, did agree with one or more persons who were not necessary participants in the
9 crime to engage in or cause the performance of such conduct, and any one of them did take a
10 substantial step in pursuance of such agreement; contrary to Revised Code of Washington
11 9A.28.040(1) and *State v. Miller*, 131 Wn.2d 78, 88-89, 929 P.2d 372 (1997).

12 (MAXIMUM PENALTY—The maximum penalty for criminal attempt, criminal solicitation and
13 criminal conspiracy is based upon the underlying crime that is charged, pursuant to RCW
14 9A.28.020(3), 9A.28.030(2), and 9A.28.040(3).)

Underlying Charged Crime	Resulting Classification of the Crime if the Mode of Commission is:		
	Attempt	Solicitation	Conspiracy
Murder in the First Degree	Class A Felony	Class A Felony	Class A Felony
Arson in the First Degree	Class A Felony	Class B Felony	Class A Felony
Child Molestation in the First Degree; Indecent Liberties by Forcible Compulsion; Rape in the First or Second Degrees; or Rape of a Child in the First or Second Degrees.	Class A Felony	Class B Felony	Class B Felony
Other Class A Felony	Class B Felony	Class B Felony	Class B Felony
Class B Felony	Class C Felony	Class C Felony	Class C Felony
Class C Felony	Gross Misdemeanor	Gross Misdemeanor	Gross Misdemeanor
Gross Misdemeanor or Misdemeanor	Misdemeanor	Misdemeanor	Misdemeanor

26 Special Allegation—Armed With Firearm

27 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
28 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

29 (MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of
30 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
31 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
the presumptive range of confinement if the Defendant has previously been sentenced for any



1 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d.)

2
3 Special Allegation--Aggravating Circumstance--Multiple Current Offenses; Some Unpunished

4 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
5 Defendant's high offender score results in some of the current offenses going unpunished,
6 contrary to RCW 9.94A.535(2)(c) [determination by judge].

7
8 **Count II**

9 **Unlawful Possession of a Firearm in the Second Degree**

10 On or between September 15, 2010 and November 17, 2010, in the County of Kitsap,
11 State of Washington, the above-named Defendant did knowingly own, possess, or have in his or
12 her control a firearm, to wit: Hi-Point .40 caliber pistol; after having been previously convicted of
13 THEFT IN THE FIRST DEGREE; contrary to the Revised Code of Washington 9.41.040(2)(a)(i).

14 (MAXIMUM PENALTY--Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW
15 9.41.040(2)(b) and 9A.20.021(1)(c), plus restitution and assessments.)

16 JIS Code: 9.41.040.2A Firearm Possession Unlawful-2

17
18 Special Allegation--Aggravating Circumstance--Multiple Current Offenses; Some Unpunished

19 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
20 Defendant's high offender score results in some of the current offenses going unpunished,
21 contrary to RCW 9.94A.535(2)(c) [determination by judge].

22
23 **Count III**

24 **Possessing a Stolen Firearm**

25 On or between September 15, 2010 and November 17, 2010, in the County of Kitsap,
26 State of Washington, the above-named Defendant did knowingly possess, carry, deliver, sell, or
27 have in his or her control a stolen firearm, to wit: Hi-Point .40 caliber pistol; contrary to the
28 Revised Code of Washington 9A.56.310 and RCW 9A.56.140.

29 (MAXIMUM PENALTY--Ten (10) years imprisonment and/or a \$20,000 fine pursuant to RCW
30 9A.56.310(6) and RCW 9A.20.021(1)(b), plus restitution and assessments.)

31 JIS Code: 9A.56.310 Possessing a Stolen Firearm



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Special Allegation–Aggravating Circumstance–Multiple Current Offenses; Some Unpunished
AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count IV
Unlawful Possession of a Firearm in the Second Degree

On or between November 1, 2010 and November 17, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did knowingly own, possess, or have in his or her control a firearm, to wit: Taurus .44 caliber revolver, after having been previously convicted of THEFT IN THE FIRST DEGREE; contrary to the Revised Code of Washington 9.41.040(2)(a)(i). (MAXIMUM PENALTY–Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW 9.41.040(2)(b) and 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9.41.040.2A Firearm Possession Unlawful-2

Special Allegation–Aggravating Circumstance–Multiple Current Offenses; Some Unpunished
AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count V
Possessing a Stolen Firearm

On or between November 1, 2010 and November 17, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did knowingly possess, carry, deliver, sell, or have in his or her control a stolen firearm, to wit: Taurus .44 caliber revolver; contrary to the Revised Code of Washington 9A.56.310 and RCW 9A.56.140. (MAXIMUM PENALTY–Ten (10) years imprisonment and/or a \$20,000 fine pursuant to RCW 9A.56.310(6) and RCW 9A.20.021(1)(b), plus restitution and assessments.)

JIS Code: 9A.56.310 Possessing a Stolen Firearm



1 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished
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3 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
4 Defendant's high offender score results in some of the current offenses going unpunished,
5 contrary to RCW 9.94A.535(2)(c) [determination by judge].
6

7 **Count VI**
8 **Possession of Marijuana**

9 On or about November 17, 2010, in the County of Kitsap, State of Washington, the
10 above-named Defendant did possess marijuana; contrary to Revised Code of Washington
11 69.50.4014 and 69.50.204(c)(14).

12 (MAXIMUM PENALTY FOR FIRST OFFENSE—Not less than 24 consecutive hours nor more than
13 ninety (90) days in jail, and not less than \$250.00 nor more than \$1,000.00 fine, pursuant to RCW
14 69.50.4014(2), 69.50.425 and 9.92.030, plus restitution, assessments and court costs.)

15 (MAXIMUM PENALTY FOR SECOND OR SUBSEQUENT OFFENSE—Not less than 24 consecutive hours
16 nor more than ninety (90) days in jail, and not less than \$500.00 nor more than \$1,000.00 fine,
17 pursuant to RCW 69.50.4014(2), 69.50.425 and 9.92.030, plus restitution, assessments and court
18 costs.)

19 JIS Code: 69.50.4014 Marihuana Possession =< 40 Grams
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21 **Count VII**
22 **Robbery in the First Degree**

23 On or about September 15, 2010, in the County of Kitsap, State of Washington, the
24 above-named Defendant did, with intent to commit theft thereof, unlawfully take personal
25 property that Defendant did not own from the person of another, to-wit: ROBERT STEVEN DATO,
26 or in said person's presence against said person's will by the use or threatened use of immediate
27 force, violence, or fear of injury to said person or the property of said person or the person or
28 property of another, and in the commission of said crime or in immediate flight therefrom, the
29 Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the
30 Revised Code of Washington 9A.56.200(1) and 9A.56.190.

31 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
and 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a "most serious



1 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
2 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
3 to RCW 9.94A.030 and 9.94A.570.)

4 JIS Code: 9A.56.200 Robbery 1

5 Special Allegation—Armed With Firearm

6 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
7 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

8 (MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of
9 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
10 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
11 the presumptive range of confinement if the Defendant has previously been sentenced for any
12 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

13 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

14 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
15 Defendant's high offender score results in some of the current offenses going unpunished,
16 contrary to RCW 9.94A.535(2)(c) [determination by judge].

17 **Count VIII**
18 **Robbery in the First Degree**

19 On or about September 15, 2010, in the County of Kitsap, State of Washington, the
20 above-named Defendant did, with intent to commit theft thereof, unlawfully take personal
21 property that Defendant did not own from the person of another, to-wit: AARRON JAYE DATO, or
22 in said person's presence against said person's will by the use or threatened use of immediate
23 force, violence, or fear of injury to said person or the property of said person or the person or
24 property of another, and in the commission of said crime or in immediate flight therefrom, the
25 Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the
26 Revised Code of Washington 9A.56.200(1) and 9A.56.190.

27 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
28 and 9A.20.021(1)(a), plus restitution and assessments.)

29 (If the Defendant has previously been convicted on two separate occasions of a "most serious
30 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
31 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
to RCW 9.94A.030 and 9.94A.570.)



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JIS Code: 9A.56.200 Robbery 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count IX
Burglary in the First Degree

On or about September 15, 2010, in the County of Kitsap, State of Washington, the above-named Defendant, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in the building or in immediate flight therefrom, the Defendant or another participant in the crime was armed with a deadly weapon; contrary to the Revised Code of Washington 9A.52.020.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000.00 fine pursuant to RCW 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a “most serious offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant to RCW 9.94A.030 and 9.94A.570.)

JIS Code: 9A.52.020 Burglary 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an



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3 **Count XI**
Robbery in the First Degree

4 On or about September 28, 2010, in the County of Kitsap, State of Washington, the
5 above-named Defendant did, with intent to commit theft thereof, unlawfully take personal
6 property that Defendant did not own from the person of another, to-wit: ROBERT STEVEN DATO,
7 or in said person's presence against said person's will by the use or threatened use of immediate
8 force, violence, or fear of injury to said person or the property of said person or the person or
9 property of another, and in the commission of said crime or in immediate flight therefrom, the
10 Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the
11 Revised Code of Washington 9A.56.200(1) and 9A.56.190.

12 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
13 and 9A.20.021(1)(a), plus restitution and assessments.)

14 (If the Defendant has previously been convicted on two separate occasions of a “most serious
15 offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
16 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
17 to RCW 9.94A.030 and 9.94A.570.)

18 JIS Code: 9A.56.200 Robbery 1

19 **Special Allegation—Armed With Firearm**

20 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
21 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

22 (MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of
23 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
24 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
25 the presumptive range of confinement if the Defendant has previously been sentenced for any
26 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

27 **Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished**

28 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
29 Defendant's high offender score results in some of the current offenses going unpunished,
30 contrary to RCW 9.94A.535(2)(c) [determination by judge].
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Count XII
Robbery in the First Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did, with intent to commit theft thereof, unlawfully take personal property that Defendant did not own from the person of another, to-wit: AARRON JAYE DATO, or in said person's presence against said person's will by the use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another, and in the commission of said crime or in immediate flight therefrom, the Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2) and 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a "most serious offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant to RCW 9.94A.030 and 9.94A.570.)

JIS Code: 9A.56.200 Robbery 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant's high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].



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Count XIII
Robbery in the First Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did, with intent to commit theft thereof, unlawfully take personal property that Defendant did not own from the person of another, to-wit: JEFFERY J. TURNER, or in said person's presence against said person's will by the use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another, and in the commission of said crime or in immediate flight therefrom, the Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2) and 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a “most serious offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant to RCW 9.94A.030 and 9.94A.570.)

JIS Code: 9A.56.200 Robbery 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant's high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].



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Count XIV
Burglary in the First Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in the building or in immediate flight therefrom, the Defendant or another participant in the crime was armed with a deadly weapon; contrary to the Revised Code of Washington 9A.52.020.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000.00 fine pursuant to RCW 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a “most serious offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant to RCW 9.94A.030 and 9.94A.570.)

JIS Code: 9A.52.020 Burglary 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation—Aggravating Circumstance—Victim Present During Burglary

AND FURTHERMORE, the current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed, contrary to RCW 9.94A.535(3)(u).

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].



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Count XV
Theft in the Second Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did wrongfully obtain or exert unauthorized control over the property of another, or the value thereof, with intent to deprive said person of such property or services, such property or services being in excess of seven hundred fifty dollars (\$750.00) in value; contrary to the Revised Code of Washington 9A.56.020(1)(a) and RCW 9A.56.040(1)(a).

(MAXIMUM PENALTY—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW 9A.56.040(2) and RCW 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9A.56.040 Theft in the Second Degree

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant's high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count XVI
Robbery in the First Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did, with intent to commit theft thereof, unlawfully take personal property that Defendant did not own from the person of another, to-wit: BRETT CUMMINGS, or in said person's presence against said person's will by the use or threatened use of immediate force, violence, or fear of injury to said person or the property of said person or the person or property of another, and in the commission of said crime or in immediate flight therefrom, the Defendant was armed with and/or displayed what appeared to be a firearm; contrary to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2) and 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a "most serious offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant



1 to RCW 9.94A.030 and 9.94A.570.)

2 JIS Code: 9A.56.200 Robbery 1

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4 Special Allegation—Armed With Firearm

5 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
6 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

7 (MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of
8 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
9 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
10 the presumptive range of confinement if the Defendant has previously been sentenced for any
11 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

12 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

13 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
14 Defendant's high offender score results in some of the current offenses going unpunished,
15 contrary to RCW 9.94A.535(2)(c) [determination by judge].

16
17 **Count XVII**
18 Burglary in the First Degree

19 On or about September 28, 2010, in the County of Kitsap, State of Washington, the
20 above-named Defendant, with intent to commit a crime against a person or property therein, did
21 enter or remain unlawfully in a building, and in entering or while in the building or in immediate
22 flight therefrom, the Defendant or another participant in the crime was armed with a deadly
23 weapon and/or did assault any person therein, to-wit: BRETT CUMMINGS; contrary to the Revised
24 Code of Washington 9A.52.020.

25 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000.00 fine pursuant to RCW
26 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

27 (If the Defendant has previously been convicted on two separate occasions of a "most serious
28 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
29 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
30 to RCW 9.94A.030 and 9.94A.570.)

31 JIS Code: 9A.52.020 Burglary 1



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Special Allegation-Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY-If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation-Aggravating Circumstance-Victim Present During Burglary

AND FURTHERMORE, the current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed, contrary to RCW 9.94A.535(3)(u).

Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant's high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count XVIII
Theft in the Third Degree

On or about September 28, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did wrongfully obtain or exert unauthorized control over the property of another, to-wit: BRETT CUMMINGS, or the value thereof, with intent to deprive said person of such property; contrary to Revised Code of Washington 9A.56.050(1) and 9A.56.020.

(MAXIMUM PENALTY-Three hundred sixty-four (364) days in jail or \$5,000 fine, or both, pursuant to RCW 9A.56.060(2) and RCW 9A.20.021(2), plus restitution, assessments and court costs.)

JIS Code: 9A.56.050 Theft Third Degree



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Count XIX
Burglary in the First Degree

On or between October 2, 2010 and October 3, 2010, in the County of Kitsap, State of Washington, the above-named Defendant, with intent to commit a crime against a person or property therein, did enter or remain unlawfully in a building, and in entering or while in the building or in immediate flight therefrom, the Defendant or another participant in the crime was armed with a deadly weapon; contrary to the Revised Code of Washington 9A.52.020.

(MAXIMUM PENALTY—Life imprisonment and/or a \$50,000.00 fine pursuant to RCW 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

(If the Defendant has previously been convicted on two separate occasions of a “most serious offense” as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant to RCW 9.94A.030 and 9.94A.570.)

JIS Code: 9A.52.020 Burglary 1

Special Allegation—Armed With Firearm

AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

(MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of the commission of the crime, an additional sixty (60) months is added to the presumptive range of confinement for a first offense and an additional one-hundred-twenty (120) months is added to the presumptive range of confinement if the Defendant has previously been sentenced for any deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count XX
Theft in the Second Degree

On or between October 2, 2010 and October 3, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did wrongfully obtain or exert unauthorized control over the property of another, to-wit: KIMBERLY RENE BIRKETT, or the value thereof, with intent



1 to deprive said person of such property or services, such property or services being in excess of
2 seven hundred fifty dollars (\$750.00) in value; contrary to the Revised Code of Washington
3 9A.56.020(1)(a) and RCW 9A.56.040(1)(a).

4 (MAXIMUM PENALTY—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW
5 9A.56.040(2) and RCW 9A.20.021(1)(c), plus restitution and assessments.)

6 JIS Code: 9A.56.040 Theft in the Second Degree

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8 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished
9 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
10 Defendant's high offender score results in some of the current offenses going unpunished,
11 contrary to RCW 9.94A.535(2)(c) [determination by judge].
12

13 **Count XXI**
14 **Robbery in the First Degree**

15 On or between November 3, 2010 and November 4, 2010, in the County of Kitsap, State
16 of Washington, the above-named Defendant did, with intent to commit theft thereof, unlawfully
17 take personal property that Defendant did not own from the person of another, to-wit: AARRON
18 MIACHEAL TUCHECK, or in said person's presence against said person's will by the use or
19 threatened use of immediate force, violence, or fear of injury to said person or the property of
20 said person or the person or property of another, and in the commission of said crime or in
21 immediate flight therefrom, the Defendant was armed with and/or displayed what appeared to be
22 a firearm; contrary to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

23 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
24 and 9A.20.021(1)(a), plus restitution and assessments.)

25 (If the Defendant has previously been convicted on two separate occasions of a "most serious
26 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
27 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
28 to RCW 9.94A.030 and 9.94A.570.)

28 JIS Code: 9A.56.200 Robbery 1

29
30 **Special Allegation—Armed With Firearm**

31 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an



1 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

2 (MINIMUM PENALTY—If the Defendant is found to have been armed with a firearm at the time of
3 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
4 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
5 the presumptive range of confinement if the Defendant has previously been sentenced for any
6 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

6 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished
7 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
8 Defendant's high offender score results in some of the current offenses going unpunished,
9 contrary to RCW 9.94A.535(2)(c) [determination by judge].
10

11
12 **Count XXII**
Robbery in the First Degree

13 On or between November 3, 2010 and November 4, 2010, in the County of Kitsap, State
14 of Washington, the above-named Defendant did, with intent to commit theft thereof, unlawfully
15 take personal property that Defendant did not own from the person of another, to-wit: KEEFE
16 ALLEN JACKSON, or in said person's presence against said person's will by the use or threatened
17 use of immediate force, violence, or fear of injury to said person or the property of said person or
18 the person or property of another, and in the commission of said crime or in immediate flight
19 therefrom, the Defendant was armed with and/or displayed what appeared to be a firearm;
20 contrary to the Revised Code of Washington 9A.56.200(1) and 9A.56.190.

21 (MAXIMUM PENALTY—Life imprisonment and/or a \$50,000 fine pursuant to RCW 9A.56.200(2)
22 and 9A.20.021(1)(a), plus restitution and assessments.)

23 (If the Defendant has previously been convicted on two separate occasions of a "most serious
24 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
25 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
26 to RCW 9.94A.030 and 9.94A.570.)

26 JIS Code: 9A.56.200 Robbery 1
27

28 **Special Allegation—Armed With Firearm**

29 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
30 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.
31



1 (MINIMUM PENALTY-If the Defendant is found to have been armed with a firearm at the time of
2 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
3 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
4 the presumptive range of confinement if the Defendant has previously been sentenced for any
5 deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)

6 Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished
7 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
8 Defendant's high offender score results in some of the current offenses going unpunished,
9 contrary to RCW 9.94A.535(2)(c) [determination by judge].

10
11 **Count XXIII**
12 **Burglary in the First Degree**

13 On or between November 3, 2010 and November 4, 2010, in the County of Kitsap, State
14 of Washington, the above-named Defendant, with intent to commit a crime against a person or
15 property therein, did enter or remain unlawfully in a building, and in entering or while in the
16 building or in immediate flight therefrom, the Defendant or another participant in the crime was
17 armed with a deadly weapon; contrary to the Revised Code of Washington 9A.52.020.

18 (MAXIMUM PENALTY-Life imprisonment and/or a \$50,000.00 fine pursuant to RCW
19 9A.52.020(2) and RCW 9A.20.021(1)(a), plus restitution and assessments.)

20 (If the Defendant has previously been convicted on two separate occasions of a "most serious
21 offense" as defined by RCW 9.94A.030, in this state, in federal court, or elsewhere, the
22 mandatory penalty for this offense is life imprisonment without the possibility of parole pursuant
23 to RCW 9.94A.030 and 9.94A.570.)

24 JIS Code: 9A.52.020 Burglary 1

25 **Special Allegation-Armed With Firearm**

26 AND FURTHERMORE, at the time of the commission of the crime, the Defendant or an
27 accomplice was armed with a firearm; contrary to the Revised Code of Washington 9.94A.602.

28 (MINIMUM PENALTY-If the Defendant is found to have been armed with a firearm at the time of
29 the commission of the crime, an additional sixty (60) months is added to the presumptive range of
30 confinement for a first offense and an additional one-hundred-twenty (120) months is added to
31 the presumptive range of confinement if the Defendant has previously been sentenced for any
deadly weapon enhancements after July 23, 1995; pursuant to RCW 9.94A.533(3)(a) and (d).)



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Special Allegation–Aggravating Circumstance–Victim Present During Burglary

AND FURTHERMORE, the current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed, contrary to RCW 9.94A.535(3)(u).

Special Allegation–Aggravating Circumstance–Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count XXIV
Theft of a Firearm

On or between November 3, 2010 and November 4, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did commit a theft of a firearm; contrary to the Revised Code of Washington 9A.56.300 and RCW 9A.56.020(a).

(MAXIMUM PENALTY–Ten (10) years imprisonment and/or a \$20,000 fine pursuant to RCW 9A.56.300(2) and RCW 9A.20.021(1)(c), plus restitution and assessments.)

JIS Code: 9A.56.300 Theft of a Firearm

Special Allegation–Aggravating Circumstance–Multiple Current Offenses; Some Unpunished

AND FURTHERMORE, the Defendant has committed multiple current offenses and the Defendant’s high offender score results in some of the current offenses going unpunished, contrary to RCW 9.94A.535(2)(c) [determination by judge].

Count XXV
Theft in the Second Degree

On or between November 3, 2010 and November 4, 2010, in the County of Kitsap, State of Washington, the above-named Defendant did wrongfully obtain or exert unauthorized control over the property of another, to-wit: ANN MARIE K. TUCHECK, or the value thereof, with intent to deprive said person of such property or services, said property being an access device; to wit a



1 Bank of America debit card; contrary to the Revised Code of Washington, 9A.56.020(1)(a) and
2 RCW 9A.56.040(1)(a).

3 (MAXIMUM PENALTY—Five (5) years imprisonment and/or a \$10,000 fine pursuant to RCW
4 9A.56.040(2) and RCW 9A.20.021(1)(c), plus restitution and assessments.)

5 JIS Code: 9A.56.040 Theft in the Second Degree

6
7 Special Allegation—Aggravating Circumstance—Multiple Current Offenses; Some Unpunished
8 AND FURTHERMORE, the Defendant has committed multiple current offenses and the
9 Defendant's high offender score results in some of the current offenses going unpunished,
10 contrary to RCW 9.94A.535(2)(c) [determination by judge].

11
12 **Count XXVI**
13 **Possession of Stolen Property in the Third Degree**

14 On or about November 19, 2010, in the County of Kitsap, State of Washington, the
15 above-named Defendant did knowingly receive, retain, possess, conceal, or dispose of stolen
16 property; contrary to Revised Code of Washington 9A.56.170(1).

17 (MAXIMUM PENALTY—Three hundred sixty-four (364) days in jail or \$5,000 fine, or both,
18 pursuant to RCW 9A.56.170(2) and RCW 9A.20.021(2), plus restitution, assessments and court
costs.)

19 JIS Code: 9A.56.170 Poss Stolen Property 3rd

20 I certify (or declare) under penalty of perjury under the laws of the State of Washington
21 that I have probable cause to believe that the above-named Defendant committed the above
22 offense(s), and that the foregoing is true and correct to the best of my knowledge, information and
23 belief.

24 DATED: June 1, 2012
25 PLACE: Port Orchard, WA

STATE OF WASHINGTON

26 
27 CAMI G. LEWIS, WSBA NO. 30568
Deputy Prosecuting Attorney

28 All suspects associated with this incident are—

29
30 Jerrell Eugene Smith
Joe Louis Perez
31 La'Juanta Le'Vear Conner



Troy Allen Brown
Kevion Maurice Alexander
Lonnie Allan Hoover

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1 **DEFENDANT IDENTIFICATION INFORMATION**

2 LA'JUANTA LE'VEAR CONNER Alias Name(s), Date(s) of Birth, and SS Number
3 3439 H Spruce Street La ' Juanta Le ' Vear Conner, 04/22/1989
4 Bremerton, Wa 98310

5 [Address source-(1) Kitsap County Jail records if Defendant in custody, or law enforcement report noted below if Defendant not in
6 custody, or (2) Washington Department of Licensing abstract of driving record if no other address information available]

6 Race: Black Sex: Male DOB: 04/22/1989 Age: 22
7 D/L: CONNELL113J2 D/L State: Washington SID: [s.i.d. number] Height: 511
8 Weight: 150 JUVIS: Unknown Eyes: Brown Hair: Black
9 DOC: Unknown FBI: [fbi number]

10 **LAW ENFORCEMENT INFORMATION**

11 Incident Location: Sr 303/Bentley Avenue, Bremerton, WA 98311

12 Law Enforcement Report No.: 2010BP011191

13 Law Enforcement Filing Officer: Michael S. Davis, 437

14 Law Enforcement Agency: Bremerton Police Department - WA0180100

15 Court: Kitsap County Superior Court, WA018015J

16 Motor Vehicle Involved? No

17 Domestic Violence Charge(s)? No

18 Law Enforcement Bail Amount? Unknown

19 **CLERK ACTION REQUIRED**

20 No Action Required

21 Appearance Date If Applicable: N/A

22 **PROSECUTOR DISTRIBUTION INFORMATION**

Superior Court	District & Municipal Court
<p>24 Original Charging Document- 25 Original +2 copies to Clerk 1 copy to file</p> <p>26 Amended Charging Document(s)- 27 Original +2 copies to Clerk 1 copy to file</p>	<p>24 Original Charging Document- 25 Original +1 copy to Clerk 1 copy to file</p> <p>26 Amended Charging Document(s)- 27 Original +1 copy clipped inside file on top of left side 1 copy to file</p>

28 Prosecutor's File Number-10-184374-3



Attachment “C”

205

12-9-016558

RECEIVED AND FILED
IN OPEN COURT
JUL 27 2012
DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 11-1-00435-8
 Plaintiff,)
) JUDGMENT AND SENTENCE
 v.)
)
 LA'JUANTA LE'VEAR CONNER,)
 Age: 23; DOB: 04/22/1989,)
)
 Defendant.)

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence. The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>	RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I Burglary in the First Degree, Conspiracy	9A.52.020; 9A.28.040	11/17/2010	11/17/2010	F
I Armed With Firearm	9.94A.533.3A			
I Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
II Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	09/15/2010	11/17/2010	
II Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			

JUDGMENT AND SENTENCE; Page 1
 [Form revised January 29, 2010]



Russell D. Hauge, Prosecuting Attorney
 Adult Criminal and Administrative Divisions
 614 Division Street, MS-35
 Port Orchard, WA 98366-4681
 (360) 337-7174; Fax (360) 337-4949

1	III	Possessing a Stolen Firearm	9A.56.310	09/15/2010	11/17/2010	
2	III	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
3						
4	IV	Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	11/01/2010	11/17/2010	
5						
6	IV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
7						
8	V	Possessing a Stolen Firearm	9A.56.310	11/01/2010	11/17/2010	
9	V	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	VI	Possession of Marijuana (ACQUITTAL)	69.50.4014	11/17/2010	11/17/2010	
12						
13	VII	Robbery in the First Degree	9A.56.200.1A <i>i</i> 1A ii	09/15/2010	09/15/2010	F
14	VII	Armed With Firearm	9.94A.533.3A			
15	VII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
16						
17	VIII	Robbery in the First Degree	9A.56.200.1A <i>i</i> 1A ii	09/15/2010	09/15/2010	F
18	VIII	Armed With Firearm	9.94A.533.3A			
19	VIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
20						
21	IX	Burglary in the First Degree	9A.52.020	09/15/2010	09/15/2010	F
22	IX	Armed With Firearm	9.94A.533.3A			
23	IX	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
24						
25	IX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	X	Theft in the Second Degree	9A.56.040.1AW	09/15/2010	09/15/2010	
28	X	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
29						
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1	XI	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
2						
3	XI	Armed With Firearm	9.94A.533.3A			
4	XI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
5						
6	XII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
7						
8	XII	Armed With Firearm	9.94A.533.3A			
9	XII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	XIII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
12						
13	XIII	Armed With Firearm	9.94A.533.3A			
14	XIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
15						
16	XIV	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
17						
18	XIV	Armed With Firearm	9.94A.533.3A			
19	XIV	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
20						
21	XIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
22						
23	XV	Theft in the Second Degree	9A.56.040.1AW	09/28/2010	09/28/2010	
24						
25	XV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	XVI	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
28						
29	XVI	Armed With Firearm	9.94A.533.3A			
30	XVI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
31						
	XVII	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
	XVI	Armed With Firearm	9.94A.533.3A			



1	XVII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
2						
3	XVII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
4						
5	XVIII	Theft in the Third Degree	9A.56.050	09/28/2010	09/28/2010	
6						
7	XIX	Burglary in the First Degree	9A.52.020	10/02/2010	10/03/2010	
8						
9	XIX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	XX	Theft in the Second Degree	9A.56.040.1AW	10/02/2010	10/03/2010	
12						
13	XX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
14						
15	XXI	Robbery in the First Degree	9A.56.200.1Ai1A ii	11/03/2010	11/04/2010	F
16						
17	XXI	Armed With Firearm	9.94A.533.3A			
18						
19	XXI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
20						
21	XXII	Robbery in the First Degree	9A.56.200.1Ai1A ii	11/03/2010	11/04/2010	F
22						
23	XXII	Armed With Firearm	9.94A.533.3A			
24						
25	XXII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	XXIII	Burglary in the First Degree	9A.52.020	11/03/2010	11/04/2010	F
28						
29	XXIII	Armed With Firearm	9.94A.533.3A			
30						
31	XXIII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
	XXIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
	XXIV	Theft of a Firearm	9A.56.300	11/03/2010	11/04/2010	
	XXIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			



1	XXV	Theft in the Second Degree	9A.56.040.1C	11/03/2010	11/04/2010	
2	XXV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
3						
4	XXVI	Possession of Stolen Property in the Third Degree (ACQUITTAL)	9A.56.170	11/19/2010	11/19/2010	
5						
6						

7	2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>		Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
8	Theft I		5/7/08		King County Superior	
9						

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I	36	VII	65.25 to 87	-	X	F	60		life
II	19	III	51 to 60	-	X			323 to 414	5 years
III	19	V	72 to 96	-	X			323 to 414	10 years
IV	19	III	51 to 60	-	X			323 - 414	5 years
V	19	III	72 to 96	-	X			323 - 414	5 years
VI	0	N/A	0 - 90	X	-			ACQUITTAL	1 year
VII	36	IX	129 to 171	-	X	F	60		life
VIII	36	IX	129 to 171	-	X	F	60		life
IX	36	VII	87 to 116	-	X	F	60		life
X	23	I	22 to 29	-	X				5 years
XI	36	IX	129 to 171	-	X	F	60		life
XII	36	IX	129 to 171	-	X	F	60		life
XIII	36	IX	129 to 171	-	X	F	60		life
XIV	36	VII	87 to 116	-	X	F	60		life
XV	23	I	22 to 29	-	X				5 years



2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
XVI	36	IX	129 to 171	-	X	F	60		life
XVII	36	VII	87 to 116	-	X	F	60		life
XVIII	0	N/A	0 to 364	X	-				2 years
XIX	36	VII	87 to 116	-	X				life
XX	23	I	22 to 29	-	X				5 years
XXI	36	IX	129 to 171	-	X	F	60		life
XXII	36	IX	129 to 171	-	X	F	60		life
XXIII	36	VII	87 to 116	-	X	F	60		life
XXIV	19	VI	77 to 102	-	X			323 - 414	10 years
XXV	23	I	22 to 29	-	X				5 years
XXVI	0	N/A	0 to 364	X	-			ACQUITTAL	

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

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (9.94A.836); <15=Victim Under 15 (9.94A.837); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); CSG=Criminal Street Gang Involving a Minor (9.94A.833); AE=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.5- **FIRST-TIME OFFENDER.** RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY**—The Court finds the Defendant has a chemical dependency that contributed to the offense(s). RCW 9.94A.030(9).
- 4.5- **PRISON-BASED DOSA—SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7- **WORK ETHIC CAMP.** RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on

JUDGMENT AND SENTENCE; Page 6

[Form revised January 29, 2010]



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1 community custody for any remaining time of total confinement, subject to conditions. Violation of the
 2 conditions of community custody may result in a return to total confinement for the balance of
 Defendant's remaining time of total confinement.

3 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence above
 4 below the standard range, within the standard range for Count ___ but served consecutively to
 Count(s) ___, or warranting exceptional conditions of supervision for Count(s) _____.
 5 The Prosecutor did did not recommend a similar sentence. The exceptional sentence was
 stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in
 6 support of the exceptional sentence are incorporated by reference.

7 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender and is sentenced to life without the
 possibility of early release. RCW 9.94A.570.

COURT'S SENTENCE:		
<i>Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.</i>		
COUNT I <u>87</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>147</u> <input checked="" type="checkbox"/> Mo.	COUNT II <u>10</u> Days <input checked="" type="checkbox"/> Mo. <u>55.5</u>	COUNT III <u>1</u> Days <input checked="" type="checkbox"/> Mo. <u>84</u>
COUNT V <u>84</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT VI COUNT 4 - <u>55.5</u>	COUNT VII <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.
COUNT VIII <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.	COUNT IX <u>116</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>176</u> <input checked="" type="checkbox"/> Mo.	COUNT X <u>29</u> <input checked="" type="checkbox"/> Mo.
COUNT XI <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.	COUNT XII <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.	COUNT XIII <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.
COUNT XIV <u>116</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>176</u> <input checked="" type="checkbox"/> Mo.	COUNT XV <u>29</u> <input checked="" type="checkbox"/> Mo.	COUNT XVI <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.
COUNT XVII <u>116</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>176</u> <input checked="" type="checkbox"/> Mo.	COUNT XVIII <u>364</u> Days with <u>0</u> Days Suspended for 2 Years	
COUNT XIX <u>116</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>176</u> <input checked="" type="checkbox"/> Mo.	COUNT XX <u>29</u> <input checked="" type="checkbox"/> Mo.	COUNT XXI <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.
COUNT XXII <u>171</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>231</u> <input checked="" type="checkbox"/> Mo.	COUNT XXIII <u>116</u> <input checked="" type="checkbox"/> Mo. F: 60 months Total: <u>176</u> <input checked="" type="checkbox"/> Mo.	COUNT XXIV <u>89.5</u> <input checked="" type="checkbox"/> Mo.



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COUNT XXV <u>29</u> <input checked="" type="checkbox"/> Mo.	COUNT XXVI _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.
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IF MULTIPLE COUNTS—Total confinement ordered: 1148.5 Days Months. (per DOSA sentence)
COUNTS SERVED Concurrent Consecutive Firearm and Deadly Weapon enhancements served consecutive;
the remainder concurrent. Sexual Motivation enhancements served consecutive; the remainder concurrent.
 VUCSA enhancements served consecutive concurrent; the remainder consecutive.

- 4.4—CONFINEMENT ONE YEAR OR LESS—Defendant shall serve a term of confinement as follows:
- JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found eligible, the confinement ordered may be converted to—Work Release, RCW 9.94A.731 (*Note: the Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail or Peninsula Work Release*), Home Detention, RCW 9.94A.731, 190, or Supervised Community Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.
 - STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if applicable under RCW 9.94A.190(3) in the Department of Corrections.
- 4.5—CONFINEMENT OVER ONE YEAR—Defendant is sentenced to the above term of total confinement in the custody of the Department of Corrections.
- OTHER SENTENCES—This sentence shall be served consecutive concurrent to sentence(s) ordered in cause number(s) _____
 - CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to sentencing solely for this cause number as computed by the jail unless specifically set forth—_____ days.
 - 4.3—NO CONTACT ORDER—Defendant shall abide by the terms of any no contact order issued as part of this Judgment and Sentence.

SUPERVISION

- 4.6—COMMUNITY CUSTODY – SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP. RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody (and supervised probation if ordered). *First Offenders—RCW 9.94A.650.* If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 12 months; and if treatment is ordered, community supervision may include up to the period of treatment but not exceed 2 years.



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Community Custody Is Ordered for the Following Term(s):

For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):

- COUNT(S) _____ 36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
- COUNT(S) I, VII, VIII, IX, XI, XII, XIII, XIV, XVI, XVII, XIX, XXI, XXII, XXIII_ 18 months for Violent Offense
- COUNT(S) _____ 12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)

For offenders sentenced to a term of one year or less :

- COUNT(S) _____ 12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions).

- Community custody for sex offenders may be extended for up to the statutory maximum term.
- For sex offenses, defendant shall submit to electronic home detention if imposed by DOC

Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:

- COUNT(S) XVIII _____ 12 months 24 months _____ months

~~4.6~~ **WORK ETHIC CAMP—COMMUNITY CUSTODY.** RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

~~4.6~~ **PRISON-BASED DOSA—COMMUNITY CUSTODY.** RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

~~4.7~~ **ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS—**If DOC finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.

~~4.7~~ **ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**



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FROM THE DOSA PROGRAM—If the defendant fails to complete, or is administratively terminated from, the drug offender sentencing alternative program, the court imposes a term of community custody under RCW 9.94A.701, to begin upon the defendant's release from custody, and during this term of community custody, the defendant shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC.

4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY. RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the ADDENDUM are hereby imposed.

-ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA SENTENCE CONDITIONS—If the court finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, the court may order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard range or a term of total confinement up to the top of the standard range. The court may also impose a term of community custody. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.

COMMUNITY CUSTODY VIOLATIONS. In any case in which community custody is imposed, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.



SUPERVISION SCHEDULE: The Defendant Shall-

STANDARD

- Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
- Report to and be available for contact with assigned CCO as directed.
- Obey all no-contact orders including any in this judgment.
- Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
- Notify CCO within 48 hours of any new arrests or criminal convictions.
- Pay DOC monthly supervision assessment.
- Comply with crime-related prohibitions.

SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)

- Work only at DOC-approved education, employment and/or community service.
- Possess or consume no controlled substances without legal prescription.
- Reside only at DOC-approved location and arrangement.
- Consume no alcohol, if so directed by the CCO.

FIRST OFFENDER

- Obey all laws.
- Devote time to specific employment or occupation.
- Pursue a prescribed secular course of study or vocational training.
- Participate in DOC programs and classes, as directed.
- Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed standard sentence range.

FINANCIAL GAIN

- Commit no thefts.
- Possess no stolen property.
- Have no checking account or possess any blank or partially blank checks.
- Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
- Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
- Possess no identification in any other name other than Defendant's true name.
- Possess no credit cards or access devices belonging to others or with false names.
- Cause no articles to be refunded except with the written permission of CCO.
- Take a polygraph test as requested by CCO to monitor compliance with supervision.

PSI CONDITIONS-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.

ALCOHOL/DRUGS

- Possess or consume no alcohol.
- Enter no bar or place where alcohol is the chief item of sale.
- Possess and use no illegal drugs and drug paraphernalia.
- Submit to UA and breath tests at own expense at CCO request.
- Submit to searches of person, residence or vehicles at CCO request.
- Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
- Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.

EVALUATIONS- Complete an evaluation for:
 substance abuse anger management mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.

DOSA

- Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
- Devote time to a specific employment or training.
- Perform community service work.

4.8-OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

PROGRAMS / ASSAULT

- Have no assaultive behavior.
- Successfully complete a certified DV perpetrators program.
- Successfully complete an anger management class.
- Successfully complete a victim's awareness program.

TRAFFIC

- Commit no traffic offenses
- Do not drive until your privilege to do so is restored by DOL.

HAVE NO CONTACT WITH: Robert Dato, Aarron Dato, Jeremy Turner, Thomas Hunnell (AKA Harvison), Brett Cummings, Aaron Tucheck, Ann Marie Tucheck, Keefe Jackson, Kimberly Birkett, Paul Woods, Brandon Bird, Christopher Devenere, Jerrell Smith, Kevion Arnold-Alexander, Heather Arnold-Alexander, and any of their properties.



FINANCIAL OBLIGATIONS

41-LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760. The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> X	\$500 Victim Assessment, RCW 7.68.035 [PCV]	\$_____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<input checked="" type="checkbox"/> X	\$1135 Court-appointed attorney fees [PUB]	\$_____ Witness Costs [WFR]
<input checked="" type="checkbox"/> X	\$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$_____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> X	\$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$_____ Court-appointed defense fees/other defense costs
	<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Mandatory fine for drug crimes, RCW 69.50.430	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
	\$_____ Contribution to SIU-Bremerton Police Department, RCW 9.94A.030, 9.94A.760.	<input checked="" type="checkbox"/> X \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
	\$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
	\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	<input checked="" type="checkbox"/> X \$100 Contribution-Anti-Profitcing Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82 .110
	Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$200 DUC-DUIDP Account Fee - Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

RESTITUTION-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted-_____ RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. **INTEREST WAIVED FOR TIMELY PAYMENTS**-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

42-HIV TESTING-The Defendant shall submit to HIV testing. RCW 70.24.340.

43-DNA TESTING-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law

JUDGMENT AND SENTENCE; Page 12

[Form revised January 29, 2010]



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enforcement agency unless otherwise stated.

- 4.10-COMPLIANCE WITH SENTENCE-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.
- JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.
- EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

NOTICES AND SIGNATURES

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

5.2-LENGTH OF SUPERVISION-The court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3-NOTICE OF INCOME-WITHHOLDING ACTION-If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a 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.

5.5-ANY VIOLATION OF JUDGMENT AND SENTENCE-Is punishable by up to 60 days of confinement per violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW 9.94A.633.

5.6-FIREARMS-You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Clerk's Action Required-The court clerk shall forward a copy of the Defendant's driver's license, identicard, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable-

5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION. LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.

1. General Applicability and Requirements:

Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010, CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.

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

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

2. Offenders Who are New Residents or Returning Washington Residents:

If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. Change of Residence Within State:

If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you



1 change your residence to a new county within this state, you must register with the sheriff of the new county within
2 three business days of moving. Also within three business days, you must provide, by certified mail, with return
3 receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you
4 last registered.

5 **4. Leaving the State or Moving to Another State:**

6 If you move to another state, or if you work, carry on a vocation, or attend school in another state you must
7 register a new address, fingerprints, and photograph with the new state within three business days after establishing
8 residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the
9 state, you must also send written notice within three business days of moving to the new state or to a foreign country to
10 the county sheriff with whom you last registered in Washington State.

11 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher
12 Education or Common School (K-12):**

13 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you
14 are required to notify the sheriff of the county of your residence of your intent to attend the institution within three
15 business days prior to arriving at the institution. If you become employed at a public or private institution of higher
16 education, you are required to notify the sheriff for the county of your residence of your employment by the institution
17 within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or
18 private institution of higher education is terminated, you are required to notify the sheriff for the county of your
19 residence of your termination of enrollment or employment within three business days of such termination. If you
20 attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are
21 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the
22 sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the
23 principal of the school.

24 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

25 Even if you do not have a fixed residence, you are required to register. Registration must occur within three
26 business days of release in the county where you are being supervised if you do not have a residence at the time of your
27 release from custody. Within three business days after losing your fixed residence, you must send signed written
28 notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than
29 24 hours, you will be required to register with the sheriff of the new county not more than three business days after
30 entering the new county. You must also report weekly in person to the sheriff of the county where you are registered.
31 The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business
hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff
upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level
and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.21.550.

7. Application for a Name Change:

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

5.8-PERSISTENT OFFENDER-

"Three Strike" Warning-You have been convicted of an offense that is classified as a "most serious offense"
under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the
first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

"Two Strike" Warning-In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,
rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child
molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the
first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second
degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in
the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW
9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,
federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

Persistent Offender Sentence-A persistent offender shall be sentenced to a term of total confinement for life
without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in
the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

5.8-DEPARTMENT OF LICENSING NOTICE-The court finds that Count _____ is a felony in the



1 commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract
2 of Court Record to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285.
3 **TREATMENT RECORDS**—If the Defendant is or becomes subject to court-ordered mental health or
4 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment
5 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

5 **Voting Rights Statement:**

6 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter
7 registration will be cancelled.

8 My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence
9 in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before
10 voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial
11 obligations or an agreement for the payment of legal financial obligations.

12 My right to vote may be permanently restored by one of the following for each felony conviction: a) A certificate of
13 discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the
14 right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050;
15 or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C
16 felony, RCW 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

17 Defendant's Signature: [Signature]

18 **SO ORDERED IN OPEN COURT.**

19 DATED: 7/27/12

20 [Signature] **JEANETTE DALTON**

21 JUDGE

22 [Signature]
23 **G. MOSCA FRANKLIN**, WSBA No. 38811
24 Deputy Prosecuting Attorney

25 [Signature], WSBA No. 2181
26 Attorney for Defendant

27 Defendant has previously, through their plea agreement, waived
28 his or her presence at any future restitution hearing.

29 LC (initials)

30 [Signature]
31 **LAVUANIA LE'VEAR CONNER**
32 Defendant

33 If I have not previously done so, I hereby agree to waive my
34 right to be present at any restitution proceedings:
35 LC (initials)



1 INTERPRETER'S DECLARATION - I am a certified or registered interpreter, or the court has found me other
2 wise qualified to interpret, the _____ language, which the Defendant
3 understands. I interpreted this Judgment and Sentence for the Defendant into that language.
4 I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and
5 correct.

6 Translator signature/Print name- _____
7 Signed at Port Orchard, Washington, on _____, 201__.

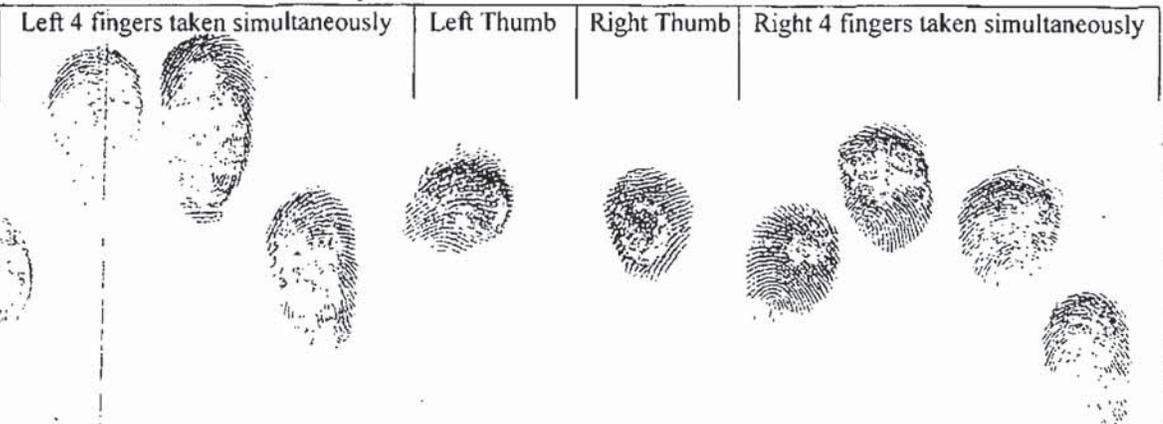
8 **IDENTIFICATION OF DEFENDANT**

9 Race: Black Sex: Male DOB: 04/22/1989 Age: 23
10 D/L: CONNELL113J2 D/L State: Washington SID: [s.i.d. number] Height: 511
11 Weight: 150 JUVIS: Unknown Eyes: Brown Hair: Black
12 DOC: Unknown SSN: 307-06-9361 FBI: [fbi number]

13 FINGERPRINTS-I attest that I saw the same Defendant who appeared in Court on this document affix his or
14 her fingerprints and signature thereto.

15 Clerk of the Court- *Dinecourt*, Deputy Clerk. Dated- 7/27/12

16 DEFENDANT'S SIGNATURE- *[Signature]*



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30 Prosecutor's File Number-10-184374-3

31 Prosecutor Distribution-Original (Court Clerk); 1 copy (Prosecutor), 1 copy (DOC), 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)



Attachment “D”

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED
COURT OF APPEALS
DIVISION II

2015 JUN -4 AM 8:34

STATE OF WASHINGTON,
Respondent,

v.

LA'JUANTA LE'VEAR CONNER,
Appellant.

No. 43762-7-II
consolidated with
No. 45418-1-II

STATE OF WASHINGTON

DEPUTY

UNPUBLISHED OPINION

MELNICK, J. — La'Juanita Le'Vear Conner appeals his 24 convictions based on, or related to, a series of home invasion robberies and burglaries.¹ Conner argues (1) the trial court abused its discretion when it allowed the State to exercise a peremptory challenge after the trial started, (2) the trial court erred by allowing improper opinion testimony, (3) his attorney's failure to object to improper opinion testimony provided him ineffective assistance of counsel, (4) the trial court erred when it provided a missing witness instruction to the jury, (5) the trial court improperly commented on the evidence, and (6) the trial court erroneously imposed a fourteenth firearm enhancement related to a charge of which Conner was acquitted. In his statement of additional grounds (SAG), Conner asserts insufficient evidence exists to support his convictions of unlawful possession of a firearm and possession of a stolen firearm. He further asserts prosecutorial misconduct.

Conner filed a personal restraint petition (PRP) that is consolidated with this direct appeal. In his PRP, Conner argues (a) the State's second amended information is invalid because the State

¹ Conner was convicted of one count of conspiracy to commit burglary in the first degree, two counts of unlawful possession of a firearm in the second degree, two counts of possession of a stolen firearm, eight counts of robbery in the first degree, five counts of burglary in the first degree, four counts of theft in the second degree, one count of theft in the third degree, and one count of theft of a firearm.

did not file an amended statement of probable cause, (b) the jury instructions relieved the State of its burden to prove all elements of the crimes beyond a reasonable doubt, (c) the State vindictively prosecuted him, (d) the trial court erred when it sentenced him by imposing an exceptional sentencing without findings, by failing to conduct a same criminal conduct analysis, and by violating his double jeopardy rights.

We hold that the trial court erred when it allowed the State to exercise a peremptory challenge after the jury was sworn, but that the error did not prejudice Conner. We also hold that the trial court erred by instructing the jury using a missing witness instruction, but that the error was harmless. We vacate Conner's theft in the third degree conviction because it violates the prohibition against double jeopardy. We affirm Conner's remaining convictions. Additionally, we hold that the trial court erroneously sentenced Conner on one firearm enhancement related to a charge of which he was acquitted. We remand for resentencing on the remaining convictions and twelve firearm enhancements.

FACTS

I. HOME INVASIONS AND ARREST

The State, by second amended information, charged Conner with 26 separate offenses based on a series of home invasion robberies and burglaries in Kitsap County, 14 of which included firearm enhancements.

A. Twelfth Street (I)

On September 15, 2010, Robert and Aaron Dato were present at their apartment on Twelfth Street in Bremerton that they shared with Thomas Harveson, who was not home at the time. Conner, Kevion Alexander, Anthony Adams, and Troy Brown entered the apartment wearing bandanas, carrying guns, and making demands for property. They took the Datos' personal

property from their persons or in their presence, and they took property that belonged to Harveson. Conner carried a Hi-Point .40 pistol during the commission of this crime. Based on this incident, the State charged Conner with two counts of robbery in the first degree, one count of burglary in the first degree, and one count of theft in the second degree. The State alleged three firearm enhancements.

B. Twelfth Street (II)

On September 28, 2010, the Datos and a friend, Jeffrey Turner, were at the Twelfth Street apartment in Bremerton. Harveson was not at home. Conner, Alexander, and Adams entered the apartment wearing bandanas, carrying guns, and making demands for money. They took personal property from the Datos. They also took personal property belonging to Harveson. Based on this incident, the State charged Conner with three counts of robbery in the first degree, one count of burglary in the first degree, and one count of theft in the second degree. The State alleged four firearm enhancements.

C. Shore Drive

On September 28, 2010, Brett Cummings was in his studio apartment on Shore Drive in Bremerton. Conner stood outside while Alexander and Adams entered Cummings's apartment carrying guns and making demands for property. Either Alexander or Adams pushed Cummings to the ground and Conner and Adams hit him over the head with the butt of their guns. They took Cummings's personal property. Conner carried a Hi-Point .40 pistol during the commission of this home invasion. Based on this incident, the State charged Conner with one count of robbery in the first degree, one count of burglary in the first degree, and one count of theft in the third degree. The State alleged two firearm enhancements.

D. Weatherstone Apartments

On the night of October 2, 2010, Conner, Alexander, Adams, and Jerrell Smith entered Kimberly Birkett's apartment at the Weatherstone Apartments. They took Birkett's personal property. Conner carried a Hi-Point .40 pistol. Based on this incident, the State charged Conner with one count of burglary in the first degree and one count of theft in the second degree. The State alleged one firearm enhancement.

E. Wedgewood Lane

On the night of November 3, 2010, Aaron Tucheck, Ann Tucheck, and Keefe Jackson, were at their residence on Wedgewood Lane. Conner, Alexander, and Brown entered the residence carrying guns, making demands for property, and ordering Aaron to open a safe. They took personal property, including a firearm and a debit card, belonging to the Tuchecks and Jackson. Conner carried a Hi-Point .40 pistol during the commission of these crimes. A co-defendant carried a Taurus .44 revolver during the commission of the Wedgewood Lane home invasion. Based on this incident, the State charged Conner with two counts of robbery in the first degree, one count of burglary in the first degree, one count of theft of a firearm, and one count of theft of an access device in the second degree. The State alleged three firearm enhancements.

F. Arrest

On November 17, 2010, the police arrested Conner during a high-risk traffic stop. Conner was a passenger in the truck occupied by two of his co-defendants. Prior to the stop, Conner sat in the passenger seat when the driver of the vehicle said, "[W]e got two gats locked and loaded ready to go." VI Report of Proceedings (RP) at 869. Law enforcement executed a search warrant on the truck and found a bag in the bed of the truck containing two loaded firearms, a Hi-Point .40 pistol with a filed off serial number and a Taurus .44 revolver. Law enforcement also located a

baggies of marijuana in the cab of the truck where a co-defendant had been sitting. Based on this incident, the State charged Conner with one count of conspiracy to commit burglary in the first degree, two counts of unlawful possession of a firearm in the second degree, two counts of unlawful possession of a stolen firearm, and one count of possession of marijuana. The State alleged one firearm enhancement.

Law enforcement subsequently searched the apartment of Conner's romantic partner, Rachel Duckworth, and found stolen property from the crimes described above. Based on this search and seizure, the State charged Conner with one count of possession of stolen property in the third degree.

II. TRIAL

A. Peremptory Challenge

After the parties selected a jury but before the court swore them in, juror 4 stated that she remembered that the judge had presided over the trial where her son was convicted of attempted murder. The State asked the trial court, but not the juror, whether the juror testified at her son's trial. The trial court replied in the negative. Following additional questioning, the trial court found that juror 4 showed no bias or prejudice. The State neither challenged the juror for cause nor exercised its remaining peremptory challenge. The judge swore in juror 4 with the rest of the panel.

The State began its case in chief and presented witnesses. Two days later, the State informed the trial court it learned juror 4 had testified in her son's trial and that the prosecutor had accused her of lying and manipulating testimony. The State also asserted that the juror indicated she had talked to a family member about Conner's trial, which caused her to remember that the judge presided over her son's trial. The State moved to excuse the juror, but the trial court ruled

that the juror had not clearly violated the trial court's orders and that it "[could not] excuse her for cause based upon answers to questions that she provided earlier because we had already addressed that issue before impaneling her." VI RP at 651. The trial court took the State's motion under advisement.

The next day, the State asked to exercise its remaining peremptory challenge to excuse juror 4. Conner objected. The State argued that it relied on the trial court's faulty recollection that the juror had not been a witness in her son's trial and it would have struck her if the State had been aware she testified. Relying on *State v. Williamson*, 100 Wn. App. 248, 996 P.2d 1097 (2000), the trial court allowed the State to exercise its remaining peremptory challenge and it excused juror 4. Following this juror's excusal, 12 jurors and one alternate remained.

B. Opinion Testimony

Detective Mike Davis testified about his post-arrest questioning of Conner. During cross-examination, Conner elicited from Detective Davis that he used a "ruse" when questioning Conner. V RP at 605. On redirect, Detective Davis explained he employs a ruse when questioning suspects "[t]o elicit the truth" and when he "believe[s] that [the facts say] otherwise what the person is telling me." VI RP at 730. Detective Davis said he uses a ruse "to get the facts. That is what I am is a fact-finder." VI RP at 730. Conner did not object to this testimony.

C. Missing Witness Instruction

The State presented evidence that Duckworth exhibited hostility towards Detective Davis. The State also played recordings of jail calls between Conner and Duckworth in which Conner made many comments including that he was "done with all that [explicative]" and "changing [his] ways." Supp. Clerk's Papers (CP) at 355, 360. Conner testified that the recordings meant he would be leaving the streets behind and quit selling drugs.

The State requested a missing witness instruction. It argued that Duckworth, identified as a defense witness, exhibited hostility to law enforcement, could have supported Conner's version of the jail calls, and could have testified regarding the stolen property found in her apartment. Conner argued that the State could have called Duckworth.

The trial court found that Duckworth's testimony would have been material and not cumulative, Duckworth's absence was not adequately explained, Duckworth was particularly within Conner's control; Conner did not adequately explain Duckworth's absence, and Duckworth's testimony would neither have infringed on Conner's constitutional rights to remain silent nor shifted the burden to Conner to prove his innocence. Thus, the trial court instructed the jury using a missing witness instruction and permitted the State to argue Duckworth's absence in its closing argument.

D. Closing Argument

During closing argument, Conner argued that the police and prosecutor's office coached witnesses regarding their testimony. The State objected:

[DEFENSE COUNSEL:] Mr. Smith is no fool. Like any kid, he's just been told what direction to take with his lies. Mook Alexander went through the same thing, whether he got it from the prosecutor's office, when they interviewed him from the detectives, from his own lawyer—

[PROSECUTOR]: Objection, Your Honor. These are facts not in evidence.

THE COURT: Sustained. Move on, [Defense Counsel].

[DEFENSE COUNSEL]: Mr. Alexander knew which way that he needed to go. At the time that he came forth in March, and they needed to cut his sentence way down, he knew, and in trial the only person that they had to get was Mr. Conner.

[PROSECUTOR]: Objection, Your Honor. Move to strike.

THE COURT: Members of the jury, you will disregard the last argument of Counsel.

[DEFENSE COUNSEL]: Mr. Conner was the person left that they did not have the evidence that they needed, and Mook Alexander—

[PROSECUTOR]: Objection, Your Honor. Move to strike.

THE COURT: Sustained. Move on, [Defense Counsel].

XVII RP at 2590-91. Conner later argued that Smith and Alexander changed their stories because they are experienced liars. The State objected:

[DEFENSE COUNSEL:] Once they start lying, they don't stop lying. . . . So they are very quick, and they move very quick. So it's almost like shadow boxing because they know how to do it because they are experienced in it. They have been doing it a long time.

[PROSECUTOR]: Objection, Your Honor.

THE COURT: Sustained. Move on.

[DEFENSE COUNSEL]: I submit that the evidence shows that when you look in your record in terms of what Mr. Mook Alexander's record is, that he talks about on the stand—

[PROSECUTOR]: Objection, Your Honor. Facts not in evidence.

XVIII RP at 2613-2614.

Outside of the jury's presence, the State argued that the record contained nothing to suggest Alexander has been a liar for a long time. Conner argued that Alexander's prior crimes of dishonesty meant that he was an experienced liar. The trial court sustained the objection because the statement "'they have been lying for a long time' is improper argument based upon the facts that are in evidence." XVIII RP at 2616. The trial court noted that Smith had no prior convictions and that "one can be a theft [sic], which is dishonest, and one can be a liar." XVIII RP at 2615-16. The trial court sustained the objection and instructed the jury to disregard Conner's counsel's last remarks.

E. Verdict and Sentencing

The jury found Conner guilty on all counts except possession of marijuana and possession of stolen property in the third degree. Additionally, the jury specially found that Conner was armed with a firearm on all but one count alleged. The trial court imposed a standard range sentence of 1148.5 months. Conner appeals. He also filed a PRP that is consolidated with this direct appeal.

ANALYSIS

I. PEREMPTORY CHALLENGE

Conner argues that the trial court erred by allowing the State to exercise a peremptory challenge after the jury had been sworn and witnesses had testified. He argues that the trial court did not follow proper procedures. We hold that the trial court abused its discretion by allowing to State to exercise its remaining peremptory challenge on juror 4, but no prejudice resulted.

We review a trial court's decision to excuse a juror for abuse of discretion. *State v. Elmore*, 155 Wn.2d 758, 768, 781, 123 P.3d 72 (2005); *State v. Ashcraft*, 71 Wn. App. 444, 461, 859 P.2d 60 (1993). "A discretionary determination will not be disturbed on appeal without a clear showing of abuse of discretion, that is, discretion that is manifestly unreasonable or exercised on untenable grounds, or for untenable reasons." *State v. Smith*, 90 Wn. App. 856, 859-60, 954 P.2d 362 (1998). A trial court abuses its discretion if its decision is based on a misunderstanding of the underlying law. *State v. Burke*, 163 Wn.2d 204, 210, 181 P.3d 1 (2008).

CrR 6.4(e) sets forth the procedures for exercising peremptory challenges in criminal trials. "After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately." CrR 6.4(e)(2). Once a party accepts the jury as presently constituted, that party may only peremptorily challenge jurors later added to that group. CrR 6.4(e)(2). Here, the parties had already accepted the jury; therefore, the State could not use a peremptory challenge on juror 4. Because the trial court misapplied the court rule, it abused its discretion.²

² The trial court relied on *Williamson*, 100 Wn. App. at 253. In that case, unforeseen circumstances existed to justify the court's action because a juror did not disclose that she knew the victim until after the trial court swore in the jury and the State's first witness began to testify. *Williamson*, 100 Wn. App. at 252. We do not have unforeseen circumstances in this case because juror 4 informed the trial court that the judge presided over her son's trial before the sworn jury started hearing the case.

However, the trial court's error caused no prejudice. The Sixth Amendment of the United States Constitution and article 1, section 22 of the Washington Constitution guarantee a defendant the right to a fair trial by an impartial jury. *State v. Latham*, 100 Wn.2d 59, 62–63, 667 P.2d 56 (1983). But the “[d]efendant has no right to be tried by a particular juror or by a particular jury.” *State v. Gentry*, 125 Wn.2d 570, 615, 888 P.2d 1105 (1995). The constitutional requirement of a randomly selected jury is “satisfied by the initial random selection of jurors and alternate jurors from the jury pool.” *State v. Coe*, 109 Wn.2d 832, 842, 750 P.2d 208 (1988).

If a juror becomes unable to perform his or her duty after formation of the jury, the trial court may discharge the juror. CrR 6.1(c). In such instance, an alternate juror may replace the discharged juror. CrR 6.5. Here, following juror 4's excusal, 12 jurors plus an alternate remained. The State and Conner selected all of the jurors and alternate jurors. Conner makes no showing and does not argue that a biased jury heard his case. Therefore, no violation of Conner's right to an impartial jury occurred and he has demonstrated no prejudice that resulted from the excusal of juror 4. The error was harmless.

II. OPINION TESTIMONY

Conner argues that the trial court erred by admitting Detective Davis's testimony regarding his use of a ruse. He argues that this testimony prejudiced him by allowing opinion testimony on an ultimate issue for the jury and therefore his guilt. Conner initially elicited the testimony on use of a ruse. Additionally, Conner did not object, move to strike, or ask that the jury be instructed to disregard Detective Davis's testimony on redirect. Therefore, Conner failed to preserve any challenge to this testimony and we decline to review it. RAP 2.5(a).

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Conner contends that he received ineffective assistance of counsel because his attorney did not object to Detective Davis's testimony regarding his use of a ruse. He argues that this failure to object resulted in prejudice because "there was nothing preventing the jury from considering that opinion [that Conner was untruthful] when evaluating Conner's credibility." Appellant's Br. at 40. We disagree and hold that Conner did not receive ineffective assistance of counsel.

A. Standard of Review

Ineffective assistance of counsel is a mixed question of law and fact we review de novo. *Strickland v. Washington*, 466 U.S. 668, 698, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A defendant claiming ineffective assistance of counsel has the burden to establish that (1) counsel's performance was deficient and (2) the performance prejudiced the defendant's case. *Strickland*, 466 U.S. at 687. Failure to establish either prong is fatal to an ineffective assistance of counsel claim. *Strickland*, 466 U.S. at 700.

An attorney's performance is deficient if it falls "below an objective standard of reasonableness based on consideration of all the circumstances." *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Deficient performance prejudices a defendant if there is a "reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different." *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). Our scrutiny of counsel's performance is highly deferential; we strongly presume reasonableness. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). To rebut this presumption, a defendant bears the burden of establishing the absence of any legitimate trial tactic explaining counsel's performance. *Grier*, 171 Wn.2d at 33.

B. No Ineffective Assistance of Counsel

Even assuming, without deciding, that Detective Davis's opinion testimony went to an ultimate issue for the jury, Conner has not established the absence of any legitimate trial tactic to explain his counsel's performance. Conner's lawyer first raised Detective Davis's use of a ruse on cross-examination. He asked Detective Davis if he lied to Conner when he told him that Smith and Perez accused Conner of handling the Hi-Point .40 pistol. Detective Davis responded that he used a ruse. Conner's counsel followed up by asking, "That is something that you do in police work . . . you make people think that you have something when you don't have something?" V RP at 608. Detective Davis answered, "That is correct." V RP at 608. On redirect, the State asked Detective Davis to define ruse, and Conner's counsel did not object. Conner fails to show that no conceivable legitimate trial tactic explains his counsel's performance. *See Grier*, 171 Wn.2d at 33. In fact, this line of questioning was consistent with Conner's overall defense strategy of denying his involvement in the crimes while implying that Conner became a target of the police. Conner cannot demonstrate deficient performance; therefore, we need not address the second prong. *See Grier*, 171 Wn.2d at 33.

IV. MISSING WITNESS INSTRUCTION

Conner argues that his convictions should be reversed because the trial court misapplied the missing witness doctrine and improperly instructed the jury. He also argues that the trial court improperly permitted the prosecutor to argue this doctrine. We hold that that the trial court misapplied the missing witness doctrine, but the error was harmless.

A. Standard of Review

"[W]hether legal error in jury instructions could have misled the jury is a question of law, which we review de novo." *State v. Montgomery*, 163 Wn.2d 577, 597, 183 P.3d 267 (2008). We

review a trial court's rulings on improper prosecutorial argument for abuse of discretion. *Montgomery*, 163 Wn.2d at 597. "A discretionary determination will not be disturbed on appeal without a clear showing of abuse of discretion, that is, discretion that is manifestly unreasonable or exercised on untenable grounds, or for untenable reasons." *Smith*, 90 Wn. App. at 859-60.

B. Missing Witness Doctrine

In general, the State may not comment on the defendant's lack of evidence because the defendant has no duty to present evidence. *State v. Cheatam*, 150 Wn.2d 626, 652, 81 P.3d 830 (2003). The missing witness doctrine is an exception: it applies where a party failed to produce a witness particularly within its control. *State v. Blair*, 117 Wn.2d 479, 485-86, 816 P.2d 718 (1991). When applicable, this doctrine permits both a prosecutor to comment on a defendant's failure to produce evidence and a jury to infer that the missing evidence or testimony would have been unfavorable to the party who failed to produce it. *Blair*, 117 Wn.2d at 485-86.

The missing witness doctrine applies in a criminal case when: (1) the absent witness is particularly within the defense's ability to produce, (2) the missing testimony is not merely cumulative, (3) the witness's absence is not otherwise explained, (4) the witness is not incompetent or her testimony privileged, and (5) the testimony does not infringe on the defendant's constitutional rights. *Cheatam*, 150 Wn.2d at 652-53. The doctrine does *not* apply where the missing witness's testimony, if favorable to the party who would naturally have called the witness, would necessarily be self-incriminatory. *Blair*, 117 Wn.2d at 489-90. The State may only comment on the defendant's failure to call a witness where the defendant has unequivocally implied that the missing witness would have corroborated his theory of the case and it is clear the defendant could produce the witness. *State v. Contreras*, 57 Wn. App. 471, 476, 788 P.2d 1114 (1990).

C. The Trial Court Misapplied the Missing Witness Doctrine

Over Conner's objection, the trial court allowed the State to argue that Duckworth would have provided unfavorable testimony and it gave a missing witness instruction to that effect. The trial court misapplied the missing witness doctrine.³

Conner never unequivocally implied that Duckworth would have corroborated his theory of the case or his version of the recorded jail phone calls. The record does not demonstrate that Duckworth was peculiarly within the defendant's ability to produce. Despite her romantic relationship with Conner and hostility towards the State, the record contains no evidence that the State could not have called her as a witness. The record also does not demonstrate that Duckworth could provide material testimony. Although she could have testified about what Conner meant when he stated he was "done with all that" and "changing [his] ways" in the jail calls with Duckworth, she could have only testified as to her understanding of Conner's statements. Supp. CP at 355, 360. Duckworth's absence was adequately explained: she did not want to incriminate herself. Therefore, relying on all the *Cheatam* factors, the trial court misapplied the missing witness doctrine and erred by instructing the jury using the missing witness instruction. 150 Wn.2d at 652-53.

³ The parties both argue that the trial court based its ruling in part on a mistaken belief that Conner's counsel stated in opening that Duckworth would testify. While the trial court did ask Conner's counsel why he said Duckworth was going to testify, implying a mistaken belief that he had done so, the trial court's ruling the next day does not indicate that this was a factor in its decision. The trial court stated:

[Conner's counsel] argued in his opening statement that the jury would hear *about* Rachel Duckworth and would hear about the safe that was found in her apartment.

XVI RP at 2415-16 (emphasis added). From this statement, it is clear that the trial court did not actually base its ruling on a mistaken belief that Conner's counsel argued Duckworth would testify.

D. The Error is Harmless

Although the trial court erred by allowing the missing witness instruction, the error was harmless. As long as the jury is properly instructed on the State's burden, an improper jury instruction may be harmless error. *Montgomery*, 163 Wn.2d at 600. "An erroneous instruction is harmless if, from the record in [the] case, it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.' Whether a flawed jury instruction is harmless error depends on the facts of a particular case." *Montgomery*, 163 Wn.2d at 600 (quoting *State v. Carter*, 154 Wn.2d 71, 81, 109 P.3d 823 (2005)).

Here, the trial court properly instructed the jury on the State's burden. The State emphasized its burden during closing arguments. And the State did not make repeated references to Duckworth's absence.

Because other evidence tied Conner to each of the home invasion robberies and burglaries, we hold the instructional error was harmless.⁴ It did not contribute to the verdict. Conner's co-defendant, Alexander, testified about Conner's involvement in the Twelfth Street (I) and (II) crimes. Alexander testified Conner wore a bandana and carried a Hi-Point .40 pistol during both incidents. Another co-defendant, Smith, testified that Conner stored stolen property from both incidents with Smith. Though the victims did not identify Conner at trial, one of them corroborated Alexander's testimony.

⁴ We summarized only a portion of the evidence that inculpates Conner. Additional evidence of Conner's guilt also exists in the record.

Alexander also testified as to Conner's involvement in the Shore Drive crime. He related how Conner participated in using force against Cummings. Smith also testified that Conner told him about the incident and how it did not go as planned because the victim was home. Although Cummings did not identify Conner at trial, he corroborated the events.

Smith testified that he participated in the crime at the Weatherstone Apartments at Conner's invitation. Alexander related that they targeted this residence because Conner knew the victim, and that Conner carried the victim's personal property from the apartment.

Alexander also testified about Conner's involvement in the Wedgewood Lane crime. He related that Conner helped plan the crime and that Conner participated by scoping out the apartment earlier in the day. Conner wore a black hoodie and bandana, and carried the Hi-Point .40 pistol. The victims corroborated this testimony. The record contains overwhelming evidence of Conner's guilt, and the erroneous instruction did not contribute to the verdict.

V. COMMENT ON THE EVIDENCE

Conner argues that the trial court improperly commented on the evidence when it sustained some of the State's objections during closing arguments. We disagree.

A. Judicial Comments on the Evidence Prohibited

Article 4, section 16 of the Washington Constitution prohibits judges from commenting on the evidence. *State v. Swan*, 114 Wn.2d 613, 657, 790 P.2d 610 (1990), *cert. denied*, 498 U.S. 1046 (1991). "A statement by the court constitutes a comment on the evidence if the court's attitude toward the merits of the case or the court's evaluation relative to the disputed issue is inferable from the statement." *State v. Lane*, 125 Wn.2d 825, 838, 889 P.2d 929 (1995). A court's conduct violates the constitution only if its attitudes are "reasonably inferable from the nature or manner of the court's statements." *State v. Elmore*, 139 Wn.2d 250, 276, 985 P.2d 289 (1999)

(quoting *State v. Carothers*, 84 Wn.2d 256, 267, 525 P.2d 731 (1974)). “A court does not comment on the evidence simply by giving its reasons for a ruling.” *In re Det. of Pouncy*, 144 Wn. App. 609, 622, 184 P.3d 651 (2008), *aff’d*, 169 Wn.2d 382 (2010).

B. No Comment on the Evidence

Conner argues that there are two instances where the trial court commented on the evidence when it sustained the State’s objections during Conner’s closing argument. First, Conner argued to the jury that the police and prosecutor’s office directed Conner’s co-defendants to lie. The State objected and the trial court sustained the objection. In ruling, the trial court simply stated, “Sustained. Move on, [Conner’s counsel].” XVII RP at 2591. Following this ruling, Conner almost immediately made another argument that implied the State manipulated a co-defendant’s testimony. In ruling on that objection, the trial court stated, “Members of the jury, you will disregard the last argument of [c]ounsel.” XVII RP at 2591. Because the trial court judge did not convey to the jury her personal opinion regarding the truth or falsity of any evidence introduced at trial, it did not impermissibly comment on the evidence. *See Lane*, 125 Wn.2d at 838. The trial court merely ruled on the objections.

Second, the trial court sustained the State’s objection to Conner’s argument that two of the co-defendants were experienced liars. In ruling on that objection, the trial court stated, “I have sustained the objection, and you are instructed to disregard the last remarks of [c]ounsel.” XVIII RP at 2616-17. Again, the trial court did not convey to the jury its personal opinion regarding merits of the case or its evaluation of disputed evidence. We hold that the trial court did not

impermissibly comment on the evidence and, therefore, did not violate Conner's constitutional rights.⁵

VI. Firearm Enhancement on Weatherstone Apartment Incident

Conner argues, and the State concedes, that the trial court erred when it imposed a 60 month firearm enhancement on his burglary in the first degree conviction arising from the Weatherstone Apartment incident. The jury did not find beyond a reasonable doubt that Conner was armed with a firearm during the commission of burglary in the first degree of the Weatherstone Apartment; therefore, we accept the State's concession and remand to the trial court to strike the firearm enhancement and to resentence Conner.

VII. STATEMENT OF ADDITIONAL GROUNDS

In his SAG, Conner asserts that insufficient evidence exists to support two convictions for unlawful possession of a firearm in the second degree and two convictions for possession of a stolen firearm. He also asserts the prosecutor committed misconduct by relying on coerced and false testimony. We hold that sufficient evidence exists for the unlawful possession of a firearm convictions and the possession of a stolen firearm convictions and that the prosecutor did not commit misconduct.

A. SUBSTANTIAL EVIDENCE

Conner asserts that his convictions for unlawful possession of a firearm in the second degree (Hi-Point .40 pistol), possession of a stolen firearm (Hi-Point .40 pistol), unlawful possession of a firearm in the second degree (Taurus .44 revolver), and possession of a stolen

⁵ To the extent that Conner argues that the trial court's rulings on the State's objections amounted to instructing the jury to disregard Conner's defense theory, this claim is without merit. The trial court instructed the jury only to disregard an improper statement by defense counsel during closing argument, not to disregard the defendant's theory of the case.

firearm (Taurus .44 revolver) are not supported by substantial evidence. Specifically, he argues that sufficient evidence does not support the jury's finding that he possessed the firearms or that he knew they were stolen. Viewed in the light most favorable to the State, the evidence is sufficient to convince the jury beyond a reasonable doubt that Conner possessed the Hi Point .40 pistol and the Taurus .44 revolver, and that Conner knew both firearms were stolen.

1. Standard of Review

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). "Credibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

2. Possession

Conner first asserts that the State failed to prove beyond a reasonable doubt that he possessed both firearms. Possession can be actual or constructive. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). Actual possession means the firearms were in Conner's personal custody. *Staley*, 123 Wn.2d at 798. Constructive possession means that Conner had dominion and control over the firearms. *Staley*, 123 Wn.2d at 798; *State v. Summers*, 107 Wn. App. 373, 384, 28 P.3d 780 (2001). Dominion and control over the premises where the item was found creates a rebuttable inference of dominion and control over the item itself. *State v. Cantabrana*, 83 Wn. App. 204, 208, 921 P.2d 572 (1996). The State must show more than mere proximity, but need

not show exclusive control. *State v. George*, 146 Wn. App. 906, 920, 193 P.3d 693 (2008). However, knowledge of the presence of contraband, without more, is insufficient to show dominion and control to establish constructive possession. *State v. Hystad*, 36 Wn. App. 42, 49, 671 P.2d 793 (1983). The trial court instructed the jury, without objection, that “[a]ctual possession occurs when the item is in the actual physical custody of the person charged” and that “[c]onstructive possession occurs when . . . there is dominion and control over the item.” CP at 258.

a. Hi-Point .40 Pistol

To convict Conner of unlawful possession of the Hi-Point .40 pistol, the State needed to prove that he possessed it “on or between September 15, 2010 and November 17, 2010.” CP at 262. Viewed in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that Conner actually possessed the Hi-Point .40 pistol between September 15 and November 17. Testimony established that Conner carried the Hi-Point .40 pistol on his person during the commission of four of the home invasion robberies and burglaries. Therefore, sufficient evidence exists to uphold this conviction.

b. Taurus .44 Revolver

To convict Conner of unlawful possession of the Taurus .44 revolver, the State needed to prove that Conner possessed it “on or between November 1, 2010 and November 17, 2010.” CP at 264. Viewed in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that Conner actually possessed the Taurus .44 revolver between November 1 and November 17. The State presented evidence that the Taurus .44 revolver was stolen on November 1. Testimony established that Conner actually possessed and handled the Taurus .44 revolver on numerous occasions, including when Adams initially showed it to him after

it was stolen and when Conner held it while sitting in the front seat of Adams's truck. Therefore, sufficient evidence exists to uphold this conviction.

3. Knowledge that the Firearms were Stolen

Conner next asserts that the State failed to prove beyond a reasonable doubt that he knew both firearms were stolen. "Knowledge" means that a person "is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or . . . has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense." RCW 9A.08.010(1)(b).

a. Hi-Point .40 Pistol

Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that Conner knew the Hi-Point .40 pistol was stolen. The firearm's true owner testified that the firearm went missing after Brown and Conner visited his home. Alexander testified that the Hi-Point .40 pistol was "stolen" and that another co-defendant gave it to Conner on September 5 as "payment" for broken property. XII RP at 1683, 1685. The serial number was filed off. Detective Davis testified that in his training and experience, the only reason to file a serial number off any weapon is to conceal its stolen identity. Conner carried this firearm during the majority of the home invasion robberies and burglaries. The State produced sufficient evidence to convince a rational jury beyond a reasonable doubt that Conner had knowledge the firearm was stolen at the time he possessed it.

b. Taurus .44 Revolver

Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that Conner knew the Taurus .44 revolver was stolen. The firearm's true owner testified that the firearm went missing after his home was burglarized on

November 1. The firearm's true owner also identified the firearm at trial by its appearance and serial number. Alexander testified that Conner was present when Adams discussed acquiring the Taurus .44 semiautomatic by stealing it in "a lick [which is] [a] burglary or robbery, some type of breaking and entering." XII RP at 1685. The State produced sufficient evidence to convince a rational jury beyond a reasonable doubt that Conner had knowledge the firearm was stolen at the time he possessed it.

C. PROSECUTORIAL MISCONDUCT

Conner asserts the prosecutor committed misconduct by relying on Smith's "false and coerced testimony" and Alexander's false testimony.⁶ SAG at 11. We disagree and hold that no prosecutorial misconduct occurred.

The due process clause of the Fourteenth Amendment to the United States Constitution imposes on prosecutors a duty not to introduce perjured testimony or use evidence known to be false to convict a defendant. *State v. Finnegan*, 6 Wn. App. 612, 616, 495 P.2d 674 (1972). This duty requires the prosecutor to correct State witnesses who testify falsely. *Finnegan*, 6 Wn. App. at 616 (citing *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959)). To succeed on his claim that the prosecutor used false evidence to convict him, Conner must show that "(1) the testimony (or evidence) was actually false, (2) the prosecutor knew or should have known that the testimony was actually false, and (3) that the false testimony was material." *United States v. Zuno-Arce*, 339 F.3d 886, 889 (9th Cir. 2003). Conner fails to make the necessary showing for the first of these elements regarding both Smith's and Alexander's testimony.

⁶ Additionally, Conner argues that the police coerced Smith into making a statement. Any fact related to Smith's custodial interrogation is outside of this record on appeal. We do not address issues relying on facts outside the record on direct appeal. *McFarland*, 127 Wn.2d at 338 n.5.

The record does not support any of Conner's assertions that the State relied on false testimony. Conner offers no evidence to demonstrate the falsity of Smith's or Alexander's testimony other than his own version of events. Conflicting testimony is not evidence of falsity. *See Camarillo*, 151 Wn.2d at 71 (Credibility determinations are for the trier of fact and are not subject to review.). Because there is no support in the record that the State introduced false testimony, Conner's assertion relating to prosecutorial misconduct is without merit.

VI PERSONAL RESTRAINT PETITION

In his PRP, Conner argues (a) the State's second amended information is invalid because the State did not file an amended statement of probable cause, (b) the jury instructions relieved the State of its burden to prove all elements of the crimes beyond a reasonable doubt, (c) the State vindictively prosecuted Conner, and (d) the trial court erred by imposing an exceptional sentence without findings, by failing to conduct a same criminal conduct analysis, and by violating his double jeopardy rights. We vacate Conner's theft in the third degree conviction on double jeopardy grounds and remand for resentencing, but hold that the remainder of his claims are without merit. Because we remand for resentencing, we do not reach Conner's same criminal conduct claim.

A. Standard of Review

We consider the arguments raised in a PRP under one of two different standards, depending on whether the argument is based on constitutional or nonconstitutional grounds. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). A petitioner raising constitutional error must show that the error caused actual and substantial prejudice. *Davis*, 152 Wn.2d at 672. In contrast, a petitioner raising nonconstitutional error must show a fundamental defect resulting in a complete miscarriage of justice. *In re Pers. Restraint of Elmore*, 162 Wn.2d 236, 251, 172 P.3d 335 (2007). Additionally, Conner must support his claims of error with a statement of the

facts on which his claim of unlawful restraint is based and the evidence available to support his factual allegations. RAP 16.7(a)(2); *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988); *see also In re Pers. Restraint of Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990). Conner must present evidence showing his factual allegations are based on more than mere speculation, conjecture, or inadmissible hearsay. *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied*, 506 U.S. 958 (1992). Bald assertions and conclusory allegations are not sufficient. *Rice*, 118 Wn.2d at 886.

B. Probable Cause

Conner argues that the State's second amended information is invalid because the State did not file an amended statement of probable cause. Conner fails to cite any authority for this proposition, and we could find none. Thus, Conner cannot demonstrate a fundamental defect resulting in a complete miscarriage of justice.

C. Jury Instructions

Conner argues that the "to convict" instructions relieved the State of its burden to prove all elements of the crimes beyond a reasonable doubt because some instructions lacked the specific names of co-conspirators, names of victims, and addresses. We disagree.

We review de novo allegations of constitutional violations or instructional errors. *State v. Lynch*, 178 Wn.2d 487, 491, 309 P.3d 482 (2013); *State v. Brown*, 132 Wn.2d 529, 605, 940 P.2d 546 (1997). Jury instructions suffice where, when taken as a whole "they correctly state applicable law, are not misleading, and permit counsel to argue their theory of the case." *Brown*, 132 Wn.2d at 618.

Conner first argues that instruction 10, the "to convict" instruction for conspiracy to commit burglary, is defective because it does not name co-conspirators. We disagree. A

conspiracy instruction may not be more far-reaching than the charge in the information. *State v. Brown*, 45 Wn. App. 571, 575-76, 726 P.2d 60 (1986). The naming of co-conspirators is not an element of the crime. See RCW 9A.28.040. Therefore, the instruction need not name specific co-conspirators. The instruction included all of the elements.

Conner next argues that several of the instructions for burglary and theft are deficient because they do not name the victims or contain addresses. We disagree. The names of victims and addresses are not essential elements of the crimes charged. Therefore, we hold that these claims are without merit.

D. Prosecutorial Vindictiveness

Conner argues that the prosecutor acted vindictively and retaliated against Conner by adding charges in the second amended information. The crux of Conner's argument is that the prosecutor deprived of him of his right to a fair trial because adding additional criminal counts and sentencing enhancements amounted to prosecutorial vindictiveness. We disagree.

We will reverse a conviction due to prosecutorial misconduct only if the defendant establishes that the conduct was both improper and prejudicial. *State v. Monday*, 171 Wn.2d 667, 675, 257 P.3d 551 (2011). "Constitutional due process principles prohibit prosecutorial vindictiveness." *State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13 (2006). "[A] prosecutorial action is vindictive only if *designed* to penalize a defendant for invoking legally protected rights." *Korum*, 157 Wn.2d at 614 (quoting *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C. Cir. 1987)). Actual vindictiveness must be shown by the defendant through objective evidence that a prosecutor acted in order to punish him for standing on his legal rights. *Meyer*, 810 F.2d at 1245. A presumption of vindictiveness arises when a defendant can prove that "all of the circumstances, when taken together, support a realistic likelihood of vindictiveness." *Korum*, 157 Wn.2d at 627

(quoting *Meyer*, 810 F.2d at 1245). The mere filing of additional charges after a defendant refuses a guilty plea cannot, without more, support a finding of vindictiveness. *Korum*, 157 Wn.2d at 629, 631.

Here, the State's filing of the amended information does not support Conner's assertion of vindictiveness. The prosecutor has discretion to determine the number and severity of charges to bring against a defendant. *State v. Rice*, 174 Wn.2d 884, 901, 279 P.3d 849 (2012). Conner has failed to show the State acted vindictively by filing additional charges. Therefore, we hold that the prosecutor did not act vindictively or retaliate against Conner.

E. Sentencing⁷

1. Exceptional Sentence

Conner argues that the trial court imposed an exceptional sentence without entering written findings in support of that exceptional sentence. However, the trial court did not impose an exceptional sentence. Conner's sentences were within the standard range, and the trial court ran the underlying offense sentences concurrent with each other. Because the trial court did not impose an exceptional sentence, no findings were required and this claim is without merit.

2. Double Jeopardy

Conner argues that the trial court violated his right to be free from double jeopardy under the United States Constitution and the Washington Constitution. The State correctly concedes that the robbery and theft from Cummings, during the Shore Drive incident, were the same in law and fact. We accept the State's concession, reverse Conner's conviction of theft in the third degree, and remand for resentencing. We disagree with Conner regarding to all other charges.

⁷ Conner also argues that the trial court erred by not conducting a same criminal conduct analysis. Because we remand for resentencing, we do not address this issue.

Double jeopardy violations are questions of law we review de novo. *State v. Womac*, 160 Wn.2d 643, 649, 160 P.3d 40 (2007). The federal and state constitutions prohibit being punished twice for the same crime. U.S. CONST. amend. V; WASH. CONST. art. I, § 9; *State v. Freeman*, 153 Wn.2d 765, 770-71, 108 P.3d 753 (2005). Multiple convictions whose sentences are served concurrently may still violate the rule against double jeopardy. *State v. Turner*, 169 Wn.2d 448, 454-55, 238 P.3d 461 (2010). Absent clear legislative intent to the contrary, two convictions constitute double jeopardy when the evidence required to support a conviction for one charge is also sufficient to support a conviction for the other charge, even if the more serious charge has additional elements. *See Freeman*, 153 Wn.2d at 776-77. Thus, two convictions constitute the same offense if they are the same in law and in fact. *State v. Calle*, 125 Wn.2d 769, 777, 888 P.2d 155 (1995). If each conviction includes elements not included in the other, or requires proof of a fact that the other does not, the offenses are different. *Calle*, 125 Wn.2d at 777.

Conner first argues that his burglary convictions should be reversed because they were the same in law and in fact as the thefts and robberies. We disagree. A trial court does not violate double jeopardy protections if it enters convictions for multiple crimes that the legislature expressly intends to punish separately. *State v. Elmore*, 154 Wn. App. 885, 900, 228 P.3d 760 (2010). The legislature enacted the burglary antimerger statute that expressly allows for a defendant to be convicted and punished separately for burglary and all crimes committed during that burglary. RCW 9A.52.050; *Elmore*, 154 Wn. App. at 900. The fact that the State can establish multiple offenses with the same conduct does not alone violate double jeopardy. *State v. Mandanas*, 163 Wn. App. 712, 720 n.3, 262 P.3d 522 (2011). Therefore, the trial court may punish burglary separately from other crimes because of the plain language of RCW 9A.52.050.

Accordingly, the trial court did not violate Conner's right to be free from double jeopardy when it treated the burglaries as separate criminal conduct for sentencing purposes.

Conner next argues that we should vacate his separate convictions of three counts of theft in the second degree and one count of theft in the third degree because they were the same in law and in fact as his convictions of eight counts of robbery in the first degree. We vacate only Conner's conviction of theft in the third degree because this theft was the functional equivalent of a lesser included of robbery in the first degree of Cummings.

A person is guilty of robbery in the first degree if

[i]n the commission of a robbery or of immediate flight therefrom, he . . . [i]s armed with a deadly weapon; or [d]isplays what appears to be a firearm or other deadly weapon; or [i]nflicts bodily injury.

RCW 9A.56.200. RCW 9A.56.190 defines "robbery," in pertinent part, as follows:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.

A person is guilty of theft in the second degree if he commits theft of property which exceeds \$750 in value but does not exceed \$5,000 in value, or an access device. RCW 9A.56.040(1)(a) and (d). A person is guilty of theft in the third degree if he commits theft of property that does not exceed \$750 in value. RCW 9A.56.050. RCW 9A.56.020(1)(a) defines "theft," in pertinent part, as follows:

To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.

A person is guilty of theft of a firearm if he commits a theft of any firearm, regardless of the value of the firearm. RCW 9A.56.300.

Conner's convictions arising from the Twelfth Street (I) incident were robbery in the first degree and theft in the second degree. Conner's convictions do not constitute double jeopardy. Although both crimes require the taking of another person's property, the victims in this incident were different. Robert Dato and Aaron Dato were both victims of the robberies. Harveson, who was not present during the home invasion, was not a robbery victim. However, because Conner took Harveson's property, he was a theft victim. The crimes were different in fact because proof of one offense would not necessarily prove the other. *State v. Lust*, 174 Wn. App. 887, 891, 300 P.3d 846 (2013); *State v. Smith*, 124 Wn. App. 417, 432, 102 P.3d 158 (2004) *aff'd*, 159 W.2d 778 (2007) (for purposes of double jeopardy analysis, the same criminal conduct cannot occur where there are multiple victims). We hold that these convictions do not constitute double jeopardy.

Conner's convictions from the Twelfth Street (II) incident, robbery in the first degree and theft in the second degree do not constitute double jeopardy because, again, the victims were different. Robert Dato, Aaron Dato, and Turner, were robbery victims. Harveson, a victim of theft but not robbery, was not present during the home invasion. The crimes were different in fact because proof of one offense would not necessarily prove the other. We hold that these convictions do not constitute double jeopardy.

The State concedes that Conner's convictions from the Shore Drive incident, robbery in the first degree and theft in the third degree, constituted a violation of double jeopardy. Even though the statutory elements differ, under the facts of this incident, both crimes involved the taking of property from the same victim at the same time. We accept the State's concession and reverse the theft in the third degree conviction.

Conner's convictions from the Wedgewood Lane incident, robbery in the first degree, theft of a firearm, and theft in the second degree by taking a debit card, do not constitute a violation of

double jeopardy. Different people were victims. Aaron Tucheck and Keefe Jackson were robbery victims. Conner took Ann Tucheck's property, the firearm and debit card, but not in her presence, and not with force or the threatened use of force. Therefore, she was a theft victim and not a robbery victim. Additionally, theft of a firearm and theft of a debit card are neither factually nor legally identical because proof of one offense would not necessarily prove the other. We hold that these convictions do not constitute double jeopardy.

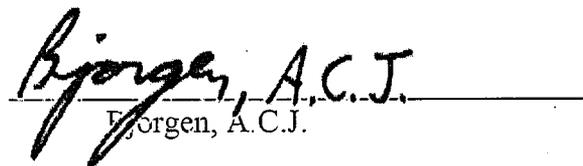
We vacate Conner's theft in the third degree conviction and affirm his remaining convictions. We remand for resentencing on the remaining convictions and twelve firearm enhancements.

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


Melnick, J.

We concur:


Worswick, J.


Bjorgen, A.C.J.

Attachment “E”

Case Information

11-1-00435-8 | STATE OF WASHINGTON VS CONNER, LA'JUANTA LE'VEAR

Case Number	Court	
11-1-00435-8	Kitsap	
File Date	Case Type	Case Status
06/08/2011	ADL Criminal Adult	Return from Appeal

Party

Plaintiff (Criminal)
STATE OF WASHINGTON , NFN

Defendant (WIP)
CONNER, LA'JUANTA LE'VEAR

DOB
XX/XX/XXXX

Inactive Attorneys ▼
 Attorney
 KITSAP COUNTY
 PUBLIC DEFENSE
 Court Appointed

Disposition Events

02/01/2016 Disposition ▼

Vacated Conviction

06/06/2012 Disposition ▼

See Verdict Form

06/06/2012 Disposition ▼

See Verdict Form

06/11/2012 Disposition ▼

Guilty

Acquitted/Not Guilty

Guilty

Guilty

Guilty

Acquitted/Not Guilty

Guilty

Guilty

Guilty

07/27/2012 SCOMIS Judgment and Sentence ▼

SCOMIS Judgment and Sentence

Comment

Comment (Prison Serve: Y; Prob/Comm. Supervision: Y; Restitution: \$900.00; Court Costs: \$200.00; Appealed To: 2; Appeal Date: 2012-08-01; Sentence Description: SENTENCED 1148.5 MONTHS CONFINEMENT WITH COUNTS TO RUN CONCURRENT. DEFENDANT TO; BE ON SUPERVISED PROBATION FOR 24 MONTHS FOR COUNT XVIII. \$500 VICTIM; ASSESSMENT, \$100 EXPERT WITNESS FUND, \$100 DNA SAMPLE FEE AND \$100; ANTI-PROFITEERING FUND.; ; 11-16-2012 RESTITUTION ORDER FILED; ; 02-01-2016 MANDATE FROM COURT OF APPEALS VACATING THEFT IN 3RD DEGREE; CONVICTION, AFFIRMING REMAINING CONVICTIONS, AND REMANDING FOR RESENTENCING; ; 03/25/16 RESENTENCED TO MULTIPLE COUNTS (SEE AMENDED J&S) TO BE SERVED; CONCURRENT FOR A TOTAL CONFINEMENT ORDERED 1148.5 MONTHS. 18 MONTHS; COMMUNITY CUSTODY ON COUNTS I, VII, VIII, IX, XI, XII, XIII, XIV, XVI,; XVII, XIX, XXI, XXII AND XXIII. \$500 VICTIM ASSESSMENT AND \$100 DNA SAMPLE; FEE.;)

Restitution and Other Fees

Restitution In Favor Of:

CONNER, LA'JUANTA LE'VEAR

Debtor: CONNER, LA'JUANTA LE'VEAR

Current Sentence Status:

Status: Fully Satisfied

Status Date: 04/07/2016

Signed Date: 07/27/2012

Effective Date: 07/27/2012

Comment: Signed By: JUDGE DALTON; SCOMIS JUDGMENT EVENTS: 2012-07-27 FJS FELONY JUDGMENT AND SENTENCE DEFENDANT TO PAY THE FOLLOWING: VICTIM ASSESSMENT 500.00 FILING FEE 200.00 DNA SAMPLE FEE 100.00 EXPERT WITNESS FUND 100.00 ANTI-PROFITEERING FUND 100.00 INTEREST @ 12% PER ANNUM ; 2012-08-02 ARCR ACCOUNT(S) RECEIVABLE CREATED ; 2012-11-16 ORSR ORDER SETTING RESTITUTION 900.00; 2016-04-07 ARCL ACCOUNT(S) RECEIVABLE CLOSED ;

Events and Hearings

04/12/2010 Motion in Limine ▼

Comment

95: MOTION IN LIMINE STATES;

06/08/2011 Information ▼

Comment
1: INFORMATION;

06/08/2011 Motion to Compel ▼

Comment
2: MOTION TO COMPEL EVIDENCE;

06/08/2011 Certificate ▼

Comment
CERTIFICATE SUPPORT;

06/08/2011 Copy ▼

Comment
3: COPY OF RELEASE ORDER (DST CT);

06/08/2011 Order Setting ▼

Comment
ORDER SETTING; 06-16-2011V2; ARRAIGNMENT/CHANGE OF PLEA/MOTION; TO COMPEL EVIDENCE;

06/08/2011 Note for Motion Docket ▼

Comment
4: NOTE FOR MOTION DOCKET; 06-16-2011; MOTION TO COMPEL EVIDNECE;

06/16/2011 V2 Criminal O/C 10:30 AM V2 ▼

Hearing Time
8:00 AM

Comment
ARRAIGNMENT/CHANGE OF PLEA/MOTION TO COMPEL EVIDENCE

06/16/2011 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time
08:00 AM

Comment
4: NOTE FOR MOTION DOCKET; 06-16-2011; MOTION TO COMPEL EVIDNECE;

06/16/2011 Initial Arraignment ▼

Comment

5: INITIAL ARRAIGNMENT; NOT GUILTY PLEA ENTERED; JUDGE M. KARLYNN HABERLY, DEPT 7; COURT REPORTER KATHY TODD;

06/16/2011 Order Setting ▼

Comment

6: ORDER SETTING MKH; 06-22-2011O2; STATUS RE: DNA SAMPLE; STRIKE IF SAMPLE GIVEN 6/20/11;

06/16/2011 Order Setting Omnibus Hearing ▼

Comment

ORDER SETTING OMNIBUS HEARING; 08-15-2011S2; OMNIBUS;

06/16/2011 Order Setting Trial Date ▼

Comment

ORDER SETTING TRIAL DATE; SEPT. 6, 2011/3 WEEKS;

06/16/2011 Acknowledgement of Advice of Rights ▼

Comment

7: ACKNWLDGMT OF ADVICE OF RIGHTS;

06/16/2011 Order for Pretrial Release ▼

Comment

8: ORDER FOR PRETRIAL; JUDGE M. KARLYNN HABERLY, DEPT 7;

06/16/2011 Affidavit of Prejudice ▼

Comment

9: AFFIDAVIT OF PREJUDICE - RWH;

06/16/2011 Order ▼

Comment

10: ORDER FOR DEF TO PROVIDE EVIDENCE; JUDGE M. KARLYNN HABERLY, DEPT 7;

06/22/2011 O2 Criminal O/C 10:30 AM O2 ▼

Hearing Time

8:00 AM

Comment

STATUS RE: DNA SAMPLE STRIKE IF SAMPLE GIVEN 6/20/11

06/22/2011 Status Conference Hearing ▼

Comment

11: STATUS CONFERENCE / HEARING; DNA SAMPLE TAKEN TODAY; JUDGE JAY B ROOF, DEPT 5; COURT REPORTER CARISA GROSSMAN;

06/22/2011 Order Setting ▼

Comment

12: ORDER SETTING JBR; 07-19-2011T2; STATUS;

06/22/2011 Bail Bond ▼

Comment

13: BAIL BOND ALADDIN- \$100,000.00;

07/19/2011 T2 Criminal O/C 10:30 AM T2 ▼

Hearing Time

8:00 AM

Comment

STATUS

07/19/2011 Status Conference Hearing ▼

Comment

14: STATUS CONFERENCE / HEARING; ADDITIONAL STATUS HRG SET; JUDGE JAY B ROOF, DEPT 5; COURT REPORTER CARISA GROSSMAN;

07/19/2011 Order Setting ▼

Comment

15: ORDER SETTING JBR; 08-09-2011T2; STATUS RE:DNA;

08/03/2011 States List of Witnesses ▼

Comment

16: STATE'S LIST OF WITNESSES;

08/09/2011 T2 Criminal O/C 10:30 AM T2 ▼

Hearing Time

8:00 AM

Comment

STATUS RE:DNA

08/09/2011 Motion Hearing ▼

Comment

17: MOTION HEARING; COURT NOTES MR. LONGACRE'S FTA/
MATTER LEFT ON FOR 8/15 OMNI; JUDGE LEILA MILLS, DEPT 2;
COURT REPORTER CRYSTAL MCAULIFFE;

08/15/2011 S2 Criminal O/C 10:30 AM S2 ▼

Hearing Time

8:00 AM

Comment

OMNIBUS

08/15/2011 Motion Hearing ▼

Comment

18: MOTION HEARING; MOTION TO CONTINUE OMNI/TRIAL;
GRANTED; JUDGE LEILA MILLS, DEPT 2; VISITING COURT
REPORTER; MILLIE MARTIN;

08/15/2011 Order Setting Omnibus Hearing ▼

Comment

19: ORDER SETTING OMNIBUS HEARING LM; 09-08-2011O2;
OMNIBUS;

08/15/2011 Order Setting Trial Date ▼

Comment

ORDER SETTING TRIAL DATE LM; OCTOBER 11, 2011 @ 9 AM
(10 DAYS);

09/08/2011 O2 Criminal O/C 10:30 AM O2 ▼

Hearing Time

8:00 AM

Comment

OMNIBUS

09/08/2011 Motion Hearing ▼

Comment

20: MOTION HEARING; OMNI CONTINUANCE GRANTED; JUDGE
THEODORE F SPEARMAN DEPT 4; COURT REPORTER NICKIE
DRURY;

09/08/2011 Order Setting ▼

Comment

21: ORDER SETTING TS; 09-16-2011S4; OMNIBUS;

09/14/2011 States List of Witnesses ▼

Comment

22: STATE'S LIST OF WITNESSES/FIRST; AMENDED;

09/16/2011 S4 Criminal 9:00 AM S4 ▼

Hearing Time

8:00 AM

Comment

OMNIBUS

09/16/2011 Omnibus Hearing ▼

Comment

23: OMNIBUS HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER CRYSTAL MCAULIFFE; STIPULATION SIGNED;

09/16/2011 Omnibus Order ▼

Comment

24: OMNIBUS ORDER LM; 09-21-2011O2; FA/3.5(S);

09/21/2011 O2 Criminal O/C 10:30 AM O2 ▼

Hearing Time

8:00 AM

Comment

FA/3.5(S)

09/21/2011 Motion Hearing ▼

Comment

25: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; MOT TO CONTINUE TRIAL/DENIED;

09/21/2011 Order Setting ▼

Comment

26: ORDER SETTING LM; 10-06-2011V2; STATUS: TRIAL;

09/23/2011 States List of Witnesses ▼

Comment

27: STATE'S LIST OF WITNESSES/2ND; AMENDED;

09/28/2011 Order ▼

Comment
27A: ORDER OF PRODUCTION ROBERT DATO;

09/29/2011 States List of Witnesses ▼

Comment
28: STATE'S LIST OF WITNESSES 3RD;

10/03/2011 States List of Witnesses ▼

Comment
29: STATE'S LIST OF WITNESSES/4TH; AMENDED;

10/05/2011 Defendants List of Witnesses ▼

Comment
30: DEFENDANT'S LIST OF WITNESSES;

10/05/2011 States List of Witnesses ▼

Comment
31: STATE'S LIST OF WITNESSES 5TH;

10/06/2011 V2 Criminal O/C 10:30 AM V2 ▼

Hearing Time
8:00 AM

Comment
STATUS: TRIAL

10/06/2011 Motion Hearing ▼

Comment
32: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER NICKIE DRURY; COURT GRANTS TRIAL CONTINUANCE;

10/06/2011 Order Setting ▼

Comment
33: ORDER SETTING LM; 10-28-2011LM; STATUS RE: DISCOVERY ISSUES; STATUS RE: TRIAL;

10/06/2011 Order Setting Trial Date ▼

Comment
ORDER SETTING TRIAL DATE LM; APRIL 3, 2012 @ 9AM/5 WEEKS;

10/06/2011 Order Appointing Attorney ▼

Comment

34: ORDER APPOINTING ATTORNEY;

10/06/2011 Order Appointing Attorney ▼

Comment

35: ORDER APPOINTING ATTORNEY;

10/06/2011 Order for Pretrial Release ▼

Comment

36: ORDER FOR PRETRIAL RELEASE/AMENDED; JUDGE LEILA MILLS, DEPT 2;

10/28/2011 LM Hon Leila Mills ▼

Hearing Time

8:00 AM

Comment

STATUS RE: DISCOVERY ISSUES STATUS RE: TRIAL

10/28/2011 Motion Hearing ▼

Comment

37: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; STATUS CONT'D;

10/28/2011 Order Setting ▼

Comment

38: ORDER SETTING LM; 11-18-2011; STATUS: TRIAL;

10/28/2011 Subpoena Duces Tecum ▼

Comment

39: SUBPOENA DUCES TECUM;

11/02/2011 Motion ▼

Comment

40: MOTION TO AMEND RELEASE CONDITIONS;

11/02/2011 Motion Hearing ▼

Comment

41: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; MOTION TO AMEND RELEASE CONDITIONS; GRANTED/BENCH WARRANT ORDERED;

11/02/2011 Order Directing Issuance of Bench Warrant ▼

Comment
38: ORDER SETTING LM; 11-18-2011; STATUS: TRIAL;

12/02/2011 LM Hon Leila Mills ▼

Hearing Time
8:00 AM

Comment
STATUS RE: TRIAL

12/02/2011 Motion Hearing ▼

Comment
49: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; MOTION TO CONTINUE TRIAL GRANTED;

12/02/2011 Order Setting ▼

Comment
50: ORDER SETTING LM; 12-09-2011LM; STATUS: SUBPOENA FOR JAIL CALLS;

12/02/2011 Order Setting Trial Date ▼

Comment
ORDER SETTING TRIAL DATE LM; APRIL 10, 2012 @ 9 AM (3 WEEKS);

12/02/2011 Correspondence ▼

Comment
51: CORRESPONDENCE (PROS TO COUNSEL);

12/08/2011 Brief ▼

Comment
52: BRIEF IN SUPPORT OF SUBPOENA FOR; RECORDED INMATE TELEPHONE CALLS;

12/09/2011 LM Hon Leila Mills ▼

Hearing Time
8:00 AM

Comment
STATUS: SUBPOENA FOR JAIL CALLS

12/09/2011 Status Conference Hearing ▼

Comment

59: STATUS CONFERENCE / HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; COURT SETS STATUS HRG ON 1/20/12 @; 1:30 PM;

01/13/2012 Order Setting ▼

Comment

60: ORDER SETTING LM; 01-20-2012LM; STATUS: JAIL PHONE CALLS; CO DEF'S/COUNSEL TO APPAER;

01/20/2012 LM Hon Leila Mills ▼

Hearing Time

8:00 AM

Comment

STATUS: JAIL PHONE CALLS CO DEF'S/COUNSEL TO APPAER

01/20/2012 Motion Hearing ▼

Comment

61: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER ANDREA RAMIREZ; FURTHER STATUS SET;

01/20/2012 Order Setting ▼

Comment

62: ORDER SETTING LM; 02-03-2012LM; STATUS RE JAIL PHONE CALLS;

02/03/2012 LM Hon Leila Mills ▼

Hearing Time

8:00 AM

Comment

STATUS RE JAIL PHONE CALLS

02/03/2012 Motion Hearing ▼

Comment

63: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; STIP/PROTECTION ORDER RE:JAIL; CALL RECORDINGS & ORDER SETTING; SIGNED BY THE COURT; COURT REPORTER ANDREA RAMIREZ;

02/03/2012 Stipulation ▼

Comment

64: STIPULATION;

02/03/2012 Order for Protection ▼

Comment

ORD FOR PROTECTION RE: JAIL PHONE; CALL RECORDINGS;
JUDGE LEILA MILLS, DEPT 2;

02/03/2012 Order Setting ▼

Comment

65: ORDER SETTING LM; 03-05-2012S2; STATUS RE:
DISCOVERY;

03/05/2012 S2 Criminal O/C 10:30 AM S2 ▼

Hearing Time

8:00 AM

Comment

STATUS RE: DISCOVERY

03/05/2012 Motion Hearing ▼

Comment

66: MOTION HEARING; JUDGE M. KARLYNN HABERLY, DEPT 7;
COURT REPORTER KATHY TODD; STATUS CONT'D;

03/05/2012 Order Setting ▼

Comment

67: ORDER SETTING MKH; 03-14-2012O2; 3.6(S)/STATUS: JAIL
PHONE CALLS;

03/14/2012 O2 Criminal O/C 10:30 AM O2 ▼

Hearing Time

8:00 AM

Comment

3.6(S)/STATUS: JAIL PHONE CALLS

03/14/2012 Motion Hearing ▼

Comment

68: MOTION HEARING; JUDGE M. KARLYNN HABERLY, DEPT 7;
COURT REPORTER KATHY TODD; STATUS CONT'D;

03/14/2012 Order Setting ▼

Comment

69: ORDER SETTING MKH; 03-23-2012JM; 3.6(S);

03/14/2012 List ▼

Comment

70: LIST OF JAIL PHONE CALLS AND; ADDITIONAL DEFENSE WITNESSES;

03/19/2012 Order of Preassignment ▼

Comment

71: ORDER OF PREASSIGNMENT TO DEPT 1; JUDGE ANNA M. LAURIE, DEPT 3;

03/19/2012 Ex Parte Action With Order ▼

Comment

EX-PARTE ACTION WITH ORDER;

03/20/2012 Motion to Suppress ▼

Comment

72: MOTION TO SUPPRESS (DEFENDANT'S);

03/23/2012 JM Hon Jeanette Dalton ▼

Hearing Time

8:00 AM

Comment

3.6(S)

03/23/2012 Motion Hearing ▼

Comment

73: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; COURT REPORTER JAMI HETZEL; STATUS & SEPERATE 3.6 HEARING SET;

03/23/2012 Order Setting ▼

Comment

74: ORDER SETTING JD; 04-06-2012JM; STATUS RE: TRANSCRIPTS/DEFENSE; COUNSEL MAY APPEAR TELEPHONICALLY;

03/23/2012 Order Setting ▼

Comment

ORDER SETTING JD; 04-10-2012; 3.6 HEARING*SPECIAL SET @ 9 AM*;

03/23/2012 Declaration Affidavit ▼

Comment
82A: MOTION TO AMEND CONDITIONS OF; RELEASE-STATE'S;

04/06/2012 Status Conference Hearing ▼

Comment
83: STATUS CONFERENCE / HEARING; JUDGE JEANETTE DALTON, DEPT 1; COURT REPORTER JAMI HETZEL; COURT MODIFIED RELEASE CONDITIONS;

04/06/2012 Order Setting ▼

Comment
84: ORDER SETTING JD; 04-09-2012S2; STATUS: WITNESSES/COUNSEL;

04/06/2012 Order ▼

Comment
85: ORDER AMENDING ORDER FOR PRETRIAL; RELEASE; JUDGE JEANETTE DALTON, DEPT 1;

04/09/2012 S2 Criminal O/C 10:30 AM S2 ▼

Hearing Time

8:00 AM

Comment
STATUS: WITNESSES/COUNSEL

04/09/2012 Status Conference Hearing ▼

Comment
86: STATUS CONFERENCE / HEARING; JUDGE JEANETTE DALTON, DEPT 1; VISITING COURT REPORTER; SARA WOOD; DEFENDANT TAKEN INTO CUSTODY;

04/09/2012 Order ▼

Comment
87: ORDER AMENDING ORDER FOR PRETRIAL; RELEASE- ADDITIONAL \$50,000 BAIL;

04/09/2012 Order ▼

Comment
88: ORDER ALLOWING ATTORNEY TO BRING; COMPUTER & RECORDER INTO THE JAIL;

04/10/2012 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time

08:00 AM

Comment

ORDER SETTING JD; 04-10-2012; 3.6 HEARING*SPECIAL SET @ 9 AM*;

04/10/2012 Motion in Limine ▼

Comment

89: MOTION IN LIMINE DEFENSE;

04/10/2012 Motion Hearing ▼

Comment

90: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; COURT REPORTER NICKIE DRURY; TRIAL TO BEGIN 9 AM TOMORROW;

04/10/2012 Order ▼

Comment

91: ORDER AMENDING ORDER FOR PRETRIAL; RELEASE;

04/11/2012 Motion to Suppress ▼

Comment

92: MOTION TO SUPPRESS/DEFENDANT'S; SUPPLEMENTAL AND;

04/11/2012 Reply ▼

Comment

REPLY TO STATE'S RESPONSE;

04/12/2012 Bail Bond ▼

Comment

93: BAIL BOND/ALADDIN BAIL/\$50,000;

04/12/2012 Amended Information ▼

Comment

94: AMENDED INFORMATION 1ST;

04/12/2012 States List of Witnesses ▼

Comment

96: STATE'S LIST OF WITNESSES 7TH;

04/12/2012 Brief ▼

Comment
97: BRIEF STATES SUPPLEMENTAL RE 3.6;

04/12/2012 Order for Pretrial Release ▼

Comment
98: ORDER FOR PRETRIAL RELEASE AMENDED; JUDGE
JEANETTE DALTON, DEPT 1;

04/12/2012 Correspondence ▼

Comment
99: CORRESPONDENCE/JAIL SUCKS RE: EHM; DENIAL;

04/12/2012 Correspondence ▼

Comment
100: CORRESPONDENCE/OMS RE: EHM; APPROVAL;

04/13/2012 Transcript ▼

Comment
101: TRANSCRIPTS OF JAIL CALLS;

04/16/2012 Order Setting ▼

Comment
102: ORDER SETTING LM; 04-19-2012; TRIAL RESUMES @
1:30/DEPT # 1;

04/19/2012 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time
08:00 AM

Comment
102: ORDER SETTING LM; 04-19-2012; TRIAL RESUMES @ 1:30/DEPT
1;

04/19/2012 Order Setting ▼

Comment
103: ORDER SETTING JD; 04-23-2012; TRIAL CONT'D/1:30 PM
DEPT # 1;

04/19/2012 Notice ▼

Comment
104: NOTICE RE EHM PROGRAM START;

04/20/2012 Notice ▼

Comment
112B: STIP&OR RET EXHBTS UNOPNED DEPOSTNS; JUDGE
JEANETTE DALTON, DEPT 1;

04/25/2012 Order for Pretrial Release ▼

Comment
114: ORDER FOR PRETRIAL RELEASE; JUDGE JEANETTE
DALTON, DEPT 1;

04/25/2012 Order for Pretrial Release ▼

Comment
115: ORDER FOR PRETRIAL RELEASE-COPY; CONFIRMATION
SIGNATURE OF OMS; ADMINISTRATOR;

04/25/2012 Order for Pretrial Release ▼

Comment
116: ORDER FOR PRETRIAL RELEASE/; CONDITIONS OF
RELEASE UPDATE;

04/26/2012 Notice ▼

Comment
117: NOTE FROM EMPLOYER OF JUROR # 72;

05/03/2012 Order ▼

Comment
118: ORDER RE: EXHIBITS; JUDGE JEANETTE DALTON, DEPT 1;

05/03/2012 Order ▼

Comment
119: ORDERS IN LIMINE; JUDGE JEANETTE DALTON, DEPT 1;

05/03/2012 Stipulation ▼

Comment
120: STIPULATION TO FACTS RE: COUNTS II; AND IV-
UNLAWFUL POSSESSION OF A; FIREARM IN THE SECOND
DEGREE; JUDGE JEANETTE DALTON, DEPT 1;

05/03/2012 Stipulation ▼

Comment
121: STIPULATION RE: PAUL WOODS'; OWNERSHIP OF PISTOL;
JUDGE JEANETTE DALTON, DEPT 1;

05/03/2012 Stipulation ▼

Comment

122: STIPULATION TO ADMISSIBILITY OF; STATEMENTS OF THE DEFENDANT; JUDGE JEANETTE DALTON, DEPT 1; ***** VOLUME 2 *****;

05/07/2012 Jury Note ▼

Comment

123: JURY NOTE (JUROR # 4);

05/14/2012 Jury Note ▼

Comment

124: JURY NOTE (JUROR # 9);

05/17/2012 Jury Note ▼

Comment

125: JURY NOTE (JUROR # 3);

05/17/2012 Jury Note ▼

Comment

126: JURY NOTE (JUROR # 1);

06/04/2012 Plaintiffs Proposed Instructions ▼

Comment

127: PLAINTIFF'S PROPOSED INSTRUCTIONS;

06/04/2012 Plaintiffs Proposed Instructions ▼

Comment

128: PLAINTIFF'S PROPOSED INSTRUCTIONS; (SUPPLEMENTAL);

06/04/2012 Instructions ▼

Comment

129: INSTRUCTIONS (DEFENSE PURPOSED);

06/04/2012 Report ▼

Comment

130: REPORT BY OFFENDER HOME MONITORING;

06/04/2012 Report ▼

Comment

130A: REPORT FROM KITSAP RECOVERY CENTER; UA RESULTS FROM 4/26 6/04/2012;

06/04/2012 Order ▼

Comment

131: ORDER AMENDING ORDER FOR PRETRIAL; RELEASE;

06/06/2012 Plaintiffs Proposed Instructions ▼

Comment

132: PLAINTIFF'S PROPOSED INSTRUCTIONS;
(SUPPLEMENTAL);

06/06/2012 Amended Information ▼

Comment

133: AMENDED INFORMATION 2ND;

06/06/2012 Order ▼

Comment

134: ORDER FOR CORRECTION DEPARTMENT; TO OBTAIN UA
SAMPLE FROM DEFENDANT; JUDGE JEANETTE DALTON, DEPT
1; ***** VOLUME 3 *****;

06/11/2012 Jury Panel ▼

Comment

135: JURY PANEL;

06/11/2012 Jury Trial ▼

Comment

136: JURY TRIAL; APRIL 11-JUNE 11, 2012; JUDGE JEANETTE
DALTON, DEPT 1; COURT REPORTER JAMI HETZEL;

06/11/2012 Jury Note ▼

Comment

137: JURY NOTE FROM DELIBERATING JURY;

06/11/2012 Jury Note ▼

Comment

138: JURY NOTE FROM DELIBERATING JURY;

06/11/2012 Jury Note ▼

Comment

139: JURY NOTE FROM DELIBERATING JURY;

06/11/2012 Courts Instructions to Jury ▼

Comment
 140: COURT'S INSTRUCTIONS TO JURY; JUDGE JEANETTE DALTON, DEPT 1;

06/11/2012 Verdict Form ▼

Comment
 141: VERDICT; JUDGE JEANETTE DALTON, DEPT 1;

06/11/2012 Notice of Ineligibility to Possess a Firearm ▼

Comment
 142: NOTICE INELIGIBLE POSSESS FIREARM; JUDGE JEANETTE DALTON, DEPT 1;

06/11/2012 Order of Detention ▼

Comment
 143: ORDER OF DETENTION; JUDGE JEANETTE DALTON, DEPT 1;

06/11/2012 Order Setting ▼

Comment
 144: ORDER SETTING JD; 07-27-2012; SENTENCING, DEPT. 1; SPECIAL SET 2:30 PM/2 HOURS;

06/11/2012 Def Res Convicted by Jury Verdict

06/21/2012 Exhibit List ▼

Comment
 145: EXHIBIT LIST;

06/21/2012 Stipulation and Order for Return of Exhibits and or Unopen ▼

Comment
 146: STIP&OR RET EXHBTS UNOPND DEPOSTNS; JUDGE JEANETTE DALTON, DEPT 1;

07/02/2012 Victim Statement ▼

Comment
 147: VICTIM STATEMENT (RESTITUTION; ESTIMATE);

07/13/2012 Witness List ▼

Comment
 148: WITNESS LIST;

07/13/2012 Cost Bill ▼

Comment
COST BILL CC'D PROSECUTOR'S OFFICE;

07/25/2012 Memorandum ▼

Comment
149: MEMORANDUM SENTENCING/STATES;

07/27/2012 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time
08:00 AM

Comment
144: ORDER SETTING JD; 07-27-2012; SENTENCING, DEPT. 1;
SPECIAL SET 2:30 PM/2 HOURS;

07/27/2012 Sentencing Hearing ▼

Comment
150: SENTENCING HEARING; JUDGE JEANETTE DALTON, DEPT
1; COURT REPORTER JAMI HETZEL;

07/27/2012 Order Setting ▼

Comment
151: ORDER SETTING JD; 10-19-2012AS; RESTITUTION
SIGN/SET; DEFT WAIVES PRESENCE/NOTED ON J&S;

07/27/2012 Findings of Fact and Conclusions of Law ▼

Comment
152: FINDINGS OF FACT&CONCLUSIONS OF LAW; FOR
HEARING N CRR 3.5;

07/27/2012 Findings of Fact and Conclusions of Law ▼

Comment
153: FINDINGS OF FACT&CONCLUSIONS OF LAW; FOR
HEARING ON CONDITONS OF;

07/27/2012 Order ▼

Comment
154: ORDER RE: CLEAR COGENT AND; CONVINCING
EVIDENCE;

07/27/2012 Felony Judgment and Sentence ▼

Comment
155: FELONY JUDGMENT AND SENTENCE; 12 9 01655 8;

07/27/2012 Warrant of Commitment ▼

Comment

156: WARRANT OF COMMITMENT;

07/27/2012 Advice of Rights ▼

Comment

157: ADVICE OF RIGHTS OF APPEAL; JUDGE JEANETTE DALTON, DEPT 1;

07/27/2012 Notice of Appeal to Court of Appeals ▼

Comment

158: NOTICE OF APPEAL TO COURT OF APPEAL;

07/27/2012 Affidavit Declaration Certificate Confirmation of Service ▼

Comment

AFFIDAVIT/DCLR/CERT OF SERVICE;

07/27/2012 Motion Declaration for Indigency ▼

Comment

159: MOTION FOR INDIGENCY;

07/27/2012 Order of Indigency ▼

Comment

160: ORDER OF INDIGENCY; JUDGE JEANETTE DALTON, DEPT 1;

07/27/2012 Transcript ▼

Comment

160A: TRANSCRIPT-SEARCH WRRNT APPLICATION;

08/01/2012 Transmittal Letter Copy Filed ▼

Comment

161: TRANSMITTAL LETTER - COPY FILED; NOTICE OF APPEAL EFILED W/COA;

08/16/2012 Findings of Fact and Conclusions of Law ▼

Comment

162: FINDINGS OF FACT&CONCLUSIONS OF LAW; 3.6 HEARING;

08/16/2012 Perfection Notice from Court of Appeals ▼

Comment

163: PERFECTION NOTICE FROM CT OF APPLS;

09/10/2012 Designation of Clerks Papers ▼

Comment

164: DESIGNATION OF CLERK'S PAPERS;

09/24/2012 Index ▼

Comment

165: INDEX;

10/19/2012 AS 11:00 AM After Sentencing Calendar ▼

Hearing Time

8:00 AM

Comment

RESTITUTION SIGN/SET DEFT WAIVES PRESENCE/NOTED ON J&S

10/19/2012 Hearing Stricken In Court NonAppearance ▼

Comment

HEARING STRICKEN:IN COURT NONAPPEAR;

10/22/2012 Verbatim Report of Proceedings ▼

Comment

166: VERBATIM REPORT OF PROCEEDINGS (3); 10/06/2011
12/16/2011 04/23/2012; COURT REPORTER NICKIE DRURY;

10/29/2012 Transmittal Letter Copy Filed ▼

Comment

167: TRANSMITTAL LETTER - COPY FILED;

10/29/2012 Clerks Papers Sent ▼

Comment

CLERK'S PAPERS EFILED W/COA;

10/30/2012 Verbatim Report of Proceedings ▼

Comment

168: VERBATIM REPORT OF PROCEEDINGS (1); 04/09/2012;
COURT REPORTER SARA E WOOD;

10/31/2012 Note for Motion Docket ▼

Comment

169: NOTE FOR MOTION DOCKET; 11-16-2012AS; MOTION FOR
ORDER OF RESTITUTION;

11/05/2012 Verbatim Report of Proceedings ▼

Comment

170: VERBATIM REPORT OF PROCEEDINGS (2); 12/02/2011 & 01/20/2012, 05/17/2012; COURT REPORTER ANDREA RAMIREZ;

11/08/2012 Transmittal Letter Copy Filed ▼

Comment

171: TRANSMITTAL LETTER - COPY FILED;

11/08/2012 Verbatim Report of Proceedings Transmitted ▼

Comment

3 VERBATIM RPT TRANSMITTED TO COA;

11/13/2012 Receipts ▼

Comment

172: RECEIPT(S);

11/15/2012 Transmittal Letter Copy Filed ▼

Comment

173: TRANSMITTAL LETTER - COPY FILED;

11/15/2012 Verbatim Report of Proceedings Transmitted ▼

Comment

1 VERBATIM RPT TRANSMITTED TO COA;

11/16/2012 AS 11:00 AM After Sentencing Calendar ▼

Hearing Time

8:00 AM

Comment

MOTION FOR ORDER OF RESTITUTION

11/16/2012 Motion Hearing ▼

Comment

174: MOTION HEARING; JUDGE LEILA MILLS, DEPT 2; COURT REPORTER JAMI HETZEL; RESTITUTION ORDER SIGNED;

11/16/2012 Receipts ▼

Comment

175: RECEIPT(S);

11/16/2012 Order Setting Restitution ▼

Comment
176: ORDER SETTING RESTITUTION; JUDGE LEILA MILLS,
DEPT 2;

11/20/2012 Verbatim Report of Proceedings ▼

Comment
177: VERBATIM REPORT OF PROCEEDINGS-18;
04/11,12,16,19&20/2012; 04/23,24,25&26/2012 05/03&07/2012;
05/08/2012 05/09&10/2012 05/14/2012; 05/15/2012 05/16&17/2012
05/21/2012;

11/20/2012 Transmittal Letter Copy Filed ▼

Comment
178: TRANSMITTAL LETTER - COPY FILED;

11/20/2012 Verbatim Report of Proceedings Transmitted ▼

Comment
2 VERBATIM RPT TRANSMITTED TO COA;

11/26/2012 Receipts ▼

Comment
179: RECEIPT(S);

12/11/2012 Transmittal Letter Copy Filed ▼

Comment
180: TRANSMITTAL LETTER - COPY FILED;

12/11/2012 Verbatim Report of Proceedings Transmitted ▼

Comment
18 VERBATIM RPT TRANSMITTED TO COA;

12/12/2012 Receipts ▼

Comment
181: RECEIPT(S);

04/24/2013 Copy ▼

Comment
182: COPY OF ORDER FROM COA RE; EXTENSION OF TIME
FOR BRIEF;

05/13/2013 Verbatim Report of Proceedings ▼

Comment
183: VERBATIM REPORT OF PROCEEDINGS (1); 05/07/2012;
COURT REPORTER JAMI HETZEL;

05/24/2013 Transmittal Letter Copy Filed ▼

Comment

184: TRANSMITTAL LETTER - COPY FILED;

05/24/2013 Verbatim Report of Proceedings Transmitted ▼

Comment

1 VERBATIM RPT TRANSMITTED TO COA;

05/24/2013 Designation of Clerks Papers ▼

Comment

185: DESIGNATION OF CLERK'S PAPERS/; APPELLANT'S SUPPLEMENTAL;

05/29/2013 Index ▼

Comment

186: INDEX/APPELLANT'S SUPPLEMENTAL;

05/30/2013 Receipts ▼

Comment

187: RECEIPT(S);

06/03/2013 Transmittal Letter Copy Filed ▼

Comment

188: TRANSMITTAL LETTER - COPY FILED;

06/03/2013 Clerks Papers Sent ▼

Comment

APP SUPP CLERK'S PAPERS EFILED; W/COA;

06/15/2015 Order for Delivery of Prisoner ▼

Comment

189: ORDER FOR DELIVERY OF PRISONER; JUDGE ANNA M. LAURIE, DEPT 3;

06/17/2015 Note for Motion Docket ▼

Comment

190: NOTE FOR MOTION DOCKET; 07-08-2015O1; NEW SENTENCING HEARING/COURT OF; APPEAL REMAND;

07/08/2015 O1 Criminal In Custody 9:00 O1 ▼

Hearing Time

8:00 AM

Comment

NEW SENTENCING HEARING/COURT OF APPEAL REMAND

07/08/2015 Motion Hearing ▼

Comment

191: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; ATTORNEY APPOINTED;; RESENTENCING IS CONTINUED; COURT REPORTER ANITA SELF;

07/08/2015 Order Appointing Attorney ▼

Comment

192: ORDER APPOINTING ATTORNEY; KITSAP COUNTY PUBLIC DEFENSE,;

07/08/2015 Order Setting ▼

Comment

ORDER SETTING / SPECIAL SET; 07-15-2015; SENTENCING @ 9:00 A.M. DEPT. 1; JUDGE JEANETTE DALTON, DEPT 1;

07/09/2015 Memorandum ▼

Comment

193: MEMORANDUM RE SENTENCING/STATE'S; AMENDED;

07/09/2015 Notice Withdraw and Substitution of Counsel ▼

Comment

194: NOTICE WITHDRAW & SUBSTITUT COUNSEL;

07/09/2015 Notice of Appearance ▼

Comment

195: NOTICE OF APPEARANCE;

07/14/2015 Motion ▼

Comment

196: MOTION FOR CONTINUANCE OF; RESENTENCING;

07/15/2015 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time

08:00 AM

Comment

ORDER SETTING / SPECIAL SET; 07-15-2015; SENTENCING @ 9:00 A.M. DEPT. 1; JUDGE JEANETTE DALTON, DEPT 1;

07/15/2015 Motion Hearing ▼

Comment

197: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; RESENTENCING CONTINUED; COURT REPORTER CRYSTAL MCAULIFFE;

07/15/2015 Order Setting ▼

Comment

198: ORDER SETTING SPECIAL SET; 07-17-2015; SENTENCING ON REMAND 9AM DEPT 1;

07/17/2015 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time

08:00 AM

Comment

198: ORDER SETTING SPECIAL SET; 07-17-2015; SENTENCING ON REMAND 9AM DEPT 1;

07/17/2015 Motion Hearing ▼

Comment

199: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; SENTENCING CONTINUANCE/GRANTED; COURT REPORTER JAMI HETZEL;

07/17/2015 Order Setting ▼

Comment

200: ORDER SETTING JD; 08-03-2015; SENTENCING/SPECIAL SET 9 AM/DEPT 1;

07/17/2015 Order ▼

Comment

201: ORDER GRANTING LEAVE TO WITHDRAW;

07/17/2015 Order ▼

Comment

202: ORDER ALLOWING ACCESS TO LAW; LIBRARY; JUDGE JEANETTE DALTON, DEPT 1;

08/03/2015 Cancelled/Rescheduled Hearing/Trial/Motion (conversion) ▼

Hearing Time

08:00 AM

Comment
200: ORDER SETTING JD; 08-03-2015; SENTENCING/SPECIAL SET 9 AM/DEPT 1;

08/03/2015 Motion Hearing ▼

Comment
203: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1; SENTENCING CONTINUANCE/GRANTED; COURT REPORTER CARISA GROSSMAN;

08/03/2015 Order Setting ▼

Comment
204: ORDER SETTING JMD; 08-21-2015JM; SENTENCING;

08/03/2015 Motion ▼

Comment
205: MOTION FOR SECOND CONTINUANCE; OF RE-SENTENCING;

08/21/2015 JM Hon Jeanette Dalton ▼

Hearing Time
8:00 AM

Comment
SENTENCING

08/21/2015 Hearing Stricken In Court NonAppearance ▼

Comment
HEARING STRICKEN:IN COURT NONAPPEAR;

02/01/2016 Mandate ▼

Comment
206: MANDATE FROM COURT OF APPEALS;; AFFIRMING IN PART, VACATING IN PART; AND REMANDING FOR RESENTENCING;

02/02/2016 Order to Compel Production ▼

Comment
207: ORDER TO COMPEL PRODUCTION OF; PRISONER LA'JUANTA CONNER FOR; HEARING ON 3/18/16; JUDGE JEANETTE DALTON, DEPT 1;

02/04/2016 Note for Motion Docket ▼

Comment
208: NOTE FOR MOTION DOCKET; 03-18-2016JM;
RESENTENCING AFTER MANDATE;

02/29/2016 Motion ▼

Comment
209: MOTION RE RESENTENCING FROM DEF;

02/29/2016 Declaration Affidavit ▼

Comment
210: DECLARATION OF DEFENDANT;

03/18/2016 JM Hon Jeanette Dalton ▼

Hearing Time
8:00 AM

Comment
RESENTENCING AFTER MANDATE

03/18/2016 Motion Hearing ▼

Comment
211: MOTION HEARING; JUDGE JEANETTE DALTON, DEPT 1;
MATTER CONTINUED; COURT REPORTER GLORIA BELL;

03/18/2016 Order Setting ▼

Comment
212: ORDER SETTING RESENTENCING; 03-25-2016JM; JUDGE
JEANETTE DALTON, DEPT 1; RESENTENCING AFTER
MANDATE;

03/25/2016 JM Hon Jeanette Dalton ▼

Hearing Time
8:00 AM

Comment
RESENTENCING AFTER MANDATE

03/25/2016 Memorandum ▼

Comment
213: MEMORANDUM DEFENDANT'S SENTENCING;

03/25/2016 Felony Judgment and Sentence ▼

Comment
214: FELONY JUDGMENT AND SENTENCE/; AMENDED;

03/25/2016 Warrant of Commitment ▼

Comment

215: WARRANT OF COMMITMENT/AMENDED; JUDGE JEANETTE DALTON, DEPT 1;

03/25/2016 Advice of Rights ▼

Comment

216: ADVICE OF RIGHTS TO APPEAL; JUDGE JEANETTE DALTON, DEPT 1;

03/25/2016 Sentencing Hearing ▼

Comment

217: SENTENCING HEARING; JUDGE JEANETTE DALTON, DEPT 1;

04/25/2016 Motion Declaration for Indigency ▼

Comment

218: MOTION FOR INDIGENCY;

04/25/2016 Order of Indigency ▼

Comment

219: ORDER OF INDIGENCY; JUDGE MELISSA A HEMSTREET, DEPT3;

04/25/2016 Ex Parte Action With Order ▼

Comment

EX-PARTE ACTION WITH ORDER;

04/25/2016 Notice of Appeal to Court of Appeals ▼

Comment

220: NOTICE OF APPEAL TO COURT OF APPEAL;

04/25/2016 Affidavit Declaration Certificate Confirmation of Service ▼

Comment

221: AFFIDAVIT/DCLR/CERT OF SERVICE;

04/25/2016 Transmittal Letter Copy Filed ▼

Comment

222: TRANSMITTAL LETTER - COPY FILED; NOTICE OF APPEAL TO COA;

05/11/2016 Perfection Notice from Court of Appeals ▼

Comment

223: PERFECTION NOTICE FROM CT OF APPLS;

05/20/2016 Designation of Clerks Papers ▼

Comment

224: DESIGNATION OF CLERK'S PAPERS;

06/30/2016 Index ▼

Comment

225: INDEX;

07/13/2016 Transmittal Letter Copy Filed ▼

Comment

226: TRANSMITTAL LETTER - COPY FILED;

09/07/2016 Motion ▼

Comment

227: DEFENDANT'S MOTION FOR ORDER FOR; TELEPHONIC APPEARANCE ON 9/21/16; (FOR UNKNOWN HEARING);

11/08/2016 Response ▼

Comment

228: STATE'S RESPONSE TO CRR 7.8 MOTION; TO VACATE;

06/26/2017 Correspondence ▼

Comment

229: CORRESPONDENCE/STAFF ATTY TO DEF; W/INSTRUCTIONS ON SETTING HRG;

06/26/2017 Correspondence ▼

Comment

CORRESPONDENCE/DEF TO COURT; W/NOTICE OF HRG FOR 7.8 MTN;

07/11/2017 Note for Motion Docket ▼

Comment

230: NOTE FOR MOTION DOCKET; 08-04-2017AS; 7.8 MOTION TO VACATE;

07/17/2017 Mandate ▼

Comment

231: MANDATE FROM COURT OF APPEALS;

Comment

Details

OF ORDER FROM COA DISMISSING PETITION

Attachment “F”

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4
5 SUPERIOR COURT FOR KITSAP COUNTY, WASHINGTON
6

7 STATE OF WASHINGTON,

No. 11-3-069-4

8 Plaintiff,

MOTION FOR SECOND
CONTINUANCE
OF RE-SENTENCING

9 v.

10 LAJUANTA CONNER,

11 Defendant
12

13 Defendant Lajuanta Conner hereby moves for a second continuance of the re-sentencing in
14 this matter in order to allow counsel sufficient time to prepare factual and legal arguments against
15 the de facto sentence of life in prison without possibility of release that Mr. Conner is facing for
16 property and gun crimes that did not involve actual physical injury to any person – or, if that is a
17 misstatement of fact and there were injuries to one or more of the burglary robbery victims, that did
18 involved injuries and that constituted crimes that were not significant enough to warrant
19 incarceration for the rest of his life.

20 On July 27, 2012, Mr. Conner was 23 years and three months old. On that date this Court
21 sentenced him to 95 years, eight-and-a-half months in prison for 24 crimes, 23 of which were
22 felonies that are before the Court on re-sentencing, in a sentence that included 13 firearm
23 enhancements of five years each that must run consecutively and in their entirety before Mr. Conner
24 can begin to receive any credit for good time off the remainder of his sentence. The firearms
25 enhancements alone seem to require imposition of a consecutive 65 years, even before the Court
26 considers sentences, standard range or otherwise, for the 23 underlying crimes; obviously, then, Mr.
27 Conner will not live to see the end of his presumptive standard range sentence.

28 Mr. Conner was only 21 when he committed these numerous crimes, the dates of which
ranged from September 15, 2010, when he was 21 years and five months (just under 21 years and six

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EXHIBIT 17

1 months) old, to November 17, 2015, when he was just under 21 years and seven months old. All of
2 his crimes involved at least two other individuals who played more prominent roles in the planning
3 and commission of these crimes.

4 Mr. Conner would like to pursue an exceptional sentence downward based on constitutional
5 issues regarding his relative youth as well as the involvement and the degree of his culpability relative
6 to that of his co-defendants under the specific provisions of RCW 9.94A.535(1)(c), (d) and (e).

7 Washington State case law does not presently support arguments that youth alone can justify
8 an exceptional sentence downward.

9 However, apparently the issue of a young adult's age as it affects standard range sentencing
10 (and Mr. Conner concedes that he was an adult when these crimes occurred) is currently before the
11 state Supreme Court in the case of *State v. Odell*, in which the Court heard argument in March of this
12 year, under, again apparently, the authority of recent United States Supreme Court cases such as
13 *Miller v. Alabama*, 567 U.S. ___ (2012), and *Graham v. Florida*, 560 U.S. 48 (2010), that have come
14 down in recent years. (Notably, *Graham v. Florida* is similar to Mr. Conner's case in that it involved a
15 de jure sentence of life without possibility of parole, while Mr. Conner's case involves a de facto
16 sentence of the same duration; Mr. Conner's argument is that his youth, developmental status and
17 the circumstances of the commission of his crimes bears inquiry prior to sentencing).

18 Counsel also seeks additional time to present factual and legal arguments involving same
19 criminal conduct that may exist notwithstanding the Washington burglary anti-merger statute, RCW
20 9A.52.050; this may be a "dumb question," the answer may be clear and the Court may so rule, but
21 counsel has been unable yet to determine from case law or otherwise whether theft and robbery
22 during the commission of a burglary may constitute "same criminal conduct" under RCW
23 9.94A.589(1)(a) despite the clear and explicit language of the anti-merger statute that the State may
24 punish a person for "any other crime" that he or she commits during the commission of burglaries
25 as in Mr. Conner's case; if theft and robbery during a burglary can constitute same criminal conduct,
26 then that may require adjustment of Mr. Conner's offender score and sentence.

27 * Personal factors unrelated to the crime cannot support a sentence below the standard range. *State v. Law*,
28 154 Wn.2d 85 (2005). Age alone is not a mitigating factor justifying an exceptional sentence downward. *State*
v. *Humm*, 132 Wn.2d 834 (1997) (18 year old convicted of armed robbery). Youthfulness as a basis for
limited capacity to appreciate wrongful conduct not a basis for an exceptional down. *State v. Scott*, 72
Wn.App 207 (1993) (17 year old convicted of first degree murder).

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1 In addition, counsel also requires more time to research – rather than simply making the
2 argument orally either without legal authority to support it or without the ability to argue against or
3 to attempt to distinguish any contrary authority that may exist – whether it would violate double
4 jeopardy principles to apply the aggravating factor that the jury found in several of these crimes of
5 victims being present during burglaries during which Mr. Conner also committed; the argument
6 would be that it would be unfair to impose an exceptional sentence for a victim of a burglary being
7 present when the defendant is also receiving punishment for robbery of that individual.

8 I have been working diligently to research these factual and legal issues. I also note in all
9 candor that Mr. Conner himself is indigent and that as his retained attorney I would be seeking
10 public funds for an expert witness to assess any developmental issues that may exist as they relate to
11 arguments at sentencing. (I invoke here the anecdotal evidence that I believe we have all heard or
12 read, that our brains do not become fully developed, and our reasoning skills, including maturity and
13 awareness of and concern for consequences, until the approximate age of 25 years.)

14 I also note, again in all candor, that there appear to be troubling issues of competency of Mr.
15 Conner's trial counsel, including without limitation a very real question of whether Mr. Longacre
16 relayed to Mr. Conner the profoundly important facts that (1) the prosecution had offered him a
17 plea bargain of somewhere in the neighborhood of 10 years, I believe, but certainly, and again
18 profoundly, a lifetime's different than the 95 years that he received as a standard range sentence, (2)
19 the fact that he was even facing a standard range sentence of 95 years or (3) that he was even facing
20 firearms enhancement at all, much less firearms enhancements that totaled a consecutive and
21 mandatory 65 years.

22 Mr. Conner himself recognizes, as I as his counsel certainly do as well, that these last issues
23 cannot affect the Court's consideration of his sentence; we raise them here only because they do
24 exist in this case, and because we wish to be entirely forthright with the Court and with opposing
25 counsel.

26 At present, as the State has argued in their sentencing memorandum, Mr. Conner is looking
27 at the rest of his life in prison; on that basis it constitutes no prejudice to him to seek a delay in his
28 re-sentencing, and he waives any right to re-sentencing within the next 90 days if not beyond. It is
counsel's hope that neither the Court nor opposing counsel will see any delay to either party's or the
people of the State's interests as well in delaying re-sentencing to allow full consideration of these
profoundly important issues.

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1 As counsel for Mr. Conner, I am asking the Court to allow additional time for the retaining
2 of an expert witness and for briefing and argument of the issues that I have presented in this
3 motion.

4 Respectfully submitted August 3, 2015

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7 Eric S. Valley
8 WSBA No. 21184
9 Attorney For Lajuanta Conner

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Attachment “G”

FILED
KITSAP COUNTY CLERK
2016 MAR 25 PM 1:22
DAVID W. PETERSON

SUPERIOR COURT FOR KITSAP COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

LAJUANTA CONNER,

Defendant

11-1-435-8
No. ~~11-3-069-1~~

DEFENDANT'S
SENTENCING
MEMORANDUM

Defendant Lajuanta Conner submits this brief memorandum and asks that the Court impose an exceptional sentence downward on the basis of his relative youth on the date of these crimes, that the Court recognize that these crimes were all part of a continuous crime spree and therefore constituted same criminal conduct, that the Court dismiss certain counts as constituting double jeopardy and that the Court exercise its discretion and decline to apply the anti-merger burglary statute.

Mr. Conner is facing a literal sentence of life in prison without possibility of release for property and gun crimes that did not involve actual physical injury to any person – or, if that is a misstatement of fact and there were injuries to one or more of the burglary robbery victims, that did involved injuries and that constituted crimes that were not significant enough to warrant incarceration for the rest of his life.

When the Court sentenced Mr. Conner on July 27, 2012, he was 23 years and 3 months old; on that date the Court sentenced him to 95 years and 8 & 1/2 months in prison for 24 crimes, 23 of which were felonies that are before the Court on re-sentencing.

Mr. Conner's sentence included 13 seemingly mandatory firearm enhancements of 5 years each, or 65 years, that must run consecutively and in their entirety before Mr. Conner can begin to receive any credit for good time off the remainder of his sentence, even before the Court considers

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SUB(213)

1 what sentences it will impose, standard range or otherwise, for Mr. Conner's 23 underlying
2 convictions; obviously, then, Mr. Conner will not live to see the end of his presumptive standard
3 range sentence.

4 Mr. Conner was only 21 on the dates of these crimes, which ranged from September 15,
5 2010, when he was 21 years and five months (just under 21 years and six months) old, to November
6 17, 2015, when he was just under 21 years and seven months old.

7 Moreover, all of these crimes involved at least two other individuals who played more
8 prominent roles in the planning and commission of these crimes.

9 Mr. Conner asks that the Court impose an exceptional sentence downward based on his
10 relative youth as well as the involvement and the degree of his culpability relative to that of his co-
11 defendants under the specific provisions of RCW 9.94A.535(1)(c), (d) and (e). Mr. Conner
12 respectfully submits that this request is consistent with the important recent Washington State
13 Supreme Court case of *State v. Odell*, 183 Wn.2d 680; 358 P.3d 359 (2015), which addressed this
14 issue.

15 Mr. Conner also reiterates that a departure down is necessary in order to avoid the otherwise
16 inevitable disproportionate sentence of literally the entire remainder of his life in prison, without any
17 possibility of release, for property crimes in which he was not the primary actor and in which no
18 persons suffered actual or grievous physical harm. (Neither counsel nor Mr. Conner intend in any
19 way to minimize the violations that burglary and robbery, and especially home invasion robberies,
20 are; Mr. Conner hopes merely to persuade the Court to sentence him to something other than the
21 rest of his life in prison for these crimes.)

22 Mr. Conner also submits that, while some of his convictions involve crimes that occurred on
23 different days and so are not "same criminal conduct," the burglary and robbery convictions were
24 same criminal conduct, as the sole purpose of the burglaries was to facilitate the robberies, so that
25 sentencing him separately on each of these convictions would violate both the constitutional
26 prohibition on double jeopardy and the statutory scheme of recognizing same criminal conduct as a
27 single offense. Mr. Conner asks, in light of all of the above, that the Court in its discretion not apply
28 the anti-merger burglary statute, and that the Court in that manner allow him some possibility of one
day securing release from his incarceration.

Mr. Conner also submits that it constitutes double jeopardy to apply the aggravating factor
that the jury found in several of these crimes of multiple victims being present during burglaries of

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1 which they convicted Mr. Conner; it is double jeopardy to impose an exceptional sentence for a
2 victim of a burglary being present when the defendant is also receiving punishment for robbery of
3 that individual, and that despite the number of persons present during a robbery, there is only one
4 unit of prosecution if only one person is robbed.

5 Finally, and again hoping to secure a proportional sentence for his crimes, Mr. Conner raises
6 the issue of the 13 firearm enhancements as they relate to the anti-merger statute, same criminal
7 conduct, double jeopardy and his multiple victim exceptional sentence argument. For instance, as
8 counsel wrote previously in this case, if theft and robbery during a burglary can constitute same
9 criminal conduct during the commission of a burglary, then that may require adjustment of Mr.
10 Conner's offender score and sentence, as well as the number of firearms enhancements that the
11 Court must impose.

12 In conclusion, and with reference to the immediately preceding paragraph – and recognizing
13 that the Court has awesome discretion in this matter, while at the same time the Court is bound by
14 the Sentencing Reform Act and applicable case law - Mr. Conner asks that the Court fashion and
15 impose an appropriate sentence that is commensurate with the many crimes of which the jury
16 convicted him.

17 Respectfully submitted March 25, 2016

18 
19 _____
20 Eric S. Valley
21 WSBA No. 21184
22 Attorney For Lajuanta Conner

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Attachment “H”

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	COA No. 48846-9-II
)	
vs.)	No. 11-1-00435-8
)	
LA'JUANTA L. CONNER,)	
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS
RESENTENCING

March 25, 2016

Before the Honorable Jeanette Dalton,
a Kitsap County Superior Court Judge,
sitting in Department 1 thereof.

APPEARANCES

For Plaintiff: Cami G. Lewis
 Deputy Prosecuting Attorney

For Defendant: Eric Valley
 Attorney at Law

Barbara L. Brace, CCR, RPR
Official Court Reporter
License No. 3010
614 Division Street, MS-24
Port Orchard, Washington 98366
Phone: (360) 337-4462

1 WHEREUPON, the following proceedings were had,
2 to wit:

3 <<<<<< >>>>>>

4 THE COURT: Go ahead and be seated, everyone.

5 All right. We're here in the matter State of
6 Washington v. La-Juanta Conner. This is Cause
7 No. 11-1-00435-8.

8 We are here in the courtroom pursuant to a mandate
9 from the Court of Appeals to resentence Mr. Conner in
10 accordance with that opinion from the Court of Appeals.

11 Mr. Valley, I've received your brief, and I have
12 reviewed it. Ms. Lewis, there's a brief in the file
13 that's back from July of last year, which I've also
14 reviewed.

15 I'll let the State go first.

16 MS. LEWIS: Thank you, Your Honor.

17 Your Honor, we are simply asking that the Court --
18 it's essentially the same sentence that the Court imposed
19 at the trial court level. I think Ms. Franklin probably
20 pointed out at one of the other hearings, the opinion
21 references that there were 12 enhancements -- there were
22 actually 13 -- and that the enhancement that was
23 reflected on the Judgment and Sentence that the Court of
24 Appeals objected to was actually never included in the
25 actual sentence itself.

1 So our position is that the Court -- there's no
2 reason to change the sentence from the original sentence.
3 We're asking that the Court impose that. I believe it's
4 1,149 months -- 49 and a half months. Let me just
5 double-check that. 1,148.5.

6 THE COURT: .5? Okay.

7 All right. Mr. Conner, I have also received and
8 reviewed your submittal, which came pursuant -- it's
9 entitled a motion pursuant to Criminal Rule 7.8. And I
10 do have a couple of -- pretty much Mr. Valley has
11 incorporated into his submittal everything that you have
12 discussed, with the exception of whether Mr. Longacre
13 conveyed the plea agreement to you. That's the only
14 thing that's outstanding. I just need to find that place
15 in his.

16 MS. LEWIS: When the Court is ready, Your Honor,
17 I have a response to that, a brief one.

18 THE COURT: Okay. Well, Mr. Valley has
19 incorporated everything except that one piece in
20 Mr. Conner's submittal to the Court. Ordinarily, this
21 would get sent back up as a PRP, a personal restraint
22 petition. If we can resolve it here, I'd like to be able
23 to do that.

24 He says on Page 5 of his brief, "In determining
25 whether the defendant has met his burden of proof of

1 proving a prima facie case of prejudice, the Court must
2 make specific findings."

3 One is that the prosecution offered a plea bargain
4 of less than 95 years; and secondly, that the defendant
5 would have accepted such a plea bargain -- ten, seven, or
6 six years, had he -- I'm paraphrasing here -- had he
7 known about it. He says clearly trial counsel failed in
8 each of his above-cited duties. He's alleging
9 ineffective assistance of counsel.

10 What do you know from the record, Ms. Lewis?

11 MS. LEWIS: Well, Your Honor, I obviously was
12 one of the DPAs that was assigned this from the very
13 beginning. I know that Mr. Longacre has had an issue
14 with that in the past, so it was our policy, when he was
15 still practicing, that we would send a letter to him.

16 And I specifically recall putting on the record the
17 plea offer. I also recall -- obviously, my math was bad,
18 but I recall taking basically a guess at how much the
19 firearm enhancements were going to be. I thought they
20 were going to be 45 years. I remember specifically
21 putting that on the record as well.

22 THE COURT: Do you know about when you may have
23 done that?

24 MS. LEWIS: It was well into the process.

25 THE COURT: Well, I do have a clerk's minute

1 entry from September 16, 2011. This was during the time
2 period that the witness list issue from Mr. Longacre was
3 popping up.

4 MS. LEWIS: Right.

5 THE COURT: And the indication was that the
6 State would provide a plea agreement to Mr. Longacre
7 before the next hearing. So that was actually
8 incorporated in the minute entry on September 16. The
9 next hearing is September 21. There's simply no mention
10 one way or the other of the plea agreement. There is a
11 further arraignment hearing that is set for October 6 of
12 2011.

13 MS. LEWIS: Well, Your Honor, as I said, I
14 specifically recall saying, you know, I know the Court
15 doesn't want to get involved in the plea negotiations in
16 this, but I wanted to make sure it was on the record what
17 our offer was because of the history that Mr. Longacre
18 had, so I know I specifically put that on the record.

19 THE COURT: Let me see if I can find that.

20 MS. LEWIS: I'll be honest with the Court. I
21 did look through the minutes. I didn't see anything that
22 reflected that. I probably could have pulled the
23 transcripts from all of them. I didn't.

24 THE COURT: All right. So your recollection is,
25 because of not only who Mr. Longacre is, the defense

1 attorney himself, but also the posture of the case, you
2 specifically remember stating the plea agreement on the
3 record?

4 MS. LEWIS: Yes.

5 THE COURT: If he wanted to plead before the new
6 added charges.

7 MS. LEWIS: Yes. I recall talking about how
8 many -- I mean, talking about the firearm enhancements
9 alone.

10 THE COURT: All right. Mr. Valley?

11 MR. VALLEY: Thank you, Your Honor.

12 First off, I owe the Court -- I feel I owe the
13 Court, and I certainly want to apologize for last week.
14 It was confusion. It was not me blithely choosing to
15 take a vacation, but I -- and hopefully, enough said.
16 Sincere apologies. It was -- it's confusion, and I --
17 I've had many clients say that, and it doesn't do you
18 very much good.

19 I guess I want to say something else. I feel like I
20 might have said this to Your Honor before. One of my
21 best friends in law school -- I was 26 years old -- and
22 he taught me there's no such thing as a good excuse. So
23 I don't mean it as an excuse. I mean it as an apology.

24 THE COURT: Thank you.

25 MR. VALLEY: I also apologize for getting my

1 sentencing memorandum in late. Again, how busy I am is
2 not an excuse. It's a good thing, and we're all very
3 busy. I understand that.

4 But I will note, too, that I spoke with Counsel
5 about whether I might want a continuance because I filed
6 late, whether the -- I don't want to overstate my case,
7 but I think we're all in agreement that nobody is asking
8 for a continuance. Certainly, if Counsel wanted one, I
9 wouldn't be opposing it.

10 Moving on from that -- and again, in the nature of
11 an apology or -- there's no specific rule that says when
12 it needs to be in, but an hour before the hearing is not
13 enough -- early enough.

14 But that leads me to my next point, which is that
15 there are very serious issues here at play, as I've
16 written not too -- not too eloquently perhaps, but just
17 pretty much bare bones. You know, my client is looking
18 at literally the rest of his life in prison if things go
19 the way they are appearing.

20 I will now get down to brass tacks and address the
21 most recent issue that the Court and Counsel were
22 addressing, which is the issue of the 7.8 hearing. I'll
23 start by noting my client and I have discussed that.
24 Mr. Conner was aware that he didn't note that motion, but
25 I don't feel that we're prejudiced.

1 I think -- and he can kick me under the table. I
2 don't mean to make inappropriate light by saying anything
3 like that. But if I'm wrong, I'm sure he'll correct me.
4 I think he's grateful that the Court is taking this under
5 consideration, because what he and I talked about was, I
6 was going to help him note it up. So we are prepared to
7 address that, and I'll be addressing it here on his
8 behalf here in the next few moments.

9 My next point is that I have known Ms. Lewis for
10 several years, and I absolutely trust her and take what
11 she says at her word. However, I don't think any of our
12 memories are reliable, and that's why we rely on written
13 records.

14 With all due respect and professional and personal
15 esteem for Ms. Lewis, I submit that that's an
16 insufficient record on which -- and the Court can do what
17 it wants, and then, you know, we're left to our devices
18 and our remedies.

19 And I will state anecdotally, you know, there's a
20 book I read called the *Invisible Gorilla*. It's
21 psychological -- it's a psychology layman's book. What
22 they use is 9/11, because they were already in this
23 business on 9/11/2001, if I'm not doing everyone a grave
24 discourtesy of misremembering that year.

25 Where were you on that day, when the Twin Towers

1 fell? People gave memories. And then literally, a
2 decade later, they asked them the same question, and the
3 memories were wildly divergent. So with all respect to
4 Counsel, I think we need more of a record than that.
5 It's intensely critical for Mr. Conner's case.

6 I will note, if I can have my cake and eat it too,
7 Ms. Lewis says she remembers. My client and I have
8 discussed this. It's important that I make that explicit
9 representation. He adamantly does not remember it. If
10 it's in the record, it's in the record, and that's where
11 it has to be. However, the corollary to that is, if it's
12 not in the record, it's not in the record.

13 I think I have nothing further to say on that,
14 except for, I guess I'll conclude by saying that I agree
15 with my client's submission that, if Mr. Longacre did not
16 relay that offer, clearly under existing case law, it is
17 ineffective assistance of counsel. I believe that that's
18 the only issue that the Court has addressed, so I may be
19 done for now.

20 I have, of course, have my memorandum, and I am
21 prepared to address sentencing. And come to think of it,
22 Counsel did, so if I should continue, I'll -- I'm happy
23 to do so.

24 THE COURT: You may.

25 MR. VALLEY: Thank you.

1 Counsel says again, quite reasonably, that the Court
2 should and certainly may simply impose the sentence that
3 the Court imposed last time. For the record, I don't
4 disagree. I agree with what Counsel says.

5 I'm familiar with the issue that the exceptional --
6 I think I'm using the wrong words -- the aggravating
7 factor that the Court of Appeals found offensive or wrong
8 wasn't a factor in the sentencing, so the Court can just
9 reimpose the same sentence.

10 True enough, but our argument is, the Court is not
11 bound to do that, and I believe the Court is free to
12 impose a different sentence.

13 There is new case law which I did cite in my
14 memorandum. I need to look at it. The case is on the
15 relative youth of the defendant. He wasn't 15. He
16 wasn't 18. He was 21 years old. But it is a factor that
17 the Court may consider in imposing an exceptional
18 sentence downward, and that is new case law. It's *State*
19 *v. O'Dell*, a 2015 state Supreme Court case.

20 I don't presume to know more law than the Court
21 does. I imagine the Court is aware of that case. I will
22 note for the record, for the Court's benefit, I discussed
23 with Counsel the luxury that I have today of not being
24 bound, if we're in a civil case, by Rule 11.

25 I can make arguments that perhaps an inquiry that I

1 spent more time on may -- if there are things that -- if
2 I'm wrong, I'm able to be wrong without fear of sanctions
3 because of the potential chilling effect that that would
4 have.

5 I think I'm giving the Court good law and giving the
6 Court the ability to, as I say, save my client from a
7 life in prison. I wrote --

8 THE COURT: Mr. Valley, I'd like you to
9 articulate for the record not just that that exists in
10 general.

11 MR. VALLEY: Thank you.

12 THE COURT: But how specifically there was
13 evidence presented to the Court that would indicate that
14 Mr. Conner fits within that criteria.

15 MR. VALLEY: Thank you, Your Honor.

16 The Court raises a good point and -- I don't mean to
17 be inappropriate by saying that -- stating the obvious.
18 I, of course, was not trial counsel. I'm also not
19 intimately familiar with the trial record, but I feel on
20 firm footing in saying that I don't believe there was any
21 actual testimony. I know that I can't invite error.

22 I do have in my notes -- and it might even have been
23 in my second motion for continuance that I believe I
24 filed -- there was a time when I had contemplated seeking
25 and obtaining expert testimony to that -- to that effect

1 or on that point, and, candidly, I don't have that, Your
2 Honor.

3 I did note somewhere -- I don't think it's in the
4 record, perhaps even just anecdotally, what I think we
5 all know. I fear the Court cannot take judicial notice
6 of it, but the fact that cognitively, all of our brains
7 physically are still developing until we're in our
8 mid-20s. I do think that the case law -- and clearly --
9 and I'll be explicit in acknowledging I'm thinking on my
10 feet here.

11 I think even the *O'Dell* case allows the Court to
12 consider simply my client's youth without any specific
13 evidence. I don't mean to be churlish or presumptuous by
14 saying that. That's a request that we make that the
15 Court can simply consider, as I wrote his age at the time
16 of these different crimes on that issue. And on that
17 basis, it is within the Court's discretion to do that
18 simply on the strength of the fact that he was 21 years
19 old.

20 And continuing to think on my feet -- this is
21 something I thought of before -- his criminal history, I
22 think, supports the argument that an exceptional sentence
23 down would be appropriate due to the due process issues
24 of proportionality.

25 I'm not a -- I'm not a scholar. I'm an attorney.

1 But I -- I think the issue presents itself of mandatory
2 sentencing provisions such as the 13 firearms
3 enhancements in this case. That's an issue I want to get
4 to as well, because we're arguing that the Court not
5 apply the antimerger statute.

6 I hope that the Court would reduce that number from
7 13 to a significantly lower number. I think I can carve
8 away seven of them. Even then, we're left with six
9 firearm enhancements of 30 years.

10 My point is that those kinds of mandatory sentencing
11 provisions can hamstring or -- can hamstring a Court's
12 discretion, and that the exceptional sentence down would
13 enable the Court or could enable the Court to issue a --
14 in its discretion, an appropriate and proportional
15 sentence and -- you know, there's a reasonable argument
16 that these sentences are proportional.

17 I'm not here to say that the legislature are
18 unreasonable people. And clearly, Counsel -- there's
19 counsel on the other side of the room that likely has a
20 contrary argument, and I recognize that.

21 I guess that takes me then to the next argument,
22 which is the antimerger statute. I note that, in my
23 brief, I failed to cite it by statute, but it's at the
24 bottom of Page 2 of my brief -- of my sentencing
25 memorandum where I ask that the Court, in its discretion,

1 not apply the antimerger -- I mis- -- I think it's the
2 burglary antimerger statute or it's the antiburglary
3 merger statute. I think it's the former, not the latter.

4 Counsel and I have discussed that, and my
5 argument -- and I think I'm on very -- if I'm wrong
6 again, I'm wrong -- but I think I'm on firm ground. That
7 statute, by its language and under case law, is
8 discretionary, and the Court is not required to punish
9 all crimes that a defendant commits, when a defendant
10 commits a burglary, separately from the burglary.

11 The Court is allowed to merge those, which brings me
12 to some specific arguments, and I'm happy to be able to
13 provide some specifics. There's an implicit admission
14 there that some of my arguments are rather vague. My
15 hope today is to make a record, but I also -- you know,
16 we can't deal in vagaries. I need to give the Court some
17 specifics, so here we go.

18 On September 15, there were convictions for two
19 robberies. I would ask the Court treat those as one
20 robbery. On September 15, there was a burglary and a
21 theft conviction -- and I don't mean to go too fast.
22 There was a burglary and a theft conviction in addition
23 to the two robberies. I would ask the Court merge those
24 and treat them as one offense.

25 So on 9/15, we have two robberies that become one,

1 under my view -- my request, and a burglary and a theft
2 that become one. So I'm asking the Court to take away
3 two convictions and treat them as same criminal conduct.

4 On September 28, there were three robberies -- and
5 I've got a note, and I am -- for the record, I have a
6 signed waiver of conflict of interest, because I
7 represented a codefendant, Anthony Adams. I'm familiar
8 with these cases.

9 So the date '02 home invasion robbery -- robberies,
10 as they're convicted now, I would argue and ask the Court
11 to treat as one robbery, which loses us two counts. On
12 that same date, there was a burglary and there was a
13 theft, which I would ask that those two merge, losing us
14 another one.

15 On November 3 and 4, there were two robberies that I
16 would ask the Court treat as one. In addition, again,
17 there was a burglary and a theft that I would ask the
18 Court treat as one, which takes me to my negative seven
19 figure that I -- that I mentioned before.

20 THE COURT: Mr. Valley, I need to ask you how --

21 MR. VALLEY: Thank you.

22 THE COURT: It's clear to me that the Court of
23 Appeals directly addressed the issue of same criminal
24 conduct and double jeopardy in their opinion. I don't --
25 in reading through their opinion, they've already

1 factored in your argument and rejected it.

2 So how am I, as a sitting trial court judge, what
3 legal authority do I have to run afoul of the Court of
4 Appeals' directive?

5 MR. VALLEY: My response to that is that I don't
6 know that it's actually a directive that binds the Court.
7 I think it's almost a -- I don't want to say an advisory
8 opinion, but -- the argument -- and I'll -- if you
9 can't -- can't explain it -- you don't understand it, so
10 I think --

11 THE COURT: Well, in their opinion, the issue
12 was raised with respect to the burglary and the
13 antimerger statute, as well as the thefts with each of
14 the robberies and whether those would constitute the same
15 criminal conduct. And the Court of Appeals specifically
16 ruled that the thefts were separate and distinct from the
17 robberies and that the antimerger statute applied.

18 So wouldn't I be running afoul of that ruling if I
19 chose to do something different?

20 MR. VALLEY: I think I understand the Court's
21 question. My argument is that I think what the Court of
22 Appeals did there was reject Mr. Conner's argument that
23 they had to do that, which wouldn't necessarily bind the
24 Court from doing that same thing, but an alternative
25 argument or an additional argument is that the analysis

1 can be different.

2 Although I want to be candid and intellectually
3 honest, if I remember the Court of Appeals' opinion
4 correctly, they did a -- I'm going to use an analogy
5 that's very inapt -- but almost a lesser included
6 analysis. They said on specific facts -- specific
7 statutory facts involving the elements of crimes, these
8 are not the same criminal conduct.

9 That takes me exactly to my point. I don't know
10 that the same criminal conduct analysis is the same as
11 the antimerger statute.

12 THE COURT: The antimerger statute applies
13 simply to the burglaries.

14 MR. VALLEY: I don't follow, Your Honor.

15 THE COURT: The antimerger statute prevents
16 burglary from merging into the goal crime, such as a
17 robbery.

18 MR. VALLEY: Okay.

19 THE COURT: So the burglary and the robbery have
20 to be counted as separate offenses.

21 MR. VALLEY: I may not have a satisfactory
22 answer, Your Honor -- I mean, one that will win the day
23 for my client. I wish I did.

24 I would refer to my memorandum in which I wrote --
25 and the Court may have already just disagreed with me --

1 when I wrote that our argument is that -- and the Court
2 of Appeals -- that's my favorite law school story. Good
3 answer, Mr. Valley, but the Court of Appeals disagrees.
4 I've been wrong before, and I'll be wrong again.

5 As I wrote in my brief, if the goal of the
6 burglary -- and I think -- I fear that the Court did just
7 rule against me. The Court used the phrase "the goal
8 crime." The goal of the burglary was the robbery.

9 THE COURT: Or theft.

10 MR. VALLEY: What I'm arguing is that the -- and
11 again, it sounds like I'm wrong. I'm not conceding that
12 I am, though. Our argument -- my argument is -- and it
13 clearly is hypertechnical -- but the argument is, I'm not
14 saying same criminal conduct. I'm saying the antimerger
15 statute, the Court doesn't have to apply it.

16 So even though they're not similar -- it's almost
17 nonsense. I think I see that look in the Court's eyes,
18 and I grant that it's almost nonsense, but that doesn't
19 mean it's nonsense.

20 What I'm saying, in a technical way, the antimerger
21 statute doesn't require that the Court punish both of
22 those crimes. If the analysis doesn't get there, then it
23 doesn't. You know, there's an old saying about what we
24 can and can't make out of different things.

25 THE COURT: Mm-hm.

1 MR. VALLEY: So we are stuck with the facts and
2 the law. And here's an elephant in the room too, Your
3 Honor. Right or wrong and successful or not, I feel
4 we're making our record today, and that's why I want to
5 be quite explicit that I'm not conceding those things.
6 And I'm doing my best to make reasonable arguments, even
7 though Rule 11 doesn't prevent me from making
8 unreasonable ones. I thank the Court for its
9 consideration and even its engagement in the analysis.

10 Your Honor, my client is -- if I may -- my client is
11 referring me to case law, which is *State v. Davis*. I did
12 not cite it in my brief. We can find -- Your Honor, I
13 have to apologize. My client has provided a citation,
14 and I don't have it at hand.

15 THE COURT: For which proposition?

16 MR. VALLEY: That the antimerger statute is
17 discretionary. Your Honor, clearly I think -- and again,
18 I know this from past practice. I think, in the criminal
19 rules, there's no specific provision for reconsideration.

20 I also believe that I could submit this post
21 closing, as it were, if in fact it's compelling or I
22 think it might even be persuasive. I regret and
23 apologize, I don't have it at hand right now.

24 THE COURT: Mr. Valley, I'm allowing you to make
25 the record that you feel you need to make.

1 MR. VALLEY: I appreciate that, Your Honor.
2 Thank you.

3 I would note now, as I look at my sentencing
4 memorandum -- which I've also referred to as a brief --
5 that all of -- what I'm looking at now is to see whether
6 I've orally argued things that I've put in writing. The
7 point I'm making is that I've already put things in
8 writing.

9 I'm not challenging the Court that -- in any way at
10 all. I want to make sure I've said everything that I've
11 written. And frankly, I feel that I have, but that's why
12 I'm looking.

13 I guess I'll give credit where credit is due to
14 counsel. I waived the double jeopardy argument relating
15 to the aggravating factor of multiple victims being
16 present. I don't believe that's a factor before the
17 Court today. So I did put that in my written brief, but
18 I'm not arguing that today.

19 I've already mentioned in passing -- I'll make it a
20 little more explicit -- that I'm asking that the Court
21 address the 13 firearm enhancements, because they're --
22 as they -- and because they are directly related to the
23 counts that I've asked the Court to merge -- and I'll
24 note that we've had a significant discussion on that
25 issue, so I -- Your Honor, respectfully, I think I'm

1 done.

2 I would note, though, this has all been legal
3 argument. The Court's hands are tied vis-a-vis standard
4 ranges and the firearm enhancements. What I'm getting at
5 is nothing other than my client's rights to elocution. I
6 know that Mr. -- I'm not saying it's time for him to do
7 that. I'm just saying I know he knows he has that right.

8 Thank you.

9 THE COURT: I'm going to hear from the
10 prosecution --

11 MR. VALLEY: Absolutely. Thank you.

12 THE COURT: -- and Mr. Conner can have the last
13 word.

14 MS. LEWIS: Thank you, Your Honor.

15 I just want to address a couple of things. I will
16 be honest. I'm not familiar with the *O'Dell* case. I'll
17 take Mr. Valley at his word that it had to do with
18 somebody being really young, although Mr. Conner was of
19 age at the time.

20 The other issue is, there's citation to the
21 departure from the guidelines of the SRA, which is
22 9.94A.535, and specifically the defendant cites (1)(c),
23 (d), and (e). I have pulled up that particular statute.

24 (1)(c) says the defendant committed the crime under
25 duress, coercion, threat, or compulsion insufficient to

1 constitute a complete defense but which significantly
2 affected his or her conduct.

3 I would submit there's absolutely no evidence in the
4 record that that is true. Mr. Conner was obviously a
5 very willing participant. I think that was the
6 overwhelming evidence.

7 Sub (d) says the defendant, with no apparent
8 predisposition to do so, was induced by others to
9 participate in the crime. Again, there is absolutely no
10 evidence of that.

11 I will note his prior conviction, which came out in
12 testimony, the theft out of King County, the facts were
13 almost identical. It was a home invasion robbery. It
14 involved marijuana. So the claim that he had no
15 predisposition to do that is, I think, without basis.

16 Subsection (e) says the defendant's capacity to
17 appreciate the wrongfulness of his or her conduct or to
18 conform wrongfulness of his or her conduct to the
19 requirements of the law was significantly impaired.
20 Voluntary use of drugs or alcohol is excluded. There is
21 absolutely nothing in the record as to that either.

22 That's my response to those arguments. Again, as
23 Mr. Valley conceded, the aggravators -- the Court did not
24 impose an exceptional sentence, so the aggravators are
25 kind of of little consequence at this point.

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THE COURT: Anything further?

MS. LEWIS: No.

THE COURT: All right. Mr. Conner, it's your opportunity to speak to me directly.

THE DEFENDANT: Okay. First off, going back to the State's sentencing memorandum, the reason for a just sentence of 95 and a half years is for me not showing no remorse or responsibility. Your Honor, I believe that breaks Rule 404. Character evidence is not admissible to prove my conduct. That's one I want to put on the record.

And two, among a little research I have done, I found out that the prosecutor actually knew what was going on and admits to the most severe outcome. That's *State v. Davis*. I just wanted to put that on the record.

And then, like my counsel said, the codefendants involved in my case, I'm the only one getting all that time.

I don't know why I'm getting choked up. I've been in a cell practicing what I'm saying.

THE COURT: You'll have all the time you need.

THE DEFENDANT: All right. But, yeah.

(Pause in proceedings.)

THE DEFENDANT: Yeah. Anyway -- yeah. I'm the only one gets sentenced to 95 and a half years. The

1 whole point of the justice, I thought, was to for me -- I
2 know I didn't do these crimes, regardless of what the
3 State say and what my codefendants say. They took deals.
4 I don't know what made them more better than me, because
5 they took deals and testified and got lesser time, and me
6 going for what I believe in. I wasn't about to, you
7 know, say I did something that I didn't do, period.

8 But I also want to make the record for you too. If
9 Mr. Longacre said, "Mr. Conner, you're looking at 65
10 years and gun enhancements, period," I would have asked
11 for a deal, period. I regret it to this day because it
12 took me away from my kids.

13 THE COURT: I see several in the courtroom
14 today.

15 THE DEFENDANT: Yeah. I'm fighting for my life,
16 because my counsel was ineffective, period. There's no
17 way I would have went to trial, knowing I'm looking at
18 life in prison, guilty or not guilty, period. And that's
19 why I'm doing all my research and trying to get home.

20 It was a lesson learned, though. You know what I'm
21 saying? These four years I've been down, getting in
22 touch with myself, you know what I'm saying, grow up, do
23 some learning. I just want this done and over with.

24 And there's no way, period, I would have went to
25 trial, period, knowing I was going to get life in prison.

1 I got too much to live for out there. Regardless of what
2 the State say, anybody say, I'm not that dude they're
3 trying to make me out to be, period. I take care of
4 everybody.

5 So I just want to put that on the record, you know
6 what I'm saying, as far as for the reason the State
7 trying to say no remorse and responsibility. Like I say,
8 that's 95 and a half years. How is that not taking
9 responsibility for something I didn't even do, regardless
10 of what the jury felt, period.

11 I should have known from the jump anyway, I ain't
12 have a chance, because I'm not even from this state. The
13 way I talk is different. It's bias, period, but -- yeah.
14 I just want to put that on the record and let you know
15 that.

16 And I just hope and pray that you heard our little
17 claims. I wish my attorney had the case law, you know
18 what I'm saying, all this stuff.

19 MR. VALLEY: I got it right here.

20 THE DEFENDANT: Okay. You talk better. I got
21 choked up. I didn't plan on being choked up, but I guess
22 it's the emotions that have been over the years, so --
23 yeah, but back to -- Your Honor, to my 7.8 -- I'm done
24 with that as far as the sentencing go.

25 But if you want me to answer to the -- to the 7.8

1 that I filed, Mr. Longacre not once told me about a plea
2 offer from the State. Not once. I looked in my research
3 that I had from my trial, from my appellate attorney.
4 She sent me all my information from the case.

5 April something -- I don't -- I'm not sure. I know
6 it's April 2012. That's when the First Amended
7 Information came out.

8 THE COURT: Okay.

9 THE DEFENDANT: I didn't know nothing about
10 that. I just knew about the Second Amended Information.
11 That's my fault, me. I was being dumb and not in tune
12 with what's going on. That's my fault.

13 With that being said, then before trial, if I would
14 have known all that, I would have been like, "Hey, man.
15 Listen. What is this? Let's try to go for a deal or
16 something. This is crazy."

17 And yet, Your Honor, I didn't even find out about my
18 gun enhancements until sentencing. That's when he came
19 downstairs and told me.

20 I said, "What's the special verdict form?"

21 I know you're looking at me crazy, because I was at
22 trial. There was so much stuff going on then. So much
23 stuff going on, so -- and he told me, "That's five years
24 apiece." He told me, "It's going to be okay. You're
25 going to be home in a couple of years," and yet he get

1 disbarred.

2 Then I do research on him. He's been disbarred for
3 the same stuff before, not telling the client how much --
4 suspended -- make that for the record -- suspended back
5 then for not telling his clients how much time they was
6 looking at and plea offers.

7 So my math, how I'm looking at it, it was all about
8 the money. It was all about the money. From the time I
9 had him to the time of trial, it was all about money,
10 period. That's all I was dishing out to him was straight
11 money for me to get 95 and a half years. It don't make
12 no sense.

13 I'm going through the motions, trying to fight for
14 my life, to get home. So if I would have known about the
15 deal, period, I would have took it, Your Honor. Whatever
16 deal -- whatever it was, it would have been way better
17 than 95 and a half years.

18 I believe that's it, Your Honor. Thank you.

19 MR. VALLEY: Your Honor?

20 THE COURT: Yes, sir.

21 MR. VALLEY: I have the citations in *State v.*
22 *Davis*, if I may, please, and thank you. It's *State v.*
23 *Davis*, 90 Wn. App. 777, which is also 954 P.2d 325, 1998.
24 That's on the antimerger statute, holding that it's
25 discretionary. It may or may not address the discussion

1 that the Court and I had.

2 One other point I feel I need to make is that -- I
3 want to backtrack from when I said I was prepared, and I
4 think I was -- I probably shouldn't have said that on the
5 7.8 motion. I did make the record clear that all that
6 Mr. Conner and I had talked about was, I was going to
7 help him note it up.

8 During this hearing right now, I just read the rule
9 again and the procedure. Clearly, if things didn't go
10 our way, then I, you know, maybe will wish I hadn't said
11 this, but I'll never know that. Out of an abundance of
12 caution, I need to ask that the Court -- well, I'll
13 finish the first thought.

14 The rule provides -- first off, I don't even know
15 whether -- because I haven't looked at it, which is why I
16 shouldn't have said I'm ready to proceed on it -- whether
17 Mr. Conner filed the affidavit that 7.8 requires he filed
18 with it. I think he probably did, but I don't know.

19 Second off, the final subsection of the rule calls
20 for a show cause hearing. I'm not saying, you know, that
21 puts the burden on the State or anything, but what I am
22 saying is that the rule seems to prescribe a more formal
23 and joined proceeding.

24 And I say that with all due respect to Your Honor,
25 and I respect the Court's desire to address this case in

1 a global fashion, as well as my desire to resolve it, as
2 well as Counsel's, you know, justice delayed and being
3 denied, et cetera. I've made my argument, and I thank
4 the Court.

5 THE COURT: I'm not really sure that I heard
6 what you were saying, Mr. Valley.

7 MR. VALLEY: I'm asking that the Court not
8 address the 7.8 motion, and that in the -- well,
9 and that -- I guess, in the alternative -- well, I guess
10 what I'm asking is that the Court -- I want to withdraw
11 all that and simply state this proposition.

12 The rule seems to provide that the Court -- and I'm
13 not trying to tell the Court what to do. I would never
14 do such a thing. I think the Court knows that. The rule
15 seems to prescribe a show cause hearing, and I'm asking
16 that the Court -- respectfully, I'm asking that the Court
17 show hold a show cause hearing so I can be prepared. And
18 the Court certainly doesn't have to grant that motion,
19 but I feel it's to provide effective assistance of
20 counsel to Mr. Conner.

21 And to be clear too, my brief -- I was hired to
22 represent him at his resentencing. I wasn't specifically
23 hired to represent him at his 7.8 hearing. I'm the guy
24 that said there's no such thing as a good excuse, so I'm
25 not making an excuse.

1 I'm saying I should not have said I was prepared to
2 represent him on the 7.8. I wasn't hired to do it. I
3 haven't done any work on it. My request is that we set
4 that over pursuant to the rule.

5 Thank you, Your Honor.

6 THE COURT: All right. I'm not going to address
7 the 7.8 issue that was raised by Mr. Conner with respect
8 to whether Mr. Longacre did or didn't advise him of the
9 plea offer that was from the State.

10 I do accept Ms. Lewis' statement for the record, and
11 that's in large part because I'm also very familiar with
12 Mr. Longacre and the ways that the prosecutor's office
13 needed to conform their practice to deal with him. But
14 having said that -- and I accept her representation --
15 you will need to get transcripts in order to be able to
16 perfect that issue for review.

17 MR. VALLEY: Absolutely.

18 THE COURT: You need to do it in the ordinary
19 course.

20 MR. VALLEY: Absolutely.

21 THE COURT: Not ad hoc brought before me,
22 because I don't think it's properly before me.

23 Now, the Court of Appeals has issued their mandate
24 to me. The mandate requires that I resentence Mr. Conner
25 in accordance with their opinion. And, Mr. Conner, I

1 believe that what you're telling me about wanting to get
2 back home is absolutely true.

3 The facts, though, are that I am constrained. I am
4 not an appellate court. I'm not the Supreme Court. I
5 must follow the law that is given to me to follow.

6 The Court specifically ruled that the antimerger
7 statute applied here. The Court specifically did not
8 allow or reject, if you will, the argument that any one
9 of these events was the same criminal conduct. So where
10 there was the robbery and the theft and the burglary or
11 two armed robberies, the Court specifically went through
12 each of those and described how those were separate
13 offenses. I am not going to look beyond the Court of
14 Appeals' decision, because that is not my purview.

15 I do want to note for the record that the issue of
16 youth did not come up at sentencing. Even if it had,
17 however, the record with respect to *O'Dell* is not the
18 same kind of record that was presented here in terms of
19 the robberies. In *O'Dell*, it was a juvenile, an
20 unsophisticated individual.

21 In this case, Mr. Conner had been before the Court
22 before for the exact same offense and the jury verdict is
23 what it is. There were two aggravating factors that the
24 jury found. And even if the Court were to balance that
25 against the defendant's youth -- and, by the way, he was

1 an adult at the time -- I don't think that Mr. Conner is
2 unsophisticated. I don't think Mr. Conner was the kind
3 of individual that was easily led, given the testimony
4 that was adduced at trial.

5 He's a father. His children were present in the
6 courtroom frequently, as they are today. And he does
7 want to live up to that responsibility as a father to
8 these children, and that's always been the case with him
9 from day one.

10 At the very beginning of this case, that was
11 primarily his concern. At the end of this case, when he
12 was first sentenced, I still remember that day very
13 clearly, and I do remember that he was most concerned
14 about the children that would grow up without him.

15 And those are not the kinds of remarks from an
16 unsophisticated child. Those are the kinds of remarks
17 that one would expect from someone who wants to honor
18 their obligation as a man in the community.

19 So even at Mr. Conner's age at the time of the
20 commission of the crimes, balanced against the
21 aggravating factors, I would find in any event that that
22 does not constitute a mitigating factor such that a
23 sentence below the standard range would be appropriate.

24 Likewise, I did not find that the aggravators,
25 though proven, I didn't find that they justified a

1 sentence above the standard range. In fact, I sentenced
2 Mr. Conner to the midpoint of the standard range, which
3 is my charge. I am constrained by statute and by the
4 legislators.

5 Mr. Conner, I can't possibly know what occurred
6 between you and Mr. Longacre in terms of your discussions
7 with him and your trial strategy, how much of this was
8 him, how much of this was you, and that is not in any
9 record before me. Given that, I'm not going to address
10 it so that you still have the opportunity to perfect that
11 issue, if you wish.

12 THE DEFENDANT: Referring to the 7.8; right?

13 THE COURT: Right. But this is not the place to
14 start that issue.

15 THE DEFENDANT: Okay. That's why I sent you the
16 motion.

17 THE COURT: I'm not going to address it because
18 it's not properly before me.

19 THE DEFENDANT: So who exactly would I need to
20 send it to?

21 THE COURT: You need to talk to Mr. Valley and
22 appellate attorneys about that issue.

23 THE DEFENDANT: Well, last time we had
24 resentencing, when Mr. Valley addressed it, Ms. Franklin
25 said, in open court on the record, "Mr. Conner needs to

1 put in a 7.8 motion," so that's what I did. When the
2 higher court was done, I filed it.

3 THE COURT: Those are considered personal
4 restraint petitions when we get them. I'm sure you've
5 heard about that in the prison system.

6 Mr. Conner, I can't give you legal advice. That's
7 why Mr. Valley is here, and so this is an issue that
8 should be well in his hands so that he can give you the
9 advice that you need about how to pursue that issue, if
10 you wish to pursue it.

11 THE DEFENDANT: Thank you.

12 THE COURT: But having said that, the standard
13 range here is still -- let me get the paperwork -- it's
14 1103 to 1194. It's 1103 months to 1194 months. That's
15 the -- the standard range of the offenses plus the 780
16 months for the weapons enhancements. I'm going to do
17 exactly the same thing.

18 Mr. Conner, the way that these crimes were committed
19 and the fact that the jury found you guilty means that
20 you are, in terms of this Court, in fact guilty of the
21 crimes.

22 You denied committing the crimes at the time, and I
23 see that you are still saying you weren't there. You
24 didn't do it. I'm hearing that, but be that as it may,
25 the jury has spoken, and I must follow their verdict.

1 Given the nature of the events and given that this
2 is not the kind of events that justify either a
3 mitigation or an aggravation, but rather just a standard
4 sentence range, I'm going to impose the midrange
5 sentence, which in this case is 1148.5.

6 I did note in the Court of Appeals' decision that
7 they did indicate that there were 12 firearm
8 enhancements. I've been back through the information and
9 the jurors' special verdict. And, Ms. Lewis, I'm also
10 relying that the prosecutor has done their homework as
11 well.

12 MS. LEWIS: I have a copy of the verdict form,
13 Your Honor.

14 THE COURT: I think I said it at the time,
15 Mr. Conner, and I continue to believe this. You're an
16 intelligent individual. It's clear to me that you've
17 done your research, and you've used your time at the
18 facility. I encourage you to continue to do so.

19 THE DEFENDANT: I will.

20 THE COURT: And I am -- I would have rather that
21 you applied that intelligence to different ventures
22 because I could see you otherwise as a very successful
23 individual. I'm sorry that you are going to be living in
24 prison. But that, beyond that, it's not up to me.

25 MR. VALLEY: Thank you, Your Honor.

1 THE COURT: All right. Go ahead and finish up
2 the documentation, and the Court will be in recess. When
3 you've got the Judgment and Sentence ready, let me know.
4 I'll come back and sign it.

5 (Recess taken.)

6 THE COURT: Got the Judgment and Sentence?

7 MS. LEWIS: I'm not sure why it was crossed out,
8 the persistent offender warning. It obviously does
9 apply. I know that Mr. Valley has gone over that with
10 his client.

11 THE COURT: All right. Mr. Valley, you've
12 talked to Mr. Conner. You know about the persistent
13 offender issue? It's a strike offense.

14 THE DEFENDANT: Yeah. I just found out.

15 THE COURT: Robbery in the First Degree is a
16 strike offense. If you commit three most serious
17 offenses, the third one has a mandatory penalty of life
18 in prison without the possibility of parole. You know
19 that?

20 THE DEFENDANT: Yeah. I'm familiar with it.

21 THE COURT: All right. I am, however, going to
22 line out all but the mandatory fees, because it's clear
23 to me that --

24 MS. LEWIS: I understand.

25 THE COURT: -- Mr. Conner is not going to be out

1 working anytime soon. I'm going to find that he's
2 indigent. That's the *Blazina* case.

3 I have signed the Judgment and Sentence. It does
4 comport with the Court's orally announced Judgment and
5 Sentence.

6 MS. LEWIS: Thank you, Your Honor.

7 MR. VALLEY: Your Honor, Counsel and I
8 discussed -- Counsel may well be right, but it seems to
9 me that he has a right to appeal this perfected
10 conviction, that Mr. Conner does.

11 THE COURT: Are you asking me to give you a
12 legal opinion on that?

13 MR. VALLEY: Not at all. No, no. I'm
14 submitting that Advice of Right to Appeal.

15 THE COURT: Oh, you want me to -- the 30-day
16 Notice of Appeal right --

17 MR. VALLEY: Right.

18 THE COURT: -- with respect to this new sentence
19 and the new issues that he raised.

20 MR. VALLEY: Exactly.

21 MS. LEWIS: Your Honor, I apologize. I don't
22 think it actually applies. The right to appeal here, the
23 form talks about convictions, the right to appeal a
24 conviction. We don't have any new convictions here. We
25 have a vacation of convictions, but there are no new

1 convictions.

2 THE COURT: I am not in a position where I know
3 the answer to that question. And so I'm going to err on
4 the side of caution, which is, you may, Mr. Conner, or
5 may not -- I don't know -- have the right to appeal this
6 sentence to the Court of Appeals since they have vacated
7 the other sentence and sent it back to me for
8 resentencing. If you choose to appeal this new sentence,
9 then you should do so within 30 days or else you're time
10 barred.

11 Do you understand what that means?

12 THE DEFENDANT: Yes.

13 THE COURT: If you have any other issue that you
14 want to take up to the Court of Appeals that is beyond
15 the 30-day requirement, you may have only one year to do
16 that under the Criminal Rule 7.8, or what we commonly
17 refer to as a personal restraint petition.

18 So I would encourage you to get with your appellate
19 people and find out the answer. But if you wish to
20 pursue it, pursue it.

21 MR. VALLEY: Thank you, Your Honor. I've filled
22 in the form. He's signing it. I'll hand it up.

23 THE COURT: I'm already going to find that he's
24 indigent -- I've made that finding -- if you need to get
25 an attorney assigned on appeal. You know what you need

1 to do, and do it quickly.

2 MR. VALLEY: I do, Your Honor. Thank you.

3 THE COURT: All right. Is there anything else
4 we need to address before we adjourn?

5 MS. LEWIS: No, Your Honor.

6 MR. VALLEY: I thank the Court.

7 THE COURT: Good luck to you, Mr. Conner.

8 (Proceedings concluded.)

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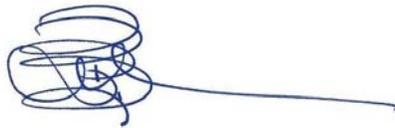
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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I, BARBARA L. BRACE, an official court reporter for
Kitsap County Superior Court, do hereby certify that the
foregoing is a true and accurate transcript of the
proceedings, as taken by me, on March 25, 2016, in the
matter of State of Washington v. Conner.

Dated this 14th day of July, 2016.



Barbara L. Brace, CCR #3010
Official Court Reporter

Attachment “I”

COURT PROCEEDINGS

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THE COURT: Be seated, please. All right. We are here in the matter of State of Washington versus La' Juanta Conner for sentencing on the verdicts following the jury's verdict on the 26 different counts.

First, I do have the State's proposed findings and conclusions on both the 3.5 and the 3.6 hearing.

Mr. Longacre, have you had an opportunity to review these?

MR. LONGACRE: Yes. I have signed the 3.5 and the 3.6. I believe that the facts are a little bit off.

THE COURT: Well, I do have some corrections that I would like to make in the 3.6, and, Counsel, what I have done is interlineated in writing. So why don't I hand this down to you so that the two of you can see what my modifications would be. And if you have anything further, then we can address it.

MS. LEWIS: Thank you, Your Honor.

THE COURT: Otherwise, I think that the 3.5 findings and conclusions are fine, and I am prepared to go ahead and sign that order today.

MS. LEWIS: I think that Ms. Franklin is handing that forward.

1 THE COURT: This is the --

2 MS. FRANKLIN: That is the 3.5.

3 THE COURT: All right. I have signed that
4 order.

5 MS. FRANKLIN: Then there is also one on the
6 conditions of release, Your Honor, that I did not provide a
7 bench copy on the hearing with conditions of release, and I
8 think that Mr. Longacre still has that for review.

9 MR. LONGACRE: I have read it. My concern is on
10 No. 20, which says that the Court found that he
11 constructively possessed alcohol. I don't believe that the
12 Court did that.

13 On No. 34 they said that he constructed and
14 possessed marijuana. I don't think that the Court made
15 that finding either.

16 THE COURT: I haven't seen the document that you
17 are talking about, so I need to see it first.

18 MS. FRANKLIN: Passing that forward, Your Honor.

19 THE COURT: Okay. For the record, Mr. Longacre,
20 towards the end of trial, right before the jury came in,
21 you had made a motion for a mistrial, and I thought that I
22 had said out loud that I had denied that motion for a
23 mistrial, but apparently it didn't get captured on the
24 record. So I want to make sure that it is captured for the
25 purposes of the record that officially I denied that.

1 MR. LONGACRE: I heard you deny that, Your
2 Honor.

3 THE COURT: No. 34 refers to the marijuana,
4 isn't it?

5 MR. LONGACRE: Correct.

6 THE COURT: Which is captured in 32?

7 MR. LONGACRE: In 34.

8 MS. FRANKLIN: I don't have a copy in front of
9 me, Your Honor.

10 THE COURT: No. 32, I did find that he did
11 possess the baggie with the residue in it. That was
12 suspected marijuana, and he said that he -- had said that
13 he was joking about the fact that he possessed marijuana
14 but that that statement was made. So I am going to go
15 ahead and delete No. 34, as I believe that the other
16 findings reflect the Court's ruling.

17 All right. So I have signed that as well. And
18 Mr. Longacre, I did also delete No. 20. I believe that you
19 are correct. I don't think that I said "constructively
20 possessed alcohol," but, again, he was in close proximity
21 to the alcohol that was at his feet, and that is a
22 violation of the Court's order.

23 All right. So now we are here for sentencing. I
24 received the State's sentencing memorandum.

25 Mr. Longacre, did you receive this?

1 MR. LONGACRE: Yes, I did, Your Honor.

2 THE COURT: All right. With respect to the
3 defendant's offender score, do you have anything that you
4 would like to say?

5 MR. LONGACRE: No, Your Honor. I think that is
6 consistent.

7 THE COURT: You believe that it's an accurate
8 calculation of his offender score?

9 MR. LONGACRE: I do believe so, Your Honor.

10 THE COURT: All right.

11 MS. FRANKLIN: Your Honor, I would like to note
12 an error in one of the calculations -- actually several
13 that relate to the firearm charges. The possession of a
14 firearm, theft of a firearm, and unlawful possession of a
15 firearm, the range, as reflected on the sentencing
16 memorandum, is 343 to 414. It should actually be 323.

17 THE COURT: All right.

18 MS. FRANKLIN: So that would be for Counts II,
19 III, V -- actually IV, V and XXIV.

20 THE COURT: You agree, Mr. Longacre?

21 MR. LONGACRE: I do, Your Honor.

22 THE COURT: All right.

23 MS. FRANKLIN: Your Honor, I also ask at this
24 time -- I don't know if the Court is prepared to make a
25 finding on the aggravator of multiple current offenses,

1 some unpunished, but that would affect the range. I don't
2 know if Your Honor wanted to comment on that before hearing
3 argument.

4 THE COURT: I think that it's clear that the
5 nature of these violations, in fact, does satisfy that
6 criteria. There the defendant's offender score under the
7 standard Sentencing Reform Act maxes out at nine. Here we
8 have an offender score of at least 19, 23, and then 36 on
9 the Conspiracy to commit Burglary in the First Degree, the
10 numerous robbery in the first degree charges, and the
11 Burglary in the First Degree charges. If there isn't a
12 case which dramatically emphasizes that point, I don't know
13 that one doesn't exist. So in this particular case, I am
14 satisfied -- easily satisfied by clear, cogent, and
15 convincing evidence that the aggravator that there are
16 multiple current offenses that go unpunished is here
17 satisfied.

18 MS. FRANKLIN: Okay. Thank you.

19 THE COURT: So who is going to speak on behalf
20 of the State?

21 MS. FRANKLIN: I will, Your Honor. Would Your
22 Honor prefer that we approach the bench?

23 THE COURT: You can stay at Counsel table.

24 MS. FRANKLIN: Okay. Having presided over this
25 lengthy trial, Your Honor is intimately familiar with the

1 facts of this case, so I won't detail each incident, but I
2 would like to highlight certain facts to supplement the
3 State's sentencing memorandum that was filed.

4 As Your Honor is aware, within a span of two months
5 in 2010 the defendant and his accomplices went on a rampage
6 within the Bremerton area. They wore bandanas. They
7 wielded guns. They brazenly entered the home of -- the
8 homes of multiple victims, some multiple times, and
9 terrified them, ransacked their homes and took whatever
10 they deemed worthy of taking.

11 The facts proven at trial demonstrated not only did
12 they brandish weapons in order to intimidate the victims
13 and to get them to entice their cooperation, but they were
14 also prepared to use them if something went wrong.

15 In fact, the testimony of Mr. Devenere demonstrated
16 that he was told point blank that they were locked and
17 loaded and ready to go. They were ready to use these guns,
18 and that was further supported by the testimony of the
19 State's cooperating codefendants.

20 They also commented that they were professionals and
21 that they had done this before. The record not only
22 supports that they engaged in this crime-spree but that the
23 defendant has experience with home-invasion robberies.

24 The State attached police reports related to the
25 Theft in the First Degree that was pled down from robbery

1 in King County, which the defendant acknowledged on the
2 stand when he was questioned about it. These facts were
3 remarkably similar to the incidents that were proven during
4 trial; namely, that these defendants went in armed with
5 firearms in a quest for marijuana and cash, and that they
6 took items with force from the victims, and during one of
7 the incidents there was even a shot fired.

8 What is most egregious about this case is that the
9 defendant has demonstrated zero remorse from the onset of
10 this case. Through his actions he traumatized at least
11 eight members of the community, some more than once, and he
12 has shown zero remorse for his actions.

13 Repeatedly, he failed to respect the conditions of
14 release set by the Court and made excuses for his actions
15 over and over again even to the point where the Court had
16 to impose 25 very specific conditions of release as
17 specific as, "You can't even go out on your porch." That
18 is very unusual for the Court to do so, and it
19 demonstrates, you know, what type of person that we are
20 dealing with.

21 Not only did you have to do that, but you had to
22 take him into custody on no bail during his own trial so
23 that he would -- so that he would be accounted for.

24 He, in his numerous phone calls that were introduced
25 at trial, again demonstrated zero remorse for his actions

1 and tried to get people to cover for him to make sure that
2 they were going to honor their word and not say anything
3 about the incidents -- I am referring to Mr. Perez -- and
4 he, when offered the opportunity to explain himself on the
5 stand, demonstrated not even the slightest hint of remorse
6 for his actions. Instead, he blamed everybody else. He
7 blamed Jerrell Smith and Kevion Alexander for what he
8 claims that he is the victim of their lies, despite all of
9 the internal and external consistencies in the evidence.
10 He is trying to portray to the Court that he is the victim
11 here, and the only thing that he is guilty of is hanging
12 out with the wrong people, people that would do whatever
13 they needed to do to save themselves.

14 He made a comment -- I don't know if he did or his
15 Counsel did -- but during trial that he -- these
16 accusations were made up because he is the, quote, unquote,
17 last man standing. In actuality, his name was brought up
18 long before he was in, you know, the position of either
19 pleading or taking this case to trial.

20 At some point he was even blaming the victim,
21 through Counsel, for one of the incidents, Kimberly
22 Birkett. He argued that it was her son -- her minor son
23 who was the link to the burglary to her residence because
24 he nearly played basketball when they are with some -- you
25 know, in the neighborhood with other ten year olds, other

1 minors, and yet he tried to establish a link between him
2 and Kevion Alexander.

3 He also blamed the police. During his hearing on
4 the conditions of release he attributed these statements
5 the police made about him possessing marijuana to lies. He
6 said that Officer Green -- and he has -- don't get along
7 and that Officer Green was lying about him having marijuana
8 in his pocket, and that he admitted to it. However, even
9 according to Detective Heffernan's report -- no indication
10 that he ever had met the defendant -- the defendant made
11 the same accusations to him, and both he and Officer Green
12 observed the marijuana in his pocket.

13 So the defendant, rather than, you know, owning up
14 to anything in this case, the only thing that he admitted
15 to was hanging out with the wrong people and selling
16 marijuana. Those are the only things that he admitted to,
17 and he has tried to deflect the attention away from
18 himself, which is where it should be.

19 Mr. Alexander testified that at some point when he
20 was incarcerated at first he, too, blamed Jerrell Smith for
21 his circumstances for the lengthy prison sentence that he
22 was looking at, and it wasn't until, you know, a lot of
23 self-reflection in the jail that he finally realized that,
24 you know, he was the person responsible for putting himself
25 in that position. He was the reason that he was in jail

1 and that he couldn't blame Jerrell Smith for telling the
2 truth.

3 Jerrell Smith also testified that he, you know, took
4 this deal and came forward because he wants nothing more to
5 do with this life -- with this type of life. The defendant
6 has never, to date, made this realization.

7 The evidence at trial further supported that he was
8 not only, you know, a part of this group, but he was one of
9 the leaders of the group. He wasn't a follower. He used
10 -- he actively was involved in the planning of these
11 crimes, and he used his connections to identify victims;
12 namely Tom Hunnell, who he knew had pills and high-dollar
13 value items in his house.

14 Megan Duckworth was the connection between the group
15 and Ms. Birkett's residence, and he even had, you know,
16 Kevion Alexander on the street selling weed for him. So
17 the picture that he is trying to paint of himself as a
18 victim of someone who is just trying to, you know, mind his
19 business is not accurate, and it is one that is not -- it's
20 directly contradicted by the evidence of this case.

21 Admittedly, there is a vast discrepancy between the
22 defendant's range and the range that Mr. Smith and
23 Mr. Alexander faced, but the major difference in that
24 discrepancy in the range is that they were willing to take
25 responsibility for their actions. They demonstrated

1 remorse for their actions. They are willing to pay
2 restitution to the victims for their crimes. This
3 defendant is not willing to do that.

4 He knowingly assumed the risk of going to trial on
5 26 counts of very serious offense class A and class B
6 felonies, despite the fact that we had two cooperating
7 codefendants who had already been deemed credible by one
8 jury in the case of State v. Troy Brown, and now he must
9 face the consequences of that decision.

10 The total sentencing range, even without the
11 multiple current offenses aggravator, is 1103 months to
12 1194 months. And if there are any questions as to how
13 these ranges were computed, I can certainly answer
14 questions of the Court. But the State, in this case, is
15 recommending top of the range on all counts for a total of
16 1194 months. The severity of this crime spree, coupled
17 with a defendant who is not willing to accept any
18 responsibility for his actions, warrants a sentence at the
19 top of the range.

20 This was not an isolated incident. This was a
21 series of calculated offenses that will forever traumatize
22 the people that were at the other end of those guns, and
23 for that, the defendant has earned this sentence. Thank
24 you.

25 THE COURT: Mr. Longacre?

1 MR. LONGACRE: I think the Court is bound by 65
2 years with the gun enhancements. You add that to
3 Mr. Conner's age, and I don't think that I am going to
4 argue much about anything else. Mr. Conner maintains his
5 innocence. The jury found otherwise. At this point, he is
6 going to rely on his -- on higher courts. I hope that
7 something comes through.

8 It's my position, Your Honor, that when somebody
9 comes to me and says they are innocent, I fight as hard as
10 I can.

11 I take umbrage at the prosecutor accusing me through
12 Mr. Conner of when I present different theories of how
13 things might have occurred. There has never been an
14 attempt to blame the Birketts for anything other than to
15 say where the connection may have come from to
16 Mr. Alexander. I want to make that clear.

17 When it comes to the Court's discretion, the range
18 doesn't make a whole lot of difference in this particular
19 case. So with that said, I think that some family members
20 have some things they want to say, but it doesn't change
21 much.

22 THE COURT: You will have another opportunity to
23 speak, Mr. Longacre. Is there any -- you can go ahead and
24 sit down for a second. Is there anybody on the State's
25 side, any victims who want to speak?

1 MS. LEWIS: The victims were all notified. I
2 don't see any of them present, Your Honor.

3 THE COURT: All right. Detective, you sat
4 through the entire trial. It is unusual, but if you have
5 anything to say, I would like to hear from you.

6 DETECTIVE DAVIS: Thank you, but, no, Your
7 Honor.

8 THE COURT: All right. Anything else,
9 Mr. Longacre?

10 MR. LONGACRE: No. Nothing from me, Your Honor.

11 THE COURT: All right. So you have family
12 members?

13 MR. LONGACRE: I am not sure. Any family
14 members want to speak? Leneka.

15 THE COURT: You can come on up, Ms. Summers.

16 MS. SUMMERS: Right here?

17 THE COURT: Yes. That is fine. You can come
18 all the way up, if you would like.

19 MS. SUMMERS: Okay.

20 THE COURT: Your name is Leneka Summers.

21 MS. SUMMERS: I am Leneka Summers.

22 THE COURT: All right. What would you like me
23 to know?

24 MS. SUMMERS: Well, I just wrote it. I just --
25 Your Honor, today as I stand before you, I just ask that

1 you take some mercy. It will be my soon-to-be fiance on
2 his heart, his life, and his mind, and I just pray that you
3 can give him another chance. To everyone who has been
4 working on this case, I know that it hasn't been easy for
5 any of you guys. I just want to say that I appreciate it.

6 I just know that to all of you guys, La'Juanta is
7 just a guy, but to everyone here, besides my son, he is a
8 father, a son, a brother, my hope-to-be-soon fiance, uncle
9 and a good friend to all of us, and in a way I feel like we
10 are all being punished, and I am going to miss him dearly
11 on whatever you do decide, and it is hard on all of us.

12 I ask once again to have some mercy on him and just
13 trust and believe in him that he can and will change his
14 life. I understand, though, that you are not the reason
15 that he is here, and I am not blaming anyone. I just feel
16 you can be the reason that he did, if he comes home a
17 little sooner, and I just pray that you can give him a
18 chance to be a better example for our son and our
19 daughters.

20 This last six weeks -- I don't know why. This is
21 just my feeling -- I feel like it's been La'Juanta against
22 everyone. That is just me, but I just -- because of some
23 of the things, I just feel like it wasn't fair, so I am
24 just asking you, in all fairness, to just please have some
25 mercy on him in making your decision. Thank you.

1 THE COURT: Thank you, Ms. Summers.

2 Mr. Longacre, is there anyone else?

3 MR. LONGACRE: His mother is here, but I think
4 that is about all, Your Honor. I don't think that you have
5 much discretion, and I appreciate what the Court is doing
6 today.

7 THE COURT: I will hear from anyone else who
8 wishes to speak. Is there anyone in the audience who
9 wishes to speak?

10 Come this way, sir. Come all the way up to the bar
11 so I can hear you. What is your name, sir?

12 MR. WILLIAMS: My name is Daniel Williams.

13 THE COURT: All right.

14 MR. WILLIAMS: I have known La' Juanta Conner.
15 We are not family, but we are one of the best of friends
16 that I have up here. I am not from Washington. I actually
17 moved up here with my wife through the Navy. Even with
18 troubled times with my wife, and I needed someone to go to,
19 La' Juanta has been there.

20 Now that he has been in this situation, I don't
21 really have anyone, you know, to fall back on, but I try to
22 support him as best that I can, and he tries to support me
23 as best that he can whenever we got -- excuse me --
24 whenever we can for each other, you know. I just hate to
25 see him going through this situation even from a friend's

1 point of view, you know.

2 So I ask that, you know, you try to have some mercy
3 when you sentence him today because he does have a family
4 and kids that he has to look after, so I ask that you have
5 some heart and, you know, try to bless this man with being
6 with his family again one day. That is all. Thank you.

7 THE COURT: Thank you, Mr. Williams.

8 Anyone else? Yes, sir. Please, come on up. May I
9 have your name, sir?

10 MR. PULLEY: My name is Joshua Pulley.

11 THE COURT: I have heard about you.

12 MR. PULLEY: Yes.

13 THE COURT: You were a subject of the -- you
14 were referred to during the testimony in the trial.

15 MR. PULLEY: Okay.

16 THE COURT: What do you want me to know?

17 MR. PULLEY: I just want you to know I met
18 La'Juanta Conner roughly at the end of -- or the middle of
19 2011. We started a car club out here to get guys together
20 to do positive things instead of being out of here and, you
21 know, be doing -- being in negativity.

22 And I met La'Juanta Conner as the president of the
23 car club. I never knew him, never heard about him, but
24 when I met him it was like he was so devoted to be around a
25 group of guys that was doing positive in the neighborhood.

1 We did a lot of things from giving Saint Vincent De Paul
2 food, money, toys, and La'Juanta Conner was there.

3 For the times that I known him being around the
4 group of guys that we established back in 2010, I've never
5 known for him to get in trouble. I've never known for him
6 to do anything to anybody. When I met him all he was
7 interested in was car club, car club, car club, car club,
8 and I feel like maybe what he did do or what he has done,
9 you know, it could come with people that was around.

10 But I know when he joined our brotherhood and
11 started hanging around us every day that he was focused,
12 and he was being with his kids, and he was being with the
13 boys, and we did a numerous amount of positivity in the
14 City of Bremerton.

15 And he was one of the guys that was there giving
16 back to the community, and I just ask that -- you know, I
17 wish that I could have met him years before so I could have
18 been even closer to him, even though the bond that we have
19 now is like inseparable. And I want him to know that, you
20 know, a lot of the guys couldn't be here, but we love you.
21 We appreciate everything that you did for us, and that is
22 all I got to say.

23 THE COURT: Thank you, Mr. Pulley. I can see
24 that that is heartfelt.

25 Is there anybody else in the courtroom who wishes to

1 speak?

2 Yes, sir. Come on up. May I have your name?

3 MR. ADAMS: My name is Christopher Adams, Your
4 Honor.

5 THE COURT: Christopher Adams?

6 MR. ADAMS: Yes.

7 THE COURT: What would you like me to know?

8 MR. ADAMS: I'd just like you to know that this
9 is my cousin right here. And, you know, I made a lot of
10 mistakes in my life, but one thing that I can say about him
11 is that by taking him out of the community it would do a
12 lot -- do more harm than it will help because I just got
13 out of prison. I got two kids right now. My brother --
14 two of my brothers is in prison; one of them for the rest
15 of his life, and the other one for 18 years.

16 I can tell you that me being in prison -- before I
17 went in prison, I can tell you that he was a positive
18 influence on my life. You know, he was helping me out on
19 the things that I was doing and helping me to be a better
20 father while I helped him, too. He got his kids out there,
21 so if you take him away from his kids, you are going to
22 leave a broken home, so you are going to create more harm
23 than you are going to help. That is all that I want to
24 say.

25 THE COURT: Thank you, sir. I appreciate your

1 comments. Anybody else? Yes, ma'am. Okay. Good
2 afternoon. You are La'Juanta's mother, right?

3 MS. HENDERSON: Yes. My name is Faith
4 Henderson.

5 THE COURT: It's nice to meet you.

6 MS. HENDERSON: And --

7 THE COURT: This has to be difficult for you.

8 MS. HENDERSON: My son has a heart of gold, and
9 I know that he didn't commit these robberies, but the Lord
10 is on my side. I know that he is going to be okay. And I
11 wasn't here for the trial, but the things that I have heard
12 just have mercy on my child. Okay? He has a family. He
13 has kids that love him. He has a family that loves him.
14 Unfortunately his aunts and uncles couldn't be here because
15 they are all out of state. But please have mercy on my
16 child. He loves his kids. He love his family. That is
17 all that I have to say.

18 THE COURT: Thank you, Ms. Henderson. Is there
19 anybody else here who wants to say something? Yes, ma'am.

20 MS. TAYLOR: Sorry.

21 THE COURT: It's all right. Come on up.

22 MS. TAYLOR: I didn't think that I was going to
23 say anything. My name is Brittany Taylor.

24 THE COURT: You are Brittany Taylor?

25 MS. TAYLOR: And Leneka has been my best friend

1 forever; almost ten years. I have a daughter. Our kids
2 are like -- it's like my sister, brother-in-law, whatever.
3 Her father is not involved, and there has been times when
4 me and Leneka have had petty fights, and I have always just
5 been able to call Juanee.

6 So just me -- like, I don't know. I have been out
7 of town a lot during all of the -- most of this, but I just
8 know that he is a good person personally to his friends and
9 his family, and, like, I know there is plenty of times that
10 I know personally that I have been able to count on him,
11 and he is -- like everybody said, if you can just have
12 mercy. He is a good person.

13 THE COURT: Thank you, ma'am. Anybody else?
14 All right. Well, Mr. Conner, you have the last word before
15 I speak, okay? So what is it that you want me to know?

16 THE DEFENDANT: I need to get myself together
17 right quick. Well, personally I want to say I feel -- I
18 feel for the victims that was involved in the case, but I
19 had no involvement in none of that, point blank, period.

20 Like Mr. Longacre said, when I came to him, I was
21 innocent, so I am going to go all the way with it, and I am
22 innocent. I want the prosecutor to know that I did not do
23 those things, and what the witnesses said -- told him, the
24 interviews, whatever, basically want the Court to know,
25 man, I haven't had no involvement in none of that. There

1 is more that I want to say, but I don't think that I am
2 going to be able to get it out.

3 THE COURT: That's okay. We have time.
4 Whatever you want to say, Mr. Conner. It is your right to
5 allocution.

6 THE DEFENDANT: I don't think that I am going to
7 get it out. Well, man, this is messed up. I mean, I am
8 going down for a long time for some stuff that I didn't
9 even do. For the prosecutors, they just make it seem like
10 I am just some -- you know what I mean -- some little crazy
11 person out here just doing all kinds of crazy stuff. That
12 is crazy.

13 It's just that the last little five weeks since
14 trial it was real hard on me, especially with you, Your
15 Honor. I mean, you did a lot of crazy stuff. I thought
16 that was kind of crazy, but, I mean, you are the judge, you
17 know. So, I mean -- but I just want you to know that I am
18 not that person that they painted the picture out to be. I
19 really ain't. So with that being said, I am just going to
20 leave it at that, but I am innocent.

21 THE COURT: Is there anything that anybody else
22 wants to say?

23 MS. LEWIS: No, Your Honor. Thank you.

24 MS. FRANKLIN: No. Thank you.

25 THE COURT: All right. Are these your children,

1 Mr. Conner?

2 THE DEFENDANT: Yes.

3 THE COURT: The two are both yours? What is her
4 name?

5 MS. SUMMERS: Shalaya (phonetic).

6 THE COURT: Hello, Shalaya. And the other?

7 MS. SUMMERS: This is Tonyae (phonetic).

8 THE COURT: Tonyae. All right. Shalaya, you
9 can go ahead and sit down if you want to, or you can stand
10 on the bench. Okay?

11 What I have come to realize over my life experience
12 is that it is very rare for any individual to be all good
13 or all bad. What is apparent is that behaviors have
14 consequences. All behaviors have consequences. The ripple
15 effect of criminal behavior reaches far beyond the
16 individual's involved, far beyond just the victim or just
17 the perpetrator of the crime. Here we have a courtroom
18 full of people who are losing someone that they love, and
19 that is you, Mr. Conner.

20 The folks that are not in this courtroom have
21 already lost their own sense of security having been
22 victims of the crime. Every family member that they have,
23 every family member that you have, suffers as a result of
24 criminal behavior. To this, I have absolutely no doubt.

25 Mr. Conner, your standard range, as you already

1 know, is 91.9 years to 99.5 years. The first 65 of those
2 years are hard time. You don't get good time credit from
3 that. You have to serve every single day of the first 65
4 years. You're 23 years old. The gun enhancements alone,
5 which are absolutely mandatory, mean that you will not see
6 the outside of a prison cell until you are at least 85, 86,
7 87 years old.

8 From my perspective, either the low end or the high
9 end of the range, as Mr. Longacre says, simply won't make a
10 difference. It is unlikely that you will out live your
11 prison sentence. In fact, it is likely that you won't.

12 The manifest nature of this series of events has
13 resulted in effectively a life sentence for you,
14 Mr. Conner. This State has adopted and put in to place the
15 hard time for armed crime laws, thus the 65 years for
16 carrying a gun to these events.

17 There were five episodes that were proved to the
18 jury of home-invasion robberies. Each of those carried
19 multiple counts, but in each of those weapons were involved
20 by either what the evidence presented was yourself or
21 accomplices, and the guns themselves is 65 years; the guns
22 themselves, just bringing a gun.

23 So, Mr. Conner, really what I do will be of simply
24 no consequence, whether it is the low end or the high end.
25 To the mother, to the family members, the Court, as you may

1 know, has absolutely no discretion to go below or to go
2 above without the exceptional sentence having been pled and
3 proved.

4 For your information, the jurors did find
5 aggravating factors that existed, which could justify a
6 sentence well beyond even the 100 years, which is the
7 maximum penalty. The fact that the State has chosen to
8 recommend a sentence within that standard range just simply
9 reflects the reality. It's a life sentence regardless of
10 what this court does.

11 Mr. Conner, I am going to select a time in the
12 middle of that range; 95 years in prison. Is there someone
13 who can comfort the little ones? It would be 1140 months
14 on the robberies.

15 MS. LEWIS: Your Honor, we are just --

16 THE COURT: Then just the high end of the range
17 on the other crimes. They will all run concurrent,
18 obviously.

19 MS. LEWIS: And actually the -- we are trying to
20 figure out the total range for each of the counts is the
21 problem. We are trying to put it in some sort of format
22 indicating that the firearms run consecutive to each other.
23 That is what -- we are trying to make it clear what it is.

24 MR. LONGACRE: Your Honor, while they are
25 figuring things out, I am going to pass up a Notice of

1 Appeal .

2 THE COURT: You have the order of indigency
3 ready?

4 MR. LONGACRE: I have a motion and order for
5 indigency also.

6 THE COURT: Do you know when the first order of
7 indigency was done? Were you retained immediately, or was
8 he appointed counsel out of the shoot upon arraignment?
9 Because I don't have the --

10 MR. LONGACRE: I believe that for the Superior
11 Court action, that I was retained, Your Honor.

12 THE COURT: Okay. Did you ever have the Court
13 -- I think that I did enter an order establishing that he
14 was indigent some time ago. Do you remember when that was?

15 MR. LONGACRE: You did, Your Honor. I could not
16 remember the date, but I believe it was in April. I
17 ordered a transcript when we did have that hearing. Did
18 you find it, Your Honor?

19 MADAM CLERK: I am looking as well, Your Honor.
20 We have more than one file, Your Honor. It would have been
21 No. 77. It was entered on March 23.

22 THE COURT: All right. Do you have an order?
23 You have the motion?

24 MR. LONGACRE: It says motion for order on it.

25 THE COURT: It says motion for order, but it

1 doesn't have the "and order."

2 Do you have that, Ms. Lewis?

3 MS. LEWIS: I do not. I can get it, though.

4 THE COURT: Well, Mr. Conner, you do have the
5 right to appeal anything that occurred during the trial, of
6 course, as well as the Court's judgment and sentence. You
7 have 30 days to file that notice of appeal. Thirty days is
8 the time limit, and if you don't file a notice of appeal
9 within 30 days, then you can lose a right to appeal.

10 Clearly you are exercising that right today, but I
11 do need to at least give you that oral advice. We are
12 going to follow that up with a writing, and I will have you
13 sign the form.

14 MS. LEWIS: Okay. So, Your Honor, let me hand
15 this to Mr. Longacre. But by way of explanation, we did
16 top of the range on all of the charges except for the
17 firearm charges and did midpoint of the range on that,
18 which brings us to what I think that the Court had already
19 said, which was 1148 and a half months.

20 THE COURT: All right. Mr. Conner, I have gone
21 ahead and signed the advise of right to appeal, so I will
22 hand this down, and you can have a copy of this that you
23 can take with you. You also have a right to a collateral
24 attack of your own choosing. You have to do that within a
25 year of your judgment and sentence, and that you can do on

1 your own without your lawyer.

2 THE DEFENDANT: Collateral?

3 THE COURT: Yes. They are called personal
4 restraints petitions, and that is contained on the form.
5 No doubt, when you get to wherever it is that you are going
6 to end up or land, you will hear about that within the
7 confines of the prison that you are in. But you do have
8 the right to do that for up to one year following the
9 judgment and sentence, and that can be either in addition
10 to what your appellate lawyer does of your own accord.

11 MS. FRANKLIN: For the record, the State is
12 seeking a restitution sign or set hearing on October 19 at
13 11 a.m.

14 THE COURT: Mr. Longacre, have you discussed
15 with Mr. Conner his right to be present at that hearing?

16 MR. LONGACRE: I have, Your Honor. He waived
17 presence.

18 THE COURT: All right. I do need to have him
19 initial that part on the judgment and sentence if you
20 wouldn't mind.

21 MS. LEWIS: Your Honor, regarding the findings
22 of fact on the 3.6 hearing, I actually -- when I drafted
23 these -- the Court may recall, I had drafted earlier ones
24 that the Court wanted to interlineate something on, so I
25 included that, which was the portion of many detectives and

1 members of the SWAT team smelled the odor of marijuana in
2 the room, so that was my addition to it.

3 I don't have any objection to the Court's entry of
4 those, but as far as you put a question on here that you
5 didn't remember making the finding that it was a
6 diversionary tactic, that is something that I found that
7 was included in those original proposed 3.6.

8 THE COURT: Leave it there, then. There was
9 another question that I had with respect to whether or not
10 you needed a conclusion of law. It's on the next page, the
11 top.

12 MS. LEWIS: Right.

13 THE COURT: I am not sure that you actually need
14 that, but if you feel that you do, go ahead and leave that
15 in.

16 MS. LEWIS: That's okay. I don't think so. I
17 can make the corrections and then present it to the Court
18 if that is --

19 THE COURT: Mr. Longacre, if you wish to
20 maintain your objection to the findings and conclusions on
21 the 3.6 hearing, I will let you do that for the record now.
22 Do you want to be -- do you want to have a hearing for
23 presentation of that order?

24 MR. LONGACRE: I don't think that we need a
25 hearing, Your Honor. I think that the Court can take

1 argument and take it on review and just go ahead and make
2 the corrections as you see fit. My concern is that they
3 are pretty much rewriting what the evidence showed.
4 Testimony that was admitted at the 3.6 shows that the
5 detective said they had -- it says that Detective Davis
6 began searching the closet for Alexander. That was not
7 part of any evidence whatsoever.

8 The evidence was that they reentered after the SWAT
9 team had come out and said that he was not present. They
10 reentered. That is when they -- to take pictures of the
11 damage, and I don't think that these findings of fact
12 reflect the way that it's written. It's so convoluted.
13 And if it's not accurate, that is fine, too. It doesn't
14 make much difference because it's the ultimate conclusion
15 and part of the appeal anyway.

16 THE COURT: If you sign off on the finalized
17 findings, Mr. Longacre, you can just write "objection
18 noted" with the argument that you have made today, and then
19 if you -- is it okay with you, or do you have any
20 objections to Ms. Lewis or someone from the prosecutor's
21 office presenting the order for me to sign ex parte?

22 MR. LONGACRE: I have no objection to that, Your
23 Honor.

24 THE COURT: All right. I have signed the
25 judgment and sentence, and it does comport with the Court's

1 orally announced judgment and sentence. Thank you,
2 everyone. We will be at recess.

3 [Whereupon, the proceedings
4 adjourned.]

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Attachment “J”

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IN OPEN COURT
MAR 25 2016
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

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STATE OF WASHINGTON,)	
)	No. 11-1-00435-8
Plaintiff,)	
)	AMENDED JUDGMENT AND SENTENCE
v.)	
)	
LA'JUANTA LE'VEAR CONNER,)	
Age: 26; DOB: 04/22/1989,)	
)	
Defendant.)	

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.

The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <small>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</small>	RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I Burglary in the First Degree, Conspiracy	9A.52.020; 9A.28.040	11/17/2010	11/17/2010	F
I Armed With Firearm	9.94A.533.3A			
I Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
II Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	09/15/2010	11/17/2010	
II Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			

JUDGMENT AND SENTENCE; Page 1
[Form revised April 13, 2015]



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III	Possessing a Stolen Firearm	9A.56.310	09/15/2010	11/17/2010	
III	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
IV	Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	11/01/2010	11/17/2010	
IV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
V	Possessing a Stolen Firearm	9A.56.310	11/01/2010	11/17/2010	
V	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
VI	Possession of Marijuana (ACQUITTAL)	69.50.4014	11/17/2010	11/17/2010	
VII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/15/2010	09/15/2010	F
VII	Armed With Firearm	9.94A.533.3A			
VII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
VIII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/15/2010	09/15/2010	F
VIII	Armed With Firearm	9.94A.533.3A			
VIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
IX	Burglary in the First Degree	9A.52.020	09/15/2010	09/15/2010	F
IX	Armed With Firearm	9.94A.533.3A			
IX	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
IX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
X	Theft in the Second Degree	9A.56.040.1AW	09/15/2010	09/15/2010	
X	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			

JUDGMENT AND SENTENCE; Page 2
[Form revised April 13, 2015]



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XI	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
XI	Armed With Firearm	9.94A.533.3A			
XI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
XII	Armed With Firearm	9.94A.533.3A			
XII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XIII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
XIII	Armed With Firearm	9.94A.533.3A			
XIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XIV	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
XIV	Armed With Firearm	9.94A.533.3A			
XIV	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
XIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XV	Theft in the Second Degree	9A.56.040.1AW	09/28/2010	09/28/2010	
XV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XVI	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/28/2010	09/28/2010	F
XVI	Armed With Firearm	9.94A.533.3A			
XVI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
XVII	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
XVII	Armed With Firearm	9.94A.533.3A			



1	XVII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
2						
3	XVII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
4						
5	XVIII	Theft in the Third Degree (VACATED ON APPEAL)	9A.56.050	09/28/2010	09/28/2010	
6						
7	XIX	Burglary in the First Degree	9A.52.020	10/02/2010	10/03/2010	
8						
9	XIX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	XX	Theft in the Second Degree	9A.56.040.1AW	10/02/2010	10/03/2010	
12						
13	XX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
14						
15	XXI	Robbery in the First Degree	9A.56.200.1Ai1A ii	11/03/2010	11/04/2010	F
16						
17	XXI	Armed With Firearm	9.94A.533.3A			
18						
19	XXI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
20						
21	XXII	Robbery in the First Degree	9A.56.200.1Ai1A ii	11/03/2010	11/04/2010	F
22						
23	XXII	Armed With Firearm	9.94A.533.3A			
24						
25	XXII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	XXIII	Burglary in the First Degree	9A.52.020	11/03/2010	11/04/2010	F
28						
29	XXIII	Armed With Firearm	9.94A.533.3A			
30						
31	XXIII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
	XXIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
	XXIV	Theft of a Firearm	9A.56.300	11/03/2010	11/04/2010	

JUDGMENT AND SENTENCE; Page 4

[Form revised April 13, 2015]



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1	XXIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
2						
3	XXV	Theft in the Second Degree	9A.56.040.1C	11/03/2010	11/04/2010	
4						
5	XXV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
6						
7	XXVI	Possession of Stolen Property in the Third Degree	9A.56.170	11/19/2010	11/19/2010	

8	2.2 CRIMINAL HISTORY (RCW 9.94A.525)				Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
9	<i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>							
10	Theft 1				5/7/08	10/17/08	King County Superior	

11	2.3 SENTENCING DATA									
12	Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*		Total Standard Range (Mo.)	Maximum Term
13	I	36	VII	65.25 to 87	-	X	F	60		life
14										
15	II	19	III	51 to 60	-	X			323 to 414	5 years
16	III	19	V	72 to 96	-	X			323 to 414	10 years
17	IV	19	III	51 to 60	-	X			323 to 414	5 years
18	V	19	III	72 to 96	-	X			323 to 414	5 years
19	VI	0	N/A	0 to 90	X	-			ACQUITTAL	1 year
20	VII	36	IX	129 to 171	-	X	F	60		life
21	VIII	36	IX	129 to 171	-	X	F	60		life
22										
23	IX	36	VII	87 to 116	-	X	F	60		life
24	X	23	I	22 to 29	-	X				5 years
25	XI	36	IX	129 to 171	-	X	F	60		life
26	XII	36	IX	129 to 171	-	X	F	60		life
27										
28	XIII	36	IX	129 to 171	-	X	F	60		life
29										
30	XIV	36	VII	87 to 116	-	X	F	60		life
31	XV	23	I	22 to 29	-	X				5 years

JUDGMENT AND SENTENCE; Page 5
 [Form revised April 13, 2015]



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2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type* Mo.		Total Standard Range (Mo.)	Maximum Term
XVI	36	IX	129 to 171	-	X	F	60		life
XVII	36	VII	87 to 116	-	X	F	60		life
XVIII	0	N/A	0 to 364	X	-			VACATED ON APPEAL	2 years
XIX	36	VII	87 to 116	-	X				life
XX	23	I	22 to 29	-	X				5 years
XXI	36	IX	129 to 171	-	X	F	60		life
XXII	36	IX	129 to 171	-	X	F	60		life
XXIII	36	VII	87 to 116	-	X	F	60		life
XXIV	19	VI	77 to 102	-	X			323 to 414	10 years
XXV	23	I	22 to 29	-	X				5 years
XXVI	0	N/A	0 to 364	X	-			ACQUITTAL	2 years

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

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533); DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (9.94A.836); <15=Victim Under 15 (9.94A.837); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); CSG=Criminal Street Gang Involving a Minor (9.94A.833); AE=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY-The Court finds the Defendant has a chemical dependency that contributed to the offense(s).
- 4.5-PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.

JUDGMENT AND SENTENCE; Page 6

[Form revised April 13, 2015]



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- 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence above below the standard range, within the standard range for Count ___ but served consecutively to Count(s) ___, or warranting exceptional conditions of supervision for Count(s) _____. The Prosecutor did did not recommend a similar sentence. The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender and is sentenced to life without the possibility of early release. RCW 9.94A.570.

COURT'S SENTENCE:		
<i>Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.</i>		
COUNT I <u>87</u> ☒Mo. F: 60 months Total: <u>147</u> ☒Mo.	COUNT II <u>55.5</u> ☒Mo. (Consecutive to Counts III, IV, V and XXIV.)	COUNT III <u>84</u> ☒Mo. (Consecutive to Counts II, IV, V and XXIV.)
COUNT IV <u>55.5</u> ☒Mo. (Consecutive to Counts II, III, V and XXIV.)	COUNT V <u>84</u> ☒Mo. (Consecutive to Counts II, III, IV and XXIV.)	COUNT VII <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.
COUNT VIII <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.	COUNT IX <u>116</u> ☒Mo. F: 60 months Total: <u>176</u> ☒Mo.	COUNT X <u>29</u> ☒Mo.
COUNT XI <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.	COUNT XII <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.	COUNT XIII <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.
COUNT XIV <u>116</u> ☒Mo. F: 60 months Total: <u>176</u> ☒Mo.	COUNT XV <u>29</u> ☒Mo.	COUNT XVI <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.
COUNT XVII <u>116</u> ☒Mo. F: 60 months Total: <u>176</u> ☒Mo.	COUNT XIX <u>116</u> ☒Mo.	COUNT XX <u>29</u> ☒Mo.
COUNT XXI <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.	COUNT XXII <u>171</u> ☒Mo. F: 60 months Total: <u>231</u> ☒Mo.	COUNT XXIII <u>116</u> ☒Mo. F: 60 months Total: <u>176</u> ☒Mo.
COUNT XXIV <u>89.5</u> ☒Mo. (Consecutive to Counts II, III, IV and V.)	COUNT XXV <u>29</u> ☒Mo.	



1 IF MULTIPLE COUNTS—Total confinement ordered: 1148.5 Days Months.

2 COUNTS SERVED— Concurrent Consecutive Firearm and Deadly Weapon enhancements served consecutive;
3 the remainder concurrent. Sexual Motivation enhancements served consecutive; the remainder concurrent.
4 VUCSA enhancements served consecutive concurrent; the remainder consecutive.

4.4—CONFINEMENT ONE YEAR OR LESS—Defendant shall serve a term of confinement as follows:

5 JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found
6 eligible, the confinement ordered may be converted to—Work Release, RCW 9.94A.731 (*Note: the
7 Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail
8 or Peninsula Work Release*), Home Detention, RCW 9.94A.731, 190, or Supervised Community
9 Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.

10 STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if
11 applicable under RCW 9.94A.190(3) in the Department of Corrections.

4.5—CONFINEMENT OVER ONE YEAR—Defendant is sentenced to the above term of total confinement in the
12 custody of the Department of Corrections.

13 OTHER SENTENCES—This sentence shall be served consecutive concurrent to sentence(s) ordered
14 in cause number(s) _____

15 CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to
16 sentencing solely for this cause number as computed by the jail unless specifically set forth—____ days.

17 4.3—NO CONTACT ORDER—Defendant shall abide by the terms of any no contact order issued as part of
18 this Judgment and Sentence.

19 SUPERVISION

20 4.6—COMMUNITY CUSTODY – SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP.
21 RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period
22 checked in the table below. Defendant shall report to DOC in person no later than 72 hours after
23 release from custody and shall comply with all conditions stated in this Judgment and Sentence,
24 including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or
25 DOC during community custody (and supervised probation if ordered). *First Offenders—RCW
26 9.94A.650.* If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 6
27 months; and if treatment is ordered, community supervision may include up to the period of treatment
28 but not exceed 1 year.

29 JUDGMENT AND SENTENCE; Page 8

30 [Form revised April 13, 2015]



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Community Custody Is Ordered for the Following Term(s):

For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):

- COUNT(S) _____ 36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
- COUNT(S) I, VII, VIII, IX, XI, XII, XIII, XIV, XVI, XVII, XIX, XXI, XXII, XXIII_ 18 months for Violent Offense
- COUNT(S) _____ 12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)

For offenders sentenced to a term of one year or less :

- COUNT(S) _____ 12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions).

- Community custody for sex offenders may be extended for up to the statutory maximum term.
- For sex offenses, defendant shall submit to electronic home detention if imposed by DOC

Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:

- COUNT(S) _____ 12 months 24 months _____ months

4.6-**WORK ETHIC CAMP-COMMUNITY CUSTODY.** RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

4.6- **PRISON-BASED DOSA-COMMUNITY CUSTODY.** RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

4.7-**ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS**-If DOC finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.

4.7-**ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**



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FROM THE DOSA PROGRAM—If the defendant fails to complete, or is administratively terminated from, the drug offender sentencing alternative program, the court imposes a term of 12 months community custody under RCW 9.94A.701 unless community custody is not authorized for the crime, to begin upon the defendant’s release from custody, and during this term of community custody, the defendant shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC.

4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY. RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the ADDENDUM are hereby imposed.

-ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA SENTENCE CONDITIONS—If the court finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, the court may order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard range or a term of total confinement up to the top of the standard range. The court may also impose a term of community custody. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant’s sentence. RCW 9.94A.714.

COMMUNITY CUSTODY VIOLATIONS. In any case in which community custody is imposed, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant’s sentence. RCW 9.94A.714.



SUPERVISION SCHEDULE: The Defendant Shall--

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- STANDARD**
 - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
 - Report to and be available for contact with assigned CCO as directed.
 - Obey all no-contact orders including any in this judgment.
 - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
 - Notify CCO within 48 hours of any new arrests or criminal convictions.
 - Pay DOC monthly supervision assessment.
 - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)**
 - Work only at DOC-approved education, employment and/or community service.
 - Possess or consume no controlled substances without legal prescription.
 - Reside only at DOC-approved location and arrangement.
 - Consume no alcohol, if so directed by the CCO.
- FIRST OFFENDER**
 - Obey all laws.
 - Devote time to specific employment or occupation.
 - Pursue a prescribed secular course of study or vocational training.
 - Participate in DOC programs and classes, as directed.
 - Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed standard sentence range.
- FINANCIAL GAIN**
 - Commit no thefts.
 - Possess no stolen property.
 - Have no checking account or possess any blank or partially blank checks.
 - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
 - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
 - Possess no identification in any other name other than Defendant's true name.
 - Possess no credit cards or access devices belonging to others or with false names.
 - Cause no articles to be refunded except with the written permission of CCO.
 - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
- ALCOHOL/DRUGS**
 - Possess or consume no alcohol.
 - Enter no bar or place where alcohol is the chief item of sale.
 - Possess and use no illegal drugs and drug paraphernalia.
 - Submit to UA and breath tests at own expense at CCO request.
 - Submit to searches of person, residence or vehicles at CCO request.
 - Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
 - Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.
- EVALUATIONS**- Complete an evaluation for:
 - substance abuse
 - anger management
 - mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
- DOSA**
 - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
 - Devote time to a specific employment or training.
 - Perform community service work.
- 4.8-OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020.** The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:

- PROGRAMS / ASSAULT**
 - Have no assaultive behavior.
 - Successfully complete a certified DV perpetrators program.
 - Successfully complete an anger management class.
 - Successfully complete a victim's awareness program.
- TRAFFIC**
 - Commit no traffic offenses
 - Do not drive until your privilege to do so is restored by DOL.
- HAVE NO CONTACT WITH:** Robert Dato, Aaron Dato, Jeremy Turner, Thomas Hunnell (AKA Harvison), Brett Cummings, Aaron Tucheck, Ann Marie Tucheck, Keefe Jackson, Kimberly Birkett, Paul Woods, Brandon Bird, Christopher Devenere, Jerrell Smith, Kevion Arnold-Alexander, Heather Arnold-Alexander, and any of their properties.



FINANCIAL OBLIGATIONS

4.1-LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760. The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

X	\$500 Victim Assessment, RCW 7.68.035 [PCV]	\$_____ Sheriff service/sub. fees [SFR/SFS/SPW/SRF]
X	\$1135 Court-appointed attorney fees [PUB]	\$_____ Witness Costs [WFR]
X	\$200 Filing Fee: \$110 if filed before 7/24/2005 [FRC]	\$_____ Jury Demand fee [JFR]
X	\$100 DNA / Biological Sample Fee, RCW 43.43.754	\$_____ Court-appointed defense fees/other defense costs
	<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Mandatory fine for drug crimes, RCW 69.50.430	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
	\$_____ Contribution to SIU-Bremerton Police Department, RCW 9.94A.030, 9.94A.760.	X \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
	\$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
	\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	X \$100 Contribution-Anti-Profitteering Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82.110
	Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$200 DUC-DUI/DP Account Fee - Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

RESTITUTION-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence immediately within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay \$100 \$50 \$25 _____ per month, unless otherwise noted-_____ RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. INTEREST WAIVED FOR TIMELY PAYMENTS-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

OTHER

4.2-HIV TESTING-The Defendant shall submit to HIV testing, RCW 70.24.340.

4.2-DNA TESTING-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law

JUDGMENT AND SENTENCE; Page 12

[Form revised April 13, 2015]



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enforcement agency unless otherwise stated.

- 4.10—COMPLIANCE WITH SENTENCE—Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.
- JOINT AGREEMENTS IN THE PLEA AGREEMENT—Are in full force and effect unless otherwise stated in this judgment and sentence.
- EXONERATION—The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

NOTICES AND SIGNATURES

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

5.2—LENGTH OF SUPERVISION—The court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3—NOTICE OF INCOME-WITHHOLDING ACTION—If the Court has not ordered an immediate notice of payroll deduction, you are notified that the DOC may issue a notice of a 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.

5.5—ANY VIOLATION OF JUDGMENT AND SENTENCE—Is punishable by up to 60 days of confinement per violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW 9.94A.633.

5.6—FIREARMS—You must immediately surrender any concealed pistol license and you may not own, use, or possess any firearm unless your right to do so is restored by a court of record.

Clerk's Action Required—The court clerk shall forward a copy of the Defendant's driver's license, identicaid, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable—

~~5.7—SEX AND KIDNAPPING OFFENDER REGISTRATION. LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.~~

~~1. General Applicability and Requirements:~~

~~Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010, CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.~~

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

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

~~2. Offenders Who are New Residents or Returning Washington Residents:~~

~~If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.~~

~~3. Change of Residence Within State:~~

~~If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you~~

JUDGMENT AND SENTENCE; Page 13

[Form revised April 13, 2015]



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change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State:

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence:

Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

7. Application for a Name Change:

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

58. PERSISTENT OFFENDER

"Three Strike" Warning You have been convicted of an offense that is classified as a "most serious offense" under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

"Two Strike" Warning In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW 9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state, federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

Persistent Offender Sentence A persistent offender shall be sentenced to a term of total confinement for life without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

58-DEPARTMENT OF LICENSING NOTICE-The court finds that Count _____ is a felony in the

This paragraph does apply, and I acknowledge that:
[Signature]
H.L.C.

JUDGMENT AND SENTENCE; Page 14

[Form revised April 13, 2015]



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commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**

- BAC The defendant had an alcohol concentration of breath or blood within two hours after driving or being in physical control of _____;
- No BAC test.
- BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- Drug Related. The defendant was under the influence of or affected by any drug.
- THC.
- Mental Health.
- Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Information: Commercial Vehicle Yes No; 16 Passenger Yes No; Hazmat Yes No.

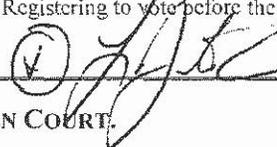
5.8—**TREATMENT RECORDS**—If the Defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

Voting Rights Statement:

I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled.

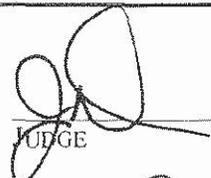
My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply 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 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

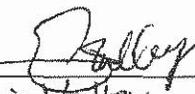
Defendant's Signature: 

SO ORDERED IN OPEN COURT.

DATED 3/24/16


JUDGE


LEWIS, WSBA No. 30524
Deputy Prosecuting Attorney


Eric Valley, WSBA No. 71184
Attorney for Defendant

Defendant has previously, through their plea agreement, waived his or her presence at any future restitution hearing.

n/a (initials)


LAQUANTA LE'VEAR CONNER
Defendant

If I have not previously done so, I hereby agree to waive my right to be present at any restitution proceedings:
_____(initials)



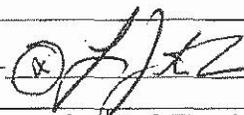
1 INTERPRETER'S DECLARATION - I am a certified or registered interpreter, or the court has found me other
2 wise qualified to interpret, the _____ language, which the Defendant
3 understands. I interpreted this Judgment and Sentence for the Defendant into that language.
4 I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and
5 correct.

6 Translator signature/Print name- _____
7 Signed at Port Orchard, Washington, on _____, 201__.

8 **IDENTIFICATION OF DEFENDANT**

9 Race: Black Sex: Male DOB: 04/22/1989 Age: 26
10 D/L: CONNELL113J2 D/L State: Washington SID: [s.i.d. number] Height: 511
11 Weight: 150 JUVIS: Unknown Eyes: Brown Hair: Black
12 DOC: Unknown SSN: 307-06-9361 FBI: [fbi number]

13 FINGERPRINTS-I attest that I saw the same Defendant who appeared in Court on this document affix his or
14 her fingerprints and signature thereto.
15 Clerk of the Court- _____, Deputy Clerk. Dated- _____

16 DEFENDANT'S SIGNATURE- 

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously
			

28 Prosecutor's File Number-10-184374-3

29 Prosecutor Distribution-Original (Court Clerk); 1 copy (Prosecutor); 1 copy (DOC); 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)

30 JUDGMENT AND SENTENCE; Page 16
31 [Form revised April 13, 2015]



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Attachment “K”

2016 FEB 29 AM 9:02

DAVID W. PETERSON *DAVI*

WASHINGTON STATE SUPERIOR COURT
KITSAP COUNTY

STATE OF WASHINGTON,
Plaintiff

Cause no. 11-1-00435-8

v

MOTION PURSUANT
TO CR 7.8 (b) (2)

LAJUNTA CONNER
Defendant,

comes now the Defendant, and respectfully submits his praise Motion pursuant to CR 7.8 (b) (2).

A. Statement of the Case

Defendant was convicted of numerous felonies after cooperating co-defendants Jerrell Smith and Kevin Alexander testified that he possessed stolen firearms, and participated in five home invasions, robberies and burglaries. Appeal was taken and

the Court of Appeals remanded the case for resentencing, at which he learned of state plea offers.

Defendant alleges that he was never apprised of plea bargains the state offered and that he would have accepted had he known. Defendant contends that his trial counsel provided ineffective assistance by failing to inform him that the prosecution offered him a plea bargain of 10 years that he was facing a standard range of 95 years, and that he was facing firearms enhancements that totaled a mandatory sentence of 65 years. Exhibits A and B. During the resentencing hearing, counsel brought to the Court's attention the newly discovered plea offers provided by the prosecution about one week prior to the hearing, Exhibit A, page 3.

The state countered that the proper venue with which to address the issue was by a 718 motion.

Defendant argues that he is entitled to a limited evidentiary hearing regarding whether he knew of the plea offers at any time before they expired and whether he would have accepted the plea if communicated to him. Defendant's trial attorney may be able to provide information relevant to this and other related ineffective assistance claims outlined herein, and therefore

should be ordered to provide this evidence at the hearing.

B. Defendant is entitled to an evidentiary hearing to determine trial counsel's ineffective representation.

To prevail on an ineffective assistance counsel claim, defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 688, 687 (1984); *Stele v. McFarland*, 172 Wn.2d 577, 334-35, 899 P.2d 1251 (1995). In the context of a claim that counsel's ineffective assistance caused the defendant to reject a plea offer, a defendant must demonstrate prejudice by showing that there is a reasonable probability he or she would have accepted the offer absent counsel's ineffective assistance. *Lefler v. Cooper*, 132 S.Ct. 1376, 1385 (2012); *Missouri v. Frye*, 132 S.Ct. 1359.

In the context of plea bargains, ineffective assistance of counsel claims may arise not only when an attorney fails to inform a client of a plea bargain, but also when an attorney fails to advise a client to enter a plea bargain when

it is clearly in the client's best interest.

Lefler, 132 S.Ct. at 1384; *Faye*, 132 S.Ct. at 1408; *U.S. v. Leonti*, 326 F.3d 1111, 1120 (9th Cir. 2003); *U.S. v. Blacklock*, 20 F.3d 1458, 1466 (9th Cir. 1993).

Defendant argues that with the overwhelming evidence against him that counsel violated his duty in not advising him to take a plea.

"Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial." *State v. Aulis*, 168 Wn.2d 229, 232, 633 P.3d 956 (2010). During plea bargaining defense counsel must "actually and substantially assist [his or her] client in deciding to plead guilty." *State v. Cameron*, 30 Wn. App. 229, 232, 633 P.2d 901 (1981). Defense counsel's duties include communicating actual offer, discussing tentative plea negotiations, and discussing the strengths and weaknesses of the defendant's case so that the defendant knows what to expect and can make an informed decision on whether to plead guilty. *State v. James*, 48 Wn. App. 353, 362, 355 P.2d 1161 (1987).

Due process requires that a defendant be

advised of the direct consequences of his plea. State v. Ross, 129 Wn.2d 279, 289, 916 P.2d 405 (1996). Direct consequences are those that represent a definite, immediate, and largely automatic effect in the range of the defendant's punishment. State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980). Defendant contends that counsel failed each of the above listed duties as alleged herein.

In determining whether Defendant has met his burden of proving a prima facie case of prejudice, the court must make specific findings as to each of the steps necessary to demonstrate prejudice (1) that the prosecution offered a plea bargain of less than 95 years; (2) that Defendant would have accepted such a plea bargain, i.e., 10, 7, or six years. Prejudice "focuses on the question whether counsel's deficient performance renders the results of the trial or the proceeding fundamentally unfair." Lockhart v. Fretwell, 506 U.S. 364, 372 (1995); Williams v. Taylor, 529 U.S. 362, 393 n.7 (2011). Clearly, trial counsel failed in each of his above cited duties. Those failures constitute ineffective assistance causing his plea negotiations

and sentencing proceedings to be "fundamentally unfair" and he was therefore prejudiced.

WHEREFORE Defendant requests an evidentiary hearing to determine whether trial counsel's representation was ineffective and once counsel is shown to be ineffective, that Defendant be allowed to plead guilty under the terms of the last plea offer provided by the state.

Noted: 2-22-16

by: 
Lataunta Corner
pro se

EXHIBIT

A

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5 SUPERIOR COURT FOR KITSAP COUNTY, WASHINGTON
6

7 STATE OF WASHINGTON,

No. 11-3-069-4

8 Plaintiff,

MOTION FOR SECOND
CONTINUANCE
OF RE-SENTENCING

9 v.
10 LAJUANTA CONNER,

11 Defendant
12

13 Defendant Lajuanta Conner hereby moves for a second continuance of the re-sentencing in
14 this matter in order to allow counsel sufficient time to prepare factual and legal arguments against
15 the de facto sentence of life in prison without possibility of release that Mr. Conner is facing for
16 property and gun crimes that did not involve actual physical injury to any person – or, if that is a
17 misstatement of fact and there were injuries to one or more of the burglary robbery victims, that did
18 involved injuries and that constituted crimes that were not significant enough to warrant
19 incarceration for the rest of his life.

20 On July 27, 2012, Mr. Conner was 23 years and three months old. On that date this Court
21 sentenced him to 95 years, eight-and-a-half months in prison for 24 crimes, 23 of which were
22 felonies that are before the Court on re-sentencing, in a sentence that included 13 firearm
23 enhancements of five years each that must run consecutively and in their entirety before Mr. Conner
24 can begin to receive any credit for good time off the remainder of his sentence. The firearms
25 enhancements alone seem to require imposition of a consecutive 65 years, even before the Court
26 considers sentences, standard range or otherwise, for the 23 underlying crimes; obviously, then, Mr.
27 Conner will not live to see the end of his presumptive standard range sentence.

28 Mr. Conner was only 21 when he committed these numerous crimes, the dates of which
ranged from September 15, 2010, when he was 21 years and five months (just under 21 years and six

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~~Eric Valley, Esq.~~
Shelton WA 98584
(360) 426-4959

EXHIBIT A

1 months) old, to November 17, 2015, when he was just under 21 years and seven months old. All of
2 his crimes involved at least two other individuals who played more prominent roles in the planning
3 and commission of these crimes.

4 Mr. Conner would like to pursue an exceptional sentence downward based on constitutional
5 issues regarding his relative youth as well as the involvement and the degree of his culpability relative
6 to that of his co-defendants under the specific provisions of RCW 9.94A.535(1)(c), (d) and (e).

7 Washington State case law does not presently support arguments that youth alone can justify
8 an exceptional sentence downward.

9 However, apparently the issue of a young adult's age as it affects standard range sentencing
10 (and Mr. Conner concedes that he was an adult when these crimes occurred) is currently before the
11 state Supreme Court in the case of *State v. Odell*, in which the Court heard argument in March of this
12 year, under, again apparently, the authority of recent United States Supreme Court cases such as
13 *Miller v. Alabama*, 567 U.S. ___ (2012), and *Graham v. Florida*, 560 U.S. 48 (2010), that have come
14 down in recent years. (Notably, *Graham v. Florida* is similar to Mr. Conner's case in that it involved a
15 de jure sentence of life without possibility of parole, while Mr. Conner's case involves a de facto
16 sentence of the same duration; Mr. Conner's argument is that his youth, developmental status and
17 the circumstances of the commission of his crimes bears inquiry prior to sentencing).

18 Counsel also seeks additional time to present factual and legal arguments involving same
19 criminal conduct that may exist notwithstanding the Washington burglary anti-merger statute, RCW
20 9A.52.050; this may be a "dumb question," the answer may be clear and the Court may so rule, but
21 counsel has been unable yet to determine from case law or otherwise whether theft and robbery
22 during the commission of a burglary may constitute "same criminal conduct" under RCW
23 9.94A.589(1)(a) despite the clear and explicit language of the anti-merger statute that the State may
24 punish a person for "any other crime" that he or she commits during the commission of burglaries
25 as in Mr. Conner's case; if theft and robbery during a burglary can constitute same criminal conduct,
26 then that may require adjustment of Mr. Conner's offender score and sentence.

26 * Personal factors unrelated to the crime cannot support a sentence below the standard range. *State v. Law*,
27 154 Wn.2d 85 (2005). Age alone is not a mitigating factor justifying an exceptional sentence downward. *State*
28 *v. Hamm*, 132 Wn.2d 834 (1997) (18 year old convicted of armed robbery). Youthfulness as a basis for
limited capacity to appreciate wrongful conduct not a basis for an exceptional down. *State v. Scott*, 72
Wn.App 207 (1993) (17 year old convicted of first degree murder).

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P2

1 In addition, counsel also requires more time to research – rather than simply making the
2 argument orally either without legal authority to support it or without the ability to argue against or
3 to attempt to distinguish any contrary authority that may exist – whether it would violate double
4 jeopardy principles to apply the aggravating factor that the jury found in several of these crimes of
5 victims being present during burglaries during which Mr. Conner also committed; the argument
6 would be that it would be unfair to impose an exceptional sentence for a victim of a burglary being
7 present when the defendant is also receiving punishment for robbery of that individual.

8 I have been working diligently to research these factual and legal issues. I also note in all
9 candor that Mr. Conner himself is indigent and that as his retained attorney I would be seeking
10 public funds for an expert witness to assess any developmental issues that may exist as they relate to
11 arguments at sentencing. (I invoke here the anecdotal evidence that I believe we have all heard or
12 read, that our brains do not become fully developed, and our reasoning skills, including maturity and
13 awareness of and concern for consequences, until the approximate age of 25 years.)

14 I also note, again in all candor, that there appear to be troubling issues of competency of Mr.
15 Conner's trial counsel, including without limitation a very real question of whether Mr. Longacre
16 relayed to Mr. Conner the profoundly important facts that (1) the prosecution had offered him a
17 plea bargain of somewhere in the neighborhood of 10 years, I believe, but certainly, and again
18 profoundly, a lifetime's different than the 95 years that he received as a standard range sentence, (2)
19 the fact that he was even facing a standard range sentence of 95 years or (3) that he was even facing
20 firearms enhancement at all, much less firearms enhancements that totaled a consecutive and
21 mandatory 65 years.

22 Mr. Conner himself recognizes, as I as his counsel certainly do as well, that these last issues
23 cannot affect the Court's consideration of his sentence; we raise them here only because they do
24 exist in this case, and because we wish to be entirely forthright with the Court and with opposing
25 counsel.

26 At present, as the State has argued in their sentencing memorandum, Mr. Conner is looking
27 at the rest of his life in prison; on that basis it constitutes no prejudice to him to seek a delay in his
28 re-sentencing, and he waives any right to re-sentencing within the next 90 days if not beyond. It is
counsel's hope that neither the Court nor opposing counsel will see any delay to either party's or the
people of the State's interests as well in delaying re-sentencing to allow full consideration of these
profoundly important issues.

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1 As counsel for Mr. Conner, I am asking the Court to allow additional time for the retaining
2 of an expert witness and for briefing and argument of the issues that I have presented in this
3 motion.

4 Respectfully submitted August 3, 2015

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6 

7 Eric S. Valley
8 WSBA No. 21184
9 Attorney For Lajuanta Conner

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EXHIBIT

B

12-9-01655-8

RECEIVED AND FILED
IN OPEN COURT
JUL 27 2012
DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 11-1-00435-8
 Plaintiff,)
) JUDGMENT AND SENTENCE
 v.)
)
 LA'JUANTA LE'VEAR CONNER,)
 Age: 23; DOB: 04/22/1989,)
 Defendant.)

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence. The Defendant was found guilty, by plea jury verdict bench trial trial upon stipulated facts, of the following-

20	21	RCW	Date(s) of Crime		The Special
22	23		from	to	Allegations*
24	25				listed below were
26	27				pled and proved
I	Burglary in the First Degree, Conspiracy	9A.52.020; 9A.28.040	11/17/2010	11/17/2010	F
I	Armed With Firearm	9.94A.533.3A			
I	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
II	Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	09/15/2010	11/17/2010	
II	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			

JUDGMENT AND SENTENCE; Page 1
 [Form revised January 29, 2010]



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1	III	Possessing a Stolen Firearm	9A.56.310	09/15/2010	11/17/2010	
2	III	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
3						
4	IV	Unlawful Possession of a Firearm in the Second Degree	9.41.040.2Ai	11/01/2010	11/17/2010	
5						
6	IV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
7						
8	V	Possessing a Stolen Firearm	9A.56.310	11/01/2010	11/17/2010	
9	V	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	VI	Possession of Marijuana (ACQUITTAL)	69.50.4014	11/17/2010	11/17/2010	
12						
13	VII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/15/2010	09/15/2010	F
14	VII	Armed With Firearm	9.94A.533.3A			
15	VII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
16						
17	VIII	Robbery in the First Degree	9A.56.200.1Ai1A ii	09/15/2010	09/15/2010	F
18						
19	VIII	Armed With Firearm	9.94A.533.3A			
20	VIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
21						
22	IX	Burglary in the First Degree	9A.52.020	09/15/2010	09/15/2010	F
23	IX	Armed With Firearm	9.94A.533.3A			
24	IX	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
25						
26	IX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
27						
28	X	Theft in the Second Degree	9A.56.040.1AW	09/15/2010	09/15/2010	
29	X	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
30						
31						

JUDGMENT AND SENTENCE; Page 2
 [Form revised January 29, 2010]



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1	XI	Robbery in the First Degree	9A.56.200.1AiiA ii	09/28/2010	09/28/2010	F
2						
3	XI	Armed With Firearm	9.94A.533.3A			
4	XI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
5						
6	XII	Robbery in the First Degree	9A.56.200.1AiiA ii	09/28/2010	09/28/2010	F
7						
8	XII	Armed With Firearm	9.94A.533.3A			
9	XII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
10						
11	XIII	Robbery in the First Degree	9A.56.200.1AiiA ii	09/28/2010	09/28/2010	F
12						
13	XIII	Armed With Firearm	9.94A.533.3A			
14	XIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
15						
16	XIV	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
17						
18	XIV	Armed With Firearm	9.94A.533.3A			
19	XIV	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
20						
21	XIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
22						
23	XV	Theft in the Second Degree	9A.56.040.1AW	09/28/2010	09/28/2010	
24						
25	XV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	XVI	Robbery in the First Degree	9A.56.200.1AiiA ii	09/28/2010	09/28/2010	F
28						
29	XVI	Armed With Firearm	9.94A.533.3A			
30	XVI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
31						
	XVII	Burglary in the First Degree	9A.52.020	09/28/2010	09/28/2010	F
	XVII	Armed With Firearm	9.94A.533.3A			

JUDGMENT AND SENTENCE; Page 3
 (Form revised January 29, 2010)



Russell D. Hauge, Prosecuting Attorney
 Adult Criminal and Administrative Divisions
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 Port Orchard, WA 98366-4681
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1	XVII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
2						
3	XVII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
4						
5	XVIII	Theft in the Third Degree	9A.56.050	09/28/2010	09/28/2010	
6	XIX	Burglary in the First Degree	9A.52.020	10/02/2010	10/03/2010	
7						
8	XIX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
9						
10	XX	Theft in the Second Degree	9A.56.040.1AW	10/02/2010	10/03/2010	
11	XX	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
12						
13	XXI	Robbery in the First Degree	9A.56.200.1AiiA ii	11/03/2010	11/04/2010	F
14	XXI	Armed With Firearm	9.94A.533.3A			
15	XXI	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
16						
17	XXII	Robbery in the First Degree	9A.56.200.1AiiA ii	11/03/2010	11/04/2010	F
18	XXII	Armed With Firearm	9.94A.533.3A			
19	XXII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
20						
21	XXIII	Burglary in the First Degree	9A.52.020	11/03/2010	11/04/2010	F
22	XXIII	Armed With Firearm	9.94A.533.3A			
23	XXIII	Special Allegation-Aggravating Circumstance-Victim Present During Burglary	9.94A.535.3U			
24						
25	XXIII	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
26						
27	XXIV	Theft of a Firearm	9A.56.300	11/03/2010	11/04/2010	
28	XXIV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
29						
30						
31						

JUDGMENT AND SENTENCE; Page 4

[Form revised January 29, 2010]



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1	XXV	Theft in the Second Degree	9A.56.040.1C	11/03/2010	11/04/2010	
2	XXV	Special Allegation-Aggravating Circumstance-Multiple Current Offenses; Some Unpunished	9.94A.535.2C			
3						
4	XXVI	Possession of Stolen Property in the Third Degree (ACQUITTAL)	9A.56.170	11/19/2010	11/19/2010	
5						
6						

7	22 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>		Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
8	Theft I		5/7/08		King County Superior	
9						

10	23 SENTENCING DATA									
11	Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type* Mo.		Total Standard Range (Mo.)	Maximum Term
12	I	36	VII	65.25 to 87	-	X	F	60		life
13	II	19	III	51 to 60	-	X			323 to 414	5 years
14	III	19	V	72 to 96	-	X			323 to 414	10 years
15	IV	19	III	51 to 60	-	X			323 - 414	5 years
16	V	19	III	72 to 96	-	X			323 - 414	5 years
17	VI	0	N/A	0 - 90	X	-			ACQUITTAL	1 year
18	VII	36	IX	129 to 171	-	X	F	60		life
19										
20	VIII	36	IX	129 to 171	-	X	F	60		life
21	IX	36	VII	87 to 116	-	X	F	60		life
22										
23	X	23	I	22 to 29	-	X				5 years
24	XI	36	IX	129 to 171	-	X	F	60		life
25										
26	XII	36	IX	129 to 171	-	X	F	60		life
27	XIII	36	IX	129 to 171	-	X	F	60		life
28										
29	XIV	36	VII	87 to 116	-	X	F	60		life
30	XV	23	I	22 to 29	-	X				5 years
31										

JUDGMENT AND SENTENCE; Page 5

[Form revised January 29, 2010]



Russell D. Hauge, Prosecuting Attorney
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2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*		Total Standard Range (Mo.)	Maximum Term
XVI	36	IX	129 to 171	-	X	F	60		life
XVII	36	VII	87 to 116	-	X	F	60		life
XVIII	0	N/A	0 to 364	X	-				2 years
XIX	36	VII	87 to 116	-	X				life
XX	23	I	22 to 29	-	X				5 years
XXI	36	IX	129 to 171	-	X	F	60		life
XXII	36	IX	129 to 171	-	X	F	60		life
XXIII	36	VII	87 to 116	-	X	F	60		life
XXIV	19	VI	77 to 102	-	X			323 - 414	10 years
XXV	23	I	22 to 29	-	X				5 years
XXVI	0	N/A	0 to 364	X	-			ACQUITTAL	

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

*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (9.94A.836); <15=Victim Under 15 (9.94A.837); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); CSG=Criminal Street Gang Involving a Minor (9.94A.833); AE=Endangerment While Attempting to Elude (9.94A.834).

CONFINEMENT/STATUS

- 4.1-**FIRST-TIME OFFENDER.** RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY**-The Court finds the Defendant has a chemical dependency that contributed to the offense(s). RCW 9.94A.030(9).
- 4.3-**PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA.** RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-**WORK ETHIC CAMP.** RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on

JUDGMENT AND SENTENCE; Page 6

[Form revised January 29, 2010]



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2016 FEB 29 AM 9:02

DAVID W. PETERSON

MP

WASHINGTON STATE SUPERIOR COURT
KITSAP COUNTY

STATE OF WASHINGTON,
Plaintiff,

No. 11-1-00435-8

v.

SWORN DECLARATION IN
SUPPORT OF F.B.
MOTION

LAIJUANJA CONNER
Defendant.

, herein declares:

1. I am the Defendant in the above captioned case, am over 18 years of age, and competent to testify in this action.
2. Clayton Longacre was my trial counsel in this action.
3. Mr. Longacre never informed me of any plea offers during the litigation of this case.

4. Mr. Longacre never informed me I was facing a standard range of 95 years.

5. Mr. Longacre never informed me that I was facing firearm enhancements that totaled a mandatory sentence of 65 years.

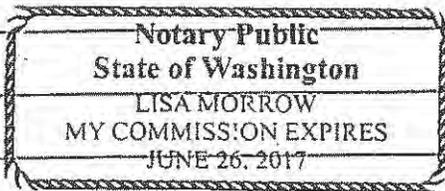
6. I only discovered the prosecution offered me a plea bargain of 10 years about one week prior to my resentencing hearing.

7. I have since discovered that Mr. Longacre had his license suspended on one prior conviction, and since my conviction has had his license revoked for malpractice.

8. Had I known of any plea offer from the prosecution with the overwhelming evidence against me, I would have accepted the offer or offers provided to Mr. Longacre by the state.

[Signature]
Luzanta Conner

SUBSCRIBED AND SWORN to before me on
February 22, 2016.



[Signature]
Lisa Morrow
Notary Public
my commission
expires on 6/26/17

Certificate of Mailing

I, LaSuante Conner, declare that on 2/22/16, I deposited the foregoing motion pursuant to CrR 7.8 and sworn Declaration in support of CrR 7.8, or copies thereof, in the internal mail system of the Washington State Penitentiary and made arrangements for postage, addressed to:

Giovanna Mosca Franklin WSBA 38817
614 Division St., MS 35
Port Orchard, WA 98366

LaSuante Conner
LaSuante Conner

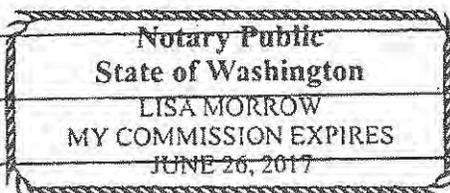
SUBSCRIBED AND SWORN to before me on 2/22/16

Lisa Morrow

Lisa Morrow

Notary public

my commission expires on 6/26/17



Attachment “L”

FILED
KITSAP COUNTY CLERK
2016 APR 25 PM 12:16
DAVID W. PETERSON

SUPERIOR COURT OF KITSAP COUNTY, WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

LAJUANTA CONNER,

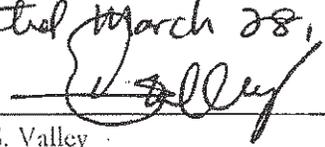
Defendant

No. *11-1-435-8*

NOTICE OF APPEAL OF
JUDGMENT AND SENTENCE
ENTERED MARCH 28, 2016

Defendant Lajaunta Conner hereby appeals the judgment and sentence that this Court entered March 25, 2016, including without limitation those portions relating to same criminal conduct, double jeopardy, the Court's decision to apply the burglary anti-merger statute, his request for an exceptional sentence downward based on his relative youth and the disproportionality and therefore the cruelty and unusualness of his 94.5-year⁴ sentence for a series of property crimes in which no person received any physical injury or even significant property loss.

Dated March 28, 2016


Eric S. Valley
WSBA No. 21184
Attorney For Lajuanta Conner

Law Office Of Eric Valley
PO Box 2059
209 W. Railroad Ave, Suites B & C
Shelton WA 98584
(360) 426-4959

Attachment “M”

FILED
MAY 30, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,)	No. 34973-0-III
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
LA'JUANTA LE'VEAR CONNER,)	
)	
Appellant.)	

LAWRENCE-BERREY, A.C.J. — La'Juanta Le'Vear Conner appeals his sentence and assigns error to the trial court's refusal to rule on his CrR 7.8(b) motion. Because Mr. Conner failed to properly note his motion, we conclude the trial court did not err.

FACTS

In 2012, a jury found Mr. Conner guilty of several crimes relating to a series of home invasions. He appealed his convictions and filed a personal restrain petition (PRP). Among other theories, Mr. Conner asserted in his PRP that the State vindictively prosecuted him for refusing to accept a plea bargain. Division Two of this court vacated one conviction and remanded to the trial court for resentencing on the remaining convictions and 12 firearm enhancements.

To accommodate transport, the trial court scheduled Mr. Conner's resentencing hearing for March 18, 2016. Prior to the hearing, Mr. Conner mailed a handwritten CrR 7.8(b)(2) motion to the sentencing court. On February 29, 2016, the sentencing court filed that motion on behalf of Mr. Conner. The trial court also appointed new defense counsel for Mr. Conner.

In the motion, Mr. Conner alleged his original trial counsel was ineffective for not informing him of the State's plea offer, and requested the sentencing court to schedule an evidentiary hearing. Mr. Conner attached a sworn declaration describing his lack of knowledge of any plea offer and noting that his original trial counsel had been disbarred for failing to inform clients of plea offers.

Defense counsel requested a continuance of the resentencing hearing for additional time to research and brief various sentencing theories, as well as time to investigate Mr. Conner's allegation raised in his CrR 7.8(b)(2) motion. The trial court continued the resentencing hearing to March 18, 2016, but defense counsel was unavailable on that date and did not attend. The trial court again continued the resentencing hearing to March 25, 2016.

Defense counsel submitted a brief that argued various sentencing theories not at issue in this appeal. At the hearing, the State acknowledged that Mr. Conner had filed a

CrR 7.8(b)(2) motion requesting relief from judgment because of newly discovered evidence. The State acknowledged that Mr. Conner's prior counsel had a history of failing to report plea bargains to clients. According to the State, because of this history, it had placed its plea offer on the record in the original trial.

The sentencing court read the clerk's minutes from the original trial and commented: "[T]he indication was that the State would provide a plea agreement to [original defense counsel] before the next hearing. So that was actually incorporated in the minute entry on September 16. The next hearing is September 21. There's simply no mention one way or the other of the plea agreement." Report of Proceedings (RP) at 5. The State maintained that it had presented the offer on the record.

Defense counsel briefly addressed the CrR 7.8 motion. "I'll start by noting my client and I have discussed that. Mr. Conner was aware that he didn't note that motion, but I don't feel that we're prejudiced." RP at 7.

The parties then addressed the resentencing issues. Prior to sentencing, the court provided Mr. Conner his right of allocution. Mr. Conner discussed his sentencing concerns and then began discussing his CrR 7.8(b)(2) motion. He argued his original trial counsel was ineffective for failing to inform him of a plea offer from the State. He

maintained that his counsel had neither informed him of his potential maximum sentence nor communicated an offer to him.

Defense counsel then addressed the CrR 7.8(b)(2) motion. Backtracking on his previous statement, defense counsel said he was *not* prepared to argue the motion, and reiterated that the motion was not properly noted. Defense counsel said that a more formal hearing was necessary, and told the court, “I’m asking that the Court not address the [CrR] 7.8 motion I want to withdraw all that and simply state this proposition.” RP at 29. Counsel ended by saying, “I should not have said I was prepared to represent him on the 7.8. I wasn’t hired to do it. I haven’t done any work on it. My request is that we set that over pursuant to the rule.”¹ RP at 30.

The sentencing court treated the motion as withdrawn and stated, “I’m not going to address the 7.8.” RP at 30. The court explained:

[THE COURT:] Mr. Conner, I can’t possibly know what occurred between you and [former counsel] in terms of your discussions with him and your trial strategy, how much of this was him, how much of this was you, and that is not in any record before me. Given that, I’m not going to address it so that you still have the opportunity to perfect that issue, if you wish.

[Mr. Conner]: Referring to the 7.8; right?

THE COURT: Right. But this is not the place to start that issue.

[Mr. Conner]: Okay. That’s why I sent you the motion.

¹ Because defense counsel did not represent Mr. Conner in connection with the CrR 7.8 motion, we determine the doctrine of invited error does not apply.

THE COURT: I'm not going to address it because it's not properly before me.

RP at 33. The court said it could not give Mr. Conner legal advice and told him if he had questions, he should talk to defense counsel.

The court sentenced Mr. Conner to 1,148.5 months of incarceration. Mr. Conner timely appealed.

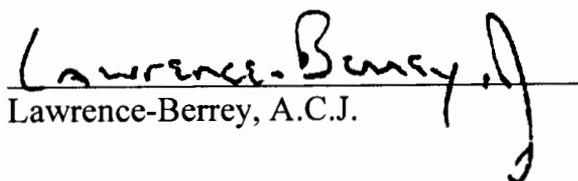
ANALYSIS

Mr. Conner contends the trial court erred by refusing to rule on his motion. He contends that CrR 7.8(c) requires the trial court to determine if the motion is time barred by RCW 10.73.090; and if it is not time barred, to either set a hearing if the motion is meritorious or to transfer the motion to the Court of Appeals. The State responds that the trial court set the motion over because Mr. Conner failed to properly note it and, for this reason, there is no decision for this court to review.

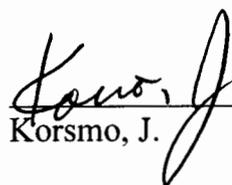
CrR 7.8(b)(2) authorizes a trial court, on motion, to relieve a criminal defendant from a judgment of guilty on the basis of newly discovery evidence. CrR 8.2 provides that CrR 3.5, CrR 3.6, and CR 7(b) governs motions in criminal cases. CR 7(b) describes the process and form for motions. Although CR 7(b) does not explicitly require motions to be noted for a specific date and time, local rules throughout the state, including Kitsap County, contain this supplemental requirement.

A trial court has discretion whether to waive or enforce its local rules. *Ashley v. Superior Court*, 83 Wn.2d 630, 636, 521 P.2d 711 (1974). We cannot find that the trial court abused its discretion when insisting on compliance with its local rule. The trial court insisted on compliance so further information could be provided to assist in its analysis of whether to retain the motion for the reasons set forth in CrR 7.8(c) or to transfer the motion to us. We, therefore, affirm the sentencing court's decision allowing Mr. Conner to properly note his motion.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Lawrence-Berrey, A.C.J.

WE CONCUR:


Korsmo, J.


Siddoway, J.

Attachment “N”

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RECEIVED AND FILED
IN OPEN COURT

AUG 11 2017

DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 LA'JUANTA LE'VEAR CONNER,)
 Age: 28; DOB: 04/22/1989,)
)
 Defendant.)

No. 11-1-00435-8
ORDER TRANSFERRING CrR 7.8 MOTION
TO COURT OF APPEALS

****CLERK'S ACTION REQUIRED****

This matter came on regularly for hearing before the undersigned Judge of the above-entitled Court on the motion of the defendant for relief pursuant to CrR 7.8. Mr. Conner appeared pro se and the state was represented by deputy prosecuting attorney John L. Cross. The Court considered the motion, briefing, argument of counsel and the records and files herein.

Mr. Conner sought relief pursuant to CrR 7.8 (b) (2) alleging that newly discovered evidence warrants relief from the judgment in this matter and a seeking a new trial. During oral argument, Mr. Conner supplemented his claim by also alleging that he received ineffective assistance of counsel, which claim is cognizable under CrR 7.8 (b) (5). By order of the Court of Appeals, Mr. Conner was resentenced on this matter on ***. The present motion was filed on February 29, 2016, which is within one year from resentencing and is not therefore time barred. RCW 10.73.090.



Tina R. Robinson, Prosecuting Attorney
Adult Criminal and Administrative Divisions
614 Division Street, MS-35
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<https://spf.kitsapgov.com/pros>

1 Mr. Conner's claims that he has discovered that his trial counsel (1) failed to advise him
2 that there were firearms enhancements in his case, (2) failed to advise him of the possible length
3 of his sentence, and (3) failed to advise him of the state's plea offer. The state responded with
4 regard to claims (1) and (2), by directing the court to passages in the report of proceeding
5 prepared for appeal. One passage shows that Mr. Conner was told on the record in open court the
6 possible amount of time he could serve if convicted. Another passage shows that on the record in
7 open court the trial judge specifically addressed each one of the alleged firearm enhancements
8 and that Mr. Conner said as to each enhancement that he understood.

9
10 With regard to the third claim, the state presented an authenticated email exchange
11 between the trial deputy prosecutor and defense counsel wherein defense counsel asserts that he
12 had communicated the state's offer to Mr. Conner and that Mr. Conner had rejected the offer.
13 Further, in a previously filed post-conviction motion, Mr. Conner, acting pro se, had written that
14 his charges constitute vindictive prosecution because he had refused to accept the plea offer. This
15 court finds that this evidence is adequate for the court to find that Mr. Conner's defense attorney
16 did in fact advise him of the state's plea offer and that he in fact rejected the same.

17
18 The court therefore finds that Mr. Conner's allegations (1) and (2) herein have no
19 credibility because they are directly contradicted by the record. Further, the court finds with
20 regard to Mr. Conner's third claim that adequate circumstantial evidence presented shows that
21 this claim also lacks credibility. Moreover, the court notes that Mr. Conner has asserted no
22 declaration or affidavit in support of his claims and that the factual averments in the motion are
23 not verified as required by CrR 7.8 (c) (1).

24
25 In the context of a newly discovered evidence claim, this court is charged with
26 considering "the credibility, significance, and cogency of the proffered evidence." *State v.*
27 *Glassman*, 160 Wn. App. 600, 609, 248 P.3d 155 (2011), *rev. denied*, 172 Wn.2d 1002 (2011).
28 Here, Mr. Conner did not properly assert facts in support of his motion. However, even had he
29 properly asserted his factual allegations, this court finds that those allegations are not credible.

30 Now therefore it is
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ORDERED, ADJUDGED, AND DECREED that Mr. Conner has failed to make a substantial showing that he is entitled to relief and no factual hearing is necessary and therefore pursuant to CrR 7.8 (c) (2) this matter must be transferred to the Washington Court of Appeals , Division II, for consideration as a personal restraint petition.

DATED this 11 day of August, 2017.

Sally F. Olsen

JUDGE

PRESENTED BY
[Signature]
STATE OF WASHINGTON

APPROVED FOR ENTRY- **SALLY F. OLSEN**

JOHN L. CROSS, WSBA No. 20142
Deputy Prosecuting Attorney

_____, WSBA No. _____
Attorney for Defendant

Prosecutor's File Number-10-184374-3



Attachment “O”

From: Cami G. Lewis

To: claytonernest@hotmail.com

Cc: Giovanna Mosca

Subject: State v. La"Juanta Conner

Date: Wednesday, May 25, 2011 11:29:00 AM

Attachments: Conner.doc

Clayton—

As we discussed this morning, we respectfully decline your client's willingness to provide information in exchange for consideration in his case. Also as we discussed, I have prepared the Information on which we would intend to go to trial.

Your client's current offer is 150 months. If we go to trial and win, your client is looking at 129 – 171 plus at least 10 years of firearm enhancements. This does not factor in an exceptional sentence should the court choose to impose that.

Please advise your client of the State's position.

Thank you-
Cami

From: CLewis@co.kitsap.wa.us

To: claytonernest@hotmail.com

Date: Thu, 2 Jun 2011 10:40:39 -0700

Subject: FW: State v. La'Juanta Conner

Clayton—

This is the email I sent last week. It has the Information attached.

Please let your client know of the State's position.

Thanks-
Cami

From: CLewis@co.kitsap.wa.us

To: claytonernest@hotmail.com

Date: Thu, 2 Jun 2011 12:38:09 -0700

Subject: Conner Information

Clayton?

Can you confirm that you received my last email with the attachment?

Thanks-

Cami

From: Clayton Ernest Longacre

To: Cami G. Lewis

Subject: RE: Conner Information

Date: Friday, June 03, 2011 2:00:14 AM

Thank you, received attachment and printed.

Clayton Ernest Longacre

From: Clayton Ernest Longacre

To: Cami G. Lewis; claytonerenst@hotmail.com

Subject: RE: State v. La"Juanta Conner

Date: Tuesday, June 07, 2011 9:01:48 AM

Cami,

Without revealing client attorney confidences, I can say my client has reviewed your position and proposed hold back amended information. He is not willing to plead out to ten years even though he is facing so much more than that (upwards of thirty) with the amendment. He claims innocence and wishes to go to trial. Please forward all discovery as requested so we can prepare for trial. this should include the identificaiton and expected testimony of the new witness you spoke to me about a couple of hearings back. thanks for your efforts.

Clayton Ernest Longacre

From: Cami G. Lewis

To: Clayton Ernest Longacre; Giovanna Mosca

Cc: Mike Davis

Subject: RE: State v. La"Juanta Conner

Date: Tuesday, June 07, 2011 10:18:28 AM

Clayton—

OK.

I'm going to ask Lori to re-issue all discovery as it is voluminous and I want to make sure you have it all. The transcript from the other cooperating witness is not yet complete, but we will forward it to you when we get it. As I'm sure you discussed with your client, once we reveal any CI's identity, there will be no further negotiations.

Also, to give you a heads up, I'm filing a motion to compel discovery and asking it be heard at arraignment. This is for a sample of your client's DNA. We have the guns he was caught with on 11/17 and would like to give the crime lab as much time as possible to test for DNA. I'll get you that motion today or tomorrow.

Thanks-

Cami

Attachment “P”

February 27, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Personal Restraint
Petition of

LA'JUANTA LE'VEAR CONNER,

Petitioner.

No. 50779-0-II

ORDER DISMISSING PETITION

La'Juanta Conner seeks relief from personal restraint imposed following his 2012 convictions for 23 counts related to robberies and burglaries, for which he was resentenced in 2016. In this, his second petition,¹ he argues that he received ineffective assistance of trial counsel when that counsel failed to advise him of (1) the standard range sentence he was facing, (2) the mandatory firearm sentencing enhancements he was facing, and (3) the State's plea offer.² But the record contradicts his claims. As to the advice regarding the sentence range and firearm enhancements, the record from his direct appeal establishes that he was advised of the standard range and the firearm enhancements. And as to the plea

(Swear! Declaratory)
↓
on the three
the main
issue was
the plea deal

¹ See *State v. Conner*, Nos. 43762-7-II, consolidated with 45418-1-II (Wash. Ct. App. June 4, 2015) (unpublished).

² Conner filed a motion to modify his judgment and sentence in the trial court under CrR 7.8. That court transferred his motion to us to be considered as a personal restraint petition under CrR 7.8(c). Because he filed his motion on February 29, 2016, prior to his March 25, 2016 resentencing, his petition is timely filed. For reasons unknown, the trial court did not transfer his motion to us until August 11, 2017.

* Pet. vindictive prosecution
arised from state v. kurum

offer, in his prior petition he argued that he had been subjected to vindictive prosecution after he rejected the State's plea offer. This demonstrates that he had been advised of the offer. Conner's arguments are frivolous. Accordingly, it is hereby

ORDERED that Conner's petition is dismissed under RAP 16.11(b).³


Acting Chief Judge Pro Tempore

cc: La'Juanta L. Conner
John L. Cross
Kitsap County Clerk
County Cause No. 11-1-00435-8

³ Although Conner's petition is successive, we dismiss it rather than transfer it to our Supreme Court because Conner does not present any competent evidence in support of his claim. *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003).

Attachment “Q”

Attachment “R”

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FILED

AUG 28 2012

RECEIVED
AUG 23 2012
VA REGIONAL COUNSEL
SEATTLE, WA

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

CLAYTON LONGACRE,
Lawyer (Bar No. 21821).

Proceeding No. 12#00033

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND HEARING OFFICER'S
RECOMMENDATION

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC),
the undersigned Hearing Officer held a default hearing on August 28, 2012.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint (Bar File No. 6), charged Respondent Clayton Longacre with misconduct as set forth therein.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the Formal Complaint are admitted and established as follows:

W

1 **Reiter Grievance**

2 Count 1. By failing to communicate about the Reiter matter and by failing to pursue the
3 matter after receiving a fee, Longacre violated RPC 1.3, RPC 3.2, RPC 1.4, and RPC 1.5.

4 Count 2. By failing to perform agreed services for Reiter for the accepted fee, Longacre
5 engaged in dishonest conduct (conversion) and violated RPC 8.4(c).

6 Count 3. By failing to file a Notice of Withdrawal, return the client file, and refund
7 unearned fees, Longacre violated RPC 1.16(d).

8 **Justin Williams Grievance**

9 Count 4. By failing to communicate about Williams’s matters and by failing to pursue
10 the matters after receiving a fee, Longacre violated RPC 1.3, RPC 3.2, 1.4, and RPC 1.5.

11 Count 5. By taking \$6,000 without performing work as agreed and failing to refund
12 unearned fees, Longacre violated RPC 1.16(d), and RPC 8.4(c)(conversion).

13 Count 6. By failing to comply with all the requirements of RPC 1.5(f) and by failing to
14 deposit fees to a trust account, Longacre violated that provision and RPC 1.15A and RPC
15 1.15B.

16 **Aaron Pope Grievance**

17 Count 7. By failing to file the promised civil suit for Pope and by failing to keep in
18 communication with his client about the civil and criminal matters, Longacre violated RPC 1.3,
19 RPC 3.2, and RPC 1.4.

20 Count 8. By admittedly doing less than \$7,500 worth of work for Pope on the criminal
21 case, by not providing a written fee agreement for the contingent fee in the civil case, and by
22 failing to refund unearned fees, Longacre violated RPC 1.5(a), RPC 1.5(b), RPC 1.5(c), and
23 RPC 1.16(d).

24 Count 9. By allowing his assistant, [Elizabeth] Kelsey, to misrepresent the status of a

1 civil suit against the County and to suggest that Longacre would drop Pope as a client so that
2 Kelsey could handle Keri's dissolution from Pope, and by allowing Kelsey to collect additional
3 fees such as the jet ski or attempt to collect additional funds such as trying to get the cashier's
4 checks, Longacre violated RPC 1.7(a) and RPC 1.8(a) (conflicts of interest), RPC 8.4(c)
5 (misrepresentation by lying about the civil case against the County and dishonesty by
6 converting the jet ski and by attempting to convert the cashier's checks), RPC 8.4(a) (violate or
7 attempt to violate the RPCs through acts of another), and RPC 5.3 (responsibilities regarding
8 nonlawyer assistants).

9 **Linda Delatorre Grievance**

10 Count 10. By failing to act for his client, by failing to communicate with his client, by
11 revealing client confidences or secrets or doing so through acts of another, Longacre violated
12 RPC 1.3, and RPC 3.2, RPC 1.4, and RPC 1.6, and RPC 8.4(a).

13 Count 11. By taking almost \$20,000 while performing little, if any, documented work
14 after the initial response to the motion in September 2010, and then failing to refund unearned
15 fees, Longacre violated RPC 1.5(a)(b), and/or RPC 1.15A(f), and/or RPC 1.16(d), and/or RPC
16 8.4(c)(conversion).

17 Count 12. By failing to place the initial payment of \$4,750 in a trust account without
18 complying with all the requirements of RPC 1.5(f), Longacre violated that provision and RPC
19 1.15A and RPC 1.15B.

20 Count 13. By failing to place the remainder of funds received in a trust account,
21 Longacre violated RPC 1.15A(b) and RPC 1.15A(c)(1).

22 Count 14. By failing to account for the funds received, Longacre violated RPC
23 1.15A(d)(e).

- 1 4.12 Suspension is generally appropriate when a lawyer knows or should know that he
2 is dealing improperly with client property and causes injury or potential injury to
3 a client.
4 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
5 client property and causes injury or potential injury to a client.
6 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
7 client property and causes little or no actual or potential injury to a client.

8 **4.2 Failure to Preserve the Client's Confidences**

- 9 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the
10 lawyer or another, knowingly reveals information relating to representation of a
11 client not otherwise lawfully permitted to be disclosed, and this disclosure causes
12 injury or potential injury to a client.
13 4.22 Suspension is generally appropriate when a lawyer knowingly reveals
14 information relating to the representation of a client not otherwise lawfully
15 permitted to be disclosed, and this disclosure causes injury or potential injury to
16 a client.
17 4.23 Reprimand is generally appropriate when a lawyer negligently reveals
18 information relating to representation of a client not otherwise lawfully permitted
19 to be disclosed and this disclosure causes injury or potential injury to a client.
20 4.24 Admonition is generally appropriate when a lawyer negligently reveals
21 information relating to representation of a client not otherwise lawfully permitted
22 to be disclosed and this disclosure causes little or no actual or potential injury to
23 a client.

24 **4.3 Failure to Avoid Conflicts of Interest**

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed
consent of client(s):
(a) engages in representation of a client knowing that the lawyer's interests
are adverse to the client's with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to the client; or
(b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes
serious or potentially serious injury to a client; or
(c) represents a client in a matter substantially related to a matter in which
the interests of a present or former client are materially adverse, and
knowingly uses information relating to the representation of a client with
the intent to benefit the lawyer or another and causes serious or
potentially serious injury to a client.
4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest
and does not fully disclose to a client the possible effect of that conflict, and
causes injury or potential injury to a client.
4.33 Reprimand is generally appropriate when a lawyer is negligent in determining
whether the representation of a client may be materially affected by the lawyer's
own interests, or whether the representation will adversely affect another client,
and causes injury or potential injury to a client.

1 4.34 Admonition is generally appropriate when a lawyer engages in an isolated
2 instance of negligence in determining whether the representation of a client may
3 be materially affected by the lawyer's own interests, or whether the
representation will adversely affect another client, and causes little or no actual
or potential injury to a client.

4 **4.4 Lack of Diligence**

5 4.41 Disbarment is generally appropriate when:

- 6 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or
7 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or
8 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

9 4.42 Suspension is generally appropriate when:

- 10 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or
11 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

12 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes injury or potential
injury to a client.

13 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client.

14 **7.0 Violations of Duties Owed as a Professional**

15 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional with the intent to
obtain a benefit for the lawyer or another, and causes serious or potentially
serious injury to a client, the public, or the legal system.

16 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.

17 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.

18 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
instance of negligence that is a violation of a duty owed as a professional, and
causes little or no actual or potential injury to a client, the public, or the legal
system.

19 **8.0 Prior Discipline Orders**

20 8.1 Disbarment is generally appropriate when a lawyer:

- 21 (a) intentionally or knowingly violates the terms of a prior disciplinary order
and such violation causes injury or potential injury to a client, the public,
22 the legal system, or the profession; or
23
24

1 (b) has been suspended for the same or similar misconduct, and intentionally
2 or knowingly engages in further similar acts of misconduct that cause
injury or potential injury to a client, the public, the legal system, or the
profession.

3 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the
4 same or similar misconduct and engages in further similar acts of misconduct
that cause injury or potential injury to a client, the public, the legal system, or the
profession.

5 8.3 Reprimand is generally appropriate when a lawyer:

6 (a) negligently violates the terms of a prior disciplinary order and such
violation causes injury or potential injury to a client, the public, the legal
system, or the profession; or

7 (b) has received an admonition for the same or similar misconduct and
engages in further similar acts of misconduct that cause injury or
8 potential injury to a client, the public, the legal system, or the profession.

9 8.4 An admonition is generally not an appropriate sanction when a lawyer violates
the terms of a prior disciplinary order or when a lawyer has engaged in the same
10 or similar misconduct in the past.

11 8. ABA Standards section 4.11 (disbarment) is most applicable to Longacre's
12 violations of RPC 8.4(c) (conversion) as charged in Counts 2, 5, 9, and 11 of the Association's
Complaint.

13 9. ABA Standards section 4.12 (suspension) is most applicable to Longacre's
14 violations of RPC 1.15A and 1.15B (trust account rules) charged in Counts 6, 11, 12, 13, and
15 14 of the Association's Complaint.

16 10. ABA Standards section 4.22 (suspension) is most applicable to Longacre's
17 violations of RPC 1.6 (confidentiality) charged in Count 10.

18 11. ABA Standards section 4.32 (suspension) is most applicable to Longacre's
19 violation of RPC 1.7 and 1.8 (conflicts of interest) through RPC 8.4(a) (violate or attempt to
20 violate RPC through acts of another) charged in Count 9 of the Association's Complaint.

21 12. ABA Standards section 4.41(a) (abandon practice), (b) (knowingly fail to perform
22 services), and (c) (pattern of neglect) (disbarment) is most applicable to Longacre's violation
23 of RPC 1.3, 1.4, and 3.2(lack of diligence and communication) charged in Counts 1, 4, 7, and
24

1 10 of the Complaint.

2 13. For failing to adequately supervise his assistant, Elizabeth Kelsey, who lied to
3 clients, (RPC 5.3, 8.4(a), 8.4(c) violations) as alleged in Counts 9 and 16 (Pope and Delatorre
4 grievances), the presumptive sanction is disbarment under ABA Standards section 7.1.

5 14. ABA Standards section 7.1 (disbarment) also applies to Longacre's failure to
6 appear in court for his client's September 10, 2010 custody hearing (RPC 8.4(d) conduct
7 prejudicial to the administration of justice violation) as alleged in Count 15 (Delatorre
8 grievance) and to the RPC 1.5(a)(b)(c) (fee violations) and RPC 1.16(d) (failure to refund
9 unearned fees and other duties on termination violations) as alleged in Counts 1, 3, 4, 5, 8, and
10 11 (Reiter, Williams, Pope and Delatorre grievances).

11 15. For asserting attorney's liens against the property of his clients or their families
12 without first having obtained a judgment (RPC 8.4(d) violation) as alleged in Count 17
13 (WSBA grievance), the presumptive sanction is disbarment under ABA Standards section 7.1.

14 16. ABA Standards section 7.1 (disbarment) applies to Longacre's failure to cooperate
15 as alleged in Count 18 (RPC 8.4(l) and ELC 5.3(e) violations).

16 17. No ABA standard directly applies to the RPC 8.4(n) (unfitness to practice)
17 violation charged in Count 19. But by analogy, ABA Standards section 7.1 (disbarment) is
18 most applicable.

19 18. For knowingly engaging in acts that are the same or similar to prior acts of
20 misconduct for which he was suspended, the presumptive sanction is disbarment under ABA
21 Standards section 8.1(b). In 2005, Longacre received a 60-day suspension for failing to
22 diligently represent and adequately communicate with his client about plea offers and
23 sentencing implications in violation of RPC 1.3 and RPC 1.4. In re Disciplinary Proceeding

1 Against Longacre, 155 Wn.2d 723, 740, 122 P.3d 710 (2005). In the instant proceeding
2 Longacre's repeated failure to act diligently and communicate adequately resulted in actual
3 injury to his clients and others, including grievants Reiter, Williams, Pope and Delatorre, as
4 alleged in Counts 1., 4, 7, and 10.

5 19. The following aggravating factors set forth in Section 9.22 of the ABA Standards
6 apply in this case:

- 7 (a) prior disciplinary offenses [In November 2005, Longacre received a 60-day
8 suspension for failure to communicate, failure to act with reasonable
9 diligence, failure to provide competent representation and conduct
10 prejudicial to the administration of justice. In January 2010 Longacre
11 received a reprimand for conduct prejudicial to the administration of
12 justice];
- 13 (b) dishonest or selfish motive;
- 14 (c) a pattern of misconduct;
- 15 (d) multiple offenses;
- 16 (g) refusal to acknowledge wrongful nature of conduct;
- 17 (i) substantial experience in the practice of law [Longacre was admitted to
18 practice October 27, 1992]; and
- 19 (j) indifference to making restitution.

20 20. None of the mitigating factors set forth in Section 9.32 of the ABA Standards
21 apply to this case.

22 21. Given the number of aggravating factors, with no mitigating factors, and given that
23 disbarment is the presumptive sanction for several different ethical violation, there is no
24 reason to depart from the presumptive sanction for the most severe misconduct: disbarment.

RECOMMENDATION

25 22. Based on the ABA Standards and the applicable aggravating and mitigating
26 factors, the Hearing Officer recommends that Respondent Clayton Longacre be disbarred.

27 ///

28 ///

1 Reinstatement should be conditioned on payment of costs of the proceeding and restitution as
2 set out above.

3 DATED this 28th day of August, 2012.

4
5 Nadine D. Scott
6 Nadine D. Scott, Bar No. 6773
7 Hearing Officer

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12 **CERTIFICATE OF SERVICE**

13 I certify that I caused a copy of the FOF, COL & HO's Recommendation
14 to be delivered to the Office of Disciplinary Counsel and to be mailed
15 to Christon Lomax Respondent/Respondent's Counsel
16 at 1814 SE. SLOAN ST. #104 Portland, OR 97202 by Certified first class mail,
17 postage prepaid on the 28th day of August, 2012

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[Signature]
Clerk/Counsel to the Disciplinary Board

Attachment “S”

[In re Discipline of Longacre](#)

Supreme Court of Washington

March 10, 2005. ; November 10, 2005, Filed

No. 200,116-5

Reporter

155 Wn.2d 723 *; 122 P.3d 710 **; 2005 Wash. LEXIS 916 ***

In the Matter of the Disciplinary Proceeding Against
CLAYTON E. **LONGACRE**, *an Attorney at Law.*

Subsequent History: Later proceeding at [In re Disciplinary Proceeding Against Longacre, 2012 Wash. LEXIS 890 \(Wash., Dec. 20, 2012\)](#)

Core Terms

suspension, hearing officer, recommended, mitigating factors, misconduct, disciplinary proceeding, presumptive, reprimand, aggravating factor, charges, plea offer, sentencing, officer's, communicate, counts, disciplinary, aggravating, multiple offenses, discipline, proceedings, hearings, plea agreement, motion for a new trial, restitution, sentencing range, neglect, cases, std, administration of justice, fail to communicate

Case Summary

Procedural Posture

Respondent attorney sought review of the decision of the Washington State Bar Association (WSBA) Disciplinary Board (board), which found that the attorney had committed three acts of misconduct and recommended that he be suspended and to attend additional hours of continuing legal education (CLE) courses.

Overview

The attorney appealed the board's findings that he committed three acts of misconduct and its recommendation. The supreme court held that the WSBA proved all three counts of misconduct but that it did not establish a pattern of misconduct or a knowing state of mind, and imposed a 60-day suspension and 30 additional hours of CLE courses. The supreme court

also affirmed the board's denial of additional proceedings. The hearing officer's conclusion that the attorney violated his duty to provide diligent and competent representation was supported by substantial facts in the record. Competent representation required the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation and counsel was required to act with reasonable diligence and promptness in representing a client pursuant to Wash. [R. Prof. Conduct 1.1](#) and [1.3](#). The record reflected that the attorney did not properly calculate the penalties that his client faced, nor did he effectively communicate such information to the client. He also violated Wash. [R. Prof. Conduct 1.4](#) by filing to keep his client reasonable informed about the status of his case.

Outcome

The supreme court imposed a 60-day suspension against the attorney and ordered that he perform an additional 30 hours of CLE courses.

LexisNexis® Headnotes

Legal Ethics > Sanctions > Disciplinary Proceedings

[HN1](#) [↓] **Sanctions, Disciplinary Proceedings**

The Supreme Court of Washington bears the ultimate responsibility for lawyer discipline in Washington.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Legal Ethics > Sanctions > Disciplinary Proceedings

[HN2](#) [↓] **Standards of Review, Substantial Evidence**

155 Wn.2d 723, *723; 122 P.3d 710, **710; 2005 Wash. LEXIS 916, ***916

A challenged finding of fact will not be overturned if it is supported by a clear preponderance of the evidence and unchallenged findings of fact are accepted as true. While the hearing officer's findings are not conclusive, they are entitled to great weight, particularly when the credibility and veracity of witnesses are at issue. In determining whether a factual finding is supported by substantial evidence, the court looks to the entire record. The supreme court ordinarily will not disturb the findings of fact made upon conflicting evidence. Substantial, albeit disputed, testimony is sufficient to support challenged findings of fact.

Legal Ethics > Sanctions > Disciplinary Proceedings

[HN3](#) [↓] **Sanctions, Disciplinary Proceedings**

A hearing officer's findings are entitled to great weight.

Legal Ethics > Sanctions > Disciplinary Proceedings

[HN4](#) [↓] **Sanctions, Disciplinary Proceedings**

The supreme court will uphold the hearing officer's conclusions of law if they are supported by the findings of fact.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

[HN5](#) [↓] **Duties to Client, Effective Representation**

See Wash. [R. Prof. Conduct 1.1](#).

Legal Ethics > Client Relations > Duties to Client > Effective Representation

[HN6](#) [↓] **Duties to Client, Effective Representation**

Counsel must act with reasonable diligence and promptness in representing a client, Wash. [R. Prof. Conduct 1.3](#).

Legal Ethics > Client Relations > Duties to Client > Effective Representation

[HN7](#) [↓] **Duties to Client, Effective Representation**

See Wash. [R. Prof. Conduct 1.2\(a\)](#).

Legal Ethics > Client Relations > Duties to Client > Effective Representation

[HN8](#) [↓] **Duties to Client, Effective Representation**

The duty to communicate requires a lawyer to keep his or her clients reasonably informed about the status of a matter, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, Wash. [R. Prof. Conduct 1.4](#).

Legal Ethics > Professional Conduct

[HN9](#) [↓] **Legal Ethics, Professional Conduct**

See Wash. [R. Prof. Conduct 8.4\(d\)](#).

Legal Ethics > Professional Conduct

[HN10](#) [↓] **Legal Ethics, Professional Conduct**

The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called plea bargaining, is an essential component of the administration of justice.

Legal Ethics > Professional Conduct

[HN11](#) [↓] **Legal Ethics, Professional Conduct**

Conduct deemed prejudicial to the administration of justice has generally been conduct of an attorney in his official or advocacy role or conduct which might physically interfere with enforcing the law. Conduct prejudicial to the administration of justice should be construed to include only clear violations of accepted practice norms. Defense lawyers must communicate all plea offers to their clients.

Legal Ethics > Sanctions > General Overview

Legal Ethics > Sanctions > Suspensions

[HN12](#) **Legal Ethics, Sanctions**

The Supreme Court of Washington retains ultimate responsibility for determining the proper measure of discipline, however the court does give serious consideration to the Washington State Bar Association Disciplinary Board's recommendation. In determining appropriate attorney disciplinary sanctions, the court engages in a two-step process utilizing the ABA Standards. First, the presumptive sanction is determined by considering: (1) the ethical duty violated, (2) the lawyer's mental state, and (3) the extent of the actual or potential harm caused by the misconduct. Second, the court considers any aggravating or mitigating factors that may alter the presumptive sanction or affect the duration of a suspension.

Legal Ethics > Sanctions > Suspensions

[HN13](#) **Sanctions, Suspensions**

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

Legal Ethics > Sanctions > General Overview

[HN14](#) **Legal Ethics, Sanctions**

The ABA Standards define "intent" as the conscious objective or purpose to accomplish a particular result, "knowledge" as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result, and "negligence" as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. This is a factual determination and the hearing officer's finding is given great weight.

Legal Ethics > Sanctions > Suspensions

[HN15](#) **Sanctions, Suspensions**

Under ABA Standards 4.42(b), when a lawyer engages

in a pattern of neglect and causes injury or potential injury to a client, suspension is generally appropriate.

Legal Ethics > Sanctions > General Overview

[HN16](#) **Legal Ethics, Sanctions**

The ABA Standards recognize in its theoretical framework that the standards do not account for multiple charges of misconduct. The ultimate sanction might well be and generally should be greater than the sanction for the most serious misconduct.

Legal Ethics > Sanctions > General Overview

[HN17](#) **Legal Ethics, Sanctions**

When the Washington State Bar Association Disciplinary Board is unanimous in its recommended sanction, this Supreme Court of Washington is reluctant to reject its recommendation.

Legal Ethics > Sanctions > General Overview

[HN18](#) **Legal Ethics, Sanctions**

A lawyer subject to discipline may be ordered to make restitution to persons financially injured by the respondent's conduct, Wash. Enforcement Law. Cond. R. 13.7(a). Restitution has been ordered in cases where a lawyer failed to properly communicate with and diligently represent his or her client.

Legal Ethics > Sanctions > Disbarments

Legal Ethics > Sanctions > General Overview

Legal Ethics > Sanctions > Disciplinary Proceedings > Hearings

Legal Ethics > Sanctions > Suspensions

[HN19](#) **Sanctions, Disbarments**

Wash. Enforcement Law. Cond. R. 11.11 allows parties to request an additional hearing within the contents of their briefs filed pursuant to Wash. Enforcement Law. Cond. R. 11.8, briefs for review involving suspension or

disbarment recommendation, or Wash. Enforcement Law. Cond. R. 11.9, briefs for review not involving suspension or disbarment recommendation. Wash. Enforcement Law. Cond. R. 11.11 allows an additional hearing based on newly discovered evidence. R. 11.11 provides that the Washington State Bar Association Disciplinary Board may grant or deny the request in its discretion.

Headnotes/Syllabus

Summary

Nature of Action: Disciplinary action against an attorney charged with three counts of misconduct based on allegations that the attorney failed to communicate several plea offers to a client or to inform the client of the correct sentencing ranges he faced if he were to be convicted at trial. The hearing officer concluded that the attorney committed two of the counts and recommended that the attorney be (1) suspended for six months, (2) placed on probation for 24 months, (3) required to obtain 30 additional hours of continuing legal education credits in the area of criminal law and procedure, and (4) ordered to pay restitution to the client. The disciplinary board approved and adopted the hearing officer's findings of fact and conclusions of law with some amendments, denied the attorney's request for additional proceedings, and found that the bar association established all three counts. The board recommended a 60-day suspension and that the attorney be required to attend an additional 30 credit hours of continuing legal education. The board declined to impose restitution, concluding that the client received some value from the attorney's representation.

Supreme Court: Holding that the bar association proved all three counts of misconduct, that the bar association did not establish a pattern of misconduct or a knowing state of mind, that a presumptive sanction of suspension could be based on multiple violations, that the record did not support a restitution obligation, and that the disciplinary board properly denied the motion to supplement the record, the court *suspends* the attorney for 60 days and *orders* the attorney to attend 30 additional credit hours of continuing legal education in the area of criminal law and procedure.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

[WA/1](#) [1]

Attorney and Client > Discipline > Supreme Court Authority > In General

The Supreme Court bears the ultimate responsibility for lawyer discipline in this state.

[WA/2](#) [2]

Attorney and Client > Discipline > Findings of Fact > Review > Standard of Review

A challenged finding of fact in a bar disciplinary proceeding will not be overturned by the Supreme Court if it is supported by a clear preponderance of the evidence. Unchallenged findings of fact are accepted as true. In determining whether a finding of fact is supported by substantial evidence, the Supreme Court looks to the entire record.

[WA/3](#) [3]

Attorney and Client > Discipline > Findings of Fact > Review > Deference > Disputed Testimony

While the hearing officer's findings of fact in a bar disciplinary proceeding are not conclusive, they are entitled to great weight, particularly when the credibility and veracity of witnesses are at issue.

[WA/4](#) [4]

Attorney and Client > Discipline > Findings of Fact > Review > Conflicting Evidence > Effect

The Supreme Court ordinarily will not disturb a finding of fact made upon conflicting evidence in a bar disciplinary proceeding. Substantial, albeit disputed, testimony is sufficient to support a challenged finding of fact; i.e., a finding supported by substantial evidence in the record will not be disturbed merely because the testimony is inconsistent or conflicting.

[WA/5](#) [5]

Attorney and Client > Discipline > Conclusions of Law > Review > Support by Findings

The Supreme Court will uphold a hearing officer's conclusions of law in a bar disciplinary proceeding if they are supported by valid findings of fact.

[WA/6](#)[] [6]

Attorney and Client > Discipline > Competent Representation > What Constitutes > Lack of Diligence > Failure To Communicate Plea Offers and Sentencing Ranges

A criminal defense attorney's failure to properly calculate the penalties faced by a client and to effectively communicate plea offers to the client and inform the client of the correct sentencing ranges if the client were convicted at trial constitute a violation of the duty to provide diligent and competent representation in violation of [RPC 1.1](#), [1.2\(a\)](#), and [1.3](#).

[WA/7](#)[] [7]

Attorney and Client > Discipline > Communication With Client > Failure To Communicate Plea Offers and Sentencing Implications

A criminal defense attorney's failure to effectively communicate plea offers and sentencing implications to a client and to keep the client reasonably informed of the status of the client's case constitute a violation of the duty to communicate with the client in violation of [RPC 1.4](#).

[WA/8](#)[] [8]

Attorney and Client > Discipline > Conduct Prejudicial to the Administration of Justice > Test

Conduct prejudicial to the administration of justice within the meaning of [RPC 8.4\(d\)](#) is conduct in an official or advocacy role that violates accepted norms of practice or conduct physically interfering with the enforcement of the law.

[WA/9](#)[] [9]

Attorney and Client > Discipline > Conduct Prejudicial to the Administration of Justice > Failure To Communicate Plea Offers

A criminal defense attorney's failure to effectively

communicate plea offers to a client constitutes a violation of the duty to refrain from conduct prejudicial to the administration of justice in violation of [RPC 8.4\(d\)](#).

[WA/10](#)[] [10]

Attorney and Client > Discipline > Degree of Punishment > Supreme Court Authority

The Supreme Court has the ultimate responsibility for determining the proper measure of discipline for an attorney's professional misconduct, although it will give serious consideration to the disciplinary board's recommendation.

[WA/11](#)[] [11]

Attorney and Client > Discipline > Degree of Punishment > Two-Stage Process > In General

The Supreme Court determines the appropriate disciplinary sanction to impose for an attorney's professional misconduct by following a two-step process utilizing the *ABA Standards for Imposing Lawyer Sanctions*. The court (1) determines a presumptive sanction by considering (a) the ethical duty violated, (b) the attorney's mental state, and (c) the extent of the actual or potential harm caused by the attorney's misconduct. Once the court determines a presumptive sanction, it (2) considers aggravating or mitigating factors that may alter the presumptive sanction or affect the duration of a suspension.

[WA/12](#)[] [12]

Attorney and Client > Discipline > Mental State > Definitions

An attorney acts with intent when the attorney has the conscious objective or purpose to accomplish a particular result. An attorney acts with knowledge when the attorney has the conscious awareness of the nature or attendant circumstances of the act but without the conscious objective or purpose to accomplish a particular result. An attorney acts negligently by failing to heed a substantial risk that circumstances exist or that a result will follow and such failure is a deviation from the standard of care that a reasonable attorney would exercise in the situation.

[WA/13](#) [13]

Attorney and Client > Discipline > Mental State >
Question of Law or Fact > Deference

An attorney's mental state in committing an act of professional misconduct is a question of fact for the hearing officer. The hearing officer's decision is given great weight by the Supreme Court.

[WA/14](#) [14]

Attorney and Client > Discipline > Degree of Punishment
> Factors > Mitigating Factors > Failure To Cite to
Record > Factors Not Raised in Earlier Proceedings

The Supreme Court may decline to consider mitigating factors argued by an attorney in a bar disciplinary proceeding if the argument is unsupported by citation to the record and the factors were not argued before the hearing officer or the disciplinary board.

[WA/15](#) [15]

Attorney and Client > Discipline > Degree of Punishment
> Reprimand > Presumptive Sanction > Elevation to
Suspension > Multiple Violations

The presumptive sanction of reprimand for an attorney's violation of duties owed as a professional may be elevated to a suspension if the attorney has committed multiple violations.

[WA/16](#) [16]

Attorney and Client > Discipline > Degree of Punishment
> Proportionality > Burden of Proof

The Supreme Court is not required to consider the proportionality of the recommended sanction in a bar disciplinary proceeding if the attorney who is the subject of the proceeding does not cite to cases demonstrating that the recommended sanction is disproportionate.

[WA/17](#) [17]

Attorney and Client > Discipline > Restitution > Support
in Record > Necessity

A restitution requirement in a bar disciplinary

proceeding must be supported by the record.

[WA/18](#) [18]

Attorney and Client > Discipline > Disciplinary Board
Review > Record > Supplementation > Court Rules

The record before the disciplinary board in a bar disciplinary proceeding may not be supplemented except as provided by [ELC 11.11](#) and [ELC 11.8](#) or [11.9](#).

[WA/19](#) [19]

Attorney and Client > Discipline > Disciplinary Board
Review > Record > Supplementation > Review >
Standard of Review

The Supreme Court will not disturb the disciplinary board's denial of a motion to supplement the record in a bar disciplinary proceeding absent an abuse of discretion.

Counsel: [***1] *Clayton E. Longacre*, pro se.

Sachia S. Powell and *Anthony L. Butler*, for the bar association.

Judges: Authored by Mary Fairhurst. Concurring: James Johnson, Bobbe J. Bridge, Charles W. Johnson, Gerry L. Alexander, Susan Owens. Dissenting: Barbara A. Madsen, Richard B. Sanders, Tom Chambers.

Opinion by: FAIRHURST

Opinion

En Banc.

[*727] [**711] P1 Fairhurst, J. -- Clayton E. Longacre appeals the Washington State Bar Association (WSBA) Disciplinary Board's (the Board) findings that he committed three acts of misconduct and its recommendation that he be suspended for 60 days and required to attend 30 hours of continuing legal education (CLE) courses. He contends on appeal that (1) the WSBA did not prove the alleged misconduct by a clear preponderance of the evidence and (2) that the recommended sanction of suspension is too harsh, asking instead for a reprimand. Longacre also appeals

the Board's **[**712]** denial of his motion for additional proceedings. The WSBA also appeals, arguing that (1) the Board erred in reversing the hearing officer's finding of a pattern of misconduct, (2) the Board erred in determining that Longacre's misconduct was merely negligent rather than knowing, (3) the Board erred in concluding that restitution was **[***2]** not appropriate in this case, and (4) the Board erred in imposing a 60-day suspension rather than a six-month suspension as recommended by the hearing officer.

P2 We hold that the WSBA proved all three counts of misconduct but that it did not establish a pattern of misconduct or a knowing state of mind, and we impose a 60-day suspension and 30 additional hours of CLE courses. We also affirm the Board's denial of additional proceedings.

I. FACTUAL AND PROCEDURAL HISTORY

A. The Charges

P3 Longacre was admitted to the practice of law in the state of Washington in 1992. He worked in criminal defense in both King and Kitsap Counties. In 2002, the WSBA filed a formal complaint charging Longacre with three counts of attorney misconduct. The charges against Longacre arose **[*728]** out of conduct that occurred in 2000 while Longacre was representing William Joseph Jones III (Tripp) in a criminal trial and in general alleged that Longacre failed to communicate several plea offers to his client and inform him of the correct sentencing ranges he faced if he were to be convicted at trial. Count I alleged that Longacre violated [Rules of Professional Conduct \(RPC\) 1.2\(a\), 1.3](#), and/or [1.1](#) by failing to represent **[***3]** Tripp effectively and diligently in the criminal proceeding. Count II alleged that Longacre violated [RPC 1.2\(a\)](#) and/or [1.4](#) by failing to communicate to Tripp the potential sentencing implications Tripp was facing in his criminal proceeding and by failing to convey written information Longacre had received from the prosecutor, including plea offers. Count III alleged that Longacre violated [RPC 8.4\(d\)](#) by engaging in conduct prejudicial to the administration of justice. Longacre denied the misconduct.

B. The Hearing

P4 As an initial matter, the facts in this matter are heavily disputed. As noted by the hearing officer:

The evidence presented was at times conflicting and contradicting. In evidence was the transcript from a prior proceeding before Judge William Howard concerning a Motion for a New Trial after

William Joseph Jones III was convicted on the Third Amended Information. There are inconsistencies between the testimony of both Respondent and Mr. Jones between that proceeding and the testimony offered herein. In resolving the inconsistencies and differences between the testimony of each witness the Hearing Officer has thoroughly considered any motivation of each witness with **[***4]** respect to each proceeding; the passage of time between the two hearings, as well as between the events in question and the testimony given with respect thereto; and finally the credibility of each witness based on the ability to observe, and in the case of Mr. Jones listen, to the testimony and to evaluate the demeanor of each witness.

Answering Br. of the WSBA, App. 1 (Findings of Fact, Conclusions of Law, and Hr'g Examiner's Recommendation) (FOF and COL), at 3. With that caveat, the following **[*729]** recitation of fact is largely taken from the hearing officer's FOF. ¹

P5 On May 1, 2000, Tripp and two other boys were arrested for drive-by shooting. Tripp was arraigned the next day in Kitsap County Superior Court and at that time was represented by Tom Weaver. Tripp received a copy of the original information prior **[***5]** to his arraignment. Weaver discovered a conflict in representing Tripp and recommended Longacre as a replacement. After briefly conversing with Tripp and Tripp's father, Longacre was hired to represent Tripp. The hearing officer found that during this brief **[**713]** meeting, Longacre did not discuss the original information with Tripp.

P6 Longacre met with Tripp in jail around May 3 or 4, 2000. Longacre and Tripp discussed Tripp's version of the events surrounding the arrest, but the hearing examiner found that Longacre did not advise Tripp of the sentencing range for the pending charges nor did he go over the contents of the original information.

P7 Tripp planned to pursue a military career, so he wanted to avoid a felony conviction.

P8 Deputy Prosecuting Attorney Kevin "Andy" Anderson (DPA Anderson) was assigned to the case on May 11, 2000, and amended the information to include drive-by

¹ Longacre has challenged several FOF before the Board and on appeal before this court. The merit of those challenges will be discussed within the analysis portion of this opinion where applicable.

shooting, assault in the second degree, and a firearm enhancement allegation. Based on the amended information, DPA Anderson prepared a plea agreement and faxed the amended information and the plea agreement to Longacre on May 11, 2000. The plea agreement articulated the sentencing range of 74-84 months for both [***6] counts, including 36 months added for the firearm allegation. In exchange for a guilty plea to the above two counts, DPA Anderson offered a sentencing recommendation of 62 months and an agreement not to file further charges (including additional counts of assault in the second degree with firearm enhancements and/or assault [*730] in the first degree). The hearing officer found that Longacre did not discuss this proffered plea agreement with Tripp.

P9 On May 26, 2000, DPA Anderson sent a letter to Longacre in which he warned Longacre of the current standard range and that he would amend the information to include four counts of assault in the first degree (or alternatively four counts of assault in the second degree), all to include firearm enhancements, in addition to one count of drive-by shooting. The collective bottom sentencing range, DPA Anderson stated, would be nearly 51 years. DPA Anderson urged Longacre to thoroughly consider the 62-month offer. The hearing officer found that Longacre did not convey the information from the May 26, 2000 letter to his client.

P10 The hearing officer found that on June 13, 2000, DPA Anderson advised Longacre by letter that he would be making a 57-month [***7] plea offer to one of Tripp's codefendants and that he would extend the same offer to Tripp. The hearing officer found that Longacre did not communicate this offer to his client.

P11 During a psychological evaluation at Western State Hospital on June 23, 2000, Tripp told Thomas Danner, Ph.D., that he believed he could be facing up to 46 months.

P12 DPA Anderson advised Longacre by letter on July 3, 2000 that, based on Tripp's apparent choice to go to trial rather than agree to a plea, he was going to arraign Tripp on a second amended information with increased charges (based on the charges articulated in the May 26, 2000 letter). The hearing examiner found, and Longacre did not challenge, that Longacre did not share this correspondence with Tripp.

P13 Tripp was arraigned on the second amended information on July 12, 2000. The information charged four counts each of assault in the first degree and assault in the second degree, all with firearm

enhancements, and one count of drive-by shooting. These were the same charges DPA Anderson indicated he would pursue in his May 26, [*731] 2000 letter. The hearing examiner found that at this arraignment, Tripp would have received a copy of the information and [***8] he would have been free to take this back to his jail cell. The information would include the maximum sentence allowed by law but it would not include the standard range sentence information nor would it contain any plea agreement offers.

P14 On August 28, 2000, Tripp went to trial on the second amended information and was convicted of four counts of assault in the second degree with a firearm finding and drive-by shooting. The presentence report included a standard range of 221-246 months based on the convictions.

P15 The hearing officer found that before sentencing, Longacre approached Weaver (Tripp's prior attorney) and discussed Tripp's case. Based on that conversation, Weaver concluded that Longacre had not fully advised [**714] Tripp of the offers made by DPA Anderson prior to trial, nor had Longacre understood the consequences of losing the trial. Weaver indicated that these acts could rise to the level of ineffective assistance of counsel and that Longacre should consider withdrawing to allow Weaver to make such a defense in a motion for a new trial. Longacre moved to withdraw on September 12, 2000, and an order approving withdrawal was issued September 19, 2000.

P16 Weaver then took over as [***9] counsel for Tripp and filed a motion for a new trial. Visiting Judge William Howard ordered a new trial, concluding that Longacre's representation of Tripp was ineffective. Judge Howard found that Longacre had provided incorrect sentencing information to Tripp, including the proper range and the effect of firearm enhancements (concurrent versus consecutive).

P17 Tripp pleaded guilty to a third amended information charging three counts of assault in the second degree and drive-by shooting (without firearm enhancements) on December 15, 2000. On January 5, 2001, Tripp was sentenced to 57 months pursuant to a plea agreement.

[*732] P18 The Kitsap County prosecutor's office filed a grievance regarding Longacre with the WSBA. The WSBA filed a formal complaint charging Longacre with three counts of misconduct for failure to provide efficient and diligent representation, failure to communicate with the client, and conduct prejudicial to the administration of justice.

P19 The hearing officer concluded that Longacre committed the first two counts of charged misconduct but not the third. The hearing officer determined that Longacre "failed to fully communicate to Tripp the sentencing range he faced and thus [***10] the risks of going to trial on the first and second amended charging documents and further did not communicate the plea offers received from DPA Anderson to Tripp." FOF and COL at 9. Additionally, Longacre "failed to calculate properly the sentence ranges for the charges and failed to understand that the firearm enhancements would run consecutively rather than concurrently." *Id.* With respect to count III, the hearing officer concluded that because Longacre's conduct was not "in an official or advocatory role or conduct physically interfering with the enforcement of the law," it was not conduct "'prejudicial to the administration of justice' under [RPC 8.4\(d\)](#)." *Id.* at 11 (citing [In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 801 P.2d 962 \(1990\)](#)).

P20 Having found that the first two counts of charged misconduct were committed, the hearing officer next considered the presumptive sanctions. The hearing officer found that with respect to count I (failure to diligently represent Tripp), the presumptive sanction was a reprimand and concluded there was no basis to depart from that sanction based on aggravating or mitigating factors. On count II (failure [***11] to communicate sentence implications and plea offers), the hearing officer determined that Longacre's actions were "negligent and not intentional," but because Longacre "demonstrated a pattern of behavior in failing to communicate with his client, failing to advise him of the standard sentence range penalties he faced if the matter went to trial, and fail[ing] to communicate the plea offers," [*733] the presumptive sanction was a suspension under the standards provided by the American Bar Association. *Id.* at 12; see ABA, STANDARDS FOR IMPOSING LAWYER SANCTIONS std. 4.42 (1991 & Supp. 1992).

P21 Although the hearing officer did not expressly identify any facts as aggravating or mitigating factors, he made FOF 32 that Longacre had no prior disciplinary record (which is a mitigating factor), and FOF 33 that, while Longacre admitted that he did not correctly calculate the sentencing ranges Tripp faced, he generally denied any further wrongdoing (which the Board later considered to be an aggravating factor). The hearing officer only referenced mitigating and aggravating factors generally in deciding not to deviate from the presumptive sanction for count I.

P22 The hearing officer recommended [***12] that Longacre be suspended for 6 months, placed on probation under [Rules for Enforcement of Lawyer Conduct \(ELC\) 13.8](#) for a period of 24 months during which period of time he [**715] obtain 30 hours of CLE credits in the area of criminal law and procedure, and ordered to pay \$ 9,000 in restitution to his former client (the amount Longacre allegedly received from Tripp's father to represent Tripp).

C. The Board

P23 Longacre filed a notice of appeal with the Board. He disputed 15 of the FOF and the first 2 of the 3 COL, as well as the hearing officer's presumptive sanctions and recommendation. He also requested additional proceedings to supplement the record.

P24 The Board approved and adopted the hearing officer's FOF and COL with some amendments and denied Longacre's request for additional proceedings. The Board determined that, contrary to the hearing officer's conclusion, the WSBA did not establish a pattern of neglect with respect to Longacre's failure to advise his client of the plea offers and potential sentences. Therefore, the presumptive sanction for count II would be a reprimand rather than suspension under ABA *Standards* std. 4.43. Also in contrast [*734] to the hearing officer, the Board [***13] found that the WSBA did establish count III--conduct prejudicial to the administration of justice--by a clear preponderance of the evidence because Longacre failed to follow a clear practice norm. The Board adopted one mitigating factor, no prior discipline, and three aggravating factors: substantial experience in the practice of law, failure to acknowledge wrongful conduct, and multiple offenses. The Board concluded that the presumptive sanction for all counts would be a reprimand but the multiple violations aggravated the sanction to a 60-day suspension. The Board declined to put Longacre on probation but did agree with the hearing officer's recommendation that Longacre be required to attend 30 additional credit hours of CLE classes. The Board declined to impose restitution because it found that Tripp did receive value from Longacre's representation.

P25 Longacre appealed the Board's decision to this court. Before this court, Longacre assigns error to FOF 4, 5, 9, 12, 14, 15, 16, 24, 29, 30, and 33 as adopted by the Board; ² COL 1, 2, and 3, as adopted by the Board;

² Although Longacre also assigns error to FOF 19, he did not appeal that finding before the Board, so we decline to address

the Board's recommended sanction of suspension based on findings of failure to acknowledge wrongful conduct and multiple [***14] offenses; and the Board's refusal to order additional proceedings as requested by Longacre.

P26 The WSBA filed a petition for discretionary review. The WSBA assigned error to the Board's determination that there was no pattern of neglect and that Longacre's state of mind was negligent rather than knowing; therefore, the presumptive sanction for count II was a reprimand rather than suspension, restitution was not appropriate, and the recommended sanction was 60 days rather than six months. This court granted the WSBA's petition and consolidated the matter with Longacre's appeal.

[*735] II. ISSUES

A. Did the WSBA prove all three counts of misconduct by a clear preponderance of the evidence?

[***15] B. If the WSBA proved misconduct, what is the appropriate sanction?

C. Did the Board err in denying Longacre's motion for additional proceedings?

III. ANALYSIS

[WA1](#) [↑] [1] P27 [HN1](#) [↑] This court bears the ultimate responsibility for lawyer discipline in Washington. *In re Disciplinary Proceeding Against Anshell*, 141 Wn.2d 593, 607, 9 P.3d 193 (2000).

A. Whether the WSBA proved all three counts of misconduct by a clear preponderance of the evidence

Factual Findings

[WA2](#) [↑] [2] [WA3](#) [↑] [3] [WA4](#) [↑] [4] P28 Longacre assigns error to many of the facts found by the hearing examiner and adopted by the Board, arguing that the WSBA failed to prove them by a clear [**716] preponderance of the evidence. [HN2](#) [↑] A challenged finding of fact will not be overturned if it is supported by a clear preponderance of the evidence and unchallenged findings of fact are accepted as true. *In re Disciplinary Proceeding Against Kuvara*, 149

it here. *In re Disciplinary Proceeding Against Kuvara*, 149 Wn.2d 237, 246, 66 P.3d 1057 (2003) (hearing officer's FOF not assigned error are verities on appeal if they were adopted by the Board).

Wn.2d 237, 246, 66 P.3d 1057 (2003); *In re Disciplinary Proceeding Against Anshell*, 149 Wn.2d 484, 503, 69 P.3d 844 (2003). "While the hearing officer's findings are not conclusive, they are entitled to great weight, particularly 'when the credibility and veracity of witnesses [***16] are at issue.'" *In re Disciplinary Proceeding Against Haskell*, 136 Wn.2d 300, 310, 962 P.2d 813 (1998) (quoting *In re Disciplinary Proceeding Against Allotta*, 109 Wn.2d 787, 793-94, 748 P.2d 628 (1988)). In determining whether a [*736] factual finding is supported by substantial evidence, the court looks to the entire record. *In re Disciplinary Proceeding Against Huddleston*, 137 Wn.2d 560, 568-69, 974 P.2d 325 (1999) (citing *In re Disciplinary Proceedings Against Denend*, 98 Wn.2d 699, 704, 657 P.2d 1379 (1983)). "[W]e ordinarily will not disturb the findings of fact made upon conflicting evidence." *In re Disciplinary Proceedings Against Miller*, 95 Wn.2d 453, 457, 625 P.2d 701 (1981). "'Substantial, albeit disputed, testimony' is sufficient to support challenged findings of fact." *Huddleston*, 137 Wn.2d at 568 (quoting *Denend*, 98 Wn.2d at 704).

P29 *Assignments of Error Two and Three*: Longacre first ³ assigns error to FOF 5 and 9. In FOF 5, the hearing officer determined that at their first meeting on May 2, 2000 (the arraignment), Longacre and Tripp did not discuss any [***17] aspect of the original information. In FOF 9, the hearing officer determined that the meeting in jail on May 3 or 4, 2000, was the first conversation of any substance between Longacre and Tripp and that Longacre did not go over the original information or the sentencing range for Tripp's pending charges. The hearing officer relied upon substantial testimony to support this FOF. See Transcript of Hearing (TR) at 54-55, 63, 73; Ex. 2, at 7-9 (testimony of Longacre at motion for new trial saying he does not remember discussing the original information with his client), 62-63 (testimony of Tripp at motion for a new trial).

[***18] P30 To try and convince the court that these findings were not supported by substantial evidence, Longacre first cites Tripp's testimony at the disciplinary

³ Longacre also assigns error to FOF 4, in which the hearing officer found that a codefendant pleaded guilty at his arraignment on May 2, 2000. The correct date, Longacre argues, is May 8, 2000. This fact has no bearing on the disciplinary charges against Longacre, but it does appear from the transcript of the disciplinary hearing that the hearing officer took judicial notice that the codefendant pleaded guilty on May 8, 2000.

hearing where Tripp claimed he never received the original information. Longacre then compares the testimony to DPA Anderson's testimony that in-custody defendants receive a copy of their [*737] information as soon as they arrive in the courtroom. But no one disputes that Tripp had a copy of his information, only whether Longacre discussed the contents of that information with his client. Longacre then cites to his own testimony and the testimony of Tripp's father to try and prove the substance of their first conference together. But whether Longacre discussed sentencing possibilities with Tripp's father is immaterial to what Longacre actually told Tripp. Nothing cited in Longacre's briefing shows that Longacre had a substantive discussion with Tripp on May 2, 2000.

P31 *Assignments of Error Five and Six*: Longacre next assigns error to FOF 16, 29, and 30, ⁴ regarding whether Longacre correctly communicated the sentencing ranges Tripp faced under the first and second amended informations. The hearing officer relied on the testimony of Tripp [***19] and Longacre in determining that Longacre failed to advise his client on multiple occasions of the sentencing ranges he faced--including the effect of firearm enhancements--under the varying informations filed against Tripp. See Ex. 2, at 10-12, 14, 16, 19, 26-27, 47-50 (Longacre testifying at the motion for a new [*717] trial that he did not remember discussing in detail sentencing ranges with Tripp), 18 (Longacre testifying he did not remember telling Tripp of standard range from DPA Anderson's May 26, 2000 letter), 66 (testimony of Tripp); TR at 59, 80, 84, 91, 180-82, 189-93.

P32 To refute the hearing officer's findings, Longacre again cites extensively to the record but his reasoning for doing so is unclear. Much of the testimony Longacre refers to involves statements that, while he did not remember specifically advising Tripp of any particular [***20] information or sentencing range, it would have been his practice to do so and, therefore, he must have done so. Longacre also opines that the fact that his client indicated during his psychological evaluation that he believed he was facing 46 months [*738] means he must have seen the original plea agreement dated May 11, 2000 (Ex. 10). On that plea agreement (following the first amended information), DPA Anderson indicated the standard range for count II (assault in the second degree with a

firearm allegation) would be 48-50 months. Ex. 10, at 2. The plea agreement also listed 26-34 months above that line as the standard range for count I (drive-by shooting). *Id.* Longacre argues the only way his client would have known of the 46-month figure was from remembering incorrectly the 48-month figure on the plea agreement for the second count. This argument is unconvincing and illogical.

P33 Further, even if the topic of a plea offer or sentencing had come up, Longacre could still have fallen short of effectively communicating with his client by failing to explain the plea offer or sentencing information and its ramifications. The rest of Longacre's arguments seem to be pointing out the inconsistencies [***21] within Tripp and Tripp's father's testimony, as well as between those testimonies and Longacre's own statements. This is insufficient to overcome the fact that the hearing officer relied upon substantial testimony to support its FOF. [Huddleston, 137 Wn.2d at 568](#) ("[S]ubstantial, albeit disputed, testimony' is sufficient to support challenged findings of fact.") (quoting [Denend, 98 Wn.2d at 704](#)).

P34 *Assignment of Error Four*: Longacre next assigns error to FOF 12, 14, 15, and 30, arguing that he did in fact convey all plea offers to Tripp and his father as well as DPA Anderson's threats to increase the charges. In finding that Longacre failed to convey plea offers to his client, the hearing officer relied on testimony given both at the disciplinary hearing and at the previous motion for a new trial. See TR at 55, 58-60, 82-83, 85, 189-90; Ex. 2, at 10-12, 16-19, 21-22, 35, 45-46 (Longacre's memory failure regarding communications with Tripp at motion for a new trial), 64-67 (testimony of Tripp).

P35 Longacre first argues that his memory failures at the motion for a new trial hearing should be understandable [*739] because, unlike at the disciplinary hearing, [***22] he was testifying during a 15-minute break from another trial he was involved in, was not given the opportunity to review Tripp's file before testifying, was not given the benefit of hearing testimony of other witnesses to help "refresh and bolster his memory," and was not given the opportunity to present evidence. Resp't's Br. Objecting in Part to Bd.'s Decision (Resp't's Br.) at 25. Thus, he argues more weight should be given to his testimony at the disciplinary hearing rather than to his testimony at the motion for a new trial hearing. But the fact that his testimony at the motion for a new trial occurred relatively soon after the events he described should have made that testimony potentially more accurate

⁴In conjunction with this argument, Longacre also assigned error to FOF 19, but, as noted previously, it was not challenged to the Board and therefore is a verity on appeal.

than his testimony two years later. The hearing officer made clear in his FOF that he had considered the inconsistency between the testimonies and in reconciling those inconsistencies he took into account the temporal proximity to the events the testimony described, the motivation of the witnesses, and their credibility.

P36 Longacre continues to cite to testimony excerpts of Tripp, Tripp's father, and Longacre, but the passages he cites do not directly support his arguments. For [***23] example, he cites to Tripp's father's testimony in which Tripp's father recalls Longacre mentioning a plea agreement with a range of around 58 months to him and his wife after [**718] just coming out of a conference with Tripp. But the fact that Longacre had just left a conference with Tripp and proceeded to tell Tripp's parents of the 57-month figure does not mean the same information would have been communicated to Tripp.

P37 Although there is some conflicting testimony, there is substantial evidence in the record to support the hearing officer's FOF. [HN3](#) [↑] The hearing officer's findings are entitled to great weight. [Haskell, 136 Wn.2d at 310](#). We decline to alter the FOF as adopted by the Board.

Conclusions of Law

[WA5](#) [↑] [5] P38 [HN4](#) [↑] The court will uphold the hearing officer's COL if they are supported by the FOF. [Huddleston, 137 Wn.2d at \[*740\] 568-69](#). Substantial facts in the record support the hearing officer's COL as amended by the Board.

1. Count I: Duties of diligent and competent representation

[WA6](#) [↑] [6] P39 The hearing officer's conclusion that Longacre violated his duty to provide diligent and competent representation is supported by substantial facts in the record. [HN5](#) [↑] "Competent representation [***24] requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." [RPC 1.1](#). [HN6](#) [↑] Counsel must also "act with reasonable diligence and promptness in representing a client." [RPC 1.3](#). [HN7](#) [↑] "In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify." [RPC 1.2\(a\)](#). The record reflects that Longacre did not properly calculate the penalties

Tripp faced--nor did he effectively communicate such information to Tripp--at several stages of the proceedings. He also failed to empower his client with the ability to accept or reject plea offers by failing to adequately inform him of the offers and the penalties he faced if he were to go to trial. Although not dispositive, a superior court judge has already determined that Longacre's representation of Tripp was ineffective, such that Tripp was entitled to a new trial.

P40 We sustain the hearing officer's conclusion as adopted by the Board that Longacre's representation of Tripp was neither diligent nor competent.

2. Count II: Duty to communicate

[WA7](#) [↑] [7] P41 Ample testimony in the record supports [***25] the conclusion that Longacre failed to communicate with his client in violation of [RPC 1.4](#). [HN8](#) [↑] The duty to communicate requires a lawyer to keep his or her clients "reasonably informed about the status of a matter," and to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." [**741] [RPC 1.4](#). Longacre failed to keep Tripp "reasonably informed" about the status of his case and did not allow Tripp to make informed decisions because Longacre did not effectively communicate all plea offers and sentencing implications to his client.

P42 We sustain the hearing officer's conclusion as adopted by the Board that Longacre violated his duty to communicate with his client.

3. Count III: Duty to refrain from conduct prejudicial to the administration of justice

P43 [RPC 8.4\(d\)](#) provides that [HN9](#) [↑] "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct that is prejudicial to the administration of justice." The hearing officer found that the WSBA failed to prove the facts necessary to sustain its charge that Longacre violated [RPC 8.4\(d\)](#) because Longacre's "conduct was not conduct in an official or advocacy role or conduct [***26] physically interfering with the enforcement of the law," but the Board modified this COL. FOF and COL at 11. The Board determined that the hearing officer "misapplied" [In re Disciplinary Proceeding Against Curran, 115 Wn.2d 747, 801 P.2d 962 \(1990\)](#), and that "Mr. **Longacre** violated a practice norm established by the U.S. Supreme Court and adopted in Washington." Answering Br. of the WSBA, App. 2 (Disciplinary Bd. Order), at 2 (citing [Santobello v. New York, 404 U.S. 257, 260-61, 92 S. Ct. 495, 498,](#)

[30 L. Ed. 2d 427 \(1971\)](#) [HN10](#) ("The disposition of criminal charges by agreement between the prosecutor and **[**719]** the accused, sometimes loosely called 'plea bargaining,' is an essential component of the administration of justice."); [State v. James, 48 Wn. App. 353, 739 P.2d 1161 \(1987\)](#)).

[WA8](#) [8] [WA9](#) [9] P44 In *Curran*, this court noted [HN11](#) "conduct deemed prejudicial to the administration of justice has generally been conduct of an attorney in his official or advocatory role or conduct which might physically interfere with enforcing the law." [115 Wn.2d at 764](#). The court went on to cite with approval Professor Hazard's opinion that "conduct prejudicial **[*742]** to the **[***27]** administration of justice should be construed to include only clear violations of accepted practice norms." [Id . at 765](#) (citing GEOFFREY C. HAZARD, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT 569 (1985)). It is beyond well-established that defense lawyers must communicate all plea offers to their clients. [Santobello, 404 U.S. at 260](#); [State v. Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 \(1984\)](#). Further, Longacre was acting in an advocatory role when he violated the clear practice norm of communicating all plea negotiations to the client. The result of Longacre's failure to communicate is that Tripp, the prosecutor's office, and the superior court all actively participated in and spent valuable resources on a criminal trial only to have a new trial ordered due to ineffective assistance of counsel after which Tripp agreed to the very same offer that was made prior to the first trial.

P45 We sustain the Board's conclusion that Longacre engaged in conduct that was prejudicial to the administration of justice.

B. Issues relating to the appropriate sanction

[WA10](#) [10] [WA11](#) [11] P46 [HN12](#) "This court retains ultimate responsibility for **[***28]** determining the proper measure of discipline," however the court does give "serious consideration" to the Board's recommendation. [In re Disciplinary Proceeding Against McLeod, 104 Wn.2d 859, 865, 711 P.2d 310 \(1985\)](#).

In determining appropriate attorney disciplinary sanctions, the court engages in a two-step process utilizing the ABA *Standards*. First, the presumptive sanction is determined by considering: (1) the ethical duty violated, (2) the lawyer's mental state, and (3) the extent of the actual or potential harm

caused by the misconduct. Second, the court considers any aggravating or mitigating factors that may alter the presumptive sanction or affect the duration of a suspension.

[In re Disciplinary Proceeding Against Cohen, 149 Wn.2d 323, 338, 67 P.3d 1086 \(2003\)](#).

P47 The Board found that for each count, the presumptive sanction was a reprimand. In finding that the presumptive **[*743]** sanction for lack of diligence was a reprimand rather than suspension, the Board rejected the hearing officer's determination that Longacre's conduct constituted a pattern of neglect and the WSBA's argument that Longacre acted knowingly rather than negligently. **[***29]** See ABA *Standards* std. 4.42. After concluding that the presumptive sanction for each count was a reprimand, the Board found that "the multiple violations aggravate this sanction to a suspension." Disciplinary Bd. Order, at 2. The Board's final sanction recommendation was a 60-day suspension and attendance at 30 hours of additional CLE classes. The Board declined to adopt the hearing officer's recommendation that \$ 9,000 in restitution be imposed because it found that "the client did receive value from Mr. Longacre's representation at the trial." *Id.* at 2-3.

1. Whether Longacre's lack of diligence and communication was negligent or knowing

P48 The hearing officer found that Longacre's "failure to communicate to Tripp the full risks of going to trial on the charges and the plea offers received was not intentional, but negligent." FOF and COL at 10. The Board did not disturb this conclusion. The WSBA argues on appeal that the hearing officer and the Board ignored the state of mind between negligent and intentional--knowing--and that because Longacre acted knowingly, the presumptive sanction for violations of [RPC 1.2, 1.3](#), and [1.4](#) should be suspension rather than reprimand. **[***30]** See ABA *STANDARDS* std. 4.42(a) [HN13](#) ("Suspension is generally appropriate when . . . a lawyer knowingly **[**720]** fails to perform services for a client and causes injury or potential injury to a client . . .").

[WA12](#) [12] [WA13](#) [13] P49 [HN14](#) The ABA *Standards* define "[i]ntent" as "the conscious objective or purpose to accomplish a particular result," "[k]nowledge" as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result," and "[n]egligence" as

"the failure of a lawyer to heed a substantial risk that circumstances exist [*744] or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." ABA *Standards* at 7. This is a factual determination and the hearing officer's finding is given great weight. *Anschell, 149 Wn.2d at 501, 69 P.3d 844* ("We decline . . . to make the initial determination of the applicable mental state and the extent of harm in connection with each of the violations. Both inquiries are factual in nature, and the hearing officer is in the best position to make such determinations based upon the evidence presented. [***31] ").

P50 In finding that Longacre behaved negligently rather than intentionally, it is unclear whether the hearing officer considered the possibility that Longacre acted knowingly. But the hearing officer did clearly make a factual finding that Longacre's behavior was negligent and the Board affirmed that finding. The WSBA's arguments are suggestive that Longacre acted knowingly but are not sufficient to overcome the deference due to the hearing officer's determination of negligence.

P51 Because the hearing officer was in the best position to make the determination and the record does not strongly suggest Longacre's actions were knowing rather than merely negligent, we leave this finding undisturbed.

2. Whether the WSBA established a pattern of neglect such that the presumptive sanction for count II should have been suspension rather than a reprimand

P52 The WSBA argues that the Board erred in rejecting the hearing officer's determination that the record established a pattern of neglect. *HN15* [↑] Under ABA *Standards* std. 4.42(b), when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client," suspension is "generally appropriate." The Board stated that because [***32] Longacre conveyed one plea agreement and some sentencing information to his client, his actions were inconsistent and, therefore, a pattern of neglect did not exist.

[*745] P53 Although the Board did not specifically alter any of the hearing officer's FOF, it did conclude that some information (including a plea agreement) was conveyed to Tripp.⁵ The hearing officer made no such finding and, conversely, made several findings of

instances where information should have--but was not--conveyed to Tripp. See FOF 12, 14-15, 17, 29. Thus, despite the fact that it did not acknowledge that it was doing so, the Board necessarily modified the hearing officer's FOF to the extent that it found that some information was communicated to Tripp.

P54 While we cannot determine from the record the precise number of instances constituting Longacre's failure to communicate, the fact that such failure occurred is clear. However, the insufficiency of the record with regard to the number of instances leaves [***33] us unable to determine as a matter of law that Longacre was engaged in a pattern of neglect. We affirm the Board's conclusion that Longacre was not engaged in a pattern of neglect.

3. Whether the Board's conclusions of aggravating and mitigating factors were correct

WA14 [↑] [14] P55 Longacre argues that, in addition to Longacre's lack of prior discipline, the Board should have also adopted as mitigating factors "Mr. Longacre's extensive well respected criminal trial history without any similar complaints, his absence of dishonest motive, [and] his timely good faith effort to get Trip[p] appellate counsel." Resp't's Br. at 45. Longacre does not provide any citation [**721] to the record that supports these claims.⁶ [***34] Additionally, it does not [*746] appear that Longacre argued these potentially mitigating factors before the hearing officer or the Board.⁷

P56 Longacre also assigned error to the Board's finding

⁶The court asked Longacre during oral argument to provide citation to the record in support of his claim that he argued for these mitigating factors below. Longacre responded by citing to TR at 175-78. These pages consist of the testimony of DPA Anderson and Thomas Weaver (Tripp's prior counsel and counsel on the motion for a new trial). They are irrelevant to the mitigating factors that Longacre proposes.

⁷The dissent would allow an attorney to successfully argue for the first time before this court that the Board should have considered several mitigating factors, despite the fact that the attorney provides no support when making such arguments to this court. The dissent would have us conduct an independent search of the record to find support for claims that Longacre himself made no attempt to prove (reputation, absence of dishonest or selfish motive, and timely good faith effort to rectify consequences), and one that Longacre never even asserted (cooperative attitude during proceedings). The attorney appealing recommended discipline has the responsibility to provide factual and legal authority to support the claims being made.

⁵The vote on this issue was 8-2.

of aggravating factors (substantial experience in the practice of law, failure to acknowledge wrongful conduct, and multiple offenses), arguing that he "should not be faulted for believing in his position, and that should not be confused with a lack of remorse." *Id.* But the Board recommended a suspension rather [***35] than reprimand because of the multiple violations, not because of the other aggravating factors it noted. Further, the remaining two aggravating factors are supported in the record.

P57 We adopt the Board's proposed aggravating and mitigating factors.

4. Proper sanction

P58 The WSBA asks the court to impose at least a six-month suspension, while Longacre argues that, at most, he should receive a reprimand. The hearing officer recommended a six-month suspension, 30 hours of additional CLE credits, restitution, and probation. The Board recommended a 60-day suspension and 30 hours of additional CLE credits. As previously noted, this court retains ultimate control over the proper sanction.

[WA15](#) [↑] [15] P59 *Suspension*: Because we have declined to find a pattern of neglect or a knowing state of mind, the presumptive sanction for each count is a reprimand. ABA STANDARDS stds. 4.43, 4.53, 5.23. The Board found that, although the presumptive sanction for each count was a reprimand, the multiple violations aggravated the sanction to a suspension. [HN16](#) [↑] The ABA *Standards* recognize in its theoretical framework [*747] that "[t]he standards do not account for multiple charges of misconduct. The ultimate sanction . . . [***36] . . . might well be and generally should be greater than the sanction for the most serious misconduct." ABA STANDARDS at 6.

[WA16](#) [↑] [16] P60 On several occasions, we have entered 60-day suspensions based on the Board's recommendation. See, e.g., [In re Disciplinary Proceeding Against Lopez, 153 Wn.2d 570, 106 P.3d 221 \(2005\)](#); [In re Disciplinary Proceeding Against Carmick, 146 Wn.2d 582, 48 P.3d 311 \(2002\)](#). [HN17](#) [↑] When the Board is unanimous in its recommended sanction, this court is reluctant to reject its recommendation. [In re Disciplinary Proceeding Against Cohen, 150 Wn.2d 744, 763, 82 P.3d 224 \(2004\)](#).⁸

⁸We need not consider whether the recommended sanction is proportionate to Longacre's misconduct or to sanctions imposed against other attorneys because Longacre has not

Here, the Board voted 8-2 to recommend a 60-day suspension. We agree with the recommendation and impose a 60-day suspension.

[***37] P61 *Restitution*: [HN18](#) [↑] A lawyer subject to discipline "may be ordered to make restitution to persons financially injured by the respondent's conduct." [ELC 13.7\(a\)](#). Restitution has been ordered in cases where a lawyer failed to properly communicate with and diligently represent his or her client. See [Cohen, 150 Wn.2d at 764](#); [Anschell, 141 Wn.2d at 619-20](#).

P62 The hearing officer specifically found that "[a]s a result of [Longacre's] failure to properly communicate the standard range [*722] sentences to Tripp and his failure to communicate the plea agreements to Tripp, Tripp was deprived of his right to participate meaningfully in the proceedings and faced a possible sentence of 221 months, as opposed to a 57 month sentence." FOF and COL at 10. The Board did not alter this finding, but it rejected the hearing officer's imposition of restitution because it determined that Tripp and his father received value from Longacre's representation.

[*748] [WA17](#) [↑] [17] P63 To say that Tripp received absolutely no value from Longacre's services is extreme. Additionally, evidence relating to what Longacre received for his services and what it cost Tripp and his father to rehire Mr. Weaver after the [***38] first trial is noticeably absent from the record. The only evidence the WSBA cites to is the testimony of Tripp's father. Tripp's father guessed the amount paid to Longacre was somewhere around \$ 9,000, but also admitted he did not have the documentation to support that figure. TR at 99. The record does not support the imposition of restitution.

P64 In sum, we impose upon Longacre 30 hours of additional CLE courses and a 60-day suspension. We decline to order restitution.

C. Whether the Board erred in denying Longacre's motion to supplement the record

P65 On March 24, 2004, after briefing before the Board was complete, Longacre filed a "Motion Requesting Additional Proceedings" under [ELC 11.11](#). Longacre was attempting to offer the testimony of Tripp's father's from the motion for a new trial hearing. Longacre could

brought "forward cases to try to persuade us that the recommended sanction is disproportionate." See [Anschell, 149 Wn.2d at 517](#).

have introduced this testimony within the normal timeframe for introducing evidence at his disciplinary hearing. The Board unanimously denied Longacre's request. Longacre claims the testimony is necessary because credibility of the witnesses is at issue and to prevent "an absolute miscarriage of justice." Resp't's Br. at 47.

[WA18](#)^[↑] [18] [WA19](#)^[↑] [19] P66 As the WSBA points out, Longacre's motion was **[***39]** untimely under [HN19](#)^[↑] [ELC 11.11](#), which allows parties to request an additional hearing within the contents of their briefs filed pursuant to [ELC 11.8](#) (briefs for review involving suspension or disbarment recommendation) or [11.9](#) (briefs for review not involving suspension or disbarment recommendation). As the hearing officer recommended suspension, [11.8\(c\)](#) provided the timeline for briefing. Longacre did not request additional proceedings in his briefing pursuant to [ELC 11.8](#). Further, Longacre did not satisfy the basis from which additional proceedings may be allowed **[*749]** under [ELC 11.11](#). [ELC 11.11](#) allows an additional hearing "based on newly discovered evidence." Testimony from four years prior is not newly discovered, especially where Longacre himself participated in the past proceedings. [ELC 11.11](#) provides that "[t]he Board may grant or deny the request in its discretion." The Board did not abuse its discretion in denying Longacre's motion.

IV. CONCLUSION

P67 We impose a 60-day suspension and 30 additional hours of CLE courses as recommended by the Board. We also affirm the Board's denial of Longacre's motion for additional proceedings.

Alexander, C.J., and C. Johnson, Bridge, and Owens, JJ., concur.

Concur by: J.M. JOHNSON

Concur

P68 J.M. Johnson, J. **[***40]** (concurring) -- I concur with the majority that attorney Longacre's conduct merits a 60-day suspension. This conclusion is largely predicated on Longacre's own explanation to Judge William Howard of his conduct, leading that judge to order a new trial based on a finding of ineffective representation of counsel.

P69 I largely agree with the dissent in its general analysis of aggravating or mitigating circumstances. The court need not rely on such factors today since a 60-day suspension is clearly warranted.

Dissent by: MADSEN, J.

Dissent

P70 Madsen, J. (dissenting) -- Clayton Longacre was charged with three counts of misconduct with respect to the same client, violating [RPC 1.1](#), [1.2\(a\)](#), [1.3](#), [1.4](#), and [8.4\(d\)](#). The presumptive sanction for these violations is a reprimand according **[**723]** to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991 & Supp. 1992) (*ABA Standards*). However, the Disciplinary Board of the Washington State Bar Association (the Board) recommended, and the majority approves, a 60-day suspension and a requirement that Longacre attend 30 hours of continuing **[*750]** legal education (CLE) courses in the field of criminal law. In so doing, the majority fails to adequately address Longacre's **[***41]** claims that the Washington State Bar Association's (WSBA) Disciplinary Board did not consider or apply several potential mitigating factors that are supported by the record and incorrectly relies on the multiple offenses aggravator to increase the sanction from the presumption to a 60-day suspension.

P71 The majority declines to examine Longacre's mitigation arguments because, it says, Longacre failed to explicitly argue mitigating factors to the hearings officer or the Board.⁹ Majority at 745-46. But the WSBA disciplinary counsel did not argue any specific aggravating or mitigating factors before the hearings officer or Board. Moreover, in other cases, this court has examined the record independently and found additional aggravating or mitigating factors, choosing not to limit itself to what was found by the hearings officer or the Board. Here, the record supports additional mitigating factors. In fairness, and for the sake of consistency, this court can and must consider these factors in determining Longacre's discipline. In my view, the mitigating factors outweigh any aggravating factors and, therefore, the appropriate sanction is a reprimand. Accordingly, I dissent.

⁹ Longacre did explicitly argue one mitigating factor to the hearing officer, Transcript of Hearing at 300 (arguing *ABA Standards* std. 9.32(d)), but the others he now urges were not expressly raised as mitigating factors.

[*42]** P72 In lawyer discipline matters the hearings officer begins by determining whether the WSBA disciplinary counsel has produced facts that prove, by a preponderance, the charged violations. The hearings officer then determines the lawyer's mental state and the degree of harm, or potential harm, caused by the violations and arrives at the presumptive sanction. Mitigating or aggravating circumstances may alter the presumptive sanction. In this case the hearings officer did not identify or weigh any mitigating or aggravating circumstances. Rather, in his findings of fact the hearings officer stated that "[r]espondent has no prior **[*751]** disciplinary record" and "[r]espondent has admitted he did not correctly calculate the sentencing ranges faced by Tripp; but has generally denied any further wrongdoing." Clerk's Papers at 181 (Findings of Fact 32, 33).

P73 Under Washington's disciplinary scheme, these findings of fact are reviewed for substantial evidence by the Board. [ELC 11.12\(b\)](#). The Board also reviews conclusions of law and recommendations de novo. *Id.* Here, the Board modified the hearings officer's findings of fact and conclusions of law by determining that the WSBA failed to prove that **[***43]** Longacre engaged in a pattern of neglect but that the WSBA did establish that Longacre's actions were conduct prejudicial to the administration of justice. Decision Papers (DP) at 4 (Bd. Order re Findings of Fact and Conclusions of Law). These changes to the hearing officer's findings altered the presumptive sanction from suspension to reprimand. Then, the Board "adopted" three aggravating factors and one mitigating factor that it extracted from the record: "substantial experience in the practice of law, failure to acknowledge wrongful conduct and multiple offenses" and "no prior discipline." DP at 4. The Board recommended suspension, despite the presumption, primarily because of the "multiple violations" aggravating factor. It limited the suspension to 60 days, however, because the presumptive sanction was reprimand. *Id.*

P74 As noted, the majority accepts the Board's recommendation and imposes a 60-day suspension upon Longacre, with the additional requirement that he attend 30 hours of CLE courses in the field of criminal law, because it says that Longacre failed to argue for the mitigating factors that he raises in this review and because the majority holds that the multiple offenses aggravator found by the Board **[***44]** is appropriate in this case. However, the majority fails to recognize that Longacre is not required to argue the specific **[**724]** factors listed in the ABA STANDARDS std. 9.32 before

the hearings officer or the Board in order to raise them on appeal.

[*752] P75 This court has "inherent and exclusive jurisdiction over the lawyer discipline and disability system" in cases where the recommended sanction is disbarment or suspension. [ELC 12.2\(b\)](#). The court has "ultimate responsibility [and authority] for determining the nature of an attorney's discipline." [In re Disciplinary Proceeding Against Tasker, 141 Wn.2d 557, 565, 9 P.3d 822 \(2000\)](#). While the "court does not lightly depart from the Board's recommendation . . . it is not bound by it," [id. at 565](#), and is thus free to examine the record and determine if additional mitigating or aggravating factors exist as part of its review. [In re Disciplinary Proceeding Against Cohen, 150 Wn.2d 744, 758, 82 P.3d 224 \(2004\)](#); [In re Disciplinary Proceeding Against Schafer, 149 Wn.2d 148, 169, 66 P.3d 1036 \(2003\)](#) (finding additional mitigating factors beyond those found by hearings officer); [In re Disciplinary Proceeding Against Schwimmer, 153 Wn.2d 752, 757, P 18, 108 P.3d 761 \(2005\)](#) **[***45]** (holding that this court has the authority to review the complete record and come to its own conclusions regarding the proper sanctions). The majority's failure to examine the record for mitigating factors independently of the Board's findings is inconsistent with these cases.

P76 Moreover, because of the sensitive nature of disciplinary proceedings, which may strip a lawyer of his professional license or permanently stigmatize and scar his professional reputation, the court should strive to fully examine the record in order to ensure a just and fair outcome. See, e.g., [In re Disciplinary Proceeding Against Allotta, 109 Wn.2d 787, 792, 748 P.2d 628 \(1988\)](#); see also [Nguyen v. Dep't of Health, 144 Wn.2d 516, 527, 29 P.3d 689 \(2001\)](#).

P77 Longacre contends that the Board should have considered his "extensive well respected criminal trial history without any similar complaints, his absence of dishonest motive, [and] his timely good faith effort to get Trip[p] appellate counsel." Resp't's Br. Objecting in Part to Bd.'s Decision (Resp't's Br.) at 45. These three mitigating factors, plus an additional one, are supported by the record and **[*753]** should be included in **[***46]** the determination of Longacre's final sanction.

P78 The first mitigating factor discounted by the majority is ABA *Standards* std. 9.32(d), a "timely good faith effort to make restitution or to rectify consequences of misconduct." Longacre *explicitly* argued before the hearings officer that he had done everything possible to

secure appellate counsel for his client, Tripp, and to track relevant Supreme Court cases that supported a new trial for his client, even after he had been replaced by Mr. Weaver as Tripp's lawyer and even though Longacre knew that he would not receive additional fees from Tripp. Transcript of Hearing (Tr.) at 281, 291-94, 299-300. Longacre even attempted to contact Tripp and inform him that new case law significantly improved his chances at trial,¹⁰ but Mr. Weaver would not allow it. Tr. at 300. This evidence was un rebutted and meets the standard of making a "timely good faith effort . . . to rectify consequences of misconduct."

[*47]** P79 Next, although the Board found that Longacre had "significant experience in the practice of law," it ignored evidence of Longacre's "character or reputation," a mitigating factor under ABA *Standards* std. 9.32(g). Mr. Jones, Sr., testified to Longacre's reputation when he explained that another attorney recommended Longacre, stating that Longacre "was a good attorney, you probably want to talk to him." Tr. at 98. Additionally, Longacre described his own reputation several times throughout his testimony. Tr. at 233 ("I had the highest win rate for some reason in the public defender's office up there as well as in this whole region."); Tr. at 234 ("So I gained a reputation before I got out of law school of doing exceptional trial work."); Tr. at 262-63 ("Because in the jail, these people think I'm a miracle-maker **[**725]** sometimes when they hear about the different people that I've won acquittals on."). Because the Board **[*754]** found that Longacre had "significant experience in the practice of law," fairness and justice require that we take into consideration his reputation as a competent and well-respected defense attorney as described in the record.

P80 Another mitigating factor described in **[***48]** ABA *Standards* std. 9.32(b) is "absence of a dishonest or selfish motive." Longacre raises this argument on appeal to this court, but the majority again disposes of it by simply stating that Longacre waived his right to have these mitigating circumstances examined. Although the record does not contain any explicit testimony, i.e., Longacre was never asked why he failed to communicate the prosecutor's offer to his client, it can be easily inferred from his testimony before the hearings

¹⁰ Longacre suggested that [State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 \(2000\)](#) and [State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 \(2000\)](#) created a rule that allowed him to prove that the jury instruction for accomplice liability was incorrect, which Longacre believed gave his client a "much better chance." Tr. at 292.

officer and in his briefs to the Board that Longacre believed the plea offers were so outrageous and unfair that they could not be viewed as serious offers. This does not excuse him from his duty to inform his client of the plea offers, but it does show that he was motivated by the desire to get the best deal for his client and not from selfish or dishonest considerations.

P81 Next, Longacre's extensive testimony and willingness to be cross-examined must be seen as evidence of his "full and free disclosure to [the] disciplinary board or cooperative attitude toward [the] proceedings." ABA *Standards* std. 9.32(e). Longacre was not accused of failing to cooperate with the hearings officer or board, and **[***49]** there is no reason to deny him this mitigating factor.

P82 Even accepting the aggravating factors adopted by the Board, the balance of mitigating to aggravating factors points in favor of the presumptive sanction of reprimand, not an increase to suspension. However, the "multiple offenses" and "failure to acknowledge wrongful conduct" aggravating factors are also suspect. The Board's finding of "multiple offenses" as an aggravating factor and the majority's adoption of that finding is dubious in light of similar cases. This particular factor is especially important here, as the Board and majority rely upon it as the reason for increasing the sanction to suspension from the presumptive **[*755]** reprimand. Majority at 746. The ABA *Standards* list two cases that demonstrate when the "multiple offenses" aggravating factor is appropriate, [State ex rel. Oklahoma Bar Ass'n v. Warzyn, 624 P.2d 1068, 1981 OK 23 \(1981\)](#), and [Ballard v. State Bar of California, 35 Cal.3d 274, 673 P.2d 226, 197 Cal.Rptr. 556 \(1983\)](#). Longacre's behavior does not begin to approach the nature and extent of the misconduct in these cases.

P83 In *Warzyn*, the disciplined attorney defrauded **[***50]** an innkeeper, engaged in multiple acts of "obtain[ing] cash and merchandise, goods, and services by means of false and bogus checks," [624 P.2d at 1072](#), and obtained "payment for professional services to be rendered" which he later failed to fully perform. *Id.* The court noted that the attorney's misconduct was not the result of a single transgression and that he engaged in misconduct over an extended period of time. [Id. at 1073](#).

P84 In *Ballard*, the attorney was charged with 34 counts of misconduct spanning 34 clients and seven years of practice. The attorney was found to have committed 32 of the 34 charged counts by the hearing panel and

review board. The charges were so numerous, the court grouped them into general categories in order to describe them. [35 Cal.3d at 279](#). The attorney "failed to perform [properly the duties] for which he was employed," *id.*, "violated [rule 8-101](#) in his handling of funds held in trust for six individual clients," *id.* (footnote omitted), refused to "refund the unearned portion of advanced fees upon being discharged or withdrawing from employment," [id. at 280](#), and "violated several [***51] miscellaneous disciplinary provisions." *Id.*

P85 Similarly, recent cases in which this court approved "multiple offenses" as an aggravating factor involved circumstances in which an attorney either engaged in *multiple* acts violating several ethical rules with one client or violated several rules with respect to multiple clients. See, e.g., [In re Disciplinary Proceeding Against Lopez, 153 Wn.2d 570, 580, P 19, 106 P.3d 221 \(2005\)](#) (finding multiple offenses because the attorney [**726] missed four deadlines and [*756] violated four separate ethical and disciplinary rules); [In re Disciplinary Proceeding Against DeRuiz, 152 Wn.2d 558, 567-72, 99 P.3d 881 \(2004\)](#) (charging attorney with 11 counts of misconduct with respect to three client matters); [In re Disciplinary Proceeding Against Ansell, 149 Wn.2d 484, 490, 69 P.3d 844 \(2003\)](#) (charging attorney with 11 counts of misconduct with respect to three client matters).

P86 Longacre's conduct does not warrant a "multiple offenses" aggravator. Longacre has not violated ethical rules with respect to multiple clients. Instead, he was charged with three counts of misconduct with respect to the same client, [***52] violating [RPC 1.1](#), [1.2\(a\)](#), [1.3](#), [1.4](#), and [8.4\(d\)](#). While found to have engaged in five separate ethical rules violations, this disciplinary action is primarily based on Longacre's alleged failure to communicate to his client one or more plea offers from the prosecutor and "miscalculations" surrounding these plea offers. The third count alleging conduct prejudicial to the administration of justice stems from the same conduct. Furthermore, it is unclear how many transgressions Longacre *actually* committed. Majority at 745. The Board rejected a finding that Longacre engaged in a "pattern of neglect" because the evidence did not support it. The Board found that "Mr. Longacre did provide one plea agreement and some sentencing implications to his client, but not others." DP at 4. Since the hearings officer found only two plea offers, the necessary implication is that Longacre only failed to convey, at most, one offer to his client.

P87 Longacre's conduct, as limited and discrete as it was, viewed as a whole, does not rise to the level of egregiousness justifying a finding of "multiple offenses." In virtually any attorney discipline case, multiple counts are commonly charged simply because most [***53] discrete behaviors violate more than one RPC. Surely the ABA *Standards* and this court never intended that *all* attorneys charged with multiple counts of misconduct be subject to the "multiple offenses" aggravating factor. The test for "multiple offenses" must require something more. More importantly, "multiple [*757] offenses" is not listed as a uniquely important aggravating factor in the ABA *Standards*, and there is no reason why this aggravator alone should overcome the multiple mitigating factors present in this case.

P88 The Board also found as an aggravating factor that Longacre failed to acknowledge his wrongful conduct. The majority simply noted that it was the multiple offenses rather than the other aggravating circumstances that caused the Board to recommend suspension instead of the presumptive reprimand. Majority at 746. If this aggravating factor is irrelevant, the majority has little reason to affirm it. Moreover, Longacre argued that he "should not be faulted for believing in his position, and that should not be confused with a lack of remorse." Resp't's Br. at 45.

P89 Finally, there are facets of this case that the majority does not discuss, which I find significant. For [***54] example, Longacre's client, Tripp, did not initiate this complaint or join in as a complainant after it was filed. Rather, the record shows that this grievance was filed by the complaining prosecutor after he was sued by a different client represented by Longacre in a civil matter. Resp't's Br. at 46. While no findings of fact were entered regarding this claim, it should still cause the court to pause and consider the nature of the complaints in this case. Additionally troubling is the fact that this disciplinary action, in part, stems from statements Longacre made during a hearing for a new trial based on ineffective assistance of counsel. If subpoenaed, a defense attorney must testify fully to the actions he or she took while representing the client. Anything less would impact the trial court's ability to make a full assessment of the facts and render a just decision. This court should be concerned that when the prosecutor initiates a bar complaint based on testimony related to a claim of ineffective assistance of counsel, the threat of bar discipline may well have a chilling effect in future cases of this kind. Full and complete testimony is necessary for just decision. This goal [***55] [*758] is not served if an attorney faces bar discipline, initiated

by **[**727]** his or her adversary in the proceeding.¹¹

P90 The purpose of attorney discipline is primarily to protect the public and maintain public confidence and trust in the legal system and secondarily to deter other lawyers from similar behavior. [*In re Disciplinary Proceeding Against Noble*, 100 Wn.2d 88, 95, 667 P.2d 608 \(1983\)](#). According to the findings of fact and conclusions of law that this court has accepted, Longacre violated several ethical duties to his client, **[***56]** Mr. "Tripp" Jones III. However, a suspension, even for only 60 days, is not warranted by the facts of this case and is unfair and excessive given the multiple mitigating factors that have not been considered and the questionable aggravating factors relied upon by the Board.

P91 The Board's recommendation should be rejected and Longacre should be reprimanded, not suspended. I respectfully dissent.

Sanders and Chambers, JJ., concur with Madsen, J.

End of Document

¹¹My concern is not limited to cases involving ineffective assistance of counsel. This court recently reviewed a petition for review involving a trial prosecutor's violation of a pretrial order excluding certain testimony. Presumably the prosecutor may be subject to discipline for violating the trial court order, should defense counsel file a complaint. I am not convinced that our disciplinary system was intended to be used by disgruntled adversaries, as occurred in this case.

Attachment “T”

Declaration of Clayton Ernest Longacre

1. I am over twenty-one years of age and currently reside in Port Orchard, Washington. I served as trial counsel for the Petitioner in the above-entitled matter.
2. I have personal knowledge of the facts contained herein, and the facts and matters contained herein are true, accurate and complete to the best of my knowledge and belief.
3. Mr. Conner retained me to represent him in Kitsap County Superior Court No. 11-1-00435-8. The case was tied to a number of robberies of drug dealers committed by a group of individuals, whom none of the victims could identify due to masks. Until Mr. Conner happened to be in a truck owned and driven by Jarell Smith, with Mr. Perez in the back seat, he was never considered by police to a member of the group of robbers. Mr. Conner was not armed when he was arrested, although there were two guns in the back of Jarell Smith's truck.
4. Before my entering the case, Mr. Conner was previously represented by a public defender. In my initial discussion with Mr. Conner, I understood that the public defender had already discussed with him the prosecutor's plea offer of 150 months. He told me the public defender wished him to take the plea and Mr. Conner refused. I also discussed the offer, and told him that if he wished to plea, he would not need to expend the extra money for my services as the public defender could handle that plea well. Mr. Conner insisted he was innocent and wished to go to trial.
5. At the time, if my memory serves me correct, the state had only one co-defendant willing

to testify against Mr. Conner. Jarell Smith, arrested at the same time as Mr. Conner, was the only inner circle of the robbery gang who had agreed to testify against other members. His first confession, which minimized his involvement, focused mostly on Mr. Perez and seemed to only casually relate to Mr. Conner. His statements over the next several weeks, during the time it became apparent to the state that Mr. Conner would not accept their deal, got stronger against Mr. Conner with coaching. But those later statements became increasingly inconsistent and seemingly given to satisfy his need to have his charges substantially reduced (he served very little time, a few months for his providing testimony against the others that the police and prosecutor wanted to prove were involved).

6. Joe Perez was the ring leader of the robbery group. He was in the vehicle the police stopped. The vehicle was driven and belonged to Mr. Smith. Mr. Conner insisted he was innocent of all charges and was supposed to be dropped off at an apartment complex where the mother of his children resided, the street just before the police pulled them over.
7. The alleged victims of the robberies Mr. Perez orchestrated were all sellers of illegal drugs, mostly marijuana. Although other items were often taken, marijuana and money were the main targets. Mr. Perez quickly pled guilty, never testified, and was released within several years of his arrest.
8. The state had only one, allegedly civilian. But the witness could only identify Mr. Perez (sorry, I cannot remember his name). However, with police prompting, he later claimed to have talked with a African American person in the passenger seat of Mr. Smith's truck

about an intended robbery to be carried out soon after the meeting. The witness's contacting the police was the reason for the police stopping the vehicle. The contact began earlier in the day. The meeting was set up by the witness.

9. Mr. Conner was in the passenger seat at that meeting, and still there a few minutes later when the police pulled over the truck. He was in the passenger seat with Mr. Perez sitting in the back seat, because he was supposed to be shortly dropped off at his girlfriend's house, the mother of his young children, just up the street while Mr. Smith and Mr. Perez continued on in the truck. Mr. Conner was getting a ride across town, no more. It explains why Mr. Perez, who wanted to meet with the witness, got in the back seat of the truck, rather than in the front seat: because Mr. Conner was to be let out soon.
10. My investigation, easily deduced from statements of that "civilian witness" as well as from other sources, that witness was a "shylock": one, who for a finder's fee or a piece of the action, directs the leaders of such groups onto available targets. He claimed at trial he was setting Perez up because Perez had robbed a dope dealer friend of his. However, my investigation indicated he owed Perez a substantial amount of money for drugs fronted to him, and that the meeting, just before the police arrested everyone in the vehicle with Perez was about that money. At the meeting, Perez demanded the witness pay him back soon or face consequences. The witness needed the police to get rid of Perez as he could not repay the debt. Mr. Conner got caught in the crossfire.
11. So I agreed to represent Mr. Conner, telling him, with him being black and the juries in Kitsap County almost always white, and that the civilian witness was white, it was an uphill battle at best.

12. It became a harder battle when a second robber (I also cannot remember his name) agreed to testify against Mr. Conner for a reduction in charges and his sentence. He was a young man Mr. Conner had attempted to get out of street crime (burglaries and thefts). He was also the focus of a police investigation for armed robberies before Mr. Conner was arrested. When the second robber witness got arrested, with police and prosecutor prompting, he agreed to testify against Mr. Conner for a very light sentence and reduction of charges (and it was very light in light of all his possible charges, including those robberies unrelated to Mr. Perez, and unrelated to the charges alleged against Mr. Conner). This second robber had worked very much with Mr. Perez. He also had formed his own gang and had been identified by victims as the person robbing them at gun point. His statements and Smith's statements seriously contradicted the facts and each other when it came to Mr. Conner's involvement. It was obvious, that as that second robber made more statements against Conner, they changed and got worse for Mr. Conner the closer they got to trial (and the more police interaction he had). Like Mr. Smith, he minimized his involvement with Mr. Perez and didn't mention his many other armed robberies.
13. I let Mr. Conner know it would be only by the grace of God if we won against the two robber witnesses and the shylock: ten years was a whole lot less than never seeing the light of day again (the sentence with the added charges and enhancements would give him essentially life without parole). However, he maintained his innocence and insisted on going to trial. With the recorded statements of the two robbery witnesses, I felt we had a chance at showing the jury their statements were contrived in the interest of self

preservation, that they were constructed and/or changed to make sure they were let off the big hook they were facing.

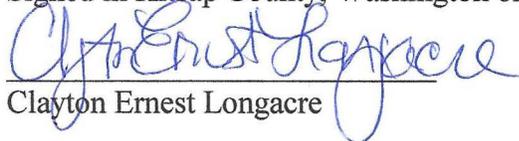
14. However, at trial, the judge refused our attempts to bring in all of their taped statements with their myriad of inconsistencies. As well, the judge refused to allow us to delve into all the other charges the second robber had escaped by agreeing to help the prosecutor turn on Mr. Conner, charges he failed to confess to in his moment of “contrite coming clean.” Further, the only black juror was wrongly booted off the jury after the jury was seated, and the jury pool sent home. And the one juror who later let us know that he would not have voted for conviction with the evidence produced, a juror known to be unfriendly to the prosecution from the beginning of the case, got designated the alternate juror at the end of closing arguments. Those circumstances were strange as the court clerk conducted the drawing without having anyone being able to verify or see her methods or the number she picked; she simply announced juror six as the one to be excused. She was later overheard asking the prosecutor and court reporter, “weren’t they relieved when she got rid of juror six.” The let her know they were happy with her performance.
15. It has always been my professional philosophy to give clients the decision making authority to choose between accepting a plea or going to trial. When a client maintains their innocence, as Mr. Conner has, I do not try to talk them into a plea, but I do tell them the consequences, that no matter how rosy their case might look (and Mr. Conner’s did not look rosy), jurors are unpredictable and have many times been known to convict innocent people. I further let them know that jurors come into a case prone to conviction,

rather than presuming innocence. Mr. Conner still wanted to go forward.

16. We spent a month trying the Conner case. It was obvious the Judge played into the prosecutor camp. I later conducted a freedom of information request and was astounded to see even the court reporter sending out emails during trial denigrating Conner and the defense team. The second robber's girlfriend, after she finally gave up on him after trial, came up to the paralegal who sat at the defense table with Mr. Conner and myself, and said that second robber had got her to work with the prosecutor's office to make up stories about Mr. Conner to get his bail revoked. It worked, with Mr. Conner going into custody during trial. The Jury saw the change, it obviously affected them. The case became much harder. At the end, when talking to the attorneys, one juror commented that the only witness they could believe was the white shylock (the two cooperating robbers and all but one of my client's witnesses were black).
17. In my opinion, with the judge keeping her thumb on the state's side of the scales, Mr. Conner didn't have a chance at a fair trial. This is the same judge, that before her election to the bench, I witnessed get on her knees in the hallway in the court house and beg the sheriff for his endorsement of her campaign for Superior Court Judge. That vision has always haunted me as I think about Mr. Conner.

I, Clayton Longacre, swear under penalty of perjury that I have read the foregoing, and that the statements made therein are true and correct based upon my own personal knowledge.

Signed in Kitsap County, Washington on this 16th Day of July, 2018;

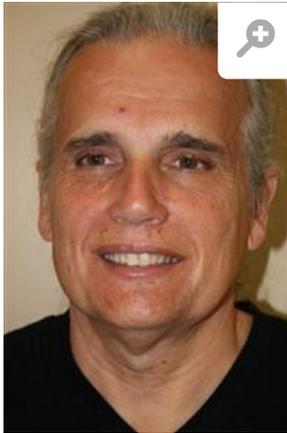

Clayton Ernest Longacre

Attachment “U”



LOCAL NEWS

Longtime Port Orchard attorney disbarred



Clayton E. Longacre

By *Josh Farley* of the Kitsap Sun



Longtime Port Orchard attorney Clayton E. Longacre has been disbarred by the state Supreme Court.

The state bar association accused Longacre, who's practiced law in Washington since 1992, of failing to provide legal services to four paying clients, charges he denies.

The bar also alleges Longacre placed liens against clients "without a legal basis to do so" and did not cooperate with the bar's investigation. But Longacre contends he was not properly served with legal documents necessary to begin discipline proceedings against him.

Washington State Bar Association Hearing Officer Nadine D. Scott called Longacre's actions "repeated misconduct" that "harmed the reputation of the profession."

"Longacre's clients and their families suffered stress when they could not reach Longacre, especially as court dates loomed or after he closed his office," Scott wrote. "Longacre's misconduct hampered court administration when he failed to appear and failed to withdraw."

The bar also has ordered Longacre to pay back almost \$35,000 in total fees he collected from four clients.

Longacre defended himself against the bar's allegations, saying he'd done the legal work for which he'd been paid.



against him.

"I had to deal with complaint upon complaint, many by people I never represented, one by an inmate I refused to hire, others by individuals I chose not to represent."

He felt Kitsap County has "had issues" with him once he sued the county, on behalf of clients, for civil rights violations.

"My success rate has been a thorn in their side since I began practice in Kitsap County," he said. "Nevertheless, they caucused with the bar to try to find grounds to go after me."

He's filed appeals with the bar and state Supreme Court ? which ultimately has the sole authority to disbar attorneys ? Â hoping for, at the very least, a new chance to vet the allegations.

"There exists ample reason to set aside the default judgment to allow the dispute to be heard on the merits," Longacre wrote in court documents, "Rather (than) decided by technical traps."

In the meantime, Kitsap County's bar association will work with the state bar to help Longacre's clients find substitute counsel, according to local attorney and bar member Paul Fjelstad.

Longacre, who argued for clients in both the civil and criminal arenas, admits in the documents that he was enduring a trying time both "financially and emotionally" in recent years. Friends and family became ill or died, he wrote. He had to close an office due to the economic downturn.

He also took issue with service of the bar's May 2012 complaint, saying a process server should have given him the paperwork directly and had ample time and information about him to do so. Instead, it was mailed during a busy summer that saw Longacre travel for a family member's graduation, come down with poison oak and have to leave the area for a family emergency.



of a plea offer from prosecutors. He also was reprimanded in 2010 for failing to appear in hearings for a client charged with DUI. The bar [sought to disbar him](#) in 2011 for what it felt was a failure to disclose a forged signature on a legal document to a judge. But Longacre [successfully argued to a hearing examiner](#) that he did not intend to mislead the court and that he thought the signature was legitimate.

In the legal world, Longacre saw himself as willing to take on the powers that be. In criminal defense, that meant standing up for clients and taking cases to trial if they elected to do so.

"I'm not the one who has my clients lay down and plead guilty," he said.

Often wearing his trademark Bolo ties and a set of cowboy boots, he's won civil suits in federal and state court and has represented clients acquitted by juries that he still sees out in the community, and who thank him. His philosophy with juries was simple: "I tried to be the one that always gives the jury the truth. Don't try to bamboozle the jury," he said.

Longacre, who will turn 60 this year, said by phone Thursday that he'd like the chance to fight and clear his name but that he was already winding down his law practice and was planning to soon retire. He has much family in the Midwest and he'd like to be closer to them.

He said in the legal profession, "I did a lot of good for a lot of people."

"You change the world by helping people, one person at a time," he said.

"I've tried."



About Josh Farley

Josh Farley covers Bremerton for the Kitsap Sun and is the editor of the Sun's Bremerton Beat blog. He leads a story walk each month to take readers where news breaks in the community, and hosts a monthly trivia night at the Manette Saloon to test their news knowledge. An Oregon native and St. Mary's College of California graduate, he's been with the Sun 10 years.

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Attachment “V”

NO. # _____

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

In Re the Personal Restraint
of:
LA'JUANTA L. CONNER,
Petitioner.

AFFIDAVIT OF LA'JUANTA
L. CONNER

STATE OF WASHINGTON)

:ss.

County of WALLA WALLA)

Affiant, La'Juanta L. Conner, being first duly sworn, deposes and states:

1. I am over twenty-one years of age and currently reside in Walla Walla, Washington. I am the Petitioner in the above-entitled matter.
2. I have personal knowledge of the facts contained herein, and the facts and matters contained herein are true, accurate and complete to the best of my knowledge and belief.
3. I have been convicted of 23 offenses arising out of five home invasions occurring in 2010. I was 21 years-old at the time those offenses were committed.
4. My involvement in criminal activity at that age was driven by my youthfulness. I have now matured and appreciate the wrongfulness of my previous lifestyle and criminal conduct.

5. At the age of 21, when these offenses were committed, I was driven into a criminal lifestyle by an inability to assess risk and consequences of my actions, and a lack of impulse control. Influenced by environmental factors, I felt a strong pull towards criminal activity, and I lacked the common sense or impulse control to resist these feelings.

6. I also suffered from a tendency toward antisocial behavior, feeling that I had to prove myself by showing that I was strong and fearless. The influence from my peers further overrode my capacity to act with common sense and rationality, as I was surrounded by peers deeply entrenched in the criminal subculture.

7. I have matured considerably and learned a lot about life and myself in the nearly eight years that have passed since these crimes. If I were to be given a sentence that took my youth into consideration and allowed for the possibility of rehabilitation, I am confident that, now having matured, I would be a productive and law-abiding member of society.

8. Many witnesses who know me could have testified to my immaturity at the age of 21, and the growth they have seen in me now that I have matured and been taken out of the criminal subculture in which I was involved in my youth. Witnesses could also have testified that, even in my youth, I exhibited signs of potential to be a positive member of society by engaging in prosocial activities such as taking good care of my family and organizing a “car club” that engaged in various positive community service activities. These witnesses, including Joshua Pulley, Brittney Taylor, and Faith Henderson, testified at my initial sentencing, but were not asked to testify specifically about my immaturity at the time of the offenses.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

STATE OF WASHINGTON)

:ss

County of WALLA WALLA)

I, La’ Juanta L. Conner, swear under penalty of perjury that I have read the foregoing, and that the statements made therein are true and correct based upon my own personal knowledge.


LA' JUANTA LE' VEAR CONNER

LAW OFFICE OF COREY EVAN PARKER

July 17, 2018 - 2:42 PM

Filing Personal Restraint Petition

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Conner, La'juanta Le'vear
Trial Court Case Number: 11-1-00435-8
Trial Court County: Kitsap Superior Court
Signing Judge:
Judgment Date:

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