

COURT OF APPEALS  
DIVISION II

2019 APR -2 PM 12:01

STATE OF WASHINGTON

BY HB  
DEPUTY

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

In the Matter of the Application )  
For Release from Personal Restraint )  
of: )  
)  
)  
Juan Ortiz )  
Petitioner )

Personal Restraint Petition  
Pursuant to (RAP 16.3)

*If there is not enough room on this form, use the back of these pages, or other paper. Fill out all of this form and other papers you are attaching before you sign this form in front of a Notary.*

A. Status of Petitioner

I, Juan Ortiz #408941, Clallambay Corrections Center 1830  
Eagle crest way clallambay, WA 98326  
(Full name and address)

Apply for relief from confinement. I am  am not  now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Identify type of order)

1. The Court in which I was sentenced is: Pierce County Superior Court  
Tacoma, WASHINGTON

2. I was convicted of the crime(s) of: Murder in the First Degree, Assault  
in the Second Degree

3. I was sentenced after trial [ ], after plea of guilty [ ] on: June 25, 2018  
(Date of Sentence) (Year)

The judge who imposed the sentence was Stanley J. Rumbaugh  
(Name of trial court judge)

4. My lawyer at trial was: Mr. Philip Thornton  
(Name and address if known; if none, write "none")

5. I did  did not [ ] appeal from the decision of the trial court (if the answer is that I did), I  
appealed to: Court of Appeals Division II  
(Name of court of courts to which appeal was taken)

My lawyer on appeal was: Kevin Hochhalter  
(Name and address if known; if none, write "none")

The decision of the appellant court was [ ] was not [ ] published. If the answer is that it was  
published, and I have this information, the decision is published in: Appeal still  
pending  
(Volume number, Washington Appellate Reports or)

(Washington Reports and page number)

6. Since my conviction I have [ ] have not  asked the court for some relief from my sentence  
other than I have already written above. (If the answer is that I have asked)

The court I asked was: \_\_\_\_\_  
(Name of court or courts in which relief was sought)

Relief was denied [ ] granted [ ] \_\_\_\_\_

(Date of decision, if more than one, dates of all decisions)

7. (If I have answered in question 6 that I have asked for relief), the name of my lawyer in the proceedings mentioned in question 6 was: \_\_\_\_\_

(Name and address if known; if none, write "none")

8. If the answer to the above questions do not really tell about the proceedings and the court, judges and attorneys involved in your case, tell about it here: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. Grounds for Relief**

(If I claim more than one reason for relief from confinement, I attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground," "Second Ground," "Third Ground." Etc.), I claim that I have (number) \_\_\_\_\_ reason(s) for this court to grant me relief from the conviction described in part A.

please see attached declarations and Arguments

Ground

(First, Second, etc.)

1. I should be given a new trial or released from confinement because [Here state legal reasons why you think that there was some sort of error made in your case which gives you right to a new trial or release from confinement.]:

- Houston - Scorners  
- violation of due-process  
- RPC 14(4)  
- 8.4 misconduct(a)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The following facts are important when considering my case [After each fact statement, put the name of the person or persons who know the facts and will support your statement of the fact. If the fact is already in the record of your case, indicate that also.]:

please see attached declarations  
\_\_\_\_\_

3. The following reported court decisions [include citations if possible] in cases similar to mine show the error I believe happened in my case [if none are known, state "None Known"]:

151 Wn.2d 294 In re pers. Restraint of ROY Leelsadore  
2004

4. The following statutes and constitutional provisions should be considered by the court [ if none are known, state "None Known"]:

Sixth Amendment  
Eighth Amendment  
Due-process

5. This petition is the best way to get the relief I want and no other way will work as well because: The facts supporting my arguments are not in the record on direct Appeals.

APR 2 2019 12:01 PM  
STATE OF WASHINGTON  
COURT CLERK

2019 APR -2 PM 12: 01

C. Statement of Finances

If you cannot afford to pay the filling fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do  do not  ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have \$ 0 in my prison or institution account.

3. I do  do not  ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

4. I am  am not  employed. My salary or wages amount to \$ 0 a month.  
My employer is:

\_\_\_\_\_  
\_\_\_\_\_  
(Name and address)

5. During the past 12 months I did  did not  get any money from a business, profession, or other form of self-employment. If I did, it was:

\_\_\_\_\_  
(Kind of self employment)

The total income I got was \$ 0.

6. During the past 12 months, I:

- | DID                      | DID NOT                             |                              |          |
|--------------------------|-------------------------------------|------------------------------|----------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Get any rent payment. If so, |          |
|                          |                                     | the total amount I got was   | \$ _____ |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Get any interest. If so,     |          |
|                          |                                     | the total amount I got was   | \$ _____ |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Get any dividends. If so,    |          |
|                          |                                     | the total amount I got was   | \$ _____ |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Get any other money. If so,  |          |
|                          |                                     | the total amount I got was   | \$ _____ |

7. During the past 12 months, I:

<b>DID</b>	<b>DID NOT</b>		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Have any cash except as said in answer 2. If so, the amount of cash I have is	\$ <u>N/A</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Have any savings accounts or checking accounts. If so the amount in all is	\$ _____
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Own Stocks, Bonds, or Notes. If so, there total value is	\$ _____

8. List all Real Estate and other property and things of value, which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family need.

Item:	<u>N/A</u>	Value:\$	<u>0</u>
Item:		Value:\$	

9. I am  am not  married. If I am married, my spouse's name and address is:  
\_\_\_\_\_  
\_\_\_\_\_

10. All of the persons who need me to support them are listed here:

Name	Address	Age	Relationship
<u>N/A</u>	<u>NONE</u>	<u>N/A</u>	<u>N/A</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



E. Oath of Petitioner

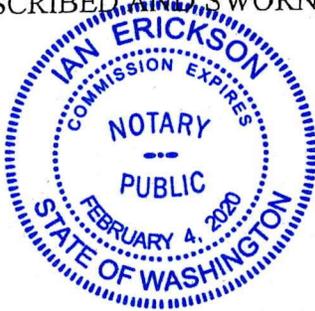
THE STATE OF WASHINGTON )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

After being first duly sworn, on oath, I dispose and say, that I am the petitioner, that I have read the petition. I know it's contents, and believe that the petition is true.

12.10.18  
Date

Juan Ortiz  
Signature of petitioner

SUBSCRIBED AND SWORN to me this 10 day of December, 2018.



Ian Erickson  
NOTARY PUBLIC in and for the State of Washington  
Residing at Clallam Bay

My commission expires: 2/4/2020

If a Notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_,  
(City and State)

Juan Ortiz  
Signature of Petitioner

JUAN ORTIZ  
Print/Type Name

## I: Status of Petitioner

Petitioner Filing pro se applies for relief from confinement. Petitioner is in custody at Clallam Bay corrections center serving a sentence upon conviction of crimes in Pierce County Superior court for the state of Washington on February 14, 2018 under cause number 10-1-02057-0 based on a guilty plea. The trial attorney was Philip E. Thornton and the sentencing judge was Stanley J. Rumbugh. Appeal was filed, the petitioner has previously filed one Personal Restraint Petition with Division II (No. 52195-4-II) while represented by attorney Kevin Hochhalter WSBA # 43124

## II: Grounds for relief

The Petitioner's sentence is in violation of his Constitutional protections found in the Sixth Amendment, being it contains ineffective assistance of counsel, Petitioner is guaranteed by the Sixth Amendment effective assistance of counsel because of misinformation and errors counsel committed by not doing what petitioner ask of him, Petitioner may appeal such a sentence to correct any manifest injustice

that went wrong in private and in the courts.

III: Statement of Finances

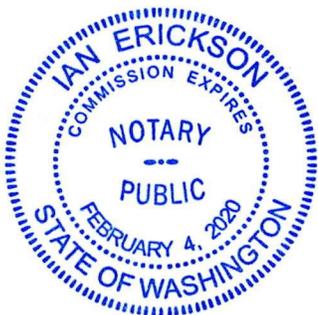
The Petitioner is indigent and is requesting that the filing fee be waived and that an attorney be appointed to represent him if the case is remanded. Petitioner's statement of finances is attached.

IV: Request for Relief

Petitioner requests that the judgment and sentence herein be vacated and that he be resentenced.

V: Oath

I declare under penalty of perjury that this petition is to the best of my knowledge true and correct.



Dated this 02 day of 24 2019  
at Clallam Bay, Washington

*Ian Erickson*  
2/24/19

X *Juan Ortiz*  
Juan Ortiz

# Letter Of Declaration

Dear: Court of Appeals Division II

My name is Juan ortiz D.O.B 2.26,1993 under Cause number # 10-1-02057-0. Im writting a personal letter to the Courts stating the facts that happen between my trail attorney and myself. When I explain the ISSUES I had with my trail attorney to my appeal attorney he advise me to write a personal letter to the Courts of Appeals explaining the reasons why I enter the plea of guilty. I want to begin by saying my trail attorney was ineffective from the beginning he violate my rights and did not provide me with my discovery a violation of DUE-PROCESS. I also told my trail attorney from the beginning that I wanted to go to trail but he told me to take what was offer to me because I was not going to win if I went to trail. I again told him no deals and that I still wanted to go to trail, but kept insisting that I take a deal. By not doing what I ask of him

he violate the sixth Amendment. Before I enter the plea of guilty my trial attorney spoke with my father and nephew and told them to convince me to take what was offer by the court because he did not want to go to trial. when my trial attorney told my family that he violated the rules of professional conduct which I would explain more in my personal Restraint Petition on why and how he broke the rules of professional conduct. My nephew will also write a letter of declaration to the courts and explain what happen and said by my trial attorney. At that point I did feel confuse and presure into entering the plea of guilty. I also knew that my trial attorney had no desires to help me. when I enter the plea of guilty I only enter it because my trial attorney said because of my mental disabilities and youth he was positive I would recive the low end but I needed to enter the plea of guilty in order for him to get me

the low end. Once I enter the plea of guilty he then inform me that he could not get me the low end anymore. A guilty plea is involuntary when it is based on misinformation, State v. Mendoza, 157, Wn 2d 582, 591, 141 P.3d 49 (2006).

When I inform him I wanted to take my plea of guilty back or withdrawal it he got upset and angry and he told me to do what I wanted but he was not going to help me file the motion to withdrawal my plea of guilty that I was going to have to do it myself. He again violate the Sixth Amendment everytime I ask him questions he made excuse's not to answer me or corretly. when I learn of Houston-sconiers on my own and then confronted him about not informing me about that case and how it applied to me, he said its to late now I enter

the guilty plea and that when I enter it I waived my right to use Houston-Sconiers. If my trial attorney would of told me that piece of information he knew I would of never agree to it and not enter the plea of guilty. When I found out about Houston-Sconiers and how he kept that from me I knew thier was a conflict of Intrest. Everything I ask him to do he never did, I do belive he did poorly and I do belive the result would have been diffent. I ask the Court of Appeals DIVISON II for relief and to grant me a new trail I take an oath and declair to the best of my knowledge true and correct.



*Clan Erickson*  
2/24/19

Dated this 02 day of 24, 2019  
at clallambay, washington

X Juan Ortiz  
Juan Ortiz

2019 APR -2 PM 12:02  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

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**SUPERIOR COURT OF WASHINGTON**  
**COUNTY OF Peirce County**

No. 10-1-02057-0

Plaintiff,

DECLARATION OF ISAI ALVAREZ  
[NAME]

vs.

Juan ortiz

Defendant.

This declaration is made by:

Name: Isai Alvarez

Age: 22

Relationship to the parties in this action: Nephew

I DECLARE that:

sheets are Attach with his document

(Attach Additional Pages if Necessary and Number Them.)

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at [City and State] on [Date]. 08-15-2019

Spanaway, WA

Isai Alvarez  
Signature

Isai Alvarez  
Print or Type Name

Dear Courts of Appeals Division 2, I'm writing on behalf of Juan Ortiz. My name is Isai Alvarez born on March 27<sup>th</sup>, 1996. I am the nephew of Juan Ortiz. I want to acknowledge that everything in this letter is true. This is a personal letter stating the facts that took place in Juan Ortiz case. I want to state that before any type of meeting or discussion with Juan he told me that he had no intentions of signing any type of deal and that he was going to trial. Prior to Juan's trial my grandfather and I received a phone call from Juan's attorney Mr. Phillip Thornton stating that he wanted to meet with us and discuss some things about the case. Due to my grandpa's lack of English, I had to translate for him. The day of the meeting Mr. Thornton laid out the evidence that was against Juan. He then went on to explain that there was really not much that could be done in this case, and that Juan's best choice was to accept a deal. He urged my grandfather and I to convince Juan to take the deal. My grandfather did not think highly of the idea of Juan accepting any type of deal due to the fact that Juan has struggled mentality ever since a kid. My grandfather told me to ask Mr. Thornton if there was any way we could present this mental disability evidence to the courts. Mr. Thornton then went on to explain that even with gathering evidence on Juan's mental disability there was not much that could be done, once again stating for us to convince Juan to accept the deal the court was offering. After meeting with Juan and discussing with him what was said at the meeting with Mr. Thornton, he went on to tell me that since the beginning of him having conversation with Mr. Thornton all he ever wanted from Juan was for him to accept a deal from the court. Mr. Thornton later went on to tell Juan that he was positive Juan would receive the low end sentencing due to Juan's mental disability. He urged Juan to enter into a plea. Juan accepted what Mr. Thornton had said and plead guilty. After pleading guilty Mr. Thornton told Juan that he was not going to try and get Juan the low-end deal anymore. Disappointed and sad, Juan went on to call me and explain to me what had

happened and felt like he wanted to take his deal back because he felt like Mr. Thornton had lied to him. Juan brought up the idea to Mr. Thornton about taking the deal back, but Mr. Thornton did not like the idea and told Juan this was his best bet. He told Juan that he was not going to try and motion anything because he wanted Juan to take the deal. Court of Appeals Division 2, I do in fact believe that Juan was scared and pressured into taking a deal. I do ask for the courts to consider into granting Juan a new trial and hear his side of the story. I honestly felt like Juan was not treated with a fair trial due to the lack of help that he received from Mr. Thornton.

03, 13, 2019

x *Luiz Phang*

## I: ISSUES Presented

(A) IS a judgement and sentence void when a criminal defendant who is being sentence because his trial attorney was ineffective and did not counsel his client the way the sixth Amendment knds too, and the judge at sentencing also makes no effort to first consider the mitigating factors of the defendants youth and Mental Disabilities before imposing them? The petitioner was Seventeen years old when he was charge with the offense. without the mitigating factors of his youth or Disabilities being consider by the sentencing judge before thier imposition. (D.O.B, 02-26-93) sentence June 26, 2018.

## II Statement of case

Petitioner was convicted by a guilty plea to charges under Pierce County case no. 10-1-02057-0. The counts the Petitioner was convicted of are

	Count Crime	RCW
I	murder In the First Degree	9A.32.030(1)(a) 9.41.010 9.94A.310/9.94A.510 9.94A.370/9.94A.530
II	Assault In the second Degree	9A.36.021

A Judgement and Sentence was enter on February 14, 2018. A copy of the judgement and sentence is attached as Appendix A.

### Argument

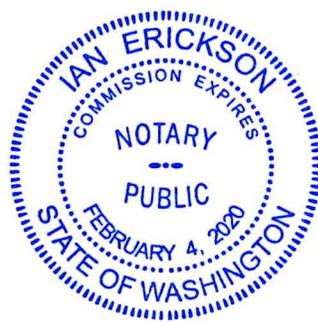
(A). The Petitioner judgement and sentence is unconstitutional. The Sixth Amendment right to counsel guarantees assistances of counsel. Counsel conduct is ineffective if it so undermine the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. In order to prevail on a sixth Amendment ineffective of counsel claim, a petitioner must establish two things: (1) counsel performance was deficient and fell below an objective of reasonableness under prevailing professional norms; and (2) defendant was prejudiced by counsel's deficient performance, i.e., that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987), see also Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed 674 (1984).

Attorney violate the rules of Professional conduct R PC 1.4(4). 1.8 Conflict of Interest: Current clients specific rules (1) the transaction and terms on which the lawyers acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client. When trail Attorney told petitioners family to convince him into taking what the state offer because he could not do anything for petitioner, trail Attorney violate 8.4 misconduct it is professional misconduct for a lawyer to (a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; (b) commit a criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (e) state or imply an ability to influence improperly a government agency or official

or to achieve results by means that violate the rules of professional conduct or other law; (f) knowingly, 1.5(m) violate the code of judicial conduct; or (h) engage in conduct demonstrating unfitness to practice law. Also when a promise is made to a defendant by his trial attorney guaranteeing petitioner the low end then that promise is violated after defendant enters the plea agreement the guilty plea is involuntary when it is based on misinformation. *State v. Mendoza*, 157 Wn.2d 582, 591, 141 P.3d 49 (2006). There is a reasonable probability that the result of the proceedings would have been different but for counsel's deficient performance. See *State v. Jones*, 183 Wn.2d 327, 339, 352 P.3d 776 (2015) citing *Strickland v. Washington*, 466 U.S. 688, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The court shall allow a defendant to withdraw the defendant's plea of guilty when ever it appears that the withdrawal is necessary to correct a manifest injustice CrR 4(f).

## Conclusion

The petitioner judgement and sentence is unconstitutional based on its having been rendered without consideration of the petitioners Sixth and Eighth Amendment protections. The judgement and sentence should be vacated and the petitioner should be granted a new trial in keeping with the U.S. Constitution's Sixth and Eighth Amendments and Washington state legislators intent.



*Ian Erickson*  
2/24/19

(Copy Receipt)

(Clerk's Date Stamp)

<p>Superior Court of Washington  County of <u>Pierce County</u></p> <p>Petitioner: <u>Juan Ortiz</u>  D.O.B. _____</p> <p>and  Respondent: _____  D.O.B. _____</p>	<p>CASE NO. _____</p> <p>MOTION AND ORDER TO  PROCEED IN FORMA PAUPERIS  (ORPRFP)</p>
--	---

MOTION

The petitioner moves the court for an order permitting the petitioner to proceed without paying the filing fee.

Type of action I wish to file:

Civil Anti-Harassment

Petition for Modification

Initial Petition for Dissolution/ Separation

Other (specify) Personal Restraint  
Petition

CERTIFICATE

The undersigned states:

I am the petitioner in this action. I believe that I have valid reasons for bringing this action and that I am entitled to relief. I am unable to pay the filing fee in this proceeding.

My financial statement is attached.

ORDER TO PROCEED IN FORMA PAUPERIS

CI 02.0200

Page 1 of 3

DR 03.0150

I certify under penalty of perjury, under the laws of the State of Washington, that I have read the foregoing statements in the Certificate, and the attached financial statement, know the contents thereof, and believe them to be true and correct.

DATED at clallambay on 03.31 2019.  
(place) (date)

Juan Ortiz  
Petitioner's Signature

ORDER

It is hereby ordered that:

- The petitioner is permitted to proceed without payment of the filing fee.
- The filing fee shall be paid at the time of the final decree being entered.
- Payment of the filing fee may be reviewed at a subsequent hearing.
- The petitioner shall pay the \$10 surcharge fee.
- Forms shall be provided to petitioner at no cost.
- This is a joint petition; respondent shall pay the filing fee prior to entry of the final orders.
- the Clerk's office shall provide one complete set of copies of the pleading to the petitioner without cost.
- The motion is denied.

Dated: \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
JUDGE/ COURT COMMISSIONER

FINANCIAL STATEMENT

GENERAL INFORMATION

(A) Name: Juan Ortiz

(B) Address: clallambay corrections center 1830 Eagle crest way,  
Street

clallambay, WA 98326 (c) Telephone No: (X) X  
City State Zip Code

(D) Social Security No: unknown - X - X

(E) Date of Birth: 02.26.1993

(F) Marital Status:  Divorced  Separation  Married  Single

(G) Persons whom you financially support:  Spouse  Children  Other \_\_\_\_\_  
List children's names, ages, and if different, address: NONE

(H) Are you presently employed?  Yes  No Occupation: \_\_\_\_\_  
Length of employment: \_\_\_\_\_ Name and address of employer or, if currently  
Unemployed, prior employer: \_\_\_\_\_

(I) Is spouse employed?  Yes  No Occupation: NONE  
Name and address of employer: \_\_\_\_\_

INCOME AND ASSETS

(A) Gross monthly income: N/A  
(you)

(B) Gross monthly income: \_\_\_\_\_  
(spouse)

(C) Other income: \_\_\_\_\_

(D) Cash:

Savings account: \_\_\_\_\_

Checking account: \_\_\_\_\_

On hand: \_\_\_\_\_

(E) Home - cash value  
less amount owing: \_\_\_\_\_

(F) Auto - cash value  
less amount owing: \_\_\_\_\_

(list make & year): \_\_\_\_\_

(G) Furniture  
(approximate value): \_\_\_\_\_

(H) Notes, mortgages,  
trusts, deeds: \_\_\_\_\_

(I) Stocks, bonds  
(approximate value): \_\_\_\_\_

(J) Other assets and  
property: \_\_\_\_\_

(K) Any indebtedness  
owed to you: \_\_\_\_\_

(A) Monthly living expenses (itemize):

Rent or mortgage: N/A

Food: \_\_\_\_\_

Utilities: \_\_\_\_\_

Transportation: \_\_\_\_\_

Installment payments: \_\_\_\_\_

Medical and dental: \_\_\_\_\_

Insurance: \_\_\_\_\_

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

TOTAL: \_\_\_\_\_

(b) Debts:

Name/Creditor	Amount Owed
---------------	-------------

_____	_____
-------	-------

_____	_____
-------	-------

_____	_____
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_____	_____
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_____	_____
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_____	_____
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TOTAL: 0

EXPENSES AND DEBTS

ORDER TO PROCEED IN FORMA PAUPERIS

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CI 02.0200

DR 03.0150

0278



10-1-02057-0 50777175 STTDFG 02-14-18



Superior Court of Washington for

State of Washington

Plaintiff

v.

JUAN ORTIZ

Defendant

No. 10-1-02057-0

Statement of Defendant on Plea of Guilty to Non-Sex Offense (Felony) (STTDFG)

- 1. My true name is: JUAN ORTIZ
- 2. My age is: 24 (2/26/1993)
- 3. The last level of education I completed was: 9th GRADE
- 4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

(b) I am charged with: CT I: MURDER IN THE FIRST DEGREE CT II: ASSAULT ON THE SECOND DEGREE  
The elements are: SET FORTH IN THE AMENDED INFORMATION DATED, A COPY I HEREBY ACKNOWLEDGE PREVIOUSLY RECEIVING AND REVIEWING WITH MY LAWYER.

5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

2/14/2018 4:37:9

0279

*JO*

(e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;

*JO*

(f) The right to appeal a finding of guilt after a trial.

6. In Considering the Consequences of My Guilty Plea, I Understand That:

*JO*

(a) My right to appeal is limited.

(b) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
1	3	271 - 361	60	36	<i>Life</i> 50,000
2	3	13 - 17	N/A	18	10 \$20,000
3					

\*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Veh. Hom., see RCW 9.94A.533(7), (P16) Passenger(s) under age 16.

(c) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

*JO*

(d) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

*JO*

(e) If I committed the above crime(s) while under age 18 and am sentenced to more than 20 years of confinement:

*JO*

(i) As long as my conviction is not for aggravated first degree murder or certain sex crimes, and I have not been convicted of any crime committed after I turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, I may petition the Indeterminate Sentence Review Board (Board) for early release after I have served 20 years.

*JO*

(ii) If I am released early because my petition was granted or by other action of the Board, I will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. I will be required to comply with any conditions imposed by the Board.

(iii) If I violate the conditions of community custody, the Board may return me to confinement for up to the remainder of the court-imposed term of incarceration.

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- (f) If I committed aggravated murder in the first degree and I was under the age of 18 at the time of the offense.
- (i) If I was under the age of 16 at the time of the offense, the judge will impose a maximum term of life and impose a minimum term of total confinement of 25 years for that crime.
- (ii) If I was at least 16 but less than 18 years old at the time of the offense, the judge will impose a maximum term of life and will impose a minimum term of total confinement that is at least 25 years and may be as long as life without the possibility of parole or early release for that crime.
- (iii) During the minimum term, I will not be eligible for earned early release time, home detention, partial confinement, work release, or any form of early release.
- (iv) After the minimum term, if I am released by the Board, I will be subject to community custody under the supervision of the DOC for a period of time determined by the board, and must comply with conditions imposed.
- (v) If I violate the conditions of community custody, the Board may return me to confinement.
- (g) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (h) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees, and the costs of incarceration.
- (i) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.729 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses	36 months
Violent Offenses	18 months
Crimes Against Persons as defined by RCW 9.94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections. For crimes occurring on or after June 28, 2016, the supervision of the Department of Corrections cannot exceed the times specified in this paragraph. I may have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days' confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (j) The prosecuting attorney will make the following recommendation to the judge: STATE WILL RECOMMEND HIGH END SENTENCES AND DEFENSE WILL RECOMMEND LOW END SENTENCES; \$500 CUPA; \$200 COURT COST; DNA DRAW AND FEE OF \$100; RESTITUTION; NO CONTACT W/ VICTIM'S FAMILY; \$1500 DAL RECOUPMENT (WAIVED IF COURT FINDS DOES NOT HAVE ABILITY TO PAY);  
 The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

EXTRADITION COSTS (TO BE DETERMINED)

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(k) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

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

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

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

(n) I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079; RCW 29A.08.520.

(o) Government assistance may be suspended during any period of confinement.

(p) I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

**Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.**

(q) This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in

federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

*JO*

(r)

The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph 6(h). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

*JO*

(s)

The judge may sentence me under the Parenting Sentencing Alternative if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.

*JO*

(t)

If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, or if this crime is promoting prostitution in the first or second degree and I have at least one prior conviction for promoting prostitution in the first or second degree, or if this crime is (human) trafficking in the first degree under RCW 9A.40.100(1)(a)(i)(A)(III) or (IV) or (1)(a)(i)(B) (relating to sexually explicit acts or commercial sex acts), I will be required to register where I reside, study, or work. The specific registration requirements are set forth in the "Offender Registration" Attachment.

*JO*

(u)

If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$115.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150. If I am convicted under RCW 26.50.110 for a violation of a domestic violence protection order issued under chapter 26.50 RCW, the court shall impose a mandatory fine of \$15.00.

*JO*

(v)

If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

*JO*

(w)

The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the prison-based alternative, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a

*JS*

comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.

If the judge imposes the residential chemical dependency treatment-based alternative, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the Department of Corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(h). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

*JS* (x) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty. Rehabilitative programs may include an order to obtain an evaluation for alcohol or controlled substance chemical dependency treatment. The court may also prohibit me from possessing or consuming alcohol or controlled substances without a valid prescription.

*JS* (y) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).

*JS* (z) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r); 21 U.S.C. § 862a.

*JS* (aa) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds I used a motor vehicle in the commission of this felony.

- \_\_\_\_\_ (bb) I understand that RCW 46.20.265 requires that my driver's license be revoked if (a) the current offense is a violation under RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [imitation drugs], and I was under the age of 21 at the time of the offense OR (b) the current offense is a violation under RCW 9.41.040 (unlawful possession of firearm), and I was under the age of 18 at the time of the offense OR (c) the current offense is a violation under RCW chapter 66.44 [Alcohol] and I was under the age of 18 at the time of the offense, AND if (a), (b), or (c) applies, the court finds that I previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.
- \_\_\_\_\_ (cc) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor, or any drug, as defined by RCW 46.61.520, an impaired driving enhancement of an additional two years shall be added to the standard sentence range for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14). All impaired driving enhancements are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other impaired driving enhancements, for all offenses sentenced under Chapter 9.94A RCW.
- \_\_\_\_\_ (dd) If I am pleading guilty to felony driving under the influence of intoxicating liquor, or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor, or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation, or denial, I must comply with the Department of Licensing ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.
- \_\_\_\_\_ (ee) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.
- \_\_\_\_\_ (ff) I am pleading guilty to the crime of driving without a required ignition interlock device (RCW 46.20.740), or the crime of circumventing or tampering with a required ignition interlock device (RCW 46.20.750(1)), and the offense occurred on or after September 26, 2015. The sentence for that offense must be served consecutively with any other sentence imposed for violations of either of those statutes and with any sentence imposed under RCW 46.61.502 (DUI), RCW 46.61.504 (physical control under the influence), or RCW 46.61.5055. The sentence for violation of RCW 46.20.750(1) also must be served consecutively with any sentence imposed under RCW 46.61.520(1)(a) or 46.61.522(1)(b) (vehicular homicide/assault while under the influence of alcohol/drugs).
- \_\_\_\_\_ (gg) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, or

vehicular assault while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.

\* YMA

THIS DOES APPLY.

*JO* (hh) The crime of ~~MURDER IN THE FIRST DEGREE~~ has a mandatory minimum sentence of at least 217 years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(q).

*JO* (ii) I am being sentenced for two or more serious-violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts \_\_\_\_\_ and \_\_\_\_\_ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

*JO* (jj) The offense(s) I am pleading guilty to include(s) a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

*JO* (kk) The offense(s) I am pleading guilty to include(s) a deadly weapon, firearm, or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.

*JO* (ll) If I am pleading guilty to (1) unlawful possession of a firearm(s) in the first or second degree and (2) felony-theft of a firearm or possession of a stolen firearm, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.

*JO* (mm) If I am pleading guilty to a felony firearm offense as defined in RCW 9.41.010, I may be required to register as a felony firearm offender under RCW 9.41.330. I will be required to register as a felony firearm offender if I committed the felony firearm offense in conjunction with an offense committed against a person under age 18, or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

*JO* (nn) If I am pleading guilty to the crime of unlawful practices in obtaining assistance as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

*JO* (oo) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than 12 months and less than 36 months, I cannot currently be either pending prosecution or serving a sentence for violation of the

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Uniform Controlled Substances Act, and I cannot have a current or prior conviction for a sex or violent offense.

7. I plead guilty to:

count MURDER IN THE FIRST DEGREE w/ FSE

count ASSAULT IN THE SECOND DEGREE

count \_\_\_\_\_

in the AMENDED Information. I have received a copy of that Information.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement: I DO NOT BELIEVE I HAVE COMMITTED THIS CRIME.

HOWEVER, AFTER REVIEW OF THE EVIDENCE WITH MY ATTORNEY, I BELIEVE THERE IS A SUBSTANTIAL LIKELIHOOD THAT I WOULD BE CONVICTED AT TRIAL. I AM PLEADING GUILTY TO ACCEPT THE STATE'S AGREEMENT TO REDUCE THE CHARGES AGAINST ME.

Instead of making a statement, I agree that the court may review ~~the police reports and/or~~ a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

J. MARSH  
Defendant

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

[Signature]  
Prosecuting Attorney

[Signature]  
Defendant's Lawyer

JARED AUSSERER      32719  
Print Name                      WSBA No.

PHILIP THURNTON      20077  
Print Name                      WSBA No.

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

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below.

**Interpreter's Declaration:** I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands. I have interpreted this document for the defendant from English into that language. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) \_\_\_\_\_, (state) \_\_\_\_\_, on (date) \_\_\_\_\_.

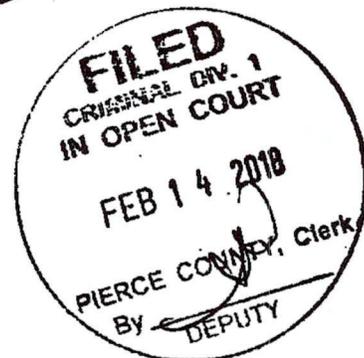
\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
Print Name

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated: February 8, 2018

[Signature]  
Judge



May 12 2010 10:39 AM

KEVIN STOCK  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 10-1-02057-0

vs.

JUAN ORTIZ,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

Defendant.

PHILIP K. SORENSEN, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident number 101320004;

That the police report, the oral reports of detectives Dan Davis and Steve Reopelle and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 12th day of May, 2010, the defendant, JUAN ORTIZ and respondent Naitaalii Toleafoa, did commit the crimes of murder and attempted murder while being unlawfully armed with a firearm. Both are under the age of 18.

According to the oral reports of Detectives Dan Davis and Steve Reopelle:

On the above date at 0005 hours Tacoma Police responded to a residence in the 3300 block of North Visscher Street regarding a shooting. Upon arrival police determined that two men at the scene had been shot. One of the men, identified as Juan Zuniga was pronounced dead at the scene. The second man, identified as Dean Salavea, was wounded and transported to a local trauma center. Initial medical reports were that Salavea's wounds were not immediately life threatening, but that he had suffered paralysis.

According to a witness, Zuniga lives at the residence and during the course of the evening was at the residence with Salavea. Shortly before midnight Zuniga indicated that "Goofy", known as juvenile TOLEAFOA, and "Weasel", known as juvenile ORTIZ, were coming to the residence to pay Zuniga money owed.

Shortly after midnight the witness saw TOLEAFOA and ORTIZ arrive at the residence on foot. They were allowed inside and all, including Salavea went into the attached garage. The witness reported that within second the witness heard four maybe five shots from inside the garage. The witness saw TOLEAFOA run for the front door with his hands shoved into his jacket pockets and flee on foot. With witness saw ORTIZ walking behind TOLEAFOA. ORTIZ was carrying a handgun and walked out the front door.

The witness entered the garage and saw Zuniga on the ground apparently already dead. Detectives indicated that it appeared Zuniga had been shot several times including what appeared to be a wound to the back of the head. The witness saw that Salavea appeared to have exited a back door of the

DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

1 garage and made it several feet before falling. Salavea appeared to have suffered at least one gunshot  
wound to the back.

2 The witness called 911 then moved to Salavea. Detectives have not been able to speak with  
3 Salevea. The witness was able to positively identify ORTIZ and TOLEAFOA through photomontages.

4 The witness indicated that approximately three weeks ago TOLEAFOA and ORTIZ appeared at  
the Zuniga residence looking for Zuniga. Zuniga was not home but TOLEAFOA was allowed inside the  
5 garage to look for a missing item. It appeared that TOLEAFOA may have taken marijuana from the  
Zuniga residence. Witnesses indicated that there was a physical altercation between Zuniga and ORTIZ  
6 and TOLEAFOA approximately one week after this possible theft. Witnesses also reported that it  
appeared that whatever the dispute was, ORTIZ and TOLEAFOA had been at the Zuniga residence at  
7 least once, under what appeared to be friendly terms, between the time of the altercation and the current  
shooting.

8 The investigation is ongoing. According to detectives, the victims and suspects are all known  
gang members.

9 A criminal history check showed that ORTIZ has previous been adjudicated guilty of felony  
10 crimes including a serious offense.

11 A criminal history check showed that TOLEAFOA has previously been adjudicated guilty of  
felony crimes including a serious offense.

12 Because of the nature of the offense exclusive jurisdiction over ORTIZ rests with the Adult  
Division of Superior Court.

13 Because of TOLEAFOA'S age, exclusive jurisdiction over TOLEAFOA rests with the Juvenile  
14 Division of Superior Court pending a formal declination proceeding.

15 Both ORTIZ and TOLEAFOA remain at large and warrants are being sought for their arrest.

16 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

17 DATED: May 12, 2010  
18 PLACE: TACOMA, WA

19 /s/ PHILIP K. SORENSEN  
PHILIP K. SORENSEN, WSB# 16441

20  
21  
22  
23  
24  
DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

February 20 2018 3:00 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 10-1-02057-0

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4  
5  
6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 10-1-02057-0

9 vs.

10 JUAN ORTIZ,

STATE'S SENTENCING  
MEMORANDUM

11 Defendant.

---

12  
13 I. Identity of Parties:

14 Comes now the State of Washington, represented by Deputy Prosecuting Attorney  
15 Gregory L. Greer, and submits the following sentencing memorandum.

16 II. Procedural History:

17 On May 12, 2010, an Information was filed charging the defendant with murder in the  
18 first degree, assault in the first degree, and unlawful possession of a firearm in the first degree.

19 A warrant was issued for the defendant's arrest as it was believed the defendant had  
20 absconded and fled to Mexico.

21 On February 9, 2011, an Amended Information was filed adding gang aggravators to the  
22 originally charged counts.

23 On April 5, 2017, the defendant, who had recently been extradited from Mexico, was  
24 arraigned on the Amended Information.  
25

STATE'S SENTENCING MEMORANDUM

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

1 On February 13, 2018, a Second Amended Information was filed and the defendant pled  
2 guilty to murder in the first degree (with FASE) and assault in the second degree.

3 Sentencing is set for February 23, 2018.

4 III. Factual History Relevant to Sentencing:

5 On May 12, 2010 at 0005 hours, TPD officers responded to the 3300 block of N.  
6 Visscher St., in Tacoma, regarding a shooting. Upon arrival officers determined two men had  
7 been shot. One of the men, Juan Zuniga, was pronounced dead at the scene and a second man,  
8 Dean Salavea, was found close to Zuniga and severely wounded. Salavea's injuries rendered  
9 him paraplegic. Law enforcement determined the defendant and another individual, Naitaaliia  
10 Toleafoa, were responsible for the shooting.

11 Both the defendant and Toleafoa had come to Zuniga's residence the evening of the  
12 shooting on pretense of paying Zuniga money owed. The defendant and Toleafoa were invited  
13 into the residence and then went into an attached garage where Zuniga and Salavea were waiting  
14 for them. Within seconds of entering the garage, the defendant fired five shots from a handgun,  
15 killing Zuniga and paralyzing Salavea. The defendant and Toleafoa then fled back through the  
16 house and out the front door. Both the defendant and Toleafoa fled to Mexico shortly after the  
17 shooting.

18 In late 2013, Toleafoa was extradited from Mexico and on June 17, 2014, he pled guilty  
19 to one count of murder in the first degree (with a firearm sentence enhancement).

20 As stated, the defendant was extradited from Mexico shortly before April 5, 2017.

21 IV. Sentence Ranges by Count:

22 Count I - 271-361 months (total range with FASE = 331-421);

23 Count II - 13-17 months.  
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1 V. State's Recommendation and Argument:

2 The execution of Zuniga was premeditated. Zuniga was the leader of the Eastside  
3 Lokotes Surenos (ELS) gang and was at the time of his murder, in disfavor with other members  
4 of ELS, including the defendant. Senior ELS members determined Zuniga would be executed  
5 and the defendant and Toleafoa were chosen to carry out the killing. The defendant shot Zuniga  
6 multiple times, to include the back of the head. Salavea was shot by circumstance of having  
7 been with Zuniga at the time of the shooting.

8 The State and defense negotiated the present plea resolution that allows the State to argue  
9 for high end and the defendant to argue for low end of the standard range. The court should  
10 understand, however, the so-called Houston-Sconiers factors (related to the defendant's youth)  
11 have been specifically considered by the State and defense in negotiating the case and the  
12 defense has agreed not to use these factors as a basis for recommending an exceptional sentence  
13 downward.

14 With this understanding, the State is asking for a high end sentence based on the  
15 defendant's criminal history and the underlying seriousness of the crimes for which the court is  
16 sentencing the defendant. There need be no further argument justifying a high end sentence but  
17 that the defendant executed one person and left another paralyzed for life.

18 The State is asking this court to also impose financial obligations of \$500 CVPA, \$200  
19 court costs, \$100 DNA sample, \$1500 DAC recoupment (waivable if court finds defendant  
20 unable to pay due to indigent status), restitution (by later order of court), and extradition fees and  
21 costs (by later order of court).

22 The State is asking this court to impose 36 months community custody on Count I  
23 (serious violent offense) and 18 months on Count II (violent offense). The State is also asking  
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1 this court to order the defendant to have no contact with Dean Salavea, who is believed to be  
2 incarcerated with DOC for an unrelated matter.

3  
4 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of February, 2018.

5  
6 MARK LINDQUIST  
7 Prosecuting Attorney

8 By: 

9 Gregory L. Greer  
10 Deputy Prosecuting Attorney  
11 WSB # 22936

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KEVIN STOCK  
COUNTY CLERK  
NO: 10-1-02057-0

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

STATE OF WASHINGTON,

Plaintiff,

vs.

JUAN ORTIZ,

Defendant.

NO.: 10-1-02057-0

DEFENDANT'S SENTENCING  
MEMORANDUM

COMES NOW the Defendant JUAN ORTIZ, by through his attorney of record, Philip E. Thornton and submits this memorandum in order to aid the court in a fair and just determination of an appropriate sentence.

**POINTS AND AUTHORITIES**

**A. PROCEDURAL HISTORY**

On May 12, 2010, the State of Washington filed an Information against Naitaalii Toleafoa and Juan Ortiz charging them with murder in the first degree, assault in the first degree and unlawful possession of a firearm in the first degree. A warrant was issued for their arrest. Authorities believed that the two teens had fled to Mexico.

1 In late 2013, Naitaalii Toleafoa was extradited from Mexico and on June 17, 2014, he  
2 entered an *Alfred/Newton* Plea to one count of Murder in the First Degree with a firearm sentencing  
3 enhancement. He was sentenced to 393 months (high end sentence of 333 plus 60 months for  
4 FSE).

5 On August 30, 2016, Juan Ortiz was arrested in a small village outside of Mexico City,  
6 Mexico. He was detained in Mexico on the Bench Warrant issued from Pierce County Superior  
7 Court until he was extradited to Pierce County

8 On April 5<sup>th</sup>, 2017, Mr. Ortiz was arraigned in the above captioned matter.

9 On February 13, 2018, Mr. Ortiz entered a plea to a murder in the first degree with a  
10 firearm sentencing enhancement and assault in the second degree.  
11

12 Sentencing is set for April 11, 2018.

13 **B. RELEVANT FACTUAL HISTORY OF THE DEFENDANT**

14 Juan Ortiz was born February 26, 1993 in Tacoma, Washington. He is the youngest of six  
15 children. Juan's mother reports that her pregnancy with Juan was a difficult one as she was  
16 constantly sick and ultimately delivered Juan by C-Section. She reports that Juan was identified in  
17 his first year as having developmental cognitive disorders as he did not meet any significant  
18 development milestones. Juan was placed into a head start program prior to commencing  
19 elementary school as a potential means to have Juan catch up with his peers. Juan struggled  
20 throughout elementary school particularly with reading and mathematics. By Middle School, Juan  
21 was placed into Special Education program. Juan received little assistance from his parents. His  
22 mother reports that she would often be requested to attend meetings concerning Juan's academic  
23 progress but due to her language (Spanish) barrier she never quite understood how to assist him.  
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1 By the sixth grade, Juan was constantly harassed and bullied by the other students. Juan  
2 attributes this to his smaller stature and the fact he wore glasses. The bullying caused him to refuse  
3 to wear the glasses and as a result he fell further behind academically. When the bullying turned to  
4 assaults against him, Juan turned to the protection of older Mexican teens with gang affiliations.  
5 By age thirteen, Juan was smoking marijuana and consuming hard liquor on a regular basis. Juan  
6 stopped attending high school in the 9<sup>th</sup> grade.

7 When Juan was 15 years old he was arrested and convicted of Unlawful Possession of a  
8 Firearm in the Second Degree. Nearly a year later he was arrested in two separate incidents and  
9 charged and convicted of Malicious Mischief in the Second Degree and Residential Burglary.  
10

11 Juan's older brother was an Eastside Lokotes Surenos (ELS). All of Juan's then friends and  
12 protectors were in the ELS. Juan was often subject to the direction of the older more powerful  
13 gang members.

14 In preparation for the sentencing hearing, Juan was evaluated by Dr. Claudette Antuna. Dr.  
15 Antuna performed cognitive, intellectual and psychological testing on Juan. Dr. Antuna's  
16 diagnostic impression of Juan is that he has an intellectual disability, suffers from chronic  
17 posttraumatic stress disorder, and suffers from depression. Juan has a Nonverbal Intelligence  
18 Quotient score of 66 which ranks in the 1% of the population. See, Psychological Evaluation of  
19 Juan Ortiz Castrajon, dated April 12, 2018 by Claudette S. Antuna, Psy.D., MHSA, LICSW  
20 Attached hereto as Exhibit A. According to the American Association on Intellectual and  
21 Developmental Disabilities, Juan's developmental disability probably occurred during his prenatal  
22 period. Dr. Antuna describes: "An **intellectual disability** is a disability characterized by  
23 significant limitations in both intellectual *functioning* and in *adaptive behavior*, which covers many  
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everyday social and practical skills. This disability originates before the age of 18. **Intellectual functioning**- also called intelligence – refers to general mental capacity, such as learning, reasoning, problem solving, judgment etc. **Adaptive behavior** is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.” Dr. Antuna notes the following factors which seem to describe Juan’s life to this juncture:

Factors such as impaired cognitive abilities and judgment, physical disabilities, insufficient adaptive behaviors, constant interactions with "protectors" who exploit them, lack of knowledge on how to protect themselves and living and working in high-risk environments increase the vulnerability to victimization (*Luckasson, 1992*). Almost all people with intellectual disability now live in the community and are susceptible to becoming involved in the criminal justice system as suspects and/or victims. As suspects, individuals with this disability are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or the consequences of their involvement. They may also have a strong need to be accepted and may agree to help with criminal activities in order to gain friendship (*Perske, 2003*).

In May of 2010, when Juan was 17years old and he accompanied Naitaalii Toleafoa to ELS gang leader Juan Zuniga’s residence. Although the State’s theory is that Juan and Toleafoa were sent to the residence by older gang members to execute Zuniga, Juan disputes this theory. Although, Juan entered a *Newton/Alfred plea* to the Information, he maintains that he did not shot anyone at the Zunaga residence that day. The older gang drove Juan to Mexico and that is where he stayed until he was arrest by the Mexican authorities on August 30, 2016.

## **B. IMPOSING A JUST SENTENCE**

The two stated purposes of the Sentencing Reform Act are:

- 1) To ensure that the punishment for the criminal offense is proportionate to the seriousness of the offense and the offender’s criminal history;
- 2) To promote respect for the law by providing a punishment which is just.

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State v. Pennington, 112 Wn.2d 607, 611(1989). RCW 9.94A.010 indicates that the purposes of the SRA are:

to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources.

To reach a just sentence in the case at bar, this court must exercise its discretion and sentence the Defendant to the low end of the Standard Range – 271 months.

#### **1. The Eighth Amendment Against Cruel and Unusual Punishment**

The State is correctly noted in its Sentencing Memorandum that the parties have considered the Defendant's "youth" in negotiating this case and the Defense has specifically agreed to not use the Houston-Sconiers factors as a basis for recommending an exceptional sentence below the standard range. The Defense is not requesting a sentence below the standard range but rather the low end of the standard range. However, the factors this Court can consider in determining whether the low end of the Standard Range Sentence is appropriate are similar to the factors other courts have relied upon in determining a sentence below the standard range.

In the last eight years, the United States Supreme Court has issued three dynamic opinions concerning the relationship between juveniles and the Eighth Amendment. *Roper v. Simmons*, 543 US 551, 561, 130 S. Ct. 2011, 161 L.Ed.2d 1(2005); *Graham v. Florida*, 560 US 48, 130 S. Ct., 2011, 2017, 176 L. Ed. 2d. 825 (2010); *Miller v. Alabama*, 567 US 460, 132. S. Ct. 2455, 2463, 183 L. Ed. 2d 407 (2012).

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PHILIP E. THORNTON**

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TACOMA, WA 98405

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1 These cases recognize that new scientific research has confirmed what common sense already led us to  
2 believe – biological differences between youths and adults diminish the culpability of juvenile criminal  
3 defendants. This realization has caused the court to strike down sentencing schemes where youths are given  
4 stiff, often mandatory, sentences in adult court.

5 Hence, the Supreme Court has transformed a number of formerly permissible sentencing practices  
6 into cruel and unusual punishment.” These include:

- 7 • Executing an insane person. *Ford v. Wainwright*. 477 US 399, 410, 106 S. Ct. 2595 (1986.)
- 8 • Executing a mentally retarded person. *Atkins v. Virginia*, 536 US 304, 321, 122 S. Ct. 2242
- 9 • Executing any defendant convicted of a capital crime committed before the age of 18. *Roper* at 568.
- 10 • Sentencing a juvenile who did not commit homicide to life without parole. *Graham* at 2034.
- 11 • Sentencing any juvenile defendant to life without parole. *Miller* at 2461.

12 In sum, the Court has consistently expanded the number of sentencing practices prohibited by the Eighth  
13 Amendment based on biological differences among certain classes of offenders. This is particularly true in  
14 terms of mandatory practices that strip the judiciary of any oversight and any ability to provide a lenient  
15 sentence based on the mitigating circumstances that surround youth.

16 The Court has also recognized that these biological differences also diminish the penological  
17 justifications for punishing juveniles. For instance, the Court cited research showing that the minors suffers  
18 from a lack of foresight, poor impulse control, and an inability to properly perform cost/benefit analysis.  
19 According to the Court, this makes youth less likely to be deterred (rendering this justification for strict  
20 punishment less persuasive.) Moreover, the Court also cited research showing that juveniles are particularly  
21 susceptible to outside influences and that their characters are simply not well formed. The Court reasoned  
22 that the biological differences increase the juveniles prospects for reform (and therefore militate against  
23 giving minors lengthy and/or mandatory sentences.) Essentially, recent advances in this field have  
24 confirmed what “common sense” already told us: that juveniles possess a greater capacity for reform than  
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adults for a number of reasons. As the *Graham* Court declared: “Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Graham* at 2026-7.

We now know that “because juveniles have lessened culpability, they are less deserving of the most severe punishments...As compared to adults, juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility’; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’.” *Graham* at 2026 quoting *Roper* 543 US at 569. The Court has said that **these characteristics make it difficult for anyone to determine whether a youthful offender is irredeemable or whether their crime “reflects unfortunate yet transient immaturity.”** *Graham* at 2026 quoting *Roper* at 573.

In the case at bar, this Court is faced not only with a youthful offender but a youthful offender suffering from a significant intellectual disability – a disability which led him to make terrible choices. Juan’s reliance on the older, more powerful individuals for protection and/or friendship led to his participation in a horrendous act. His inability to conform his behavior certainly stems from his impair cognitive abilities and judgment. Juan’s reduced mental capacity is not caused by the use of voluntary use of drugs or alcohol. It has been a life-long affliction from which he has had to navigate to survive in a challenging environment. Often times, mental disability issues are trivialized, misunderstood, and distorted at all levels of the justice system. The current political climate is one in which any potentially mitigating circumstance will be viewed suspiciously, especially one as “loaded” as mental disability. But the mitigating aspect of Juan’s impair cognitive abilities is a mitigating factor which warrants this court’s consideration of a low-end sentence. SRA places no limitations on the information a sentencing judge may consider in arriving at a sentence within the standard range. *State v. Mail*, 121 Wash. 2d 707, 711, 854 P.2d 1042, 1044 (1993). The sentencing judge is given broad discretion to arrive at a just sentence within the standard range. *Id.*

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**IV. CONCLUSION**

For the reasons stated herein which are supported by the cited authority, the Defendant respectfully requests this court to accept the Defense recommendations and determine that the Low end of the applicable standard sentencing range is appropriate.

DATED this 12th day of April, 2018.



---

PHILIP E. THORNTON  
WSBA# 20077  
Attorney for Defendant

Attachment A

**SAMMAMISH CONSULTING & COUNSELING SERVICES**

**CLAUDETTE S. ANTUÑA, Psy.D. M.S.W., A.C.S.W., B.C.D.**

**P.O. Box 40627**

**Bellevue, Washington 98015**

**(206) 948-3652**

**(425) 641-5997 Facsimile**

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**PSYCHOLOGICAL EVALUATION**

**NAME: JUAN ORTIZ CASTRAJON**

**DATE OF REPORT: April 12, 2018**

**DISCLOSURE OF SENSITIVE INFORMATION:** Because of the sensitive nature of the information contained in this report, care should be taken when giving an explanation of the findings to the client, members of the client's family or friends, or to any unauthorized person. The material was written for professional use and is highly susceptible to misunderstanding and misuse by individuals untrained in its application. This report must be used in its entirety-- no portions may be excerpted.

I am a bilingual (native Spanish speaker) independent clinical social worker licensed in the State of Washington (LW00006016). I received my Bachelor of Arts in Hispanic American Studies from the University of Miami in 1966, a Master in Social Work from Barry University in 1975 a Master in Health Services Administration in 1982 and a doctoral degree in Clinical Psychology in 2011. I have been in private practice since 1990. I have conducted psychosocial, psychosexual evaluations and provided treatment in English and Spanish for victims of abuse, sexual dysfunction and torture. I have been a Director of Social Work in medical facilities in Florida and Washington and a clinical faculty member at Barry University, Florida State University, Florida International University, University of Washington School of Social Work, Chapman University in Tacoma and Northwest University in Kirkland, Washington. I am a clinical consultant for the Tacoma Veterans Center from 2000 until 2011. I have received special training on conducting psychological documentation of trauma and other human rights abuses from HealthRight International Human Rights Clinic (2010) and Physicians for Human Rights (2011). A licensed psychologist, Alysia A. Ruddell, Ph.D., supervises my post-doctoral work.

This evaluation is based on a mental health status examination, cognitive, intellectual and psychological testing conducted with Mr. Juan Ortiz Castrajon at the Pierce County Jail in Tacoma, Washington on April 3<sup>rd</sup> and 5<sup>th</sup> 2018. Collateral information was obtained by speaking to Mrs. Castrajon Ortiz and Mr. Juan Ortiz Castrajon's brother in Spanish on April 6, 2018.

**Conclusions:**

Mr. Juan Ortiz Castrajon was born on February 26, 1993 in Tacoma Washington. He stated that he is the youngest of six children born to his married parents Vicenta Castrajon and Pablo Ortiz. Mr. Ortiz Castrajon stated that his father worked as a day laborer and his mother worked occasionally as a nanny. He stated that although his father has legal status they have been working on his mother's legal status so that in 2009 she returned to Mexico. She stated that she lives in Mexico City and visits the State of Guerrero and is currently taking care of her elderly mother. Mr. Ortiz Castrajon stated that his father travels to Mexico every couple of months. Mrs. Castrajon Ortiz reported that she did not have a normal pregnancy with Mr. Ortiz Castrajon. She reported that she was sick most of the pregnancy and had to deliver him via C-Section. She reported that he was identified within his first year as having developmental cognitive disorders because he kept missing significant developmental milestones and was placed in a Head Start program before starting kindergarten and they all worried about him. He stated that due to multiple ear infections tubes were placed in both ears. He reported that he completed elementary and then middle school in Special Education classes. Mr. Ortiz Castrajon reported that he always had difficulty with mathematics and reading. Mrs. Castrajon Ortiz reported that she was asked to participate in meetings regarding her son's needs but due to language barriers she never understood how to help him. Mr. Juan Ortiz Castrajon stated that in sixth grade he was constantly harassed and bullied by others mostly for having to wear glasses so he often would take them off and not wear them. Mr. Ortiz Castrajon stated that when he was assaulted in middle school he decided he needed protection so he began hanging out with other older Mexican kids. Mr. Ortiz Castrajon reported that he was often received additional tutoring, and he became aware of his disability in seventh grade. He reported that he first consumed beer and smoked marijuana at age, thirteen and then began consuming hard liquor and other drugs until April 4, 2016.

Mr. Ortiz Castrajon stated that he was fifteen years old when he was arrested for Possession of a Firearm and stayed at Remann Hall Juvenile Detention Center and attended Remann Hall School for a month and then wore an ankle bracelet for another month. He stated that a few months later he was arrested for Malicious Mischief and returned to Remann Hall Juvenile Detention Center for two weeks and returned to Remann Hall High School where he was able to retrieve some of his credits. Mr. Ortiz Castrajon stated that a couple of months later he was charged with burglary and sent to Green Hill School and started his GDE but was unable to complete it because he got into a fight.

Mr. Ortiz Castrajon reported that in Mexico City he lives with his uncles and worked as a dishwasher and then became a waiter. He stated that he lived in Mexico City until 2016 when he was arrested by Mexican officials. He reported that he was in a Mexican prison for eight months awaiting extradition to the U.S. and was placed at the Pierce County jail. Mr. Ortiz Castrajon pled guilty to Murder in the 1<sup>st</sup> degree and Assault in the Second degree.

**Reason for Referral:**

Mr. Juan Ortiz Castrajon was referred to this evaluator for an intellectual and cognitive functioning assessment by his attorney Mr. Philip Thornton.

### **1. Basis of Findings:**

Documents and Medical records reviewed:

- Superior Court of Washington for Pierce County, Declaration for Determination of Probable Cause, dated May 12, 2010

Psychological Testing:

- Beck Depression Inventory II (**BDI-II**)
- Comprehensive Test of Nonverbal Intelligence (**CTONI-2**)
- Montreal Cognitive Assessment (**MoCA**)
- Trauma Symptom Inventory-2 (**TSI-2**)

### **Mental Status Examination:**

Mr. Juan Ortiz Castrajon did not exhibit any problems with gait or psychomotor movements. He was pleasant in the interview. He described his general mood as "apprehensive and scared." He participated in conversation. No evidence of psychosis was noted. He experiences difficulty getting to sleep, or once awake he is unable to resume sleeping often due to nightmares. He is oriented to place, person, situation, familiar objects and other people. His fund of knowledge is limited. He was alert, coherent and cooperative during the interview and testing process. He had normal recall of some events but unable to elaborate and he maintained good eye contact. His facial expressions reflected sadness. He wants to get his GDE so he can eventually learn a trade or skills that would allow him someday be gainful employed.

### **IV. Tests and Interpretation:**

*Testing was carried out in accordance with the 1990 "Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations" of the American Psychological Association, the International Test Commission's 2000 Test Adaptation Guidelines The Department of Health and Human Services 2002 Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, and related guidelines and literature.*

All tests were administered in English at the Pierce County Jail in Tacoma, Washington in as quiet and private area as possible in order to enable valid interpretation. Collateral information was obtained by this evaluator in Spanish.

**Beck Depression Inventory-Second Edition** (BDI-II) is a 21 item self-report instrument for measuring severity of depression in adults and adolescents aged 13 years and older. This version of the inventory was developed for the assessment of symptoms corresponding to the criteria for diagnosing depressive disorders listed in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition* (DSM-IV; 1994).

**Comprehensive Test of Non Verbal Test Second Edition** (CTONI-2™) is an unbiased measure of nonverbal reasoning abilities in individuals for whom most other mental ability tests are either inappropriate or biased. This instrument includes an expanded study of item bias. Results are useful for estimating the intelligence of individuals who experience undue language or fine motor skill difficulties. No oral responses, reading, writing, or object manipulation are required. The CTONI-2 measures analogical reasoning, categorical classification, and sequential reasoning, using six subtests in two different contexts: pictures of familiar objects (e.g. toys,

people, animals) and geometric designs (unfamiliar sketches and drawings).

**Montreal Cognitive Assessment (MoCA)** was designed as a rapid screening instruments for mild cognitive dysfunction. It assesses different cognitive domains: attention and concentration, executive functions, memory, language, visuoconstructional skills, conceptual thinking, calculations, and orientation.

**Trauma Symptom Inventory -2.** (TSI-2) is designed to evaluate posttraumatic stress and other psychological sequelae of traumatic events, including the effects of sexual and physical assault, intimate partner violence, combat, torture, motor vehicle accidents, mass casualty events, medical trauma, traumatic losses, and childhood abuse or neglect. Three scales (Insecure Attachment, Somatic Preoccupations, and Suicidality) and several subscales, as well as four summary factors (Self-Disturbance, Posttraumatic Stress, Externalization, and Somatization), are new or have been significantly reconfigured. New items assess clients' tendencies to deny symptoms that are commonly endorsed, to over-endorse unusual or bizarre symptoms, or to respond in an inconsistent or random manner; the instrument now addresses malingering. An all-new standardization sample comprised 678 individuals whose demographics closely matched those of the U.S. Census.

**Test interpretation:**

Mr. Ortiz Castrajon's responses on the **BDI-II**, suggest he is severely depressed.

The **CTONI-2**, which was administered to Mr. Ortiz Castrajon, is an individually administered intelligence test that is given with basic English instructions. All items are nonverbal and require no speech. It is made up of six subtests that provide two composite scores and a Nonverbal IQ score.

The CTONI-2 subtests provide scores with a mean of 10 and a standard deviation of 3. Scores between 7 and 13 are considered average.		
<b>Subtests</b>	<b>Scaled Score</b>	
Pictorial Analogies	6	
Geometric Analogies	2	
Pictorial Categories	9	
Geometric Categories	6	
Pictorial Sequences	4	
Geometric Sequences	5	
The CTONI quotients provide scores with a mean of 100 and a standard deviation of 15. Scores between 85 and 115 are considered average.		
<b>Composite</b>	<b>Standard Score</b>	<b>Percentile Rank</b>
Pictorial Intelligence Quotient (PNIQ)	75	5
Geometric Intelligence Quotient (GNIQ)	63	<1
Full Scale Intelligence Quotient (NIQ)	66	1

The Comprehensive Test of Nonverbal Intelligence (CTONI-2) was given as a measure of intellectual ability. Mr. Ortiz's Nonverbal Intelligence Quotient (NIQ) fell in the delayed range (standard score = 66). This score is comprised of a below average Pictorial Nonverbal Intelligence Quotient (standard score = 75) and a delayed Geometric Nonverbal Intelligence Quotient (standard score = 63). Low indexes indicate that Mr. Ortiz Castrajon performed below

a level that is expected for a person his age. Mr. Ortiz Castrajon has trouble managing non-verbal information, perceiving visual data, organizing spatially oriented material, and mastering abstract properties of visual symbols. Usually people with low scores also have a history of academic struggles, which is certainly true in Mr. Ortiz Castrajon's case. Individuals with these low IQ scores and cognitive difficulties are usually referred to state and federal programs for assistance. Mrs. Castrajon Ortiz reported that she was not aware that he was eligible for these programs.

On the MoCA, which assesses different cognitive domains, Mr. Ortiz Castrajon obtained a score of 23/30. A score of 26 and above is considered normal. On the **Alternative Trail Making** test, which tests for orientation and attention, he understood the symbolic importance of numbers and letters. He was able to effectively scan the page, identify the next stimulus, and respond to and perform these functions in a relatively fast manner. The **Visuoconstructional skills test** is commonly used to test neuropsychological domains. It involves the ability to organize and manually manipulate spatial information to make a design. To this effect he was able to copy the drawing of a cube. On the clock test he was able to construct a circle and place the numbers correctly and give an accurate representation of a specified time. Tests used to measure visuoconstructional skills are considered multifactorial in nature given their multiple demands (e.g., visuospatial, executive, motor etc.). On the **Naming** portion of this test, Mr. Ortiz Castrajon was able to correctly name the picture of a lion, and a rhinoceros, and camel. **Memory skills** were tested by asking Mr. Ortiz Castrajon to repeat five words and to recall the same words five minutes later. He correctly repeated the words on presentation, but recalled only three of the five the words five minutes later. This performance is consistent with memory difficulties and depression. The first component of memory is responsible for storing and manipulating verbal information, the second is for storing and manipulating visual and spatial information and the third coordinates the functions of the first and second components along with planning, switching attention and processing items. **Attention skills** were measured by a vigilance test; a subtraction test and digit span which consists of two tests. Digits forward and digits backward involve different mental activities. In normal people, it is assumed digits forward and digits backward should be similar. Digit span gives an indication of concentration abilities and is sensitive to depression. Mr. Ortiz Castrajon was only able to recite 4 numbers forward. Digit span forward is a measure of the efficiency of attention, a factor commonly thought of as "memory." He recited 3 digits backwards, which falls in the normal range. Digits backward is an indication of mental dexterity and concentration. **Vigilance** was measured by asking Mr. Ortiz Castrajon to recognize the letter A while reading a sequence of letters. He had 2 errors on the vigilance test. On the subtraction test he was able to subtract 7 from 100 in his head twice. **Sentence Repetition** measures his ability to accurately hear a sentence and be able to repeat it without error. Mr. Ortiz Castrajon was unable to perform this task. He was oriented to date, place and self.

Mr. Ortiz Castrajon's responses on the **TSI-2** suggest that he was consistent and not defensive; his responses do suggest that he is in extreme distress. He reports that he is tense and jumpy, with nervousness and fears of death to such a degree that it impacts his ability to sleep he reports feeling sad and hopeless. Mr. Ortiz Castrajon endorsed items that suggest he perceives his anger as an intrusive and unwanted experience and that it is not entirely under his control. He reports that he has intrusive symptoms, such as flashbacks and nightmares, which he tries to push out of his mind. He reports out of body experiences and psychic numbing. Mr. Ortiz Castrajon reported that he experiences his stress somatically including nausea, muscle spasms, balance and swallowing difficulties. His responses suggest that he has difficulty maintaining stable positive

relationships and fears rejection and or abandonment. He reports that he has turned to external methods of reducing internal tension of distress such as angry outbursts, thrill-seeking and manipulative behavior.

### 1. Diagnostic impression:

The best DSM 5 and ICD 10 diagnosis at this time for **Juan Ortiz Castrajon** is:

319.00 (F70)	Intellectual Disability (moderate)
315.00 F81.0)	Specific Learning Disorder with impairment in reading and mathematics
309.81(F43.10)	Posttraumatic Stress Disorder, chronic
296.23 (F32.2)	Depressive Disorder, Single Episode, Severe
303.00 F19.20	Polysubstance use in remission in a controlled environment

### Description of Medical Conditions:

According to American Association on Intellectual and Developmental Disabilities (AAIDD) Mr. Ortiz Castrajon's developmental disability probably occurred during his prenatal period. An *Intellectual disability* is a disability characterized by significant limitations in both **intellectual functioning** and in **adaptive behavior**, which covers many everyday social and practical skills. This disability originates **before the age of 18**. *Intellectual functioning*—also called intelligence—refers to general mental capacity, such as learning, reasoning, problem solving, judgment etc. *Adaptive behavior* is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.

Factors such as impaired cognitive abilities and judgment, physical disabilities, insufficient adaptive behaviors, constant interactions with "protectors" who exploit them, lack of knowledge on how to protect themselves and living and working in high-risk environments increase the vulnerability to victimization (*Luckasson, 1992*). Almost all people with intellectual disability now live in the community and are susceptible to becoming involved in the criminal justice system as suspects and/or victims. As suspects, individuals with this disability are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or the consequences of their involvement. They may also have a strong need to be accepted and may agree to help with criminal activities in order to gain friendship (*Perske, 2003*).

Mr. Ortiz Castrajon's symptoms meet the criteria for Posttraumatic Stress Disorder (PTSD). He also meets criteria for the designation of Chronic, because the clinical criteria for PTSD have been present for over three months. Recent studies have shown that individuals who have Posttraumatic Stress Disorder experience physical changes to the hippocampus, a part of the brain involved in learning and memory, as well as in the handling of stress. The hippocampus also works closely with the medial prefrontal cortex, an area of the brain that regulates our emotional response to fear and stress. PTSD sufferers often have impairments in one or both of these brain regions. Other typical symptoms of PTSD include fragmentation of memory, intrusive memories, and flashbacks. Damage to the hippocampus, which processes memory, may explain incomplete or delayed recall of their experiences.

Mr. Ortiz Castrajon also suffers from depression. He experiences symptoms such as plummeting mood, fatigue and loss of interest. Yet cognitive symptoms are quite common and these

symptoms are incredibly debilitating. When cognitive symptoms of depression hit, they are more of a pressing concern than physical symptoms. Cognitive symptoms can interfere with all areas of a person's life, including work, and relationships. Problem-solving and higher thinking are greatly diminished. Poor concentration can cause problems with communication, and indecisiveness may strain relationships. The cognitive symptoms can be negative or distorted thinking, difficulty concentrating, distractibility, forgetfulness, reduced reaction time, memory loss, indecisiveness and judgment (*Marchand & Serani, 2008*).

I hereby declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct with a degree of psychological probability.

Dated the 12<sup>th</sup> of April, 2018

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Claudette S. Antuña, Psy.D, MHSA, LICSW

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Court of Appeals  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
THE HONORABLE STANLEY J. RUMBAUGH DEPARTMENT 18

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STATE OF WASHINGTON, )  
 )  
Plaintiff, ) COA NO. 52195-4-II  
 )  
vs. ) NO. 10-1-02057-0  
 )  
JUAN ORTIZ, )  
 )  
Defendant. )

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VERBATIM REPORT OF PROCEEDINGS  
VOLUME 1  
SENTENCING  
PAGES 1 - 27

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JUNE 25, 2018

DIANNE JOHNSON, RPR, CCR 2198  
Official Court Reporter (253) 798-6774  
930 Tacoma Avenue South, Department 22  
Tacoma, Washington 98402  
dianne.johnson@piercecountywa.gov

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APPEARANCES:

FOR THE STATE:

JARED E. AUSSERER  
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FOR THE DEFENDANT:

PHILIP E. THORNTON  
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253.383-3102  
Philip@thornton-law.net

Also present:

JUAN ORTIZ, the Defendant

1 BE IT REMEMBERED that on MONDAY, JUNE 25,  
2 2018, at Pierce County Superior Court, Department 18,  
3 930 Tacoma Avenue South, Tacoma, Washington, before THE  
4 HONORABLE STANLEY J. RUMBAUGH and reported by Dianne  
5 Johnson, RPR, CCR 2198, the following proceedings were  
6 had, to wit:

7  
8 \*\*\*\*\*

9  
10 THE COURT: We'll start with State v.  
11 Ortiz, 10-1-02057-0.

12 Mr. Thornton, good morning.

13 And Mr. Ausserer, good morning to you, sir.

14 MR. THORNTON: Good morning, your Honor.

15 MR. AUSSERER: Good morning, your Honor.

16 THE COURT: Bear with me for just a moment  
17 while I bring this up.

18 All right. Up and running.

19 So this is on today for sentencing?

20 MR. AUSSERER: Yes, your Honor. Good  
21 morning. Jared Ausserer on behalf of the State. This  
22 matter comes before the Court for sentencing after your  
23 Honor took Mr. Ortiz's plea sometime ago. Jared  
24 Ausserer on behalf of the State. I'm standing in for  
25 Mr. Greer.

1           And this morning I spoke to Mr. Thornton, who  
2 indicated to me that Mr. Ortiz now wishes to renew his  
3 motion to withdraw the plea. So I'll defer to  
4 Mr. Thornton to make that record before we go any  
5 further. Thank you.

6           THE COURT: Mr. Thornton, good morning.

7           MR. THORNTON: Good morning, your Honor.

8           THE COURT: CrR 4.2(f).

9           MR. THORNTON: I'm sorry?

10          THE COURT: CrR 4.2(f) controls the  
11 withdrawal of pleas.

12          MR. THORNTON: Okay. Mr. Ortiz is  
13 bringing his own motion to withdraw the guilty plea.  
14 He informed me this morning that he would like to  
15 withdraw his plea. I am not sure, because I have not  
16 sat down and consulted with him, the basis for that  
17 withdrawal.

18          I can let the Court know that approximately  
19 ten days ago Mr. Ortiz wanted to withdraw his plea and  
20 then changed his mind. A hearing was set, and that was  
21 struck at his request.

22          Given that he told me a few minutes before the  
23 Court took the bench that he would like to withdraw his  
24 plea, I'm certainly not aware of the basis for his  
25 withdrawal. On his behalf, I'd ask the Court to set

1 this matter over to allow him to inform me or file his  
2 own motion if that's what he wants to do.

3 Or the Court can inquire of Mr. Ortiz at this  
4 time. I don't think that would be the appropriate way  
5 to handle that. I think setting the matter over,  
6 allowing me to at least consult with him about that  
7 basis, and if he still wishes to go forward with it,  
8 then we will properly note it prior to the sentencing  
9 date.

10 THE COURT: I'm puzzled, Mr. Thornton,  
11 about how this plea was taken in the middle of  
12 February, February the 14th, we're now June the 25th,  
13 and I'm getting a last-minute motion to withdraw a  
14 plea, when there was previously a motion to withdraw a  
15 plea set and stricken from the Court's docket at the  
16 defendant's request. So I'm -- You know, I'm sensing  
17 that this is a manipulation, frankly, of the sentencing  
18 procedure.

19 Mr. Ausserer, do you want to weigh in on this?

20 MR. AUSSERER: Well, I think both  
21 Mr. Thornton and the Court is correct. I mean,  
22 Mr. Ortiz indicated earlier when I was before this  
23 Court for sentencing about eight weeks ago at least --  
24 indicated he wanted some time to brief the Court on the  
25 basis to withdraw. We agreed to setting up a motion,

1 which was then stricken.

2           So at this point I don't know what the basis  
3 of the motion would be. The State is ready to proceed  
4 to sentencing. But I think in order to preserve the  
5 integrity of the plea and I think the Court's sentence,  
6 setting the matter over a week to allow Mr. Thornton to  
7 either file a written motion or advise the Court and  
8 the parties that he is in fact ready to be sentenced on  
9 this matter would probably be the most prudent thing to  
10 do. But obviously I'll defer to the Court.

11           MR. THORNTON: If I could perhaps maybe  
12 correct the record a little, we were first before the  
13 Court, and as the Court is aware, as part of the plea  
14 agreement, the parties were not -- the Defense was not  
15 afforded the opportunity to argue age as a factor under  
16 Houston-Sconiers.

17           We had asked -- I had asked that he be  
18 evaluated for intellectual capacity as well as some  
19 other issues. That report came to me, and there was  
20 some indication that Mr. Ortiz had a significantly low  
21 intelligence level. I informed the Court about eight  
22 weeks ago that I didn't feel comfortable with those  
23 numbers and wanted to have him reexamined with regard  
24 to that. That has since happened. And once we got our  
25 indication from that particular doctor, Mr. Ortiz was

1 contemplating withdrawing his plea based on some other  
2 factors. We set up a motion --

3 THE COURT: You turned a couple of pages  
4 on me without giving me the content. So you have a  
5 report from the second doctor. Now I'm hearing that  
6 there's some other basis on which -- other than  
7 diminished intelligence or intellectual capacity, some  
8 other basis on which Mr. Ortiz wants to withdraw.

9 MR. THORNTON: Mr. Ortiz had some bases  
10 that I can't disclose to the Court, obviously, under  
11 attorney-client privilege unless he gives me specific  
12 permission to do so, which he hasn't done.

13 Once we set the motion to withdraw, Mr. Ortiz  
14 had a change of heart. I struck the motion. And we  
15 were prepared for sentencing this morning.

16 So Mr. Ortiz this morning informs me that he  
17 would like to go forward on those -- on other issues  
18 not specifically related to his intelligence level.

19 THE COURT: Can you tell me directly  
20 whether or not you believe that the second report that  
21 you referenced lends any support for the idea that  
22 Mr. Ortiz lacked the intellectual capacity to perceive  
23 the nature of his legal difficulties and understand the  
24 nature and extent of the consequences of a plea of  
25 guilty?

1 MR. THORNTON: As an officer of the court,  
2 I can tell you that if those were concerns that I had,  
3 I certainly would have brought them in a more formal  
4 basis to the Court.

5 THE COURT: Fair enough.

6 I see no reason for delay. Go ahead.

7 MR. AUSSERER: Your Honor, with that,  
8 Mr. Ortiz comes before the Court with a standard range  
9 on Count 1 of 331 to 427 months and on Count 2 13 -- I  
10 want to make sure Mr. Greer has his numbers correct.  
11 271 to 361 months on Count 1, with a 60-month firearm  
12 sentencing enhancement, for a total standard range on  
13 Count 1 of 331 to 421; Count 2, with also an offender  
14 score of three and a half, with a standard range of 13  
15 to 17 months on that count.

16 Mr. Greer has filed with the Court a  
17 sentencing memorandum. I think Mr. Thornton has as  
18 well.

19 THE COURT: Yeah.

20 MR. AUSSERER: And I'll just reiterate:  
21 The agreement between the parties is that the State  
22 would be asking for the high end of the sentencing  
23 range and the Defense would be arguing for the low end  
24 of the sentencing range. The plea agreement also  
25 includes an understanding that the parties, both State

1 and Defense, have specifically considered the factors  
2 related by the Court in Houston-Sconiers in negotiating  
3 this case. And the State is agreeing -- I'm sorry.  
4 The Defense is agreeing not to use those factors as a  
5 basis for recommending an exceptional sentence  
6 downward, and that was considered in the reduction of  
7 the charges.

8           So given the facts of this case, I'm sure the  
9 Court is aware, has read the Declaration for  
10 Determination of Probable Cause and the adjoining  
11 pleadings, Mr. Ortiz is alleged to have killed  
12 Mr. Zuniga in his garage and shot another individual in  
13 the back, resulting in paralyzation.

14           THE COURT: They're no longer allegations.

15           MR. AUSSERER: That's true. And those  
16 facts alone are the basis for the high end  
17 recommendation in this case. I think, as Mr. Greer has  
18 laid out appropriately in his recommendation, there is  
19 really no other sentence that would be appropriate for  
20 Mr. Ortiz given his conduct in this case. And so the  
21 State is asking the Court to impose the high end of the  
22 range.

23           The State is also asking the Court to impose  
24 financial obligations of \$500 crime victim penalty,  
25 \$200 in court costs, \$100 in DNA fee, \$1,500 DAC

1 recoupment. The Court obviously has the discretion to  
2 waive that if it finds that Mr. Ortiz is indigent and  
3 unable to pay. And restitution --

4 THE COURT: Thank you. There's an  
5 interesting point there, because on June the 8th the  
6 new statute was amended. The plea was in February, but  
7 the sentencing is, you know, after the date of the  
8 effectiveness of the amendment.

9 MR. AUSSERER: Yes.

10 THE COURT: What is the Court to apply?

11 MR. AUSSERER: Well, I think the reviewing  
12 Court would have you apply the law at the time of  
13 sentencing, I believe, because it would benefit  
14 Mr. Ortiz --

15 THE COURT: Right.

16 MR. AUSSERER: -- at this point, as  
17 opposed to the previous.

18 THE COURT: Which makes it \$500 plus a  
19 \$100 DNA if he hasn't had one already.

20 MR. AUSSERER: Yes, sir.

21 THE COURT: All right.

22 MR. AUSSERER: And then there was also  
23 restitution and extradition fees. Those had been  
24 identified in the amount of \$88,864.74.

25 THE COURT: 88,000 what?

1 MR. AUSSERER: \$88,864.74.

2 THE COURT: All right.

3 MR. AUSSERER: I have a restitution order  
4 in that amount prepared for the Court, and I'd ask the  
5 Court to impose those costs as well.

6 THE COURT: Is the amount of the  
7 restitution agreed upon?

8 MR. THORNTON: It is, your Honor.

9 THE COURT: Okay. Thank you. Go ahead.

10 MR. AUSSERER: Your Honor, also mandatory  
11 imposition of 36 months community custody on Count 1  
12 and 18 months community custody on Count 2.

13 THE COURT: Does that run past the full  
14 end of the range, though, if I impose community  
15 custody?

16 MR. AUSSERER: Not on Count 1, your Honor.  
17 The range would be -- You have up to life. So the  
18 Court I think would be required to impose the 36 months  
19 following Mr. Ortiz's release from the Department of  
20 Corrections.

21 THE COURT: Okay.

22 MR. AUSSERER: I would also ask the Court  
23 that Mr. Ortiz have no contact with Dean Salavea, who  
24 was the victim in Count 2. And I believe Mr. Salavea  
25 either has been or is about to be released from

1 Department of Corrections for his involvement in  
2 another murder that we litigated. So if he's in  
3 Department of Corrections, there would have to be a no  
4 contact order in place there. And if Mr. Salavea has  
5 been released or is soon to be released, we ask that  
6 there be no contact with Mr. Salavea after he is  
7 released.

8 THE COURT: I just don't want Mr. Ortiz to  
9 be sent to the same institution.

10 MR. AUSSERER: Right. And I think  
11 Department of Corrections is aware of the placement of  
12 these individuals. We've done -- There's been several  
13 codefendants of Mr. Ortiz that have been sentenced as  
14 part of multiple homicides involving this gang. And  
15 they're all in different Department of Corrections, is  
16 my understanding, including Mr. Sandoval who is in  
17 Minnesota at this point. So they're all over the  
18 place.

19 THE COURT: Thank you.

20 Any victim statement?

21 MR. AUSSERER: Sorry, your Honor?

22 THE COURT: Any victim statements?

23 MR. AUSSERER: No, your Honor. I don't  
24 believe anybody is here on behalf of Mr. Zuniga or  
25 Mr. Salavea. I know that they have been aware of and

1 have been advised of the reductions. I think they have  
2 not taken a position one way or the other with respect  
3 to any sort of amendment, as Mr. Zuniga was obviously  
4 an associate of Mr. Ortiz. And so I'm not sure he's  
5 very sympathetic one way or the other. Thank you.

6 MR. THORNTON: Thank you, your Honor.

7 The Defense is requesting the Court sentence  
8 Mr. Ortiz to the low end of the standard range. The  
9 basis for that is -- and as I think we set forth in our  
10 sentencing memorandum -- Mr. Ortiz is one of six  
11 children. He's the youngest of the six. He was -- as  
12 the Court read in the evaluation, had cognitive  
13 disabilities from the beginning. Most of those went  
14 unaddressed until middle school, when he first became  
15 aware of them. His mother was -- English was a second  
16 language for her, didn't quite understand. And a lot  
17 of those things did not get addressed in his high  
18 school year.

19 He stopped attending high school in the ninth  
20 grade and, as a result of his small stature, was picked  
21 upon by a number of different individuals. His  
22 brother, his older brother, who is currently in prison,  
23 was a member of a gang. Mr. Ortiz sought protection  
24 from these individuals terrorizing him on a daily basis  
25 and became involved in that gang.

1           It's certainly understandable, if the Court  
2 has reviewed that evaluation, to show that Mr. Ortiz's  
3 intellectual capacity truly affects the way he views  
4 the world, that his intellectual functioning and his  
5 adaptive behavior, the cognitive and adaptive behaviors  
6 that he experiences, cause him to be physically at  
7 risk. He does not know how to adapt to certain  
8 behaviors. He's constantly seeking interaction from  
9 protectors who ultimately exploit him. And knowledge  
10 of how to protect himself in working and living in  
11 these high-risk environments increase the vulnerability  
12 of him due to his condition.

13           All of this was onset before he became age 18.  
14 I've worked a long time with Mr. Ortiz, and I've spent  
15 a significant amount of time with him. Mr. Ortiz has a  
16 jaded view of the world. He has some misguided  
17 loyalties that prevent going forward in this case to  
18 his benefit. It's unfortunate.

19           I think Mr. Ortiz is a victim here in terms of  
20 his exploitation by the gang. I think that he is  
21 frightened by that gang even today. He has a brother  
22 who is still in the gang, who is in prison, that I  
23 believe has some significant influence over him.

24           THE COURT: How much influence can he  
25 exert from prison?

1 MR. THORNTON: Well, I think that's  
2 difficult for you and I to understand. But I think  
3 given his culture, given the means that he has had to  
4 live by, the friends that he has had to have made to  
5 protect himself, I think that influence is very real.  
6 I think people that control those gangs know how to  
7 control people from the outside -- or on the outside.  
8 And it's either through threats of violence, lack of  
9 support, and making him again another victim to  
10 physical abuse.

11 What Mr. Ortiz participated in was a  
12 horrendous crime. Mr. Zuniga was the leader of the  
13 gang and had terrorized Mr. Ortiz and his codefendant  
14 Mr. Toleafoa on a number of occasions. That came to a  
15 head as a result of an evening in a garage. What  
16 happened there is inexcusable. Mr. Ortiz knows that.  
17 I think at the time he felt he was in a corner and  
18 could not escape what was either ordered to them to do  
19 or he felt scared at the time.

20 This is not an easy case, your Honor. There  
21 are ultimately eight individuals that were prosecuted  
22 in this matter. Mr. Toleafoa, his codefendant, was 15  
23 at the time and was sentenced in this matter and is  
24 doing time. And Mr. Ortiz now stands before you for  
25 his actions.

1           We have tried to give you some insight into  
2 why a kid would act the way he did, and I hope the  
3 Court understands that. Mr. Ortiz is not asking to not  
4 be punished. The low end of the standard range is 271  
5 plus 60 months, which is 360 -- excuse me -- 330, which  
6 is a significant amount of time.

7           This is an event that occurred quite some time  
8 ago. Mr. Ortiz was arrested when the gang members took  
9 him to Mexico to hide him out. He was arrested on  
10 August 4th of 2016 and held on a warrant generated out  
11 of Pierce County on this cause number. He was held in  
12 a Mexican prison for eight months. And the conditions  
13 and the atmosphere that he endured during that eight  
14 months were significant.

15           THE COURT: Well, he was also a fugitive  
16 from justice for six years and managed to elude  
17 authorities despite his cognitive dysfunction.

18           MR. THORNTON: Mr. Ortiz was taken there  
19 by other gang members and told to stay in Mexico. He  
20 lived with his uncle in Mexico, told that he was never  
21 to return to the United States where his family was.

22           You've got a very young kid who functions at a  
23 very low intelligence level, and certainly with threats  
24 of violence if he returns to his family, whether that  
25 is a fleeing of justice or he is doing as he's told I

1 guess is for this Court to decide.

2 Mr. Ortiz is not a hardened gang member. He  
3 was a pawn in this scheme. And it's unfortunate that  
4 he's going to pay a very high price for that.

5 We ask the Court that a low end of the  
6 standard range sentence is the appropriate sentence  
7 here. He will be a very old man when he gets out of  
8 prison as a result.

9 THE COURT: How old is Mr. Ortiz?

10 MR. THORNTON: He's 27. Excuse me. 25  
11 years old.

12 And we are asking for him to have credit from  
13 August 4th of 2016 when he was held on this warrant in  
14 Mexico.

15 THE COURT: And he was extradited I  
16 believe on the 5th of April, 2017?

17 MR. THORNTON: He was arraigned on the 5th  
18 of April. I think he was brought back a few days prior  
19 to that.

20 We have agreed to the restitution amount,  
21 which is significant. Mr. Ortiz does not have a job.  
22 He has never worked outside of menial jobs. In Mexico  
23 he was a dishwasher and ultimately I think became a  
24 waiter a week before he was arrested. He's never held  
25 a job. He has really no financial support whatsoever.

1 He doesn't own any property or have a bank account.  
2 We'd ask the Court to waive whatever -- the court fines  
3 and other nonwaiveable fees.

4 THE COURT: I have no authority to waive  
5 restitution --

6 MR. THORNTON: Understood, your Honor.

7 THE COURT: -- nor can I waive interest on  
8 restitution. And that in and of itself over a whatever  
9 term of incarceration is going to pose probably an  
10 insurmountable economic challenge to Mr. Ortiz when he  
11 gets out, whenever that is. But, you know, that's what  
12 the legislature has decided. It's not up to me.

13 MR. THORNTON: And I wasn't asking the  
14 Court to waive the restitution.

15 Given all of the factors that we've presented  
16 to the Court, we think that the low end of the standard  
17 range sentence is significant punishment and just in  
18 this particular instance. We'd ask the Court to impose  
19 the low end of the standard range.

20 THE COURT: All right. Thank you. Let me  
21 look here. Then I want to hear from Mr. Ortiz.

22 MR. THORNTON: Mr. Ortiz does not have a  
23 statement this morning, your Honor.

24 THE COURT: All right. Mr. Ortiz, you  
25 understand that you have every right to speak with me

1 and tell me what you want to tell me about the  
2 imposition of your sentence? I want to make it clear  
3 to you that I am perfectly willing to hear you out. Do  
4 you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And you choose not to say  
7 anything?

8 THE DEFENDANT: At this time, no.

9 THE COURT: Okay. I can appreciate that  
10 negative environmental influences affect behaviors and  
11 that youthful offenders are susceptible to peer  
12 pressures. They act with impulsivity, and they act in  
13 a manner that doesn't reflect their understanding of  
14 the long-range consequences of their behavior.

15 However, this was a premeditated execution.  
16 This was not a killing that occurred in the context of  
17 being picked on or bullied and then some action by  
18 Mr. Ortiz was taken against that. This was a march in,  
19 find the target of this -- of this retribution, I  
20 guess. There was some problem internally with the  
21 gangs. I'm not clear what that was. But Mr. Zuniga  
22 was targeted, assassinated, and then Mr. Ortiz had the  
23 wherewithal, perhaps with the assistance of other gang  
24 members, to flee to Mexico and allude the authorities  
25 for six years. So that's six years of freedom that he

1 had while Mr. Zuniga was still dead.

2 And the other individual, who was paralyzed,  
3 he will live with the effects of that paralysis for the  
4 rest of his life.

5 So I'm not unsympathetic to the cognitive  
6 challenges that Mr. Ortiz suffers from. But those  
7 challenges don't morph a murderer into a victim. I can  
8 appreciate that they may render that particular  
9 individual susceptible to the things that I mentioned  
10 earlier, lack of foresight and inability to resist peer  
11 pressures.

12 But based on the whole circumstance, while it  
13 is not any delight for the Court to send a young man to  
14 prison for what will certainly be a substantial portion  
15 of his life, well over half, I'm not going to sentence  
16 him at the low end of the range either. I think that a  
17 reasonable sentence in this particular case on straight  
18 time would be 320 months. And then you add in the 60  
19 months, and that gets you to 380 months. And that will  
20 be the judgment and sentence of the Court.

21 The legal financial obligations will be  
22 restricted to the \$500 crime victim's assessment, \$100  
23 of the DNA testing in the event that he has not had a  
24 DNA test before. If he has had, DOC can go ahead and  
25 do the test, but he doesn't have to pay for it.

1 Stipulated restitution in the sum of \$88,864.74 will be  
2 ordered. A no contact order with the victim will also  
3 be entered.

4 Does that cover it, Mr. Ausserer?

5 MR. AUSSERER: A couple points of  
6 clarification, your Honor. So Count 2, I assume the  
7 Court is going to impose the 17 months and run it  
8 concurrent?

9 THE COURT: Concurrent, yes.

10 MR. AUSSERER: With respect to credit for  
11 time served, Mr. Thornton referenced August 4 I believe  
12 as the date that he was detained in a Mexican jail.  
13 I've received word from FBI Agent Postma, who is  
14 present, who notifies our office of the containment and  
15 the extradition process here, that he was booked into  
16 the jail in Mexico on August 30th of 2016. He was  
17 extradited on April 4th up here, arraigned on April 5th  
18 here. And that's the time line that I'm aware of. So  
19 I think he's entitled to credit from August 30th, of  
20 course to be calculated by Department of Corrections.

21 THE COURT: Yeah, whenever he went into  
22 custody in Mexico -- I assume it was for this charge.  
23 They picked him up on a warrant.

24 MR. AUSSERER: Right.

25 THE COURT: A governor's warrant, I

1 assume.

2 MR. AUSSERER: Yes.

3 THE COURT: So he will get credit for that  
4 time, whatever it is.

5 MR. AUSSERER: So your Honor, what I'll  
6 do, with the Court's permission, is I'll state "Credit  
7 to be calculated by Department of Corrections" and to  
8 consider his booking date in the Mexico jail under this  
9 warrant as the start date.

10 THE COURT: Correct.

11 And Mr. Thornton, you can just check that when  
12 the number comes back. If you think it's wrong, let me  
13 know and I'll look at --

14 MR. THORNTON: Thank you.

15 THE COURT: -- whatever discrepancy you  
16 perceive.

17 MR. THORNTON: Thank you.

18 MR. AUSSERER: One other point of  
19 clarification, just so that the Judgment and Sentence  
20 is accurate, I assume the Court is also ordering  
21 extradition costs separate from the restitution. That  
22 amount has been specified as \$2,351.83. And so those  
23 are nondiscretionary fees, I think is what --

24 THE COURT: Right. I thought that that  
25 was rolled in.

1 MR. AUSSERER: No, a separate restitution  
2 order outlining CVC and all those costs, and then on  
3 the Judgment and Sentence there's a line delineating  
4 extradition costs, where I've included \$2,351.83. And  
5 so I'll add the court-ordered costs up here and then  
6 attach the restitution order and check the box that  
7 says, "Restitution order agreed by the parties." There  
8 will be two separate documents outlining financial  
9 obligations.

10 THE COURT: Extradition costs are  
11 mandatory, and I imperfectly understood the restitution  
12 number of \$88,864.74 as not being inclusive of the  
13 extradition cost of \$2,351.80. And those will both be  
14 ordered.

15 MR. THORNTON: Mr. Ortiz does not wish to  
16 sign.

17 THE COURT: Indicate "Signature was  
18 refused."

19 Mr. Ortiz, Mr. Ortiz, Mr. Ortiz, before you  
20 leave the courtroom, your fingerprints are going to be  
21 on that paper. Now, you can either put them on there  
22 yourself or the officers will assist you.

23 The Court's signed off on the advisement of  
24 right to appeal, notes that Mr. Thornton has signed.  
25 Mr. Ortiz, given the opportunity to sign, has refused.

1 The Court's signed off on the order for biological  
2 sample draw. Mr. Ortiz, being present, has refused to  
3 sign. Counsel have both signed. The Court is signing  
4 the order of restitution. The defendant, being  
5 present, has refused to sign. Counsel has signed. The  
6 amount of the restitution is not in dispute.

7 The Court's signed off on the judgment and  
8 sentence. The defendant, being present, has refused to  
9 sign. The Court's signed off on the warrant of  
10 commitment. The defendant, being present, has refused  
11 to sign.

12 Did you have a no contact order?

13 MR. AUSSERER: Your Honor, it's just  
14 delineated in the body of the judgment and sentence.  
15 Thank you.

16 THE JUDICIAL ASSISTANT: Were you going to  
17 sign, Mr. Thornton, on the restitution?

18 MR. THORNTON: Well, there is nothing to  
19 witness. It just says, "Witness's signature," and he  
20 didn't sign it.

21 THE DEFENDANT: Can I say something, your  
22 Honor, before I leave?

23 THE COURT: Sure.

24 THE DEFENDANT: This morning I sent in a  
25 motion to withdraw my plea. For the record, if it gets

1 denied, I want a notice of appeal right away.

2 THE COURT: You can work that out with  
3 your lawyer.

4 MR. THORNTON: Maybe, just so that the  
5 record is clear, if we could do a handwritten note that  
6 he requested it and the Court denied that.

7 THE COURT: Well, there's going to have to  
8 be more to it than that, Mr. Thornton. The previously  
9 filed motion was withdrawn. Then a motion was dropped  
10 on the Court the morning of sentencing.

11 MR. THORNTON: If I draft a proposed order  
12 to Mr. Ausserer, may we present that ex parte?

13 THE COURT: Any objection?

14 MR. AUSSERER: No objection. I'll be here  
15 all morning.

16 THE COURT: Correct.

17 MR. AUSSERER: I'm not going anywhere.

18 THE COURT: As long as that's fine with  
19 Mr. Ortiz.

20 (Discussion off the record.)

21 THE COURT: There has to be an order  
22 entered before you have an order to appeal.

23 All right. So would you make a record,  
24 Mr. Thornton?

25 MR. THORNTON: Mr. Ortiz agrees that we

1 may draft an order outside his presence and present  
2 that to the Court and then we can go from there.

3 THE COURT: That's with regard to the  
4 denial of the motion to withdraw the plea?

5 MR. THORNTON: Correct.

6 THE COURT: Did Mr. Thornton state that  
7 correctly?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. Thank you.

10 MR. AUSSERER: Thank you, your Honor.

11 MR. THORNTON: Thank you.

12 THE COURT: All right.

13 (Proceedings concluded.)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE  
THE HONORABLE STANLEY J. RUMBAUGH DEPARTMENT 22

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STATE OF WASHINGTON, )  
 )  
Plaintiff, ) COA NO. 52195-4-II  
 )  
vs. ) NO. 10-1-02057-0  
 )  
JUAN ORTIZ, ) REPORTER'S CERTIFICATE  
 )  
Defendant. )  
 )

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STATE OF WASHINGTON )  
 ) ss  
COUNTY OF PIERCE )

I, Dianne Johnson, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing is a true and correct transcript of the proceedings, VOLUME 1, SENTENCING, PAGES 1 - 27, held in the above-entitled matter on JUNE 25, 2018.

Dated this 17TH day of SEPTEMBER, 2018.

---

Dianne Johnson, RPR, CCR 2198  
Official Court Reporter



as charged in the SECOND AMENDED Information

- A special verdict/finding for use of firearm was returned on Count(s) IRCW 9.94A.602, 9.94A.533.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

**2.2 CRIMINAL HISTORY (RCW 9.94A.525):**

	CRIME	DATE OF SENTENCE	SENTENCING COURT	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	UPOF2	10/06/08	PIERCE, WA	09/12/08	J	NV
2	MAL MISCH 2	08/03/09	PIERCE, WA	07/16/09	J	NV
3	RES BURG	10/27/09	PIERCE, WA	10/04/09	J	NV

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

**2.3 SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	3.5	XV	271 TO 361 MONTHS	60 MONTHS - FASE	331 TO 421 MONTHS	LIFE/ \$50,000
II	3.5	IV	13 TO 17 MONTHS	N/A	13 TO 17 MONTHS	10 YRS/ \$20,000

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

within  below the standard range for Count(s) \_\_\_\_\_

above the standard range for Count(s) \_\_\_\_\_

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were  stipulated by the defendant,  found by the court after the defendant waived jury trial,  found by jury by special interrogatory.

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_

2.6  **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

The court considered the following factors:

the defendant's criminal history.

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

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

other: \_\_\_\_\_

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

**III. JUDGMENT**

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

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

**IV. SENTENCE AND ORDER**

IT IS ORDERED:

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

JASS CODE

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

**PCV** \$ 500.00 Crime Victim assessment

**DNA** \$ 100.00 DNA Database Fee

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

**FRC** \$ 200.00 Criminal Filing Fee

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

**EXT** \$ 2,351.83 Extradition Costs

**OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)**

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

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

\$ 2971.83 TOTAL

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

shall be set by the prosecutor.

is scheduled for \_\_\_\_\_

**X** RESTITUTION. Order Attached

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

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

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

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

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

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

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

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

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

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

4.3 NO CONTACT  
The defendant shall not have contact with DEAN SALAVEA (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for ~~one~~ 10 years (not to exceed the maximum statutory sentence).

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

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

<u>Extradition costs, by later order of the Court.</u>

*Part*

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

4.4b BOND IS HEREBY EXONERATED

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

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

320 months on Count I
17 months on Count II

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

60 months on Count No I

Sentence enhancements in Counts shall run
[ ] concurrent [ ] consecutive to each other.
Sentence enhancements in Counts shall be served
[X] flat time [ ] subject to earned good time credit.

Actual number of months of total confinement ordered is: 380 months

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

[X] The confinement time on Count(s) I contain(s) a mandatory minimum term of 20 years

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

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

Confinement shall commence immediately unless otherwise set forth here:

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(c) Credit for Time Served. The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served. *Mr. Ortiz to be given credit from the date of incarceration in Mexico, August 31, 2016, to be verified by Department of Corrections*

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

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

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

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

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

The defendant shall be on community custody for:

Count(s) I 36 months for Serious Violent Offenses

Count(s) II 18 months for Violent Offenses

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

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

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[ ] consume no alcohol.

have no contact with: Per CCO

[ ] remain [ ] within [ ] outside of a specified geographical boundary, to wit: \_\_\_\_\_

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

participate in the following crime-related treatment or counseling services: Per CCO

[ ] undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse

[ ] mental health [ ] anger management and fully comply with all recommended treatment.  
[ ] comply with the following crime-related prohibitions: \_\_\_\_\_  
\_\_\_\_\_

[ ] Other conditions:  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

V. NOTICES AND SIGNATURES

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

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

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

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

5.4 **RESTITUTION HEARING.**

[ ] Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

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

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

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

N/A

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

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

5.10 **OTHER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE IN OPEN COURT and in the presence of the defendant this date: ~~6/25/18~~ 6/25/18

  
Deputy Prosecuting Attorney  
Print name: JAMES AUSSEVER  
WSB # 32719

JUDGE  
Print name   
Stanley J. Rumbaugh  
Attorney for Defendant  
Print name: PHILIP THORNTON  
WSB # 20072

Refused to Sign  
Defendant

**FILED**  
DEPT 18  
IN OPEN COURT  
**JUN 25 2018**  
PIERCE COUNTY, Clerk  
By Jim  
DEPUTY  
Office of Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 10-1-02057-0

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date:

Clerk of said County and State, by: \_\_\_\_\_, Deputy Clerk

**IDENTIFICATION OF COURT REPORTER**

Dianne Johnson  
Court Reporter

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6/25/2018

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APPENDIX "F"

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

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

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

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

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

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

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

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

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

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

- (I) The offender shall remain within, or outside of, a specified geographical boundary: Per CCO
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: Per CCO
- (III) The offender shall participate in crime-related treatment or counseling services; Per CCO
- (IV) The offender shall not consume alcohol; \_\_\_\_\_
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions. Per CCO
- (VII) Other: \_\_\_\_\_

APPENDIX F

0013  
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 116/25/2018  
 116252  
 116/25/2018  
 116252

IDENTIFICATION OF DEFENDANT

SID No. WA24729209  
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/26/93

FBI No. 795442AD3

Local ID No. UNKNOWN

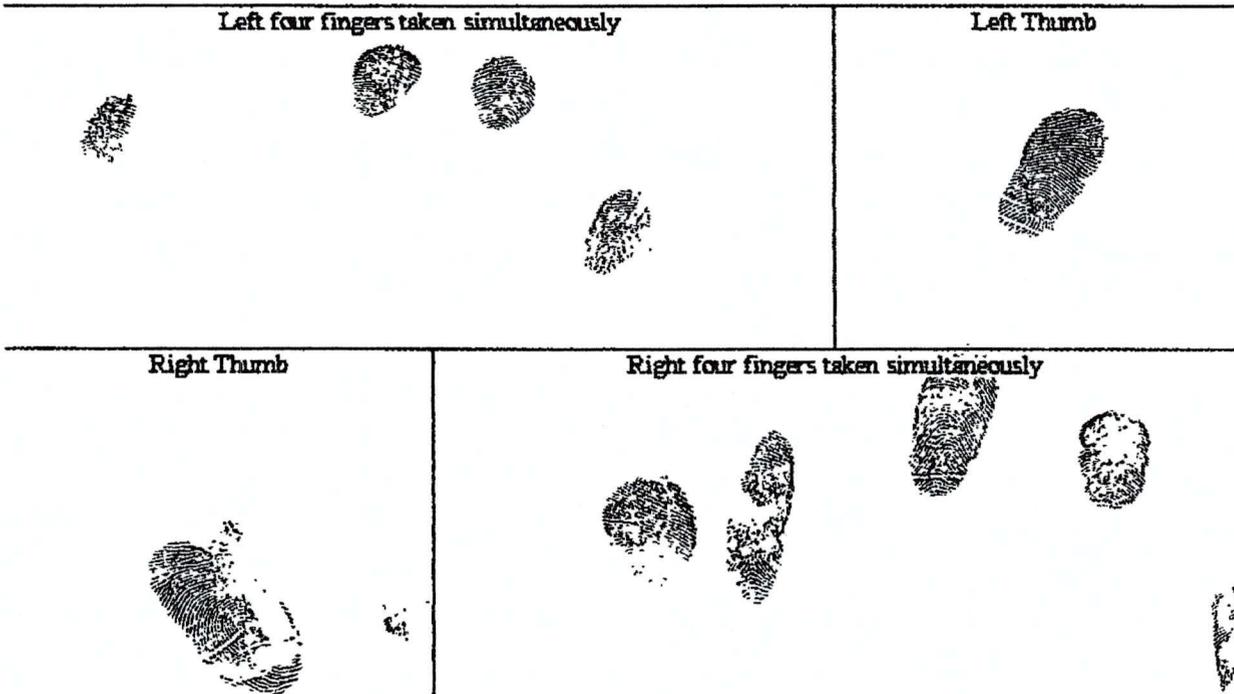
PCN No. 541803289

Other

Alias name, SSN, DOB:

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

FINGERPRINTS



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

Dated: 25 June 2018

DEFENDANT'S SIGNATURE:

[Signature] to Segra

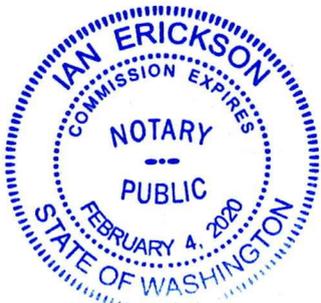
DEFENDANT'S ADDRESS:

Vertical text on the left margin: 0014, 6252, 6/25/2018, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

Dear ; Clerk David Ponzola For DIVISION II

I have gather everything I need to file for my Personal Restraint Petition, Im sending it also with this letter I wrote to you. I ask that you file it with the court of Appeals DIVISION II. I ask the courts to review my Personal Restraint Petition and the evidence I gather for my Personal Restraint Petition. With the evidence present I ask the courts to grant me a new and fair trail. Everything that I gather is to the best of my knowledge true and correct, For my Personal Restraint Petition again I ask for the clerk to file my Personal Restraint Petition to the court of Appeals DIVISION II  
thank YOU.

Dated 03 / 31 / 2019



*Ian Erickson*  
3/31/19

X *Juan Ortiz*  
Juan ortiz

RECEIVED  
APR 02 2019  
CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON