

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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:  
FINOS D. FOX, III,  
Petitioner.

NO. 52392-2-II

[Pierce County No. 12-1-02627-2]

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO DISCRETIONARY REVIEW

1. Is dismissal appropriate when the petition wrongly mixes a challenge to the trial court's exercise of sentencing discretion, for which there is no exception to the collateral attack time bar, and a double jeopardy claim, for which there is a statutory exception?
2. Should the petition also be dismissed for being presented without a transcript of the hearing where his challenged sentence was imposed?
3. Did petitioner waive his double jeopardy claim when he entered a plea pursuant to *In re Barr*<sup>1</sup> to four counts of third degree assault that were never actually committed to avoid being prosecuted for one count of first degree assault given the likelihood it would result in a conviction requiring him to spend the rest of his life in prison as a persistent offender?

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<sup>1</sup> *In re Pers. Restraint of Barr*, 102 Wn.2d 265, 684 P.2d 712 (1994) ("A plea does not become invalid because an accused chooses to plead to a related lesser charge that was not committed in order to avoid certain conviction for a greater offense").

4. Has petitioner failed to prove his double jeopardy claim as he was convicted of four counts of third degree assault that could not be derived from the same offense because they are legal fictions recognized for his benefit, but never actually occurred?

B. STATUS OF PETITIONER

Petitioner is restrained pursuant to a judgment entered on November 15, 2013, in Pierce County Cause No. 10-1-01902-4 that became final the same day as there was no appeal. Appendix at 11; RCW 10.73.090 (3)(a). He was *originally* charged with one count of deadly weapon enhanced first degree assault for intentionally assaulting Kenneth Lloyd with a deadly weapon or force or means likely to produce great bodily harm or death while armed with a knife. Appendix at 25. A notice was filed alerting him conviction for the original charge would trigger a persistent offender classification that would result in him being sentenced to life without the possibility of parole. Appendix at 30. To avoid exposure to a mandatory sentence of life for the first degree assault offense petitioner believed the State could prove, petitioner elected to enter a guilty plea pursuant to *In re Pers. Restraint of Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984) to four counts of third degree assault that never occurred. Appendices at 32 and 41. Those four class C felonies each carried a maximum sentence of 5 years, which, through the stipulated exceptional sentence, would support the imposition of a 20 year term statutorily eligible for good time credit petitioner agreed to serve instead of the foreseeable sentence of mandatory life without the possibility of parole. *Id.*

The prosecutor's statement about the amended Information explained the amendment was partially due to the fact "defendant will agree to serve twenty (20) years in prison to avoid his third strike." Appendix at 44. Petitioner's stipulation to the exceptional sentence required to support the agreed upon 20 year sentence was filed under the heading "Waiver of Jury Trial on

Aggravating Factors.” Appendix at 46. Petitioner explained the waiver:

1. I have been charged with the following crimes, which ... have the following standard sentencing ranges:

Count I—assault in the third degree (33-43 months);  
Count II—assault in the third degree (33-43 months);  
Count III—assault in the third degree (33-43 months);  
Count IV—assault in the third degree (33-43 months).

I have been informed and intend to ask this court to sentence me to 20 years. In this regard I stipulate to a sentence above the standard sentencing ranges so that the court can accomplish this sentence. It would require an exceptional sentence of the maximum term allowed by law of 5 years for any Class C felony (assault in the third degree) **for each count, and that all sentences run consecutive to each other.**

2. I am informed and I fully understand and stipulate that a conviction on the original charges filed in the original information may constitute a third strike and I would then be sentenced to life in prison without the possibility of parole because I would be a “persistent offender.” The prosecuting attorney has agreed to reduce the charge, however, to allow me to serve a 20 year sentence in lieu of life without parole. This 20 year sentence can only be accomplished if **I stipulate to an exceptional sentence above the standard range on each count and that all sentences run consecutive to each other**, because there are no statutory aggravators warranting the exceptional sentence. This is done purely to avoid a life sentence.
3. I have been informed and fully understand that I have a right to have the facts supporting any aggravating circumstances proved beyond a reasonable doubt to any jury and that a jury’s verdict must be unanimous and by special interrogatory. **However, because this is a legal fiction in this case**, I stipulate to the court’s ability to impose an exceptional sentence and waive any requirement that a jury make a factual determination of an aggravating factor;
4. I have been informed and fully understand that in a jury trial I have the following rights ... (d) The right to appeal the jury’s verdict.
5. I freely and voluntarily waive my right to a jury trial on the aggravating circumstances. ... The court will decide whether the stipulation and my criminal history provides substantial and compelling reasons to order an exceptional sentence above the standard sentencing range and whether to run the sentences consecutive to each other.

Appendix at 46 (emphasis added). The waiver was signed by petitioner and his counsel with an

avertment of the assistance petitioner received. *Id.*

Petitioner entered a second stipulation regarding his offender score for the plea. Appendix at 33. The stipulated score of 7 assigned a separate point to each third degree assault offense. *Id.* That stipulation further provided for the State refiling the original charge if the guilty plea is set aside due to a motion filed by petitioner. *Id.*

The amended Information filed pursuant to *In re Barr* did not include made-up details to explain precisely how the four lesser assault counts, for which there is no factual basis due to their fictitious *In re Barr* status, were notionally committed. Instead, four assault three counts were charged according to *In re Barr* alleging never-actually committed violations of RCW 9A.36.031 (1)(d). Only Count I provided a named victim (Charles Lloyd). Appendix at 4. Counts II-IV provide petitioner assaulted an unidentified "person." *Id.* Nothing in the record of those created offenses provide further details about the precise time "on or about" July 11, 2012, those four made-up crimes occurred. *E.g., Id.* Nor does the record provide a precise location in the State of Washington where those made-up crimes occurred. *Id.* And the specific-fictional acts by which those four made-up crimes were notionally committed are also absent from the record. *Id.* Rather than include such superfluous made-up detail, the amended information functionally provides only the information needed to support petitioner's *In re Barr* plea:

COUNT I [P]rosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN THE THIRD DEGREE, committed as follows: That FINOS DALE FOX, III, **in the State of Washington, on or about the 11<sup>th</sup> day of July, 2012**, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily **harm to Charles Lloyd by means of a weapon or other instrument or thing likely to produce bodily harm**, contrary to RCW 9A.36.031(1)(d), and against the peace and dignity of the State of Washington.

COUNT II ... That FINOS DALE FOX, III, **in the State of Washington, on or about the 11<sup>th</sup> day of July, 2012**, did unlawfully and feloniously, under

circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily harm to **a person by means of a weapon or other instrument or thing likely to produce bodily harm**, contrary to RCW 9A.36.031(1)(d), and against the peace and dignity of the State of Washington.

COUNT III ... That FINOS DALE FOX, III, **in the State of Washington, on or about the 11<sup>th</sup> day of July, 2012**, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily harm to **a person by means of a weapon or other instrument or thing likely to produce bodily harm**, contrary to RCW 9A.36.031(1)(d), and against the peace and dignity of the State of Washington.

COUNT IV ... That FINOS DALE FOX, III, **in the State of Washington, on or about the 11<sup>th</sup> day of July, 2012**, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily harm to **a person by means of a weapon or other instrument or thing likely to produce bodily harm**, contrary to RCW 9A.36.031(1)(d), and against the peace and dignity of the State of Washington.

Appendix at 4. (emphasis added). Counts II-IV also contained the following introductory language:

[P]rosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse FINOS DALE FOX III of the crime of ASSAULT IN THE THIRD DEGREE, a **crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others**, committed as follows ....

*Id.* (emphasis added).

Meanwhile, petitioner's statement on plea of guilty avers his understanding that "[e]ach crime" with which he is charged has a maximum term of "5 yrs." Appendix at 33. Each of those four crimes were then set forth with an offender score of 7, which based on his current and prior offenses required stipulation that each third degree assault was a separate and distinct offense from the three other current third degree assaults underlying petitioner's sentence. *Id.* at 2; RCW 9.94A.589. The plea stipulated the criminal history was correct and complete. *Id.* at 2. The agreed recommendation of the prosecutor was provided: "Ct I-60 months, Ct II-60 months, Ct. III-60

months, Ct. IV-60 months, each count consecutive to each other for a total of 240 months, stipulated exceptional sentence upward.” *Id.* at 4. Paragraph (h)(iii) explains the court’s authority to impose an exceptional sentence based on the parties’ stipulation. *Id.* at 4-5.

Paragraph 7 provides petitioner “plead[ed] guilty to count(s) I, II, III, IV as charged in the Amended Information.” *Id.* at 8. The knowing, intelligent and voluntary quality of that plea was averred. *Id.* The only factual basis for that *In re Barr* plea was then recited:

I am pleading guilty pursuant to the holding of In Re Barr, I acknowledge **the original declaration of probable cause establishes probable cause for the original charge**. I acknowledge there is a significant risk that I would be convicted at trial as charged, a potential third strike with a possible sentence of life imprisonment without parole, I therefore plead guilty to take advantage of the State’s willingness the [sic] reduce the charge [sic] to a non-strike offense.

*Id.* at 9 (emphasis added).

The judgment now challenged as facially invalid likewise lists the four counts of third degree assault attending petitioner’s plea. Appendix at 13. The separate point assigned to each of those distinct offenses is also reflected in the judgment through the aggregate score of 7 each was assigned (i.e., priors: three counts of illegal use of weapon—score “3;” one count second degree assault—score “1;” with three other-current third degree assaults scored against each count of third degree assault—score 3). The result is 4 (points from priors) + 3 (points from other current) = 7. Paragraph 2.4 contains the written findings required for the trial court’s imposition of the exceptional sentence petitioner sought:

2.4 [X] EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence: [X] above the standard range for Count(s) 1, 2, 3, 4. [X] The defendant and the 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....

Appendix at 14. A finding consistent with petitioner's signed stipulation. Accordingly, the stipulated exceptional sentence of 60 consecutive months for each count was imposed to give petitioner the 20 year sentence he agreed to serve to avoid the sentence of mandatory life that he believed would inevitably follow if he rejected the State's plea offer.

Petitioner was notified of his right to appeal the exceptional sentence he received. Appendix at 1. The judgment further advised him of the one-year collateral attack time limit. Appendix at 19. He nevertheless filed his collateral attack on or about September 12, 2018—4 years, 9 months and 28 days after his judgement became final on November 15, 2013. ER 201. Two claims are raised. The first challenges the legality of his sentence on double jeopardy grounds pursuant to the RCW 10.73.100(3) exception to the time bar. But the second claim challenges the court's discretionary finding his criminal history and stipulation provided substantial and compelling reasons to impose the exceptional sentence he sought. There is no exception for that claim.

### C. ARGUMENT

Personal restraint procedure has origins in the State's *habeas corpus* remedy, guaranteed by article 4, section 4, of the State Constitution. A PRP, like a petition for a writ of *habeas corpus*, is not a substitute for an appeal. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 823-824, 650 P.2d 1103 (1982). Collateral relief undermines the finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders. *Id.*; *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 409, 114 P.3d 607 (2005). These significant costs require collateral relief to be limited in the state as well as federal courts. *Id.*

In this PRP, petitioner must show constitutional error resulted in actual prejudice. Mere assertions are insufficient to demonstrate actual prejudice. The rule constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in PRPs. *In re Pers. Restraint*

*of Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825; *Woods*, 154 Wn.2d 409. A petitioner must show "a fundamental defect which inherently results in a complete miscarriage of justice" to obtain collateral relief from an alleged nonconstitutional error. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 812 792 P.2d 506 (1990); *Woods*, 154 Wn.2d 409. This is a higher standard than actual prejudice. *Cook*, 114 Wn.2d at 810. All inferences must be drawn in favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at 825-826. "This high threshold requirement is necessary to preserve the societal interest in finality, economy, and integrity of the trial process. It also recognizes the petitioner ... had an opportunity to obtain judicial review by appeal." *Woods*, 154 Wn.2d at 409.

The petition must include a statement of facts upon which the claim of unlawful restraint is based and the evidence available to support the factual allegations. RAP 16.7(a)(2); *In re Pers. Restraint of Williams*, 111 Wn.2d 353, 759 P.2d 436 (1988). PRP claims must be supported by affidavits stating particular facts, certified documents, certified transcripts, and the like. *Williams*, 111 Wn.2d at 364; *In re Pers. Restraint of Connick*, 144 Wn.2d 442, 28 P.3d 729 (2001). "If [a] petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate he has competent, admissible evidence to establish the facts that entitle him to relief." *Connick*, at 451. Reviewing courts have three options:

1. If a petitioner fails to meet the threshold burden of showing actual prejudice from constitutional error or a fundamental defect resulting in a miscarriage of justice, the petition must be dismissed;
2. If a petitioner makes a prima facie showing of actual prejudice or a miscarriage of justice, but the merits cannot be determined solely on the record, the court should remand for a full hearing on the merits or for a reference hearing pursuant to RAP 16.11(a) and RAP 16.12;

3. If the court is convinced a petitioner has proven actual prejudicial error arising from constitutional error or a fundamental defect resulting in a miscarriage of justice, the court should grant the personal restraint petition without remanding the cause for further hearing.

*Hews v. Evans*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

1. PETITIONER'S TIME BARRED CHALLENGES TO THE PURPORTED EXCESSIVENESS OF THE EXCEPTIONAL SENTENCE HE SOUGHT TO AVOID A LIFE SENTENCE PRECLUDES REVIEW OF HIS PRP. THAT UNTIMELY RAISED CLAIM IS WITHOUT AN EXCEPTION TO THE COLLATERAL ATTACK TIME BAR AND IS IMPORPERLY MIXED WITH A DOUBLE JEOPARDY CLAIM FOR WHICH THERE IS A REVIEW ENABLING EXCEPTION.

RAP 16.4(d) permits collateral relief only if allowable "under RCW 10.73.090, .100, and .130." The time bar created by RCW 10.73.090 is a "mandatory rule" with no "good cause" or "ends of justice" exception. *In re Pers. Restraint of Greening*, 141 Wn.2d 687, 694-95, 9 P.3d 206 (2000) (citing *Shumway v. Payne*, 136 Wn.2d 383, 398-99, 964 P.2d 349 (1998) (citing *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 938-39, 952 P.2d 116 (1998))). "A personal restraint petition is time barred if it is filed more than one year after the judgment becomes final." *In re Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 764, 297 P.3d 51 (2013) (citing RCW 10.73.090(1)). Untimely petitions may only be considered if the judgment and sentence is facially invalid or entitlement to an RCW 10.73.100 exception is proved.

The time limit specified in RCW 10.73.090 does not apply to a petition solely based on one or more of the following grounds:

- (1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100. Petitioner bears the burden of proving his petition falls within an exception to the one-year time limit. The burden requires him to identify an applicable exception. *In re Pers. Restraint of Stoudmire*, 145 Wn.2d 258, 36 P.2d 1005 (2001) ("*Stoudmire II*"). Neither the Court nor the State should have to guess which exception the petitioner thinks applies, nor should the State have to prove the exceptions that do not apply.

A petition which relies on RCW 10.73.100 to overcome the one-year time bar in RCW 10.73.090 cannot be based on any grounds other than the six grounds in RCW 10.73.100. *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003) (citing *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 349, 5 P.3d 1240 (2000)). "[I]f a ... petition claiming multiple grounds for relief is filed after the one-year period of RCW 10.73.090 expires, and the court determines ... at least one of the claims is time barred, the petition must be dismissed" without any analysis of which claims are timely and which are not. *Id.* (citing *In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 702, 72 P.3d 703 (2003)).

Petitioner challenges on double jeopardy grounds the legality of the sentence imposed for three of his four third degree assault convictions. That claim avoids the time bar under RCW 10.73.100(3), which provides:

The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution[.]

*Id.* But petitioner further asserts the trial court abused its discretion in imposing the stipulated exceptional sentence, claiming a sentence so “extreme” as the one imposed at his request in lieu of the mandatory life sentence he hoped to avoid through that stipulation was not supported by substantial and compelling reasons. There is no enumerated RCW 10.73.100 exception to the collateral attack time bar for that claim. *Stoudmire*, 141 Wn.2d at 350; *State v. Chambers*, 176 Wn.2d 573, 584, 293 P.3d 1185 (2013).

And that exceptional sentence is facially valid, which forecloses the only other avenue for reviewing his untimely raised challenge to its validity. Written findings setting forth the trial court’s reason for sentencing petitioner outside the standard range appears within the judgment as required by RCW 9.94A.535. Appendix at 14; *State v. Friedlund*, 182 Wn.2d 388, 393, 341 P.3d 280 (2015); *State v. Chambers*, 176 Wn.2d 573, 584, 293 P.3d 1185 (2013). The findings incorporated petitioner’s written stipulation to his exceptional sentence by reference. The 5 year sentence consecutively imposed for each of petitioner’s four third degree assault counts is authorized by the 5 year jurisdictional maximum for those Class C felonies. RCW 9A.20.021(c). There is consequently no exception to permit review of the reasons for which the exceptional sentence was imposed. And a manifest injustice from the face of his judgment has not been proven. *See Coats*, 173 Wn.2d at 138-41. The result of the former failing, when combined with

the double jeopardy claim for which there is a review-enabling exception, is an unreviewably mixed petition. Dismissal is the required result. *Stenson*, 150 Wn.2d at 220.

2. THE PETITION SHOULD ALSO BE DISMISSED AS IT WAS FILED WITHOUT A TRANSCRIPT OF THE HEARING WHERE THE CHALLENGED SENTENCE WAS IMPOSED, FOR WITHOUT THE TRANSCRIPT ONE CANNOT KNOW IF THERE IS RECORD THAT FURTHER REFUTES PETITIONER'S CLAIMS.

Personal restraint claims must be supported by certified transcripts, and the like. RAP 16.7(a)(2); *Williams*, 111 Wn.2d at 353, 364; *see also Connick*, 144 Wn.2d at 451. Arguments that are not supported by meaningful citation to the record should not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *State v. Camarillo*, 54 Wn.App. 821, 829, 776 P.2d 176 (1989) (no references to the record), *aff'd*, 115 Wn.2d 60, 794 P.2d 850 (1990); *In re Whitney*, 155 Wn.2d 451, 467, 120 P.3d 550 (2005) (citing *In re Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (declining to scour the record); RAP 10.3(a).

Petitioner failed to fulfill his predicate requirement of providing the entire record needed to review his claims. Review of the double jeopardy claim he raises requires this Court to assess if there is proof of the factual similarities claimed to exist among his convictions is "apparent from the record." *In re Pers. Restraint of Schorr*, 191 Wn.2d 315, 324, 422 P.3d 451 (2018) (citing *United States v. Broce*, 488 U.S. 563, 573-75, 109 S.Ct. 757 (1989)). For the double jeopardy claim "will be rejected" if it relies on proof of factual similarities among the charges "that are not apparent from the record." *Id.* Likewise, if the challenge to the factual basis for his exceptional sentence could avoid the time bar, this Court would need to determine if a complete miscarriage of justice occurred. Information communicated by the parties or court at sentencing may further undermine petitioner's claim by further revealing the soundness of the trial court's reasons for sentencing petitioner as it did. Since all inferences must be drawn in favor of the

judgment's validity, error cannot be properly presumed from an incomplete record petitioner has the burden to perfect. *Hagler*, 97 Wn.2d at 825-826. Dismissal is warranted.

3. PETITIONER WAIVED HIS DOUBLE JEOPARDY CLAIM WHEN HE ENTERED AN *IN RE BARR* PLEA TO FOUR COUNTS OF THIRD DEGREE ASSAULT THAT WERE NEVER COMMITTED TO AVOID BEING PROSECUTED FOR ONE COUNT OF FIRST DEGREE ASSAULT GIVEN THE LIKELIHOOD IT WOULD RESULT IN A PERSISTENT OFFENDER SENTENCE OF MANDATORY LIFE.

“[W]hen a criminal defendant pleads guilty to separate ... charges and later files a collateral attack on the convictions and sentences on double jeopardy grounds, the challenge will be rejected if it relies on proof of factual similarities between ... charges that are not apparent from the record.” For when guilty pleas involve facial allegations of distinct offenses, a defendant concedes through his pleas that he committed separate crimes. *See Broce*, 488 U.S. at 570; *accord State v. Leyland*, 277 F.3d 628, 632 (2<sup>nd</sup> Cir. 2002). This follows from the fact “[a] guilty plea is more than a confession which admits that the accused did various acts.” *Id.* at 570 (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709 (1969)). “It is an admission that [the defendant] committed the crime charged against him.” *Id.* (citing *North Carolina v. Alford*, 400 U.S. 25, 32, 91 S.Ct. 160 (1970)). “By entering a plea of guilty, the accused is not simply stating he did the discrete acts described in the indictment: he is admitting guilt of a substantive crime.” *Id.* “Just as a defendant who pleads guilty to a single count admits guilt to the specified offense, so too does a defendant who pleads guilty to two counts with facial allegations of distinct offenses concede[s] he has committed two separate crimes.” *Id.* The waiver of a double jeopardy claim inherent in such a plea does not need to be explicitly communicated or even consciously made. *Id.* at 573. “Waiver in that sense is not required.” *Id.* A collateral challenge is simply “foreclosed by the earlier guilty plea.” *Id.*

An offender raising a collateral challenge to convictions grounded in double jeopardy is precluded from expanding the record to demonstrate the convictions stemmed from a single offense. *In re Pers. Restraint of Francis*, 170 Wn.2d 517, 531, 242 P.3d 866 (2010). “[T]he double jeopardy violation must be clear from the record presented on appeal, or else be waived.” *State v. Knight*, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008); accord *State v. Kelty*, 294 Wis.2d 62, 80-81, 716 N.W.2d 886 (2006). Review of a collateral attack grounded in double jeopardy is thus limited to the four corners of the judgment informed by the charging document where a factual hearing to develop the record did not occur before the plea. See *In re Pers. Restraint of Shale*, 160 Wn.2d 489, 498, 497-98, 158 P.3d 588 (2007). It is not enough that similarities among charges like the same listed date or victim or means of committing a crime suggest attending convictions “may violate double jeopardy.” *Id.* at 499. The same is true where the number or identity of victims of the alleged criminal acts is known. *Id.* at 500. More is required to show there are multiple convictions for the same offense. *Id.* at 499. And courts will not go beyond the face of the judgement to determine if double jeopardy was violated. *Id.* at 500; *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 139-42, 267 P.3d 324 (2011). As double jeopardy claims cannot be proved through a supplemented record. *Francis*, 170 Wn.2d at 530. For example, in *Broce* the charging documents did not need to expressly state the two charged conspiracies were separate. *Francis*, 170 Wn.2d at 531 (citing *Broce*, 488 U.S. at 569-70). “The separation was inferred when the defendants pleaded guilty to both charges. Doing so waived their right to later challenge that the conspiracies charged were factually one conspiracy.” *Id.*

Petitioner entered an *In re Barr* plea to four counts of third degree assault. Such pleas enable convictions for lesser offenses that never actually occurred provided there is a factual basis for a greater offense the defendant sought to avoid through the *In re Barr* agreement. 102 Wn.2d

at 270. Because the lesser offenses selected to accomplish the *In re Barr* plea are legal fictions that did not actually occur in the physical world, there can be no factual record of them beyond the four corners of the judgment, plea and amended Information by which the fictitious lesser offenses were charged. *In re Barr* pleas are in this way fundamentally different from factual or *Alford-Newton*<sup>2</sup> pleas to lesser offenses included within greater offenses based upon actual conduct involving a real time, place and victim.

In this case, the factual record of the four made-up third degree assaults charged to accomplish the stipulated plea petitioner entered pursuant to *In re Barr* entirely exists within the four corners of the amended Information incorporated by reference into the judgment and the plea. The first *In re Barr* count identifies petitioner's victim as Charles Lloyd. Whereas the remaining *In re Barr* counts identify victims as an unspecified "person" consistent with the reality those counts were just made up to facilitate an amendment from a greater first degree assault against petitioner's only actual victim. The elements of each of the *In re Barr* counts are otherwise identical as they were charged under RCW 9A.36.031(1)(d). The place in which each of the made-up *In re Barr* counts occurred is the State of Washington for jurisdictional purposes. No more precise location was contrived for each *In re Barr* count. The date of offense for each is the period of "on or about the 11<sup>th</sup> day of July, 2012". No more precise hour of that day or period of days was contrived for each of the *In re Barr* counts. Likewise, the made up physical acts underlying the convictions were framed in the alternative as: "with criminal negligence, cause bodily harm ... by means of a weapon or other instrument or thing likely to produce bodily harm." No more detail about those physical acts was contrived for the *In re Barr* counts; allowing for one to be based on an assault with one type of weapon and the others to be respectively based on varying

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<sup>2</sup> *State v. Newton*, 87 Wn.2d 363, 372, 552 P.2d 682 (1976).

other instruments or things capable of producing bodily harm.

The unavoidable conclusion from the only available and possible record of four made up *In re Barr* offenses is that petitioner cannot prove them to be necessarily based on the same act accomplished with the same weapon against the same victim at the same time of day within the charging period and in the same place within Washington. As in *Shale*, “the number of victims is not evident from the face of the judgment[t] ... and the amended charging documen[t] do[es] not reveal the names of the victims related to each count.” 160 Wn.2d at 500. In *Shale* the court found a double jeopardy claim could not be proved “merely by showing that the ... crimes were committed on the same date.” *Id.* at 499. Here, the amended charges leave open the possibility of different offenses dates within a period of on or about July 11, 2012. “Changing an offense date by just two days would be covered under ‘on or about language’ .... [W]here the information alleges that an offense allegedly occurred ‘on or about’ a certain date, the defendant is deemed to be on notice that the charge is not limited to a specific date.” *See State v. Gassman*, 160 Wn.App. 600, 616, 248 P.3d 155 (2011). Because of the use of “on or about” language in the four challenged third degree assault charges, the record facially supports the possibility each offense was committed on a different day—one on each of the two days before and one on each of the two days after the 11<sup>th</sup> of July, 2012. *See Id.*

And just like *Newlun*, the record does not specify the particular method within the range of listed methods of completing a criminal RCW 9A.36.031(d) act each charge contemplated. For nothing in the record states whether each count was committed with a weapon, instrument or other thing. So facially each charge could reflect assaults committed with different weapons, instruments or things on anyone of four days within the charging period at different locations in Washington. *See State v. Newlun*, 158 Wn.App. 28, 35, 240 P.3d 795 (2010) (“record in case I

does not specify the particular means of identification or financial information”). Offenses are typically considered distinct criminal acts when they occur in different places over more than a short period of time even if they involve one victim and aggressor. *See State v. Handran*, 113 Wn.2d 11, 17-18, 775 P.2d 453 (1989); *State v. Channon*, 105 Wn.App. 869, 877-78, 20 P.3d 476 (2001) (shooting episodes separated by eight blocks and definite time breaks).<sup>3</sup>

Also like *Newlun*, the record of petitioner’s charges does not specifically name a victim for counts II-IV. *Newlun* 158 Wn.App. at 35. Petitioner’s Count I was committed against “Charles Lloyd.” Whereas counts II-IV were committed against “a person.” *Id.* Nothing on the face of the charges provides Counts II-IV were committed against the same person, much less “Charles Lloyd.” *Id.* The combined result is that the record of petitioner’s four third degree assault convictions provides for four assaults committed with different weapons on different days at different locations inside the State of Washington. A double jeopardy violation could not be proved without improperly permitting petitioner to expand upon that record, and not even then since the *In re Barr* nature of the convictions means there is no factual basis underlying those crimes. This is because “a defendant can plead guilty to amended charges for which there is no factual basis[.]” *State v. Zhao*, 157 Wn.2d 188, 200, 137 P.3d 835 (2006). All that remains is petitioner’s admission of guilt which triggers the double jeopardy claim waiver by operating as a concession he committed separate crimes. *Broce*, 488 U.S. at 570; *accord Schorr*, 191 Wn.2d at 324; *Shale*, 160 Wn.2d at 497-99. Making dismissal of the waived double jeopardy claim without consideration of its merits the only proper decision.

---

<sup>3</sup> *See also State v. Tili*, 139 Wn.2d 107, 117, 985 P.2d 365 (1999) (“Repeated acts of forcible sexual assault are not to be construed as a roll of thunder, an echo of a single sound rebounding until attenuated”).

4. EVEN IF THE DOUBLE JEOPARDY CLAIM WAS REVIEWABLE, IT WOULD FAIL SINCE THE *IN RE BARR* STATUS OF HIS THIRD DEGREE ASSAULT CONVICTIONS COMBINES WITH THEIR ATTENDING AMBIGUITY AS TO THE IDENTITY OF THE VICTIMS AS WELL AS THE TIME, PLACE AND MANNER OF THE ATTACKS TO ENSURE PETITOINER COULD NOT MEET HIS BURDEN TO PROVE HE WAS ACTUALLY AND NECESSARILY CONVICTED AND PUNISHED FOUR TIMES FOR THE SAME OFFENSE.

Petitioners asserting double jeopardy's issue-preclusive protection bear the "demanding" burden of proving they were "actually and necessarily" several times convicted of or punished for the same offense. See *Currier v. Virginia*, \_ U.S.\_, 138 S. Ct. 2144, 2150 (2018); *Bravo-Fernandez v. United States*, \_ U.S.\_, 137 S.Ct. 352, 357 (2016); *Schiro v. Farley*, 510 U.S. 222, 233, 114 S.Ct. 783 (1994).<sup>4</sup> That burden cannot be overcome if ambiguities in the judgment or incorporated charging document result in uncertainty about what the convictions necessarily decided. E.g., *Schiro*, at 236; *Cook v. United States*, 379 F.2d 966, 971 (5th Cir. 1967). At the same time, a defendant can plead guilty to amended charges for which there is no factual basis. *Zhao*, 157 Wn.2d at 200; *In re Barr*, 102 Wn.2d at 270. Such dispositions are allowed as "[d]oing so supports a flexible plea bargaining system through which a defendant can choose to plead guilty to a related charge that was not committed, in order to avoid near certain conviction for a greater offense. *Zhao*, at 200. This in turn ensures a defendant is able to determine the course of action that he or she believes is in his or her best interest. *Id.*

Pleas to lesser offenses without a factual basis, *i.e.*, crimes that never actually occurred, means there are no facts to evaluate under the same evidence rule used to assess if a defendant was several times convicted or punished for the same offense. See *State v. Calle*, 125 Wn.2d 769, 777, 888 P.2d 155 (1995). For under that rule, a defendant's double jeopardy rights are not

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<sup>4</sup> *Dowling v. United States*, 493 U.S. 342, 350, 110 S.Ct. 668 (1990); *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189 (1970); *State v. Eggleston*, 164 Wn.2d 61, 72, 187 P.3d 233 (2008); U.S. CONST. amend. V; WASH. CONST. art. I, § 9.

violated if he or she is convicted of offenses that are distinct in law or fact. *Id.* Yet in the context of an *In re Barr* plea, the selected lesser crimes may have no tie to reality. *Zhao*, 157 Wn.2d at 200. They need not be factually derivative of the avoided greater offense for which there is a factual basis as would be the case if a plea to a lesser included or lesser degree offense was required. *Id.*; *Barr*, 102 Wn.2d at 270. By definition lesser crimes expediently contrived for an *In re Barr* plea could not result in a double jeopardy violation as a matter of law since they could not be the same in fact being complete legal fictions without any basis in fact. A contrary rule would needlessly complicate *In re Barr* pleas by requiring parties to select an array of never committed crimes with different elements (e.g., theft second, assault third, riot) or include in each charge made up details to further differentiate them.

In this collateral action petition, petitioner must prove he was actually and substantially prejudiced from a facial violation of his double jeopardy protection against being several times convicted or several times punished for the same offense. Yet as explained above, the entire record of the four third degree assault convictions brought about by petitioner's *In re Barr* plea provides for a possibility of four assaults committed with different weapons or items on different days within the charging period at four different locations somewhere in Washington. Those ambiguities preclude him from proving he was actually and necessarily several times convicted or punished for the same offense as he must to prove a double jeopardy violation.

Meanwhile, the *In re Barr* nature of his convictions means they may also be complete legal fictions without any basis in fact capable of being tested for factual redundancy with double jeopardy's the same evidence test. Against those insurmountable barriers is the United States Supreme Court precedent which provides that petitioner's guilty plea to facial allegations of distinct third degree assault offenses conceded they were separate offenses. *Broce*, 488 U.S. at

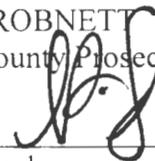
573. As separation is inferred when an offender pleads to multiple offenses. *Francis*, 170 Wn.2d at 531. And in the context of this collateral attack, that inference must be drawn with all others in support of his judgement's validity. *Hagler*. 97 Wn.2d at 825-826. All of which leaves dismissal the only accurate result as it precludes petitioner from meeting his demanding burden to prove he was actually prejudiced by being necessarily convicted or punished several times for the same offense in violation of his constitutional right to be free from double jeopardy.

D. CONCLUSION

Petitioner's collateral attack should be dismissed because it combines a time-barred and meritless challenge to his facially valid exceptional sentence with a double jeopardy claim that can be raised under RCW 10.73.100(3). Dismissal should follow from his failure to perfect the record with a transcript of his sentencing. And dismissal is further warranted by the double jeopardy claim waiver attending differences cognizable in his four *In re Barr* convictions. Those differences combine with the absence of an applicable factual basis to test through the same evidence test, and cause the claim to fail on its merits as it is impossible for petitioner to overcome his burden to prove an actually prejudicial violation of double jeopardy's issue-preclusive protection.

RESPECTFULLY SUBMITTED: October 21, 2019.

MARY ROBNETT  
Pierce County Prosecuting Attorney



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Robin Sand  
Deputy Prosecuting Attorney  
WSB #47838

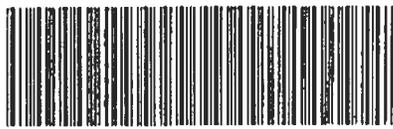
Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail to petitioner true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10.21.19   
Date Signature

# **APPENDIX**

Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 7E0C08A8-0387-42C4-97127A85135E40F2 12-1-02627-2  
Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41573382 ACAT 11-18-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III

Defendant.

ADVICE OF RIGHT TO APPEAL

RIGHT TO APPEAL

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

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

Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 7E0C08A8-0387-42C4-97127A85135E40F2 12-1-02627-2  
Certified By: Kevin Stock Pierce County Clerk, Washington

**ACKNOWLEDGMENT**

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

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

DATE: 11/15/13

DEFENDANT: James J. [Signature]

DEFENDANT'S ATTORNEY: [Signature] 14496

DATE: 11/15/13

JUDGE: John A. McCarthy  
John A. McCarthy



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM



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enter **SerialID: 7E0C08A8-0387-42C4-97127A85135E40F2**.

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Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 72F14862-11AC-499E-85857F8383BD7908  
Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41553768 AMINF 11-14-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

AMENDED INFORMATION

Defendant.

DOB: 12/31/1978  
PCN#: 540759634

SEX : MALE  
SID#: 24473352

RACE: BLACK  
DOL#: WA FOX\*\*FD220RU

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN THE THIRD DEGREE, committed as follows:

That FINOS DALE FOX, III, in the State of Washington, on or about the 11th day of July, 2012, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second degree, with criminal negligence, cause bodily harm to Charles Lloyd by means of a weapon or other instrument or thing likely to produce bodily harm, contrary to RCW 9A.36.031(1)(d), and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That FINOS DALE FOX, III, in the State of Washington, on or about the 11th day of July, 2012, did unlawfully and feloniously, under circumstances not amounting to assault in the first or second

AMENDED INFORMATION- 1



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

1 degree, with criminal negligence, cause bodily harm to a person by means of a weapon or other  
2 instrument or thing likely to produce bodily harm, contrary to RCW 9A.36.031(1)(d), and against the  
3 peace and dignity of the State of Washington.

4 **COUNT III**

5 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
6 authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN  
7 THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same  
8 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or  
9 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of  
10 one charge from proof of the others, committed as follows:

11 That FINOS DALE FOX, III, in the State of Washington, on or about the 11th day of July, 2012,  
12 did unlawfully and feloniously, under circumstances not amounting to assault in the first or second  
13 degree, with criminal negligence, cause bodily harm to a person by means of a weapon or other  
14 instrument or thing likely to produce bodily harm, contrary to RCW 9A.36.031(1)(d), and against the  
15 peace and dignity of the State of Washington.

16 **COUNT IV**

17 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
18 authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN  
19 THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same  
20 conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or  
21 so closely connected in respect to time, place and occasion that it would be difficult to separate proof of  
22 one charge from proof of the others, committed as follows:

23 That FINOS DALE FOX, III, in the State of Washington, on or about the 11th day of July, 2012,  
24 did unlawfully and feloniously, under circumstances not amounting to assault in the first or second  
degree, with criminal negligence, cause bodily harm to a person by means of a weapon or other  
instrument or thing likely to produce bodily harm, contrary to RCW 9A.36.031(1)(d), and against the  
peace and dignity of the State of Washington.

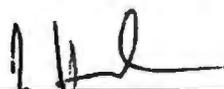
DATED this 13th day of November, 2013.

PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

jhc

By:



JAMES H CURTIS  
Deputy Prosecuting Attorney  
WSB#: 36845

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM

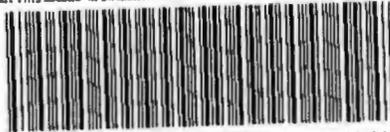


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Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 370701BD-A03D-4F8D-8A2EA041836D3276  
Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41553904 STPPR 11-14-13



**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

STIPULATION ON PRIOR RECORD  
AND OFFENDER SCORE  
(Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge ASSAULT IN THE THIRD DEGREE, the defendant FINOS DALE FOX, III, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions. The defendant further stipulates that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

**ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER**

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
I	ASLT 3	CURRENT	PIERCE, WA	07/11/12	A	NV	C		FELONY
II	ASLT 3	CURRENT	PIERCE, WA	07/11/12	A	NV	C		FELONY
III	ASLT 3	CURRENT	PIERCE, WA	07/11/12	A	NV	C		FELONY
IV	ASLT 3	CURRENT	PIERCE, WA	07/11/12	A	NV	C		FELONY

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

Case Number: 12-1-02627-2 Date: January 14, 2019  
 SerialID: 370701BD-A03D-4F8D-8A2EA041836D3276 12-1-02627-2  
 Certified By: Kevin Stock Pierce County Clerk, Washington

**OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)**  
 None Known or Claimed, or:

**PRIOR CONVICTIONS (if any)**  
 None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
ILLEGAL USE OF WEAPON (X3)	07/10/98	HOUMA, LA	02/24/98	A	NV		3	FELONY
ASLT 2	04/13/08	PIERCE, WA	04/13/08	A	V		1	FELONY

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5 YRS
II	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5 YRS
III	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5 YRS
IV	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5 YRS

(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present.

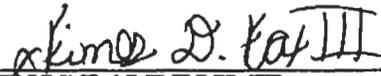
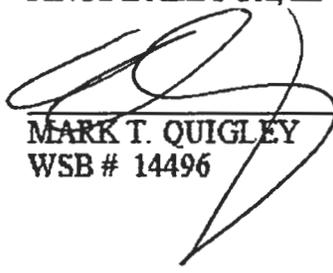
The defendant further stipulates:

- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;

1  
2 4) That none of the above criminal history convictions have "washed out" under  
3 RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated. If sentenced within the  
4 standard range, the defendant further waives any right to appeal or seek redress via any collateral  
5 attack based upon the above stated criminal history and/or offender score calculation.

6 Stipulated to this on the 13 day of Nov., 2013.

7  
8   
9 JAMES H CURTIS  
10 Deputy Prosecuting Attorney  
11 WSB # 36845

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9 FINOS DALE FOX, III  
10  
11   
12 MARK T. QUIGLEY  
13 WSB # 14496

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dlc

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM



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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter **SerialID: 370701BD-A03D-4F8D-8A2EA041836D3276**.

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Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 239185CF-D643-404D-95D5683213D2F780  
Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41573303 JDSWCD 11-18-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 12-1-02627-2

vs

FINOS DALE FOX, III,

Defendant.

WARRANT OF COMMITMENT

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

NOV 18 2013

Asst 3<sup>o</sup> (x4)

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

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

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

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

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

WARRANT OF COMMITMENT -1

000011

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

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

Dated: 11/15/13

By direction of the Honorable

*John A. McCarthy*  
JUDGE A. MCCARTHY  
KEVIN STOCK

CLERK  
*Melissa Engler*  
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF  
NOV 18 2013 By *Melissa Engler* Deputy



STATE OF WASHINGTON

ss:

County of Pierce

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

KEVIN STOCK, Clerk

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

dc

Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 239185CF-D643-404D-95D5683213D2F780 12-1-02627-2  
Certified By: Kevin Stock Pierce County Clerk, Washington



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

NOV 18 2013

vs.

FINOS DALE FOX, III

Defendant.

JUDGMENT AND SENTENCE (FJS)

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

SID: WA24473352  
DOB: 12/31/1978

I HEARING

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

II FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 11-13-13 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ASLT 3 (E34)	9A.36.031(1)(d)	NONE	07/11/12	PCSD 121930096
II	ASLT 3 (E34)	9A.36.031(1)(d)	NONE	07/11/12	PCSD 121930096
III	ASLT 3 (E34)	9A.36.031(1)(d)	NONE	07/11/12	PCSD 121930096
IV	ASLT 3 (E34)	9A.36.031(1)(d)	NONE	07/11/12	PCSD 121930096

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

as charged in the AMENDED Information

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 1 of 11

13-900012125-6

Case Number: 12-1-02627-2 Date: January 14, 2019  
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Certified By: Kevin Stock Pierce County Clerk, Washington

- 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 (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ILLEGAL USE OF WEAPON (X3)	07/10/98	HOUMA, LA	02/24/98	A	NV
2	ASLT 2	06/11/09	PIERCE, WA	04/13/08	A	V

- 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	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5YRS
II	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5YRS
III	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5YRS
IV	7	III	33-43 MONTHS	NONE	33-43 MONTHS	5YRS

For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  attached  as follows: N/A

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) 1,2,3,4.

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:

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

RTNR/JN \$ \_\_\_\_\_ 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 \$ 500.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

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

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

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

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

\$ 1300.00 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 1/3/2014

RESTITUTION. Order Attached

JUDGMENT AND SENTENCE (JS)

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[ ] 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 clerk per month commencing per clerk. 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 \_\_\_\_\_ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for \_\_\_\_\_ 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.

NO Contact with <del>prosecutor</del> Victim and witnesses

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Certified By: Kevin Stock Pierce County Clerk, Washington

4.4a [ ] All property is hereby forfeited

[ ] 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.

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):

<u>60</u> months on Count	<u>I</u>	<u>60</u> months on Count	<u>IV</u>
<u>60</u> months on Count	<u>II</u>	_____ months on Count	_____
<u>60</u> months on Count	<u>III</u>	_____ months on Count	_____

Actual number of months of total confinement ordered is: 240 months

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

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

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: Count I, II, III, IV shall run consecutively to each other.

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

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

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 492

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)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses

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

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

(B) While on community 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: \_\_\_\_\_

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

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

[ ] participate in the following crime-related treatment or counseling services: \_\_\_\_\_

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

[ ] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] comply with the following crime-related prohibitions: \_\_\_\_\_

1  
2 [ ] Other conditions:

3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_

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

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

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

15 4.7 [ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is  
16 eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the  
17 sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on  
18 community custody for any remaining time of total confinement, subject to the conditions below. Violation  
19 of the conditions of community custody may result in a return to total confinement for the balance of the  
20 defendant's remaining time of total confinement. The conditions of community custody are stated above in  
21 Section 4.6.

22 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The following areas are off limits to the  
23 defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

24 \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

28  
V. NOTICES AND SIGNATURES

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

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall  
remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to  
10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of  
all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an  
offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the  
purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is  
completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW  
9.94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the  
offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.  
RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice  
of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the

1  
2 court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in  
3 monthly payments in an amount equal to or greater than the amount payable for one month. RCW  
4 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice.  
5 RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

6  
7  
8  
9  
10  
11 5.4 RESTITUTION HEARING.

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

12  
13  
14  
15  
16  
17  
18 5.5 CRIMINAL ENFORCEMENT AND CIVIL COLLECTION. Any violation of this Judgment and  
19 Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document,  
20 legal financial obligations are collectible by civil means. RCW 9.94A.634.

21  
22  
23  
24  
25  
26  
27  
28 5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own,  
use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk  
shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the  
Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

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

N/A

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

//

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//

Case Number: 12-1-02627-2 Date: January 14, 2019  
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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: 11-15-2013

JUDGE  
Print name

John A. McCarthy  
John A. McCarthy

[Signature]  
Deputy Prosecuting Attorney  
Print name: J. Curt  
WSB # 26845

Attorney for Defendant  
Print name: Mark Quigley  
WSB # 14496

[Signature]  
Defendant  
Print name: Finas D. Fort III

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: [Signature]



Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: 239185CF-D643-404D-95D5683213D2F780 12-1-02627-2  
Certified By: Kevin Stock Pierce County Clerk, Washington

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 12-1-02627-2

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**

CATHY SCHAMU

COURT REPORTER

Court Reporter



**JUDGMENT AND SENTENCE (JS)**

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

Case Number: 12-1-02627-2 Date: January 14, 2019  
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Certified By: Kevin Stock Pierce County Clerk, Washington

IDENTIFICATION OF DEFENDANT



SID No. WA24473352  
(If no SID take fingerprint card for State Patrol)

Date of Birth 12/31/1978

FBI No. 258980JB0

Local ID No. UNKNOWN

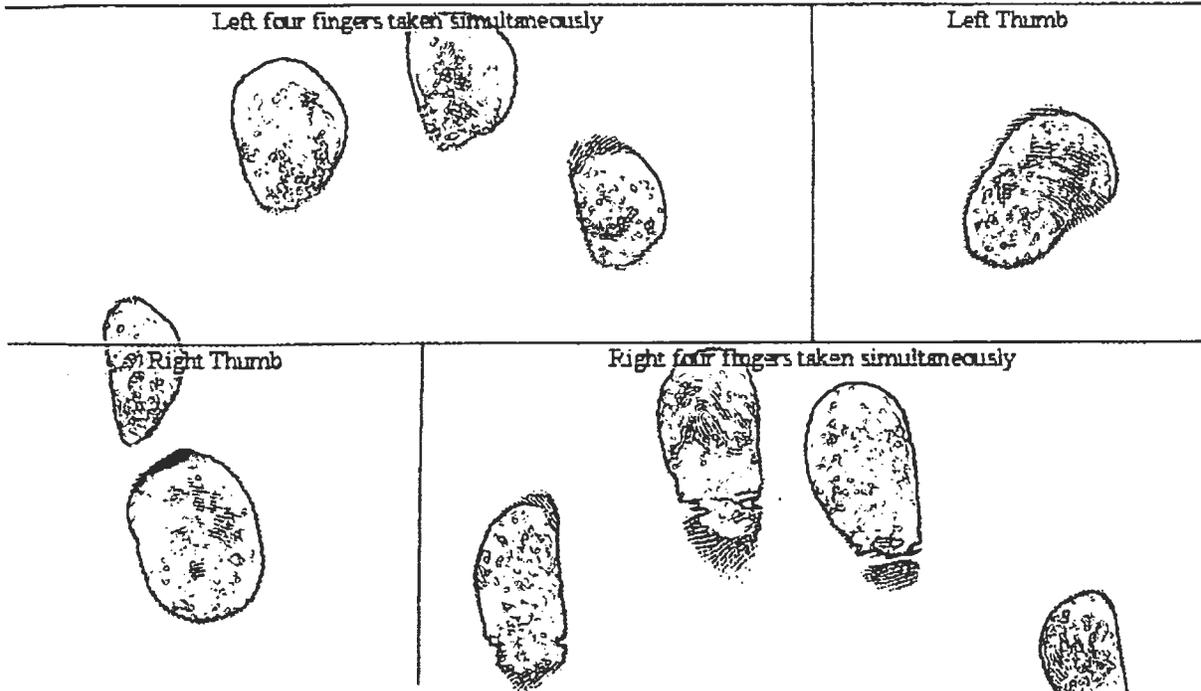
PCN No. UNKNOWN

Other

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

<b>Race:</b>	<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<b>Ethnicity:</b>	<input type="checkbox"/> Hispanic	<b>Sex:</b>	<input checked="" type="checkbox"/> Male
	<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :		<input checked="" 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, [Signature] Dated: 11/15/13

DEFENDANT'S SIGNATURE: [Signature]

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

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
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This document contains 13 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

July 12 2012 12:13 PM

KEVIN STOCK  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

INFORMATION

Defendant.

DOB: 12/31/1978  
PCN#: 540759634

SEX : MALE  
SID#: 24473352

RACE: BLACK  
DOL#: WA FOX\*\*FD220RU

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse FINOS DALE FOX, III of the crime of ASSAULT IN THE FIRST DEGREE, committed as follows:

That FINOS DALE FOX, III, in the State of Washington, on or about the 11th day of July, 2012, did unlawfully and feloniously, with intent to inflict great bodily harm, intentionally assault Charles Kenneth Lloyd with a deadly weapon or by any force or means likely to produce great bodily harm or death, contrary to RCW 9A.36.011(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a deadly weapon, other than a firearm to-wit: a knife, that being a deadly weapon as defined in RCW 9.94A.825, and invoking the provisions of RCW 9.94A.530 and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

DATED this 12th day of July, 2012.

PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

By: /s/ HUGH K. BIRGENHEIER  
HUGH K. BIRGENHEIER  
Deputy Prosecuting Attorney  
WSB#: 14720

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 16 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Jessica Hite, Deputy.

Dated: January 16, 2019 10:04 AM



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This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

July 12 2012 12:13 PM

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

KEVIN STOCK  
COUNTY CLERK

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

Defendant.

HUGH K. BIRGENHEIER, 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 PIERCE COUNTY SHERIFF, incident number 121930096;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 11th day of July, 2012, the defendant, FINOS DALE FOX, III, did commit the crime of Assault in the First Degree (Deadly Weapon Sentencing Enhancement).

On July 11, 2012 the defendant repeatedly stabbed the victim (Charles Kenneth Lloyd). The stabbing occurred in the 11800 block of 101<sup>st</sup> Avenue East in Pierce County. The defendant's actions were witnessed by several people who positively identified the defendant as the person who stabbed the victim. The victim is the ex-boyfriend of Melissa Dotson. The defendant had recently become a friend of Melissa Dotson. The stabbing occurred near Melissa Dotson's house. A K9 of the Tacoma Police Department tracked the defendant from the scene of the stabbing to the house he was living in. The defendant was contacted by the Pierce County Sheriff's Office.

Detective Merod spoke to the defendant. The defendant denied knowing Melissa Dotson and denied being at the scene of the stabbing. The defendant claimed to have no idea why the Pierce County Sheriff's Office was speaking to him. The defendant told the Pierce County Sheriff's Office that he has a mental health condition which requires he receive a shot once a month. The defendant stated he moved to the State of Washington from the State of Louisiana. The defendant admitted he had previously been convicted of "assault with a deadly weapon". The defendant stated the deadly weapon he had been accused of using was a knife. The defendant stated he had been wearing the same clothes for several hours. Detective Merod noted blood on the defendant's shorts and a cut on his hand.

One of the witnesses (Melissa Dotson's brother) provided the Pierce County Sheriff's Office with a statement regarding his observations, including the fight between the defendant and the victim. This statement included the presence of an unidentified black male who was pushing the victim and the defendant together encouraging them to fight. This witness described the knife as having a 6 to 7 inch blade.

One of the people who lived in the house the defendant lived in remembered the defendant receiving a letter from Melissa. The letter talked about Melissa being on the

1 rebound. This witness also placed Melissa in the house the defendant lived in. A search  
2 of the house that the defendant lived in failed to reveal the knife the Pierce County  
Sheriff's Office was looking for.

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

4 DATED: July 12, 2012  
5 PLACE: TACOMA, WA

6 /s/ HUGH K. BIRGENHEIER  
7 HUGH K. BIRGENHEIER, WSB# 14720

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

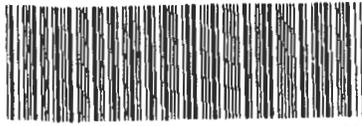
Dated: January 14, 2019 12:18 PM



**Instructions to recipient:** If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter **SerialID: 1DB8D2D5-E913-45CF-ACC66C13C38A429D**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.



12-1-02627-2 38063079 STRIKE3 08-22-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY AUG 22 2012

STATE OF WASHINGTON.

Plaintiff.

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

PERSISTENT OFFENDER NOTICE  
(THIRD CONVICTION)

Defendant.

YOU, the above named defendant, FINOS DALE FOX, III, are hereby given NOTICE that the offense of ASSAULT IN THE FIRST DEGREE, with which you have been charged, is a "Most Serious Offense" as defined in RCW 9A.030. If you are convicted at trial or plead guilty to this charge or any other most serious offense, and you have been convicted on two previous occasions of other "most serious offenses," you will be classified at sentencing as a "Persistent Offender," as defined in RCW 9.94A.030 and your sentence will be life without the possibility of parole as provided in RCW 9.94A.570.

DATED this 22<sup>nd</sup> day of August, 2012.

MARK LINDQUIST  
Pierce County Prosecuting Attorney

By: [Signature]  
JAMES H CURTIS  
Deputy Prosecuting Attorney  
WSB # 36845

dlc

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM



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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,  
enter **SerialID: 6F966A22-D516-48BD-AB89CF682FBDE102**.

This document contains 1 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

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Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41553900 STTDFG 11-14-13



**Superior Court of Washington  
For Pierce County**

State of Washington  
Plaintiff  
vs.  
FINOS D. FOX, III,  
Defendant

No. 12-1-02627-2

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

1. My true name is: Finos D. Fox, III
2. My age is: 34
3. The last level of education I completed was 11<sup>th</sup>

**4. I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Mark Quigley

(b) I am charged with the crime(s) of: Assault Third Degree- 4 Counts  
as set out in the Amended Information, dated, 11-13-13, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. F.F.  
(Defendant's initials)

The elements of  this crime  these crimes  
are as set out in the Amended Information, dated 11-13-13 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. F.F.  
(Defendant's initials)

                     Additional counts are addressed in Attachment "B"

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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;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- K.K.* (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

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

- (a) 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 RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	<del>71.1</del> <i>71.1</i>	<del>0-0 mos</del> <i>33-43 mos</i>	<i>n/a f.f.</i>	12 mos.	5 yrs/\$10,000
2	<del>71.1</del> <i>71.1</i>	<del>0-0 mos</del> <i>33-43 mos</i>	<i>n/a f.f.</i>	12 mos.	5 yrs/\$10,000
3	<del>71.1</del> <i>71.1</i>	<del>0-0 mos</del> <i>33-43 mos</i>	<i>n/a f.f.</i>	12 mos.	5 yrs/\$10,000

\*Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, RCW 9.94A.533, (D) Other deadly weapon, RCW 9.94A.533, (V) VUCSA in protected zone, See RCW 69.50.435, RCW 9.94A.6533 (6), (VII) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, See RCW 9.94A.605, (CSG) Criminal street gang involving minor, RCW 9.94A.533, (AE) Endangerment while attempting to elude. RCW 9.94A.533.

- (b) 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.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. 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 the prosecutor and I disagree about the computation of the

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Case Name: State v. Finos Fox, III Cause No: 12-1-02627-2

ATTACHMENT "B"

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count \_\_\_\_ : \_\_\_\_\_  
 Elements: \_\_\_\_\_  
 \_\_\_\_\_

The crime carries a maximum sentence of \_\_\_\_\_ years imprisonment and a \$ \_\_\_\_\_ fine. The standard range is from \_\_\_\_\_ months to \_\_\_\_\_ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense  Serious Violent  Violent  Non-Violent  Sex  Drug  Traffic  (check all that apply)

Count \_\_\_\_ : \_\_\_\_\_  
 Elements: \_\_\_\_\_  
 \_\_\_\_\_

The crime carries a maximum sentence of \_\_\_\_\_ years imprisonment and a \$ \_\_\_\_\_ fine. The standard range is from \_\_\_\_\_ months to \_\_\_\_\_ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense  Serious Violent  Violent  Non-Violent  Sex  Drug  Traffic  (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
7#	<del>33-43mos</del>	n/a	<del>33-43mos</del>	1 year	5 yrs / \$10,000
	33-43mos		33-43mos		

F.F.

F.F.

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offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). 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.

- (d) 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.
- (e) 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.
- (f) ~~**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.728 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.

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OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	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, and I will 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.

- (g) The prosecuting attorney will make the following recommendation to the judge: Ct I- 60 months, Ct II- 60 months, Ct III- 60 months, Ct. IV- 60 months, each count consecutive to each other for a total of 240 months, stipulated exceptional sentence upward. NCO w/ Victim, restitution, \$500 CVPA, \$500 DAC, \$100 DNA, \$200 costs.

The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) **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

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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.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a hearing, either the State or I can appeal the sentence.

- (i) **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.
- (j) **I understand that 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.
- (k) **I understand that 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, 29A.08.520.
- (l) **Government assistance may be suspended** during any period of confinement.
- (m) **I understand that 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.**

- ~~\_\_\_\_\_ (n) **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.~~
- ~~\_\_\_\_\_ (o) **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 (e). 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.~~

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- ~~(p) 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.~~
- ~~(q) **If this crime involves kidnapping involving a minor**, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.~~
- ~~(r) **If this is a crime of domestic violence**, I may be ordered to pay a domestic violence assessment of up to \$100.00. 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.~~
- ~~(s) **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.~~
- ~~(l) **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 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~~

1 corrections on my compliance with treatment and monitoring requirements and  
2 recommendations regarding termination from treatment, the judge may modify the  
3 conditions of my community custody or order me to serve a term of total confinement  
4 equal to one-half of the midpoint of the standard sentence range, followed by a term of  
5 community custody under RCW 9.94A.701.

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

- 18 (u) If I am subject to community custody and the judge finds that I have a **chemical**  
19 **dependency** that has contributed to the offense, the judge may order me to participate in  
20 rehabilitative programs or otherwise to perform affirmative conduct reasonably related to  
21 the circumstances of the crime for which I am pleading guilty.
- 22 (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver**  
23 **methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine,  
24 including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine  
25 may not be suspended. RCW 69.50.401(2)(b).
- 26 (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and  
27 federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. §  
28 1091(r) and 21 U.S.C. § 862a.
- (x) 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.
- (y) If this crime involves the offense of **vehicular homicide** while under the influence of  
intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after  
January 1, 1999, an additional two years shall be added to the presumptive sentence for  
vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- (z) 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  
ignition interlock device requirements.

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~~\_\_\_\_\_ (aa) The crime of \_\_\_\_\_ has a mandatory minimum sentence of at least \_\_\_\_\_ 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[n].~~

~~\_\_\_\_\_ (bb) 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.~~

~~\_\_\_\_\_ (cc) I understand that 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.~~

~~\_\_\_\_\_ (dd) I understand that 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.~~

~~\_\_\_\_\_ (ee) I understand that 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.~~

~~\_\_\_\_\_ (ff) 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.~~

~~\_\_\_\_\_ (gg) The judge may authorize work ethic camp. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690~~

7. I plead guilty to count(s) I, II, III, IV as charged in the Amended Information, dated 11/13/13. I have received a copy of that Information and reviewed it with my lawyer.

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 am pleading guilty pursuant to the holding of In Re: Barr, I acknowledge the original declaration of probable cause established probable cause for the original charge. I acknowledge there is a significant risk that I would be convicted at trial as charged, a potential third strike with a possible sentence of life imprisonment without parole, I therefore plead guilty to take advantage of the state's willingness to reduce the charge to a non-strike offense.

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.

offense.

K.K.

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.

Lionel D. Ke III  
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  
J. Curtis 3645  
Print Name WSBA No.

[Signature]  
Defendant's Lawyer  
Mark Quigley 14496  
Print Name WSBA No.

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.

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**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 translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. 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: 11/13/13 John A. McCarthy  
Judge John A. McCarthy



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

Dated: January 14, 2019 12:18 PM



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Case Number: 12-1-02627-2 Date: January 14, 2019  
SerialID: ABE0F524-4402-4F34-B15B01871D6843B3  
Certified By: Kevin Stock Pierce County Clerk, Washington



12-1-02627-2 41553897 STPATTY 11-14-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX, III,

PROSECUTOR'S STATEMENT  
REGARDING AMENDED  
INFORMATION

Defendant.

The State requests the Court to consider accepting a plea to the filing of an Amended Information pursuant to RCW 9.94A.431 for the following reasons: the defendant has a history of mental health issues and has indicated a desire to seek mental health treatment. However, the defendant will agree to serve twenty (20) years in prison to avoid his third strike.

\_\_\_\_\_ This is a drug case and there is no victim.

\_\_\_\_\_ There is no victim.

X The victim has been notified of the amended Information.

\_\_\_\_\_ The victim has not been notified of the amended Information.

11/13/13  
Date

[Signature]  
JAMES H CURTIS  
Deputy Prosecuting Attorney  
WSB # 36845



ORIGINAL

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 14 day of January, 2019



Kevin Stock, Pierce County Clerk

By /S/Linda Fowler, Deputy.

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-02627-2

vs.

FINOS DALE FOX III,

Defendant.

WAIVER OF JURY TRIAL ON  
AGGRAVATING FACTORS  
(WVJTAG)

SID: 24473352

DOB: 12/31/1978

The undersigned states that:

1. I have been charged with the following crimes, which has/have the following standard sentencing ranges:

Count I - assault in the third degree (33 -43 months);

Count II - assault in the third degree (33-43 months);

Count III - assault in the third degree (33-43 months);

Count IV - assault in the third degree (33-43 months).

I have been informed and intend to ask this court to sentence me to 20 years. In this regard I stipulate to a sentence above the standard sentencing ranges so that the court can accomplish this sentence. It would require an exceptional sentence of the maximum term allowed by law of 5 years for any Class C felony (assault in the third degree) for each count, and that all sentences run consecutive to each other.

2. I am informed and I fully understand and stipulate that a conviction on the original charges filed in the original information may constitute a third strike and I would then be sentenced to life in prison without the possibility of parole because I would be a "persistent offender."

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The prosecuting attorney has agreed to reduce the charge, however, to allow me to serve a 20 year sentence in lieu of life without parole. This 20 year sentence can only be accomplished if I stipulate to an exceptional sentence above the standard range on each count and that all sentences run consecutive to each other, because there are no statutory aggravating factors warranting the exceptional sentence. This is done purely to avoid a life sentence.

- 3. I have been informed and fully understand that I have a right to have the facts supporting any aggravating circumstances proved beyond a reasonable doubt to a jury and that a jury's verdict must be unanimous and by special interrogatory. However, because this is a legal fiction in this case, I stipulate to the court's ability to impose an exceptional sentence and waive any requirement that a jury make a factual determination of an aggravating factor,
- 4. I have been informed and fully understand that in a jury trial I have the following rights:
  - (a) The right to remain silent before and during trial and the right to refuse to testify against myself,
  - (b) The right at trial to hear and question the witnesses who testify against me,
  - (c) 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;
  - (d) The right to appeal the jury's verdict.
- 5. I freely and voluntarily waive my right to a jury trial on aggravating circumstances. No one has threatened harm of any kind to me or to any other person and no one has made promises of any kind to cause me to make this waiver.

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6. The court without a jury will consider the stipulation listed in paragraph 2. The court will decide whether the stipulation and my criminal history provides substantial and compelling reasons to order an exceptional sentence above the standard sentencing range and whether to run the sentences consecutive to each other.

Dated: 11/13/13

Kevin D. KATH  
Defendant

I have read and discussed this Waiver of Jury Trial on Aggravating Circumstances with the defendant and believe that the defendant is competent and fully understand the waiver.

JAMES CURTIS  
Prosecuting Attorney  
WSB #36845

MARK QUIGLEY  
Defendant's Attorney  
WSB # 14496

The foregoing waiver was read by or to the defendant and was signed by the defendant in order court in the presence of the defendant's lawyer and the undersigned judge. I find the defendant's waiver of Jury Trial on Aggravating Circumstances to be knowingly, intelligently and voluntarily made.

Dated: 11/13/13

John A. McCarthy  
Judge John A. McCarthy



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the  
aforementioned court do hereby certify that this foregoing instrument is  
a true and correct copy of the original now on file in my office.  
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Kevin Stock, Pierce County Clerk

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**PIERCE COUNTY PROSECUTING ATTORNEY**

**October 21, 2019 - 3:49 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52392-2  
**Appellate Court Case Title:** Personal Restraint Petition of Finos Dale Fox, III  
**Superior Court Case Number:** 12-1-02627-2

**The following documents have been uploaded:**

- 523922\_Personal\_Restraint\_Petition\_20191021154859D2480812\_9987.pdf  
This File Contains:  
Personal Restraint Petition - Response to PRP/PSP  
*The Original File Name was prp fox2.pdf*

**Comments:**

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Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

**Filing on Behalf of:** Robin Khou Sand - Email: rsand@co.pierce.wa.us (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:  
930 Tacoma Ave S, Rm 946  
Tacoma, WA, 98402  
Phone: (253) 798-7400

**Note: The Filing Id is 20191021154859D2480812**