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Court of Appeals
Division II
State of Washington
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NO. 52662-0-II

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

STATE OF WASHINGTON, Respondent

v.

LAWRENCE E DIESE, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-00407-9

RESPONSE TO PERSONAL RESTRAINT PETITION

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IDENTITY OF RESPONDENT AND AUTHORITY FOR RESTRAINT

The State of Washington is the Respondent in this matter. Mr. Lawrence E. Diese, (hereafter 'Diese') is restrained under the authority of the Judgment and Sentence entered by the Clark County Superior Court for Rape in the Second Degree – Domestic Violence, in cause number 14-1-00407-9. *See* Appendix A.

ISSUE PRESENTED

I. Whether this Court should dismiss Diese's petition because he has not established that he received ineffective assistance of counsel.

STATEMENT OF THE CASE

Lawrence Diese (hereafter 'Diese') was convicted of Rape in the Second Degree-Domestic Violence. *State v. Diese*, 198 Wn.App. 1062, slip op. 1 (Div. 2, 2017).[1] The charges stemmed from an allegation that he engaged in sexual intercourse by forcible compulsion with N.B., his girlfriend's daughter, a 20-year old woman who lived with Diese. CP 2. This rape occurred on February 23, 2014. CP 2. N.B. had lived with Diese previously, during which time Diese had raped and physically assaulted

[1] GR 14.1 allows citation to unpublished opinions issued on or after March 1, 2013. They may be accorded as much persuasive value as this Court sees fit. The State only cites to this matter to provide factual and procedural background for this case. The State also refers to the clerk's papers and transcripts filed in the direct appeal.

N.B. CP 2. On the February 23, 2014 occasion, N.B. caused her cell phone to record her and Diese's interaction, in the minutes before and during the rape. CP 2.

Prior to trial, Diese moved to suppress the evidence of the cell phone recording claiming the Privacy Act was violated and thus the recording was inadmissible under RCW 9.73.030 and RCW 9.73.050. RP 32-57. The trial court held a hearing on the admissibility of a recording of communication between the victim, N.B. and the defendant. RP 32-55. The recording was played for the court and consisted of the following between N.B. and the defendant:

> DETECTIVE ALDRIDGE: It is approximately 2:30 p.m. I'm going to do a recording of a recording from a cell phone taken from the -- Natasha Braaten. The recording will be conducted at the Vancouver West Precinct in the DECU office in the evidence room. The recording is from her phone. She has signed a written consent to have the phone examined. The only person present is myself, Detective Sandra Aldridge. The recording is approximately five and a half minutes.
>
> MR. DIESE: (Inaudible).
>
> MS. BRAATEN: What do you mean? (Inaudible).
>
> MR. DIESE: What's that?
>
> MS. BRAATEN: (Inaudible).
>
> MR. DIESE: (Inaudible).
>
> MS. BRAATEN: I believe so. (Inaudible).

MR. DIESE: (Inaudible) talk about it. No.

MS. BRAATEN: (Inaudible).

MR. DIESE: (Inaudible). Drop them. Let's go. (Inaudible).

MS. BRAATEN: I don't want to.

MR. DIESE: (Inaudible).

MS. BRAATEN: No, not that.

MR. DIESE: (Inaudible).

MS. BRAATEN: (Inaudible) and stuff.

MR. DIESE: (Inaudible).

MS. BRAATEN: No, not (inaudible).

MR. DIESE: (Inaudible) without question.

MS. BRAATEN: Okay. Well, I'll leave because I ain't doing that. You're my mom's boyfriend. You should be doing that with Mom, not me.

MR. DIESE: I can do whatever I want how I want.

MS. BRAATEN: Not with me.

MR. DIESE: So I got to tell your mom now (inaudible) and get you out of here?

MS. BRAATEN: I guess, because I'm not (inaudible).

MR. DIESE: We shall see. You know you have nowhere to go. You have no one to help you.

MS. BRAATEN: (Inaudible).

> MR. DIESE: Say again? Stand up.
>
> MS. BRAATEN: No.
>
> MR. DIESE: Come on. Get up. Let's go. Your pants are already halfway off. Let's go. Right now. Stand up. Come on. (Inaudible). Come on. (Inaudible). Come on. I'll hold your hand. Let's go. (Inaudible).
>
> MS. BRAATEN: (Inaudible).
>
> MR. DIESE: I'm going to count to three. One, two. Come on. (Inaudible).
>
> DETECTIVE ALDRIDGE: That was the end of the recording.

RP 34-36. The trial court found that RCW 9.73.030(2) does provide an exception to the general rule of dual consent to record, and allows admission of a private recording that conveys threats of extortion, blackmail, and bodily harm, or unlawful requests or demands. RP 54. The court listened to the tape and reviewed the transcript, and found that in the context of the entire conversation there were threats, and extortion of sexual activity of some sort. RP 55. The trial court further found that the defendant's demands during the taped conversation were unlawful and constituted threats. RP 55. Based upon this finding, she ruled the tape admissible under RCW 9.73.030(2). The trial court also ruled the second half of the tape, when no words are recorded, is independently admissible under RCW 9.73.030(2) as no private conversation was recorded. RP 55.

The trial court further noted that N.B. was "crying and upset throughout" the tape. RP 55.

Prior to trial, the State moved, pursuant to ER 404(b), to admit Diese's prior acts of raping and assaulting N.B. in 2008 or 2009 to show his lustful disposition toward N.B., as part of a common scheme or plan, and to prove the element of forcible compulsion. CP 54-65. The trial court held a hearing on this matter on January 15, 2015 and ruled the evidence of Diese's rapes of N.B. in 2008 and 2009 were admissible to prove his lustful disposition toward N.B. and to prove common scheme or plan. RP - 1137-39. The trial court found by a preponderance of the evidence that the prior acts occurred. RP 1138. The trial court identified the purposes for this evidence: lustful disposition and common scheme or plan. RP 1138-39. The trial court found that the prior acts were "very relevant and probative to establishing that the charge did indeed happen." RP 1141. The trial court also balanced the probative value against the prejudicial effect of admitting the evidence and found that the probative value outweighed the prejudicial effect. RP 1141. The trial court gave a limiting instruction to the jury regarding this evidence. CP 230.

The State also moved to admit evidence of an assault Diese perpetrated on N.B. that was referred to at the trial court as the "fat lip incident." RP 197-203. The trial court found this event occurred by a

preponderance of the evidence, that the evidence was relevant to proving forcible compulsion of the current rape charge, and the evidence was highly probative and any prejudicial effect could be mitigated by a limiting instruction. RP 203-04. The court thereby allowed this evidence to be admissible. RP 204. The trial court gave a limiting instruction to the jury regarding this evidence. CP 230.

The trial court also ruled pretrial on the admissibility of evidence of text messages N.B. had sent to others that had a sexual component to them. RP 109-26. Diese had filed a notice of its intent to introduce evidence of N.B.'s sexual behavior pursuant to RCW 9A.44.020. CP 168-173. The State also moved to suppress this evidence. RP 109. Diese was seeking to admit text messages that were recovered from N.B.'s cell phone as follows:

- January 11, 2015, message from N.B. to "Adam" stating, "God bad news, I am pregnet"

- January 12, 2015, message from N.B. to "Jacob Johson" including photographs of N.B.'s vagina with her fingers inserted, and a topless photo of her; message from "Jacob Johson" to N.B. of a picture depicting a penis.

- January 13, 2015, message from N.B. to "Gordo" including a photograph of her topless.

- January 17, 2015, message from N.B. to "Jake P." including a photograph of her topless and a message saying "no that shit hurts I am good and I don't want to be lose like being so tought maybe one day u can find out agine."

- January 19, 2015, message from N.B. to "Jordon" stating, "it is ok me and my friend will have fun fucking one another with her two head bobb."

- January 21, 2015, message from N.B. to "Normen" that "we can make out and shit but I dont make the first move," and including a photograph of her topless.

- February 16, 2015, message from N.B. to "Chris" including a photograph of her topless and a message saying "so horney."

- February 18, 2015, message from N.B. to "Danial" stating "Idk I like u and always wanted to fu, u," with "Danial's" reply of "I see," to which N.B. texted, "Ya u still want to" and "Danial" replied, "why not"

- February 25, 2015, message from N.B. to "kkharpole@outlook" including a topless photograph of herself and the message "here u go baby."

- February 25, 2015, message from N.B. to "Colt" indicating "k bye then why u keep talk I now u still like me u lost ur chance so when she dump u don't come to me" and "Colt's" reply of "ha oka ur pretty full of urself for being the one that wanted to be fuck buddyss knowing I liked josie and iidnt"

- February 26, 2015, message from N.B. to "Marusa" saying "I will tomorroe my bf is here and yes" and "cant my bf is with me and I am talking to him about it."

CP 169-71. Upon hearing argument and discussing legal authority, the trial court excluded evidence of these text messages. RP 124-25. The trial court found these messages were irrelevant, and did not include any

admission that N.B. had engaged in sexual intercourse or some other type of penetration that would explain her vaginal injury. RP 125.

At trial, the evidence showed that Diese was in a romantic relationship with Juline Dual, N.B.'s mother, starting in 2008. RP 343. Ms. Dual and N.B. moved in with Diese in 2008 or 2009, when N.B. was 14 years old. RP 344-45. In 2009, Ms. Dual's and Diese's relationship was rocky and came to an end (which ended up being temporary). RP 347. During an incident at this time, Diese grabbed N.B. by either the "scruff of the neck" or the "hood of her jacket" and threw her out the front door and then physically threw Ms. Dual out the door. RP 231, 347. N.B. and Ms. Dual then moved in with a friend for a while, and then lived in Portland, Oregon from 2009 until 2012. RP 232, 348, 414. Then, N.B. moved to Longview to live with her cousin. RP 415; N.B. also lived for a time with her father in 2012, and then Ms. Dual began to again date Diese. RP 233-34, 350, 415. In May 2013, Ms. Dual moved back in with Diese. RP 353. N.B. was not happy that her mother rekindled her relationship with Diese. RP 234, 350. N.B. had previously told her mother that Diese had raped her while they lived with him in 2009, but her mother had not believed her. RP 235. N.B. testified that Diese would take her clothes off and touch her breasts and penetrate her vagina with his fingers and his penis when she lived with him in 2009, and that this occurred on many occasions. RP 217-

19. On one occasion Diese threw N.B. up against a wall and caused her to have a fat lip. RP 223-24.

In December 2013, N.B. asked if she could move back in with her mother and Diese. RP 354. Diese was "adamantly against it," but that he eventually relinquished and N.B. moved in. RP 239, 354. As part of the conditions for allowing N.B. to stay, Diese wanted her to help with chores, get a job, go to counseling, and only be at the house when her mother was home. RP 238, 354.

On February 23, 2014, Ms. Dual and Diese were fighting. RP 243-44. They brought N.B. into a conversation about housework. RP 244. Diese was mad and upset about the house being dirty and N.B. not having been home earlier to clean the house. RP 244. Diese told N.B. that if he ever saw her in the street she should be worried. N.B. took this as a threat. RP 244. Diese and N.B. then went for a walk and Diese told N.B. that she needed to do everything he said when he said it and without an argument. RP 245. After N.B. and Diese returned from their walk, Ms. Dual was gone from the house. RP 246. She had gone to rent movies from Redbox. RP 246. N.B. was sitting on the couch and decided to record what was happening because she was uncomfortable being alone with Diese. RP 247-48. She set the phone down next to her. RP 248. Diese came up to N.B. and told her that now it was time to live up to her word; N.B. told

him she had done all the housework her mom told her to do. RP 251. Diese continued telling her she wasn't living up to what he was deciding and what he wanted. RP 252. N.B. realized he was not talking about housework. RP 252. Diese grabbed her by the hand and counted down. RP 253. It hurt when Diese grabbed her by the hand as he grabbed her tightly. RP 253. N.B. was terrified and in shock. RP 253. She believed Diese was going to rape her again. RP 253-54. N.B. tried to pull her hand back because she did not want to go with him. RP 254. But she was unable to get her hand away from his grip. RP 254. Diese was standing between N.B. and the door and she feared that he would get violent if she tried to leave. RP 254-55. N.B. got up from the couch because she was scared of Diese, scared it would get worse. RP 257. They walked to the bathroom, and N.B. used her hand to cover her face; she was crying really badly. RP 256.

Inside the bathroom, Diese told N.B. to pull down her pants. RP 259. She did not, so Diese pulled them down. RP 259. N.B.'s pants were around her ankles and Diese bent her over and started touching her. RP 260. He bent her over by pushing her with his hand on her back. RP 260. N.B. used her elbows to try to push Diese away, but that did not stop him from doing what he was doing. RP 280. Diese touched N.B. on her vagina and then put his penis inside her vagina. RP 262. After a short time, Diese

was done, and turned around toward the bathtub and turned on the water. RP 262. N.B. believed Diese ejaculated into the bathtub. RP 262-63. Afterwards, Diese pulled up N.B.'s pants. RP 264.

The recording was played to the jury during N.B.'s testimony. RP 270-71.

On February 26, 2014, N.B. told her mom, "I told you he was raping me" and played the recording for her. RP 363. The next morning N.B. and her mom went to a counseling session where they played the tape for the counselor; the counselor contacted the police. RP 289-90. N.B. and Ms. Dual then went to the police department and then the hospital. RP 365. N.B. underwent a rape examination at the hospital and evidence was collected. RP 545. The nurse found N.B. had a hematoma near the entry to her vagina. RP 537.

Detective Erik Anderson of the Vancouver Police Department investigated this case. RP 654. He collected articles of clothing that N.B. wore on February 23, 2014 and submitted them to the crime lab. RP 663-64. Det. Anderson obtained N.B.'s cell phone and a fellow officer made a recording of the original recording from N.B.'s cell phone. RP 691.

The DNA analyst from the crime lab examined N.B.'s clothing and found no male DNA and could not create a sample. RP 579-81. The analyst did find a small amount of male DNA on the rape kit that was

collected at the hospital, but the amount was too small to create a DNA profile. RP 633-36.

Diese testified in his defense. He admitted to physically assaulting N.B. in 2009 by grabbing her and throwing her and her mother out of the house. RP 829. Diese denied any sexual contact or intercourse with N.B. RP 827. Diese indicated that on February 23, 2014, N.B. was not doing the chores she was required to do, and was sitting on the couch with her pants so low her rear end was exposed. RP 809. Diese explained the contents of the cell phone recording and his statements to mean that N.B. had agreed to do chores and he wanted her to do them as agreed. RP 810. His mention on the recording of N.B.'s pants was because they were sagging too low and he wanted her to pull them up. RP 810. Diese was frustrated that N.B. was not doing what she was supposed to do and so did a "military tone" and counted down to try to get her to do her chores. RP 810-57. Diese also testified that N.B. cries frequently. RP 812. Diese believed N.B. wanted to break him and her mother up and that N.B. was jealous. RP 821.

Diese requested an inferior degree instruction on Rape in the Third Degree, but the trial court denied his request. RP 897. The jury began deliberating at 1:28pm on February 13, 2014. At 1:50pm the jury requested to have a transcript of the cell phone recording, which was denied, and then requested to hear the recording again. RP 972-76. The

trial court played the recording for the jury in the courtroom, without objection from Diese. RP 982. At 4:15pm the jury asked if a divided jury meant not guilty; the court responded no. RP 982-87. After an additional 30 minutes the jury asked what their options were on a split jury. RP 987. The trial court inquired of the jury if there was a reasonable probability of reaching a verdict. RP 988. Two jurors thought additional deliberations could result in reaching a verdict; ten jurors thought there was no reasonable probability of reaching a verdict. RP 989. Diese asked the court to declare a mistrial. RP 989. Instead, the court told the jury to continue to deliberate. RP 990. At 6pm, the jury indicated that juror #3 had a hard time hearing the recording and asked if he could have an amplified version of the recording. RP 990. After lengthy discussion with the parties, including the potential of bringing in the alternate juror, the court replayed the recording for the jury again. RP 995. The jury continued deliberating until almost 7pm at which time it was released until the next judicial day. RP 998. The following day the jury reached a verdict and this was announced at 11:46am.

The jury convicted Diese of Rape in the Second Degree and found it was a domestic violence offense, it was part of an ongoing pattern of abuse, and the conduct manifested deliberate cruelty or intimidation of the victim. RP 998-99; CP 247-49. The trial court sentenced Diese to an

exceptional sentence of 129 months. RP 1014; CP 276. Diese timely appealed. CP 207.

RAP 16.9 STATEMENT

RAP 16.9 (a) says the Respondent "should also identify in the response all material disputed questions of fact." The State hereby declares that if any fact averred by the defendant would in any way dispute, refute, rebut, negate, undermine, or undercut any fact in the record or verdict of the jury, it is a disputed question of fact. Unless the State *specifically disavows* a fact adduced at trial, the State should be viewed as adhering to the settled record in total and to the extent anything said or averred by the defendant would stand in contrast with any fact from the record, the State disagrees with and disputes that fact. This includes any "opinion," be it by expert or lay person, which purports to dispute, refute, rebut, negate, undermine, or undercut any fact adduced at trial or any verdict rendered by the jury. If the fact in question is germane to this Court's consideration of the personal restraint petition such that the petition cannot be decided without settling the matter, this Court is then required by RAP 16.11 to remand this matter to the Superior Court for a reference hearing, wherein a proper trier of fact can settle the dispute. An appellate court is not a trier of fact and cannot settle factual disagreements.

See e.g. *State v. Rafay*, 168 Wn.App. 734, 285 P.3d 83 (2012), *State v. Macon*, 128 Wn.2d 784, 911 P.2d 1004 (1996). A party is not required to specifically request a reference hearing to trigger the appellate Court's duty to hold one in the event this Court determines there is a disputed fact that must be settled.

ARGUMENT AS TO WHY PETITION SHOULD BE DISMISSED

I. Diese Received Effective Assistance of Counsel

Diese claims his trial counsel was ineffective for failing to retain and call a DNA expert to testify at trial to explain the significance of the absence of DNA in the case. Diese claims there is no legitimate strategic or tactical reason not to call such an expert. However, Diese has not met his burden in showing his attorney was ineffective. Accordingly, his claim of ineffective assistance of counsel fails.

A defendant has the constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). This Court reviews a claim of ineffective assistance of counsel de novo. *State v. Sutherby*, 165 Wn.2d 870, 883, 204 P.3d 916 (2009) (citing *In re Personal Restraint of Fleming*, 142 Wn.2d 853, 865, 16 P.3d 610 (2001)). To prevail, a personal restraint petitioner must show that his counsel's performance was deficient and that the performance

prejudiced the defendant's case. *State v. Mak*, 105 Wn.2d 692, 731, 718 P.2d 407, *cert. denied*, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986); *State v. McFarland,* 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *Strickland*, 466 U.S. at 687). Counsel's performance is deficient if it falls below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88. In determining deficient performance, the reviewing court must make every effort to eliminate the distorting effects of hindsight and it strongly presumes that counsel's conduct was strategic. *Id.* at 689. In addition, reviewing courts presume reasonable performance. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). A petitioner may overcome this presumption by establishing the absence of any legitimate trial tactic to explain counsel's performance. *Id.* To prove prejudice, a petitioner must show that there is a reasonable probability that but for his counsel's deficient performance the outcome of the proceeding would have been different. *State v. Hicks*, 163 Wn.2d 477, 486, 181 P.3d 831 (2008); *Strickland*, 466 U.S. at 694. A reasonable probability is one that is "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

Here, Diese presents no evidence, no affidavit from a DNA expert, to support his claim that the absence of DNA in this case was significant. Diese thereby fails to show that there is a reasonable probability that, had

the jury heard some unnamed expert's testimony about the absence of DNA, the significance of which he wants us to guess at, that the jury would have decided differently. Diese did not show prejudice from the alleged deficiency of trial counsel. He offered no declaration from an expert offering purported testimony on the purported significance of the absence of DNA in this case; instead, Diese simply declares his attorney was ineffective for failing to call a DNA expert on this issue. Diese has not shown that any expert would testify to any relevant information that would have been helpful to the trier of fact of his case, nor that any information would have possibly changed the outcome of his case, nor has he in any way established that his attorney was deficient in failing to find or seek out such expert. Without such evidence, Diese's claim is entirely speculative and Diese fails entirely in his burden of showing ineffective assistance of counsel.

In *In re Matter of the Personal Restraint of Davis*, 188 Wn.2d 356, 395 P.3d 998 (2017) our Supreme Court found that a personal restraint petitioner had failed to meet his burden of showing ineffective assistance of counsel when he failed to attach supporting declarations from relevant experts to support his claim that his trial counsel was ineffective for failing to consult with a toxicologist or pharmacologist in preparing his defense. *Davis*, 188 Wn.2d at 378-79. The Court noted, "[w]e simply do not know

what the missing toxicologist or pharmacologist would have said, making the evaluation of any prejudice highly speculative." *Id.* at 376. Diese's case is quite similar. Diese has the burden of showing ineffective assistance of counsel and does little more than claim that the absence of DNA is significant to his case and therefore his attorney was ineffective for failing to call an expert witness on DNA. More than speculation and bald assertions without factual support is needed before this Court can grant relief via a personal restraint petition. Diese has a burden of supporting his claims with evidence, which he has failed to do. Diese's claim of ineffective assistance of counsel for failing to call an expert witness fails.

The same is true of Diese's second claim, that an audio expert should have been used and called at trial. In his brief, Diese claims, "[h]ere an audio expert could have ascertained whether the recording had been altered or otherwise edited." *See* Br. of Petitioner, p. 21. However, it does not appear that Diese has had any expert review the recording as he has not submitted any affidavit from such an expert purporting to offer evidence favorable to Diese. As such, just as in *Davis, supra,* this Court simply cannot know what this missing audio expert would have said, making the evaluation of any prejudice entirely speculative.

"If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error, the petition must be dismissed...." *In re Personal Restraint of Rice*, 118 Wn.2d 876, 885, 828 P.2d 1086 (1992) (citing *In re Personal Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983)). Diese has completely failed to meet his burden of showing actual prejudice here. In addition, Diese did not make even a prima facie showing of actual prejudice which would warrant a remand for a full hearing or a reference hearing pursuant to RAP 16.11(a) or RAP 16.12. *See Rice*, 118 Wn.2d at 885. "Bald assertions and conclusory allegations will not support the holding of a hearing." *Id.* at 886 (citing *In re Personal Restraint of Williams*, 111 Wn.2d 353, 364-65, 759 P.2d 436 (1988)). In addition, a reference hearing is *not* to see if a petitioner actually has any evidence to support his allegations, but rather is to resolve genuine factual disputes. *Id.* Thus, Diese's claim that a reference hearing should be granted to determine what an expert would say in his case is a request for an improper remedy that this Court cannot grant.

> If the petitioner's evidence is based on knowledge in the possession of others, he may not simply state what he thinks those others would say, but must present their affidavits or other corroborative evidence. The affidavits, in turn, must contain matters to which the affiants may competently testify.

Id. As Diese has failed to support his claim with any evidence and has failed to make even a prima facie showing of prejudice, his petition should be dismissed.

CONCLUSION

Diese has failed to support his petition with any evidence and has failed to make a prima facie showing of prejudice. Accordingly, Diese's petition should be dismissed.

DATED this 15th day of April, 2019.

Respectfully submitted:

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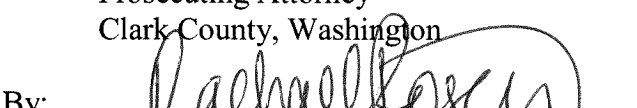
By: 

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APPENDIX A

16
Diane Grecco
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S8

FILED
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Scott G. Weber, Clerk, Clark Co

Superior Court of Washington
County of Clark

State of Washington, Plaintiff, vs. LAWRENCE E DIESE, Defendant. SID: WA25121163 If no SID, use DOB: 12/7/1961	**No. 14-1-00407-9** **Felony Judgment and Sentence -- Prison** ☒ **RCW 9.94A.507 Prison Confinement (Sex Offense and Kidnapping of a Minor) (FJS)** ☒ **Clerk's Action Required, para 2.1, 4.1, 4.3a, 4.3b, 5.2, 5.3, 5.5 and 5.7** ☐ **Defendant Used Motor Vehicle** ☐ **Juvenile Decline** ☐ **Mandatory** ☐ **Discretionary**

15-9-01263-0

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court ***Finds:***

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon
☐ guilty plea ☒ jury-verdict 2/17/2015 ☐ bench trial :

Count	*Crime*	*RCW (w/subsection)*	*Class*	*Date of Crime*
01	RAPE IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.44.050(1)(a)	FA	2/23/2014

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)
(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

☒ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

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

☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.

☐ The offense was predatory as to Count _____. RCW 9.94A.836.

☐ The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.

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☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.

☐ The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.

☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

☐ The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.825, 9.94A.533.

☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ _____. RCW 9.94A.825, 9.94A.533.

☐ Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.

☐ Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.

☐ Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.____.

☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.

☐ Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.

☐ Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW46.20.285.

☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

☒ For crime(s) charged in Count 01 **domestic violence** was pled and proved. **RCW 10.99.020.**

☐ Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).

☐ **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	Crime	Cause Number	Court (county & state)
1.			

☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	DV?*	Type
1	No known felony convictions						

*DV: Domestic Violence was pled and proved

☐ Additional criminal history is attached in Appendix 2.2.
☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
☐ The prior convictions for _____ are one offense for purposes of determining the offender score (RCW 9.94A.525).

☐ The prior convictions for _____ are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term	Maximum Fine
01	0	XI	78 MONTHS to 102 MONTHS		78 MONTHS to 102 MONTHS	LIFE	$50,000.00

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended **sentencing agreements or plea agreements** are ☐ attached ☐ as follows: _____.

2.4 ☒ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) _____.
☒ above the standard range for Count(s) ___1___.
☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☒ found by jury, by special interrogatory.
☐ within the standard range for Count(s) _____ but served consecutively to Count(s) _____.
Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.
☒ In the case of more than one aggravating factor, the Court finds that the same sentence would be imposed if any one of the aggravating factors is not upheld on appeal.

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 to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☒ That the defendant is presently indigent but is anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

☐ That the defendant is indigent and disabled and is not anticipated to be able to pay financial obligations in the future. RCW 9.94A.753.

☐ Other: _____. RCW 9.94A.753.

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

_____

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

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

3.2 ☐ The court ***dismisses*** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 Confinement. The court sentences the defendant to total confinement as follows:

(a) ***Confinement.*** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

126 months on Count 01

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

☐ The confinement time on Count _____ includes _____ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 126 months.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:_____.

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein:

_____.

Confinement shall commence immediately unless otherwise set forth here:_____

_____.

The total time of incarceration and community supervision shall not exceed the statutory maximum for the crime.

(b) ***Confinement.*** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01 minimum term 126 months maximum term Statutory Maximum / LIFE

(c) ***Credit for Time Served:*** The defendant shall receive ~~[illegible]~~ 401 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.

(d) ☐ ***Work Ethic Program.*** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released

on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

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

(A) The defendant shall be on community placement or 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)

Count(s) _____, _____ months. RCW 9.94A.701(9)

(Sex offenses, only) For count(s) 01, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

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

☒ consume no alcohol.

☒ have no contact with: NATASHA ROSE BRAATEN.

☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit:

_____.

☐ not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

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

Sexual deviancy ~~tre~~ evaluation and recommended treatment

☒ undergo an evaluation for treatment for ☒ domestic violence ☐ substance abuse ☐ mental health ☐ anger management, and fully comply with all recommended treatment. _____

☐ comply with the following crime-related prohibitions: _____

_____

_____.

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

_____

_____

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

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

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

JASS CODE			
RTN/RJN	$ 1,104.02	Restitution to: CRIME VICTIMS COMPENSATION PROGRAM ($1,104.02) (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	$ 500.00	Victim assessment	RCW 7.68.035
PDV	$ 100.00	Domestic Violence assessment	RCW 10.99.080
CRC	$	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee $ ~~200.00~~ FRC waived	
		Witness costs $ WFR	
		Sheriff service fees $ ~~70.00~~ SFR/SFS/SFW/WRF waived	
		Jury demand fee $ ~~250.00~~ JFR waived	
		Extradition costs $ EXT	
		Other $	
PUB waived	$ ~~2,250.00~~	Fees for court appointed attorney	RCW 9.94A.760
WFR	$ ~~12,977.50~~ ~~5,000~~	Court appointed defense expert and other defense costs to be supported by declaration	RCW 9.94A.760
	$	DUI fines, fees and assessments	
FCM/MTH waived	$ ~~500.00~~	Fine RCW 9A.20.021; ☐ VUCSA chapter 69.50 RCW, ☐ VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD NTF/SAD/SDI	$	Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF)	RCW 9.94A.760
	$ 100.00	DNA collection fee RCW 43.43.7541	
CLF	$	Crime lab fee ☐ suspended due to indigency	RCW 43.43.690
FPV	$	Specialized forest products	RCW 76.48.140
RTN/RJN	$	Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, $1000 maximum) Agency:	RCW 38.52.430
	$	Other fines or costs for:	
	$	***Total***	RCW 9.94A.760

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

☒ shall be set by the prosecutor.

☐ is scheduled for _____ (date).

☒ The defendant waives any right to be present at any restitution hearing (sign initials): _____.

☐ ***Restitution*** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount

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

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than $_____ per month commencing _____. RCW 9.94A.760.

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

☐ The court orders the defendant to pay costs of incarceration at the rate of $_____ per day, (actual costs not to exceed $100 per day). (*JLR*) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b ☐ 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 $_____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☒ ***HIV Testing***. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

☒ The defendant shall not have contact with NATASHA ROSE BRAATEN including, but not limited to, personal, verbal, telephonic, written or contact through a third party for NINETY-NINE (99) years (which does not exceed the maximum statutory sentence).

☒ The defendant is excluded or prohibited from coming within:

☒ 500 feet ☐ 880 feet ☐ 1000 feet of:

☒ NATASHA ROSE BRAATEN (name of protected person(s))'s

☒ home/ residence ☒ work place ☒ school

☒ (other location(s)) person

☐ other location _____,
for 99 years (which does not exceed the maximum statutory sentence).

☒ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other: No contact with minors.

4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

4.9 If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

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

5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

5.5a Firearms. **You may not own, use or possess any firearm, and under federal law any firearm or ammunition,** unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

5.5b ☐ Felony Firearm Offender Registration. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Sex and Kidnapping Offender Registration Laws of 2010, ch. 367 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or a kidnapping offense involving a minor as defined in Laws of 2010, ch. 367 § 1, you are required to register.

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

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

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

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with reutrn receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you registered.

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

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at

the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

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

8. Length of Registration:

☒ Class A felony – Life; ☐ Class B Felony – 15 years; ☐ Class C felony – 10 years

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Other: _____.

5.9 Persistent Offense Notice

The crime(s) in count(s) 1 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) 1 is/are one of the listed offenses in RCW 9.94A.030.~~(31)~~(37)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: 4-3-15

Judge/Print Name

Deputy Prosecuting Attorney	Attorney for Defendant	Defendant
WSBA No. 45627	WSBA No. 27955	Print Name:
Print Name: John Farra	Print Name: Diane Grecco	LAWRENCE E DIESE

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

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

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

Defendant's signature: _____

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at Vancouver, Washington on (date): _____

_____	_____
Interpreter	Print Name

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

Witness my hand and seal of the said Superior Court affixed this date: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

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FILED

FEB 17 2015

Scott G. Weber, Clerk, Clark Co

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

STATE OF WASHINGTON, Plaintiff, v. LAWRENCE E. DIESE, Defendant.	No. 14-1-00407-9 SPECIAL VERDICT FORM – AGGRAVATING CIRCUMSTANCE – UNITARY TRIAL

We, the jury, having found the defendant guilty of Rape in the Second Degree, return a special verdict by answering as follows:

Was the crime an aggravated domestic violence offense?

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

DATED this 17th day of FEBRUARY, 2015.

PRESIDING JUROR

Received by: 2-17-15 11:48 AM

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85

Superior Court of Washington
County of

State of Washington, Plaintiff,

vs. Lawrence Diese
Defendant.

No. 14-1-00407-9

Findings of Fact and Conclusions of Law for an Exceptional Sentence
(Appendix 2.4B Judgment and Sentence)
(Optional)
(FNFCL)

The court imposes upon the defendant an exceptional sentence [X] above [ ] within [ ] below the standard range for Count 1 based upon the following Findings of Fact and Conclusions of Law:

Findings of Fact

I. The exceptional sentence is justified by the following aggravating circumstance(s):

(a) Under RCW 9.94A.535(3)(h): The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present: (i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; (ii) ~~The offence occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years~~; or (iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

[X] The grounds listed in the preceding paragraph, taken together or considered individually, constitute sufficient cause to impose the exceptional sentence. This court would impose the same sentence if only one of the grounds listed in the preceding paragraph is valid.

II. _____

Conclusions of Law

I. There are substantial and compelling reasons to impose an exceptional sentence pursuant to RCW 9.94A.535.

II. _____

Dated: 4-3-15

Judge/Print Name: Suzanne Lee

Deputy Prosecuting Attorney
WSBA No. 45627
Print Name: John Farra

Attorney for Defendant
WSBA No. 27955
Print Name: Diane Gucco

Defendant
Print Name:

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

STATE OF WASHINGTON, Plaintiff, v. LAWRENCE E DIESE, Defendant	No. 14-1-00407-9 DECLARATION OF CRIMINAL HISTORY *14-1-00407-9*

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.525 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV?*	PTS.
No known felonies at this time					

* DV:Domestic Violence was pled and proved.

☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.

DATED this 2 day of April, 2015.

Defendant

SUSAN A. STAUFFER, WSBA #11374
Attorney for Defendant

JOHN FARRA, WSBA #45627
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTING ATTORNEY
1013 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

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

STATE OF WASHINGTON	)	**Cause No.:** 14-1-00407-9
	)	
Plaintiff	)	**JUDGMENT AND SENTENCE (FELONY)**
v.	)	**APPENDIX F**
DIESE, Lawrence E.	)	**ADDITIONAL CONDITIONS OF SENTENCE**
Defendant	)	
	)	
DOC No. 380704	)	

CRIME RELATED CONDITIONS:

- No victim contact
- Complete sexual deviancy evaluation and any recommended treatment
- Submit to polygraph examinations at the direction of the Community Corrections Officer
- Sex offender registration

4-3-15

DATE

JUDGE, CLARK COUNTY SUPERIOR COURT

Identification of the Defendant

LAWRENCE E DIESE

14-1-00407-9

SID No: WA25121163 (If no SID take fingerprint card for State Patrol)

Date of Birth: 12/7/1961

FBI No. 814229NB8

Local ID No. 198004

PCN No. _____

Other _____

Alias name, DOB:

Race: W

Ethnicity:

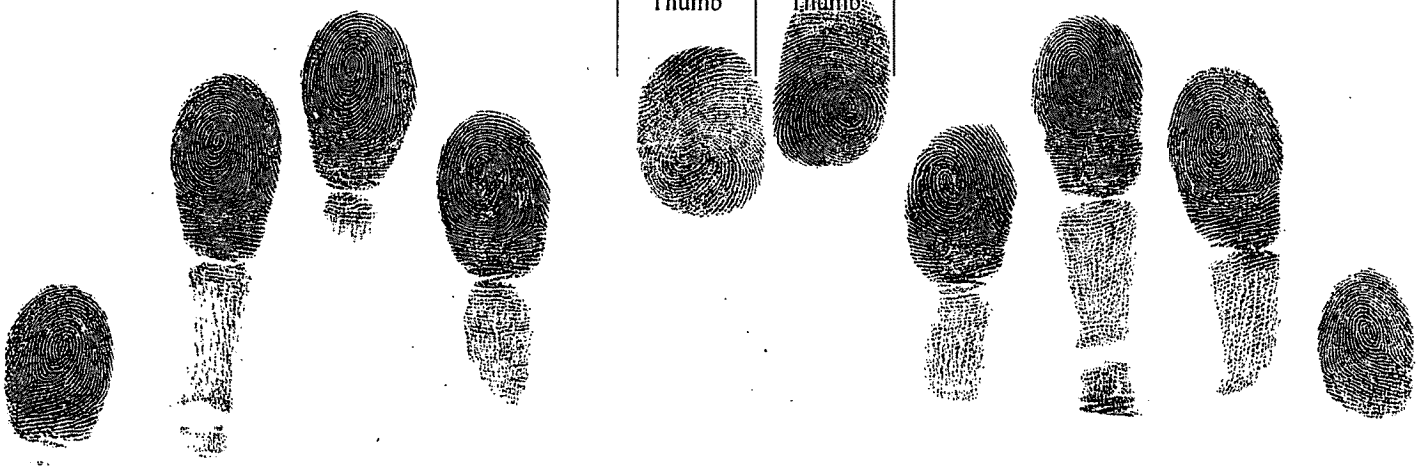
Sex: M

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, _____ Dated: 4/3/15

The defendant's signature:

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff, v. LAWRENCE E DIESE, Defendant. SID: WA25121163 DOB: 12/7/1961	NO. 14-1-00407-9 **WARRANT OF COMMITMENT TO STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE IN THE SECOND DEGREE - DOMESTIC VIOLENCE	10.99.020/9A.44.050(1)(a)	2/23/2014

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
01	RAPE IN THE SECOND DEGREE - DOMESTIC VIOLENCE	126 Days/Months

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

The defendant has credit for 400 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

_____

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable _____

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 4/3/15.

SCOTT G. WEBER, Clerk of the
Clark County Superior Court

By: _____
Deputy

Seal of the Superior Court
STATE OF WASHINGTON
Clark County

CLARK COUNTY PROSECUTING ATTORNEY

April 15, 2019 - 11:23 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	52662-0
Appellate Court Case Title:	Personal Restraint Petition of Lawrence E Diese
Superior Court Case Number:	14-1-00407-9

The following documents have been uploaded:

- 526620_Personal_Restraint_Petition_20190415112154D2049670_3352.pdf
  This File Contains:
  Personal Restraint Petition - Response to PRP/PSP
  The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- aaron.bartlett@clark.wa.gov
- bleigh@tillerlaw.com
- ptiller@tillerlaw.com

Comments:

Sender Name: Ashley Smith - Email: ashley.smith@clark.wa.gov
Filing on Behalf of: Rachael Rogers - Email: rachael.rogers@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

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Vancouver, WA, 98666-5000
Phone: (360) 397-2261 EXT 5686

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