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No. 53262-0-II

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

WARREN M. HELZER,

Appellant.

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OPENING BRIEF OF APPELLANT

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On Appeal From Pierce County Superior Court  
The Hon. Gretchen Leanderson, Presiding  
The Hon. Thomas Felnagle, Presiding

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NEIL M. FOX  
Attorney for Appellant  
WSBA No. 15277  
2125 Western Ave. Suite 330  
Seattle WA 98121

Phone: (206) 728-5440  
Fax: (866) 422-0542  
Email: [nf@neilfoxlaw.com](mailto:nf@neilfoxlaw.com)

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**A. INTRODUCTION**

In 2010, Pierce County Superior Court Judge Thomas Felnagle sentenced Mr. Helzer to serve a fixed term of 130-months in prison for intra-familial sex offenses. CP 20-32 (App. A). Initially, Mr. Helzer received a suspended SSOSA sentence, but after a violation, the suspended sentence was revoked and he was committed to the Department of Corrections (“DOC”) for a total of 130 months of confinement. CP 69-71 (App. B). Almost at the end of the commitment, the State filed a motion to increase the sentence to a life term, with a minimum sentence of 130 months, placing Mr. Helzer under the jurisdiction of the Indeterminate Sentence Review Board (“ISRB”). CP 136-200. Over Mr. Helzer’s objection, a new superior court judge, the Hon. Gretchen Leanderson, granted the State’s motion, calling the original error “clerical.” CP 374-75 (App. C).

In this appeal, Mr. Helzer contests this retroactive increase in his sentence as a violation of double jeopardy and due process. There was no “clerical” error as the State failed in its burden of showing that Judge Felnagle made a scrivener’s error. The State’s motion was time-barred and violated its obligations under the plea agreement. Finally, even if the late increase in his sentence was proper, Mr. Helzer now contests some of the

vague and overbroad sentencing conditions that were imposed in the original judgment.

**B. ASSIGNMENTS OF ERROR**

1. Mr. Helzer assigns error to the entry of the *Motion and Order Correcting Judgment and Sentence & Correcting Order Revoking Suspended Sentence Nunc Pro Tunc to Feb 5, 2010 and Oct 22, 2010*. CP 374-75 (App. C).

2. Judge Leanderson erred when she changed Mr. Helzer's sentence from a determinate 130-month sentence to an indeterminate life sentence with a 130-month minimum term under the jurisdiction of the ISRB.

3. By changing of Mr. Helzer's sentence after he had served most of it, Judge Leanderson violated double jeopardy and due process under the Fifth and Fourteenth Amendments to the United States Constitution and article I, sections 3 and 9, of the Washington Constitution.

4. Judge Leanderson erred when she determined that there were "clerical" or "scrivener's" errors on the prior final orders and judgments.

5. Judge Leanderson erred when she granted the State's time-barred collateral attack motion.

6. The State breached the plea agreement and Judge Leanderson erred when considering State's motion.

7. Judge Felnagle erred when he imposed various conditions in of community custody (all from the original judgment except as otherwise noted):

- a. Condition 3 (ban on consumption of alcohol);
- b. Condition 9 and Condition I of the Order Revoking Sentence (geographic restrictions);
- c. Condition 10 (submit to urinalysis or breath test);
- d. Condition 15 (ban on pornographic materials);
- e. Condition 18 (regarding "romantic" relationships);
- f. Condition 19 (regarding polygraphs and plethysmographs);
- g. Condition 21 (avoiding places where children congregate);
- h. Condition 25 (ban on access to the Internet);
- i. Condition 28 (ban on frequenting adult entertainment establishments);
- j. Condition 29 (ban on frequenting establishment where primary business is furnishing alcohol);

CP 37-39 (App. A), CP 70 (App. B).

**C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Almost a decade after Judge Felnagle entered final judgments in this case, imposing a determinate 130-month sentence, should Judge Leanderson have changed the judgment to increase the sentence to an indeterminate life sentence, with a minimum term of 130-months?

2. Was there a “clerical” error in the original judgment and order revoking the suspended sentence?

3. Did the increase in sentence violate Mr. Helzer’s rights to due process of law and to be free from double jeopardy?

4. Was the State’s motion time-barred?

5. Did the State breach its plea agreement, and, if so, what should be the remedy?

6. Are various sentencing conditions imposed by Judge Felnagle unconstitutional or not valid crime-related prohibitions?

**D. STATEMENT OF THE CASE**

By information filed on January 7, 2009, in Pierce County Superior Court, the State charged Warren Helzer with sex offenses against his children with various charging periods from 2000 until 2003. CP 1-2. On December 16, 2009, the State filed an amended information charging three counts of

child molestation in the first degree: Count II against A.H., between November 10, 2001, and November 9, 2003; Count III against M.H., between November 10, 2001, and November 9, 2003; and Count IV against M.H. between June 23, 2003 and June 23, 2005. CP 4-5.

Mr. Helzer pled guilty to the amended information on December 16, 2009. CP 6-17. Although there was an arrow handwritten onto the *Statement of Defendant on Plea of Guilty to Sex Offense*, pointing to a section that child molestation in the first degree as it related to indeterminate sentencing, CP 9, there is no indication who put that arrow on the form, when it was placed on the form and the significance of the arrow. In contrast to the arrow, the State's plea recommendation was not for an indeterminate sentence. Rather, the State's sentence recommendation (agreed by the defense) was for "SSOSA, 130 months incarceration with 124 months suspended." CP 10. The State's agreement was thus for a fixed term of imprisonment, albeit suspended, but not a life sentence, with a suspended minimum term.

The plea form also set out two different SSOSA sentence structures, including the one recommended by the State:

The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670.

CP 12 (¶ 6, § q).

During the plea colloquy between Judge Felnagle and Mr. Helzer, neither the “arrow” nor the indeterminate nature of the possible sentence were mentioned. Judge Felnagle rather stated:

The maximum penalty is life in prison and a \$50,000 fine. The standard sentencing range is 98 to 130 months, and then you could be on community custody for a life term as well. .

..

...

The recommendation from the State is that, if you qualify, they would recommend a SSOSA or suspended sentence with 124 months suspended, and six months would have to be served in custody.

RP (12/16/09) 5-6 (CP 102-03).<sup>1</sup>

When Mr. Helzer was sentenced on February 5, 2010, the State requested a determinate sentence that was to be suspended: “We are asking the Court to impose 130 months. We are asking the Court to suspend 124

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<sup>1</sup> The transcripts in this case are of record in this Court in a variety of forms. The transcript from the plea hearing and the sentencing hearing were filed in the trial court and have been designated as part of the clerk’s papers. CP 98-106 (December 16, 2009); CP 107-135 (February 5, 2010). The transcript of the SSOSA revocation hearing (October 22, 2010) was transferred to the file in this case from the prior appeal (No. 41435-0-II) by order filed on June 18, 2019. Finally, the transcript of the April 12, 2019, hearing at which the trial court changed the judgment was prepared recently and is now of record. For sake of consistency, references to the transcript will made to the date of the transcript and the page number -- i.e. RP (10/22/10) 3 – adding a clerk’s paper’s citation if applicable.

months, ordering the defendant to serve six months immediately. . . . We are asking the Court to order the defendant to a period of lifetime supervision under the Department of Corrections.” RP (2/5/10) 4 (CP 110). Consistent with its promise in the plea statement, the State did not recommend the Court to impose a life sentence, with a minimum term of 130 months (that would then be suspended for the SSOSA program).

Judge Felnagle went along with the prosecutor’s recommendation. RP (2/5/10) 26-27 (CP 132-33). The transcript of the sentencing hearing makes no mention of an indeterminate life sentence, with a minimum term of 130 months, suspended on condition of compliance with the SSOSA. The final judgment reflected exactly what the State recommended:

- (a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of *total confinement* in the custody of the county jail or Department of Corrections (DOC):

130 months on Count II  
130 months on Count III  
130 months on Count IV

*Actual number of months of total confinement* ordered is:  
130 Months

CP 25 (emphasis added). Thus, the judgment imposed not an indeterminate life sentence but a determinate 130-month sentence. The final judgment also

contained a series of conditions for community custody (“App. H”). CP 37-39. Neither Mr. Helzer nor the State filed a notice of appeal and thus the February 5, 2010, judgment became final in early 2010.

On August 31, 2010, DOC claimed that Mr. Helzer violated the SSOSA sentence. The CCO’s violation report described Helzer as having an additional 124 months to serve (even listing a termination date for the sentences of 6/5/20). There was no mention of an indeterminate sentence. CP 293-95.<sup>2</sup>

Judge Felnagle revoked the suspended sentence on October 22, 2010. RP (10/22/10) 21-24. He committed Mr. Helzer to DOC to serve the remainder of the determinate standard range sentence previously suspended:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the *suspended standard range sentence* be revoked pursuant to RCW 9.94A.670 and 9.94A.505, and the defendant *committed to the Department of Corrections for a period of 130 months.*

CP 69 (emphasis added). Judge Felnagle also ordered lifetime DOC supervision (as had been initially recommended by the State), with a number of conditions. CP 69-70 (App. F). Again, in terms of whether the final order somehow misrepresented what the judge actually ruled, the transcript of the

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<sup>2</sup> In the original DOC presentence report, though, the writer did note the sentence structure was as follows: “Life with a minimum set between 98 and 130 months.” CP 42.

revocation hearing contains no discussion of indeterminate life sentences with a minimum term, and release by the ISRB. RP (10/22/10) 3-25. However, the transcript does show that the prosecutor prepared the final order. RP (10/22/10) 24-25.

When Mr. Helzer arrived at prison in October 2010, DOC staff read the judgment and order revoking the SSOSA and quickly realized that the judge had imposed a determinate sentence. DOC staff emailed the prosecutor in this case, stating:

When they are sentenced under this RCW they should have a minimum term, a maximum term (equal to the statutory maximum for the offense, in this case Life) and also supervision for any time released prior to the statutory maximum sentence. He was sentenced to 130 months and community placement of Life but there is no reference to a minimum and maximum term.

CP 328. In response, the prosecutor incorrectly told DOC staff Helzer had been given a life sentence with a minimum term of 130 months. *Id.* DOC did not file a post-sentence review petition under RCW 9.94A.585(7) and RAP 16.18(b).

Mr. Helzer appealed the revocation of the SSOSA. The State did not cross-appeal the commitment to DOC for a fixed 130-month sentence.

Rather, in its appellate brief, the State described Mr. Helzer's sentence in the following manner:

The conditions of defendant's suspended sentence began on February 5, 2010, when he was sentenced to 130 months in custody with 124 months suspended pursuant to the Special Sex Offender Sentencing Alternative ("SSOSA").

CP 331. On April 24, 2012, when affirming the revocation this Court repeated this language when describing the case's history:

On February 5, 2010, the trial court imposed a SSOSA, suspending Helzer's 130-month sentence.

CP 86.

After losing his appeal, Mr. Helzer did not petition for review to the Washington State Supreme Court, and the mandate issued on June 4, 2012.

CP 84-85. Mr. Helzer did not file a Personal Restraint Petition, a petition for a writ of *certiorari* to the U.S. Supreme Court or a petition in federal court under 28 U.S.C. § 2254. Instead, Mr. Helzer served out the 130-month determinate sentence imposed by Judge Felnagle.

Mr. Helzer's earned early release ("ERD") was set for May 19, 2019.

CP 206. In late 2019, the ISRB scheduled a Community Custody Board ("CCB") hearing to determine whether Mr. Helzer should be released. Mr. Helzer filed two civil actions (a petition for a writ of prohibition in Thurston

County and a petition for a writ of habeas corpus in Snohomish County) contesting the ISRB’s assertion of jurisdiction. CP 347, 349-55. While the habeas writ in Snohomish County was pending, at DOC’s behest,<sup>3</sup> the State filed a motion in this case to “correct” the judgment alleging a scrivener’s or clerical error, arguing that the proper sentence structure was an indeterminate life sentence, with a minimum term and ISRB jurisdiction. CP 136-200. Mr. Helzer opposed the motion, raising issues related to due process, double jeopardy, time-bar, and breach of the plea agreement. CP 201-220.

On April 12, 2019, Judge Gretchen Leanderson (the successor judge to Judge Felnagle) granted the State’s motion, finding that there was a scrivener’s or clerical error in the original judgments. RP (4/12/09) 46-51. She signed the order amending the original judgment and the order revoking the suspended sentence, *nunc pro tunc*, to increase the sentence from 130 months to an indeterminate life sentence, with a minimum 130-month term on each count. CP 374-75. This appeal then timely followed. CP 378-400.

Subsequently, the ISRB held a CCB hearing and ordered that Mr. Helzer be released from prison. He was released on September 17, 2019, but is still subject to life-time ISRB jurisdiction. In other words, if Mr. Helzer

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<sup>3</sup> See CP 144 (State notes that the “Department of Corrections has requested” the order).

violates community custody, he can be returned to prison for life, RCW 9.95.435(2). Under the final judgments as they were originally entered in 2010, Mr. Helzer was still on DOC supervision for life, but could not be returned to prison for life if there was a violation – there would only be sanctions of up to 60 days of confinement. Former RCW 9.94A.634 (eff. 9/1/01).

**E. ARGUMENT**

**1. *The Trial Court Erred When It Increased Mr. Helzer’s Sentence Almost a Decade after It Became Final***

**a. *The Standard of Review***

Although in many instances “[a] trial court’s decision on a motion to vacate a judgment is reviewed on an abuse of discretion standard,” *State v. Hardesty*, 129 Wn.2d 303, 317, 915 P.2d 1080 (1996), in this case, the trial court’s decision was based not on any testimony below, but solely upon the review of the written record. Thus, the standard of review in this Court is *de novo*.<sup>4</sup>

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<sup>4</sup> See *John Doe G v. Dep’t of Corr.*, 190 Wn.2d 185, 191, 410 P.3d 1156 (2018); *State v. Kipp*, 179 Wn.2d 718, 727, 317 P.3d 1029 (2014); *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994) (plurality).

Moreover, even if the standard is “abuse of discretion,” “the trial court must apply the correct legal standard and rest its decision on facts supported by the record.” *State v. Van Elsloo*, 191 Wn.2d 798, 807, 425 P.3d 807 (2018). A trial court abuses its discretion if its decision is “manifestly unreasonable or based on untenable grounds . . . if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. . . [or] if it based its ruling on an erroneous view of the law.” *Id.* (internal quotations and citations omitted).

Under either *de novo* review or abuse of discretion, the trial court’s decision to increase the sentence a decade after the judgment became final should be reversed.

**b. There Was Not a Clerical or Scrivener’s Error**

The trial court changed Mr. Helzer’s sentence, increasing it from 130 months to life because it concluded there was a clerical or scrivener’s error in the original judgments.<sup>5</sup> This was error.

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<sup>5</sup> There were two final judgments at issue in this case. First was the original judgment and sentence entered on February 5, 2010, CP 20-32, which became final when neither side appealed within 30 days. The second judgment was the October 22, 2010, order revoking the SSOSA sentence, CP 69-71, and committing Mr. Helzer to DOC for 130 months, which became final upon the issuance of this Court’s mandate on June 4, 2012. CP 84-85.

There is normally a presumption of regularity that attaches to final criminal judgments, with the burden of proof on the party seeking modification. *See Parke v. Raley*, 506 U.S. 20, 31, 113 S. Ct. 517, 121 L. Ed. 2d 391 (1992) (“Our precedents make clear, however, that even when a collateral attack on a final conviction rests on constitutional grounds, the presumption of regularity that attaches to final judgments makes it appropriate to assign a proof burden to the defendant.”). Thus, to change the final orders and judgment in this case, the State had the burden of proof.

The State styled its motion as one to “correct” a “scrivener’s” error, arguing that the trial court had the power under CrR 7.8(a) to correct “errors arising from oversight or omission . . . at any time.” CP 137. CrR 7.8(a), though, requires there to have been a “clerical” mistake,<sup>6</sup> and there is a difference between a “clerical” error and a “judicial” error:

A clerical mistake is one that, when amended, would correctly convey the intention of the court based on other evidence. [Citation omitted] If the mistake is not clerical in nature, however, then it is characterized as judicial and the trial court cannot amend the judgment and sentence.

*State v. Davis*, 160 Wn. App. 471, 478, 248 P.3d 121 (2011).

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<sup>6</sup> See Statutory Appendix for full text of rules and statutes.

“Clerical errors are those that do not embody the trial court’s intention as expressed in the trial record.” *State v. Morales*, 196 Wn. App. 106, 117, 383 P.3d 539 (2016). On the other hand, a “judicial” error is an error of law that then becomes final upon the entry of the judgment, and cannot be corrected under CrR 7.8(a) (or the civil rule, CR 60(a)):

A statement made at oral argument before this court illuminates another indicator of the essential distinction between “clerical error” and “judicial error.” Counsel for Barrett-Yeakel began its argument and said that it asked the trial court to “amend the judgment because we did not believe that he intended the results of his original judgment.” . . . Whether a trial court intended that a judgment *should have a certain result* is a matter involving legal analysis and is beyond the scope of CR 60(a). The rule is limited to situations where there is a question whether a trial court intended to enter the judgment that was actually entered.

*Presidential Estates v. Barrett*, 129 Wn.2d 320, 326 n.5, 917 P.2d 100 (1996) (emphasis in original).<sup>7</sup>

Here, the State did not maintain its burden of showing that the two final orders in this case contained a clerical error that mistakenly did not reflect the oral ruling of the court in 2010. While perhaps, at most, there were a series of judicial errors (invited by the State), there is no basis in the

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<sup>7</sup> See also *State v. Morales*, 196 Wn. App. at 118 (“Errors that are not clerical are characterized as judicial errors, and trial courts may not amend a judgment under CrR 7.8 for judicial errors.”).

record to conclude that Judge Felnagle orally ruled that he was imposing a maximum of life in prison while setting a minimum term of 130 months, but that somehow the final orders misrepresented what was stated in court.

Nothing in the transcripts of the various hearings support such a conclusion. In fact, given the State's own recommendation for a 130-month sentence, not a life sentence with a minimum term of 130 months, it is not surprising that the record from 2009 and 2010 does not contain documentation of a clerical error. Judge Felnagle did not simply inadvertently fail to check the correct boxes on a particular form. Rather, on two occasions, in very clear language, at the State's behest, Judge Felnagle imposed determinate 130-month sentences, which reflected exactly the State's recommendation. CP 25, 69.<sup>8</sup>

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<sup>8</sup> For an example of a true scrivener's error, see *State v. Blackman*, 2019 Wash. App. LEXIS 349, 2019 WL 624685 (No. 50221-6-II, 2/13/19) (unpub.) (court intentionally struck condition of community custody in Appendix F, but neglected to strike similar prohibition from the judgment). The "correction" the State sought here was not to correct a scrivener's error, but really was to completely rewrite the sentence structure in a way never announced on the record by Judge Felnagle.

Judge Leanderson made the changes "*nunc pro tunc*." CP 374-75; RP (4/12/19) 52-55. "A *nunc pro tunc* order allows a court to date a record reflecting its action back to the time the act in fact occurred." *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). But "[a] retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred." *State v. Smissaert*, 103 Wn.2d 636, 641, 694 P.2d 654 (1985). Thus, an order *nunc pro tunc* is not appropriate to reopen a previously closed matter "in order to resolve substantive issues differently." *Hendrickson*, 165 Wn.2d at 478. Here, it was inappropriate to style the order as "*nunc pro tunc*" since the change here resolved a substantive issue differently.

“Washington is a written order state.” *State v. Huckins*, 5 Wn. App. 2d 457, 469, 426 P.3d 797 (2018). The judgment and revocation order were clear that what the State recommended and what Judge Felnagle imposed was a determinate sentence as defined by RCW 9.94A.030:

(18) “Determinate sentence” means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. . . .

The language of the final judgment and the order revoking the SSOSA clearly and unambiguously reflected this sentence structure, imposing 130 months of actual total confinement. There was no evidence of a clerical error in the record of the sentencing hearing or the revocation hearing. The State did not meet its burden of proof and demonstrate that Judge Felnagle imposed an indeterminate sentence, but that the final judgment and revocation order neglected to reflect his actual ruling. At most there was a legal or judicial error, but that is not a basis to “correct” final judgments that are nearly a decade old.

Judge Leanderson therefore erred when she concluded there was a scrivener's error or a clerical error. The record from 2009 and 2010 does not support the conclusion that Judge Felnagle imposed a life sentence with a minimum term of 130 months, and that the judgment and order revoking the SSOSA simply neglected to reflect his rulings. The 2019 order amending the two 2010 final orders should be reversed.<sup>9</sup>

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<sup>9</sup> For the first time in a reply memo below, the State argued that an alternative basis for its motion was CrR 7.8(b)(1) & (5). CP 364-65. Not only did Judge Leanderson not base her ruling on that argument, finding only that there was a clerical mistake under CrR 7.8(a), but the State's argument under CrR 7.8(b) was tardy and should not be considered. *See In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 327, 394 P.3d 367 (2017) (court would not consider a meritorious argument which would have led to relief because the prisoner did not raise it in the initial pleading).

In any case, a motion under CrR 7.8(b)(1) (mistakes) still needed to be filed within one year and those under CrR 7.8(b)(4) (void judgments) & CrR 7.8(b)(5) (catch-all provision) need to be brought within a "reasonable time." Moreover, the judgments here were not "void" – "a judgment rendered by a court of competent jurisdiction is not void merely because there are irregularities or errors of law in connection therewith." *Dike v. Dike*, 75 Wn.2d 1, 8, 448 P.2d 490 (1968) (internal quotes and citations omitted). Generally, an order is void only where the court lacks jurisdiction over the person or the subject matter. *Dike*, 75 Wn.2d at 8. That is not the case here.

Finally, regarding CrR 7.8(b)(5)(based on CrR 60(b)(11)), this "catch-all" provision is intended "to serve the ends of justice in extreme, unexpected situations." *In re Det. of Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005). The State failed to explain why or how such circumstances apply here. But, again, Judge Leanderson's ruling was based on CrR 7.8(a) only.

**c. Increasing the Sentence After It Had Substantially Been Served Violated Double Jeopardy and Due Process of Law**

Both the U.S. Constitution and the Washington Constitution protect against being placed in jeopardy twice for the same act.<sup>10</sup> Both constitutions also guarantee due process of law.<sup>11</sup>

“The double jeopardy clause applies when ‘(1) jeopardy has previously attached, (2) that [previous] jeopardy has terminated, and (3) the defendant is in jeopardy a second time for the same offense in fact and law. . . . If all three elements are present, the double jeopardy clause bars the State from retrying the defendant.’” *State v. Walters*, 146 Wn. App. 138, 145, 188 P.3d 540 (2008) (quoting *State v. Ervin*, 158 Wn.2d 746, 752, 147 P.3d 567 (2006)). “[T]he Constitution was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it,” *Ex parte Lange*, 85 U.S. 163, 173, 21 L.Ed. 872 (1873), and the double

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<sup>10</sup> U.S. Const. amend. V (“[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . .”); Const. art. I, § 9 (“No person shall . . . be twice put in jeopardy for the same offense.”). The Fifth Amendment applies to the states by way of the due process clause of the Fourteenth Amendment. *See Benton v. Maryland*, 395 U.S. 784, 793-96, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969).

<sup>11</sup> U.S. Const. amend. XIV (“[N]or shall any state deprive any person of life, liberty, or property, without due process of law.”); Const. art. I, § 3 (“No person shall be deprived of life, liberty, or property, without due process of law.”).

jeopardy clause exists to “protect the integrity of a final judgment.” *United States v. Scott*, 437 U.S. 82, 92, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978).

Generally, double jeopardy is not violated by the *government’s* timely appeal of a sentence that results in the sentence being longer or more onerous if the government wins. *See United States v. DiFrancesco*, 449 U.S. 117, 101 S. Ct. 426, 66 L. Ed. 2d 328 (1980). “[T]he *DiFrancesco* Court noted that the double jeopardy clause does not bar a court from correcting its sentencing error by increasing the severity of a sentence to conform to the mandatory provisions of a statute.” *State v. Traicoff*, 93 Wn. App. 248, 253, 967 P.2d 1277 (1998). Similarly, double jeopardy is not violated where it is the *defendant* who raises challenges to the judgment. *State v. Ervin*, 158 Wn.2d at 757-58 & n.11 (where a defendant successfully challenges a conviction on collateral attack, jeopardy does not terminate). Finally, double jeopardy is not violated if a portion of a sentence is corrected *before* the defendant actually begins to serve it. *See State v. Traicoff*, 93 Wn. App. at 255-57 (where defendant had not yet begun serving community placement, he had no expectation in finality of erroneous judgment).

On the other hand, when someone has finished serving his or her sentence, or is close to finishing the sentence, it violates double jeopardy to allow the government to go back and change it years later:

What matters for purposes of double jeopardy is not the legality or illegality of the sentence. . . , but the defendant's expectation of finality. . . . A defendant's expectation of finality is influenced by factors such as completion of the sentence, passage of time, pendency of an appeal or review of the sentence, or a defendant's misconduct in obtaining the sentence.

*Harris v. Charles*, 171 Wn.2d 455, 461, 256 P.3d 328 (2011) (internal citations and quotations omitted).

In *State v. Hardesty*, *supra*, the Supreme Court held that, even if a sentence was illegal, if the defendant had fully *or substantially* served it, double jeopardy precluded changing the sentence unless the erroneous sentence was a product of the defendant's fraud. *Id.* at 312. Mr. Hardesty was accused of fraud for failing to accurately relate his criminal history as part of a plea agreement. After Hardesty had fully served his sentence, the prosecutor determined that Hardesty had a more extensive criminal history and moved to increase his sentence. *Id.* at 305-08. The issue was whether an increase of the sentence would violate double jeopardy and due process, and the Court held:

The case law following *DiFrancesco* indicates *the defendant acquires a legitimate expectation of finality in a sentence, substantially or fully served*, unless the defendant was on notice the sentence might be modified, due to either a pending appeal or the defendant's own fraud in obtaining the erroneous sentence . . .

...

*Other cases find a similar barrier to increasing a served sentence if the defendant is innocent of wrongdoing in obtaining the sentence, based upon the due process clause of the Fourteenth Amendment to the U.S. Constitution. . . .*

...

While the State now contends Hardesty did not have a reasonable expectation of finality for purposes of double jeopardy if his sentence was merely erroneous, rather than fraudulent, and he fully served it, this was not the basis for the trial court's decision. Here the State did not appeal the sentence, Hardesty fully served it, and a period of months elapsed after the completion of the sentence. Under these facts, *if Hardesty's more favorable sentence was merely the product of an error, and not his fraud upon the trial court, Hardesty would have a reasonable expectation of finality in the sentence for purposes of double jeopardy.*

*Hardesty*, 129 Wn.2d at 312-14 (emphasis added).<sup>12</sup>

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<sup>12</sup> See also *Ex Parte Cavitt*, 170 Wash. 84, 84-88, 15 P.2d 276 (1932) (holding that habeas relief was available when trial judge ordered man who had finished serving his sentence to serve it again). Compare *State v. Gonzalez*, 168 Wn.2d 256, 269, 226 P.3d 131 (2010) (restitution amount could be increased as defendant was on notice that statute allowed for modification of initial order).

The Supreme Court reaffirmed these principles in *State v. Hall*, 162 Wn.2d 901, 177 P.3d 680 (2008), a case where the defendant had been convicted in 1994 of felony murder based upon a second degree assault. In 2002, the Supreme Court held that felony murder charges cannot be based on a second degree assault as the predicate felony. *In re Pers. Restraint of Andress*, 147 Wn.2d 602, 56 P.3d 981 (2002). Many other prisoners went back and got their convictions vacated, but Mr. Hall decided just to finish his sentence. In 2006, when Mr. Hall was 69 years old and was nearing the end of his prison sentence,<sup>13</sup> the State brought him back to court and, over his objection, filed a motion to vacate the conviction under *Andress* and charge him manslaughter and assault. The State's argument was that the judgment was facially invalid and void, *Hall*, 162 Wn.2d at 904-05, 908, but the Supreme Court rejected the State's arguments.

Our Supreme Court held that where Mr. Hall had almost fully served the sentence and had not filed any collateral attack on the judgment, double jeopardy barred vacating his conviction and retrying him without his consent:

Hall's individual right to be free from continuing jeopardy imposed by the government weighs heavily in his favor.

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<sup>13</sup> Mr. Hall was apparently not released on his early release date, and was in custody at the time the State filed its motion, which was filed about 11 months before the expiration of the maximum term. *See Hall*, 162 Wn.2d at 905 & n.2.

The circumstances in this case are very unique; almost all other defendants who were held or tried at the time *Andress* was decided voluntarily moved to vacate their convictions. Fairness and justice dictate that an individual who has served his sentence, and is not seeking any relief other than that imposed in the original action, should not be retried by the State for the same offense.

*Hall*, 162 Wn.2d at 911. In other words, even though Mr. Hall was serving time for a conviction *for a non-existent crime* (felony murder based on a second degree assault) and thus a judgment that was facially invalid,<sup>14</sup> because he had substantially served the sentence, the State could not haul him back to court and tamper with the final judgment.

Under *Hardesty* and *Hall*, changing the judgment in this case violated double jeopardy. Previously, when Mr. Helzer's guilty plea was accepted, jeopardy attached.<sup>15</sup> When the judgment was entered on February 5, 2010, the previous jeopardy was terminated.<sup>16</sup> Mr. Helzer was then placed in jeopardy a second time for the same offense in fact and law – the State sought

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<sup>14</sup> See *In re Pers. Restraint of Hinton*, 152 Wn.2d 853, 857, 100 P.3d 801 (2004) (“A conviction under former RCW 9A.32.050 resting on assault as the underlying felony is not a conviction of a crime at all.”).

<sup>15</sup> See *In re Pers. Restraint of Maxfield*, 81 Wn. App. 705, 710, 915 P.2d 1134 (1996) (jeopardy attaches upon the court's acceptance of a guilty plea), *rev'd on other grounds* 133 Wn.2d 332, 945 P.2d 196 (1997); *Fransaw v. Lynaugh*, 810 F.2d 518, 523 (5th Cir. 1987) (“[j]eopardy attaches with the acceptance of a guilty plea”) (internal quotes omitted).

<sup>16</sup> See *State v. Ervin*, 158 Wn.2d at 757 (“Conviction of the crime charged unequivocally terminates jeopardy.”).

an alteration to the final judgment in a way that interfered with Mr. Helzer's ability to be released on his ERD, without ISRB supervision, when he finished the 130 months originally imposed in 2010, and increased his sentence to a potential life in prison – a dramatic change in the level of jeopardy faced by Mr. Helzer.

Mr. Helzer had a legitimate expectation of finality in the judgment and orders entered in 2010. Mr. Helzer not only did not appeal the original judgment, but at various steps of the way he had options for post-conviction remedies that he did not pursue – he could have petitioned for review to the Washington Supreme Court after the Court of Appeals rejected his appeal of the revocation; if the Supreme Court denied review, he could have sought *certiorari* in the U.S. Supreme Court; he could have filed a timely Personal Restraint Petition; he could have filed a writ of habeas corpus in federal court under 28 U.S.C. § 2254. Rather, like Mr. Hall, he did not pursue those options and opted to serve out the 130-month determinate sentence imposed by Judge Felnagle.

There was no allegation that Mr. Helzer in any way fraudulently caused the judge to impose a determinate, rather than an indeterminate, sentence. Judge Felnagle merely imposed the sentence structure requested

by the State, on forms supplied by and filled out by the State. Thus, to allow the State go back to court almost a decade after the judgments became final, on the eve of Mr. Helzer's release from prison, and to change the sentence violated both double jeopardy and due process of law under the Fifth and Fourteenth Amendments and article I, sections 3 and 9.<sup>17</sup>

**d. The State's Collateral Attack Petition Was Time-Barred**

Although CrR 7.8(a) states that a clerical mistake can be corrected at any time, and there is old case law that suggests that sentencing errors can also be corrected at any time,<sup>18</sup> these provisions must be read in conjunction with the procedures and time limits set up by the Legislature and the Supreme Court specifically to address changes to final criminal judgments. At the outset, RCW 10.73.090 sets out a strict one-year time limit for filing a petition for collateral attack, which encompasses the State's motion, filed

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<sup>17</sup> In *Hardesty*, the Supreme Court noted cases that held that increasing a sentence violated due process under the Fourteenth Amendment. *Hardesty*, 129 Wn.2d at 313. Although Mr. Helzer's primary argument is that changing the sentence violates double jeopardy, based on the Supreme Court's reference to due process in *Hardesty*, Mr. Helzer also argues that changing the sentence violated due process of law under the Fourteenth Amendment and article I, section 3.

<sup>18</sup> See *State v. Smissaert*, 103 Wn.2d 636, 639, 694 P.2d 654 (1985); *State v. Pringle*, 83 Wn.2d 188, 193, 517 P.2d 192 (1973); *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955).

almost a decade after the judgment was entered.<sup>19</sup> The judgment clearly reflects that the State received notice of this time-limit, CP 27 (§ 5.1), and the time-bar should apply despite any possible merits of a post-conviction petition.<sup>20</sup>

The State and DOC were not without their remedies to come back to court in a timely fashion to try to change the judgment if they felt it was wrong in any way. The Legislature very consciously set out a procedure by which DOC could go to court and correct a judgment if need be, but only within a set period of time. RCW 9.94A.585(7) specifically provides:

The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. *Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence.* The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

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<sup>19</sup> RCW 10.73.090 does not distinguish between defendants' collateral attack petitions and the State's petitions.

<sup>20</sup> *See, e.g., In re Pers. Restraint of Haghghi*, 178 Wn.2d 435, 445-49, 309 P.3d 459 (2013) (court denies PRP, despite meritorious suppression issue, because ineffectiveness claim was not timely raised by *pro se* prisoner before the one-year time limit passed, but rather was raised later, after the assignment of counsel).

Emphasis added. *See also* RAP 16.18(b) (DOC post-sentence petition “should be filed no later than 90 days after the Department of Corrections has received the documents containing the terms of the sentence.”).

In this case, DOC had notice of the actual terms of the judgment at least on August 31, 2010, when the CCO petitioned to revoke the SSOSA, noting the determinate sentence structure. CP 293-95. Moreover, when Mr. Helzer arrived in prison in October 2010, DOC staff certainly knew that the final judgment and orders imposed a determinate, not an indeterminate, sentence as evidenced in the Chronos log for October 29, 2010. CP 327.<sup>21</sup> At no time did DOC take advantage of the remedy provided by the Legislature. While deputy prosecutor gave DOC staff an incorrect interpretation of the unambiguous final judgment, CP 328, a prosecutor’s legal error is not a basis to avoid application of a time limit. *See State v. Dearbone*, 125 Wn.2d 173, 181-82, 883 P.2d 303 (1994) (prosecutor’s unfamiliarity with statute does not excuse lack of compliance with service requirement).

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<sup>21</sup> Below, the State claimed it did not know of the error until recently. *See* CP 364 (“The error was discovered only recently when an Assistant Attorney General brought it to the State’s attention.”). Of course, the determinate nature of Mr. Helzer’s sentence was known by the State, not only when it requested it and was present when the final judgments were entered (and drafted by the State), but also when DOC staff notified the State of the sentence structure upon Mr. Helzer’s arrival at prison. CP 328.

The reason why the Legislature and the Supreme Court set a time limit for correcting judgments is to provide a prisoner with repose,<sup>22</sup> the same way that the State is entitled to repose when a prisoner fails to file a timely post-conviction petition, even with meritorious legal issues. The existence of these remedies for incorrect sentences ties into the double jeopardy and due process arguments made in the prior section as the fact that the DOC and the State failed timely to take action under established procedures to change a sentence is what gave Mr. Helzer an expectation of finality. Accordingly, because of the extreme time delay here, Judge Leanderson erred when granting the State's tardy motion, filed in violation of RCW 10.73.090 and filed at the request of DOC which itself was barred from seeking relief under RCW 9.94A.585(7) and RAP 16.18(b).

**e. The State Breached the Plea Agreement**

When Mr. Helzer gave up his constitutional rights to have a jury trial and confront the witnesses against him, and when he agreed to plead guilty, the State promised it would make a particular sentence recommendation:

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<sup>22</sup> Double jeopardy protects against subjecting defendants repeatedly to "embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity." *Green v. United States*, 355 U.S. 184, 187, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957). Here, the mere setting of the State's motion, combined with the transportation from a prison to the Pierce County Jail, would certainly cause anyone severe anxiety and insecurity.

“SSOSA, 130 months incarceration with 124 months suspended.” CP 10. The State’s agreement was thus for a fixed term of 130 months of incarceration, suspended, and not a life sentence, with a suspended minimum term.

Basic principles of due process of law under the Fourteenth Amendment and article I, section 3, “require[] a prosecutor to adhere to the terms of the plea agreement.” *State v. Sanchez*, 146 Wn.2d 339, 367, 46 P.3d 774 (2002) (citing *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971)). “A plea agreement is a contract between the State and the defendant. . . . The State thus has a contractual duty of good faith, requiring that it not undercut the terms of the agreement, either explicitly or implicitly, by conduct evidencing intent to circumvent the terms of the plea agreement.” *State v. MacDonald*, 183 Wn.2d 1, 8, 346 P.3d 748 (2015). As the Supreme Court explained:

In addition to contract principles binding the parties to the agreement, constitutional due process “requires a prosecutor to adhere to the terms of the agreement” by recommending the agreed upon sentence. [*State v. Sledge*, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997)] (plea agreements concern fundamental rights of the accused and thus are more than simple common law contracts). By pleading guilty to a crime, defendants waive significant rights. These rights include the right to a jury trial, the right to confront accusers, the right to present witnesses in his defense, the right to remain silent, and the right to have the charges against him proved beyond a reasonable doubt. *Santobello*, 404 U.S. at 264 (Douglas, J.,

concurring). However, in exchange for these waivers, the defendant receives the benefits of the bargain. When the State breaches a plea agreement, it “undercuts the basis for the waiver of constitutional rights implicit in the plea.” *State v. Tourtellotte*, 88 Wn.2d 579, 584, 564 P.2d 799 (1977).

*State v. MacDonald*, 183 Wn.2d at 8-9.

In this case, the State’s sentence recommendation was for a determinate 130-month sentence, to be suspended. The State did not request the imposition of a life sentence with a minimum term of 130 months, which would be suspended for treatment. Mr. Helzer had a due process right for that sentence recommendation to be honored, and the State’s very motion below (and even its litigation of this appeal) violated that agreement.<sup>23</sup>

At the time of Mr. Helzer’s plea, the law in Washington was clear – upon the prosecutor’s breach of a plea agreement, the defendant, at his or her option, could insist either on specific performance or on withdrawal of the plea, even if the enforcement of the plea meant the enforcement of an illegal sentence. *See State v. Miller*, 110 Wn.2d 528, 531-35, 756 P.2d 122 (1988). While later, after the judgment in Mr. Helzer’s case became final, the

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<sup>23</sup> When Mr. Helzer was terminated from the SSOSA in October 2010, he could not have at that point decided to withdraw from the plea agreement and go to trial simply because he did not like the judge’s ruling revoking the suspended sentence. In the same way, the State was bound by the plea agreement and should not be able to come back to court a decade later and change its recommendation simply because it did not like the determinate sentence imposed by the judge at its request.

Supreme Court overruled *Miller* and held that if the agreement was for an illegal sentence, the defendant's only option was to withdraw the plea, *State v. Barber*, 170 Wn.2d 854, 248 P.3d 494 (2011), this new rule of procedure should not be applied retroactively to a final judgment. *In re Pers. Restraint of Haghighi*, 178 Wn.2d 435, 441, 309 P.3d 459 (2013). Thus, the State should have been barred from undermining its agreement to seek only 130 months of incarceration. Judge Leanderson should not have entertained the State's motion and should have struck the motion as a violation of its plea obligations which violated Mr. Helzer's right to due process under the Fourteenth Amendment and article I, section 3.

**2. *The Court Should Strike or Modify Various Sentence Conditions***

When sentencing Mr. Helzer in February 2010, Judge Felnagle imposed a series of conditions on Mr. Helzer as part of community placement/custody. CP 38-39. Then, when revoking the SSOSA in October 2010, Judge Felnagle imposed other restrictions. CP 70. In the intervening years, many of these conditions have been found to be unconstitutional or not

valid crime-related prohibitions in other cases. Accordingly, the Court in this appeal should strike or modify such conditions.<sup>24</sup>

**a. Appealability**

At the time of sentencing, Mr. Helzer did not object to the imposition of the any of the conditions of supervision. However, despite the lack of objection below, challenges to conditions of supervision are suitable to be considered for the first time on appeal, particularly if they impact constitutional rights or are illegal or erroneous as a matter of law. *See State v. Padilla*, 190 Wn.2d 672, 677, 416 P.3d 712 (2018); *State v. Blazina*, 182 Wn.2d 827, 833-34, 344 P.3d 680 (2015); *State v. Peters*, \_\_\_ Wn. App.2d \_\_\_, \_\_\_ P.3d \_\_\_, 2019 Wash. App. LEXIS 2412, 2019 WL 4419800 (No. 31755-2-III, 9/17/19), Slip Op. at 2-5.

Mr. Helzer, like the State, did not appeal the original judgment in 2010. However, because of Judge Leanderson's recent action of modifying the original judgment and increasing the sentence from 130 months to life,

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<sup>24</sup> The ISRB has also imposed a series of conditions connected to its order of release of Mr. Helzer. Mr. Helzer is not challenging those conditions in this appeal as they are not part of the judgment. However, he is raising challenges to those conditions in the judgment for two reasons: (1) to the extent the Court agrees that Mr. Helzer's sentence should not have been changed, then Mr. Helzer would not be under the jurisdiction of the ISRB and the judgment conditions would be the only conditions governing Mr. Helzer, and (2) if Mr. Helzer at some point during the rest of his life convinces the ISRB to alter some of the conditions of release, then he would not need to return to court to change the judgment to eliminate illegal conditions.

Mr. Helzer now has the right to file an appeal of the amended judgment. He may not have filed such an appeal in 2010 because the judgment only imposed a 130-month determinate sentence, but a different calculus applies now that the judgment imposes the possibility of being incarcerated in prison for the rest of his life, and he can be returned to prison for even an unintentional violation of the terms of supervision.<sup>25</sup>

In *State v. Smissaert*, 103 Wn.2d 636, 694 P.2d 654 (1985), the Supreme Court upheld the tardy modification of a criminal judgment, imposed after a jury trial, which changed the maximum term of imprisonment from 20 years to life. Even though the defendant had not appealed the original judgment, he appealed the judgment after the modification. The Supreme Court upheld the modification but also recognized that the defendant's right to appeal, protected under article I, section 22, required restoration of the defendant's appeal of the judgment:

Petitioner argues that his reliance on the original 20-year sentence influenced his waiver of appeal. [Footnote omitted] Resentencing him to an increased number of years after the running of the time for taking an appeal thus deprives him of his constitutional right to appeal. This position is well taken.

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<sup>25</sup> See *State v. McCormick*, 166 Wn.2d 689, 697-705, 213 P.3d 32 (2009) (revocation of SSOSA upheld even for unintentional violations of conditions).

*Smissaert*, 103 Wn.2d at 642-43. Similarly, here, now that the State was allowed to go back in time and change the 2010 judgment, Mr. Helzer can now appeal that same judgment.

**b. A Trial Court’s Authority to Impose Community Custody Conditions is Limited**

Under the version of the Sentencing Reform Act of 1981 in force in November of 2001, the beginning of the charging period in this case, a court had the authority to impose “crime-related prohibitions and affirmative conditions” as part of a felony sentence. Former RCW 9.94A.505(8) (eff. 9/1/01). Former RCW 9.94A.700(5)(e) (eff. 9/1/01) allowed a court to order, as condition of community placement, compliance with any “crime-related prohibition.”

“‘Crime-related prohibition’ means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” Former RCW 9.94A.030(12) (eff. 9/1/01). To determine whether a condition is directly related, a court reviews the factual basis for the condition for “substantial evidence” and “will strike the challenged condition if there is no evidence in the record linking the circumstances of the crime to the condition.” *State v. Padilla*, 190 Wn.2d at 683.

While review of most conditions of community custody is for “abuse of discretion,” *State v. Sanchez Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010), a “[m]ore careful review of sentencing conditions is required where those conditions interfere with a fundamental constitutional right.” *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). “Imposition of an unconstitutional condition would, of course, be manifestly unreasonable.” *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008).

While a convicted person’s rights can be restricted as a result of a criminal conviction, the Supreme Court recently held that a crime-related prohibition must be directly related to the circumstances of the crime of which the defendant was convicted, but also “a restrictive condition must be reasonably necessary to accomplish essential state needs and public order. . . . And when the regulation implicates First Amendment speech, it must be narrowly tailored to further the State’s legitimate interest.” *Padilla*, 190 Wn.2d at 682-83 (internal quotes and citations omitted).<sup>26</sup>

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<sup>26</sup> This is in line with the general principle that the restriction of fundamental freedoms, including freedom of speech, can only be justified by “compelling” state interests with narrowly drawn restrictions. See *Bering v. Share*, 106 Wn.2d 212, 237-45, 721 P.2d 918 (1986).

Community custody conditions can also be unconstitutionally vague, in violation of the guaranty of due process, contained in the Fourteenth Amendment to the United States Constitution and article I, section 3 of the Washington Constitution, if the conditions do not provide fair warning of the proscribed conduct and are not definite enough to prevent arbitrary enforcement. *State v. Bahl*, 164 Wn.2d at 752-53. A community custody condition is unconstitutionally vague if either “(1) it does not sufficiently define the proscribed conduct so an ordinary person can understand the prohibition or (2) it does not provide sufficiently ascertainable standards to protect against arbitrary enforcement.” *State v. Padilla*, 190 Wn.2d at 677. Conditions can also violate other provisions of the United States and Washington Constitutions, such as the First Amendment and article I, section 5. *State v. Padilla*, 190 Wn.2d at 677-78.

**c. Conditions 15, 18, 19, 21, and 25 (Bans on the Internet, Pornography and Places Where Children Congregate; Polygraphs and Plethysmograph and Romantic Relationships)**

In the last decade, a number of court decisions have issued which have struck down some of the blanket prohibitions imposed in 2010 in this case.

For instance, although Condition No. 25 (CP 39) bans access to the Internet, in this day and age, that condition is completely unenforceable as it would ban Mr. Helzer even using a cell phone on a wireless network or even from purchasing gas at a station whose pumps are tied to the credit card records through the Internet.<sup>27</sup> Such a ban is not a “crime related prohibition” in this case, violates Mr. Helzer’s rights under the First Amendment and article I, section 5, and is unconstitutionally vague in violation of due process under article I, section 3 and the Fourteenth Amendment. *See State v. Johnson*, 180 Wn. App. 318, 325 & 330, 327 P.3d 704 (2014).

Condition No. 15's ban on possessing or “perusing” pornographic materials (CP 38) similarly runs afoul of the First Amendment and article I, section 5 and is not crime-related, as the Supreme Court has made clear in *State v. Bahl*, 164 Wn.2d at 753-58, and *State v. Padilla*, 190 Wn.2d at 681.<sup>28</sup>

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<sup>27</sup> *See e.g.*, <https://www.cnet.com/news/gas-stations-online-are-easy-access-for-managers-and-hackers/> (accessed 9/8/19).

<sup>28</sup> The Supreme Court has upheld bans on narrowly defined terms such as “sexually explicit” materials as defined in RCW 9.68.130 or erotic materials as defined by RCW 9.68.050 or any material depicting any person engaged in sexually explicit conduct as defined by RCW 9.68A.011(4). *State v. Hai Minh Nguyen*, 191 Wn.2d 671, 679-81, 425 P.3d 847 (2018). *See also State v. Peters*, *supra*, Slip Op. at 19-20 (upholding ban on “sexually explicit” material not tied to statutory definition).

Condition 18 requires Mr. Helzer to notify the CCO of “any romantic relationships” to verify there are no victim-age children involved. CP 38. This condition is unconstitutionally vague in violation of due process of law under the Fourteenth Amendment and article I, section 3, and following what Division Three has done, the term “romantic relationship” should be changed to “dating relationship.” *State v. Peters, supra*, Slip Op. at 14-15.

Condition 19 orders that Mr. Helzer “[s]ubmit to polygraph and plethysmograph testing as deemed appropriate upon direction of your Community Corrections Officer and/or therapist at your expense.” CP 39. Polygraph testing is only a valid condition if it is for monitoring compliance with sentence conditions. *See State v. Riles*, 135 Wn.2d 326, 342-43, 957 P.2d 655 (1998), *abrogated by State v. Sanchez Valencia, supra*; *State v. Combs*, 102 Wn. App. 949, 953, 10 P.3d 1101 (2000). To be valid, plethysmograph testing can only be for the purpose of sexual deviancy treatment and not for monitoring purposes. *See State v. Johnson*, 184 Wn. App. 777, 781, 340 P.3d 230 (2014); *State v. Peters, supra*, Slip Op. at 21 (unpub. portion). Condition No. 19 should be modified accordingly.

Finally, Condition No. 21's requirement that Helzer “avoid places where children congregate” (CP 39) runs afoul of this Court’s explicit

holding in *State v. Wallmuller*, 4 Wn. App. 2d 698, 700-04, 423 P.3d 282 (2018), *review granted*, 192 Wn.2d 1009 (2019), that such a ban is unconstitutionally vague in violation of due process under the Fourteenth Amendment and article I, section 3. While this issue will likely be decided by the Supreme Court in the next few months (argument in *Wallmuller* was on May 14, 2019), this Court should follow the majority decision in that case.

**d. Conditions 3, 10 and 29 – Alcohol, Controlled Substances, Monitoring and Various Establishments**

Condition No. 3 bans consumption of alcohol (CP 38); Condition No. 10 allows for urinalysis and breath testing (CP 38), presumably to test in part for alcohol consumption, and Condition No. 29 bans “frequent[ing] establishments that the primary business is furnishing liquor (i.e. taverns, lounges, wineries, bars, etc.).” CP 39. Yet, there was no tie between this intrafamilial sex abuse case from the early 2000s and any alcohol or substance abuse. *See* CP 47 (DOC PSR).

At the outset, this Court has struck down in unpublished cases similar conditions prohibiting the *entry* into a “location where alcohol is the primary product, such as taverns, bars, and/or liquor stores.” *State v. Barnes*, 2018 Wash. App. LEXIS 1950 (No. 48993-7-II, 8/14/18) (unpub.), Slip Op. at 20;

*State v. Svauleson*, 2018 Wash. App. LEXIS 1232 (No. 48855-8-II, 5/30/18) (unpub.), Slip Op. at 26. The condition in this case is more vague as it bans not the “entry” but “frequenting” such establishments, a term that does not make it clear if Mr. Helzer is banned from ever going to a winery for any reason (including work, for instance) or if he can go but not often. Condition No. 29 is unconstitutionally vague in violation of due process under the Fourteenth Amendment and article I, section 3, in addition to not be “crime-related.”

As for the ban on consumption of alcohol, Condition No. 3 (CP 38),<sup>29</sup> to be sure, former RCW 9.94A.700(5)(d) (eff. 9/1/01) allowed a court to impose such a condition, even if there was no tie between the crime and alcohol. *State v. Jones*, 118 Wn. App. 199, 206-07, 76 P.3d 258 (2003). *But see State v. Julian*, 102 Wn. App. 296, 305, 9 P.3d 851 (2000) (striking down alcohol ban). However, the alcohol ban in the statute is not a mandatory condition. *See Former RCW 9.94A.700(5)* (eff. 9/1/01) (“As a part of any terms of community placement imposed under this section, the court *may* also order one or more of the following special conditions”) (emphasis added).

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<sup>29</sup> When Judge Felnagle revoked the SSOSA, he reimposed a series of conditions of community custody, but did not ban consumption of alcohol. CP 70.

In the years since this Court issued *Jones*, Washington legalized marijuana, removing it from the list of controlled substances. Init. 502. Thus, under the judgment, Mr. Helzer is able to consume marijuana, but not alcohol. This is an irrational result that makes no sense and it was an abuse of discretion to impose Condition No. 3 that bans Mr. Helzer for life from having a glass of wine with dinner, but not smoking marijuana.

Finally, with regard to the urinalysis and breathalyzer conditions (No. 10) (CP 38), in *State v. Vant*, 145 Wn. App. 592, 186 P.3d 1149 (2008), this Court upheld an urinalysis condition on the ground that it provided a mechanism for enforcing the condition prohibiting non-prescribed controlled substances. *Id.* at 603-04. However, subsequently, the Supreme Court held that random urinalysis implicated a probationer's privacy interests under article I, section 7, although it was a legitimate tool used in a DUI probation case to promote rehabilitation. *State v. Olsen*, 189 Wn.2d 118, 399 P.3d 1141 (2017).

Here, random urinalysis and breathalyzers are not a legitimate tool to promote rehabilitation because unlike a DUI case, there was no connection between the sex offenses in this case and consumption of alcohol or controlled substances. Such a condition therefore is not crime-related and an

infringement of Helzer’s rights to privacy under article I, section 7 and the Fourth Amendment. *See State v. Stark*, 2018 Wash. App. LEXIS 2334 (No. 76676-7-I, 10/15/18) (unpub.), Slip Op. at 13 (“Stark was not convicted of a drug offense, and the State points to no evidence of a connection between Stark’s offenses and drugs. We conclude that the urinalysis requirement is not narrowly tailored or reasonably necessary.”).

**e. Condition 28 – “Adult” Entertainment**

Condition No. 28's ban on entering establishments whose primary business is “adult” entertainment (adult bookstores, swinger clubs and nude bars, etc.) (CP 39) is not only not “crime related” in this case, but also violates Mr. Helzer’s rights under the First and Fourteenth Amendments and article I, sections 3 and 5. “Adult entertainment” businesses are lawful and enjoy constitutional protection.<sup>30</sup> There is no evidence, in this record, that exposure to lawful sex-related businesses involving adults generally has any relationship to intra-familial sex abuse of children.

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<sup>30</sup> *See Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969) (First Amendment protects private possession of obscenity); *City of Seattle v. Davis*, 174 Wn. App. 240, 251, 306 P.3d 961 (2012) (adult cabarets are protected under the First Amendment); *World Wide Video v. Tukwila*, 117 Wn.2d 382, 387-980, 816 P.2d 18 (1991) (recognizing peep shows as protected under article I, section 5 and the First Amendment).

While the Supreme Court in *State v. Hai Minh Nguyen*, 191 Wn.2d 671, 425 P.3d 847 (2018), upheld a condition of community custody that prohibited defendant Norris from entering any “sex-related business,” this condition was sufficiently crime-related as there was more of a link to sexually explicit materials given how the defendant (Ms. Norris) had sent sexually explicit photographs of herself to the minor victim. *Id.* at 686-87. In contrast, in *State v. Padilla*, *supra*, the Supreme Court recently struck down a restriction of accessing pornography, with no distinction between child and adult pornography, in a communicating with a minor case, because there was “no connection in the record between Padilla’s inappropriate messaging and imagery of adult nudity or simulated intercourse.” *Padilla*, 190 Wn.2d at 684.

Mr. Helzer’s case comes down on the side of *Padilla*, not *Nguyen*, as there was no tie in the record between the acts against Mr. Helzer’s children in the early 2000s and adult entertainment businesses. *See State v. Johnson*, 4 Wn. App. 2d 352, 359-60, 421 P.3d 969 (2018) (striking restrictions on attending “X-rated movies, peep shows, or adult book stores”).<sup>31</sup>

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<sup>31</sup> In an unpublished opinion, Division Three held that *Nguyen* changed the result of *Johnson*. *State v. Merrill*, 2019 Wash. App. LEXIS 1487 (No. 35631-1-III, 6/11/19) (unpub.), Slip Op. at 10-11. But because the Supreme Court in *Nguyen* did not overrule (continued...)

Moreover, there is a difference for vagueness purposes between banning access to “sex-related businesses” and banning entry to “adult entertainment” businesses. An adult cabaret that that combines political satire with “revealing” costumes may qualify as “adult entertainment” even though there is clear First Amendment and article I, section 5 protection to it.<sup>32</sup> Accordingly, the Court should strike Condition No. 28.

**f. Condition No. 9/Condition I – Geographic Restrictions**

Condition No. 9 requires Mr. Helzer to remain within a geographic boundary as set forth in writing by the CCO. CP 38. When the SSOSA sentence was revoked, Judge Felnagle also ordered that Mr. Helzer “remain within, or outside of, a specified geographical boundary per CCO.” CP 70. This geographic restriction, however, needs to be construed in light of current DOC policies that prohibit any travel outside the 50 states or the District of

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<sup>31</sup>(...continued)  
*Padilla*, and in fact did not discuss the case or the tests announced, *Nguyen* must be limited to its specific facts.

<sup>32</sup> *See, e.g.*, <https://columbiacitytheater.com/event/after-midnight-cabaret-presents-7-year-itch-3> (accessed on 9/24/19).

Columbia. DOC Policy 380.650 (1/19/18).<sup>33</sup> Thus, Mr. Helzer is prohibited, for the rest of his life, not only from traveling within the United States to Puerto Rico, the American Virgin Islands, Guam, and the Northern Mariana Islands, but also from traveling internationally.<sup>34</sup> This prohibition is not only crime-related, but also violates Mr. Helzer’s constitutional right to travel.<sup>35</sup>

The general right of free movement is a long recognized, fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment and article I, section 3. *See Kent v. Dulles*, 357 U.S. 116, 125, 78 S. Ct. 1113, 2 L. Ed. 2d 120 (1958) (“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.”).<sup>36</sup> Courts have also recognized a protected liberty

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<sup>33</sup> <https://www.doc.wa.gov/information/policies/files/380650.pdf> (accessed 9/24/19) (copy in Statutory Appendix).

<sup>34</sup> It is not even clear that the DOC policy would allow Mr. Helzer to travel to Alaska or Hawaii since he would have to leave the United States to go to those locations

<sup>35</sup> Mr. Helzer needs to challenge the travel restriction now as the Department of Corrections takes the position, upheld by Division One, that once the judgment is final, the sentencing court loses the ability to modify the restriction and is powerless to authorize foreign travel. *See In re Post-Sentence Review of Hadgu*, 2016 Wash. App. LEXIS 204, 2016 WL 687251 (No. 74490-9-I, 2/16/16) (unpub.). In other words, if Mr. Helzer does not challenge the condition now, he may be barred from such a challenge later.

<sup>36</sup> *See also Kerry v. Din*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2128, 2133, 192 L. Ed. 2d 183 (2015) (plurality opinion, Scalia, J.) (referencing Blackstone’s recognition that “the ‘personal liberty of individuals’” protected under the Magna Carta “‘consist[ed] in the power of locomotion, of changing situation, or removing one’s person to whatsoever (continued...)”

interest in traveling internationally. See *Kent*, 357 U.S. at 126 (“Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic to our scheme of values.”). International law is in accord. International Covenant on Civil and Political Rights, Article 12(2), 999 U.N.T.S. 171 (1966) (ratified by U.S., June 8, 1992) (“Everyone shall be free to leave any country, including his own.”).<sup>37</sup>

Nearly 60 years ago, the U.S. Supreme Court struck down prohibitions on high-ranking leaders of the U.S. Communist Party from obtaining a passport for foreign travel. *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S. Ct. 1659, 12 L. Ed. 2d 992 (1964). Despite the fact that there were large national security concerns (1964 was in the midst of the Cold War, with the Cuban Missile Crisis only two years earlier), the Supreme Court held

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<sup>36</sup>(...continued)  
place one’s own inclination may direct; without imprisonment or restraint.”) (quoting W. Blackstone, *Commentaries on the Laws of England* 130 (1769)).

<sup>37</sup> Whether the State of Washington is “bound” by the ICCPR is not as significant as the fact that the U.S. Supreme Court routinely relies on international law when construing the U.S. Constitution. See *Gamble v. United States*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 1960, 1967, 204 L. Ed. 2d 322 (2019) (citing customary international law to construe double jeopardy); *Roper v. Simmons*, 543 U.S. 551, 575, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (referring “to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”).

that passport ban was too broad and indiscriminate and violated the Fifth Amendment. *Aptheker*, 378 U.S. at 514.

To be sure, someone on DOC supervision can have his or her liberty restricted, but even here, geographic restrictions can still violate the Eighth Amendment and article I, section 14. *See State v. Gitchee*, 5 Wn. App. 93, 94-95, 486 P.2d 328 (1971) (banishment for the State of Washington as a sentence condition would be cruel and unusual punishment). To address the proper balance, in *State v. Schimelpfenig*, 128 Wn. App. 224, 115 P.3d 338 (2005), this Court set out following nonexclusive factors to assist courts in determining whether a specific geographic restriction permissibly infringes on a defendant's right to travel:

- (1) whether the restriction is related to protecting the safety of the victim or witness of the underlying offense;
- (2) whether the restriction is punitive and unrelated to rehabilitation;
- (3) whether the restriction is unduly severe and restrictive because the defendant resides or is employed in the area from which he is banished;
- (4) whether the defendant may petition the court to temporarily lift the restriction if necessary; and
- (5) whether less restrictive means are available to satisfy the State's compelling interest.

*Id.* at 229.

Here, there is no issue about protection of the witnesses or victims that would support a ban on travel outside the 50 states and the District of

Columbia. The condition is punitive and unrelated to rehabilitation -- travel to American territories and foreign travel are “pro-social” activities that are highly educational and may allow Mr. Helzer to visit family members. A life-time prohibition on Mr. Helzer traveling to Puerto Rico or Sweden has no tie to the offense and actually hinders rehabilitation. And, DOC takes the position that there is no way for Mr. Helzer to return to court and get approval for foreign travel in the future. *See In re Post-Sentence Review of Hadgu*, 2016 Wash. App. LEXIS 204, 2016 WL 687251 (No. 74490-9-I, 2/16/16) (unpub.).

The geographic restriction conditions should be modified to allow the superior court to allow for particular travel plans (either internationally or to territories of the United States), upon Mr. Helzer’s petition. In this regard, if Mr. Helzer does travel abroad, he will have to give notice and use a special passport so that law enforcement both in this country and abroad will know of his movements. RCW 9A.44.130(3); 22 U.S.C. § 212b. He also could restrict his travel to countries that have extradition treaties with the United States. This is a less restrictive alternative to a complete ban on such travel for the rest of Mr. Helzer’s life.

In all, there is no basis to impose a lifetime ban on travel to portions of the United States and to foreign countries. The geographic restriction conditions violate Mr. Helzer's constitutional right to travel and should be stricken or modified to allow Mr. Helzer to petition the court to allow for such travel.

**F. CONCLUSION**

The Court should reverse the trial court's ruling that changed Mr. Helzer's sentence structure from a 130-months determinate sentence to a life sentence with a 130-month minimum term, with ISRB oversight. The Court should also modify or strike various supervision conditions.

Dated this 25th day of September 2019

Respectfully submitted,

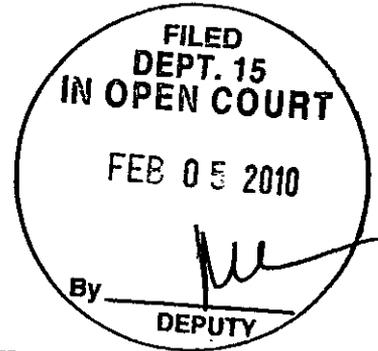
s/ Neil M. Fox

WSBA NO. 15277

Attorney for Appellant

## **APPENDIX A**

09-1-00111-3



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

NCO

FEB 08 2010

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-00111-3

vs.

JUDGMENT AND SENTENCE (JS)

WARREN HELZER

Defendant.

- Prison  RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

SID: UNKNOWN  
DOB: 05/29/1962

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 12/14/2009 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
II	CHILD MOLESTATION IN THE FIRST DEGREE (139)	9A.44.083		11/10/01-11/09/03	082470300 PCSD
III	CHILD MOLESTATION IN THE FIRST DEGREE (139)	9A.44.083		11/10/01-11/09/03	082470300 PCSD
IV	CHILD MOLESTATION IN THE FIRST DEGREE (139)	9A.44.083		6/23/03-06/23/05	082470300 PCSD

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 1 of

10-9-01699-7

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

09-1-00111-3

- \* (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

- The crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence.
- 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	POSSESS STOLEN PROPERTY 2	11/05/80	PIERCE, WA	08/18/80	A	
2	09-1-00111-3 CHILD MOLEST 1	OTHER CURRENT				
3	09-1-00111-3 CHILD MOLEST 1	OTHER CURRENT				

- 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
II	6	X	98 - 130 MONTHS	N/A	98 - 130 MONTHS	LIFE/ \$50,000
III	6	X	98 - 130 MONTHS	N/A	98 - 130 MONTHS	LIFE/ \$50,000
IV	6	X	98 - 130 MONTHS	N/A	98 - 130 MONTHS	LIFE/ \$50,000

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

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

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

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

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

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

- 2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defend'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

JUDGMENT AND SENTENCE (JS)

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

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that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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

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

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows:

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

RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

(Name and Address--address may be withheld and provided confidentially to Clerk's Office).

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

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

FRC \$ 200.00 Criminal Filing Fee

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

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

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

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

\$ 800.00 TOTAL

[X] 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:

[X] shall be set by the prosecutor.

[ ] is scheduled for \_\_\_\_\_

[ ] RESTITUTION. Order Attached

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[X] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN			

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

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

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

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

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

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

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

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

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

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

4.3 NO CONTACT  
The defendant shall not have contact with \_\_\_\_\_ (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.

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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.

Appendix "G" and "H"

4.4a BOND IS HEREBY EXONERATED

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4.5 SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.670. The court finds that the defendant is a sex offender who is eligible for the special sentencing alternative and the court has determined that the special sex offender sentencing alternative is appropriate. The defendant is sentenced to a term of confinement as follows:

(a) CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the county jail or Department of Corrections (DOC):

<u>130</u>	months on Court	<u>II</u>	months on Court
<u>130</u>	months on Court	<u>III</u>	months on Court
<u>130</u>	months on Court	<del>III</del> <u>IV</u>	months on Court
_____	months on Court	_____	months on Court

Actual number of months of total confinement ordered is: 130 Months

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the following which shall be served consecutively:

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently to all felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here.

[ ] The sentence herein shall run consecutively to the felony sentence in cause number(s) \_\_\_\_\_

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.120. 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: 51 days

(d) SUSPENSION OF SENTENCE. The execution of this sentence is suspended; and the defendant is placed on community custody under the charge of DOC for the length of the suspended sentence or three years, whichever is greater, and shall comply with all rules, regulations and requirements of DOC and shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. Community custody for offenses not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody may result in additional confinement. The defendant shall report as directed to a community corrections officer, pay all legal financial obligations, perform any court ordered community restitution (service) work, submit to electronic monitoring if imposed by DOC, and be subject to the following terms and conditions or other conditions that may be imposed by the court or DOC during community custody:

Undergo and successfully complete an  outpatient [ ] inpatient sex offender treatment program with

Maureen Saylor  
for a period of 3-5 Years

Defendant shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and the court and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change.

Serve 6 ~~days~~ months of total confinement. Work Crew and

Electronic Home Detention are not authorized. RCW 9.94A.725, 734.

[ ] Obtain and maintain employment: \_\_\_\_\_

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[ ] Work release is authorized, if eligible and approved. RCW 9.94A.731.

[ ] Defendant shall perform \_\_\_\_\_ hours of community restitution (service) as approved by defendant's community corrections officer to be completed:

[ ] as follows: \_\_\_\_\_

[ ] on a schedule established by the defendant's community corrections officer. RCW 9.94A.

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

Other conditions: per CCO and SSOA Treatment Provider (Maureen Saylor)

The conditions of community custody shall begin immediately unless otherwise set forth here: \_\_\_\_\_

4.6 **REVOCAION OF SUSPENDED SENTENCE.** The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence, with credit for any confinement served during the period of community custody, if the defendant violates the conditions of the suspended sentence or the court finds that the defendant is failing to make satisfactory progress in treatment. RCW 9.94A.670.

4.7 **TERMINATION HEARING.** A treatment termination hearing is scheduled for 2/6/2015 (three months prior to anticipated date for completion of treatment) RCW 9.94A.670.

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## 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 court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **RESTITUTION HEARING**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.
- 1. General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., 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 defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
- 2. Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. 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 out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting

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1 school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after  
2 doing so if you are under the jurisdiction of this state's Department of Corrections.

3 **3. Change of Residence Within State and Leaving the State:** If you change your residence within a  
4 county, you must send written notice of your change of residence to the sheriff within 72 hours of moving.  
5 If you change your residence to a new county within this state, you must send signed written notice of your  
6 change of residence to the sheriff of your new county of residence at least 14 days before moving and  
7 register with that sheriff within 24 hours of moving. You must also give signed written notice of your  
8 change of address to the sheriff of the county where last registered within 10 days of moving. If you move  
9 out of Washington State, you must send written notice within 10 days of moving to the county sheriff with  
10 whom you last registered in Washington State.

11 **4. Additional Requirements Upon Moving to Another State:** If you move to another state, or if you  
12 work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and  
13 photograph with the new state within 10 days after establishing residence, or after beginning to work, carry  
14 on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving  
15 to the new state or to a foreign country to the county sheriff with whom you last registered in Washington  
16 State.

17 **5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of  
18 Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to  
19 a public or private institution of higher education, you are required to notify the sheriff of the county of your  
20 residence of your intent to attend the institution within 10 days of enrolling or by the first business day after  
21 arriving at the institution, whichever is earlier. If you become employed at a public or private institution of  
22 higher education, you are required to notify the sheriff for the county of your residence of your employment  
23 by the institution within 10 days of accepting employment or by the first business day after beginning to work  
24 at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of  
25 higher education is terminated, you are required to notify the sheriff for the county of your residence of your  
26 termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend,  
27 a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify  
28 the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff  
within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier.  
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 24 hours 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 48 hours excluding weekends and holidays 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 in 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 may be  
required to provide a list the locations where you have stayed during the last seven days. 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. Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence  
and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of  
the county where you are registered. Reporting shall be on a day specified by the county sheriff's office,  
and shall occur during normal business hours. If you comply with the 90-day reporting requirement with  
no violations for at least five years in the community, you may petition the superior court to be relieved of  
the duty to report every 90 days.

**8. 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 five days of the entry of the order. RCW 9A.44.130(7).

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

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

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

DONE in Open Court and in the presence of the defendant this date: 2/5/10

JUDGE

Print name: Thomas J. Felngale

Tim Lewis  
\_\_\_\_\_

Deputy Prosecuting Attorney

Print name: Tim Lewis

WSB # 33767

Math D  
\_\_\_\_\_

Attorney for Defendant

Print name: Math D

WSB # 31089

[Signature]  
\_\_\_\_\_

Defendant

Print name: Anna Helzer

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: \_\_\_\_\_

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case: 09-1-00111-3

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**

\_\_\_\_\_  
Court Reporter

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APPENDIX "G" - CONDITIONS FOR SSOSA SENTENCE

I. The defendant shall attend and complete sexual deviancy treatment with:

Maureen Saylor

- 1. The defendant shall follow all rules set forth by the treatment provider,
- 2. The defendant shall submit to quarterly polygraph examinations to monitor compliance with treatment conditions,
- 3. The defendant shall submit to periodic plethysmograph examinations,
- 4. The defendant shall not peruse pornography, which shall be defined by the treatment provider.
- 5. \_\_\_\_\_

II. The defendant shall not have any contact with the victim(s) \_\_\_\_\_ or any minor child (without prior written authorization from the treatment provider and community corrections officer). The defendant shall not frequent establishments where minor children are likely to be present such as school playgrounds, parks, roller skating rinks, video arcades, \_\_\_\_\_

III. The defendant's living arrangements shall be approved in advance by the community corrections officer.

IV. The defendant shall work at Department of Corrections approved education or employment.

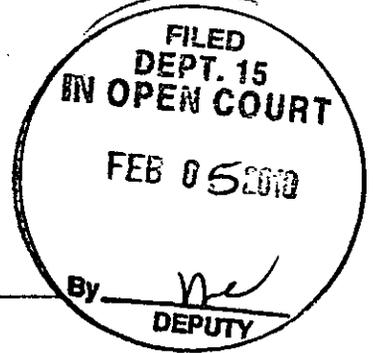
V. The defendant shall not consume alcohol.

VI. The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.

VII. The defendant shall remain within geographical boundaries prescribed by the community corrections officer.

VIII. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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IDENTIFICATION OF DEFENDANT

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

Date of Birth 05/29/1962

FBI No UNKNOWN

Local ID No

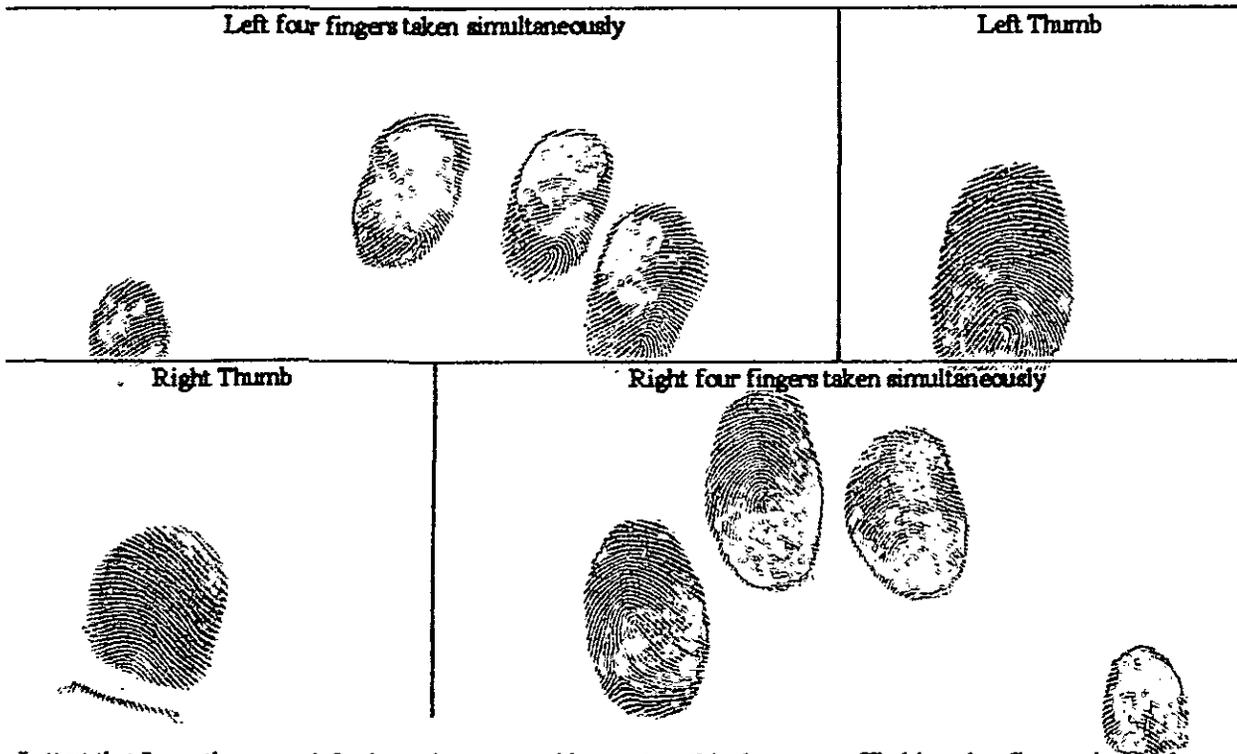
PCN No 539687182

Other

Alias name, SSN, DOB:

Race: [ ] Asian/Pacific Islander [ ] Black/African-American [X] Caucasian [ ] Native American [ ] Other : Ethnicity: [ ] Hispanic [X] Non-Hispanic Sex: [X] Male [ ] 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: 2-5-10

DEFENDANT'S SIGNATURE: [Signature]

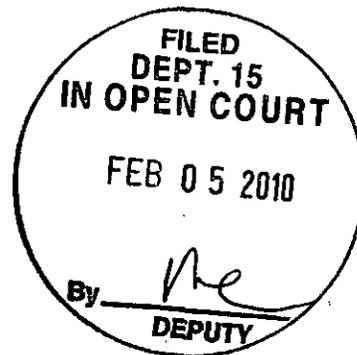
DEFENDANT'S ADDRESS: [Signature]

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



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

STATE OF WASHINGTON	]	Cause No.: 09-1-00111 3
	]	
Plaintiff	]	JUDGEMENT AND SENTENCE (FELONY)
v.	]	APPENDIX H
Warren Matthew Helzer	]	COMMUNITY PLACEMENT / CUSTODY
Defendant	]	
	]	
DOC No. 272481	]	

The court having found the defendant guilty of offense(s) qualifying for Community Custody, it is further ordered as set forth below.

**COMMUNITY PLACEMENT/CUSTODY:** Defendant additionally is sentenced on convictions herein, for the offenses under RCW 9.94A.712 committed on or after September 1, 2001 to include up to life community custody; for each sex offense and serious violent offense committed on or after June 6, 1996 to Community Placement/Custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer, and on conviction herein for an offense categorized as a sex offense or serious violent offense committed on or after July 1, 1990, but before June 6, 1996, to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2) whichever is longer, and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement. Community Placement/Custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to Community Custody in lieu of early release.

- (a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:
- (1) Report to and be available for contact with the assigned Community Corrections Officer as directed;
  - (2) Work at a Department of Corrections' approved education, employment, and/or community service site;
  - (3) Do not consume alcohol or controlled substances except pursuant to lawfully issued prescriptions;
  - (4) Do not unlawfully possess controlled substances;
  - (5) Pay supervision fees as determined by the Department of Corrections;
  - (6) Receive prior approval for living arrangements and residence location;
  - (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision, or both (RCW 9.94A, 120 (13));
  - (8) Notify Community Corrections Officer of any change in address or employment; and
  - (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer;
  - (10) Comply with unalalysis and/or breathalyzer testing as directed.

**WAIVER:** The following above-listed mandatory conditions are waived by the Court: None

- (b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:
11. Reside at a residence and under living arrangements approved of in advance by your Community Corrections Officer. You shall not change your residence without first obtaining the authorization of you Community Corrections Officer.
  12. Obtain a Psychosexual Evaluation and comply with any recommended treatment by a certified Sexual Deviancy Counselor. You are to sign all necessary releases to insure your Community Corrections Officer will be able to monitor your progress in treatment.
  13. You shall not change Sexual Deviancy Treatment Providers without prior approval from your Community Corrections Officer.
  14. Have no contact with the victims to include but not limited to in-person, written, or third-party.
  15. Do not possess or peruse pomographic materials. Your Community Corrections Officer will consult with the identified Sexual Deviancy Treatment Provider to define pomographic material.
  16. Hold no position of authority or trust involving children under the age of 18.
  17. Do not initiate or prolong physical contact with children under the age of 18 for any reason.
  18. Inform your Community Corrections Officer of any romantic relationships to verify there are no victim-age children involved.

19. Submit to polygraph and plethysmograph testing as deemed appropriate upon direction of your Community Corrections Officer and/or therapist at your expense.
20. Register as a Sex Offender in your county of residence.
21. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)
22. Submit to DNA testing.
23. Follow all conditions imposed by your Sexual Deviancy Treatment Provider.
24. Obey all laws.
25. You shall not have access to the Internet.
26. No contact with any minors without prior approval of the DOC/CCO and Sexual Deviancy Treatment Provider.
27. Obtain a Mental Health Evaluation by a state-certified Mental Health Provider and comply with all follow-up treatment and medication.
28. Do not frequent establishments that the primary business is adult entertainment (i.e., adult bookstores, swinger clubs, nude bars, etc.,)
29. Do not frequent establishments that the primary business is furnishing liquor (i.e., taverns, lounges, wineries, bars, etc.,)

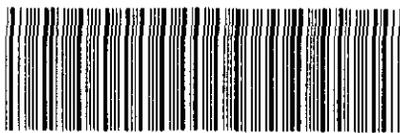
2-5-10

DATE

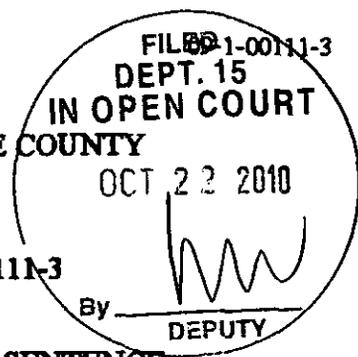


JUDGE, PIERCE COUNTY SUPERIOR COURT

## **APPENDIX B**



09-1-00111-3 35263450 ORRSS 10-25-10



JRT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 09-1-00111-3

vs.

WARREN MATTHEW HELZER,

Defendant.

ORDER REVOKING SENTENCE

OCT 25 2010

THIS MATTER coming on regularly for hearing before the above entitled court on the petition of GRANT E. BLINN, Deputy Prosecuting Attorney for Pierce County, Washington, for an order revoking sentence heretofore granted the above named defendant on February 5, 2010, pursuant to defendant's plea of guilty to/trial conviction for the charge(s) of CHILD MOLESTATION IN THE FIRST DEGREE; CHILD MOLESTATION IN THE FIRST DEGREE; CHILD MOLESTATION IN THE FIRST DEGREE, the defendant appearing in person and being represented by Barry Flegenheimer, defendant's attorney, and the State of Washington being represented by Tim Lewis, Deputy Prosecuting Attorney for Pierce County, Washington, the court having examined the files and records herein, having read said petition, and hearing testimony in support thereof/defendant having stipulated to the violation(s), and it appearing therefrom that the defendant has, by various acts and deeds, violated the terms and conditions of said sentence and the court being in all things duly advised, Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the suspended standard range sentence be revoked pursuant to RCW 9.94A.670 and 9.94A.505, and the defendant committed to the Department of Corrections for a period of 130 months.

The Defendant is additionally sentenced to a term of Life year(s) community placement; see Appendix F attached hereto and incorporated by reference.

IT IS FURTHER ORDERED:

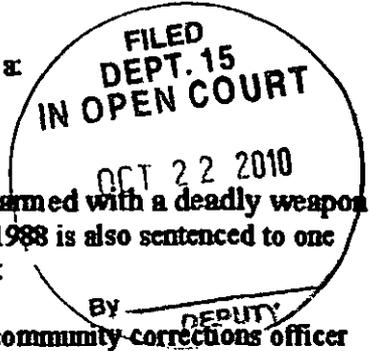
DOC # 272481

09-1-00111-3

APPENDIX "F"

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

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69.50 and 69.52 committed after July 1, 1988 is also sentenced to one (1) year term of community placement on these conditions:



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

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

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

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

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

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

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

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

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

DOC # 272481

09-1-00111-3

Defendant to receive 252 days credit for time served  
Appendix "F"

DONE IN OPEN COURT this 22 day of October, 2010.

SIGNED IN THE PRESENCE OF THE DEFENDANT.

*Thomas Felnagle*  
\_\_\_\_\_  
JUDGE  
JUDGE THOMAS FELNAGLE  
DEPT. 15

Presented by:

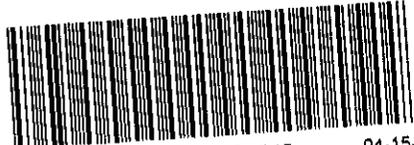
*Grant E. Blinn*  
\_\_\_\_\_  
GRANT E. BLINN  
Deputy Prosecuting Attorney  
WSB # ~~25570~~ 33767

wji

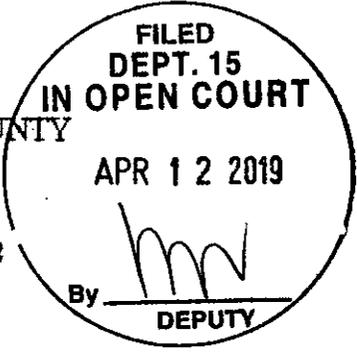
FILED  
DEPT. 15  
IN OPEN COURT  
OCT 22 2010  
*[Signature]*  
By \_\_\_\_\_  
DEPUTY

## **APPENDIX C**

0112  
0000



09-1-00111-3 53135061 ORCJS 04-15-19



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO. 09-1-00111-3

VS.

WARREN M. HELZER,

Defendant.

MOTION AND ORDER CORRECTING  
JUDGMENT AND SENTENCE *+ Correcting*  
**CLERKS ACTION REQUIRED** *Order Revoking Suspended Sentence*

THIS MATTER coming on regularly for hearing before the above-entitled court on the *NUNC PRO TUNC to Feb 5, 2010 and Oct 22, 2010.*  
Motion of the Deputy Prosecuting Attorney for Pierce County, Washington, for an order  
correcting Judgment and Sentence heretofore granted the above-named defendant on February 5,  
2010 pursuant to defendant's plea to three counts as to child molestation in the first degree, and  
the Order Revoking the suspended SSOSA sentence entered on October 22, 2010:

1) That section 4.5 of the judgment and sentence indicates 130 months confinement on  
Counts II, III, and IV, suspended on SSOSA;

2) That the Order Revoking ~~indicates~~ *the* the suspended sentence is revoked and that  
defendant is committed to the Department of Corrections for a period of 130 months;

5) That all other terms and conditions of the Judgment and Sentence are to remain in full  
force and effect as if set forth in full herein, including Appendices F and H, and the No Contact  
Orders entered on February 5, 2010; and the court being in all things duly advised, Now,  
Therefore, It is hereby

ORDERED, ADJUDGED and DECREED that the Judgment and Sentence granted the  
defendant on February 5, 2010 be and the same is hereby corrected as follows:

0330  
4/16/2019

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1) Section 4.5 of the judgment and sentence shall indicate 130 months up to life subject to the ISRB pursuant to former RCW 9.94A.712) on counts II, III + IV ;

2) The Order Revoking the suspended sentence shall indicate that the suspended sentence is revoked and the defendant committed to the Department of Corrections for a period of 130 months up to life subject to the ISRB pursuant to former RCW 9.94A.712; on counts II, III + IV ;

3) All other terms and conditions of the original Judgment and Sentence shall remain in full force and effect as if set forth in full herein, including the Appendices F and H and all No Contact Orders entered on February 5, 2010. IT IS FURTHER

ORDERED that the Clerk of the Court shall attach a copy of this order to the judgment filed on February 5, 2010 so that any one obtaining a certified copy of the judgment will also obtain a copy of this order.

DONE IN OPEN COURT this 12<sup>th</sup> day April, 2019; NUNC PRO TUNC to February 5, 2010; and October 22, 2010;

*[Signature]*  
JUDGE

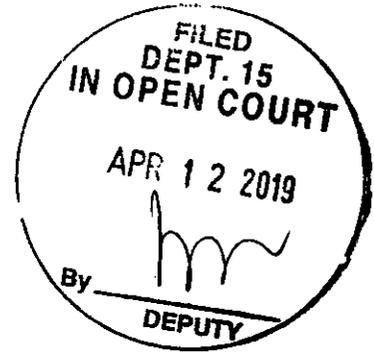
GRETCHEN LEANDERSON

Presented by:

*[Signature]*  
KARA E. SANCHEZ  
Deputy Prosecuting Attorney  
WSB# 35502

~~Approved as to form~~ *Objecting Noted*  
*[Signature]*  
Attorney for Defendant  
WSB# 15777

*[Signature]*  
WILLIAM MATTHEW HELZER  
Defendant



**STATUTORY APPENDIX**

22 U.S.C. § 212b provides in part:

(b) Authority to use unique passport identifiers

(1) In general

Except as provided under paragraph (2), the Secretary of State shall not issue a passport to a covered sex offender unless the passport contains a unique identifier, and may revoke a passport previously issued without such an identifier of a covered sex offender.

CR 60 provides in part:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

CrR 7.8 provides:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5;

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void; or

(5) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than 1 year after the judgment, order, or proceeding was entered or taken, and is further subject to RCW 10.73.090, .100, .130, and .140. A

motion under section (b) does not affect the finality of the judgment or suspend its operation.

(c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Transfer to Court of Appeals. The court shall transfer a motion filed by a defendant to the Court of Appeals for consideration as a personal restraint petition unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

(3) Order to Show Cause. If the court does not transfer the motion to the Court of Appeals, it shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

DOC Policy 380.650 (1/19/18) (attached below)

International Covenant on Civil and Political Rights, Article 12 provides:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order

(ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

RAP 16.18 provides:

(a) Generally. The Department of Corrections may petition the Court of Appeals for review of a sentence committing an offender to the custody or jurisdiction of the Department of Corrections. The review shall be limited to errors of law.

(b) Filing. The petition should be filed no later than 90 days after the Department of Corrections has received the documents containing the terms of the sentence. The petition should be filed in the division that includes the superior court entering the decision under review.

(c) Parties. When the Department files the petition, it should serve copies on the prosecuting attorney and on the offender whose sentence is in question. The appellate court clerk will serve the offender with a statement of the right to counsel and the right to proceed at public expense if indigent. If the offender was found indigent at trial and has been incarcerated since trial, continued indigency is presumed. In other cases where the offender claims indigency, the Court of Appeals may make a determination of indigency or may remand to the sentencing court for such a determination. The Court of Appeals may appoint counsel for indigent offenders and waive costs as provided in RAP 16.15(g) or may remand to the sentencing court for such appointment. All parties should file a written response to the petition within 45 days after the appellate court clerk notifies the offender of the right to counsel and the right to

proceed at public expense. The Department has 20 days after service of the last response to file a reply.

(d) Petition. The petition should contain:

(1) The county and superior court cause number below;

(2) The crime for which the offender was convicted;

(3) The date the Department of Corrections received the documents containing the terms of the sentence;

(4) The address of the offender;

(5) The error of law at issue;

(6) A statement by the Department of Corrections of all efforts that have been made to resolve the dispute at the superior court level, and the results thereof;

(7) Argument;

(8) The relief requested;

(9) A conclusion; and

(10) An appendix. The appendix should contain a copy of the judgment and sentence, the warrant of commitment, and any response of the superior court regarding the Departments administrative efforts to resolve the issue.

(e) Consideration of Petition.

(1) Generally. The Chief Judge will consider the petition promptly after the time has expired for filing of the

Departments reply. The Chief Judge determines at the initial consideration if the petition will be retained by the appellate court for determination on the merits.

(2) Determination by Appellate Court. The Chief Judge determines at the initial consideration of the petition the steps necessary to properly decide on the merits the issues raised by the petition. If the issues presented are frivolous, the Chief Judge will dismiss the petition. If the petition is not frivolous, the Chief Judge will refer the petition to a panel of judges for a determination on the merits. The Chief Judge may enter other orders necessary to obtain a prompt determination of the petition on the merits.

(3) Oral Argument. Decisions of the Chief Judge will be made without oral argument. If a petition is to be decided on the merits by a panel of judges, the appellate court clerk will set the petition for consideration by the panel of judges, with or without oral argument. If oral argument is directed, the clerk will notify the parties of the date set for oral argument.

(f) Disposition. The Court of Appeals will dispose of the matter in such manner as the ends of justice require.

(g) Review of Court of Appeals Decision. If the petition is dismissed by the Chief Judge or decided by the Court of Appeals on the merits, the decision is subject to review by the Supreme Court by a motion for discretionary review on the terms and in the manner provided in rule 13.5A.

RCW 9.68.050 provides:

For the purposes of RCW 9.68.050 through 9.68.120:

(1) "Minor" means any person under the age of eighteen years;

(2) "Erotic material" means printed material, photographs, pictures, motion pictures, sound recordings, and other material the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;

(3) "Person" means any individual, corporation, or other organization;

(4) "Dealers", "distributors", and "exhibitors" mean persons engaged in the distribution, sale, or exhibition of printed material, photographs, pictures, motion pictures, or sound recordings.

RCW 9.68.130 provides:

(1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor.

RCW 9.68A.011 provides in part:

(4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse;

(e) Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

(5) "Minor" means any person under eighteen years of age. . . .

RCW 9.94A.030 provides in part:

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation.

Former RCW 9.94A.030 (eff. 9/1/01) provided in part:

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

Former RCW 9.94A.505 (eff. 9/1/01) provided in part:

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

RCW 9.94A.585 provides in part:

(7) The department may petition for a review of a sentence committing an offender to the custody or jurisdiction of the department. The review shall be limited to errors of law. Such petition shall be filed with the court of appeals no later than ninety days after the department has actual knowledge of terms of the sentence. The petition shall include a certification by the department that all reasonable efforts to resolve the dispute at the superior court level have been exhausted.

Former RCW 9.94A.634 (eff. 9/1/01) provided in part:

The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court;

Former RCW 9.94A.700 (eff. 9/1/01) provided in part:

(4) Unless a condition is waived by the court, the terms of any community placement imposed under this section shall include the following conditions:

(a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(b) The offender shall work at department-approved education, employment, or community service, or any combination thereof;

(c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(d) The offender shall pay supervision fees as determined by the department; and

(e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

(5) As a part of any terms of community placement imposed under this section, the court may also order one or more of the following special conditions:

(a) The offender shall remain within, or outside of, a specified geographical boundary;

(b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) The offender shall participate in crime-related treatment or counseling services;

(d) The offender shall not consume alcohol; or

(e) The offender shall comply with any crime-related prohibitions.

RCW 9.95.435 provides in part:

(2) Following the hearing specified in subsection (3) of this section, the board may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community, or may suspend the release and sanction up to sixty days' confinement in a local correctional facility for each violation, or revoke the release to community custody whenever an offender released by the board under RCW 9.95.420, 10.95.030(3), or 9.94A.730 violates any condition or requirement of community custody.

RCW 9A.44.130 provides in part:

(3) Any person required to register under this section who intends to travel outside the United States must provide, by certified mail, with return receipt requested, or in person, signed written notice of the plan to travel outside the country to the county sheriff of the county with whom the person is registered at least twenty-one days prior to travel. The notice shall include the following information: (a) Name; (b) passport number and country; (c) destination; (d) itinerary details including departure and return dates; (e) means of travel; and (f) purpose of travel. If the offender subsequently cancels or postpones travel outside the United States, the offender must notify the county sheriff not later than three days after cancellation or postponement of the intended travel outside the United States or on the departure date provided in the notification, whichever is earlier. The county sheriff shall notify the United States marshals service as soon as practicable after receipt of the notification. In cases of unexpected travel due to family or work emergencies, or for offenders who travel routinely across international borders for work-related purposes, the notice must be submitted in person at least twenty-four hours prior to travel to the sheriff of the county where such offenders are registered with a written explanation of the circumstances that make compliance with this subsection (3) impracticable.

RCW 10.73.090 provides:

(1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a

direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.

U.S. Const. amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VIII provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. XIV, § 1 provides in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wash. Const. art. I, § 3 provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Wash. Const. art. I, § 5 provides:

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Wash. Const. art. 1, § 7 provides:

No person shall be disturbed in his private affairs,  
or his home invaded, without authority of law.

Wash. Const. art. I, § 9 provides:

No person shall be compelled in any criminal case  
to give evidence against himself, or be twice put in  
jeopardy for the same offense.

Wash. Const. art. I, § 14 provides:

Excessive bail shall not be required, excessive fines  
imposed, nor cruel punishment inflicted.

Wash. Const. art. 1, § 22 (Amendment 10) provides in part:

In criminal prosecutions the accused shall have the  
right to appear and defend in person, or by counsel, to  
demand the nature and cause of the accusation against him,  
to have a copy thereof, to testify in his own behalf, to meet  
the witnesses against him face to face, to have compulsory  
process to compel the attendance of witnesses in his own  
behalf, to have a speedy public trial by an impartial jury of  
the county in which the offense is charged to have been  
committed and the right to appeal in all cases . . . .



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

<b>APPLICABILITY FIELD</b>		
REVISION DATE 1/9/18	PAGE NUMBER 1 of 3	NUMBER <b>DOC 380.650</b>
TITLE <b>TRAVEL FOR COMMUNITY OFFENDERS</b>		

**POLICY**

**REVIEW/REVISION HISTORY:**

Effective: 8/1/00  
 Revised: 4/11/03  
 Revised: 8/1/04  
 Revised: 1/19/07  
 Revised: 11/7/07 AB 07-032  
 Revised: 8/4/08  
 Revised: 5/22/09  
 Revised: 11/22/10  
 Revised: 4/6/15  
 Revised: 1/9/18

**SUMMARY OF REVISION/REVIEW:**

I.A., II.B.3.a. - Adjusted language for clarification  
 II.B.3.a.1) - Adjusted investigation timeframe to 7 days  
 II.B.3.a.3) - Added CeField reference

**APPROVED:**

Signature on file

\_\_\_\_\_  
**STEPHEN SINCLAIR**, Secretary  
 Department of Corrections

12/27/17  
 \_\_\_\_\_  
 Date Signed

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	<p>APPLICABILITY <b>FIELD</b></p>		
	<p>REVISION DATE 1/9/18</p>	<p>PAGE NUMBER 2 of 3</p>	<p>NUMBER <b>DOC 380.650</b></p>
	<p>TITLE <b>TRAVEL FOR COMMUNITY OFFENDERS</b></p>		

**REFERENCES:**

DOC 100.100 is hereby incorporated into this policy; RCW 9A.44.130; DOC 310.010 Assignments; DOC 380.605 Interstate Compact; DOC 390.600 Imposed Conditions

**POLICY:**

- I. The Department has established guidelines for offender travel to monitor offender movement in the community.

**DIRECTIVE:**

- I. General Requirements
  - A. If the offender is under the jurisdiction of the Indeterminate Sentence Review Board (Board) and has a geographic boundary condition imposed by the Board, travel requires prior Board approval.
  - B. If an offender has a Victim Wraparound or Community Concerns flag in his/her electronic file, the Community Corrections Officer (CCO) must review the Victim Safety Plan and confirm that the travel will not compromise the plan. Information on the plan is available through the Community Victim Liaison.
  - C. Travel is prohibited outside of the 50 states or the District of Columbia.
- II. In-State Travel
  - A. Low Risk offenders not required to register do not require permission to travel in-state.
  - B. All other offenders must have permission via DOC 01-085 In-State Travel Permit before traveling outside their county of residence.
    1. Ongoing travel (e.g., travel for employment, education, treatment) may be granted.
    2. The supervising CCO will verify the offender's travel plans.
    3. Before allowing overnight travel, the CCO will notify the office nearest the offender's destination unless it is ongoing travel.
      - a. For Level 3 sex offenders requesting to stay over 24 hours, the CCO will request that the destination address be investigated by contacting the appropriate Assignment Coordinator.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p><b>POLICY</b></p>	<b>APPLICABILITY</b> <b>FIELD</b>		
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	<b>TITLE</b> <b>TRAVEL FOR COMMUNITY OFFENDERS</b>		

- 1) The Assignment Coordinator will assign the contact as an "other" investigation code in the offender's electronic file for completion within 7 days.
- 2) The CCO from the receiving county may make Field visits to the approved destination address.
- 3) The CCO will instruct the offender to report to the office nearest the destination address via KIOSK/CeField and/or the Duty Officer within one business day of arrival.
4. Emergency travel may be authorized if approved by the Community Corrections Supervisors/designees of both the sending and the receiving offices.
5. Report information will be added to the offender's electronic file.

### III. Out-of-State Travel

- A. For Interstate Compact offenders and offenders traveling as part of a request to transfer supervision, travel requests will be handled per DOC 380.605 Interstate Compact.
- B. For all other offenders, CCOs are authorized to allow temporary out-of-state travel for up to 31 days by issuing DOC 05-546 Out-of-State Travel Permit.
- C. The CCO will enter the information in the offender's electronic file.

#### **DEFINITIONS:**

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

#### **ATTACHMENTS:**

None

#### **DOC FORMS:**

[DOC 01-085 In-State Travel Permit](#)  
[DOC 05-546 Out-of-State Travel Permit](#)

**CERTIFICATE OF SERVICE**

I, Neil Fox, certify and declare as follows:

On September 25, 2019, I served a copy of the OPENING BRIEF OF APPELLANT on counsel for the Respondent by filing this brief through the Portal and thus a copy will be delivered electronically.

I am also serving a copy of this brief on the appellant, by having a copy deposited into the U.S. Mail (on 9/26/19) in an envelope with proper first class postage affixed addressed to:

Warren Helzer  
224 Ave. E  
Snohomish, WA, 98290

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

Dated this 25<sup>th</sup> day of September 2019, at Seattle, Washington.

s/ Neil M. Fox  
WSBA No. 15277

**LAW OFFICE OF NEIL FOX PLLC**

**September 25, 2019 - 4:44 PM**

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Address:  
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