

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington

Plaintiff

September 3, 2019

vs.

MARTAVIS TRAMAIN SIMPSON

Defendant

No.: 17-1-04830-7
Court of Appeals No.:

CLERK'S PAPERS PER
REQUEST OF APPELLANT
TO THE
COURT OF APPEALS,
DIVISION II

HONORABLE STEPHANIE A AREND
Trial Judge

1
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3 State of Washington

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KEVIN STOCK
COUNTY CLERK
NO: 17-1-04830-7

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

STATE OF WASHINGTON,)	Case No.: 17-1-04830-7
)	
Plaintiff,)	
)	MOTION AND MEMORANDUM TO
vs.)	WITHDRAW GUILTY PLEA
)	
MARTAVIS TRAMAIN SIMPSON,)	
)	
Defendant.)	

COMES NOW the defendant, Martavis Simpson, through counsel, James E. Oliver, Durflinger Oliver & Associates, and moves the court for an order authorizing him to withdraw his plea of guilty. This motion is based upon CrR 7.8, the Sixth Amendment to the United States Constitution, and the following statement of facts and memorandum of law.

1. FACTS.

Martavis Simpson, defendant herein, was charged with four counts of Robbery in the First Degree, one count of Burglary in the First Degree, two counts of Assault in the Second Degree, one count of Unlawful Possession of a Firearm in the First Degree, and one count of Unlawful Imprisonment as a result of an armed robbery of an AT&T store and its three employees in the above captioned matter. See, Statement of Defendant on Plea of Guilty, attached hereto as Exhibit 1. Mr. Simpson, who has at most a 9th grade education, was represented by a court-

1 appointed attorney in the above-captioned cases. Id.

2 Mr. Simpson's history combined with the charges in this matter exposed him a standard
3 range sentence with enhancements in excess of 25 years in prison. Despite the severity of the
4 sentence faced by his client, Mr. Simpson's attorney failed to interview witnesses and alleged
5 victims prior to allowing his client to enter a guilty plea to all nine counts of the amended
6 Information, as detailed supra, including two firearm enhancements, with a recommended
7 sentence of 129 months with an additional 15 years of flat time, for a total of nearly 26 years in
8 custody. Exhibit 1, at 4, Order Continuing Trial Date, attached hereto as Exhibit 2.¹

9 There is likewise no evidence that counsel ever argued, or attempted to argue, that the
10 crimes charged in this case should be considered as a single continuing course of conduct, rather
11 than counted as separate crimes for sentencing purposes, thus greatly increasing Mr. Simpson's
12 sentencing score in this matter.

13 Mr. Simpson's attorney not only failed to investigate this matter and make arguments
14 regarding Mr. Simpson's offender score, but also failed to properly advise him of the charges
15 against him and the associated standard sentencing range, and then prepared and allowed Mr.
16 Simpson to sign plea paperwork that was rife with errors and inconsistencies. Exhibit 1.

17 For instance, the recommendation as written on the Statement on Plea of Guilty, and as
18 conveyed to Mr. Simpson, provides for an agreed sentence of 129 months, with 18 months of
19 community custody for counts I-VI. However, the next line in the recommendation indicates
20 that count V would expose Mr. Simpson to 116 months in custody with 18 months community
21 custody and Count VI indicates a recommended range of 48 months in addition to a 72-month
22 firearm sentencing enhancement. This is in direct opposition to the first line of the
23
24

25 ¹ Defense counsel indicated in his May 21, 2018 Order Continuing Trial Date, that he would not conduct witness interviews unless Mr. Simpson opted for trial.



1 recommendation indicating an agreed 129-month sentence with no firearm enhancement. In
2 short, Mr. Simpson appears to have been advised of an inaccurate agreed sentencing agreement
3 that is internally inconsistent and confusing.

4 Mr. Simpson was additionally advised, incorrectly, that his license would be suspended
5 as a result of the conviction, despite the complete lack of evidence that Mr. Simpson used a
6 motor vehicle in the alleged offenses other than as a mode of transportation, an incidental use
7 that does not bring with it licensing consequences. Verbatim Report of Proceedings at 13:12-15,
8 attached hereto as Exhibit 3.

9 The assault charges listed in the form are listed without degree of assault represented,
10 depriving Mr. Simpson of any way of knowing exactly which crimes were referenced thereby.

11 Likewise, defense counsel and the State agreed to a criminal history form that appears to
12 count each charge on the Amended Information as a separate offense for sentencing purposes
13 and does not reflect the apparent intent of the amended information to charge all crimes as a
14 continuing course of conduct. Mr. Simpson's attorney did not object to this calculation. See,
15 Stipulation to Prior Record and Offender Score, attached hereto as Exhibit 4.
16

17 Finally, while Mr. Simpson was advised in the colloquy that this plea constituted his
18 second strike, this was mentioned only in passing by the prosecutor, and is not specifically noted
19 in the plea paperwork or by defense counsel or the court, who note only that Mr. Simpson pled to
20 a strike offense and that three strikes would put him behind bars for life. Exhibit 1 at p.6, ¶n,
21 Exhibit 3 at 5:1-5, 12:15-24. There is no evidence that this advisement was adequate to ensure
22 Mr. Simpson understood that he was in fact pleading to his second-strike offense, and that a
23 single new conviction for certain crimes could result in a life sentence.

24 Finally, the Statement of Defendant on Plea of Guilty fails to state the jurisdictional
25

1 element of where the crime was committed and merely states that the acts occurred in
2 Washington and not that Pierce County was the proper jurisdiction for the adjudication of the
3 matter. Exhibit 1.

4 **2. MEMORANDUM OF LAW**

5 **A. Mr. Simpson’s plea was not knowing, intelligent and involuntary as evidenced**
6 **by the inconsistent sentencing recommendation, inadequate advisement of**
7 **consequences, and improper license implications.**

8 A defendant’s decision to plead guilty must be knowing, intelligent and voluntary. In re
9 Pers. Restraint of Isadore, 151 Wash.2d 294, 297, 88 P.3d 390 (2004). To be knowing and
10 intelligent, the guilty plea must at least be made with a correct understanding of the charge and
11 the consequences of pleading guilty. State v. Wakefield, 130 Wash.2d 464, 472, 925 P.2d 183
12 (1996). A guilty plea is not knowingly made when based on misinformation regarding
13 sentencing consequences. State v. Miller, 110 Wash.2d 528, 531, 756 P.2d 122 (1988).

14 “Due process principles are offended by the entry of a guilty plea without an **affirmative**
15 **showing in the record** that the plea was made intelligently and voluntarily.” State v. Holley, 75
16 Wn. App. 191 (Wash. Ct. App. 1994) (emphasis supplied). The criminal rules reflect this
17 principle by dictating that a court must not accept a plea of guilty “without first determining that
18 it is made voluntarily, competently and with an understanding of the nature of the charge and the
19 consequences of the plea.” CrR 4.2(d). Here, Mr. Simpson was unable to understand the offer
20 or the resulting plea agreement. The best evidence of this is the confusing contradictory
21 recommendation indicated in the plea form. Given Mr. Simpson’s single digit years of education,
22 it is unsurprising that he was unable to discern the problems inherent in this guilty plea.

23 A post-sentencing motion to withdraw a guilty plea is governed by CrR 7.8. When guilty
24 pleas are obtained in violation of due process, the resulting judgment is void and subject to
25 collateral attack pursuant to CrR 7.8(b)(4), State v. Olivera-Avila, 89 Wn. App. 313, 319 (Wash.



1 Ct. App. 1997). A final judgment may only be vacated in limited circumstances required by the
2 interests of justice. *State v. Zavala-Reynoso*, 127 Wn.App. 119, 122-23, 110 P.3d 827 (2005);
3 *State v. Shove*, 113 Wash.2d 83, 88, 776 P.2d 132 (1989).

4 In State v. Walsh, the Supreme Court held that a plea is involuntary and can be
5 withdrawn when the actual standard sentencing range is different than the range stated in the
6 plea agreement. 143 Wash.2d 1 (2001). In Walsh, both the prosecutor and defense counsel
7 calculated Walsh's offender score at 86 to 114 months. The plea form provided the prosecutor
8 would recommend a sentence of 86 months. After the plea hearing, Walsh's score was
9 calculated differently, resulting in a range of 95 to 125 months. Nothing in the record showed
10 that Walsh was ever advised or realized before sentencing that the standard range was not the
11 one reflected in the plea agreement. The Supreme Court held that "because a mutual mistake at
12 the time the plea was entered regarding the standard sentencing range, Walsh had established
13 that his guilty plea was involuntary." Id. at 8.

14
15 Similarly, In Personal Restraint of Matthews, 128 Wash.App. 267, 273, 115 P.3d 1043
16 (Div. 2, 2005) (Overturned on other grounds) the Court of Appeals held that

17 "[W]hen a defendant enters a plea agreement and learns of a requirement to pay
18 restitution, to serve consecutive sentences, or to serve a mandatory community
19 placement period, his unawareness of the full extent of punishment entitles him to
20 withdraw his guilty plea. Thus, a defendant is entitled to the same relief where he
21 agrees to plead guilty only to later learn of a miscalculated offender score and
22 sentencing range higher than he had initially believed."

23 *Matthews*, 128 Wash.App. at 273

24 In State v. Mendoza, the Supreme Court ruled that misinformation, "including a
25 miscalculated offender score that resulted in an incorrect higher standard range" may make a
plea involuntary. 157 Wash.2d 582, 141 P.3d 49 (2006). "The length of the sentence is a direct
consequence of pleading guilty," the court reasoned. Id.



1 The Statement of Defendant on Plea of Guilty prepared by Mr. Simpson’s defense attorney was,
2 at best, ambiguous. The actual term of sentence was misrepresented, the crimes charged were
3 unclear, and the agreed criminal history did not reflect an apparent intent within the Information
4 to charge the crimes as a continuing course of conduct.

5 The list of charges on page one of the Statement lists “Assault x2” without reference to degree
6 of assault. One cannot knowingly plead to an Assault without knowing the degree. Though the
7 crime of second-degree assault was mentioned in passing during the plea colloquy, not only was
8 it not clear in this mention that Mr. Simpson was pleading to not one, but two counts of this
9 offense, but clarification of this nature at the time of the colloquy arguably far too late for a
10 defendant to learn the nature of the charges against him. Exhibit 3 at 13:5. Once a defendant has
11 agreed to plead guilty and the colloquy has begun, it is almost unheard of for the same defendant
12 to halt all proceedings and be able or willing to formulate an objection to the plea in open court.
13 Instead, most defendants will continue with the plea despite any confusion or conflicting
14 statements, being far too intimidated by court and the very nature of the proceedings to believe
15 they are free to do otherwise.
16

17 The State’s sentencing recommendation in the Statement on Plea of Guilty form was
18 internally inconsistent and confusing and there was no way that Mr. Simpson could have made
19 a knowing, intelligent, voluntary waiver of his right to trial.

20 The recommendation conveyed to Mr. Simpson in the Statement on Plea of Guilty
21 indicated that Counts I-VI had an agreed sentence of 129 Months with 18 months of
22 community custody. As written, the indicated recommendation for Counts 1, 2, 3, 4, 5 and 6
23 was 129 months with each count served concurrently.
24
25

1 Unfortunately, the very next line in the recommendation in the Plea form indicated that
2 Count 5 would expose Mr. Simpson to 116 months in custody with 18 months community
3 custody. Further confusing this matter is the fact that Count 6 indicates a recommended range
4 of 48 months in addition to a 72-month firearm sentencing enhancement.

5 The first line of the recommendation indicates that Count 6 would be an agreed 129-month
6 sentence and no firearm sentencing enhancement. In short, the first line of the recommendation
7 advised Mr. Simpson that Counts I, II, III, IV, V and VI would subject Simpson to 129 months
8 and no firearm enhancement. The ensuing sentence recommendations were highly inconsistent
9 and incredibly confusing. Though the State at sentencing clarified that the total recommendation
10 was for just over 25 years, this again is far too late for such clarifications to be heard by a
11 defendant who has already agreed to the plea agreement, as argued above. *See*, Exhibit 3 at
12 11:8-15.

13
14 Finally, the plea paperwork referenced the agreed criminal history for Mr. Simpson.
15 This showed two felonies committed when he was a juvenile, and additional felonies
16 committed just a couple of year later, but a full 17 years prior to sentencing in this matter.
17 Those offenses appear to have washed out, giving Mr. Simpson an offender score of zero.
18 However, the nine charges to which Mr. Simpson pled guilty in this case appear to have been
19 counted separately for offender score purposes, placing Mr. Simpson's offender score at 9+. A
20 review of the information demonstrates the State's apparent intent to charge the crimes in this
21 case as a continuing course of conduct with four separate victims, as will be argued further
22 below. This calculation would have lowered Mr. Simpson's offender score to four, and
23 significantly lowered the standard range sentences of all crimes to which Mr. Simpson pled.
24 Exhibit 4.
25

1 Mr. Simpson pled guilty despite the fact that the recommendation on the Statement on
2 Plea of Guilty was internally inconsistent, irreconcilable and/or ambiguous. Mr. Simpson was
3 urged to plead guilty by his then-defense-counsel who conveyed incorrect sentence ranges in
4 getting Mr. Simpson to agree to forego trial. Mr. Simpson, did not – and could not – make a
5 voluntary and intelligent decision to plead guilty because he was unaware of the direct
6 consequences of his plea. Allowing Mr. Simpson to withdraw the plea is the only appropriate
7 remedy in this case, and the Court should grant Mr. Simpson’s motion in the interests of
8 justice.

9 **B. Defense counsel’s failure to interview witnesses and alleged victims rendered Mr.**
10 **Simpson’s guilty plea unknowing, unintelligent and involuntary such that it**
11 **should be vacated.**

12 The right to effective assistance of counsel in a criminal proceeding is a constitutional
13 right, guaranteed under the Sixth Amendment to the United States Constitution as well as
14 Article 1, Section 22 (amendment 10) of the Washington State Constitution. Strickland v.
15 Washington, 466 U.S. 668, 684-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); In re Pers.
16 Restraint of Davis, 152 Wash.2d 647, 672, 101 P.3d 1 (2004).

17 A claim for ineffective assistance of counsel is reviewed de novo. State v. Shaver, 116
18 Wn.App. 375, 382, 65 P.3d 688 (2003). A defendant must overcome a strong presumption that
19 the defense counsel’s performance was effective. State v. McFarland, 127 Wn.2d 322, 335,
20 337, 899 P.2d 1251 (1995). The presumption of competence is overcome by a showing in the
21 record of the absence of “legitimate or tactical reasons” supporting counsel’s conduct. State v.
22 McFarland, 127 Wn.2d 322, 334-38, 899 P.2d 1251 (1995).

23 The test for determining whether assistance of counsel was ineffective is in two parts.
24 First, the defendant must demonstrate that counsel’s conduct was deficient, or that it fell below
25

1 an “objective standard of reasonableness.” Second, the defendant must show that the conduct
2 caused actual prejudice. In other words, the defendant must be able to establish that there is a
3 reasonable possibility that the outcome of the proceeding would have been different but for the
4 deficient conduct of counsel. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)
5 (adopting test from Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d
6 674 (1984)). A reasonable probability is “a probability sufficient to undermine confidence in
7 the outcome.” Strickland, 466 U.S. at 694, 104 S.Ct. 2052.

8 A. Mr. Simpson’s counsel failed to actually and substantially assist him in deciding
9 whether to plead guilty or continue to trial.

10 In the plea-bargaining context, counsel's performance is deficient if he failed to
11 “actually and substantially assist his client in deciding whether to plead guilty.” State v.
12 Osborne, 102 Wn.2d 87, 99, 684 P.2d 683 (1984) (quoting State v. Cameron, 30 Wn.App. 229,
13 232, 633 P.2d 901 (1981)). It is counsel’s responsibility to aid the defendant in evaluating the
14 evidence against him and in discussing the possible direct consequences of a guilty plea. State
15 v. S.M., 100 Wn. App. 401, 410-11 (2000)

16 A reasonably competent attorney providing actual and substantial assistance to a
17 client considering a guilty plea would inform the client about the procedures and
18 consequences of going to trial and about options other than pleading guilty to the
19 charged offenses. To aid the client in considering the options, a reasonably
20 competent attorney would help the client evaluate the evidence.

21 *Id.* at 410-12.

22 In order to show a valid admission of guilt, the state must prove by clear and
23 convincing evidence that the accused received adequate sentencing information, either from his
24 attorney or the court. State v. Ross, 129 Wn.2d 279, 287 (1996). In order to be effective,
25 defense counsel must discuss with his client any potential plea bargains as well as the strengths
and weaknesses of the defendant’s case, “so that the defendant[] **know[s] what to expect** and

1 can make an informed judgment. . .”, about how proceed with his case. State v. James, 48 Wn.
2 App. 353, 362 (1987). [Emphasis supplied.]

3 Mr. Simpson’s burden is an easy one in this case. Here, Mr. Simpson was clearly.
4 misadvised and misinformed as to the consequences of the plea that he was about to enter. The
5 full sentencing consequences of the plea are unclear on the face of the plea form. There is no
6 possibility that Mr. Simpson was fully advised of all of the consequences to follow from this plea
7 agreement.

8 Counsel did not adequately advise or assist his client in entering the plea of guilty in this
9 matter – it is unclear if counsel even had the time to spend going over the plea agreement with
10 Mr. Simpson, and given the fact that Mr. Simpson does not even possess a high school diploma,
11 it is unlikely that he would have been able to discern the true sentence from the terms of the
12 agreement as written, when it was problematic for reviewing counsel to do so.

13 Counsel’s assistance to Mr. Simpson in pleading guilty in this matter was deficient.
14 While it is unknown what other measures counsel took, or failed to take, prior to the entry of the
15 plea, the failure to adequately set forth the sentence in the plea paperwork itself speaks to a lack
16 of time spent on the case and, likely, a failure to adequately communicate with Mr. Simpson
17 regarding his concerns and wishes. Counsel’s failure to understand, and therefore advise, Mr.
18 Simpson of the full impact of his plea is sufficient to constitute a clear dereliction of counsel’s
19 duty to assist his client in entering a knowing, intelligent, and voluntary plea in the above
20 captioned matter.
21

22 B. Counsel failed to fully investigate this matter prior to entry of the plea.

23 The right to effective assistance of counsel in a criminal proceeding is guaranteed by
24 both the Sixth Amendment to the United States Constitution an Article I, Section 22
25

1 (Amendment 10) of the Washington State Constitution. Strickland v. Washington, 466 U.S.
2 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77, 917
3 P.2d 563 (1996). Where an attorney unreasonably fails to research or apply relevant statutes
4 without any tactical purpose, that attorney's performance is constitutionally deficient. In re
5 Pers. Restraint of Yung-Cheng Tsai, 183 Wn.2d at 102.

6 Counsel is ineffective if his or her conduct was deficient, or that it fell below an
7 "objective standard of reasonableness," and that the conduct caused actual prejudice to the
8 defendant. In other words, the defendant must be able to establish that there is a reasonable
9 possibility that the outcome of the proceeding would have been different but for the deficient
10 conduct of counsel. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (adopting
11 test from Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

12
13 Due process requires that a defendant's guilty plea must be knowing, intelligent, and
14 voluntary. State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). "Due process
15 principles are offended by the entry of a guilty plea without an *affirmative showing in the*
16 *record* that the plea was made intelligently and voluntarily." State v. Holley, 75 Wn. App. 191
17 (Wash. Ct. App. 1994) (emphasis added). The criminal rules reflect this principle by dictating
18 that a court must not accept a plea of guilty "without first determining that it is made
19 voluntarily, competently and with an understanding of the nature of the charge and the
20 consequences of the plea." CrR 4.2(d). When guilty pleas are obtained in violation of due
21 process, the resulting judgment is void and subject to collateral attack pursuant to CrR
22 7.8(b)(4). State v. Olivera-Avila, 89 Wn. App. 313, 319 (Wash. Ct. App. 1997). Here, Mr.
23 Simpson could not understand the offer or what he was doing and the best evidence of this is
24 the confusing contradictory recommendation indicated in the plea form. Given Mr. Simpson's
25

1 single digit years of education, it is unsurprising that he did not catch the problems with his
2 case and his guilty plea.

3 In order to show a valid admission of guilt, the state must prove by clear and
4 convincing evidence that the accused received adequate sentencing information, either from his
5 attorney or the court. State v. Ross, 129 Wn.2d 279, 287 (1996). In order to be effective,
6 defense counsel must discuss with his client any potential plea bargains as well as the strengths
7 and weaknesses of the defendant's case, "so that the defendant[] *know[s] what to expect* and
8 can make an informed judgment. . .", about how proceed with his case. State v. James, 48 Wn.
9 App. 353, 362 (1987), emphasis added.

10 An ineffective assistance of counsel claim cannot be predicated on conduct that may be
11 characterized as legitimate trial strategy or tactics. State v. Goldberg, 123 Wn. App. 848, 99
12 P.3d 924 (Division 3, 2004); State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002) (citing
13 State v. Adams, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)). However, the deference owed to
14 strategic judgments is cemented in the adequacy of the investigation supporting those judgments:
15

16 [S]trategic choices made after thorough investigation of law and facts relevant to
17 plausible options are virtually unchallengeable; and strategic choices made after
18 less than complete investigation are reasonable precisely to the extent that
19 reasonable professional judgments support the limitations on investigation. In
20 other words, counsel has a duty to make reasonable investigations or to make a
21 reasonable decision that makes particular investigations unnecessary. In any
22 ineffectiveness case, a particular decision not to investigate must be directly
23 assessed for reasonableness in all the circumstances, applying a heavy measure of
24 deference to counsel's judgments.

25 Wiggins v. Smith, 539 U.S. 510, 521-22, 123 S.Ct. 2527 (2003), quoting Strickland v.
Washington, 466 U.S. at 690-91, 104 S.Ct. 2052.

Both the Sixth Amendment's, and the Washington state .Const. Art. 1, § 22's right to
effective assistance of counsel includes within it a requirement that counsel at trial fully

1 investigate a case prior to trial. *State v. Jury*, 19 Wn. App. 256, 263, 576 P.2d 1302 (1978);
2 *Rios v. Rocha*, 299 F.3d 796, 805 (9th Cir. 2002). The United States Supreme Court has held:
3 "counsel has a duty to make reasonable investigations or to make a reasonable decision that
4 makes particular investigations unnecessary." *Strickland v. Washington*, 466 U.S. 668, 691, 80
5 L.Ed.2d 674, 104 S. Ct. 2052 (1984).

6 Reasonable investigation requires not only that an attorney interview key witnesses, but
7 also that the attorney does not automatically rely blindly on the interviews done by the police.
8 *State v. Visitacion*, 55 Wn. App. 166, 173-74, 776 P.2d 986 (1989); *Hawkman v. Parratt*, 661
9 F.2d 1161, 1168-69 (8th Cir. 1981).

10 In *Visitacion*, the Court of Appeals cited with approval the affidavit of an expert, "a very
11 experienced Washington criminal defense attorney", who stated that he could not "conceive of
12 any reason, tactical or otherwise, for not contacting witnesses," and that "[r]eliance on the police
13 reports was no substitute for contacting these witnesses." 55 Wn. App. at 173. The Court also
14 subscribed to the reasoning of the 8th Circuit in its *Hawkman* decision, where a case was
15 similarly overturned for ineffective assistance:
16

17 Trial counsel essentially limited his pre plea investigation to discussing the
18 case with the petitioner and securing and reviewing state investigation
19 materials. Trial counsel made no attempt to independently contact or interview
20 the three eyewitnesses before advising the petitioner to plead guilty. The court
21 held that by failing to investigate the facts, petitioner's attorney failed to
22 perform an essential duty which a reasonably competent attorney would have
23 performed under similar circumstances.

24 *Visitacion*, 55 Wn. App. at 173-74, citing *Hawkman*, 661 F.2d at 1168-69. See also *State v. Jury*,
25 19 Wn.App. 256, 576 P.2d 1302, *review denied*, 90 Wn.2d 1006 (1978) (counsel's failure to
acquaint himself with the facts of the case by interviewing witnesses was an omission which no
reasonably competent counsel would have committed); ABA Standards for Criminal Justice:

1 Defense Function Standard 4-4.1, 4-6.1; National Legal Aid and Defender Association
2 Performance Guidelines for Criminal Defense Representation, Guideline 4.1 (1997)
3 (“Investigation”); RPC 1.1 (“A lawyer shall provide competent representation to a client.
4 Competent representation requires ... thoroughness and preparation reasonably necessary for the
5 representation.”)

6 The degree and extent of investigation required will vary depending upon the issues and
7 facts of each case, but the Washington Supreme Court has found that, at a minimum, “counsel
8 must *reasonably evaluate the evidence against the accused.*” *State v. A.N.J.*, 168 Wn.2d 91, 225
9 P.3d 956 (2010) [Emphasis supplied]. To fail to do so renders counsel ineffective. *Id.*

10 In A.N.J. counsel was found to have made single telephone calls to two potentially
11 favorable defense witnesses and, when he received no answer, abandoned any further
12 investigation. A.N.J., 168 Wn.2d at 109. The Court found that the failure to interview witnesses
13 or conduct any further investigation prior to counseling his client to accept a guilty plea fell
14 below acceptable standards of professional conduct and constituted ineffective assistance of
15 counsel. *A.N.J.*, 168 Wn.2d at 111.

17 A personal interview is often important because of the subtleties and nuances of a
18 witness’s demeanor and manner of testifying. See Lord v. Wood, 184 F.3d 1083, 1095 (9th Cir.
19 1999) (“A witness's testimony consists not only of the words he speaks or the story he tells, but
20 of his demeanor and reputation. A witness who appears shifty or biased and testifies to X may
21 persuade the jury that not-X is true, and along the way cast doubt on every other piece of
22 evidence proffered by the lawyer who puts him on the stand. But counsel cannot make such
23 judgments about a witness without looking him in the eye and hearing him tell his story.”).
24 However, counsel may also appropriately rely upon the defense investigator’s reports and
25

1 transcripts of pre-trial interviews. LaGrand v. Stewart, 133 F.3d 1253, 1274 (9th Cir. 1998).
2 See also State v. Early, 70 Wn. App. 452, 461, 853 P.2d 964 (1993) (“While a trial counsel’s
3 failure to conduct appropriate investigations may indicate deficient performance, [citation
4 omitted] use of investigators to interview witnesses and victims in criminal prosecutions is
5 common practice and does not suggest counsel’s performance fell below an objective standard
6 of reasonableness.”).

7 Here, there is no evidence *any* investigation was undertaken, or that Mr. Simpson
8 entered into the plea after having been given sufficient information to compare the risks and
9 benefits of the plea to the risks to the benefits of proceeding to trial. Counsel did not hire a
10 private investigator, nor did he conduct interviews, make an attempt to speak with the alleged
11 victims, view evidence, or make any other effort to investigate the allegations in the
12 Information. Under these circumstances, trial counsel cannot possibly render effective
13 assistance of counsel, because he cannot give an informed opinion of the defendant’s options,
14 including the option of going to trial. If the defense counsel can simply rely on the police
15 investigation, there is little need for defense counsel.
16

17 This requirement to investigate applies whether or not the defendant decides to plead
18 guilty. In State v. A.N.J., 168 Wash.2d 91, 225 P.3d 956 (2010), Our Supreme Court strongly
19 disagreed with the State’s contention that because defense counsel believed his client was to
20 plead guilty or confess that defense counsel did not have a duty to investigate. “Effective
21 assistance includes assisting defendants in making an informed decision whether or not to
22 plead guilty or go to trial.” Id 109. We hold that at very least Counsel must reasonably
23 evaluate the evidence against the accused and like hood of conviction if case proceeds to trial
24
25

1 so that Defendant can make a meaningful decision as to whether or not to plead guilty.” *Id.* at
2 112.

3 In addition to citing to the standards of professional conduct, the A.N.J. Court also relied
4 upon the Washington State Bar Standards for Indigent Defense to evaluate whether counsel in
5 that case rendered effective assistance, though these standards had not yet been adopted at the
6 time of the decision. *Id.* at 110. Standard Two of the Washington State Bar Association
7 Standards for Indigent Defense Services requires an attorney’s legal representation plan to
8 provide defense services

9 to all clients in a professional, skilled manner consistent with minimum standards
10 set forth by the American Bar Association, applicable state bar association
11 standards, the Rules of Professional Conduct, case law and applicable court rules
12 defining the duties of counsel and the rights of defendants in criminal cases. Counsel’s primary and most fundamental responsibility is to promote and protect
13 the best interests of the client.

14 Standard Six requires that “Public defender offices, assigned counsel, and private law
15 firms holding public defense contracts should employ investigators with investigation training
16 and experience. A minimum of one investigator should be employed for every four attorneys.”

17 Also relevant are the American Bar Association Criminal Justice Section Standards.
18 Standard 4.3-2 requires the defense attorney to interview the client as soon as possible to
19 determine all relevant facts known to the accused. Defense counsel is directed to probe for all
20 legally relevant information. Standard 4-4.1 recommends that defense counsel

21 conduct a prompt investigation of the circumstances of the case and explore all
22 avenues leading to facts relevant to the merits of the case and the penalty in the
23 event of conviction. The investigation should include efforts to secure information
24 in the possession of the prosecution and law enforcement authorities. The duty to
25 investigate exists regardless of the accused's admissions or statements to defense
counsel of facts constituting guilt or the accused's stated desire to plead guilty.

1 Similarly, ABA Standard 4-5.1 requires defense counsel to advise the defendant with
2 complete candor concerning all aspects of the case, including the probable outcome, **after**
3 **informing himself or herself fully on the facts and the law.**

4 ABA Standard 4-6.1(b) states in relevant part: “Under no circumstances should defense
5 counsel recommend to a defendant acceptance of a plea **unless appropriate investigation and**
6 **study of the case has been completed, including an analysis of controlling law and the**
7 **evidence likely to be introduced at trial.”** [Emphasis supplied.]

8 As can be seen, the Standards require defense counsel to conduct an investigation of the
9 case. Reading the police reports is not an investigation. Counsel must hire an investigator if
10 appropriate; he must interview witnesses in any event. Counsel cannot adequately advise his or
11 her client whether to accept a plea or go to trial if he or she has not interviewed witnesses or had
12 them interviewed by a private investigator.

13 Counsel’s actions in this case violate not only the best practices as recommended by our
14 state’s highest court, but national standards applicable to all defense attorneys in the country.
15 Counsel made no effort to investigate this matter prior to writing up the plea agreement. In the
16 absence of a thorough investigation of this case and of the consequences of the plea on Mr.
17 Simpson, counsel could not properly advise him that the plea deal proffered by the State was in
18 his best interests. Counsel failed to properly investigate this matter and thus failed to adequately
19 advise Mr. Simpson of the consequences of the deal versus those of going to trial. Had counsel
20 done his homework, he would have been able to fully inform Mr. Simpson, and Mr. Simpson
21 would have declined to enter the plea. The guilty plea in this case should be vacated and this
22 matter set for trial.
23
24

25 C. **Counsel failed to object to the underlying offender score as calculated by
the State, likely increasing the length of Mr. Simpson’s sentence.**

1 RCW 9.94A.400(1)(a) provides in part:

2 [W]henever a person is to be sentenced for two or more current offenses, the sentence
3 range for each current offenses shall be determined by using all other current and prior
4 convictions as if they were prior convictions for the purpose of the offender score:
5 PROVIDED, That if the court enters a finding that some or all of the current offenses
6 encompass the same criminal conduct then those current offenses shall be counted as one
7 crime. Sentences imposed under this subsection shall be served concurrently. Consecutive
8 sentences may only be imposed under the exceptional sentence provisions "Same criminal
9 conduct," as used in this subsection, means two or more crimes that require the same criminal
10 intent, are committed at the same time and place, and involve the same victim. . . .

11 Thus, under subsection (1)(a), the offender score for each current conviction is
12 determined by using all other current convictions as if they were prior convictions. The process
13 is repeated in turn for each current conviction. The resulting offender score is used to determine
14 the sentence range applicable for each conviction. Under this subsection, a sentence is then
15 imposed for each current conviction, which are served concurrently unless an exceptional
16 sentence is imposed. See DAVID BOERNER, SENTENCING IN WASHINGTON §§ 5.8(a),
17 5.16 (1985); State v. Tili, 139 Wn.2d 107 (1999)

18 Two crimes “merge” or are treated as one for sentencing purposes, if they encompass the
19 same course of criminal conduct. State v. Porter, 133 Wash.2d 177, 942 P.2d 974 (1997). Two
20 or more crimes encompass the same criminal conduct when they (1) require the same criminal
21 intent, (2) are committed at the same time and place, and (3) involve the same victim. RCW
22 9.94A.589(1)(a). Two offenses share the same criminal intent when the offender's intent,
23 objectively viewed, does not change from one crime to the next. State v. Vike, 125 Wn.2d 407,
24 411, 885 P.2d 824 (1994). The Court should first look at the underlying statutes and the intent
25 necessary to commit each crime. *Id.* The Court then examines the facts. *Id.* Finally, the Court
considers whether the crimes were intimately related, whether the criminal objective changed
substantially from one crime to the next, and whether one crime furthered the other. *State v.*

1 *Burns*, 114 Wn.2d 314, 318, 788 P.2d 531 (1990); *State v. Bickle* 153 Wash.App. 222, 222 P.3d
2 113 (2009); *State v. Torngren* 147 Wash.App. 556, 196 P.3d 742 (2008).

3 A defendant's criminal intent for multiple offenses is the same when, viewed objectively,
4 it did not change from one offense to the next. *State v. Dunaway*, 109 Wn.2d 207, 215, 743 P.2d
5 1237, 749 P.2d 160 (1987). For instance, a defendant who simultaneously possesses two types of
6 drugs has a single criminal objective of delivering the drugs sometime in the future. *State v.*
7 *Garza-Villarreal*, 123 Wn.2d 42, 49, 864 P.2d 1378 (1993).

8 In *State v. Porter*, 133 Wn.2d 177, 942 P.2d 974 (1997), the Washington Supreme Court that
9 crimes committed sequentially against the same victim in a short time period constituted the same
10 criminal conduct for purposes of sentencing. *Id.* at 132. *Porter* established that the “same time”
11 was never intended to mean that the acts occur simultaneously. In fact, Courts of Appeal cases
12 decided both before and after *Porter* have so held. In *State v. Calvert*, 79 Wn.App. 569, 903
13 P.2d 1003 (1995) the Court held that multiple forged checks presented to the same bank during
14 the course of the same day involving the same victims account, were the same criminal conduct.

15
16 Similarly, in *State v. Dunbar*, 59 Wn. App. 447, 798 P.2d 306 (1990), the Court found
17 that the charges of burglary, kidnapping, and assault were all part of a single course of conduct.
18 The Court found persuasive Mr. Dunbar’s analysis, reasoning that the crimes were committed at
19 the same time and place and involved the same victim and finding that the burglary furthered the
20 kidnapping in that “the assault was one of the means of accomplishing the abduction. *Dunbar*,
21 59 Wn. App. at 455. The Court also found that Mr. Dunbar’s

22 objective intent in committing the burglary was to commit some crime, one of
23 which was the assault. In addition, the burglary furthered the kidnapping by
24 means of the assault. Although the kidnapping was a continuing crime, its
25 essential element, an abduction, did occur at the same time and place as the
burglary.

1 Dunbar, 59 Wn. App. at 455

2 The Dunbar Court further declined to apply the burglary antimerger statute, RCW
3 9A.52.050, to this case, reasoning that there is evidence that the SRA provision regarding same
4 criminal conduct was intended to apply to the crime of burglary, and that the purpose of the SRA
5 is criminal responsibility for a class of crimes, while the purpose of the criminal code is
6 individual responsibility for the crime committed, and that both can be read together to avoid
7 conflict. Id. at 455-56. When construed in light of the SRA and limited to criminal
8 responsibility, the Court reasoned, “the antimerger statute permits a burglary and the underlying
9 crime to both be charged despite the doctrine of merger.” Id. at 457. Contrary to the SRA,
10 however, RCW 9A.52.050 authorizes the separate prosecution of, and punishment for, the
11 underlying crime despite the merger doctrine. Id. Given this, the Court concluded, “if the
12 crimes do not encompass the same criminal conduct, the defendant may be punished for both.”

13 Id.

14
15 Finally, the Court observed that there is Supreme Court precedent for a finding that a
16 burglary and the underlying crimes constituted the “same criminal conduct” for sentencing
17 purposes. Id. at 456-7. Specifically, in State v. Collicott, 112 Wn.2d 399, 771 P.2d 1137 (1989),

18
19 the Supreme Court relied on the absence of any references to merger in the
20 previous and present versions of RCW 9.94A.400(1)(a) to conclude that the
21 statute was to function independently from the merger doctrine. The same
22 rationale would apply to the antimerger statute as well. Since both the previous
23 and present versions of the statute failed to refer to the antimerger statute, it must
24 also function independently of RCW 9.94A.400(1)(a).

25 The Court found that the crimes merged and reversed Mr. Dunbar’s sentence. Id.

Here, Mr. Simpson was charged with robbery in the first degree as against four different
alleged victims. During the commission of that crime, it was alleged that Mr. Simpson assaulted

1 two of the victims, unlawfully imprisoned one, committed a burglary for the purposes of
2 accessing the victims, and illegally carried a firearm while committing the other crimes. Per the
3 Amended Information, the State appears to have conceded that the crimes constituted the same
4 conduct with respect to each victim. The burglary, assault, unlawful possession of a firearm, and
5 unlawful imprisonment charges were committed in furtherance of the robbery and must merge
6 therewith. This reduces Mr. Simpson’s offender score notably, from 9 to 4, also making a
7 marked reduction in the standard sentence faced by Mr. Simpson in this case.

8 That counsel blithely agreed to the offender score calculation proposed by the State
9 cannot be construed as anything other than ineffective assistance. Counsel apparently took no
10 time to research case law regarding merger of crimes in general, or these specifically. A mere 20
11 minutes on Lexis produced several opinion, like Dunbar, cited supra, which establish that crimes
12 of robbery, burglary, assault, and unlawful imprisonment can and do merge for purposes of
13 offender score calculation and sentencing. Counsel exposed Mr. Simpson to a far greater prison
14 sentence than necessary under a straight plea without agreement to the State-calculated offender
15 score. As agreement to the offender score was a necessary facet of the plea agreement in this
16 case, Mr. Simpson must be allowed to withdraw his plea in this case to remedy this plain error.

17
18 D. **The guilty plea form improperly indicates that Mr. Simpson will lose his**
19 **license as a result of his conviction in this matter.**

20 In Washington, a sentencing court may order the Department of Licensing to revoke a
21 defendant's license upon a conviction of certain crimes, including “[a]ny felony in the
22 commission of which a motor vehicle is used.” RCW 46.20.285(4). Mr. Simpson did not “use”
23 his vehicle in the commission of his felony.

24 RCW 46.20.285(4) does not define “use.” In order for RCW 46.20.285(4) to
25 apply the vehicle must contribute in some way to the accomplishment of the
crime. There must be some relationship between the vehicle and the commission

1 or accomplishment of the crime. “Used” in the statute means “employed in
2 accomplishing something.” RCW 46.20.285(4) does not apply when the vehicle
3 was incidental to the commission of the crime.

4 State of Washington v. Alcantar-Maldonado, 184 Wn. App. 215, 227-8, 340 P.3d 859 (2014)

5 (Internal citations omitted.)

6 The Alcantar-Maldonado Court pointed to cases where a license restriction was properly
7 imposed, noting first that in State v. Batten, 140 Wn.2d 362, 365, 997 P.2d 350 (2000), the
8 defendant had used his car to conceal a firearm that he could not legally possess, and to transport
9 a controlled substance. The state supreme court correctly held that he had “used” his car in the
10 commission of a felony. Similarly, in State v. Dupuis, 168 Wn.App. 672, 278 P.3d 683 (2012),
11 Division II held the defendant “used” a car while committing the offense of second degree taking
12 or riding in a motor vehicle without the owner's permission. A sufficient connection was
13 likewise found between car and crime in State v. Griffin, 126 Wn.App. 700, 708, 109 P.3d 870
14 (2005), when the defendant was given cocaine in exchange for providing a ride in his car.

15 Division II found use of a vehicle supported a licensing suspension in State v. Dykstra,
16 127 Wn.App. 1, 110 P.3d 758 (2005), when the defendant and his accomplices used his car to
17 cruise cars to steal, drove stolen cars, and drove unwanted stolen car parts to a disposal site. In
18 State v. Hearn, 131 Wn. App. 601, 609-10, 128 P.3d 139 (2006), Division II again rejected a
19 sufficient connection between the crime of possession of methamphetamine and use of a car,
20 when the drug was found in the defendant's purse and in clothing within a basket in the car,
21 concluding that the defendant did not use the “structure of the car” to conceal drugs. Finally, in
22 State v. Wayne, 134 Wn. App. 873, 875-76, 142 P.3d 1125 (2006), Division II declined to apply
23 licensing consequences when contraband was found on Mr. Wayne’s person, because “there was
24
25

1 no reasonable relationship between the crime of possession and the vehicle, and the vehicle itself
2 did not contribute in some reasonable degree to the commission of the felony.”

3 Mr. Simpson’s use of a car facilitated, in a loose sense, the crimes at issue in this matter
4 because the car transported Simpson to the scene of the assault. Nonetheless, use of the car was
5 merely fortuitous or gratuitous in that Simpson could have rode a bike or bus to phone store.
6 The commission of the felonies in this case did not entail operation of a motor vehicle.

7 No Washington decision answers the question of whether RCW 46.20.285(4)
8 applies when the defendant transports himself to and from the scene of an assault.
9 We believe Washington decisions, however, require a more direct connection
10 between the use of the vehicle and the crime. We find support in this position in
11 several foreign decisions.

12 Alcantar-Maldonado, 184 Wn. App. at 228.

13 The Alcantar-Maldonado Court found support for its position in similar statutes in Ohio
14 and Florida, where state laws also allow for suspension of a license when a motor vehicle is used
15 in the commission of a felony. *See, e.g. State v. Krug*, 89 Ohio App.3d 595, 596, 626 N.E.2d
16 984 (1993) (Court reversed license suspension when the car used only to transport defendant’s
17 wife from store to home with an assault beginning in the store and continuing at home, as
18 “merely using an automobile as a means of transportation to or from a crime scene is
19 insufficient.”); Watson v. State, 556 So.2d 489 (1990)(License revocation not permitted when
20 the defendant used the vehicle solely to drive to the scene of the crime, instead requiring more,
21 such as crime taking place inside or from the vehicle.)

22 Mr. Simpson did not use a car to commit the crimes alleged in this matter. His car was
23 not the subject of the crime charged, and the crime did not take place inside or from his car. No
24 license suspension was proper or required in this case. The inclusion of such a suspension in the
25 plea paperwork was clear error and constituted a mis-advisement to Mr. Simpson of the true

1 consequences of his plea. Mr. Simpson was misled about any required license suspension, and
2 his ensuing guilty plea was not knowing, intelligent or voluntary.

3 **E. The guilty plea form fails to state the jurisdiction in which the crime was**
4 **alleged to have been committed.**

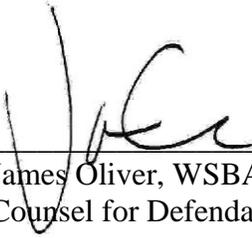
5 The location of the commission of the crime charged is an element of a crime that the
6 State must prove at trial. However, the elements of the crime with which defendant was
7 charged were not included in the plea form. There is no admission that the crimes occurred in
8 Pierce County nor that Pierce County has jurisdiction as the proper venue for prosecution of
9 this case. Exhibit 1.

10 **3. CONCLUSION**

11 Counsel for Mr. Simpson was ineffective in his representation of his client. Counsel
12 prepared and allowed Mr. Simpson to sign a plea form that was internally inconsistent and
13 misrepresented the recommended sentence, licensing consequences, and degree of offense.
14 Counsel failed to investigate the case and apparently failed to make arguments that could and
15 would have greatly reduced the sentence imposed in this case.
16

17 There is no conceivable reason or strategy that would justify counsel's failure to
18 perform an investigation, take measures to reduce Mr. Simpson's offender score, prepare
19 adequate plea paperwork, or negotiate the case in a strategically sound manner. Defense
20 counsel presented Mr. Simpson with a plea agreement containing numerous errors and
21 misstatements including the degree of a felony offense, the recommended sentence for offenses
22 and the erroneous license implications. Counsel's actions clearly and greatly prejudiced Mr.
23 Simpson in the resolution of this matter. The only proper cure is to allow Mr. Simpson to
24 withdraw his guilty plea.
25

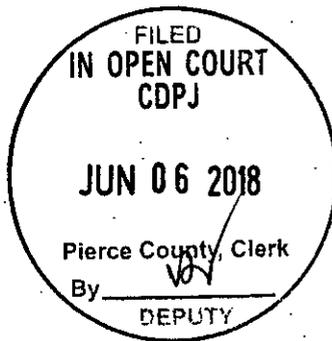
Respectfully submitted this 13th day of June, 2019.


James Oliver, WSBA # 29984
Counsel for Defendant

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EXHIBIT 1

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6/6/2018



**Superior Court of Washington
For Pierce County**

State of Washington

Plaintiff

vs.

Martavis TraMAIN Simpson
Defendant

No. 17-1-04830-7

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

1. My true name is: Martavis TraMAIN Simpson

2. My age is: 32

3. The last level of education I completed was 9th

4. I Have Been Informed and Fully Understand That:

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

(b) I am charged with the crime(s) of: Robbery 1st(x4) - Burglary 1; Assault 2nd (x2); UPOE 1; Unlawful Imprisonment 4th (x2); as set out in the Amended Information, dated 6/1/18, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. X M.S
(Defendant's initials)

The elements of this crime these crimes are as set out in the Amended Information, dated 6/1/18 a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. X M.S
(Defendant's initials)

Additional counts are addressed in Attachment "B"

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

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- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

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

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

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1-4	9+	129-171 mo.		18 mo.	Life, \$50K
25	9+	87-116 mo.		18 mo.	Life, \$50K
6-7	9+	63-84 mo.	72 mo.	18 mo.	10yrs.; \$20K
8	9+	87-116 mo.			10yrs.; \$20K
9	9+	51-60 mo.	36 mo.	12 mo.	5yrs.; 10K.

*The sentencing enhancement codes are: (RPh) Robbery of a pharmacy, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude. The following enhancements will run consecutively to all other parts of my entire sentence, including other enhancements and other counts: (F) Firearm, (D) Other deadly weapon, (V) VUCSA in protected zone, (JP) Juvenile present, (VH) Vehicular Homicide, see RCW 46.61.520, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (P16) Passenger(s) under age 16.

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

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- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months
Violent Offenses as defined by RCW 9.94A.030(54)	18 months

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

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

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

(g) The prosecuting attorney will make the following recommendation to the judge:

Agreed

Counts I-VI: 129 months 18 months c/c
 Count V: 116 months, 18 months c/c
 Count VI-VII 48 ~~(plus period of early release)~~ + 72 months flat on each count
 c/c conditions: Drug tests, Alcohol, NCO WVS, FIA Registration, LAB, \$500 CIPA, \$200 Fwy Fee, \$100 DNA
 Count VIII 116 months
 Count IX 24 + 36 months flat
 Total time 129 months + 15 yrs flat time
 Retention LOC \$500 Doc

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

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

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing

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Reform Act.

- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

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

(i)

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

(j)

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

(k)

Loss of voting rights - Acknowledgment, RCW 10.64.140: After conviction of a felony, or entry of a plea of guilty to a felony, your right to vote is immediately revoked and any existing voter registration is cancelled. Pursuant to RCW 29A.08.520, after you have completed all periods of incarceration imposed as a sentence, and after all community custody is completed and you are discharged by the Department of Corrections, your voting rights are automatically restored on a provisional basis. You must then reregister to be permitted to vote.

Failure to pay legal financial obligations, or comply with an agreed upon payment plan for those obligations, can result in your provisional voting right being revoked by the court.

Your right to vote may be fully restored by (i) a certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637; (ii) a court order issued by the sentencing court restoring the right, as provided in RCA 9.92.066; (iii) a final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or (iv) a certificate of restoration issued by the governor, as provided in RCW 9.96.020.

Voting before the right is either provisionally or fully restored is a class C felony under RCW 29A.84.660.

(l)

Government assistance may be suspended during any period of confinement.

(m)

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

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

shall initial all paragraphs that **DO APPLY**.

M.S. (P)

This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

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

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

___ (q) If this crime involves kidnapping involving a minor, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.

___ (r) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

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

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

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

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

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

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

MS (u)

If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

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

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

MS

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

(y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).

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(z) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. In addition to any other costs of the ignition interlock device, I will be required to pay an additional fee of \$20 per month.

(aa) For the crimes of vehicular homicide committed while under the influence of intoxicating liquor, or any drug defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor, or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.507(6)), or felony physical control under the influence (RCW 46.61.504(6)), the court shall add 12 months to the standard sentence range for each child passenger under the age of 16 who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(bb) For the crimes of felony driving under the influence of intoxicating liquor, or any drug, for vehicular homicide while under the influence of intoxicating liquor, or any drug, the court may order me to reimburse reasonable emergency response costs up to \$2,500 per incident.

(cc) The crime of _____ has a mandatory **minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].

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

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

Ms (ff)

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

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

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Apples
MS (circled)
(M)

I may be required to register as a felony firearm offender under RCW 9.41.330 and RCW 9.41.333. The specific registration requirements are in the "Felony Firearm Offender Registration" Attachment.

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

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

7. I plead guilty to count(s) 1-9 as charged in the Amended Information, dated 6/1/18. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

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

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

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

M.S

On 12/13/17 and 12/19/17 in Washington I, with the intent to commit theft took property from the presence of another (4 people) against their will and with the threat of force and was armed with a firearm. And on 12/19/17 in Washington I entered a building with the intent to commit a crime against property while armed a firearm.

And on 12/19/17 in Washington during the acts described above assaulted two people by threatening with a firearm. And on 12/19/17 in Washington I knowingly possessed a firearm and had previously been convicted of a serious offense and restrained (knowingly) three other people while armed with a firearm.

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

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

[Signature]
Defendant

6/6/2018 6016 0250

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

[Signature]
Prosecuting Attorney
LOUI KOZIMY 25570
Print Name WSBA No.

[Signature]
Defendant's Lawyer
Michael Mathey
Print Name WSBA No.

24754

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

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

Interpreter's Declaration: I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands. I have translated and interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

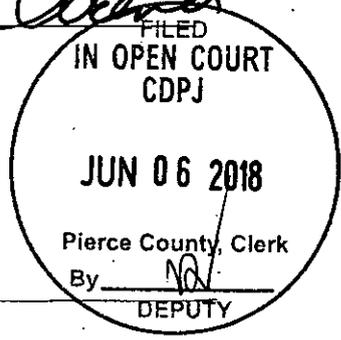
Signed at (city) _____, (state) _____, on (date) _____.

Interpreter Print Name

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

Dated: June 6, 2018

[Signature]
Judge



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Case Name State v. Martavis Simpson Cause No. 17-1-04830-7
D.O.B.: 7/29/1984

"Felonv Firearm Offender Registration" Attachment: Registration for Felony Firearm Offenders (If required, attach to the judgment and sentence.)

1. General Applicability and Requirements: The defendant is required to register because this crime involves a felony firearm offense as defined in RCW 9.41.010, and, after considering statutory factors, the court decided the defendant must register.

If the defendant resides in this state, the defendant must personally register with the county sheriff for the county of the defendant's residence, whether or not the defendant has a fixed residence.

The defendant must register with the county sheriff within 48-hours after the date:
(a) of release from custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility for this offense; or
(b) the court imposes the defendant's sentence, if the defendant receives a sentence that does not include confinement.

2. Register on Every 12-month Anniversary: The defendant must register with the county sheriff not later than 20 days after each 12-month anniversary of the date the defendant is first required to register as described in paragraph 1, above.

If the defendant is confined in any correctional institution, state institution or facility, or health care facility throughout the 20-day period after each 12-month anniversary, the defendant must personally appear before the county sheriff not later than 48-hours after release to verify and update, as appropriate, the defendant's registration.

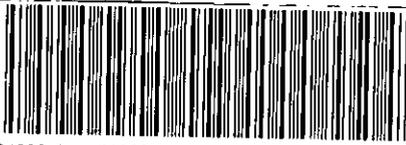
3. Change of Residence within State: If the defendant changes residence and the new residence address is in this state, the defendant must register with the sheriff of the county of the defendant's residence address not later than 48 hours after the change of address. If the defendant changes residence within a county, the defendant must update the current registration.

4. Length of Duty to Register: The defendant must continue to register for four years from the date the defendant is first required to register, as described in paragraph 1, above.

Date: 6/5/18

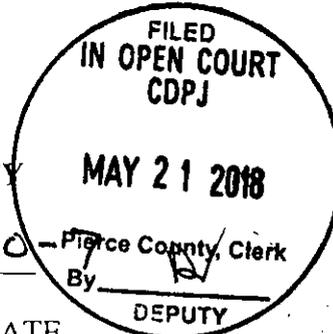

Defendant's Signature

EXHIBIT 2



17-1-04830-7 51333263 ORCTD 05-22-18

OF WASHINGTON FOR PIERCE COUNTY



STATE OF WASHINGTON, Plaintiff

Cause No. 17-1-04830 - Pierce County, Clerk By [Signature] DEPUTY

ORDER CONTINUING TRIAL DATE

vs: Martavis Simpson Defendant

Case Age: 148 Prior Continuances: 2
Charges: Burgl, Kidnapping, Rob
Assault 2

Co-Defendants: Yes No

This motion for continuance is brought by state defense counsel/defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or for administrative necessity.

Reasons: offer extended need time to consider offer given is 5/25 @ 5pm. If offer or refusal witness interviews needed.
 RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim. Defense Atty out of town

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO: 6/23/18 - 7/9/18

	DATE	TIME	COURTROOM	CASE AGE
<input checked="" type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>	<u>6/15/18</u>	<u>1:30</u>	<u>260</u>	
<input checked="" type="checkbox"/>	<u>7/17/18</u>	<u>8:30am</u>	<u>260</u>	<u>205</u>

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST AND THE POSSIBLE FILING OF ADDITIONAL CHARGES.

<input type="checkbox"/> TESTIMONY REQUESTED	FILING	RESPONSE	REPLY
3.5/3.6 MOTION BRIEF DUE DATES			

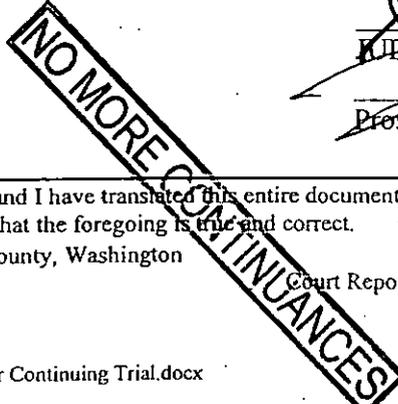
Expiration date is: 5/16/18 (Defendant's presence not required) TFT days remaining: 30

Trial Readiness Conference is a MANDATORY proceeding with trial counsel and MAY NOT be stricken without permission from the Court.

DONE IN OPEN COURT this 21 day of May, 20 18

Defendant Michael Matthey
Attorney for Defendant/Bar # 24754

JUDGE Stephanie [Signature]
Prosecuting Attorney/Bar # 30370



I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.
Pierce County, Washington
Interpreter/Certified/Qualified _____ Court Reporter _____

5/22/2018 5:01:12

EXHIBIT 3

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

STATE OF WASHINGTON, :
 :
 Plaintiff, :
 : Case No. 17-1-04830-7
 v. :
 : June 6, 2018
 MARTAVIS TRAMAIN SIMPSON :
 :
 Defendant. :
 _____ :

VERBATIM REPORT OF PROCEEDINGS

The above-entitled action came on for
PLEA HEARING
Before the Honorable Judge Stephanie A. Arend
Commencing at Morning Session

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN
OFFICIAL STENOGRAPHIC REPORTER, ENGAGED BY THE COURT,
WHO HAS PERSONALLY CERTIFIED THAT THIS TRANSCRIPT
REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS
REPORTED.

SUSAN A. ZIELIE, RMR, FCRR
CCR-WA No. 3226
Official Court Reporter
Pierce County Superior Court
930 Tacoma Avenue South
Tacoma, WA 98402
susan.zielie@piercecountywa.gov
PCSCReporter@gmail.com

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APPEARANCES:

**For the Plaintiff/State:
LORI KOOIMAN, ESQ.
Pierce County Prosecutor's Office**

**For the Defendant:
MICHAEL MALTBY, ESQ.
Public Defender's Office**

1 TACOMA, WASHINGTON; WEDNESDAY, JUNE 6, 2018

2 MORNING SESSION

3 MS. KOOIMAN: State of Washington versus
4 Martavis Simpson, Cause Number 17-1-04830-7. Lori
5 Kooiman for the State. The defendant is present, in
6 custody, is represented by Mr. Maltby. And we're here
7 for a change of plea. 09:52

8 I've handed forward to the Court the Amended
9 Information, and the basis for the Amended. I would
10 note for this Court that this plea and the Amended 09:53
11 Information is contingent upon the codefendant also
12 entering pleas of guilty. We have yet to set her date,
13 but should have it set this week or early next week to
14 have that happen.

15 If she does not enter the pleas, then this case 09:53
16 will come back on the Original Information, and the
17 defendant's plea of guilty will be withdrawn.

18 I would note that the Amended Information, we'd
19 ask the accept to accept it, of the two, the conditions
20 of the codefendant pleading and valid guilty pleas by 09:53
21 the defendant. Charges the defendant in this case
22 request three counts of robbery in the first degree; a
23 fourth count of the robbery in the first degree from a
24 separate incident; in addition one count of burglary in
25 the first degree; two counts of assault in the second 09:53

1 degree, firearm enhanced; unlawful possession of a
2 firearm in the first degree; and unlawful imprisonment,
3 firearm sentence enhanced.

4 We'd ask the Court to also, if the Court does
5 accept the pleas of guilty, to set over sentencing. 09:54

6 THE COURT: Okay. Did you get a date?

7 MR. MALTBY: We're asking for June 15th.

8 THE COURT: Mr. Maltby.

9 I think she's done.

10 MR. MALTBY: I'm sorry? Oh, okay. 09:54

11 THE COURT: I think she's done. It's your
12 turn.

13 MR. MALTBY: Good morning. Michael Maltby, for
14 the record, representing Martavis Simpson, who is
15 sitting on my right. 09:54

16 We would acknowledge receipt of the Amended
17 Information; waive a formal reading. Mr. Simpson
18 intends to plead guilty pursuant to the Statement on Plea
19 of Guilty before Your Honor, which I have gone over
20 line-by-line, section-by-section, and explained to Mr. 09:54
21 Simpson what he's charged with in the Amended
22 Information, what the elements of the offenses are, what
23 the sentencing ranges are with regard to the respective
24 counts, how they're derived, the rights he's giving up
25 by pleading guilty, the fact that this Information and 09:55

1 the charge that he's pleading guilty to contain numerous
2 strike offenses, the effect of the guilty plea and other
3 rights and privileges as outlined in that Statement of
4 Plea of Guilty. Gave Mr. Simpson an opportunity to ask
5 questions and have them answered.

09:55

6 I do believe he will be entering a voluntary,
7 intelligent, knowing plea to the amended charge.

8 THE COURT: Thank you.

9 The Court accepts the Amended Information based
10 on the prosecutor's statement.

09:55

11 Is your true and correct name Martavis Tramain
12 Simpson?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Is your date of birth July 29,
15 1984?

09:55

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand that you have a
18 right to remain silent today?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Are you willing to give up your
21 right to remain silent so you can answer my questions
22 and I can accept your plea?

09:55

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. I have a form here. It's
25 called Statement of Defendant on Plea of Guilty.

09:55

1 Did you go over this form with Mr. Maltby?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Did he answer all of your
4 questions?

5 THE DEFENDANT: Yes, ma'am. 09:55

6 THE COURT: Do you think you understand what it
7 says and how it applies to you?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. I'm going to ask you a bunch
10 of questions about a number of the paragraphs on this
11 form. If I ask you a question you're maybe not sure
12 what I am asking or you want to have conversation with
13 Mr. Maltby about what we're doing today, I'd like you to
14 interrupt me; okay? Okay. 09:56

15 I need you to always answer out loud for the
16 record. Thank you. 09:56

17 This states you have been charged by the Amended
18 Information, Count 1, robbery in the first degree; Count
19 2, robbery in the first degree; Count 3, robbery in the
20 first degree; Count 4, robbery in the first degree; 09:56
21 Count 5, robbery in the -- excuse me -- burglary in the
22 first degree; Count 6, assault in the second degree;
23 Count 7, assault in the second degree; Count 8, unlawful
24 possession of a firearm in the first degree; Count 9,
25 unlawful imprisonment. 09:56

1 It sets forth the elements of each those crimes
2 and states that they carry the following sentences:

3 Count 1 through 4 each carry a maximum sentence
4 of life imprisonment and a \$50,000 fine. Your standard
5 sentence range is 129 to 171 months, followed by 18
6 months of community custody. 09:57

7 Count 5 carries a maximum sentence of life in
8 prison and a \$50,000 fine. Your standard sentence range
9 is 87 to 116 months, followed by 18 months of community
10 custody. 09:57

11 Count 6 and 7 each carry a maximum of 10 years
12 in prison and a \$20,000 fine. Your standard sentence
13 range is 63 to 84 months, plus 72 months enhancements --
14 is that a firearm enhancement?

15 MS. KOOIMAN: On each one, yes, Your Honor,
16 because he is has the doubler. So each firearm on the
17 Class Bs, instead of being three years, it's six years. 09:57

18 THE COURT: So each of them have a 72-month
19 enhancement, plus 18 months of community custody.

20 Count 8 has a maximum sentence of 10 years in
21 prison and a \$20,000 fine. Your standard sentence range
22 is 87 to 116 months. 09:57

23 And Count 9 has a maximum sentence of five years
24 in prison and a \$10,000 fine. Your standard sentence
25 range is 51 to 60 months, 36 months of firearm 09:58

1 enhancement, and 12 months of community custody.

2 Do you understand the crimes with which you are
3 charged?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand the elements of
6 those crimes that the State would have the burden of
7 proving beyond a reasonable doubt if you chose to go to
8 trial?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And do you understand the sentence
11 that goes with each of those crimes?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Paragraph 5 of this form sets forth
14 your Constitutional rights. Those rights include the
15 right to a speedy trial; the right to confront witnesses
16 who would testify against you; the right to have your
17 own witnesses brought into court to testify on your
18 behalf; and the right to appeal guilty verdict following
19 trial.

20 Do you understand that when you plead guilty
21 you're giving up all of those rights?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Paragraph 6G sets forth the
24 recommendation of the prosecuting attorney for
25 sentencing.

1 Do you understand that the Court does not have
2 to go along with that recommendation?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And as long as Court sentences you
5 within your standard sentence range for each of the
6 various counts, plus enhancements that apply, and
7 community custody, you cannot appeal that sentence. Do
8 you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: That's one of those rights you're
11 giving up by pleading guilty. You understand?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Yes? Okay.

14 The recommendation is Counts 1 through -- says 6
15 but I think it means 4.

16 MS. KOOIMAN: It's 1 through 4, Your Honor.

17 THE COURT: 1 through 4, 129 months plus 18
18 months of community custody.

19 Count 5, 116 months, plus 18 months community
20 custody.

21 Counts 6 and 7, 48 months, plus 72 months flat
22 on each count. That's the weapon enhancement -- or
23 firearm enhancement, excuse me.

24 MS. KOOIMAN: There won't be any community
25 custody, Your Honor, because it will exceed the --

1 THE COURT: The statutory maximum?

2 MS. KOOIMAN: Right. And that's why it's
3 dropped down to 48 months instead of the standard range.

4 THE COURT: Count 8, 116 months.

5 Count 9, 24 -- I assume that's 24 months, plus 10:00
6 36 months of enhancement, for a total time of -- is this
7 right -- 129 months, plus 15 years flat time?

8 MS. KOOIMAN: That's correct, Your Honor. It's
9 the 129 months from the Count 1 through 4 for the rob
10 1s, and that's the standard range time that he will 10:00
11 have. And it will be followed with the 15 years of flat
12 time from the three enhancements. So it's a total of 25
13 years.

14 THE COURT: Okay.

15 MS. KOOIMAN: Or just above 25. 10:00

16 THE COURT: Plus 18 months of community
17 custody, conditioned upon a drug and alcohol evaluation;
18 no contact order with the victims; felony -- I assume
19 this is a felony firearm registration requirement; law
20 abiding behavior; and pay legal financial obligations. 10:01

21 Did I say all that correctly?

22 MS. KOOIMAN: Yep.

23 THE COURT: Any questions about any part of
24 that recommendation?

25 THE DEFENDANT: No, ma'am. 10:01

1 THE COURT: And I spoke about community custody
2 several times; right? Did Mr. Maltby explain to you and
3 do you understand what I mean when I say community
4 custody?

5 THE DEFENDANT: Yes, ma'am. 10:01

6 THE COURT: When community custody is part of a
7 person's sentence, if the Court is to find that you have
8 a chemical dependency that contributed to the offense,
9 the Court can require you to participate in a drug or
10 alcohol treatment program as part of your sentence. Do 10:01
11 you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that if you are
14 not a citizen of the United States by pleading guilty to
15 a crime it may have immigration consequences? 10:02

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you understand you may not own,
18 possess or have under your control any firearms unless
19 your right to do so is restored by a court of record?

20 THE DEFENDANT: Yes, ma'am. 10:02

21 THE COURT: Do you understand you must
22 immediately surrender any concealed pistol license?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have one?

25 THE DEFENDANT: No. No, ma'am. 10:02

1 THE COURT: Do you understand you're losing
2 your right to vote?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand that government
5 assistance may be suspended during any period of
6 confinement? 10:02

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand that you're going
9 to be required to provide a biological sample for a DNA
10 identification analysis? 10:02

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you know that you may be charged
13 \$100 for that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that this is a 10:02
16 most serious offense or what we call a strike offense?
17 And if you have at least two prior convictions for most
18 serious offenses, whether in this state, in federal
19 court, or elsewhere, the crime for which you are charged
20 carries a mandatory sentence of life imprisonment 10:02
21 without the possibility of parole?

22 THE DEFENDANT: Yes, ma'am.

23 MS. KOOIMAN: Your Honor, just for the record,
24 this is the second strike.

25 THE COURT: Okay. And it's Counts 1 through 4 10:03

1 that are the strike; right?

2 MS. KOOIMAN: They're all strikes.

3 THE COURT: All of them are strikes?

4 MS. KOOIMAN: All except for the UPOF.

5 Assault 2, firearm enhanced is a strike. Burg 10:03

6 1 is a strike. Rob 1 is a strike. Unlawful

7 imprisonment, because it's firearm enhanced, is a

8 strike. So the only one that's not is the UPOF.

9 THE COURT: And there was a vehicle used?

10 MS. KOOIMAN: There was a get-away vehicle, 10:03

11 yes.

12 THE COURT: So because a motor vehicle was used

13 in the commission of a felony, your driver's license or

14 privilege to drive will be suspended or revoked by the

15 Department of Licensing. Do you understand that? 10:03

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. So you are pleading guilty

18 to a -- and again, it's a firearm enhancement, not a

19 deadly weapon?

20 MS. KOOIMAN: That's correct. 10:03

21 THE COURT: Well, okay.

22 Deadly weapon firearm or sexual motivation

23 enhancements are mandatory. They must or served in

24 total confinement, and they must run consecutively to

25 any other sentence and to any other deadly weapon 10:04

1 firearm or sexual motivation enhancements. Do you
2 understand all of that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: There's a request that you be
5 required to register as a felony firearm offender when
6 you get out of prison. And that's this one-page
7 attachment here. Did you go over that attachment with
8 Mr. Maltby?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. And so at sentencing --
11 which we're not doing today -- but at sentencing, the
12 Court has to consider three statutory factors and then
13 anything else that either the State or the defense would
14 like to bring to the Court's attention.

15 The statutory factors are your criminal
16 history, your propensity for violence, and whether or
17 not you were previously found not guilty by reason of
18 insanity. And then again, any other factors that either
19 the State or the defense would like to bring to the
20 sentencing judge's attention. You understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: So if the Court exercises its
23 discretion and decides that you will be required to
24 register as a felony firearm offender, when you get out
25 of prison, you must do that, according to this

1 attachment. And if you don't do that, the State can
2 file another charge against you, another criminal charge
3 against you for failing to register. Do you understand
4 that?

5 THE DEFENDANT: Yes, ma'am. 10:05

6 THE COURT: Okay. In paragraph 11 of this form
7 there is a handwritten statement that reads:

8 On December 13, 2017, and December 19, 2017, in
9 Washington, I with the intent to commit theft took
10 property from the presence of another, four people,
11 against their will, and with the threat and force and
12 was armed with a firearm; 10:05

13 And on December 19, '17, in Washington, I
14 entered a building with the intent to commit a crime
15 against property while armed with a firearm; 10:05

16 And on December 19, 2017, in Washington, during
17 the acts described above, assaulted two people by
18 threatening them with a firearm;

19 And on December 19, 2017, in Washington, I
20 knowingly possessed a firearm, and had previously been
21 convicted of a serious offense and restrained knowingly
22 three other people while armed with a firearm. 10:06

23 Is that a true and correct statement of what
24 you did that makes you guilty of all of these crimes?

25 THE DEFENDANT: Yes, ma'am. 10:06

1 THE COURT: Are you entering your plea today
2 freely and voluntarily?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Is anybody forcing or threatening
5 you in any way in order to get you to enter a guilty
6 plea? 10:06

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Anyone promising you anything in
9 order to get you to enter a guilty plea?

10 THE DEFENDANT: No, ma'am. 10:06

11 THE COURT: And you understood, at the
12 beginning of this, Ms. KOOIMAN said that she is
13 requesting that the Court conditionally accept your
14 plea, because it's conditioned upon the codefendant also
15 entering a guilty plea. You understand that? 10:07

16 So if the codefendant does not enter a guilty
17 plea, the Court will put back in the position of
18 being -- not having pled guilty but being ready for
19 trial. You understand that?

20 THE DEFENDANT: Yes, ma'am. 10:07

21 THE COURT: Okay. So the Court finds that the
22 plea is being entered into freely and voluntarily; that
23 he understands the rights he's giving up; and the
24 consequences of his plea.

25 In response to Count 1, robbery in the first 10:07

1 degree, what is your plea?

2 THE DEFENDANT: Guilty, ma'am.

3 THE COURT: Count 2, robbery in the first
4 degree, what is your plea?

5 THE DEFENDANT: Guilty. 10:07

6 THE COURT: Count 3, robbery in the first
7 degree, what is your plea?

8 THE DEFENDANT: Guilty.

9 THE COURT: Count 4, robbery in the first
10 degree, what is your plea? 10:07

11 THE DEFENDANT: Guilty.

12 THE COURT: Count 5, burglary in the first
13 degree, what is your plea?

14 THE DEFENDANT: Guilty.

15 THE COURT: Count 6, assault in the second
16 degree while armed with a firearm, adding additional
17 time to the presumptive sentence, what is your plea? 10:07

18 THE DEFENDANT: Guilty.

19 THE COURT: Count 7, assault in the second
20 degree while armed with a firearm, and adding additional
21 time to the presumptive sentence, what is your plea? 10:08

22 THE DEFENDANT: Guilty.

23 THE COURT: Count 8, unlawful possession of a
24 firearm in the first degree, what is your plea?

25 THE DEFENDANT: Guilty. 10:08

1 THE COURT: Count 9, unlawful imprisonment
2 while armed with firearm and adding additional time to
3 the presumptive sentence, what is your plea?

4 THE DEFENDANT: Guilty.

5 THE COURT: Thank you.

6 Did we come up with a date for sentencing?

7 We're going to have him held without bail.

8 JUDICIAL ASSISTANT: Mr. Maltby has that and is
9 handing it forward.

10 THE COURT: We are setting the sentencing over
11 to June 15 at 8:30 in the morning. Thank you.

12 MS. KOOIMAN: Thank you, Your Honor.

13 [PROCEEDINGS CONCLUDED]

14
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10:08

10:09

CERTIFICATE OF REPORTER

I, SUSAN A. ZIELIE,

Official Court Reporter for the Superior Court
of Pierce County, do hereby certify that I reported in
my official capacity, by stenographic shorthand, the
proceedings had and testimony adduced upon the motion
hearing in the case of MARTAVIS TRAMAIN SIMPSON, Cause
Number 17-1-04830-7.

I further certify that the foregoing pages
constitute the official transcript of said proceedings,
as taken from my stenographic notes, to the best of my
ability.

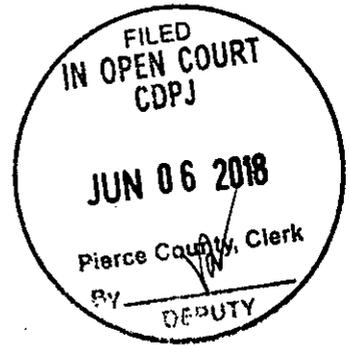
In witness whereof, I have hereto subscribed my
name this 9th day of June, 2019.

/S/ Susan A. Zielie, RMR, FCRR

Susan A. Zielie, RMR, FCRR

EXHIBIT 4

0252
 16016
 6/6/2018



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
 Plaintiff,
 vs.
MARTAVIS TRAMAIN SIMPSON,
 Defendant.

CAUSE NO. 17-1-04830-7
STIPULATION ON PRIOR RECORD AND OFFENDER SCORE (Plea of Guilty)

Upon the entry of a plea of guilty in the above cause number, charge ROBBERY IN THE FIRST DEGREE; BURGLARY IN THE FIRST DEGREE; ASSAULT IN THE SECOND DEGREE (FASE); ASSAULT IN THE SECOND DEGREE (FASE); UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE; UNLAWFUL IMPRISONMENT (FASE), the defendant MARTAVIS TRAMAIN SIMPSON, hereby stipulates that the following prior convictions are HIS complete criminal history, are correct and that HE is the person named in the convictions. The defendant further stipulates that any out-of-state convictions listed below are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525:

ALL CURRENT CONVICTIONS, THIS CAUSE NUMBER

Count	Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	A. or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
I	ROBBERY I		PIERCE, WA	12/19/17	A	V	A	CT. I: N/A CT. II: 2 CT. III: 2 CT. IV: 2 CT. V: 2 CT. VI: 2 CT. VII: 2 CT. VIII: 1 CT. IX: 1	FELONY
II	ROBBERY I		PIERCE, WA	12/19/17	A	V	A	CT. I: 2 CT. II: N/A CT. III: 2 CT. IV: 2 CT. V: 2 CT. VI: 2 CT. VII: 2	FELONY

STIPULATION ON PRIOR RECORD AND OFFENDER SCORE -1
 jsprior-plea dot

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

III	ROBBERY I		PIERCE, WA	12/19/17	A	V	A	CT. VIII: 1 CT. IX: 1	FELONY
IV	ROBBERY I		PIERCE, WA	12/13/17	A	V	A	CT. I: 2 CT. II: 2 CT. III: N/A CT. IV: 2 CT. V: 2 CT. VI: 2 CT. VII: 2 CT. VIII: 1 CT. IX: 1	FELONY
V	BURGL		PIERCE, WA	12/19/17	A	V	A	CT. I: 2 CT. II: 2 CT. III: 2 CT. IV: 2 CT. V: N/A CT. VI: 2 CT. VII: 2 CT. VIII: 1 CT. IX: 1	FELONY
VI	ASSAULT 2 (FASE)		PIERCE, WA	12/19/17	A	V	B	CT. I: 2 CT. II: 2 CT. III: 2 CT. IV: 2 CT. V: 2 CT. VI: N/A CT. VII: 2 CT. VIII: 1 CT. IX: 1	FELONY
VII	ASSAULT 2 (FASE)		PIERCE, WA	12/19/17	A	V	B	CT. I: 2 CT. II: 2 CT. III: 2 CT. IV: 2 CT. V: 2 CT. VI: 2 CT. VII: N/A CT. VIII: 1 CT. IX: 1	FELONY
VIII	UPOPI		PIERCE, WA	12/19/17	A	NV	B	CT. I: 1 CT. II: 1 CT. III: 1 CT. IV: 1 CT. V: 1 CT. VI: 1 CT. VII: 1 CT. VIII: N/A CT. IX: 1	FELONY
IX	UNLAW IMPRIS		PIERCE, WA	12/19/17	A	NV	C	CT. I: 1 CT. II: 1 CT. III: 1 CT. IV: 1 CT. V: 1 CT. VI: 1 CT. VII: 1 CT. VIII: 1 CT. IX: N/A	FELONY

The defendant committed a current offense while on community placement (adds one point to score).
RCW 9A.525.

OTHER CURRENT CONVICTIONS, OTHER CAUSE NUMBERS (if any)

None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
N/A								

PRIOR CONVICTIONS INCLUDED IN OFFENDER SCORE (if any)

None Known or Claimed, or:

Crime	Date of Sentence	Sentencing Court	Date of Crime	A or J Adult Juv	Type of Crime	Class	Score by Ct	Felony or Misdemeanor
THEFT 1	01/22/01	PIERCE, WA	07/09/00	J	NV	B	5	FELONY
ATTEMPTED ELUDE	01/22/01	PIERCE, WA	07/09/00	J	NV	C	5	FELONY
ATTEMPTED VEH PROWL 2	11/14/00	PIERCE, WA	07/09/00	J	MISD			MISD
UPCS	01/05/01	PIERCE, WA	10/01/00	J	MISD			MISD
ASSAULT 2 (FASE)	02/5/02	PIERCE, WA	06/26/01	A	V	B	2	FELONY
DRIVE BY SHOOTING	02/5/02	PIERCE, WA	06/26/01	A	V	B	2	FELONY
UPFA 2	09/29/09	PIERCE, WA	06/15/09	A	NV	D	1	FELONY
NVOL		PIERCE, WA	12/30/00	A	MISD			MISD
ATT PSP 2	02/05/02	PIERCE, WA	10/12/01	A	MISD			MISD
OBSTRUCTION	09/29/09	PIERCE, WA	06/15/09	A	MISD			MISD

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

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
II	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
III	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
IV	9+	IX	129 - 171 MOS		129 - 171 MOS	LIFE/ \$50,000
V	9+	VII	87 - 116 MOS		87 - 116 MOS	LIFE/ \$50,000
VI	9+	IV	63 - 84 MOS	72 MOS	135 - 156 MOS	10 YRS/ \$20,000
VII	9+	IV	63 - 84 MOS	72 MOS	135 - 156 MOS	10 YRS/ \$20,000
VIII	9+	VII	87 - 116 MOS		87 - 116 MOS	10 YRS/ \$20,000
IX	9+	III	51 - 60 MOS	36 MOS	87 - 96 MOS	5 YRS/ \$10,000

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

The defendant further stipulates:

- Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any

such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.

- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty;
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated. If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

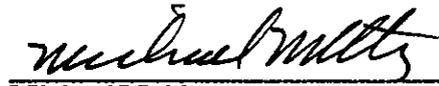
Stipulated to this on the 6 day of June, 2018.



 LORI KOOLMAN
 Deputy Prosecuting Attorney
 WSB# 30370



 MARTAVIS TRAMAIN SIMPSON



 Michael Maltby
 WSB# 24754

mrp

August 22 2019 9:07 AM

KEVIN STOCK
COUNTY CLERK
NO: 17-1-04830-7

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6 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

7 STATE OF WASHINGTON,

8 Plaintiff,

CAUSE NO. 17-1-04830-7

9 vs.

10 MARTAVIS TRAMAIN SIMPSON,

STATE'S RESPONSE TO MOTION TO
WITHDRAW GUILTY PLEA

11 Defendant.

12 The state moves the court to transfer this motion to the Court of Appeals under CrR
13 7.8(c)(2). This is based upon the following statement of facts and memorandum of law. The
14 defendant has failed to make a substantial showing that he is entitled to relief.

15 ***FACTS***

16 The defendant was originally charged on December 17, 2018 with eleven counts
17 including three counts of Kidnapping in the First Degree, three counts of Robbery in the First
18 Degree, three counts of Assault in the Second Degree, Burglary in the First Degree and Unlawful
19 Possession of a Firearm in the First Degree (UPOF 1). All counts except for the UPOF 1, also
20 carried a firearm sentencing enhancement (FASE). *Defendant's Ex. 4*. Each FASE on a class A
21 offense is normally 60 months flat time. However, the defendant was facing 120 months
22 (double) flat time on each class A offense due to a previous assault 2 conviction which included
23 a FASE. *Defendant's Ex. 4, p.3, line 11*. The FASE would also be doubled for lesser offenses.
24 In other words, the defendant was looking at a sentence of eighty-eight (88) years of flat time,
25

1 just for the FASEs, as charged. The Kidnapping in the First Degree are serious violent offenses
2 which would be subject to being served consecutively under RCW 9.94A.589(1)(b) if there were
3 multiple convictions.

4 On June 6, 2018, the defendant entered a plea to an amended information with nine
5 counts including counts I-IV (Robbery in the First Degree), count V (Burglary in the First
6 Degree), counts VI-VII (Assault in the Second Degree), count VIII (UPOF 1) and count IX
7 (Unlawful Imprisonment). Count VI and VII have FASE. Count IX also has a FASE. The
8 FASE time is fifteen (15) years. *Defendant's Ex. 4, Amended Information.*

9 The prosecutor's recommendation was listed as 129 months plus 15 years (180 months)
10 flat time. The defendant was sentenced on June 15, 2018, to 129 months plus 180 months of flat
11 time. *Defendant's Ex. 1, page 4, paragraph (g).* Further, the Prosecutor's Statement Regarding
12 Amended Information stated "[A]lthough this resolution is a significant reduction in time as the
13 defendant was facing serious violent offense that would run consecutive in addition to
14 enhancement flat time of over 70 years, he is agreeing to essentially a 25 year sentence."
15 *Defendant's Exhibit 4, Prosecutor's Statement Regarding Amended Information, dated June 6,*
16 *2018, p.1, lines 17-20.*

17
18 The defendant filed his motion to withdraw the guilty plea on June 13, 2019.

19
20 **MEMORANDUM OF LAW**

21 The defendant's motion is based on CrR 7.8. This motion was not filed as a direct appeal
22 and is a collateral attack on the judgement and sentence. *RCW 10.73.090.* Constitutional and
23 non-constitutional errors may be raised in a collateral challenge. *In re Elmore*, 162 Wash.2d
24 236, 251 (2007). The petitioner has the burden to show actual prejudice as to a constitutional
25

1 error. The petitioner has the burden to show a fundamental defect resulting in a “complete
2 miscarriage of justice” as to a non-constitutional error.

3 CrR 7.8(c)(2) states that a court:

4 [S]hall transfer to the Court of Appeals for consideration as a personal restraint
5 petition unless the court determines that the motion is not barred by RCW
6 10.73.090 and either (i) the defendant has made a substantial showing that he or
7 she is entitled to relief or (ii) resolution of the motion will require a factual
8 hearing.

9 The defendant claims that his plea was involuntary based on ineffective assistance of
10 counsel. This would be a constitutional error.

11 A guilty plea may be withdrawn only when it appears that the withdrawal is necessary to
12 correct a manifest injustice. *CrR 4.2(f); State v. Taylor*, 83 Wn.2d 594, 596 (1974). A manifest
13 injustice is “obvious, directly observable, overt, not obscure.” *Id.* When a defendant completes
14 a plea statement and admits to reading, understanding, and signing it, this creates a strong
15 presumption that the plea is voluntary. *State v. Perez*, 33 Wash.App. 258, 261 (1982) cited by
16 *State v. Smith*, 134 Wash.2d 849, 852 (1998). The defendant must present some evidence of
17 involuntariness beyond his self-serving allegations. *State v. Osbornes*, 102 Wn.2d 87, 97 (1984).
18 “The timing of the motion may be considered by the court together with all other evidence
19 bearing on the issue.” *State v. A.N.J.*, 168 Wash.2d 91, 107 (2010).

20 The sixth amendment to U.S. Constitution guarantees a criminal defendant the right “to
21 have the assistance of counsel for his defense.” This includes the effective assistance of counsel.
22 *Strickland v. Washington*, 466 U.S. 668, 686 104 S. Ct. 2052, 2063, 80 L.Ed.2d 674 (1984).

23 In *Strickland*, the U.S. Supreme Court created a two-prong test to determine if assistance
24 of counsel is ineffective. Both prongs must be met by the defendant to show ineffective
25 assistance of counsel. 466 U.S. at 686.

1 The two prongs are one, the defendant must show the counsel's performance was
2 deficient (performance); and two, the defendant must show that the deficient performance
3 prejudiced the defense (prejudice). 466 U.S. at 687. The court may begin its review with an
4 examination of either prong. If the court finds the prejudice prong is not shown by the
5 defendant, the court does not need to proceed to a review of the performance prong. 466 U.S. at
6 697. This test was first adopted in *State v. Jeffries*, 105 Wash.2d 398, 418 (1986). It has been
7 reaffirmed as recently as 2018 in *State v. Buckman*, 190 Wash.2d 51, 62 (2018).

8 *Buckman* contains an extensive review of the caselaw since *Strickland*, outlining that
9 constitutional error and actual prejudice are required on collateral review. 190 Wash.2d at 61.
10 The state supreme court held that even if the court finds a constitutional error, the defendant
11 must further show "that the error more likely than not resulted in a different outcome at the
12 guilty plea stage." 190 Wash.2d at 71. *Buckman* failed to do this.

13
14 In *Buckman*, the seventeen-year-old defendant pled guilty to second degree rape of a
15 child. 190 Wash.2d at 54. He was erroneously told that the maximum penalty was life in prison
16 (as a juvenile, he could not receive life in prison) and that he faced community custody for the
17 rest of his life (it was three years). 190 Wash.2d at 59-60. Buckman was ultimately sentenced to
18 a SSOSA (Special Sexual Offender's Sentencing Alternative), six months in jail and a lifetime of
19 community custody. 190 Wash.2d at 56. Buckman was ultimately violated and sentenced to 114
20 months. His attorney realized the error and filed a motion to withdraw his plea. *Id.*

21 The state supreme court found the two errors to be constitutional errors, and the plea
22 involuntary. 190 Wash.2d at 71. However, the defendant was not allowed to withdraw his plea
23 because he failed to "show that the error more likely than not resulted in a different outcome at
24 the guilty plea stage. *Id.*

1 During his plea colloquy, the defendant acknowledged to the court that he had gone over
2 the plea form with his attorney, that he had answered all of his questions and that he understood
3 what it said and how it applied to him. *Defendant's Ex. 3, Plea Hearing; p.6, lines 1-8.* The
4 court then went through the charges in the amended information noting that counts one through
5 four carried a sentence range of 129 to 171 months. *Ex. 3; p.7, lines 4-6.* Count five was 87 to
6 116 months and counts six and seven were 63 to 84 months with counts six and seven having a
7 "doubled" firearm sentencing enhancement of 72 months on each count (12 years). *Ex. 3; p.7,*
8 *lines 7-19.* Count eight was 87 to 116 months and count nine was 51 to 60 months with 36
9 months (3 years) for a firearm sentencing enhancement. *Ex. 3; p.7; lines 20-25 to p. 8; line 1.*

10 The court then went through the prosecutor's recommendation, noting that the
11 prosecutor's recommendation for counts 1-4 were 129 months. *Ex. 3, p. 9, lines 14-18.* The
12 court and prosecutor specifically noted the recommendation was for counts 1-4, and not 1-6 as
13 mistakenly noted in the plea form. *Id.* The court then noted that the recommendation was for
14 129 months plus the fifteen months of flat time. The prosecutor also repeated this
15 recommendation and the defendant said he had no "questions about any part of that
16 recommendation." *Ex. 3, p.10, lines.* The court then went over the defendant's statement which
17 he acknowledged, saying it was true and correct. *Ex. 3, p.15, lines 6-25.* The defendant said he
18 was entering his plea "freely and voluntarily" and no one had forced or threatened him in any
19 way or made any promises to him. *Ex. 3, p.16, lines 1-10.* The court then found that he had
20 entered into the plea freely and voluntarily, that he understood the rights he was giving up and
21 the consequences of his plea. *Ex. 3, p. 16, lines 21-24.*

22 The defendant admitted to reading, understanding and signing the plea document. This
23 creates a strong presumption that the plea is voluntary, *State v. Perez, 33 Wash.App. 258, 261*
24
25

1 (1982). The defense wants to claim that the recommendation by the prosecutor was confusing
2 and that he could not understand it. The only possible confusion would be on page 4 of 10 in the
3 plea agreement which was listed counts 1-4 as 1-6 with a mistake in the writing of roman
4 numeral 4 by transposing it. However, the court clearly noted and clarified the transposition
5 error on the record, and the defendant said he had no questions about it. *Ex. 3, Plea Hearing, p.9,*
6 *line 14 to p.10, line 25.*

7 There is no evidence that the plea was not voluntary. There is no error. Further, the
8 defendant must show actual prejudice. He must show a “reasonable probability” that but for the
9 error, “he would not have pleaded guilty and would have insisted on going to trial.” *In re*
10 *Personal Restraint of Riley*, 122 Wash.2d at 780-81 (citing *Hill v. Lockhart*, 474 U.S. at 59). A
11 bare allegation that he would not have pleaded guilty is not enough. *Riley*, 122 Wash.2d at 69-
12 70. The defendant received a favorable plea deal at the low end of reduced charges with several
13 firearm sentencing enhancements dropped. *See Defendant’s Ex.4, Prosecutor’s Statement*
14 *Regarding Amended Information*. The record shows that he benefited from the plea as opposed
15 to being prejudiced in some way. Even if there was error, no rational person in his situation
16 would have insisted on going to trial instead of entering a plea of guilty.

17
18 *THERE IS NO EVIDENCE THAT DEFENSE COUNSEL FAILED TO*
19 *INTERVIEW WITNESSES AND VICTIMS*

20 Nothing in the record indicates what defense counsel’s investigation was, or was not,
21 prior to the entry of the plea. Caselaw cited by the defendant as to error for failure to investigate
22 involves the situation when a defendant goes to trial. *State v. Visitacion*, 55 Wash.App. 166, 168
23 (1989). *Visitacion* included an expert affidavit from an experienced criminal defense attorney to
24 support his claim. 55 Wash.App. at 173. Even with this finding, the court of appeals sent the
25 case back to the trial court to determine if witnesses, who gave differing statements to police,

1 could be located and made to appear at trial. Further, the trial court would have to determine if
2 the omissions by counsel would have prejudiced him. 55Wash.App. at 174-75.

3 *State v. A.N.J.*, 168 Wash.2d 91, 120 did involve a guilty plea which was made on
4 incorrect information about the sentencing consequences. But this involved defense counsel
5 who said he spent less than two hours with a juvenile charged with a sex offense. 55 Wash.2d at
6 103. Additionally, the plea clearly showed there was confusion as to the sex registration
7 requirement and the defendant promptly filed a motion to withdraw his guilty plea. 55 Wash.2d
8 at 120. Further, the factual basis for the plea was insufficient to constitute a crime. *Id.* These
9 circumstances are not present in this case.

10 The defendant has made no specific allegations of lack of investigation by his counsel or
11 shown proof of a lack of investigation. There is nothing in the record to support his claim of
12 error. Further, there is no showing of actual prejudice. Nothing in the record indicates that a
13 reasonable person in his position would have declined to have pled guilty based on a substantial
14 reduction in the charges. Finally, based on the declaration of probable cause, the case appears to
15 be strong with the defendant being found in the suspect vehicle, with the stolen property and
16 with multiple firearms. This resolution was the result of lengthy negotiations which produced a
17 favorable agreement for the defendant. The agreement was fully disclosed to the defendant and
18 the court imposed a sentence consistent with the recommendation of the parties.

19
20 *DEFENDANT'S STIPULATION TO HIS OFFENDER SCORE IS NOT ERROR*

21 The defendant scored as a 9+ on all counts. The defendant signed a stipulation on prior
22 record and offender score at the plea of guilty. *Defense Exhibit 4*. His prior history includes
23 juvenile convictions for theft 1 and eluding, and adult convictions for assault 2 with a FASE,
24 drive by shooting and unlawful possession of a firearm in the second degree. The stipulation
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1 specifically stated that none of the convictions “washed out” unless specifically noted and that
2 “the defendant further waives any right to appeal or seek redress via any collateral attack based
3 upon the above stated criminal history and/or offender score calculation.” *Ex. 4., p.4, lines 9-10.*

4 Even if one assumes that the defendant did not stipulate to his criminal history as outlined
5 in his signed statement, his criminal history would still score as a 9+ (assuming the assault 2
6 convictions would be same course of conduct).

7 The defense appears mistaken in asserting that the antimerger statute does not prevent the
8 burglary from being the same course of conduct. *Dunbar*, 59 Wn.App. 447 (1990) has been
9 overruled by *State v. Lessley*, 118 Wash.2d 773 (1992). *Lessley* holds that the antimerger statute
10 gives the sentencing judge discretion to punish for both crimes, even if they are of the same
11 course of conduct. 118 Wash.2d 781. The unlawful possession of a firearm (UPOF) charge also
12 does not count as the same course of conduct when a defendant commits a crime and is also a
13 felon in possession of a firearm. *State v. McGrew*, 156 Wash.App. 546, 555 (2010) (“McGrew’s
14 unlawful possession of a firearm conviction and unlawful delivery of a controlled substance
15 conviction, with a firearm enhancement, were not the the ‘same criminal conduct’...” No case
16 law was found to support the merge of unlawful possession of firearm convictions with other
17 offenses unless it was a multiple firearm fact pattern. The defendant cites no support for this
18 proposition.
19

20 The defense claim that the unlawful imprisonment merges is also without support.
21 Caselaw holds that kidnapping can never merge with robbery. *State v. Berg*, 181 Wash.2d 857,
22 872 (2014). It follows that a similar rule would follow with unlawful imprisonment, a lesser
23 included offense of kidnapping. For purposes of merger, unlawful imprisonment is considered as
24 a lesser of kidnapping. *State v. Davis*, 177 Wash.App. 454, 461 (2013).
25

1 If this court finds that the stipulation of the parties to the defendant's criminal history was
2 not sufficient to show that he agreed to the offender score as listed, his only arguable conviction
3 would be that the two assault 2 convictions would be the same course of conduct as the robbery 1
4 convictions. Even if this was the case, he still scores as a 9+ on all counts.

5 For example, the defendant's prior history includes two juvenile offenses which count as
6 a half point, a UPOF which counts as 1, and an assault 2 with a FASE and drive by which count
7 as 1 for non-violent offenses, and as 2 for violent offenses (Total 4 for non-violent offenses and 6
8 for violent offenses). His other currents include the four counts of robbery in the first degree,
9 burglary in the first degree, (best case scenario, exclude assault 2 counts from scoring), UPOF
10 and unlawful imprisonment. The violent offenses, robbery 1s and the burglary 1, score at 16
11 points (10-other current offenses plus 6 for prior history). The non-violent offenses, UPOF and
12 unlawful imprisonment, score at 10 points (6 for other current offenses plus 4 for his prior
13 history).
14

15 The documents would indicate that the parties had agreed to treat the charges as separate
16 courses of conduct in order to reach a negotiated, significantly reduced, plea resolution.
17 Additionally, even if the assault 2 convictions are the same course of conduct, the FASEs would
18 still run consecutively to the sentence. *State v. Mandanas*, 168 Wash.2d 84, 90 (2010) (A
19 "sentencing court must impose multiple firearm enhancements where a defendant is convicted of
20 multiple enhancement-eligible offenses that amount to the same criminal conduct under the
21 sentencing statute.") If merger applied, it is not if the FASE would still apply. However,, the
22 defendant's negotiated plea and stipulation to criminal history, show that this was the result of a
23 negotiated, favorable plea bargain. The doubled FASE enhancements were attached to two class
24 B and one class C felony. The class A FASE would have been ten years each on each
25

1 Kidnapping in the First Degree. These offense would also have been subject to having their
2 sentences run consecutively because Kidnapping in the First Degree are serious violent offenses.
3 This case is similar to *State v. Finstad*, 177 Wash.2d 501 (2013). *Finstad* also involved a
4 collateral challenge to an agreed, favorable plea resolution. However, the parties failed to
5 include an exceptional sentence finding to justify the consecutive time as contemplated by the
6 agreed recommendation of the parties. *Id.* at 503. *Finstad* did not appeal, and three years later,
7 filed a personal restraint petition. *Finstad* argued that the judgment and sentences were not valid
8 on their face. The state argued, and the supreme court agreed, that despite making the proper
9 findings for an exceptional sentence, the defendant had not shown that he was entitled to relief
10 “because he has not met his burden of showing he was prejudiced by the particular flaw.”
11 *Finstad*, 177 Wash.2d. at 504.

12
13 *Finstad* held, that if this was found to be a constitutional error, the defendant would have
14 to show “actual and substantial prejudice flowing from that error.” The court found that there
15 was not actual and substantial prejudice because of the significant amount of time that he was
16 facing as charged and with the addition of a possible aggravator. 177 Wash.2d at 509. The court
17 found that the defendant was trying to use a mutual mistake in order to withdraw a guilty plea.
18 *Id.*

19 The plea and documents support this same argument in this case. This was a proper
20 stipulation and negotiated resolution in an effort to get a favorable plea bargain for the defendant.
21 This is supported by the stipulation to his prior record and by the prosecutor’s statement
22 regarding the amended information. The parties agreed and waived any challenge:s in order to get
23 to a negotiated sentencing resolution. Most importantly, the defendant has not shown actual
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1 prejudice, or any evidence that a reasonable person in his shoes would not have gone forward
2 with this favorable resolution.

3 *THE REVOCATION OF THE DEFENDANT'S LICENSE REVOCATION WAS*
4 *NEVER IMPOSED BUT WOULD HAVE BEEN PROPER*

5 The defendant states that the guilty plea form improperly advises him that he will lose his
6 license as a result of his plea. First, the sentencing court did not impose the license revocation,
7 so there is no constitutional error and there is no actual prejudice to the defendant. Second,
8 license revocation would have been proper in this case.

9 RCW 46.20.285(4) says the Department of Licensing will suspend the license of
10 someone who is convicted of "Any felony in the commission of which a motor vehicle is
11 used..." *State v. B.E.K.* 141 Wash.App. 742, 748 (2007) states, "[T]he relevant test under RCW
12 46.20.285(4) is whether vehicle *operation or use* contributed in some reasonable degree to the
13 commission of a felony. In other words, the vehicle must be an instrumentality of the crime,
14 such that the offender uses it in some fashion to carry out the crime."
15

16 The declaration of probable cause filed in the defendant's Exhibit 4 outlines the facts in
17 this case. The defendant(s) went to a cell phone store in a vehicle, left with property from the
18 cell phone store in the vehicle, then used it to transport them to Burien. The vehicle was a rental
19 vehicle with Oregon license plates. The vehicle was used as a means to take them to the scene of
20 the crime, to flee from Pierce County to King County, used to transport the stolen property and
21 the firearms used in the crime, and appears to have been rented to help disguise and prevent their
22 identification as the robbers.
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1 There was no consequence to the defendant. Even if the court had imposed the one-year
2 revocation, it would have been proper under the statute. There is no error, and there is no actual
3 prejudice to the defendant.

4 *THE PLEA DOCUMENTS INCLUDE THE JURISDICTION OF THE CRIME,*
5 *THE STATE OF WASHINGTON*

6 The defendant, without citing to any authority, argues that the plea document is defective
7 because it fails to cite the jurisdiction/venue where it occurred. However, the jurisdiction is the
8 state of Washington which is noted in the information and in the defendant's statement of guilty
9 plea, page nine of the Defendant's Exhibit 1. Further, "[P]roper venue is not an element of a
10 crime." *State v. Rockl*, 130 Wash.App. 293, 297 (2005). "Rather, it is a constitutional right that
11 is waived if not asserted in a timely fashion." *Id.*

12 The jurisdiction is the State of Washington. There is no error.

13 *CONCLUSION*

14 The defendant must show error and must also show actual and substantial prejudice. In
15 other words, that "but for" the error, "he would not have pleaded guilty and would have insisted
16 on going to trial". *In re Personal Restraint of Riley*, 122 Wash.2d at 780-81. *State v. Buckman*
17 has characterized this as a showing that "a rational person in his situation would more likely than
18 not have rejected the plea and proceeded to trial." *Buckman*, 190 Wash.2d at 69-70 (citations
19 omitted).

20 This plea was the result of extensive negotiations, including the entry of a plea by the co-
21 defendant. The defendant, in the original information, was facing multiple serious violent
22 offenses which would run consecutive, multiple firearm offenses which would be doubled based
23 upon his prior conviction for an offense with a FASE, and just FASE flat time, of over seventy
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1 (70) years. His negotiated plea, with a stipulated criminal history, including the assault 2
2 charges, resulted in an approximate twenty-five (25) year sentence.

3 The defendant has failed to show that his plea was not knowing, intelligent and voluntary
4 based upon his burden to overcome the signed plea form and colloquy with the court. In
5 addition, no actual prejudice has been shown. The claim of ineffective assistance of counsel
6 based upon failure to investigate has no factual basis and no actual prejudice has been shown.
7 The attack on his offender score is not appropriate based upon his negotiated favorable plea
8 resolution and the stipulation to his offender score. Further, even if that was not binding, the
9 defendant's offender score is 9+ on all his counts, even assuming that the assault 2 offenses
10 would merge into the robbery 1 convictions. Most importantly, no actual and substantial
11 prejudice is shown. His sentence was exactly what he bargained for and the agreed upon
12 sentence was imposed by the court. The license revocation could have been properly imposed,
13 but it was not imposed by the sentencing court. Again, there is no actual and substantial
14 prejudice because it was never imposed by the court. Finally, the venue argument is not
15 supported by caselaw. The jurisdiction is the state of Washington. Venue was never timely
16 asserted. And again, no actual prejudice is shown.
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1 In conclusion, this case should be transferred to the Court of Appeals as a personal
2 restraint petition because the defense has not made a “substantial showing” that he is entitled to
3 relief. CrR 7.8(c)(2).

4 RESPECTFULLY SUBMITTED this 22 day of August, 2019.

5 MARY ROBNETT
6 Prosecuting Attorney

7 By: 
8 Patrick Cooper
9 Deputy Prosecuting Attorney
10 WSB # 15190

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
Plaintiff

Cause No: 17-1-04830-7

vs.

**ORDER ON DEFENDANT'S MOTION TO
MODIFY JUDGMENT AND SENTENCE**

SIMPSON, MARTAVIS TRAMAIN,
Defendant

CLERK'S ACTION REQUIRED

THIS MATTER came before the undersigned judge of the above entitled court upon review of the defendant's motion(s) filed on June 13, 2019, After reviewing the defendant's written pleadings, and the State's Response filed August 22, 2019, the court now enters the following order pursuant to CrR 7.8(c)(2):

A. [X] IT IS HEREBY ORDERED that this petition is transferred to the Court of Appeals, Division II, to be considered as a personal restraint petition. The petition is being transferred because:

- [] it appears to be time-barred under RCW 10.73.090;
- [] is not time-barred under RCW 10.73.090, but is untimely under CrR 7.8(a) and therefore would be denied as an untimely motion in the trial court; or
- [X] is not time barred but does not meet the criteria under CrR 7.8 (c)(2) to allow the court to retain jurisdiction for a decision on the merits.

If box "A" above is checked, the Pierce County Superior Court Clerk shall forward a copy of this order as well as the defendant's pleadings identified above, to the Court of Appeals.

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B. [] IT IS HEREBY ORDERED that this court will retain consideration of the motion because the following conditions have been met: 1) the petition is not barred by the one year time bar in RCW 10.73.090, and either:

- [] the defendant has made a substantial showing that he or she is entitled to relief; or
- [] the resolution of the motion will require a factual hearing.

IT IS FURTHERED ORDERED that the defendant's motion shall be heard on its merits.

The State is directed to:

[] file a response by _____. After reviewing the response, the Court will determine whether this case will be transferred to the Court of Appeals, or if a hearing shall be scheduled.

[] appear and show cause why the defendant's motion should not be granted. That hearing shall be held on _____ at _____ a.m. / p.m.

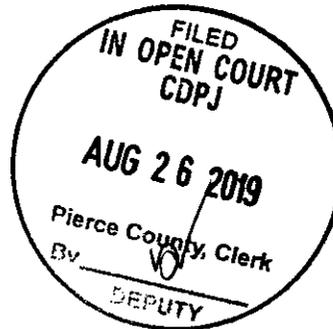
[] As the defendant is in custody at the Department of Corrections, the State is further directed to arrange for defendant's transport for that hearing.

If box "B" above is checked, the clerk is directed to send a copy of this Order to the Appellate Division of the Pierce County Prosecutor's Office.

DATED this 26 of August, 2019.

Stephanie A. Arend
JUDGE STEPHANIE A. AREND

CC: Patrick Cooper
Martavis Simpson



PIERCE COUNTY SUPERIOR COURT

September 03, 2019 - 3:34 PM

Filing PRP Transfer Order

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Simpson, Martavis Tramain *cod*
Trial Court Case Number: 17-1-04830-7
Trial Court County: Pierce County Superior Court
Signing Judge:
Judgment Date:

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