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Court of Appeals  
Division II  
State of Washington  
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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

WELDON MARC GILBERT,

Petitioner.

NO. 54188-2-II

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Should this personal restraint petition be dismissed as time barred where an alleged violation of RCW 10.43.040 is not a recognized exception to the one-year time limit for collateral attack?
2. Is petitioner entitled to relief when he pleaded guilty and thereby waived the statutory defense of RCW 10.43.040?
3. Should the petition be dismissed as inadequately presented for review, where petitioner relies on bald assertions and conclusory allegations to support his claim?
4. Must the petition be dismissed where petitioner fails to show a fundamental defect resulting in a complete miscarriage of justice as he cannot show a violation of RCW 10.43.040?

B. STATUS OF PETITIONER:

Petitioner, Weldon M. Gilbert, is restrained pursuant to a Judgment and Sentence entered in Pierce County Cause Number 07-1-05618-3. Appendix at 1-19. In November of 2007, petitioner was originally charged in Pierce County Superior Court with multiple counts of Rape of a Child in the Second Degree and Rape of a Child in Third Degree, one count of Child Molestation in the Second Degree, and two counts of Sexual Exploitation of a Minor, all involving minor victims R.L.K. and E.L.K. Appx. at 20-29. At approximately the same time, petitioner was indicted in the United States District Court for the Western District of Washington, Cause No. CR07-5732BHS, on multiple counts of Sexual Exploitation of a Child in the Production of Child Pornography and one count of Transportation of a Minor to Engage in Illegal Sexual Activity, involving John Does 1, 2 and 3. *See* Gilbert PRP Appendix at 2-5. Petitioner was subsequently indicted on multiple additional charges in federal court. *See* Gilbert PRP Appx. at 9-22.

On April 23, 2009, petitioner pleaded guilty in the United States District Court to thirty-one (31) counts of Sexual Exploitation of a Child in the Production of Child Pornography, contrary to 18 U.S.C. §§ 2251(a) and (e) and 2256; two (2) counts of Transportation of a Minor to Engage in Illegal Sexual Activity, contrary to 18 U.S.C. §§ 2423(a) and 2; and two (2) counts of Obstruction of Justice, contrary to 18 U.S.C. §§ 1512(b)(1) and (b)(3). Appx. at 107-132. *See also*, Gilbert PRP Appx. at 57-91. The charges involved 17 different victims (John Does 1-15, 17 and 18). *See* Appx. at 108-111, 116-117. Petitioner's federal plea agreement was considered a "package" deal with the United States and State of Washington, such that his federal plea was conditioned on petitioner entering a guilty plea in Pierce County Superior Court. Appx. at 129-130, 132.

The federal court sentenced petitioner to 300 months in the United States Bureau of Prisons. Appx. at 191-192, 198-199.

On November 20, 2009, petitioner pleaded guilty to an amended information in Pierce County Superior Court which charged him with two counts of Child Molestation in the First Degree and nine counts of Sexual Exploitation of a Minor. Appx. at 30-48. Petitioner was later permitted to withdraw his guilty plea<sup>1</sup> and the Pierce County case was reset for trial. Appx. at 67-81. *See also*, Gilbert PRP Appx. at 274-76. The State subsequently filed a new amended information which charged three counts of Rape of a Child in the Second Degree, three counts of Rape of a Child in the Third Degree, one count of Child Molestation in the First Degree, five counts of Child Molestation in the Second Degree, one count of Child Molestation in the Third Degree, and one count of Possession of Depictions of Minor Engaged in Sexually Explicit Conduct. Appx. at 82-99. The counts included victims who were not the basis of any federal counts. Appx. at 91-93.

Over two years later, on the day of trial, petitioner filed a motion to dismiss pursuant to RCW 10.43.040, arguing “his prior federal convictions for the same acts bar the entirety of this prosecution.” Appx. at 100-132, 138. The State filed a response in opposition. Appx. at 133-36. The court denied petitioner’s motion to dismiss. Appx. at 143. Petitioner thereafter elected to enter a plea of guilty to a second amended information, charging him with nine counts of Child Molestation in the Second Degree and five counts of Child Molestation in the Third Degree. Appx. at 144, 146-166, 167-205. Counts XII, XIII and XIV of the second amended information involved victims who were not the basis of any federal counts. Appx. at 91-93, 150-151. The court imposed 116 months of

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<sup>1</sup> The parties had contemplated a determinate sentence but the charges to which petitioner pleaded guilty required indeterminate sentencing.

confinement and ordered the time to run consecutive to petitioner's federal case. Appx. at 9.

Petitioner did not file a direct appeal. His judgment and sentence became final on November 6, 2012, when the trial court entered it. Petitioner subsequently filed two personal restraint petitions, Nos. 51148-7-II and 51266-1-II, which were dismissed. Appx. at 206-209. Petitioner filed the instant personal restraint petition on October 11, 2019, claiming the federal and state charges to which he pleaded guilty violate RCW 10.43.040. The State's response follows.

C. ARGUMENT:

Personal restraint procedure came from the State's habeas corpus remedy, which is guaranteed by article 4, § 4 of the Washington State Constitution. *In re Pers. Restraint of Hagler*, 97 Wn.2d 818, 823, 650 P.2d 1103 (1982). Collateral attack includes personal restraint petitions, motions to vacate judgment, and motions to withdraw guilty plea. RCW 10.73.090(2). Collateral attack by personal restraint petition is not, however, a substitute for direct appeal. *In re Hagler*, 97 Wn.2d at 824. "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." *In re Hagler*, 97 Wn.2d at 824 (citing *Engle v. Issac*, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). These costs are significant and require that collateral relief be limited in state as well as federal courts. *In re Hagler*, 97 Wn.2d at 824.

In a collateral action, the petitioner must prove constitutional error resulted in actual prejudice. Mere assertions are inadequate to demonstrate actual prejudice. The rule constitutional error must be proven harmless beyond a reasonable doubt has no application.

*In re Pers. Restraint of Mercer*, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987); *In re Hagler*, 97 Wn.2d at 825. A petitioner must show a fundamental defect resulted in a complete miscarriage of justice to obtain collateral relief for alleged nonconstitutional error. *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than actual prejudice. *Id.* at 810. “After establishing the appropriateness of collateral review; a petitioner will be entitled to relief only if he can meet his ultimate burden of proof, which, on collateral review, requires that he establish error by a preponderance of the evidence.” *Id.* at 814 (citing *In re Pers. Restraint of Hews*, 99 Wn.2d 80, 89, 660 P.2d 263 (1983)). Inferences must be drawn in favor of the judgment’s validity. *In re Hagler*, 97 Wn.2d at 825-826.

Reviewing courts have three options in evaluating personal restraint petitions:

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

*In re Hews*, 99 Wn.2d at 88.

1. THE PETITION MUST BE DISMISSED AS TIME BARRED, BECAUSE AN ALLEGED VIOLATION OF RCW 10.43.040 DOES NOT DEFEAT THE ONE-YEAR TIME LIMIT FOR COLLATERAL ATTACK.

Because of the costs and risks involved, there is a time limit in which to file a collateral attack. RCW 10.73.090(1) subjects petitions to a one-year statute of limitation.

The statute provides:

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

RCW 10.73.090(1). The Supreme Court has addressed what makes a judgment facially invalid under RCW 10.73.090:

Under this statute, the “facial invalidity” inquiry is directed to the judgment and sentence itself. “Invalid on its face” means the judgment and sentence evidences the invalidity without further elaboration.

*In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532, 55 P.3d 615 (2002); *see also, In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002) (court could properly consider petitioner’s challenge to offender score because judgment was facially invalid by inclusion of washed out juvenile convictions).

A claimed facial invalidity must be “...a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner.” *In re Pers. Restraint of Benavidez*, 160 Wn. App. 165, 170, 246 P.3d 842 (2011) (quoting *In re Pers. Restraint of McKiernan*, 165 Wn.2d 777, 783, 203 P.3d 375 (2009)). In *McKiernan*, the court held that a misstatement of the maximum sentence on the judgment and sentence did not render the judgment and sentence facially invalid. *In re McKiernan*, 165 Wn.2d 777.

The general rule is that a judgment and sentence is invalid on its face, if it demonstrates that the trial court did not have the power or statutory authority to impose the judgment or sentence. *In re Pers. Restraint of Scott*, 173 Wn.2d 911, 916-17, 271 P.3d 218 (2012). Examples of a sentence unauthorized by statute include: (1) a sentence exceeding the statutory maximum, (2) a sentence for a nonexistent crime, and (3) a sentence that included a washed-out prior offense. *See In re Pers. Restraint of Coats*, 173 Wn.2d 123, 135-36, 267 P.3d 324 (2011).

The Washington Supreme Court recently conducted a helpful review of what documents other than the judgment and sentence courts have looked to when finding facial invalidity. *In re Coats*, 173 Wn.2d at 143.

While the court does not limit its review for facial invalidity to the four corners of the judgment and sentence, it only considers other documents to the extent that they reveal some fact that shows the judgment and sentence is invalid on its face because of a legal error. *In re Coats*, 173 Wn.2d. at 138-39. The court has found invalidity based upon charging documents, verdicts, and plea statements of petitioners on plea of guilty. *See In re Pers. Restraint of Carrier*, 173 Wn.2d 791, 799, 727 P.3d 209 (2012). While the court may consult verdict forms, it may not consult the jury instructions, trial motions, and other documents that relate to whether the petitioner received a fair trial. *In re Scott*, 173 Wn.2d at 917. Further, “[a] judgment and sentence may be valid on its face even if the petitioner can show some error that might have received relief if brought on direct review or in a timely personal restraint petition.” *Id.*

Although the court will examine a plea statement to evaluate a claim that a judgment and sentence is not valid on its face, the court will not examine the judgment and sentence to determine whether the plea was voluntary. *In re Coats*, 173 Wn.2d at 142. An involuntary plea does not render a judgment and sentence facially invalid. *Id.* at 141. “[A]n invalid plea agreement cannot on its own overcome the one-year time bar or render an otherwise valid judgment and sentence invalid.” *In re McKiernan*, 165 Wn.2d at 782. Plea documents are only relevant to the extent they reveal how a judgment was entered in excess of a court’s authority. *Id.*

In addition to the exceptions listed within RCW 10.73.090, there are other specific exceptions to the one-year time limit for collateral attack:

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

- (1) Newly discovered evidence, if the [petitioner] acted with reasonable diligence in discovering the evidence and filing the petition or motion;
- (2) The statute that the [petitioner] was convicted of violating was unconstitutional on its face or as applied to the [petitioner's] conduct;
- (3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;
- (4) The [petitioner] pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
- (5) The sentence imposed was in excess of the court's jurisdiction; or
- (6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

RCW 10.73.100.

Personal restraint petitions are also governed by the rules of appellate procedure, which work in conjunction with the statutes. Under RAP 16.4, the court will grant appropriate relief under a personal restraint petition where a petitioner is under restraint, and that restraint is unlawful for one of seven specified reasons. RAP 16.4(a)-(c).

However, even where a valid ground exists under RAP 16.4, the court will only grant relief if such relief can be granted under RCW 10.73.090, .100 and .130. RAP 16.4(d), provides, in part:

The appellate court will only grant relief by a personal restraint petition if other remedies which may be available to petitioner are inadequate under the circumstances and if such relief may be granted under RCW 10.73.090 or .100.

If the Court independently reviews a petition filed more than one year after finality, the issues within it must necessarily fall within one of three categories: 1) no exception applies, and the issue is time barred; 2) the issue is allowed under an exception listed in RCW 10.73.100; 3) the issue is allowed under an exception listed in RCW 10.73.090(1).

If an issue does not fall into any exception, the entire petition is dismissed. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 350-51, 5 P.3d 1240 (2000) (*Stoudmire I*). The petitioner bears the burden of proving that an exception to the RCW 10.73.090 statute of limitation applies. *Shumway v. Payne*, 136 Wn.2d 383, 399-400, 964 P.2d 349 (1998); *State v. Schwab*, 141 Wn. App. 85, 90, 167 P.3d 1225 (2007). To meet that burden of proof, the petitioner must state the applicable exception within the petition. *In re Personal Restraint of Stoudmire*, 145 Wn.2d 258, 267, 36 P.3d 1005 (2001) (*Stoudmire II*). The State, in responding to a petition, should not have to guess which exception the petitioner thinks applies, nor should the State have to prove the exceptions that do not apply.

Here, petitioner's judgment and sentence became final on November 6, 2012, when the trial court entered it. RCW 10.73.090(3)(a). He did not file this petition until 2019, more than one year later. Unless he shows that one of the exceptions in RCW 10.73.100 applies or shows that his judgment and sentence is facially invalid, his petition is time-barred. *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 532-33, 55 P.3d 615 (2002); *In re Pers. Restraint of Toledo-Sotelo*, 176 Wn.2d 759, 764, 297 P.3d 51 (2013).

Petitioner does not claim his judgment and sentence is facially invalid. Rather, petitioner claims his petition meets the time bar exception in RCW 10.73.100(3). *See* PRP

at 7. RCW 10.73.100(3) provides an exception to the time bar for an alleged violation of *constitutional* double jeopardy: “The time limit specified in RCW 10.73.090 does not apply to a petition...that is based solely on one or more of the following grounds...The conviction was barred by double jeopardy *under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution.*” (Emphasis added). Petitioner, however, is alleging a violation of *statutory* double jeopardy under RCW 10.43.040 based on his federal and state court charges.<sup>2</sup> See PRP at 8-13. Statutory double jeopardy is not an exception to the time bar under RCW 10.73.100.

Pursuant to the doctrine of dual sovereignty, neither the Fifth Amendment to the United States Constitution nor Article I, section 9 of the Washington State Constitution prohibits successive prosecutions at the hands of separate sovereigns so long as each sovereign punishes the offender no more than once.<sup>3</sup> *State v. Ivie*, 136 Wn.2d 173, 178, 961 P.2d 941 (1998); *State v. Caliguri*, 99 Wn.2d 501, 511-12, 664 P.2d 466 (1983); *Gamble v. United States*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019)

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<sup>2</sup> Petitioner references the “state Double Jeopardy Clause” in a heading, *see* PRP at 8, but does not discuss or argue a violation of article I, section 9 in the body of his brief. Any additional argument that petitioner makes only in a heading is insufficient for this Court to address. *See State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) (“this court will not review issues for which inadequate argument has been briefed or only passing treatment has been made.”); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (appellant waives assignments of error unsupported by argument or authority). Moreover, as argued below, case law is clear that neither the federal nor the state constitution bar successive prosecutions by separate sovereigns for the same offense. To the extent petitioner argues otherwise, his claims of a violation of article I, section 9 of the Washington Constitution *and* RCW 10.43.040 transform the collateral attack into an unreviewable mixed petition which must be dismissed. “A petition which relies upon RCW 10.73.100 to overcome the one-year time bar in RCW 10.73.090 cannot be based upon any grounds other than the six grounds in RCW 10.73.100.” *In re Pers. Restraint of Stenson*, 150 Wn.2d 207, 220, 76 P.3d 241 (2003) (citing *Stoudmire I*, 141 Wn.2d at 349). “[I]f a personal restraint petition claiming multiple grounds for relief is filed after the one year period of RCW 10.73.090 expires, and the court determines ... at least one of the claims is time barred, the petition must be dismissed” without any analysis of which claims are timely and which are not. *Id.* (citing *In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 702, 72 P.3d 703 (2003)). *See also, Stoudmire I*, 141 Wn.2d at 350-51 (if an issue does not fall into any exception, the entire petition is dismissed).

<sup>3</sup> “The Washington State Constitution, article I, section 9 provides the same protection against double jeopardy as the fifth amendment to the federal constitution.” *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 815, 100 P.3d 291 (2004) (citing *State v. Gocken*, 127 Wn.2d 95, 107, 896 P.2d 1267 (1995)).

(declining to overturn the longstanding dual-sovereignty doctrine); *Bartkus v. Illinois*, 359 U.S. 121, 132-38, 79 S. Ct. 676, 3 L. Ed. 2d 684 (1959). States are free to provide greater protection against double jeopardy, either by state constitution or by statute. *See Ivie*, 136 Wn.2d at 178; *Caliguri*, 99 Wn.2d at 511. Washington has chosen to reject the dual sovereignty doctrine by statute – RCW 10.43.040. *See Ivie*, 136 Wn.2d at 178; *Caliguri*, 99 Wn.2d at 511-12. The statute provides,

Whenever, upon the trial of any person for a crime, it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, in a judicial proceeding conducted under the criminal laws of such state or country, founded upon the act or omission with respect to which he or she is upon trial, such former acquittal or conviction is a sufficient defense. Nothing in this section affects or prevents a prosecution in a court of this state of any person who has received administrative or nonjudicial punishment, civilian or military, in another state or country based upon the same act or omission.

RCW 10.43.040.

RCW 10.43.040 has been in effect since 1909. *See* Laws of 1909, ch. 249 § 19; *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 808, 792 P.2d 506 (1990). RCW 10.73.100, on the other hand, was enacted in 1989. *See* Laws of 1989, ch. 395 § 2. If the legislature intended for statutory double jeopardy in RCW 10.43.040 to defeat the one-year time limit for collateral attack, then it would have included such an exception in the plain language of RCW 10.73.100. Because RCW 10.43.040 is not listed as an exception to the time bar, it is not an exception to the time bar. *See In re Cook*, 114 Wn.2d at 805 (indicating that petitions filed after 1989 and claiming a violation of RCW 10.43.040 are subject to the time limits for collateral attacks in RCW 10.73.090-.140).

“In interpreting a statute, this court looks first to its plain language. If the plain language of the statute is unambiguous, then this court's inquiry is at an end. The statute is to be enforced in accordance with its plain meaning.” *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). RCW 10.73.100(3) only provides an exception for constitutional double jeopardy. *See State v. Rudy*, 105 Wn.2d 921, 924, 719 P.2d 550 (1986) (noting that “no constitutional issue is involved” in case involving alleged double jeopardy violation under RCW 10.43.040). Because petitioner’s claim relies on an alleged violation of statutory double jeopardy, and statutory double jeopardy is not a recognized exception to the time bar, the petition must be dismissed as time barred.

2. PETITIONER WAIVED HIS RCW 10.43.040 CLAIM BY PLEADING GUILTY.

Petitioner waived his RCW 10.43.040 claim by pleading guilty to the amended charges. “A guilty plea generally insulates the defendant’s conviction from collateral attack.” *State v. Knight*, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008). In Washington, a defendant pleading guilty specifically waives the presumption of innocence, the right to remain silent, and the right to force the State to prove guilt beyond a reasonable doubt at a trial. CrR 4.2(g)(5). A guilty plea also waives the right to test the State’s trial evidence by cross-examining State witnesses or presenting defense witnesses. *Id.* Any defendant, including petitioner, who waives these rights and enters a guilty plea gives up the right to force the State to prove guilt and to challenge the State’s evidence of guilt. *In re Pers. Restraint of Bybee*, 142 Wn. App. 260, 268, 175 P.3d 589 (2007). Petitioner was advised of the same in his statement on plea of guilty. Appx. at 152-153.

Petitioner averred understanding the charges to which he pleaded guilty and the consequences of his guilty plea, and he affirmed that he was making his plea freely and voluntarily. Appx. at 152-160. The court found petitioner's guilty plea to be "knowingly, intelligently and voluntarily made" with an understanding of the charges and the consequences of the plea. Appx. at 160. It is presumed petitioner's guilty plea was knowing, intelligent and voluntary. *See State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998); *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993).

RCW 10.43.040 is a statutory defense. *See* RCW 10.43.040 ("...such former acquittal or conviction is a sufficient defense"). "A guilty plea waives all defenses other than the failure of the information to charge an offense." *State v. Peltier*, 181 Wn.2d 290, 294, 332 P.3d 457 (2014). A criminal defendant can also generally waive rights that exist for his own benefit. *Id.* at 297. For example, a defendant can waive his right to a timely trial under CrR 3.3. *See* CrR 3.3(c)(2)(i); CrR 3.3(d)(3), (4). A defendant may waive the criminal statute of limitations in a pretrial agreement. *See, e.g., In re Pers. Restraint of Swagerty*, 186 Wn.2d 801, 383 P.3d 454 (2016); *Peltier*, 181 Wn.2d at 297-98. And, an allegation that concurrent convictions constitute the same criminal conduct is waived if not raised before the trial court. *See In re Pers. Restraint of Shale*, 160 Wn.2d 489, 496, 158 P.3d 588 (2007); *State v. Nitsch*, 100 Wn. App. 512, 997 P.2d 1000, *review denied*, 141 Wn.2d 1030 (2000).

Other jurisdictions have found that statutory double jeopardy may be waived. *See, e.g., In re Marcus B.*, 942 N.Y.S.2d 38, 42, 95 A.D.3d 15, 20 (2012) ("While a guilty plea may waive a statutory double jeopardy claim, a constitutional claim of double jeopardy survives a guilty plea."); *People v. Prescott*, 66 N.Y.2d 216, 220, 495 N.Y.S.2d 955, 957-

58, 486 N.E.2d 813, 815 (1985); *In re Habeas Corpus Application of Coulter*, 18 Kan. App.2d 795, 860 P.2d 51 (1993) (defendant's nolo contendere plea waived his statutory protection against successive prosecutions by separate sovereigns). RCW 10.43.040 is only a statutory right. Therefore, cases which focus upon constitutional violations of double jeopardy do not apply. *See, e.g., Menna v. New York*, 423 U.S. 61, 62, 96 S. Ct. 241, 46 L. Ed. 2d 195 (1975); *In re Pers. Restraint of Schorr*, 191 Wn.2d 315, 321-24, 422 P.3d 451 (2018).<sup>4</sup> Petitioner's guilty plea waived his RCW 10.43.040 claim. His petition should be dismissed.

3. PETITIONER FAILS TO PROVIDE SUFFICIENT PROOF TO SUPPORT HIS CLAIM.

A personal restraint petitioner is required to provide "the facts upon which the claim of unlawful restraint of petitioner is based and the evidence available to support the factual allegations. . . ." RAP 16.7(a)(2)(i). This requirement means that a "petitioner must state with particularity facts which, if proven, would entitle him to relief." *In re Pers. Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). Bald assertions and conclusory allegations are insufficient to support a claim. *Id.*

Collateral attack claims must be supported by affidavits stating particular facts, certified documents, certified transcripts, and the like. RAP 16.7(a)(2); *Petition of Williams*, 111 Wn.2d 353, 759 P.2d 436 (1988); *In re Pers. Restraint of Connick*, 144 Wn.2d 442, 451, 28 P.3d 729 (2001). Petitioners "must present evidence showing []

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<sup>4</sup> However, after a guilty plea, a constitutional double jeopardy violation must still be clear from the record presented on appeal or else be waived. *See In re Schorr*, 191 Wn.2d at 324 (citing *United States v. Broce*, 488 U.S. 563, 575-76, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989)); *Knight*, 162 Wn.2d at 811; *In re Pers. Restraint of Newlun*, 158 Wn. App. 28, 33-34, 240 P.3d 795 (2010). As argued below, petitioner fails to provide the record necessary to make a factual comparison of the federal and state court charges, as is his burden. Thus, even if cases involving constitutional double jeopardy were to apply to this case, because petitioner's statutory double jeopardy claim is not clear from the record on appeal, it is waived.

factual allegations are based on more than speculation, conjecture, or inadmissible hearsay.” *In re Rice*, 118 Wn.2d at 886-87. “[A] mere statement of evidence [ ] petitioner believes will prove [ ] allegations is not sufficient.” *Id.* Facts alleged in inherently unreliable or factually deficient declarations are not be considered as proof of a claim. *In re Pers. Restraint of Reise*, 146 Wn. App. 772, 780-81, 192 P.3d 949 (2008) (citing *State v. Taylor*, 83 Wn.2d 594, 597-98, 521 P.2d 699 (1974)). A petition must be dismissed when the petitioner fails to provide sufficient evidence to support its claims. *Id.*; *In re Rice*, 118 Wn.2d at 885-86, 893. *See also, In re Pers. Restraint of Newlun*, 158 Wn. App. 28, 33-34, 240 P.3d 795 (2010) (an appellate court is permitted to review a constitutional double jeopardy claim made on collateral attack only if the record is sufficient to establish the violations).

Here, petitioner makes the conclusory allegation that “the crimes for which Gilbert was convicted and sentenced were the same in fact as the crimes for which he was sentenced in federal court.” *See* PRP at 13. This is insufficient to support his claim. *In re Rice*, 118 Wn.2d at 886. Petitioner fails to point to or provide the specific facts underlying the federal and state court charges. He merely alleges that they were based on the same victims and same evidence. *See* PRP at 13.

Investigators found “several boxes of videotapes” in petitioner’s residence. Appx. at 53. The videos involved approximately 40 victims and 250 different scenes. Appx. at 53, 88. One victim was depicted in 102 scenes. Appx. at 54. The federal fourth superseding indictment lists the victim(s) for each charge and the discovery tape and scene number. Appx. 107-109. However, it does not describe what is specifically depicted in those individual scenes. Petitioner does not provide that information, as is his burden. His federal plea agreement noted that each child pornography production count involved “(a) [petitioner] engaged in some form of sex act with the victim, or the victim masturbating at

[petitioner's] request; or (b) a lascivious display of the victims' genitalia." Appx. at 121 (emphasis added). Therefore, it appears at least some of the federal charges involved conduct that did not include child molestation. Petitioner provides nothing to make a factual comparison of the federal and state court charges. Thus, his petition should be dismissed as inadequately presented for review.

4. PETITIONER FAILS TO DEMONSTRATE A FUNDAMENTAL DEFECT RESULTING IN A COMPLETE MISCARRIAGE OF JUSTICE, AS HE CANNOT SHOW A VIOLATION OF RCW 10.43.040.

"RCW 10.43.04 prohibits a Washington prosecution if the defendant has already been prosecuted for the same offense by the federal government or another state or country." *Ivie*, 136 Wn.2d at 176. The statute specifically addresses successive prosecution founded upon the same "act or omission." RCW 10.43.040. In *State v. Caliguri*, 99 Wn.2d 501, 514, 664 P.2d 466 (1983), the Washington Supreme Court construed RCW 10.43.040 to "prohibit state prosecution for any offense which *is in fact alone identical to or included within* an offense for which a defendant has been previously prosecuted in another jurisdiction." (Emphasis added). "Act" as used in RCW 10.43.040 includes the mental state accompanying it. *Caliguri*, 99 Wn.2d at 514.

In *Caliguri*, the court found that RCW 10.43.040 did not prohibit the defendant's state prosecution for conspiracy to commit murder based on his prior federal prosecution for racketeering.<sup>5</sup> 99 Wn.2d at 514-15. Although the federal and state prosecutions relied on the same witnesses and exhibits, the defendant's conspiracy to commit murder conviction "required proof of an act of a different character; namely, arson committed with the premediated intent to cause a particular individual's death." *Id.* at 503-04, 514. *See also, State v. Rudy*, 105 Wn.2d 921, 719 P.2d 550 (1986) (defendant convicted in

federal court for interference with commerce by threats or violence did not bar state action for kidnapping in the first degree with intent to inflict extreme emotional distress even though charges based on the same events because state had not charged defendant with the same act).

Here, petitioner's federal charges of sexual exploitation of a child in the production of child pornography required proof that: (1) petitioner employed, used, persuaded, induced, enticed, or coerced the victim to take part in sexually explicit conduct for the purpose of producing a visual depiction of that conduct; (2) the victim was a minor; and (3) that the visual depiction was produced using materials that had been transported in interstate or foreign commerce. Appx. at 116-117. *See also*, 18 U.S.C. § 2251(a); *United States v. Sheldon*, 755 F.3d 1047, 1049-50 (9th Cir. 2014). "Sexually explicit conduct" is defined in 18 U.S.C. § 2256 and includes actual or simulated sexual intercourse, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals. As noted above, the evidence in the federal matter consisted of videotapes which depicted "(a) [petitioner] engaged in some form of sex act with the victim, or the victim masturbating at [petitioner's] request; or (b) a lascivious display of the victims' genitalia." Appx. at 121 (emphasis added).

On the other hand, petitioner's state charges of child molestation in the second degree required proof that petitioner had, or knowingly caused another person under the age of 18 to have, sexual contact with a person who is at least 12 years old but less than 14 years old. RCW 9A.44.086. Petitioner's state charges of child molestation in the third degree required proof of the same with a minor victim at least 14 years old but less than

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<sup>5</sup> The federal racketeering charge incorporated conspiracy to commit arson as an element. *Caliguri*, 99 Wn.2d at 503.

16 years old. RCW 9A.44.089. “Sexual contact” is statutorily defined as “any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.” RCW 9A.44.010(2).

Petitioner’s underlying purpose in the federal prosecution was to produce visual depictions of minor victims engaged in sexually explicit conduct. That sexually explicit conduct included acts that did not constitute child molestation (e.g., masturbation and lascivious exhibition of the genitals). Petitioner committed child molestation for the purpose of gratifying the sexual desires of himself or another. Sexual gratification is not required for the federal charges. The strict interpretation of the term “act” in *Caliguri* and *Rudy* leads to the conclusion that the State of Washington did not charge petitioner with the same “act” as the United States. *See State v. Duncan*, 111 Wn.2d 859, 869-71, 765 P.2d 1300 (1989); *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 815-16, 792 P.2d 506 (1990). Moreover, the state prosecution included minor victims who were not listed in the federal indictment, so they were not the same “in fact.” *See Appx.* at 91-93, 150-151 (victims T.M. and I.C.).

*State v. Neufeld*, 351 Mont. 389, 212 P.3d 1063 (2009), cited by petitioner, is distinguishable for several reasons. First, it is an out-of-state case and thus not binding authority. *See American Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 408, 229 P.3d 693 (2010). Second, *Neufeld* was a direct appeal, not a collateral attack, and so not subject to the same time limitation as this case. Third, the defendant in *Neufeld* did not plead guilty in state court, so waiver was not at issue. Fourth, the record was sufficient for the court to determine if the federal and Montana charges were factually the same. Fifth, the federal and Montana charges involved the same singular victim. Finally, the text of

Montana's double jeopardy statute, M.C.A. § 46-11-504(1), is broader than Washington's double jeopardy statute, and thus subject to different analysis. *See Neufeld*, 351 Mont. at 391-93 (definition of "transaction" as used in statute). *See also, Heddings v. State*, 362 Mont. 90, 94-97, 265 P.3d 600 (2011) (distinguishing *Neufeld*).

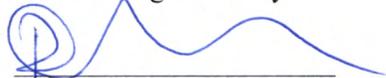
Petitioner fails to demonstrate a violation of RCW 10.43.040. His state court charges "required proof of an act of a different character." *See Caliguri*, 99 Wn.2d at 514. As a result, he fails to show a fundamental defect resulting in a complete miscarriage of justice, and his petition must be dismissed.

D. CONCLUSIONS:

The State respectfully requests that this Court dismiss the petition as time barred. The petition should also be dismissed, because petitioner waived his RCW 10.43.040 claim by pleading guilty, he fails to provide sufficient evidence to support his claim, and he fails to show a violation of RCW 10.43.040.

DATED: March 13, 2020.

MARY ROBNETT  
Pierce County  
Prosecuting Attorney



BRITTA HALVERSON  
Deputy Prosecuting Attorney  
WSB #44108

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/13/20   
Date Signature

**APPENDIX: TABLE OF CONTENTS**

Judgment and Sentence.....1

Information.....20

Declaration for Determination of Probable Cause.....24

Corrected Information.....26

Amended Information (11/20/09).....30

Statement of Defendant on Plea of Guilty to Sex Offense (11/20/09).....35

Pre-Sentence Investigation (12/3/09).....49

Clerk Minute Entry (12/11/09).....67

Defendant’s Supplemental Briefing Regarding Determinate  
Sentencing and the Remedies Plea Withdrawal (12/16/09).....69

Clerk Minute Entry (1/12/10).....80

Amended Information & Supplemental Declaration for  
Determination of Probable Cause (3/12/10).....82

Corrected Amended Information (9/21/12).....94

Defendant’s Motion to Dismiss Pursuant to RCW 10.43.040 (10/29/12).....100

State’s Response to Defendant’s Motion to  
Dismiss Pursuant to RCW 10.43.040 (11/1/12).....133

Clerk’s Minute Entry (11/6/12).....137

Second Amended Information (11/6/12).....146

Statement of Defendant on Plea of Guilty to Sex Offense (11/6/12).....152

Plea Agreement (11/6/12).....167

Certificate of Finality No. 51148-7.....206

Order Granting Motion to Voluntarily Withdraw Petition (9/19/18).....207

Certificate of Finality No. 51266-1.....208

# **APPENDIX**



07-1-05618-3 39479864 JDSWCD 11-06-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,  
vs.  
WELDON MARC GILBERT,  
Plaintiff,  
Defendant

CAUSE NO 07-1-05618-3

NOV - 5 2012

WARRANT OF COMMITMENT  
1)  County Jail  
2)  Dept. of Corrections  
3)  Other Custody (*United States Marshall's Service*)  
*(to serve federal time.)*

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

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

- [ ] 1. YOU, THE DIRECTOR ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement in Pierce County Jail)
- [ ] 2. YOU, THE DIRECTOR ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

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

WARRANT OF COMMITMENT -1

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

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

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5 Dated: November 6, 2012

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By Katherine M. Stolz  
JUDGE  
KATHERINE M. STOLZ  
CLERK  
Melissa Engler  
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF

NOV - 6 2012 Melissa Engler

STATE OF WASHINGTON

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this \_\_\_\_\_ day of \_\_\_\_\_

KEVIN STOCK, Clerk  
By: \_\_\_\_\_ Deputy

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

NOV - 6 2013



STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 07-1-05618-3

vs

WELDON MARC GILBERT

Defendant.

SID: 24227529  
DOB: 02/26/1960

AS TO COUNTS I THROUGH XIV ONLY

JUDGMENT AND SENTENCE (FJS)

- Prison
- RCW 9A.7129 9A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 45 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline  Mandatory  Discretionary

I HEARING

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

II FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 12-6-12 (November 6, 2012) by  plea  jury-verdict  bench trial of

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	CHILD MOLEST 2 (140)	9A.44.026		03/14/01-03/13/03	PCSD 073030751
II	CHILD MOLEST 2 (140)	9A.44.086		03/14/01-03/13/03	PCSD 073030751
III	CHILD MOLEST 2 (140)	9A.44.086		03/14/01-03/13/03	PCSD 073030751
IV	CHILD MOLEST 3 (141)	9A.44.089		03/14/03-03/13/05	PCSD 073030751

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007), Page 1 of 14

12-9-11958-0

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
V	CHILD MOLEST 3 (141)	9A.44.089		03/14/03- 03/13/05	PCSD 073030751
VI	CHILD MOLEST 3 (141)	9A.44.089		03/14/03- 03/13/05	PCSD 073030751
VII	CHILD MOLEST 2 (140)	9A.44.086		10/27/07	PCSD 073030751
VIII	CHILD MOLEST 2 (140)	9A.44.086		04/06/07- 10/01/07	PCSD 073030751
IX	CHILD MOLEST 2 (140)	9A.44.086		04/06/07- 10/01/07	PCSD 073030751
X	CHILD MOLEST 3 (141)	9A.44.089		05/11/03- 05/10/05	PCSD 073030751
XI	CHILD MOLEST 2 (140)	9A.44.086		03/20/04- 03/19/05	PCSD 073030751
XII	CHILD MOLEST 2 (140)	9A.44.086		11/12/04- 11/11/06	PCSD 073030751
XIII	CHILD MOLEST 2 (140)	9A.44.086		11/12/04- 11/11/06	PCSD 073030751
XIV	CHILD MOLEST 3 (141)	9A.44.089		10/30/07	PCSD 073030751

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom. See RCW 4A.61.520.  
(JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee See RCW  
9A.44.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the SECOND AMENDED Information

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9A.4A.589)

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

2.2 CRIMINAL HISTORY (RCW 9A.4A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	SEXUAL EXPLOITATION OF CHILD IN PROD OF CHILD PORN **29 COUNTS**	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
2	TRANSPORT OF MINOR TO ENGAGE IN SEXUAL ACTIVITY	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
3	TRANSPORT OF MINOR TO ENGAGE IN SEXUAL ACTIVITY	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
4	OBSTRUCTION OF JUSTICE	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 2 of 14

07-1-05618-3

5	OBSTRUCTION OF JUSTICE	04/23/09	US DIST FEDERAL COURT, WESTERN WA	12/11/07	A	
6	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
7	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
8	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
9	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
10	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
11	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
12	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
13	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
14	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
15	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
16	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
17	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV
18	OTHER CURRENT 07-1-05618-3	OTHER CURRENT	PIERCE, WA		A	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9A.525).

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 3 of 14

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

[X] The following prior convictions are not counted as points but as enhancements pursuant to RCW 46 61 520

2.3 SENTENCING DATA

COUNT NO	OFFENDER SCOPE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
II	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
III	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
IV	9+	V	60 MONTHS		60 MONTHS	5YR/10K
V	9+	V	60 MONTHS		60 MONTHS	5YR/10K
VI	9+	V	60 MONTHS		60 MONTHS	5YR/10K
VII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
VIII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
IX	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
X	9+	V	60 MONTHS		60 MONTHS	5YR/10K
XI	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XIII	9+	VII	87-116 MONTHS		87-116 MONTHS	10YR/20K
XIV	9+	V	60 MONTHS		60 MONTHS	5YR/10K

2.4 [ ] EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence

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

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

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

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

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 4 of 14

26 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  attached  as follows

III. JUDGMENT

31 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2 1

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

IV. SENTENCE AND ORDER

IT IS ORDERED

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

JASS CODE

RTNRJN \$ \_\_\_\_\_ Restitution to \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to \_\_\_\_\_  
(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

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

FRC \$ 200.00 Criminal Filing Fee

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

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

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

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

\$ 700.00 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered RCW 9 94A.753 A restitution hearing.

shall be set by the prosecutor.

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

RESTITUTION Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction RCW 9 94A.7602, RCW 9.94A.760(8)

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

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

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

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute RCW 36.18.150, 9.94A.780 and 19.15.500

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

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10.73.150

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

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

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

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

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

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

Appendix "F" per United States Probation and Parole

1  
2 4.4a [ ] All property is hereby forfeited

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

4 4.4b BOND IS HEREBY EXONERATED

6 4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows

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

<del>116</del>	months on Counts	<del>I, II, III</del>	<u>60</u>	months on Count	<u>IV, V, VI</u>
<u>116</u>	months on Count	<u>VII and VIII</u>	<u>60</u>	months on Count	<u>X</u>
<u>116</u>	months on Count	<u>IX, XI, XII</u>	<u>60</u>	months on Count	<u>XIV</u>
		<u>XIII</u>			

13 Actual number of months of total confinement ordered is 116 Months

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

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

16 CONSECUTIVE CONCURRENT SENTENCES. RCW 9.94A.589 All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively Counts to run concurrent to one another, but consecutive to Federal cause number CR07-5732BHS.

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

23 Confinement shall commence immediately unless otherwise set forth here Defendant to be remanded to the United States Marshall's Service for service of Federal sentence prior to commencing consecutive sentence under this cause number.

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

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

Court \_\_\_\_\_ for \_\_\_\_\_ months.

Court \_\_\_\_\_ for \_\_\_\_\_ months.

Court \_\_\_\_\_ for \_\_\_\_\_ months.

COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9 94A.701)

(A) The defendant shall be on community custody for the longer of *to be supervised for a period of 4 months Community Custody by U.S. Probation and Parole.*  
(1) the period of early release RCW 9 94A.728(1)(2), or  
(2) the period imposed by the court, as follows:

Count(s) I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII months for Serious Violent Offenses

Count(s) XI, XII, XIII 18 months for Violent Offenses

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

(B) While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) notify DOC of any change in defendant's address or employment, (4) not consume controlled substances except pursuant to lawfully issued prescriptions, (5) not unlawfully possess controlled substances while in community custody, (6) not own, use, or possess firearms or ammunition, (7) pay supervision fees as determined by DOC, (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court, (9) abide by any additional conditions imposed by DOC under RCW 9 94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9 94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

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

[ ] consume no alcohol

have no contact with minor children

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

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

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

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

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

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

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[ ] Other conditions

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

[ ] For sentences imposed under RCW 9 94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

**Court Ordered Treatment.** If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9 94A.562

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

47 [ ] **WORK ETHIC CAMP.** RCW 9 94A.690. RCW 72 09 410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

48 **OFF LIMITS ORDER (known drug trafficker)** RCW 10 66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: \_\_\_\_\_

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

**V. NOTICES AND SIGNATURES**

51 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10 73 100. RCW 10 73.090.

52 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000 the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9 94A.760 and RCW 9 94A.505. The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9 94A.760(4) and RCW 9 94A.753(4).

53 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4 1, you are notified that the Department of Corrections or the clerk of the

court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9 94A 7602 Other income-withholding action under RCW 9 94A may be taken without further notice. RCW 9 94A 760 may be taken without further notice. RCW 9 94A 7606

54 **RESTITUTION HEARING**

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

55 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means RCW 9 94A 634

56 **FIREARMS** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9 41.040, 9 41 047

57 **SEX AND KIDNAPPING OFFENDER REGISTRATION** RCW 9A.44 130, 10 01 200

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW) where the victim is a minor defined in RCW 9A.44 130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register at the time of your release and within three (3) business days from the time of release.

2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state. If you are under the jurisdiction of this state's Department of Corrections, you must register within three (3) business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state.

3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person signed written notice of your change of residence to the sheriff within three (3) business days of moving. If you change your residence to a new county within this state, you must register with that county sheriff within three (3) business days of moving, and must, within three (3) business days provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom you last registered. If you move out of Washington State, you must send written notice within three (3) business days of moving to the county sheriff with whom you last registered in Washington State.

4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three (3) business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within three (3) days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

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

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 10 of 14

1 residence of your intent to attend the institution within three (3) business days prior to arriving at the  
 2 institution. If you become employed at a public or private institution of higher education, you are required to  
 3 notify the sheriff for the county of your residence of your employment by the institution within three (3)  
 4 business days prior to beginning to work at the institution. If your enrollment or employment at a public or  
 5 private institution of higher education is terminated, you are required to notify the sheriff for the county of  
 6 your residence of your termination of enrollment or employment within three (3) business days of such  
 7 termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or  
 8 chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to  
 9 attend the school. You must notify the sheriff within three (3) business days prior to arriving at the school to  
 10 attend classes. The sheriff shall promptly notify the principal of the school.

11 **6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed  
 12 residence, you are required to register. Registration must occur within three (3) business days of release in  
 13 the county where you are being supervised if you do not have a residence at the time of your release from  
 14 custody. Within three (3) business days after losing your fixed residence, you must provide signed written  
 15 notice to the sheriff of the county where you last registered. If you enter a different county and stay there  
 16 for more than 24 hours, you will be required to register in the new county within three (3) business days  
 17 after entering the new county. You must also report weekly in person to the sheriff of the county where  
 18 you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall  
 19 occur during normal business hours. You may be required to provide a list the locations where you have  
 20 stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in  
 21 determining an offender's risk level and shall make the offender subject to disclosure of information to the  
 22 public at large pursuant to RCW 4.24.550.

23 **7. Application for a Name Change:** If you apply for a name change, you must submit a copy of the  
 24 application to the county sheriff of the county of your residence and to the state patrol not fewer than five  
 25 days before the entry of an order granting the name change. If you receive an order changing your name,  
 26 you must submit a copy of the order to the county sheriff of the county of your residence and to the state  
 27 patrol within three (3) business days of the entry of the order. RCW 9A.44.130(7).

28  The defendant is a sex offender subject to indeterminate sentencing under RCW 9A.712.

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

59 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment,  
 the defendant must notify DCC and the defendant's treatment information must be shared with DOC for  
 the duration of the defendant's incarceration and supervision. RCW 9A.562

5 10 OTHER \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date November 6, 2012

JUDGE

Print name

Katherine Stolz

Deputy Prosecuting Attorney

Print name Tim Lewis

WSB # 33767

Attorney for Defendant

Print name

Ann Stenberg  
Ann Stenberg

WSB #

22596

Defendant

Print name

Weldon Marc Gilbert

VOTING RIGHTS STATEMENT: RCW 10.64 140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by a) A certificate of discharge issued by the sentencing court, RCW 9 94A.637, b) A court order issued by the sentencing court restoring the right, RCW 9.92 066. c) A final order of discharge issued by the indeterminate sentence review board, FCW 9 96 050, or d) A certificate of restoration issued by the governor, RCW 9 96 020. Voting before the right is restored is a class C felony, RCW 92A.84 660

Defendant's signature

Weldon Marc Gilbert



JUDGMENT AND SENTENCE (JS),  
(Felony) (7/2007) Page 12 of 14

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**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case 07-1-05618-3

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

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

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

**IDENTIFICATION OF COURT REPORTER**

**KIMBERLY A. O'NEILL**

Court Reporter

APPENDIX "F"

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

- sex offense
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69 50 and 69 52

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

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

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

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

The offender shall pay community placement fees as determined by DOC

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

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

The Court may also order any of the following special conditions

(I) The offender shall remain within, or outside of, a specified geographical boundary \_\_\_\_\_

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: minor children

(III) The offender shall participate in crime-related treatment or counseling services.

(IV) The offender shall not consume alcohol. \_\_\_\_\_

(V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or

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

(VII) Other \_\_\_\_\_

IDENTIFICATION OF DEFENDANT

SID No 24227529  
(If no SID take fingerprint card for State Patrol)

Date of Birth 08/26/1960

FBI No 37895VC1

Local ID No UNKNOWN

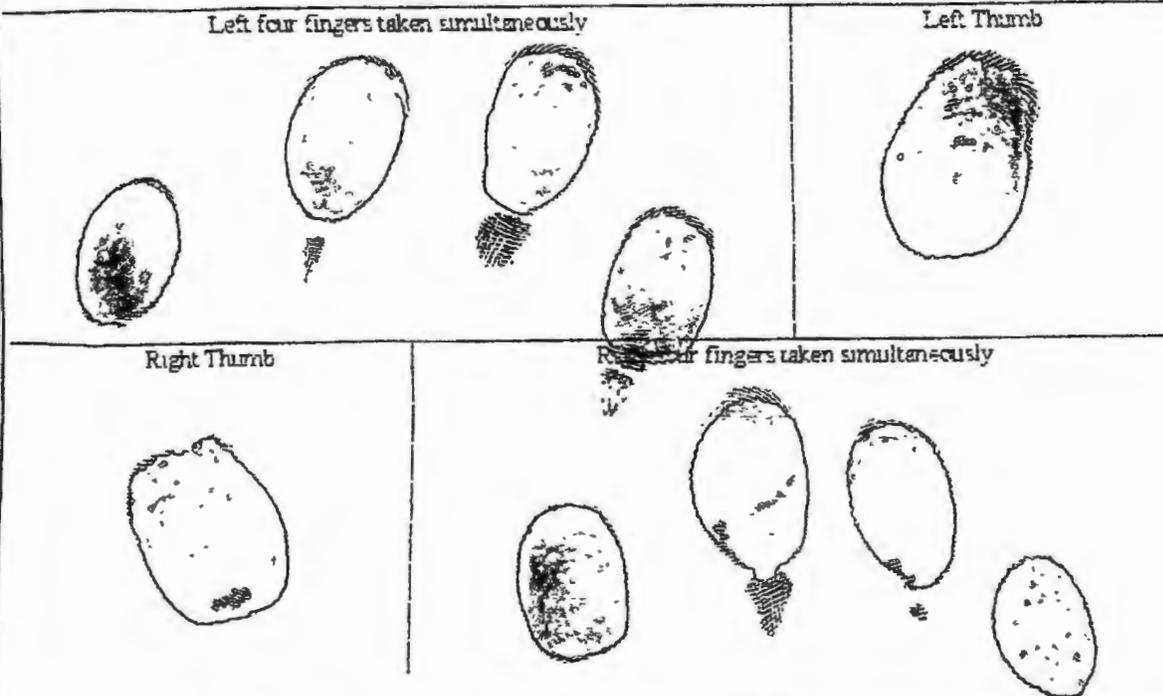
PCN No 539961888

Other

Alias name, SSN, DOB

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

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk, L. Simpson Dated 11/6/12

DEFENDANT'S SIGNATURE M. [Signature]

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

JUDGMENT AND SENTENCE (JS)  
(Felony) (7/2007) Page 14 of 14

1  
2 within three business days of moving to the new state or to a foreign country to the  
3 county sheriff with whom you last registered in Washington State.

4 **5. Notification Requirement When Enrolling in or Employed by a Public or Private**  
5 **Institution of Higher Education or Common School (K-12):** If you are a resident of  
6 Washington and you are admitted to a public or private institution of higher education,  
7 you are required to notify the sheriff of the county of your residence of your intent to  
8 attend the institution within three business days prior to arriving at the institution. If you  
9 become employed at a public or private institution of higher education, you are required  
10 to notify the sheriff for the county of your residence or your employment by the  
11 institution within three business days prior to beginning to work at the institution. If your  
12 enrollment or employment at a public or private institution of higher education is  
terminated, you are required to notify the sheriff for the county of your residence of your  
termination of enrollment or employment within three business days of such termination.  
If you attend, or plan to attend, a public or private school regulated under Title 28A  
RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your  
residence of your intent to attend the school. You must notify the sheriff within three  
business days prior to arriving at the school to attend classes. The sheriff shall  
promptly notify the principal of the school.

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

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

Date: 11.6.2012

Manfred  
Defendant

Quin Stenberg #22596  
Attorney for Defendant

Stanley

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

1 Case Name State v. Wilburt Cause No. 07-1-05618-3

2  
3 Sex and Kidnapping Offender Registration. RCW 9A.44.130, Laws of 2010, ch. 267  
4 § 1, 10.01.200.

5 **1. General Applicability and Requirements:** Because this crime involves a sex  
6 offense or kidnapping offense involving a minor as defined in Laws of 2010, ch. 267 § 1,  
7 you are required to register.

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

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

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

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

37 **4. Leaving the State or Moving to Another State:** If you move to another state, or if  
38 you work, carry on a vocation, or attend school in another state you must register a new  
address, fingerprints, and photograph with the new state within three business days  
after establishing residence, or after beginning to work, carry on a vocation, or attend  
school in the new state. If you move out of the state, you must also send written notice

*KWS*

November 01 2007 3:57 PM

KEVIN STOCK  
COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

Defendant.

INFORMATION

DOB: SEX : MALE RACE: WHITE  
PCN#: SID#: UNKNOWN DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least

INFORMATION- 1

1 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
 2 less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the  
 3 peace and dignity of the State of Washington.

4 **COUNT III**

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
 6 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
 7 A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on  
 8 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 9 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 10 proof of one charge from proof of the others, committed as follows:

11 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 12 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
 13 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
 14 less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the  
 15 peace and dignity of the State of Washington.

16 **COUNT IV**

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

23 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 24 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
 less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the  
 peace and dignity of the State of Washington.

**COUNT V**

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
 A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on  
 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 proof of one charge from proof of the others, committed as follows:

1 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 2 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
 3 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
 4 less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the  
 peace and dignity of the State of Washington.

#### COUNT VI

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
 6 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
 7 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
 8 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 proof of one charge from proof of the others, committed as follows:

9 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 10 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
 11 48 months older than E.L.K., engage in sexual intercourse with E.L.K., who is at least 14 years old but  
 12 less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the  
 peace and dignity of the State of Washington.

#### COUNT VII

13 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
 14 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
 15 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
 16 based on the same conduct or on a series of acts connected together or constituting parts of a single  
 17 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 difficult to separate proof of one charge from proof of the others, committed as follows:

18 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
 19 October, 2007, did unlawfully and feloniously, being at least 36 months older than E.L.K., have sexual  
 20 contact with E.L.K., who is at least 12 years old but less than 14 years old, and not married to the  
 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### COUNT VIII

21 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
 22 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
 23 EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
 24 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 proof of one charge from proof of the others, committed as follows:

INFORMATION- 3

1 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
2 October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to  
3 engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live  
4 performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of  
Washington.

COUNT IX

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
6 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
7 EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
8 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

9 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
10 2nd day of November, 2004 and the 14th day of March, 2007, did unlawfully and feloniously aid, invite,  
11 employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such  
12 conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and  
against the peace and dignity of the State of Washington.

13 DATED this 1st day of November, 2007.

14 PIERCE COUNTY SHERIFF  
15 WA02700

GERALD A. HORNE  
Pierce County Prosecuting Attorney

16 mer

17 By: /s/ MARY E. ROBNETT  
18 MARY E. ROBNETT  
19 Deputy Prosecuting Attorney  
20 WSB#: 21129  
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KEVIN STOCK  
COUNTY CLERK

1 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

2 STATE OF WASHINGTON,

3 Plaintiff,

CAUSE NO. 07-1-05618-3

4 vs.

5 WELDON MARC GILBERT,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

6 Defendant.

7 MARY E. ROBNETT, declares under penalty of perjury:

8 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police  
9 report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 073030751;

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

11 That in Pierce County, Washington, on or about the period between the 14<sup>th</sup> day of March, 2001  
12 and the 29<sup>th</sup> day of October, 2007, the defendant, WELDON MARC GILBERT, did commit the crimes of  
**Rape of a Child in the Second Degree, Child Molestation in the Second Degree, Rape of a Child in  
the Third Degree, and Sexual Exploitation of a Child.**

13 Pierce County Sheriff's Detective Berg reports that on October 30, 2007, she was contacted by  
14 two adult men who wanted to report that their younger brothers were being sexually molested by the  
defendant, Weldon Marc Gilbert. The brothers identified their younger brothers as R.L.K. born 03-14-89  
and E.L.K. born 11-04-94.

15 Detective Berg reports that she contacted R.L.K. and he reported the following: he met the  
16 defendant when he was 12 year old shortly after his father died. R.L.K. often went to the defendant's  
home and he also went on trips with the defendant to Hong Kong, Thailand and Europe. The defendant  
17 would frequently spank R.L.K. with his hand or an assortment of paddles while R.L.K. was naked.  
R.L.K. reported that he would have welts, bruises and cuts from the spankings. The defendant would also  
18 have R.L.K. spank the defendant. The defendant would also touch R.L.K., on the buttocks and genitals,  
they would mutually masturbate and the defendant would perform oral sex on R.L.K. R.L.K. reported the  
19 events happened regularly and frequently. R.L.K. reports that he eventually found out that the defendant  
would sometimes video tape the spanking and R.L.K. discovered that the defendant had numerous tapes  
20 of himself spanking R.L.K. and others. The defendant would often pay R.L.K. for the spankings, R.L.K.  
had been living with the defendant for the past several months and the last incident occurred on October  
21 28, 2007. R.L.K. said the defendant had been showing some interest in his 12 year old brother, and  
R.L.K. told the defendant to stay away from E.L.K. However, R.L.K.'s older brother unknowingly  
22 brought E.L.K. to the defendant's house on October 29<sup>th</sup> and E.L.K. thereafter reported that the defendant  
had spanked him and videotaped him. R.L.K. provided the Detective Berg with a video tape of the  
defendant spanking him and the second half of the tape depicts the defendant spanking E.L.K.

23 Detective Berg reports that she has reviewed the tape and it includes images of the defendant  
spanking R.L.K. and touching and rubbing and pinching his buttocks and genitals. Detective berg reports

24 DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE - 1

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

1 the tape also depicts the defendant spanking E.L.K. and touching and rubbing E.L.K.'s buttocks and  
2 genitals.

3 Detective Berg reports that on October 31, 2007 she and other detectives executed a search  
4 warrant at the defendant's residence. The detectives seized numerous video tapes, DVDs, CDs, floppy  
5 discs, assorted sex toys, numerous paddles, several cameras, a tripod, paddles, blindfolds, ropes, spanking  
6 devices, bondage implements, computers and two handguns.

7 R.L.K. reported that he had taken the defendant to the airport and that the defendant was traveling  
8 to Atlanta. R.L.K. reported the defendant is due back Saturday, November 3<sup>rd</sup>. Detective Berg reports  
9 that she has been able to determine that the defendant works for UPS as a pilot and he is currently staying  
10 in Atlanta for job related training.

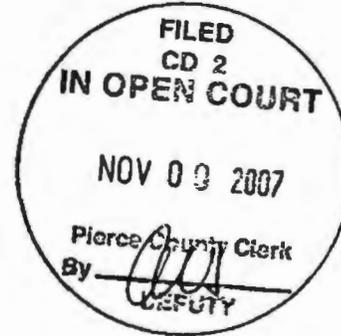
11 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
12 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

13 DATED: November 1, 2007  
14 PLACE: TACOMA, WA

15 /s/ MARY E. ROBNETT  
16 \_\_\_\_\_  
17 MARY E. ROBNETT, WSB# 21129



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

**CORRECTED INFORMATION**  
(AS TO DEFENDANT'S DATE OF BIRTH AND  
COUNT V )

Defendant.

DOB: 8/26/1960

SEX : MALE

RACE: WHITE

PCN#:

SID#: UNKNOWN

DOL#: UNKNOWN

COUNT I

I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

CORRECTED INFORMATION- I

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

1 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
2 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
3 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
4 less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the  
peace and dignity of the State of Washington.

COUNT III

5 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
6 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
7 A CHILD IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on  
8 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

9 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
10 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
11 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
12 less than 14 years old and not married to the defendant, contrary to RCW 9A.44.076, and against the  
peace and dignity of the State of Washington.

COUNT IV

13 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
14 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
15 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
16 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
17 proof of one charge from proof of the others, committed as follows:

18 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
19 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
20 48 months older than R.L.K., engage in sexual intercourse with RL.K., who is at least 14 years old but  
less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the  
peace and dignity of the State of Washington.

COUNT V

21 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
22 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
23 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
24 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
2 proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
4 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
5 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
6 less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the  
7 peace and dignity of the State of Washington.

#### 6 COUNT VI

7 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
8 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
9 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
10 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
11 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
12 proof of one charge from proof of the others, committed as follows:

13 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
14 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
15 48 months older than E.L.K., engage in sexual intercourse with E.L.K., who is at least 14 years old but  
16 less than 16 years old and not married to the defendant, contrary to RCW 9A.44.079, and against the  
17 peace and dignity of the State of Washington.

#### 14 COUNT VII

15 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
16 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
17 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
18 based on the same conduct or on a series of acts connected together or constituting parts of a single  
19 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
20 difficult to separate proof of one charge from proof of the others, committed as follows:

21 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
22 October, 2007, did unlawfully and feloniously, being at least 36 months older than E.L.K., have sexual  
23 contact with E.L.K., who is at least 12 years old but less than 14 years old, and not married to the  
24 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### 22 COUNT VIII

23 And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
24 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
2 proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
4 October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause E.L.K., a minor, to  
5 engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live  
6 performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of  
7 Washington.

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COUNT IX

And I, GERALD A. HORNE, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

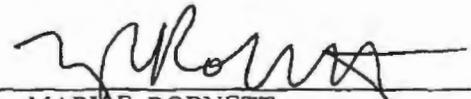
That WELDON MARC GILBERT, in the State of Washington, during the period between the  
2nd day of November, 2004 and the 14th day of March, 2007, did unlawfully and feloniously aid, invite,  
employ, authorize, or cause E.L.K., a minor, to engage in sexually explicit conduct, knowing that such  
conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and  
against the peace and dignity of the State of Washington.

DATED this 9th day of November, 2007.

PIERCE COUNTY SHERIFF  
WA02700

GERALD A. HORNE  
Pierce County Prosecuting Attorney

bs

By:   
MARY E. ROBNETT  
Deputy Prosecuting Attorney  
WSB#: 21129



ORIGINAL

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WELDON MARC GILBERT,

Defendant.

CAUSE NO. 07-1-05618-3

NOV 23 2009

AMENDED INFORMATION

DOB: 8/26/1960  
PCN#:

SEX : MALE  
SID#: 24227529

RACE: WHITE  
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K., have sexual contact with R.L.K., who is less than 12 years old and not married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

COUNT II

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

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously, being at least

AMENDED INFORMATION- 1

1 36 months older than E.L.K., have sexual contact with E.L.K., who is less than 12 years old and not  
2 married to the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of  
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COUNT III

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause S.C., A.H. and A.Y., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT IV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause D.R., B.M., C.M., L.C., Z.R. and J.R., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT V

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause V.Z., S.P., I.C., R.M. and O.P., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause K.B., V.P., N.H. and B.Y., minors, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite, employ, authorize, or cause B.M., V.C., Y.K., and I.C., minors to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

COUNT VIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,

1 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
2 proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
4 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite,  
5 employ, authorize, or cause D.D., T.M., A.M., B.V. and D.H., minors to engage in sexually explicit  
6 conduct, knowing that such conduct will be photographed or part of a live performance, contrary to RCW  
7 9.68A.040(1)(b), and against the peace and dignity of the State of Washington.

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COUNT IX

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the  
14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite,  
employ, authorize, or cause R.L.K., a minor, to engage in sexually explicit conduct, knowing that such  
conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and  
against the peace and dignity of the State of Washington.

COUNT X

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the  
same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the  
14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite,  
employ, authorize, or cause C.F., a minor, to engage in sexually explicit conduct, knowing that such  
conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and  
against the peace and dignity of the State of Washington.

COUNT XI

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of SEXUAL  
EXPLOITATION OF A MINOR, a crime of the same or similar character, and/or a crime based on the

1 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
2 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
3 proof of one charge from proof of the others, committed as follows:

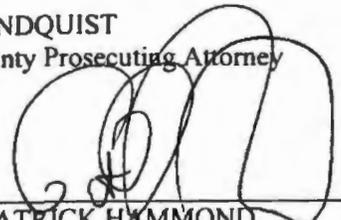
4 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
5 14th day of March, 2001 and the 27th day of October, 2007, did unlawfully and feloniously aid, invite,  
6 employ, authorize, or cause N.W., a minor, to engage in sexually explicit conduct, knowing that such  
7 conduct will be photographed or part of a live performance, contrary to RCW 9.68A.040(1)(b), and  
8 against the peace and dignity of the State of Washington.

9 DATED this 20th day of November, 2009.

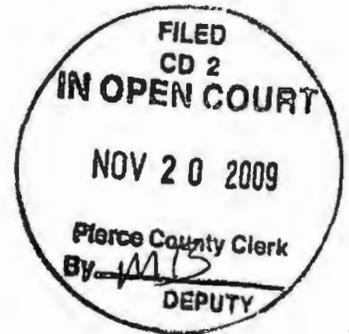
10 PIERCE COUNTY SHERIFF  
11 WA02700

12 tmc

MARK LINDQUIST  
Pierce County Prosecuting Attorney



By: \_\_\_\_\_  
PATRICK HAMMOND  
Deputy Prosecuting Attorney  
WSB#: 23090



Superior Court of Washington For Pierce County

State of Washington

Plaintiff

vs.

Weldon Marc Gilbert

Defendant

No. 07-1-05618-3

Statement of Defendant on Plea of Guilty to Sex Offense (STDFG)

NOV 23 2009

1. My true name is: Weldon Marc Gilbert

2. My age is: 49 years

3. The last level of education I completed was 12<sup>th</sup> grade

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: John Henry Browne, Emma Scanlan

(b) I am charged with the crime(s) of: Count I: child molestation in the first degree  
The elements are: (1) sexual contact with a minor who is less than 12 years old (2) at a time when the defendant was at least 36 months older than the minor.

Count II:  
child molestation in the first degree  
The elements are: (1) sexual contact with a minor who is less than

12 years old (2) at a time when the defendant was at least 36 months older than the minor.

(c) § III - XI Additional counts are addressed in Attachment "B"

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

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been 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) I am presumed innocent unless the charge is proven 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 pre-trial 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*	TOTAL ACTUAL CONFINEMENT (standard range including 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	9+	149-198 mos	N/A		36-48 mos	\$20,000/ life
2	9+	149-198 mos	N/A		36-48 mos	\$10,000/ life

\* (F) Firearm, (D) other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee.  
 RCW 9.94A.533(9)  
 Counts 3-11: 9+ 120 months N/A 36-48 mos \$20,000.  
 10-15.

- (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 agreement.

Statement on Plea of Guilty to Sex Offense (STDFG) - Page 2 of 10  
 CrR 4.2(g) (7/2007)

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.

- (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. 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 sex offenses 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 supervision if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. 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. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005 (6) (h).

**For sex offenses committed on or after July 1, 2000 but prior to September 1, 2001:** 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 period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

**For sex offenses committed on or after September 1, 2001:**

- (i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of

confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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 period of confinement is over one year, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me,

which may include electronic monitoring.

**For sex offenses committed on or after March 20, 2006:**

For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

**Community Custody Violation:**

If I am subject to a first or second violation hearing and the Department of Corrections finds that I committed the violation, I may receive as a sanction up to 60 days of confinement per violation. If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge:  
 100 months determinate in-custody on Counts I+II to run concurrent with a sentence of 120 months determinate on Counts III - XI, ~~with no contact with named victims~~; no contact with named victims, no contact with minors without supervision; all other conditions in Appendix H; no restitution as it is to be determined in the federal case; time to run concurrent with federal sentence.

[ ] 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 there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
  - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more

than nine.

(iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

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

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

- (i) **If I am not a citizen** of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) **Public assistance will be suspended** during any period of imprisonment.
- (m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in the registration requirements and for complying with the new requirements.
- (n) I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.
- (o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

**Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.**

- (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 offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the

first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

(q) **Special sex offender sentencing alternative:**

In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

**For offenses committed before September 1, 2001:** The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(f). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

**For offenses committed on or after September 1, 2001:** The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement, **or for offenses committed on or after 7/1/05, I will be ordered to serve up to 12 months of total confinement;** I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions

described in paragraph 6(f). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- (r) If this is a crime of **domestic violence**, the court may order me 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 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.
- (t) If this **offense involves a motor vehicle**, my driver's license or privilege to drive will be suspended or revoked.
- (u) The crime of \_\_\_\_\_ has a **mandatory minimum sentence** of at least \_\_\_\_\_ years of total confinement. 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[p].
- (v) 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.
- (w) I understand that the offense(s) I am pleading guilty to include 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.
- (x) **For crimes committed on or after July 22, 2007**: I understand that if I am pleading guilty to **rape of a child** in the first, second, or third degree or **child molestation** in the first, second or third degree, and I engaged, agreed or offered to engage the victim in **sexual intercourse or sexual contact for a fee**, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.

7. I plead guilty to count(s): I-XI in the Amended Information. I have received a copy of that Information.
8. I make this plea freely and voluntarily.
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

Statement on Plea of Guilty to Sex Offense (STTDFG) - Page 8 of 10  
CrR 4.2(g) (7/2007)

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

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

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

  
\_\_\_\_\_  
Prosecuting Attorney  
PAT HAMMOND 23090  
Print Name WSBA No.

M. J. [Signature]  
Defendant  
I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.  
[Signature]  
Defendant's Lawyer  
Emma Scanlan 37885  
Print Name WSBA No.

The foregoing statement was signed by the defendant in the presence of the defendant's lawyer and acknowledged in open court before 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 attached.

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

Dated: 11/20/09

[Signature]  
Judge

**Interpreter's Declaration**

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the \_\_\_\_\_ language, which the defendant understands, and I have translated the \_\_\_\_\_ for the defendant from English into that language. (Identify document being translated)

The defendant has acknowledged his or her understanding of both the translation 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.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Interpreter

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

Location: \_\_\_\_\_

Case Name State v. Weldon MacGilbert Cause No. 07-1-058183

**"Offender Registration" Attachment:** sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.130. (If required, attach to Statement of Defendant on Plea of Guilty.)

**1. General Applicability and Requirements:** Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

**2. Offenders Who Leave the State and Return:** If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

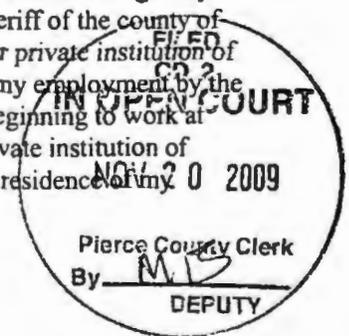
**3. Change of Residence Within State and Leaving the State:** If I change my residence within a county, I must send signed written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send signed written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence and I must register with the sheriff of the new county within 24 hours of moving. I must also give signed written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

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

**5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution. If I become employed at a public or private institution of higher education, I am required to notify the sheriff for the county of my residence of my employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If my enrollment or employment at a public or private institution of higher education is terminated, I am required to notify the sheriff for the county of my residence of my

Statement on Plea of Guilty ("Offender Reg." Attachment) - Page 1 of 2  
CrR 4.2(g) (7/2007) RCW 10.01.200, 9A.44.130

Z-252



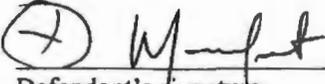
termination of enrollment or employment within 10 days of such termination. If I attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, I am required to notify the sheriff of the county of my residence of my intent to attend the school. I must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if I do not have a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody. Within 48 hours, excluding weekends and holidays, after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may be required to provide a list of the locations where I have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

**7. Reporting Requirements for Persons Who Are Risk Level II or III:** If I have a fixed residence and I am designated as a risk level II or III, I must report, in person, every 90 days to the sheriff of the county where I am registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If I comply with the 90-day reporting requirement with no violations for at least five years in the community, I may petition the superior court to be relieved of the duty to report every 90 days.

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

Date: \_\_\_\_\_

  
 Defendant's signature

**Attachment "B"**

Page 1

**Statement of Defendant on Plea of Guilty****State of Washington v. Weldon Marc Gilbert, Cause No. 07-1-05618-3****Count III: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count IV: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count V: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count VI: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count VII: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count VIII: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count IX: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Count X: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.

**Attachment "B"**

**Page 2**

**Statement of Defendant on Plea of Guilty**

**State of Washington v. Weldon Marc Gilbert, Cause No. 07-1-05618-3**

**Count XI: sexual exploitation of a minor**

The elements are: The defendant did aid, invite, employ, authorize or cause a minor, to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance.



07-1-05618-3 33312222 PSI 12-04-09

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PIERCE COUNTY SHERIFF DEPUTY  
DEC 03 2009  
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STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

**PRE-SENTENCE INVESTIGATION**

TO: The Honorable Susan K. Serko  
Pierce County Superior Court

NAME: Weldon Marc Gilbert

ALIAS(ES):

CRIME(S): Count I/Count II: Child Molestation in the First Degree;  
Count III-Count XI: Sexual Exploitation of a Minor

DATE OF OFFENSE: Count I: Between March 14, 2001 and March 13, 2003;  
Count II - XI: Between March 14, 2001 and October 27, 2007;

PRESENT ADDRESS: Pierce County Jail

DATE OF REPORT: 12/01/2009

DOC NUMBER: 336204

COUNTY: Pierce

CAUSE #: 07-1-05618-3

SENTENCING DATE: 12/11/2009

DEFENSE ATTORNEY: John Henry Browne  
821 2<sup>nd</sup> Ave Suite 2100,  
Seattle, WA 98104

**I. OFFICIAL VERSION OF OFFENSE:**

On November 1, 2007, an Information formally charging Weldon Marc Gilbert with Rape of a Child in the Second Degree, Count I/Count II/Count III/Count V; Rape of a Child in the Third Degree, Count IV/Count VI; Child Molestation in the Second Degree, Count VII; and Sexual Exploitation of a Minor, Count VIII and IX was filed by the Pierce County Prosecuting Attorney's Office. On November 9, 2007, a Corrected Information was filed correcting the defendant's date of birth only. On November 20, 2009, an Amended Information was filed amending the charges to two Counts of Child Molestation in the First Degree and nine Counts of Sexual Exploitation of a Minor. Mr. Gilbert signed a Plea Agreement to the charges as filed that same day. He is currently detained in the

Pre-Sentence Investigation  
Weldon Marc Gilbert  
Doc #336204  
07-1-05618-3  
Page 1 of 15

Pierce County Jail awaiting Sentencing that has been scheduled for December 11, 2009.

According to file material, Mr. Weldon Marc Gilbert (DOB: 08/26/1960) befriended R.L.K. (DOB: 03/14/1989) following R.L.K.'s father's suicide when R.L.K. was twelve years of age. Mr. Gilbert was introduced to R.L.K. through Gilbert's sister, who lived next door to R.L.K. and his family.

A few months after Mr. Gilbert met R.L.K., Gilbert took R.L.K. for his first airplane ride, at the age of thirteen, and allowed R.L.K. to take the controls of the plane. After the airplane ride, Mr. Gilbert took R.L.K. home and provided him with a nice dinner and a Mike's Hard Lemonade. After dinner, Mr. Gilbert put on "Girls Gone Wild" and began rubbing R.L.K.'s head, chest, and stomach. Mr. Gilbert then slid his hand down R.L.K.'s pants and masturbated R.L.K.

R.L.K. started spending more time at Mr. Gilbert's home in Lake Tapps, Washington. Mr. Gilbert would pay R.L.K. to do odd jobs around the house. In a short time, Mr. Gilbert started paying R.L.K. for sexual favors, spankings on his bare buttocks and participation in mutual masturbation and oral sex and/or anal sex. He received between \$50.00 and \$100.00 for these sessions; more if R.L.K. accepted a more severe spanking or if he participated in oral or anal sex.

Mr. Gilbert would take R.L.K. into a room decorated with Mario Brothers wallpaper and a sign in the closet that read "Boy's Punishment Room" where a video camera was set up to capture the spanking sessions. Mr. Gilbert would instruct R.L.K. to undress; sometimes he would bend R.L.K. over his lap, sometimes he would bind him to a spanking bench. Mr. Gilbert would then spank R.L.K. with his hand, or a paddle, leather strap, or a cane. Mr. Gilbert would touch R.L.K., grabbing, fondling, and pinching R.L.K.'s penis/testicles. The spankings that Mr. Gilbert would give R.L.K. would often result in welts, bruising, and cuts to R.L.K.'s buttocks. R.L.K. often cried and begged Mr. Gilbert to stop or would try to block him from striking him.

With time R.L.K. would trade positions with Mr. Gilbert and spank Mr. Gilbert and masturbate him. Sometimes Mr. Gilbert would beg for R.L.K. to agree to oral and/or anal sex saying, "Just get me off real quick. Come on... please... please." At first this was more of a joke but eventually progressed to oral and/or anal sex.

When R.L.K. made mistakes he would be taken to the room and forced to strip, chastised for his mistakes, and then sexually assaulted. Mr. Gilbert soon stopped offering money for the sexual favors and would say, "Don't forget where your bread is buttered..." or "Don't cut off the hand that feeds you."

Over the years, many boys would visit Mr. Gilbert's home. R.L.K. would invite his own friends over and Mr. Gilbert would pay for their participation in the spanking sessions.

Mr. Gilbert lured the boys with lavish dinners, alcohol, access to Gilbert's home, boats, jet skis, seaplane and helicopter, and expensive gifts. R.L.K. and his friends would often accompany Mr. Gilbert on trips to Lake Isabelle, Whistler Ski Resort, and an old mining town at the Cascade Foothills. R.L.K. also traveled to Hong Kong, Germany, Australia, Jamaica, Thailand, and Europe with Mr. Gilbert. R.L.K. traveled out of the country for the first time at the age of fourteen with Mr. Gilbert.

Mr. Gilbert referred to R.L.K. as the "President of Generation Five", which meant R.L.K. was the primary victim of the fifth group of boys that Mr. Gilbert had victimized. Mr. Gilbert purchased a coffee business in Seattle for R.L.K. to own and operate. R.L.K. would have never been able to afford the lifestyle he had enjoyed if it was not for the extravagant gifts provided by Mr. Gilbert.

As R.L.K. grew older, Mr. Gilbert started to lose interest. Mr. Gilbert preferred boys under 18 or without facial hair. Mr. Gilbert requested that R.L.K. invite his younger brother, E.L.K. (DOB: 11/04/1994) to the house but R.L.K. did not want to do this. Unknowingly, R.L.K. and E.L.K.'s older brother, Y.K., took E.L.K. to the home of Mr. Gilbert on the pretense that he was going to go on a helicopter ride with Mr. Gilbert.

While E.L.K. was in Mr. Gilbert's home, Mr. Gilbert confronted E.L.K. and accused him of viewing pornography. Mr. Gilbert then directed E.L.K. into the room decorated with Mario Brothers wallpaper and told E.L.K. he was going to be punished with a spanking. Mr. Gilbert ordered E.L.K. to sit on a chair while he set up a camcorder. He then asked E.L.K. why they were there and E.L.K. responded because he had done bad stuff on the computer. Mr. Gilbert ordered E.L.K. to remove his pants and had him lie down across Mr. Gilbert's lap. Mr. Gilbert then spanked E.L.K.'s bare buttocks with his hand. He then told E.L.K. that he should see his butt because it was red. Mr. Gilbert then took E.L.K. into Mr. Gilbert's room, where he got a paddle from the wall. Mr. Gilbert then ordered E.L.K. to spank him, which E.L.K. did. Mr. Gilbert ordered E.L.K. to spank him harder but E.L.K. refused and placed the paddle back on the wall.

R.L.K. learned what had happened and reported the abuse to their older brothers, A.K. and V.K., who then contacted the Pierce County Sheriff's Department and filed a report. A.K. and V.K. expressed concern about making the report because of Gilbert's wealth and power, and they feared retaliation. They indicated that a good number of spanking sessions had been videotaped and that R.L.K. had one of the videotapes in his possession.

Law enforcement officials met with R.L.K., who stated, "There's shitloads of tapes in the house... you're gonna find a lot of paddles, you're gonna find an endless supply of paddles. You're gonna find a lot of videos, mainly of me." R.L.K. provided a videotape to law enforcement. The first part of the video tape depicted the first time R.L.K. was ever spanked by Mr. Gilbert at the age of 13. R.L.K. was seen being interrogated by Mr. Gilbert as to why he was being punished. Mr. Gilbert then ordered R.L.K. to remove his clothing, to which R.L.K. complied. Mr. Gilbert then directed R.L.K. not to cover

his clothing, to which R.L.K. complied. Mr. Gilbert then directed R.L.K. not to cover himself and commented on the size of R.L.K.'s penis. R.L.K. then lay across Mr. Gilbert's lap and Mr. Gilbert caressed R.L.K.'s buttocks and between his legs. Mr. Gilbert then spanked R.L.K.'s bare buttocks with his hand. R.L.K. began to cry during the spanking and attempted to shield himself. Mr. Gilbert grabbed R.L.K.'s hand and moved it out of the way and continued to spank R.L.K. After the spanking, Mr. Gilbert had R.L.K. kneel before him and he hugged R.L.K. He then pulled R.L.K. on top of him on the bed and fondled R.L.K.'s buttocks, which were red and welted.

The second part of the video tape was E.L.K. being spanked by Mr. Gilbert at the age of 12. E.L.K. was seen being interrogated by Mr. Gilbert about looking at Internet pornography. Mr. Gilbert ordered E.L.K. to remove his clothing and E.L.K. took off everything but his shirt. Mr. Gilbert then ordered E.L.K. to lie across his lap, to which E.L.K. complied. Mr. Gilbert rubbed E.L.K.'s buttocks and told him to spread his legs. Mr. Gilbert asked E.L.K. if viewing the pornography had "made your little dick hard..." Mr. Gilbert then spanked E.L.K. with his hand. E.L.K. initially started to laugh but soon started squirming and crying as Mr. Gilbert spanked him harder and faster. E.L.K. reached back with hand to shield himself from the spanking and Mr. Gilbert told him, "Do you know what happens when you put your hand back here... we start all over." After the spanking Mr. Gilbert asked E.L.K. if the spanking was hard enough and if E.L.K. felt better. Mr. Gilbert then had E.L.K. kneel before him between his legs and he hugged E.L.K. and caressed E.L.K.'s buttocks. Mr. Gilbert then pulled up E.L.K.'s shirt and reached toward his penis and stated, "Holy shit dude this is getting huge."

An initial search of Mr. Gilbert's home revealed a room decorated with Mario Brothers wallpaper and a sign in the closet that read "Boys Punishment Room". Among the items seized were a stockpile of paddles, straps, canes, brushes, cuffs, straps, a large wooden fraternity paddle, spanking games, several cameras, blindfolds, lengths of rope, bondage straps, bondage implements, four computer hard drives, two video cameras, DVD's, CD's, audio cassettes, floppy discs, commercial fetish spanking pornography, and numerous homemade videotapes marked with initials or names, a two-page contract ("Binding Agreement", which documented to allow a person identified as R.M., the unsupervised use of Gilbert's residence and listed spanking as punishment for breaking the rules).

A review of Mr. Gilbert's computers revealed that he had frequented several fetish spanking websites including [www.malespank.net](http://www.malespank.net), [www.spankthis.com](http://www.spankthis.com), and [www.guyspank.com](http://www.guyspank.com). It was also determined that Mr. Gilbert authored eleven stories: An Awakening at South Prairie High; Austin; Brother Sean; Cool Teenager; High Altitude Correction; Jerry; Jerry Spanks Again; Kyle, Part I; Mentoring Kyle (School Attendance Agreement); Scott and I Get Spanking; and The Coach). Mr. Gilbert had posted these sites under his username of [barespanker@aol.com](mailto:barespanker@aol.com). The stories depicted young boys between the ages of thirteen and fifteen being subjected to severe spankings by older men. The older men became sexually aroused and after the young boys got over their fear they too became sexually aroused. An email was also located,

which indicated a man identified as Clifton Meador, had helped Gilbert destroy videotapes during a prior sex offense investigation in 2001.

Clifton Meador was interviewed and reported that he and Mr. Gilbert became associated due to their common interest in spanking in 1995 or 1996. Clifton Meador operated a website [spankingcentral.com](http://spankingcentral.com). Mr. Gilbert frequented a variety of spanking websites and posted several spankings stories on the website [malespank.net](http://malespank.net) under his user name of [barespanker@aol.com](mailto:barespanker@aol.com). Clifton Meador was reportedly aware of Mr. Gilbert's interest in young boys, those of whom Mr. Gilbert referred to as "baby boys". Mr. Gilbert had sent Clifton Meador a number of spanking videos, but Clifton Meador indicated he could not use them because some of the boys were under the age of 18. Mr. Gilbert offered Clifton Meador the services of a seventeen year old boy for use in his videos but Clifton Meador declined the offer since the boy was too young. Clifton Meador indicated that Mr. Gilbert believed the boys were able to give consent at the age of sixteen.

Clifton Meador explained that Mr. Gilbert had contacted him about being investigated for sexually abusing a boy in 2001. Mr. Gilbert had expressed concern that the 2001 investigation was going to spark renewed interest in the allegations surrounding a young boy that disappeared from Alaska previously. Mr. Gilbert claimed he had started spanking the boy and the boy freaked out and fled Mr. Gilbert's home.

Clifton Meador reported that he assisted Gilbert in removing over 200 videotapes from Gilbert's home. Clifton Meador advised officials there was a secret storage area in Gilbert's home behind a fake panel in a downstairs closet where Gilbert kept many of his videotapes. On October 31, 2007, Clifton Meador received a call from Mr. Gilbert and Mr. Gilbert said, "I think my life is about to change in a big way."

A second search warrant was served on Mr. Gilbert's residence and the hiding spot was located behind a fake panel in a downstairs closet. Inside the storage area officials found a spanking bench and several boxes of videotapes.

The homemade videotapes depicted Mr. Gilbert engaged in ritualistic spanking sessions with one or more young boys ranging in ages between eight and seventeen. Although there were approximately 40 victims in the videos only 36 victims were identified and interviewed. The videos depicted Mr. Gilbert ordering the boys to strip, often completely naked, and then Gilbert would fondle them and comment on the size of their penis and/or to their level of arousal. Mr. Gilbert is seen lecturing the boys and/or interrogating them about their real or imagined misbehavior, which would necessitate them to be punished. Mr. Gilbert would then lay the boys across his lap with their buttocks in the air and their feet off the ground. He would spank their bare buttocks with his hand or with some form of spanking instrument such as a paddle, belt, or cane. The spankings generally lasted ten to thirty minutes. The victims were almost always left crying, screaming, writhing, and pleading for him to stop. The victims suffered redness, welting, cuts, bruises, blisters, and sometimes bleeding to their buttocks. In many of the spanking sessions the victims were bound or forcibly held down by Mr. Gilbert. During

the spankings Mr. Gilbert would caress and fondle the victims' bodies. After the spankings, Mr. Gilbert would hug the victims and made them thank him for the spankings. A few of the scenes depicted traditional sexual conduct to include masturbation and oral and anal sex.

R.L.K. is depicted in 102 of these scenes, which occurred between his ages thirteen and eighteen. R.L.K. is seen being spanked by Mr. Gilbert while he is naked or mostly naked. Mr. Gilbert is using his hand, paddle, belt, hair brush, cane, and leather strap. In many of the scenes, R.L.K. is strapped to the spanking bench or held down by Mr. Gilbert. R.L.K. is seen struggling, crying and pleading with Mr. Gilbert to stop. In one scene, R.L.K. is seen resisting and Mr. Gilbert whispers "If you don't participate in this, it will be ten times worse." During the spanking R.L.K. is lifted up and then pulled back down by his penis and spanked more. Some scenes R.L.K. is seen spanking a naked Mr. Gilbert with a leather strap, paddle or cane. In one scene, Mr. Gilbert asked R.L.K. if he liked spanking his bare butt and R.L.K. responded, "No, I hated it." Mr. Gilbert then put on a pornographic video and directed R.L.K. to say, "Shut up and suck my cock, bitch." Mr. Gilbert is then seen performing oral sex on R.L.K. There is one scene that depicts a man identified as Jack Papeggay spanking a naked R.L.K. with a paddle. Three scenes depict R.L.K. spanking another naked young boy and Mr. Gilbert is instructing them on how to touch themselves. R.L.K. is seen with a boy identified as S.C. masturbating and performing oral sex on one another. Mr. Gilbert states, "I wanna see the cum on the lips." One scene depicts R.L.K. at the age of 15, and Mr. Gilbert inserting a vibrator into R.L.K.'s anus. One scene depicts Mr. Gilbert bathing R.L.K. and shaving off all of his pubic hair. Seven scenes depict R.L.K. in a shower or a hot tub. One scene depicts R.L.K. lying on a bed with a red ribbon tied around him as if he were a Christmas present.

Jack Papeggay wa interviewed and he admitted he met Mr. Gilbert in 1990 due to their mutual interest in spanking. Mr. Papeggay indicated Mr. Gilbert did not enjoy spanking men his own age and began getting involved with younger and younger men. He began spanking boys as young as sixteen and referred to them as "baby boys". Mr. Papeggay questioned Mr. Gilbert about his relationships with young boys and Mr. Gilbert insisted that age of consent in Washington was sixteen. Mr. Gilbert showed Mr. Papeggay approximately 50 videos of Gilbert spanking young boys. Mr. Gilbert introduced Papeggay to R.L.K. and then pulled down R.L.K.'s pants and underwear and spanked R.L.K. in front of Papeggay. Mr. Gilbert tried to entice Mr. Papeggay into spanking R.L.K. on three occasions, at which Mr. Papeggay finally agreed. R.L.K. stated he preferred to be spanked by Papeggay because Gilbert's spankings were too severe, which Papeggay described as "very hard and vicious." Papeggay also reported that Mr. Gilbert's typical fantasy included Gilbert role playing as a fourteen year old boy being spanked by an older man.

## II. VICTIM CONCERNS:

Although R.L.K. and E.L.K. are clearly identified in the Official Version of the Offense, the Department of Corrections did not receive a list of all the victims captured in this case nor did the Department of Corrections receive any contact information for those victims identified.

## III. GILBERT'S STATEMENT REGARDING OFFENSE:

On December 2, 2009, Community Corrections Officer Dustin Richey and I met Mr. Gilbert in the Pierce County Jail and he agreed to participate in the Pre-Sentence Investigation interview.

Mr. Gilbert indicated there were a "number of discrepancies" in the official version of the offense but that he was not going to dispute them because it would undermine the Plea Agreement. Mr. Gilbert stated that the file material described him as a sadist... he stated, "I'm really much more of a masochist." According to Mr. Gilbert, he really preferred to be the person subjected to the spankings more so than to dispense the spankings. He professed his "love" for R.L.K. and explained that he felt that their relationship was consensual. He stated that R.L.K. "as a disciplinarian was phenomenal."

He insists that the videotapes were rarely viewed afterward. He referred to himself as a "pack rat" and stated that he really maintained the videos so he could use them in his defense should anyone ever accuse him of illegal conduct. He added... "I never really thought of it as child molestation."

He explained that as a child, age five or six, his father performed corporal punishment as a form of discipline. He would lecture him and then spank him when he misbehaved but always hugged him afterward. As he grew older, at age fourteen or fifteen, his father's anger during the spankings was heightened and he described being "terribly afraid". It was during this time that his father stopped consoling him with a hug afterward. Mr. Gilbert indicated that a psychologist had suggested to him that the area of the brain that is stimulated by fear is adjacent to the area that is stimulated by sex. The psychologist further suggested that perhaps, in his case, the barrier between fear and his sexual arousal was breached leading to him being sexually aroused by fear and pain.

He stated, "It was completely inappropriate behavior." He maintains that R.L.K. was thirteen years of age before he and R.L.K. began their intimate relationship and stated, "I take full responsibility."

**IV. CRIMINAL HISTORY:****SOURCES:**

1. National Crime Information Center (NCIC) and Washington Crime Information Center ( WASCIC).
2. Washington State Department of Corrections Offender Database.
3. Superior Court Operations Management Information System (SCOMIS).
4. Law Enforcement Support Agency (LESA).
5. District Court Information System (DISCIS).

<b>Juvenile Felony:</b>	Gilbert has no known juvenile felony convictions.
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**Adult Felony:**

<b>Date of Offense:</b>	Before on or about October 31, 2007
<b>Crime:</b>	Sexual Exploitation of a Child in the Production of Child Pornography, Counts 1 – 21, 23 – 31, and 33 (Violation of 18 U.S.C. §§ 2251(a) and (e) and 2256)
<b>County / Cause:</b>	United States District Court / CR07-5732BHS-001
<b>Date of Sentence:</b>	10/26/2009
<b>Disposition:</b>	Guilty, Life with the minimum set at 15 years.

**Adult Felony:**

<b>Date of Offense:</b>	On or about 2005 and within five years of on or about October 31, 2007
<b>Crime:</b>	Transportation of a Minor to Engage in Illegal Sexual Activity, Counts 34 and 35 (Violation of 18 U.S.C. §§2423(a) and 2)
<b>County / Cause:</b>	United States District Court / CR07-5732BHS-001
<b>Date of Sentence:</b>	10/26/2009
<b>Disposition:</b>	Guilty, Life with the minimum set at 10 years.

**Adult Felony:**

<b>Date of Offense:</b>	Between on or about October 30, 2007 and on or about August 28, 2008
<b>Crime:</b>	Obstruction of Justice, Count 36 (Violation of 18 U.S.C. § 1512(b)(3))
<b>County / Cause:</b>	United States District Court / CR07-5732BHS-001
<b>Date of Sentence:</b>	10/26/2009
<b>Disposition:</b>	Guilty, 20 years maximum.

<b>Adult Felony:</b>	
<b>Date of Offense:</b>	Between on or about October 30, 2007 and on or about August 28, 2008
<b>Crime:</b>	Obstruction of Justice, Count 37 (Violation of 18 U.S.C. § 1512(b)(1))
<b>County / Cause:</b>	United States District Court / CR07-5732BHS-001
<b>Date of Sentence:</b>	10/26/2009
<b>Disposition:</b>	Guilty, 20 years maximum.

<b>Adult Felony:</b>	
<b>Date of Offense:</b>	Count I: Between March 14, 2001 and March 13, 2003; Count II: Between March 14, 2001 and October 27, 2007
<b>Crime:</b>	Child Molestation in the First Degree, Counts I and II
<b>County / Cause:</b>	Pierce County Cause / 07-1-05618-3
<b>Date of Sentence:</b>	Pending - current
<b>Disposition:</b>	Guilty, awaiting Sentencing.

<b>Adult Felony:</b>	
<b>Date of Offense:</b>	Counts III - XI: Between March 14, 2001 and October 27, 2007
<b>Crime:</b>	Sexual Exploitation of a Minor, Counts III - XI
<b>County / Cause:</b>	Pierce County Cause / 07-1-05618-3
<b>Date of Sentence:</b>	Pending - current
<b>Disposition:</b>	Guilty, awaiting Sentencing.

**Misdemeanor(s):** Misdemeanors do not affect the offender score but do reflect the offender's view of societal values and should be noted by the court. Mr. Gilbert has no documented misdemeanor convictions.

<b>V. SCORING:</b>		
SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE
Count I X	9+	Life with a minimum set between 149 and 198 months
Count II X	9+	Life with a minimum set between 149 and 198 months
Count III IX	9+	120 months
Count IV IX	9+	120 months
Count V IX	9+	120 months
Count VI IX	9+	120 months
Count VII IX	9+	120 months
Count VIII IX	9+	120 months
Count IX IX	9+	120 months
Count X IX	9+	120 months
Count XI IX	9+	120 months

Pre-Sentence Investigation  
Weldon Marc Gilbert  
Doc #336204  
07-1-05618-3  
Page 9 of 15

<b>VI. COMMUNITY CUSTODY:</b>			
	<b>SERIOUSNESS LEVEL</b>	<b>OFFENDER SCORE</b>	<b>STANDARD RANGE</b>
Count I	X	9+	Life
Count II	X	9+	Life
Count III	IX	9+	36 - 48 months
Count IV	IX	9+	36 - 48 months
Count V	IX	9+	36 - 48 months
Count VI	IX	9+	36 - 48 months
Count VII	IX	9+	36 - 48 months
Count VIII	IX	9+	36 - 48 months
Count IX	IX	9+	36 - 48 months
Count X	IX	9+	36 - 48 months
Count XI	IX	9+	36 - 48 months

#### **VII. RISK / NEEDS ASSESSMENT:**

A needs assessment interview was completed with the offender. The following area(s) and strengths have implications for potential risk, supervision, and interventions. Unless otherwise noted, the following information was provided by the offender and has not been verified.

#### **Criminal History:**

According to the federal Pre-Sentence Report dated October 15, 2009, on September 17, 2007, a Grand Jury for the Western District of Washington returned a 37 Count Indictment against Weldon Marc Gilbert. Counts 1 - 33 charged Mr. Gilbert with Sexual Exploitation of a Child in the Production of Child Pornography. Counts 34 and 35 charged Mr. Gilbert with Transportation of a Minor to Engage in Illegal Sexual Activity. Count 36 and 37 charged Mr. Gilbert with Obstruction of Justice.

On April 23, 2009, Mr. Gilbert pled guilty to Counts 1 – 21, 23 – 31, and 33 – 37 of those originally charged. According to the terms of the Plea Agreement, the parties acknowledge and agree that the appropriate Sentence to be imposed by the Court is a Sentence between 228 and 300 months confinement and a term of Life on Supervised Release. No other agreement had been made with regard to the imposition of the Sentence in that matter, and the parties indicated they understood that the Court retained full discretion to impose a Sentence within the agree range. Per the Pre-Sentence Report, US Probation Officer Daniel Acker recommended confinement for a total of 300 months and Life on Supervised Release.

Mr. Gilbert is currently being detained on the current charges in the Pierce County Jail. He is housed in protective custody housing and indicated he has not been subjected to disciplinary action.

**ADULT FELONY OFFENSES:**

**Date of Offense: Count I: Between March 14, 2001 and March 13, 2003; Count II - XI: Between March 14, 2001 and October 27, 2007; Child Molestation in the First Degree, Count I/II; Sexual Exploitation of a Minor, Counts III - XI (Pierce County Cause 07-1-05618-3), Date of Sentence: Pending; DISPOSITION: Guilty; awaiting Sentencing.**

(See Page 1; Section I Official Version of Offense)

Community Corrections Officer Dustin Richey and I met with Mr. Gilbert in the Pierce County Jail and he agreed the background information provided in the federal Pre-Sentence Report was accurately reported. The following information is a compilation of information gathered by file material and the interview.

**Education / Employment:**

Mr. Gilbert reported he graduated from Manson High School in Manson, Washington in 1978, as Valedictorian and President of the Honor Society. He attended Washington State University for less than three years while working for Evergreen Air at the Pullman Moscow Airport. He found work at the airport more fulfilling and dropped out of college.

Mr. Gilbert was originally hired by Evergreen Air as a support person performing menial tasks on the tarmac. During this same time he pursued lessons in flying and obtained his flying license in early 1980. Shortly after, Evergreen Air was purchased by Palouse Aviation and despite the managerial changes, he remained on and was promoted to Assistant Manager and Chief Pilot.

File material indicates he worked for a small international airline company; however, no specific information was provided/verified.

In June 1982, Mr. Gilbert went to work for Evergreen Helicopters in McMinnville, Oregon as a co-pilot on a corporate leer jet. He later transferred to their Airline Division, Evergreen International Airlines, as a co-pilot. Within one year he was promoted to Captain and was one of the nation's youngest captains at the age of 24.

Evergreen International Airlines contracted for United Parcel Service (UPS) and for this reason, Mr. Gilbert was given the opportunity to occasionally fly UPS jets. In 1988, UPS took over its airline fleet and Mr. Gilbert was subsequently hired by UPS as their youngest captain.

Between August 1988 and November 2007, at the time of Mr. Gilbert's arrest, he was employed by UPS in Seattle, Washington making approximately \$235,000.00 per year. During this same time period, Mr. Gilbert began investing in small business ventures to include being the owner and operator of Spencer Aircraft, and Aerocenter. In 2007, Mr. Gilbert purchased a coffee shop, Bellino Coffee in Seattle, Washington for R.L.K., and

entered into a business partnership with R.L.K. According to Mr. Gilbert, Bellino Coffee went under and he lost almost \$100,000.00 in investment capital. While he was did not provide specific information, he indicated he still has partnership in one or more businesses and will continue to reap revenue from the businesses.

**Financial:**

As indicated above, Mr. Gilbert lived a lavish lifestyle prior to his arrest. Due to the current offense, he has lost his home and property in Lake Tapps, his personal vehicle, his helicopter, his airplane, and his boat in a seizure. Mr. Gilbert lost a considerable amount of money on the business venture he entered with his victim, R.L.K., but indicates he will manage financially on the revenue with his other businesses.

**Family / Marital:**

Mr. Gilbert was born Weldon Cecil Gilbert and Sybil Ann Decker on August 26, 1960, in California. His father works in the construction industry and his mother is retired teacher. He has two siblings; a brother, Jeffrey Gilbert (age 44), and a sister, Julie Montiel (age 38). His brother is an attorney and his sister works in management in the hotel industry.

Mr. Gilbert and his siblings were raised with strong work ethics. Their household was void of abuse and although Mr. Gilbert described his father's use of corporal punishment as perhaps a trigger for his current sexually deviant behavior, he denies ever being sexually abused himself.

Mr. Gilbert has never been married and has no children. He has always been attracted to young males and more so to heterosexual males, which has always made his sexual relationship covert.

**Accommodation:**

Mr. Gilbert was residing in Lake Tapps; however, as noted above, that residence has been seized due to the current offense. He expressed some concern about returning to Pierce County and some desire to possibly transfer his Supervised Release to another State.

Mr. Gilbert indicated that he was told he would be supervised by the Federal Probation Office and that the State of Washington would "defer" supervision to the federal government. It should be noted that I advised Mr. Gilbert that is not the case and he would still be supervised by both the State of Washington and US Probation, as they are separate jurisdictions. This being the case, I stressed the importance that he comply with Conditions of Supervision identified by the Pierce County Superior Court and if he wished to pursue an Interstate Transfer then he must first apply through the Interstate Compact process, which will be done by the Washington State Department of Corrections.

**Leisure / Recreation:**

Mr. Gilbert has always enjoyed the company of young boys and provided an environment that bred a desire by the boys to be around him. Mr. Gilbert admitted that he has never really grown up and has a great relationship with young boys because he is easy to talk to and can relate to young boys. He enjoys the same type of entertainment as the company he keeps.

**Companions:**

Mr. Gilbert's obsession with corporal punishment has led him to develop relationships with men with the same obsession; i.e., Clifton Meador and Jack Pappagay.

**Alcohol / Drug Use:**

Mr. Gilbert tried an alcoholic beverage for the first time at the age of fifteen. He refers to himself as a "social drinker" and last drank the night of his arrest. He denies any illicit drug use.

**Emotional / Personal:**

Mr. Gilbert denies any familial history or personal history of mental illness. He denies any current suicidal ideations or prior suicidal thoughts or attempts.

**Attitude / Orientation:**

Mr. Gilbert accepted responsibility for his behaviors without hesitation. During this interview he spoke freely and passionately of his love for young boys and often described himself identifying with many of his victims, whether those feelings were fact or fiction.

Mr. Gilbert is currently being prosecuted on the "fifth generation", which included as many as 40 victims but the true extent of Mr. Gilbert's offending is really unknown. Mr. Gilbert poses a threat to any male minor he has contact with.

**VIII. CONCLUSIONS:**

A Pre-Sentence interview was completed and factors which require attention to reduce the risk to re-offend include sexual deviancy. Recommended conditions on Appendix H will enable the Department of Corrections to effectively monitor and supervise Mr. Gilbert in the community. Intervention applied to these areas would assist in reducing potential risk to community safety. Also, the Department of Corrections, as a matter of policy, supervises sex offenders and violent offenders who are placed on supervision, at an elevated level.

**IX. SENTENCE OPTIONS:**

- Confinement within the Standard Range Sentence  
 Exceptional Sentence

**X. RECOMMENDATIONS:****Confinement within the Standard Range Sentence**

The standard range for Child Molestation in the First Degree with an offender score of nine plus would be Life with the minimum set between 149 and 198 months. The Indeterminate Sentence Review Board will determine his actual release date. While incarcerated he could be available for treatment through the Department's Twin Rivers Correctional Center's treatment facility.

Following incarceration he will be required to spend Life on Community Custody under the supervision of the Department of Corrections and the authority of the Indeterminate Sentence Review Board for any period of time the person is released from total confinement before the expiration of the maximum sentence on Counts I and II; Counts III - XI are subjected to a range of 36 to 48 months. While on Community Custody this Department will supervise Mr. Gilbert for any conditions imposed by the Court and for the collection of his Court-ordered legal financial obligations. Following his release, he would continue to be monitored for the full period of his Community Custody by qualified sexual deviancy counselors.

It is my understanding the Deputy Prosecutor in this matter intends to recommend a Determinate Sentence of 198 months confinement on Counts I and II and 120 months confinement on Counts III - XI to run concurrent to one another and to US District Court case CR07-5732BHS-001, Community Custody for 36 - 48 months, No Contact Order with named victims, No Contact Order with minors without supervision, all Conditions as identified in Appendix H, and No Restitution.

On December 2, 2009, I spoke to Deputy Prosecutor Pat Hammond regarding the Sentence recommendations. It was Mr. Hammond's position that the Sentencing option would be a Determinate Sentence. Based on information available to this Department, it is our opinion that the Sentencing Guideline imposed is based on the most recent date of offense(s); therefore, based on the last date listed in Count I, March 13, 2003; and in Count II, October 27, 2007, these Sentences fall under the Indeterminate Sentence Review Board.

Ultimately, the Department would like to support the recommendation of the Plea Agreement and concur with the State's recommendations with the exception the Department will recommend a No Contact Order with *all minors*. If the Court determines that the Department is misinterpreting these Sentencing guidelines, please disregard the Standard Range listed. If the Court determines that the dates listed would in fact constitute an Indeterminate Sentence, then we concur with any adjustments to the dates of offenses listed in order to correct this.

**Sentence Type / Option:** Standard Range

**Confinement:**

Count I/II: 198 months;

Count III – XI: 120 months.

**Community Custody:**

Counts I/II: 36 months;

Count III – XI: 36 months

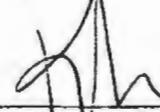
**Conditions of Supervision:** (See attached Appendix H)

**XI. MONETARY OBLIGATIONS:**

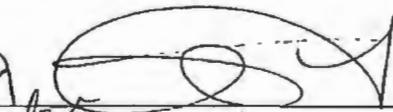
<b>Restitution:</b> TBD	<b>Court Costs:</b> \$200.00	<b>Other:</b> \$100.00
<b>Victim Penalty:</b> \$500.00	<b>Attorney Fees:</b> \$0.00	
<b>Drug Fund:</b> \$0.00	<b>Fine:</b> \$0.00	

Submitted By:

Approved By:

  
 \_\_\_\_\_  
 Kimberly Carrillo  
 Community Corrections Officer III  
 Pierce County PSI/Intake Unit  
 755 Tacoma Ave S  
 Tacoma, WA 98402  
 253-207-4749

12/3/2009  
Date

  
 \_\_\_\_\_  
 Kristine Skipworth  
 Community Corrections Supervisor  
 Pierce County PSI/Intake Unit  
 755 Tacoma Ave S  
 Tacoma, WA 98402  
 253-207-4738

12/3/09  
Date

Distribution: ORIGINAL – Court COPY - Pat Hammond, Prosecuting Attorney; John Browne, Defense Attorney, File, WCC / RC (Prison)

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

<p><b>STATE OF WASHINGTON</b></p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">Defendant</p> <p>Weldon Marc Gilbert</p> <p>DOC No. 334195</p>	<p>]</p> <p>]</p> <p>]</p> <p>]</p> <p>]</p> <p>]</p> <p>]</p>	<p><b>Cause No.: 07-1-05618-3</b></p> <p><b>JUDGEMENT AND SENTENCE (FELONY)</b></p> <p><b>APPENDIX H</b></p> <p><b>COMMUNITY PLACEMENT / CUSTODY</b></p>
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The court having found the defendant guilty of offense(s) qualifying for Community Custody, it is further ordered as set forth below.

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

(a) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/custody:

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

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

(b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement / custody:

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

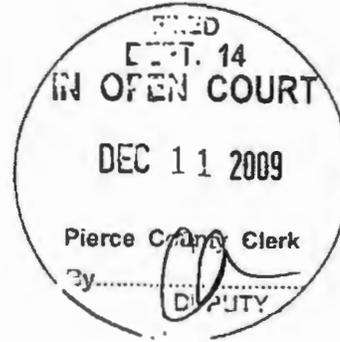
- direction of your Community Corrections Officer and/or therapist at your expense.
19. Register as a Sex Offender in your county of residence.
  20. Avoid places where children congregate. (Fast-food outlets, libraries, theaters, shopping malls, play grounds and parks.)
  21. Submit to DNA/HIV testing.
  22. Follow all conditions imposed by your Sexual Deviancy Treatment Provider.
  23. Obey all laws.
  24. You shall not have access to the Internet.
  25. No contact with any minors without prior approval of the DOC/CCO and Sexual Deviancy Treatment Provider.
  26. Obtain a Mental Health Evaluation by a state-certified Mental Health Provider and comply with recommended follow-up treatment and medication.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
JUDGE, PIERCE COUNTY SUPERIOR COURT



07-1-05618-3 33357052 CME 12-14-09



**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF JOURNAL ENTRY**

vs.

Page 1 of 2

GILBERT, WELDON MARC

Judge: SUSAN K. SERKO

Court Reporter: Lanre Adebayo

Judicial Assistant/Clerk: Candice Augustin

PATRICK HAMMOND

Prosecutor

JOHN HENRY BROWNE

Defense Attorney

Proceeding Set: SENTENCING DATE

Proceeding Date: 12/11/09 13:30

Proceeding Outcome: CONTINUED

Resolution:

**Clerk's Code:**

Proceeding Outcome code: HCNTSTP

Resolution Outcome code:

Amended Resolution code:

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

GILBERT, WELDON MARC

Page: 2 of 2

Judge: SUSAN K. SERKO

**MINUTES OF PROCEEDING**

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Judicial Assistant/Clerk: Candice Augustin

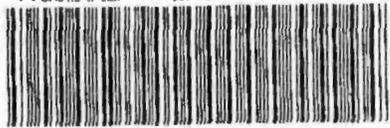
Court Reporter: Lanre Adebayo

**Start Date/Time: 12/11/09 1:46 PM**

December 11, 2009 01:45 PM This matter comes on for sentencing. Present are: Patrick Hammond for the State and John Henry Browne with and on behalf of the Defendant who is in custody. Mr. Hammond addresses the Court regarding an Amended Information. Court's comments and request for briefing regarding determinate versus indeterminate sentencing. Counsel address the Court. Sentencing is set over to January 12, 2010 at 3:00 p.m. before Judge Serko.

**End Date/Time: 12/11/09 2:02 PM**

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07-1-05618-3 33382684 MMSNT 12-17-09

THE HONORABLE SUSAN K. SERKO

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

STATE OF WASHINGTON,

Plaintiff,

vs.

WELDON MARC GILBERT,

Defendant.

No. 07-1-05618-3

DEFENDANT'S SUPPLEMENTAL  
BRIEFING REGARDING  
DETERMINATE SENTENCING AND  
THE REMEDIES PLEA, FILED  
IN COUNTY CLERK'S OFFICE  
WITHDRAWAL

AM. DEC 16 2009 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

COMES NOW the defendant, Marc Gilbert, by and through his attorneys, John Henry Browne and Emma C. Scanlan, and submits this supplemental briefing requesting that the Court impose the agreed upon determinate sentence of 198 months.

Should the Court refuse to accept the new Amended Information and determine that the indeterminate sentencing provisions apply, Mr. Gilbert will invoke his right to elect to move either for withdrawal of his plea or specific performance of the terms of the bargain as based upon the mutual mistake of law at the heart of the agreement. The state will then dismiss the present charges and file a new charging document with corrected dates- to which Mr. Gilbert will plead guilty as charged.

ORIGINAL

1 This procedure will thus ensure that Mr. Gilbert receives the determinate sentence  
2 the parties agreed to during the extensive plea negotiations on both the state and federal  
3 levels in this case.

#### 4 I. INTRODUCTION

5 On November 20, 2009, before this Court, Mr. Gilbert pled guilty to Counts I and  
6 II, child molestation in the first degree, in violation of RCW 9A.44.083, and Counts III  
7 through XI, sexual exploitation of a minor, in violation of RCW 9.68A.040(1)(b), of the  
8 Amended Information.

9 The underlying offense conduct for Counts I and II occurred on March 14, 2001,  
10 which predated the promulgation of the indeterminate provisions of RCW 9.94A.712.

11 As sexual exploitation of a minor is not subject to RCW 9.94A.712, Counts III  
12 through XI are not at issue.

13 The Court informed Mr. Gilbert during the colloquy that, in accordance with the  
14 plea agreement, he faced a standard range sentence of 149 to 198 months, not 149 months  
15 to life. In the plea agreement, the state recommends that the Court impose a determinate  
16 sentence of 198 months on Counts I and II, to run concurrent with a determinate sentence  
17 of 120 months on Counts III through XI, all of which is to run concurrently with Mr.  
18 Gilbert's 300 month federal sentence. The most crucial component of the agreement, in  
19 fact, was the determinate nature of the agreed upon sentence.

20 On December 11, 2009, Mr. Gilbert came before this Court for sentencing.  
21 During the ensuing proceedings, the state submitted a new Amended Information  
22 ("Amended Information II"), listing March 14, 2001 as the sole charging date for all  
23 counts. As this date precedes enactment of RCW 9.94A.712, which mandates  
24

1 indeterminate sentencing for certain enumerated offenses- including child molestation in  
2 the first degree- both the state and the defense agreed that the determinate sentencing  
3 provisions in place in March of 2001 applied to this case and requested a determinate  
4 sentence of 198 months.

5 The Court then stated its position that it would take under advisement the issue of  
6 the new Amended Information submitted to the Court on December 11, 2009 at  
7 sentencing. In addition, the Court requested additional briefing regarding the  
8 applicability of determinate sentencing in this case.

9 Should the Court reject Amended Information II, Mr. Gilbert will move, with the  
10 agreement of the state, to withdraw his guilty plea or request specific performance of the  
11 terms of the plea bargain. The state will then dismiss the present charges and file an  
12 entirely new Information listing the dates and charges in Amended Information II. Mr.  
13 Gilbert will then plead guilty as charged and proceed to sentencing with the top of the  
14 standard range at 198 months.

15 Rather than expend more resources to ensure that Mr. Gilbert receives the  
16 determinate sentence which the parties agree is appropriate in this case, the defense- in  
17 accord with the state- respectfully requests that the Court impose the determinate 198  
18 month sentence which is: (1) appropriate with respect to the charging dates submitted in  
19 both Amended Informations I and II; and (2) the result of countless hours of negotiations  
20 over a two year time period.

## 21 **II. A DETERMINATE SENTENCE IS APPROPRIATE IN THIS CASE**

22 Given the Court's ratification of the explicit agreement between the parties that  
23 Mr. Gilbert's sentence is to be between 149- 198 months, the Court should impose the  
24

1 agreed upon recommendation of a 198 month determinate sentence to run concurrently  
2 with Mr. Gilbert's 300 month federal sentence.

3 First, as the charging periods for the counts listed in Amended Information I, filed  
4 on November 20, 2009, begin on March 14, 2001, RCW 9.94A.712 was not yet in effect  
5 so that any sentence must be determinate.

6 Next, in Amended Information II, submitted by the state on December 11, 2009,  
7 the offense date for each count is March 14, 2001. As this date predates the enactment of  
8 RCW 9.94A.712, any sentence imposed must therefore be determinate.

9 Finally, "[T]he integrity of the plea bargaining process requires that once the  
10 court has accepted the plea, it cannot ignore the terms of the bargain, unless the  
11 defendant ... chooses to withdraw the plea." State v. Bisson, 156 Wn.2d 507, 520, 130  
12 P.3d 820 (2006) (adding emphasis) (quoting State v. Miller, 110 Wn.2d 528, 536, 756  
13 P.2d 122 (1988)).

14 In Miller, for example, before entering his guilty plea, the defendant was  
15 misinformed by his attorney- who, in turn, was misinformed by the prosecutor- that the  
16 possibility of a sentence less than 20 years existed on his first degree murder conviction.  
17 110 Wn.2d at 529. Defendant thus entered into a plea deal wherein he could argue for an  
18 exceptional sentence less than 20 years while the state would recommend a term of  
19 confinement of 20 years, the bottom of the standard range. Id.

20 Before sentencing, defendant was correctly informed about the 20 year mandatory  
21 minimum sentence for murder in the first degree. He then moved to withdraw his plea,  
22 but the trial court denied the motion. Id. at 529-30.

24

1 The appellate court held that defendant was indeed entitled to withdraw his plea,  
2 State v. Miller, 48 Wn.App. 625, 742 P.2d 723 (1987), and the State Supreme Court  
3 granted the state's petition for review. 110 Wn.2d at 530.

4 The Miller noted that "the integrity of the plea bargaining process requires that  
5 defendants be entitled to rely on plea bargains as soon as the court has accepted the plea."  
6 Id. at 536 (citing State v. Tourtellote, 88 Wn.2d 579, 585, 564 P.2d 799 (1977)). A trial  
7 court must therefore determine the validity of a plea prior to accepting the plea and at that  
8 point, "the defendant is entitled to rely on the benefit of the bargain." Id.

9 The Court thus permitted defendant to withdraw his plea. Id. at 537.

10 As the Miller Court concluded:

11 [W]here the terms of a plea agreement conflict with the law or the  
12 defendant was not informed of the sentencing consequences of the  
13 plea, the defendant must be given the initial choice of a remedy to  
14 specifically enforce the agreement or withdraw the plea. The  
15 prosecutor bears the burden of demonstrating that the defendant's  
16 choice of remedy is unjust.

17 Id. at 536.

18 The factually analogous In re Murillo, 134 Wn.App. 521, 142 P.3d 615 (2006),  
19 provides additional guidance. In Murillo, defendant was sentenced to a determinate term  
20 of 59.5 months pursuant to his plea of guilty to child molestation in the first degree,  
21 which is one of the crimes enumerated in RCW 9.94A.712 as requiring an indeterminate  
22 sentence. Id. at 524-26. During the sentencing hearing, the parties also discussed  
23 community custody, which was the first time that the defendant realized he could be  
24 subject to supervision for the remainder of his life. Id. at 526.

1 The Department of Corrections noticed the error and requested that the defendant  
 2 be re-sentenced. Id. at 529. The court then amended the judgment and sentence to reflect  
 3 an indeterminate sentencing range of 59.5 months to life. Id.

4 The Murillo Court first repeated the axiom that a guilty plea “entered on a plea  
 5 bargain that is based upon misinformation about sentencing consequences is not  
 6 knowingly made.” Id. at 533 (quoting In re Hoisington, 99 Wn.App. 423, 428, 993 P.2d  
 7 296 (2000) (citing Miller, supra at 531) (citing Tourtellotte, supra at 585)). At that point,  
 8 the sentencing court may permit the defendant to either withdraw his plea or move for  
 9 specific performance. Id. And, “[t]he fact that the terms of a plea agreement are contrary  
 10 to the explicit terms of a sentencing statute does not preclude enforcement of the  
 11 agreement, “where fundamental principles of due process so dictate.” Id. (quoting Miller,  
 12 supra at 532 (citing State v. Cosner, 85 Wn.2d 45, 530 P.2d 317 (1975)). These above  
 13 principles “operate to bind the court, as well, once a plea agreement has been validly  
 14 accepted.” Id. (quoting State v. Schaupp, 111 Wn.2d 34, 38, 757 P.2d 970 (1988)).

15 Under Miller and Murillo, then, a trial court has the authority to order a  
 16 determinate sentence even where RCW 9.94A.712 facially applies; and, a defendant has  
 17 the right to elect between withdrawal of the plea and specific performance where there is  
 18 a conflict in law or where the defendant is improperly informed of the direct sentencing  
 19 consequences of a plea agreement.

20 **III. IF THE COURT SEEKS TO IMPOSE AN INDETERMINATE**  
 21 **SENTENCE, MR. GILBERT WILL ELECT TO WITHDRAW HIS**  
 22 **PLEA OR MOVE FOR SPECIFIC PERFORMANCE.**

23 If the Court decides that Mr. Gilbert’s sentence is indeterminate, it will be clear  
 24 that Mr. Gilbert did not understand- and was in fact misinformed by his own counsel, the

1 prosecution, and the plea colloquy conducted by this Court. Mr. Gilbert thus has the right  
2 to elect either withdrawal of his plea or specific performance of the terms of the bargain.

3 A defendant's guilty plea must be "knowing, voluntary, and intelligent." Murillo,  
4 supra at 530 (citing Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d  
5 274 (1969); In re Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004)). For a plea to be  
6 voluntary and thus valid, the defendant "must understand the sentencing consequences"  
7 of his plea. Bisson, supra at 517.

8 These constitutional requirements are implemented by court rule in the State of  
9 Washington: "The court shall not accept a plea of guilty, without first determining that it  
10 is made voluntarily, competently and with an understanding of the nature of the charge  
11 and the consequences of the plea." Murillo, supra at 530 (quoting CrR 4.3(d)).

12 A guilty plea is thus involuntary if the plea is entered "without knowledge of the  
13 direct sentencing consequences," which constitutes a "manifest injustice" requiring the  
14 court to permit a defendant to withdraw the plea. Id. (citing CrR 4.2(f); Isadore, 151  
15 Wn.2d at 298; State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); State v. Walsh,  
16 143 Wn.2d 1, 8, 17 P.3d 591 (2001)); see also State v. Turley, 149 Wn.2d 395, 398-99,  
17 69 P.3d 338 (2003) (where a defendant demonstrates that a guilty plea is involuntary-  
18 such as where defendant is not informed of the direct sentencing consequences of the  
19 plea- this "independently establishes manifest injustice" so that the trial court must permit  
20 defendant to withdraw his plea).

21 As stated above, under such circumstances where defendant has entered an  
22 involuntary plea, defendant has the right to elect either withdrawal of the guilty plea or  
23

24

1 specific performance of the terms of the bargain. See, e.g., Bisson, supra at 517; Turley,  
2 supra at 399; Murillo, supra at 533.

3 The trial court, however, is “not necessarily bound” by the defendant’s remedy of  
4 choice. Bisson, supra at 517. Once defendant has opted for one of the available  
5 remedies, the state bears the burden of demonstrating that defendant’s choice is unjust,  
6 which requires an affirmative showing “that compelling reasons exist not to allow the  
7 defendant’s choice.” Id. at 517-18.

8 Here, the state is in accord with the defense that should the Court seek to impose  
9 an indeterminate sentence, the equities dictate that Mr. Gilbert will either entirely  
10 withdraw his plea or, preferably, compel specific performance of the terms of the bargain.

11 **A. Withdrawal**

12 Under any and all controlling authority, because Mr. Gilbert was not properly  
13 informed of the direct sentencing consequences of his guilty plea, he has the right to  
14 withdraw from the bargain. See, e.g., Bisson, supra at 517; Turley, supra at 399; Murillo,  
15 supra at 533.

16 As stated by the Murillo Court:

17 CrR 4.2(d) imposes a duty on the court to determine that the defendant is  
18 entering a plea with a correct understanding of the consequences of his  
19 plea. That rule implements important constitutionally mandated principles.  
20 See Boykin, 395 U.S. at 242, 89 S.Ct. 1709. That duty was not met here.  
21 The court apparently misunderstood the sentencing consequences. And  
22 both the judge’s advice to Mr. Murillo and the written plea agreement  
23 reflect this misunderstanding. We therefore grant Mr. Murillo’s personal  
24 restraint petition and order the superior court to allow him to withdraw his  
guilty plea. See Hunter v. State, 1992 OK CR 1, 825 P.2d 1353, 1355.

Murillo, 134 Wn.App. at 531.

1 The irony is that if this occurs, pursuant to an agreement between the parties, the  
2 state will simply refile a new Information with charging dates preceding enactment of  
3 RCW 9.94A.712. Mr. Gilbert will then plead guilty as charged and proceed to sentencing  
4 with the state recommending the top of the standard range as 198 months determinate.

5 As this procedure produces the identical result desired by the parties, it seems  
6 more expeditious that the Court accept the plea agreement as is and impose the  
7 determinate sentence that the parties toiled over during a two year period. This will save  
8 defense, state, and even judicial resources and also enable Mr. Gilbert to formally begin  
9 what will be a very long period of incarceration.

10 **B. Specific Performance**

11 Because both the state and the defense understood that Mr. Gilbert's sentence  
12 would be a determinate sentence within the standard range, Mr. Gilbert is entitled to  
13 specific performance if he so elects.

14 In Murillo, supra, for example, the court held that the defendant would be entitled  
15 to specific performance of the determinate sentencing condition of his plea agreement if  
16 that was the mutual understanding of the parties.

17 As stated above, the issue in Murillo was whether a defendant who- like Mr.  
18 Gilbert- pleaded guilty to child molestation in the first degree could move for specific  
19 performance of the determinate sentence agreed to by the parties in the plea bargain.  
20 When the trial court accepted the plea agreement, it- like this Court- did not mention that  
21 it must impose a maximum sentence of life imprisonment; nor did it advise that that Mr.  
22 Gilbert was subject to a lifetime of community custody if he is released prior to the  
23 maximum life sentence. Id. at 526.  
24

1 At sentencing, the state recommended a sentence in the middle of the standard  
2 range. Defendant's attorney responded that the state had agreed to recommend the low  
3 end of the standard range, but the written statement on plea of guilty stated that the state  
4 reserved its recommendation as to defendant's time of confinement. The court then  
5 imposed a mid-range sentence. Id.

6 The parties then discussed community custody, which was the first time RCW  
7 9.94A.712 was mentioned. But- like here- the preprinted community custody paragraphs  
8 were left blank. Id. at 527.

9 In Murillo, therefore- as here- because neither the defense nor the state  
10 contemplated the applicability of RCW 9.94A.712 during sentencing, this is a mutual  
11 misunderstanding which renders the plea invalid. 134 Wn.App. at 532.

12 With respect to specific performance, as both the state and the defense labored  
13 under the same misunderstanding that defendant would be sentenced to a determinate  
14 sentence within the standard range, this suggested that "the court and the lawyers were at  
15 least mistaken about the correct sentence." Id. at 533. This is important because specific  
16 performance is unavailable where the plea agreement is unambiguous. Id.

17 The Murillo Court then found that "the basis of the plea agreement here was the  
18 understanding of both the State and the defense that [Defendant's] determinate sentence  
19 would be in the standard range," for "there is no inconsistency or ambiguity in the  
20 parties' actual agreement of a standard range sentence." Id. at 535.

21 The Court thus concluded: "[Defendant] is entitled to specific performance of a  
22 plea agreement if the parties understood his correct sentence would be in the standard  
23 range." Id.

1 Here, therefore, as in Murillo: (1) the plea agreement is unequivocal: the state will  
 2 recommend that Mr. Gilbert receive a determinate sentence of 198 months to run  
 3 concurrent with his 300 month federal sentence; (2) there was no discussion during the  
 4 plea colloquy that Mr. Gilbert would be subject to an indeterminate sentence or a lifetime  
 5 of state community custody; and finally (3) the explicit understanding of the parties is  
 6 that Mr. Gilbert will receive a determinate sentence within the standard range.

7 It thus follows that if Mr. Gilbert elects specific performance of the precise terms  
 8 of the plea agreement, he is entitled to such remedy. Also note that should Mr. Gilbert  
 9 elect specific performance, given that the Court has already accepted the plea, the Court  
 10 is similarly bound by the agreement. Id. at 533 (quoting Schaupp, 111 Wn.2d at 38).

11 **IV. CONCLUSION**

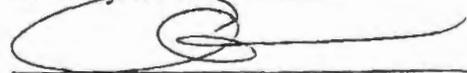
12 As Mr. Gilbert and the state are parties to an unambiguous plea agreement in  
 13 which the state will recommend a determinate sentence of 198 months to run  
 14 concurrently with Mr. Gilbert's 300 month federal sentence, should the Court refuse to  
 15 accept Amended Information II, Mr. Gilbert is entitled to elect between withdrawal of his  
 16 guilty plea or specific performance of the precise terms of the bargain

17 DATED this 15th day of December, 2009.

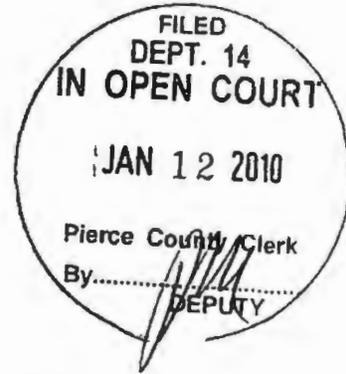
18 Respectfully Submitted,

19 THE LAW OFFICES OF JOHN HENRY BROWNE, P.S.

20   
 21 John Henry Browne, WSBA #4677  
 Attorney for Marc Gilbert

22   
 23 Emma C. Scanlan, WSBA #37835  
 Attorney for Marc Gilbert

24



**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF JOURNAL ENTRY**

vs.

Page 1 of 2

GILBERT, WELDON MARC

Judge: SUSAN K. SERKO

Court Reporter: KYLE STEADMAN

Judicial Assistant/Clerk: PAMELA MAYHEW

PATRICK HAMMOND

Prosecutor

JOHN HENRY BROWNE

Defense Attorney

Proceeding Set: SENTENCING DATE

Proceeding Date: 01/12/10 15:00

Proceeding Outcome: CANCELLED - WITHDRAWN PLEA

Resolution:

**Clerk's Code:**

Proceeding Outcome code: HSTKSTP

Resolution Outcome code:

Amended Resolution code:

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3  
**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

GILBERT, WELDON MARC

Page: 2 of 2  
Judge: SUSAN K. SERKO

**MINUTES OF PROCEEDING**

Judicial Assistant/Clerk: PAMELA MAYHEW  
Start Date/Time: 01/12/10 3:12 PM

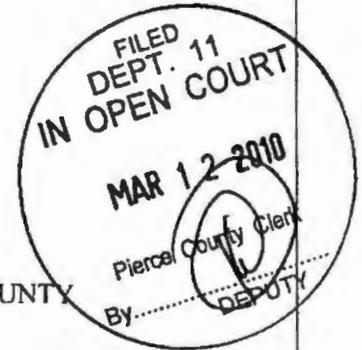
Court Reporter: KYLE STEADMAN

January 12, 2010 03:12 PM Court convenes for sentencing. DPA Pat Hammond, Atty John Browne, Atty Emma Scanlan for the defense, defendant present in custody. Colloquy re: defendant could withdraw his guilty plea. Assistant Federal Prosecutor, Roger Rogoff present. 03:29 PM Recess. 03:46 PM Court recovenes. Atty Browne indicates that the defendant will withdraw his guilty plea, DPA files as an exhibit an Amended Information for the record. Court grants motion to withdraw guilty plea is granted. The November Amended Information is withdrawn. November 8, 2007, not guilty was taken.on the original charge. Colloquy with the defendant about withdrawing his guilty plea. Case will now be set for trial on 1/28/2010 in CD2 at 11 AM, Court signs Order Establishing Conditions of Release. 04:12 PM Recess.

End Date/Time: 01/12/10 4:12 PM



07-1-05618-3 33845877 AMINF 03-16-10



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

AMENDED INFORMATION

Defendant.

**ORIGINAL**

DOB: 8/26/1960  
PCN#:

SEX : MALE  
SID#: 24227529

RACE: WHITE  
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K. (DOB: 03/14/89), engage in sexual intercourse with R.L.K. (DOB: 3/14/89), who is at least 12 years old but less than 14 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

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

AMENDED INFORMATION- 1

1 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
2 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
3 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
4 less than 14 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of  
Washington.

5 COUNT III

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

10 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
11 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
12 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
13 less than 14 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of  
Washington.

14 COUNT IV

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

19 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
20 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
21 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
22 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
Washington.

23 COUNT V

24 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
AMENDED INFORMATION- 2

1 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
2 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
3 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
4 proof of one charge from proof of the others, committed as follows:

5 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
6 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
7 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
8 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
9 with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
10 Washington.

#### 11 COUNT VI

12 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
13 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
14 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
15 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
16 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
17 proof of one charge from proof of the others, committed as follows:

18 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
19 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
20 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
21 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
22 with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
23 Washington.

#### 24 COUNT VII

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

That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
October, 2007, did unlawfully and feloniously, being at least 36 months older than  
E.L.K. (DOB: 11/4/94), have sexual contact with E.L.K. (DOB: 11/4/94), who is at least 12 years old but  
less than 14 years old, and not married to the defendant and not in a state registered domestic partnership

1 with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of  
2 Washington.

#### COUNT VIII

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

9 That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th  
10 day of April, 2005 and the 5th day of April, 2006, did unlawfully and feloniously, being at least 36  
11 months older than C.D.F. (DOB: 4/6/95), have sexual contact with C.D.F. (DOB: 4/6/95), who is less  
12 than 12 years old and not married to the defendant and not in a state registered domestic partnership with  
13 the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

#### COUNT IX

14 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
15 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
16 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
17 based on the same conduct or on a series of acts connected together or constituting parts of a single  
18 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
19 difficult to separate proof of one charge from proof of the others, committed as follows:

20 That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th  
21 day of April, 2006 and the 1st day of October, 2006, did unlawfully and feloniously, being at least 36  
22 months older than C.D.F., have sexual contact with C.D.F., who is at least 12 years old but less than 14  
23 years old, and not married to the defendant and not in a state registered domestic partnership with the  
24 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### COUNT X

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

That WELDON MARC GILBERT, in the State of Washington, during the period between the  
13th day of March, 2007 and the 30th day of September, 2007, did unlawfully and feloniously, being at

AMENDED INFORMATION- 4

1 least 48 months older than V.Z. (DOB: 10/1/91), have sexual contact with V.Z. (DOB: 10/1/91), who is at  
2 least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered  
3 domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace and dignity  
4 of the State of Washington.

#### COUNT XI

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

11 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
12 20th day of March, 2004 and the 19th day of March, 2005, did unlawfully and feloniously, being at least  
13 36 months older than S.N.P. (DOB: 3/20/91), have sexual contact with S.N.P. (DOB: 3/20/91), who is at  
14 least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered  
15 domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity  
16 of the State of Washington.

#### COUNT XII

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

23 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
24 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
at least 36 months older than T.M. (DOB: 11/12/92), have sexual contact with T.M. (DOB: 11/12/92),  
who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state  
registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace  
and dignity of the State of Washington.

#### COUNT XIII

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
based on the same conduct or on a series of acts connected together or constituting parts of a single

AMENDED INFORMATION- 5

1 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
2 difficult to separate proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
4 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
5 at least 36 months older than T.M., have sexual contact with T.M., who is at least 12 years old but less  
6 than 14 years old, and not married to the defendant and not in a state registered domestic partnership with  
7 the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

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COUNT XIV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

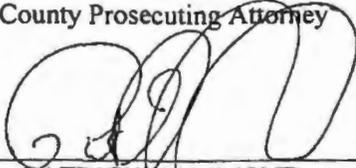
That WELDON MARC GILBERT, in the State of Washington, on or about the 30th day of October, 2007, did unlawfully, feloniously, and knowingly possess visual or printed matter depicting a minor engaged in sexually explicit conduct, contrary to RCW 9.68A.070, and against the peace and dignity of the State of Washington.

DATED this 12th day of March, 2010.

PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

caf

By:   
PATRICK HAMMOND  
Deputy Prosecuting Attorney  
WSB#: 23090

## SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

SUPPLEMENTAL DECLARATION FOR  
DETERMINATION OF PROBABLE CAUSE

Defendant.

PATRICK HAMMOND, declares under penalty of perjury:

That the Declaration for Determination of Probable Cause dated the 1st day of November, 2007, is by reference incorporated herein;

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 073030751;

**STATE v. GILBERT**

The Declaration for Determination of Probable Cause by Deputy Prosecutor Mary Robnett, dated November 1, 2007, is incorporated herein by reference. In the time that has elapsed since that document was filed, substantial information has been developed concerning the defendants systematic abuse of under-age boys over decades. This Declaration will refer to information developed by State and Federal Authorities.

**General Background:**

Prior to his arrest, in November, 2007, the defendant was quite successful financially, which allowed him to own a number of possessions that were quite attractive. The investigation revealed that the defendant would provide trips in his sea-plane, boat and helicopter to under-age males. Numerous witnesses have confirmed that the defendant would also provide the under-age males with alcohol. The defendant's abuse of these males consisted mostly of a spanking ritual that usually involved the boys dropping both their pants and underwear, lying over his lap with their their bare buttocks exposed, and being subjected to spankings, either with bare hands, or with a variety of implements. The defendant often alternated between spanking the boys, and rubbing their naked buttocks. In several cases, the defendant's abuse then proceeded to masturbation, oral sex, and anal sex. In many cases, the defendant engaged in this activity with boys who were already 16, and therefore could legally consent to his behavior. However, the defendant also videotaped many of his activities with these boys. Although the acts portrayed in the videos may have been legal, the depiction of those acts with minors under the age of 18 violated both State and Federal laws pertaining to the Sexual Exploitation of Minors. The defendant also videotaped sex acts with boys 15 years and younger. The Federal Presentence Investigation indicates that videos seized from the defendant's residence depicted 250 different scenes, involving approximately 40 individuals.

The State is alleging multiple counts of child molestation, which requires the State to show probable cause that the defendant's actions were for the sexual gratification of himself or others. Because the defendant's actions fall outside the mainstream, it is unfortunately necessary to explain why the spanking ritual employed by the defendant was in fact done for sexual gratification. This is best summarized by the Federal Presentence Investigation's summary of the information developed by authorities investigating this case:

SUPPLEMENTAL DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE - 1

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

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"Among the items seized [in the search of the defendant's residence on October 31, 2007] was an audio cassette tape on which Gilbert discussed his spanking fantasies. . . Agents later conducted a forensic review of Gilbert's computer. They determined that he had frequented several fetish spanking websites including [websites omitted]. They further determined that Gilbert had authored 11 stories [titles omitted] that he had posted to these sites under the username of barespanker@aol.com. *The stories involved older men punishing young boys (ages 13 to 15) with severe spankings. In the stories, the older men became sexually excited by spanking the young boys and the young boys eventually overcame their fear and became sexually excited by the spankings as well.*" [emphasis added]

The following facts are alleged with regards to victims listed in the Federal Indictment to which the defendant has already pleaded guilty. New charges are in bold font (The State references uncharged victims in response to the Defendant's request for disclosure of "other facts" evidence:

R.L.K., born 3/14/89:

This is one of the two victims listed in the Original Information and Corrected Information filed under this cause in November, 2007. R.L.K. was "John Doe 1" in the Federal Indictment. Because the defendant has been convicted of the Federal Crime of Sexual Exploitation of a Minor for his conduct with R.L.K., the Amended Information drops the State Law allegation of Sexual Exploitation of a Minor originally charged in Count VIII, but leaves intact the original allegations of Child Rape and Child Molestation involving R.L.K., for which probable cause has already been established.

E.L.K., born 11/4/94:

This is the second of the two victims listed in the Original Information and Corrected Information filed under this cause in November, 2007. E.L.K. was "John Doe 2" in the Federal Indictment. For the same reasons outlined above for R.L.K., the State is dropping the allegation of Sexual Exploitation of a Minor that was originally contained in Count IX.

C.D.F., born 4/6/95:

This victim, who was "John Doe 3" in the Federal Indictment, was interviewed by the Chelan County Sheriff's Department on November 11, 2007. During the interview, C.D.F. disclosed multiple occasions of spankings administered by the defendant. C.D.F. explained how he had first met the defendant, who was already developing a "relationship" with his older brother, S.W.F. (born 1/21/88). C.D.F. was also able to describe several other identified victims.

In the Chelan interview, C.D.F. said that he had last visited the defendant in the Summer of 2006. C.D.F. also said he had not been videotaped. However, the summary of the video evidence in the Federal Presentence Investigation indicates that C.D.F. was in fact depicted in one scene which was filmed at his age 10. Apparently C.D.F. cried out in pain and eventually began crying. When C.D.F. reached his hand back to shield himself, the defendant allegedly told him: "Put your hand back down." After the spanking, the defendant allegedly caressed the victim's buttocks. **This is the basis for one Count of Child Molestation in the First Degree, occurring during the time period between April 6, 2005, and April 5, 2006. C.D.F.'s disclosures are also the basis of one count of Child Molestation in the Second Degree, occurring during the time period between April 6, 2006, and October 1, 2006.**

N.C.W., born 6/5/87:

This victim, depicted in eight scenes, was "John Doe 4" in the Federal Indictment. However because it is believed that N.C.W. was 16 or older in those scenes, and because the defendant has already been convicted of Sexual Exploitation of a Minor for this conduct, the State is not filing any additional counts involving N.C.W.. However, the State does intend to call him to testify pursuant to ER 404(b) and RCW10.58.090.

07-1-05618-3

1 S.C., born 9/6/88:

2 This victim, depicted in fourteen scenes, was "John Doe 5" in the Federal Indictment. However, because it  
3 is believed that he was 16 or older in those scenes, and because the defendant has already been convicted of  
4 Sexual Exploitation of a Minor for this conduct, the State is not filing any additional counts involving S.C..  
5 However, the State does intend to call him to testify pursuant to ER 404(b) and RCW 10.58.090.

6 A.H.:

7 This victim, depicted in eight scenes, was "John Doe 6" in the Federal Indictment. However, because it is  
8 believed that he was 16 or older in those scenes, and because the defendant has already been convicted of  
9 Sexual Exploitation of a Minor for this conduct, the State is not filing any additional counts involving A.H..  
10 However, the State does intend to call him to testify pursuant to ER 404(b) and RCW 10.58.090.

11 A.Y., born 10/9/86:

12 This victim, depicted in ten scenes, was "John Doe 7" in the Federal Indictment. The statute of limitations  
13 has run for any third degree child molestation counts the State might have filed against the defendant for  
14 the conduct depicted in those scenes. However, the State does intend to call A.Y. pursuant to ER 404(b)  
15 and RCW 10.58.090.

16 D.R., born 3/13/87:

17 This victim, depicted in 31 scenes, was "John Doe 8" in the Federal Indictment. The statute of limitations  
18 has run for any second or third degree child molestation counts the State might have filed against the  
19 defendant for the conduct depicted in those scenes. However, the State does intend to call D.R. pursuant to  
20 ER 404(b) and RCW 10.58.090.

21 B.M., born 1/9/82:

22 This victim, depicted in five scenes, was "John Doe 9" in the Federal Indictment. The statute of limitations  
23 has run for any third degree child molestation counts the State might have filed against the defendant for  
24 the conduct depicted in those scenes. However, the State does intend to call B.M. pursuant to ER 404(b)  
25 and RCW 10.58.090.

26 L.C.:

27 This victim, depicted in two scenes, was "John Doe 10" in the Federal Indictment. The State intends to call  
28 L.C. pursuant to ER 404(b) and RCW 10.58.090.

29 Z.M.R., born 9/13/86:

This victim, depicted in two scenes, was "John Doe 11" in the Federal Indictment. As in other cases  
involving victims 16 years or older where the defendant's conduct has already resulted in a Federal  
conviction for exploitation of a minor, the State will only call him to testify pursuant to ER 404(b) and  
RCW 10.58.090.

J.M.R., born 6/10/84:

This victim, depicted in 54 scenes, was "John Doe 12" in the Federal Indictment. The statute of limitations  
has run for any third degree child molestation counts the State might have filed against the defendant for  
the conduct depicted in those scenes. However, the State does intend to call J.M.R. pursuant to ER 404(b)  
and RCW 10.58.090.

07-1-05618-3

V.Z., born 10/1/91:

This victim, depicted in six scenes filmed when he was between 15 and 17 years old, was "John Doe 13" in the Federal Indictment. V.Z. said he met the defendant when he was 15, and though he was a "cool guy" because he always provided alcohol and a place to hang out. According to V.Z. shortly after he first met the defendant, he was enticed into a "spanking contest" involving him and several of his friends.

The statute of limitations for Child Molestation in the Third Degree is three years. V.Z. turned 16 on October 1, 2007. **The State is therefore charging the defendant with a single count of Child Molestation in the Third Degree with V.Z. as the alleged victim. The charging period for this count is between March 13, 2007, and September 30, 2007.**

S.N.P., born 3/20/91:

This victim, depicted in four scenes filmed when he was between 13 and 15 years old, was "John Doe 14" in the Federal Indictment. S.N.P. told Detective Merod that he was 13 years old when he met the defendant, and the defendant agreed to give him flight lessons in his helicopter. S.N.P. says the first time the defendant spanked him, was a couple of weeks later. S.N.P. said the defendant told him to drop his pants, which he thought was normal for a spanking. However, S.N.P. thought it was odd when the defendant asked him to remove his shirt. S.N.P. said he thought it was very odd when the defendant then asked him to remove his underwear. Nonetheless, S.N.P. complied, and the defendant spanked him repeatedly with a bare hand, as S.N.P. lay naked across the defendant's lap. S.N.P. said the defendant also rubbed his buttocks while he was laying naked on the defendant's lap. **This is the basis for one count of Child Molestation in the Second Degree, alleged to have occurred between March 20, 2004, and March 19, 2005.**

S.N.P. disclosed several other incidents, following his first experience, which the State will seek to introduce under ER 404(b) and RCW 10.58.090.

C.S.M., born 4/12/87:

This victim, depicted in four scenes filmed when he was 15, was "John Doe 15" in the Federal Indictment. As with several other victims, the statute of limitations has run for the behavior depicted in those scenes. Nonetheless, the State intends to call him as a witness pursuant to ER 404(b) and RCW 10.58.090.

A.J.G., born 11/22/87:

This victim, depicted in one scene filmed when he was 14 or 15, was "John Doe 18" in the Federal Indictment. As with several other victims, the statute of limitations has run for the behavior depicted in that scene. Nonetheless, the State intends to call him as a witness, pursuant to ER 404(b) and RCW 10.58.090.

A.S.C., born 10/7/89:

This victim, depicted in four scenes filmed between his ages of 15 and 16, was "John Doe 17" in the Federal Indictment. As with C.S.M. and A.J.G., the State seeks to call him only for purposes of introducing evidence under ER 404(b) and RCW 10.58.090.

The following facts are alleged with regards to victims not listed in the Federal Indictment, but listed in the discovery. New charges are in bold font (The State references uncharged victims in response to the Defendant's request for disclosure of "other facts" evidence):

T.M., born 11/12/92:

Based on T.M.'s disclosures during his interview with the Chelan County Sheriff's Office, it appears that he was either 12 or 13 when he visited the defendant at Lake Tapps with C.D.F.. **The State is charging**

07-1-05618-3

1 the defendant with two counts of Child Molestation in the Second Degree for the defendant's  
2 spanking of T.M., during the time period from 11/12/04, to 11/11/06.

3 T.M. described how the defendant would give him and C.D.F. alcohol, then spank them both on their bare  
4 buttocks. They would also sit with the defendant in his hot tub, nude. T.M. said he and CDF had to give  
5 the defendant a massage while the defendant was naked both front and back. T.M. cried throughout his  
6 interview, and said he was concerned for C.D.F., because C.D.F. spent more time with the defendant than  
7 he did.

8 A.R.M., born 7/12/82:

9 The State will not be seeking to introduce evidence of the defendant groping A.R.M. when he was 13.

10 R.W.M., born 9/29/88:

11 The State will not be seeking to introduce any evidence of inappropriate touching by the defendant against  
12 R.W.M..

13 However, the State will be calling R.W.M. as a witness concerning his observations of the defendant with  
14 E.L.K. on October 27,2007. The State may also call him as an impeachment witness, depending on  
15 R.L.K.'s testimony.

16 S.F.P., born 12/2/80:

17 The State will seek to introduce testimony from S.F.P. concerning the defendant's sexual abuse of him, the  
18 defendant's threats against him, and his observation of the defendant with other alleged victims.

19 A.T.M., born 12/17/90:

20 This witness will be called by the State pursuant to ER 404(b) and RCW 10.58.090. Should this witness  
21 disclose abuse, the State reserves the right to file additional charges based on new disclosures.

22 R.N.M., born 9/6/83:

23 This victim will be called by the State pursuant to ER 404(b) and RCW 10.58.090(statute of limitations has  
24 run)

25 A.S.D., born 10/13/74:

26 The State is electing not to call this witness under 404(b).

27 I.S.C., born 5/18/86:

28 This victim will be called by the State pursuant to ER 404(b) and RCW 10.58.090(statute of limitations has  
29 run).

D.P.D., born 1/26/89:

This victim will be called by the State pursuant to ER 404(b) and RCW 10.58.090(statute of limitations has  
run).

Y.A.K., born 11/13/88:

This victim will be called by the State pursuant to ER 404(b) and RCW 10.58.090 (statute of limitations  
has run).

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A.M., born 6/26/88:

The State will not be calling this witness.

The State anticipates calling the following additional witnesses pursuant to ER 404(b) and RCW 10.58.090:

- G.M., born 9/2/87
- S.W.F., born 1/21/88
- I.A.C., born 12/12/83
- J.B.C., born 7/20/89
- K.J.B., born 5/27/87
- B.R.M., born 1/9/82
- O.N.P., born 6/25/89

Possession of Depictions of Minors Engaged in Sexually Explicit Conduct:

The Federal Prosecution did not rely on all of the child pornography seized from the defendant's residence as a factual basis for the defendant's Federal convictions. As a consequence, the State is relying on the pornographic materials that were not a part of the Federal Prosecution to support a single count of Possession of Depiction(s) of a Minor in Sexually Explicit Conduct.

More specifically, the Presentence Investigation confirms that scenes depicting I.A.C., R.N.M, O.N.P, K.J.B, B.R.M. were not the basis of any federal counts.

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

DATED: March 12, 2010  
PLACE: TACOMA, WA



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PATRICK HAMMOND, WSB# 23090



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

Defendant.

CORRECTED AMENDED INFORMATION

**ORIGINAL**

DOB: 8/26/1960

SEX : MALE

RACE: WHITE

PCN#:

SID#: 24227529

DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF A CHILD IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R.L.K. (DOB: 03/14/1989), engage in sexual intercourse with R.L.K. (DOB: 03/14/89), who is at least 12 years old but less than 14 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of Washington.

COUNT II

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

CORRECTED AMENDED INFORMATION- 1

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

1 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
2 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
3 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
4 less than 14 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of  
Washington.

5 COUNT III

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

10 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
11 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
12 36 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 12 years old but  
13 less than 14 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.076, and against the peace and dignity of the State of  
Washington.

14 COUNT IV

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

19 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
20 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
21 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
22 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
Washington.

23 COUNT V

24 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of RAPE OF  
CORRECTED AMENDED INFORMATION- 2

1 A CHILD IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on  
2 the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
3 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
proof of one charge from proof of the others, committed as follows:

4 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
5 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
6 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
7 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
Washington.

#### 8 COUNT VI

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

13 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
14 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
15 48 months older than R.L.K., engage in sexual intercourse with R.L.K., who is at least 14 years old but  
16 less than 16 years old and not married to the defendant and not in a state registered domestic partnership  
with the defendant, contrary to RCW 9A.44.079, and against the peace and dignity of the State of  
Washington.

#### 17 COUNT VII

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

22 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
23 October, 2007, did unlawfully and feloniously, being at least 36 months older than E.L.K. (DOB:  
24 11/04/94), have sexual contact with E.L.K. (DOB: 11/04/94), who is at least 12 years old but less than 14  
years old, and not married to the defendant and not in a state registered domestic partnership with the  
defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

CORRECTED AMENDED INFORMATION- 3

## COUNT VIII

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

That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th day of April, 2005 and the 5th day of April, 2007, did unlawfully and feloniously, being at least 36 months older than C.D.F. (DOB: 04/06/95), have sexual contact with C.D.F. (DOB: 04/06/95), who is less than 12 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

## COUNT IX

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

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th day of April, 2007 and the 1st day of October, 2007, did unlawfully and feloniously, being at least 36 months older than C.D.F., have sexual contact with C.D.F., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

## COUNT X

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

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That WELDON MARC GILBERT, in the State of Washington, during the period between the 13th day of March, 2007 and the 30th day of September, 2007, did unlawfully and feloniously, being at least 48 months older than V.Z. (DOB: 10/01/91), have sexual contact with V.Z. (DOB: 10/01/91), who is

1 at least 14 years old but less than 16 years old, and not married to the defendant and not in a state  
2 registered domestic partnership with the defendant, contrary to RCW 9A.44.089, and against the peace  
and dignity of the State of Washington.

3 COUNT XI

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

8 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
9 20th day of March, 2004 and the 19th day of March, 2005, did unlawfully and feloniously, being at least  
10 36 months older than S.N.P. (DOB: 03/20/91), have sexual contact with S.N.P. (DOB: 03/20/91), who is  
11 at least 12 years old but less than 14 years old, and not married to the defendant and not in a state  
registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace  
and dignity of the State of Washington.

12 COUNT XII

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

17 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
18 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
19 at least 36 months older than T.M. (DOB: 11/12/92), have sexual contact with T.M. (DOB: 11/12/92),  
20 who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state  
registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace  
and dignity of the State of Washington.

21 COUNT XIII

22 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
23 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
24 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
based on the same conduct or on a series of acts connected together or constituting parts of a single

1 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
2 difficult to separate proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
4 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
5 at least 36 months older than T.M., have sexual contact with T.M., who is at least 12 years old but less  
6 than 14 years old, and not married to the defendant and not in a state registered domestic partnership with  
7 the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

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COUNT XIV

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of  
POSSESSION OF DEPICTIONS OF MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT, a  
crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts  
connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect  
to time, place and occasion that it would be difficult to separate proof of one charge from proof of the  
others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 30th day of  
October, 2007, did unlawfully, feloniously, and knowingly possess visual or printed matter depicting a  
minor engaged in sexually explicit conduct, contrary to RCW 9.68A.070, and against the peace and  
dignity of the State of Washington.

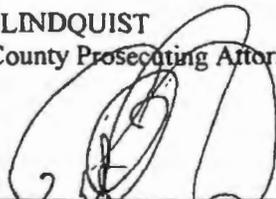
DATED this 12th day of March, 2010.

PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

caf

By:



PATRICK HAMMOND  
Deputy Prosecuting Attorney  
WSB#: 23090

October 29 2012 11:33 AM

THE HONORABLE KATHERINE M. STOLZ  
KEVIN STOCK  
COUNTY CLERK  
NO: 07-1-05618-3

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

STATE OF WASHINGTON,

Plaintiff,

vs.

WELDON MARC GILBERT,

Defendant.

No. 07-1-05618-3

DEFENDANT'S MOTION TO DISMISS  
PURSUANT TO RCW 10.43.040

**I. MOTION**

COMES NOW the Defendant, Weldon Marc Gilbert, *pro se*, and moves this Court, pursuant to RCW 10.43.040, to dismiss all charges because his prior federal convictions for the same acts bar the entirety of this prosecution.

**II. RELEVANT FACTS**

On December 10, 2008, the Defendant was charged in Western District of Washington No. CR-07-5732-BHS with, among others, Counts 1-33- sexual exploitation of a child in the production of child pornography, in violation of 18 U.S.C. §§ 2251(a) and (e); 2256. See Fourth Superseding Indictment, Exhibit A. On April 23, 2009, the Defendant pled guilty to Counts 1-21, 23-31, and 33. See Plea Agreement at 1:25-27, Exhibit B.

To convict, the government had to demonstrate that the Defendant "employed,

1 used, persuaded, induced, enticed or coerced the victim to take part in sexually explicit  
2 conduct for the purpose of producing a visual depiction of such conduct ..." Id. at 2:15-  
3 17. In other words, the Defendant (1) used, persuaded, induced, enticed, or coerced (2) a  
4 minor (3) to engage (4) in sexually explicit conduct (5) for the purpose (6) of producing a  
5 visual depiction of such conduct and (7) the visual depiction was produced using  
6 materials that travel in interstate or foreign commerce. See 18 U.S.C. § 2251(a).

7 The plea agreement lays out the facts encompassing the Defendant's former  
8 conviction in paragraph 6: Statement of Facts.

9 First, all of the videos were created in Washington State. Ex B 6: 24-25.

10 Second, the videos show seventeen different victims, the youngest of which were  
11 10, 12, 13, 14 when they first appear in the video. Ex B 6:7-8.

12 Next, the visual depictions of minors engaged in sexually explicit conduct  
13 specifically includes the following acts: the Defendant "engaged in some sort of sex act  
14 with the victim"; the Defendant "striking the unclothed victim with his hand, or with an  
15 implement, such as a paddle, belt, or cane"; the Defendant "caressing the nude bodies of  
16 the victims while striking them"; the Defendant "touching or attempting to touch the  
17 victim's genitalia. EX B 6:10-20. Each and every one of the videos, therefore, contained  
18 depictions of minors engaged in sexually explicit conduct.

19 Sexually explicit conduct," is defined as: (a) sexual intercourse, whether genital-  
20 genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite  
21 sex or with animals; (b) vaginal or anal penetration; (c) masturbation; (d)  
22 sadomasochistic abuse for the sexual stimulation of the viewer; (e) defecation or  
23 urination for sexual stimulation of the viewer; (f) Lascivious exhibition of the genitals or  
24

1 public area for the sexual stimulation of the viewer; or (g) touching of a person's clothed  
2 or unclothed genitals, public area, buttocks, or breasts for the sexual stimulation of the  
3 viewer.

4 The Defendant is presently charged by Corrected Information dated September  
5 21, 2012 with Counts: I-III second degree rape of a child, in violation of RCW  
6 9A.44.076; IV-VI third degree rape of a child, in violation of RCW 9A.44.079; VII, IX,  
7 and XI-XIII - second degree child molestation, in violation of RCW 9A.44.086; VIII-  
8 first degree child molestation, in violation of RCW 9A.44.083; 10 - third degree child  
9 molestation, in violation of RCW 9A.44.089; and XIV- possession of depiction of minors  
10 engaged in sexually explicit conduct, in violation of RCW 9.68A.070.

11 For Counts I-III, the state will have to prove that the Defendant had intercourse  
12 with another at least twelve years old but less than 14 years of age. RCW 9A.44.076(1).

13 For counts IV-VI, the state will have to prove that the Defendant had intercourse  
14 with another at least 14 years old but less than 16 years of age. RCW 9A.44.079.

15 For first degree child molestation, the state will have to prove that the Defendant  
16 had- or knowingly caused another under 18 years of age to have- sexual contact with  
17 another less than 12 years old. RCW 9A.44.083(1). For second degree, the state must  
18 prove the same, but the victim must be at least twelve- but less than 14- years old. RCW  
19 9A.44.086(1). For third degree, the elements are again the same, but the victim must be  
20 at least 14- but less than 16- years old. RCW 9A.44.089(1).

21 "Sexual Contact" is defined as any touching of the sexual or other intimate parts  
22 of a person done for the purpose of gratifying sexual desire of either party or a third  
23 party. RCW 9A.44.010  
24

1 Finally, to convict the Defendant of possessing a depiction of a minor engaged in  
2 sexually explicit conduct, the state need show that he knowingly possessed such  
3 depiction. RCW 9.68A.070(1).

4 As the pending charges are thus, in fact, the precise acts for which the Defendant  
5 has already been convicted in federal court, RCW 10.43.040 mandates dismissal.

6 **III. RCW 10.43.040 PROHIBITS THIS PROSECUTION**

7 As the Defendant was already convicted in federal court of the same acts which  
8 the state now also seeks to prosecute, dismissal under RCW 10.43.040 is required.

9 While dual sovereignty typically permits successive federal and state prosecutions  
10 for even identical offenses, the State of Washington rejected this doctrine by statute  
11 through the codification of RCW 10.43.040- as stated in the seminal case of State v.  
12 Caliguri, 99 Wn.2d 501, 511, 66 P.2d 466 (1983). Under current RCW 10.43.040:

13 Whenever, upon the trial of any person for a crime, it appears that the  
14 offense was committed in another state or country, under such  
15 circumstances that the courts of this state had jurisdiction thereof, and that  
16 the defendant has already been acquitted or convicted upon the merits, in a  
17 judicial proceeding conducted under the criminal laws of such state or  
18 country, founded upon the act or omission with respect to which he or she  
19 is upon trial, such former acquittal or conviction is a sufficient defense.

20 Although the statute mentions only “another state or country,” it specifically  
21 includes federal prosecutions. Id. at 512. In addition, because the statute refers to a prior  
22 acquittal or conviction based upon an “act or omission”- as opposed to the “same  
23 offense”- the prior “act or omission” must be identical only in fact alone. Id. at 513-14.

24 Stated differently, a state prosecution is prohibited where the Defendant was  
already prosecuted for offenses which are in fact, alone, identical to or include the state  
charges. Id. at 514. This test- focusing on fact alone and thus broader than the standard

1 double jeopardy test- is “justified because crimes defined by different sovereigns may  
2 differ in certain technical respects which have little to do with the interest protected.” Id.

3 Here, the Defendant was convicted in federal court of 31 counts of sexual  
4 exploitation of a minor in the production of child pornography. Under Washington law,  
5 each of the acts in the depictions underlying the convictions is also alleged to involve  
6 either second or third degree rape of a child or any degree of child molestation.

7 While the state may argue that the state charges involve acts “different in  
8 character” from those required for conviction under the federal statutes and thus do not  
9 trigger the protections of RCW 10.43.040, it is important to note that the government  
10 failed to specify which definitional prong(s) of 18 U.S.C. § 2256 each count satisfied.  
11 The situation is thus analogous to an ambiguous jury verdict, “which, under the rule of  
12 lenity, must be resolved in the defendant’s favor.” State v. Kier, 164 Wn.2d 798, 811,  
13 194 P.3d 212 (2008).

14 The rule of lenity and its strict construction in favor of the accused, moreover,  
15 specifically apply to interpretation of plea agreements. State v. Bisson, 156 Wn.2d 507,  
16 522-523, 130 P.3d 820 (2006).

17 Here, then, taking into consideration the federal charging document, the  
18 Defendant’s federal guilty plea, the current pending charges, and the rule of the lenity,  
19 the identical facts underlying the state charges, any ambiguity must be resolved in the  
20 defendant’s favor. Had the government simply delineated which prong(s) of § 2256 each  
21 count fulfilled, the ambiguity could have been eliminated. See Kier, 164 Wn.2d at 812  
22 (citing State v. DeRyke, 110 Wn.App. 815, 41 P.3d 1225 (2002)).  
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1 And, more generally, the principles of lenity also apply to the construction of  
2 RCW 10.43.040 in this case.

3 There is, finally, no question that Count XIV, possession of child pornography-  
4 the unit of possession for which is one, see State v. Sutherby, 165 Wn.2d 870, 204 P.3d  
5 916 (2009)- is necessarily precluded by the federal production convictions.

6 As, therefore, this prosecution is premised upon charges- all of which are identical  
7 in fact to or included within the Defendant's prior federal convictions- RCW 10.43.040  
8 and the rule lenity mandate dismissal.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Defendant respectfully requests that the Court  
11 dismiss all charges and remand him to the custody of the United States Marshals Service  
12 and the federal government.

13 DATED this 29th day of October, 2012 at Tacoma, Washington.

14 Respectfully Submitted,

15 /s/ Weldon Marc Gilbert

16 Weldon Marc Gilbert

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# EXHIBIT A

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Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

DECEMBER 10, 2008  
BRUCE KIPKIN, Clerk

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
WELDON MARC GILBERT,  
  
Defendant.

NO. CR07-5732BHS  
FOURTH SUPERSEDING  
INDICTMENT



07-CR-05732-INDI

The Grand Jury charges that:

**COUNTS ONE THROUGH THIRTY-THREE**  
**(Sexual Exploitation of a Child in the Production of Child Pornography)**

On exact dates unknown, but before on or about October 31, 2007, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did use, persuade, induce, entice, and coerce the following minor males, who at the time were under the age of eighteen (18) years, to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, that is, videotapes and digital video discs (DVDs), such visual depictions having been produced using materials that had been mailed, shipped, and transported in interstate and foreign commerce, with each such production constituting a separate Count of this Fourth Superseding Indictment:

<u>COUNT</u>	<u>MINOR VICTIMS</u>	<u>DISCOVERY TAPE #, SCENE #</u>
One	John Doe 1	Tape SW2-7, Scene 2
Two	John Doe 2	Exhibit 6, Scene 2
Three	John Doe 3	Exhibit 3, Scene 4
Four	John Doe 4	Exhibit 5, Scene 4
Five	John Doe 5	Tape SW2-2, Scene 1
Six	John Doe 6	Exhibit 9, Scene 1
Seven	John Doe 7	Exhibit 9, Scene 4
Eight	John Doe 8	Exhibit 9, Scene 5
Nine	John Doe 9	Exhibit 9, Scene 7
Ten	John Doe 10	Exhibit 11, Scene 5
Eleven	John Doe 11	Exhibit 5, Scene 5
Twelve	John Doe 12	Exhibit 9, Scene 11
Thirteen	John Does 1 and 13	Exhibit 3, Scene 2
Fourteen	John Does 1 and 14	Tape SW2-34, Scene 1
Fifteen	John Does 8 and 15	Exhibit 16, Scenes 12-14
Sixteen	John Doe 1	Tape SW2-28, Scene 1
Seventeen	John Doe 1	Tape SW2-68, Scene 1
Eighteen	John Doe 1	Tape SW2-43, Scene 2
Nineteen	John Doe 1	Exhibit 13, Scene 4
Twenty	John Doe 1	Exhibit 14, Scene 4
Twenty-One	John Doe 1	Exhibit 15, Scene 7
Twenty-Two	John Doe 1	Exhibit 12, Scene 5
Twenty-Three	John Doe 1	Tape SW2-29, Scene 3
Twenty-Four	John Doe 1	Exhibit 8, Scene 2
Twenty-Five	John Doe 4	Exhibit 1, Scene 7
Twenty-Six	John Doe 4	Exhibit 12, Scenes 3 and 4 (connected)

FOURTH SUPERSEDING INDICTMENT/GILBERT - 2

<u>COUNT</u>	<u>MINOR VICTIMS</u>	
Twenty-Seven	John Doe 8	Exhibit 9, Scene 6
Twenty-Eight	John Doe 8	Tape SW2-67, Scene 5
Twenty-Nine	John Doe 8	Tape SW2-71, Scene 3
Thirty	John Doe 18	Tape SW2-70, Scene 3
Thirty-One	John Doe 12	Tape SW2-65, Scene 5
Thirty-Two	John Doe 12	Tape SW2-39, Scene 5
Thirty-Three	John Doe 1	Tape SW2-27, Scenes 3 and 4

All in violation of Title 18, United States Code, Sections 2251(a) and (e) and Section 2256.

**COUNTS THIRTY-FOUR AND THIRTY-FIVE**  
**(Transportation of a Minor to Engage in Illegal Sexual Activity)**

On or about the dates set forth below, within the Western District of Washington and elsewhere, the defendant, WELDON MARC GILBERT, did knowingly and willfully transport and caused to be transported the following minor males, who at the time were under the age of eighteen (18) years, in interstate and foreign commerce from Pierce County, in the State of Washington, to Canada, with the intent that the minor male engage in sexual activity under circumstances as would constitute a criminal offense by a person under Revised Code of Washington (RCW) Section 9A.44.089, Child Molestation; RCW Section 9.68A.090, Communication with a Minor for Immoral Purposes; RCW Section 9.68A.040, Sexual Exploitation of a Minor; RCW Section 9A.44.093, Sexual Misconduct with a Minor in the First Degree; RCW Section 9A.44.096, Sexual Misconduct with a Minor in the Second Degree; and Title 18, United States Code, Section 2251(a), Sexual Exploitation of a Child in the Production of Child Pornography, with each transportation constituting a separate Count of this Fourth Superseding Indictment:

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FOURTH SUPERSEDING INDICTMENT/GILBERT - 3

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<u>COUNT</u>	<u>DATE</u>	<u>MINOR VICTIMS</u>	<u>TAPE #</u>
Thirty-four	In or about 2005	John Doe 1	SW2-5
Thirty-five	On a date unknown but within five years of on or about October 31, 2007	John Does 1, 5, 13, 17	SW2-13

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All in violation of Title 18, United States Code, Section 2423(a) and Section 2.

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**COUNT THIRTY-SIX**  
**(Obstruction of Justice)**

9

10 Beginning on or about October 30, 2007, and continuing until on or about August  
11 28, 2008, within the Western District of Washington and elsewhere, the defendant,  
12 WELDON MARC GILBERT, with others known and unknown to the Grand Jury,  
13 knowingly did corruptly persuade, attempt to corruptly persuade, and engage in  
14 misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate  
15 with law enforcement and judicial officers, with intent to hinder, delay and prevent the  
16 communication to a law enforcement officer and judge of the United States, of  
17 information relating to the commission or possible commission of a Federal offense,  
18 namely Production of Child Pornography, as charged in Counts 1, 13, 14, and 16 through  
19 24 of this Indictment, in violation of Title 18, United States Code, Section 2251, and  
20 Transportation of a Minor With Intent to Engage in Criminal Sexual Activity, as charged  
21 in Counts 29 and 30 of this Indictment, in violation of Title 18, United States Code,  
22 Section 2423(a).

23 All in violation of Title 18, United States Code, Section 1512(b)(3).

**COUNT THIRTY-SEVEN**  
**(Obstruction of Justice)**

25 Beginning on or about October 30, 2007, and continuing until on or about August  
26 28, 2008, within the Western District of Washington and elsewhere, the defendant,  
27 WELDON MARC GILBERT, with others known and unknown to the Grand  
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1 Jury, knowingly did corruptly persuade, attempt to corruptly persuade, and engage in  
2 misleading conduct toward John Doe 1, by trying to convince John Doe 1 not to cooperate  
3 with law enforcement and judicial officers, with intent to influence, delay, or prevent the  
4 testimony of any person in an official proceeding, namely, proceedings related to the  
5 conduct that forms the basis of the charges in this Indictment.

6 All in violation of Title 18, United States Code, Section 1512(b)(1).

7 **ASSET FORFEITURE ALLEGATIONS**

8  
9 The allegations contained in Counts 1 - 28 of this Fourth Superseding Indictment  
10 are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures  
11 pursuant to Title 18, United States Code, Section 2253(a).

12 Upon conviction of the offenses in violation of Title 18, United States Code,  
13 Sections 2252(a) and (e) and 2256 set forth in Counts 1-28 of this Fourth Superseding  
14 Indictment, the defendant, WELDON MARC GILBERT, shall forfeit to the United States  
15 of America, pursuant to Title 18, United States Code, Section 2253(a)(3), any property,  
16 real or personal, used or intended to be used, to commit or to promote the commission of  
17 such offenses and any property traceable to such property, including but not limited to:

- 18 a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB,  
19 VIN JTJBT20X940035115;
- 20 b. One 2006 white Ford F150 pick-up, Washington license plate A68898Z,  
21 VIN 1FTRF12206NB15476;
- 22 c. A 1981 Bell 206B-III helicopter bearing tail number N325JR and serial  
23 number 3296, and all flight logs and maintenance logs associated with this  
24 aircraft;
- 25 d. One 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362, and  
26 all flight logs and maintenance logs associated with this aircraft;
- 27 e. One 2003 Sea Ray Boat, model 185BR, bearing license number  
28 WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore

1 Land'r trailer, Washington license plate 0059RG, VIN  
2 IMDJ2JR163A248710;

3 f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
4 98391, parcel number 8996010100, its buildings, improvements,  
5 appurtenances, fixtures, attachments and easements, more particularly  
6 described as: Lot 10 of Tapps Island Division No. 1, according to the Plat  
7 thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records  
8 of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1,  
9 according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive,  
10 records of Pierce County, Washington;

11 g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
12 98391, parcel number 8996010110, its buildings, improvements,  
13 appurtenances, fixtures, attachments and easements, more particularly  
14 described as: Lot 10 of Tapps Island Division No. 1, according to the Plat  
15 thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive, records  
16 of Pierce County, Washington; and, Lot 11 of Tapps Island Division No. 1,  
17 according to Plat recorded in Book 48 of Plats at pages 30 to 34, inclusive,  
18 records of Pierce County, Washington

19 If any of the property described above, as a result of any act or omission of the defendant:

- 20 a. cannot be located upon the exercise of due diligence;
- 21 b. has been transferred or sold to, or deposited with, a third party;
- 22 c. has been placed beyond the jurisdiction of the court;
- 23 d. has been substantially diminished in value; or
- 24 e. has been commingled with other property which cannot be divided without  
25 difficulty,

26 the United States shall be entitled to forfeiture of substitute property pursuant to Title 21,  
27 United States Code, Section 853(p), as incorporated by Title 18, United States Code,  
28 Section 2253(b).

The allegations contained in Counts 29 - 30 of this Fourth Superseding Indictment  
are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures  
pursuant to Title 18, United States Code, Section 2253(a).

1 Upon conviction of the offenses in violation of Title 18, United States Code,  
2 Section 2423(a) set forth in Counts 29 - 30 of this Fourth Superseding Indictment, the  
3 defendant, WELDON MARC GILBERT, shall forfeit to the United States of America,  
4 pursuant to Title 18, United States Code, Section 2253(a)(3), any property, real or  
5 personal, used or intended to be used, to commit or to promote the commission of such  
6 offenses and any property traceable to such property, including but not limited to:

- 7 a. One 2004 blue Lexus GX470, bearing Washington license plate 029RYB,  
8 IN JTJBT20X940035115.

9 If any of the property described above, as a result of any act or omission of the  
10 defendant:

- 11 a. cannot be located upon the exercise of due diligence;  
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13 b. has been transferred or sold to, or deposited with, a third party;

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FOURTH SUPERSEDING INDICTMENT/GILBERT - 7

- 1 c. has been placed beyond the jurisdiction of the court;
- 2 d. has been substantially diminished in value; or
- 3
- 4 e. has been commingled with other property which cannot be divided without
- 5 difficulty,

6 the United States shall be entitled to forfeiture of substitute property pursuant to Title 21,  
 7 United States Code, Section 853(p), as incorporated by Title 18, United States Code,  
 8 Section 2253(b).

9 A TRUE BILL:

10 DATED:

11 *The signature of the foreperson has been*  
 12 *redacted pursuant to the policy of the Judicial*  
 13 *Conference of the United States*

14 \_\_\_\_\_  
 15 FOREPERSON

16   
 17 \_\_\_\_\_  
 18 JEFFREY C. SULLIVAN  
 19 United States Attorney

20   
 21 \_\_\_\_\_  
 22 LAWRENCE LINCOLN  
 23 Assistant United States Attorney

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 25 \_\_\_\_\_  
 26 ROGER ROGOFF  
 27 Assistant United States Attorney

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 MICHAEL DION  
 Assistant United States Attorney

FOURTH SUPERSEDING INDICTMENT/GILBERT - 8

# EXHIBIT B

Judge Settle

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07-CR-05732-PLAGR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
WELDON MARC GILBERT,  
Defendant.

NO. CR07-5732BHS  
PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Roger Rogoff and Michael Dion, Assistant United States Attorneys for said District, and the defendant, WELDON MARC GILBERT, and his attorneys, John Henry Browne and Emma Scanlan, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Fourth Superseding Indictment ("Indictment"). By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Sexual exploitation of a child in the Production of Child Pornography, as charged in Counts 1 through 21, 23 through 31, and 33, in violation of Title 18, United States Code, Section 2251(a) and (e), and 2256;

1           b.     Transportation of a minor to engage in illegal sexual activity, as  
2 charged in Counts 34 and 35, in violation of Title 18, United States Code, Section  
3 2423(a) and Section 2;

4           c.     Obstruction of justice, as charged in Count <sup>36</sup>35, in violation of Title  
5 18, United States Code, Section 1512(b)(3); and

6           d.     Obstruction of justice, as charged in Count <sup>37</sup>36, in violation of Title  
7 18, United States Code, Section 1512(b)(1).

8           Defendant further understands that before entering his pleas of guilty, Defendant  
9 will be placed under oath. Any statement given by Defendant under oath may be used by  
10 the government in a prosecution for perjury or false statement.

11           2.     Elements of the Offenses. The elements of the offenses are as follows:

12           a.     The elements of the offense of Production of Visual Depictions of  
13 Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, 23  
14 through 31, and 33, of the Indictment, are:

15                 First, Defendant employed, used, persuaded, induced, enticed or coerced the  
16 victim to take part in sexually explicit conduct for the purpose of producing a visual  
17 depiction of such conduct;

18                 Second, at the time, the victim was a minor; and

19                 Third, the visual depiction was produced or transmitted using materials that  
20 had been mailed, shipped, or transported in or affecting interstate or foreign commerce.

21           b.     The elements of the offense of Transportation of Minors to Engage  
22 in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment, are:

23                 First, Defendant knowingly transported an individual in interstate  
24 commerce;

25                 Second, the individual was under 18 years of age when the transportation  
26 took place; and

27                 Third, Defendant intended that the person engage in sexual activity for  
28 which any person can be charged with a criminal offense.

1 c. The elements of the offense of Obstruction of Justice, as charged in  
2 Count 36 of the Indictment, are:

3 First, Defendant knowingly did corruptly persuade, attempt to corruptly  
4 persuade, or engage in misleading conduct toward another by trying to convince such  
5 person not to cooperate with law enforcement and judicial officers;

6 Second, Defendant did so with intent to hinder, delay and prevent the  
7 communication to a law enforcement officer or judge of the United States, of information  
8 relating to the commission or possible commission of a Federal offense.

9 d. The elements of the offense of Obstruction of Justice, as charged in  
10 Count 37 of the Indictment, are:

11 First, Defendant knowingly did corruptly persuade, attempt to corruptly  
12 persuade, and engage in misleading conduct toward another, by trying to convince that  
13 person not to cooperate with law enforcement and judicial officers; and

14 Second, Defendant did so with intent to influence, delay, or prevent the  
15 testimony of any person in an official proceeding.

16 3. The Penalties.

17 a. The statutory penalties for Production of Visual Depictions of  
18 Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, <sup>23</sup> ~~22~~  
19 through 31, and 33, of the Indictment, are, as to each count: imprisonment for not less  
20 than fifteen (15) years and not more than Life, a fine of up to two-hundred and fifty  
21 thousand dollars (\$250,000.00), or both, a one-hundred dollar (\$100.00) penalty  
22 assessment, and a period of supervision following release from prison of not less than five  
23 (5) years and up to the lifetime of the offender.

24 b. The statutory penalties for Transportation of Minors with Intent to  
25 Engage in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment are:  
26 imprisonment for not less than 10 years nor more than Life, a fine of up to two-hundred  
27 and fifty thousand dollars (\$250,000.00), or both, a one-hundred dollar (\$100.00) penalty  
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1 assessment, and a period of supervision following release from prison of not less than five  
2 (5) years and up to the lifetime of the offender.

3 c. The statutory penalties for Obstruction of Justice, as charged in  
4 Count 36 and 37 of the Indictment are: imprisonment for not more than 20 years, a fine of  
5 up to two-hundred and fifty thousand dollars (\$250,000.00), or both, a one-hundred dollar  
6 (\$100.00) penalty assessment, and a period of supervision following release from prison  
7 of not more than three (3) years.

8 Defendant understands that supervised release is a period of time following  
9 imprisonment, during which he will be subject to certain restrictions and requirements.  
10 Defendant further understands that if supervised release is imposed and he violates one or  
11 more of its conditions, he could be returned to prison for all or part of the term of  
12 supervised release that was originally imposed. This could result in Defendant serving a  
13 total term of imprisonment greater than the statutory maximum stated above.

14 Defendant agrees that any monetary penalty the Court imposes, including the  
15 special assessment, fine, costs or restitution, is due and payable immediately, and further  
16 agrees to submit a completed Financial Statement of Debtor form as requested by the  
17 United States Attorney's Office.

18 4. Rights Waived by Pleading Guilty. Defendant understands that, by  
19 pleading guilty, he knowingly and voluntarily waives the following rights:

20 a. The right to plead not guilty, and to persist in a plea of not guilty;

21 b. The right to a speedy and public trial before a jury of Defendant's  
22 peers;

23 c. The right to the effective assistance of counsel at trial, including, if  
24 Defendant could not afford an attorney, the right to have the Court appoint one for  
25 Defendant;

26 d. The right to be presumed innocent until guilt has been established at  
27 trial, beyond a reasonable doubt;

1 e. The right to confront and cross-examine witnesses against Defendant  
2 at trial;

3 f. The right to compel or subpoena witnesses to appear on Defendant's  
4 behalf at trial;

5 g. The right to testify or to remain silent at trial, at which trial such  
6 silence could not be used against Defendant; and

7 h. The right to appeal a finding of guilt or any pretrial rulings

8 5. United States Sentencing Guidelines. Defendant understands and  
9 acknowledges that, absent applicable intervening law:

10 a. The United States Sentencing Guidelines, promulgated by the  
11 United States Sentencing Commission, are applicable to this case;

12 b. The Court will determine Defendant's applicable Sentencing  
13 Guidelines range at the time of sentencing; and

14 c. Except as provided in paragraph 7 below, Sentencing, Defendant  
15 may not withdraw a guilty plea solely because of the sentence imposed by the Court.

16 6. Statement of Facts. The parties agree on the following facts in support of  
17 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged  
18 offenses and expressly waives any right to have these facts determined by a jury beyond a  
19 reasonable doubt.

20 **Background**

21 a. At all relevant times, WELDON MARC GILBERT resided at his house in  
22 Lake Tapps, Washington. GILBERT was born on August 26, 1960.

23 **Child Pornography Production Charges**

24 b. GILBERT used one or more foreign-made video cameras to create videos  
25 of minors engaged in sexually explicit conduct. All of the videos described below were  
26 created using those foreign-made video cameras, and those cameras traveled to  
27 Washington state in interstate and foreign commerce before being used to create those  
28 videos.

1 c. GILBERT filmed all of the videos described below with the purpose and  
2 intent of creating visual depictions of minors engaged in sexually explicit conduct.  
3 GILBERT knew that the victims shown on the videos were minors, and he knew that they  
4 were engaging in sexually explicit conduct.

5 d. GILBERT created thirty-one visual depictions of minors engaged in  
6 sexually-explicit conduct, as charged in Counts 1 through 21, 23 through 31, and 33 of  
7 the Indictment. The videos show 17 different victims. The youngest victims are 10, 12,  
8 13, and 14 when they first appear in the videos. GILBERT arranged the lighting, camera  
9 angle, and the victims' bodies to ensure that the victims' genitalia would be clearly caught  
10 on film. All of the videos fall into one of the following two categories: (a) GILBERT  
11 engaged in some form of sex act with the victim, or the victim masturbating at  
12 GILBERT's direction; or (b) a lascivious display of the victims' genitalia. With respect  
13 to category (b), each and every one of those videos also displayed one or more of the  
14 following: (1) GILBERT striking the unclothed victim with his hand, or with an  
15 implement, such as a paddle, belt, or cane; (2) GILBERT restraining the victim, either by  
16 hand or by tying the victim down; (3) the victim indicating that GILBERT was inflicting  
17 pain upon them; (4) welts, bruises, or blisters inflicted by GILBERT, (5) GILBERT  
18 caressing the nude bodies of the victims while striking them; (6) GILBERT commenting  
19 upon the victims' genitalia; (7) GILBERT touching, or attempting to touch, the victims'  
20 genitalia; and (8) GILBERT engaging in a sexual discussion with the victim.

21 e. There was no legitimate reason for GILBERT to create any of these visual  
22 depictions of minors engaged in sexually explicit conduct. GILBERT created the videos  
23 for the purpose of producing child pornography that he could watch whenever he wanted  
24 to. GILBERT created these videos over a period of several years. All of the videos were  
25 created in Washington State. GILBERT agrees and acknowledges that all of the videos  
26 were sexually explicit, in that each and every one of the videos showed one or more of the  
27 following: (1) actual or simulated sexual intercourse; (2) masturbation; (3) sadistic abuse;  
28 and (4) lascivious exhibition of the genitals and pubic area.

1 f. GILBERT used, persuaded, and induced each of the victims to appear in the  
2 videos.

3 **Transportation of minors charges**

4 g. In 2005, GILBERT transported a minor male victim ("John Doe 1") from  
5 Washington State to Whistler, British Columbia, Canada. One of GILBERT's dominant  
6 purposes in transporting John Doe 1 to Canada was to engage in illegal sexual conduct  
7 with John Doe 1, namely, GILBERT intended to produce pornographic videos of John  
8 Doe 1 in violation of 18 U.S.C. § 2251(a). GILBERT did in fact produce a pornographic  
9 video of John Doe 1, the content of which was along the lines of the videos described  
10 above. GILBERT used a video recorder that had traveled in interstate or foreign  
11 commerce, GILBERT knew that John Doe 1 was a minor, and GILBERT deliberately  
12 created a visual depiction of John Doe 1 engaged in sexually explicit conduct.

13 h. In 2007, GILBERT transported four minor male victims, John Doe 1 and  
14 three of his friends, from Washington State to Whistler, British Columbia, Canada. One  
15 of GILBERT's dominant purposes in transporting these victims to Canada was to engage  
16 in illegal sexual conduct with the victims, namely, GILBERT intended to produce  
17 pornographic videos of the victims in violation of 18 U.S.C. § 2251(a). GILBERT used a  
18 video recorder that had traveled in interstate or foreign commerce, GILBERT knew that  
19 the victims were minors, and GILBERT deliberately created a visual depiction of the  
20 victims engaged in sexually explicit conduct along the lines of the other videos described  
21 above.

22 **Obstruction of justice charges**

23 i. On October 30, 2007, GILBERT learned that he was being investigated by  
24 law enforcement. GILBERT soon learned that the subject of the investigation was child  
25 abuse, child molestation, and production of child pornography. GILBERT knew that the  
26 evidence would prove that he committed these crimes. GILBERT knowingly and  
27 intentionally set out to obstruct the investigation and eventual prosecution of these crimes.  
28 GILBERT repeatedly attempted to tamper with John Doe 1. GILBERT's goals were: (1)

1 to prevent John Doe 1 from telling law enforcement the truth about GILBERT's crimes;  
2 (2) to prevent John Doe 1 from testifying at trial; and (3) to convince John Doe 1 to make  
3 false statements in a legal proceeding that would support GILBERT's efforts to suppress  
4 evidence seized during the investigation.

5 j. GILBERT was charged in federal court in this case on November 2, 2007.  
6 From that point on, GILBERT knew that he was the subject of a federal criminal  
7 proceeding before the United States District Court for the Western District of  
8 Washington, and his attempts to tamper with John Doe 1 were aimed at (1) corruptly  
9 persuading John Doe 1 to lie, or to refuse to testify, in that proceeding, and (2) to prevent  
10 John Doe 1 from communication<sup>ing</sup> information to federal agents and federal judicial  
11 officers in connection with that proceedings.

12 k. GILBERT made several attempts to tamper with John Doe 1 in the manner  
13 described above. In January of 2008, GILBERT wrote a letter to John Doe 1. GILBERT  
14 arranged for a third party to meet with John Doe 1 and convey the contents of the letter to  
15 him. The letter encouraged John Doe 1 to make false statements to the federal judge in  
16 the context of the federal criminal case. GILBERT believed that these false statements  
17 would support an effort by defense to have the search warrant declared invalid and the  
18 critical evidence suppressed. ~~As an inducement, GILBERT offered John Doe 1 a~~ <sup>ND</sup> ~~financial reward.~~ <sup>and convince him to not NN</sup>  
19 ~~In February of 2008, GILBERT wrote another letter to the third party~~  
20 ~~he had previously used to contact John Doe 1. In the letter, GILBERT instructed the third~~  
21 ~~party about how to approach John Doe 1 and convince him not to testify truthfully to the~~  
22 ~~Court, and not cooperate with federal agents, in the pending criminal case regarding the~~  
23 federal offense of production of child pornography. GILBERT told the third party to  
24 mention to John Doe 1 an incident in which one of John Doe 1's friends was charged with  
25 stealing a television from GILBERT. The third party was to tell John Doe 1 that  
26 GILBERT was willing to falsely tell the police that the friend had permission to take the  
27 television. GILBERT hoped that, in return for his willingness to lie to protect John Doe  
28

1 | 1's friend, John Doe 1 would stop cooperating with the federal investigation and  
2 | prosecution of the case against GILBERT.

3 | 7. Sentencing.

4 | Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the  
5 | parties acknowledge and agree that the appropriate sentence of imprisonment to be  
6 | imposed by the Court at the time of sentencing should be within the range of 228 to 300  
7 | months, to be followed by supervised release for life. If the sentencing court rejects the  
8 | agreement of the parties and seeks to impose a sentence outside the agreed upon  
9 | sentencing range, both the defendant and the United States reserve the right to withdraw  
10 | from this agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal  
11 | Procedure and to proceed to trial. No other agreement has been made with regard to the  
12 | imposition of the sentence in this matter, and the parties understand that the Court retains  
13 | full discretion to impose a sentence within the range agreed to above.

14 | 8. Presentation of Evidence at Sentencing. The Government agrees to the  
15 | following restrictions on the evidence that it will present in support of its sentencing  
16 | recommendation: (1) the Government will not present any videos, excerpts from videos,  
17 | or stills from videos, unless requested by the Court; and (2) the Government will not  
18 | present the document it has marked as trial Exhibit 75 (and sub-exhibits), unless  
19 | requested by the Court.

20 | With respect to (1), the Government is free to describe videos in as much detail as  
21 | it wishes. Furthermore, if Defendant disputes the accuracy of the Government's  
22 | description of a video, the parties agree to request that a judicial officer of this District,  
23 | other than the sentencing judge, review the video at issue and report to the sentencing  
24 | judge about whether the Government's description is accurate.

25 | Defendant acknowledges and understands that this Paragraph will not bar the  
26 | Government from providing whatever information it is required to provide to the United  
27 | States Probation Office.

1           9.     Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
2 the United States Attorney's Office for the Western District of Washington agrees to  
3 move to dismiss the remaining counts in the Indictment at the time of sentencing and not  
4 to prosecute Defendant for any additional offenses known to it as of the time of this  
5 Agreement that are based upon evidence in its possession at this time, or that arise out of  
6 the conduct giving rise to this investigation. In this regard, Defendant recognizes that the  
7 United States has agreed not to prosecute all of the criminal charges that the evidence  
8 establishes were committed by Defendant solely because of the promises made by  
9 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for  
10 purposes of preparing the Presentence Report, the United States Attorney's Office will  
11 provide the United States Probation Office with evidence of all relevant conduct  
12 committed by Defendant.

13           The United States Attorney's Office for the Western District of Washington also  
14 agrees not to prosecute any other person based upon evidence in its possession at this  
15 time, or that arise out of the conduct giving rise to this investigation, relating to witness  
16 tampering, obstruction of justice, or related offenses, in connection with this case.

17           Defendant agrees and acknowledges that any charges to be dismissed before or at  
18 the time of sentencing were substantially justified in light of the evidence available to the  
19 United States, were not vexatious, frivolous or taken in bad faith, and do not provide  
20 Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No.  
21 105-119 (1997).

22           10.    Voluntariness of Plea. Defendant acknowledges that he has entered into  
23 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
24 promises contained in this Plea Agreement, were made to induce Defendant to enter these  
25 pleas of guilty.

26           11.    Statute of Limitations. In the event that this Agreement is not accepted by  
27 the Court for any reason, or Defendant has breached any of the terms of this Plea  
28 Agreement, the statute of limitations shall be deemed to have been tolled from the date of

1 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
2 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea  
3 Agreement by Defendant is discovered by the United States Attorney's Office.

4 12. Post-Plea Conduct. Defendant understands that the terms of this Plea  
5 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
6 If, after the date of this Agreement, Defendant should engage in illegal conduct, or  
7 conduct that is in violation of his conditions of release or confinement (examples of  
8 which include, but are not limited to: obstruction of justice, failure to appear for a court  
9 proceeding, criminal conduct while pending sentencing, and false statements to law  
10 enforcement agents, the Pretrial Services Officer, Probation Officer or Court), the United  
11 States is free under this Agreement to seek a sentence that takes such conduct into  
12 consideration. Such a sentence could include, to the extent the United States Sentencing  
13 Guidelines are applicable, a sentencing enhancement or upward departure.

14 13. Forfeiture of Property: Defendant agrees to forfeit to the United States  
15 immediately all of his right, title and interest in any property, real or personal, used or  
16 intended to be used, to commit or to promote the commission of the offense of Sexual  
17 Exploitation of a Child in the Production of Child Pornography and any property  
18 traceable to such property, pursuant to Title 18, United States Code, Section 2253(a)(3),  
19 including the following properties:

20 a. One (1) 2004 blue Lexus GX470, bearing Washington license plate  
21 029RYB, VIN JTJBT20X940035115;

22 b. One (1) 2006 white Ford F150 pick-up, Washington license plate A68898Z,  
23 VIN 1FTRF12206NB15476;

24 c. One (1) 1981 Bell 206B-III helicopter bearing tail number N325JR and  
25 serial number 3296, and all flight logs and maintenance logs associated with this aircraft;

26 d. One (1) 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362,  
27 and all flight logs and maintenance logs associated with this aircraft;  
28

1 e. One (1) 2003 Sea Ray Boat, Model 185BR, bearing license number  
2 WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer,  
3 Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

4 f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
5 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances,  
6 fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps  
7 Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at  
8 pages 30 to 34, inclusive, records of Pierce County, Washington; and,

9 g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
10 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures,  
11 attachments and easements, more particularly described as: Lot 11 of Tapps Island  
12 Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34,  
13 inclusive, records of Pierce County, Washington;

14 h. One (1) Sony Digital Handicam Digital 8 cam corder, model:  
15 DCR-TRV250, s/n: 388947;

16 i. One (1) Sony Video 8 Handycam cam corder, model: model: CCD-TR40,  
17 s/n: 3009669;

18 j. One (1) Averatec laptop computer, model: 5500 series, s/n obliterated;

19 k. One (1) Fry's Intel Pentium 4 computer tower, model: FS7470, s/n:  
20 747FSX340000296;

21 l. One (1) Averatec Notebook computer, model: 2200 series, s/n partially  
22 obliterated, starting with NW04CE06040;

23 m. One (1) Seagate Medalist 13640 hard drive, model: ST313640A, s/n:  
24 7AE054NA;

25  
26 n. One (1) Western Digital WD1600 Enhanced IDE hard drive, model:  
27 WD1600BB-00DAA0, s/n: WMACK2069917;

28

1 o. One (1) Western Digital WD400 Enhanced IDE hard drive, model:  
2 WD400JB-00ENA0, s/n: WCAD19728957;

3 p. One (1) Western Digital WD1600 Enhanced IDE hard drive, model:  
4 WD1600JB-75GVC0, s/n: WCAL96008970; and

5 q. One (1) MX 1000 Camera tripod.

6 Defendant agrees to forfeit to the United States immediately all of his right, title  
7 and interest in any visual depiction described in Title 18, United States Code, Section  
8 2251, or any book, magazine, periodical, film, videotape or other matter which contains  
9 any such visual depiction, which was produced, transported, mailed, shipped, or received  
10 in violation of this chapter, pursuant to Title 18, United States Code, Section 2253(a)(1),  
11 including the following properties:

12 a. Any and all images of child pornography, in whatever form and however  
13 stored, including but not limited to, those stored on zip disks, CDs/DVDs, video cassette  
14 tapes, and floppy disks.

15 Defendant agrees to forfeit to the United States immediately all of his right, title  
16 and interest in any property, real or personal, used to commit or to facilitate the  
17 commission of the violation of Transportation of a Minor to Engage in Illegal Sexual  
18 Activity, and any property traceable to such property, pursuant to Title 18, United States  
19 Code, Section 2428(b)(1)(A), including the following property:

20 a. One (1) 2004 blue Lexus GX470, bearing Washington license plate  
21 029RYB, VIN JTJBT20X940035115.

22 Defendant agrees to fully assist the United States in the forfeiture of the listed  
23 assets, including but not limited to: surrendering title and executing any documents  
24 necessary to effectuate such forfeiture; assisting in bringing any assets located outside the  
25 United States within the jurisdiction of the United States; and taking whatever steps are  
26 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,  
27 hidden, or otherwise made unavailable for forfeiture. Defendant further agrees to  
28

1 withdraw all claim(s) to the listed properties in the related civil forfeiture action, United  
2 States v. One 2004 Blue Lexus, GX470, et al., Docket No. C08-5084BHS.

3 The United States agrees that once the preliminary order of forfeiture is entered,  
4 forfeiting the defendant's interest in the above-listed assets, the government will negotiate  
5 with counsel representing the defendant in the related civil forfeiture case in this district  
6 to attempt to achieve the objective of applying the assets, or proceeds from the sale of the  
7 assets, for the benefit of the victims of the crimes to which the defendant is pleading  
8 guilty and any related crimes, with the exception of the visual depictions, or those  
9 electronic items containing visual depictions, being forfeited to the United States. In  
10 addition, the government will seek to obtain all necessary approvals to achieve the goal of  
11 utilizing the forfeited assets to compensate the victims of the defendant's crimes, in lieu of  
12 obtaining final orders of forfeiture for the assets. The defendant in turn will take all steps  
13 necessary to ensure that these assets in fact are utilized for the benefit of the victims and  
14 will not go back to him or any of his relatives, including the removal of any liens or  
15 interests in the assets that currently exist in favor of any of his relatives.

16 14. Interdependence of Plea Agreements. The parties agree that this Plea  
17 Agreement shall be conditioned upon the defendant entering a plea in Pierce County  
18 Superior Court in the matter of State of Washington v. Weldon Marc Gilbert, cause  
19 number 07-1-05618-3, as set forth in the Memorandum attached as Appendix A to this  
20 plea agreement.

21 Defendant understands, therefore, that this Agreement is part of a package plea  
22 agreement with the United States and the State of Washington, to wit, if Defendant does  
23 not enter into, and plead guilty pursuant to the respective Plea Agreements in Federal  
24 District Court and ~~King~~ <sup>Pierce</sup> County Superior Court, or if Defendant subsequently seeks to  
25 withdraw from either guilty plea, then the United States will withdraw from the instant  
26 Plea Agreement and will seek an indictment against Defendant for all crimes for which  
27 the United States has sufficient evidence. Defendant's plea of guilty in State of  
28 Washington v. Weldon Marc Gilbert is integral to the instant plea agreement. If the State

1 of Washington fails to abide by the agreement set forth in Appendix A, the defendant may  
2 withdraw his federal plea agreement.

3 15. Acceptance of Responsibility. The United States acknowledges that  
4 Defendant has assisted the United States by timely notifying the authorities of his  
5 intention to plead guilty, thereby permitting the United States to avoid preparing for trial  
6 and permitting the Court to allocate its resources efficiently. If at the time of sentencing,  
7 the United States remains satisfied that Defendant has accepted responsibility, then it will  
8 recommend a sentence that takes this acceptance of responsibility into consideration.  
9 Defendant understands and agrees that the United States will base its recommendation on  
10 factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

11 16. Waiver of Appeal. As part of this Plea Agreement and on the condition that  
12 the Court imposes a term of imprisonment that does not exceed the sentencing range set  
13 forth in this Agreement, Defendant waives to the full extent of the law:

14 a. any right conferred by Title 18, United States Code, Section 3742 to  
15 appeal the sentence, including any restitution order imposed; and

16 b. any right to bring a collateral attack against the conviction and  
17 sentence, including any restitution order imposed, except as it may relate to the  
18 effectiveness of legal representation

19 Furthermore, this waiver does not preclude Defendant from bringing an  
20 appropriate motion pursuant to 28 U.S.C. 2241, to address the conditions of his  
21 confinement or the decisions of the Bureau of Prisons regarding the execution of his  
22 sentence.

23 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
24 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
25 any way, the United States may prosecute Defendant for any counts, including those with  
26 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
27 Agreement.

28



Exhibit A**Pierce County****Memo****Gerald A. Horne**  
Prosecuting Attorney

**To:** Asst. U.S. Attorney Roger Rogoff  
**From:** Patrick J. Hammond  
**Date:** 4/23/2009  
**Re:** State v. Weldon Marc Gilbert, Pierce County Cause No. 07-1-05618-3

The purpose of this memorandum is to outline the Pierce County Prosecutor's Office plea agreement in Mr. Gilbert's case in State court. Because the primary focus of the plea negotiations has been on Mr. Gilbert's federal case, only the broadest parameters of the agreement in State court can be outlined at this time. However, this should be sufficient to enable the federal plea agreement to go forward.

If Mr. Gilbert pleads guilty under the terms negotiated with federal prosecutors on April 23, 2009, the Pierce County Prosecutor's Office will agree to file an Amended Information in which Mr. Gilbert is charged with multiple offenses, the most serious of which will be Child Molestation in the First Degree. The Amended Information will not include any allegations of Child Rape, in any degree. The Amended Information will result in Mr. Gilbert having an offender score of nine, which will give him a determinate sentencing range of 149-198 months in prison. The State will recommend that Mr. Gilbert receive a sentence of 198 months in prison, to run concurrently with the sentence Mr. Gilbert receives in Federal Court. Mr. Gilbert's term of community custody has not yet been determined. However, the State will recommend the conditions of probation that are typically included in Appendix "H" (e.g. deviancy treatment, restrictions on contact with minors, etc.).

The State will recommend the typical legal financial obligations associated with a case of this nature, including the crime victim's penalty assessment, court costs, DNA assessment, and restitution. The Amended Information filed in State Court as part of this plea agreement will contemplate all of the known victims who have come to light in the course of the investigation and prosecution of Mr. Gilbert, for whom the statute of limitations has not already run.

**cc:** File



07-1-05618-3 38456489 SRSP 11-01-12

FILED  
IN COUNTY CLERK'S OFFICE

A.M. NOV - 1 2012 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY: [Signature] DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

Defendant.

STATE'S RESPONSE TO  
DEFENDANT'S MOTION TO DISMISS  
PURSUANT TO RCW 10.43.040

MOTION

COMES NOW the Plaintiff, State of Washington, by and through Pierce County  
Prosecuting Attorney Mark E. Lindquist, by and through his Deputy Tim Lewis, respectfully  
moves this Court to deny the Defendant's motion to dismiss pursuant to RCW 10.43.040.

STATEMENT OF THE CASE

On April 23, 2009, the Defendant pled guilty in the United States District Court for the  
Western District of Washington to thirty-one counts of Sexual Exploitation of a Child in the  
Production of Child Pornography, contrary to 18 U.S.C. §§ 2251(a) and (e) and 2256; two counts  
of Transportation of a Minor to Engage in Illegal Sexual Activity, contrary to 18 U.S.C. §§  
2423(a) and 2; one count of Obstruction of Justice, contrary to 18 U.S.C. § 1512(b)(3); and one  
count of Obstruction of Justice, contrary to 18 U.S.C. § 1512(b)(1). The Defendant was  
sentenced on November 16, 2009.

1 The Defendant is presently charged in the Superior Court of the State of Washington, in  
2 and for Pierce County, with three counts of Rape of a Child in the Second Degree, contrary to  
3 RCW 9A.44.076; three counts of Rape of a Child in the Third Degree, contrary to RCW  
4 9A.44.079; one count of Child Molestation in the First Degree, contrary to RCW 9A.44.083; five  
5 counts of Child Molestation in the Second Degree, contrary to RCW 9A.44.086; one count of  
6 Child Molestation in the Third Degree, contrary to RCW 9A.44.089; and one count of  
7 Possession of Depictions of Minor Engaged in Sexually Explicit Conduct, contrary to RCW  
8 9.68A.070.

#### 9 ARGUMENT

10 Pursuant to the doctrine of dual sovereignty, neither the Fifth Amendment to the United  
11 States Constitution nor Article I § 9 of the Washington State Constitution, prohibits successive  
12 prosecutions at the hands of separate sovereigns so long as each sovereign punishes the offender  
13 no more than once. State v. Kenney, 83 Wash. 441 (1915); Petite v. United States, 361 U.S. 529  
14 (1960). However, individual states may abandon this doctrine statutorily. State v. Caliguri, 99  
15 Wash.2d 501, 512 (1983). The State of Washington did precisely that in 1909, via RCW  
16 10.43.040, which abrogates the doctrine of dual sovereignty in this state. Caliguri at 511. In  
17 other words, a criminal defendant in the State of Washington may not be prosecuted when that  
18 same defendant has already been prosecuted elsewhere for the same offense. State v. Ivie, 136  
19 Wash.2d 173, 179 (1998). Here, the Defendant's argument fails.

21 In order for the Defendant to establish that the current prosecution is barred by RCW  
22 10.43.040, he must first establish that he is being prosecuted for the same "act or omission" for  
23 which he has already been prosecuted elsewhere. Caliguri at 512. In that the term "act or  
24 omission" is not defined by RCW 10.43.040, our Supreme Court has held that since the statute  
25

1 pertains to the concept of double jeopardy, courts should look to double jeopardy jurisprudence  
2 to define the term. Caliguri at 512-514. Under Washington State law, a defendant is placed in  
3 double jeopardy only if the offenses for which he has been previously, and is presently being,  
4 prosecuted are identical in fact. Caliguri at 514. The fact that the State may rely upon or utilize  
5 the same evidence produced in the prior prosecution is not dispositive. State v. Rudy, 105  
6 Wash.2d 921, 928, (1986).

7 The facts relied upon by the State in the present prosecution of the Defendant are not  
8 identical to those utilized in forming the factual basis for his federal convictions. The facts  
9 underlying the Defendant's convictions for thirty-one counts of Sexual Exploitation of a Child in  
10 the Production of Child Pornography required that the Defendant's underlying purpose for  
11 having minors engaging in sexually explicit conduct was for production of visual depictions of  
12 such conduct in the form videotape and digital video discs. No such purpose underlies the  
13 State's charges as listed in counts one through thirteen of the presently filed Corrected Amended  
14 Information. As to Count XIV, Possession of Depictions of Minor Engaged in Sexually Explicit  
15 Conduct, the charge is predicated upon the possession of depictions of minors engaged in  
16 sexually explicit conduct not included or named as victims in the federal convictions.

#### 17 CONCLUSION

18  
19  
20 In that the facts underlying the basis for the charges presently pending against the  
21 Defendant in this Court are not identical in fact to the charges for which the Defendant has  
22 previously been convicted in federal court, the Defendant cannot establish jeopardy as defined by  
23 the double jeopardy jurisprudence of this state, and is therefore not entitled to dismissal under  
24  
25

1 RCW 10.43.040. For the foregoing reasons, and pursuant to the cited authority of law, the State  
2 respectfully moves this Court to deny the Defendant's motion to dismiss.

3 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of October, 2012.

4 MARK LINDQUIST  
5 Prosecuting Attorney

6  
7 By:   
8 Tim Lewis  
9 Deputy Prosecuting Attorney  
10 WSB # 33767

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tl



07-1-05618-3 39479746 CME 11-06-12

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF JOURNAL ENTRY**

vs.

Page 1 of 9

GILBERT, WELDON MARC

Judge: KATHERINE M. STOLZ

Court Reporter: KIMBERLY ONEILL

Judicial Assistant/Clerk: LINDA SHIPMAN

PATRICK HAMMOND

Prosecutor

JOHN HENRY BROWNE

Defense Attorney

Proceeding Set: JURY TRIAL

Proceeding Date: 10/22/12 8:30

Proceeding Outcome: GUILTY PLEA AFTER TRIAL COM

Resolution: Guilty Plea After J Trial Com

<b>Clerk's Code:</b>
Proceeding Outcome code: JTRIAL
Resolution Outcome code: GPJT
Amended Resolution code:



**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

Page: 2 of 9

GILBERT, WELDON MARC

Judge:  
KATHERINE M. STOLZ

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: LINDA SHIPMAN  
Start Date/Time: 10/22/12 10:05 AM

Court Reporter: KIMBERLY ONEILL

**October 22, 2012** 10:04 AM Court convened on the day set for jury trial with State of Washington represented by co-counsel Patrick Hammond and Tim Lewis; defendant pro se present (in custody) with standby counsel Ann Stenberg also present. Scheduling issues addressed. Case is called and recessed until 10/29/12. 10:10 AM Court at recess.

End Date/Time: 10/22/12 10:10 AM

Judicial Assistant/Clerk: LINDA SHIPMAN  
Start Date/Time: 10/29/12 1:33 PM

Court Reporter: KIMBERLY ONEILL

**October 29, 2012** 01:33 PM Court reconvened with State of Washington represented by co-counsel Patrick Hammond and Tim Lewis; defendant pro se present (in custody) with standby counsel Ann Stenberg also present. 01:35 PM Defendant addresses the court; court addresses the defendant. 01:39 PM Discussions re: proposed juror questionnaire; defendant's objections noted for the record. 02:16 PM Defendant addresses the court; response by the court. 02:23 PM Court at recess. 03:30 PM Court reconvened with counsel (T. Williams and P. Hammond) present; defendant present pro se (in custody); standby counsel A. Stenberg also present. Colloquy between defendant and the court. 03:35 PM Plaintiff/defendant are in agreement with the final draft of the juror questionnaire. 03:37 PM Defendant addresses the court regarding his motion to sever (double jeopardy motion). 03:40 PM Court at recess. 03:45 PM Court reconvened with counsel (T. Williams and P. Hammond) present; defendant present pro se (in custody); standby counsel A. Stenberg also present. 03:46 PM Order re: media coverage is addressed; the same is signed and filed. 03:49 PM Scheduling issues addressed. 03:51 PM Further discussions/argument between counsel/defendant/ court re: newly disclosed expert witness.

04:01 PM Scheduling issues addressed. 04:00 PM Court at recess until Tuesday, 10/30/12 at 9:30 a.m.

JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

Page: 3 of 9

GILBERT, WELDON MARC

Judge:  
KATHERINE M. STOLZ

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**MINUTES OF PROCEEDING**

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**End Date/Time: 10/29/12 4:06 PM**


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**Judicial Assistant/Clerk: LINDA SHIPMAN  
Start Date/Time: 10/30/12 9:41 AM**
**Court Reporter: KIMBERLY ONEILL**

**October 30, 2012** 09:40 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Scheduling issues addressed. 09:43 AM Colloquy between defendant and the court. 09:43 AM Objection by defendant noted for the record. 09:47 AM Court at recess. 10:04 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. 10:19 AM Jury box is filled with Jurors 1-30; prospective jurors are sworn (Oath on voir dire). Court instructs jurors 1-30 to look at question #45 on the questionnaire and mark if necessary. Jurors 1-30 excused to jury administration to complete the questionnaire at which time they are to return to jury administration on Wed, 10/31/12 at 9:30 a.m. 10:24 AM Jury box is filled with Jurors 31-60; prospective jurors are sworn (Oath on voir dire). 10:30 AM Court instructions jurors 31-60 to look at question #45 on the questionnaire and mark if necessary. 10:39 AM Jurors #31-60 excused to jury administration to complete the questionnaire at which time they are to return to jury administration on Wed, 10/31/12 at 9:30 a.m. 10:40 AM Court at recess.

**End Date/Time: 10/30/12 10:41 AM**


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**Judicial Assistant/Clerk: LINDA SHIPMAN  
Start Date/Time: 10/30/12 3:28 PM**
**Court Reporter: KIMBERLY ONEILL**

**October 30, 2012** 03:40 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Scheduling issues addressed. 03:45 PM Court admonishes counsel/defendant to not conduct any investigation regarding any jurors. 03:46 PM Court at recess until 9:30 a.m. on Wed.

JUDGE KATHERINE M. STOLZ Year 2012

## IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

### MEMORANDUM OF JOURNAL ENTRY

vs.

Page: 4 of 9

GILBERT, WELDON MARC

Judge:  
KATHERINE M. STOLZ

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### MINUTES OF PROCEEDING

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10/31/12.

**End Date/Time: 10/30/12 3:46 PM**


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**Judicial Assistant/Clerk: LINDA SHIPMAN**  
**Start Date/Time: 10/31/12 9:36 AM**
**Court Reporter: KIMBERLY ONEILL**

October 31, 2012 09:36 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg); defendant present in custody. 09:37 AM Plaintiff and defense motions to excuse jurors for cause: Juror #49 excused for cause by agreement. 09:41 AM Juror #3 excused for cause by agreement. 09:42 AM Juror #7 excused for cause by agreement. 09:43 AM Juror #9 excused for cause by agreement. 09:43 AM Juror #12 excused for cause by agreement. 09:44 AM Juror #17 excused for cause by agreement. 09:45 AM Juror #25 excused for cause by agreement. 09:46 AM Juror #27 excused for cause by agreement. 09:47 AM Juror #48 excused for cause by agreement. 10:00 AM Juror #24 excused for cause. 10:09 AM Juror #43 excused for cause by agreement. 10:16 AM Juror #56 excused for cause by agreement. 10:39 AM Court at recess. 10:51 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. 10:53 AM Juror #2 questioned individually; excused until Thurs, 11/1 at 9:30 a.m. 11:02 AM Juror #4 questioned individually; excused until Thurs, 11/1 at 9:30 a.m. 11:11 AM Juror #13 questioned individually; defense motion to excuse for cause; motion denied; cautioned and excused until Thurs, 11/1 at 9:30 a.m. 11:25 AM Juror #15 questioned individually; cautioned and excused until Thurs, 11/1 at 9:30 a.m. 11:36 AM Jury #16 questioned individually; cautioned and excused until Thurs, 11/1 at 9:30 a.m. 11:37 AM Discussions regarding other potential juror conflicts. 11:59 AM Court at recess.

**End Date/Time: 10/31/12 12:00 PM**


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 JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

Page: 5 of 9

GILBERT, WELDON MARC

Judge:  
KATHERINE M. STOLZ

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: LINDA SHIPMAN

Court Reporter: KIMBERLY ONEILL

Start Date/Time: 10/31/12 1:40 PM

**October 31, 2012** 01:40 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Individual questioning of potential jurors continues. Juror #19 questioned individually; Juror #19 excused for cause by agreement. 02:00 PM Juror #30 questioned individually; defense motion to excuse for cause; Juror #30 excused for cause. 02:29 PM Court at recess. 02:41 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. 02:42 PM Juror #31 questioned individually; defense motion to excuse for cause; motion denied; cautioned and excused until Thurs, 11/1 at 9:30 a.m. 03:07 PM Juror #33 questioned individually; Juror #33 excused for cause by agreement. 03:24 PM Juror #54 questioned individually; Juror #54 excused for cause by agreement. 03:36 PM Court at recess.

End Date/Time: 10/31/12 3:36 PM

Judicial Assistant/Clerk: LINDA SHIPMAN

Court Reporter: KIMBERLY ONEILL

Start Date/Time: 11/01/12 9:39 AM

**November 01, 2012** 09:38 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Individual questioning continues. 09:42 AM Juror #20 questioned individually; defense moves to excuse for cause; Juror #20 excused for cause. 09:58 AM State's motion to excuse Juror #37; Juror #37 excused for cause. 10:01 AM Juror #38 questioned individually; defense motion to excuse for cause; motion denied. 10:13 AM Colloquy re: standby counsel. 10:17 AM Juror #38 continued questioning individually; defense motion to excuse for cause denied. 10:19 AM P. Hammond addresses the court re: voir dire procedure and requests the court to admonish the voir dire jury panel. 10:27 AM Court at recess. 10:43 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant

JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

GILBERT, WELDON MARC

Page: 6 of 9

Judge:  
KATHERINE M. STOLZ**MINUTES OF PROCEEDING**

present in custody. 10:43 AM Jury box is filled. Court admonishes the jurors to not discuss any specifics re: this case. 10:45 AM Voir dire - P. Hammond. 11:03 AM Voir dire - pro se defendant (W. Gilbert). 11:23 AM Court addresses the defendant pro se regarding his voir dire questioning. 11:24 AM 2nd round voir dire - T. Lewis. 11:50 AM 2nd round voir dire - pro se defendant (W. Gilbert). 11:58 AM Voir dire jury panel cautioned and excused until 1:30 and should report to jury administration. 12:00 PM Juror #4 excused for cause. 12:02 PM Court at recess.

**End Date/Time: 11/01/12 12:02 PM**Judicial Assistant/Clerk: LINDA SHIPMAN  
Start Date/Time: 11/01/12 1:31 PM

Court Reporter: KIMBERLY ONEILL

**November 01, 2012** 01:31 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. 01:33 PM Defense motion to exclude voir dire jury panel by pro se defendant (W. Gilbert); argument by defendant pro se and DPA P. Hammond; motion denied. 01:36 PM Scheduling issues also addressed. 01:47 PM Voir dire jury panel returns to courtroom. Court admonishes the voir dire jury panel to not discuss any specifics about this case during the voir dire process. 01:49 PM Continued 2nd round voir dire - defendant pro se (W. Gilbert). 01:55 PM 3rd round voir dire - P. Hammond. 02:18 PM 3rd round voir dire - defendant pro se (W. Gilbert). 02:36 PM 4th round voir dire - T. Lewis. 02:44 PM 4th round voir dire - defendant pro se (W. Gilbert). 02:59 PM Voir dire jury panel cautioned and excused until Monday, 11/5/12 at 9:30 a.m. 03:02 PM Juror #36 excused for cause by agreement. 03:03 PM Juror #41 excused for cause by agreement. 03:06 PM Court at recess.

**End Date/Time: 11/01/12 3:06 PM**

Judicial Assistant/Clerk: LINDA SHIPMAN

Court Reporter: KIMBERLY ONEILL

JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

GILBERT, WELDON MARC

Page: 7 of 9

Judge:  
KATHERINE M. STOLZ

**MINUTES OF PROCEEDING**

**Start Date/Time: 11/02/12 1:43 PM**

**November 02, 2012** 01:42 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Case proceeds this afternoon with two motions: motion to recuse and motion to dismiss.

01:44 PM Defense motion to recuse: Argument by defendant pro se (W. Gilbert) and DPA P. Hammond; motion to recuse denied.

01:53 PM Defense motion to dismiss: Argument by defendant pro se (W. Gilbert) and DPA T. Lewis; court's ruling given - motion to dismiss denied.

02:08 PM Court at recess. 02:34 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby Ann Stenberg) present; defendant present in custody. Scheduling issues addressed. Colloquy re: defense motions in limine; motions in limine will be argued 11/5/12 at 1:30 p.m. 02:44 PM A. Stenberg addresses the court re: logistics; colloquy. 02:48 PM Court at recess until Monday, 11/5/12 at 9:15 a.m.

**End Date/Time: 11/02/12 2:49 PM**

Judicial Assistant/Clerk: LINDA SHIPMAN

Court Reporter: KIMBERLY ONEILL

**Start Date/Time: 11/05/12 9:39 AM**

**November 05, 2012** 09:38 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Scheduling issues addressed. Peremptory procedures addressed. 09:42 AM Defendant motions for additional peremptories; motion denied. 09:50 AM Juror #44 questioned individually; State moves to remove Juror #44 for cause; Juror #44 excused for cause. 10:23 AM Voir dire jury panel returns to courtroom. Court questions Juror #39. 10:26 AM Peremptory

JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

Page: 8 of 9

GILBERT, WELDON MARC

Judge:  
KATHERINE M. STOLZ

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**MINUTES OF PROCEEDING**

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challenges taken. 11:04 AM Jurors are sworn (oath) and impaneled to try this cause. 11:05 AM Preliminary cautionary instruction "open minds". 11:08 AM Judge's preliminary instruction to jury (outline course of trial). 11:17 AM Jury excused to the jury room. 11:29 AM Jury returns to courtroom. 11:32 AM Jury cautioned and excused until Tuesday, 11/6/12 at 9:15 a.m. 11:33 AM Court at recess.

**End Date/Time: 11/05/12 11:33 AM**


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 Judicial Assistant/Clerk: LINDA SHIPMAN  
 Start Date/Time: 11/05/12 1:38 PM

---

 Court Reporter: KIMBERLY ONEILL

**November 05, 2012** 01:37 PM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Defendant's motions in limine argued by pro se defendant and counsel; court's rulings given. 01:56 PM Witnesses excluded. 02:35 PM Court addresses the defendant re: making any reference to representing himself. 02:37 PM Court at recess.

**End Date/Time: 11/05/12 2:43 PM**


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 Judicial Assistant/Clerk: LINDA SHIPMAN  
 Start Date/Time: 11/06/12 9:58 AM

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 Court Reporter: KIMBERLY ONEILL

November 06, 2012 09:58 AM Court reconvened with counsel (P. Hammond, T. Lewis and standby counsel A. Stenberg) present; defendant present in custody. Media issue is addressed. 09:59 AM DPAs P. Hammond and T. Lewis address the court. 10:01 AM Court comments. 10:01 AM T. Lewis continues to address the court re: proposed acceptance and filing of the 2nd Amended Information. 10:07 AM Court accepts the 2nd Amended Information. 10:08 AM Pleas of guilty entered. 10:09 AM Court proceeds with the reading of the Plea Agreement. 10:19 AM Court accepts the plea agreement. 10:25 AM Court accepts the plea. Case proceeds to sentencing; court sentences the defendant.

JUDGE KATHERINE M. STOLZ Year 2012

**IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON**

STATE OF WASHINGTON

Cause Number: 07-1-05618-3

**MEMORANDUM OF  
JOURNAL ENTRY**

vs.

GILBERT, WELDON MARC

Page: 9 of 9

Judge:  
KATHERINE M. STOLZ

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**MINUTES OF PROCEEDING**

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10:40 AM Jury returns to open court. Jurors are discharged from this case. 10:55 AM Sentencing documents are signed and filed. The defendant is served with the no contact orders in open court. 11:05 AM Court at recess.

**End Date/Time: 11/06/12 11:06 AM**

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07-1-05618-3 39479847 AMINF2 11-06-12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 07-1-05618-3

vs

WELDON MARC GILBERT,

SECOND AMENDED INFORMATION

Defendant.

DOB: 8/26/1960  
PCN#: 539961888

SEX MALE  
SID#: 24227529

RACE: WHITE  
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD MOLESTATION IN THE SECOND DEGREE, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least 36 months older than R K , have sexual contact with R.K., who is at least 12 years old but less than 14 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

COUNT II

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

That WELDON MARC GILBERT, in the State of Washington, during the period between the 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least

SECOND AMENDED INFORMATION- 1

ORIGINAL

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

9

1 36 months older than R.K., have sexual contact with R.K., who is at least 12 years old but less than 14  
2 years old, and not married to the defendant and not in a state registered domestic partnership with the  
3 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

4 COUNT III

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

11 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
12 14th day of March, 2001 and the 13th day of March, 2003, did unlawfully and feloniously, being at least  
13 36 months older than R.K., have sexual contact with R.K., who is at least 12 years old but less than 14  
14 years old, and not married to the defendant and not in a state registered domestic partnership with the  
15 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

16 COUNT IV

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

23 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
24 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
48 months older than R.K., have sexual contact with R.K., who is at least 14 years old but less than 16  
years old, and not married to the defendant and not in a state registered domestic partnership with the  
defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington

COUNT V

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

1. That WELDON MARC GILBERT, in the State of Washington, during the period between the  
2 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
3 48 months older than R.K., have sexual contact with R.K., who is at least 14 years old but less than 16  
4 years old, and not married to the defendant and not in a state registered domestic partnership with the  
defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

COUNT VI

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

9 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
10 14th day of March, 2003 and the 13th day of March, 2005, did unlawfully and feloniously, being at least  
11 48 months older than R.K., have sexual contact with R.K., who is at least 14 years old but less than 16  
12 years old, and not married to the defendant and not in a state registered domestic partnership with the  
defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

COUNT VII

13 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
14 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
15 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
16 based on the same conduct or on a series of acts connected together or constituting parts of a single  
17 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
difficult to separate proof of one charge from proof of the others, committed as follows:

18 That WELDON MARC GILBERT, in the State of Washington, on or about the 27th day of  
19 October, 2007, did unlawfully and feloniously, being at least 36 months older than E.K., have sexual  
20 contact with E.K., who is at least 12 years old but less than 14 years old, and not married to the defendant  
and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44 086, and  
against the peace and dignity of the State of Washington

COUNT VIII

21 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
22 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
23 MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
24 based on the same conduct or on a series of acts connected together or constituting parts of a single

1. scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 2. difficult to separate proof of one charge from proof of the others, committed as follows:

3. That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th  
 4. day of April, 2007 and the 1st day of October, 2007, did unlawfully and feloniously, being at least 36  
 5. months older than C.F., have sexual contact with C.F., who is at least 12 years old but less than 14 years  
 6. old, and not married to the defendant and not in a state registered domestic partnership with the  
 7. defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

8. COUNT IX

9. And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 10. authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
 11. MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
 12. based on the same conduct or on a series of acts connected together or constituting parts of a single  
 13. scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 14. difficult to separate proof of one charge from proof of the others, committed as follows:

15. That WELDON MARC GILBERT, in the State of Washington, during the period between the 6th  
 16. day of April, 2007 and the 1st day of October, 2007, did unlawfully and feloniously, being at least 36  
 17. months older than C.F., have sexual contact with C.F., who is at least 12 years old but less than 14 years  
 18. old, and not married to the defendant and not in a state registered domestic partnership with the  
 19. defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

20. COUNT X

21. And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 22. authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
 23. MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime  
 24. based on the same conduct or on a series of acts connected together or constituting parts of a single  
 25. scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 26. difficult to separate proof of one charge from proof of the others, committed as follows:

27. That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 28. 11th day of May, 2003 and the 10th day of May, 2005, did unlawfully and feloniously, being at least 48  
 29. months older than V.Z., have sexual contact with V.Z., who is at least 14 years old but less than 16 years  
 30. old, and not married to the defendant and not in a state registered domestic partnership with the  
 31. defendant, contrary to RCW 9A.44.089, and against the peace and dignity of the State of Washington.

32. COUNT XI

33. And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 34. authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
 35. MOLESTATION IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime  
 36. SECOND AMENDED INFORMATION- 4

1 based on the same conduct or on a series of acts connected together or constituting parts of a single  
 2 scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be  
 difficult to separate proof of one charge from proof of the others, committed as follows:

3 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 4 20th day of March, 2004 and the 19th day of March, 2005, did unlawfully and feloniously, being at least  
 5 36 months older than S.P., have sexual contact with S.P., who is at least 12 years old but less than 14  
 6 years old, and not married to the defendant and not in a state registered domestic partnership with the  
 defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington

#### COUNT XII

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

11 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 12 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
 13 at least 36 months older than T.M., have sexual contact with T.M., who is at least 12 years old but less  
 14 than 14 years old, and not married to the defendant and not in a state registered domestic partnership with  
 the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### COUNT XIII

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

19 That WELDON MARC GILBERT, in the State of Washington, during the period between the  
 20 12th day of November, 2004 and the 11th day of November, 2006, did unlawfully and feloniously, being  
 21 at least 36 months older than T.M., have sexual contact with T.M., who is at least 12 years old but less  
 22 than 14 years old, and not married to the defendant and not in a state registered domestic partnership with  
 the defendant, contrary to RCW 9A.44.086, and against the peace and dignity of the State of Washington.

#### COUNT XIV

23 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 24 authority of the State of Washington, do accuse WELDON MARC GILBERT of the crime of CHILD  
 SECOND AMENDED INFORMATION- 5

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MOLESTATION IN THE THIRD DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

That WELDON MARC GILBERT, in the State of Washington, on or about the 30th day of October, 2007, did unlawfully and feloniously, being at least 48 months older than I.C., have sexual contact with I.C , who is at least 14 years old but less than 16 years old, and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A 44 089, and against the peace and dignity of the State of Washington.

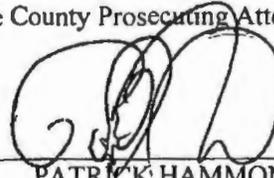
DATED this 5th day of November, 2012.

PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

mac

By



PATRICK HAMMOND  
Deputy Prosecuting Attorney  
WSB#: 23090



07-1-05618-3 39479861 STDFG 11-06-12



**Superior Court of Washington  
For Pierce County**

No 07-1-05618-3

State of Washington  
Plaintiff  
vs.  
Weldon Marc Gilbert  
Defendant

**Statement of Defendant on Plea of  
Guilty to Sex Offense  
(STDFG)**

- 1 My true name is: Weldon Marc Gilbert
- 2 My age is: 52 8/26/60
- 3 The last level of education I completed was College JR yr.

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

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is:  
Pro Se w/ Standby Counsel Ann Stenberg.

(b) I am charged with the crime(s) of Child Molestation 2nd and 3rd Degree  
as set out in the amended Information, dated, 11/5/12, a copy of which I hereby  
acknowledge previously receiving and reviewing with my lawyer.

(Defendant's initials)

The elements of  this crime  these crimes  
are as set out in the amended Information, dated 11/5/12 a copy of which I hereby  
acknowledge previously receiving and reviewing with my lawyer

(Defendant's initials)

X Additional counts are addressed in Attachment "B"

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

(a) The right to a speedy and public trial by an impartial jury in the county where the crime

Statement on Plea of Guilty to Sex Offense (STDFG) - Page 1 of 9  
CrR 4 2(g) (2/2012)

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 pre-trial 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*	TOTAL ACTUAL CONFINEMENT (standard range including enhancement)	COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000 For crimes committed prior to July 1, 2000 see paragraph 6(f))	MAXIMUM TERM AND FINE
1	39	87-116 Months		87-116 Months	36 Months	10yr/\$20K
2	39	87-116 Months		87-116 Months	36 Months	10yr/\$20K
3	39	87-116 Months		87-116 Months	36 Months	10yr/\$20K

\* Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, RCW 9 94A 533, (D) Other deadly weapon, RCW 9.94A 533, (SM) Sexual Motivation, RCW 9 94A 533(8), (SCF) Sexual conduct with a child for a fee, RCW 9 94A 533(9), (CSG) Criminal street gang involving minor, RCW 9 94A 533, (AE) Endangerment while attempting to elude. RCW 9 94A 533

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

Statement on Plea of Guilty to Sex Offense (STDFG) - Page 2 of 9  
CrR 4 2(g) (2/2012)

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 sex offenses 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 period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release, whichever is longer. 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 sex offenses committed on or after July 1, 2000 but prior to September 1, 2001:** 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 period of confinement is over one year, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

**For sex offenses committed on or after September 1, 2001:** (i) Sentencing under RCW 9.94A.507: If this offense is any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs

- (aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

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

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

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

(m) I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment.

(n) I will be required to have a biological sample collected for purposes of DNA identification analysis, unless it is established that the Washington State Patrol crime laboratory already has a sample from me for a qualifying offense. I will be required to pay a \$100.00 DNA collection fee.

(o) I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

**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**

*Handwritten:* Defendant acknowledges this paragraph applies to the Child Molest 2nd Degree Counts. Ann Steubing

~~(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 offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~

(q) **Special sex offender sentencing alternative:** In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

~~For offenses committed before September 1, 2001: The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing~~

alternative (SSOSA) if I qualify under former RCW 9 94A.120(8) (for offenses committed before July 1, 2001) or RCW 9.94A 670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

**For offenses committed on or after September 1, 2001:** The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of the minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement if I committed the crime prior to July 1, 2005, or up to 12 months with no early release if I committed the crime on or after July 1, 2005; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- \_\_\_\_\_ (r) If this is a crime of domestic violence, the court may order me 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 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.
- \_\_\_\_\_ (t) 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.
- \_\_\_\_\_ (u) 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(p).

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(bb) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation:	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Kidnapping in the second degree	Assault in the first degree
Assault in the second degree	Assault of a child in the first degree
Assault of a child in the second degree	Burglary in the first degree

(ii) If this offense is a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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 period of confinement is over one year, or if my crime is failure to register as a sex offender, and this is my second or subsequent conviction of that crime, the judge will sentence me to community custody for 36 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, which may include electronic monitoring

**For sex offenses committed on or after March 20, 2006:** For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater

1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.

2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.

3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a

frail elder or vulnerable adult.

**Community Custody Violation:** 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:

Please See State's Plea Agreement  
filed November 6, 2012, for terms  
and condition.

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 (except as provided in paragraph 6(f)). I understand the following regarding exceptional sentences:

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

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

- (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



statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

Myself  
 Defendant

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

Tim Lewis  
 Prosecuting Attorney  
 Tim Lewis 33767  
 Print Name WSBA No.

Ann Stenberg # 22596  
 Defendant's Lawyer STANDBY  
 Ann Stenberg 22596  
 Print Name WSBA No.

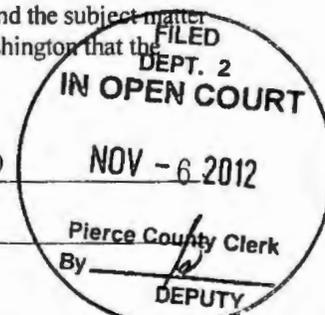
The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

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

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

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

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



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

Dated: 11/06/12  
Katherine M. Stolz  
 Judge KATHERINE M. STOLZ

Case Name: Weldon Marc Gilbert Cause No 07-1-05618-3

ATTACHMENT "B"

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

**Count IV : Counts V, VI, X, IVX: Child Molestation in the Third Degree**  
 Elements: see second amended Information

The crime carries a maximum sentence of 5 years imprisonment and a \$10K fine. The standard range is from 00 months to 00 months based upon the attached stipulation as to my criminal history.

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

**Count V# : Counts VIII, IX, XI, XII, XIII: Child Molestation Second Degree**  
 Elements: see second amended Information

The crime carries a maximum sentence of 10 years imprisonment and a \$20K fine. The standard range is from 87 months to 116 months based upon the attached stipulation as to my criminal history.

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

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

COUNT NO	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46 61 520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000 For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
<del>IV-VI, X, IVX</del>	60 Months		60 Months	36 Months	5 Yrs/\$10,000
<del>VII, VIII, IX, XI, XIII</del>	120 Months		120 Months	36 Months	10yr/\$20K

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

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT  
D.O.B.: 08/26/1960

Defendant.

ADDENDUM TO PLEA FORM FOR  
COMBINED ALFORD/NEWTON AND IN RE  
BARR PLEA

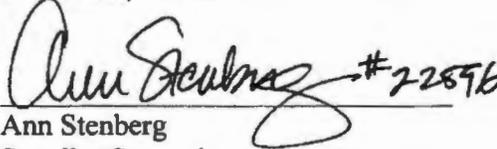
**North Carolina v. Alford, 400 U.S. 25 (1970); State v. Newton, 87 Wn.2d 363 (1976):** I do not admit that I am guilty of this/these crime(s), but I have reviewed the evidence with my attorney and believe that there is a substantial likelihood I would be convicted or more serious charges if I proceeded to trial. I am pleading guilty in order to take advantage of the State's offer. I understand that the court must find a factual basis for my plea of guilty. I acknowledge there is a factual basis for the charge(s) in the Original Information that is set forth in the Declaration for Determination of Probable Cause, and I agree the court may consider that declaration, as well as any other information presented by the prosecutor at the time of this plea, to support the court's finding of a factual basis for my plea.

**In re Barr, 102 Wn.2d 265 (1984):** In addition to what is set out above, and in addition to my factual admissions in the plea form, I recognize that I am entering a plea of guilty to a crime that I in fact did not commit. My attorney has discussed with me all of the elements of the original charge(s) and the elements of the amended charge(s), and I understand them all. There is a factual basis for the original charge(s). I understand that the prosecution would be unable to prove the amended charge(s) at trial, but I see pleading guilty to the amended charge(s) as being beneficial to me because it will allow me to avoid the risk of conviction on the charge(s) I would face at trial. Based upon a review of the alternatives before me, I have decided to plead guilty to a crime I did not commit in order to take advantage of the State's offer. I understand the consequences of this plea agreement and I am making a voluntary and informed choice to enter into it.

1 I understand that the court must find a factual basis for the original charge(s) and I  
2 agree that the court may consider the declaration for determination of probable cause and any  
3 other information presented by the prosecutor at the time of this plea to support the factual  
4 basis for the original charge(s).

5 DATED this 6<sup>th</sup> day of November, 2012.

6   
WELDON MARC GILBERT  
7 Defendant, Pro Se

8  #22596  
Ann Stenberg  
9 Standby Counsel  
10 WSB # 22596

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CASE NAME State v. Weldon Marc Gilbert Cause No 07-1-05618-3

ATTACHMENT 'S' See paragraph 6(f) and 6(g) of Statement on Plea of Guilty (Required attachment to Statement of Defendant on Plea of Guilty for plea to any sex offense)

**Paragraph 6(f) For sex 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 supervision if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody or up to the period of earned early release period, whichever is longer. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h)

**For sex crimes committed on or after July 1, 2000, but prior to Sept. 1, 2001:**

Unless I am being sentenced under RCW 9.94A.670 (SSOSA)(formerly RCW 9.94A.120(8)), 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 period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. 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.

**For sex crimes committed on or after September 1, 2001:**

(i) **Sentencing under RCW 9.94A.712:** If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentencing Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for the statutory maximum sentence for that offense. The statutory maximum sentence for this offense is [ ] ten years [ ] life. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities and I may be required to participate in rehabilitative programs or other affirmative conduct. 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.

STATEMENT ON PLEA OF GUILTY (Attachment S for sex offenses)(05/02) - Page 1 of 3

(aa) If the current offense is any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree committed when I was at least 18 years old	Rape of a child in the second degree committed when I was at least 18 years old
Child molestation in the first degree committed when I was at least 18 years old	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Assault in the first degree	Kidnapping in the second degree
Assault in the second degree	Assault of a child in the first degree
Burglary in the first degree	

(bb) If the current offense is any sex offense, other than failure to register as a sex offender, and I have a prior conviction for any of these offenses or attempt to commit any of these offenses:

Rape in the first degree	Rape in the second degree
Rape of a child in the first degree	Rape of a child in the second degree
Child molestation in the first degree	Indecent liberties by forcible compulsion
Any of the following offenses with a finding of sexual motivation	
Murder in the first degree	Murder in the second degree
Homicide by abuse	Kidnapping in the first degree
Assault in the first degree	Kidnapping in the second degree
Assault in the second degree	Assault of a child in the first degree
Burglary in the first degree	

(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of confinement, the judge may order me to serve up to one year of community

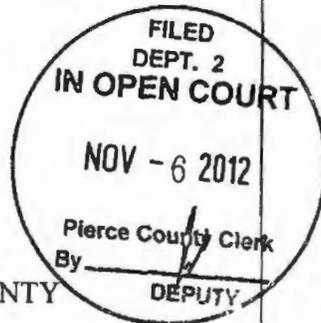
1  
2 custody if the total period of confinement ordered is not more than 12 months. If the period of  
3 confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48  
4 months or up to the period of earned release, whichever is longer. During the period of community  
5 custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I  
6 will have restrictions placed on my activities

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Paragraph 6(o)

**For offenses committed before September 1, 2001:** The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under former RCW 9.94A.120(3) (for offenses committed before July 1, 2001) or RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

**For offenses committed on or after September 1, 2001:** The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement and my current offense is for any sex offense other than those listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

STATEMENT ON PLEA OF GUILTY (Attachment S for sex offenses)(05/02) - Page 3 of 3



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY  
DEPARTMENT 2, JUDGE KATHERINE STOLZ

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 07-1-05618-3

vs.

WELDON MARC GILBERT,

PLEA AGREEMENT

Defendant.

COMES NOW, the plaintiff, the State of Washington, by and through its attorney, Pierce County Prosecuting Attorney Mark E Lindquist, by and through his deputies, Patrick Hammond and Tim Lewis, Deputy Prosecuting Attorneys, the defendant, Weldon Marc Gilbert, proceeding pro se, assisted by standby counsel Ann Stenberg, have entered into a plea agreement resolving this case pursuant to Revised Code of Washington (RCW) 9.94A.421, and consistent with the terms of the Plea Agreement between the United States of America, and the defendant, Weldon Marc Gilbert, entered in United States of America v. Weldon Marc Gilbert, case number CR07-5732BHS. The terms of the plea agreement between the State of Washington and the defendant are as follows:

1. **Offenses and Maximum Penalties:**

The Defendant agrees to plead guilty to each count in the second amended Information presented by the State, contingent upon the Court's acceptance of the second amended Information, in which the Defendant is charged in Counts I-III, VII-IX, and XI-XIII with Child

1 Molestation in the Second Degree, contrary to RCW 9A.44.086, and in Counts IV-VI, X, and  
2 XIV with Child Molestation in the Third Degree, contrary to RCW 9A.44.089. The defendant's  
3 pleas of guilty to Counts I-XIV shall result in imposition of a determinate sentence. The  
4 Defendant understands that Child Molestation in the Second Degree is a Class "B" Felony  
5 Crime, punishable by up to 10 years imprisonment and a \$20,000 fine per RCW 9A.20.021. The  
6 Defendant understands that Child Molestation in the Third Degree, is a Class "C" Felony Crime,  
7 punishable by up to 5 years imprisonment and a \$10,000 fine per RCW 9A.20.021. The  
8 defendant understands that Child Molestation in the Second Degree and Child Molestation in the  
9 Third Degree as charged in the second amended Information require a term of 36 months of  
10 Community Custody upon release from confinement, and that violation of the terms of  
11 Community Custody could result in additional terms of imprisonment. The defendant  
12 understands that Child Molestation in the Second Degree is a sex offense which will require him  
13 to register as a sex offender for a period of 15 years.

14  
15 **2. Factual Basis for the Plea:**

16 The defendant will enter pleas of guilty to all charges in the second amended Information  
17 via *Alford/Newton* and *In re Barr* pleas. North Carolina v. Alford, 400 U.S. 25 (1970); State v.  
18 Newton, 87 Wn.2d 363 (1976); In re Barr, 102 Wn.2d 363 (1976). The defendant understands  
19 that by entering *Alford/Newton* pleas of guilty, he is not required to admit guilt, but will  
20 acknowledge that the State possess sufficient evidence to prove his guilt beyond a reasonable  
21 doubt as to the original charges in the corrected amended Information. The defendant  
22 understands that by entering *In re Barr* pleas, he is entering pleas of guilty to crimes in the  
23 second amended Information which he did not commit and for which there is no factual basis,  
24 but is doing so in order to take advantage of the plea agreement reached with the State. The  
25

1 defendant stipulates that there is a factual basis to support all of the charges in the corrected  
2 amended Information, and that the State possesses sufficient evidence to prove each of the  
3 counts in the corrected amended Information beyond a reasonable doubt.

4 **3. Waiver of Appeal:**

5 The defendant understands that he has a right to appeal his convictions. The defendant  
6 understands that since he has entered pleas of guilty to the charges in the second amended  
7 Information, he has waived his right to raise certain issues, as discussed in his Statement of  
8 Defendant on Plea of Guilty, in an appeal. The defendant understands that he has a right to  
9 appeal any sentence that is outside of his standard sentencing range.

10 **4. Restitution:**

11 The State will not seek restitution in this matter, as forfeiture of the defendant's assets  
12 and restitution to his victims were incorporated into his plea and sentencing under United States  
13 of America v. Weldon Marc Gilbert, case number CR07-5732BHS.

14 **5. Assistance and Advice of Counsel:**

15 The defendant is proceeding pro se in this case with the assistance of standby counsel,  
16 and has elected to do so knowingly and voluntarily. The defendant stipulates that he is  
17 completely satisfied with the assistance afforded by his standby counsel in this case.

18 **6. Sentencing Recommendation:**

19 The defendant understands that pursuant to his pleas of guilty to the second amended  
20 Information filed by the State, for purposes of sentencing, he would present with an offender  
21 score of nine plus. The standard sentencing range for Child Molestation in the Second Degree  
22 with an offender score of nine plus is 87-116 months imprisonment. The standard sentencing  
23 with an offender score of nine plus is 87-116 months imprisonment. The standard sentencing  
24  
25

1 range for Child Molestation in the Third Degree with an offender score of nine plus is 60 months  
2 imprisonment.

3 Contingent upon the defendant entering pleas of guilty to Counts I through XIV of the  
4 amended Information, the parties will make the following agreed recommendation to the Court  
5 regarding sentencing:

6 Counts I, II, III, VII, VIII, IX, XI, XII, XIII (Child Molestation in the Second  
7 Degree): 116 months determinate imprisonment, each count concurrent with the  
8 other, concurrent with Counts IV, V, VI, X, and XIV, of the second amended  
9 Information, and concurrent with the Defendant's sentence imposed under United  
10 States of America v. Weldon Marc Gilbert, case number CR07-5732BHS. Credit  
11 for time spent in custody since the Defendant's initial arrest on November 1,  
12 2007. 36 Months Community Custody to be supervised and served concurrently  
13 with lifetime supervision by United States Probation as ordered in the judgment in  
14 United States of America v. Weldon Marc Gilbert, case number CR07-5732BHS.  
15 Conditions of Supervision as ordered in the judgment in United States of America  
16 v. Weldon Marc Gilbert, case number CR07-5732BHS. Legal financial  
17 obligations in the form of \$500.00 Crime Victim Penalty Assessment, \$200.00  
18 Court Costs, \$100.00 DNA Testing Fee, No Contact with the victims listed in the  
19 second amended Information, No Contact with Minors.

20 Counts IV, V, VI, X, and XIV (Child Molestation in the Third Degree): 60  
21 months determinate imprisonment, each count concurrent with the other,  
22 concurrent with Counts I, II, III, VII, VIII, IX, XI, XII, XIII of the second  
23 amended Information, and concurrent with the Defendant's sentence imposed  
24 under United States of America v. Weldon Marc Gilbert, case number CR07-  
25 5732BHS. Credit for time spent in custody since the Defendant's initial arrest on  
November 1, 2007. 36 Months Community Custody to be supervised and served  
concurrently with lifetime supervision by United States Probation as ordered in  
the judgment in United States of America v. Weldon Marc Gilbert, case number  
CR07-5732BHS. Conditions of Supervision as ordered in the judgment in United  
States of America v. Weldon Marc Gilbert, case number CR07-5732BHS.

#### 7. Role of the Court

26 The defendant stipulates that the Superior Court of the State of Washington, in and for  
27 the County of Pierce, has both personal and subject matter jurisdiction over him and this case  
28 and waives any objection to venue. The Defendant understands that the Court is not bound by  
29 any sentencing recommendation of the parties pursuant to RCW 9.94A.431(2), but that pursuant

1 to 9.94A.431(1), upon review of this plea agreement, the Court shall determine if the plea  
 2 agreement is consistent with the interests of justice and with the prosecuting standards found at  
 3 RCW 9.94A.411. If the Court determines that the plea agreement is not consistent with the  
 4 interests of justice and the prosecuting standards, the Court shall, on the record, inform the  
 5 Defendant and the State that they are not bound by the agreement and that the Defendant may  
 6 withdraw his plea of guilty if one has been entered.

7 Pursuant to RCW 9.94A 431(2), the Court is not bound by any sentencing  
 8 recommendation contained in any allowed plea agreement. The Court is free to sentence the  
 9 Defendant anywhere within his standard sentencing range of 87-116 months on Counts I, II, III,  
 10 VII, VIII, IX, XI, XII, XIII (Child Molestation in the Second Degree) , and 60 months on Counts  
 11 IV, V, VI, X, and XIV (Child Molestation in the Third Degree). The State of Washington makes  
 12 no promise or representation concerning what sentence the Court will impose, and the defendant  
 13 understands that he cannot withdraw his plea of guilty based upon the actual sentence imposed  
 14 by the Court.

15  
 16 **8. Nature of Agreement and Modifications:**

17 This written agreement constitutes the complete plea agreement between the plaintiff, the  
 18 State of Washington, and the defendant, Weldon Marc Gilbert. The Defendant acknowledges  
 19 that no threats, promises, or representations have been made, nor agreements reached, other than  
 20 those set forth in writing in this plea agreement, to cause the defendant to plead guilty to the  
 21 second amended Information in this case.

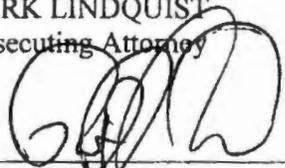
22 **9. Interdependence of Plea Agreements:**

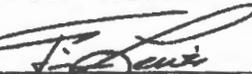
23 The defendant stipulates that the second amended Information and this plea agreement  
 24 satisfies and complies with the obligations of the State of Washington as outlined and described  
 25

1 in section 14, "Interdependence of Plea Agreements", of the Plea Agreement between the  
2 defendant and the United States Attorney for the Western District of Washington, entered in  
3 United State of America v. Weldon Marc Gilbert, case number CR07-5732BHS (Attachment A).

4 DATED this 6th day of November, 2012.

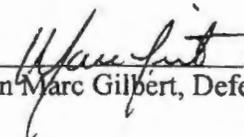
5 MARK LINDQUIST  
6 Prosecuting Attorney

7 By:   
8 Patrick Hammond  
9 Deputy Prosecuting Attorney  
10 WSBA # 23090

11 By:   
12 Tim Lewis  
13 Deputy Prosecuting Attorney  
14 WSBA # 33767

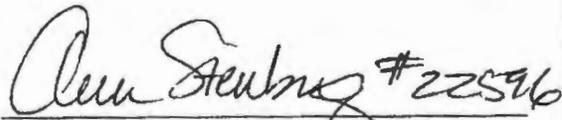
15 **Defendant's Signature:** I hereby agree that I have consulted with my standby attorneys and  
16 fully understand all rights I have as a criminal defendant as to these charges and that I am giving  
17 up those rights by voluntarily entering into this plea agreement with the State of Washington, and  
18 entering by entering pleas of guilty to the second amended Information in this case. I further  
19 understand that the Sentencing Reform Act, RCW 9.94A, and the sentencing guidelines therein,  
20 apply fully to my case, and that the Court is not bound by any recommendation of either party as  
21 to the sentence I receive. I have read this plea agreement fully and reviewed each portion of this  
22 plea agreement with my standby attorney I understand this agreement and voluntarily agree to  
23 it.

24 Date: 11/6/2012

25   
Weldon Marc Gilbert, Defendant

1 **Standby Counsel Signature:** I am standby counsel for the defendant in this case. I have fully  
2 explained to the defendant each and every right he has a criminal defendant, that he is giving up  
3 those rights by entering into this plea agreement with the State of Washington, and by entering a  
4 plea of guilty to the second amended Information before this Court. I have explained to the  
5 Defendant that the Court is not bound by this plea agreement, nor the recommendation of either  
6 party, in imposing sentence in this case. I have carefully reviewed every part of this plea  
7 agreement with the defendant. To my knowledge, the defendant's decision to enter into this plea  
8 agreement is an informed and voluntary one.

9  
10 Date: Nov 6, 2012

 #22596  
11 Ann Stenberg, WSBA # ~~30226~~  
12 Standby Attorney for Defendant  
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# Attachment A

Judge Settle

07-CR-05732-PLAGR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
WELDON MARC GILBERT,  
Defendant.

NO. CR07-5732BHS  
PLEA AGREEMENT

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Roger Rogoff and Michael Dion, Assistant United States Attorneys for said District, and the defendant, WELDON MARC GILBERT, and his attorneys, John Henry Browne and Emma Scanlan, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Fourth Superseding Indictment ("Indictment"). By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document.

a. Sexual exploitation of a child in the Production of Child Pornography, as charged in Counts 1 through 21, 23 through 31, and 33, in violation of Title 18, United States Code, Section 2251(a) and (e), and 2256;

1           b.     Transportation of a minor to engage in illegal sexual activity, as  
2 charged in Counts 34 and 35, in violation of Title 18, United States Code, Section  
3 2423(a) and Section 2;

4           c.     Obstruction of justice, as charged in Count <sup>36</sup>35, in violation of Title  
5 18, United States Code, Section 1512(b)(3); and

6           d.     Obstruction of justice, as charged in Count <sup>37</sup>36, in violation of Title  
7 18, United States Code, Section 1512(b)(1).

8           Defendant further understands that before entering his pleas of guilty, Defendant  
9 will be placed under oath. Any statement given by Defendant under oath may be used by  
10 the government in a prosecution for perjury or false statement.

11           2.     Elements of the Offenses. The elements of the offenses are as follows:

12           a.     The elements of the offense of Production of Visual Depictions of  
13 Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, 23  
14 through 31, and 33, of the Indictment, are:

15                 First, Defendant employed, used, persuaded, induced, enticed or coerced the  
16 victim to take part in sexually explicit conduct for the purpose of producing a visual  
17 depiction of such conduct;

18                 Second, at the time, the victim was a minor; and

19                 Third, the visual depiction was produced or transmitted using materials that  
20 had been mailed, shipped, or transported in or affecting interstate or foreign commerce.

21           b.     The elements of the offense of Transportation of Minors to Engage  
22 in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment, are:

23                 First, Defendant knowingly transported an individual in interstate  
24 commerce;

25                 Second, the individual was under 18 years of age when the transportation  
26 took place; and

27                 Third, Defendant intended that the person engage in sexual activity for  
28 which any person can be charged with a criminal offense.

1           c.     The elements of the offense of Obstruction of Justice, as charged in  
2 Count 36 of the Indictment, are:

3                 First, Defendant knowingly did corruptly persuade, attempt to corruptly  
4 persuade, or engage in misleading conduct toward another by trying to convince such  
5 person not to cooperate with law enforcement and judicial officers;

6                 Second, Defendant did so with intent to hinder, delay and prevent the  
7 communication to a law enforcement officer or judge of the United States, of information  
8 relating to the commission or possible commission of a Federal offense.

9           d.     The elements of the offense of Obstruction of Justice, as charged in  
10 Count 37 of the Indictment, are:

11                 First, Defendant knowingly did corruptly persuade, attempt to corruptly  
12 persuade, and engage in misleading conduct toward another, by trying to convince that  
13 person not to cooperate with law enforcement and judicial officers; and

14                 Second, Defendant did so with intent to influence, delay, or prevent the  
15 testimony of any person in an official proceeding.

16           3.     The Penalties.

17           a.     The statutory penalties for Production of Visual Depictions of  
18 Minors Engaged in Sexually Explicit Conduct, as charged in Counts 1 through 21, ~~22~~<sup>23</sup>  
19 through 31, and 33, of the Indictment, are, as to each count: imprisonment for not less  
20 than fifteen (15) years and not more than Life, a fine of up to two-hundred and fifty  
21 thousand dollars (\$250,000.00), or both, a one-hundred dollar (\$100.00) penalty  
22 assessment, and a period of supervision following release from prison of not less than five  
23 (5) years and up to the lifetime of the offender.

24           b.     The statutory penalties for Transportation of Minors with Intent to  
25 Engage in Illegal Sexual Conduct, as charged in Counts 34 and 35 of the Indictment are:  
26 imprisonment for not less than 10 years nor more than Life, a fine of up to two-hundred  
27 and fifty thousand dollars (\$250,000.00), or both, a one-hundred dollar (\$100.00) penalty  
28

1 assessment, and a period of supervision following release from prison of not less than five  
2 (5) years and up to the lifetime of the offender.

3 c. The statutory penalties for Obstruction of Justice, as charged in  
4 Count 36 and 37 of the Indictment are: imprisonment for not more than 20 years, a fine of  
5 up to two-hundred and fifty thousand dollars (\$250,000.00), or both, a one-hundred dollar  
6 (\$100.00) penalty assessment, and a period of supervision following release from prison  
7 of not more than three (3) years.

8 Defendant understands that supervised release is a period of time following  
9 imprisonment, during which he will be subject to certain restrictions and requirements.  
10 Defendant further understands that if supervised release is imposed and he violates one or  
11 more of its conditions, he could be returned to prison for all or part of the term of  
12 supervised release that was originally imposed. This could result in Defendant serving a  
13 total term of imprisonment greater than the statutory maximum stated above.

14 Defendant agrees that any monetary penalty the Court imposes, including the  
15 special assessment, fine, costs or restitution, is due and payable immediately, and further  
16 agrees to submit a completed Financial Statement of Debtor form as requested by the  
17 United States Attorney's Office.

18 4. Rights Waived by Pleading Guilty. Defendant understands that, by  
19 pleading guilty, he knowingly and voluntarily waives the following rights:

- 20 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 21 b. The right to a speedy and public trial before a jury of Defendant's  
22 peers;
- 23 c. The right to the effective assistance of counsel at trial, including, if  
24 Defendant could not afford an attorney, the right to have the Court appoint one for  
25 Defendant;
- 26 d. The right to be presumed innocent until guilt has been established at  
27 trial, beyond a reasonable doubt;
- 28

- 1 e. The right to confront and cross-examine witnesses against Defendant  
2 at trial;
- 3 f. The right to compel or subpoena witnesses to appear on Defendant's  
4 behalf at trial;
- 5 g. The right to testify or to remain silent at trial, at which trial such  
6 silence could not be used against Defendant; and
- 7 h. The right to appeal a finding of guilt or any pretrial rulings

8 5. United States Sentencing Guidelines. Defendant understands and  
9 acknowledges that, absent applicable intervening law:

- 10 a. The United States Sentencing Guidelines, promulgated by the  
11 United States Sentencing Commission, are applicable to this case;
- 12 b. The Court will determine Defendant's applicable Sentencing  
13 Guidelines range at the time of sentencing; and
- 14 c. Except as provided in paragraph 7 below, Sentencing, Defendant  
15 may not withdraw a guilty plea solely because of the sentence imposed by the Court.

16 6. Statement of Facts. The parties agree on the following facts in support of  
17 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged  
18 offenses and expressly waives any right to have these facts determined by a jury beyond a  
19 reasonable doubt.

20 **Background**

21 a. At all relevant times, WELDON MARC GILBERT resided at his house in  
22 Lake Tapps, Washington. GILBERT was born on August 26, 1960.

23 **Child Pornography Production Charges**

24 b. GILBERT used one or more foreign-made video cameras to create videos  
25 of minors engaged in sexually explicit conduct. All of the videos described below were  
26 created using those foreign-made video cameras, and those cameras traveled to  
27 Washington state in interstate and foreign commerce before being used to create those  
28 videos.

1 c. GILBERT filmed all of the videos described below with the purpose and  
2 intent of creating visual depictions of minors engaged in sexually explicit conduct.  
3 GILBERT knew that the victims shown on the videos were minors, and he knew that they  
4 were engaging in sexually explicit conduct.

5 d. GILBERT created thirty-one visual depictions of minors engaged in  
6 sexually-explicit conduct, as charged in Counts 1 through 21, 23 through 31, and 33 of  
7 the Indictment. The videos show 17 different victims. The youngest victims are 10, 12,  
8 13, and 14 when they first appear in the videos. GILBERT arranged the lighting, camera  
9 angle, and the victims' bodies to ensure that the victims' genitalia would be clearly caught  
10 on film. All of the videos fall into one of the following two categories: (a) GILBERT  
11 engaged in some form of sex act with the victim, or the victim masturbating at  
12 GILBERT's direction; or (b) a lascivious display of the victims' genitalia. With respect  
13 to category (b), each and every one of those videos also displayed one or more of the  
14 following: (1) GILBERT striking the unclothed victim with his hand, or with an  
15 implement, such as a paddle, belt, or cane; (2) GILBERT restraining the victim, either by  
16 hand or by tying the victim down; (3) the victim indicating that GILBERT was inflicting  
17 pain upon them; (4) welts, bruises, or blisters inflicted by GILBERT, (5) GILBERT  
18 caressing the nude bodies of the victims while striking them; (6) GILBERT commenting  
19 upon the victims' genitalia; (7) GILBERT touching, or attempting to touch, the victims'  
20 genitalia; and (8) GILBERT engaging in a sexual discussion with the victim.

21 e. There was no legitimate reason for GILBERT to create any of these visual  
22 depictions of minors engaged in sexually explicit conduct. GILBERT created the videos  
23 for the purpose of producing child pornography that he could watch whenever he wanted  
24 to. GILBERT created these videos over a period of several years. All of the videos were  
25 created in Washington State. GILBERT agrees and acknowledges that all of the videos  
26 were sexually explicit, in that each and every one of the videos showed one or more of the  
27 following: (1) actual or simulated sexual intercourse; (2) masturbation; (3) sadistic abuse;  
28 and (4) lascivious exhibition of the genitals and pubic area.

1 f. GILBERT used, persuaded, and induced each of the victims to appear in the  
2 videos.

3 **Transportation of minors charges**

4 g. In 2005, GILBERT transported a minor male victim ("John Doe 1") from  
5 Washington State to Whistler, British Columbia, Canada. One of GILBERT's dominant  
6 purposes in transporting John Doe 1 to Canada was to engage in illegal sexual conduct  
7 with John Doe 1, namely, GILBERT intended to produce pornographic videos of John  
8 Doe 1 in violation of 18 U.S.C. § 2251(a). GILBERT did in fact produce a pornographic  
9 video of John Doe 1, the content of which was along the lines of the videos described  
10 above. GILBERT used a video recorder that had traveled in interstate or foreign  
11 commerce, GILBERT knew that John Doe 1 was a minor, and GILBERT deliberately  
12 created a visual depiction of John Doe 1 engaged in sexually explicit conduct.

13 h. In 2007, GILBERT transported four minor male victims, John Doe 1 and  
14 three of his friends, from Washington State to Whistler, British Columbia, Canada. One  
15 of GILBERT's dominant purposes in transporting these victims to Canada was to engage  
16 in illegal sexual conduct with the victims, namely, GILBERT intended to produce  
17 pornographic videos of the victims in violation of 18 U.S.C. § 2251(a). GILBERT used a  
18 video recorder that had traveled in interstate or foreign commerce, GILBERT knew that  
19 the victims were minors, and GILBERT deliberately created a visual depiction of the  
20 victims engaged in sexually explicit conduct along the lines of the other videos described  
21 above.

22 **Obstruction of justice charges**

23 i. On October 30, 2007, GILBERT learned that he was being investigated by  
24 law enforcement. GILBERT soon learned that the subject of the investigation was child  
25 abuse, child molestation, and production of child pornography. GILBERT knew that the  
26 evidence would prove that he committed these crimes. GILBERT knowingly and  
27 intentionally set out to obstruct the investigation and eventual prosecution of these crimes.  
28 GILBERT repeatedly attempted to tamper with John Doe 1. GILBERT's goals were: (1)

1 to prevent John Doe 1 from telling law enforcement the truth about GILBERT's crimes;  
2 (2) to prevent John Doe 1 from testifying at trial; and (3) to convince John Doe 1 to make  
3 false statements in a legal proceeding that would support GILBERT's efforts to suppress  
4 evidence seized during the investigation.

5 j. GILBERT was charged in federal court in this case on November 2, 2007.  
6 From that point on, GILBERT knew that he was the subject of a federal criminal  
7 proceeding before the United States District Court for the Western District of  
8 Washington, and his attempts to tamper with John Doe 1 were aimed at (1) corruptly  
9 persuading John Doe 1 to lie, or to refuse to testify, in that proceeding, and (2) to prevent  
10 John Doe 1 from communication<sup>ing</sup> information to federal agents and federal judicial  
11 officers in connection with that proceedings.

12 k. GILBERT made several attempts to tamper with John Doe 1 in the manner  
13 described above. In January of 2008, GILBERT wrote a letter to John Doe 1. GILBERT  
14 arranged for a third party to meet with John Doe 1 and convey the contents of the letter to  
15 him. The letter encouraged John Doe 1 to make false statements to the federal judge in  
16 the context of the federal criminal case. GILBERT believed that these false statements  
17 would support an effort by defense to have the search warrant declared invalid and the  
18 critical evidence suppressed. ~~As an inducement, GILBERT offered John Doe 1 a~~ *ND*  
19 ~~financial reward.~~ In February of 2008, GILBERT wrote another letter to the third party  
20 he had previously used to contact John Doe 1. In the letter, GILBERT instructed the third  
21 party about how to approach John Doe 1 ~~and convince him not to testify truthfully to the~~  
*ND and convince him to not NA*  
~~Court, and not cooperate with federal agents, in the pending criminal case regarding the~~  
23 federal offense of production of child pornography. GILBERT told the third party to  
24 mention to John Doe 1 an incident in which one of John Doe 1's friends was charged with  
25 stealing a television from GILBERT. The third party was to tell John Doe 1 that  
26 GILBERT was willing to falsely tell the police that the friend had permission to take the  
27 television. GILBERT hoped that, in return for his willingness to lie to protect John Doe  
28

*ND*

*ND*

1 | 1's friend, John Doe 1 would stop cooperating with the federal investigation and  
2 | prosecution of the case against GILBERT.

3 | 7. Sentencing.

4 | Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the  
5 | parties acknowledge and agree that the appropriate sentence of imprisonment to be  
6 | imposed by the Court at the time of sentencing should be within the range of 228 to 300  
7 | months, to be followed by supervised release for life. If the sentencing court rejects the  
8 | agreement of the parties and seeks to impose a sentence outside the agreed upon  
9 | sentencing range, both the defendant and the United States reserve the right to withdraw  
10 | from this agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal  
11 | Procedure and to proceed to trial. No other agreement has been made with regard to the  
12 | imposition of the sentence in this matter, and the parties understand that the Court retains  
13 | full discretion to impose a sentence within the range agreed to above.

14 | 8. Presentation of Evidence at Sentencing. The Government agrees to the  
15 | following restrictions on the evidence that it will present in support of its sentencing  
16 | recommendation: (1) the Government will not present any videos, excerpts from videos,  
17 | or stills from videos, unless requested by the Court; and (2) the Government will not  
18 | present the document it has marked as trial Exhibit 75 (and sub-exhibits), unless  
19 | requested by the Court.

20 | With respect to (1), the Government is free to describe videos in as much detail as  
21 | it wishes. Furthermore, if Defendant disputes the accuracy of the Government's  
22 | description of a video, the parties agree to request that a judicial officer of this District,  
23 | other than the sentencing judge, review the video at issue and report to the sentencing  
24 | judge about whether the Government's description is accurate.

25 | Defendant acknowledges and understands that this Paragraph will not bar the  
26 | Government from providing whatever information it is required to provide to the United  
27 | States Probation Office.

28 |

1           9.     Non-Prosecution of Additional Offenses. As part of this Plea Agreement,  
2 the United States Attorney's Office for the Western District of Washington agrees to  
3 move to dismiss the remaining counts in the Indictment at the time of sentencing and not  
4 to prosecute Defendant for any additional offenses known to it as of the time of this  
5 Agreement that are based upon evidence in its possession at this time, or that arise out of  
6 the conduct giving rise to this investigation. In this regard, Defendant recognizes that the  
7 United States has agreed not to prosecute all of the criminal charges that the evidence  
8 establishes were committed by Defendant solely because of the promises made by  
9 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for  
10 purposes of preparing the Presentence Report, the United States Attorney's Office will  
11 provide the United States Probation Office with evidence of all relevant conduct  
12 committed by Defendant.

13           The United States Attorney's Office for the Western District of Washington also  
14 agrees not to prosecute any other person based upon evidence in its possession at this  
15 time, or that arise out of the conduct giving rise to this investigation, relating to witness  
16 tampering, obstruction of justice, or related offenses, in connection with this case.

17           Defendant agrees and acknowledges that any charges to be dismissed before or at  
18 the time of sentencing were substantially justified in light of the evidence available to the  
19 United States, were not vexatious, frivolous or taken in bad faith, and do not provide  
20 Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No.  
21 105-119 (1997).

22           10.   Voluntariness of Plea. Defendant acknowledges that he has entered into  
23 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the  
24 promises contained in this Plea Agreement, were made to induce Defendant to enter these  
25 pleas of guilty.

26           11.   Statute of Limitations. In the event that this Agreement is not accepted by  
27 the Court for any reason, or Defendant has breached any of the terms of this Plea  
28 Agreement, the statute of limitations shall be deemed to have been tolled from the date of

1 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea  
2 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea  
3 Agreement by Defendant is discovered by the United States Attorney's Office.

4 12. Post-Plea Conduct. Defendant understands that the terms of this Plea  
5 Agreement apply only to conduct that occurred prior to the execution of this Agreement.  
6 If, after the date of this Agreement, Defendant should engage in illegal conduct, or  
7 conduct that is in violation of his conditions of release or confinement (examples of  
8 which include, but are not limited to: obstruction of justice, failure to appear for a court  
9 proceeding, criminal conduct while pending sentencing, and false statements to law  
10 enforcement agents, the Pretrial Services Officer, Probation Officer or Court), the United  
11 States is free under this Agreement to seek a sentence that takes such conduct into  
12 consideration. Such a sentence could include, to the extent the United States Sentencing  
13 Guidelines are applicable, a sentencing enhancement or upward departure.

14 13. Forfeiture of Property: Defendant agrees to forfeit to the United States  
15 immediately all of his right, title and interest in any property, real or personal, used or  
16 intended to be used, to commit or to promote the commission of the offense of Sexual  
17 Exploitation of a Child in the Production of Child Pornography and any property  
18 traceable to such property, pursuant to Title 18, United States Code, Section 2253(a)(3),  
19 including the following properties:

- 20 a. One (1) 2004 blue Lexus GX470, bearing Washington license plate  
21 029RYB, VIN JTJBT20X940035115;
- 22 b. One (1) 2006 white Ford F150 pick-up, Washington license plate A68898Z,  
23 VIN 1FTRF12206NB15476;
- 24 c. One (1) 1981 Bell 206B-III helicopter bearing tail number N325JR and  
25 serial number 3296, and all flight logs and maintenance logs associated with this aircraft;
- 26 d. One (1) 1968 Cessna A185E Float Plane, Tail #N2210T, Serial #185-1362,  
27 and all flight logs and maintenance logs associated with this aircraft;
- 28

1 e. One (1) 2003 Sea Ray Boat, Model 185BR, bearing license number  
2 WN8212NM, Boat Hull #SERV5716E303185BR3560 and One Shore Land'r trailer,  
3 Washington license plate 0059RG, VIN 1MDJ2JR163A248710;

4 f. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
5 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances,  
6 fixtures, attachments and easements, more particularly described as: Lot 10 of Tapps  
7 Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at  
8 pages 30 to 34, inclusive, records of Pierce County, Washington; and,

9 g. Real property located at 2901 211th Avenue East, Lake Tapps, Washington  
10 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures,  
11 attachments and easements, more particularly described as: Lot 11 of Tapps Island  
12 Division No. 1, according to Plat recorded in Book 48 of Plats at pages 30 to 34,  
13 inclusive, records of Pierce County, Washington;

14 h. One (1) Sony Digital Handicam Digital 8 cam corder, model:  
15 DCR-TRV250, s/n: 388947;

16 i. One (1) Sony Video 8 Handycam cam corder, model: model: CCD-TR40,  
17 s/n: 3009669;

18 j. One (1) Averatec laptop computer, model: 5500 series, s/n obliterated;

19 k. One (1) Fry's Intel Pentium 4 computer tower, model: FS7470, s/n:  
20 747FSX340000296;

21 l. One (1) Averatec Notebook computer, model: 2200 series, s/n partially  
22 obliterated, starting with NW04CE06040;

23 m. One (1) Seagate Medalist 13640 hard drive, model: ST313640A, s/n:  
24 7AE054NA;

25  
26 n. One (1) Western Digital WD1600 Enhanced IDE hard drive, model:  
27 WD1600BB-00DAA0, s/n: WMACK2069917;

28

1 o. One (1) Western Digital WD400 Enhanced IDE hard drive, model:  
2 WD400JB-00ENA0, s/n: WCAD19728957;

3 p. One (1) Western Digital WD1600 Enhanced IDE hard drive, model:  
4 WD1600JB-75GVC0, s/n: WCAL96008970; and

5 q. One (1) MX 1000 Camera tripod.

6 Defendant agrees to forfeit to the United States immediately all of his right, title  
7 and interest in any visual depiction described in Title 18, United States Code, Section  
8 2251, or any book, magazine, periodical, film, videotape or other matter which contains  
9 any such visual depiction, which was produced, transported, mailed, shipped, or received  
10 in violation of this chapter, pursuant to Title 18, United States Code, Section 2253(a)(1),  
11 including the following properties:

12 a. Any and all images of child pornography, in whatever form and however  
13 stored, including but not limited to, those stored on zip disks, CDs/DVDs, video cassette  
14 tapes, and floppy disks.

15 Defendant agrees to forfeit to the United States immediately all of his right, title  
16 and interest in any property, real or personal, used to commit or to facilitate the  
17 commission of the violation of Transportation of a Minor to Engage in Illegal Sexual  
18 Activity, and any property traceable to such property, pursuant to Title 18, United States  
19 Code, Section 2428(b)(1)(A), including the following property:

20 a. One (1) 2004 blue Lexus GX470, bearing Washington license plate  
21 029RYB, VIN JTJBT20X940035115.

22 Defendant agrees to fully assist the United States in the forfeiture of the listed  
23 assets, including but not limited to: surrendering title and executing any documents  
24 necessary to effectuate such forfeiture; assisting in bringing any assets located outside the  
25 United States within the jurisdiction of the United States; and taking whatever steps are  
26 necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted,  
27 hidden, or otherwise made unavailable for forfeiture. Defendant further agrees to  
28

1 withdraw all claim(s) to the listed properties in the related civil forfeiture action, United  
 2 States v. One 2004 Blue Lexus, GX470, et al., Docket No. C08-5084BHS.

3 The United States agrees that once the preliminary order of forfeiture is entered,  
 4 forfeiting the defendant's interest in the above-listed assets, the government will negotiate  
 5 with counsel representing the defendant in the related civil forfeiture case in this district  
 6 to attempt to achieve the objective of applying the assets, or proceeds from the sale of the  
 7 assets, for the benefit of the victims of the crimes to which the defendant is pleading  
 8 guilty and any related crimes, with the exception of the visual depictions, or those  
 9 electronic items containing visual depictions, being forfeited to the United States. In  
 10 addition, the government will seek to obtain all necessary approvals to achieve the goal of  
 11 utilizing the forfeited assets to compensate the victims of the defendant's crimes, in lieu of  
 12 obtaining final orders of forfeiture for the assets. The defendant in turn will take all steps  
 13 necessary to ensure that these assets in fact are utilized for the benefit of the victims and  
 14 will not go back to him or any of his relatives, including the removal of any liens or  
 15 interests in the assets that currently exist in favor of any of his relatives.

16 14. Interdependence of Plea Agreements. The parties agree that this Plea  
 17 Agreement shall be conditioned upon the defendant entering a plea in Pierce County  
 18 Superior Court in the matter of State of Washington v. Weldon Marc Gilbert, cause  
 19 number 07-1-05618-3, as set forth in the Memorandum attached as Appendix A to this  
 20 plea agreement.

21 Defendant understands, therefore, that this Agreement is part of a package plea  
 22 agreement with the United States and the State of Washington, to wit, if Defendant does  
 23 not enter into, and plead guilty pursuant to the respective Plea Agreements in Federal  
 24 District Court and <sup>Pierce County</sup> ~~King~~ County Superior Court, or if Defendant subsequently seeks to  
 25 withdraw from either guilty plea, then the United States will withdraw from the instant  
 26 Plea Agreement and will seek an indictment against Defendant for all crimes for which  
 27 the United States has sufficient evidence. Defendant's plea of guilty in State of  
 28 Washington v. Weldon Marc Gilbert is integral to the instant plea agreement. If the State

1 of Washington fails to abide by the agreement set forth in Appendix A, the defendant may  
2 withdraw his federal plea agreement.

3 15. Acceptance of Responsibility. The United States acknowledges that  
4 Defendant has assisted the United States by timely notifying the authorities of his  
5 intention to plead guilty, thereby permitting the United States to avoid preparing for trial  
6 and permitting the Court to allocate its resources efficiently. If at the time of sentencing,  
7 the United States remains satisfied that Defendant has accepted responsibility, then it will  
8 recommend a sentence that takes this acceptance of responsibility into consideration.  
9 Defendant understands and agrees that the United States will base its recommendation on  
10 factors set forth in the United States Sentencing Guidelines, including Section 3E1.1.

11 16. Waiver of Appeal. As part of this Plea Agreement and on the condition that  
12 the Court imposes a term of imprisonment that does not exceed the sentencing range set  
13 forth in this Agreement, Defendant waives to the full extent of the law:

14 a. any right conferred by Title 18, United States Code, Section 3742 to  
15 appeal the sentence, including any restitution order imposed; and

16 b. any right to bring a collateral attack against the conviction and  
17 sentence, including any restitution order imposed, except as it may relate to the  
18 effectiveness of legal representation

19 Furthermore, this waiver does not preclude Defendant from bringing an  
20 appropriate motion pursuant to 28 U.S.C. 2241, to address the conditions of his  
21 confinement or the decisions of the Bureau of Prisons regarding the execution of his  
22 sentence.

23 If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
24 attacking (except as to effectiveness of legal representation) the conviction or sentence in  
25 any way, the United States may prosecute Defendant for any counts, including those with  
26 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea  
27 Agreement.  
28



# UNITED STATES DISTRICT COURT

Western District of Washington

UNITED STATES OF AMERICA

V.

WELDON MARC GILBERT

## JUDGMENT IN A CRIMINAL CASE

Case Number: CR07-5732BHS-001

USM Number: 37955-086

John Henry Browne

Defendant's Attorney

### THE DEFENDANT:

pleaded guilty to count(s) 1 - 21, 23 - 31 and 33 - 37 of the indictment Plea: 04/23/09

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 2251(a) and (e) and 2256	Sexual Exploitation of a Child in the Production of Child Pornography	10/31/2007	1 - 21, 23 - 31 and 33
18 U.S.C. §§ 2423(a) and 2	Transportation of a Minor to Engage in Illegal Sexual Activity	10/31/2007	34 and 35
18 U.S.C. § 1512(b)(3)	Obstruction of Justice	08/28/2008	36
18 U.S.C. § 1512(b)(1)	Obstruction of Justice	08/28/2008	37

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) 22, and 32 of the indictment  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

[Signature]  
Assistant United States Attorney

November 16, 2009  
Date of Imposition of Judgment

[Signature]  
Signature of Judge

The Honorable Benjamin H. Settle  
United States District Judge

Nov. 16, 2009  
Date

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 300 months (25 years)

The court makes the following recommendations to the Bureau of Prisons:

*Court recommends placement at Terminal Island*

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on \_\_\_\_\_
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Life years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug and/or alcohol test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight valid tests per month, pursuant to 18 U.S.C. § 3563(a)(5) and 18 U.S.C. § 3583(d).

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his or her person, residence, office, property, storage unit or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.

The defendant shall not possess or peruse any authentic, altered, or manufactured, in whatever form, material that depicts and/or describes "sexually explicit conduct," as defined in 18 U.S.C. § 2256(2) or "child pornography," as defined in 18 U.S.C. § 2256(8).

The defendant's employment must be approved in advance by the probation officer. The defendant may not engage in any paid occupation or volunteer service that exposes him/her, either directly or indirectly, to minors, unless approved in advance by the probation officer.

The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of that Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing (if the offender did not receive a prison sentence) or within three business days after being released from custody.)

The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer. *\*except plethysmograph*

The defendant shall actively participate and make reasonable progress in a certified sexual deviancy treatment program, as designated by the U.S. Probation Officer. The sexual deviancy treatment program shall follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The program shall offer individual and group sessions, and appropriate testing, to determine the defendant's patterns of sexual arousal, and to monitor the defendant's progress and compliance with treatment goals and conditions of supervision. The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of treatment, according to his/her ability, as determined by the U.S. Probation Officer.

The defendant shall follow all rules, to include other lifestyle restrictions by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of the defendant's supervision.

The defendant shall not go to places nor loiter within 100 feet of an area where minors are known to frequent without the prior approval of the probation officer and the sexual deviancy therapist. The defendant shall not affiliate with, own, control, volunteer, and/or be employed, in any capacity, by an organization in an activity, which would place him/her in direct or indirect contact with children under the age of 18.

The defendant shall have no direct or indirect contact with any children under the age of 18, unless accompanied and supervised by an adult, who has been approved in advance by the sexual deviancy therapist and the supervising probation officer. The defendant shall immediately report any unauthorized contact with children to the probation officer and sexual deviancy therapist.

The defendant's residence shall be pre-approved by the probation office. The defendant shall not reside in direct view of places used primarily by minors, such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.

Restitution in the amount of \$TBD is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall not be waived.

The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his/her computer(s), hardware, and software, and any/all electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his/her computer use. Monitoring may also include the retrieval and copying of all data from his/her computer(s) or any/all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.

The defendant shall provide the probation officer with access to any requested financial information including authorization to conduct credit checks and obtain copies of the defendant's federal income tax returns.

*No contact with victims*

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

**CRIMINAL MONETARY PENALTIES**

**TOTALS**      Assessment      Fine      Restitution  
\$ 3,500      \$ Waived      \$ TBD

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
	TBD	TBD	
<b>TOTALS</b>	\$ _____ TBD	\$ _____ TBD	

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

The court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.

- The defendant shall pay the following court

- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: WELDON MARC GILBERT  
CASE NUMBER: CR07-5732BHS-001

### ADDITIONAL FORFEITED PROPERTY

One 2004 blue Lexus GX470, bearing Washington license 029RYB, VIN JTJBT20X940035115; One 2006 white Ford F150 pick-up, Washington license A68898Z, VIN 1FTRF12206NB15476; One 1981 Bell 206B helicopter, Tail #N325JR, Serial #3296, and all flight logs and maintenance logs associated with this aircraft; One 1968 Cessna A185E float plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft; One 2003 Sea Ray boat, Model 185BR, license #WN8212NM, Boat Hull #0059RG, VIN 1MDJ2JR163A248710; Real property located at 2901 211<sup>th</sup> Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010100, its buildings, improvement, appurtenances, fixtures, attachments and easements, more particularly described as : Lot 10 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; Real property located at 2901 211<sup>th</sup> Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvement, appurtenances, fixtures, attachments and easements, more particularly described as : Lot 11 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; One Sony Digital Handicam Digital 8 camcorder, model DCR-TRV250, Serial #388947; One Sony Video 8 Handicam camcorder, model CCE-TR40, Serial #3009669; One Averatec laptop computer, model 5500 series, Serial number obliterated; One Fry's Intel Pentium 4 computer tower, model FS7470, Serial #747FSX340000296; One Averatec Notebook computer, model 2200 series, Serial number partially obliterated, starting with NW04CE6040; One SeaGate Medalist 13640 hard drive, model ST313640A, Serial #7AE054NA; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600BB-00DAA0, Serial #WMACK2069917; One Western Digital WD400 Enhanced IDE hard drive, model WD400JB-00ENA0, Serial #WCAD19728957; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600JB-75GVC0, Serial #WCAL96008970; One MX 1000 camera tripod; and Any and all images of child pornography, in whatever form and however stored, including but not limited to, those stored in zip disks, CDs/DVDs, video cassette tapes, and floppy disks.

AO 245C (Rev 6/05) Amended Judgment in a Criminal Case  
Sheet 1 (Rev USAO 10/2005)

(NOTE: Identify Changes with Asterisks (\*))

# UNITED STATES DISTRICT COURT

WESTERN

District of

WASHINGTON

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

V.

WELDON MARC GILBERT

Case Number: CR07-5732BHS-001

USM Number: 37955-086

Date of Original Judgment: November 16, 2009  
(Or Date of Last Amended Judgment)

John Henry Browne  
Defendant's Attorney

**Reason for Amendment:**

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(e)(2))
- Direct Motion to District Court Pursuant to  28 U.S.C. § 2255 or  18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

**THE DEFENDANT:**

- pleaded guilty to Counts 1-21, 23-31, and 33-37 of the Fourth Superseding Indictment
- pleaded *nolo contendere* to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
18 USC §§ 2251(a) & (e) and 2256	Sexual Exploitation of Child in Production of Child Pornography	10/31/2007	1-21, 23-31, & 33
18 USC §§ 2423(a) and 2	Transportation of a Minor to Engage in Illegal Sexual Activity	10/31/2007	34 and 35
18 USC §§ 1512(b)(3)	Obstruction of Justice	08/28/2008	36
18 USC §§ 1512(b)(1)	Obstruction of Justice	08/28/2008	37

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) 22 and 32  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

[Signature]  
Signature of Assistant United States Attorney

10/7/11  
Date of Imposition of Judgment

[Signature]  
Signature of Judge

Benjamin H. Settle, US Dist. Judge  
Name and Title of Judge

10/7/11  
Date

AO 245C (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
Sheet 2 — Imprisonment

(NOTE: Identify Changes with Asterisks (\*\*))

Judgment — Page 2 of 8

DEFENDANT: Weldon Marc Gilbert  
CASE NUMBER: CR07-5732BHS-001

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 300 months (25 years)

The court makes the following recommendations to the Bureau of Prisons:

**The court recommends that the defendant be placed at Terminal Island Correctional Facility.**

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

AO (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
 Sheet 3 — Supervised Release

(NOTE: Identify Changes with Asterisks)

Judgment—Page 3 of 8

DEFENDANT: Weldon Marc Gilbert  
 CASE NUMBER: CR07-5732BHS-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised  
Life

- The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons
- The defendant shall not commit another federal, state or local crime.
- The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, up to a maximum of 8 tests per month at dates and times directed by the U.S. Probation Officer.
- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

#### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer,
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

AO 245C

Sheet 3C — Supervised Release

(NOTE: Identify Changes with Asterisks (\*))

Judgment—Page 4 8

DEFENDANT: Weldon Marc Gilbert  
CASE NUMBER: CR07-5732BHS-001

### SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to a search of his/her person, residence, office, property, storage unit, or vehicle conducted in a reasonable manner and at a reasonable time by a probation officer.

The defendant shall not possess or peruse any authentic, altered or manufactured, in whatever form, material that depicts and/or describes "sexually explicit conduct," as defined in 18 USC § 2256(2) or "child pornography," as defined in 18 USC §2256(8).

The defendant's employment must be approved in advance by the probation officer. The defendant may not engage in any paid occupation or volunteer service that exposes him/her, either directly or indirectly, to minors, unless approved in advance by the probation officer.

The defendant, who is required to register under the Sex Offender Registration and Notification Act, must comply with all requirements of the Act. The defendant shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any jurisdiction where the person resides, is employed, or is a student. For initial registration purposes only, the defendant shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of the residence. Registration must occur within three business days after sentencing (if the offender did not receive a prison sentence) or within three business days after being released from custody.

The defendant shall participate in a sexual deviancy evaluation conducted by a sexual deviancy treatment provider, as directed and approved by the U.S. Probation Officer. The treatment provider shall be trained and experienced in the treatment of sexual deviancy, and follow the guideline practices established by the Association for the Treatment of Sexual Abusers (ATSA). The sexual deviancy evaluation may include psychological and physiological testing \*\*except plethysmograph \*\* The defendant shall disclose all previous sex offender or mental health evaluations to the treatment provider. The defendant shall also contribute to the costs of the evaluation, according to his/her ability, as determined by the U.S. Probation Officer.

The defendant shall follow all rules, to include other lifestyle restrictions, recommended by the defendant's therapist, and continue with those rules and restrictions as they pertain to avoiding risk situations throughout the course of supervision.

The defendant shall not go to places nor loiter within 100 feet of an area where minors are known to frequent without the prior approval of the probation officer and the sexual deviancy therapist. The defendant shall not affiliate with, own, control, volunteer, and/or be employed, in any capacity, by an organization in an activity which would place him in the direct or indirect contact with children under the age of 18.

The defendant shall have no direct or indirect contact with any children under the age of 18, unless accompanied and supervised by an adult, who has been approved in advance by the sexual deviancy therapist and the supervising probation officer. The defendant shall immediately report any unauthorized contact with children to the probation officer and sexual deviancy therapist.

The defendant's residence shall be pre-approved by the probation office. The defendant shall not reside in direct view of places used primarily by minors, such as school yards, parks, public swimming pools, or recreational centers, playgrounds, youth centers, video arcade facilities, or other places primarily used by children under the age of 18.

Restitution in the amount of \$1,072,175.76 is due in full within 30 days.

The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his computers, hardware, and software and any electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his computer use. Monitoring may also include the retrieval and copying of all data from his computers or any/all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.

The defendant shall provide the probation officer with access to any requested financial information including authorizations to conduct credit checks and obtain copies of the defendant's federal income tax returns.

The defendant shall have no contact whatsoever with any of the victims in this case.

AO 245C (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
 Sheet 5 — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks (\*\*))

Judgment — Page 5 of 8

DEFENDANT: Weldon Marc Gilbert  
 CASE NUMBER: CR07-5732BHS-001

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 3,500	\$ Waived	\$ \$1,072,175.76

- The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(f), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Amount of Total</u>	<u>Amount of Restitution</u>	<u>Priority or Percentage</u>
<u>John Doe 1</u>	<u>23,612.50</u>	<u>23,612.50</u>	
<u>John Doe 2</u>	<u>51,250.00</u>	<u>51,250.00</u>	
<u>John Doe 3</u>	<u>98,750.00</u>	<u>98,750.00</u>	
<u>John Doe 4</u>	<u>67,127.59</u>	<u>67,127.59</u>	
<u>John Doe 5</u>	<u>94,144.17</u>	<u>94,144.17</u>	
<u>See Add'l Payees on</u>	<u>Attached page</u>		
<b>TOTALS</b>	\$ <u>1,072,175.76</u>	\$ <u>1,072,175.76</u>	

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the 30th day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that:
  - the interest requirement is waived for  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:
- Interest is not ordered so long as the restitution is paid in full 30 days from today's date
- The Court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245C (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
Sheet 5B — Criminal Monetary Penalties

(NOTE: Identify Changes with Asterisks (\*))

Judgment — Page 6 of 8DEFENDANT: Weldon Marc Gilbert  
CASE NUMBER: CR07-5732BHS-001**ADDITIONAL RESTITUTION PAYEES**

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
John Doe 6	1,717.49	1,717.49	
John Doe 7	69,195.45	69,195.45	
John Doe 8	49,021.40	49,021.40	
John Doe 9	58,713.99	58,713.99	
John Doe 10	71,749.03	71,749.03	
John Doe 11	98,750.00	98,750.00	
John Doe 12	47,520.00	47,520.00	
John Doe 13	21,225.00	21,225.00	
John Doe 14	32,758.80	32,758.80	
John Doe 15	2,204.52	2,204.52	
John Doe 16	7,089.77	7,089.77	
John Doe 17	54,353.55	54,353.55	
John Doe 18	68,575.00	68,575.00	
John Doe 19	67,625.00	67,625.00	
John Doe 20	34,962.50	34,962.50	
John Doe 21	51,830.00	51,830.00	

\* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245C (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
Sheet 6 — Schedule of Payments

(NOTE: Identify Changes with Asterisks (\*))

Judgment — Page 7 of 8DEFENDANT: Weldon Marc Gilbert  
CASE NUMBER: CR07-5732BHS-001**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- PAYMENT IS DUE IMMEDIATELY.** Defendant will fully pay the restitution amount within 30 days.:
- During the period of imprisonment, no less than \_\_\_\_\_% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than \_\_\_\_\_% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than \_\_\_\_\_% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment.

All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to: United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified at pages 5 & 6 of this Judgment.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several**
- Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245C (Rev. 6/2005) Amended Judgment in a Criminal Case (Rev. USAO 10/2005)  
Sheet 6A — Schedule of Payments

(NOTE: Identify Changes with Asterisks (\*))

AO 245C (Rev 6/2005) Amended Judgment in a Criminal Case (Rev USAO 10/2005)  
Sheet 6B — Schedule of Payments

(NOTE: Identify Changes with Asterisks (\*\*))

Judgment—Page 8 of 8DEFENDANT: Weldon Marc Gilbert  
CASE NUMBER: CR07-5732BHS-001**ADDITIONAL FORFEITED PROPERTY**

One blue Lexu GX470, bearing WA License 029RYB, VINGJTJBT20X940035115; One 2006 white Ford F150 pick-up, WA license A68898Z, VIN1FTRF12206NB15476; One 1981 Bell 206B helicopter, Tail#N325JR, Serial #3296, and all flight logs and maintenance logs associated with this aircraft; One 1968 Cessna A185E float plane, Tail #N2210T, Serial #185-1362, and all flight logs and maintenance logs associated with this aircraft; One 2003 Sea Ray boat, Model 185BR, license #WN8212NM, Boat Hull #0059RG, VIN 1MDJ2JR163A248710; Real property located at 2901 211th Avenue East, Lake Tapps, Washington, 98391, parcel numbers 8996010100, its buildings, improvements, appurtenances, fixtures, attachments and easements, more particularly described as: Lot 10 of Lake Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; Real property located at 2901 211th Avenue East, Lake Tapps, Washington 98391, parcel numbers 8996010110, its buildings, improvements, appurtenances, fixtures, attachments, and easements, more particularly described as: Lot 11 of Tapps Island Division No. 1, according to the Plat thereof recorded in volume 48 of Plats at pages 30 to 34, inclusive records of Pierce County, Washington; One Sony Digital Handicam Digital 8 camcorder, mode DCR-TRV250, Serial #388947; One Sony Video 8 Handicam camcorder, model CCE-TR40, Serial #3009669; One Averatec laptop computer, model 5500 series, Serial number obliterated; One Fry's Intel Pentium 4 computer tower, model FS7470, Serial #747FSX340000296; One Averatec Notebook computer, model 2200 series, Serial number partial obliterated, starting with NW04CE6040; One SeaGate Medalist 13640hard drive, model ST313640A, Serial #7AE054NA; One Western Digital WD1600 Enhanced IDE hard drive, model WD1600BB-00DAA0, Serial #WMACK2069917; One Western Digital WD400 Enhanced IDE hard drive, model WD400JB-00ENA0, Serial #WCAD19728957; One Western Digital WD 1600 Enhanced IDE hard drive, model WD1600JB-75GVC0, Serial #WCAL96008970; One MX 100 camera tripod; and any and all images of child pornography, in whatever form and however stored, including but not limited to, those stored in zip disks, CDs/DVDs, video cassette tapes, and floppy disks.

May 25 2018 8:30 AM

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

KEVIN STOCK  
COUNTY CLERK  
NO: 07-1-05618-3

**DIVISION II**

In re the Personal Restraint Petition of:  
  
WELDON M. GILBERT,  
  
Petitioner.

No. 51266-1-II  
  
CERTIFICATE OF FINALITY  
  
Pierce County  
  
Superior Court No. 07-1-05618-3

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and  
for Pierce County.

This is to certify that the decision of the Court of Appeals of the State of Washington,  
Division II, filed on April 12, 2018, became final on May 15, 2018.



**IN TESTIMONY WHEREOF**, I have hereunto set my  
hand and affixed the seal of said Court at Tacoma, this  
24<sup>th</sup> day of May 2018.

Derek M. Byrne  
Clerk of the Court of Appeals,  
State of Washington, Division II

cc:

Ann Farrell Stenberg  
Stenberg Law Office  
910 N Sheridan Ave  
Tacoma, WA 98403-1527

Michelle Hyer  
Pierce County Prosecutor  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

In re the Personal Restraint of:

No. 51266-1-II

WELDON M. GILBERT,

RULING DISMISSING APPEAL

Petitioner,

**THIS MATTER** came on for hearing of the clerk's motion to dismiss on the ground of abandonment, no filing fee or statement of finances having been submitted. Appellant has not responded to the Clerk's motion, and it appears that the appeal was taken for delay and should be dismissed for want of prosecution. RAP 18.9(a),(b). Accordingly, it is

**ORDERED** that this appeal is dismissed.

DATED this 12<sup>th</sup> day of April, 2018.

  
COURT CLERK

Ann Farrell Stenberg  
Stenberg Law Office  
910 N Sheridan Ave  
Tacoma, WA 98403-1527

Michelle Hyer  
Pierce County Prosecutor  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2102  
PCpatcecf@co.pierce.wa.us

FILED  
COURT OF APPEALS  
DIVISION II  
2018 APR 12 PM 2:49  
STATE OF WASHINGTON  
BY   
DEPUTY

November 08 2018 10:10 AM

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

KEVIN STOCK  
COUNTY CLERK  
NO: 07-1-05618-3

In re the  
Personal Restraint Petition of  
  
WELDON GILBERT,  
  
Petitioner.

No. 51148-7-II

CERTIFICATE OF FINALITY

Pierce County  
Superior Court No. 07-1-05618-3

**THE STATE OF WASHINGTON TO:** The Superior Court of the State of Washington in and  
for Pierce County.

This is to certify that the decision of the Court of Appeals of the State of Washington,  
Division II, filed on September 19, 2018, became final on October 22, 2018.



**IN TESTIMONY WHEREOF**, I have hereunto set my  
hand and affixed the seal of said Court at Tacoma, this  
*20th* day of October, 2018.

  
Derek M. Byrne  
Clerk of the Court of Appeals,  
State of Washington, Division II

Ann Farrell Stenberg  
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910 N Sheridan Ave  
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# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

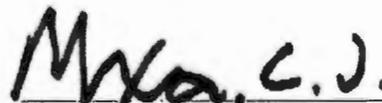
## DIVISION II

In re the  
Personal Restraint Petition of  
  
WELDON GILBERT,  
  
Petitioner.

No. 51148-7-II

ORDER GRANTING MOTION  
TO VOLUNTARILY  
WITHDRAW PETITION AND  
DISMISSING PETITION  
WITHOUT PREJUDICE

Weldon Gilbert has moved to voluntarily withdraw this petition. Respondent has not objected to this motion. Accordingly, this motion is granted and this petition is dismissed without prejudice.

  
\_\_\_\_\_  
Chief Judge

cc: Weldon Gilbert  
Pierce County Clerk  
County Cause No(s). 07-1-05618-3  
Michelle Hyer, Pierce County Prosecutor's Office  
Suzanne Lee Elliott

**PIERCE COUNTY PROSECUTING ATTORNEY**

**March 13, 2020 - 4:23 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54188-2  
**Appellate Court Case Title:** Personal Restraint Petition of Weldon M. Gilbert  
**Superior Court Case Number:** 07-1-05618-3

**The following documents have been uploaded:**

- 541882\_Personal\_Restraint\_Petition\_20200313155638D2579146\_5870.pdf  
This File Contains:  
Personal Restraint Petition - Response to PRP/PSP  
*The Original File Name was Gilbert States Response to PRP.pdf*

**A copy of the uploaded files will be sent to:**

- karim@suzanneelliottlaw.com
- suzanne-elliott@msn.com

**Comments:**

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Sender Name: Aeriele Johnson - Email: aeriele.johnson@piercecountywa.gov

**Filing on Behalf of:** Britta Ann Halverson - Email: britta.halverson@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

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

**Note: The Filing Id is 20200313155638D2579146**