

**FILED**  
MAY 19, 2014  
Court of Appeals  
Division III  
State of Washington

NO. 31485-5-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALFRED BRICE INOCENCIO,

Appellant.

---

BRIEF OF RESPONDENT

---

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes two assignments of error. These can be summarized as follows;

1. The trial court erred when it denied Appellant's motion to strike his 2005 convictions from offender score.
2. The trial court erred when it determined that the 2005 convictions should be included in Appellant's offender score.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. There was no error by the court when it refused to strike the prior convictions from Appellant's offender score.
2. The trial court properly included the previous convictions.

II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to the record as needed.

III. ARGUMENT.

The actions of the trial court were well within its discretion, were based on the rules of evidence and case law.

**RESPONSE TO ALLEGATION ONE**

Appellant challenges the actions of the trial court wherein it included in Appellant's offender score two prior convictions at his resentencing. These two convictions were never challenged Appellant's first appeal. Appellant in this second appeal argues that the prior convictions should not be included because he was not properly informed of the ramifications of the joint agreement declining juvenile court jurisdiction in 2005.

The action of the trial court was proper; State v. Strauss, 119 Wn.2d 401, 832 P.2d 78 (1992), "A sentencing judge's discretion under the SRA is structured, but not eliminated. See RCW 9.94A.010." The decision of the trial court at this resentencing to include the 2005 convictions was a discretionary act State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) sets out clearly controlling case law:

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. State ex rel. Clark v. Hogan, 49 Wash.2d 457, 303 P.2d 290 (1956). Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. MacKay v. MacKay, 55 Wash.2d 344, 347 P.2d 1062 (1959); State ex rel. Nielsen v. Superior Court, 7

Wash.2d 562, 110 P.2d 645, 115 P.2d 142  
(1941).

Whether this discretion is based on untenable grounds, or is manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or private interests of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other.

The State has included a lengthy portion of the plea hearing in Appendix A. This court must take into consideration that this was not your “typical” juvenile decline. This was clearly a well negotiated settlement on the day the jury trial was set to go out. This agreement allowed Appellant to avoid a strike offense. There is little doubt that this matter was extensively negotiated. The bargain that resulted in the defendant pleading to the two lesser counts was negotiated to the extent that this defendant actually requested an exceptional sentence of twelve months and day which allowed him to “take advantage” of the programs in prison and not just be stuck in the county jail.

MR. THERRIEN...The problem for us was statements made by Mr. Zaragoza, his presence, the actions that Mr. Hernandez would have said could have created an accomplice type of liability situation for Mr. Inocencio which I think based upon the offer that was presented to him, which is too good to turn down because it is a non-strike, nonviolent felony and I think it's a good result for him in terms of the potential risk at trial. I was willing-- I told Alfredo I was willing to go to trial on it and try it but I think this is a wise decision because no

one knows what can happen at trial as the Court well knows, so I would ask the Court to follow the recommendation. Actually, the standard range is 4 to 12 months, he wanted work release. I just can't imagine anybody wanting to be in the County for six months if they had the opportunity to go to prison and maybe better programs there for him, better opportunity. I don't know if, you know, based upon his age whether-- I think he's considered an adult because he's just declined and I don't know if he can go to a juvenile facility at Green Hill or whatever the heck they have them. I don't know if that's possible because in fact he pled as an adult but, you know, I'd ask the Court -- I don't know if the Court has any --

THE COURT: That's an excellent point. My understanding and I haven't been in this system for a while is that there is an agreement between the Department of Corrections and the Juvenile Rehabilitation Administration regarding placement of people who fit into this category. I don't know what the current status of that agreement is. He will have to go to Shelton initially --

MR. THERRIEN: Right.

THE COURT: --to the reception center and then they will disburse him accordingly. It may very well be they'll keep him at Shelton. They have programs at Shelton. My guess is that he'll either remain at Shelton or he will go to Green Hill. That's just a guess on my part, but it's a good point. It's something that he'll learn about very quickly.

CP 66

This was not some last minute rush to a plea, it was a bargained for exchange with an obvious history. If this appeal were to be granted it would in effect negate a portion of the plea agreement. There was never a challenge at the time of the entry of the original plea, no appeal, no PRP, nothing. Now eight years later Appellant is in effect asking this court to

void that plea, strike those convictions and allow that criminal act to go unpunished an agreement that he willingly participated in and gained benefit from.

Appellant argues that State v. Knippling, 166 Wn.2d 93, 97, 206 P.3d 332 (2009) is similar factually to the case before the bar. This is patently inaccurate. As the State will address below the record in Saenz Knippling and Bailey, were all but devoid of the reason or basis for Saenz and for Knippling's presence in Superior Court and a basis for the decline.

In Knippling the sole fact before the court was one document, the Judgment and Sentence, which stated that at the time of the conviction Knippling was "16." "Importantly, there is **no** evidence in the record to counter Knippling's assertion that once the charge of first degree robbery was reduced to second degree robbery, the case was not remanded to the juvenile court. **What the State produced, rather, was a superior court judgment and sentence showing that Knippling was 16 years old at the time he was convicted** of second degree robbery, an offense that does not grant the superior court automatic jurisdiction. **This judgment and sentence did not disclose how or why the case was before the superior court instead of the juvenile court.**" Knippling at 101.

(Emphasis mine.)

While the State would agree that the legal analysis in State v. Saenz, 175 Wn.2d 167, 283 P.3d 1094 (2012) is applicable the State would also point out that Saenz is factually distinguishable. The only discussion on the record in Saenz concerning waiver a single line statement by his attorney, "I believe that he understands what the implications are of having this moved to adult court, but that is his desire at this time." Saenz, 175 Wn.2d at 171. There were also no findings and conclusions entered in Saenz as required;

These requirements are mandatory. A transfer of juvenile jurisdiction to adult court is not valid until the juvenile court has fulfilled its solemn responsibility to independently determine that a decline of jurisdiction is in the best interest of the juvenile or the public and entered written findings to that effect before transferring the case. Former RCW 13.40.110(2), (3). Even where the parties stipulate to decline juvenile jurisdiction, the statute still requires the court to enter findings, and the court cannot transfer a case to adult court until it has done so. If transfer is not in the best interest of the juvenile or the public, the juvenile cannot be transferred, despite any agreement among the parties. Saenz, 175 Wn.2d at 179.

Inocencio's case has a wealth of information. The information before the trial court at the time that Appellant waived his rights, as a part of a plea agreement, was more than sufficient to conclude that the factors set forth in Saenz have been met. Most importantly in this case there

were findings and conclusions that were signed by the defendant, his attorney and the court and they are verities for this appeal.

This is also in effect an attempt to challenge unchallenged and unchallengeable findings and conclusions. These findings of fact and conclusions of law were entered by agreement of the parties, and signed by the defendant, eight years ago. There is no legal basis and Appellant can cite no legal basis to challenge the agreed to findings and conclusions eight years after the fact. These findings and conclusions are verities. As was stated in State v. Stenson, 132 Wn.2d 668, 697, 940 P.2d 1239 (Wash. 1997) “Because the Defendant fails to challenge any of the findings of fact entered after the suppression hearing, they are treated as verities on appeal. State v. Gentry, 125 Wash.2d 570, 605, 888 P.2d 1105 (1995). Additionally, the trial court's findings are supported by the evidence.”

Those unchallenged Findings state “Inocencio knowingly, intelligently and voluntarily waives his right to a declination hearing in the Juvenile Division under RCW 13.40.110(1). Here in opposition to Saenz we do know that there was a knowing, intelligent waiver, it says so in the agreed, undisputed findings which were signed by the defendant at the time of his plea. We also have the interaction between the trial court, Inocencio and his attorney.

The information set forth in Appendix A is extensive. The actions of the trial court in 2005 were reviewed by the trial court at the time Appellant was resentenced. These decisions were based on information before the court, at the resentencing the court had before it the briefing of both parties which included the analysis set forth in Saenz. The opening statement from the Saenz it telling and sets it apart from Inocencio's case;

We conclude first that Saenz's waiver was invalid because **there is virtually nothing in the record** demonstrating that it was intelligently made or that Saenz was fully informed when he made it. **Next, we hold that Saenz's case was not properly transferred** to adult court **because the commissioner transferring the case failed to enter findings that transfer was in the best interest of the juvenile or the public as required by statute.** (Saenz at 170, emphasis mine.)

In this case there is a colloquy between the court and all of the parties including Appellant. There were finding and conclusions that were entered and never challenged; these findings and conclusions are signed by both the attorney for the Appellant and the Appellant himself. (CP 43) The findings and conclusions, the order of decline and the pleas from both defendants were taken on August 15, 2005. They were done in open court. The colloquy between the court the defendant and his attorney addresses what is to occur and the rights that Inocencio is going to give up. All of this is done in light of a bargained for agreement. Those

findings and conclusions specifically address the fact that Inocencio would no longer meet the definition of “juvenile” under RCW Title 13 as interpreted by State v. Oreiro, 73 Wn.App. 868 (1994) the “criterion set forth in Kent v. United States, 383 U.S. 541 (1966) and State v. Holland, 96 Wn.2d 507 (1983).

Saenz and Knippling were for all intent and purpose devoid of a record. That clearly is not the case here. Rarely ever is the record on review sufficient to satisfy an appellant when he challenges past actions. But here we can see that the trial court was very familiar with this defendant and held in great respect the trial attorney; “THE COURT:...Alfredo, I had you in Court before, do you remember me? MR. INOCENCIO: Yes.... THE COURT: Okay. Mr. Therrien, I know that you're conscientious and careful and you've gone over this in all of its detail, okay. MR. THERRIEN: Thank you, Your Honor.” (CP 49-50)

The trial court entered the required findings and conclusions. However Inocencio places great emphasis on the fact that there is only “one” finding and that it is “more akin to a “conclusion.” No matter how Inocencio parses this the fact remains, the court complied with the law and with the edicts of Saenz and entered findings and conclusions which support the action that court took.

The very recent decision in State v. Bailey, \_\_ Wn.App. \_\_, 313 P.3d 483 (2013) issued on November 26, 2013 is also factually distinguishable. Bailey was sentenced under the Persistent Offender Accountability Act (POAA). The juvenile conviction that was the subject of the appeal was a “strike” offense. It is important to note that both Saenz and Bailey were POAA cases. In Bailey this court found that the actions of the trial court were flawed because the court record did not reflect that Bailey was “informed of any of these rights and protections” and went on to indicate “The other critical defect in the transfer of juvenile court jurisdiction is the juvenile court's failure to enter specific written findings that transfer was in the best interest of Mr. Bailey or the public.”

In Inocencio’s case there were written findings and those findings and conclusions cite the operative cases, this was a pre-Saenz case, the findings specifically cite Kent. Appellant would have this court ignore those findings and conclusion as perfunctory. But as indicated above the defendant signature is on those findings and conclusions, this was a well bargained for exchange, the court expressed great confidence in the actions of the trial court attorney for Appellant and the appellant had been before this very judge before.

There is no doubt that there could have been a better record made, but that is not the standard, the standard as set by Saenz was met in this case.

It is important to note the following section of the report of proceedings;

THE COURT: It's being handed up right now. This is on Alfredo's case. Well, I just signed Rojelio Zaragoza's. Now, State of Washington v. Alfredo Inocencio, the charges of first degree theft and second degree theft. Count 3 is dismissed and there's the order. I'm going to impose 12 months plus one day on Count 1 and six months on Count 2. These are to run concurrently. Now, the judgment of 12 months and a day is an exceptional sentence. This is greater than the standard range because of the agreement that the parties have reached and there are findings regarding the exceptional sentence and I find that they are compatible with the law and with a common sense approach to the resolution of this matter.

MR. KNITTLE: Can I just toss (inaudible) for the record this was the defendant's request.

MR. THERRIEN: It was.

CP 68/RP 22

MR. KNITTLE: Yeah. It's not something I'm doing just to kind of (inaudible) around a little more and get an extra (inaudible). This was his request to have an above the standard range sentence of 12 and a day as opposed to 12 here in the county jail.

THE COURT: Well, that certainly would be somewhat consistent with what Mr. Therrien said earlier about the opportunities that may be available to him at Shelton as opposed to staying in the county jail. The sentences of 12 months and a day and 6 months are to run concurrently. You get credit for time served and credit for good behavior. Now, when you're done with your confinement you are not subject to community custody or follow-up supervision by the Department of Corrections but I must tell you that you cannot use or possess any firearms or ammunition unless those rights are specifically restored to you by the Court. Do you understand that?

MR. INOCENCIO: Yes.

CP 69/RP 23

While not an explicit discussion of the “benefits” of staying in the juvenile court it is clear from the above discussion and agreed exceptional sentence that Appellant was aware of the programs that were available in the adult system as is clear that there had been a discussion of the specific benefits that he would receive from this increased sentence. This sentence was done in order to allow Appellant access to programs that would not have been available had he stayed in county jail. Appellant was clearly aware of the ramifications and the benefits of this plea bargain.

**RESPONSE TO ALLEGATION TWO.**

There is no real section of appellant’s brief that addresses the hearing in the trial court where the trial court on remand heard argument and read briefing by the parties and denied Inocencio’s request that at resentencing the trial court should not count the 2005 convictions as a portion of Appellant’s offender score.

The sentencing of an offender, as indicted above, is a discretionary act on of the sentencing court, within the edicts of the Sentencing Reform Act (SRA) State v. Strauss, 119 Wn.2d 401, 832 P.2d 78 (1992), “A sentencing judge's discretion under the SRA is structured, but not eliminated. See RCW 9.94A.010.” The decision of the trial court at this resentencing to include the 2005 convictions was a discretionary act State

ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); State v. Harp, 13 Wn. App. 239, 245, 534 P.2d 842 (1975) “Our review of the sentencing part of the judgment is limited to determining whether the court abused its discretion. We believe that, under the circumstances, the court acted well within its discretion in ordering the life sentence for rape to be served following the life sentences for the assaults.”

The trial court at the time of resentencing took into consideration the edicts of Saenz and Kent as well as the briefing and argument of the parties and determined that the action of the original court met the standards of Saenz. This court is now being asked to overturn that discretionary act. Appellant has not presented this court with anything that would suggest the actions of either court, the initial court that declined jurisdiction nor the court at the resentencing, acted in a manner that was in excess of the discretion allowed those courts nor can Appellant demonstrate that he was unaware of the “benefits” of juvenile jurisdiction, to the contrary it would appear from the discussion amongst the parties and the court that this appellant was well aware of the benefits and consequences of his action and this plea agreement that resulted in the declination of juvenile jurisdiction. Each court reached the conclusion it did based on the individual facts of the case, the well settled case law and made a sound, well-reasoned decision which this court should not disturb.

#### IV. CONCLUSION

For the reasons set forth above this court should deny this appeal.

This action of the trial court at the time of the resentencing was a discretionary act. The law is clear that there must be a record upon which a court of review can determine that an appellant made a valid waiver and that it was done knowingly, intelligently and voluntarily. The cases cited by Appellant are clearly distinguishable. The record before the trial court at the time of the resentencing was sufficient to allow that court to make the discretionary ruling regarding the use of the prior conviction of Appellant. That discretionary ruling should not be overturned. The actions of the trial court should be upheld, the State's Motion on the Merits should be granted, and this appeal should be dismissed.

Respectfully submitted this 19<sup>th</sup> day of May 2014,

s/ David B. Trefry  
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# Appendix A

The sections of the verbatim report of proceedings are set forth using the page numbers of the verbatim report as well as the CP numbers because this portion of the record was supplied to the trial court as a Verbatim Report of Proceedings and in this court as Clerk's papers.

THE COURT: Mr. Therrien.

MR. THERRIEN: Your Honor, before we start just so we can have this on the record, the entry of these pleas of guilty, at least to my client, Alfredo is-- he has to stipulate to waive jurisdiction of Juvenile Court. He is 16 years old. He'll be 17 next April. I've gone over a stipulation agreement with him explaining to him the consequences of pleading guilty to these charges, this amended information, and we would waive a reading of this amended information and explain to him by entering a plea of guilty and waiving jurisdiction in juvenile court he is in fact effectively waiving jurisdiction for any subsequent charges that come up before his 18th birthday, and even though I tried to posture the agreement where that would not be the case, I've been informed and verified, and I've verified to Ms. Barnes,  
CP 48/RP 2

who, I think, is one of the experts in these types of field that in fact if he pleads guilty under *United States v. Kent* (phonetic), the *Kent* criteria that in fact has waived jurisdiction for purposes of any subsequent charges. Alfredo understands that-- do you understand that, Alfredo?

MR. INOCENCIO: Yes.

MR. THERRIEN: And we talked about it and I told you I was going to tell the Court, you know, that we talked about this stipulation and your waiver of jurisdiction, right?

MR. INOCENCIO: Yes.

MR. THERRIEN: Okay. You understand that?

THE COURT: Well, first of all, I want to thank you for bringing this up because it occurred to me as I was getting prepared for today that this was an issue that was going to have to be put on the record. I think another way of saying what you're saying is because the charges are being reduced, if these charges were just filed initially, he would have to be in juvenile court--

MR. THERRIEN: Right.

MR. KNITTLE: Yes, Your Honor.

THE COURT: --number one. By saying that he doesn't want to go back to juvenile court and he is submitting himself to the jurisdiction of the adult court, he's also saying that he's submitting himself forever to the

jurisdiction of the adult court. So if for some reason before he turns 18, he winds up getting picked up for shoplifting or forgery or anything, he wouldn't go to juvenile court where he normally would go, he'd have to go to adult court. This is a very important concept and what your attorney said is very, very carefully described so that you're properly before the Court. Alfredo, I had you in Court before, do you remember me?

MR. INOCENCIO: Yes.

CP 49/RP 3

THE COURT: Okay. And your birthday is what now?

MR. INOCENCIO: 4/5/89.

THE COURT: 4/5/89, which means that you just turned 16 this past April,

MR. INOCENCIO: Yes.

THE COURT: All right. So what we're saying is because of this agreement that your attorney has negotiated with the prosecutor, you are agreeing that you should stay here in adult court rather than go back to juvenile court, correct?

MR. INOCENCIO: Yes.

THE COURT: Okay. Secondly, by submitting yourself to the adult court now, this is forever. You'll be part of the jurisdiction of the adult court under the authority of the adult court forever. Do you understand that?

MR. INOCENCIO: Yes.

THE COURT: Okay. Mr. Therrien, I know that you're conscientious and careful and you've gone over this in all of its detail, okay.

MR. THERRIEN: Thank you, Your Honor.

CP 50/RP 4

THE COURT: Alfredo, you have the right to have a jury trial to determine whether or not you're guilty of any charge, do you understand that?

MR. INOCENCIO: Yes.

THE COURT: Today had been the day that had been set for the beginning of your trial. Now, if you plead guilty, you give up your right to a trial, do you understand that?

MR. INOCENCIO: Yes.

THE COURT: This is being presented as an Alford plea. An Alford plea means that you're pleading guilty even though you might not feel that you're guilty because you want to take advantage of an agreement that your attorney has made with the prosecutor, but it's still the same as a regular plea and it goes on your record, do you understand that?

MR. INOCENCIO: Yes.

THE COURT: And to the charge in Count I of first degree theft as amended, what is your plea, guilty or not guilty?

MR. INOCENCIO: Guilty.

THE COURT: And to the charge in Count 2 of Second Degree Theft as amended, what is your plea, guilty or not guilty?

CP 53/RP 7

MR. INOCENCIO: Guilty.

THE COURT: Has anyone forced you or threatened you to get you to say that you're guilty to these two charges?

MR. INOCENCIO: No.

THE COURT: Has anyone made you any promises as to what sentence you would receive in return for saying that you're guilty?

MR. INOCENCIO: No.

THE COURT: I've been handed this document entitled Statement of Defendant on Plea of Guilty, did you go over this with Mr. Therrien?

MR. INOCENCIO: Yes.

THE COURT: Did you understand it?

MR. INOCENCIO: Yes.

THE COURT: And did you sign it?

MR. INOCENCIO: Yes.

THE COURT: Mr. Therrien, do you know of any reason why I should not accept these pleas?

MR. THERRIEN: No, Your Honor.

CP 54/RP 8

THE COURT: Well, I've read through the exhibits, listened to the prosecutor's recitation and I had a chance to study the file a little bit beforehand. I'm satisfied that there is a factual basis for both of these pleas. I'm satisfied that both Rojelio and Alfredo understand their rights, that they're wanting to-- that they're knowingly giving up those rights, that they're wanting to take advantage of a very significant plea agreements that their attorneys have negotiated with the prosecutors and that Rojelio is guilty of the amended charge of second degree robbery and that Alfredo's guilty of the amended charges of first degree theft in Count 1, second degree theft in Count 2. Count 3 will be dismissed pursuant to the agreement of the parties and I'm satisfied that both Rojelio and Alfredo have been properly counseled as to the stipulations and that both of them understand the stipulations regarding jurisdiction over them because they are juveniles.

CP 59/RP 13

THE COURT: Mr. Schuler, have you had a chance to go over this document?

MR. SCHULER: Oh, the decline documents?

THE COURT: Yeah.

MR. SCHULER: Yes, I have.

THE COURT: And I see that Rojelio has signed it. Rojelio, okay.

MR. KNITTLE: And here are the documents on Mr. Inocencio.

THE COURT: And there's an order on agreed declination, likewise, Mr. Schuler, I see your signature and Rojelio's signature and you've had a chance to go over this?

MR. SCHULER: That's correct, Your Honor, and Mr. Therrien, I have similar documents on Alfredo. I see that your signature is on here and Alfredo's, so you've had had a chance to go over this.

MR. THERRIEN: Yes, Your Honor.

THE COURT: And I've got an order here regarding agreed declination and I've signed that as well.

CP 61/RP 15

MR. THERRIEN: Just that, Your Honor, I believe we're in somewhat better position trial-wise than Mr. Zaragoza was in terms of what the evidence -- how the evidence looked towards us and if we had went to trial and lost, very well the sentence for Alfredo could have been 41 months or maybe mid-range. I interviewed Mr. Hernandez and found him to be a credible reporter of the incident as it happened even though he had given a false name earlier in the day to the police. I did find him to be a credible reporter and I thought he would be credible on the stand. The problem for us was statements made by Mr. Zaragoza, his presence, the actions that Mr. Hernandez would have said could have created an accomplice type of liability situation for Mr. Inocencio which I think based upon the offer that was presented to him, which is too good to turn down because it is a non-strike, nonviolent felony and I think it's a good result for him in terms of the potential risk at trial. I was willing-- I told Alfredo I was willing to go to trial on it and try it but I think this is a wise decision because no one knows what can happen at trial as the Court well knows, so I would ask the Court to follow the recommendation. Actually, the standard range is 4 to 12 months, he wanted work release. I just can't imagine anybody wanting to be in the County for six months if they had the opportunity to go to prison and maybe better programs there for him, better opportunity. I

don't know if, you know, based upon his age whether-- I think he's considered an adult because he's just declined and I don't know if he can go to a juvenile facility at Green Hill or whatever the heck they have them. I don't know if that's possible because in fact he pled as an adult but, you know, I'd ask the Court -- I don't know if the Court has any --

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MR. THERRIEN: Right.

THE COURT: --to the reception center and then they will disburse him accordingly. It may very well be they'll keep him at Shelton. They have programs at Shelton. My guess is that he'll either remain at Shelton or he will go to Green Hill. That's just a guess on my part, but it's a good point. It's something that he'll learn about very

CP 66/PR 20

quickly. Alfredo, is there anything you would like to say or do you have any legal reason why the judgment of the Court should not pronounced?

MR. INOCENCIO: No.

THE COURT: Do you remember the talks that we used to have?

MR. INOCENCIO: You said the same thing to me.

THE COURT: Thought you had potential, I wanted you to stay in school. don't remember meeting your family.

MR. INOCENCIO: Maybe my mom.

THE COURT: Did she come to Court?

MR. INOCENCIO: She (inaudible) because she had to work, you know.

CP 67/ RP 21

THE COURT: It's being handed up right now. This is on Alfredo's case. Well, I just signed Rojelio Zaragoza's. Now, State of Washington v. Alfredo Inocencio, the charges of first degree theft and second degree theft. Count 3 is dismissed and there's the order. I'm going to impose 12 months plus one day on Count 1 and six months on Count 2. These are to run concurrently. Now, the judgment of 12 months and a day is an exceptional sentence. This is greater than the standard range because of the agreement that the parties have reached and there are findings

regarding the exceptional sentence and I find that they are compatible with the law and with a common sense approach to the resolution of this matter.

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MR. THERRIEN: It was.

CP 68/RP 22

MR. KNITTLE: Yeah. It's not something I'm doing just to kind of (inaudible) around a little more and get an extra (inaudible). This was his request to have an above the standard range sentence of 12 and a day as opposed to 12 here in the county jail.

THE COURT: Well, that certainly would be somewhat consistent with what Mr. Therrien said earlier about the opportunities that may be available to him at Shelton as opposed to staying in the county jail. The sentences of 12 months and a day and 6 months are to run concurrently. You get credit for time served and credit for good behavior. Now, when you're done with your confinement you are not subject to community custody or follow-up supervision by the Department of Corrections but I must tell you that you cannot use or possess any firearms or ammunition unless those rights are specifically restored to you by the Court. Do you understand that?

MR. INOCENCIO: Yes.

CP 69/RP 23

DECLARATION OF SERVICE

I, David B. Trefry state that on May 19, 2014, I emailed a copy, by agreement of the parties, of the Motion on the Merits, to Mrs. Susan Gasch at [gaschlaw@msn.com](mailto:gaschlaw@msn.com) and deposited a copy in the United States mail on this date to

Alfredo Brice Inocencio DOC #885779)  
Washington State Penitentiary  
1313 North 13th Avenue  
Walla Walla WA 99362

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

DATED this 19<sup>th</sup> day of May, 2014 at Spokane, Washington,

s/David B. Trefry

By: DAVID B. TREFRY WSBA# 16050  
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