

**FILED**

FEB 24, 2014  
Court of Appeals  
Division III  
State of Washington

COA No. 32077-4-III

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON ,

Respondent

v.

ROBERT GABRIEL

Petitioner.

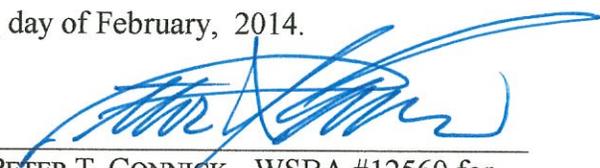
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APPELLANT'S OPENING BRIEF

BENTON COUNTY SUPERIOR COURT No. 04-1-01146-2

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DATED this 24th day of February, 2014.



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PETER T. CONNICK - WSBA #12560 for  
ROBERT THOMPSONS - WSBA #13003  
Law Office of Robert Thompson  
504 W Margaret Street  
Pasco, WA 99301  
(509) 547-4011

## TABLE OF CONTENTS

TABLE OF AUTHORITIES

ASSIGNMENTS OF ERROR

ISSUES RELATED TO ASSIGNMENTS OF ERROR

I. IDENTITY OF APPELLANT	1
II. CITATION TO SUPERIOR COURT DECISION	1
III. SUMMARY OF ARGUMENT	1
III. STATEMENT OF THE CASE	2
IV. ARGUMENT	
A. The Standard Of Review Under CrR 7.8 - Abuse of Discretion.	4
B. Vacating Judgments And Orders of Discharge - Time Limits.	5
C. No Reasons Exist Under CrR 7.8 To Vacate The Order Of Discharge.	7
V. CONCLUSION	12

APPENDICES #1 - #5

## TABLE OF AUTHORITIES

### Washington Cases

<i>Haley v. Highland</i> , 142 Wn.2d 135, 12 P.3d 119 (2000)	4
<i>In re Coats</i> , 173 Wn.2d 123, 267 P.3d 324 (2011)	7
<i>In re Cook</i> , 114 Wn.2d 802, 792 P.2d 506 (1990)	7
<i>In re Elmore</i> , 162 Wn.2d 236, 172 P.3d 335 (2007)	7
<i>In re Marriage of Flannagan</i> , 42 Wn.App. 214, 709 P.2d 1247 (1985)	11
<i>Shum v. Dept. of Labor &amp; Indus.</i> , 63 Wn.App. 405, 819 P.2d 399 (1991)	11
<i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12,482 P.2d 775 (1971)	9
<i>State v. Brand</i> , 120 Wn.2d 365, 842 P.2d 470 (1992)	10, 11
<i>State v. Chipman</i> , 176 Wn.App. 615309 P.3d 669 (2013)	8
<i>State v. Cortez</i> , 73 Wn.App. 838, 871 P.2d 660 (1994)	10
<i>State v. Davis</i> , 160 Wn.App. 471, 248 P.3d 121 (2011)	9
<i>State v. Dearbone</i> , 125 Wn.2d 173, 883 P.2d 303 (1994)	5
<i>State v. Neal</i> , 144 Wn.2d 600, 30 P.3d 1255 (2001)	4
<i>State v. Olmsted</i> , 70 Wn.2d 116, 422 P.2d 312 (1966)	8
<i>State v. Quismundo</i> , 164 Wn.2d 499, 192 P.3d 342 (2008)	4
<i>State v. Shove</i> , 113 Wn.2d 83, 776 P.2d 132 (1989)	10
<i>State v. Swan</i> , 114 Wn.2d 613, 790 P.2d 610 (1990)	4
<i>Wash. State Physicians Ins. Exch. &amp; Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993).	4

### Washington Statutes

RCW 10.73.090	1, 5, 6, 8, 10, 11,12
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### Washington Court Rules

CrR 7.8	1, 2-4, 5, 6, 7, 8, 9,10 11-12
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#### **A. ASSIGNMENTS OF ERROR**

1. Whether the Superior Court can vacate an order of discharge when the State files its motion to vacate months over the one year time limit in CrR 7.8 and RCW10.73.090?
2. Whether grounds existed under CrR 7.8 to vacate the order of discharge?

#### **B. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Whether RCW 10.73.090 bars the court from vacating its order of discharge when over one year has passed?
2. Whether adequate grounds exist under CrR 7.8(a), (b)(3) & (b)(4) where the following facts exist: (i) Mr. ROBERT GABRIEL makes required payments as ordered by the court; (ii) the Benton County Court purposely misapplies these payments first to his fines, costs and assessments rather than restitution; (3) a certificate of discharge is entered based on Mr. Gabriel's payments to the Benton County Superior Court; and (4) restitution is not completely paid; the prosecutor seeks to vacate the *Order of Discharge* after one year?

I. IDENTITY OF APPELLANT: Defendant ROBERT ALAN GABRIEL.

II. CITATION TO SUPERIOR COURT DECISION

Petitioner appeals Benton County Superior Court decision entered September 9, 2013. (Appendix #1)

III. SUMMARY OF ARGUMENT

Collateral attacks on judgments must be brought within one year under CrR 7.8, RCW 10.73.090.<sup>1</sup> The State did not bring its motion to vacate within the one year time period allowed and the Superior Court was statutorily barred from granting the relief requested. Moreover, there was no "clerical error" or "mistake" under CrR 7.8 - the Clerk's Office intended to apply Mr. Gabriel's payments the way it did and indicated to the court that Mr. Gabriel completed his financial obligations supported by the

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<sup>1</sup> RCW 10.73.090 provides, in relevant part:

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

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

payment schedule. The order was not void on its face and the "catchall" provision of CrR 7.8 (b)(5) does not apply in this case.

### III. STATEMENT OF THE CASE

On February 16<sup>th</sup>, 2005, Mr. GABRIEL pled guilty to *Malicious Mischief in the First Degree*. In the *Statement of Defendant on Plea of Guilty* at page 3, paragraph (g), indicates the following:

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

3 months concurrent to other cases, dismiss malicious mischief 2<sup>nd</sup> degree, pay restitution on dismissed case.

See Appendix #1 -September 9, 2013 letter decision the Benton County Superior Court, Judge CARRIE RUNGE.

On May 19, 2005, Judge MATHESON made a finding that the defendant signed an agreement to pay restitution in "an amount to be determined." This finding was apparently in regards to the dismissed charge. Appendix #1.

On July 27, 2005, a restitution hearing went forward. On May 3, 2012, Judge CARRIE RUNGE signed a *Certificate and Order of Discharge* which had a *Case Financial History* (CFHS) attached showing that all legal financial obligations had been paid in full. (Appendix #1, #2). The restitution that had been ordered on July 27, 2005, was never entered into the State database that tracks legal financial obligations.

Prior defense counsel for Mr. Gabriel, Randy Jameson, filed a *Note for Motion and Motion To Strike Restitution Due to Lack of Jurisdiction* April 29, 2013 after Benton County Superior Court issued an April 1, 2013 *Final Notice* demanding \$7,550.01 in restitution. (Appendices #3 & #4, respectively). This motion was based in part on the May 3, 2012 *Certificate of Discharge*.

The State filed a *Response To Defendant's Motion To Strike Restitution And Vacate Certificate Of Discharge* on August 19, 2013. (Appendix #5 - Benton County Superior Court Docket). This request for relief from the *Order of Discharge* was not brought within the one year time limit allowed for collateral attacks under RCW 10.73.090.

In a September 9, 2013, Superior Court Judge CARRIE RUNGE issued a letter opinion holding that the *Certificate of Discharge* was entered erroneously, as Mr. GABRIEL had not paid the ordered restitution. The Court recognized that Mr. GABRIEL'S payments were paid but that the Court Clerk/Administration first applied payments, wrongfully, to his fines, costs and assessments and this was the Superior Court's Administrations' error. Appendix #1. The Superior Court held that it was appropriate to grant the State's motion to vacate the *Certificate of Discharge* pursuant to CrR 7.8(a) and/or CrR 7.8(b)(4) or (5):

It is appropriate then to grant the State's motion to vacate the certificate of discharge entered in Mr. Gabriel's case. In my opinion, the court has the authority to grant this request pursuant to CrR 7.8(a) and/or CrR 7.8(b)(4) or (5).

Accordingly, the defendant's Motion to Strike Restitution is denied and the State's Motion to Vacate the Certificate and Order of Discharge is granted. Ms. Whitmire, I will sign the appropriate order when presented.

September 9, 2013 letter decision. Appendix #1.

#### IV. ARGUMENT.

##### A. THE STANDARD OF REVIEW UNDER CRR 7.8 - ABUSE OF DISCRETION.

The appellate court generally reviews a trial court's decision on a motion to vacate for abuse of discretion. *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000); *State v. Swan*, 114 Wn.2d 613, 642, 790 P.2d 610 (1990). A trial court abuses its discretion when it exercises discretion in a manner that is manifestly unreasonable or based upon untenable grounds. *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001). A decision is based on untenable grounds or made for untenable reasons when it was reached by applying the wrong legal standard. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008). A court abuses its discretion if its ruling is based on an erroneous view of the law. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

However, when a trial court bases its otherwise discretionary decision solely on application of a court rule or statute, the issue is one of law that the appellate court reviews de novo. *State v. Dearbone*, 125 Wn.2d 173, 179, 883 P.2d 303 (1994). Although the defense believes that the proper standard is *de novo* review because it involves the straight application of RCW 10.73.090, Appellant addresses the abuse of discretion standard in vacating judgments.

B. VACATING JUDGMENTS AND ORDERS OF DISCHARGE -  
TIME LIMITS.

The applicable Superior Court criminal rule to vacate a criminal judgment is CrR 7.8, which provides as follows:

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

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

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

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.6;

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

(4) The judgment is void; or

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

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

With respect to Mr. GABRIEL'S case, the motion to vacate was untimely - it was not brought within one year of the May 3, 2012 *Order of Discharge*. No petition or motion for collateral attack on a criminal judgment and sentence 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). Such is the case in Mr. GABRIEL'S case. The August 19, 2013 State motion to vacate missed the time limit by months. Moreover, the *Order of Discharge* was valid on its face and rendered by a court with competent jurisdiction. Thus, the Superior Court was statutorily barred from vacating the criminal order on discharge.

C. NO REASONS EXIST UNDER CRR 7.8 TO VACATE THE ORDER OF DISCHARGE.

The State did not meet its "high burden" for obtaining collateral relief in Mr. GABRIEL'S case. "Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment." *In re Coats*, 173 Wn.2d 123, 132-33, 267 P.3d 324 (2011) (citing *In re Cook*, 114 Wn.2d 802, 810-12, 792 P.2d 506 (1990)). As applied to defendants, this typically, this means a petitioner must show either that he/she was actually and substantially prejudiced by constitutional error or that his/her trial suffered from a fundamental defect of a nonconstitutional nature that inherently resulted in a complete miscarriage of justice. *In re Elmore*, 162 Wn.2d 236, 251, 172 P.3d 335 (2007); *Cook*, 114 Wn.2d at 810-12. Not only did the Benton County Prosecutor fail in meeting its burden, the Government did not even attempt to meet this standard.

Third, the trial court reviewed GABRIEL'S motion to vacate under CrR 7.8(a), (b)(4) and (5) - i.e., that there were errors, the judgment was void, or there "was other reason justifying relief from the operation of the judgment."

In this case the appellate court should find that the Superior Court abused its discretion because it rendered a manifestly unreasonable opinion when it vacated the discharge; there were no tenable grounds or reasons to vacate. *State v. Olmsted*, 70 Wn.2d 116, 119, 422 P.2d 312 (1966).<sup>2</sup> It must be remembered that the Court's Administration's office intentionally applied the monies paid into the court to financial obligations other than restitution and furnished the Superior Court with a record indicating that payment of all financial obligations were made. This was not a "mistake" or "error" caused by anything Mr. GABRIEL did - this

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<sup>2</sup> The defense anticipates an argument by the Government that the Clerk's intentional application of payments somehow leaves the victim in an unfair position without restitution. This argument was made in *State v. Chipman*, 176 Wn.App. 615, fnote. 4, 309 P.3d 669 (2013), a case where a restitution order was entered after the deadline established in RCW 9.94A.753(1). In rejecting the argument and the setting of restitution after the time limit of 180 days, the Court of Appeals explained alternative remedies to the victim:

We are aware that our ruling leaves Cooper without restitution. However, the legislature has determined in RCW 9.94A.753(1) that "when restitution is ordered" the trial court must determine the amount of restitution at sentencing or within 180 days of sentencing, and we must follow that directive. The legislature did allow for relief from this 180 – day rule for "good cause", but here the State failed to use this opportunity when it did not file a timely motion to extend the time period.

The same reasoning should be applied in Mr. Gabriel's case. The prosecutor has no excuse for not filing a motion to vacate within the time limits imposed by RCW 10.73.090.

was intentional misconduct by Superior Court Administration's/Clerk's office.

Thus, in *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971), a law professor and some students asked the court to allow inspection of 189 randomly selected mental illness files. The Court found that the order allowing the examination was unsupported by adequate reasons or tenable grounds of sufficient weight to overcome public and private interests in a legislatively assured confidentiality and privacy. In other words, it was an abuse of discretion to allow the order in view of the legislatively assured confidentiality and privacy in RCWs 71.02.160, 71.02.250.

Under CrR 7.8(a), a trial court may correct a clerical error at any time. A clerical error is an error that, when corrected, "correctly convey[s] the intention of the court based on other evidence." *State v. Davis*, 160 Wn.App. 471, 478, 248 P.3d 121 (2011). There is no claim that a "clerical" error was made in the *Order of Discharge*. To the contrary, it was exactly what the Court Administration/Clerk's Office intended to do. It also reflected correctly what the Clerk's Office was telling the court, that an *Order of Discharge* should be issued based on the Clerk's financial history submitted. The only mistake was the Clerk's office

misapplication of funds to financial obligations other than restitution. This was done purposely and deliberately. There was no "clerical" mistake.

Similarly, allegations brought under CrR 7.8(b)(4) must be brought within a "reasonable time" or at least within the one year under RCW 10.73.090. Filing a request to vacate months after the one year limitation is not reasonable. Even if Mr. GABRIEL'S case involved a void judgment, which it does not, the challenge was still untimely.

CrR 7.8(b)(5) permits a judgment to be vacated for "[a]ny other reason justifying relief." "A vacation under section (5) is limited to extraordinary circumstances not covered by any other section of the rule." *State v. Cortez*, 73 Wn.App. 838, 841–42, 871 P.2d 660 (1994) (citing *State v. Brand*, 120 Wn.2d 365, 369, 842 P.2d 470 (1992)). Final judgments " 'may be vacated or altered only in those limited circumstances where the interests of justice most urgently require.' " *Cortez*, 73 Wn.App. at 842, 871 P.2d 660 (quoting *State v. Shove*, 113 Wn.2d 83, 88, 776 P.2d 132 (1989)).

CrR 7.8(b)(5) does not apply when the circumstances alleged to justify the relief existed at the time the judgment was entered. *Cortez*, 73 Wn.App. at 842, 871 P.2d 660. Again, the

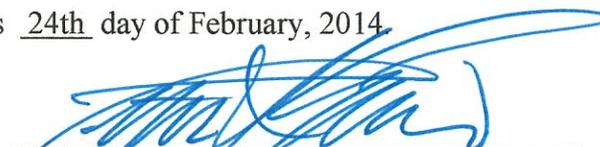
circumstances must be extraordinary - i.e., a trial judge should not vacate a conviction pursuant to CrR 7.8(b)(5) absent, "extraordinary circumstances not covered by any other section of the rule." *State v. Brand*, 120 Wash.2d 365, 369, 842 P.2d 470 (1992). "Extraordinary circumstances" must relate to " 'irregularities which are extraneous to the action of the court or go to the question of the regularity of its proceedings.' " *Shum v. Department of Labor & Indus.*, 63 Wn.App. 405, 408, 819 P.2d 399 (1991) (quoting *In re Marriage of Flannagan*, 42 Wn.App. 214, 221, 709 P.2d 1247 (1985), *review denied*, 105 Wn.2d 1005 (1986)). The Washington Supreme Court has said that a conviction should be vacated only in those limited circumstances, "where the interests of justice most urgently require." *State v. Shove*, 113 Wn.2d 83, 88, 776 P.2d 132 (1989).

Extraordinary circumstances do not exist in GABRIEL'S case. Mr. GABRIEL met his responsibilities and duties under the court's judgment and sentence and restitution orders. The Clerk's Office collected the financial obligations Mr. Gabriel paid and misapplied the monies. The Clerk's ineptness or malfeasance at the routine collection of financial obligations are not the "extraordinary circumstances" contemplated by CrR 7.8(b)(5).

## V. CONCLUSION

In conclusion, the Government's collateral attack on the criminal order of discharge had to be brought within one year under CrR 7.8 and RCW 10.73.090. The prosecutor did not do this and the Superior Court was statutorily barred from vacating its discharge order outside the one year time limit. Moreover, there was no "clerical error" or "mistake" under CrR 7.8 - the Clerk's Office intended to apply Mr. GABRIEL'S payments the way it did and indicated to the court that Mr. GABRIEL completed his financial obligations to the court supported by the payment schedule. The order was not void on its face and the "catchall" provision of CrR 7.8 (b)(5) does not apply in this case. For those reasons and arguments made above, the appellate should remand and order reinstatement of the discharge order.

DATED this 24th day of February, 2014.



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PETER T. CONNICK - WSBA #12560 for  
ROBERT THOMPSON - WSBA #13003  
Attorney for Appellant/Petitioner

# APPENDIX #1

Superior Court of the State of Washington  
for Benton and Franklin Counties  
7122 W. Okanogan Place, Building A, Kennewick, WA 99336

Judge  
Carrie L. Runge

Benton County Justice Center  
Franklin County Courthouse  
Telephone (509)736-3071  
Fax (509)736-3057

September 9, 2013

✓Mr. Randy Jameson  
Attorney at Law  
Armstrong, Klym, Waite, Atwood & Jameson, P.S.

Ms. Megan Whitmire  
Deputy Prosecuting Attorney  
Benton County Prosecutor's Office

*Re: State vs. Robert Alan Gabriel  
Benton County #04-1-01146-2*

Dear Counsel:

I have had the opportunity to finally review the above file in its entirety, the transcript from the July 27<sup>th</sup>, 2005 restitution hearing, and defendant's motion to strike restitution and the State's response to said motion.

The court file reflects that on February 16<sup>th</sup>, 2005, Mr. Gabriel pleaded guilty to Malicious Mischief in the First Degree. In the Statement of Defendant on Plea of Guilty at page 3, paragraph (g), indicates the following:

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

3 months concurrent to other cases, dismiss malicious mischief 2<sup>nd</sup> degree, pay restitution on dismissed case.

Mr. Gabriel's initials are located to the left of this particular paragraph. Sentencing was held on the same day. Restitution was left in a sum to be determined.

After this, numerous dates were set for a restitution hearing. On May 19, 2005, Judge Matheson made a finding that the defendant signed an agreement to pay restitution in an amount to be determined. This finding was apparently in regards to the dismissed charge. Thereafter, additional restitution hearings were scheduled, all of which were continued for one reason or the other.

On July 27, 2005, the restitution hearing went forward. Mr. Hugill was present on behalf of his client, Robert Gabriel. I noted that a Mr. Estep, unknown relationship to Mr. Gabriel, had called court

AKWAJ, P.S. RECEIVED

SEP 11 2013

administration to say that Mr. Gabriel was not well enough to come to court. Mr. Hugill had no information or message from his client. The court had no information from Mr. Gabriel. The victim, Manual Ursua, was present and had been present at numerous prior scheduled restitution hearings. Testimony was taken from Mr. Ursua. At the conclusion of the hearing, I noted that if Mr. Hugill heard from his client or came up with information from his client, that the matter could be reopened. See page 9 of the restitution hearing held on July 27, 2005.

On May 3, 2012, I signed a Certificate and Order of Discharge that had attached a CFHS (Case Financial History) showing that all legal financial obligations had been paid in full. Unfortunately, the restitution that had been ordered on July 27, 2005, was never entered into the State database that tracks legal financial obligations. See Affidavit of Megan Whitmire dated August 16, 2013.

*Issue: Whether the erroneous entry of a Certificate of Discharge deprives the Court of jurisdiction to collect restitution?*

An offender is entitled to a Certificate of Discharge when the offender has completed all requirements of the sentence, including any and all legal financial obligations. See RCW 9.94A.637. Additionally, pursuant to RCW 9.94A760(1), ...Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

Clearly, the certificate of discharge in this case was entered erroneously, as Mr. Gabriel had not paid the ordered restitution. Additionally, the legislature has determined that restitution shall be paid first before all other fines, costs, and assessments. Here, Mr. Gabriel's payments were paid first to his fines, costs and assessments. This was also done in error given that Mr. Gabriel was ordered to pay restitution.

It is appropriate then to grant the State's motion to vacate the certificate of discharge entered in Mr. Gabriel's case. In my opinion, the court has the authority to grant this request pursuant to CrR 7.8(a) and/or CrR 7.8(b)(4) or (5).

Accordingly, the defendant's Motion to Strike Restitution is denied and the State's Motion to Vacate the Certificate and Order of Discharge is granted. Ms. Whitmire, I will sign the appropriate order when presented.

Very truly yours,

  
Carrie Runge

# APPENDIX #2

JOSIE DELVIN  
BENTON COUNTY CLERK

MAY -3 2012 *J-2*  
FILED

Superior Court of Washington  
County of

State of Washington, Plaintiff,

vs.  
ROBERT ALAN GABRIEL,  
Defendant.

SID:  
If no SID, use DOB: 04-24-1962

Criminal Case No.: 04-1-01146-2  
Civil Case No.: \_\_\_\_\_

Certificate and Order of Discharge  
(CRORD)  
 and Order re Issuance of Separate  
No-Contact Order (CRORDN)

Clerks action required.

This matter came before the Court pursuant to RCW 9.94A.637. The court considered the petition and any supporting material submitted, and reviewed the relevant court records.

The court received notification from the county clerk that the defendant has paid all ordered legal financial obligations and finds that the defendant has provided adequate verification of completion of the requirements of the sentence, and there appears to be no reason why the court should not discharge the defendant. Therefore,

The court orders that this document be considered a satisfaction of judgment entered under this cause number and that the defendant be **discharged** from the confinement and supervision of the Secretary of the Department of Corrections.

The court orders that this discharge restores the defendant's civil rights not already restored by RCW 29A.08.520. This certificate of discharge:

- is not based on a finding of rehabilitation and does not restore the right to ship, transport, possess or receive firearms or ammunition.
- does not terminate any obligation to register as a sex or kidnapping offender.
- does not terminate any obligation to comply with a no-contact order that excludes or prohibits the defendant from having contact with a specified person or coming within a set distance of any specified location. Any no-contact order filed separately from the judgment and sentence remains in effect.

The defendant is subject to a no-contact order that was imposed as a part of the judgment and sentence in this case and was not filed separately. This certificate of discharge is valid and effective only upon entry of a separate civil no-contact order with terms and conditions identical to those imposed in the judgment and sentence in this case. The court orders the defendant to comply with the separate no-contact order reissued under a new cause number on this date or dated \_\_\_\_\_.

Dated: 5/3/12

Carrie Ringer  
Judge/Print Name

Presented by: \_\_\_\_\_

Approved for entry without further notice:

Defendant/Attorney for Defendant/WSBA No. \_\_\_\_\_

De 1081  
Deputy Prosecuting Attorney/WSBA No.

Cert. and Ord. of Discharge (CRORD, CRORDN) - Page 1 of 1  
WPF CR 08.0650 (7/2009) RCW 9.94A.637 (K)

CC: PA; JAIL; WSP; DEF

# APPENDIX #3

BENTON COUNTY SUPERIOR COURT  
7122 W OKANOGAN PL BLDG A  
KENNEWICK WA 99336

April 01, 2013 FINAL NOTICE

GABRIEL, ROBERT ALAN  
4204 W HOOD AVE  
KENNEWICK WA 993362612

RE: Case: 04-1-01146-2 S1 Judgment Date: 02/16/2005 Judgment At: \$7,550.01  
Balance Amount: \$5,637.51 Past Due Amount: \$285.00

BENTON COUNTY SUPERIOR COURT, OFFICE OF THE CLERK  
COLLECTION ENFORCEMENT DIVISION (509)735-8333 EXT 8025

RCW 9.94A.760(4), (10); 9.94A.634; 9.94A.737; 9.94A.740

The County Clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the Court. The offender is subject to penalties for non payment including jail time. Per the "Supervision Closure" provided to you by the Department of Corrections and the Judgment and Sentence, you were ordered to pay legal financial obligations to the County Clerk. WITHIN 30 DAYS FROM THE DATE OF THIS NOTICE YOU MUST PAY THE ABOVE BALANCE IN FULL OR MAKE ARRANGEMENTS FOR PAYMENT WITH THIS OFFICE. IF YOU DO NOT RESPOND TO THIS NOTICE WITHIN 30 DAYS THE CLERK'S OFFICE WILL ISSUE A BENCH WARRANT FOR YOUR ARREST WITHOUT FURTHER NOTICE OR REQUIRE YOU TO APPEAR BEFORE THE SUPERIOR COURT AND SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED WITH JAIL TIME. Personal checks are not accepted. Credit card payment may be made at [www.bentonclerk.com](http://www.bentonclerk.com) or at 1-800-701-8560. A \$100 annual collection assessment will be charged.

Sincerely,

DELVIN, JOSEPHINE X  
COUNTY CLERK - BENTON COUNTY SUPERIOR COURT

DELVIN, JOSEPHINE  
BENTON COUNTY CLERK, SUPERIOR

# APPENDIX #4

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

STATE OF WASHINGTON,  
  
Plaintiff,  
  
v.  
  
ROBERT ALAN GABRIEL,  
  
Defendant.

No. 04-1-01146-2

NOTE FOR MOTION DOCKET AND  
MOTION TO STRIKE RESTITUTION  
DUE TO LACK OF JURISDICTION

TO: JOSIE DELVIN, Clerk of the Superior Court, Andy Miller, Benton County  
Prosecuting Attorney, and Opposing Parties;

MOTION

Defendant, Robert Alan Gabriel, by and through his attorney Randy L. Jameson, Jr., of  
ARMSTRONG, KLYM, WAITE, ATWOOD & JAMESON, P.S., attorneys for Defendant,  
respectfully requests that a hearing be set to hear legal arguments on his motion to strike  
restitution due to the court lacking jurisdiction over the matter. This motion is based, among  
other things, on the fact that the Defendant was not present during a restitution hearing and more  
importantly the fact that the Defendant received a certficagte of discharge in the above captioned  
matter on May 3<sup>rd</sup>, 2012. Thus, pursuant to *State v. May*, 80 Wn. App. 711 (1996) and *State v.*

Note for Motion Docket and Motion  
To Strike Restitution - 1

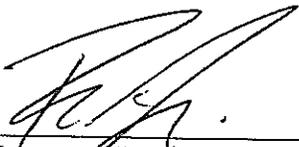
ARMSTRONG, KLYM, WAITE, ATWOOD & JAMESON, P.S.  
ATTORNEYS AT LAW  
SWIFT PROFESSIONAL CENTER  
SUITE A  
660 SWIFT BOULEVARD  
RICHLAND, WA 99352  
(509) 943-4681  
FAX (509) 946-3949

copy out to  
clerk  
5/1/13  
10

1 Johnson, 54 Wn. App. 491 (1989) the Court lacks jurisdiction to impose sanctions upon the  
2 Defendant including seeking restitution under cause number 04-1-01146-2. The Defendant  
3 further requests a special set on this matter so that the Court may set a briefing and oral argument  
4 schedule.

5  
6 Dated this 29<sup>th</sup> day of April, 2013.

7  
8  
9 Attorney for Defendant

10  
11 

12  
13 Randy L. Jameson, Jr., WSBA #30851  
14 **ARMSTRONG, KLYM, WAITE, ATWOOD & JAMESON, P.S.**  
Attorneys for Defendant

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Note for Motion Docket and Motion  
To Strike Restitution - 2

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**ARMSTRONG, KLYM, WAITE, ATWOOD & JAMESON, P.S.**  
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# APPENDIX #5

## Superior Court Case Summary

State v. Robert Gabriel

**Court:** Benton Superior Ct

**Case Number:** 04-1-01146-2

Sub	Docket Date	Docket Code	Docket Description	Misc Info
001	09-15-2004	INFORMATION	Information	
002	09-15-2004	MOTION FOR ARREST/DETENT PROB CAUSE	Motion For Arrest/detent Prob Cause	
003	09-15-2004	ORDER FOR WARRANT	Order For Warrant	
	09-15-2004	EX-PARTE ACTION WITH ORDER JDG0005	Ex-parte Action With Order Judge Robert G Swisher	
004	09-15-2004	WARRANT OF ARREST	Warrant Of Arrest Bail: \$5,000	
	09-15-2004	REQUEST ACTION	Request For Hearing Mal Mis 1	09-22-2004CM
		ACTION	Arraign\_____	
005	09-16-2004	SHERIFF'S RETURN WARRANT OF ARREST	Sheriff's Return Wa 09-15-04	
006	09-22-2004	ADVICE OF RIGHTS ACTION	Advice Of Rights Mal Mis 1	10-06-2004CM
		ACTION	Omnhrg\_____	
	09-22-2004	COMMENT ENTRY ACTION	Mal Mis 1	10-20-2004
		ACTION	Stahrg\_____	
	09-22-2004	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date Mal Mis 1	11-01-2004
		ACTION	Jtrial\_____	
007	09-22-2004	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release Bail: Pr	
008	09-22-2004	INITIAL ARRAIGNMENT JDG0001	Initial Arraignment Vanderschoor/mclaughlin/shaw	

009	10-06-2004	MOTION HEARING	Motion Hearing	
	10-06-2004	HEARING CONTINUED: UNSPECIFIED JDG0005	Hearing Continued: Unspecified Judge Robert G Swisher	10-13- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Omnhrg\_____	
010	10-13-2004	MOTION HEARING	Motion Hearing	
	10-13-2004	HEARING CONTINUED: UNSPECIFIED JDG0005	Hearing Continued: Unspecified Swisher/lang/pace	10-20- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Stahrg\omnhrg_____	
011	10-20-2004	MOTION HEARING	Motion Hearing	
	10-20-2004	HEARING CONTINUED: UNSPECIFIED JDG0004	Hearing Continued: Unspecified Judge Matheson/lang/weidner	10-27- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Stahrg\omnhrg_____	
012	10-27-2004	MOTION HEARING	Motion Hearing	
	10-27-2004	HEARING CONTINUED: UNSPECIFIED JDG0005	Hearing Continued: Unspecified Swisher/lang/sinclair	11-03- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Stahrg\omnhrg_____	
			Def Fta - Strike Td	
013	11-03-2004	MOTION HEARING	Motion Hearing	11-17-

		JDG0006	Judge Runge/adams/pace	2004CM
		ACTION	Mal Mis 1	
		ACTION	Omnhrg\_____	
	11-03-2004	COMMENT ENTRY ACTION	Mal Mis 1	12-15- 2004
		ACTION	Stahrg\_____	
	11-03-2004	COMMENT ENTRY ACTION	Mal Mis 1	12-27- 2004
		ACTION	Jtrial	
014	11-17-2004	OMNIBUS HEARING JDG0006	Omnibus Hearing Judge Runge/adams/weidner	12-15- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Stahrg\omnhrg (ongoing)\_____	
015	12-15-2004	MOTION HEARING	Motion Hearing	
	12-15-2004	HEARING CONTINUED: UNSPECIFIED JDG0007	Hearing Continued: Unspecified Mitchell/pelletier/pace	12-22- 2004CM
		ACTION	Mal Mis 1	
		ACTION	Stahrg\_____	
			State Ready	
016	12-22-2004	ORDER FOR CONTINUANCE: STIPULATED	Order For Continuance: Stipulated	
	12-22-2004	WAIVER OF SPEEDY TRIAL ACTION	Waiver Of Speedy Trial Mal Mis 1	01-19- 2005CM
		ACTION	Stahrg\_____	

	12-22-2004	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date -reset Jtrial\_____	01-31- 2005
		ACTION	Mal Mis 1	
017	12-22-2004	MOTION HEARING JDG0007	Motion Hearing Judge Mitchell/lang/shaw	
018	01-19-2005	MOTION HEARING JDG0001	Motion Hearing Vanderschoor/mclaughlin/shaw	
			Fta - Bw Ordered	
019	01-19-2005	BENCH WARRANT	Bench Warrant - Oral Order Bail: None	
020	01-24-2005	ORDER ESTABLISHING COND. OF RELEASE	Order Establishing Cond. Of Release Bail: \$5,000.00	
021	01-24-2005	WARRANT IDENTIFICATION HEARING JDG0005	Warrant Identification Hearing Judge Swisher/lang/pace	01-26- 2005CM
		ACTION	Mal Mis 1	
		ACTION	Mthrg\reset Dates_____	
022	01-26-2005	SHERIFF'S RETURN ON A BENCH WARRANT	Sheriff's Return On A Bw 01-19-05	
023	01-26-2005	ADVICE OF RIGHTS ACTION	Advice Of Rights Stahrg\_____	02-16- 2005CM
		ACTION	Mal Mis 1	
	01-26-2005	NOTICE OF TRIAL DATE ACTION	Notice Of Trial Date - Reset Mal Mis 1	02-28- 2005
		ACTION	Jtrial	
024	01-26-2005	MOTION HEARING JDG0005	Motion Hearing Judge Swisher/pelletier/pace	

025	02-16-2005	STATEMENT OF DEFENDANT, PLEA GUILTY	Statement Of Defendant, plea Guilty	
026	02-16-2005	JUDGMENT AND SENTENCE	Judgment And Sentence	
027	02-16-2005	GUILTY PLEA AND SENTENCING HEARING ACTION	Guilty Plea And Sentencing Hearing Mal Mis 1	03-02-2005CM
		JDG0007	Judge Mitchell/pelletier/shaw	
		ACTION	Mthrg\rest Hrg_____	
028	02-16-2005	WARRANT OF COMMITMENT	Warrant Of Commitment	
029	03-02-2005	MOTION HEARING	Motion Hearing	
	03-02-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg @ 1:30_____	03-09-2005CM
		ACTION	Mal Mis 1	
		JDG0002	Yule/king/anderson	
030	03-09-2005	MOTION HEARING	Motion Hearing	
	03-09-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg @ 1:30_____	03-16-2005CM
		JDG0004	Judge Matheson/king/pace	
		ACTION	Mal Mis 1	
031	03-16-2005	MOTION HEARING	Motion Hearing	
	03-16-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Judge Matheson/king/shaw	03-30-2005CM
		JDG0004		

		ACTION	Mal Mis 1	
		ACTION	Mthrg\rest Hrg @_1:30_____	
032	03-30-2005	MOTION HEARING	Motion Hearing	
	03-30-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg_____	04-06- 2005CM
		ACTION	Mal Mis 1	
		JDG0004	Matheson/pelletier/sinclair	
033	04-06-2005	MOTION HEARING	Motion Hearing	
	04-06-2005	HEARING CONTINUED: UNSPECIFIED JDG0007	Hearing Continued: Unspecified Judge Mitchell/king/weidner	04-15- 2005CM
		ACTION	Mal Mis 1	
		ACTION	Mthrg\rest Hrg_____	
			Cnsl To Get Spec Set Time From Adm	
034	04-15-2005	MOTION HEARING	Motion Hearing	
	04-15-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg_____	05-11- 2005CM
		ACTION	Mal Mis 1	
		JDG0007	Judge Mitchell/pelletier/sinclair	
035	05-11-2005	MOTION HEARING	Motion Hearing	
	05-11-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg\**1:30**_____	05-19- 2005CM
		ACTION	Mal Mis 1	

		JDG0006	Judge Runge/king/shaw	
036	05-19-2005	MOTION HEARING JDG0004	Motion Hearing Judge Matheson/king/shaw	
			Def To Pay Restitution Amount Tbd	
037	06-08-2005	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Mal Mis 1	06-29- 2005CM
		ACTION	Mthrg\rest Hrg @ 1:30_____	
038	06-29-2005	MOTION HEARING	Motion Hearing	
	06-29-2005	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Mthrg\rest Hrg__1:30_____	07-06- 2005CM
		ACTION	Mal Mis 1	
		JDG0005	Judge Swisher/lang/weidner	
039	07-06-2005	MOTION HEARING	Motion Hearing	
	07-06-2005	HEARING CONTINUED: UNSPECIFIED JDG0001	Hearing Continued: Unspecified Judge Vanderschoor/lang/shaw	07-20- 2005CM
		ACTION	Mal Mis 1	
		ACTION	Mthrg\rest Hrg__@_8:30_____	
040	07-20-2005	MOTION HEARING JDG0007	Motion Hearing Judge Mitchell/nicholson/weidner	07-27- 2005TR
		ACTION	Mal Mis 1	
		ACTION	Mthrg\rest Hrg_____	
		ACTION	*special Set @ 8:30 A.m.*	
041	07-27-2005	WITNESS RECORD	Witness Record	
042	07-27-2005	EXHIBIT LIST	Exhibit List	

043	07-27-2005	ORDER SETTING RESTITUTION	Order Setting Restitution
044	07-27-2005	MOTION HEARING JDG0006	Motion Hearing Runge/king/anderson
045	08-03-2005	COST BILL	Cost Bill-c\c Crt Admin
	08-03-2005	EX-PARTE ACTION WITH ORDER JDG0006	Ex-parte Action With Order Judge Carrie L. Runge
046	09-06-2007	AGREEMENT	Payment Agreement Re: Lfo's
047	04-01-2008	ORDER RE: EXHIBITS	Order Re: Exhibits Release/destroy
	04-01-2008	EX-PARTE ACTION WITH ORDER JDG0005	Ex-parte Action With Order Judge Robert G Swisher
048	11-01-2011	ORDER WAIVING LFO INTEREST	Order Waiving Lfo Interest
	11-01-2011	ORDER OF DISMISSAL	Order Of Dismissal Show Cause
	11-01-2011	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Vic L Vanderschoor
049	05-03-2012	CERTIFICATE AND ORDER OF DISCHARGE	Certificate And Order Of Discharge
	05-03-2012	ORDER RESTORING VOTING RIGHTS	Order Restoring Voting Rights
	05-03-2012	FINAL DISCHRG RESTORING CIVIL RIGHT	Final Dischrg Restoring Civil Right
	05-03-2012	EX-PARTE ACTION WITH ORDER JDG0006	Ex-parte Action With Order Judge Carrie L. Runge
050	05-01-2013	NOTE FOR MOTION DOCKET	Note For Motion Docket
	05-01-2013	MOTION	Motion To Strike Restitution Due To Lack Of Jurisdiction

	05-01-2013	COMMENT ENTRY	Randy Jameson Filed Motion-no Noa On File-tld Randy Needs To Get Copy  Wants To Resubmitt Paperwork W/lfo  Docket Date Included-he Said He  Would Notify Admin  To Admin To Special Set Unless He	
051	05-02-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Jameson Mal Mis 1	05-23- 2013LF
		ACTION	Mthrg/mt Strike Restitution	
052	05-21-2013	EXHIBITS DESTROYED	Exhibits Destroyed	
053	05-23-2013	HEARING CONTINUED: UNSPECIFIED ACTION	Hearing Continued: Unspecified Show Cause/lfo	06-13- 2013LF
		COM0003	Commissioner Jerri Potts	
		CTR0003	Court Reporter Pat Adams-sxd	
		ACTION	Mal Misc 1	
054	06-11-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Jameson Mal Misc 1	08-16- 2013
		ACTION	Mthrg/mt Strike Restitution	
055	06-13-2013	HEARING STRICKEN: IN COURT OTHER COM0003	Hearing Stricken: In Court Other Commissioner Jerri Potts	
		CTR0004	Court Reporter Joe King-sxd	
056	08-06-2013	MOTION	Motion To Strike Special Setting	
057	08-06-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Jameson Mm1	08-15- 2013LF
		ACTION	Show Cause/lfo/def Motion	
059	08-15-2013	HEARING STRICKEN: IN COURT OTHER	Hearing Stricken: In Court Other Commissioner Jerri Potts	

		COM0003		
		CTR0002	Court Reporter Renee Munoz-sxd	
058	08-19-2013	RESPONSE	Response To Deft Mt To Strike Restitution And Vacate Cert/ord Of Discharge	
060	08-21-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Whitmire Mal Mis 1	08-29- 2013C2
		ACTION	Mthrg/deft Mt Strike Restitut *clr*	
061	08-29-2013	MOTION HEARING JDG0006	Motion Hearing Judge Carrie L. Runge/adams/trc	
062	09-10-2013	LETTER	Letter Fr Judge Runge Re Ruling	
063	10-03-2013	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket - Whitmire Mthrg/entry Vacate Order Discharge	10-21- 2013
		ACTION	Mal Mis 1	
064	10-15-2013	NOTE FOR MOTION DOCKET ACTION	Note For Mot Dock -whitmire -amnd Mthrg/entry Vac Ord Dischr -clr	10-22- 2013TR
		ACTION	Mal Mis 1	
065	10-22-2013	ORDER VACATING	Ord Vacating Cert/ord Of Discharge	
066	10-22-2013	MOTION HEARING JDG0006	Motion Hearing Judge Carrie L. Runge/adams/trc	
067	11-04-2013	ORD TO APPEAR FAIL TO FOLL SCHEDULE ACTION	Ord To Appear And Produce Mal Misc 1	11-14- 2013LF
		ACTION	Show Cause/lfo	
	11-04-2013	EX-PARTE ACTION WITH ORDER JDG0001	Ex-parte Action With Order Judge Vic L Vanderschoor	
068	11-14-2013	MOTION HEARING COM0001 CTR0005	Motion Hearing Commissioner Jacqueline I. Stam Court Reporter Lisa Lang-sxd Fta-bw	
069	11-14-2013	BENCH WARRANT ISSUED - COPY FILED	Bench Warrant Issued Bail: \$500 Cash Only	
	11-19-2013	FILING FEE RECEIVED	Filing Fee Received Rcpt# 02110	290.00
070	11-19-2013	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
071	11-21-2013	TRANSMITTAL LETTER - COPY FILED	Trans Ltr/e-file/coa/#070	
072	12-02-2013	ORDER QUASHING BENCH WARRANT	Order Quashing Bench Warrant	
	12-02-2013	EX-PARTE ACTION	Ex-parte Action With Order	

		WITH ORDER JDG0001	Judge Vic L Vanderschoor
073	12-04-2013	SHERIFF'S RETURN ON A BENCH WARRANT	Sheriff's Return On Bw - 11-14-13
074	12-16-2013	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
075	12-18-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
076	12-19-2013	INVOICE VOUCHER	Invc Vchr/atty Thompson/#075 Prep 23.00 Bates 11.50
	12-19-2013	LETTER	Designation Cover Letter
077	12-19-2013	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings 07-27-2005/1 Vol/ King
078	12-19-2013	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted/coa/#077
079	12-19-2013	INVOICE VOUCHER	Invc Vchr/postage/atty Thompson #077/ 2.18
	12-30-2013	COMMENT ENTRY	Postage Received/rcpt#11730/2.18
080	12-31-2013	LETTER	Verbatim Cover Ltr/coa/#077
	01-02-2014	CLERK'S PAPERS - FEE RECEIVED	Fee Received Prep & Bates 34.50
081	01-02-2014	TRANSMITTAL LETTER - COPY FILED	Trans Ltr/e-file/coa/# 075