

NO. 338134
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

V.

Patrick L. Rhynard,
Appellant.

APPELLANT'S BRIEF

Patrick Rhynard
#853584
Coyote Ridge Correction Center
P.O. Box 769
Connell, WA 99326

Filed
Washington State Supreme Court

MAR - 2 2015

Received Ronald R. Carpenter
Washington State Supreme Court Clerk

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COA # 338134

SEP 10 2014

Ronald R. Carpenter
Clerk

Appellant's Opening Brief

THE SUPREME COURT OF WASHINGTON

Patrick L. Rhynard,
Petitioner,
v.
State of Washington,
Respondent

NO: 12-1-01213-3
MOTION FOR
DIRECT REVIEW
(RAP 4.2 a, 2, 3)
(Appellant's Opening Brief)

A. IDENTITY

1. COMES NOW Patrick L. Rhynard,
petitioner, prose for Direct Review of
a Superior Court Decision, specifically
the order of denial dated and signed
September 3, 2014. SEE APPENDIX A

2. The Superior Court decision in
question, is Unconstitutional (RAP 4.2
a, 2) and conflicts with both

Appellate and Supreme Court decisions (RAP 4.2 a, 3). Thereby Rhynard asserts it merits a Direct Review.

B. RELIEF SOUGHT

Rhynard prays this court to vacate judgement with prejudice and consider relieving him of his duty to register, alleging, his juvenile adjudication of Indecent Liberties has been overtly used by the Benton County Prosecution to falsely imprison him.

C. FACTS

1. Well established Washington State and Federal Authorities provide, that an adjudication of juvenile delinquency is not to be construed as a conviction of crime or felony.

2. Rhynard was adjudicated of the juvenile OFFENSE described as Indecent Liberties in September of 1999. Thereby it is not a felony sex offense. SEE APPENDIX B

3. Rhynard involuntarily and Unconstitutionally pled guilty to Felony Failure to Register on June 6, 2013 and recieved an unconstituted sentence of 43 months prison and 36 months community custody. SEE APPENDIX D

4. Contrary to the State's provided order of denial, Rhynard motioned for a modification of sentence and was denied July 23, 2014. SEE APPENDIX A, and E.

5. Rhynard motioned to have the judgement for cause number 12-1-01213-3 Felony Failure to Register vacated, basis being, it is facially invalid and unconstitutional

as applied to him. The State failed to enter response and, Rhynard was denied by the Honorable Robert Swisher on September 3, 2014 complements of a ludicrous and unprofessional order prepared by Deputy Prosecuting Attorney Terry J. Bloor. SEE APPENDIX A, and C.

6. As evidenced in *State v. Kuhlman* (2006) 135 Wash. App. 527, 144 P.3d 1214. Both the Honorable Robert Swisher and, Deputy Prosecuting Attorney Terry J. Bloor have recognized that the Statutory Maximum sentence a juvenile sex offender can receive for a failure to register is 90 days, basis being, it is a "gross misdemeanor" as provided by Washington State Law. Thereby the proceedings and ultimate denial Rhynard has endured are nefarious and unconstitutional on behalf of

the adverse parties.

D. ARGUMENT and GROUNDS

1. An adjudication of juvenile delinquency is neither a felony nor a misdemeanor but a civil determination of status (United States v. Doe, 53 F.3d 1081, @1083, (C.A.9 (Wash) 1995).

2. The judgement in question not only violates Washington State and Federal Law, but is repugnant to the Fifth Amendments due process clause, the Sixth Amendments provision of effective assistance of counsel, the Eighth Amendments prohibition on cruel and unusual punishment and, the Fourteenth Amendments guarantee of the equal protection of the laws

3. RCW 13.04.011(1) states - "Adjudication" has the same meaning as "conviction"

in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW.

4. RCW 13.04.240 states - An order of court adjudging a child, a juvenile offender, or dependent under the provisions of this chapter shall in no case be deemed a conviction of crime.

5. RCW 13.40.240 states - All references to juvenile delinquents or juvenile delinquency in other chapters of the RCW shall be construed as meaning juvenile offenders or the commitment of an OFFENSE by juveniles as defined in this chapter

6. RCW 13.04.011(3) states, "Juvenile offender" and "Juvenile offense" have the meaning ascribed in RCW 13.40.020.

7. RCW 13.40.020 (20) states - "Offense" means an act designated a violation or a crime if committed by an adult.....

8. RCW 13.40.020 (32) states - "Sex offense" means an OFFENSE defined as a sex offense in RCW 9.94A.030.

9. RCW 29A.04.079 states - a juvenile adjudication pursuant to chapter 13.40 RCW is not an "infamous crime".....

10. In State v. Tuck it was held that a juvenile who had been adjudicated of first degree child rape couldn't be found guilty of "Felony" Failure to Register, but could be found guilty of a "gross misdemeanor"! The court holding that a juvenile adjudication is not a crime, but civil adjudication. (38 A.L.R 6TH, State v. Tuck, 127 Wash. App. 1008, 2005 WL 950688,

review denied 156 Wash. 2d 1006, 132 P.3d 147 (2006).

11. In *State v. Michaelson*, the Washington State Supreme Court held that, "a juvenile has not committed a crime, including a "felony," when he has committed an offense." (*State v. Michaelson*, 124 Wash. 2d 364, 878 P.2d 1206 (1994)).

12. Referencing *In re Frederick*, the Washington State Supreme Court held, "Under § 13.40.020 which defines an offense as an act designated a crime if committed by an adult, when a juvenile commits an offense, he has not committed a crime and, therefore, he has not committed a felony." (*In re Frederick*, 93 Wash. 2d 28, 604 P.2d 953 (1980))

13. In Reference to *In re Weaver*,

it was held that, a "Juvenile offense is not a felony." (In re Weaver, 84 Wash. App. 290, 929 P.2d 445 (1996))

14. In State v. Cheatham it was held that, "Under the Juvenile Justice Act, a juvenile cannot be convicted of crime or felony." (State v. Cheatham, 80 Wash. App. 269, 908 P.2d 381 (1996))

15. In State v. J.H. it was held that, "Under the juvenile code, an adjudication does not constitute conviction of a crime.... Thus, an act which would be a crime if committed by an adult is not a crime, and thus not a felony, if committed by a juvenile." (State v. J.H., 96 Wn. App. 167, 978 P.2d 1121, @1125 (1999))

16. U.S.C. 18§ 5031 states - For the purposes of this section a "juvenile" is a person who has not attained his eighteenth birthday.... "juvenile

delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult....

17. In *United States v. Caniff* it was held that, "no criminal prosecution is instituted against the young person.... and the ultimate adjudication is not a criminal conviction." (*United States v. Caniff*, 521 F.2d 565, @ 569 (C.A.2 (N.Y.) 1975)

18. In *United States v. Hill* it was held that, "an adjudication of delinquency.... is a determination of status and, not a conviction of crime." (*United States v. Hill*, 538 F.2d 1072, @ 1074 (4th Cir. 1976)

19. In *United States v. Kinsman* it was held that, "Not only is § 5031

not a felony.... it does not describe a crime of any kind." (United States v. Kinsman, 195 F. Supp. 271, @ 273 (S.D. Cal. 1961))

20. In Thomas v. United States it was held that, "the primary function of juvenile courts.... is not conviction or punishment for crime, but crime prevention and delinquency rehabilitation. It would be a serious breach of public faith, therefore, to permit these informal and presumably beneficent procedures to become the basis for criminal records, which could be used to harass a person throughout his life." (Thomas v. United States, 121 F.2d 905, @ 907-909 (D.C. Cir. 1941))

21. In HU YAU LEUNG v. Soscia it was held that, "a juvenile court adjudication is not a crime and should not be viewed to

indicate criminality for any purpose." (HU YAU LEUNG v. Soscia, 500 F. Supp. 1382, @1388 (E.D.N.Y. 1980).

E. CONCLUSION

In regard to the aforementioned it has been well established and prima facie that, Rhynard's juvenile adjudication for Indecent Liberties can in no way be construed to constitute a felony, thereby, the judgement in question for Felony Failure to Register is erroneous, unconstitutional and, invalid. By these merits alone the Relief that Rhynard requests should be inevitably granted.

Concluded futhermore, in good faith.

Respectfully submitted this 7TH day of September, 2014.

Patrick L. Rhynard
Petitioner, prose

Patrick L. Rhynard
853584 cell GB20
Coyote Ridge Corr. Center
P.O. Box 769
Connell, wa. 99324

STATE OF WASHINGTON)

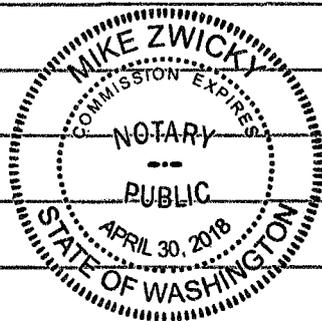
) SS

COUNTY OF FRANKLIN)

I, Patrick L. Rhynard, being first duly sworn, on oath, depose and state that I have read the foregoing petition/motion, know the contents thereof, and verily believe the same to be true.

Patrick L. Rhynard
Petitioner, prose

SUBSCRIBED AND SWORN to before me this 7TH day of September, 2014



[Signature]
Notary Public in and for the
State of Washington
Commission Expires: April 30 2018

APPENDIX A

12-1-01213-3

(1 page)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
 IN AND FOR THE COUNTY OF BENTON/FRANKLIN
 JUVENILE DIVISION

1250
 # 99-3744

STATE OF WASHINGTON, Plaintiff, vs. <u>Patrick Levi Rhynard</u> Respondent.	NO. <u>99-8-00645-2</u> ORDER OF DISPOSITION JUVENILE OFFENDER
--	--

COPY

I. HEARING

- 1.1 The above named juvenile was found guilty by plea the Court of the offense(s) of: Independent Libel on the 25th day of August, 1999.
- 1.2 A dispositional hearing was held on the 24th day of September, 1999.
- 1.3 Persons appearing at the hearing were:
 Respondent Respondent's Attorney (Deputy) Prosecuting Attorney Probation Counselor
 Parent(s)/Guardian Other: _____
- 1.4 Testimony was taken from: _____

II. FINDINGS

- 2.1 The juvenile is a: minor/first middle serious offender; and an offender who has declined to enter into a diversion agreement.
- 2.2 No mitigating factors exist in this case.
 The following mitigating factor's exist:
 The juvenile's conduct neither caused nor threatened serious bodily injury or the juvenile did not contemplate that his/her conduct would cause or threaten serious bodily injury.
 The juvenile acted under strong and immediate provocation.
 The juvenile was suffering from a mental or physical condition that significantly reduced his/her culpability for the offense though failing to establish a defense.
 Prior to his/her detection the juvenile compensated or made a good faith attempt to compensate the victim for the injury/loss sustained.
 There has been at least one year between the juvenile's current offense and any prior offense.
 Other: _____
- 2.3 No aggravating factors exist in this case.
 The following aggravating factors exist in this case:
 In the commission of the offense, or in flight therefrom, the juvenile inflicted or attempted to inflict serious bodily injury to another.
 The offense was committed in an especially heinous, cruel, or depraved manner.
 The victim or victims were particularly vulnerable.
 The juvenile has recent criminal history or has failed to comply with conditions of a recent dispositional order or diversion agreement.
 The current offense included a finding of sexual motivation pursuant to RCW 9.94A.127.
 The juvenile was the leader of a criminal enterprise involving several persons.
 There are other complaints which have resulted in diversion or a finding or plea of guilty but which are not included as criminal history.
 Other: _____

BENTON COUNTY
 CLERK'S DEPT.
 99 SEP 28 AM 10:55

- 2.4 Restitution is owed and is to be distributed as follows (see below); not owed; to be determined at a later hearing;
 Other: _____
- | NAME | ADDRESS | AMOUNT |
|-------|---------|----------|
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |

- 2.5 The conduct in counts _____ is the same course of conduct.
- 2.6 The Court finds that the respondent possessed a firearm in violation of RCW 9.41.040(1)(e), or the respondent or an accomplice was armed with a firearm under RCW 13.40.
- 2.7 A disposition within the standard range for this offense would effectuate a manifest injustice (see attached findings/conclusions).
- 2.8 OTHER: _____

III. ORDER

- IT IS HEREBY ORDERED THAT:
- 3.1 **COMMUNITY SUPERVISION:** The juvenile shall serve a term of community supervision for a period of 24 months. Said supervision shall be served concurrent/ consecutive (circle one) to any previous court orders and shall include the following:
 _____ hours of community service, to be completed by _____.
 School: regular school attendance or vocational program, and comply with all rules regulations and expectations thereof.
 Employment: maintain regular employment and provide proof of such employment as directed by probation counselor.
 Curfew: 8 p.m. weekdays (Sunday-Thursday) 10 p.m./a.m. weekends (Friday and Saturday).
 No illegal use of alcohol or drugs.
 No contact with: _____
 Travel limitations: _____
 Gang conditions: subject to personal search upon reasonable suspicion of a probation violation; no contact with known gang members; no possession of gang paraphernalia.
 Counseling/Information classes: _____
 Reside in a residence approved by probation counselor and keep him/her advised of the juvenile's current address and phone number.
 Report to the probation counselor as directed and follow any other terms as set by the probation counselor.
 Other: _____

3.2 **CONFINEMENT:** The juvenile shall serve confinement as follows:
 ~~30~~ days to begin 9-24-99, credit for _____ day(s) served, to be served as follows:
 Firearm Enhancement: The above ordered period of confinement includes 10 days pursuant to RCW 13.40.193.
 ~~15-36~~ weeks and _____ days commitment to a DSHS/JRA facility, credit for _____ days served.
 Firearm Enhancement: The above ordered period of confinement includes 10/90 days pursuant to RCW 13.40.193.
 Option B: The confinement period above is imposed and suspended upon adherence to the conditions set forth in this order and upon completion of _____ days in detention, credit for _____ days served, to be served as follows: _____
 SSODA Option: The confinement period above is imposed and suspended subject to the findings and conditions in Appendix B.
 Other: _____

3.3 **MONETARY ASSESSMENTS:** The juvenile shall pay the following monetary assessments:
 Restitution is ordered in the amount of \$ _____ to be paid in full by _____ and to be disbursed at intervals/times deemed appropriate by the Clerk.
 Restitution is owed jointly and severally with the following persons, as ordered and adjudicated: _____

Jurisdiction is extended for collection of restitution until such restitution is paid or from a period of ten years from the date of the restitution order, not to exceed the juvenile's 28th birthday.

- \$ 100 Victim's Compensation Fund Assessment.
- \$ 40 Attorney's fees.
- \$ _____ Fine

Jurisdiction is extended for collection of monetary assessments until such restitution is paid or from a period of ten years from the date of the restitution order, not to exceed the juvenile's 28th birthday.

ALL MONETARY ASSESSMENTS ARE PAYABLE TO THE:

- Benton County Clerk 735-8388
Benton County Justice Center
7320 W. Quinault Ave. Kennewick, WA 99336
- Franklin County Clerk 545-3525
Franklin County Courthouse
1016 N. 4th, Pasco, WA 99301

3.4 **OTHER:** The respondent is hereby advised of the following collateral consequences required by law pursuant to this adjudication:
 Revocation or suspension of the respondent's privilege to drive.
 Mandatory blood testing for the Human Immunodeficiency (AIDS) Virus.
 Mandatory blood testing for DNA identification analysis.
 Immediate surrender of any concealed pistol license, and may not possess, own, or have under his/her control any firearm unless the right to do so is restored by a court of record.
 Registration with the sheriff of Benton County where the respondent resides, within twenty-four hours of release from confinement or immediately upon completion of being sentenced if no confinement is ordered. If the respondent does not now reside in Washington, he/she must register within 30 days after establishing residence in this state. If the respondent later moves within the county of registration, he/she must notify the sheriff within 10 days of establishing the new residence. If the respondent later moves to another county, the respondent must notify the sheriff of EACH county.

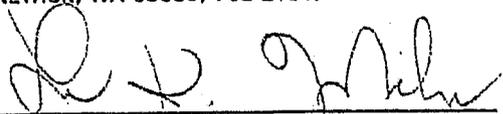
3.5 GENERAL

Medical and dental- The agency or person with whom the juvenile is placed is authorized to consent to medical, psychological, psychiatric and dental care as professionally prescribed except for induced abortions. This authority extends to immunization as required of students in public schools.

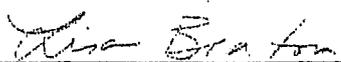
Temporary release from confinement- The probation/supervision unit and/or the detention service unit shall have the authority to release the respondent from confinement for temporary periods of time so long as the respondent is in the physical custody of Juvenile Court Staff.

THE RESPONDENT IS REQUIRED TO MAKE CONTACT WITH THE PROBATION UNIT WITHIN TWO WEEKS OF THE DATE OF THIS ORDER AT THE BENTON/FRANKLIN JUVENILE JUSTICE CENTER, 5606 W. CANAL PL., KENNEWICK, WA 99336, 783-2151.

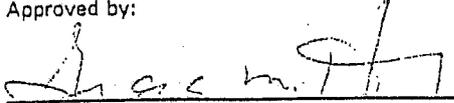
DATED this 24th day of September, 19 99.



 JUDGE/COURT COMMISSIONER

Presented by:


 (Deputy) Prosecuting Attorney

Approved by:


 Attorney for the Respondent

DATED: _____
 Fingerprint attested by: _____

 (Deputy Clerk)

State v. Patrick Levi Rhynard
 Cause No. 99-9-60645-2

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON/FRANKLIN
JUVENILE DIVISION

THE STATE OF WASHINGTON

Plaintiff,

vs.

Patrick Levi Rhynard
Respondent.

Juvenile Division

No. 99-8-00645-2

ORDER OF DISPOSITION
APPENDIX B

SPECIAL SEX OFFENDER DISPOSITION ALTERNATIVE COMMUNITY SUPERVISION REQUIREMENTS

I. The Respondent shall abide by all court orders as specified in the Order of Disposition dated 9-24-99.

II. The Respondent shall abide by the following requirements of community supervision:

- A. Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not-to-exceed the standard range of confinement for that offense. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change.

The Respondent shall attend group counseling at per Darryl Banks

The Respondent shall attend individual counseling with per Darryl Banks

The Respondent shall submit to sexual history and monitoring polygraphs for treatment and supervision purposes, as arranged by Sex Offender Treatment Coordinator.

- B. The Respondent will report to the court and a probation counselor.

The Respondent shall report weekly in person to the assigned probation counselor, or as directed by the assigned probation counselor.

The Respondent will cooperate with the assigned sexual offender monitor person.

- C. The Respondent shall devote time to a specific education, employment or occupation.

The Respondent shall regularly attend and comply with the expectations of a specific educational program.

or

The Respondent shall maintain regular employment or be actively seeking employment.

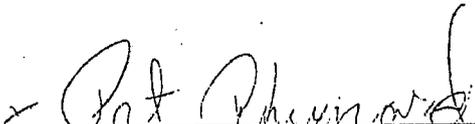
- D. The Respondent must remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offenders address, education program, or employment.

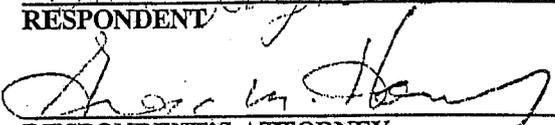
The Respondent will remain in the care, control, and custody of per Darryl Banks
at _____

The Respondent shall not leave Benton-Franklin Counties without prior approval of his/her probation counselor.

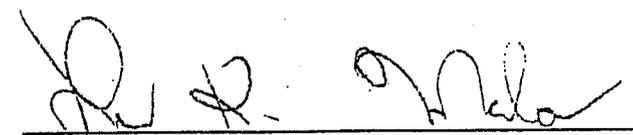
E. The Respondent will comply with the following conditions:

1. Respondent shall have no contact with children 10 years or younger without constant visual supervision by an adult who has knowledge of the Respondent's offense.
2. Respondent shall have no contact with youth three (3) years their junior unless a supervision plan has been approved by the Respondent's probation counselor.
3. Respondent shall have no contact with the victim or victim's family, unless approved by the victim's therapist, the Respondent's therapist, and the assigned Probation Counselor has approved a supervision plan.
4. Respondent will submit to HIV, and DNA testing as required by RCW's 70.24.340 and 43.43.754.
5. Respondent will have no violations of Local, County, State, or Federal Laws or Ordinances.
6. The Respondent shall not use or have in possession any pornographic material. Pornography will be defined by Respondent's therapist.
7. The Respondent will participate in treatment activities which include verbal participation and written assignments. Respondent's therapist will make the decision regarding non-participation.
8. The Respondent shall register as a sexual offender pursuant to RCW 9A.44.130 with the sheriff of the county of residence.
9. The Respondent shall not use or possess drugs or alcohol.
10. The Respondent shall submit to a urinalysis test upon the request of probation counselor.


RESPONDENT


RESPONDENT'S ATTORNEY


PROSECUTOR


JUDGE/COURT COMMISSIONER

9-24-99
DATE

APPENDIX C

12-1-01213-3

(12 pages)

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

Patrick L. Rhynard,

Accused,

v.

State of Washington,

Respondent.

NO: 12-1-01213-3

Motion to Vacate

Judgement

(CrR 7.8(b)(3)(4))

(RAP 7.2(e))

A. TIMELINESS

This motion is not time-barred, by reasons, the judgement is facially invalid pursuant to RCW 10.73.050(1), and the judgement and sentence were unconstitutionally imposed pursuant to RCW 10.73.100 (2).

B. IDENTITY

1. Rhynard pled guilty to "Felony" Failure to Register RCW 9A.44.132(1)(b) and was sentenced to 43 months prison 36 months community custody. The prison sentence is still in the process of being served.

2. The Judge who imposed sentence was Vic L. Vanderschoor.

3. The State was represented by Terry J. Bloor, and defense counsel was Gary Metro.

C. GROUNDS

1. Rhynard's conviction should be vacated and he should be released, for the following reasons.

2. Rhynard was unlawfully charged with the crime "Felony" Failure to Register RCW 9A.44.132(1)(b), RCW 13.40.020(20)(32) provides that his juvenile adjudication for Indecent

Liberties is not a "felony" but rather an "offense."

3. As evidenced in State v. Kuhlman the Benton County Prosecuting Attorneys Office clearly understands the difference between an "adjudication" and a "felony." (State v. Kuhlman, (2006), 135 Wash. App. 527, 144 P.3d 1214.)

4. RCW 9A.44.132(2) unambiguously provides that a failure to register for anything other than a "felony" sex offense would constitute a "gross misdemeanor."

5. Rhynard's guilty plea was involuntary, on the basis, he was misled into believing "Felony" Failure to Register was constituted. Thereby his guilty plea is null and, not legally binding in respect to Washington State Law, Fifth, Sixth, and Fourteenth Amendments.

D. ARGUMENT I

1. In *United States v. Juvenile Male*, the retroactive application of the Sex Offender Registration and Notifications Act (SORNA) to an earlier adjudicated juvenile was punitive, and thus it violated the Ex Post Facto clause. In retrospect Justice REINHARDT held that "As a society, we generally refuse to punish our nation's youth as harshly as we do our fellow adults, or to hold them to the same level of culpability as people who are older, wiser, and more mature. The avowed priority of our juvenile justice system has, historically been rehabilitation rather than retribution." (*United States v. Juvenile Male*, C.A. 9 (Mont.) 2010, 590 F.3d 924.)

2. Generally speaking a "felony" is an "infamous crime" and, under

RCW 29A.04.079, A juvenile adjudication pursuant to chapter 13.40 RCW is not an "infamous crime."

3. In *State v. Tuck*, it was asserted that a juvenile who had been adjudicated of first degree child rape couldn't be found guilty of "Felony" Failure to Register. Basis being, that under the Juvenile Justice Act, an act which would be a crime if committed by an adult is not a crime, and thus not a "felony," if committed by a juvenile. The court found him guilty of a "gross misdemeanor," saying that the defendant's juvenile adjudication was not a crime, but "civil adjudication." (38 A.L.R. 6TH, *State v. Tuck*, 127 Wash. App. 1008, 2005 WL 950688, review denied 156 Wash. 2d 1006, 132 P.3d 147 (2006).)

In reference to *State v. Tuck*, Rhynard was adjudicated of

Indecent Liberties, thereby protecting him from "Felony" Failure to Register. A "gross misdemeanor" is the only crime constituted.

4. In *State v. Michaelson*, 9 of the sitting Washington State Supreme Court Justices held, with primary reliance upon, *In re Frederick*, 93 Wash.2d 28, 604 P.2d 953 (1980), that "a juvenile has not committed a crime, including a "felony," when he has committed an "offense." (*State v. Michaelson*, 124 Wash.2d 364, 878 P.2d 1206 (1994).)

In reference to *State v. Michaelson*, Rhynard was adjudicated of Indecent Liberties, therefore it is not a "felony," and a failure to register under RCW 9A.44.130 would only constitute a "gross misdemeanor," pursuant to RCW 9A.44.132(2).

5. Under § 13.40.020 which defines an offense as an act designated

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

STATE OF WASHINGTON,

Plaintiff,

vs.

PATRICK L. RHYNARD,

Defendant.

NO. 12-1-01213-3

ORDER DENYING MOTION TO
VACATE

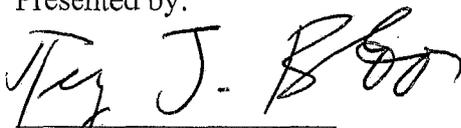
THIS MATTER having come before the Court on the defendant's motion on August 28, 2014, the Court having reviewed the motion and defendant's argument, and it appearing that the motion was previously heard on July 23, 2014 and denied and that the defendant has suggested no additional grounds for his motion, NOW, THEREFORE,

IT IS HEREBY ORDERED THAT the defendant's motion is denied.

Dated: September 3, 2014


Robert G. Swisher, Judge

Presented by:



Terry J. Bloor
Deputy Prosecuting Attorney
Offc. Id. No: 91004

 COPY

APPENDIX B

#12-1-01213-3

(4 pages)

a crime if committed by an adult, when a juvenile commits an offense, he has not committed a crime and, therefore, he has not committed a "felony." (In re Frederick (1980), 93 Wash. 2d 28, 604 P.2d 953.)

In reference to In re Frederick, the definition of an "offense" is the deciding factor when charging Rhynard with a failure to register.

E. ARGUMENT 2

In State v. Kuhlman, the defendant was charged in Benton County Superior Court with failure to register and, Trafficking Stolen Property. His record revealed four prior failures to register and had reached a maximum offender score. In consideration of his juvenile sex "offense" adjudication, the defendant was offered 90 days for Failure to Register. (State v.

Kuhlman (2006), 135 Wash. App. 527,
144 P.3d 1214.]

In reference to State v.
Kuhlman, the Benton County
Prosecuting Attorneys Office has
distinguished the fact that
a juvenile adjudication is not
a "felony" Rhynard should have
been afforded the same treatment
as Kuhlman. Basis being, that
what should have been a "gross
misdemeanor" was aggravated
into a "felony." State Law provides
that a failure to register for a
non-felony sex offense constitutes
a "gross misdemeanor." RCW 9A.44.132
(2).

G. ARGUMENT 3

1. In Bell v. United States both the
defendant and his counsel misunder-
stood law in such that, they believed,
the possession of a loaded shotgun
under bed along with illicit drugs

constituted the crime of using a firearm during and in relation to drug trafficking offense. Thereby rendering the defendant's guilty plea involuntary, and thus the defendant's plea was not bar to collateral review. (Bell v. United States, E.D. Mo. 1996, 917 F.Supp. 681, vacated 121 F.3d 712, certiorari denied 118 S.Ct. 1527, 523 U.S. 1079, 140 L.Ed.2d 678.)

In reference to Bell v. United States, Rhynard's guilty plea was involuntary because both counsel and defendant misunderstood the law pursuant to RCW 9A.44.132. Therefore Rhynard's guilty plea is not bar to collateral review.

2. In the Matter of Evans, the defendant asked to have his conviction vacated and dismissed on the grounds that, his plea was coerced and the facility where ~~where~~ he was alleged to have

escaped from wasn't relevant to statute. The court of appeals vacated judgement. (Matter of Evans (1982), 31 Wash. App. 330, 641 P.2d 722.)

In reference to the Matter of Evans, RCW 9A.44.132(1)(b) is irrelevant as applied to Rhynard, since his juvenile sex offense is not a "felony." Therefore "Felony" Failure to Register cannot be applied to him.

H. CLOSING ARGUMENT

It has been well established that a juvenile adjudication is not a crime, and thus is not a "felony." Therefore there can be no reason shown, denying the vacation of Rhynard's judgement and sentence for "Felony" Failure to Register. The mistake made in his case is not harmless, comparing a 90 day sentence to 43 months prison and

36 months community custody,
in respect to Washington State Law,
Fifth, Sixth, and Fourteenth
Amendments.

I. CONCLUSION

In regard to the aforementioned,
Rhynard prays this court
vacates his conviction and dismisses
the criminal charges against him
without a new trial.

Respectfully submitted this 17TH day
of August, 2014.

Patrick L. Rhynard
Accused, Pro se

Patrick L. Rhynard
853584 cell GB20
Coyote Ridge Corr. Center
P.O. Box 769
Connell, Wa. 99326

APPENDIX D

12-1-01213-3

(8 pages)

arraignment
Oct 16, 2012

JOSIE DELVIN
BENTON COUNTY CLERK

JUN 06 2013
FILED 9

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

STATE OF WASHINGTON,

Plaintiff,

vs.

PATRICK LEVI RHYNARD,

Defendant.

SID: WA19804198,
DOB: 03/04/1984.

NO. 12-1-01213-3

JUDGMENT DOCKET

NO 139-019241

FELONY JUDGMENT AND SENTENCE (FJS)

Prison

CLERK'S ACTION REQUIRED:

853584
7/10/13

Firearms rights revoked

Clerk's Action Required, 2.1 4.1, 4.4, 5.2, 5.3 and 5.5

WRPD # 12-3817

I. HEARING

- 1.1 The court conducted a sentencing hearing; the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

- 2.1 CURRENT OFFENSE(S): The defendant is guilty of the following offenses on 5-31-13, based upon plea jury-verdict bench trial.

COUNT	CRIME	RCW	CLASS	DATE OF CRIME
1	FAILURE TO REGISTER (Two or More Prior Sex Offenses-Felony-FTC With)	RCW 9A.44.132(1)(b)	B	06/12/2012

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

() as charged in the Amended Information.

2.2 CRIMINAL HISTORY RCW 9.94A.525:

CRIME	DATE OF SENTENCE	Sentencing Court (County and State)	DATE OF CRIME	AGE AT CRIME Adult/Juvenile	TYPE OF CRIME
-------	------------------	-------------------------------------	---------------	-----------------------------	---------------

FELONY JUDGMENT AND SENTENCE (FJS)
PRISON
Page 1

CERTIFIED COPY

1	Indecent Liberties	9-24-99	Benton Co., Wa.	11-1-98	J	S	99-8-00645-2
2	Burglary, Second Degree	2-19-03	Benton Co., Wa.	2-18-02	A	NV	02-1-00675-0
3	Theft, Second Degree	3-12-03	Benton Co., Wa.	5-17-02	A	NV	02-1-00677-2
4	Forgery	11-21-03	Benton Co., Wa.	9-25-03	A	NV	03-1-00900-1
5	VUCSA--Possession	7-14-05	Benton Co., Wa.	2-2-04	A	NV	04-1-00653-1
6	Forgery	9-20-06	Benton Co., Wa.	8-25-06	A	NV	06-1-01312-1
7	Failure to Register	11-22-06	Benton Co., Wa.	4-19-06	A	NV	06-1-01087-C
8	Failure to Register	4-17-08	Benton Co., Wa.	5-11-07	A	S	07-1-01011-B
9	Theft, Second Degree	4-17-08	Benton Co., Wa.	6-25-07	A	NV	07-1-01095-9
10	Unlawful Possession of Payment Instruments	10-8-07	Yakima Co., Wa.	7-23-07	A	NV	
11	Eluding	1-4-12	Benton Co., Wa.	6-19-11	A	NV	

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

The defendant had been sentenced to the crimes listed in this section prior to the commission of the current offense(s), except the following: _____

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (Not Including Enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (Including Enhancements)	MAXIMUM TERM/FINE
1	14	II	43-57 MONTHS			10 YEARS

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

2.4 **EXCEPTIONAL SENTENCE.** The court finds that 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 a 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 defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.
- 3.2 The Court DISMISSES Counts _____ in the charging documents.
- 3.3 The Defendant is found NOT GUILTY of Counts _____ in the charging documents.

IV. SENTENCE AND ORDER

IT IS ORDERED:

- 4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

PCV	\$ <u>500</u>	Victim assessment	RCW 7.68.035
CRC	\$ <u>See Attached</u> <u>Cost Bill</u>	Court costs, including <i>(Transportation costs on FTA Warrants in this case will be assessed at the current legal rate. Other costs as assessed by the Clerk and set forth in the Cost Bill to be attached upon filing of this Judgment and Sentence. If FTA costs and fees are contested, a hearing must be requested at the time of sentencing.)</i>	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
EXT	\$ _____	Extradition Costs	RCW 9.94A.120
FCM/MTH	\$ <u>500</u>	Fine	RCW 9A.20.021;
	\$ <u>100</u>	Felony DNA collection fee <input type="checkbox"/> not imposed due to hardship	RCW 43.43.7541
	\$ _____	Other costs for: _____	
	\$ _____	TOTAL	RCW 9.94A.760

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

Legal financial obligations, including restitution, for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the defendant's release from total confinement or entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. Legal financial obligations, including restitution, for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender until the obligation is completely satisfied, regardless of the statutory maximum for the crime.

- The Department of Corrections (DOC) or the clerk of the court may 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 and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____, RCW 9.94A.760

The defendant shall report to the Benton County Clerk, 7122 West Okanogan Place, Kennewick, Washington, and provide financial information as requested. RCW 9.94A.760(7)(b).

- The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

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

[X] The defendant shall pay up to \$50.00 per month to be taken from any income the defendant earns while in the custody of the Department of Corrections. This money is to be applied towards legal financial obligations. ESB 5990

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

[] HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 OTHER: _____

4.4 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(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):

43 Months on Count I _____ months on Count _____
_____ Months on Count _____ months on Count _____
_____ Months on Count _____ months on Count _____

Actual number of months of total confinement ordered is: _____
All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above in Section 2.3, and except for the following counts which shall be served consecutively: _____

(Exceptional sentence Findings necessary).

This sentence shall run consecutively with the sentences imposed for the crimes listed in Section 2.2, "Criminal History," except for the following: _____

The "other current convictions" listed in Section 2.1 shall be served concurrently, except for the following: _____ (Exceptional sentence Findings necessary).

This sentence shall run consecutively with the sentence in the following cause number(s) not listed in Section 2.2 (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) 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: _____

4.5 [X] COMMUNITY PLACEMENT or COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94B.050 and .060).

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count 1 for 36 months;
 Count _____ for _____ months;
 Count _____ for _____ months;

(For sentences after July 26, 2009)

The term of community custody shall be reduced by the Department of Corrections, if necessary, so that the total amount of incarceration and community custody does not exceed the maximum term of sentence for any offense, as specified in this judgment.

(B) DOC shall supervise the defendant if DOC classified the defendant in the A or B risk categories; or, DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) The defendant committed a current or prior:		
i) sex offense	ii) violent offense	iii) crime against a person RCW 9.94A.411
iv) domestic violence offense RCW 10.99.020	v) residential burglary offense	
vi) offense for manufacture, delivery or possession with intent to deliver methamphetamine including its salts, isomers, and salts of isomers		
vii) offense for deliver of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi,vii)		
b) The conditions of community placement or community custody include chemical dependency treatment		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745		

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 Department of Corrections-approved education, employment and/or community restitution; (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 the Department of Corrections; (8) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; (10) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders sentenced under RCW 9.94A.710 may be extended for up to the statutory maximum term of the sentence.

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

- not consume any alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____
- 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: _____

[] Other conditions: _____

Department of Corrections shall notify the sentencing court of any violations during the time of supervision.

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten 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 purposes 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(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 **COMMUNITY CUSTODY VIOLATION** (a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634. (b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047
- 5.6 **OTHER:** _____

DONE IN OPEN COURT and in the presence of the defendant this date: 6/6/13

T. J. K. B.
Deputy Prosecuting Attorney
OFC ID #91004
Print name: TERRY J. BLOOR
WSBA # _____

Attorney for Defendant
WSBA # _____
Print name: G.METRO

Patrick Vander Schoor
JUDGE
Print name: Vicki Vander Schoor
Patrick
Defendant
Print name: PATRICK LEVI RHYNARD

CERTIFIED COPY

VOTING RIGHTS STATEMENT: I acknowledge that I have lost my right to vote due to this felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660. Termination of monitoring by DOC does not restore my right to vote.

Defendant's signature: _____

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 12-1-01213-3

I, _____, 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 DEFENDANT

SID No: WA19804198
(If no SID take fingerprint card for State Patrol)

Date of Birth: 03/04/1984

FBI No: 359567XB8

Local ID No: RHYNAPL166DD

PCN No:

SS No: 538-17-3685

Alias name, SSN, DOB: _____ Other _____

Race: M.

Ethnicity:

Sex: W

Hispanic

Non-Hispanic

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: [Signature] Deputy Clerk/Bailiff. Dated: 6-6-13

DEFENDANT'S SIGNATURE: [Signature]

Left four fingers taken simultaneously



Left
Thumb



Right
Thumb



Right four fingers taken simultaneously



APPENDIX E

12-1-01213-3

(12 pages)



COPY

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

STATE OF WASHINGTON,

Plaintiff,

vs.

PATRICK LEVI RHYNARD,

Defendant.

NO. 12-1-01213-3

**STATE'S RESPONSE TO
DEFENDANT'S PRO SE
MOTION TO MODIFY
JUDGMENT AND SENTENCE**

→ First Response: The Motion is time barred under RCW 10.73.090.

The defendant generally has one year to collaterally attack a Judgment and Sentence, under RCW 10.73.090. None of the exceptions to the one year time period listed in RCW 10.73.100 (newly discovered evidence, unconstitutional statute, double jeopardy, insufficient evidence, sentence was in excess of court's jurisdiction or significant change of law) apply.

In this case, the defendant was sentenced on June 6, 2013. His Motion to Modify or Correct Judgment and Sentence was filed on July 14, 2014. The inquiry should end at this point.

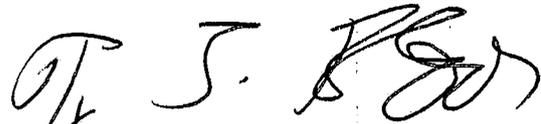
→ Second Response: The defendant's motion has no merit.

The defendant requests that the sentence herein be concurrent to a prior sentence, Benton County No. 11-1-00638-1. However, in that case the defendant charged and convicted of Eluding a Pursuing Police Vehicle, with a date of offense of June 19, 2011, and a sentencing date of January 4, 2012. The date of offense in this case was June 12, 2012, to September 19, 2012. Therefore, these were not current offenses. Indeed, the defendant probably completed his sentence on the Eluding charge (No. 11-1-00638-1) and then committed the crime herein, Failure to Register as a Sex Offender.

→ **Third Response:** If this motion is heard, it should be done with no further oral argument.

The defendant also requested in his "Motion to Docket" that the matter be heard without oral argument. The State agrees; the defendant has not requested that he be transported from DOC, and there is no need to do so.

DATED: July 17, 2014.



TERRY J. BLOOR, WSBA #9044
Deputy Prosecuting Attorney
OFC ID #91004

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

JOSIE DELVIN
BENTON COUNTY CLERK

JUL 23 2014

STATE OF WASHINGTON,

NO. 12-1-01213-3

Plaintiff,

ORDER DENYING DEFENDANT'S
PRO SE MOTION TO MODIFY
JUDGMENT AND SENTENCE

FILED

K.V.1

vs.

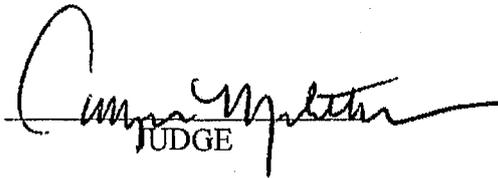
PATRICK LEVI RHYNARD

Defendant.

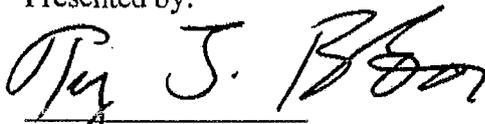
THIS MATTER having come before the Court on the defendant's motion to modify the Judgment and Sentence, and the Court having read the motion and the State's Response, NOW, THEREFORE,

IT IS HEREBY ORDERED THAT the defendant's motion is denied.

DATED: July 23, 2014


JUDGE

Presented by:



Terry J. Bloor
Deputy Prosecuting Attorney
Offc. Id. No: 91004

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

State of Washington, Plaintiff,	No: 12-1-01213-3
------------------------------------	------------------

v. Patrick L. Rhynard, Defendant.	Motion to Modify Judgement and Sentence
---	---

1. FACTS

1.1 COMES NOW Patrick L. Rhynard,
Defendant, pro se, in the above
entitled matter.

1.2 The Defendant appeared before
Judge Vic L. Vanderschoor.

1.3 The State being represented by

Terry J. Bloor of Benton County Prosecutors Office, and the Defendant being represented by Gary Metro Defense Attorney.

1.4 The Defendant pled guilty to 43 months prison and 36 months community custody.

II. RELIEF SOUGHT

2.1 That cause numbers 12-1-01213-3 and 11-1-00638-1 be ran concurrent.

III. ARGUMENT

3.1 Pursuant to Rule 35, Federal Rules of Criminal Procedure, the court imposed sentence. The Defendant only seeks modification of sentence, not retrial.

3.2 Prior to sentencing the

Defendant finished serving sentence arising from cause number 11-1-00638-1

3.3 The Defendant was arraigned on cause number 12-1-01213-3 on October 16TH, 2012 and remanded to the custody of the Department of Corrections on October 17TH, 2012 to serve sentence for cause number 11-1-00638-1.

3.4 The Defendant was not fully released subsequent to cause number 11-1-00638-1, instead the Defendant was remanded to the custody of the Benton County Jail, to answer charges giving rise to cause number 12-1-01213-3.

3.5 This motion is sought in good faith.

IV. GROUNDS

4.1 18 U.S.C.A § 3584(a) states:

If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt.

Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

4.2 RCW 9.94A.589(3) states:

Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

4.3 When a person is convicted of a gross misdemeanor and sentenced while serving sentence for prior gross misdemeanor and court fails to specify whether or not the sentences shall run concurrently, the second sentence is to run

concurrently with balance remaining to be served on first sentence. Op. Atty. Gen. 1953-55, No. 100.

4.4 Under this statutes provision that court "may" provide for sentences to run concurrently under certain circumstances, use of word "may" leaves it to discretion of court whether it will provide for concurrent sentences. State v. Miles (1970) 77 Wash. 2d 593, 464 P.2d 723.

4.5 Decisive act by trial court which will determine whether sentences shall be concurrent or consecutive occurs at time of imposition of sentence, and unless in its imposition trial court expressly orders sentences to be served consecutively they shall run concurrently. Matter of Shriner (1981) 95 Wash. 2d 541, 627 P.2d 99.

4.6 Concurrent sentence doctrine is not jurisdictional bar to consideration of validity of multiple convictions when sentences imposed are concurrent, but rather is matter of judicial convenience and discretion. State v. Eppens (1981) 30 Wash. App. 119, 633 P.2d 92

4.7 Under this section prior to 1986 amendment, when sentences were imposed on multiple offenses, other than serious violent ones, which were committed while offender was not subject to a felony conviction and exceptional sentence was not warranted, concurrent sentences were required when convictions were obtained in single or consolidated proceeding; however when convictions were obtained in separate proceedings, the latter imposed sentence was either concurrent or consecutive at discretion of

sentencing judge. State v.
Huntley 45 Wash. App. 658, 726
P.2d 1254.

4.8 Judgement and sentence which
stated that defendant, who was
convicted for offenses committed
while on parole, was sentenced
to confinement "immediately" meant
as soon as possible and did not
affect whether sentence was to
run concurrently or consecutively
with confinement resulting from
subsequent revocation of defendant's
parole. Matter of Webster (1994)
74 Wash. App. 832, 875 P.2d 1244

4.9 Exercise of the court's
discretion under § 9.92.080 in
fixing sentences for multiple
convictions as either concurrent
or consecutive is not violative
of equal protection mandates
Jansen v. Morris (1976) 87 Wash. 2d
258, 551 P.2d 743

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

Respectfully submitted this 21ST day of July, 2014.

Patrick L. Rhynard
Signature

Patrick L. Rhynard 853584
Printed Name

Coyote Ridge Corr. Center
GB20

P.O. Box 769

Connell, Wa. 99324

CERTIFICATE OF SERVICE BY MAIL

This is to certify and state under the penalty of perjury under the laws of the State of Washington that I have mailed a true and correct copy of the following document(s):

Notice of Appeal, Motion for Direct Review, and Appendices A, B, C, D, and E. Inmate Status Report, PLRA In Forma Pauperis Status Report, Statement of Finances

By depositing in the United States mail, marked *Legal Mail*, postage prepaid, on this 7TH day of September, 2014 to the following:

Washington State Supreme Court

Received
Washington State Supreme Court

SEP 10 2014

Ronald R. Carpenter
Clerk

Respectfully Submitted,



Signature

Patrick L. Rhynard

Print Name

D.O.C.# 853584 Unit # 4B Cell # 20

Received
Washington State Supreme Court

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

SEP 10 2014
Ronald R. Carpenter
Clerk

Patrick L. Rhynard,
Appellant/Petitioner,
v.
State of Washington,
Respondent.

NO: 12-1-01213-3
Notice of Motion
for Direct Review
by Supreme Court
(RAP 4.2 a, 2, 3)

SUPREME COURT CLERK; BENTON
COUNTY SUPERIOR COURT CLERK;
AND DEPUTY PROSECUTOR Terry, J.
Bloor, PLEASE TAKE NOTICE: I,
Patrick L. Rhynard, appellant/petitioner,
pro se, seek Direct Review of a
Superior Court decision, pursuant
to RAP 4.2 a, 2, 3.

This notice and necessary paper
work will be sent to all parties,
same day, via U.S. mail.

Date: 9-7-14

Patrick L. Rhynard
Appellant/Petitioner, pro se

STATEMENT OF FINANCES

1. Patrick C. Rhynard, certify that I cannot afford to pay the \$250 filing fee normally required to file a Motion for Direct Review

1. I request that the filing fee be waived and that I be allowed to file my Motion for Direct Review without prepayment of the filing fee.
2. My request in this matter is brought in good faith.
3. I am _____ am not X employed. My salary or wages amount to \$_____ per month. My employer is (Name and address):

4. I do X do not _____ have any checking or DoC savings accounts in any financial institutions. The total amount of funds I have in any such accounts of any type is \$ 116.
5. In the past 12 months, I did _____ did not X receive any interest, dividends, rental payments, or other money. The total amount of such money I received was \$_____. The total amount of cash I have other than otherwise indicated above is \$ 0.
6. I own or have an interest in the following real estate, stocks, bonds, notes, and other property (list any property of a present value of more than \$50, its current value and the amount, if any, currently owed against said property):

<u>Item</u>	<u>Value</u>	<u>Amount Owed</u>
(for example: an automobile, make, model, and year; the present value, \$3,000.00; still owe \$500.00).		

<u>N/A</u>		

7. I am _____ am not X married. My spouse is _____ is not _____ employed. His or her salary or wages amount to \$_____ per month. He or she owns the following property not already described above:

* I am too poor to hire a lawyer and pray one be appointed.

8. These following persons depend on me for support (list name, relationship to you, and address for each person):

N/A

9. I owe the following bills (list name and address of creditors and any amount currently owed):

\$26,000+ To Benton County for
Legal Financial obligation

[IF APPLICABLE - Petitioner incarcerated in a correctional facility-COMplete #10]

10. I have a spendable balance of \$ 0 in my prison or institutional account as of the date of this financial statement.

I declare under the penalty of perjury (pursuant to the laws of the State of Washington) that I have read this financial statement, know its contents, and I believe all of the information and statements contained therein to be true.

Dated this 7TH day of September, 2014.

Patrick L. Rhynard
PETITIONER

Patrick L. Rhynard



**CERTIFICATE OF OFFENDER STATUS
(Non-IAD)**

RE: <u>RHYNARD, Patrick L.</u> Offender <u>CRCC</u> Facility	<u>853584</u> DOC Number	<u>3/4/1984</u> Date of Birth
	<u>CRCC / Connell</u> Location	

The custodial authority/designee hereby certifies:

1. CSE#/County: 12-1-01213-3(AH) / Benton
2. Date Rec'd in DOC: 7/10/2013
3. Sentence Length: 43 months
4. Earned Release Date (Tentative): 11/4/2015
5. Maximum Release Date: 1/13/2017

Correctional Records Supervisor / Designee Signature	<u>7-25-14</u> Date
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CUSTODIAL AUTHORITY

Name Jeff Uttecht	Facility Coyote Ridge Corrections Center		
Mailing Address 1301 N Ephrata	City Connell	State WA	Zip 99326
Telephone Number (509) 543-5800			

Disclaimer: The certified information provided is subject to change.

08/01/2014

Department of Corrections

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AR1

COYOTE RIDGE CORRECTIONS CENTER

OIRPLRAR

10.2.1.18

**PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD 01/31/2014 TO 07/31/2014**

DOC# : 0000853584 NAME : RHYNARD PATRICK ADMIT DATE : 07/10/2013

DOB : 03/04/1984 ADMIT TIME : 13:15

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
139.76	27.95	10.06	2.01