

No. 34170-4-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

TERRENZ HAMPTON HENDERSON

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ASOTIN COUNTY

The Honorable Judge David Estudillo

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

Terrenz Hampton Henderson pleaded guilty to second-degree unlawful possession of a firearm for events stemming from December 2, 2015. He was also charged with second-degree taking a motor vehicle without permission for events on December 2, 2015, although the defendant's statement on plea of guilt indicated that he had instead committed a vehicle offense on October 26, 2015, the date originally charged for this count.

After pleading guilty, Mr. Hampton Henderson moved to withdraw his guilty plea, but the court refused to vacate and proceeded to sentencing. Based on an offender score of "9+", Mr. Hampton Henderson received a prison-based DOSA sentence for count I, and a non-DOSA sentence for count II. After release from incarceration on both concurrent sentences, Mr. Hampton Henderson was ordered to serve an additional term of community custody pursuant to the DOSA sentence on count I.

This matter should now be reversed for withdrawal of the guilty plea on both counts. First, the plea as to count II (taking a motor vehicle without permission) lacked a sufficient factual basis as to the date of the crime and the particular elements of the offense. The conviction on count II should be reversed, the plea on this count should be withdrawn and the

charge should be dismissed. Also, the plea as to count I must be vacated as well, because it was part of an indivisible plea contract with count II.

Alternatively, Mr. Hampton Henderson should have been permitted to withdraw his guilty plea, or the trial court should have at least held an evidentiary hearing, based on the defendant's statements that the plea was produced through coercion and without an understanding of the sentencing consequences.

At a minimum, this matter should be remanded for resentencing. The State did not offer sufficient proof of the defendant's prior convictions to establish an offender score of "9+"; instead, based on the limited information before the trial court, Mr. Hampton Henderson's offender score appears to have been an "eight" at most. Additionally, the trial court erred by imposing a hybrid DOSA and non-DOSA sentence.

Finally, in the event Mr. Hampton Henderson does not prevail in this appeal, the Appellant preemptively objects to any appellate costs being imposed against him and awarded to the Respondent State.

B. ASSIGNMENTS OF ERROR

1. The court erred by accepting a guilty plea that lacked a factual basis as to count II (taking a motor vehicle without permission).
2. The court erred by refusing to vacate a guilty plea that lacked a factual basis and was not entered voluntarily, knowingly and intelligently.
3. The court erred by refusing to vacate the guilty plea that was entered under pressures of coercion.

4. The court erred by failing to hold an evidentiary hearing prior to deciding whether the plea was entered under coercion.
5. The court erred by refusing to vacate the guilty plea where it was made without a clear understanding of the consequences of pleading guilty, including that mandatory community custody would be imposed.
6. The court erred in sentencing the defendant based on an offender score of “9+”.
7. The court erred by sentencing the defendant based on an offender score of “9+” that was never proven by the State.
8. The court erred by imposing a hybrid, concurrent prison-based DOSA for count I and non-DOSA sentence on count II, whereby the prison-based DOSA community custody term would be served consecutive to the in-custody portion of the non-DOSA sentence.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1: Whether (a) this Court should vacate the guilty plea and dismiss count II, because the guilty plea lacked the necessary factual basis for taking a motor vehicle without permission; and (b) the plea on count I should be vacated as well because it was part of an indivisible plea agreement with the involuntary plea on count II.

Issue 2: Whether this Court should reverse for withdrawal of the defendant’s guilty plea, because the plea was involuntary, a result of coercion, or made without a clear understanding of the sentencing consequences.

Issue 3: Whether the defendant should be resentenced, because the State failed to prove the defendant’s criminal history to support an offender score of “9+,” and it appears Mr. Hampton Henderson’s offender score was actually an “eight,” which necessarily would have resulted in a lower standard range sentence.

Issue 4: Whether the trial court erred by imposing a hybrid sentence where the DOSA-based sentence ran concurrently in part and consecutively in part to the non-DOSA sentence.

Issue 5: Whether, in the event the Appellant is unsuccessful in this appeal, this Court should refuse to impose appellate costs.

D. STATEMENT OF THE CASE

On February 9, 2016, Terrenz Hampton Henderson entered a guilty plea to second-degree unlawful possession of a firearm (count I) and second-degree taking a motor vehicle without permission (count II). CP 25-33; RP 19-27. No facts were offered at the plea hearing (*see* RP 22), and the box was not checked on the plea form for the court to rely on police reports or any probable cause statement supplied by the prosecution in order to establish a factual basis for the plea (*see* CP 32). Instead, the following statement was made in the defendant's written plea:

On December 2, 2015 I possessed a firearm after being convicted of a felony [count one], and on October 26, 2015 I used a motor vehicle that did not belong to me without permission [count two], all in the State of Washington.

CP 32.

Count One – Unlawful Possession of a Firearm
(cause no. 15-1-00775-3)

As to the unlawful possession of a firearm, this charge stemmed from events allegedly occurring on December 2, 2015. CP 23. Although the police reports were never admitted or relied upon by the trial court for purposes of the guilty plea, the police reports are summarized for background information only, particularly to differentiate the events on

this date from the events that allegedly occurred on October 26, 2015 (see count II below).

According to police reports, a woman contacted law enforcement after she said Mr. Hampton Henderson displayed a pistol on his lap while sitting as a passenger in a brown older truck with matching canopy in Moses Lake, Washington. CP 8-9. Officers did background checks and determined Mr. Hampton Henderson had an outstanding, active warrant and was a convicted felon. CP 9. One officer then noticed a brown truck with matching canopy in the driveway next-door to where the complainant said Mr. Hampton Henderson and his driver might have gone after leaving her home. *Id.* Officers later saw that vehicle travelling in Moses Lake and stopped the vehicle to investigate. *Id.*

After stopping the vehicle, officers arrested the passenger, Mr. Hampton Henderson, on outstanding warrant, placed him in custody and read him his *Miranda* warnings. CP 9. Mr. Hampton Henderson agreed to speak with officers and said there was a firearm located in the vehicle beside or behind the passenger seat where he was riding, which he “might have touched...earlier” so his fingerprints would be on the gun. CP 9-10. Officers obtained consent from the driver, searched the vehicle, and found a firearm. CP 10, 12.

Count Two – Taking a Motor Vehicle Without Permission
(Former cause no. 15-1-00706-1, later joined with 15-1-00775-3 above)

Again, the police reports supporting this count were not admitted for purposes of establishing the defendant's guilt in this case. However, they are described herein in order to give this Court some background on Mr. Hampton Henderson's ultimate guilty plea and conviction for count two herein.

According to police reports, Mr. Hampton Henderson was pulled over in Moses Lake on October 26, 2015, while driving a vehicle that had been reported stolen. (See Appendix A, Police Report filed under cause number 15-1-00706-1.)¹ Mr. Hampton Henderson was charged with possession of a stolen vehicle on or about October 26, 2015. (Appendix B, Information filed under cause number 15-1-00706-1) (emphasizing the different initial charge and date of crime).

Just prior to Mr. Hampton Henderson pleading guilty to unlawful possession of a firearm (count I above), the trial court granted the motion to add the charge from cause number 15-1-00706-1 (count II) to the Information in 15-1-00775-3 for a "global resolution" of the matters. CP 23-24; RP 19. Both matters proceeded under 15-1-00775-3, and the

¹ The undersigned appointed counsel is only counsel of record for the appeal from cause number 15-1-00775-3, but the charge in this cause number was amended to include a charge initiated under cause number 15-1-00706-1 for a "global resolution" of the separate matters. CP 23-24. The clerk's papers in this appeal do not include all necessary documents from cause number 15-1-00706-1, which counsel was not in a position to order since no appeal was filed from 15-1-00706-1 and she is not counsel of record in that file. For clarity sake, pertinent documents filed in 15-1-00706-1 have been attached to this brief.

charge in 15-1-00706-1 was dismissed. (Appendix C, Order of Dismissal; RP 24, 26.) But, rather than charging Mr. Hampton Henderson on count II with possession of a stolen vehicle on October 26, 2015 (as the police reports and initial Information in 15-1-00706-1 indicated), the amended charge accused the defendant of taking a motor vehicle without permission on or about December 2, 2015 (the date when the defendant was arrested while riding in the brown truck with the firearm, see count I). CP 24.

Mr. Hampton Henderson's guilty plea states he unlawfully possessed a firearm on December 2, 2015, and that he used a motor vehicle without permission on October 26, 2015. CP 32. But the Information and felony judgment and sentence states the date of crime for both counts I (unlawful possession of a firearm) and II (taking a motor vehicle without permission) as December 2, 2015. CP 24, 40.

Motion to Withdraw Guilty Plea

After Mr. Hampton Henderson pleaded guilty to both counts on February 9, 2016, the court received and filed a motion by the defendant for release on his own recognizance on February 18, 2016. CP 35. The defendant's declaration in support of the motion is dated February 6, 2016, just prior to the date he pleaded guilty. CP 35. In that declaration, the defendant expressed concerns that he needed to plead guilty in order to protect his wellbeing:

...I have due to the (sic) my immediate well being and safety issues from on going harassment from staff I do not fill (sic) safe so I feel I'm constantly scared for my life and I have attached the grievances explaining why I was wanting to proceed to trial but will all these threats I just want to take...plea to get out of the county jail. Unless I receive a PR signature bond or a surety bond or bail reduction. If not I'm taking a plea bargain because all of the harassment ad (sic) neglect here in Grant County due to my race...

CP 35.

...Your (sic) honor I'm in custody at a place were (sic) I declared a medical emergency and it was brushed of (sic) by staff and told there was nothing they could do because they were short staffed. Were (sic) asked for medical help and still 3 months later never to be responded to in a jail facility. Your honor were (sic) I Kited through the proper channels every day with the legal kiosk Kites every day for almost 15 days straight to go to the legal kiosk and almost on top of that never stopped putting them in from Oct 2015 to todays date and have yet to be taken; so I could look at different case laws along with definitions. Once that failed your honor I Kited Durand the Lt. plus some lady Dawn & my attorney for my case laws, sentencing guide lines, definitions of my charges and was denied by everyone I asked even the attorney appointed to me Sue brought me your honor just my guide lines on what she decided to. None of the definitions or case laws I asked and refused to file for motions. My mother told me about such as 'State v. Knaptstead (sic)' I have yet to see my discovery on one of my cases which again I have Kited for and no. On top of all I have explained above I was just shaken up by the very staff/correction officer your honor to were (sic) I fear If I stay in custody and don't get out I'm in danger for my life and retaliation if I don't take the deal the district attorney offers. I fill (sic) I can win my case and these are not just allegations... Your honor I not only beg of you I sincerely plead with you to hear my motion and grant me either bail I can afford or release me to fight my case so I do not take a 55 month plea bargain for fear of retaliation.

CP 36.²

Based on the date of filing for the above declaration, the court did not appear to have yet received or reviewed that declaration prior to the plea hearing. CP 36. Mr. Hampton Henderson did not raise the concerns expressed in this February 6th declaration at his plea hearing on February 9, 2016. RP 19-27. Instead, at the plea hearing, the defendant agreed that he made the plea freely and voluntarily, and that nobody threatened him to enter his plea. RP 22.

On February 17, 2016, at the initial date set for sentencing, the defendant verbally moved to withdraw his plea based on coercion. RP 31. On February 19, 2016, defense counsel filed a motion to withdraw the plea based on the concerns in the defendant's declaration above, including the lack of access to medication needed to assist Mr. Hampton Henderson with thinking clearly, and denial of access to legal resources. CP 38; RP 35. The defendant also indicated he did not realize he would be ordered to serve 27 months community custody. RP 36. In the column on the plea form specifying community custody, the plea form states "None Prison-based DOSA³: 27.75 months." CP 26. However, later in the plea form

² Please note that every effort was made to be true to the message and writing above, whilst not writing in all capital letters as the declaration is and adding punctuation that was apparently overlooked, for clarity sake.

³ "A person sentenced under DOSA [Drug Offender Sentencing Alternative] serves 'A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater....' ... He or she then serves 'The

there are statements that community custody would be imposed pursuant to a prison-based DOSA. CP 28, 30.

On February 23, 2016, the court denied the defendant's motion to withdraw his guilty plea and proceeded to sentencing. RP 42.

Sentencing

Pursuant to the plea agreement, the State recommended a prison-based DOSA for both counts; i.e., the State recommended a mid-point sentence of 27.75 months in prison and 27.75 months community custody for count I, and 13 months each of incarceration and community custody on count II. RP 46. The trial court decided not to follow the recommendation and instead imposed the recommended DOSA sentence on count I of 27.75 months incarceration plus 27.75 months community custody, but then imposed 29 months incarceration on count II pursuant to a non-DOSA sentence. RP 49-50. Defense counsel did not express concern about this sentence, but the State's attorney alerted the court there might be a problem with the sentence pursuant to *State v. Smith*, 142 Wn. App. 122, 173 P.3d 973 (2007): "I think you can do that [impose concurrent DOSA and non-DOSA sentences]... But... we may find out otherwise." RP 49-50.

remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services.'" *State v. Smith*, 142 Wn. App. 122, 173 P.3d 973 (2007) (quoting RCW 9.94A.660(5)(a); RCW 9.94A.660(5)(b)).

Mr. Hampton Henderson received a sentence of 27.75 months incarceration with 27.75 months community custody for count I, and 29 months incarceration for count II. CP 44. Mr. Hampton Henderson's sentence was based on an offender score of "9+". CP 26, 42. The State did not offer any proof of the prior offenses; instead, the offenses were simply listed on the felony judgment and sentence, and Mr. Hampton Henderson indicated in his plea statement he had an offender score of 9+. See CP 1-88; RP 35-52; CP 26, 42. Two of these offenses listed on the judgment and sentence were noted to be gross misdemeanors, another was listed as a "wash," and another offense was listed as a juvenile felony. CP 42.

Mr. Hampton Henderson timely appealed from his denied motion to withdraw the guilty plea and his judgment and sentence on both counts. CP 66.

E. ARGUMENT

As a threshold matter, due process requires a trial court not accept a guilty plea without first determining that it is made voluntarily, competently and with an understanding of the nature of the charges and consequences of the plea. CrR 4.2(d); *In re Pers. Restraint of Ness*, 70 Wn. App. 817, 821, 855 P.2d 1191 (1993); U.S. Const. amend. XIV; Wash. Const. art. 1, §3. "[I]nvoluntariness of a guilty plea is a

constitutional error that a defendant can raise for the first time on appeal.”

State v. Knotek, 136 Wn. App. 412, 422-23, 149 P.3d 676 (2006).

This Court reviews the circumstances surrounding entry of a guilty plea de novo and reviews the trial court’s ruling on a motion to withdraw the guilty plea for abuse of discretion. *Young v. Konz*, 91 Wn.2d 532, 535-36, 588 P.2d 1360 (1979); *State v. Marshall*, 144 Wn.2d 266, 280, 27 P.3d 192 (2001), *abrogated by State v. Sisouvanh, State v. Sisouvanh*, 175 Wn.2d 607, 290 P.3d 942 (2012). The State bears the burden of demonstrating the validity of a guilty plea. *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). On the other hand, the defendant bears the burden of proving “manifest injustice” to allow the plea to be withdrawn. CrR 4.2(f); *Knotek*, 136 Wn. App. at 423. “Manifest injustice” is defined as “an injustice that is obvious, directly observable, overt, not obscure.” *State v. Saas*, 118 Wn.2d 37, 42, 820 P.2d 505 (1991). Manifest injustice may be established where the plea was unknowing, unintelligent or involuntary. *State v. Kissee*, 88 Wn. App. 817, 947 P.2d 262 (1997).

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Issue 1: Whether (a) this Court should vacate the guilty plea and dismiss count II, because the guilty plea lacked the necessary factual basis for taking a motor vehicle without permission; and (b) the plea on count I should be vacated as well because it was part of an indivisible plea agreement with the involuntary plea on count II.

The only fact supporting the guilty plea as to count II (taking a motor vehicle without permission) is the following statement made by the defendant:

[O]n October 26, 2015 I used a motor vehicle that did not belong to me without permission, all in the State of Washington.

CP 32. This statement does not establish a sufficient factual basis for the charged crime of taking a motor vehicle without permission on December 2, 2015.

First, the defendant's statement of guilt pertains to events on October 26, 2015 (see Appendix A & B for cause number 15-1-00706-1, when the defendant was apparently arrested in possession of a stolen vehicle). The defendant's statement of guilt does not pertain to the amended charge of taking a motor vehicle without permission on December 2, 2015, which is the day the defendant was arrested after riding in the brown truck with the firearm. *See* CP 24, 45. Mr. Hampton Henderson's statement on plea of guilt does not establish the charged or convicted crime in this case – that the defendant was guilty of taking a motor vehicle without permission on December 2, 2015.

The plea also lacked a factual basis, because Mr. Hampton Henderson's statement that he "used" a motor vehicle does not prove the element that he voluntarily rode "in" or "upon" the vehicle. Moreover, Mr. Hampton Henderson's statement that he used the vehicle "without permission" does not prove the element that he did so with "knowledge of the fact that the vehicle was unlawfully taken." *C.f.* RCW 9A.56.075. The guilty plea should be vacated as it is involuntary due to lacking a factual basis; count II should then be dismissed for lack of a factual basis.

Next, because the plea on count II lacked a factual basis rendering the plea involuntary, and because the plea agreement was an indivisible contract as to count I and count II, the plea on count I must now be vacated as well.

A guilty plea is not voluntary "unless the defendant possesses an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466, 22 L.Ed.2d 418, 89 S.Ct. 1166 (1969). While the Constitution does not expressly require the record to establish a factual basis for the plea, the absence of a factual basis may render the plea involuntary and therefore a violation of due process. *In re Hews*, 108 Wn.2d 579, 592, 741 P.2d 983 (1987). "The necessity for the record to contain a factual basis for a guilty plea is as much a constitutional requirement as it is mandated by the applicable guilty plea rule." *In re*

Taylor, 31 Wn. App. 254, 256, 640 P.2d 737 (1982); CrR 4.2(d) (“The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.”) *Accord In re Pers. Restraint of Clements*, 125 Wn. App. 634, 645, 106 P.3d 244 (2005).

The defendant must understand the law, the facts, and the relationship between the two:

A defendant must not only know the elements of the offense, but also must understand that the alleged criminal conduct satisfies those elements... Without an accurate understanding of the relation of the facts to the law, a defendant is unable to evaluate the strength of the State’s case and thus make a knowing and intelligent guilty plea.

State v. R.L.D., 132 Wn. App. 699, 706, 133 P.3d 505 (2006).

The purpose behind the factual basis requirement is to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge, but without realizing that his conduct does not actually fall within the charge. *In re Keene*, 95 Wn.2d 203, 622 P.2d 360 (1980) (factual basis required to prevent conviction where evidence does not warrant it).

On review, there is not a sufficient factual basis for a plea unless the record contains sufficient evidence from which a jury could find the defendant guilty. *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976); *State v. Zumwalt*, 79 Wn. App. 124, 130, 901 P.2d 319 (1995). Failure to sufficiently develop facts on the record at the time of the plea

requires vacation of the conviction and dismissal of the charge. *R.L.D.*, 132 Wn. App. at 706-07 (citing *Keene*, 95 Wn.2d 203) (“where insufficient evidence supported a guilty plea of forgery, but sufficient evidence supported third degree theft, the remedy was to vacate and dismiss.”)

Mr. Hampton Henderson was charged with and convicted of second-degree taking a motor vehicle without permission on or about December 2, 2015. CP 24, 45. A person is guilty of second-degree taking a motor vehicle without permission if “he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away any automobile or motor vehicle, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, or he or she voluntarily rides in or upon the automobile or motor vehicle with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.” RCW 9A.56.075(1) (emphases added). “Second degree TMV requires an unlawful taking of another's motor vehicle.” *State v. Sharkey*, 172 Wn. App. 386, 391, 289 P.3d 763 (2012) (citing *State v. Crittenden*, 146 Wn. App. 361, 367, 189 P.3d 849 (2008)).

Here, the charge and date of conviction pertained to actions on or about December 2, 2015. CP 23, 45. The only factual basis for the charge in this case is Mr. Hampton Henderson’s statement on plea of guilt,

specifically that “on October 26, 2015 I used a motor vehicle that did not belong to me without permission, all in the State of Washington.” CP 32. This plea does not establish a factual basis for the crime.

First, the plea addresses activity occurring on October 26, 2015, when Mr. Hampton Henderson was apparently stopped while in possession of a stolen vehicle. Appendices A and B (no probable cause statement or police report was admitted for establishing the factual basis of the crime). Whereas on December 2, 2016, the date of the charged and convicted crime, Mr. Hampton Henderson was arrested while riding as a passenger in an apparently unrelated brown truck. CP 8-9. There is no indication in the record that the brown truck had ever been unlawfully taken, or that Mr. Hampton Henderson would be guilty of taking the brown truck without permission on December 2, 2016. Indeed, Mr. Hampton Henderson never admitted committing a vehicle-related crime on December 2, 2016. The plea must be vacated and the charge dismissed for lack of an adequate factual basis. *R.L.D.*, 132 Wn. App. at 706-07; *Keene*, 95 Wn.2d 203 (setting forth this remedy).

Assuming, arguendo, that the correct date of crime had been charged and proven, the conviction also lacked a factual basis as to the

pertinent elements for taking a motor vehicle without permission.⁴ Mr. Hampton Henderson’s statement on plea of guilt seemingly referenced that original charge of possession of a stolen vehicle, merely stating he had “used” a vehicle not belonging to him without permission. CP 32. But this plea statement does not establish the elements for second-degree taking a motor vehicle without permission.

Specifically, the defendant’s statement on guilt does not indicate that he “rode in or upon a vehicle”; instead, the statement says Mr. Hampton Henderson “used” a vehicle not belonging to him. CP 32. He may have used the vehicle, such as to store belongings within the vehicle or for some other purpose, but such “use” is not the equivalent of riding in or upon a vehicle.

Additionally, the plea statement does not establish the element that Mr. Hampton Henderson rode in or upon the vehicle “with knowledge of the fact that the automobile or motor vehicle was unlawfully taken.” RCW 9A.56.075(1). Mr. Hampton Henderson’s statement says he knew the vehicle did not belong to him, but he did not state he knew the vehicle had been unlawfully taken. Again, failure to establish a factual basis for this essential element requires the guilty plea be vacated and the charge dismissed. *R.L.D.*, 132 Wn. App. at 706-07; *Keene*, 95 Wn.2d 203.

⁴ The statement on plea of guilt may have intended to address the originally charged crime of possession of stolen property – vehicle, as originally charged, see Appendices A and B)

Ultimately, the appropriate remedy in this case is for this Court to reverse for Mr. Hampton Henderson to withdraw his guilty plea in its entirety. The guilty plea was an indivisible contract; the lack of a factual basis on one count results in Mr. Hampton Henderson being permitted to withdraw the entire plea due to the involuntariness of the plea. *Accord State v. Turley*, 149 Wn.2d 395, 400, 69 P.3d 338 (2003) (“a trial court must treat a plea agreement as indivisible when pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding...”); *In re Pers, Restraint of Bradley*, 165 Wn.2d 934, 941–42, 205 P.3d 123 (2009) (same); *State v. Bisson*, 156 Wn.2d 507, 518–20, 130 P.3d 820 (2006) (remedy for involuntary plea in part was withdrawal of plea in its entirety).

Here, Mr. Hampton Henderson entered a plea at a single proceeding to two counts that stemmed from the same amended charging document. CP 23-24, 32. There is no indication Mr. Hampton Henderson ever pleaded guilty to one count with the understanding that the second count actually lacked a factual basis. The plea in this case was an indivisible contract, the entirety of which should be vacated or withdrawn for lack of voluntariness.

Based on the foregoing, Mr. Hampton Henderson respectfully requests this Court reverse his convictions, permit him to withdraw his

guilty plea to both counts, and require dismissal of count II for lack of an adequate factual basis being developed at the plea hearing. *Turley*, 149 Wn.2d at 400; *R.L.D.*, 132 Wn. App. at 706-07; *Keene*, 95 Wn.2d 203.

Issue 2: Whether this Court should reverse for withdrawal of the defendant’s guilty plea, because the plea was involuntary, a result of coercion, or made without a clear understanding of the sentencing consequences.

A guilty plea must be knowing, voluntary and intelligent, and with an understanding of the consequences of the plea. Mr. Hampton Henderson should have been permitted to withdraw his plea where he entered the plea in order to avoid harm, and did so without the benefit of his medication for treating his mental health issues or access to legal resources. Additionally, Mr. Hampton Henderson should have been permitted to withdraw his guilty plea where it is not clear he understood the consequences of pleading guilty, including that he would be subject to a mandatory term of community custody following the prison-based portion of his DOSA sentence. Alternatively, and at a minimum, the trial court should be required to hold an evidentiary hearing to determine the extent that these issues affected the voluntariness of the plea.

“[T]he agents of the State may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant.” *Brady v. United States*, 397 U.S. 742, 750, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970). “[C]oercion may render a guilty plea involuntary,

irrespective of the State's involvement.” *State v. Frederick*, 100 Wn.2d 550, 556, 674 P.2d 136 (1983), *overruled on other grounds*, *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 794, 982 P.2d 601 (1999). “To hold one in prison who, through no real choice of his or her own, has been denied a fair trial, indeed denied any trial at all, strikes us as the ultimate injustice.” *Frederick*, 100 Wn.2d at 556 (emphasis in original).

After entering a guilty plea, a defendant may later challenge that plea on the basis that it was the result of improper coercion. *Frederick*, 100 Wn.2d at 557-58. The defendant may make this challenge even where he had earlier denied any improper influence in open court. *Id.* at 557. The defendant who seeks to later retract his admission of voluntariness does “bear a heavy burden in trying to convince a court or jury that his admission in open court was coerced.” *Id.* at 558. “Nevertheless, a defendant should not be denied the opportunity to at least present evidence on the issue.” *Id.*

Here, given the information the trial court had before it at the hearing on motion to withdraw plea and sentencing, the trial court should have either vacated the plea or at least held an evidentiary hearing to determine whether Mr. Hampton Henderson's plea was the result of coercion or other circumstances overbearing his free will. Mr. Hampton Henderson maintained he felt compelled to plead guilty in order to avoid

physical and mental harm at the jail. He said he was “scared for [his] life” and with “all these threats I just want to take...plea to get out of the county jail.” CP 35. He informed the court he was not receiving access to his medication or proper medical treatment in the jail, which also affected his ability to think clearly in order to knowingly and intelligently enter a valid plea. CP 36, 38; RP 35. The defendant declared he was being denied access to legal resources in order to learn about the charges being brought against him. *Id.* Finally, the defendant said he was “shaken up by the...staff/correction officer” and he “fear[ed] if [he] stay[ed] in custody and don’t get out I’m in danger for my life and retaliation if I don’t take the deal the district attorney offers.” CP 36. He asked for the court’s help so he would not take a “plea bargain for fear of retaliation.” *Id.*

The circumstances Mr. Hampton Henderson described would render his guilty plea involuntary. A person cannot validly plead guilty as a result of threats or in an effort to avoid harm. Mr. Hampton Henderson sacrificed important rights by pleading guilty, but his plea was undermined by physical and mental pressures. Under these circumstances where the defendant raised issues of coercion, he should have had “the opportunity to at least present evidence on the issue.” *Frederick*, 100 Wn.2d at 558. If his guilty plea is not vacated based on the argument in Issue One above, or based on the serious circumstances the defendant

described to the court, Mr. Hampton Henderson respectfully requests this Court remand for a full evidentiary hearing and to further assess whether this guilty plea was the result of coercion.

Next, Mr. Hampton Henderson should be permitted to withdraw his plea where he pleaded guilty without understanding the consequences of doing so. It is well settled a defendant must be informed of the consequences of a plea, including mandatory community custody. *In re Quinn*, 154 Wn. App. 816, 836-38, 226 P.3d 208 (2010). Here, Mr. Hampton Henderson challenged his plea prior to sentencing, contending he was not aware he would be placed on community custody after his release from incarceration. *See* RP 36. The defendant's confusion is consistent with the misleading plea form, which stated "None" in the box for community custody. CP 26. Although the plea form did later indicate that community custody would be imposed (*see* CP 28, 30), it is entirely possible the defendant relied on the initial table that simplified and summarized the plea agreement and expected sentence in this case (CP 26). Given the inconsistencies in the statement on plea of guilt, and the defendant's verbal assertion that he was unaware community custody would be imposed, the plea in this case cannot be considered voluntary, intelligent and knowing. Mr. Hampton Henderson would respectfully request his plea be vacated and withdrawn on this basis as well.

Issue 3: Whether the defendant should be resentenced, because the State failed to prove the defendant's criminal history to support an offender score of "9+," and it appears Mr. Hampton Henderson's offender score was actually an "eight" at most, which necessarily would have resulted in a lower standard range sentence.

There are 11 total offenses listed on Mr. Hampton Henderson's felony judgment and sentence. CP 42. Of these offenses, a notation on the judgment and sentence indicates two of the offenses (line items 1 and 7, CP 42) were gross misdemeanors, which would not count toward the defendant's offender score. Another notation on the judgement and sentence indicates the 1996 offense would "WASH" (see line item 10, CP 42), so it also would not count toward the offender score. This left Mr. Hampton Henderson with seven adult priors and one other current offense contributing to his offender score, and one remaining juvenile offense from 1998 (line item 9 on the judgment and sentence). Mr. Hampton Henderson contends this 1998 juvenile offense should have washed as well. But, regardless of whether the 1998 juvenile offense washes out, a juvenile felony would only contribute a half point toward the defendant's offender score for a total of eight-and-a-half points at most, which is rounded down to an offender score of eight rather than nine. The State was required to prove Mr. Hampton Henderson's prior convictions at sentencing; it did not do so with anything more than a list on the felony judgment and sentence and the defendant's agreement in his plea

statement that his score was a “9+” (CP 42, 26). Based on the information before the court, the defendant’s offender score was miscalculated. Mr. Hampton Henderson should be resentenced.

“A defendant’s offender score, together with the seriousness level of his current offense, dictates the standard sentence range used in determining his sentence.” *State v. Zamudio*, 192 Wn. App. 503, 507, 368 P.3d 222 (2016) (citing RCW 9.94A.530(1)). “To calculate the offender score, the court relies on its determination of the defendant's criminal history, which the Sentencing Reform Act (SRA), chapter 9.94A RCW, defines as ‘the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.’” *Id.* (quoting RCW 9.94A.030(11)). “Prior convictions result in offender score “points” in accordance with rules provided by RCW 9.94A.525.” *Id.*

“In determining the proper offender score, the court ‘may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.’” *Zamudio*, 192 Wn. App. at 508 (quoting *State v. Hunley*, 175 Wn.2d 901, 909, 287 P.3d 584 (2012) (quoting RCW 9.94A.530(2)). “Sentencing information or facts are ‘admitted[or] acknowledged ... at the time of sentencing’ for this purpose if they are *affirmatively* admitted or acknowledged; the mere failure to object to a prosecutor’s assertions of

criminal history does not constitute such an acknowledgment.” *Id.*
(quoting *State v. Mendoza*, 165 Wash.2d 913, 922, 205 P.3d 113 (2009)
(quoting former RCW 9.94A.530(2) (2005))).

A trial court’s calculation of a defendant’s offender score is reviewed de novo. *State v. Mutch*, 171 Wn.2d 646, 653, 254 P.3d 803 (2011). An offender may challenge erroneous sentences lacking statutory authority for the first time on appeal. *In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 877, 50 P.3d 618 (2002). A sentencing court acts without statutory authority when it imposes a sentence based on a miscalculated offender score. *In re Pers. Restraint of Johnson*, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997).

For nonviolent offenses –as in this case (see RCW 9.41.040(2) (count I) and RCW 9A.56.075 (count II)) – the offender score is generally calculated by counting “one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and ½ point for each juvenile prior nonviolent felony conviction.” RCW 9.94A.525(7) (emphasis added); *see also* RCW 9.94A.525(20). A prior conviction “washes out” and is not included in the offender score calculation under the following relevant circumstances:

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of

judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

RCW 9.94A.525(2) (emphases added).

“A correct offender score must be calculated before a presumptive or exceptional sentence is imposed.” *State v. Tili*, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003). “Remand is necessary when the offender score has been miscalculated unless the record makes clear that the trial court would impose the same sentence.” *Id.* (citing *State v. Parker*, 132 Wn.2d 182, 189, 937 P.2d 575 (1997)).

Here, the State did not offer any certified copies of prior judgments and sentences. Instead, Mr. Hampton Henderson indicated in his guilty plea statement that his offender score was “9+”, without specifying the details of any of the prior convictions (CP 26). The felony judgment and sentence lists the supposed crimes that brought the defendant’s offender score to a 9+ (CP 42), though there is limited information on that document as to the “class” of certain offenses and

when Mr. Hampton Henderson was released following various sentencings (see CP 42).

There are 11 total offenses listed on Mr. Hampton Henderson's criminal history. CP 42. Upon reviewing that list of prior offenses, Mr. Hampton Henderson would have had, at most, an offender score of eight instead of nine.

First, the State did not offer any proof that line items 1 or 7 on the criminal history chart were indeed felonies rather than gross misdemeanors (the hand-written notation states on the judgment and sentence that these offenses were gross misdemeanors, which neither party disputed). Thus, since only felonies would have counted toward the defendant's offender score (RCW 9.94A.525(7), (2)), the potential countable offenses necessarily drop from 11 to 9.

Next, the State did not offer any evidence as to the juvenile offense from 1996 (line item 10 on the judgment and sentence, CP 42), including whether it was a class "b" or "c" felony. Presuming the offense was a "class c" felony, it would have washed after Mr. Hampton Henderson spent five consecutive years in the community crime free. RCW 9.94A.525(2)(c). There is a written notation on the felony judgment and sentence that this offense was a "wash," which neither party disputed. CP

42. Thus, without counting this wash-out 1996 offense, Mr. Hampton Henderson's potential score drops from nine to eight.

Next, the juvenile offense from 1998 (line item 9 on the judgment and sentence) should have washed out just like the 1996 offense. The State did not offer any proof of this prior "VUCSA-Possess with Intent" (CP 42); it is unclear what crime was committed, including what substance was possessed with intent to deliver. The State carried the burden of proving that this prior offense was a "class b" possession felony subject to 10-year wash-out rules, rather than a "class c" possession offense that would have washed out after five consecutive years in the community crime-free. Based on the limited information in the felony judgment and sentence, Mr. Hampton Henderson was sentenced as a juvenile for this offense in July 1998, and his next offense was committed in January 2004, more than five years later. CP 42. The State did not prove any details of this offense, including that it should count toward the defendant's offender score as a class "b" felony. And, the State did not prove the disposition that was imposed to show that the defendant spent a lesser amount of time in the community than five years crime-free.

As such, given the limited information was listed in the judgment and sentence (and the very limited admission of criminal history details in the defendant's plea statement), it appears the defendant's offender score

should not have included the 1998 offense. Excluding this line item 9 from the criminal history list would bring Mr. Hampton Henderson's potential offender score down from eight to seven.

Alternatively, even if the State had proven that the 1998 offense was a class "b" felony (line item 9, CP 42) so that it did not wash out after five years, the 1998 offense was only a juvenile matter. Prior juvenile offenses only contribute half of a point toward this defendant's offenders scoring for his convicted offenses. *See* RCW 9.41.040(2); RCW 9A.56.075; RCW 9.94A.525(7); RCW 9.94A.525(20). And, the total offender score is "the sum of points accrued under this section rounded down to the nearest whole number." RCW 9.94A.525. Thus, the juvenile prior could at most bring Mr. Hampton Henderson's offender score to seven-and-a-half points, which rounds back down to seven.

Mr. Hampton Henderson acknowledges he was sentenced for two offenses, so his "other current offense" would add one point to his offender score for each count respectively. RCW 9.94A.525; RCW 9.94A.589. This brings Mr. Hampton Henderson's score up one point, for a total of 8½ points if the 1998 juvenile offense challenged above is counted, which, again, rounds down to eight. RCW 9.94A.525. With an offender score of eight, the standard range for count I was 43-57 months (i.e., 25 months would have been the mid-point of the mid standard range

for purposes of the prison-based DOSA). RCW 9.94A.510. And, the standard range for count II would have been 17-22 months (*id.*), whereas the court imposed 29 months on count II in this case (CP 43-44) based on the miscalculated offender score. The trial court could not have imposed 29 months incarceration in this case without running afoul of exceptional sentencing provisions that were never satisfied in this case (*see* RCW 9.94A.537). Thus, since it is not clear the trial court would have imposed the same sentence absent the miscalculated offender score, this matter must be remanded for resentencing. *Tili*, 148 Wn.2d at 358 (setting forth this remedy).

Issue 4: Whether the trial court erred by imposing a hybrid sentence where the DOSA-based sentence ran concurrently in part and consecutively in part to the non-DOSA sentence.

As to count one, the trial court imposed a prison-based DOSA sentence of 27.75 months confinement (representing the mid-point of the standard range) plus 27.75 months community custody. CP 44. For count two, the trial court then imposed a non-DOSA standard range sentence of 29 total months confinement, served concurrently to the DOSA sentence. *Id.* The effect of this sentence is that Mr. Hampton Henderson must serve the 27.75 months of confinement on count one, he will then complete the time left on the concurrent 29-month sentence for count two, and he will then be released to serve 27.75 months in community custody for count

one (i.e. the community custody portion of the DOSA sentence would be consecutive to the 29-month non-DOSA sentence for count two). This exact type of DOSA hybrid consecutive and concurrent sentence was expressly rejected by *State v. Smith*, 142 Wn. App. 122, 123-29, 173 P.3d 973 (2007). Resentencing is required in this matter.

“[U]nder RCW 9.94.589(3), a sentence must either be concurrent with another sentence or consecutive to it.” *Smith*, 142 Wn. App. at 127 (citing statute). “Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535.” RCW 9.94A.589(1)(a). The sentencing guidelines do “not authorize a part consecutive, part concurrent hybrid sentence.” *Smith*, 142 Wn. App. at 127. ““Nothing in the statute suggests that the court pronouncing ‘the sentence’ can divide it into two parts, one part to run concurrently with the other sentences and the other consecutively.”” *Id.* (quoting *State v. Grayson*, 130 Wn. App. 782, 786, 125 P.3d 169 (2005)). As stated above, an offender may challenge erroneous sentences lacking statutory authority for the first time on appeal. *Goodwin*, 146 Wn.2d at 877.

State v. Smith, supra, is directly on point with this matter. There, like here, the trial court sentenced the defendant for multiple offenses, imposing a non-DOSA sentence for one conviction and DOSA sentences

for the remaining offenses. *Smith*, 142 Wn. App. at 124, 126.⁵ The higher of the concurrent DOSA sentences incarcerated that defendant for 25 months. *Id.* The non-DOSA sentence was 43-months of concurrent incarceration with the DOSA sentence, meaning, “[a]t the end of the 25 months [on the DOSA sentence]..., Smith will remain in confinement to finish the rest of his 43-month, non-DOSA sentence.” *Id.* “After [Smith] completes the non-DOSA sentence, he then begins to serve the rest of his DOSA sentences in community custody.” *Id.* Here, too, Mr. Hampton Henderson will serve the 27.75 months of incarceration on the DOSA sentence, followed by the remaining term on his 29 months of the non-DOSA sentence, and will then serve the rest of his DOSA sentence in the community. CP 44; RP 52.

This type of “part concurrent, part consecutive ‘hybrid sentence’” was expressly rejected by *Smith, supra*, and the matter was remanded for resentencing. 142 Wn. App. at 123-24, 126. The Court agreed with Smith’s argument “that his sentence is hybrid because the first half of his DOSA sentences run concurrently with his non-DOSA sentence, but the community custody portions of his DOSA sentences run consecutively to his non-DOSA sentence.” *Id.* at 126. The Court further explained how Smith had received an unlawful hybrid sentence:

⁵ Like here, the *Smith* court’s decision to impose the hybrid sentence may have been influenced by the defendant’s failure to appear in the matter when required by the court. *Smith*, 142 Wn. App. at 124; *c.f.* RP 31.

The in-custody portions of his DOSA sentences run concurrently with his non-DOSA sentence of 43 months, but the community custody portions of his DOSA sentences run consecutively to the non-DOSA sentence. Like the 12 months to be served consecutively to the sentence in *Grayson*, the community custody portions of Smith's DOSA sentences are “tacked on” to the end of his non-DOSA sentence... Smith's sentence is part concurrent and part consecutive.

Smith, 142 Wn. App. at 127-28 (citing *Grayson*, 130 Wn. App. at 786).

Accord In re Green, 170 Wn. App. 328, 335, 283 P.3d 606 (2012) (citing *Smith*, 170 Wn. App. at 126 (*Green* Court acknowledging this type of DOSA and non-DOSA sentence as an “invalid ‘hybrid’ sentence under RCW 9.94A.589(3) because the confinement portion of [the] DOSA sentences ran concurrently with [the] non-DOSA sentence; but, the community custody portions of [the] DOSA sentences were to run consecutively to [the] non-DOSA sentence.”))

Here, the court imposed the same type of invalid hybrid DOSA and non-DOSA sentence rejected by *Smith, supra*, and *Green, supra*. The trial court exceeded its sentencing authority and imposed a hybrid, part-concurrent and part-consecutive sentence that is invalid under RCW 9.94A.589. This matter must be remanded for resentencing.⁶ *Smith*, 142 Wn. App. at 124, 126, 129.

⁶ Mr. Hampton Henderson recognizes that on remand, “the trial court may, but is not required to, impose a DOSA” on any of his sentences. *Smith*, 142 Wn. App. at 129.

Issue 5: Whether, in the event the Appellant is unsuccessful in this appeal, this Court should refuse to impose appellate costs.

Mr. Hampton Henderson preemptively objects to any appellate costs should the State be the prevailing party on appeal, pursuant to the recommended practice in *State v. Sinclair*, 192 Wn. App. 380, 385-94, 367 P.3d 612, 618 (2016), and pursuant to this Court's General Court Order issued on June 10, 2016.

Mr. Hampton Henderson was found indigent by the trial court and was represented by appointed counsel for purposes of the trial court and appellate proceedings. CP 62. The trial court imposed only mandatory costs at sentencing. CP 46-47.

According to his Report as to Continued Indigency, filed contemporaneously on the same day this opening brief was filed, Mr. Hampton Henderson remains indigent and unable to pay costs that may be imposed on appeal. He owns no real property, has only approximately \$10 in personal belongings, has no income from any source, owes almost \$4,000 in debt, has "Mental disabilities several as well as physical to (sic) many to explain" and is unable to contribute any amount toward costs if awarded to the State. *See* Appellant's Declaration on Continued Indigency. The imposition of costs under these circumstances would be inconsistent with those principles enumerated in *Blazina*. *See State v. Blazina*, 182 Wn.2d 827, 835-37, 344 P.3d 680 (2015).

In *Blazina*, our Supreme Court recognized the “problematic consequences” LFOs inflict on indigent criminal defendants. *Blazina*, 182 Wn.2d at 835-37. To confront these serious problems, this Court emphasized the importance of judicial discretion: “The trial court must decide to impose LFOs and must consider the defendant’s current or future ability to pay those LFOs based on the particular facts of the defendant’s case.” *Blazina*, 182 Wn.2d at 834. Only by conducting such a “case-by-case analysis” may courts “arrive at an LFO order appropriate to the individual defendant’s circumstances.” *Id.*

The *Blazina* Court addressed LFOs imposed by trial courts, but the “problematic consequences” are every bit as problematic with appellate costs. The appellate cost bill imposes a debt for losing an appeal, which then “become[s] part of the trial court judgment and sentence.” RCW 10.73.160(3). Imposing thousands of dollars on an indigent appellant after an unsuccessful appeal results in the same compounded interest and retention of court jurisdiction. Appellate costs negatively impact indigent appellants’ ability to move on with their lives in precisely the same ways the *Blazina* court identified for trial costs.

Although *Blazina* applied the trial court LFO statute, RCW 10.01.160, it would contradict and contravene our High Court’s reasoning not to require the same particularized inquiry before imposing costs on

appeal. Under RCW 10.73.160(3), appellate costs automatically become part of the judgment and sentence. To award such costs without determining ability to pay would circumvent the individualized judicial discretion that *Blazina* held was essential before including monetary obligations in the judgment and sentence. This is particularly true where, as here, the trial court imposed only mandatory costs and Mr. Hampton Henderson's Report as to Continued Indigency demonstrates a continued inability to pay costs. CP 46-47.

In addition, the prior rationale in *State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997), has lost its footing in light of *Blazina*. The *Blank* court did not require inquiry into an indigent appellant's ability to pay at the time costs are imposed, because ability to pay would be considered at the time the State attempted to collect the costs. *Blank*, 131 Wn.2d at 244, 246, 252-53. But this time-of-enforcement rationale does not account for *Blazina*'s recognition that the accumulation of interest begins at the time costs are imposed, causing significant and enduring hardship. *Blazina*, 344 P.3d at 684; *see also* RCW 10.82.090(1) (“[F]inancial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments.”). Moreover, indigent persons do not qualify for court-appointed counsel at the time the State seeks to collect costs. RCW 10.73.160(4) (no provision for

appointment of counsel); RCW 10.01.160(4) (same); *State v. Mahone*, 98 Wn. App. 342, 346-47, 989 P.2d 583 (1999) (holding that because motion for remission of LFOs is not appealable as matter of right, “Mahone cannot receive counsel at public expense”). Expecting indigent defendants to shield themselves from the State’s collection efforts or to petition for remission without the assistance of counsel is neither fair nor realistic. The *Blazina* Court also expressly rejected the State’s ripeness claim that “the proper time to challenge the imposition of an LFO arises when the State seeks to collect.” *Blazina*, 182 Wn.2d at 832, n.1.

Furthermore, the *Blazina* court instructed *all* courts to “look to the comment in GR 34 for guidance.” *Blazina*, 182 Wn.2d at 838. That comment provides, “The adoption of this rule is rooted in the constitutional premise that *every level of court* has the inherent authority to waive payment of filing fees and surcharges on a case by case basis.” GR 34 cmt. (emphasis added). The *Blazina* court suggested, “if someone does meet the GR 34[(a)(3)] standard for indigency, courts should seriously question that person’s ability to pay LFOs.” *Blazina*, 182 Wn.2d at 839.

This Court receives orders of indigency “as a part of the record on review.” RAP 15.2(e). “The appellate court will give a party the benefits of an order of indigency throughout the review unless the trial court finds

the party's financial condition has improved to the extent that the party is no longer indigent." RAP 15.2(f). This presumption of continued indigency, coupled with the GR 34(a)(3) standard, requires this Court to "seriously question" an indigent appellant's ability to pay costs assessed in an appellate cost bill. *Blazina*, 182 Wn.2d at 839.

This Court has discretion to deny appellate costs. RCW 10.73.160(1) states the "supreme court . . . may require an adult . . . to pay appellate costs." (Emphasis added.) "[T]he word 'may' has a permissive or discretionary meaning." *Staats v. Brown*, 139 Wn.2d 757, 789, 991 P.2d 615 (2000). *Blank*, too, acknowledged appellate courts have discretion to deny the State's requests for costs. *Blank*, 131 Wn.2d at 252-53.

The record demonstrates Mr. Hampton Henderson does not have the ability to pay costs on appeal. He was found indigent by the trial court and remains indigent. Mr. Hampton Henderson respectfully requests this Court exercise its discretion by denying an award of appellate costs in this case, in the event the State substantially prevails on appeal.

F. **CONCLUSION**

Based on the foregoing, Mr. Hampton Henderson respectfully requests that his convictions be reversed, his guilty plea vacated, and count II dismissed. At a minimum, resentencing is required in this case

due to the miscalculated offender score and hybrid DOSA and non-DOSA sentence. Finally, in the event Mr. Hampton Henderson does not prevail in this appeal, he preemptively objects to any appellate costs being imposed against him.

Respectfully submitted this 7th day of September, 2016.

/s/ Kristina M. Nichols
Kristina M. Nichols, WSBA #35918
Attorney for Appellant

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
Plaintiff/Respondent) COA No. 34170-4-III
vs.) No. 15-1-00775-3
)
TERRENZ HAMPTON HENDERSON) PROOF OF SERVICE
Defendant/Appellant)
_____)

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on September 7, 2016, I mailed by U.S. Postal Service first class mail, postage prepaid, a true and correct copy of the Appellant's opening brief to:

Terrenz Hampton Henderson, #876493
Coyote Ridge Corrections Center
1301 N Ephrata Ave
Connell, WA 99326

Having obtained prior permission, I also served the Respondent by email at kburns@grantcountywa.gov.

Dated this 7th day of September, 2016.

/s/ Kristina M. Nichols
Kristina M. Nichols,
WSBA #35918
Nichols Law Firm, PLLC
PO Box 19203
Spokane, WA 99219
Phone: (509) 731-3279
Wa.Appeals@gmail.com

APPENDIX A

Police Report filed under cause number 15-1-00706-1

FILED

2015 OCT 27 AM 10:54

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

07-905474

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

TERRENZ RAY HAMPTON HENDERSON,

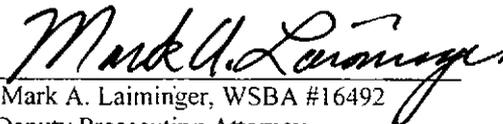
Defendant.

No. 15-1-00706-1

MOTION AND CERTIFICATION
FOR ARREST AND DETENTION

I. MOTION

The Prosecuting Attorney moves for authority to arrest and detain the above-named defendant, based on the following affidavit.


Mark A. Laiminger, WSBA #16492
Deputy Prosecuting Attorney

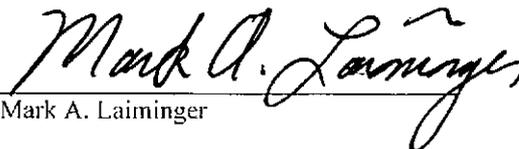
II. CERTIFICATION

Under penalty of perjury under the laws of the State of Washington the undersigned certifies:

I believe probable cause exists to detain the above-named defendant on a charge(s) of:

Count 1: Possession of a Stolen Vehicle (7-22-07 or Later), 9A.56.068, based upon a report filed with our office by Officer Randy Loyd, a law enforcement officer employed by the Moses Lake Police Department, a copy of which is attached hereto and incorporated herein. The type written officer's signature would be considered as a "signed" document.

DATED: Tuesday, October 27, 2015.


Mark A. Laiminger



Moses Lake Police Department

Prosecutor Report for Incident 15ML15281

Nature: Traffic Stop
Location:

Address: 405 W LOOP DR
MOSES LAKE WA 98837

Offense Codes: RSVE

Circumstances: BM88 LT13

Received By: M17

How Received: Officer/Unit

Agency: MLPD

Responding Officers: Loyd Randy Munro Adam Tufte Thomas

Responsible Officers: Loyd Randy

Disposition: Active 10/26/15

When Reported: 10:04:18 10/26/15

Clearance:

Occurred Between: 10:04:18 10/26/15 and 10:04:18 10/26/15

SUSPECTS:

Name: HAMPTON HENDERSON, TERRENZ R.

Name Number: 299277

Race: B

Sex: M

DOB: 12/16/81

Height: 5'07"

Weight: 185

Hair: BLK

Eyes: BRO

Address: 206 BEALE AVE, MOSES LAKE, WA 98837

Home Phone: (253)584-0890

Work Phone: () -

COMPLAINANT:

Name: MOSES LAKE POLICE DEPARTMENT

Name Number: MLPD

Race:

Sex:

DOB: **/**/**

Height: 1"

Weight: 0

Hair:

Eyes:

Address: 411 S BALSAM ST, MOSES LAKE, WA 98837

Home Phone: (509)764-3887

Work Phone: (509)764-3919

fax

WITNESSES:

Name: HINDMAN, DENNIS T.

Name Number: 37025

Race: W

Sex: M

DOB: 05/26/69

Height: 6'03"

Weight: 210

Hair: BRO

Eyes: BRO

Address: 4128 MOON DR NE, MOSES LAKE, WA 98837

Home Phone: (509)760-0978

Work Phone: () -

cell

INVOLVEMENTS

edcall

C15104373

10/26/15

Recovered

vhmain

149927

10/26/15

RECOVERED STOLEN VEH

VEHICLE INFORMATION:

Owner ID Number: 365736 **Vehicle Number:** 149927 **License Plate:** AKP9484
VIN: 1GKEK13R8XJ805706 **State:** WA **Expires:** 01/23/16
Year: 1999 **/Make:** GMC **Model:** YUKON **Type:** SUV **Color:** GLD/ **Doors:** 4
Value: 5000 **Characteristics:**

NARRATIVE:

Officer observed vehicle being driven north on Stratford from Broadway. A check showed the vehicle was listed as a stolen vehicle from Grant County Sheriff's Office. S/1 taken into custody for Possession of Stolen Vehicle and False Statements for providing false name. Passenger, W, taken into custody for Felony warrant for FTA- Possession of Stolen Vehicle. Vehicle was towed by Hall's towing, message was left for RO.

Engine in the rear of the stolen vehicle was found to come from a stolen vehicle from Spokane. Engine was recovered and stored at Hall's Towing.

S/1 Hampton Henderson, Terrenz R. 12/16/1981
W Hindman, Dennis T. 5/26/1969

Mon Oct 26 12:24:14 PDT 2015/115

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Officer _____ Badge _____ Date _____
Approved _____ Date _____

Prosecutor Report for Incident 15ML15281

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Supplemental Narrative:

Name: Loyd Randy

Date: 12:23:51 10/26/15

Moses Lake Police Incident Report

1. Initial Report
 Follow up Report
 Photos to send
 In-Car Video/Security Video to send
 DVD Statement to Send
 Refer to Investigations
 Captain Approval _____ () Yes () No

2. Suspect 1: Hampton Henderson, Terrenz Ray 12/16/1981
 Alcohol Used?
 Drugs Used?
 Computer Used?
 Weapon on Person? Type of Weapon:
 Charges, including RCW:
 RCW 9A.56.068, Possession of Stolen vehicle
 RCW 9A.56.160, Possession of Stolen Property 2nd Degree
 RCW 9A.76.175, Making False Statements
 Citation Issued, including number:
 Relationship to Victim

3. Identify Witness

4. Reconstruct Incident

On 10/26/2015 I was on duty with the Moses Lake Police Department operating vehicle 087, a fully marked patrol vehicle with department decals and overhead light bar. The vehicle is equipped with audio/video recording capabilities.

At approximately 1002 hours I was stationary in traffic at the intersection of Stratford and Broadway. I was facing south in the left lane and was the very first vehicle. I observed a gold in color GMC Yukon turn from eastbound Broadway onto northbound Stratford. The vehicle caught my attention as it turned as it appeared to be traveling quickly. I observed a black male driving the vehicle. As the vehicle completed the turn I obtained the license plate and conducted a records check through the Emergency Services Database. The return showed a flag for stolen vehicle. The flag is indicated by the vehicle license plate being highlighted Red with the words "STOLEN CHECK NCIC/WACIC" on the screen.

I waited for traffic and turned around. I could see the vehicle nearing Stratford and Knolls Vista. There was a vehicle between myself and the Yukon. I activated my overhead lights and that vehicle pulled to the right lane. I shut my lights off and continued to catch up to the vehicle. I advised dispatch of the vehicle description and license plate.

The vehicle turned onto Knolls Vista from Stratford and I temporarily lost sight of the vehicle. As I turned onto Knolls Vista I observed the vehicle traveling westbound on Loop Dr. I began to catch up to the vehicle and observed it to be occupied by at least the driver and a front seat passenger.

As I caught up to the vehicle my overhead lights were not activated. The

Prosecutor Report for Incident 15ML15281

Page 6 of 10

vehicle turned his left turn signal on and pulled in to the driveway at 405 W Loop Dr. I pulled my vehicle behind the vehicle as it came to a stop. The driver looked back towards me as the vehicle started to roll slightly back. I pulled my vehicle forward more to prevent any avenue of escape.

I opened my drivers door and began to yell in the direction of the vehicle. I instructed the driver to place both his hands up and outside the window. The driver's side window was partially down and I observed the left hand of the driver. I continued to instruct the driver to put both hands up, he yelled back "I can't my hand is stuck."

I waited for other units to arrive. Ofc Munro, Ofc Rodriguez, Cpl Tufte, Capt Williams, and Ofc Gaddis arrived on scene. Ofc Munro called for the driver to step out. The driver was called back to our location and placed into handcuffs. I overheard Ofc Munro providing the driver with his miranda warnings. The passenger was called out of the vehicle next. Due to no door handle being on the inside of the front door the passenger climbed over the driver's seat and exited from the driver's door.

The vehicle was checked for additional passengers and found to be secure. Ofc Gaddis and Cpl Tufte checked the vehicle and found an engine sitting in the rear of the Yukon. Cpl Tufte located a VIN attached to the engine and conducted a check of the VIN. The VIN returned to a stolen vehicle, a 2011 Hyundai Accent, SD 9DX895, which was reported stolen to the Spokane Police Department 2/25/2013.

The front passenger was identified as Dennis Hindman. Hindman advised me the following:

He had just met the driver the previous night and knew him as Shadow. Shadow had asked if he knew of anyone selling a vehicle that got better gas mileage than the Yukon. He had seen Shadow arrive and later leave driving the Yukon. He informed Shadow he owned an Mitsubishi Eclipse that he would sell but the Eclipse was missing the motor and transmission. Shadow wanted to go look at the vehicle but he was unable to since it was on private property and the owner of the property did not like people there at night.

Shadow drank a few beers with Hindman and then left with an arrangement to pick up Hindman and see the Eclipse. A short time before they were in Police custody Shadow arrived to pick him up driving the Yukon. They were headed to Cascade Valley when Shadow pulled in to a driveway. He looked behind him and saw a police car with the lights on. He heard the Police yelling to put up his hands, so he complied. Shadow was yelling out the window that his hand was stuck but he could see Shadow trying to undo his seat belt.

He did not know the residents of the house they were at and Shadow had not mentioned stopping anywhere else. He did not know about the engine in the back but knew Shadow did not have it with him the previous night. Hindman declined to provide a written statement of the incident.

Ofc Gaddis and Capt Williams cleared the vehicle and located no additional people inside. Ofc Gaddis and Cpl Tufte advised me of an engine in the rear of the Yukon. Cpl Tufte located a VIN attached to the engine and conducted a check through dispatch. The VIN showed it belonged to a 2011 Hyundai Accent reported stolen to Spokane Police Department on 2/25/2013.

I attempted to contact the Registered Owner of the Yukon, Darcy Wageman, with no

Prosecutor Report for Incident 15ML15281

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success. Hall's Towing responded at my request and took possession of the Yukon. I requested they remove the engine from the vehicle and contact me so I could photograph it.

I contacted the occupant of the residence who advised they did not know the driver, passenger or the vehicle.

Hindman was arrested for unrelated warrants for Possession of Stolen Vehicle and transported to Moses Lake Police Department by Cpl Tufte.

Ofc Munro transported the driver to the Moses Lake Police Department. I contacted Ofc Munro at the Moses Lake Police Department and he provided me with a written statement which is attached to this report.

I was contacted by Hall's Towing and requested to their impound facility. I responded and took photographs of the engine which was sitting on a tire inside a garage. I located an additional VIN plate which was attached to the transmission. The transmission and engine were assembled together and both VIN plate's matched the stolen report.

I requested a copy of the original Theft paperwork and received a faxed copy from Grant County Sheriff's Office. The report is attached to this report.

5. Describe Victim's Injuries, where treated and by whom
6. Describe Premise or Vehicle of Victim and Where Parked

A gold, 1999 GMC Yukon, bearing WA AKP9484, registered to Darcy L. Wageman, 2417 96th St S Apt D26, Tacoma, WA 98444.

7. Vehicle used by the suspect

A gold, 1999 GMC Yukon, bearing WA AKP9484, registered to Darcy L. Wageman, 2417 96th St S Apt D26, Tacoma, WA 98444.

8. For Burglary and Vehicle Prowl Reports, Describe Entry, Where, How, Tool Used:

9. Describe Property Taken Or Damaged (List):

10. Property Recovered (List):

A gold, 1999 GMC Yukon, bearing WA AKP9484, registered to Darcy L. Wageman, 2417 96th St S Apt D26, Tacoma, WA 98444.

An engine and transmission for a 2011 Hyundai Accent, VIN KMHCN4AC0BU616626.

11. Evidence (List):

12. Drugs and Equipment (List):
Type: Measurement: Value:

13. Juveniles taken into custody-Indicate who was contacted, and if not why:

14. Written Statements Obtained and Attached

Prosecutor Report for Incident 15ML15281

Statement from Ofc Munro
Case File from Grant County Sheriff's Office

15. Routing

Case File
Prosecutor's Office
Grant County Sheriff's Office (15GS12899)

16. Victim Letter Completed

- Yes
- No

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Officer *[Signature]* Badge 115 Date 10-26-15
 Approved _____ Date _____

10/26/15
11:52

Moses Lake Police Department
Officer Supplemental Report

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SUPPLEMENTAL OFFICER'S REPORT

On 10/26/2015 at approximately 1000 hours, Officer R. Loyd advised he was traveling behind a stolen vehicle on Loop Dr., Moses Lake. He requested Dispatch confirm Washington State registration AKP9484 was reported stolen. Officer Loyd advised the driver of the vehicle was traveling on Loop Dr., towards Central Dr. I responded from the Moses Lake Police Department to his location. While en-route, Officer Loyd advised the driver of the vehicle was pulling into a driveway at the 300 block of Loop Dr. He advised of two occupants in the vehicle. Dispatch confirmed the vehicle was reported stolen.

Upon arrival, I observed an older model gold, GMC Yukon partially parked in a driveway. The back end of the vehicle was blocking the crosswalk and protruding into the roadway. The driver side window was partially rolled down and I observed the driver's left hand sticking out of it. Officer Loyd's patrol was parked in the roadway, behind the Yukon, with the overhead emergency lights activated. Officer Loyd was positioned outside the driver side door and I could hear Officer Loyd yelling for the driver to put both of his hands outside the window.

I parked to the east of Officer Loyd and I moved to the passenger side of his vehicle. I advised the occupants of the Yukon that they were in a stolen vehicle. I began to provide verbal commands to driver of the vehicle. The driver was called out of the vehicle and was subsequently detained.

I advised the driver of his Constitutional rights, per Miranda, from my preprinted card. The driver told me he understood his rights. I advised the driver he was operating a stolen vehicle. He said "she let me use the car to go buy beer." Hampton was not able to tell me who "she was."

The driver initially told me his name was Terenz Hampton DOB: 02/16/1979. I was unable to locate him in the Law Enforcement Database (Spillman) with the information he provided.

I did locate him as Terrenz R. Hampton Herderson DOB: 12/16/1981. A booking photograph of Hampton was in Spillman and I also recognized him from previous contacts. I asked Hampton what his date of birth was on three separate occasions and he told me 02/16/1979. I told Hampton I knew who he was and that he was not being honest with me. I told Hampton his date of birth was 12/16/1981. Hampton said "Oh, I thought you were asking my from my brother's information." I asked him why I would want his brother's information. Hampton told me he did not know.

Hampton was found to have a confirmed Department of Corrections warrant for his arrest. Hampton was advised he was under arrest for the warrant and for providing a false statement to a Public Servant. I transported Hampton to the Moses Lake Police Department.

Upon arrival, Hampton asked my why he was under arrest. I explained to him a second time of the confirmed warrant for his arrest and how he provided me an incorrect date of birth.

I asked Hampton about the stolen vehicle and he told me "some chick let me use it to go buy weed." I asked him who the "chick" was and he told me did not know. Hampton was also not able to provide me a description of her or where she lived. I told Hampton he originally told me he was going to the store to buy beer. At first, Hampton did not initially say anything. He then said, "I'm tired and I

10/26/15
11:52

Moses Lake Police Department
Officer Supplemental Report

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get confused easily." "I was going to buy weed from some dude by Chico's pizza." Hampton denied knowing the vehicle was stolen.

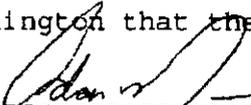
I asked Hampton if he knew the occupants of the house he was in front of. Hampton said he did and indicated his "Home-boy" lived there. I asked him what his "Home-boy's" name was. Hampton said, "he's my cuz."

Hampton was placed into a holding cell. I cleared my contact with Hampton.

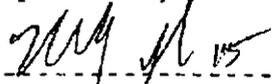
RCW 9A.72.085 "I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct."

Date: Mon Oct 26 11:36:26 PDT 2015
Reporting Officer: A. Munro
Agency: Moses Lake Police Department

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

 10/26

Responsible LEO:



Approved by:

10/26/15

Date

OCT/26/2015/MON 11:06 AM

FAX No.

P. 012/012

Grant County Sheriff's Office MOTOR VEHICLE THEFT REPORT

COPY

1. Reporting Agency: <u>Grant County Sheriff's Office</u>		2. Case Number: <u>15652859</u>
3. Estimated Value: <u>\$5,000.00</u>	4. Date of Theft: <u>10/18/15</u>	5. Time of Theft: <u>1240 HRS</u>
6. Location of Theft: <u>Interstate 7-80 at mile 172 - Moses Lake WA</u>		

7. Vehicle Year: <u>1999</u>	8. Make: <u>GM</u>	9. Model: <u>YUKON</u>	10. Style: <u>4-DR</u>	11. Color: <u>Gold</u>
12. VIN: <u>1GKEK13R8X1E05706</u>		13. License Number: <u>AKP9484</u>		14. State: <u>WA</u>
15. Expiration Date: <u>01/23/2016</u>			16. Location of duplicate keys:	
17. Vehicle Loaned <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			17. Vehicle Rented <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
18. Keys in Vehicle <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			18. Doors Locked <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
18. Damaged <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			18. Divorce/Sep. in progress <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
19. Identifying characteristics (damage, special equip., other ID numbers, other points of identity):			20. Fuel Inventory: <u>GALLONS: 20 Gallons</u>	
21. Insurance Company (Agent, Address, Phone):				

22. Theft reported by: <u>Wageman, Nancy L.</u>	23. Address: <u>2417 96th St Apt B-26 Tacoma</u>	24. Home Phone: <u>(253) 744 1305</u>	25. Work Phone:
26. Registered Owner: <u>Same as above</u>	27. Address: <u>Same as above</u>	28. Home Phone: <u>Same</u>	29. Work Phone:
30. Legal Owner <input checked="" type="checkbox"/> Lienholder <input type="checkbox"/>	31. Address: <u>Same as above</u>	32. Home Phone: <u>Same</u>	33. Work Phone:
34. Vehicle Purchased from:	35. Address:	36. Date of Sale:	37. Has title been transferred: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
38. Suspect: <u>Alison, Courtney L.</u>	39. Address/Phone: <u>3000 Corbett Ave WA Tacoma</u>	40. Physical Description: <input type="checkbox"/> M <input checked="" type="checkbox"/> F <u>09/19/90</u> Age 25 Race B Hgt 5-07 Wgt 165 Eyes Blue DOB	

41. Statement of Reporting Party (describe circumstances of the theft):

VICTIM PROVIDED SUSPECT AND ANOTHER MADE A RIDE TO MOSES LAKE TO CLEAN OUT A STORAGE UNIT. DURING THIS TIME, BOTH SUSPECTS ARE BELIEVED TO HAVE BEEN INVOLVED IN THE DRUG AND PROSTITUTION TRADE. VICTIM WAS LEAVING FEMALE SUSPECT A RIDE BACK TO TACOMA WHEN A PHYSICAL ALTERCATION BROKE OUT IN THE VEHICLE AND SUSPECT ASSAULTED THE VICTIM. SUSPECT TOOK THE VICTIM VANITING LEAVING VICTIM ON THE SIDE OF THE INTERSTATE. VICTIM TRANSPORTED TO SAMARITAN HOSPITAL FOR INJURIES RECEIVED DURING THE ASSAULT.

(If additional space is needed, use plain 8 1/2 x 11 paper for page 2)

I the undersigned hereby declare this information to be true and correct: I did not give anyone permission to take or use the described vehicle (except as described above): I am the owner or person who was legally in possession of the described vehicle and will testify in court, under oath, to the facts herein. I understand that I may be charged with violation of RCW 9A.76.020, "Obstructing a Public Servant: by filing a false report. If I regain possession of this vehicle, I understand that I must notify the Grant County Sheriff's Office immediately of the recovery.

Date 10/18/15 Time 1944 Signature Nancy L. Wageman

42. Sobriety of Claimant: <input checked="" type="checkbox"/> SBR <input type="checkbox"/> HBD <input type="checkbox"/> INTOX <input type="checkbox"/> UNK	43. Proof of Ownership Shown by: <input type="checkbox"/> REG <input type="checkbox"/> TITLE <input checked="" type="checkbox"/> NONE	44. Entered into WAC: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date: Time:
45. Report taken by: <u>A. Anderson</u>	46. Badge Number: <u>96</u>	Date: <u>10/18/15</u>

APPENDIX B

Information filed under cause number 15-1-00706-1

FILED

2015 OCT 27 AM 10:54

KIMBERLY A. ALLEN
GRANT COUNTY CLERK

07-905475

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

TERRENZ RAY HAMPTON HENDERSON,

Defendant.

No. **15-1-00706-1**

INFORMATION

GARTH DANO, Prosecuting Attorney for Grant County, State of Washington, by this Information accuses the above-named defendant of the crimes of:

Count 1: Possession of a Stolen Vehicle (7-22-07 or Later), 9A.56.068

Committed as follows:

COUNT 1: Possession of a Stolen Vehicle [Incident July 22, 2007 or Later]

On or about the 26th day of October, 2015, in the State of Washington, the above-named Defendant did knowingly possess a stolen motor vehicle, to-wit: a gold 1999 GMC Yukon, Washington license AKP9484, the property of Darcy L. Wageman; Possessing a stolen motor vehicle means the defendant did knowingly receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto; contrary to Revised Code of Washington 9A.56.068.

(MAXIMUM PENALTY- Ten (10) years imprisonment and/or a \$20,000 fine pursuant to RCW 9A.56.068 and RCW 9A.20.021(1)(b), plus restitution, assessments and court costs.)

JIS Code: 9A.56.068 Poss Stolen Vehicle

contrary to form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

DATED at Ephrata, Washington, Tuesday, October 27, 2015.

GARTH DANO
Grant County Prosecuting Attorney

By: *Mark A. Laiminger*
Mark A. Laiminger, WSBA #16482
Deputy Prosecuting Attorney

DEFENDANT INFORMATION			
NAME: TERRENZ RAY HAMPTON HENDERSON		DOB: 12/16/1981	
ADDRESS: 206 BEALE AVE, MOSES LAKE, WA 98837			
OIN: 15ML15281	AGENCY: MLPD	DRIV. LIC. NO. HAMPTTR198RW	DL ST: WA
SID: WA18773219	FBI: 903776NB5	PCN: 926037676	DOC:
SEX: M	RACE: B		

APPENDIX C

Order of Dismissal filed under cause number 15-1-00706-1

MARLA WEBB
FILED
FEB 09 2016
KIMBERLY A. ALLEN
GRANT COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

**TERRENZ RAY HAMPTON
HENDERSON,**
MLPD 15ML15281
PCN: 926037676

Defendant.

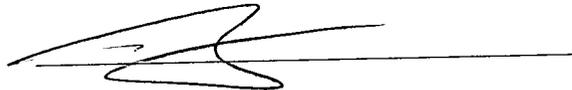
NO. 15-1-00706-1

ORDER FOR DISMISSAL

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court upon the motion of the State of Washington, Plaintiff, and the Court having considered the files and records herein and the affidavit of the Deputy Prosecuting Attorney in support of the motion, and the ends of justice not warranting further proceedings in this matter as to the above-entitled Defendant, now, therefore,

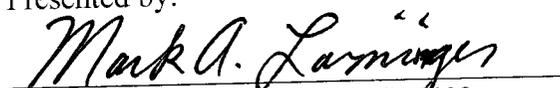
IT IS ORDERED that this matter is hereby dismissed without prejudice.

Dated: 2-9-16



JUDGE

Presented by:


Mark A. Laiminger, WSBA #16492
Deputy Prosecuting Attorney