

FILED
September 27, 2016
Court of Appeals
Division III
State of Washington

NO. 34173-9-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

PATRICK GALE WILSON,

Defendant/Appellant.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES	ii
STATUTES	ii
ASSIGNMENT OF ERROR	1
ISSUE RELATING TO ASSIGNMENT OF ERROR	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	6
APPENDIX “A”	
APPENDIX “B”	
APPENDIX “C”	

TABLE OF AUTHORITIES

CASES

Richland v. Wakefield, slip opinion 92594-1 (September 22, 2016) 6
State ex rel Carroll v. Junker, 79 Wn.2d 12, 482 P.2d 775 (1981) 4
State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015)..... 4, 5

STATUTES

RCW 9.94A.507..... 5
RCW 9.94A.729(3)..... 4
RCW 10.01.160(3)..... 4
RCW 10.01.160(4)..... 3

ASSIGNMENT OF ERROR

1. The trial court's failure to modify Patrick Gale Wilson's legal financial obligations (LFOs), or to terminate them, with the exception of the mandatory LFOs, constitutes an abuse of discretion.

ISSUE RELATING TO ASSIGNMENT OF ERROR

1. Will Mr. Wilson ever be able to make payment of the LFOs originally ordered in his November 4, 2011 Judgment and Sentence based upon the length of his prison sentence and his inability to earn significant funds for payment? (CP 3)

STATEMENT OF THE CASE

Mr. Wilson was convicted of first degree child rape and sentenced on November 4, 2011. (Appendix "A")

The Judgment and Sentence contains mandatory LFOs plus a reference to a cost bill. (CP 16)

The cost bill sets out a total of \$14,448.50. (Appendix "B")

The sentencing court did not check any of the boxes under paragraph 2.5 concerning Mr. Wilson's ability to pay LFOs. It is unknown whether or not an appropriate colloquy was conducted at the time of sentencing.

On January 11, 2016 Mr. Wilson filed a motion to remit his LFOs. (CP 1)

The State responded with a brief filed on January 26, 2016. (CP 10)

The Court, without conducting a hearing, entered an order denying Mr. Wilson's motion on the basis that it was premature. (CP 13)

Mr. Wilson filed a Notice of Appeal on February 25, 2016. (CP 14)

SUMMARY OF ARGUMENT

The Court abused its discretion when it denied Mr. Wilson's motion for remission. Mr. Wilson set forth his disability and lack of income.

The only applicable LFOs are the mandatory LFOs. No restitution was ordered.

ARGUMENT

The trial court's ruling involving Mr. Wilson's motion to terminate LFOs follows:

... [T]he defendant's motion to remit his legal financial obligations is denied. The proper time for the defendant to file a motion to terminate or modify his legal financial obligations is after he has been released from prison.

(CP 13)

RCW 10.01.160(4) provides, in part:

A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs

Mr. Wilson contends that the trial court abused its discretion at the hearing on his motion to remit LFOs.

Where the decision or order of the court is a matter of discretion, it will not be disturbed

on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1981).

It is unknown if the sentencing court conducted a colloquy with regard to Mr. Wilson's ability to pay LFOs.

Mr. Wilson is not contesting the fact that he is required to pay mandatory LFOs. However, he contends that the sentencing court's failure to conduct a colloquy at the time of sentencing, along with the resentencing court abusing its discretion concerning his ability to pay, constitutes a violation of the ruling in *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015).

The *Blazina* case interpreted RCW 10.01.160(3). The Court ruled at 838:

Practically speaking, this imperative under RCW 10.01.160(3) means that the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant's current and future ability to pay. Within this inquiry, the court must also consider important factors ... such as incarceration, any of defendant's other debts, including restitution, when determining a defendant's ability to pay.

Mr. Wilson was sentenced to one hundred thirty-six (136) months to life in prison

RCW 9.94A.729(3) provides, in part:

An offender may earn early release time as follows:

- (a) ...;
- (b) ...;
- (c) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

Ten (10%) percent of one hundred and thirty-six (136) months is thirteen point five (13.5) months. This means that Mr. Wilson will not become eligible for release for a period of one hundred and twenty-two and one-half (122 ½) months (10+ years) from his date of sentencing less any credit for time served in the Benton County Jail.

Mr. Wilson may not be released then since his sentence is subject to review by the Indeterminate Sentencing Review Board. RCW 9.94A.507 (Appendix "C")

The *Blazina* Court went on to say, *supra* 838-39:

Courts should also look to the comment in court rule GR 35 for guidance. This rule allows a person to obtain a waiver of filing fees and surcharges on the basis of indigent status, and the comment to the rule lists

ways that a person may prove indigent status. GR 34. For example, under the rule, courts must find a person indigent if a person establishes that he or she receives assistance from a needs-based, means-tested assistance program, such as Social Security or food stamps. ... In addition, courts must find a person indigent if his or her household income falls below 125 percent of the federal poverty guideline. ... Although the ways to establish indigent status remain non-exhaustive ..., if someone does meet with GR 34 standards for indigency, courts should seriously question that person's ability to pay LFOs.

Mr. Wilson's imprisonment for probably the rest of his life substantiates that he is truly indigent for purposes of paying LFOs.

CONCLUSION

The likelihood that Mr. Wilson will be released from prison in the near future is minimal.

Even if Mr. Wilson is released from prison he will not be able to secure employment and will have to reapply for social security disability. (CP 4) *See: Richland v. Wakefield, slip opinion 92594-1* (September 22, 2016) (prohibiting the taking of Social Security disability payments to pay LFOs).

The trial court abused its discretion. No reasonable person would leave the LFOs in effect with the exception of those LFOs that are mandatory.

Mr. Wilson requests that his case be remanded to the trial court to remove all non-mandatory LFOs.

DATED this 24th day of September, 2016.

Respectfully submitted,

s/ Dennis W. Morgan

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APPENDIX “A”

NOV 04 2011

ORIGINAL FILED ^{jos 14}

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

JUDGMENT DOCKET
NO 11-9-02522-8

STATE OF WASHINGTON,

NO. 09-1-01031-9

Plaintiff,

FELONY JUDGMENT AND SENTENCE (FJS)

vs.

Prison RCW 9.94A.712 Prison Confinement

PATRICK GALE WILSON ,

Defendant.

CLERK'S ACTION REQUIRED:

Restraining Order

Firearms Rights Revoked

Clerk's Action Required, para 4.1, 4.3, 5.6 and 5.8

SID: WA22410198

DOB: 03/20/1979

BCSO #09-15160

I. HEARING

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

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on September 6, 2011
by plea jury-verdict bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
1	RAPE OF A CHILD IN THE FIRST DEGREE	RCW 9A.44.073	01/01/2007

as charged in the Amended Information.

The court finds that the defendant is subject to indeterminate sentencing under RCW 9.94A.712.

The jury returned a special verdict or the court made a special finding with regard to the following:

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense

(RCW 9.94A.500,.505)(WPF CR 84.0400 (6/2008))

Page 1

0-00000003

- The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____ RCW 9.94A. _____
- The offense was predatory as to Count(s) _____, RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count(s) _____, RCW 9.94A. _____
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count(s) _____, RCW 9.94A.838, 9A.44.010.
- The defendant acted with sexual motivation in Count(s) _____. RCW 9.94A.835.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- The defendant used a firearm in the commission of the offense in Count(s) _____. RCW 9.94A.602, 9.94A.533.
- The defendant used a deadly weapon other than a firearm in the commission of the offense in Count(s) _____. RCW 9.94A.602, 9.94A.533.
- Count(s) _____, Violation of the Uniform Controlled Substances Act (VUCSA), RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture in Count(s) _____. RCW 9.94A.605, RCW 69.50.401(a), RCW 69.50.440.
- Count _____ is a criminal street gang-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that minor in the commission of the offense. Laws of 2008, ch.276 § 302.
- Count _____ is the crime of unlawful possession of a firearm. The defendant was a criminal street gang member or associate when the defendant committed the crime. RCW 9.94A.545.
- The defendant committed vehicular homicide vehicular assault proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- Count _____ involves attempting to elude a police vehicle and during the commission of the crime, the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. Laws of 2008, ch.219 § 2.
- Count _____ is a felony in the commission of which the defendant used a motor vehicle. RCW 46.20.285.

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense

(RCW 9.94A.500,.505)(WPF CR 84.0400 (6/2008))

Page 2

0-00000004

- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- For the crime(s) charged in Count(s) _____, **domestic violence** was pled and proved. RCW 10.99.020.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score are RCW 9.94A.589.

Other current convictions listed under different cause numbers used in calculating the offender score are:

CRIME	CAUSE NUMBER	COUNTY/STATE

2.2 CRIMINAL HISTORY RCW 9.94A.525:

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	Age Adult Juvi	TYPE OF CRIME
1 ARSON II (WASHES)	7-19-1991	BENTON	7-2-1991	J	V
2 VUCSA	11-9-2005	BENTON	6-5-2004	A	DRUG
3					
4					
5					

- 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, the court finds that they are one offense for purposes of determining the offender score. RCW 9.94A.525.
- The prior convictions listed as number(s) _____ above, are not counted as points but as enhancements pursuant to RCW 46.61.520.

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	1	LEVEL XII	102-136			LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

FELONY JUDGMENT AND SENTENCE (FJS)
 Prison - Sex Offense
 (RCW 9.94A.500,.505)(WPF CR 84.0400 (6/2008))
 Page 3

0-00000005

(JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8). (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

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

RTN/RJN Restitution to:

TOTAL ORDERED: \$0

(Name and Address—address may be withheld and provided confidentially to Clerk's Office).

PCV	\$ 500	Victim assessment	RCW 7.68.035
CRC	\$ See Attached	Court costs, including	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
	Cost Bill	(Transportation costs on FTA Warrants in this case will be assessed at the current legal rate.	

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense
(RCW 9.94A.500, 505)(WPF CR 84.0400 (6/2008))

Page 4

0-000000006

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.)

EXT	\$ _____	Extradition Costs	RCW 9.94A.120
FCM/MTM	\$ 500 _____	Fine	RCW 9A.20.021
CDF/LDI/FCD	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
CLP	\$ _____	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ 100 _____	Felony DNA collection fee [] not imposed due to hardship	RCW 43.43.7541
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	Other costs for:	
	\$ _____	TOTAL	RCW 9.94A.760

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 [] shall be set by the prosecutor
 [] is scheduled for _____

[] The defendant waives any right to be present at any restitution hearing (sign initials): _____

[] RESTITUTION. Schedule attached.
 [] Restitution ordered above shall be paid jointly and severally with:

NAME CAUSE NUMBER

RJN

[] 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, 7320 W. Quinault, Kennewick, WA 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

FELONY JUDGMENT AND SENTENCE (FJS)
Prison - Sex Offense
 (RCW 9.94A.500,.505)(WPF CR 84.0400 (6/2008))
 Page 5

0-00000007

[X] 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):

_____ Months on Count _____ months on Count _____
_____ Months on Count _____ months on Count _____
_____ Months on Count _____ months on Count _____

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

[] The confinement time on Count _____ includes _____ months as enhancement for [] firearm [] deadly weapon [] sexual motivation [] VUCSA in a protected zone [] manufacture of methamphetamine with juvenile present [] sexual conduct with a child for a fee.

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 at Section 2.3, and except for the following counts which shall be served consecutively:

_____ This sentence shall run concurrently with the sentence in cause number(s): _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT. RCW 9.94A.712 (Sex offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count I minimum term 136 mo. maximum term Statutory Maximum
Count _____ minimum term _____ maximum term Statutory Maximum

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

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 9.94A.700, .705, and .715).

(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 I for Life months.

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense

(RCW 9.94A.500, .505)(WPF CR 84.0400 (6/2008))

Page 6

0-00000008

Count _____ for _____ months;
Count _____ for _____ months;

(For sentences after July 26, 2009)

The above term of community custody or community placement shall be reduced by the court whenever an offender's term of confinement, in combination with the term of community custody or community placement exceeds the statutory maximum for the crime as provided in RCW 9A.20.021. The term of confinement shall be completed when the defendant has served the confinement imposed herein or is released from custody pursuant to any earned early release credits.

(Sex offenses only) For count(s) _____, sentenced under RCW 9.94A.712, for any period of time the defendant is released from confinement before the expiration of the statutory maximum.

(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: D.S.M. DOB 3-13-2002 _____
- remain within outside of a specified geographical boundary, to wit: _____
- participate in the following crime-related treatment or counseling services: ALL CONDITIONS IN APPENDIX F.
- 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: _____

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense
(RCW 9.94A.500,.505)(WPF CR 84.0400 (6/2008))
Page 7

0-000000009

[] Other conditions: _____

(C) For sentences imposed under RCW 9.94A.712, the Indeterminate Sentence Review Board may be impose other conditions, including electronic monitoring if DOC so recommends. In an emergency, DOC may impose other conditions for a period not to exceed seven (7) working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

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

4.6 **OFF-LIMITS ORDER** (known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections.

V. NOTICES AND SIGNATURES

- 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

Cross off if not applicable:

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense

(RCW 9.94A.500,,505)(WPF CR 84.0400 (6/2008))

Page 8

0-00000010

5.6 SEX AND KIDNAPPING OFFENDER REGISTRATION RCW 9A.44.130, RCW 10.01.200

(1) **GENERAL APPLICABILITY AND REQUIREMENTS:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody in which case you must register within 24 hours of your release.

(2) **OFFENDERS WHO LEAVE THE STATE AND RETURN:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three (3) business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later, while not a resident of Washington, you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within three (3) business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

(3) **CHANGE OF RESIDENCE WITHIN STATE AND LEAVING THE STATE:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

(4) **ADDITIONAL REQUIREMENTS UPON MOVING TO ANOTHER STATE:** If you move to another state, or if you work, carry on a vocation, or attend school in another state, you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington state.

(5) **NOTIFICATION REQUIREMENT WHEN ENROLLING IN OR EMPLOYED BY A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION OR COMMON SCHOOL (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff of the county of your residence of your termination of enrollment or employment within 10 days of such termination.

(Effective September 1, 2006) If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you enroll on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

(6) **REGISTRATION BY A PERSON WHO DOES NOT HAVE A FIXED RESIDENCE:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours, excluding weekends and holidays after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list of the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(7) **REPORTING REQUIREMENTS FOR PERSONS WHO ARE RISK LEVEL II OR III:** If you have a fixed residence and you are designated as a Risk Level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office and shall occur during normal

FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense

(RCW 9.94A.500, .505)(WPP CR 84.0400 (6/2008))

Page 9

0-00000011

business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.

(8) APPLICATION FOR A NAME CHANGE: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.030(7)

5.7 MOTOR VEHICLE: If the court found in Section 2.1 that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

6.0 OTHER _____

DONE IN OPEN COURT and in the presence of the defendant this date: 11/4/11

Anita Petra

Deputy Prosecuting Attorney
OFC WSBA #
Print name: ANITA I. PETRA
OFC ID #91004

S. Cornish

Attorney for Defendant
WSBA # 25334
Print name: S.CORNISH

Patrick Wilson
JUDGE Print name: _____

Defendant
Print name:
PATRICK GALE WILSON

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: _____

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

FELONY JUDGMENT AND SENTENCE (FJS)
Prison - Sex Offense
(RCW 9.94A.500, 505)(WPF CR 84.0400 (6/2008))
Page 10

0-00000012

IDENTIFICATION OF DEFENDANT

SID No: WA22410198
(If no SID take fingerprint card for State Patrol)

Date of Birth: 03/20/1979

FBI No: 160851FC2

Local ID No: WILSOPG211D0

PCN No:

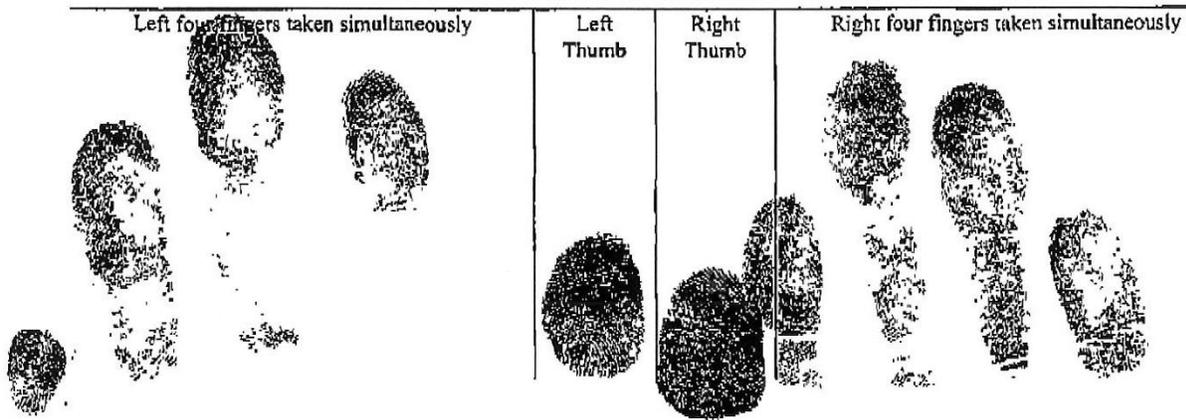
SS No:

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 Ana Suter Deputy Clerk/Bailiff. Dated: 11/4/11

DEFENDANT'S SIGNATURE: x Patrick Wilson



FELONY JUDGMENT AND SENTENCE (FJS)

Prison - Sex Offense
(RCW 9.94A.500, 505)(WPF CR 84.0400 (6/2008))
Page 11

0-00000013

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

STATE OF WASHINGTON]	Cause No.: 09-1-01031-9
]	
	Plaintiff]
	v.]
Patrick Gale Wilson		JUDGEMENT AND SENTENCE (FELONY)
	Defendant]
		APPENDIX F
		COMMUNITY CUSTODY
DOC No. 888891]	

The court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

Community Custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) Defendant shall comply with the following conditions during the term of community custody:

- (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 service;
- (3) Not consume or be in possession of controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use, or possess a firearm or ammunition;
- (8) Notify community corrections officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.

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

- 1) Within 30 days of release from confinement, enter into and make reasonable progress in sexual deviancy therapy, as directed, with a therapist approved by your Community Corrections Officer.
- 2) Have no contact with the victim of this offense, either verbal, written, or third party for the statutory maximum of the offense, unless approved by the Community Corrections Officer and therapist.
- 3) Have no contact with females under the age of 16, unless approved by your therapist and/or Community Corrections Officer. In case of approved contact, it shall be only in the presence of a responsible adult who has received prior approval from the therapist and Community Corrections Officer, and who is aware of offense behavior.
- 4) Submit to polygraph and plethysmograph testing upon the request of your therapist and/or Community Corrections Officer, at your own expense.
- 5) Hold no position of authority or trust involving children.
- 6) Avoid places where children congregate, including parks, libraries, playgrounds, schools, day care centers, and video arcades.
- 7) Do not change therapists without prior approval of your Community Corrections Officer.
- 8) Do not possess or peruse pornographic materials, including those found on the internet.
- 9) Do not attend X-rated movies, peep shows, or adult book stores.
- 10) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, undergo an evaluation regarding substance abuse at your expense, and follow any recommended treatment as a result of that evaluation.
- 11) Do not initiate or prolong physical contact with children for any reason.
- 12) Inform the Community Corrections Officer of any romantic relationships to verify there are no victim-age children involved.
- 13) Offender's employment and volunteer activities must be approved of in advance by the supervising Community Corrections Officer.
- 14) Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and searches of your person, residence and vehicle by the Community Corrections Officer to monitor compliance.
- 15) Do not enter any business where alcohol is the primary commodity for sale.
- 16) Undergo alcohol evaluation and follow all recommended treatment.
- 17) Do not hold employment without first advising the employer of your conviction for this offense, as directed by the Community Corrections Officer.
- 18) Defendant will obey all laws.

DATE

11/9/11

JUDGE, Benton County Superior Court

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Page 2 of 2

DOC 09-131 (F&P Rev. 04/05/2001) OCO

APPENDIX F - FELONY COMMUNITY PLACEMENT

0-00000015

APPENDIX “B”

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 09-1-01031-9
)	
vs.)	COST BILL
)	
PATRICK GALE WILSON,)	
)	
Defendant.)	

The following court costs have been incurred by the county in the above-entitled matter and are owing:

		<u>ORD</u>	<u>ASS'D</u>
FILING FEE	\$ 200.00	_____	_____
CLERK'S FEE FOR FTA WARRANTS	\$ _____	_____	_____
_____ \$ _____	\$ _____		
_____ \$ _____	\$ _____		
SHERIFF'S SERVICE FEE	\$ 60-	_____	_____
10/30/09 \$ 60-	\$ _____		
_____ \$ _____	\$ _____		
JURY DEMAND FEE	\$ 250-	_____	_____
WITNESS FEES ⁴³⁰⁻	\$ 130-	_____	_____
ATTORNEY'S FEES # 700 trial	\$ 2700-	_____	_____
SPECIAL COSTS REIMBURSEMENT	\$ 11108.50	_____	_____
EXTRADITION COSTS	\$ _____	_____	_____
TOTAL ORDERED AND/OR ASSESSED	\$ 14448.50	_____	_____

DATED: November 4, 2011

JOSIE DELVIN
SUPERIOR COURT CLERK

By: [Signature]
Deputy

INV 742.50
INV 175.00
DR 1250
INV 1200
INV 803.50
INV 704.00
INV 1427.00
INV 496.50

DR 900
INV 945.50
INV 704.00
DR 500.00

ATTY 2000
INV 1200

0-000000016

CRIMFLY 3/2007
SXA

APPENDIX “C”

RCW 9.94A.507

Sentencing of sex offenders.

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

[2008 c 231 § 33. Prior: 2006 c 124 § 3; (2006 c 124 § 2 expired July 1, 2006); 2006 c 122 § 5; (2006 c 122 § 4 expired July 1, 2006); 2005 c 436 § 2; 2004 c 176 § 3; prior: 2001 2nd sp.s. c 12 § 303. Formerly RCW 9.94A.712.]

NOTES:

Reviser's note: *(1) The reference to RCW 9.94A.030(31)(b) was apparently in error. The reference should be to RCW 9.94A.030(34)(b). RCW 9.94A.030 was subsequently amended by 2010 c 224 § 1 and by 2010 c 274 § 401, changing subsection (34) to subsection (35). RCW 9.94A.030 was subsequently amended by 2011 c 87 § 2, changing subsection (35) to subsection (36). RCW 9.94A.030 was subsequently amended by 2015 c 287 § 1, changing subsection (36) to subsection (37).

(2) This section was recodified pursuant to the direction found in section 56(4), chapter 231, Laws of 2008.

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Expiration date—2006 c 124 § 2: "Section 2 of this act expires July 1, 2006." [2006 c 124 § 4.]

Effective date—2006 c 124: See note following RCW 9.94A.030.

Effective date—2006 c 122 §§ 5 and 7: "Sections 5 and 7 of this act take effect July 1, 2006." [2006 c 122 § 9.]

Expiration date—2006 c 122 §§ 4 and 6: "Sections 4 and 6 of this act expire July 1, 2006." [2006 c 122 § 8.]

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

NO. 34173-9-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	BENTON COUNTY
Plaintiff,)	NO. 09 1 01031 9
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
PATRICK GALE WILSON,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 26th day of September, 2016, I caused a true and correct copy of the *BRIEF OF APPELLANT* and to be served on:

COURT OF APPEALS, DIVISION III
Attn: Renee Townsley, Clerk
500 N Cedar St
Spokane, WA 99201

E-FILE

BENTON COUNTY PROSECUTOR'S OFFICE

Attn: Andrew Kelvin Miller

prosecuting@co.benton.wa.us

E-FILE

PATRICK GAYLE WILSON #888891

Airway Heights Correctional Center

P.O. Box 2049, L-A-55-U

Airway Heights WA 99001

U.S. MAIL

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99169

Phone: (509) 775-0777

Fax: (509) 775-0776

nodblspk@rcabletv.com