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Division III  
State of Washington  
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NO. 34639-1-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

JOSE MENDEZ, JR.,

Appellant.

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BRIEF OF RESPONDENT

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## I. ASSIGNMENTS OF ERROR

### A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant raised two assignments of error:

- A. The trial court erred when it failed to conduct a comparability analysis of the federal conviction
- B. The trial court violated the law of the case doctrine when it allowed the state to present evidence after it had already conceded the striking of the federal conviction and wash out of five earlier convictions.
- C. The trial court erred in failing to enter written findings and conclusions justifying an exceptional sentence.
- D. The court should correct the judgment and sentence to actually reflect its ruling with respect to count four.
- E. The record does not support the court's finding that Mr. Mendez had the current or future ability to pay five hundred dollars toward the cost of incarceration
- F. The State should not be awarded appellate costs if it primarily prevails against Mendez.

### B. ANSWERS TO ASSIGNMENTS OF ERROR.

The State's response is as follows:

1. The State submitted documentation which proved the defendant to be the person in the federal judgment and sentence, Mendez admitted he was the person. Mendez never raised the issue of comparability in the initial proceeding nor in the second sentencing. In the alternative if this court determines the need for comparison this court need not remand, this court may address that legal analysis. If this court does that analysis it will determine the federal conviction is comparable to similar state offenses.
2. The law of the case doctrine is not applicable in the manner espoused by Mendez. This court vacated the sentence and remanded for a full resentencing, that is the law of the case. The trial court did not commit error.
3. This issue is moot, findings and conclusions have been

entered.

4. The judgment and sentence contains one scrivener's error in section 4.A.2. The remainder of that section does not conflict with sections 2.6, 3.2 or the court's sentence.
5. The trial court's finding supports the imposition of the very limited legal financial obligation. In the alternative if this court determines the record is insufficient this court should simply order the specific section of the judgment and sentence be stricken in the trial court by ex parte order without further hearing.
6. The State does not intend to request appellate costs when it primarily prevails in this appeal.

## II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately set forth in appellant's brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section. The State shall refer to specific sections of the verbatim report of proceeding in the body of this brief.

## III. ARGUMENT

### A. Response to allegation A. - The law of the case doctrine does not preclude the actions taken by the trial court at the Mendez's resentencing.

Mendez did not dispute the facts of the crime, his initial dispute was the existence of the crime at all given the fact that the State did not have any proof in the form of a judgment and sentence or some other type of documentation that Mendez was the Mendez who had committed this federal offense. Further, Mendez did not object to the very same conviction in a prior criminal conviction.

The law of the case is as follows “...we vacate the sentence and remand to the superior court for resentencing... We remand the case to the Yakima County Superior Court for resentencing.” Slip at 10, 11. The State would agree that the parties must follow the ruling of this court, the State would wholly and totally disagree with Mendez on what that law is in this case.

As our State Supreme Court very recently noted in In re Personal Restraint of Canha, 94175-1 (WASC) “Under our law of the case doctrine, "once there is an appellate court ruling, its holding must be followed in all of the subsequent stages of the same litigation." State v. Schwab, 163 Wn.2d 664, 672, 185 P.3d 1151 (2008); see also Humphrey Indus., Ltd. v. Clay Street Assocs., 176 Wn.2d 662, 669-70, 295 P.3d 231 (2013) (concluding that "the parties, the trial court, and this court are bound by the holdings of [this] court on a prior appeal" (alteration in original) (quoting Greene v. Rothschild, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966))).” (Footnote 1)

The alleged “concession” by the State is not the law of the case, the ruling by the court is. In this instance Mendez asked for and got what he wanted, to be resentenced. As the age old adage goes, one must be careful of what one asks for.

This court has two options when inquiring into the comparability

of a foreign crime and one of a similar nature in this state. This court can 1) remand the case to the superior court for a comparability analysis, as addressed in State v. Thiefault, 160 Wn.2d 409, 420, 158 P.3d 580 (2007), or this court can perform the comparability analysis itself and remand thereafter to superior court for resentencing if necessary as set out in In re Personal Restraint of Lavery, 154 Wn.2d at 255-58. In this case this court should, if needed, perform the comparability analysis and remand for resentencing if it determines there was error on the part of the trial court.

To compare offenses, this court uses a two-part test. In re Pers. Restraint of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). The first portion of the analysis is to determine if the crimes are legally comparable. This court will compare the elements of the out-of-state offense to the most comparable Washington offense. State v. Morley, 134 Wn.2d 588, 605-06, 952 P.2d 167 (1998). If this court were to determine that the crimes' elements are not the same, then the offenses are not legally comparable. Id. at 606. If on the other hand the crimes are legally comparable, the analysis ends and the crime is included in the offender score.

If the offenses are not legally comparable, this court will address the second part of the test and analyze factual comparability. Lavery, 154 Wn.2d at 255-57. Offenses are factually comparable when the defendant's

conduct would have violated a Washington statute. Morley, 134 Wn.2d at 606, "The key inquiry is under what Washington statute could the defendant have been convicted if he or she had committed the same acts in Washington."

The statutes in Washington which are comparable to those found in BB are as follows:

**RCW 69.50.401. Prohibited acts: A-Penalties**

- (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.
- (2) Any person who violates this section with respect to:
  - (a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, ...

**RCW 69.50.407. Conspiracy**

Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**RCW 69.50.101. [Definitions] ...**(e) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include industrial hemp as defined in RCW 15.120.010

...

- (l) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

RCW 69.50.206. Schedule II

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

This court need only look to Exhibit BB to determine that the previous federal offense is comparable to a State offense under RCW 69.50.401. The judgment and sentence in BB indicates that Mendez pleaded guilty to two counts, 1) Conspiracy to Distribute a Controlled Substance and 3) Distribution of a Controlled Substance, Cocaine (Over 500 Grams) Mendez was sentenced to 120 months. (Exhibit BB) (This judgment and sentence/exhibit indicates that count 4 was dismissed but does not address the outcome of count 2.)

The United States Code (USC) for this offense is 21 U.S. Code § 841 - Prohibited acts A, which reads in part: (a) Unlawful acts Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally— (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance...”

The following sections of the USC define terms of incarceration

that meet or exceed a felony sentence in this state.

21 U.S. Code § 841 - Prohibited acts A (b) Penalties Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows...

The USC code uses the following definitions when addressing crimes of this type, these definitions are nearly identical to those found in RCW 69.50. The federal code defines the elements of the crime which was proven through the exhibit admitted during sentencing as follows:

**21 U.S. Code § 802 - Definitions**

(6) The term “controlled substance” means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

...

(11) The term “distribute” means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term “distributor” means a person who so delivers a controlled substance or a listed chemical.

...

(13) The term “felony” means any Federal or State offense classified by applicable Federal or State law as a felony.

...

(17) The term “narcotic drug” means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

...

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

**21 U.S. Code § 812 - Schedules of controlled substances**  
**Schedule II**

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

...

(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

**21 U.S. Code § 846 - Attempt and conspiracy**

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

The State must prove the existence of a prior conviction by a preponderance of the evidence. State v. Rivers, 130 Wn.App. 689, 697, 128 P.3d 608 (2005) (citing State v. Lopez, 147 Wn.2d 515, 519, 55 P.3d 609 (2002)). The best evidence of a prior conviction is a certified copy of the judgment and sentence, and "[t]he state may introduce other

comparable evidence only if it is shown that the [certified copy] is unavailable for some reason other than the serious fault of the proponent." Lopez, 147 Wn.2d at 519; Rivers, 130 Wn.App. at 698.

This court will review an offender score de novo unless it involves factual or discretionary determinations. State v. Booker, 143 Wn.App. 138, 141, 176 P.3d 620 (2008). The factual question of whether the prior conviction exists and is a conviction of the defendant is reviewed for substantial evidence. See State v. McCorkle, 88 Wn.App. 485, 492–93, 945 P.2d 736 (1997). "Substantial evidence exists where there is a 'sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.'" State v. Finch, 137 Wn.2d 792, 856, 975 P.2d 967 (1999)

The law of the case for Mendez was a remand for resentencing. While Mendez did not truly challenge the comparability, only the legal existence of his federal criminal act he did mention it in passing. That reference was incorrect in its basis but may suffice to allow review. Mendez argues that the State at the time of the original sentencing stated that there were some comparability issues, that is not reflected in the record. The State merely did not have the financial resourced to obtain an archived copy of this document. This comparability was never raised in any previous action by Mendes. RAP 2.5 may therefore exclude review of

this issue.

Once this court has had occasion to review the federal document and the law of the two jurisdictions it will be clear that these two criminal acts are comparable. The federal offense should be counted in Mendez's offender score which then prevents the wash-out of the older offenses.

Response to allegation B. - The trial court did not violate the law of the case doctrine when it allowed the state to present evidence after it had already conceded the striking of the federal conviction and wash out of five earlier convictions.

Mendez argues that the "law of the case" doctrine applies herein. However, he himself steps outside this legal doctrine and asks this court to consider matters which were not raised in the initial appeal nor in the Personal Restraint Petition. (PRP). If Mendez is going to ask this court to adhere to that doctrine, then the only matters which could be raised by Mendez are matters raised in the PRP.

Mendez continually states that the prior offenses "washed out." This is incorrect. Those convictions did not "wash-out" in the first sentencing the State did not have the legal proof of the existence of a prior conviction which would "hook" the other convictions and prevent wash-out. The offender score measures a defendant's criminal history and is calculated by totaling the defendant's prior convictions for felonies and certain juvenile offenses. State v. Ford, 137 Wn.2d 472, 479, 973 P.2d 452

(1999). The existence of a prior conviction is a question of fact, and the State must prove the existence of these prior convictions by a preponderance of the evidence. Id. at 479-80; In re Pers. Restraint of Adolph, 170 Wn.2d 556, 566, 243 P.3d 540 (2010).

The State at no time in the original sentencing on April 12, 2013 conceded that the federal offense was somehow gone or that it had washed out. In fact, the State argued the opposite. The State's argument was that the defendant had previously acknowledged that the federal conviction was valid and it was his history. This was done in a prior Judgment and Sentence and a statement of defendant on plea of guilty for a previous eluding charge. RP 4.12.113 pg. 5. The State argued that because of this prior admission and adoption of his history that Mendez was bound by those priors and that the court could recognize that offense. The trial court disagreed and struck that federal crime. RP 4.12.13 pg. 4-7. The reason the State had not obtained a certified copy of this conviction was that this decades old case had been archived and that there was a payment that was required to retrieve the documents. The deputy prosecuting attorney who was trial counsel for the state indicated on the record that his office did not have the discretionary budget to pay for the needed documents.

Mendez also refers to the State's "concession" in the answer to the PRP. The totality of the States "concession" in its response to Mendez's PRP is as follows:

The State concedes that the offender scores were incorrectly calculated. Striking the federal conviction created a "wash-out" situation in which certain offenses wash. This resulted in a lower offender score.

The State moves to remand for resentencing.

The State literally just indicates that by removing the conviction that hooked in the older class C felonies that the trial court incorrectly left the older convictions in the sentencing grid. The most important line in this four sentence reply is "*The State moves to remand for resentencing.*" (Emphasis added.) By the use of this sentence the State did not preclude the action that was taken in the trial court, which was a full and complete resentencing. A resentencing that was contemplated by the Washington State Legislature when it authored RCW 9.94A.530(2), a statute that was upheld by the Washington State Supreme Court in State v. Jones, 182 Wn.2d 1, 338 P.3d 278 (2014)

In the trial court at the time of the resentencing Mendez admitted that he had the prior federal offense. (RP 071516 pg. 6-7) In this appeal Mendez did not and does not dispute the existence of the federal offense, what he disputed was that the State had not presented legal proof of the

existence of that conviction. This court stated when it sent this case back to the trial court "...we **vacate the sentence and remand** to the superior court **for resentencing**... We remand the case to the Yakima County Superior Court for **resentencing**." Slip at 10, 11. (Emphasis added.)

The trial court took this portion of this court's opinion at face value stating;

THE COURT:...The court's order, the Court of Appeals order, it says, we vacate the sentence and remand to the superior court for resentencing. Then they repeat, we remand the case to the Yakima County Superior Court for resentencing.

They didn't say we send it back to have a sentence imposed which is within the standard range without the federal conviction and with the other state convictions having washed as a result. They say, we send it back for resentencing. I think that means that it's a whole new ball game. RP 071516 pg. 9

State v. Hernandez, 185 Wn.App. 680, 342 P.3d 820 (Div. 3 2015),

"We review offender score calculations de novo. State v. Wilson, 113 Wn.App. 122, 136, 52 P.3d 545 (2002). Offender scores are calculated in three steps: " (1) identify all prior convictions; (2) eliminate those that wash out; (3) 'count' the prior convictions that remain in order to arrive at the offender score." State v. Moeurn, 170 Wn.2d 169, 175, 240 P.3d 1158 (2010).

Clearly by citing to State v. Jones, 182 Wn.2d 1, 338 P.3d 278 (2014) Mendez is agreeing that Jones is applicable to the issue he now

raises and Jones' interconnection with the law of the case doctrine.

STANDARD RANGE

In addition, it is the States position that if this court determined the trial court erred there is no need to remand this case once again.

Based on Mendez's significant offender score, even if this court were to strike the federal offense and the four crimes that would wash-out, the outcome would be the same due to Mendez's extremely high offender score and the trial courts clear intent at the two previous sentencings.

At the original sentencing and at the resentencing Mendez had by agreement of he, his trial attorney, the State's attorney and the trial court judge;

Count 1 - 16 points on - Attempting to Elude a Pursuing Police Officer,

Count 2/3 - 11 points for both counts Possession of a Controlled Substance – Cocaine/Heroin, (count 4 was a gross misdemeanor)

Count 5 - 16 points for – Felony Driving While Under the Influence of Alcohol.

The State must remind this court that the original sentence did not include the conviction from federal court.

If this court were to discount these point totals by removing the 4 old felonies from 1988 that would “wash-out” without the federal conviction the standard range is still exactly the same.

Using the new, lower point total Mendez would have 11 points for Count 1, 6 points for Counts 2 and 3 and 11 points for Count 5.

The State has attached in Appendix A the scoring sheets for these crimes. In each of these three felonies using the point total that is suggested by Mendez the result is the same range that was used found to be accurate in the first two sentencings.

This court may and should deny further remand of this case. Mendez made his argument to the trial court on two occasions. On the second occasion the court was presented with evidence of the actions that Mendez had taken while in prison. Mendez’s trial attorney argued for a standard range sentence based on this new evidence.

The State argued again that the court should impose an exceptional sentence based on the egregious nature of Mendez’s actions while he was eluding the police and the number of previous alcohol related driving offenses.

The court considered the information before it and commended the defendant for his positive actions while in prison but stated:

The difficulty is that you have a significant amount of

criminal history that you need to live down. You haven't done that yet. You're progressing in that direction, but you're not there yet.

I am very much afraid that if I were to follow your request and essentially let you back out into the community that the temptation to go back to doing what you've done so many times in the past, whether it be alcohol or drugs, would be too much. So I'm going to decline the opportunity to impose a sentence within the standard range.

I think that your offender score warrants an exceptional sentence. I'm going to impose the sentence that I imposed last time.

A resentencing need not be ordered when the appellate court is convinced that the trial court would impose the same sentence on remand. State v. Carter, 127 Wn.2d 836, 904 P.2d 290 (1995). Remanding for an evidentiary hearing on that issue would not likely achieve a different result from her conviction. State v. Perez, 69 Wn. App. 133, 140, 847 P.2d 532 (1993); “We are satisfied that the trial court would have followed the State's recommendation and imposed the same sentence absent the improper factor. Therefore, we need not remand for further consideration. State v. Fisher, 108 Wn.2d 419, 429-30, 430 n.7, 739 P.2d 683 (1987). State v. Drummer, 54 Wn. App. 751, 760, 775 P.2d 981 (1989).”

C. Response to allegation C. This allegation is moot. The findings of fact and conclusions of law in question have been entered into the record of the trial court and are a portion of the record before this court.

It must be noted by this court that after the findings of fact and conclusions of law were filed, after review by appellate counsel, Mendez

was given leave by this court to file supplemental briefing. He chose not to file any additional briefing. Therefore, the findings of fact are verities before this court. State v. Nason, 146 Wn.App. 744, 756, 192 P.3d 386 (Div. 3 2008) “Unchallenged findings are treated as verities on appeal. State v. Stenson, 132 Wash.2d 668, 697, 940 P.2d 1239 (1997).”

D. Response to allegation D. The judgment and sentence contains one scrivener's error in section 4.A.2. The remainder of that section does not conflict with sections 2.6, 3.2 or the court's sentence.

The first full line of text below heading 4.A.2 Concurrent or Consecutive contains the following;

Concurrent: The confinement time of Counts 2,3 and 4 are concurrent for a term of 24 months.

The last “4” was clearly erroneously placed in this section. This court should order that the trial court amend this one error. This correction is ministerial and this court should further order that the trial court shall amend this judgment and sentence through ex parte order which merely strikes “and 4” from that section. The trial court stated, “I’m going to impose the sentence that I imposed last time.” In the previous judgment and sentence document the same section reads;

Concurrent: The confinement time of Counts 2&3 are concurrent...” CP 24.

Further the sentence imposed reflects that the court only intended

one period of 24 months be run consecutively.

Mendez indicates that sections 2.6 and 3.2 conflict with this section. In actuality, only section 2.6 would appear to have this scrivener's error conflict. Section 3.2 referenced by Mendez and found at CP 64 has a series of "boxes" that would need to have been "checked" to be applicable to this defendant, the boxes are blank therefore this section does not apply to Mr. Mendez.

E. Response to allegation E – Costs of incarceration.

Mr. Mendez placed on the record information which would clearly indicate that he will have the future ability to make payments. The court struck every cost it could and lowered the cost of incarceration from \$1,000.00 to \$500.00 (RP 07.15.16, pg. 22-3, CP 68)

Mr. Mendez took an HVAC course while in prison and "[h]e took some technical classes on HVAC maintenance and did receive a degree in that. We have a copy of his certificate showing a graduation from Walla Walla Community College." RP 07.15.16, pg. 13

Mr. Mendez stated the following regarding his future ability to earn an income: "I won't be in front of you ever again if given the opportunity to get myself released sooner I could get a job in the HVAC industry that I love so much to provide for my family." VRP 07.15.18, pg. 17-18.

His HVAC instructor wrote a letter to the court that stated in part, “I believe that if he continues working hard he will make himself very employable in this trade. He is always on time, doesn't miss any days and works well with or without supervision. Mr. Mendez displays a positive attitude and a willingness to work.” RP 07.15.16 pg. 15.

There is sufficient information in this record to support the imposition of this minimal cost.

If this court follows Mendez’s request and orders this case to be sent back to the trial court for consideration the State will agree to amend the judgment and sentence through an order that simply dismisses this section from the document.

If the court does not require a new hearing but agrees that this cost was not properly addressed by the trial court, the State would again agree to dismiss this section through an ex parte order which would negate the need to return Mendez to Yakima County. The cost to return a defendant from prison and the associated costs to appoint counsel and conduct a hearing would far exceed the \$500.00 ordered to be paid to the county.

#### IV. CONCLUSION

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

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Respectfully submitted this 13<sup>th</sup> day of December 2017,

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# APPENDIX A

# Driving While Under The Influence Of Intoxicating Liquor Or Any Drug (Effective 7/1/2007)

RCW 46.61.502(6)  
CLASS C\* – NONVIOLENT/TRAFFIC OFFENSE  
OFFENDER SCORING RCW 9.94A.525(11)

**ADULT HISTORY:**

Enter number of Vehicular Homicide and Vehicular Assault felony convictions ..... x 2 = \_\_\_\_\_

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... x 1 = \_\_\_\_\_

Enter number of felony convictions ..... x 1 = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of Vehicular Homicide and Vehicular Assault dispositions ..... x 2 = \_\_\_\_\_

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony dispositions ..... x ½ = \_\_\_\_\_

Enter number of felony dispositions ..... x ½ = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:**

*(Other current offenses that do not encompass the same conduct count in offender score)*

Enter number of Vehicular Homicide and Vehicular Assault convictions ..... x 2 = \_\_\_\_\_

Enter number of other Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... x 1 = \_\_\_\_\_

Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x 1 = \_\_\_\_\_

**STATUS:**

Was the offender on community custody on the date the current offense was committed? (if yes)..... + 1 = \_\_\_\_\_

Total the last column to get the **Offender Score** (Round down to the nearest whole number)

**SENTENCE RANGE**

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
<b>LEVEL V</b>	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	47.5m 41 - 54	55.5m 51 - 60*	60 - 60*	60 - 60*

- ✓ For attempt, solicitation, conspiracy (RCW 9.94A.595) see page 62 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 218 for standard range adjustments.
- ✓ For deadly weapon enhancement, see page 222.
- ✓ For sentencing alternatives, see page 209.
- ✓ For community custody eligibility, see page 219.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 215.

The Caseload Forecast Council is not liable for errors or omissions in the manual, for sentences that may be inappropriately calculated as a result of a practitioner's or court's reliance on the manual, or for any other written or verbal information related to adult or juvenile sentencing. The scoring sheets are intended to provide assistance in most cases but do not cover all permutations of the scoring rules. If you find any errors or omissions, we encourage you to report them to the Caseload Forecast Council.

# Attempting To Elude Pursuing Police Vehicle

RCW 46.61.024  
 CLASS C – FELONY TRAFFIC OFFENSE  
 OFFENDER SCORING RCW 9.94A.525(11)

**ADULT HISTORY:**

Enter number of Vehicular Homicide and Vehicular Assault convictions ..... x 2 = \_\_\_\_\_

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... x 1 = \_\_\_\_\_

Enter number of felony convictions ..... x 1 = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of Vehicular Homicide and Vehicular Assault dispositions ..... x 2 = \_\_\_\_\_

Enter number of Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony dispositions ..... x 1/2 = \_\_\_\_\_

Enter number of felony dispositions ..... x 1/2 = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:**

*(Other current offenses that do not encompass the same conduct count in offender score)*

Enter number of Vehicular Homicide and Vehicular Assault convictions ..... x 2 = \_\_\_\_\_

Enter number of other Operation of a Vessel While Under the Influence of Intoxicating Liquor or Any Drug felony convictions ..... x 1 = \_\_\_\_\_

Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

Enter number of Driving While Under the Influence of Intoxicating Liquor or Any Drug and Actual Physical Control While Under the Influence of Intoxicating Liquor or Any Drug and Reckless Driving and Hit-And-Run Attended Vehicle non-felony convictions ..... x 1 = \_\_\_\_\_

**STATUS:**

Was the offender on community custody on the date the current offense was committed?..... + 1 = \_\_\_\_\_

Total the last column to get the **Offender Score** (Round down to the nearest whole number)



**SENTENCE RANGE**

Offender Score										
	0	1	2	3	4	5	6	7	8	9+
<b>LEVEL I</b>	0-60 days	0-90 days	3m	4m	5.5m	8m	13m	16m	19.5m	25.5m
			2 - 5	2 - 6	3 - 8	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29

- ✓ For gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 218 for standard range adjustment.
- ✓ For deadly weapon enhancement, see page 222.
- ✓ For sentencing alternatives, see page 209.
- ✓ For community custody eligibility, see page 219.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 215.
- ✓ If the conviction includes a finding by special allegation of ‘endangering one or more persons’ under RCW 9.94A.834, add 12 months and 1 day to the entire standard sentencing range for the current offense. Effective 06/12/2008.

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# Possession Of Controlled Substance That Is Either Heroin Or Narcotics From Schedule I Or II Or Flunitrazepam From Schedule IV e.g. Cocaine, PCP

RCW 69.50.4013  
CLASS C – NONVIOLENT

OFFENDER SCORING RCW 9.94A.525(7)

*If it was found that this offense was committed with sexual motivation (RCW 9.94A.533(8)) on or after 7/01/2006, use the General Nonviolent Offense with a Sexual Motivation Finding scoring form on page 225.*

*If the present conviction is for a felony domestic violence offense where domestic violence was plead and proven, use the General Nonviolent Offense Where Domestic Violence Has Been Plead and Proven scoring form on page 223.*

**ADULT HISTORY:**

Enter number of felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:**

Enter number of serious violent and violent felony dispositions ..... x 1 = \_\_\_\_\_

Enter number of nonviolent felony dispositions ..... x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:**

*(Other current offenses that do not encompass the same conduct count in offender score)*

Enter number of other felony convictions ..... x 1 = \_\_\_\_\_

**STATUS:**

Was the offender on community custody on the date the current offense was committed? (if yes) ..... + 1 = \_\_\_\_\_

Total the last column to get the **Offender Score** (Round down to the nearest whole number)

SENTENCE RANGE - DRUG

Offender Score			
	0 to 2	3 to 5	6 to 9+
LEVEL I	3m	9m	18m
	0 - 6	6+ - 12	12+ - 24

- ✓ For attempt, solicitation, conspiracy (RCW 9.94A.595) see page 62 or for gang-related felonies where the court found the offender involved a minor (RCW 9.94A.833) see page 218 for standard range adjustments.
- ✓ Per RCW 9.94A.518, any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW 9.94A.602 becomes a level III offense.
- ✓ For deadly weapon enhancement, see page 222.
- ✓ For sentencing alternatives, see page 209.
- ✓ For community custody eligibility, see page 219.
- ✓ For any applicable enhancements other than deadly weapon enhancement, see page 215.

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DECLARATION OF SERVICE

I, David B. Trefry state that on December 13, 2017 emailed a copy, by agreement of the parties, of the Respondent's Brief, to: Marie Trombley at [marietrombley@comcast.net](mailto:marietrombley@comcast.net)

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

DATED this 13<sup>th</sup> day of December, 2017 at Spokane, Washington.

By: s/David B. Trefry  
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