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Court of Appeals
Division III
State of Washington
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No. 35910-7-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

MIGUEL ANGEL MONTENEGRO,

Appellant

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

NO. 18-1-00012-6

BRIEF OF RESPONDENT

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REGULATIONS AND COURT RULES

CtR 3.56

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The Judgment and Sentence lists a statutory citation referencing “criminal street gang member” which has been recodified, but the error does not affect any substantive provision of the Judgment and Sentence.
- B. The defense attorney had a sound factual basis and tactical reasons to stipulate at sentencing that the defendant was a criminal street gang member.
- C. The State agrees that the \$200 filing fee should be removed from the Judgment and Sentence.
- D. The defendant has not assigned error to the Court accepting a stipulation that he is a member of a criminal street gang but has argued that in his brief. Since it was not assigned as an error, it cannot be argued. On the substance of the argument, there is no requirement that a court engage in a colloquy regarding a stipulated fact.

II. STATEMENT OF FACTS

On December 29, 2017, at around 12:41 A.M., Kennewick Police Detectives Riley and Dorame saw a vehicle driving in an apartment

complex without any headlights on. RP¹ at 70-71. When the car turned onto a city street, still without headlights, they stopped it. RP at 70.

The driver of the vehicle was Sara Madrigal. RP at 71. The front passenger was the defendant. RP at 49. Ms. Madrigal's three-year-old was also in the vehicle. RP at 47.

Although she denied it when testifying, at the scene Ms. Madrigal told Detective Riley that as she was being stopped, the defendant pulled something out of his waistband and placed it near the center console on the driver's side area. RP at 59, 81.

Both Ms. Madrigal and the defendant gave the police a false name for him. RP at 56, 100. Despite the false name, Detective Dorame recognized the defendant. RP at 101.

The defendant was arrested for giving a false name. *Id.* In a search of his person, Detective Riley found a holster on the front of the defendant's pants, tucked inside his underwear. RP at 75. The holster was affixed to his pants with a small piece of metal. RP at 76. Exhibits 6 and 7 depict the holster. *See Exs. 6, 7.*

The defendant did not have an explanation of why he had a holster if he also did not have a gun. RP at 107-08.

¹ Unless otherwise indicated, "RP" refers to the verbatim report of proceedings from jury trial on 03/05/2018 to 03/06/2018

The police found a loaded 9mm Ruger semiautomatic handgun under the floormat on the driver's side floorboard. RP at 108-09. *See Ex. 12.*

The gun fit into the holster. RP at 111. *See Ex. 9.*

The defendant had a prior conviction for Kidnapping in the Second Degree. RP 02/22/18 at 5. The defendant chose to stipulate that he had a prior conviction for a serious offense rather than have the prosecution prove this specific crime. RP at 45.

He also chose to stipulate that he was a member of a criminal street gang. RP at 15. There was evidence in the record about the defendant's membership in such a gang. RP 03/01/18 at 12. The defense attorney also knew of additional information concerning the defendant's gang ties and wanted to keep that information out of the record. RP at 15.

III. ISSUES

- A. When the Judgment and Sentence cites a statute which has been replaced and recodified elsewhere as the basis for imposing 12 months of community supervision, can this Court simply remand to correct the statutory citation?
- B. Was the defense attorney ineffective at sentencing by stipulating that the defendant was a criminal street gang member, or should he have required the State to prove this?

1. What is the standard on appeal for ineffective assistance claims?
 2. Was there a sound tactical reason for the defense attorney to want evidence of his client's gang ties to not be presented to the sentencing judge?
 3. Can the defendant show that the State would not have been able to prove he was a criminal street gang member?
 4. Is there any prejudice to the defendant if his attorney did not notice that RCW 9.94A.545, cited in the Judgment and Sentence, had been repealed and recodified?
- C. Should the legislation effective July 7, 2018 making the \$200 filing fee discretionary apply to the defendant?
- D. Although not raised as an issue or assigned as an error, did the trial court commit any error when accepting the defendant's stipulation that he was a member of a criminal street gang?

IV. ARGUMENT

- A. The defendant cannot be relieved of the requirement to serve 12 months of community supervision because of a scrivener's error in citing RCW 9.94A.545, rather than the recodified version of RCW 9.94A.702 (3)(b).**

An individual who is a gang member and who is convicted of Unlawful Possession of a Firearm must be sentenced to 12 months of community custody, under RCW 9.94A.702 (3)(b). The defendant

correctly points out that the Judgment and Sentence cites RCW 9.94A.545, which was recodified as RCW 9.94A.702 (3)(b).

This is obviously a scrivener's error, and the remedy is to remand to the trial court for correction. *In re Pers. Restraint of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005).

The State will move to do so after a mandate is issued.

B. The defendant received effective assistance from his attorney, who had sound tactical reasons for stipulating that the defendant was a member of a criminal street gang.

1. The Standard on Review.

To establish ineffective assistance of counsel, the defendant must establish that his attorney's performance was deficient, and the deficiency prejudiced the defendant. Deficient performance is falling below an objective standard of reasonableness based on consideration of all the circumstances. The prejudice prong requires the defendant to prove there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different. If either element of the test is not satisfied, the inquiry ends. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

There is a strong presumption that counsel's performance was reasonable. When counsel's conduct can be characterized as legitimate trial strategy or tactics, the performance is not deficient. *Id.* at 862-63.

2. The defense attorney made a sound tactical decision, based on evidence, that the defendant's gang membership should be stipulated.

The defendant argues on appeal that “[t]he record does not reflect, other than the stipulation, any evidence that Mr. Montenegro is a criminal street gang member or associate.” Br. of Appellant at 6. This is not quite correct. Detective Dorame testified that he believed the defendant was a gang member in the March 1, 2018 hearing under CrR 3.5. RP 03/01/18 at 12. The defense attorney also specifically stated that he had agreed with the prosecutor that gang affiliation would not be admitted into evidence. RP at 15.

The lack of evidence in the record does not mean that there was no evidence that the defendant was a gang member. It is telling that the defendant never denied his gang membership. This Court should presume the defense attorney was acting appropriately and made a calculated decision to not require the State to prove the defendant's gang ties. In fact, it was probably the defense attorney's goal to prevent the trial court from hearing about the defendant's street gang membership.

At sentencing, the defense attorney had a brief statement asking the Court to impose the bottom of the standard range and not penalize the defendant for exercising his right to trial by jury. RP 03/08/2018 at 5. The defendant asked for mercy saying that he had three children at home. *Id.*

That plea for mercy would have almost certainly been ignored if the trial court had more specific evidence of the defendant's gang ties, including the defendant's street name, his problems with rival gangs, and why he may have wanted to be armed after midnight.

This tactic is akin to the stipulations authorized by *Old Chief v. United States*, 519 U.S. 172, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997). Instead of requiring that prosecution prove a specific prior felony conviction, the defendant is allowed to stipulate that he or she has such a conviction. Otherwise, the fact-finder may be prejudiced by the nature of the specific crime. *State v. Humphries*, 181 Wn.2d 708, 336 P.3d 1121 (2014) is discussed below in more depth. But the case held that a defense attorney is allowed to stipulate to certain facts, unless the defendant expressly disagrees. *Id.* at 715.

In this case, the defendant and defense attorney were willing to sacrifice 12 months of community supervision in the hope that it may result in a sentence of confinement of 26 months, rather than 34 months. This Court should not second guess this tactic. Nor should this Court assume that most criminal defense attorneys would not have done the same thing. There is no reason to believe the defense attorney fell below reasonable standards.

3. The defendant cannot show any prejudice.

There is no reason to believe the State would not have proven the defendant is a member of a criminal street gang if required to do so. The outcome of failing to stipulate on this point would have been that the trial judge would have become more familiar with the defendant's gang ties and would have been more certain to sentence the defendant to the maximum possible.

4. The defendant also cannot show any prejudice from his attorney's failure to point out that the statutory citation for community supervision had been recodified as RCW 9.94A.701 (3)(b).

The defendant argues that the defense attorney was ineffective for “[a]llowing him to be sentenced under a repealed statute.” Br. of Appellant at 5. However, as discussed above, the Court was still required to sentence the defendant, a criminal street gang member, to 12 months of community supervision, whether or not the correct statute was cited. As stated above, the correct remedy is to remand to the trial court for correction of the scrivener's error regarding citation to RCW 9.94A.545, rather than RCW 9.94A.701 (3)(b).

C. The State agrees that the new legislation regarding filing fees should apply to the defendant.

This is not to criticize the trial court. At the time of sentencing, the \$200 filing fee was mandatory. It no longer is, and he should not be required to pay it.

The State will propose amending the Judgment and Sentence as set forth in Appendix A.

D. The trial court properly accepted the stipulation that the defendant was a member of a criminal street gang.

The defendant has not assigned error to the trial court's accepting the stipulation. However, the defendant argues that the trial court should have engaged in a colloquy with him to establish his gang membership, similar to a guilty plea colloquy. Br. of Appellant at 7-9. But the last thing the defense probably wanted at sentencing was a colloquy between the Judge and defendant about the defendant's gang membership, his street name, his run-ins with rival gangs, or anything to allow the Judge to infer that his carrying a firearm might be gang-related.

State v. Humphries, 181 Wn.2d 708, 336 P.3d 1121 (2014) is on point. *Humphries* cited with approval federal cases holding that trial courts do not need to engage in a colloquy with a defendant to ensure stipulations are voluntary. *Id.* at 715. The trial court can assume that a stipulation made by the defense counsel in the presence of the defendant is agreed to by the defendant. *Id.* The *Humphries* court also cited with approval several federal cases hold that the defense attorney has the authority to stipulate to material facts as a matter of trial tactics. *Id.* at 716.

Note that the stipulation in *Humphries* involved an element of the crime. *Id.* at 712. In this case, the stipulation was not concerning an

element of the crime, but a sentencing provision requiring community supervision.

The trial court was not required to make sure the stipulation was something the defendant agreed with. And, in this case, the defense did not want the trial court to engage in any such colloquy.

V. CONCLUSION

The defendant has not challenged his conviction. The only challenges are to imposition of the \$200 filing fee and 12 months of community supervision. The \$200 filing fee should be stricken. While the trial court at the time of sentencing was required to impose that fee, the law has since changed, and the defendant should have the benefit of that change. The 12 months of community supervision was required under RCW 9.94A.701 (3)(b), because the defendant is a gang member. The Judgment and Sentence lists an incorrect statutory citation on this point. The State will amend the Judgment and Sentence after a mandate is issued on both matters.

On appeal the defendant faults his attorney for stipulating that he was a gang member. The defendant raised no objection at the time and even now does not deny gang membership. The defense attorney's stipulation was a smart, tactical decision; if the trial court heard evidence of the defendant's gang ties, the plea for mercy by the defendant and

defense attorney would have been much less likely for success. There is no reason to second guess the defense attorney, and no reason to believe the State could not prove the defendant's gang membership as so required.

Other than the \$200 filing fee and the citation to RCW 9.94A.545 rather than 9.94A.701 (3)(b), the conviction and sentence should be affirmed.

RESPECTFULLY SUBMITTED on December 7, 2018.

ANDY MILLER
Prosecutor

Handwritten signatures of Andy Miller and Terry J. Bloor.

Terry J. Bloor, Deputy
Prosecuting Attorney
Bar No. 9044
OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

**Dennis W. Morgan
P.O. Box 1091
Republic, WA 99166**

E-mail service by agreement
was made to the following
parties:
nodblspk@rcabletv.com

Signed at Kennewick, Washington on December 7, 2018.


Demetra Murphy
Appellate Secretary

Appendix A

Felony Judgment and Sentence for 18-1-00012-6

MAR 08 2018

FILED 921

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON

JUDGMENT DOCKET
NO 18-9-00649-2

STATE OF WASHINGTON,

NO. 18-1-00012-6

Plaintiff,

FELONY JUDGMENT AND SENTENCE (FJS)

vs.

Prison

MIGUEL ANGEL MONTENEGRO ,

Defendant.

CLERK'S ACTION REQUIRED:

- Restraining Order
 - Firearms rights revoked
 - Clerk's Action Required, 2.1, 4.1, 4.4, 5.2, 5.3, 5.5 and 5.7
 - Defendant Used Motor Vehicle
 - Juvenile Decline Mandatory Discretionary
- KPD # 17-47774

SID: WA23682268

DOB: 05/10/1990

I. HEARING

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

II. FINDINGS

2.1 **CURRENT OFFENSE:** The defendant is guilty of the following offenses on March 6, 2018 , based upon plea jury-verdict bench trial:

COUNT	CRIME	RCW	CLASS	DATE OF CRIME
1	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE	RCW 9.41.040(1)(a)	B	12/29/2017
2	MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT	RCW 9A.76.175	GM	12/29/2017

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

Count 1 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 has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.

2.2 CRIMINAL HISTORY RCW 9.94A.525:

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME	DV* Yes
1	Unlawful Possession of a Controlled Substance	7/15/2008	Franklin County, WA	6/9/2008	A	NV	
2	Kidnapping in the Second Degree	8/6/2008	Benton County, WA	12/10/2006	J	V	

The defendant had been sentenced to the crimes listed in this section prior to the commission of the current offenses.

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	2	VII	26-34 months			10 years and \$20,000 fine
2	N/A	N/A	N/A			364 days and \$5000 fine

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 defendant is required to provide a current address to the Benton County Clerk's Office. If the defendant moves before all outstanding legal financial obligations are paid in full, the defendant shall provide the new address to the Benton County Clerk.

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.

2.6 [X] **FELONY FIREARM OFFENDER REGISTRATION.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

The court considered the following factors:

- o the defendant's criminal history.
- o evidence of the defendant's propensity for violence that would likely endanger persons.
- o Other: gang affiliation and disregarding the conditions of a domestic violence no court order

The court decided the defendant should [] should not [] register as a felony firearm offender.

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 [] The Court DISMISSES Counts _____ in the charging documents.

3.3 [] The Defendant is found NOT GUILTY of Counts _____ in the charging documents.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

PCV	\$ 500	Victim assessment	RCW 7.68.035
CRC	\$ See Attached <u>Cost Bill</u> <u>200</u>	Court costs, including <i>(Transportation costs on FTA Warrants in this case will be assessed at the current legal rate. Other costs as assessed by the Clerk and set forth in the Cost Bill to be attached upon filing of this Judgment and Sentence. If FTA costs and fees are contested, a hearing must be requested at the time of sentencing.)</i>	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
EXT	\$ _____	Extradition Costs	RCW 9.94A.120
FCM/MTH	\$ _____	Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCD	\$ _____	Drug enforcement fund of _____	RCW 9.94A.760
CLF	\$ 100	Crime lab fee [] suspended due to indigency	RCW 43.43.690
	\$ 100	Felony DNA collection fee RCW 43.43.7541	
	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	DV Penalty Assessment	RCW 10.99.080
	\$ _____	Other costs for:	
	\$ <u>800</u>	TOTAL	RCW 9.94A.760

[] The above total does not include all restitution or other legal financial obligations, which may be set by later

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

statutory maximum for the crime. If the defendant is convicted of Rape of a Child in the First, Second or Third Degree, and the victim became pregnant, the defendant shall remain under the court's jurisdiction until the defendant has satisfied support obligations under the superior court or administrative order, but not longer than a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer.

[] The Department of Corrections (DOC) or the clerk of the court may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760

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

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

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

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

4.3 [X] FORFEITURE OF FIREARMS: a Ruger 9mm handgun with serial number 312-06452

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):

<u>34</u> Months on Count	<u>1</u>	_____ months on Count	_____
364/0 Months on Count	<u>2</u>	_____ months on Count	_____
_____ Months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: 34 month

All counts shall be served concurrently:

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

Confinement shall commence immediately unless otherwise set forth here: _____

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

(c) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.5 [X] COMMUNITY PLACEMENT or COMMUNITY CUSTODY. (To determine which offenses are eligible for or required for community custody, see RCW 9.94A.701.)

(A) The defendant shall be on community custody for the period imposed by the court, as follows:

Count 1 for 12 months

Note: Combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

If the term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime, the term of community custody shall be reduced so that the defendant shall not serve more than the maximum sentence for the crime.

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

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

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at Department of Corrections-approved education, employment and/or community restitution; (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by the Department of Corrections; (8) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; (10) abide by any additional conditions imposed by DOC under RCW 9.94A.720. The defendant's residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders sentenced under RCW 9.94A.710 may be extended for up to the statutory maximum term of the sentence.

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

not consume any alcohol.

have no contact with: _____

remain within outside of a specified geographical boundary, to wit: _____

participate in the following crime-related treatment or counseling services:

undergo an evaluation for treatment for domestic violence substance abuse mental health anger management and fully comply with all recommended treatment.

comply with the following crime-related prohibitions: _____

Other conditions: _____

(C) For sentences imposed under RCW 9.94A.507, 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.

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).

5.5a FIREARMS. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in

FELONY JUDGMENT AND SENTENCE (FJS)

PRISON

(RCW 9.94A.500,.505)(WPF CR 84.0400 (7/2011))

Page 6

Washington State where you live, and by a federal court if required. **You must immediately surrender any concealed pistol license.** (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.

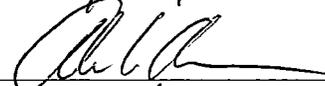
5.5b FELONY FIREARM OFFENDER REGISTRATION. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Reserved.

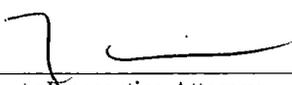
5.7 MOTOR VEHICLE: If the court found in Section 2.1 that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing,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

5.8 OTHER: _____

DONE IN OPEN COURT and in the presence of the defendant this date: 03/08/2018

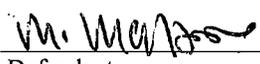


JUDGE
Print name: Alex C. Echeverria



Deputy Prosecuting Attorney
OFC ID #91004
KRISTIN McROBERTS
WSBA #39752

Attorney for Defendant
WSBA # _____
DENNIS HANSON


Defendant
MIGUEL ANGEL MONTENEGRO

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

IDENTIFICATION OF DEFENDANT

SID No: WA23682268
(If no SID take fingerprint card for State Patrol)

Date of Birth: 05/10/1990

FBI No: 62252PC6
PCN No:

Local ID No: MONTEMA101KS
SS No:

Alias name, SSN, DOB: _____ Other _____
Race: W Ethnicity: Sex: M
[] 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: Staci U, Deputy Clerk/Bailiff Dated: 3/8/18

DEFENDANT'S SIGNATURE: W. Mann

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



FELONY JUDGMENT AND SENTENCE (FJS)

PRISON
(RCW 9.94A.500,.505)(WPF CR 84.0400 (7/2011))

Case Name Miguel Montenegro
D.O.B.: 5/10/1990

Cause No. 18-1-00012-6

“Felony Firearm Offender Registration” Attachment: Registration for Felony Firearm Offenders (If required, attach to the judgment and sentence.)

1. General Applicability and Requirements: The defendant is required to register because this crime involves a felony firearm offense as defined in RCW 9.41.010, and:

- after considering statutory factors, the court decided the defendant must register; or
- the offense was committed in conjunction with an offense committed against a person under the age of 18, or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030.

If the defendant resides in this state, the defendant must personally register with the county sheriff for the county of the defendant’s residence, whether or not the defendant has a fixed residence.

The defendant must register with the county sheriff within 48-hours after the date:

- (a) of release from custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility for this offense; or
- (b) the court imposes the defendant’s sentence, if the defendant receives a sentence that does not include confinement.

2. Register on Every 12-month Anniversary: The defendant must register with the county sheriff not later than 20 days after each 12-month anniversary of the date the defendant is first required to register as described in paragraph 1, above.

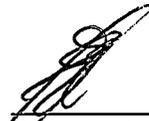
If the defendant is confined in any correctional institution, state institution or facility, or health care facility throughout the 20-day period after each 12-month anniversary, the defendant must personally appear before the county sheriff not later than 48-hours after release to verify and update, as appropriate, the defendant’s registration.

3. Change of Residence within State: If the defendant changes residence and the new residence address is in this state, the defendant must register with the sheriff of the county of the defendant’s residence address not later than 48 hours after the change of address. If the defendant changes residence within a county, the defendant must update the current registration.

4. Length of Duty to Register: The defendant must continue to register for four years from the date the defendant is first required to register, as described in paragraph 1, above.

Date: _____

03/18/2018



Defendant’s Signature

PROSECUTING ATTORNEY
BENTON COUNTY, WASHINGTON

7122 West Okanogan Place, Bldg. A
Kennewick, Washington 99336-7693

Ph: (509) 735-3591 ■ Fax: (509) 736-3066

January 24, 2018

DENNIS HANSON
Attorney at Law

RE: State v. MIGUEL ANGEL MONTENEGRO

This letter is to advise you that I have charged the above defendant with the crime of UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE and MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT.

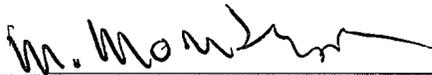
The following criminal history is subject to change. If additional criminal history is found, the range will change. The defendant is deemed to know his or her criminal history. Changes in the history may affect the offer and will not allow a defendant to withdraw his or her plea. Acceptance of this offer is acceptance of the above terms.

PRIOR FELONY CONVICTIONS

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County and State)	DATE OF CRIME	A or J Adult, Juvenile	TYPE OF CRIME
1	Unlawful Possession of a Controlled Substance	7/15/2008	Franklin County, WA	6/9/2008	A	NV
2	Kidnapping in the Second Degree	8/6/2008	Benton County, WA	12/10/2006	J	V

Neither of the above offenses wash out for purposes of calculating the defendant's offender score. The defendant has not been in the community ten years from the date of his kidnapping conviction. The defendant has gross misdemeanor and misdemeanor convictions in 2010, 2011, and 2014 that prevent the drug conviction from washing out.

I agree that the above criminal history is true and accurate.



Defendant

Based on my understanding that your client has prior convictions and an offender score of 2, I calculate the standard range to be 26-34 months.

If your client pleads guilty as charged, I will recommend that he be sentenced to 26 months, 12 months community custody based on the defendant's gang membership or affiliation, standard fines and costs, and all other terms of the judgment and sentence. Additionally, I will request the defendant be ordered to register as a felony firearm offender.

The State will make the above recommendation on the condition that the defendant does not enter an *Alford* plea. If the defendant pleads guilty via *Alford*, we will increase our recommendation by 25 percent.

Please consider this letter notice that should your client choose to testify, the State would intend to offer any prior convictions for crimes of dishonesty as impeachment material.

Please advise me of your client's position regarding this offer. **If we have not heard from you by the day before the first pretrial setting, the above offer is revoked.**

Very truly yours,

ANDY MILLER
Prosecuting Attorney

KRISTIN M. MCROBERTS
Deputy Prosecuting Attorney

BENTON COUNTY PROSECUTOR'S OFFICE

December 07, 2018 - 11:38 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35910-7
Appellate Court Case Title: State of Washington v. Miguel Angel Montenegro
Superior Court Case Number: 18-1-00012-6

The following documents have been uploaded:

- 359107_Briefs_20181207113720D3197757_2555.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 35910-7 Montenegro - Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- andy.miller@co.benton.wa.us
- kristin.mcroberts@co.benton.wa.us
- nodblspk@rcabletv.com

Comments:

Sender Name: Demetra Murphy - Email: deme.murphy@co.benton.wa.us

Filing on Behalf of: Terry Jay Bloor - Email: terry.bloor@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

Address:
7122 W. Okanogan Place
Kennewick, WA, 99336
Phone: (509) 735-3591

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