

FILED
Court of Appeals
Division III
State of Washington
7/9/2018 4:26 PM

SPOKANE SUP. CT. # 00-1-02031-8

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON
CASE # 359310**

STATE OF WASHINGTON,

Appellee,

v.

GEORGE DEAN BARTZ,

Appellant.

BRIEF OF APPELLANT.

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I. Introduction

On November 15, 2000, Spokane County Superior Court sentenced Mr. Bartz in this case. The court calculated an offender score of 5 and a sentencing range of 138-184 months. The court sentenced Mr. Bartz to 184 months incarceration, the top of the range.

On Dec 16, 2016, Mr. Bartz filed a motion to vacate the Judgment and Sentence in case # 91-1-00416-2. On June 15, 2017 the Superior court granted his motion in part, vacating count 1. The offense of conviction, Statutory Rape under former RCW 9A.44.070 had been repealed and replaced by the new statute that became effective July 1, 1988. The court correctly concluded that the statute could not apply to conduct that occurred after the effective date of the repeal.

The order vacating that conviction has consequences for this case, because this never valid conviction was included in the calculation of Mr. Bartz's offender score when he was sentenced in 2000. Mr. Bartz filed a motion to correct the sentence imposed in the 2000 case on that basis on November 22, 2017. The court denied the motion by decision letter dated December 18, 2017, which was incorporated into a January 4, 2018 order. Mr. Bartz filed

a motion for reconsideration on that same day, and the court issued a letter decision the request to reconsider which was incorporated into the final order from which he appeals dated February 23, 2018.

II. Assignments of error and Issues presented

A. The offender score was incorrectly calculated because it included the never valid 1991 conviction and therefore the J & S was invalid on its face and the time bar of RCW 10.73.090 does not apply.

There may be more than one issue here, but they are intimately related. First, if the motion was time barred by RCW 10.73.090, then that would be that and Mr. Bartz would not be entitled to relief. However, because dealing with this first issue involves a determination about whether there was an error that made the J & S facially invalid, when a court determines that a motion is timely made because the bar does not apply, it has de facto made a ruling that some kind correction of the J & S is appropriate. Therefore in this case the Superior Court erred when it found that the time bar did apply, and it erred when it determined that the J and S was not facially invalid, did not constitute a manifest injustice etc. But these are essentially the same question.

III. Statement of the case.

On November 15, 2000, Spokane County Superior Court sentenced Mr. Bartz in this case. Paragraph 2.3 of the Judgment and Sentence indicates that the court calculated an offender score of 5 and a sentencing range of 138-184 months. App. A at 4. In paragraph 4.5 of the J & S the court sentenced Mr. Bartz to 184 months incarceration, the top of the range. The court also sentenced Mr. Bartz to 24-48 months of community custody in paragraph 4.6. App. A at 8.

Mr. Bartz was remanded to DOC custody and he served this sentence minus good time or earned release and was released on September 18, 2013. On August 14, 2014, Mr. Bartz was returned to DOC custody. He remained in DOC custody until January 6, 2016. The DOC's position was that the remainder of the 36 months of community custody that they had assigned to Mr. Bartz was "tolled" during his return to custody to serve his earned release time. Their calculation was that this time period was 510 days. App B.

On Dec 16, 2016, Mr. Bartz filed a motion to vacate the Judgment and Sentence in case # 91-1-00416-2. On June 15, 2017 the Superior court granted his motion in part, vacating count 1. App. C 22-23. The court found that the offense of conviction, Statutory

Rape under former RCW 9A.44.070 did not legally exist for crimes that occurred after July 1, 1988, because it had been repealed, and could not apply to conduct that occurred after the effective date of the repeal. Because count two alleged conduct that occurred before the effective date of the repeal, in 1984 and 1985, the court declined to vacate that conviction. *Id.*

The sound reasoning of the court's order vacating count 1 demonstrates that count 1 was never a valid conviction. The State did not even attempt to challenge that point. App. D 25-26. That order has consequences for this case, because this never valid conviction was included in the calculation of Mr. Bartz's offender score when he was sentenced in this case in 2000.

At the time that he filed the motion in Superior Court, Mr. Bartz was still on DOC supervision. That supervision ended in February of 2018, so his request to terminate supervision is no longer operative. He continues to request that the court correct his sentence, to the high end of the proper sentencing range, 160 months.

IV. Argument

The inclusion of this never valid conviction in the calculation of the offender score makes the judgment and sentence in this case invalid on its face. Mr. Bartz is therefore entitled to request relief from the Judgment and Sentence because the time limit of RCW 10.73.090 does not apply.

As stated above whether the J & S in this case is invalid and whether the time bar applies are two sides of the same coin. I will begin with the leading case on what makes a J & S “facially invalid.”

- A. The Washington Supreme Court’s principles for applying RCW 10.73.090 show that when an error results in a sentence in excess of what the court was authorized by law to impose, that the J & S is facially invalid.

In *In re Coats*, 173 Wn.2d 123, 267 P.3d 324, (2011), the Supreme Court of Washington, acknowledging that prior case law created confusion about what makes a judgment and sentence “facially invalid,” or “invalid on its face,” etc, tried to clarify the issue. *Coats*, 173 Wn.2d at 134,135.

In *Coats*, the defendant argued that the misstatement of the maximum penalty for one off the offenses he was sentenced on made the J & S “facially invalid”. The J & S stated that the maximum penalty for conspiracy to commit first degree robbery was life imprisonment, the statement of defendant on plea of guilty stated that

the maximum was 20 years. The maximum sentence for the offense was in fact 10 years. *In re Coats*, 173 Wn.2d 123, 267 P.3d 324, (2011).

However, Mr. Coats had also pled to two more serious offenses that did in fact carry a maximum term of life in prison. Other than the misstatement of the maximum penalty for conspiracy for the robbery, the sentence range for each crime was correctly calculated, and the counts were to run concurrently. *Id.* In other words, the sentence that the court imposed was a valid sentence for the charges of conviction, notwithstanding the error misstating the maximum for one particular charge.

The common principle in the cases that the *Coats* court reviewed was that error in the judgment and sentence, one that made it facially invalid for purposes of the time bar, had to be more than a misstatement of law or a clerical error. The error had to have the legal effect of making either the judgment (because the conviction was not valid), or the sentence, legally incorrect. “[A] careful review of our cases reveals that we have only found errors rendering a judgment invalid under RCW 10.73.090 where a court has in fact exceeded its statutory authority in entering the judgment or sentence.” *Coats* at 135.

The court listed cases where a defendant had pled guilty to a crime after the statute of limitations had passed, where the court had imposed a sentence above the statutory maximum, where a defendant pled guilty to non-existent crimes (such as the 1991 conviction in this case) and where the court had miscalculated the offender score. *Coats* at 135-36.

The court explained that *Coats*' situation, a clerical error that misstated the maximum sentence but did not result in an illegal sentence, was different because it did not result in error in the sentence the court actually imposed. "We have regularly found facial invalidity when the court actually exercised a power it did not have. However, we have never found a judgment invalid merely because the error invited the court to exceed its authority when the court did not in fact exceed its authority. *In re Coats*, 173 Wn.2d 123, 267 P.3d 324, (2011).

After explaining the invalidity portion of "facially invalid," the court took care to explain that the "facial" portion was not a limitation on looking beyond the J&S itself. In other words, the error did not need to be evident from only a review of the J&S.

"Since at least 1947, we have not limited our review to the four corners of the judgment and sentence. But we have only

considered documents that reveal some fact that shows the Judgment and Sentence is invalid on its face because of legal error. *Coats* at 139-39, *citations omitted*.

The point here is that the court has long approved of reviewing extrinsic documents that demonstrate that a legal error occurred in the J & S.

Applying these principles to the case at hand, Mr. Bartz position is that the 1991 conviction for statutory rape was never a valid conviction. That conviction should not have been included in his offender score in this case. The primary document outside of the J & S that supports this is the court's order vacating count 1 of the 1991 cases. That order demonstrates an error that makes the J & S in this case invalid on its face, because it leads to the inescapable conclusion that the never valid 1991 conviction should not have been included in determining the offender score. The legal reasoning that the court used to vacate the 1991 conviction was just as valid in 2000, at the time of sentencing in this case as it was when the order was signed. That conviction was not valid in 1991, in 2000, or ever.

Because the conviction was never valid, the J & S in this case had an erroneous offender score. As explained below, his offender

score should have been 3. His sentencing range should have been 120-160 months, not the 138-184 stated in the J & S.

Because the court sentenced him to 184 months, and the court legally was limited to the top of the range of his correct sentence range, 160 months, the court “exceeded its statutory authority in entering the judgment or sentence.” *Coats* at 135. The J & S is therefore facially invalid. The court did not impose an exceptional sentence, nor did it enter findings that would have been required to support such a sentence. Put simply, the sentence imposed exceeded the range and therefore the court exceeded its authority.

B. The offender score without the 1991 conviction was 3, and the sentence range was 120-160 months.

Attached as Appendix E, are relevant excerpts from the 2000 guidelines manual. As stated above, the J & S in this case listed Mr. Bartz offender score as 5. App. A. at 4. The score was based upon the criminal history set forth in paragraph 2.2, which included the two convictions for statutory rape from the 1991 cases and a 1997 child assault 3. *Id.* The child assault 3 is a nonviolent offense according to the last page of App. E at 33, 2000 sent manual page IV-49. The other two convictions are “violent offenses,” because they are class

A felonies. App. E at 29, 2000 sent. manual page II-53. The offender scoring sheet for this case from the 2000 sentencing manual scores each of the statutory rape convictions for 2 points and the child assault 3 for 1 point. In the J&S, this resulted in an offender score of 5, and a range of 138-184 months. Removing the 2 points for the vacated count, the corrected offender score is 3, resulting in a sentencing range of 120-160 months. 160 months was the top of the range and the maximum sentence that the court was authorized to impose.

C. The Superior Court did not properly apply these principles.

The orders of the court entered January 4, and February 23, of 2018 respectively were orders that incorporated the letter decisions that had been issued by the court on December 15, 2017 (filed on December 18) and February 7, 2018 (filed February 8). These letter decisions contain the legal reasoning of the court below.

Both of these letters recognize the invalidity of the 1991 Conviction. "Here there is no dispute that count one of the 1991 conviction (sic) for first degree statutory rape was not valid on its face. The court did not have authority to enter judgment on a statute that had been repealed prior to the unlawful conduct occurring." Dec 15 letter decision. Similarly, "There is no dispute that the 1991

judgment was invalid on its face, as Mr. Bartz was convicted of a crime that did not then exist.” Feb. 7 2018 decision letter.

The error in the court’s reasoning appears to be more of an issue with the confusing nature of this body of law as mentioned in *Coats*. The court cited two cases, *In re Pers. Restraint of Scott*, 173 Wn. 2d 911(2012), and *In re Stoudmire*, 141 Wn. 2d 342 (2000). In the motion for reconsideration, Mr. Bartz did point out that *Scott* was a decision that had no majority opinion and therefore no precedential value. See *In re Pers. Restraint of Francis*, 170 Wn.2d 517, 532 n.7 (2010). However, nothing in the language that the court used from that case in support of its reasoning appears to be wrong per se. The court below quoted *Scott* by noting that ““invalid on its face” does not mean that the trial judge committed some legal error,” and “Simply because the court commits a legal error does not divest the court of its authority.” Dec 15 Letter at 2. This language is not inconsistent with *Coats*. In *Coats* there was an error in stating the maximum sentence, but that error did not divest the court of its authority, because in *Coats*, the sentence imposed was a “legal” sentence despite the error. Maybe the court below interpreted this language to conclude that the error that occurred in this case, including the never valid conviction in the offender score, did not

divest the court of its authority, and that therefore the court did not act beyond its authority (because the error does not divest the court of its authority). Later the court below concludes that “the error in calculating the offender score amounts to legal error rather than the court acting without authority. *Id.* This is not a correct application of the law.

The primary teaching of *Coats* is that the error must be error that ultimately **results** in a sentence that the court would have known was not authorized if it had not committed the error. In other words if the court had known in 2000 that the 1991 conviction was never valid it would have known its sentence of 180 months was not authorized. The point is that the error in this case did not divest the court of the authority to act. The court never had that authority. You can't take away (divest) authority that the court never had.

On reconsideration, counsel was concerned that the court was placing too much emphasis on its conclusion that the inclusion of the never valid conviction was “legal” error. Counsel is still not sure exactly what that means in this context. The pure “legal” error occurred in 1991. The subsequent inclusion of that conviction in the calculation in 2000 seems to be both a factual error and a legal error.

But to point out that legal error did not preclude a finding that the J&S was facially invalid counsel went back to *Coats*, quoting...

"Since at least 1947, we have not limited our review to the four corners of the judgment and sentence. But we have only considered documents that reveal some **fact** that shows the judgment and sentence is invalid on its face because of **legal** error."

Coats at 138-39, citations omitted, emphasis added.

So initially at least, the court below interpreting this as "legal error rather than the court acting without authority," and applying that interpretation by concluding that if the error is legal that the court did not act beyond its authority may be the source of the court's error. The quotation from *Coats* shows that this is not a proper application of the law.

In order to emphasize this, and to provide a factually similar case, counsel also referred on reconsideration to cases that specifically found that a miscalculated offender score defeats the time bar.

Counsel pointed out that the issue of whether a miscalculated offender score demonstrates that a court acted in excess of its jurisdiction is a settled issue in this State. "[a] sentencing court acts without statutory authority ... when it imposes a sentence based on

a miscalculated offender score." *Id.* "Moreover, a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice." *In re Goodwin*, 146 Wn.2d 861, 876 (2002) citing *In re Johnson*, 131 Wash.2d at 569.

In *Goodwin*, as in this case, the defendant had been sentenced based upon an incorrect offender score. The court was clear that, for that reason, the petition was not time barred by RCW 10.73.090. *Goodwin* at 866-867. Discussing miscalculation of an offender score, the *Goodwin* court cites *In re Pers. Restraint of Carle*, 93 Wash.2d 31 (1980), for the proposition that '[w]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered.' *Goodwin* at 869 citing *Carle* at 33.

Goodwin sums up at the end by stating in no uncertain terms how a miscalculated offender score is the most serious of errors

In *Goodwin's* case there is not, and never has been, merely a factual dispute. The judgment and sentence on its face shows that *Goodwin's* offender score was miscalculated. Nor is there any sentencing court discretion at issue. There is simply no question that *Goodwin's* offender score was miscalculated, and his sentence is as a matter of law in excess of what is statutorily permitted for his crimes given a correct offender score. *Goodwin* cannot waive the legal effect of his prior convictions

under these circumstances because he cannot agree to a sentence in excess of that statutorily authorized. Therefore, his sentence, based upon an incorrect offender score, is fundamentally defective.

Goodwin 875-876 citing *Johnson*, 131 Wash.2d at 569.

This language disposes of the issue of whether the time bar applies to the case before the court, and clearly indicates that the error of miscalculation of the offender score is the kind of error that can, and does show the facial invalidity of the sentence that was imposed.

Despite being made aware of these authorities the court below denied relief on reconsideration. In its letter decision, the court's reasoning is faulty. The court below attempted to factually distinguish *Coats*, stating that "In Coats, the Court sentenced the defendant to a maximum life in prison for a crime that carried a maximum sentence of 20 years. *Id.*, This is significantly different than Mr. Bartz's situation where the difference is 24 months. Here Mr. Bartz was sentenced correctly based on the information the Court had before it at the time." February 7, 2018 decision letter 1-2.

It looks as if the court may have misread *Coats*, as the defendant was actually denied relief in that case. In fact, in *Coats*, there was no difference between what the court was allowed to

impose and what the court actually imposed. Here, the court actually imposed a sentence that later was shown to be clearly in excess of the court's power. The trial court's last sentence shows the disconnect. Clearly, if the standard was that the court's sentence was based upon the information that it had at the time, then no sentences could be corrected. It is hard to imagine that a court would impose a sentence despite, or notwithstanding, the information before it at the time. That of course would be a subject for successful direct appeal.

The court below then acknowledges that the sentence was incorrect but that "it did not result in a gross miscarriage of justice." This is despite the citation to *Goodwin* in Mr. Bartz's briefing that makes it clear that "a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice." *In re Goodwin*, 146 Wn.2d 861, 876 (2002) citing *In re Johnson*, 131 Wash.2d at 569. Counsel does not believe that the word "gross" being absent from the quote is legally significant. "fundamental defect and inherent miscarriage of justice" is fairly strong language.

The other authorities that the court below relied upon do not support its conclusion. This case concerns the application of RCW 10.73.090. *In re Cook*, 114 Wn. 2d 802 (1996), specifically states that

10.73.090 did not apply to that case as it was not in effect during relevant times. Cook at 806. *In re Elmore*, 162 Wn.2d 236 (2007), is not based on 10.73.090, and involves a collateral attack based upon issues such as ineffective assistance of counsel, the kind of error that is far less clear than a miscalculated offender score.

The last case cited by the court below includes this quote and citation to authorities. A court may not order a sentence beyond that authorized by law. *In re Pers. Restraint of Carle*, 93 Wash.2d 31, 33, 604 P.2d 1293 (1980). Any such order is invalid on its face. *In re Pers. Restraint of Goodwin*, 146 Wash.2d 861, 866-67, 50 P.3d 618 (2002). *In re Tobin*, 165 Wn.2d 172, 175-6 (2008).

Counsel would point out that these authorities support our position, which is why we cite to them repeatedly. Also, the trial court's parenthetical that indicates that the court in *Tobin* intentionally sentenced the defendant above the range does not appear to be a correct reading of the case. *Id.*

V. Conclusion

The great weight of authority supports our position. The position that the court below took seems at odds with these authorities. The court seems to have rationalized its decision based upon the fact that the sentencing court was not aware of the error at the time. To

counsel, it seems that the very purpose of an exception to the time bar is so that in cases, where as here, an error is not discovered until well after it is made, that the court can and should correct the error. Neither the court below, or the State seem to disagree that the 1991 conviction was never valid, and that had that been known at the time the court would not have sentenced Mr. Bartz as it did. The authorities we have put before the court seem to confirm that the purpose of the exception to the time bar is to correct easily identifiable error even if it occurs well after the fact.

Mr. Bartz requests that the court remand this case to the superior court for the imposition of a sentence within the properly calculated sentencing range. If the State concedes error, Mr. Bartz is prepared to stipulate to a sentence at the top of the range, 160 months.

RESPECTFULLY SUBMITTED this 9th day of July, 2018.



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Appendix C **pp 21-23**

June 15, 2017 order vacating count 1 in Spokane County Superior court case# 91-1-00416-2

Appendix D **pp 24-26**

- 1. May 31, 2017 response by State to motion to vacate in court case# 91-1-00416-2**

Appendix E **pp 27-33**

Excerpts from the 2000 Adult Sentencing manual

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Appendix A

1. November 15, 2000 Judgment and Sentence
2. Plea offer
3. Warrant of commitment

SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE
STATE OF WASHINGTON,
Plaintiff,

v.

GEORGE DEAN BARTZ,
WM 062145

Defendant.

SID: 015289409

No. 00-1-02031-8
PA# 00-9-04475-0
RPT# 02-00-257711
RCW 9A.36.011(1)(a)-F (#05401)

JUDGMENT AND SENTENCE (JS)

- Prison
- Persistent Offender
- Jail One Year or Less
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative

FILED
NOV 15 2000
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

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 11/15/00
by plea jury verdict bench trial of:

Count No.: 1 Crime: FIRST DEGREE ASSAULT
RCW 9A.36.011(1)(a)-F (#05401)
Date of Crime August 30, 2000
Incident No. 02-00-257711

Count No.: Crime:
RCW
Date of Crime
Incident No.

Count No.: Crime:
RCW
Date of Crime
Incident No.

as charged in the Amended Information

Additional current offenses are attached in Appendix 2.1

JUDGMENT AND SENTENCE (Felony) (JS)
(RCW 9.94A.110,.120)(WPF CR 84.0400 (6/2000))

- A special verdict/finding for use of a firearm was returned on Count(s) ____
RCW 9.94A.125, .310
- A special verdict/finding for use of a deadly weapon other than a firearm was
returned on Count(s) ____ RCW 9.94A.125, .310
- A special verdict/finding of sexual motivation was returned on Count(s) ____
RCW 9.94A.127
- A special verdict/finding for Violation of the Uniform Controlled
Substances Act was returned on Count(s)_____, RCW 69.50.401 and
RCW 69.50.435, taking 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, in a public transit vehicle,
or in a 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.
- A special verdict/finding that the defendant committed a crime involving the
manufacture of methamphetamine when a juvenile was present in or upon
the premises of manufacture was returned on Count(s)_____
RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately
caused by a person 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
- 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 court finds that the offender has a chemical dependency that has
contributed to the offense(s). RCW 9.94A.____.
- The crime charged in Count(s)_____ involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one
crime in determining the offender score are (RCW 9.94A.400):
- Other current convictions listed under different cause numbers used in
calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: (RCW 9.94A.360):

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
CHILD ASSAULT 3	050197		A	SPOKANE CO, WA	011698
STATUTORY RAPE 1	103189	VIOLENT SEX	A	SPOKANE CO, WA	100991
STATUTORY RAPE 1	123185	VIOLENT SEX	A	SPOKANE CO, WA	100991

- Additional criminal history is attached in Appendix 2.2
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360
- The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

CT NO	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus enhance-ments*	Total Standard Range (including enhancements)	Maximum Term
I	5	XII (A)	138-184 months	N/A	138-184 months	Life / 150 months

*(F) Firearm, (D) other deadly weapons, (V) VUCSA in a protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, (JP) Juvenile present.

- Additional current offense sentencing data in Appendix 2.3
- 2.4 EXCEPTIONAL SENTENCE: Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. 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.142

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are

attached as follows _____
↳ plea offer & conditions of community custody

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1

3.2 The Court DISMISSES Counts

The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

\$ _____ Restitution to: _____

JASS CODE \$ _____ Restitution to: _____

RTN/RJN \$ _____ Restitution to: _____
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV \$500.00 Victim Assessment RCW 7.68.035

CRC \$110.00 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal Filing fee \$ _____ FRC

Witness costs \$ _____ WFR

37.00 Sheriff service fees \$ **37.00** SFR/SFS/SFW/SRF

Jury demand fee \$ _____ JFR

Other _____ \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.030
 WRF \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030
 FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA additional fine deferred due to indigency RCW 69.50.430
 CDF/LDV \$ _____ Drug enforcement fund of _____
 FCD/NTF/SAD/SDI _____ RCW 9.94A.030
 CLF \$ _____ Crime lab fee [] deferred due to indigency RCW 43.43.690
 EXT \$ _____ Extradition costs RCW 9.94A.120
 \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430
 \$ _____ Other costs for: _____

\$ 647⁰⁰ TOTAL RCW 9.94A.145 * no interest until after 1st full month of release

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.142. A restitution hearing:

[] shall be set by the prosecutor
 is scheduled for 2/22/01 @ 3:30 PM

[] RESTITUTION. Schedule attached, Appendix 4.1

[] Restitution ordered above shall be paid jointly and severally with:
 NAME of other defendant CAUSE NUMBER (Victim Name) (Amount\$)

RJN

[] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ TBD per month commencing upon consult/US RCW 9.94A.145.

[] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

[] 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

4.2 HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 • The Defendant shall not have contact with [REDACTED] (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence.) *see Attached Conditions of Community Custody for exceptions.*

Domestic Violence Protection Order or Anti-Harassment Order is filed with this Judgment and Sentence.

4.4 OTHER _____

2

EXHIBIT A

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

- (a) • CONFINEMENT. RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

184 (months) on Count No. I ;
 _____ (months) on Count No. _____ ;
 _____ (months) on Count No. _____ .

Actual number of months of total confinement ordered is: 184
 _____ (Add mandatory firearm or deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400.

Confinement shall commence immediately unless otherwise set forth here: defendant in custody

- (b) • The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. 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: 70 days CFTB 17 days

4.6 [] COMMUNITY PLACEMENT is ordered on Count _____ for _____ months, Count _____ for _____ months, Count _____ for _____ months.

• COMMUNITY CUSTODY is ordered as follows:
 Count I for a range from 2A to 4B months;
 Count _____ for a range from _____ to _____ months;
 Count _____ for a range from _____ to _____ months;
 or for the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.120(9) for community placement offenses--serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense--RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall:

EXHIBIT A

(1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The defendant shall not consume any alcohol.
 Defendant shall have no contact with: any minors under age 18

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

The defendant shall participate in the following crime-related treatment or counseling services: sexual deviancy treatment

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

The defendant shall comply with the following crime-related prohibitions: no frequenting where minors congregate

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: See attached Condition of Community Custody incorporated herein, polygraphs to monitor

4.7 WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 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.** 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.145 and RCW 9.94A.120(13).
- 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 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.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**
~~Defendant waives any right to be present at any restitution hearing (sign initials):~~
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200
- 5.6 **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 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.

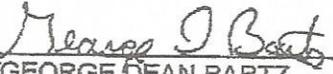
5.8 OTHER: defendant shall be considered for evaluation & treatment @ SCSTP @ Twin Rivers.

DONE in Open Court in the presence of the defendant this 15 day of November, 2000.


JUDGE Print name: TARI S. EITZEN


SHARON L. HEDLUND
Deputy Prosecuting Attorney
WSBA # 27263


~~ALAN B. ROBB~~ Dennis Dressler
Attorney for Defendant
WSBA# 19602


GEORGE DEAN BARTZ
Defendant

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: 00-1-02031-8.

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. 015289409

Date of Birth 06/21/1945

(if no SID take fingerprint card for State Patrol)

FBI No. 702851MA2

Local ID No. 0201042

PCN No.

Other

SSN 538-42-1270, DOB 06/21/1945

Alias name

Race:

Ethnicity:

Sex:

Asian/Pacific Islander

Black/African-American

Caucasian

Hispanic

Male

Native American

Other: _____

Non-hispanic

Female

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: THOMAS R. FALLOUST, County Clerk / Deputy Clerk. Dated: 11/15/2000

DEFENDANT'S SIGNATURE: Mervyn J. Baitz

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously

JUDGMENT AND SENTENCE (Felony) (JS)
(RCW 9.94A.110,.120)(WPF CR 84.0400 (6/2000))

PLEA OFFER

State vs. GEORGE DEAN BARTZ

Cause No. **00102031-8**

Defense Attorney: **Dennis Dressler**

FILED
NOV 15 2000
THOMAS R. FALLOQUIST
SPOKANE COUNTY CLERK

The State of Washington makes the following plea offer: (Circle where appropriate)

1. ~~Plea as charged:~~

a) ~~Jail/Prison time recommendation:~~

2. Plea to:

Assault 10 (Great Bodily Harm) via In Re Barr

(a) ~~Jail/Prison time recommendation:~~

184 months - must be joint recommendation

If the plea offer is not accepted by _____ all plea offers are canceled. The State will move to amend the Information to: _____

The following enhancements will be added:

- a) Deadly Weapon (w/firearm _____ non-firearm _____) on Count(s) _____
- b) School Zone - VUCSA on Count(s) _____
- c) Sexual Motivation on Count(s) _____

3. Sentence Recommendation:

- a) Work Release/Work Crew
- b) Electronic Monitoring
- c) Community Service _____ hours
- d) Work Ethic Camp
- e) SSOSA
- f) DSOSA
- g) No Contact Provisions**
- h) Sex Offender Registration
- I) TASC Monitoring
- j) First Offender Option Conditions: _____

4. Conditions of Sentence:

- a) Length of Supervision:**
 - i) Community Supervision: _____ months.
 - ii) Community Placement: _____ years.
 - iii) Community Custody: 2-4 years.**

- iv) Probation: _____ months/years.
- b) Drug fines _____
- c) Lab Fees _____
- d) Warrant Fees 3702 _____
- e) Attorney Fees _____
- f) Fine _____
- g) Emergency Response Fee _____
- h) General Traffic Conditions _____
- i) Extradition Costs _____
- j) BAC Fee _____
- k) Court appointed defense expert and other defense costs _____

l) Other See attached conditions of community custody

m) Mandatory license revocation.

5. Restitution

- a) In full on the charge counts TBD
- b) As follows: (i.e. uncharged counts)

6. Real Facts: In accordance with RCW 9.94A.370, the parties have stipulated that the Court, in sentencing, may consider as real and material facts information as follows:

- a) As set forth in the Probable Cause Affidavit / In Re Barr.
- b) As set forth in attached Appendix.
- c) Mandatory Minimum Term (RCW 9.94A.120(4) only):

Date: 11/15/00

AA Hedlund
 Deputy Prosecuting Attorney
 WSBA# 27263

11/15/00 Tari S. Eitzen
 Judge
 TARI S. EITZEN

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

FILED

NOV 15 2000

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

STATE OF WASHINGTON)
)
 Plaintiff,)
)
 v.)
)
 GEORGE DEAN BARTZ,)
 WM 062145)
)
 Defendant(s).)

No. 00-1-02031-8
PA# 00-9-04475-0
RPT# 02-00-257711
RCW 9A.36.011(1)(a)-F (#05401)
WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: The Sheriff of Spokane County.

The defendant: GEORGE DEAN BARTZ has been convicted in the Superior Court of the State of Washington of the crime(s) of: FIRST DEGREE ASSAULT and the court has ordered that the defendant be punished by serving a total determined sentence of 184 ~~(days)~~ (months) as ordered in the Judgment and Sentence.

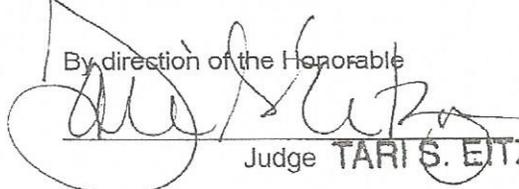
Credit be given for ~~(time)~~ 30 days served solely on these charges.

() YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

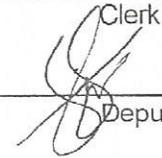
YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

Date: 11/15/00

By direction of the Honorable

Judge TARI S. EITZEN

THOMAS R. FALLQUIST, County Clerk

Clerk
By: 
Deputy Clerk

Appendix B

1. DOC custody info (OMNI legal face sheet pp 7-9)
2. DOC info re tolling and time on return to serve remainder of sentence
(OMNI: View J & S field)

Supervision Type	Activity Type	Activity Date	State	Supervising Officer	Field Office
CCP	CC Detained Jail Return	08/14/2014	Washington	Lucas, Kaylyn M	Chehalis Office
CCP	CC Detained Jail	08/14/2014	Washington	Lucas, Kaylyn M	Chehalis Office
CCP	Intake	09/18/2013	Washington	Buswell, Robert E	Chehalis Office

External / Internal Movements

Movement Date/Time	From Location	To Location	Movement Type		Movement Reason		Created By		
01/06/2016 08:32:05	CRCC	Lewis	CCI/CC Release		CCI Transfer		Bitton, Wendy K		
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	CRCC	10/13/2015	BB181L	Unassigned					Bitton, Wendy K
10/13/2015 12:13:56	Benton	CRCC		Return From Escorted Leave		Medical Completed			Judd, Gregory A
10/13/2015 09:08:09	CRCC	Benton		Escorted Leave		Medical Needs			Judd, Gregory A
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	CRCC	08/17/2015	BB181L	Unassigned					Judd, Gregory A
08/17/2015 03:10:51	Benton	CRCC		Return From Escorted Leave		Medical Completed			Carlton, John T
08/17/2015 01:08:08	CRCC	Benton		Escorted Leave		Medical Needs			Pettitt, Andy L
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	CRCC	08/12/2015	BB181L	Unassigned					Pettitt, Andy L
08/12/2015 03:33:17	Benton	CRCC		Return From Escorted Leave		Medical Completed			Thorson, Kevin R
08/12/2015 12:55:56	CRCC	Benton		Escorted Leave		Medical Needs			Judd, Gregory A
	Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
	CRCC	08/04/2015	BB181L	Unassigned					Judd, Gregory A

08/04/2015 02:45:58	Benton	CRCC		Return From Escorted Leave	Medical Completed			Thorson, Kevin R
08/04/2015 11:59:46	CRCC	Benton		Escorted Leave	Medical Needs			Thorson, Teresa K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
CRCC	07/20/2015	BB181L	Unassigned					Thorson, Teresa K
07/20/2015 03:58:13	Benton	CRCC		Return From Escorted Leave	Medical Completed			Pettitt, Andy L
07/20/2015 01:21:17	CRCC	Benton		Escorted Leave	Medical Needs			Markel, Robert C
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
CRCC	11/19/2014	BB181L	Gunter, Joe A	71016235	11/07/2014			Markel, Robert C
CRCC	11/06/2014	BB461L	Gunter, Joe A	71016235	11/07/2014			Bitton, Wendy K
CRCC	11/06/2014	BB461L	Unassigned					Thorson, Teresa K
11/06/2014 12:00:41	WCC-RC	CRCC		Accepted At Facility	Initial Classification			Culey, William A
11/06/2014 04:45:52	WCC-RC	CRCC		Transfer From A Facility	Initial Classification			Roman, Ramses
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	09/26/2014	6F09L	Vaughn, Toby M	71006286	09/09/2014			Roman, Ramses
WCC-RC	09/10/2014	3B04L	Vaughn, Toby M	71006286	09/09/2014			Waldecker, Robert R
WCC-RC	09/04/2014	3F01L	Vaughn, Toby M	71006286	09/09/2014			Roman, Ramses
WCC-RC	09/04/2014	3F01L	Unassigned					Waldecker, Robert R
WCC-RC	08/29/2014	3F01U	Unassigned					Vincent, Douglas M
08/29/2014 11:49:39	Lewis County Violator Facility	WCC-RC		Accepted At Facility	CCP Return			Olsen, Jayne S
08/29/2014 10:48:02	Lewis County Violator Facility	WCC-RC		Transfer From A Facility	CCP Return			Olsen, Jayne S

Washington State
Department of Corrections

Offender Management Network Information

DOC No.: 985210 Go

Selected DOC No.: 985210 BARTZ, George Dean

Home | Assignments | Offender | Facility | Search | Administration

Home > Offender > Sentence Information > View J & S - Field

Return to Case Plan

Logged in as Alex Kostin

Sentence Information Menu

Field Offender: BARTZ, George Dean (985210)

Legal Face Sheet

- View J & S - Prison
- View J & S - Field
- Conditions
- Earned Time
- Good Conduct Time
- Problem J & S

Gender: Male	DOB:	Age: 70	Body Status: Active Field
RLC: LOW	Wrap-Around: No	Comm. Concern: No	Location: Chehalis Office
SED: 02/09/2018	County SO Lvl: Level 3 (03/13/2014)	ESR SO Lvl: Level 3 (04/08/2013)	CC/CCO: Bornstein, Gus V (CX45)

Links

- OnBase
- CeField
- Policies
- Report Wizard

Period Of Jurisdiction
12/14/2000 - Current

Display
 Include Closed Causes Enable Scrolling

Sentence Drilldown:
Cause, Count, & Supervision Type

Details
 Sch. End Date Calculations StatMax Calculations
 Toll Time Graphical Sentence View

Cause	Count	Supervision Type	Consecutive Supervision	Status	Supervision Length	Time Start Date	Sch. End Date	Stat Max	+ Stat Max Length	- Cause Credits	+ Out Time	+ Toll Time
Offender Overall				Active	-	09/18/2013	02/09/2018	-	-	-	-	-
AC-001020318-Spokane-CCP [CCP Return]				Active	0Y, 36M, 0D	09/18/2013	02/09/2018	Life	-	-	-	-
○ 1-Assault 1				Active	0Y, 36M, 0D	09/18/2013	02/09/2018	Life	0	-	0	0
Community Custody Range - CCP				-	0Y, 36M, 0D	09/18/2013	02/09/2018	-	-	-	-	-
Toll Time				-	-	-	-	-	-	-	-	-
○ Sanction Tolling				-	0Y, 0M, 510D	08/14/2014	01/06/2015	-	-	-	-	-

Maintain					Create				
View	Update	Modify J & S	Cancel Modify	Delete	View J & S Versions	Add Cause	Add Count	Copy Count	Add Toll Time
Action									
Calculate			Analyze		Print				

ATTACHMENT B

08/14/2014 11:18:25	Spokane	Lewis County Violator Facility	CCI/CCP Returned	CCP Return	Olsen, Jayne S			
09/18/2013 08:20:05	MCC-TRU	Lewis	CCI/CC Release	CCI Transfer	Mcdonald, Rene M			
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC- TRU	10/19/2012	A3171	Johnson, Cheryl A	70047620	09/07/2012			Robinson, Lindsey L
MCC- TRU	09/07/2012	A3031	Johnson, Cheryl A	70047620	09/07/2012			Robinson, Lindsey L
MCC- TRU	09/07/2012	A3031	Hathaway, Michael S	70047619	09/06/2012			Robinson, Lindsey L
MCC- TRU	09/06/2012	C3161	Hathaway, Michael S	70047619	09/06/2012			Robinson, Lindsey L
MCC- TRU	09/06/2012	C3161	Johnson, Cheryl A	70047620	09/05/2012			Robinson, Lindsey L
MCC- TRU	09/05/2012	A3031	Johnson, Cheryl A	70047620	09/05/2012			Robinson, Lindsey L
MCC- TRU	09/05/2012	A3031	Mcbride, Ml	70047626	09/05/2012			Robinson, Lindsey L
MCC- TRU	09/05/2012	A3031	Hathaway, Michael S	70047619	08/20/2012			Robinson, Lindsey L
MCC- TRU	08/20/2012	C3161	Hathaway, Michael S	70047619	08/20/2012			Smith, Vicki J
MCC- TRU	08/20/2012	C3161	Unassigned					Smith, Vicki J
08/20/2012 08:15:23	MCC-WSR- MSU	MCC-TRU	Accepted At Facility	Facility Assignment Change	Robinson, Lindsey L			
08/20/2012 08:05:59	MCC-WSR- MSU	MCC-TRU	Transfer From A Facility	Facility Assignment Change	Steffins, Wendi A			
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC- WSR- MSU	12/12/2011	DD105B	Gaugler, Keith J	70046787	08/08/2011			Steffins, Wendi A
MCC- WSR- MSU	08/08/2011	DD324L	Gaugler, Keith J	70046787	08/08/2011			Steffins, Wendi A
MCC- WSR- MSU	08/08/2011	DD324L	Unassigned					Polson, Dianna F
08/08/2011 11:35:16	MCC-WSR	MCC-WSR-MSU	Transfer In Within Complex - No Transfer Order	Medical Completed	Edwards, Michelle C			

Appendix C

1. June 15, 2017 order vacating count 1 in Spokane County Superior court case # 91-1-00416-2

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COPY ORIGINAL FILED

JUN 15 2017

SPOKANE COUNTY CLERK

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

STATE OF WASHINGTON)
)
 Plaintiff,)
)
 v.)
)
 GEORGE DEAN BARTZ)
 WM 06/21/45)
)
 Defendant(s).)
)
)

No. 91-1-00416-2
PA# 91-9-80155-0
RPT# CT I, II: 001-90-0055684
RCW CT I, II: 9A.44.070-F (#67320)
ORDER ^

I. BASIS

The Plaintiff, State of Washington represented by Prosecutor LAWRENCE H. HASKELL, through his Deputy Prosecutor EDWARD D. HAY, moved the court for denying Mr. Bartz's motion in part.

II. FINDING

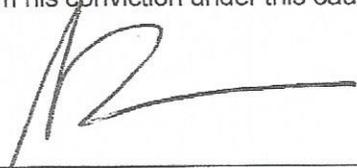
After reviewing the case record to date, and the basis for the motion, the court finds that Mr. Bartz pleaded guilty on October 9, 1991 to two counts titled First Degree Statutory Rape under RCW 9A.44.070. Count I alleged offense dates of July 1, 1988 through October 31, 1989. Count II related to acts occurring between September 1, 1984 and December 31, 1985. Laws of Washington 1988, Chapter 145, Section 24 and 25 repealed the crime of 1st Degree Statutory

Rape for acts occurring on or after July 1, 1988. The repeal did not apply offenses occurring before July 1, 1988.

III. ORDER

IT IS ORDERED that: Mr. Bartz' motion to vacate his conviction of Count I is granted .His motion to vacate his conviction under Count II, of 1st Degree Statutory Rape is denied. The conviction under Count II remains in full effect. Mr. Bartz is relieved of his duty to register as a Sex Offender to the extent to which that duty arises solely from his conviction under this cause number.

DATED this 15th day of June, 2017.

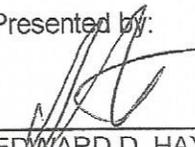


JUDGE / COURT COMMISSONER

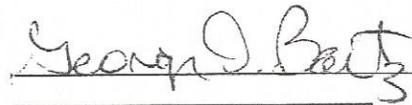
JUDGE ANNETTE S. PLESE

Approved:

Presented by:

 #29408

EDWARD D. HAY
Deputy Prosecuting Attorney
WSBA # 11846



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Appendix D

1. May 31, 2017 response by State to motion to vacate in court case #
91-1-00416-2

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SUPERIOR COURT
SPOKANE COUNTY, WA

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

STATE OF WASHINGTON)	
)	
Plaintiff,)	No. 91-1-00416-2
)	
v.)	PA# 91-9-80155-0
)	Response - Motion to Vacate
GEORGE DEAN BARTZ)	
WM 06/21/45)	
)	
Defendant(s).)	
)	

COMES NOW, State of Washington, represented by LAWRENCE H. HASKELL, Spokane County Prosecuting Attorney, by and through his Deputy Prosecuting Attorney DAWN C. CORTEZ, and now makes the following:

I. FACTS

Mr. Bartz pleaded guilty on October 9, 1991 to two counts titled First Degree Statutory Rape under RCW 9A.44.070. Count I alleged offense dates of July 1, 1988 through October 31, 1989. Count II related to acts occurring between September 1, 1984 and December 31, 1985

II. ISSUES PRESENTED

Is Mr. Bartz entitled to vacation of his Judgement and Sentence, when Count II related to 1st Degree Statutory rape occurring in 1984 and 1985?

III. LAW AND ARGUMENT

Laws of Washington 1988, Chapter 145 Section 24 repealed RCW 9A.44.070, and replaced it with RCW 9A.44.073, Rape of a Child in the First Degree

NEW SECTION. Sec. 24. The following acts or parts of acts are each repealed:

- (l) Section 7, chapter 14, Laws of 1975 1st ex. sess., section 4, chapter 244, Laws of 1979 ex. sess., section 31, chapter 257, Laws of 1986 and RCW 9A.44.070;

The repeal clause did not extinguish liability for acts occurring before July 1, 1988. Laws of Washington 1988, Chapter 145, section 25 stated:

NEW SECTION. Sec. 25. This act shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on July 1, 1988, and shall apply only to offenses committed on or after July 1, 1988.

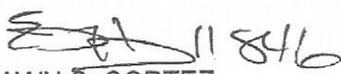
Mr. Bartz's guilty plea and sentencing were valid as to Count II.

IV. CONCLUSION

For the reasons above stated, the State respectfully requests this court deny Mr. Bartz's motion. Judicially recognized interests in fair and efficient administration of justice require this court to rule as requested.

DATED this 31 day of May, 2017

Respectfully submitted,
LAWRENCE H. HASKELL
Prosecuting Attorney


DAWN C. CORTEZ
Deputy Prosecuting Attorney
WSBA# 19568

Appendix E

Excerpts from the 2000 Adult Sentencing manual
(page numbers are for original pages in the manual)

1. Offender Score Sheet for Assault 1. page III- 54
2. Definition of "violent offense." page II-53
3. Scoring rules. page II-165 to II-167
4. Felony index of nonviolent offenses. page IV-49

ASSAULT, FIRST DEGREE

(RCW 9A.36.011)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict, use form on page III-31)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent felony convictions..... x 3 =

Enter number of violent felony convictions..... x 2 =

Enter number of nonviolent felony convictions..... x 1 =

JUVENILE HISTORY:

Enter number of serious violent felony dispositions..... x 3 =

Enter number of violent felony dispositions..... x 2 =

Enter number of nonviolent felony dispositions..... x 1/2 =

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other violent felony convictions..... x 2 =

Enter number of nonviolent felony convictions..... x 1 =

STATUS: Was the offender on community placement 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)

II. SENTENCE RANGE

A. OFFENDER SCORE:
STANDARD RANGE
(LEVEL XII)

0	1	2	3	4	5	6	7	8	9 or more
93 - 123 months	102 - 136 months	111 - 147 months	120 - 160 months	129 - 171 months	138 - 184 months	162 - 216 months	178 - 235 months	209 - 277 months	240 - 318 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. When a court sentences an offender to the custody of the Dept. of Corrections, the court shall also sentence the offender to community custody for the range of 24 to 48 months, or to the period of earned release, whichever is longer (9.94A.120).
- D. Statutory minimum sentence is 60 months if the offender used force or means likely to result in death or intended to kill the victim (RCW 9.94A.120).
- E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-14 or III-15 to calculate the enhanced sentence.

(43) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(44) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(45) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

(46) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(47) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2000 c 28 § 2. Prior: 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

RCW 9.94A.031 "Offender" and "defendant." (Effective July 1, 2001, until July 1, 2005.) For purposes of judicial and criminal justice forms promulgated under this chapter and related to corrections and sentencing, the terms "offender" and "defendant" may be used interchangeably without substantive effect.

This section expires July 1, 2005. [2000 c 28 § 3.]

offenses should be included in the offender score when the current offense is Vehicular Homicide by Being Under the Influence of Intoxicating Liquor or Any Drug.

RCW 9.94A.360 Offender score. (Effective July 1, 2001.) *The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:*

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Class A and sex prior felony convictions shall always be included in the offender score. Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction. Class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986,

for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction.

(12) If the present conviction is for a drug offense count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, Willful Failure to Return from Work Release, RCW 72.65.070, or Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(14) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(15) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex

offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point. [2000 c 28 § 15. Prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7.]

NOTES:

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

RCW 9.94A.370 Presumptive sentence. *(Effective until July 1, 2001.)* (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point. The facts shall be deemed proved at the hearing by a preponderance of the evidence. Facts that establish the elements of a more serious crime or additional crimes may not be used to go outside the presumptive sentence range except upon stipulation or when specifically provided for in RCW 9.94A.390(2) (d), (e), (g), and (h). [1999 c 143 § 16; 1996 c 248 § 1; 1989 c 124 § 2; 1987 c 131 § 1; 1986 c 257 § 26; 1984 c 209 § 20; 1983 c 115 § 8.]

Comment

The Commission believed that defendants should be sentenced on the basis of facts which are acknowledged, proven, or pleaded to. Concerns were raised about facts which were not proven as an element of the conviction or the plea being used as a basis for sentence decisions, including decisions to depart from the sentence range. As a result, the "real facts policy" was adopted. Amendments in 1986 clarified that facts proven in a trial can be used by a court in determining a sentence.

If the defendant disputes information in the presentence investigation, it is anticipated that an evidentiary hearing will be held to resolve the issue.

RCW 9.94A.370 Standard sentence range. *(Effective July 1, 2001.)* (1) The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the standard sentence range (see RCW 9.94A.310, (Table 1)). The additional time for deadly weapon findings or for those offenses enumerated in RCW 9.94A.310(4) that were committed in a state correctional facility or county jail shall be added to the entire standard sentence range. The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement.

(2) In determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence

FELONY INDEX OF NONVIOLENT OFFENSES

Statute (RCW)	Offense	Class	Seriousness Level
9A.42.060	Abandonment of Dependent Persons 1	B	V
9A.42.070	Abandonment of Dependent Persons 2	C	III
29.36.160	Absentee Voting Violation	C	Unranked
9A.82.030	Advancing Money or Property for Extortionate Extension of Credit	B	V
9.41.170	Alien Possession of a Firearm Without an Alien Firearm License	C	Unranked
46.12.220	Alteration or Forgery - Motor Vehicle Title	B	Unranked
9.45.210	Altering Sample or Certificate of Assay	B	Unranked
16.52.205	Animal Cruelty 1	C	Unranked
9A.36.031	Assault 3	C	III
79A.60.060	Assault by Watercraft	B	IV
9A.36.140	Assault of a Child 3	C	III
9.05.030	Assembly of Saboteurs	B	Unranked
72.23.170	Assist Escape of Mental Patient	C	Unranked
88.12.045	Attempting to Elude Pursuing Law Enforcement Vessel	C	Unranked
46.61.024	Attempting to Elude Pursuing Police Vehicle	C	I
9A.76.170(2)(b)	Bail Jump with Class A Offense	B	V
9A.76.170(2)(c)	Bail Jump with Class B or C Offense	C	III
30.12.100	Bank or Trust Company/Destroy or Secrete Records	B	Unranked
30.12.090	Bank or Trust Company/False Entry, Statements, etc.	B	Unranked
30.44.120	Bank or Trust Company/Receiving Deposits When Insolvent	B	Unranked
9A.64.010	Bigamy	C	Unranked
9.61.160	Bomb Threat	B	IV
9A.72.100	Bribe Received by Witness	B	IV
16.49A.360	Bribe Received by/Offering to Meat Inspector	C	Unranked
9A.68.010	Bribery	B	VI
9A.72.090	Bribing a Witness	B	IV
72.23.300	Bringing Narcotics, Liquor, or Weapons into Institution or Grounds	B	Unranked
9.47.120	Bunco Steering	B	Unranked
9A.52.030	Burglary 2	B	III
9.46.180	Causing Person to Violate Gambling Laws	B	Unranked
65.12.730	Certification of Land Registration Subject to Larceny	B	Unranked
49.12.410	Child Labor Law Violation - Death/Disability	C	Unranked
9A.44.086	Child Molestation 2	B	VII

KRAIG GARDNER ATTORNEY AT LAW

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Transmittal Information

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