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Court of Appeals
Division III
State of Washington
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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

GEORGE BARTZ, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. AUTHORITY FOR RESTRAINT OF PETITIONER

George Bartz is no longer incarcerated and is no longer subject to community custody associated with the conviction at issue in this case. The State is unaware of any other facts which would indicate that he is “under restraint.”

II. APPELLANT’S ASSIGNMENTS OF ERROR

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.

III. ISSUES PRESENTED

1. Should this appeal be treated as a personal restraint petition?¹
2. Whether the claim made by the defendant is moot, and whether he is under an unlawful restraint?
3. Whether the defendant is barred by the doctrine of laches from claiming error in his 2000 judgment and sentence?

¹ The State has filed a motion for this Court to treat this matter as a personal restraint petition, or, in the alternative, to remand to the superior court for entry of an order transferring the case as a personal restraint petition. That motion was filed contemporaneously with this response to the defendant’s appeal. Because under either procedure, this matter must be treated not as an appeal, but as a personal restraint petition, the State has attached documents which are outside the record, but, which may be helpful to this Court in reaching its decision on the merits of the defendant’s claim.

4. Assuming the petition is not time-barred, has the defendant demonstrated a fundamental defect in the proceedings which has resulted in a complete miscarriage of justice?

IV. STATEMENT OF THE CASE

On September 11, 2000, the defendant was charged with one count of first-degree child molestation, after engaging in sexual contact with a 10-year-old child. CP 93. In exchange for a plea of guilty and a joint sentencing recommendation, the State offered to amend the charge to one count of first-degree assault. CP 10-11, 46-47. The defendant accepted the offer to avoid a mandatory life without the possibility of parole sentence, the State amended the information, and the defendant pled guilty to the amended information. CP 1-9, 46-47, 92. The defendant entered an *In re Barr*² plea on the first-degree assault charge. CP 89. He was sentenced on November 15, 2000, to an agreed-upon 184 months of confinement and 24-to 48-months of community custody. CP 18, 46-47.

² *In re Barr*, 102 Wn.2d 265, 684 P.2d 712 (1984).

Years earlier, on October 9, 1991, the defendant pled guilty to two counts of first-degree statutory rape.^{3, 4} CP 58. One count alleged an offense date of “on or about between” July 1, 1988, through October 31, 1989, and the other count alleged an offense date of “on or about between” September 1, 1984, through December 31, 1985.⁵ CP 58; Attach. B.

Prior to the motion to modify the sentence on the instant case, the defendant moved, in a separate proceeding, to have the 1991 convictions vacated. CP 55-56. On June 15, 2017, the Honorable Annette Plese vacated one of the two counts of first-degree statutory rape from the judgment entered October 9, 1991 – the count that was alleged to have been committed on or about between July 1, 1988 and October 31, 1989.⁶ CP 55-56.

³ The original information, which charged five counts of first-degree child rape, was amended to include only two counts of first-degree statutory rape. Attach. A, B.

⁴ The State has redacted the victim’s names from the 1991 charging documents to include only their initials.

⁵ For the sake of clarity, because both of these convictions were entered in 1991, the State will refer to the case alleged to have occurred in 1989 as “the 1989 case” or “the 1989 conviction” even though the conviction for the offense did not occur until 1991.

⁶ The crime of statutory rape was “repealed” on July 1, 1988 and “replaced” with the crime of rape of a child. CP 55-56. The legislature described this as a mere “renaming” of the offense. *See* 1988 FINAL LEGISLATIVE REPORT, 50th Wash. Leg., at 24-25; H.B. REP. ON H.B. 1333, 50th Leg., Reg. Sess. (Wash. 1988).

Then, on November 17, 2017, the defendant moved the superior court for an order modifying his sentence and terminating community custody in the 2000 conviction for first-degree assault (which was amended from the original charge of first-degree child molestation). CP 25. The defendant claimed that his offender score was incorrectly calculated at the time of sentencing, and included the 1991 conviction that was “never valid,” but that was not vacated by Judge Plese until June 15, 2017. CP 25. Thus, he argued, his offender score in 2000 should have been calculated to be a “3” rather than a “5,” and requested the court adjust his sentence to be reflective of the “proper” offender score. CP 31-33. At the time, he was also serving a community custody term, and he requested the superior court relieve him of that obligation as well. CP 31-33.

The Honorable John Cooney denied the defendant’s motion, finding it to be time-barred by RCW 10.73.090. CP 95-96. The court reasoned that, although the 1991 conviction had been vacated in 2017, its invalidity did not affect the facial validity of the defendant’s 2000 judgment for first-degree assault. CP 95-96. Because the defendant’s motion was made 17 years after his conviction became final, the court denied the motion to correct the sentence. CP 96.

The defendant moved the superior court to modify its ruling, which the court denied, finding that, although Mr. Bartz was “sentenced [on the

2000 case] beyond what he should have been it did not result in a gross miscarriage of justice.” CP 110-12. The superior court did not transfer the matter to this Court as a personal restraint petition, and the defendant appealed the court’s denial of his CrR 7.8 motion.

The defendant has never challenged the validity of his 2000 conviction for first-degree assault, and has never argued that he did not voluntarily enter a guilty plea to that charge. He requests that this Court order that his sentence, which he has already served in full, be reduced by 24 months. Br. at 4.

V. STATEMENT OF MATERIAL AND DISPUTED FACTS

Except as set forth above, the State disputes the defendant’s factual assertions.

VI. ARGUMENT

A. THE TRIAL COURT ERRED BY NOT TRANSFERRING THE DEFENDANT’S MOTION TO THIS COURT AS A PERSONAL RESTRAINT PETITION; THIS COURT SHOULD NOT TREAT THE MATTER AS AN APPEAL, BUT AS A PERSONAL RESTRAINT PETITION.

For 21 years, CrR 7.8(c) allowed the superior court to do what it did in this case: deny a CrR 7.8(b) motion without a hearing if the alleged facts did not establish grounds for relief. *State v. Smith*, 144 Wn. App. 860, 862, 184 P.3d 666 (2008) (citing former CrR 7.8(c)(2) (adopted September 1,

1986)). Following an amendment effective September 1, 2007, superior courts:

may rule on the merits of the motion only when the motion is timely filed and either (a) the defendant makes a substantial showing that he is entitled to relief or (b) the motion cannot be resolved without a factual hearing.

Id. at 863. Absent those circumstances, however, the rule requires that a superior court transfer the motion to the court of appeals for consideration as a personal restraint petition. *Id.*, CrR 7.8(c)(2).

In *Smith*, the superior court improperly denied a CrR 7.8 motion, failing to transfer it to the Court of Appeals as a personal restraint petition. As a result, the court of appeals remanded the case to the superior court with instructions to follow the procedural requirements of CrR 7.8 and to transfer the matter as a personal restraint petition. 144 Wn. App. at 864. That is unnecessary here:

[S]ince the trial court has already determined that [the defendant's] motion is untimely..., a revolving door procedure by which we send the case back to the trial court, so that it can send it back to us, is pointless. It makes more sense for us to resolve the appeal.

State v. Shafer, 2016 WL1298959 at *2, 193 Wn. App. 1012 (2016).⁷

⁷ Pursuant to GR 14.1(a), a party may cite to unpublished opinions of the court of appeals filed on or after March 1, 2013. Such opinions are not binding upon any court, and may be accorded such persuasive value the court deems appropriate.

Therefore, despite the trial court's failure to transfer this case to this Court as a personal restraint petition, this Court may still resolve the issues presented without requiring the matter first be remanded to the superior court for a proper transfer order.

B. THE PETITION SHOULD BE DISMISSED AS MOOT. THE PETITIONER IS NO LONGER UNDER RESTRAINT.

The defendant claims that the superior court should have reopened a long-final judgment to correct his sentence where he had already served all of his prison time. He persists in this claim on appeal even though now, unlike at the time of the superior court hearing, he is no longer supervised by the Department of Corrections. Br. at 4 (“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 standard sentencing range, 160 months”).

When considering a PRP, a court may grant relief to a petitioner *only* if the petitioner is under unlawful restraint, as defined by RAP 16.4(c). *In re Yates*, 177 Wn.2d 1, 16, 296 P.3d 872 (2013). “A petitioner is under a ‘restraint’ if the petitioner has limited freedom because of a court decision in a ... criminal proceeding, if the petitioner is confined, the petitioner is

subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case.” RAP 16.4(b). The nature of the unlawful restraint alleged must be for one or more of the reasons included in RAP 16.4(c). For example, a restraint is unlawful if the challenged action is unconstitutional or violates the laws of the State of Washington. RAP 16.4(c)(6). *In re Bovan*, 157 Wn. App. 588, 594, 238 P.3d 528 (2010).

Mootness can arise at any stage of litigation. *Steffel v. Thompson*, 415 U.S. 452, 459 n.10, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974). A case is moot “when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief.” *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005); *see also In re Mines*, 146 Wn.2d 279, 283, 45 P.3d 535 (2002). This Court may reach the merits of a “technically moot” issue if it involves a matter of continuing and substantial public interest. *State v. Hunley*, 175 Wn.2d 901, 907, 287 P.3d 584 (2012). An appellate court decides whether an issue involves a matter of continuing and substantial public interest according to three factors: (1) the public or private nature of the issue, (2) the need for a judicial decision to guide public officers in future cases, and (3) the issue’s likelihood of reoccurrence. *Id.* at 907. In the present case, the defendant fails

to argue or substantiate any of the above factors which would necessitate this Court's review.

Accordingly, this matter is now moot. The defendant is no longer subject to the allegedly invalid sentence (he does not challenge the validity of the conviction itself). The only relief Mr. Bartz requests is academic and abstract – the correction of a sentence that has already been fully served. There is no likelihood of the issue repeating itself, as the issue is particular to Mr. Bartz' criminal history, and the "invalid" 1989 conviction⁸ has

⁸ The State concedes that it did not argue in support of the continued validity of the 1989 conviction during the June 15, 2017 hearing before the Honorable Annette Plese. Of note, however, is CrR 2.1(a)(1) which provides that "the indictment or information shall state for each count the official or customary citation of the statute, rule, regulation, or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice." The information charging the 1989 case notes a charging period beginning July 1, 1988 – the very day the legislative amendments renaming statutory rape to rape of a child took effect. *See, n. 5., supra.*

After the Supreme Court decided *Matter of Arnold*, 190 Wn.2d 136, 144-45, 410 P.3d 1133 (2018), it is clear that the former offense of first-degree statutory rape is the same as, or encompasses one or more of the felonies currently listed in RCW 9A.44. And, the charging language used and elements that the State needed to prove to convict the defendant of first-degree statutory rape were identical to those alleged in the original information which charged him with committing first-degree child rape.

Lastly, the amended information charging the 1989 crime as "first degree statutory rape" cites RCW 9A.44.070 as the crime which was committed. That statute criminalized first-degree statutory rape. However, the judgment and sentence for the 1989 conviction recites RCW 9A.44.073 as the crime that was committed, although titles it "first degree statutory rape." RCW 9A.44.073 is the statute which criminalizes "rape of a child first degree." Attach. C.

already been vacated. It is not a matter of substantial public interest. There is no need to provide guidance to judicial officers for future cases.

In a similar vein, the defendant is no longer “under restraint” as required for a personal restraint petition. RAP 16.4(a); *In re Davis*, 152 Wn.2d 647, 669-70, 101 P.3d 1 (2004). “A personal restraint petition is an appropriate procedure only where the petitioner is under a ‘restraint’ resulting from the challenged decision.” *In re Welfare of M.R.*, 51 Wn. App. 255, 257, 753 P.2d 986 (1988).

The defendant is not under any unlawful restraint. His prison time has been served. His community custody has ended. The 1989 conviction for statutory rape was vacated under a different cause number, and will no longer count for purposes of future offender score calculations on new cases. The only “restraint” that Mr. Bartz now faces is that a judgment and sentence, now fully satisfied, allegedly contains an incorrect offender score,⁹ and its attendant sentencing range. That offender score calculation has no effect on a future sentencing court’s determination of his offender score. Because the defendant has been released of any allegedly unlawful

⁹ The defendant agreed to his criminal history, which stated: “defendant’s understanding of his criminal history is as set out above. Defendant agrees that, unless otherwise noted in writing here, each of the listed convictions counts in the computation of the offender score.” The statement of criminal history signed by the defendant includes the 1989 statutory rape charge. CP 82-83.

restraint, he can obtain no further relief. *In re Rebecca K.*, 101 Wn. App. 309, 313, 2 P.3d 501 (2000).

Mr. Bartz does not request that the judgment itself be vacated, apparently conceding that his plea was voluntarily entered. Because he does not challenge any aspect of his conviction (but rather only the sentence imposed), there is no danger of “collateral legal consequences” if this Court does not address his claims. *See Pennsylvania v. Mimms*, 434 U.S. 106, 108 n. 3, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). Because the defendant is no longer under any restraint as a result of the court orders in this case, this Court cannot provide him any effective or meaningful relief. This Court should decline to further consider the now-moot issue raised by the defendant. *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983).

C. THE DEFENDANT IS PRECLUDED FROM RAISING THIS ISSUE BY THE DOCTRINE OF LACHES.

It is inequitable to permit any correction of the defendant’s sentence, now satisfied, where the defendant stipulated to his criminal history and to an agreed 184-month sentence, in exchange for the State’s agreement to amend the information to first-degree assault.¹⁰ In accepting this plea

¹⁰ Because the defendant agreed to his criminal history, as did his attorney, the State was relieved of its burden to prove its existence. *State v. Mendoza*, 165 Wn.2d 913, 205 P.3d 113 (2009). In *Mendoza*, the court held that a defendant must affirmatively acknowledge the “*facts and information*” the State introduces at sentencing before the State is relieved of its duty to prove criminal history by a preponderance of the evidence. *Id.* at 928-29. When counsel affirmatively

negotiation, under which the defendant agreed to serve 184 months, based upon the specific offender score calculated by and agreed to by the parties and its attendant sentencing range, the defendant avoided a life sentence and benefitted from the agreed plea bargain.

This Court has recognized three elements of a laches claim: (1) knowledge of a potential claim by a party, (2) an unreasonable delay in asserting the claim, and (3) damage to the other party resulting from the delay. *Club Envy of Spokane, LLC v. Ridpath Tower Condo. Ass'n*, 184 Wn. App. 593, 603, 337 P.3d 1131 (2014).

Certainly, the defendant is deemed to know that his 1989 conviction for statutory rape was a conviction for a non-existent crime, long before he finally raised the issue in 2017.¹¹ He did not timely raise the issue so as to avoid the potential that his 1989 conviction would be wholly undone within the statute of limitations and risk that the State would prosecute him for the five counts of first-degree rape of a child that were charged in the original

acknowledges a defendant's criminal history, the State is entitled to rely on such acknowledgement. *State v. Bergstrom*, 162 Wn.2d 87, 96-98, 169 P.3d 816 (2007).

¹¹ *In re Thompson*, 141 Wn.2d 712, 10 P.3d 380 (2000), was decided in 2000, the year in which the defendant entered his plea on this case. *Thompson* involved a defendant who pled guilty to first-degree rape of a child, with offense dates ranging from January 1, 1985 to December 31, 1986. Those dates fall within the ambit of the former statutory rape statutes, rather than the child rape statutes adopted in 1988. Thus, the defendant was on notice, as early as the year 2000, that there could be a deficiency in the manner in which he was charged for the 1989 case.

information. Even though he was represented by counsel in 2000, he failed to claim any invalidity in his prior criminal history, and stipulated to that history in exchange for a sentence that did not trigger a persistent offender sentence. Instead, he waited until 2017 to challenge the 1989 conviction, after his prison time was served, and the statute of limitations for all charged crimes had run. Likewise, he waited until 2017 to challenge his offender score in the 2000 case – after he had already fully satisfied his 184 months of incarceration.

The defendant had no legitimate reason to delay either of these two claims, unless it was to ensure that the child victims' memories had faded, or that they were otherwise unavailable for trial. Or, perhaps, the defendant believes that he may claim that he is owed remuneration for the additional 24 months of incarceration he served – the difference between the agreed 184 months of prison, and his now requested, high-end sentence of 160 months. In either event, the defendant has failed to explain why now, 18 years after his conviction, he is entitled to any relief when he has already fully served his sentence. And, as discussed below, he is unable to demonstrate that he was prejudiced by the claimed error.

D. THE DEFENDANT IS UNABLE TO DEMONSTRATE PREJUDICE.

Even assuming that this Court determines that the defendant's judgment demonstrates a "facial invalidity" which allows the defendant to circumvent the one-year time-bar, the defendant's claim still fails. The collateral relief afforded under a PRP is limited, and requires the petitioner to show that he has been prejudiced by the alleged error. *In re Hagler*, 97 Wn.2d 818, 819, 650 P.2d 1103 (1982). There is no presumption of prejudice on collateral review. *Id.* at 823. The petitioner must either make a prima facie showing of a constitutional error that, more likely than not, constitutes actual and substantial prejudice, or a nonconstitutional error that inherently constitutes a complete miscarriage of justice. *In re Cook*, 114 Wn.2d 802, 810, 812, 814, 792 P.2d 506 (1990). Without either such showing, a reviewing court must dismiss the petition. *Id.* at 810, 812.

In order for an untimely personal restraint petition to survive, a defendant must demonstrate both a facial invalidity and that he was prejudiced by the error – two separate inquiries. *In re Toledo-Sotelo*, 176 Wn.2d 759, 297 P.3d 51 (2013) (facial invalidity question and prejudice are distinct inquiries). Similarly, prejudice is not the mere existence of error. *State v. Buckman*, 190 Wn.2d 51, 67, 409 P.3d 193 (2018) ("Since this Court requires both error and prejudice, it would be circular to conclude that

prejudice is the existence of error”). Defendant concentrates his argument on whether his collateral attack is time-barred, but fails to demonstrate any prejudice that is separate from the error he claims.

In reviewing this issue, this Court should be mindful of the procedural history of both the 1989 and 2000 cases. In 1991, the defendant pled guilty to two counts of first-degree statutory rape, in exchange for the State dismissing three other counts of first-degree statutory rape. He was allowed a SOSSA sentence on that conviction. Attach. D. In 2000, in order to avoid a sentence of life in prison, he agreed to plead guilty to first-degree assault, rather than proceed to trial on the original charge of first-degree child molestation. CP 7, 10-11, 92. He agreed to his criminal history in full and to a sentence of 184 months. CP 10, 82-83.

The claimed error is a sentencing error, not a constitutional error. Thus, in order for Mr. Bartz to be entitled to any relief, he must demonstrate a fundamental defect in the proceedings resulting in a complete miscarriage of justice. He cannot do so, and the lower court determined he had not done so. CP 110. The only prejudice that petitioner alleges is “a sentence that is based upon an incorrect offender score is a fundamental defect that inherently results in a miscarriage of justice.” Br. at 16 (citing *In re Goodwin*, 146 Wn.2d 861, 876, 50 P.3d 618 (2002)); *but see, Buckman*, 190 Wn.2d 51.

Where, as here, a defendant has pled guilty pursuant to a plea agreement, has agreed to a specific number of months in prison in order to take advantage of that plea agreement, has fully served that sentence and was released, and has avoided a life sentence by doing so, he is unable to demonstrate a miscarriage of justice. Mr. Bartz still reaps the benefit of the plea agreement – he was saved from a potential life sentence by entering the agreed plea. He fails to demonstrate a miscarriage of justice under these circumstances, so even assuming his CrR 7.8 motion is not time-barred, he is not entitled to relief.

VII. CONCLUSION

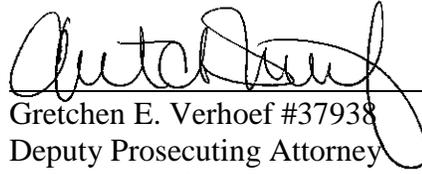
The defendant is no longer under any restraint, let alone unlawful restraint, associated with the calculation of his offender score in his 2000 conviction for first-degree assault. Having served his sentence in full, his claim is moot and the court can afford him no meaningful relief.

Additionally, even assuming that the lower court erred in determining that the defendant's collateral attack is time-barred, the defendant is unable to demonstrate a fundamental defect in his case which resulted in a miscarriage of justice – the defendant avoided the potential of serving a life sentence and dying in prison by agreeing to his offender score

in a *In re Barr* plea to first-degree assault. The State respectfully requests that his petition be dismissed.

Dated this 15 day of October, 2018.

LAWRENCE H. HASKELL
Prosecuting Attorney



A handwritten signature in black ink, appearing to read 'Gretchen E. Verhoef', is written over a horizontal line. The signature is fluid and cursive.

Gretchen E. Verhoef #37938
Deputy Prosecuting Attorney
Attorney for Respondent

ATTACHMENT A

FILED

NOV 14 1991

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,)	
	)	INFORMATION
Plaintiff,)	
	)	NO. 91100416 2
v.	)	DAWN C. CORTEZ
	)	Deputy Prosecuting Attorney
GEORGE D. BARTZ)	
WM 062145	)	PA# 91-9-80155-0
	)	RPT# 01-90-55684-0
	)	RCW CT 9A.44.073(1)-F (#67350)
Defendant(s)	)	( 5 Counts)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between August 1, 1989, and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S████ D. D████, did then and there engage in sexual intercourse with the victim, who was 10 and 11 years old,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GEORGE D. BARTZ, with the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between August 1, 1989, and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S████ D. D████, did then and there engage in sexual intercourse with the victim, who was 10 and 11 years old,

COUNT III: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GEORGE D. BARTZ, with the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between August 1, 1989, and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S████ D. D████, did then and there engage in sexual intercourse with the victim, who was 10 and 11 years old,

INFORMATION

DONALD C. BROCKETT
Spokane County Prosecuting Attorney
County-City Public Safety Building
Spokane, Washington 99260

COUNT IV: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GEORGE D. BARTZ, with the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between August 1, 1989, and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S████ D. D████, did then and there engage in sexual intercourse with the victim, who was 10 and 11 years old,

COUNT V: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GEORGE D. BARTZ, with the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between August 1, 1989, and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S████ D. D████, did then and there engage in sexual intercourse with the victim, who was 10 and 11 years old,

Dawn C. Cox
Deputy Prosecuting Attorney

19568
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Spokane, Washington 99260

Attach. A-2

ATTACHMENT B

FILED

OCT - 9 1991

THOMAS R. FALLOUST
SPOKANE COUNTY
CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

STATE OF WASHINGTON,	)	AMENDED
	)	INFORMATION
Plaintiff,)	
	)	NO. 91-1-00416-2
v.)	
	)	DAWN C. CORTEZ
	)	Deputy Prosecuting Attorney
GEORGE D. BARTZ)	
WM 062145	)	PA# 91-9-80155-0
	)	RPT# 01-90-55684-0
Defendant(s)	)	RCW
	)	CT I & CT II: 9A.44.070-F (#67320)

19

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendant(s) with the following crime(s):

COUNT I: FIRST DEGREE STATUTORY RAPE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between July 7, 1988 and October 31, 1989, then and there being at least twenty-four months older than, and not married to the victim, S█████ D. D█████, did then and there engage in sexual intercourse with the victim, who was ten (10) and eleven (11) years old,

COUNT II: And the Prosecuting Attorney, as aforesaid, further charges the defendant, GEORGE D. BARTZ, with the crime of FIRST DEGREE STATUTORY RAPE, committed as follows: That the defendant, GEORGE D. BARTZ, in Spokane County, Washington, on or about between September 1, 1984 to December 31, 1985, then and there being over thirteen years of age, did then and there engage in sexual intercourse with H█████ S█████, who was nine (9) and ten (10) years of age.

Dawn C. Cortez
Deputy Prosecuting Attorney

19508
WA St. Bar ID#

AMENDED INFORMATION

DONALD C. BROCKETT
Spokane County Prosecuting Attorney
County-City Public Safety Building
Spokane, Washington 99260

Attach. B-1

ATTACHMENT C

48 mo I
48 mo II

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

FILED
NOV 14 1991
KIMBERLY R. FALLGUIS
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON)
CREDITOR SPOKANE CO. CLERK)
Plaintiff,)
v.)
GEORGE D. BARTZ,)
WM 062145)
DEBTOR)
Defendant(s))

NO. 91-1-00416-2
PA# 91-9-80155-0
RPT# 01-90-55684-0
RCW CT I: 9A.44.070 -F(#67320)
CT II: 9A.44.070-F (#67320)
JUDGMENT AND SENTENCE
(FELONY)

I. HEARING

1.1 A sentencing hearing in this case was held: November 11, 1991
(Date)

1.2 Present were:

Defendant: GEORGE D. BARTZ
Defendant's Lawyer: CRAIG SMITH
Deputy Prosecuting Attorney: DAWN C. CORTEZ
Other: S [redacted]; S [redacted]; D [redacted]; D [redacted]

COURT COSTS 70.00
VICTIM ADVERS. 100.00
RESTITUTION _____
FINE _____
CRIME SURV. FUND _____
CHILD CARE _____

1.3 The State has moved for dismissal of Count(s) _____.

1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 10-9-91 by [plea] [~~verdict~~] [~~jury~~] [~~non-jury~~] of:

Count No.: I Crime: 1^o Statutory Rape

RCW CT I: 9A.44.073(1)-F(#67350)

Date of Crime July 1, 1988 to October 31, 1989

Incident No. A-90055624-0

91905163-1

Count No.: II Crime: 1st Statutory Rape
 CT II: 9A.44.070-F (#67320)
 Date of Crime September 1, 1984 to December 31, 1985
 Incident No. 89-30659-11

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

- () With a special verdict/finding for use of deadly weapon on Count(s): _____
- () With a special verdict/finding of sexual motivation on Count(s): _____
- () With a special verdict/finding of RCW 69.50.401(a) violation in a school bus or within 1000 feet of a school bus route or 1000 feet of the perimeter of a school grounds (RCW 69.50.435).
- () Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):
- () Additional current offenses attached in Appendix A.

2.2 CRIMINAL HISTORY: Criminal history used in calculating the offender score is (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
<u>None</u>				

- () Additional criminal history is attached in Appendix B.
- () Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
Count No. <u>I</u>	<u>2</u>	<u>1X</u>	<u>41 to 54 mos.</u>	<u>life</u>
Count No. <u>II</u>	<u>2</u>	<u>1X</u>	<u>41 to 54 mos.</u>	<u>life</u>
Count No. _____	_____	_____	_____	_____

() Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

- (a) () An offender who shall be sentenced to confinement of over one year.
- (b) () An offender who shall be sentenced to confinement of one year or less.
- (c) () A first time offender who shall be sentenced under the waiver of the presumptive sentence range (RCW 9.94A.030(12), .120(5)).
- (d) (X) A sexual offender who is eligible for the special sentencing alternative and who shall be sentenced under the alternative because both the defendant and the community will benefit from its use (RCW 9.94A.120(7)(a)).
- (e) () A felony sexual offender who shall be sentenced to confinement of over one year but less than six years and shall be ordered committed for evaluation of defendant's amenability to treatment (RCW 9.94A.120(7)(b)).

III. JUDGMENT

IT IS ADJUDGED that the defendant is guilty of the crime(s) of:
FIRST DEGREE STATUTORY RAPE (2 Counts)

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the conditions set forth below.

4.1 The Court, having examined the defendant's ability to pay monetary obligations, makes the following findings:

() The defendant [does] [~~does not~~] have the present ability to pay toward financial obligation herein.

() There [is] [is not] a likelihood of the defendant having a future ability to pay toward financial obligations herein.

() Defendant shall pay the following legal financial obligation to the Clerk of the Court:

(a) \$ 76.00, Court costs;

(b) \$100.00, Victim Assessment;

(c) \$ _____, Restitution to be paid to:

pursuant to attached Appendix E,
Schedule of Restitution

(d) \$ _____, Recoupment for attorney's fees;

(e) \$ _____, Fine; [] VUCSA additional fine waived due to indigency. RCW 69.40.430.

(f) \$ _____, Drug enforcement fund of _____

(g) \$ _____, Other costs for:

(h) \$ _____, TOTAL legal financial obligations.

Commencing with the first full month after the date of this Judgment and Sentence or after release from confinement, the defendant shall pay not less than \$ 2,700 per month, subject to adjustment by the court as necessary upon the recommendation of the community corrections officer, to the Clerk of the Court until the total legal financial obligation is paid in full (with credit for amounts paid by co defendants), to be paid in full by with payment with a report by the Department of Corrections to be submitted to the court by at the end of that time. The Department of Corrections shall monitor all assets and earnings of the defendant while s/he is confined and shall deduct appropriate amounts to be forwarded to the Clerk of the Court to satisfy the court-ordered legal financial obligations as provided for herein.

Upon receipt, the Clerk of the Court shall distribute the restitution to: _____

- () Schedule of Restitution is attached as Appendix E, following the restitution hearing set for 12/19/11.
() Schedule of Restitution to be filed.

The court shall retain jurisdiction over the defendant for the greater of ten (10) years, subject to adjustment by the court, from the date of this Judgment and Sentence or from the defendant's last date of release from confinement pursuant to a felony conviction to assure payment of the above legal financial obligations. The defendant shall report to the Department of Corrections to monitor compliance, and obey conditions as provided by RCW 9.94A.120(12) and RCW 9.94A.145. Provided further, the Department of Corrections shall assist the court in setting or modifying the minimum monthly sum, when necessary, by investigating and reporting to the court on the monthly amount the offender should pay toward said legal financial obligation, considering the defendant's financial circumstances, capabilities, and assets as determined under the provisions of RCW 9.94A.145.

4.3 SPECIAL SEXUAL OFFENDER SENTENCING ALTERNATIVE: The defendant is sentenced as follows pursuant to RCW 9.94A.120(7)(a):

- 48 ~~(days)~~ (months) for Count No. I.
- 48 ~~(days)~~ (months) for Count No. II.
- _____ (days) (months) for Count No. _____.

The execution of this sentence is SUSPENDED and the following conditions are imposed:

(a) () CONFINEMENT: Defendant shall serve a term of confinement in the Spokane County Jail as follows:

- () _____ (days) (months) total confinement, commencing _____, 19_____.
- () _____ (days) (months) partial confinement, commencing _____, 19_____.
- () Partial confinement shall be served in work release.
- () The sentence herein to run (concurrently) (consecutively) with the sentence in _____.
- () Credit be given for (time) (_____ days) served solely on these charges.

(b) (X) COMMUNITY SUPERVISION: Defendant shall serve 24 months of community supervision. Community Supervision shall commence immediately 19_____. Defendant shall report by within 72 hours, 19_____, to the Department of Corrections and shall comply with all rules, regulations and requirements.

The defendant's monthly probationer assessment to the Department of Corrections is as follows (RCW 9.94A.270):

- () Full payment
- () Total exemption
- () Partial exemption; payments shall not exceed \$_____ per month

(c) (X) The defendant, having been convicted of a felony sex offense, shall register with the County Sheriff where the defendant resides within thirty (30) days of release from confinement and/or placement on community supervision as a convicted sex offender.

(d) (X) TREATMENT: Defendant shall undergo (~~inpatient~~) (outpatient) sexual offender treatment for 24 (months) (~~days~~) as follows: per therapist; said treatment to comply with the conditions of RCW 9.94A.120(7)(a).

(X) CONDITIONS: A treatment termination hearing is to be set three (3) months prior to the anticipated completion of treatment. The Community Corrections Officer shall submit a report to the Court requesting the setting of a hearing, which will include the reports from the treatment professional and the community corrections officer and any recommendations to the Court.

(e) () COMMUNITY SERVICE: The defendant shall serve _____ hours of community service to be completed as follows: _____

(f) () OTHER CONDITIONS:

() Additional conditions are attached in Appendix F.

4.4 (X) Pursuant to RCW 70.24.340 the defendant shall submit to HIV testing as soon as possible, be provided pre-test counseling and be provided post-test counseling for the reason that:

(X) The offense herein is a sexual offense under RCW Chapter 9A.44.

() The offense herein is a prostitution offense or related to prostitution under RCW Chapter 9A.88.

() The offense herein is a drug offense under RCW Chapter 69.50 and it is determined by the court that the related drug offense is one associated with the use of hypodermic needles.

Provided further the results of the HIV test are to be confidential but are to be provided to the victim, prosecuting attorney, community corrections officer and the public defender as necessary.

4.5 Pursuant to Ch. 230 Washington Laws of 1990 this conviction being for a felony defined as a sex offense under RCW 9.94A.030(29)(a)

() The defendant shall have a blood sample drawn for purposes of DNA identification analysis prior to his release from confinement.

(X) The defendant, not having been sentenced to confinement, shall report immediately to the Spokane County Detention Facility to have a blood sample drawn for purposes of DNA identification analysis. The defendant shall be in the custody of the Court and shall abide by this requirement as a term and condition of his sentence.

Violations of the conditions or requirements of this sentence are punishable for a period not to exceed sixty (60) days of confinement for each violation. (RCW 9.94A.200(2)), in addition to the conversion of Community Service of Community Supervision back to partial or total confinement (9.94A.120).

The following appendices are attached to this Judgment and Sentence and are incorporated by reference:

- () Appendix A, Additional Current Offenses
- () Appendix B, Additional Criminal History
- () Appendix C, Current Offense(s) Sentencing Information
- () Appendix D, Findings of Fact and Conclusions of Law for Exceptional Sentence
- (~~X~~) Appendix E, Schedule of Restitution
- (X) Appendix F, Additional Conditions
- () Appendix H, Order Prohibiting Contact
- (X) Appendix I, Notification of Registration Requirement
- (X) Appendix J, Advice of Time Limit for Filing Collateral Relief

Date: November 14, 1991



Judge

Presented by:

Dawn C. Cortez
DAWN C. CORTEZ
Deputy Prosecuting Attorney
WA State Bar ID #: 19568

Approved as to form:

Craig Smith
CRAIG SMITH
Lawyer for Defendant
WA State Bar Id #: _____

FINGERPRINTS



Right Hand
Fingerprints of:

GEORGE D. BARTZ

Dated: 11-14-91

Attested by:

THOMAS R. FALLOUST, County Clerk

By:

Kelly Shen

CERTIFICATE

I, _____
Clerk of this Court, certify that
the above is a true copy of the
Judgment and Sentence in this
action on record in my office.

Dated: _____

Clerk

By: _____
Deputy Clerk

- * OFFENDER IDENTIFICATION
- *
- * S.I.D. NO. WA15289409
- * Date of Birth 062145
- * Sex Male
- * Race White
- * ORI WA032013A
- * OCA 201042
- * OIN 01900556840/89-30659-11
- * DOA 022091

*
*
*
*
*

ATTACHMENT D

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

FILED

OCT - 9 1991

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

NO. **91100416 2** THOMAS R. FALLQUIST
SPokane County
CLERK
PA# 91-9-80155-0
RPT# 01-90-55684-0
RCW CT 9A.44.070 -F (#67320)
(2 Counts)
STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO A FELONY

I. STATEMENT OF DEFENDANT

1.1 My true name is: GEORGE D. BARTZ

I am also known as _____

1.2 My age is 46 . Date of birth 6-21-45 .

1.3 I went through the 12 grade in school.

1.4 I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me.

20

My lawyer's name is CRAIG SMITH.

1.5 I have been provided a copy of the Information and am informed and fully understand that I am charged with the crime(s) of: First Degree Statutory Rape (2 Counts), and the elements of the crime(s) are:

as contained in the Amended Information, the maximum sentence(s) for which (is) (are): 20 years and/or \$50,000.00 fine. In addition, I understand that I may have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime(s) is at least 41 and not more than 54, based upon my criminal history which I understand the Prosecuting Attorney none says to be:

1.6 I have been informed and fully understand that:

- (a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
- (b) I have the right to remain silent before and during trial, and I need not testify.
- (c) I have the right at trial to hear and question witnesses who testify against me.

Attach. D-1

- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal certain pretrial court decisions and any determination of guilt after trial.
- (g) IF I PLEAD GUILTY, I GIVE UP THESE RIGHTS IN STATEMENTS 1.6(a) through (f).

- 1.7 I plead guilty to the crime(s) of First Degree Statutory Rape (2 Counts) as charged in the (Substitute/Amended) Information.
- 1.8 I make this plea freely and voluntarily.
- 1.9 No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 1.10 No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 1.11 I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court:
Sessa RCW 9A.94A.120(2)(a) sentencing alternative
two years probation, suspension of all jail time with SSSA
and a fine of \$5000.00. Sessa
recommended by Sessa it is amenable to treatment.
- 1.12 I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was 15 years of age or older. Juvenile convictions count only if I was less than 23 years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 1.5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the prosecuting Attorney's recommendation increases.
- 1.13 I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the court must impose a sentence within the standard range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard range, either I or the

State can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the court's sentencing determination. I also understand that the court must sentence to a mandatory minimum term, if any, as provided in paragraph 1.14 and that the court may not vary or modify that mandatory minimum term for any reason.

() I have been advised that the law requires that a prison term be imposed and does not permit any form of probation for the crime(s) with which I am charged.

() I have been advised that if I am sentence to prison, my sentence must be served consecutively to my prior prison sentence for a prior felony.

1.14 I have been further advised that the crime(s) of Statutory Rape IN THE FIRST DEGREE (2nd Counts) with which I am charged carries with it a term of total confinement of not less than N/A years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term.

(a) I have been advised that the crime(s) of Statutory Rape in the 1st^o with which I am charged is a felony sex offense. I have been advised that the law requires that I register with the County Sheriff where I live within thirty (30) days of my release from confinement and/or placement on community supervision. I have been further advised that failure to do so is a violation of the law and punishable as either a felony or gross misdemeanor.

1.15 I have been advised that the sentences imposed in Counts I & II will run (consecutively) (~~concurrently~~) unless the court finds substantial and compelling reasons to run the sentences (concurrently) (consecutively).

1.16 I have been informed and fully understand that if I am on probation or parole, a plea of guilty to the present charges will be sufficient grounds for a Judge or the parole board to revoke my probation or parole.

1.17 I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

1.18 The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the Information. This is my statement: I had unlawful sexual contact with the complaining witnesses in these matters.

1.19 I have read or have had read to me all of the numbered sections (1.1 through 1.18) above and have received a copy of "Statement of Defendant on Plea of Guilty to a Felony." I have no further questions to ask of the court.

SIGNED IN OPEN COURT:

Date: 08/19/1991 George D. Bartz
GEORGE D. BARTZ
Defendant

II. JUDGE'S FINDINGS

The court finds that:

- 2.1 The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his/her lawyer ~~and the undersigned judge~~, in open court;
- 2.2 The defendant's plea of guilty was made knowingly, intelligently and voluntarily.
- 2.3 The court has informed the defendant of the nature of the charge and the consequences of the plea;
- 2.4 There is a factual basis for ~~the plea~~, and that the defendant is guilty as charged as indicated by the defendant's plea in section 1.7 above.

Date: 08/19/1991 John A. Scholtz
Judge

for: Marilyn Nockenstam Craig Smith
DAWN C. CORTEZ CRAIG SMITH #
Deputy Prosecuting Attorney Defendant's Lawyer
WA State Bar ID #: _____

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his/her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: _____ Interpreter

Attach. D-4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

GEORGE BARTZ,

Appellant.

NO. 35931-0-III

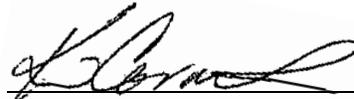
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on October 15, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Kraig Gardner
kraiggardner@yahoo.com

10/15/2018
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

October 15, 2018 - 11:39 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35931-0
Appellate Court Case Title: State of Washington v. George Dean Bartz
Superior Court Case Number: 00-1-02031-8

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Motion 1 - Other
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