

55488-5

55488-5

78739-5

CASE NO. 55488-5

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

JOHNNY NAV

Petitioner,

v.

STATE OF WASHINGTON

Respondent.

PERSONAL RESTRAINT PETITION

1-12-05
PETITIONER MAY FILE PETITION
WITHOUT PAYMENT OF FILING FEE


COURT ADMINISTRATOR/CLERK

Johnny Nav # 763455
Stafford Creek Corrections Cener
191 Constantine Way
Aberdeen, Wa 98520

RECEIVED
JAN 12 2005

Other than the current challenge cited above, there have been no other successful challenges to the petitioner's current conviction and or confinement.

TIMELINESS

Petitioner asks this court to accept this PRP pursuant to RCW 10.73.100 (6) (4); (where there has been a significant change in law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal proceeding instituted by a State Government, and sufficient reasons exist to require retroactive application of changed legal standard, the petitioner may be granted relief). Also the petitioner states that the issues set forth in this PRP are of State and Federal constitutional magnitude and therefore should be heard by this court.

Due to the recent decision in the Washington State Supreme Court's case In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002), amended and reconsideration denied (2003), in which is a new change in law, being that Assault can not be a predicate of Felony Murder. Petitioner states that he was charged and convicted of Second degree Felony Murder, where Assault was the predicate felony of the Murder charge. The petitioner ask that this court find that this petition is timely pursuant to that standards set forth by RCW 10.43.100 (6) (4); and RAP 16. 4 (c) (4).

B. GROUND FOR RELIEF

INTRODUCTION

The petitioner claims that there is one compelling and substantial reason for this court to grant him relief from his current 1997 conviction and or relief from restraint pursuant to the 1997 sentence imposed in King County Superior Court. The petitioner request relief from restraint based upon RAP 16.4 (c) (2) (conviction obtained in, violation of the State and Federal Costitution); and RAP 16.4 (c) (4).

The facts in this PRP being presented are of evidentiary value, and threfore warrant a full hearing on the merits in this court, or a reference hearing in the Superior Court, pursuant to RAP 16.11 See, In re Hews, 99 Wn. 2d 876, 886-828 P.2d 1086 (1992).

FACTS PERTAINING TO GROUNDS FOR RELIEF

The petitioner and some friends were at a party in Seattle. Also at the party were some Somoan gang members who commented the little guys (meaning Cambodians) were not so tough. As Johnny and his friends were attempting to leave, one of the Somoans pulled an ax out and threatened to chop off their heads. They (the petitioner and his friends) were then chased to their car where four or five large Somoan males beat the petitioner and his friends viciously. The female driver had her head smashed against the windshield and one of the Somoan's got the car keys out of the ignition saying "it was going to be the last party any of them ever went to." Another one of the Somoans pulled a gun and fired a few rounds at

the car in which the petitioner was riding. Shots were apparently exchanged from the petitioner's car as well as another white car nearby some bystanders (who were armed with a .40 Cal. Glock). One person next to the car was hit by stray shots and injured. The petitioner and his friends fled for their lives and were arrested a short time thereafter.

On March 21, 1997, the petitioner plead guilty to Second Degree Felony Murder and one count of Assault in the second degree. The second degree Murder was listed under the statute of RCW 9A.32.050 (1) (b) where the language stipulates that assault is the predicate felony to second degree Murder.

GROUND FOR RELIEF

The petitioner's Judgment and Sentence is invalid on its face, due to a significant change in law, where Assault cannot be used as the predicate felony in Second degree Felony Murder.

The State Supreme Court has held that 'where an intervening opinion has effectively overturned a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a 'Significant change in law' for the purposes of exemption from procedural bars. In Re Pers Restraint of Greening, 141 Wn.2d 687, 697 9 P.3d 206 (2000). RCW 10.73.100 (6) preserves access to collateral review in cases where there has been

'a significant change in law' that's material to a court order. Our Supreme Court has repeatedly found that appellate decisions can effect such a change. See Johnson, 131 Wn.2d at 567 (citing In re pers. Restraint of Jefferies, 114 Wn.2d 485, 488 789 P.2d 731 (1990); In re pers. Restraint of Taylor, 105 Wn. 2d 683, 688 717 P.2d 753 (1986), In re pers. Restraint of Vandervlugt, 120 Wn.2d 427, 432-35 842 P.2d 950 (1997)).

In Greening the Supreme Court stated that:

We hold that where the Pierce County Superior Court sentenced Greening in August 1997, the court of appeals had just, two months earlier, in Lewis 86, Wn. App. 716, construed former RCW 9.94A.310 (3) (e) to mean that multiple firearm enhancements had to be imposed cosecutively to eachother. Id. at 718. At the same time, Lewis was the determinative construction of that statute, at least for courts in Division Two.

It was only when Charles overturned Lewis that it became apparent that six years of Greening sentence had been unlawfully imposed, thus, we find that Charles brought about a change in law that was material to Greening sentence and that the RCW 10.73.100 (6) exemption applies. Id. at 697

In In re pers. Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002) Amended and reconsideration denied (2003), our Supreme Court ruled that Assault cannot serve as a predicate felony for Felony Murder. In its ruling the Court stated that " a felony Murder rule that punishes all homicides committed in the perpetration of a felony whether the death is intentional, unintentional or accidental without the necessity of proving the relation of the perpetrator's

state of mind to the homicide, violates the most fundamental principle of criminal law-- criminal liability for causing a particular result is not justified in the absence of some culpable mental state in respect to that result" Id. at 602

The Andress Court stated that in 1966, this court first considered whether the Felony Murder rule should apply to homicides where the predicate felony is an assault on the person killed. State v. Harris, 69, Wn.2d 92 8, 421 P.2d 662 (1966), State v. Leech, 114 Wn.2d 700, 790 P.2d 160 (1990), In re pers. Restraint of Lehman, 93 Wn.2d 25, 27, 604 P.2d 948 (1980). Where the prior courts affirmed the use of the assault as a predicate felony the Andress court ruled that assault cannot be used as a predicate felony thus, as in Greening the Andress ruling constitutes a significant change in the law, which is material to the conviction and sentence in the present case.

Andress became involved in a fight outside a bar with Eric Porter and Edwin Foster after the fight had continued for a time, Porter saw Foster stumble off holding his chest, and a little later Porter realized that both he and foster had been stabbed by Andress. Foster died from the stabbing. The state charged Andress with Second degree intentional Murder with Second degree Assault as the predicate felony, arising from the stabbing of Foster, and first degree Assault, arising from the stabbing of Porter; the information alleged that Andress committed each of these offenses

while armed with a deadly weapon. Andress filed an appeal alleging that Assault cannot be a predicate felony to Second degree felony murder because the statute do not show the mental element that is needed to convict someone of intentional murder. The Supreme court agreed with Andress and reversed his conviction and remanded his case back to the Trial Court to be sentenced for Manslaughter in the first degree.

The case at bar mirrors the situation in Andress. The petitioner and some friends were at a party in Seattle. Also at the party were some Somoan gang members who commented " the little guys (meaning Cambodians) were not so tough!" As the petitioner and his friends were attempting to leave, one of the Somaons pulled an ax out and threatened to chop off their heads. The petitioner and his friends were then chased to their car where four or five large Somoan males beat the petitioner and his friends viciously. Ultimately, one of the Somoans pulled out a gun and fired a few rounds at the car in which the petitioner was riding. Shots were apparently exchanged from the petitioner's car. One person next to the car was hit and died, another two (also near the car) were hit by stray shots and injured. The petitioner and his friends fled for their lives and were arrested a short time thereafter.

The petitioner was ultimately charged with Second degree Felony Murder and one count of second degree Assault, where the Assault was the predicate crime of Felony murder which was listed under the

same statute that was used in Andress. Rcw 9A. 32.050 (1) (b).

The petitioner was prejudiced and did not receive just due of the law because the statute as in Andress did not prove that the petitioner intentionally murdered the victim.

As the Supreme court stated in Andress that when the felony Murder rule punishes all homicides without proving the relation of the perpetrator's state of mind to the homicide, violates the most fundamental principle of criminal law... the result is not justified in the absence of some culpable mental state in respect to that result, Andress Id. at 602

It is clear that the petitioner did not have the mental state to intentionally murder the victim. The record clearly shows that the petitioner was trying to fight for his life and in the heat of the passion he killed someone and injured two others. This shows that his mental state does not meet the burden of intentional murder by which the statute proscribes. Therefore as in Andress the petitioner conviction should be reversed and remanded to the trial court for further proceeding consistent with the culpability of manslaughter.

INVALID ON ITS FACE

Constitutionally invalid on its face means " a conviction which without further elaboration evidences infirmities of a constitutional magnitude. Under this statute, facial invalidity inquiry is directed to the Judgment and Sentence evidences the invalidity without further elaboration. In Re Pers. Restraint of Goodwin, noted at 146 Wn.2d 861, Slip op. at 5 (2002), In Re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 353 5 P.3d 1240 (2000), In Re Pers. Restraint of Thompson, 141 Wn.2d 712, 718 10 P.3d 380 (2000).

The court in Stoudmire and Thompson held that documents signed as part of plea agreement may be considered in determining facial invalidity when those documents are relevant in assessing the validity of the judgment and sentence. Thus, in Stoudmire, the court held the one-year bar did not apply where the plea documents showed that some charges were filed after the statute of limitations had run, and thus, showed that the judgment and sentence was invalid. Stoudmire, 141 Wn.2d at 354. Similarly, in Thompson, the plea documents showed that the petitioner had been charged with an offense that did not become a crime until two years after the offense was committed and thus those documents showed the judgment and sentence was invalid on its face. Thompson, 141 Wn.2d at 719.

In the case at bar, the petitioner plead guilty to Second degree

Felony Murder where the predicate felony was Assault. RCW 9A.32.050 (1) (b). In the recent decision from the State Supreme Court In Re Pers. Restraint of Address, 147 Wn.2d 603 56 P.3d 931 (2002) Amended and reconsideration denied (2003), the Supreme Court held that a conviction for Second degree Murder could not be based upon a predicate crime of Assault. This ruling directly effects the petitioner judgment and sentence and therefore, as in Stoudmire and Thompson the Judgment and sentence evidences the invalidity without further elaboration. Thus, the one-year time bar should not apply in this case, and the sentence should be vacated.

LESSER OFFENSE

In State v. Gamble, 118 Wn. App. 72 P.3d 1139 (2003) the Supreme Court stated the proper inquiry in such a case is whether the jury necessarily found each element of the lesser included offense beyond a reasonable doubt in reaching its verdict on the crime charged. 118 Wn. App. 72 P.3d at 1141. If proof of the elements of Second degree Felony Murder conviction establishes guilt of another lesser included offense, that person may properly be resentenced on that lesser offense. Gamble 118 Wn. App. 72 P.3d at 1141.

The Gamble court applied the "as charged" analysis stated in State v. Berlin, 133 Wn. 2d 541, 548, 947 P.2d 700 (1997) (Berlin sets forth a test to determine whether a lesser included offense is proven by the greater offense: to establish that a offense is a lesser included offense, the rule is: first each of the elements

of the lesser offense must be a necessary element of the offense charged; Second, the evidence in the case must support an inference that the lesser crime was committed) and concluded that the charge and the evidence revealed that first degree Manslaughter was a lesser included offense of second degree felony murder, as charged in violation Second degree Felony Murder, as charged in violation of second degree Assault. 118 Wn. App. 72 P.3d at 1142

This reasoning was used in Andress to determine the proper resentence. In the case at bar, the record and the facts of the case clearly show that a re-sentence is in order and that the facts of this case supports A First degree Manslaughter as a lesser offense. Thus, as in Gamble and Andress, this court should remand this case back to the trial court for a resentence of first degree Manslaughter.

RETROACTIVITY OF ANDRESS

In a recent decision in State v. Hanson, No.74079-8 (6/17/2004), the State supreme court ruled that the decision in Andress only applies "Prospectively" to only those cases that are not yet final and are still on appeal. The petitioner asserts that this ruling should not apply to him and that his case should be remanded for proper re-sentence according to the ruling in Andress.

The presumption against retroactivity is overcome only if the new rule prohibits "a certian category of punishment for a class of defendants because of their status or offense." Penry v. Lynaugh,

492 U.S. 302,330 (1989), abrogated on other grounds by Atkins v. Virginia, 122 S. Ct. 2242 (2002) or presents a new "watershed rule of criminal procedure" that enhances accuracy and alters our understanding of bedrock procedural elements essential to the fairness of a particular conviction. Teague, 489 U.S. at 311.

In Teague v. Lane 489 U.S. 288, 313 Pp 3-4 our Supreme court stated that: " a new rule" resulting from a decision of this court applies to convictions that are already final only in limited circumstances. New Substantive rules generally apply retroactively but, new procedural rules generally do not-- only 'Watershed rules' of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding are given retroactive effect. Saffle v. Parks, 494 U.S. 484, 495 (1990). Such a rule must be one of an accurate conviction is seriously diminished. Teague V. Lane, 489 U.S. 288, 313 Pp 3-4. Narrows the scope of a criminal statute by interpreting its terms, see Bousley v. United States, 523 U.S. 614, 620-21 (1998) as well as constitutional determinations that place particular conduct on persons covered by the statute beyond the state's power to punish, See Saffle v. Parks ,494 U.S. at 484; Teague v. Lane,489 U.S. at 288 (plurality opinion). Such rules apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose

upon him. Bousley Supra at 620.

That a new rule is "fundamental" in some abstract sense is not enough; the rule must be one "without which the likelihood of an accurate conviction is seriously deminished Id. at 313.

In re Pers. Restraint of Andress, falls under the retroactivity exception for "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding Saffle, 494 U.S. at 495 (quoting Teague, 489 U.S. at 311).

Teague, sets forth the revelant retroactivity criteria. A new procedural rule applies retroactively in habeas proceedings if the new procedure is (1) "implicit in the concept of ordered liberty" implicating "fundamental fairness", and (2) "central to an accurate determination of innocence or guilt," such that absence " creates an impermissibly large risk that the innocent will be convicted. Id. at 311-313. In the context of a conviction of Felony Murder where the matter is one of guilt or innocence the second criterion ask whether the new procedure is central to an accurate determination that the elements are met and the punishment is appropriate. Id at 313 See Sawyer v. Smith,497 U.S. 227,244 (1990).

Teague's basic purpose favors retroactive application of the ruling in Andress. Teague's retroactivity principles reflect the courts efforts to balance competing considerations See, 489 U.S., at 309-313; Mackey v. United States, 401 U.S. 667-675 (1971).

The two prong test of retroactivity in Teague is present and met in the decision that was rendered in Andress. In Andress the court ruling was based firmly on the guilt or innocence that is talked about in Teague. The Andress court ruled that a Felony Murder rule that punishes all Homicides violates the most fundamental principles of criminal law. It is clear that the court actions were that of determining accurately the guilt or innocence, and that of protecting the concept of ordered liberty, that Teague is talking about. Id at 311-313. Even where the Andress ruling is talking about the culpability of the defendant, it is still clear that the courts were concerned about the fairness of the law in respect to the guilt or innocence of the defendant. Thus, the Andress ruling should not be applied prospectively but should be applied retroactively to the present case at bar.

PREJUDICE

A new rule is fundamental in some abstract sence is not enough ; the rule must be one without which the likelihood of an accurate conviction is seriously deminished. Id. at 313. In the case at bar, the petitioner was charged and convicted of a crime that did not have the element to prove that that murder that was committed was in fact intentional. In the recent decision in Andress the court ruled that the court cannot convict a person of felony murder if they do not prove the defendant intentionally murdered the victim. Adress Supra at 602.

The case at bar, mirrors Andress in the respect that the petitioner facts are almost a direct likeness as those in Andress. Here, as in Andress the petitioner was being beating by some guys that was twice his size. As like in Andress, here the petitioner lashed out in a reckless manner in the attempts to save his own life incedently killed some one and injured two others. The facts are clear that the petitioner did not intentionally kill anyone, moreso,, his actions were reckless at best. With out the ruling in Andress being applied to the petitoner's case the accuracy of a proper and correct conviction is seriously deminished. Therefore, the petitioner is prejudiced by not receiving a just due of the law if this ruling is not applied. He will be forced to do time for a crime that he do not meet the elements of and will not be given the right to be sentenced in the accordance of the law as in Andress. This case given the facts, should be remanded back to the Superior court for a correct sentence of First degree Manslaughter.

EQUAL PROTECTION OF THE LAW

The Fourthteenth Amendment constituion of the United States provides: "No state shall make or enforce any law which abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend XIV.

The Washington State Constitution, Article 1 Section 12, States: that no law shall be passed granting to any citizen, class or corporation othe than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Together, the Fourthteenth Amendment to the United States and the Washington's companion provision, article 1 section 12, insure that similarly situated persons receive like treatment with respect to laws with a legitimate purpose, See State v. Thorne, 129 Wn.2d 736, 771 (1996).

A valid law administered in a maner that unjustly discriminates between similarly situated persons, violates equal protection. State v. Handley, 115 Wn.2d 275, 290-91 796 P.2d 1266 (1990).

If a defendant can establish that he or she is similarly situated with another defendant by virtue of near identical participation in the same set of criminal circumstances, then the defendant will have established a class of which he or she is a member. Handley, 115 Wn.2d at 289.

In the case at bar the petitioner mirrors the facts in Andress point by point. In Andres, Andress was involved in a fight with two individuals outside a bar where he assaulted them both with a knife and subsequently killed one of them unintentionally. In the present case the petitioner and his friends were attacked at a party where they were attending, during the assault that was against

them and while attempting to escape the petitioner fired several shots where one hit the victim and fatally injured him and also injured two others that were bystanders, the record as in Andress clearly show that the murder was unintentionally committed. Both of the cases was charged with Felony Murder where the predicate felony was Assault.

When looking at the facts in both of these cases it is so a like that they almost mirror eachother. For the the court to not to give the same remedy as that was given in the Andress court, the court would be violating the petitioner's rights to Equal Protection of the law.

CONCLUSION

In the case at bar, the recored clearly shows that the is a complete miscarriage of justice, that the petitioner judgment and sentence is invalid on its face, and that there is a significant change in the law that is material to the petitioner's conviction and that there is an equal protection violation by not applying the ruling in Andress to the petitioner's case. The petitioner was convicted under the felony murder rule where Assault was the predicate felony , where the court ruled in Andress that Assault cannot serve as the predicate felony. The petitioner has met the burden of the exception of the time bar and the court should accept this petition. The petitioner is asking this court to grant him the relief asked for in part D of this petition.

C. STATEMENT OF FINANCES

1. I ask that the court file this petition waiving all the filing fee's as I am indigent, thus unable to pay them.
2. I have \$ 90.00 in my inmate/institutional account.
3. I ask that the court appoint me counsel, as I cannot afford to hire an attorney.
4. I am employed within the institution, my salary or DOC wages monthly amount to \$ 52.00.
5. During the past 12-months:
I did not receive any rent payments.
I did not receive any interest of any kind.
I did not receive any dividends.
I did not receive any other funds.
I did not receive any cash.
I do not have any savings, or checking accounts.
6. Real Estate, Property, or things of Value.

ITEMS

VALUE

7. I am not married.

8. All persons I am financially responsible for.

NAME AND ADDRESS

RELATIONSHIP

AGE

D. REQUEST FOR RELIEF

This petition is the best way that I know how to get relief that I want, and no other way will work. Only by filing this PRP can I bring these facts to the court's attention, to show that my Felony Murder conviction and sentence are both unconstitutional and invalid on its face. I respectfully request this court to remand my case and reverse my conviction and sentence based on the fact that there has been a miscarage of justice and my conviction and sentence is invalid on its face. which I have cited in part B of this petition.

I also would like this court to transfer this petition to the Superior Court for a reference hearing pursuant to RAP 16.11 if the court determines the issues cannot be resolved on the records and files currently available.

E. OATH OF PETITIONER

STATE OF WASHINGTON)

) ss:

COUNTY OF GRAYS HARBOR)

Ater being duly sworn, I depose and say: I am the petitioner, that I have prepared this petition, know its contents, and believe the petition to be true.

JOHNNY NAV / Johnny Nav

SUBSCRIBED AND SWORN to me before this 28 day of Dec 2004

SEAL



NOTARY PUBLIC in and for the state of Washington, at Grays Harbor

My commission Expires: 03-28-05

10/11/2004

GLHARP

DEPARTMENT OF CORRECTIONS
STAFFORD CREEK CORRECTIONS CEN. ..

Page 1 of 1

OIRPLRAR

PLRA IN FORMA PAUPERIS STATUS REPORT

4.12.0.0.1TR

FOR DEFINED PERIOD : 04/01/2004 TO 09/30/2004

DOC : 0000763455

NAME : NAV JOHNNY

ADMIT DATE : 06/06/1997

DOB : 12/29/1979

ADMIT TIME : 00:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
206.43	41.29	58.44	11.69

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTION CENTER
CERTIFIED BY: G Harp

APPENDIX A

96-51372

MILB

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

763455
66647

State of Washington,

No. 96-1-07541-4 SEA -1

Plaintiff,

FELONY WARRANT OF COMMITMENT

vs.

- 1. () COUNTY JAIL
- 2. (X) DEPARTMENT OF CORRECTIONS
- 3. () OTHER - CUSTODY
- 4. () WESTERN STATE HOSPITAL (Sexual Offender)

JOHNNY NAV,

122979

Defendant.

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF KING COUNTY

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of King, that the defendant be punished as specified in the Judgment and Sentence, a full true and correct copy of which is attached hereto.

- () 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in King County Jail; or pursuant to RCW 9.94A.190(3), if the defendant is committed or returned for incarceration in a state facility or another felony, take and deliver the defendant to the proper officers of the Department of Corrections.)
- (X) 2. YOU, THE DIRECTOR, 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. (Sentence of confinement in Department of Corrections custody.)

- () 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above and 4 below.)
- () 4. The defendant is committed for up to thirty (30) DAYS evaluation at Western State Hospital to determine amenability to sexual offender treatment.

YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the State pending delivery to the proper officers of the Department of Social and Health Services.

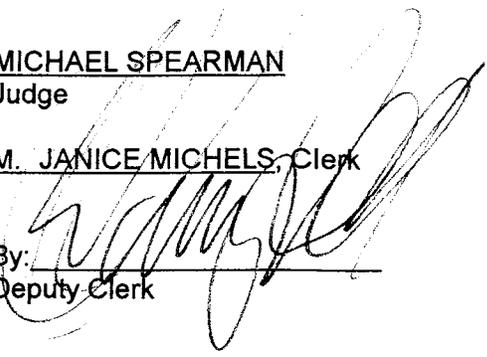
YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

By direction of the Honorable

Dated: June 4, 1997

MICHAEL SPEARMAN
Judge

M. JANICE MICHELS, Clerk

By: 
Deputy Clerk

1294467

7.
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON)

Plaintiff,)

v.)

JOHNNY NAV)

Defendant.)

No. 96-1-07541-4 SEA

JUDGMENT AND SENTENCE

*** CLERK'S ACTION REQUIRED**

3455 97
763
6:06
7:15

I. HEARING

1.1 The defendant, the defendant's lawyer, J.C. BECKER, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

1.2 The state has moved for dismissal of count(s) _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 3-21-97 by plea of:

Count No.: I Crime: MURDER IN THE SECOND DEGREE
RCW 9A.32.050 1 B Crime Code 00146
Date of Crime 10-26-96 Incident No. _____

Count No.: II Crime: ASSAULT IN THE SECOND DEGREE
RCW 9A.36.021 1 C Crime Code 01020
Date of Crime 10-26-96 Incident No. _____

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

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

- (a) A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): _____
- (b) A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s): _____
- (c) A special verdict/finding was rendered that the defendant committed the crime(s) with a **sexual motivation** in Count(s): _____
- (d) A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place
 in a school zone in a school on a school bus in a school bus route stop zone in a public park in public transit vehicle in a public transit stop shelter in Count(s): _____
- (e) Vehicular Homicide Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)
- (f) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1), a)) are: _____

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

MISSING
JWST

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a)				
(b)				
(c)				
(d)				

- Additional criminal history is attached in Appendix B.
 Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): _____
 One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	2	XIII			144 TO 192 MONTHS	LIFE AND/OR \$50,000
Count II	2	IV			12+ TO 14 MONTHS	10 YRS AND/OR \$20,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 **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. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) _____

IV. ORDER

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

4.1 **RESTITUTION AND VICTIM ASSESSMENT:**

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth these circumstances in attached Appendix E.
 Restitution to be determined at future hearing on (Date) _____ at _____ m. Date to be set. **WITHIN 90 DAYS**
 Defendant waives presence at future restitution hearing(s).
 Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of \$100 if all crime(s) date prior to 6-6-96 and \$500 if any crime date in the Judgment is after 6-5-96.

4.2 **OTHER FINANCIAL OBLIGATIONS:** Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____ Court costs; Court costs are waived;
 (b) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; Recoupment is waived (RCW 10.01.160);
 (c) \$ _____, Fine: \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
 (d) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
 (e) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
 (f) \$ _____, Incarceration costs; Incarceration costs waived (9.94A.145(2));
 (g) \$ _____, Other cost for: **TRUST FEES AND INTEREST ARE WAIVED**

4.3 **PAYMENT SCHEDULE:** Defendant's TOTAL FINANCIAL OBLIGATION is: \$ _____. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer. _____ The

Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: Immediately; (Date): _____ by _____ m.

180 months on Count I _____ months on Count _____ months on Count _____
14 months on Count II _____ months on Count _____ months on Count _____

ENHANCEMENT time due to special deadly weapon/firearm finding of _____ months is included for Counts _____

The terms in Count(s) I & II are concurrent consecutive.
The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) _____ but consecutive to any other cause not referred to in this Judgment.

Credit is given for 183 days served days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). 204 days
36 days

4.5 NO CONTACT: For the maximum term of _____ years, defendant shall have no contact with _____
Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

4.6 BLOOD TESTING: (sex offense, violent offense, prostitution offense, drug offense associated with the use of hypodermic needles) Appendix G is a blood testing and counseling order that is part of and incorporated by reference into this Judgment and Sentence.

4.7 COMMUNITY PLACEMENT, RCW 9.94A.120(9): Community Placement is ordered for any of the following eligible offenses: any "sex offense", any "serious violent offense", second degree assault, any offense with a deadly weapon finding, any CH 69.50 or 69.52 RCW offense for the maximum period of time authorized by law. All standard and mandatory statutory conditions of community placement are ordered.
 Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

4.8 WORK ETHIC CAMP: The court finds that the defendant is eligible for work ethic camp and is likely to qualify under RCW 9.94A.137 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the Department shall convert the period of work ethic camp confinement at a rate of one day of work ethic camp to three days of total standard confinement and the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.120(9)(b).
 Appendix K for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

4.9 SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

4.10 ARMED CRIME COMPLIANCE, RCW 9.94A.103,105. The state's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: MAY 16th 1997

Judge [Signature]
Print Name: MICHAEL B. SPEARMAN

Presented by: [Signature]
Deputy Prosecuting Attorney, Office: WSBA #D #91002
Print Name: D. WILLIAMS MILLER
*25454

Approved as to form: [Signature]
Attorney for Defendant, WSBA # 14350
Print Name: BECKER

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Johnny Nav
DEFENDANT'S ADDRESS: 708

JOHNNY NAV

DATED: MAY 16 1997

ATTESTED BY:
M. JANICE MICHELS, SUPERIOR COURT CLERK
BY: Marion Ravinec
DEPUTY CLERK

JUDGE, KING COUNTY SUPERIOR COURT
MICHAEL S. SPEARMAN

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.
DATE OF BIRTH: DECEMBER 29, 1979
SEX: M
RACE: ASIAN

CLERK

BY: _____
DEPUTY CLERK



DENIAL OF DISCLOSURE OF PUBLIC RECORDS

7/23/04

DATE

ADDRESS

PERSON REQUESTING DISCLOSURE

1. TO: JOHNNY NAV
DOC/763455

Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

2. YOUR REQUEST FOR DISCLOSURE OF THE RECORDS IDENTIFIED BELOW HAS BEEN DENIED TO THE EXTENT AND FOR THE REASON(S) SET FORTH BELOW.

DOCUMENT: MARKED PAGE OF APPENDIX H TO KING COUNTY CAUSE NO. 96-1-07541-4

RCW 43.17.310 (e) INFORMATION REVEALING THE IDENTITY OF PERSONS WHO ARE WITNESSES TO OR VICTIMS OF CRIME OR WHO FILE COMPLAINTS WITH INVESTIGATIVE, LAW ENFORCEMENT, OR PENOLOGY AGENCIES, OTHER THAN THE PUBLIC DISCLOSURE COMMISSION, IF DISCLOSURE WOULD ENDANGER ANY PERSON'S LIFE, PHYSICAL SAFETY OR PROPERTY:

PARTIAL-DISCLOSURE :

3. NAME
DECIDED BY: Molly Stallard

TITLE
Correctional Records Specialist

4. YOU MAY APPEAL THIS DECISION TO KAY WILSON-KIRBY BY COMPLETING THE APPEAL SECTION OF THIS FORM, AND MAILING THIS ENTIRE FORM, AND ANY ATTACHMENTS THERETO, TO THE ADDRESS SHOWN ON LINE 5.

5. TO: TITLE
KAY WILSON-KIRBY PDA

ADDRESS
OFFICE OF CORRECTIONAL OPERATIONS
410 WEST 5th, PO BOX 41100
OLYMPIA, WA 98504-1100

6. APPEAL

I APPEAL THE ABOVE DECISION DENYING DISCLOSURE. IT IS INCORRECT BECAUSE:

7. SIGNATURE OF PERSON MAKING APPEAL

DATE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON)

Plaintiff,)

No. 96-1-07541-4 SEA

v.)

APPENDIX H

NAV, Johnny)

COMMUNITY PLACEMENT

Defendant,)

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

4.5 Community Placement: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community placement for two years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

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

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

- (1) Report to and be available for contact with the assigned community corrections officer as directed;
- (2) Work at Department of Corrections-approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay community placement fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location; and
- (7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court: _____

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

1. Do not purchase, possess, control or use any deadly weapon and submit to reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance, based upon well-founded suspicion.

2. Do not have direct or indirect contact with _____

SPECIAL SENTENCE REQUIREMENTS

3. Obtain a written substance abuse evaluation from a qualified provider and complete all treatment recommendations as approved and directed by the Community Corrections officer.

PARTIAL DISCLOSURE

page 1

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON)

Plaintiff,)

No. 96-1-07541-4 SEA

v.)

continued

NAV, Johnny)

APPENDIX H

Defendant,)

COMMUNITY PLACEMENT

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

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(2) Work at Department of Corrections-approved education, employment, and/or community service;
(3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
(4) While in community custody not unlawfully possess controlled substances;
(5) Pay community placement fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court:

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

- 4. Report to the Department of Corrections and successfully complete the Victim Awareness Education Program (VAEP), as directed by the Community Corrections Officer.

Date:

5/16/97

JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

___ Accelerated
___ Non Accelerated
___ DPA ___ Defense

STATE OF WASHINGTON,

Plaintiff,

v.

JOHNNY NAV,

Defendant,

NO. 96-1-07541-4 KNT

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(Felony)

1. My true name is JOHNNY NAV
2. My age is 17. Date of Birth 12-29-79
3. I went through the 7TH grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) 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. My lawyer's name is JC BECKER

(b) I am charged with the crime(s) of MURDER 2° / ASSAULT 2°

The elements of this crime(s) are SEE ATTACHED

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) 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) The right to remain silent before and during trial, and the right to refuse to testify against myself;

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY 1 of 8

SC FORM CLD 100 Rev. 5/13/9

WP - A:VED\Statements.F

(c) The right at trial to confront and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of LIFE years imprisonment and a \$ 20,000 fine.

RCW 9.94A.030(21), provides that for a third conviction for a "most serious offense" as defined in that statute, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.

(b) The standard sentence range is from 0/5 2 XIII IV I 144 192 14 (days) months to (days) months confinement, based on the prosecuting attorney's understanding of my criminal history. The standard sentence 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 always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older. Criminal history also may include convictions in juvenile court for felonies or serious traffic offense that were committed when I was 15 years of age or older. Juvenile convictions, except those for sex offense and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete.

crimes between now and the time I am sentenced, I am obligated to inform the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if I was on community placement at the time of the offense to which I am now pleading guilty, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase.

If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030(21), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains two prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

Even so, my plea of guilty to this charge may be binding on me. I may not be able to change my mind if additional criminal history is discovered, even though it will result in the mandatory sentence that the law does not allow to be reduced.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 500 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

SENTENCE is specific rec. + capt. that state will stay w/in standard range and defense may ask for exceptional down. VPA, Rest, costs, ~~sum~~ and NCC for

(g) The judge does not have to follow anyone's recommendation as to the sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

The crime of MURDER 2° / ASSAULT 2° is a most serious offense as defined by RCW 9.94A.030(21), and if a fact finder determines that I have at least two prior convictions on separate occasions whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

(i) The sentence imposed on counts I & III will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

* IF SENTENCES DO NOT RUN CONCURRENT THE STATE WILL NOT PROSECUTE DEFENDANT MAY WITHDRAW PLEA BY AGREEMENT.

(j) In addition to confinement, the judge will sentence me to community placement for at least one year. During the period of community placement, I will be under the supervision of the Department of Corrections and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

* BOTH PARTIES AGREE THE DEFENDANT MAY WITHDRAW HIS PLEA SUBJECT TO THE COURT'S DISCRETION

Department of Corrections, and Washington State Board of Prisoners, of the Department of Social and Health Services. If at the time I move to this state I am not under the jurisdiction of one of these agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (that is, the county sheriff of my former residence) of that change of residence in writing and I must complete both acts within 10 days of my change of residence. [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

7. I plead GUILTY to the crime of MURDER 2^o
ASSAULT 2^o as charged in the AMMENDED

information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these crime(s)). This is my statement:

ON 10-26-96 IN SEATTLE, KING COUNTY, WA
I SHOT ~~AND KILLED~~ ^{OUT OF A} VAN AND KILLED
ALTHOUGH ACTING IN SELF DEFENSE, THE FC
USED WAS NOT REASONABLE AND THUS I ADM
MY GUILT TO THE CHARGE. I ALSO SHOT AN
WOUNDED I WAS ALSO UNREASONABLE
AND UNLAWFUL UNDER SECOND DEGREE ASSAULT

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant Plea of Guilty." I have no further questions to ask the judge.

Johnny Mar
DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Monika 25454
PROSECUTING ATTORNEY

SSA 1930
DEFENDANT'S LAWYER

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriated box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understand the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

DATED this 21st day of MARCH, 1997

[Signature]
JUDGE

I am fluent in the CAMBODIAN language and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or 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.

DATED this 21 day of MARCH, 1997.

Nischaner Wint
INTERPRETER

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 96-1-07541-4 KNT
)	
v.)	
JOHNNY NAV)	INFORMATION
)	
)	
)	
Defendant.)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JOHNNY NAV of the crime of **Murder in the Second Degree**, committed as follows:

That the defendant JOHNNY NAV in King County, Washington during a period of time intervening between October 25, 1996 through October 26, 1996, while committing and attempting to commit the crime of Assault, and in the course of and in furtherance of said crime and in immediate flight therefrom, did cause the death during the period of time of October 25, 1996 through October 26, 1996, of James Taupule, a human being who was not a participant in the crime;

Contrary to RCW 9A.32.050(1)(b), and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant JOHNNY NAV at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse JOHNNY NAV of the crime of **Assault in the First Degree**, a

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000

1 crime of the same or similar character as another crime charged
2 herein, and committed as follows:

3 That the defendant JOHNNY NAV in King County, Washington during
4 a period of time intervening between October 25, 1996 through
5 October 26, 1996, with intent to inflict great bodily harm, did
6 assault Topelagi Siva with a firearm and a deadly weapon and force
7 and means likely to produce great bodily harm or death, to-wit: a
8 9mm hand gun;

9 Contrary to RCW 9A.36.011(1)(a), and against the peace and
10 dignity of the State of Washington.

11 And I, Norm Maleng, Prosecuting Attorney for King County in the
12 name and by the authority of the State of Washington further do
13 accuse the defendant JOHNNY NAV at said time of being armed with a
14 9mm hand gun, a firearm as defined in RCW 9.41.010, under the
15 authority of RCW 9.94A.310(3).

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COUNT III

And I, Norm Maleng, Prosecuting Attorney aforesaid further do
accuse JOHNNY NAV of the crime of **Assault in the First Degree**, a
crime of the same or similar character as another crime charged
herein, and committed as follows:

That the defendant JOHNNY NAV in King County, Washington during
a period of time intervening between October 25, 1996 through
October 26, 1996, with intent to inflict great bodily harm, did
assault Robert Herman with a firearm and a deadly weapon and force
and means likely to produce great bodily harm or death, to-wit: a
9mm hand gun;

Contrary to RCW 9A.36.011(1)(a), and against the peace and
dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the
name and by the authority of the State of Washington further do
accuse the defendant JOHNNY NAV at said time of being armed with a
9mm hand gun, a firearm as defined in RCW 9.41.010, under the
authority of RCW 9.94A.310(3).

NORM MALENG
Prosecuting Attorney

By: _____
Dana Cashman, WSBA #91002
Deputy Prosecuting Attorney

Norm Maleng
Prosecuting Attorney
W 554 King County Courthouse
Seattle, Washington 98104-2312
(206) 296-9000