

P.R.P.

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

79025-6

IN THE MATTER OF THE )  
PERSONAL RESTRAINT OF: )  
DONALD T. MCCARTHY, )  
Petitioner. )  
\_\_\_\_\_ )

NO **32702-3**

2004 DEC -9 AM 11:42

FILED  
COURT OF APPEALS  
PROCEEDINGS

Petitioner, by and through his attorney, CRAIG P. BARNES, of the Law Office of Mitchell A. Riese, applies for relief from personal restraint.

STATE OF WASHINGTON  
CRAIG P. BARNES

**I. STATUS OF PETITIONER**

Petitioner is now in custody at the Twin Rivers Corrections Center, Monroe Correctional Complex, Monroe, Washington, serving a sentence upon conviction of a crime.

1. Petitioner was charged with Assault in the Third Degree with Sexual Motivation. Ex. 1, Judgment and Sentence, at 1.
2. Petitioner pled guilty to Assault in the Third Degree with Sexual Motivation on July 25, 2002. Id.
3. Petitioner's Judgment and Sentence was filed on December 4, 2002, in the Superior Court for Clark County, Case No. 02-1-01018-1. Id.
4. Since his conviction, Petitioner has not asked this court for relief on the issue he

**ORIGINAL**

PETITIONER MAY FILE THE  
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presents in this petition.

## **II. GROUNDS FOR RELIEF**

This petition is filed pursuant to RAP 16.4(c)(6) and (7). No other remedies are available to the Petitioner, and he has not had any previous or alternative avenue for obtaining judicial review. Petitioner was deprived of his Sixth Amendment right to a jury trial because the Indeterminate Sentence Review Board (ISRB) added nearly 48 months to his sentence, above the statutory maximum of his sentencing range, based on facts that were not stipulated by the Petitioner or submitted to a jury. In addition, the failure of the ISRB to allow Petitioner, who is diagnosed with paranoid schizophrenia and has border-line mental retardation, to be represented by his attorney at his RCW 9.95.420(3)(".420 hearing" hereafter)hearing, and receive a fundamentally fair hearing, deprived Mr. McCarthy of his Fourteenth Amendment right to Due Process.

Petitioner suffered actual and substantial prejudice because the ISRB decided to keep Mr. McCarthy in prison for at least two more years based on facts that the state did not prove beyond a reasonable doubt to a jury. Petitioner also suffered actual and substantial prejudice because the ISRB's policy to not permit attorneys to represent inmates at .420 hearings denied Mr. McCarthy a fair opportunity to be heard. Furthermore, Petitioner's version of the disputed issues could have only been fairly presented by a trained advocate. Due to Petitioner's mental disabilities, the need in his case for an attorney was critical.

### **III. SUMMARY OF THE CASE**

#### **A. PROCEDURAL HISTORY**

Petitioner, Donald McCarthy, pled guilty to one count of Assault in the Third Degree with Sexual Motivation. Ex. 8, Statement of Defendant on Plea of Guilty. At sentencing on December 4, 2002, the Court found that Mr. McCarthy was subject to sentencing under RCW 9.94A.712 (Sentencing for Nonpersistent Offenders). Ex. 1., Judgment and Sentence. Under that statute, the Court sentenced him to a minimum term of one year and one day (stipulated exceptional sentence), and a maximum term of 60 months. Ex. 1, Judgment and Sentence at 5. On August 5, 2003, the ISRB held Mr. McCarthy's first .420 Release Hearing. Ex. 3, Decision and Reasons (2003). On September 16, 2003, the ISRB issued a decision, finding that, by a preponderance of the evidence, Mr. McCarthy was more likely than not to commit sex offenses if released. *Id.* The ISRB added 24 additional months to Mr. McCarthy's minimum term. On October 6, 2004, the ISRB again found that Mr. McCarthy was more likely than not to reoffend sexually if released to the community, and extended his sentence 23 months and 26 days. Ex. 9, Decisions and Reasons (2004), at 1.

#### **B. STATEMENT OF FACTS**

Mr. McCarthy was sentenced pursuant to RCW 9.94A.712, which applies to individuals convicted of crimes committed on or after September 1, 2001. Under the statute, if a person is convicted of one of several serious sexual offenses, one of several offenses with a sexual motivation, an attempt to commit one of those crimes, or the person has a prior conviction for a crime enumerated in RCW 9.94A.030(32)(b) and commits any sex offense after September 1, 2001, the person is given an indeterminate sentence and falls under the jurisdiction of the ISRB.

Id. If a person is convicted under this statute, the court imposes a minimum sentence within the standard sentencing range, and a maximum sentence equal to the statutory maximum for the offense. Id. Therefore, for example, a person who had no prior record, and was convicted of rape in the second degree, would receive a maximum sentence of life.

The trial court appears to have sentenced Mr. McCarthy under RCW 9.94A.712(b)- the section the ISRB has termed a “strike and a half”. See Ex.3, Decision and Reasons (2003). The underlying “strike” for Mr. McCarthy was an out of state conviction for “frottage” in the early 1990's. Id. In Mr. McCarthy’s case, the standard range for Assault in the Third Degree with Sexual Motivation, with an offender score of 3, was nine to twelve months. Ex.1, Judgment and Sentence at 3. The Court gave Mr. McCarthy an exceptional sentence of one year and one day. Ex.1, Judgment and Sentence at 5. Because Mr. McCarthy was convicted under RCW 9.94A.712, he could spend up to nearly five times that exceptional sentence in prison, unless he is released by the ISRB prior to the maximum date.

During his .420 hearing on September 16, 2003, Mr. McCarthy immediately asked to have an attorney represent him. Ex. 4, Transcript of .420 Hearing. The Chairman of the ISRB, John Austin, responded by telling Mr. McCarthy that attorneys were not allowed at the hearing, in part because the Department of Corrections (DOC) does not allow attorneys at the hearing, and in order to “avoid economic discrimination”. Id. Mr. Austin also added that attorneys are only allowed at parolability hearings. Id. Mr. McCarthy responded by saying, “bear with me, I’m a little slow.” Id. During the hearing, Mr. Merkner, Mr. McCarthy’s prison counselor, described Mr. McCarthy’s history of paranoid schizophrenia to the ISRB. Id. Mr. Slusser (a mental health counselor), described Mr. McCarthy as a “fragile” person who experienced high anxiety. Id.

The ISRB then acknowledged his participation in the Sex Offender Treatment Program, noting that he was making satisfactory progress in the program. Ex. 9, Decisions and Reasons (2004) at 2. The ISRB stated that Mr. McCarthy maintained a “highly anxious appearance” and continued to need medication. The ISRB made its decision not to release Mr. McCarthy based on documentation in Mr. McCarthy’s prison files and the discussion the ISRB had with Mr. McCarthy during the hearing. Ex. 3, Decisions and Reasons (2003) at 3.

During his second .420 hearing, held on September 8, 2004, Mr. McCarthy asked again for an attorney to represent him at the hearing. Ex. 10, Declaration of Donald McCarthy. The ISRB denied his request, telling him that he was not entitled to an attorney. *Id.* The Board based its decision not to release Mr. McCarthy on their interview at the hearing, a review of his DOC and ISRB files, and its previous dictations. Ex. 9, Decisions and Reasons (2004) at 3.

#### **IV. ARGUMENT**

##### **A. BECAUSE THE BOARD EXTENDED MR. MCCARTHY’S SENTENCE BEYOND THE STIPULATED EXCEPTIONAL SENTENCE IMPOSED BY THE COURT, AND RELIED ON FACTS THAT WERE NEITHER ADMITTED BY PETITIONER NOR FOUND BY A JURY TO SUPPORT THE SENTENCE EXTENSION, THE SENTENCE VIOLATED MR. MCCARTHY’S RIGHT TO TRIAL BY JURY.**

“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Blakely v. Washington, 124 S.Ct. 2531, 2536 (2004), *citing* Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). The relevant “statutory maximum” is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. Blakely, 124 S.Ct. at 2537. When a judge assigns punishment the

jury's verdict alone did not allow, the jury has not found all the facts that the law makes essential to the punishment, and the judge exceeds his proper authority. Id.

In Blakely, the petitioner was sentenced to more than three years above the 53-month statutory maximum of the standard range based on a factual finding, by the judge, of "deliberate cruelty". Id. The facts supporting the finding were neither admitted by Blakely nor found by a jury. Id. The Blakely Court explained that the judge could not have imposed a sentence outside the statutory maximum solely on the basis of the facts admitted in the guilty plea. The Court noted that if the judge had imposed the exceptional sentence solely on the basis of the plea, he would have been reversed. Id.

The Blakely Court held that because the State's sentencing procedure deprived the petitioner of his Sixth Amendment right to a trial by jury, the petitioner's sentence was invalid. Blakely, 124 S.Ct. at 2538. The Court concluded that, "The Framers would not have thought it too much to demand that, before depriving a man of three years of his liberty, the State should suffer the modest inconvenience of submitting its accusation to 'the unanimous suffrage of twelve of his equals and neighbors,' rather than a lone employee of the State." Blakely, 124 S.Ct. at 2543, *citing* 4 Blackstone, Commentaries, at 343.

In the present case, the petitioner, Mr. McCarthy, stipulated to an exceptional sentence of one day above the standard range sentence in order for the defendant to take advantage of a plea to a lesser charge. Ex. 8, Findings of Fact and Conclusions of Law for an Exceptional Sentence. However, Mr. McCarthy did not stipulate to any further facts that would support any further deviation above the standard range. Id. The ISRB added 24 additional months to Mr. McCarthy's minimum term after holding a .420 hearing in September of 2003, and then added 23 months and

26 days to his sentence after his September 2004 hearing. In both cases, the ISRB made its decision to add time to his sentence based on documentation in Mr. McCarthy's prison files and the discussion the ISRB had with Mr. McCarthy during the hearing. Ex. 3, Decisions and Reasons (2003) at 3, Ex. 9, Decisions and Reasons (2004) at 3.

Because the ISRB used new facts, based on information contained in Mr. McCarthy's prison file or ascertained from him during both .420 hearings, to increase the penalty for his crime beyond the prescribed statutory maximum (and even his exceptional sentence), without submitting those facts to a jury, where the state would have the burden of proving them beyond a reasonable doubt, the ISRB's decisions to add 24 months to Mr. McCarthy's sentence in 2003, and an additional 23 months and 26 days to his sentence in 2004 were invalid. Blakely, 124 S.Ct. at 2536, *citing* Apprendi, 530 U.S. at 490 (2000).

In Mr. McCarthy's case, his "standard range" was 9 to 12 months, and the "maximum term" was five years. Ex. 1., Judgment and Sentence at 3. He was sentenced to a minimum term of 12 months and one day, and a maximum term of 60 months. Ex. 1., Judgment and Sentence at 5. Even though the ISRB's total addition of nearly four years to Mr. McCarthy's sentence has not yet caused his sentence to exceed the "maximum term" of 60 months, it has caused Mr. McCarthy to serve far more than the "standard range" prescribed by the Sentence Reform Act (and the stipulated exceptional sentence), which constitutes the relevant "statutory maximum" for the purpose of analyses under Apprendi and Blakely. Id.

As in Blakely, the facts supporting the additional months given to Mr. McCarthy were neither admitted by him nor found by a jury. Also, as in Blakely, a judge could not have imposed a sentence outside the statutory maximum range solely on the basis of the facts admitted by Mr.

McCarthy in his guilty plea. In accordance with the Blakely decision, this Court should find that the State's indeterminate sentencing procedure has deprived Mr. McCarthy of his Sixth Amendment right to a trial by jury, and invalidate the ISRB's decision.

**B. THE ISRB'S DENIAL OF COUNSEL TO MR. MCCARTHY VIOLATED MR. MCCARTHY'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE WASHINGTON CONSTITUTION BECAUSE MR. MCCARTHY DID NOT HAVE A FUNDAMENTALLY FAIR HEARING WITHOUT COUNSEL TO ASSIST HIM, PARTICULARLY IN LIGHT OF MR. MCCARTHY'S MENTAL DISABILITIES.**

1. Parole and probation revocation hearings are subject to Due Process protections, and counsel should be appointed on a case-by-case basis.

The revocation of parole and probation, although not stages of criminal prosecution, do result in a loss of liberty. Morrissey v. Brewer, 408 U.S. 471, 480 (1972). The loss of liberty entailed is a serious deprivation requiring that the parolee be accorded due process. Morrissey, 408 U.S. at 482.

The Court declined to establish a per se rule with regard to the necessity of counsel in a probation or parole revocation hearing. Gagnon v. Scarpelli, 411 U.S. 778, 790, 93 S.Ct. 1756, 36 L. Ed. 2d 656 (1973) . Instead, the Court held that the need for counsel must be determined on a case-by-case basis by the state authority charged with responsibility for administering the probation and parole system. Id.

2. In determining whether or not counsel should be appointed in a hearing, the state authority should carefully consider the ability of the parolee or probationer to effectively present his case, especially if that person suffers from mental illness.

The effectiveness of the due process rights guaranteed by Morrissey may depend on the

use of skills that a probationer or parolee is unlikely to possess. Scarpelli, 411 U.S. at 786.

Despite the informal nature of the proceedings and the absence of technical rules of procedure or evidence, the unskilled or uneducated probationer or parolee may well have difficulty in presenting his version of a disputed set of facts where the presentation requires the examination or cross-examination of witnesses or the offering or dissecting of complex documentary evidence. Scarpelli at 786-787.

In Scarpelli, the Court found that, “In passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears capable of speaking effectively for himself.” Scarpelli, 411 U.S. at 791.

This principle enunciated in Scarpelli is cited repeatedly by the Washington Supreme Court with regard to ISRB hearings. See In re Personal Restraint Petition of Douglas Boone, 103 Wn.2d 224, 230, 691 P.2d 965 (1984); Arment v. Henry, 98 Wn.2d 663, 778 (1983).

In Arment, the issue considered by the Court was whether the ISRB is constitutionally required to appoint counsel for an indigent inmate before increasing the inmate’s minimum sentence at a disciplinary hearing held pursuant to RCW 9.95.080. Arment, 98 Wn.2d at 777. The Court distinguished such disciplinary hearings from probation or parole revocation hearings. Arment, 98 Wn.2d at 779. It found that disciplinary hearings held pursuant to RCW 9.95.080 were comparable to the proceeding in Wolff v. McDonnell, 418 U.S. 539, 41 L.Ed. 2d 935, 94 S.Ct. 2963 (1974), and held that due process did not require a right of counsel in an RCW 9.95.080 hearing. Arment, 98 Wn.2d at 781.

However, in the context of a parole or probation revocation hearing, the Court recognized that “prisoners who are illiterate and uneducated have a greater need for assistance in exercising

their rights.” Arment, 98 Wn.2d at 779, *citing* Scarpelli, 411 U.S. at 786-787; Wolff, 418 U.S. at 570. In Arment, the Court found further that, “A prisoner thought to be suffering from a mental disease or defect requiring involuntary treatment probably has an even greater need for legal assistance, for such a prisoner is more likely to be unable to understand or exercise his rights. In these circumstances, it is appropriate that counsel be provided to indigent prisoners whom the State seeks to treat as mentally ill.” Arment, 98 Wn.2d at 779.

Based on the findings in Scarpelli, Arment and In re Boone, it is well established in Washington that an inmate’s mental capacity and mental health, as well as their financial situation, should be an important consideration in determining whether or not the state provides counsel to inmates subject to an ISRB hearing.

3. An RCW 9.95.420(3) hearing operates under the same legal standard as parole revocation hearing, involves similar technical legal arguments, is rehabilitative in nature and may result in loss of liberty, thus it should also have similar due process protections.

Parole revocation, probation revocation, and Special Sex Offender Sentencing Alternative (“SSOSA”) revocation all can result in the loss of liberty. Thus, the subject of such hearings is entitled to due process. Morrissey, 408 U.S. at 482; State v. Dahl, 139 Wn.2d 678, 683 (1999). The denial of an offender’s release by the ISRB in a .420 hearing also results in the continued deprivation of liberty. See Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979); In re Personal Restraint of Dennis Sinka, 92 Wn.2d 555, 599 P.2d 1275 (1979).

In Greenholtz, the Court held that, despite the necessary subjective and predictive nature of the parole-release decision, state statutes may create liberty interests in parole release that are entitled to protection under the Due Process Clause. Greenholtz, 442 U.S. at 12. The Court concluded that the mandatory language and the structure of the Nebraska statute at issue in

Greenholtz created an “expectancy of release,” which is a liberty interest entitled to such protection. Id.

In the present case, .420 hearings are authorized by a Washington statute that has mandatory language and a structure that, similar to the Nebraska statute at issue in Greenholtz, creates an “expectancy of release.” See RCW 9.95.420. According to the Washington statute, “The board *shall order* the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such condition, it is more likely than not that the offender will commit sex offenses if released.” RCW 9.95.420(3)(a)(emphasis added). As in Greenholtz, because the statute states that the board “shall order” the offender released “unless” it is determined by a preponderance of evidence that the inmate is “more likely than not” to re-offend, an “expectancy of release” has been created by this statute, and a liberty interest entitled to Due Process protection exists for an offender subject to a .420 hearing. Id.

The burden of proof on the ISRB is the same in both a .420 hearing and a parole revocation hearing. See RCW 9.95.125; RCW 9.95.420(3). In a parole revocation hearing, “If the member or members having heard the matter should conclude that the allegations of violation of the conditions of parole have been *proven by a preponderance* of the evidence and constitute sufficient cause for the revocation of parole, then such member or members shall enter an order of parole revocation and return the parole violator to state custody.” RCW 9.95.125(emphasis added). In a .420 hearing, an offender should be released, “unless the board determines *by a preponderance of the evidence* that, despite such conditions it is *more likely than not that* the offender will commit sex offenses if released...” RCW 9.95.420(3)(emphasis added). Because the

ISRB must show that, by a preponderance of evidence, offenders are more likely than not to re-offend, there is a presumption of the right of an offender to liberty that the ISRB must overcome, as in a parole revocation. Therefore, offenders subject to .420 hearings should have the same right to due process that is afforded to parolees.

In addition, both parole revocation hearings and .420 hearing share a rehabilitative goal. The focus of Scarpelli is on the rehabilitative goal of probation and parole. In re Personal Restraint Petition of McNeal, 99 Wn.App. 617, 634, 994 P.2d 890 (2000). Parole revocation is a part of the rehabilitative process. Id., *citing Scarpelli*, 411 U.S. at 785. Because a parole revocation hearing is adversarial in nature, counsel is needed to insure that the rehabilitative effort is not unnecessarily interrupted. Id.

A .420 hearing is similarly adversarial, because the ISRB has the burden of showing by a preponderance of evidence that an offender is more likely than not to commit another sex offense when he is released. RCW 9.95.420. It is also rehabilitative, because the burden of proof essentially requires the ISRB to determine whether or not the offender has been rehabilitated sufficiently to function lawfully in society. If the ISRB does not find an offender to be safe for release, it must set a new minimum term. Id. During that time, the ISRB can recommend programming, such as the Sex Offender Treatment Program, for further treatment and rehabilitation of the offender. Because the .420 hearing, like the parole revocation hearing, is primarily rehabilitative in nature rather than punitive, the rationale of Scarpelli should apply. In re McNeal, 99 Wn.App. at 635.

A parole revocation hearing is similar to a .420 hearing in that it is an informal hearing held before the ISRB. Like parolees, the large majority of offenders who appear before the ISRB

for a .420 hearing are unskilled, uneducated, and sometimes mentally retarded or mentally ill. They may not be able to clearly articulate their version of the disputed facts. Although it may be unusual for an offender to call a witness, both his unit counselor and/or his mental health counselor would be present and it may be necessary to cross-examine either of them. Finally, offenders can have a lengthy, complicated history, and a long trail of documents associated with their case. Most offenders lack the sophisticated skills required to successfully cross-examine witnesses and make use of the documentary evidence.

4. Because Mr. McCarthy was entitled to due process protections at his .420 hearing, and he suffers from mental disabilities, he should have been appointed counsel to represent him at the hearing.

Mr. McCarthy was sentenced to an indeterminate sentence under RCW 9.94A.712, and placed under the jurisdiction of the ISRB. In August of 2003 and in September of 2004, Mr. McCarthy was brought before the ISRB to determine, by a preponderance of evidence, whether or not he was more likely than not to re-offend if released. Ex. 3, Decisions and Reasons (2003); Ex. 9, Decisions and Reasons (2004). At his first opportunity, in his 2003 hearing, Mr. McCarthy asked the ISRB to allow him to have an attorney present. Ex. 4, Transcript of .420 Hearing. The Chairman of the ISRB refused to grant Mr. McCarthy's request and explained that attorneys were not allowed at the hearing, in part because the DOC did not allow them, and to "avoid economic discrimination." Id. In his 2004 .420 hearing, Mr. McCarthy again requested an attorney, and the Board denied his request a second time, claiming that the state of Washington could not afford to provide him with an attorney. Ex. 10, Declaration of Donald McCarthy. The Board stated further that even if the state could afford to provide Mr. McCarthy with an attorney, he was not entitled to an attorney at a .420 hearing. Id.

To determine if an offender is more likely than not to re-offend if released, the ISRB uses a variety of documentation and psychological test data. See Ex.3, Decision and Reasons; Ex. 9, Decisions and Reasons (2004). The documentation can include information about infractions, programming, victim contact, family contact and support, crime related issues, and reports from any specialized counseling and classes. Id. The Board can also use psychological evaluations that include a number of complicated instruments (ie: MMPI-2, PAI, VRAG, LSI-R, etc.), as well as a Treatment Summary including: behavioral observations, personal/criminal history, risk for violence, escape, and case management recommendations. Id. These documents and the results of the psychological instruments could tip the evidence in favor of further incarceration for the offender. Therefore, to properly represent himself, an offender would need to understand them so that he could competently challenge their conclusions. It is very unlikely that an offender who lacks even a high school education, or suffers from a mental disability, could understand, much less challenge, the ISRB's reliance on these materials. Although Mr. McCarthy made an attempt to answer each of the ISRB's questions during his hearing, he did not make any attempt to challenge the basis of file materials relied on by the ISRB to find him more likely than not to re-offend. Ex. 4, Transcript of .420 hearing.

It was a violation of Mr. McCarthy's right to due process for the ISRB to outright deny assistance of counsel at his .420 hearing. Under the Scarpelli standard, the ISRB should have made an individual determination as to Mr. McCarthy's need for the assistance of counsel. Scarpelli, 411 U.S. at 790 .

The effectiveness of guaranteed due process rights may depend on the use of skills the probationer or parolee is unlikely to possess. Scarpelli, 411 U.S. at 786. An unskilled or

uneducated probationer or parolee may have serious difficulty making a presentation at a hearing. Id. In the present case, Mr. McCarthy is over 60 years of age, and has an IQ of 72, which is in the range of mild retardation. Ex. 5, Test Score History; Ex. 6, Classification Referral. He was unable to finish his high school education, and last worked as a painter. Ex. 6, Classification Referral. Mr. McCarthy clearly did not possess the skills nor education necessary to competently present his case to the ISRB without assistance of counsel at his .420 hearing.

In Arment, the Washington Supreme Court found that a prisoner suffering from a mental disease requiring involuntary treatment probably had an even greater need for legal assistance. Arment, 98 Wn.2d at 779. Mr. McCarthy has been receiving mental health treatment since 1980, beginning at the Woodside Mental Health Center. Ex. 6, Classification Referral. Mr. McCarthy has been diagnosed with paranoid schizophrenia. Ex. 7, Offender Accountability Plan. In circumstances such as these, the Court found that, “it is appropriate that counsel be provided to indigent prisoners whom the State seeks to treat as mentally ill.” Arment, 98 Wn.2d at 779.

Because Mr. McCarthy lacked the skill, education and mental acuity to properly represent himself in a .420 hearing, he clearly fell into the category of “doubtful cases” described in Scarpelli where the inability of the inmate to speak effectively for himself should have caused the ISRB to appoint counsel. See Scarpelli, 411 U.S. at 791. There is no evidence that the ISRB considered Mr. McCarthy’s ability to adequately represent himself, at either hearing, despite the ISRB’s access to all of Mr. McCarthy’s personal file information. The ISRB chose instead to rely on an arbitrary, “one size fits all” rule to ban any inmate from being represented by an attorney at a .420 hearing, regardless of their circumstances. Considering that some offenders face a possible life sentence as a result of one offense, and that this state allows attorneys at most other similar

hearings, it would be fundamentally unfair to allow the ISRB to conduct .420 hearings in a manner that puts the inmate at such a disadvantage, particularly when that inmate is mentally disabled.

**C. BECAUSE THE SENTENCING COURT DID NOT DETERMINE IF MR. MCCARTHY'S OUT OF STATE CONVICTION WAS COMPARABLE TO A WASHINGTON STATE CONVICTION, HIS OUT OF STATE CONVICTION SHOULD NOT HAVE BEEN USED AS A BASIS TO SENTENCE HIM UNDER RCW 9.94A.712 TO AN INDETERMINATE SENTENCE.**

To determine whether or not an out-of-state conviction counts in Washington for sentencing purposes, a trial court must conduct a three-part comparability analyses by: “(1) identifying whether any comparable offenses exist in Washington through a comparison of the elements of the out-of-state crime with the Washington counterpart, (2) selecting the most comparable Washington offense and classifying it, and (3) treating the out-of-state conviction as if it were a conviction of the comparable Washington offense.” State v. Berry, 141 Wn.2d 121, 130-31, 5 P.3d 658 (2000). If the elements of the out-of-state crime and the comparable Washington offense are not the same, then the court may look to the record of the out-of-state conviction to complete its analysis. State v. Russell, 104 Wn. App. 422, 442, 16 P.3d 664 (2001).

Mr. McCarthy was sentenced under a new law that applied to individuals who were convicted of crimes committed on or after September 1, 2001. See Ex.1, Judgment and Sentence; RCW 9.94A.712. Under the statute, if a person is convicted of one of several serious sexual offenses, one of several offenses with a sexual motivation, an attempt to commit one of those crimes, or the person has a prior conviction for a crime enumerated in RCW 9.94A.030(32)(b) and commits *any* sex offense after September 1, 2001, the defendant is given an indeterminate

sentence and falls under the jurisdiction of the ISRB.

Mr. McCarthy was convicted of Assault in the Third Degree with Sexual Motivation. Id. This is not one of the offenses listed in RCW 9.94A.712(1)(a). Therefore, the court must have found that Mr. McCarthy qualified under part (b) of the statute instead. RCW 9.94A.712. To qualify under part (b), Mr. McCarthy must have had a prior conviction, listed in RCW 9.94A.030(32)(b), in addition to his current sex offense.

The only listed conviction in Mr. McCarthy's criminal history on the Judgment and Sentence is Sex Abuse First Degree, committed in Oregon in 1992. Ex. 1, Judgment and Sentence at 2. Because the only conviction in his criminal history was from out of state, the trial court should have engaged in a comparative analysis between that out-of-state conviction and a similar Washington offense. Berry, 141 Wn.2d at 130-31. There is no indication on the Judgment and Sentence that this analysis was completed. See Ex. 1, Judgment and Sentence.

If the trial court engaged in a comparative analyses between Mr. McCarthy's out of state conviction and a similar Washington statute, it would have found that the most similar Washington offense is not listed in RCW 9.94A.030(32)(b), and therefore Mr. McCarthy did not qualify for indeterminate sentencing.

In 1992, Mr. McCarthy was convicted under ORS 163.427 -Sexual abuse in the First Degree. ORS 163.425 was enacted in 1991 to redefine first degree sexual abuse. Or. Laws 1991, ch. 830, ss 2, 3. Under the new statute, the relevant elements of first degree sexual abuse are sexual ~~contact~~ with a victim under the age of 14, and the crime was upgraded to a class B felony.

Id.<sup>1</sup>

The most comparable Washington offense would appear to be either Child Molestation First or Second Degree. The key difference between those two crimes is that one is a class A felony that applies when there is sexual contact with another who is less than twelve years old, and the other is a class B felony that applies when the victim is at least twelve years old but less than fourteen years old. See RCW 9A.44.083 and RCW 9A.44.086. The Oregon offense of Sexual Abuse in the First Degree appears to be most comparable to the Washington offense of Child Molestation in the Second Degree. Both offenses have the elements of sexual contact with a victim that is less than fourteen years old, and both crimes are class B felonies.

Because Child Molestation in the Second Degree is not listed in RCW 9.94A.030(32)(b), Mr. McCarthy received an illegal sentence under RCW 9.94A.712 as a non-persistent offender. Such an illegal sentence would not be subject to the one year statute of limitations for filing this personal restraint petition. See RCW 10.73.100(5); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 869, 50 P.3d 618 (2002). Therefore, Mr. McCarthy should have been released from prison upon the completion of his current minimum term of twelve months and one day.

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<sup>1</sup>A person commits the crime of sexual abuse in the first degree when that person: (a) Subjects another person to sexual contact and: (A) The victim is less than 14 years of age; (B) The victim is subjected to forcible compulsion by the actor; or (C) The victim is incapable or consent by reason of being mentally defective, mentally incapacitated or physically helpless; or (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purposes of arousing or gratifying the sexual desire of a person. (2) Sexual abuse in the first degree is a Class B felony. ORS 163.427.

**V. REQUEST FOR RELIEF**

Petitioner requests that this court vacate Mr. McCarthy's conviction under RCW 9.94A.712 and release him on time served. Alternatively, Petitioner asks this court to vacate the results of his .420 hearing, and order the state to provide him with an attorney for another hearing.

**VI. STATEMENT OF INDIGENCE**

Petitioner is an indigent prisoner and request a waiver of expenses necessary to consider the Petition in this court. RAP 16.15(g).

**VII. STATEMENT OF PETITIONER'S FINANCES**

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do X do not \_\_\_ ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.
  
2. I have \$ 21.14 in my prison or institution account.
  
3. I do \_\_\_ do not X ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.
  
4. I am \_\_\_ am not X employed. My salary or wages amount to \$ 0 a month. My employer is       N/A
  
5. During the past 12 months, I did \_\_\_ did not X get any money from a business, profession or other form of self employment. (If I did, it was \_\_\_\_\_ and the total income I got was \$       0      ).

6. During the past 12 months, I

- did \_\_\_\_\_ did not  get any rent payments. If so, the total amount I got was \$ \_\_\_\_\_
- \_\_\_\_\_  get any interest. If so, the total amount I got was \$ \_\_\_\_\_
- \_\_\_\_\_  get any dividends. If so, the total amount I got was \$ \_\_\_\_\_
- \_\_\_\_\_ get any other money. If so, the amount of money I got was \$50/month from Tony McCarthy (son) and \$15/month from John McCarthy (son)
- \_\_\_\_\_  have any cash except as said in answer 2. If so, the total amount of cash have is \$ \_\_\_\_\_
- \_\_\_\_\_  have any savings accounts or checking accounts. I so, the amount in all accounts is \$ \_\_\_\_\_
- \_\_\_\_\_  own stocks, bonds or notes. If so, their total value is \$ \_\_\_\_\_

8. List all real estate and other property or things of value which belong to you, or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items:	Value
a) 1986 Chrysler LeBaron (car)	\$400-\$500
b) 1976 Mobile Home	\$9000

9. I am \_\_\_\_\_ am not  married. If I am married, my wife's name and address is:

---

10. All of the persons who need me to support them are listed here.

Name and Address:	Relationship:	Age:
N/A		

---

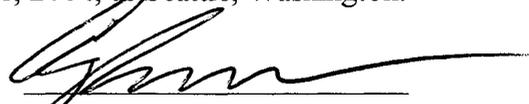
11. All the bills I owe are listed here:

Name of Creditor you owe money to:	Address:	Amount
a) PUD Vancouver		\$1100
b) AT&T (phone bill)		\$850

**IX PARTY DECLARATION**

I am the attorney for Petitioner Donald McCarthy, I have read the petition, know its contents, and I believe that the Petition is true. I hereby declare under penalty of perjury of the laws of the State of Washington the foregoing is true and correct.

DATED THIS 2nd day of December, 2004, at Seattle, Washington.



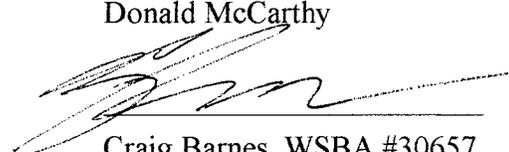
Craig Barnes, WSBA #30657  
Law Office of Mitchell A. Riese  
753 N. 35th, Suite 102  
Seattle, WA 98103-8802  
(206)545-8561

**VERIFICATION**

I declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Dated this 24<sup>th</sup> day of November, 2004.

  
Donald McCarthy

  
Craig Barnes, WSBA #30657  
Law Office of Mitchell A. Riese  
753 N. 35th, Suite 102  
Seattle, WA 98103-8802  
(206)545-8561

11/18/2004

DEPARTMENT OF CORRECTIONS  
WASHINGTON STATE REFORMATORY

Page 1 of 1

OIRPLRAR

NOLSSON

PLRA IN FORMA PAUPERIS STATUS REPORT  
FOR DEFINED PERIOD : 05/01/2004 TO 10/31/2004

4.12.0.0.1TR

DOC : 0000707212

NAME : MCCARTHY DONALD

ADMIT DATE :12/06/2002

DOB : 09/17/1941

ADMIT TIME :00:00

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
70.83	14.17	21.14	4.23

*N. Jay Nelson, Am Accts*

MARLTON

FILED

S5

DEC 04 2002

JoAnne McBride, Clerk, Clark Co.

707212  
12-06-02

SUPERIOR COURT OF WASHINGTON  
COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,  
v.  
DONALD TIMOTHY MCCARTHY  
aka  
Defendant.  
SID:  
DOB: 09/17/1941

No. 02-1-01018-1

JUDGMENT AND SENTENCE (JS)

PRISON - COMMUNITY  
PLACEMENT/COMMUNITY CUSTODY

NON PERSISTENT OFFENDER -  
RCW 9.94A.712

Clerk's action required Paragraph 5.7

I. HEARING

02 9 06445 0

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on  
by  plea  jury-verdict  bench trial of:

July 25, 2002  
(Date)

COUNT	CRIME	RCW	DATE OF CRIME
01	ASSAULT IN THE THIRD DEGREE WITH SEXUAL MOTIVATION	9A.36.031/9.94A.835	05/18/2002

as charged in the (Third Amended) Information.

The court finds that the Defendant is subject to sentencing under RCW 9.94A.712.

A special verdict/finding for use of **firearm** was returned on Count(s) \_\_\_\_\_.  
RCW 9.94A.602, 510

A special verdict/finding for use of **deadly weapon** other than a firearm was returned on  
Count(s) \_\_\_\_\_. RCW 9.94A.602

A special verdict/finding of **sexual motivation** was returned on Count(s) I.  
RCW 9.94A.835

PRINTED

- A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) \_\_\_\_\_ is/are Domestic Violence offense(s) as that term is defined in RCW 10.99.020:
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_. RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) \_\_\_\_\_. RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): \_\_\_\_\_.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult, Juv.	TYPE OF CRIME
1. Sex Abuse 1 <sup>o</sup>	2/23/93	Multnomah, OR	9/13/92	A	

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: \_\_\_\_\_
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520: \_\_\_\_\_
- The State has moved to dismiss count(s)

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01	3	III	9 MONTHS to 12 MONTHS			005.00 Years \$10000

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

Additional current offense sentencing data is attached in Appendix 2.3.

2.4  EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence  above  within  below the standard range for Count(s) I. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney  did  did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are  attached  as follows: \_\_\_\_\_ . If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

III. JUDGMENT

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

3.2  The Court DISMISSES Counts .

The defendant is found NOT GUILTY of Counts .

3.3 There  do  do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$None	Restitution to be paid to  <input type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/753
\$110.00	Criminal filing fee	RCW 9.94A.505
\$500.00	Victim assessment	RCW 7.68.035
<del>\$100.00</del> NA	Collection of biological sample (for crimes committed on or after July 1, 2002)	Chapter 289, Laws of 2002
\$ _____	Fees for court appointed attorney	RCW 9.94A.505/760/030
\$500.00	Fine	RCW 9A.20.021

\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
\$ _____	Crime lab fee	RCW 43.43.690
\$ _____	Witness costs	RCW 10.01.160 and RCW 2.40.010
Court costs, including:		RCW 9.94A.030, 9.94A.505, 9.94A.760, 10.01.160, 10.46.190
\$ _____	Sheriff service fees	RCW 10.01.160 and RCW 36.18.040
\$ _____	Jury demand fee	RCW 10.01.160 and RCW 10.46.190
\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.505, 760, RCW 9.94A.030
\$ _____	Extradition costs	RCW 9.94A.505
\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To:  _____ (List Law Enforcement Agency)	RCW 38.52.430
\$ _____	Other Costs for: _____	RCW 9.94A.760

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.750/753. A restitution hearing:
- shall be set by the prosecutor
- is scheduled for \_\_\_\_\_
- The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602
- All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_ . RCW 9.94A.760
- In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ \_\_\_\_\_ . RCW 9.94A.760
- The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190
- The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

- 4.2  DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754
- HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling. RCW 70.24.340
- 4.3 The defendant shall not have contact with C.M.H. (female, DOB: 5-8-74) including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for Life years (not to exceed the maximum statutory sentence).
- Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4.3.

4.4 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections:

12 days/months on Count 01

Actual number of months of total confinement ordered is: 12 months of day  
 (Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

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

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

\_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) **CONFINEMENT 9.94A.712.** The Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections:

COUNT	SENTENCE RANGE	minimum	Maximum
01	<u>12 months of day</u>		<u>60 months</u>

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505.

Credit for 4 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4.6  **COMMUNITY PLACEMENT** is ordered on Counts \_\_\_\_\_ for \_\_\_\_\_ months

COMMUNITY CUSTODY for count(s) I, sentenced under RCW 9.94A.712 is ordered for any period of time the Defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered on Counts \_\_\_\_\_ for a range from to 260 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700/705(9) for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense --RCW 9.94A.505. Use paragraph 4.7 to impose community custody following work ethic camp. Community placement/custody shall be for 12 months or for the period of earned early release, whichever is longer, for sex offenses or serious violent offenses committed between 7/1/88 and 7/1/90, Assault 2, Assault of a Child 2, deadly weapon enhancements and drug offenses under RCW 69.50 or 69.52; 24 months or for the period of early earned release, whichever is longer, for sex offenses occurring between 7/1/90 and 6/6/96, serious violent offenses, and vehicular homicides or vehicular assaults; 36 months or for the period of earned early release, whichever is longer, for sex offenses committed after 6/6/96.]

The defendant shall be on community supervision/community custody under the charge of the Department of Corrections and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community supervision/community custody and any other conditions stated in this Judgment and Sentence.

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

- The defendant shall not consume any alcohol.
- Defendant shall have no contact with [redacted] (female, DOB: [redacted]).
- Defendant shall remain  within  outside of a specified geographical boundary, to wit: as determined by the Department of Corrections Office.
- For Sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by the Department of Corrections. Emergency conditions shall not remain in effect longer than seven working days unless approved by the Indeterminate Sentence Review Board pursuant to law. RCW 9.94A.713.
- Other conditions may be imposed by the court or Department during community custody, or are set forth here:

- The conditions of community supervision/community custody shall begin immediately or upon the defendant's release from confinement unless otherwise set forth here:
- 

- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:
- 

- Defendant shall not have any contact with other participants in the crime, either directly or indirectly.
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers.
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed.
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages  at all  to excess.

The defendant will  will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.

Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.

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

Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment program as established by the community corrections officer and/or the treatment facility.

- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.

- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):  
\_\_\_\_\_
- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
- Defendant shall not have any contact with minors. Minors mean persons under the age of 18 years *adult supervision*.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.

- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

maintain mental health treatment  
and prescribed medications for  
any mental illness

- 4.7 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).
- 4.8 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.
- 4.9 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the Department of Corrections:

4.10 Other: \_\_\_\_\_  
 \_\_\_\_\_

**V. NOTICES AND SIGNATURES**

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A505(5).
- 5.3 **NOTICE OF INCOME-WITHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**  
 Defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment).  
RCW 9.41.040, 9.41.047

5.7  The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, who must revoke the defendant's driver's licenses. RCW 46.20.285.

**Cross off if not applicable:**

5.8 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing a residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign

country to the county sheriff with whom you last registered in Washington State

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(7).

5.9 Persistent Offense

- The crime(s) in count(s) \_\_\_\_\_ is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in count(s) \_\_\_\_\_ is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

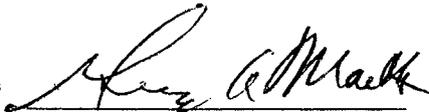
5.10 OTHER: \_\_\_\_\_

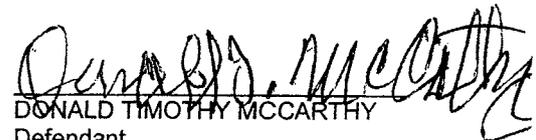
DONE in Open Court and in the presence of the defendant this date: 4 December 2002

  
JUDGE OF THE SUPERIOR COURT

Print Name: ROBERT HARRIS

  
Kathleen A. Hart, WSBA #24207  
Deputy Prosecuting Attorney

  
George A. Marlton, WSBA #04736  
Attorney for Defendant

  
DONALD TIMOTHY MCCARTHY  
Defendant

DC

**FILED**  
DEC 04 2002  
JoAnne McBride, Clerk, Clark Co.

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

STATE OF WASHINGTON,  
Plaintiff,  
v.  
DONALD TIMOTHY MCCARTHY,  
Defendant.

No. 02-1-01018-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW FOR AN  
EXCEPTIONAL SENTENCE

An exceptional sentence above the standard range should be imposed based upon the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. The Court finds that at the time of the plea of guilt, the parties stipulated to an exceptional sentence of one day above the standard range sentence in order for the defendant to take advantage of a plea to a lesser charge.
2. The defendant is a two-time convicted sex offender.
3. The victim in the present case suffers from a mental handicap, diagnosed as Downs Syndrome.
4. The victim was a stranger to the defendant, whom he victimized in a public place.
5. Other: Impact on victim was greater due to mental problems of being a Downs,

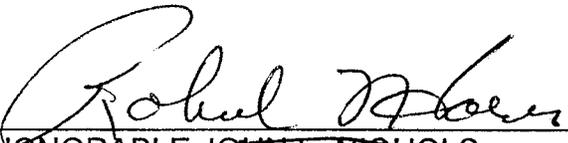
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW- 1

CLARK COUNTY PROSECUTING ATTORNEY  
1200 FRANKLIN STREET • PO BOX 5000  
VANCOUVER, WASHINGTON 98666-5000  
(360) 699-2261 (OFFICE)  
(360) 699-2230 (FAX)

11. CONCLUSIONS OF LAW

- 1. The court finds that there are substantial and compelling reasons, set forth in the statement of facts, justifying an exceptional sentence.
- 2. An exceptional sentence of one day above the standard range is justified because the defendant stipulated to an exceptional sentence above the standard range sentence at the time he entered a plea of guilt to a reduced charge, and the facts in this case support an exceptional sentence.
- 3. It is in the interests of justice that the court impose an exceptional sentence above the standard range in order for the defendant to take advantage of a plea to a lesser charge. The facts of the case justify a stipulated exceptional sentence of 366 days in prison.
- 4. Other: \_\_\_\_\_

DATED this 4 day of December, 2002.

  
 HONORABLE JOHN F. NICHOLS  
 JUDGE OF THE SUPERIOR COURT

Presented by:

  
 KATHLEEN A. HART, WSBA #24207  
 Deputy Prosecuting Attorney

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 2

CLARK COUNTY PROSECUTING ATTORNEY  
 1200 FRANKLIN STREET • PO BOX 5000  
 VANCOUVER, WASHINGTON 98666-5000  
 (360) 699-2261 (OFFICE)  
 (360) 699-2230 (FAX)

IISO100

LEGAL FACE SHEET

TIME 10:28

DOC NO: 707212 NAME: MCCARTHY, DONALD T. ("B") STATUS: ACTIVE \*\*\*
BED NO: D02D1132 COUNSELOR: 0624 ROBINS, STEVEN

CURRENT LOCATION: MCC-TRCC MSC
SEX: M AGE: 62 FBI NO: 283338E
RACE : WHITE SID NO: 16494835
HISP ORIG : NO
HEALTH RECORD REVIEW : NOT REQUIRED
NAMES: MCCARTHY, TIMOTHY D. (AKA)

MXED: 12/01/2007 MNED:
ERD : 12/03/2004 ADJ.: 12/03/2004
NRD : 01/27/2004 SCORE: 67
CUS.: MI3 MFED: 12/06/2002
COMM. CONCERN: N RMI: RMA
VICTIM WRAP AROUND: N
VW ELIGIBLE: YES COMM.PLACEMENT: NO
LSI-R: 28 AND LSI LEVEL : MODERATE
SSA NO: 543-42-0601 BIRTH: 09/17/1941
06/17/1941

P. PREL: DENY IMPAIR FUNCTION
P. MFED: DENY-IMPAIR FUNCT
P U L H E S D X T DATE
1 3 3 1 1 3 2 3 1 02/12/2003

P. WTR: DENY IMPAIR FUNCTION
P. REL: NO COM RESOURCES
REGISTERABLE OFFENDER : Y

Table with columns: COM., COUNTY, GTL TIME START RECEIVED OC, MIN.TERM CC CS, REL.DATE STATUS. Includes entry for @B@N CLARK with details on assault offense.

TOTAL MONETARY OBLIGATION: ORDERED \$\*\*\*1110.00 ;AS OF 12/16/03 PAID \$\*\*\*\*\*0.00
SCHEDULE: 0 SET BY: SPECIAL CONDITIONS: YES
STAT MAX: 12/02/2007

\*\*\*\*\*

COMMENTS: 4/30/93 ACCEPTED ORE PRO RS 2/28/96 CLOSURE FROM OREGON RS
2/29/96 SPEC TO OREGON RS STATIC-99=5 MED-HIGH 1/16 BT02
LEVEL 2 PSYCH. EVAL. REQUIRED ISRB REC'D 05-03 PSYCH 5-27-03
05212003 HCSC APPROVES MI3 HMH TDG

Table with columns: MOVEMENT DATE & TYPE, DESTINATION, REASON FOR, ORIGIN. Lists transfer history from WA COR CTR to MCC-TRCC MSC.

HOUSING DATE & LOCATION COUNSELOR WORK ASSIGN. SUPERVISOR
12/16/03 D02-D1132 ROBINS, STEVEN

Table with columns: EARNED EARLY RELEASE DATE & TYPE, DOC, ISRB, STATUS, LOCATION. Shows earned time for release.

2

IIS0100

LEGAL FACE SHEET

TIME 10:28

DOC NO: 707212 NAME: MCCARTHY, DONALD T. ("B") STATUS: ACTIVE \*\*\*

EARNED	EARLY RELEASE DATE & TYPE	DOC	ISRB	STATUS	LOCATION
02/01/03--03/01/03	EARNED TIME	4.67	0.00	PENDING	WCCTC
	B	4.67	0.00		
03/01/03--08/01/03	EARNED TIME	25.50	0.00	PENDING	SCCC
	B	25.50	0.00		
08/01/03--10/01/03	EARNED TIME	10.17	0.00	PENDING	MCCSOU
	B	10.17	0.00		
10/01/03--12/01/03	EARNED TIME	10.17	0.00	PENDING	MCCSOU
	B	10.17	0.00		

ISRB	HEARING	ACTION	COMM.	MIN.	TERM	PS%	NEXT HR.	TYPE
01/06/03	ADMIN ACT	SCHED CCB REL HRG 120 DAYS PRIOR TO ERD				00	99/99	NO HEARING
08/05/03	CCB REL HR	DEFERRED DECISION				00	99/99	NO HEARING
09/16/03	ADMIN ACT	DD RESOLVED NOT RELEASABLE ADD TO MINIMUM TERM SCHED CCB REL HRG 120 DAYS PRIOR TO ERD PSYCH.RPT REQUESTED	B	3Y 0M 1D	00	08/04	CCB REL HR	

CUSTODY DATE	SCORE	TYPE	ASSIGNED	CUSTODY	OVERRIDE	LOCATION
12/30/2002	52	INITIAL	01/27/2003	MINIMUM	MENTAL H	WA COR CTR RC
03/19/2003	67	PLAN RVW	03/21/2003	MINIMUM	MEDICAL	STAFFORD CREEK
05/06/2003	67	PLAN RVW	05/21/2003	MINIMUM	HCSC ASG	MCC SOU
05212003 HCSC APPROVES MI3 HMH. TDG						
08/27/2003	67	REVIEW	08/28/2003	MINIMUM	INDETERM	MCC SOU
10/29/2003	67	REVIEW	12/02/2003	MINIMUM	INDETERM	MCC SOU

IISUI012 NO WARRANTS OR DETAINERS FOUND

IISUI016 NO RPM DATA FOUND

IISUI016 NO RPM DATA FOUND

IISUI004 NO INFRACTION FOUND



STATE OF WASHINGTON

## INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. \* P.O. Box 40907 \* Olympia, Washington 98504-0907 \* (360) 493-9266  
(TDD Relay 1-800-833-6388)

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**DECISION AND REASONS**


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NAME: McCARTHY, Donald T.  
 NUMBER: 707212  
 INSTITUTION: Special Offender Center  
 TYPE OF MEETING: .420 Release Hearing  
 DATE: August 5, 2003  
 PANEL MEMBERS: JA & JG  
 FINAL DECISION DATE: September 16, 2003

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**BOARD DECISION:**

This was a Deferred Decision. The full Board finds by a preponderance of the evidence that Mr. McCarthy is more likely than not to commit sex offenses if released, even on conditions, to the community, and adds 24 months to his minimum term. The Board recommends that Mr. McCarthy enter into and complete the SOTP (Sexual Offender Treatment Program) during this period of time.

**NEXT ACTION:**

Schedule .420 release hearing 120 days prior to ERD. The Board specifically requests a current ISRB 530/20-030 report (no more than six months old) that contains information on infractions, programming, victim contact, family contact and support, crime related issues, and reports from any specialized counseling or classes. Also, all 530 reports and infractions occurring since offender was last seen by the Board. The Board requests a complete instrument supported (i.e. MMPI-2, PAI, VRAG, LSI-R, etc.) psychological evaluation and/or Treatment Summary to include: behavioral observations, personal/criminal history, risk for violence, escape, and case management recommendations; which is no more than two years old at the time of the hearing. The value of personality inventories and their scores

(continued on next page)

3



McCARTHY, Donald T.

DOC #707212

NEXT ACTION CONTINUED - PAGE 2

is secondary to Risk Assessment Instruments and scores, especially with sex offenders. The Board also requests a complete copy of all **TYPED** reports relating to mental health only, located in both the central and/or medical files. If offender has ever participated in Chemical Dependency Treatment, the Board must have a signed waiver form and copies of all chemical dependency information located in either the central/medical/chemical dependency file. The classification counselor is required to attend the hearing and shall have file materials and details of inmate behavior at this hearing.

**HISTORY/COMMENTS:**

Mr. McCarthy is under the Board's jurisdiction for Assault Third with Sexual Motivation out of Clark county, with a time start of December 6<sup>th</sup>, 2002, and a maximum expiration date of December 1<sup>st</sup>, 2007. The Judge set a sentence of 12 months and one day following an Alford plea. Mr. McCarthy's crime is what the Board has termed a "strike and a half," as he also had a Sex Abuse in the First Degree back in the early 1990s. This was a sentencing in Multnomah county, Oregon, for frottage on a female under 12 years of age.

File materials indicate that about 4:47 in the afternoon of May 18<sup>th</sup>, 2002, at a B. Dalton Book Store in the Vancouver mall, the defendant, 60 years old, approached a 28 year old developmentally disabled female suffering from Downs Syndrome and began frottage, which was noticeable by her sister. The defendant indicated he was just being friendly and he later admitted that he practiced frottage regularly, two or three times a year. The polygraph that he has taken indicates some deception. He has admitted bestiality with horses and has a high priority for the SOTP. There appear to be some possible mental health issues. He demonstrates a high level of anxiety, controllable apparently by medications.

(continued on next page)

McCARTHY, Donald T.

DOC #707212

CONTINUED - PAGE 3

REASONS:

Though Mr. McCarthy demonstrates considerable disgust with his behavior and apologizes profusely, it's more in the vein of a childlike refusal. He is able to write the version of his offense and essentially details his regret over the offense. However, this particular behavior at this age and the type of victims that he specifically targets, for example youngsters in the early 1990s and someone suffering from Downs Syndrome, suggests that Mr. McCarthy is unable to control himself in spite of his best efforts and, therefore, the possibility of developing some insight by completing the SOTP prior to reconsideration for actual release to the community is appropriate. Mr. McCarthy indicated that he was the primary caregiver for his mother who recently died in a mobile home park, a senior residence. He does indicate that he has some resources on the outside including Columbia Mental Health, which was apparently part of his probation for the Multnomah county offense. He also has adult siblings and children who have indicated the possibility of coming and taking care of him. However, he also indicates that he still drives and he would still be available in low supervised situations to commit sex offenses. This is possibly not one of the more violent ones, but it's the one that is more casual and in view of Mr. McCarthy's repeat offending and the fact that he acknowledges doing it in the past, it's the Board's conclusion that unless he has some sex offender treatment in order to learn about his deviant desires and behaviors he would constitute an ongoing danger to the community, especially young, vulnerable, or mentally disabled people.

FACTS RELIED UPON:

The facts relied upon are an examination of the End of Sentence Review Committee report, discussions with Mr. McCarthy today, and a consideration of the nature of the behavior and it's history.

JA:jas/September 5, 2003

CC: INSTITUTION/RESIDENT/FILE

**UNOFFICIAL TRANSCRIPT OF  
DONALD T. MCCARTHY 420 HEARING**

Austin: Good morning, Mr. McCarthy.

McCarthy: Hi.

Austin: My name is John Austin. I'm the chair of the Indeterminate Sentence Review Board.

McCarthy: Yes sir.

Austin: Substitute for the old parole board, and I'll be conducting this morning's 420 hearing. This is a hearing for the Board to determine whether you are safe to be at large or whether you are a chronic sex offender and need to stay in custody. With me on the panel this morning is Ms. Garrett.

McCarthy: Hi, Mrs. Garrett.

Austin: I don't think you've met either one of us before. We have a third member, Margaret Martinez. All three members have to confer to decide what the decision should be. That means I will not make the decision today. Does that reassure you a little bit?

McCarthy: Yeah, I was told it would take a couple a weeks.

Austin: Very good.

Austin: Ah, the purpose of this hearing is to determine whether the preponderance of evidence shows that you're more likely than not to commit a sex offense if you're released. If we're satisfied that that's the case we can keep you for up to two years at a time. During that two years we'd expect you to submit to treatment. You'd be seen again probably in about 17 or 18 months. Do you have any questions about the procedure?

McCarthy: Ah, ah, I would like to have an attorney present?

Austin: We don't have attorneys at this particular hearing because the Department of Corrections has decided there would not be attorneys, and in order to avoid economic discrimination we don't allow attorneys at these hearings.

McCarthy: Okay, I was talking to one and he didn't know for sure...

Austin: Mr. Barnes?

McCarthy: Yes.

Austin: Yes. We've encouraged the department to have the legal services attorneys talk to you before these hearings. The only difference between this and a parolability hearing is that attorneys are at parolability hearings but not at these hearings.

McCarthy: Okay.

Austin: Is that clear?

McCarthy: Yes. Yes.

Austin: Any questions about that?

McCarthy: Um, No, I'm kinda slow so bear with me.

Austin: I'll bear with you.

Austin: Did you get a chance to make a written statement about why you're in custody?

McCarthy: Uh, yes I did.

Austin: Okay, may I see that file? And do you have a copy of it that you're keeping? I see this.

Austin: Okay, did you have a chance to go over the material about the crime? Uh, the details...

McCarthy: Yes, I saw most of it, yes.

Austin: In other words, the material that Ms. Garrett and I'll be looking at and talking about this morning I want to make sure you had a chance to go over it. Did you?

McCarthy: Yes, I, I did, I, I read over it kinda fast because there wasn't alot of time for the people to be with me to read it.

Austin: Okay, did you get a chance to talk about the case with Mr. Barnes at all?

McCarthy: No, I, I saw him before that.

Austin: Okay, and this statement that you've given me I'm gonna take it as an exhibit, ah, is this an accurate statement?

McCarthy: Yes it is.

Austin: Okay. In a moment I'm gonna swear you and your treatment counselors in and I'm gonna ask them to give a summary update of your performance and behavior in the institution. If I talk too fast or use any big words, Mr. McCarthy, tell me to stop and go over it again. I don't mind at all, okay?

McCarthy: Okay.

Austin: Okay. All of you will be sworn in and then I'll ask for a summary of their observations of your behavior while you've been in the institution. Ms. Garrett and I may have some additional questions, and we'll allow you to ask questions. They are fact witnesses and you can ask them questions to bring out anything that you don't feel has been brought out.

McCarthy: Okay.

Austin: After that has been completed we'll ask you some questions and you can make a presentation on your own behalf. Is there anything that I've said so far that's confusing to you, gone by a little bit too fast, would like me to repeat, or would you like me to explain something further for you?

Austin: Ah, no, I think, I think I heard it okay.

Austin: Okay, would all of you please raise your right hand and be sworn. Do you and each of you swear or affirm the testimony you're about to give in this proceeding be the whole truth and nothing but the truth?

All: Yes sir.

Austin: Okay. For the record, please state your name.

McCarthy: Donald T. McCarthy.

Merkner: James Merkner, correction (inaudible) counselor.

Slusser: Frank Slusser, classification counselor.

Austin: I should note Mr. McCarthy that that's a microphone on the table between us and I'm taperecording this proceeding. I'm gonna keep that tape in our office for about six months. If you want a copy of that tape for any reason during that six month period let us know in writing and send a blank 90 minute tape and a copy will be provided to you. Okay? And I've just gone over before swearing you in the fact that you've given us a statement that you wrote concerning this offense which the Board is gonna consider, and that you've had an opportunity to review material that the end of sentence review committee of the Department of Corrections looked at when they made their own finding, and that you've had a chance to talk briefly about the

procedure with a legal services attorney named Craig Barnes. Is all that accurate sir?

McCarthy: Yes sir.

Austin: Okay. And you've told us that you're a little bit nervous today?

McCarthy: Oh, very frightened.

Austin: And if we talk a little too fast you'd ask us to slow down. We don't mind at all.

Austin: Mr. Merkner, can you indicate the basis of your contact with Mr. McCarthy please?

Merkner: Yes. Ah, I've been seeing Mr. McCarthy just since 7/24 when Mr. Glaser indicated to me asked me to get involved in light of my prior work with Mr. McCarthy in the relaxation training group that I did in the spring of '03 and for which I gave Mr. McCarthy a certificate which would be one of three certificates he'll present today. So I knew Mr. McCarthy from that relaxation training group... available to work with him a little bit and come to the Board with him.

Austin: Okay. And what have been your observations since he's been here at the institution?

Merkner: Ah, he just came in March I believe, March 21, ah, and I ah, makes it clear that anxiety and nervousness has been the major mental health symptom and ah, he did seek help and got into my relaxation training group when that became available in the spring of '03. He successfully completed that and participated ah, ah, wholeheartedly in that and appears to have gotten some benefit from that and...

Austin: Why specifically was he sent over here?

McCarthy: Paranoid schizophrenia.

Austin: We'll ask you in just a minute, Mr. McCarthy. We'll take it step by step if you can listen, please.

Merkner: Reason for referral, offender is extremely fearful, anxious and paranoid. History of paranoid schizophrenia.

Austin: And that's manifest by his condition today, that's the way he normally presents himself when he's talking to you, or is he a little less nervous?

Austin: Is he taking any medication?

Merkner: No, he is a little nervous.

Merkner: Maybe a little less.

Merkner: got the medication records a couple of days ago. He's on diazepam, which is a (inaudible) diazepam, risperidone, which was one of the small dose one milligram, which is one of the modern antipsychotics, and Selexa, which is an antidepressant.

Austin: And he's dosed now, is that correct?

Merkner: Yes, he's been regularly and ah, quite conscientious in taking his medications. I don't see any refusals.

Austin: Does he do any acting out or any remarkable behavior since he's been in the institution?

Merkner: Ah, I don't believe there's been any major infractions from 7/17.

Austin: Thank you. Questions Ms. Garrett?

Garrett: No, I don't, thank you.

Austin: Do you have questions for Mr. Merkner, Mr. McCarthy?

McCarthy: Well, when Mark Glaser went on vacation, so Jim Merkner took over while he's on vacation. He's my regular counselor, Mark Glaser.

Austin: Fine. Okay, do you have any questions for Mr. Merkner? Anything that you think we should know that we might not have asked him or that he didn't mention.

Garrett: Or anything you think that Mr. Glaser might have told us that Mr. Merkner might not have readily (inaudible). Did you expect Mr. Glaser to give a different presentation?

McCarthy: I don't know.

Austin: Can you think of any questions that you would have asked Mr. Glaser?

McCarthy: Not really, no, not right now.

Austin: Okay. Mr. Slusser, how about a summary of your observations of Mr. McCarthy's behavior while he was in the institution.

Slusser: Mr. McCarthy arrived here at SOU on March 21, 2003 as Jim said he was sent here to (inaudible). Since he's been here he's not been a management problem. I did his end of sentence review and BMI referral and so I've known and had a good contact with Mr. McCarthy since he's been here at SOU. Um, he is a lot more right now kind of, how do you describe it, what you're

feeling right now, kind of anxiety, more than he usually is. Ever since he was informed that this board hearing was coming up in the last month or so he's been a lot more kind of paranoid, but his anxiety has been at a lot higher level, so on a normal basis it's not this high. Like I say I got to meet with him when he first came in here and interviewed (inaudible) twice as much as it usually is. Since he's been here I think I've mentioned before he's not had major infractions, he's not been a behavior problem, he's been attending Edmonds Community College, he's been taking some horticulture classes out there, he's been enrolled in relaxation groups, anxiety group, (inaudible) management, so he's been very prosocial and his being here in this program with Mr. Glaser and just being here on the unit. He keeps to himself mostly. He has some issues with another cellie and that was pretty much his, it wasn't his fault, that was pretty much his cellie's, it was more his cellie's really aggressive inmate. Program wise, he's been programming very well, everything that we've asked of him he's been participating in. We offer no sex offender groups here at SOU so that's for him at this time wouldn't be an option for him. But the groups that we wanted him in he's been taking and he's been participating in and he has received his certificates. Um, I haven't had an issue with him.

Austin: Okay. Ms. Garrett, questions for Mr. Slusser?

Garrett: Is he aware that if the Board suggests SOTP that he would have to do that in another institution that he couldn't stay here and do sex offender treatment?

Slusser: I think Mark has had an opportunity to speak with him. Um, I think he's aware that SOTP is over at Twin Rivers and that that's something that he would be required to participate in to get a transfer over there (inaudible) have to first come over here and review and make sure mentally he'd be able to participate.

Garrett: From your observations of him in just how he deals with stressors in general, um, does the concept of going to a different institution frighten him?

Slusser: I couldn't answer that. I don't. I have my own...

Garrett: Has he told you anything or if there's just anything that's come up that has given you any perspective. I'm not trying to pin you down it's just whether or not you had this come up.

Slusser: Um, I think um, we have described Mr. McCarthy as a very fragile person. Um, he's making progress. I do not know if he would be able to participate in SOTP at this time, complete it just due to his mental health conditions right now. So, um, like I say his anxiety is twice as much right now as it usually is. He's doing well at SOU, and um, that would be something I would prefer the mental health staff to evaluate and see if he can go there or participate.

Garrett: Sure. Okay, thank you, I have no further questions.

Austin: Do you have questions for Mr. Slusser, Mr. McCarthy?

McCarthy: Yeah. One thing. There were two bad cell mates that I had and I was also frightened at the arguments when people were told something and were talking about me. Not really threatening but talking.

Austin: What'd they say about ya?

McCarthy: Intimidation and pointing at me and talking, whispering and stuff.

Garrett: Do you know what they were saying about you?

Garrett: (Inaudible)

McCarthy: Not really, but the way I heard it was that ah, that (inaudible) said he heard it from a guard.

Garrett: So you didn't, this isn't something you saw but just something you heard that other people were talking about?

McCarthy: Yeah, at some point that whispering and stuff.

Garrett: Okay.

McCarthy: And then the other two bad cellmates I had at SOU, one of 'em masturbated, played with himself in front of me, completely nude trying to talk to me. And I said this is kind of inappropriate. And he got moved (inaudible) and I couldn't sleep that night and I got moved the next day. And then the other one was big and scary and bossed me around & stuff, and so I got transferred again and I got a good cell mate now.

Austin: Okay, good. Who is your cell mate now?

McCarthy: John Bradley.

Austin: How old is he. About your same age?

McCarthy: 34.

Austin: Who is Tom DeCourt?

McCarthy: Oh, oh, Tony DeCourt?

Austin: Tony DeCourt, yeah.

McCarthy: Tony DeCourt. I met him after I offended and was going through the court system.

Ah, actually, ah, my mother was getting sicker. I was her caregiver, and she was getting sicker, and ah, I had an appointment at Columbia Mental Health on the Wednesday. Well I went there and they said the person no longer worked there and they said well can I see an emergency person and they said, they said not to call him until, call him Monday and see if you can see him. Well, Monday the person that they said no longer worked there called me and said she was working there and to come in and see her on Wednesday, and I offended on that Saturday before that.

Austin: Why do you think you offended?

McCarthy: Well, I was just stupid. I wasn't ah...

Austin: What attracted you to the woman. What made you...

McCarthy: Well she was kinda heavy set and attracted to me. And ah, I started talking to her and looked at a book, she wanted to see a book, and she motioned to me, and ah, and I just shouldn't a done it. I...

Austin: Could you tell that there was something wrong with her?

McCarthy: After a little while, yeah.

Austin: You could tell when she talked that she had Down's Syndrome?

McCarthy: Yeah.

Austin: She talked kinda funny, had an interesting kind of shape of her face?

McCarthy: Yeah.

Austin: Who was in the store with ya?

McCarthy: No one was with me.

Austin: You were out there alone?

McCarthy: Yeah.

Austin: Okay, now you were on probation with Multnomah County at that time. In Oregon. Is that right?

McCarthy: No.

Austin: When were you off probation?

McCarthy: I was on probation in Vancouver and I got off in '96.

Austin: And what did you get on your probation for at that time?

McCarthy: I went to jail for three months for rubbing up against a boy in an arcade.

Austin: Why do you think you did that?

McCarthy: I was just letting my emotions get away from me and it was a very inappropriate thing to do, and I feel ....

Austin: This rubbing against (inaudible) is this the first time you did that again since you rubbed up against the little boy?

McCarthy: No, I've done it maybe six or eight other times before.

Austin: What made you...

McCarthy: Well I hadn't done it since I was arrested but ah, I, probably sexual attraction, uh....

Austin: Are you excited whenever you see them, whenever you saw the one, you said you were attracted to her?

McCarthy: Ah, I didn't have an erection, but I was ah, attracted to her, and all I know is it's not gonna happen again. I have a family and friends support system letter, here.

Austin: Now your mother's died since you came in...

McCarthy: She, she, she, got sicker. I was her caregiver and she wasn't only my mother she was my best friend and she was getting sicker, and ah, I was going through the court system at the same time and I went through a lot of trauma and she died on the 9th of September 2002, and ah, we had the funeral and things and I was able to still be free to be there.

Austin: Did you get to go to the funeral?

McCarthy: Yes, I did. ....still seeing her alot because I couldn't care for her anymore she was too sick.

Austin: Did you all live in a mobile home?

McCarthy: Yes I do, in a senior mobile home park.

Austin: Who also lives there with you?

McCarthy: Well after my mother passed away the first of October my girlfriend moved in with me, and it wasn't good for me to be alone and my son would come and spend the night sometimes because I was still, you know, very upset and going through a lot of anguish and trauma.

Austin: How old is your son?

McCarthy: He's 39.

Austin: Okay, does he have a family?

McCarthy: He's, he's going, got a divorce. He's getting a divorce. His divorce is final now and he's got a new girlfriend.

Austin: Does he live in Vancouver, also?

McCarthy: He lives in Warren, Oregon, it's just north of Portland a ways.

Austin: Fairly close.

McCarthy: Yes.

Austin: How often would you see him, would he stop by and see you and your mom?

McCarthy: Ah, he was coming quite a bit there when mom was sicker, and they put her in the hospital and then they had to put her in a nursing home 'cuz she was too sick for me to care for her.

Austin: How long had you lived with her?

McCarthy: I'd lived with her since the end of '95.

Austin: So this is after you had that first trouble?

McCarthy: Yes.

Austin: Okay. And you mentioned your girlfriend. How long had you been going with her?

McCarthy: I met her on the 18th of September in 1993.

Austin: And ya'll been together ever since?

McCarthy: We broke up once for awhile and got back together for about a month maybe.

Austin: Does she know where you are now?

McCarthy: Yes. She's, she's aware. She writes me and I write her.

Austin: How frequently do you write to each other?

McCarthy: Well, usually once a week.

Austin: She still in Vancouver?

McCarthy: She's living in my place now.

Austin: And about how old is she?

McCarthy: She's 57 going on 58.

Austin: She have any kids?

McCarthy: She's got a daughter.

Austin: How old is the daughter, about?

McCarthy: The daughter is about 37, I think.

Austin: Are there any young kids, under 15 that are around that place?

McCarthy: No, it's a senior retirement court, 55 and older.

Garrett: Now, is your girlfriend's daughter the one who is mentally handicapped?

McCarthy: Yes, she is.

Garrett: And there's some information that she said in one of the end of sentence review reports that you've been rubbing on her ever since her mother met you on the internet. Did you meet her mother, your girlfriend, on the internet?

McCarthy: No, by letter, in the newspaper.

Garrett: Okay. But you met her through, um, other than normal means, you didn't meet her through a friend, you met her through a newspaper ad?

McCarthy: Yeah, she sent me a letter yeah.

Garrett: Now, the daughter who's mentally handicapped also, there's no charges around that young woman, correct? You've never been charged...

McCarthy: It didn't happen.

Garrett: Okay, well she says you've been rubbing on her so why would she say that. She's also mentally handicapped, the victim in the current case is mentally handicapped, why do you think that she would say you'd been rubbing against her since her mother met you?

McCarthy: She's made up all kinds of things. Like she hallucinates, and she can't control it, and the medicine they put her on can't control the hallucinations, and she said things about going to Canada for a month when she was living with her mother to go follow a preacher that went up there and was gone for a whole month, but three guys tried to put the mark of the beast on her forehead and she kicked 'em down and knocked 'em around and drove 'em out of the place and she wasn't home. And she said her ex-husband, girlfriend's ex-husband, grabbed her and tried to bother her downtown on the streets, and she's said all kinds of things.

McCarthy: No, no, I didn't do that.

Austin: If you went back to that mobile home, ah, with your mother there, could you still live there?

McCarthy: Yes.

Austin: Why, who would pay for it?

McCarthy: I'd pay for it.

Austin: Okay, out of what?

McCarthy: I got SSI disability.

Austin: Okay, about how much do you get a month?

McCarthy: The rent, ah, about five, I think it's up to \$552 and the rent is \$355 for the space, and my girlfriend ah, works part-time and ah, she is also disabled and gets ah, SSI too.

Austin: What's her disability?

McCarthy: Ah, she had a stroke before I met her, and it was like a hemorrhaging, she was out for a while and then she's back and she had also, its, ah, handicapped her, ah, I'm not sure what they call it, but it, she goes to mental health, and ah...

Austin: Does anybody come by and see you where you live, see how you're doing?

McCarthy: A neighbor, a couple a neighbors, and they been concerned about me but I haven't talked to 'em or written to em.

Austin: How do you get around, do you walk, ride the bus, do you drive?

McCarthy: Well I did have a car, I was driving.

Austin: Really...

McCarthy: Yes. .

Austin: Would you be driving again if you got out?

McCarthy: Yes I'm gonna go to treatment and Columbia Mental Health and do a bunch of things to improve my life and I got a lot of safety precautions. I got this letter here from my support group, friends and family.

Austin: Is this your only copy? If I can I'd like to keep it for our file.

McCarthy: You can keep it cuz he made a copy of it.

Garrett: Mr. McCarthy, do you know what Mr. Austin and Ms. Martinez and I have to decide in order to make a decision on your case. Do you know what's at issue here?

McCarthy: Yes I do know, that's why I'm so frightened.

Austin: Go ahead and tell us, what?

Austin: Go ahead and tell us what's at stake.

McCarthy: Whether I get released or have to stay in prison for longer.

Austin: How much longer?

McCarthy: Well I was told I could stay in until 2007.

Garrett: Do you know what questions we have to answer in making our decision. Has anyone told you what the...

McCarthy: Yeah, I'm safe to release in the community.

Garrett: The question is, by preponderance of the evidence is it more likely than not that you'll commit another sexual offense if we release you at this time.

McCarthy: It's not gonna happen.

Garrett: And if the answer's yes, then we can hold you for another two years and look at you again in two years. If the answer's no, then we can find you releasable.

McCarthy: The answer is no, I'm not going to.

Garrett: Well, we look at a number of things.

McCarthy: Right.

Garrett: We look at what the current offense is, we look at what led up to it, we look at prior convictions, we look at every piece of information. There's no one piece of information that's a deciding factor. We look at everything. And um, one of the things that concerns me is the conviction in Oregon and the fact that you appear to have done this other times when you haven't been caught, and its, um, you know, a big concern, and the fact that you went up to this woman that you didn't know in a store and were rubbing against her in a sexual manner is a huge concern.

McCarthy: I realize it now.

Garrett: And I think you understand that everybody tells us they'll never do it again. I've never had anybody in my almost ten years on the Board that said to me I'm gonna commit another sexual offense if you release me. They always tell me no. And, quite often, well not quite often but on a number of occasions, they have gone out and offended again so it's a pretty big job we've got here on whether or not we think someone's safe to be at large. Now, I have some concerns. I'm only one person on the Board, but I have some concerns that you're not safe to be released. If the Board were to suggest that you go to SOTP, the sex offender treatment program, is that something you think you'd be willing to give a try...

McCarthy: Yes.

Garrett: ... going to talk to them. I don't know if they'd take you and you apparently have already been rated a high priority, um, so, apparently, they...

McCarthy: My counselor said I was low priority. My other counselor. I don't know why he said that. He didn't have that information.

Garrett: Said that they have reviewed and rated you a high priority.

Austin: I hadn't discussed that (inaudible) with Mr. Grazer. He was not aware of the (inaudible) until I pointed out ...

Garrett: So, if they give you a low priority or even a medium priority it might be a little bit sketchy if they consider you, but when they give somebody a high priority it means their willing to put you on a waiting list, and I guess just this one vote I would like to see you ah, there are aspects of your history about your having sex with horses over a hundred times.

McCarthy: Not over. But near.

Garrett: But even once is something that's a bit unusual. I mean...

McCarthy: Yeah. It was.

Garrett: Whenever you start having different aspects of sexual deviancy, um, you know often gives us a pretty unsettled feeling about someone's safety...

McCarthy: Well I would never harm anyone or force sex on...

Garrett: You don't think this woman was harmed having some guy she doesn't know rub against her?

McCarthy: Yes she was.

Austin: What amount the inmate that was naked and masturbating in front of you and you couldn't sleep all night. See that's the way we look at it. When you're rubbing against somebody...

McCarthy: Yeah.

Austin: They remember feeling...

McCarthy: Yeah, yeah.

Austin: Who's John McCarthy?

McCarthy: That's my son.

Austin: And he's approximately 39?

McCarthy: He's gonna be 40 this month.

Austin: He's just divorced?

Austin: And who's Pamela Lynch?

McCarthy: Pamela Lynch is his girlfriend.

Austin: And does she know about your problems?

McCarthy: Yes.

Austin: Okay.

Austin: And Anthony McCarthy is your other son?

McCarthy: Yes.

Austin: And how old is he about?

McCarthy: He's 27.

Austin: And Kelly Neinhaus (sp?)?

McCarthy: Yes.

Austin: Who's she?

McCarthy : She's his girlfriend.

Austin: And you have a sister, Nancy. She lives in The Dalles.

McCarthy: Yes sir.

Austin: Okay.

Austin: And Pat. How old is Nancy.

McCarthy: Nancy is ah, 56, and Pat just turned 58.

Austin Do they have little children under 15?

McCarthy: No.

Austin: And they've known about your problems.

McCarthy: Yes.

Austin: And all of them are within about an hour of where you live down there in Vancouver?

McCarthy: Well my sons are closer, but my sister is in (inaudible) , which is a little farther past Battleground, and my other sister in The Dalles is a couple a hours away.

Austin: When you're out do you take medications?

McCarthy: Yes I do. I always do.

Austin: Okay, now what kind of medications are those?

McCarthy: (inaudible) they put me on some ah, Librium after I got in trouble and my mom was getting sicker, and to calm my nerves 10 mgs. of Librium and they changed it to Valium, its 5 mg. here.

Austin: How do those medications make you feel?

McCarthy: Well, I usually feel alright. I...

Austin: What happens when you start to come off, I think they say decompensate, whenever you feel like you might need the medications again, how do you feel...

McCarthy: Well, I was in the jail when I was first arrested and they didn't give me no medicine and about 11 o'clock at night I was starting to twitch and starting to freak out and stuff and I couldn't sleep and ah, they bailed me out, my mom did. I used to have an old collector car I sold to pay for the bail.

Austin: I noticed that your hands shake a little bit. Do your hands shake all the time or is that just cuz your nervous and scared?

McCarthy: (inaudible)

Austin: So it doesn't happen all the time?

McCarthy: No.

Garrett: What do you think is important for us to consider, if anything. Is there any one particular or several particular things that you think is important for us to look at?

McCarthy: Yes there is. I'm going to go to Columbia Mental Health and get my counseling and guidance and my medication there. I have a very good family and friends support system. I was my mother's caregiver. We were close. She was getting sicker when I got arrested and died when I was going through the courts. I went through a lot of trauma. I already said that, but anyway. I

went through some scary times in prison with people talking about me, and had two scary cellmates which I also talked about, and ah, I would like to add that this has been a very scary time for me and I feel that I've learned my lesson and ah, I'm getting pretty old and I feel that I will not offend again. It's just simply not worth it. And its the wrong thing to do. I'm deeply ashamed of myself. I'm disgusted with myself for what I did.

Austin: Well, we're not here to beat up on you Mr. McCarthy. You're in custody and your serving your time for the crime. Our job is to determine whether people are going to be safe to be around you in the future. Obviously there's some guesswork on this. You hit this once before had a period of probation and apparently were either didn't do it or were not caught. It's a crime of fortunately fairly minor proportions unless you happen to be the one that somebody's rubbing up against, as you saw yourself in a jail cell when somebody's doing something like that it does hurt you it does have an effect on you, ah. Our job primarily is to decide if you can control yourself in the community or if your gonna need some additional help.

McCarthy: This family support system is gonna help me and the treatment. I'm gonna pay for it and go to treatment...

Austin: I accept your sincerity now. I know that you're scared. You'd like to get out and you feel like that there's a good program. I accept that you're telling me the truth. Ah, the concern of each board member has to be is would you be able to control yourself if somebody wasn't watching you if you went over to a bookstore for example and saw somebody that attracted you? Circumstances change and that's what I have to be concerned with.

McCarthy: I feel that I would be able to now, after this.

Austin: The reason you're under our jurisdiction for example is only because you have no prior offense. Offense the assault in the third degree you would not even be under our jurisdiction except that you have this history. Did you understand that?

McCarthy: Yes sir.

Austin: If you were to be released on community custody you'd be under the supervision of the Department of Corrections all the way up until December of '07, plus your family support group, but as I say...

McCarthy: I have this list here, if you'd like to hear....

Austin: I got it already and I read it.

McCarthy: Oh, okay.

Austin: I don't want to cut you off. As Mr. (inaudible) says, I have some concerns about how

you'd do at SOTP, but its a factor that each of us has to make up our mind about. Is there something that you think we should know that we might not have talked about that you'd like to make sure that we know about? This is like going to the doctor, after you leave is when you figure out all the things that you wanted to ask your physician about so is there anything you can think of now that you think Ms. Garrett and I should know about when we start to talk about & think about our decision?

McCarthy: One time I started to go up to a boy and started to rub up against him and got disgusted with myself and thought no, this is wrong, this is sick, and I got away from him.

Austin: Okay, anything else we should know?

McCarthy: I'm just disgusted with myself. Ashamed of myself.

Austin: Alright. I've got to conclude the hearing. Ms. Garrett and I will talk about what we think the decision should be and then we'll talk with Ms. Martinez sometime in the next week or two. We have two part-time members and one full-time member. We know you want to know what we've decided in your case as soon as possible so we won't drag it out, but it will take a week or more. And probably it'll take three or four weeks before you find out what the decision is simply because of the mechanics. It has to get typed and everything else. Now you can't do anything else about it except wait for our decision so I hope you won't be under too much pressure about that.

McCarthy: Yes sir.

Austin: One of the things we can do is to say alright, were satisfied that he can be supervised in the community. That's one of the things we can do. Another thing we can do is to say no, this man needs some assistance to figure out what makes him do these things, and so we'd extend you for two more years, you'd have to serve 85% of that time, so you'd have to serve about 17 months. You'd be seen by the Board in just over a year if you completed the sex offender treatment program. Now sometimes that goes by quickly. So that's the only two decisions that we can make. Whether you're safe to be at large, in which case that what it would say, and then we would expect you to put together a release plan, proper address, a community corrections officer that could supervise you. That's one decision. The other decision is you'd serve at least another 17 months, and we'd expect you to go to sex offender treatment program. So you wouldn't automatically serve all the way to 2007. We have the authority to hold you for about two years, and because of your good time you'd serve about 85% of that. Do you have any questions about that?

Austin: Take your time.

McCarthy: No.

Austin: Okay. If after this hearing something occurs to you that you think is real important and that we should know you can write to us.

McCarthy: Okay.

Austin: ...and we'll consider it because you know the decision is gonna take three or four weeks by the time we get through fooling around and everything.

McCarthy: This was my release date, did you know that?

Austin: Today? Okay. And your problem is that you're under our jurisdiction and so you have to wait for the decision. Okay, that's what makes you nervous. Make's us nervous too. We try to make the right decision, Mr. McCarthy. That'll conclude this hearing.

McCarthy: Thank you. Have a good afternoon.



DI80 0 707212

IISO180

TEST SCORE HISTORY

06/12/03 13.44.28

PAGE 1

DOC NO: 707212

NAME: MCCARTHY, DONALD T.

STATUS: ACTIVE

CUR.LOC.: MCC SOC

ERD: 08/05/2003

TEST TYPE	DATE TAKEN	LOC. COND.	LEV.	UNIT FORM	SCORES	
BETA	12/17/02	C01 X		M IQ	PC	
				072	03	
ECSM	01/02/03	C01 N	1	30 M	SCAL	
					203	
ECSR	01/02/03	C01 N	1	30 M	SCAL	
					207	

OPTIONS: I=INQUIRY, C=CHANGE, D=DELETE  
INQUIRY COMPLETE

5

DEPARTMENT OF CORRECTIONS  
**CLASSIFICATION REFERRAL**

PACKET	
<input type="checkbox"/>	CAMP ASSIGNMENT
<input type="checkbox"/>	COMMAND MANAGER
<input type="checkbox"/>	DIRECT COMMUNITY SERVICES
<input type="checkbox"/>	HCSC
<input type="checkbox"/>	CHIEF, CLASSIFICATION
<input type="checkbox"/>	NO ACTION REQUIRED

REVIEW PERIOD: 12-06-02 TO: 12-27-02 FACILITY/LIVING UNIT: WCC-RC jfa *12/27/02*

1. REFERRAL AGENT: RICH BOWMAN, CCIII	REPORT DATE: 12-27-02	2. MXED: 12-01-07	3. NRD: TBD
<b>4. REVIEW OF CLASSIFICATION FOR:</b>			
<input checked="" type="checkbox"/> INITIAL (RC)	<input type="checkbox"/> CAMP	<input type="checkbox"/> W/R	<input type="checkbox"/> ISRB
<input type="checkbox"/> Six Month/Annual Review	<input type="checkbox"/> Ad Seg	<input type="checkbox"/> PPR	<input type="checkbox"/> Transfer
<input type="checkbox"/> Other (specify)			

**5. NARRATIVE:**

**PROGRAMMING:** See test battery results for program recommendations.

**SERIOUS INFRACTIONS:** None.

**MENTAL HEALTH:** McCarthy said that he has received mental health treatment since 1980 beginning at the Woodside Mental Health Center. He said that he is currently taking medications.

**COMMUNITY SUPPORT/RELEASE PLAN:** McCarthy owns a mobile home at 15509 Mill Plain, #44, Vancouver, WA 98684. The phone number is 360-896-5456. His girlfriend, Mary Ann Trueblood, is residing there.

**EMPLOYMENT/EDUCATION/TRAINING:** McCarthy said he completed the 11<sup>th</sup> grade and last worked painting houses. He has been disabled since the 1980's. He has received SSI since he was diagnosed with mental illness.

**COUNSELOR COMMENTS:** McCarthy is a CCB case with a PERD of 10-10-03. His ICD score is 52, which equates to **Minimum Custody**.

McCarthy has been advised that he will have a .420 hearing and prior to that hearing will be asked to participate in a polygraph and possibly a psychological assessment.

I am recommending that McCarthy be placed at WCC-TC in the Special Needs Unit. McCarthy has mental health needs that are being addressed with medications and he is stable on these medications. He is a slightly built 61-year-old man that likely would be victimized if placed in general population.

**INMATE CHOICE:** 1) WCC-TC-SNU. 2) MICC

**RECEPTION CENTER CLASSIFICATION RECOMMENDATIONS/ACTION:**

**DATE:**

*Min. Custody* *1/17/03*  
*MICC TRAC - 102*  
*Spcl. 3 code*

*Paul Stewart*

**OFFICE OF CORRECTIONAL OPERATIONS RECOMMENDATIONS/ACTION:**

**DATE:**

*(MCC)* *MICC*  
*WCC/TC/SNU (#01)*

*J. Meyer* *1/27/03*

6. DOC NUMBER <b>707212</b>	NAME: LAST <b>MCCARTHY,</b>	FIRST <b>Donald</b>	MIDDLE <b>T.</b>
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**STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS**

**OFFENDER ACCOUNTABILITY PLAN**

Plan Information	
Offender Name MCCARTHY, DONALD T	DOC Number 707212
Date Developed 03/28/2003	Revision Date 03/28/2003

Offender Information					
RM Level RMA	Custody Level MI3	VRAG Bin # 0	Guardian No	RM Team No	Offender Signature TBD
DMIO No	Level 3 No	41+ Violent Conviction No	RMA Other Yes	SOTP No	CPU No
Earliest Release Date 08/05/2003			Maximum Release Date 12/01/2007		
Earliest Community Custody End Date			Scheduled End Date		
Facility/Officer MONROE CORR. COMPLEX-SOC					
CC/CCO Name SLUSSER, FRANK			Facility/Officer Telephone 3607942200		
Facility RMS Leslie Raphael			Community RMS		

Sentence Information			
<b>Prefix</b> B	<b>County</b> CLARK	<b>Cause Number</b> 021010181	<b>Crime Description</b> ASSAULT 3

Collaborator Information	
<b>Name</b> Marc Glaser	<b>Type</b> Mental Health Treatment Provider

Risk Factors					
LSI-R Risk Factors	Initial	Current	Percentile	Need Rating	Targeted
Criminal History	5	3	N/A	N/A	
Education/Employment	9	9	75	High	
Financial	2	2	100	Medium	
Family/Marital	2	3	93	High	
Accommodation	1	1	78	High	
Leisure/Recreation	2	2	100	High	
Companions	0	0	24	N/A	
Alcohol/Drugs	6	1	31	Low	
Emotional/Personal	5	5	100	High	
Attitudes/Orientation	2	2	76	High	
<b>LSI-R Score Totals</b>	34	28			
<b>Other Risk Factor</b>					<b>Targeted</b>
Sexual Deviancy					
Cognitive Impairment					
Mental Health					✓
Medical					
Other					
Narrative					
I/M McCarthy is currently SMI with ongoing mental health issues. He has an OAA conviction with no community placement.					

Offender Risk/Need Summary
<p><b>Criminal History</b>                      11/22/02 STILL VERIFYING CRIM HISTORY. QUESTIONS ON OREGON CASES. EMAILED OREGON TO TRY TO CONFIRM CRIMES. SENTENCE LISTED ON TWO, BUT NO OFFENSE INDICATED--LIKELY MISDEMEANORS. THESE COMMITTED AS ADULT BETWEEN 22 AND 33 YRS OF AGE. THEFT 2 FROM 74 CONFIRMED,SEX ABUSE 1, INVOLVING 2 VICTIMS--ONE MALE AND ONE FEMALE--BOTH UNDER 12. P ENGAGED IN FROTTAGE WHILE IN VIDEO ARCADE. INSTANT OFFENSE IS FROTTAGE WITH MENTALLY-HANDICAPPED VICTIM IN BOOKSTORE. IN COURSE OF INVESTIGATION PROSC RECV'D CALL FROM P'S CURRENT GF'S MENTALLY-DISABLED DAUGHTER WHO CLAIMS P HAS BEEN OFFERING HER \$5 TO "CUDDLE" AND WAS ACTUALLY LYING AND/OR STAND 11/22/02 M QUINTANA STANDING BEHIND HER RUBBING HIS PELVIC AREA AGAINST HER. THIS GF'S DAUGHTER, T.T. SAID THIS BEHAVIOR HAS BEEN GOING ON SINCE 1993. SHE CAME FORWARD AS SHE KNEW ABOUT THE INSTANT OFFENSE BECAUSE P'S SISTER CALLED P'S GF, AND TOLD HER PGOT ARRESTED FOR DOING THE "SAME THING" TO A GIRL WITH DOWN'S SYNDROME."THE GF'S MOM, WHO PLANS TO REMAIN WITH P, DOES NOT BELIEVE HER DAUGHTER'S ACCUSATIONS REGARDING P. THIS CASE NOT FILED ON THE CONDITION THE DAUGHTER NOT LIVE IN THE HOUSE WITH P AGAIN. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN</p>
<p><b>Education/Employment Narrative</b>                      11/22/02 P RECEIVES SSI OF \$545 AND HAS SINCE BEING DIAGNOSED WITH PARANOID SCHIZOPHRENIA IN THE EARLY 1980'S. HE DOES HAVE EXPERIENCE WORKING EARLIER IN LIFE (1964-1968) AT PDX BUILTWEEL FURNITURE AS A PACKER. ALSO WORKED IN PDX (1969-1971) AT NEW YORK MERCHANDISE DOING WHAREHOUSE WORK. HE JOINED NAVY AT 19AND REC'VD A HARDSHIP DISCHARGE AFTER 4 OR 5 MONTHS (HE CLAIMS) AS HE HAD TO HELP TAKE CARE</p>

OF HIS ILL FATHER. HE SERVED IN THE NAVY RESERVES TILL 1996. P SAYS HE ATTENDED REG HS BUT DID NOT GRADUATE. THEY LIKELY LACKED SPECIAL ED PROGRAMS IN THOSE DAYS. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Financial Narrative

11/22/02 P RECVS SSI GRANT DUE TO MENTAL DISABILITY; LOW INCOME AND WILL LIKELY HAVE A TOUGH TIME SURVIVING WITHOUT A ROOMATE. P'S GF, MARRIANE TRUEBLOOD ALSO SAYS SHE CAN'T PAY RENT WITHOUT HIS HELP. P WILL SURELY REC S/O CONDITIONS WITH STANDARD TX, BUT DON'T SEE HOW HE WILL BE ABLE TO PAY THIS. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Family/Marital Narrative

11/22/02 P HAS A GF, MARIANNE TRUEBLOOD. HIS 83 YR OLD MOTHER, BETTY MCCARTHY DIED 09/09/02. P WAS HER CARETAKER AND THEY HAD A VERY CLOSE RELATIONSHIP. ACCORDING TO HIS SELF REPORT AND THAT OF HIS MENTAL HLTH WORKERS, THAT EVENT DEVASTATED HIM. HIS SON, TONY MCCARTHY, AGE 26, ATTENDED PSI INTERVIEW, ALONG W HIS GF, MARIANNE TRUEBLOOD AND HIS MENTAL HLTH ADVOCATE, PAM. P HAS ANOTHER SON, JOHN, AGE 39 AND A DAUGHTER MEGAN, AGE 25. THIS APPEARS TO BE THE EXTENT OF HIS FAMILY SUPPORT. HIS FATHER DIED OF BRAIN CANCER WHEN HE WAS 19. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Accommodation Narrative

11/22/02 ACCOMODATIONS ARE NOT YET DECIDED. P WILL PROBABLY HAVE SOME S/O-RELATED CONDITIONS FOR APPROPRIATENESS OF THE RESIDENCE/LOCATION. CURRENTLY RESIDES 15509 MILL PLAIN #44 VANCOUVER 98684. IT IS POSSIBLE HE AND THE GF MIGHT GET TOGETHER IF THE DAUGHTER MOVES FROM THE GF'S RESIDENCE AT FRAN MAR, BUT THAT LOCATION WOULD ALSO NEED TO BE APPROVED, AS WILL THE MILL PLAIN RESIDENCE. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Leisure/Recreation Narrative

11/22/02 P HAS FEW SOCIAL OUTLETS. HE LIKES TO WANDER AROUND MALLS AND "PEOPLE WATCH" WHICH SEEMS TO CORRELATE WITH THE REPEATED FROTTAGE SITUATIONS. P IS NOT A MEMBER OF A CHURCH NOR ANY OTHER PROSOCIAL OR ORGANIZED GP. DOES NOT PARTICIPATE IN A DAY PROGRAM THROUGH MENTAL HLTH 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Companions Narrative

11/22/02 P ASSOCIATES MAINLY WITH FAMILY. HE IS AFFIABLE AND HAS GOOD VERBAL SKILLS, BUT HIS MENTAL HLTH ISSUES AND SOME OF HIS UNUSUAL HABITS LIKELY CONTRIBUTE TO HIS LACK OF SOCIAL CONTACTS. ODDLY ENOUGH, P DESCRIBED AN OCCURANCE AT THE LOCAL GOODWILL STORE, WHERE HE "RUBBED UP AGAINST" A WOMAN AND THEY STRUCK UP AN ACQUAINTANCESHIP (FOR LACK OF A BETTER WORD) AND "DATED . . ." 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Alcohol/Drugs Narrative

11/22/02 P BOASTS HE HAS BEEN CLEAN AND SOBER FOR 17 YRS. HE STATES HE DRANK INTO HIS 30'S AND RECEIVED A DUI IN 83, ALTHOUGH DO NOT SEE A RECORD OF THIS ON THE CRIM HISTORY. P STATES HE DOES NOT ENGAGE IN ILLICIT DRUG USE OF ANY KIND. HE IS MEDICATED WITH PX PSYCHOTROPICS HOWEVER AND HAS BEEN FOR A NUMBER OF YRS. P AND HIS ADVOCATES/FAMILY CLAIM HE ACTED OUT IN THE INSTANT OFFENSE DUE TO STRESS FROM HIS MOM'S ILLNESS/DEATH AND THAT HE NEEDED A MED ADJUSTMENT. 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

## Emotional/Personal Narrative

11/22/02 P HAS SIGNIFICANT MENTAL HLTH ISSUES. HOSPITALIZED IN 1980 AT WOODSIDE MENTAL HOSP AND WAS THERE ON AND OFF. NOW SEES TONY DECORT AT COLUMBIA RIVER MENTAL HLTH. DIAGNOSED PARANOID SCHIZOPHRENIC. HE IS CURRENTLY STABLE ON HIS MEDICATIONS. P'S RISK OBVIOUSLY INCREASES IF HE SHOULD GET OFF HIS REG MEDICATION SCHEDULE AND/OR USE ALCOHOL OR ILLICIT DRUGS. ALSO LIKLIHOOD OF DANGEROUS DRUG INTERACTION WITH THE MEDS HE IS TAKING. EMOTIONAL: P MINIMIZES EVERYTHING. REFERS TO FROTTAGE BEHAVIOR WITH VICTIMS AS "BUMPING INTO" THEM. P GOT MENTLA HLTH

(NAMI) INVOLVED IN THIS CASE, ATTEMPTED TO SHOW HE WAS NOT COMPETENT. WAS FOUND COMPETENT. PLEA STANDS 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

Attitudes/Orientation Narrative

11/22/02 P IS COOPERATIVE AND POLITE, BUT MAKE EXCUSES AND APPEARS IN DENIAL ABOUT HIS OFFENSES. HE HAS RATHER ODD EXPLANATIONS FOR THE REOCCURRING SITUATIONS INVOLVING FROTTAGE BEHAVIOR WITH STRANGERS. SAYS THE CHILD IN THE VIDEO ARCADE FROM TH E93 CASE (WHO WAS MALE), WAS VERY FEMININE LOOKING AND BIG FOR HIS AGE. KID WAS 11. SAYS HE IS "FLIRTATIOUS" AND "VERY FRIENDLY" AND THAT IS WHY HE KEEPS GETTING INTO TROUBLE OVER TOUCHING PEOPLE. SPOKE W P ABOUT THE DIFFERENCE BETWEEN INADVERTENTLY BUMPING INTO SOMEONE AND INTENTIONALLY RUBBING UP AGAINST THEM IN AN INAPPROPRIATE MANNER. P INITIALLY DENIED, THEN MINIMIZED. FINALLY USED EXCUSES AND RATIONALIZED 11/22/02 M QUINTANA 02/28/2003 06:44 PM UNKNOWN

Description of Violence

*None entered*

Victim and Community Concerns

*None entered*

**Risk Analysis Narrative**

Risk Analysis Narrative Summary

Program Needs: Mental Health. Overall Goals: Reduce overall level, frequency, and intensity of the anxiety so I/M McCarthy's daily functioning is not impaired.

**Intervention Strategies for Targeted Risk Factor *Mental Health***

Compliance Narrative

Goals: 1) Anxiety reduction: Identify an anxiety reducing coping skill that has been successful in the past, and practice its use. 2) Anxiety reduction: take anxiety-reducing medications and be 100% medication compliant. 3) Anxiety reduction: Enroll and complete psycho-educational groups in anxiety reduction and relaxation techniques.

I/M McCarthy has been infraction free since being incarcerated, is cooperating with mental health staff, and has been medication compliant.

Conditions Per Cause		
Cost of Supervision Assessment \$0.00	Cost of Supervision Balance \$0.00	
<b>CLARK Cause 021010181</b>		
LFO Payment Scheduled Amount \$0.00	LFO Balance \$1,110.00	LFO as of Date
CSH Balance (hours) 0	CSH Work Site Name	CSH as of Date
	<b>Authority</b>	<b>Compliance</b>
Maintain educational, vocational program. Do not change course of study or drop out w/o approval -	COURT	TBD
Maintain lawful employment & provide proof of employment to DOC staff as directed -	COURT	TBD
Shall reside at a location and under living arrangement as approved by CCO -	COURT	TBD
Perform affirmative acts as ordered by court and/or Department of Corrections -	COURT	TBD
Pay all court ordered legal financial obligations and/or restitution as directed by CCO -	COURT	TBD
Pay cost of supervision fees to department of corrections as directed by CCO -	COURT	TBD
Notify CCO of any change in employment -	COURT	TBD
Notify CCO upon receipt of a prescription for controlled substances -	COURT	TBD
Notify CCO of any arrest or citations -	COURT	TBD
Submit to plethysmograph examination as directed -	COURT	TBD
Do not work at or be in places frequented by minors -	COURT	TBD
Do not enter parks, pools, playgrounds, school yards or other locations frequented by minors -	COURT	TBD
Do not commit a crime that mirrors originating offense -	COURT	TBD
Do not use alcohol -	COURT	TBD
Do not consume controlled substance except pursuant to lawfully issued prescriptions -	COURT	TBD
Do not have direct or indirect contact with any victim - FEMALE VICTIM DOB 5/8/74 DEV DISABLED NO END DT	COURT	TBD
Have no contact with minors -	COURT	TBD
Do not possess or peruse pornographic materials unless authorized -	COURT	TBD
Submit to urine testing as directed -	COURT	TBD
Submit to polygraph examination as directed -	COURT	TBD
Remain within or outside of geographical boundaries as specified -	COURT	TBD
Do not use/possess/purchase/consume alcohol -	COURT	TBD
Do not reside with anyone who is a parent/legal guardian of minor children -	COURT	TBD
Do not use/possess/consume any controlled substances without a lawfully issued prescription -	COURT	TBD

Do not associate with drug users or sellers except in context of C.D. treatment program -	COURT	TBD
Do not consume alcohol -	COURT	TBD
Submit to breathalyzer testing as directed -	COURT	TBD
Do not have direct/indirect contact with codefendant(s) or crime partner -	COURT	TBD
Enter into and participate in mental health treatment as directed -	COURT	TBD
Obey all municipal, county, state, tribal and federal laws -	COURT	TBD
Submit to HIV testing and pre/post test counseling as directed -	COURT	TBD
Submit to DNA blood draw and testing as directed -	COURT	TBD
Register with sheriffs office in the county of residence as required by law -	COURT	TBD
Enter into and successfully complete a sex offender treatment program -	COURT	TBD

Document History				
Date	Document	New State	Author	Position ID
03/28/2003	OAP	In-Work Pending Approval	SLUSSER, FRANK	C451
03/28/2003	OAP	In-Work Updating	SLUSSER, FRANK	C451

FILED  
JUL 25 2002  
JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF WASHINGTON  
FOR CLARK COUNTY

STATE OF WASHINGTON,  Plaintiff,  vs.  DONALD TIMOTHY MCCARTHY,  Defendant.	No. 02-1-01018-1  STATEMENT OF DEFENDANT ON PLEA OF GUILTY
---	---

1. My true name is Donald Timothy McCarthy.
2. My age is 60 and my date of birth is 9.17.1941.
3. I went through the 12<sup>th</sup> grade.
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. My lawyer is William H. Dunn.

- (a) I am charged with: Assault in the Third Degree with Sexual Motivation.
- (b) The elements are: Please see the State's Amended Information.

14  
SP

ORIGINAL

WILLIAM H. DUNN  
Attorney At Law  
408 West Ninth Street  
P.O. Box 1016  
Vancouver, WA 98666  
(360) 694-4815

8

1 5. I UNDERSTAND I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE  
2 THEM ALL UP BY PLEADING GUILTY:

- 3 (a) The right to a speedy and public trial by an impartial jury in the county where the  
4 crime is alleged to have been committed;
- 5 (b) The right to remain silent before and during trial, and the right to refuse to testify  
6 against myself;
- 7 (c) The right at trial to hear and question the witnesses who testify against me;
- 8 (d) The right at trial to testify and to have witnesses testify for me. These witnesses  
9 can be made to appear at no expense to me;
- 10 (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or  
11 I enter a plea of guilty;
- 12 (f) The right to appeal a finding of guilt after a trial.

13 6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I  
14 UNDERSTAND THAT:

- 15 (a) Each crime with which I am charged carries a maximum sentence, a fine, and a  
16 STANDARD SENTENCE RANGE as follows:

17

Count No.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS enhancements	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f)	MAXIMUM TERM AND FINE
1	9-12 months	N/A	9-12 months	60 months	5 years/\$10,000

- 18 (b) The standard sentence range is based on the crime charged and my criminal  
19 history. Criminal history includes prior convictions and juvenile adjudications or  
20 convictions, whether in this state, in federal court, or elsewhere.
- 21 (c) The prosecuting attorney's statement of my criminal history is attached to this  
22 agreement. Unless I have attached a different statement, I agree that the  
23 prosecuting attorney's statement is correct and complete. If I have attached my  
24 own statement, I assert that it is correct and complete. If I am convicted of any  
25 additional crimes between now and the time I am sentenced, I am obligated to tell  
26 the sentencing judge about those convictions.

- 1 (d) If I am Convicted of any new crimes before sentencing, or if any additional  
2 criminal history is discovered, both the standard sentence range and the  
3 prosecuting attorney's recommendation may increase. Even so, my plea of guilty to  
4 this charge is binding on me. I cannot change my mind if additional criminal history  
5 is discovered even though the standard sentencing range and the prosecuting  
6 attorney's recommendation increase or a mandatory sentence of life imprisonment  
7 without the possibility of parole is required by law.
- 8 (e) In addition to sentencing me to confinement, the judge will order me to pay  
9 \$500.00 as a victim's compensation fund assessment. If this crime resulted in  
10 injury to any person or damage to or loss of property, the judge will order me to  
11 make restitution, unless extraordinary circumstances exist which make restitution  
12 inappropriate. The amount of restitution may be up to double my gain or double  
13 the victim's loss. The judge may also order that I pay a fine, court costs, attorney  
14 fees, defense expert costs, and the costs of incarceration.
- 15 (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to  
16 confinement, the judge may order me to serve up to one year of community  
17 supervision if the total period of confinement ordered is less than 12 months. As a  
18 first offender I may be ordered to serve up to two years of community supervision,  
19 if treatment is ordered. If this crime is a drug offense, assault in the second degree,  
20 assault of a child in the second degree, or any crime against a person in which a  
21 specific finding was made that I or an accomplice was armed with a deadly  
22 weapon, the judge will order me to serve at least one year of community  
23 placement. If this crime is a vehicular homicide, vehicular assault, or a serious  
24 violent offense, the judge will order me to serve at least two years of community  
25 placement. If this crime is a sex offense, the court will order me to serve at least  
26 three years of community custody. The actual period of community placement,  
community custody, or community supervision may be as long as my earned early  
release period. During the period of community placement, community custody, or  
community supervision, I will be under the supervision of the Department of  
Corrections, and I will have restrictions placed on my activities. My failure to  
comply with these conditions will render me ineligible for general assistance, RCW  
74.04.005(6)(h).

1                   **For crimes committed on or after July 1, 2000:** In addition to sentencing me to  
 2 confinement, the judge may order me to serve up to one year of community  
 3 custody if the total period of confinement ordered is less than 12 months. If the  
 4 crime I have been convicted of falls into one of the offense types listed in the  
 5 following chart, the court will sentence me to community custody for the  
 6 community custody range established for that offense type unless the judge finds  
 7 substantial and compelling reasons not to do so. If the period of earned release  
 8 awarded per RCW 9.94A.150 is longer, that will be the term of my community  
 9 custody. If the crime I have been convicted of falls into more than one category of  
 10 offense types listed in the following chart, then the community custody range will  
 11 be based on the offense type that dictates the longest term of community custody.  
 12 If I have been convicted of a crime that is not listed in the chart and my sentence is  
 13 more than 12 months, I will be placed on community custody for the period of  
 14 earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer.

19                   During the period of community custody I will be under the supervision of the Department  
 20 of Corrections, and I will have restrictions placed on my activities. My failure to comply with  
 21 these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may  
 22 result in the Department of Corrections transferring me to a more restrictive confinement status or  
 23 other sanctions.

24                   If the crime I have been convicted of does not have a specified community custody  
 25 term or range, my community custody will be equal to earned early release.  
 26

1 (g) The prosecuting attorney will make the following recommendation to the Judge:

2 State recommends a stipulated exceptional sentence for 12 months + 1 day. A Pre  
3 Sentence Investigation is to occur before the Sentencing Hearing. Please see  
4 "Appendix A" attached to this document.

5 (h) The judge does not have to follow anyone's recommendation as to sentence. The  
6 judge must impose a sentence within the standard range of actual confinement and  
7 community custody unless the judge finds substantial and compelling reasons not  
8 to do so. If the judge goes outside the standard range of actual confinement and  
9 community custody, either the State or I can appeal that sentence. If the sentence  
10 is within the standard range, no one can appeal the sentence.

11 (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable  
12 as a crime under state law is grounds for deportation, exclusion from admission to  
13 the United States, or denial of naturalization pursuant to the laws of the United  
14 States.

15 (j) I understand that I may not possess, own, or have under my control any firearm  
16 unless my right to do so is restored by a court of record and that I must  
17 immediately surrender any concealed pistol license. RCW 9.41.040.

18 **NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING**  
19 **PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED**  
20 **BY THE DEFENDANT AND THE JUDGE**

21 (k) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and  
22 if I have at least two prior convictions for most serious offenses, whether in this  
23 state, in federal court, or elsewhere, the crime for which I am charged carries a  
24 mandatory sentence of life imprisonment without the possibility of parole. In  
25 addition, if this offense is (1) rape in the first degree, rape of a child in the first  
26 degree, rape in the second degree, rape of a child in the second degree, indecent  
liberties by forcible compulsion, or child molestation in the first degree, or (2)  
murder in the first degree, murder in the second degree, homicide by abuse,  
kidnaping in the first degree, kidnaping in the second degree, assault in the first  
degree, assault in the second degree, assault of a child in the first degree, or  
burglary in the first degree, with a finding of sexual motivation, or (3) any attempt  
to commit any of the crimes listed in this sentence and I have at least one prior  
conviction for one of these listed crimes in this state, in federal court, or elsewhere,  
the crime for which I am charged carries a mandatory sentence of life  
imprisonment without the possibility of parole.

- 1 (l) The judge may sentence me as a first-time offender instead of giving a sentence  
2 within the standard range if I qualify under RCW 9.94A.030. This sentence could  
3 include as much as 90 days' confinement and up to two years community  
4 supervision if the crime was committed prior to July 1, 2000, or up to two years of  
5 community custody if the crime was committed on or after July 1, 2000, plus all of  
6 the conditions described in paragraph (e). Additionally, the judge could require me  
7 to undergo treatment, to devote time to a specific occupation, and to pursue a  
8 prescribed course of study or occupational training.
- 9 (m) The judge may suspend execution of the standard range term of confinement under  
10 the special sex offender sentencing alternative (SSOSA) if I qualify under RCW  
11 9.94A.120(8). If the judge suspends execution of the standard range term of  
12 confinement, I will be placed on community custody for the length of the  
13 suspended sentence or three years, whichever is greater; I will be ordered to serve  
14 up to 180 days of total confinement; I will be ordered to participate in sex offender  
15 treatment; and I will be subject to all of the conditions described in paragraph (e).  
16 Additionally, the judge could require me to devote time to a specific occupation  
17 and to pursue a prescribed course of study or occupational training. If a violation  
18 of the sentence occurs during community custody, the judge may revoke the  
19 suspended sentence.
- 20 (n) Because this crime involves a sex offense, or a kidnaping offense involving a  
21 minor, I will be required to register where I (a) reside; (b) am a student or go to  
22 school; (c) am employed; (d) I carry on a vocation. The specific current  
23 registration requirements are set forth in Appendix "A" which is attached hereto  
24 and is hereby incorporated by reference. These requirements may change at a later  
25 date. I will be responsible for learning about any changes in the registration  
26 requirements and for complying with them.
- (o) If this crime involves a sex offense or a violent offense, I will be required to  
provide a sample of my blood for purposes of DNA identification analysis.
- (p) If this is a crime of domestic violence and if I, or the victim of the offense, has a  
minor child, the court may order me to participate in a domestic violence  
perpetrator program approved under RCW 26.50.150.
- (q) If this crime involves a sexual offense, prostitution, or a drug offense associated  
with hypodermic needles, I will be required to undergo testing for the human  
immunodeficiency (AIDS) virus.

- 1 (r) The judge may sentence me under the special drug offender sentencing alternative  
2 (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a  
3 period of total confinement in a state facility for one-half of the midpoint of the  
4 standard range plus all of the conditions described in paragraph (e). During  
5 confinement, I will be required to undergo a comprehensive substance abuse  
6 assessment and to participate in treatment. The judge will also impose community  
7 custody of at least one-half of the midpoint of the standard range that must include  
8 appropriate substance treatment, a condition not to use illegal controlled  
9 substances, and requirement to submit to urinalysis or other testing to monitor that  
10 status. Additionally, the judge could prohibit me from using controlled substance  
11 or alcohol, require me to devote time to a specific employment or training, to stay  
12 out of certain areas, and to pay thirty dollars per month to offset the cost of  
13 monitoring, and require other conditions, including affirmative conditions.
- 14 (s) If the judge finds that I have a chemical dependency that has contributed to the  
15 offense, the judge may order me to participate in rehabilitative programs or  
16 otherwise to perform affirmative conduct reasonably related to the circumstances  
17 of the crime for which I am pleading guilty.
- 18 (t) If this crime involves the manufacture, delivery, or possession with the intent to  
19 deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-  
20 up fine of \$3,000.00 will be assessed. RCW 69.50.401 (a)(1)(ii)
- 21 (u) If this crime involves a motor vehicle, my driver's license and/or privilege to drive  
22 will be suspended or revoked. If I have a driver's license, I must now surrender it  
23 to the judge.
- 24 (v) If this crime involves the offense of vehicular homicide while under the influence of  
25 intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or  
26 after January 1, 1999, an additional two years shall be added to the presumptive  
sentence for vehicular homicide for each prior offense as defined in RCW  
46.61.5055(8).
- (w) The crime has a mandatory minimum sentence of at least years of total  
confinement. The law does not allow any reduction of this sentence. This  
mandatory minimum sentence is not the same as the mandatory sentence of life  
imprisonment without the possibility of parole described in paragraph 6[k].
- (x) I am being sentenced for two or more serious violent offenses arising from  
separate and distinct criminal conduct and the sentences imposed on counts will  
run consecutively unless the judge finds substantial and compelling reasons to do  
otherwise.

1 (y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or  
2 firearm enhancement. Deadly weapon or firearm enhancements are mandatory,  
3 they must be served in total confinement, and they must run consecutively to any  
4 other sentence and to any other deadly weapon or firearm enhancements.

5 (z) I understand that the offenses I am pleading guilty to include both a conviction  
6 under RCW 9.41.040 for unlawful possession of a firearm in the first or second  
7 degree and one or more convictions for the felony crimes of theft of a firearm or  
8 possession of a stolen firearm. The sentences imposed for these crimes shall be  
9 served consecutively to each other. A consecutive sentence will also be imposed  
10 for each firearm unlawfully possessed.

11 (aa) This plea of guilty will result in the suspension of public assistance. RCW  
12 74.08.290.

13 7. I plead guilty to count I in the Amended Information. I have received a copy of that  
14 information.

15 8. I make this plea freely and voluntarily.

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

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

20 11. The judge has asked me to state what I did in my own words that makes me guilty of this  
21 crime. This is my statement:

22 I, Donald McCarthy am making the following Newton plea to the Court pursuant to *North*  
23 *Carolina v. Alford*, 400 US 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*,  
24 87 Wn.2d 363, 552 P.2d 682 (1976). I am making this plea to take advantage of the  
25 States settlement offer. I am pleading guilty to the facts that the State will present: that on  
26 May 18, 2002 in Clark County, Washington, I did knowingly cause C.M.H., who is not  
~~married to me, to have sexual contact with me.~~ CAUSE bodily harm to C.M.H. by means of a  
27 ~~weapon, and further this was a Sexually motivated crime.~~

28 12. (If previously filed, the court has reviewed the statement of probable cause supplied by the  
29 prosecution to establish a factual basis for the plea.)

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

4   
DONALD TIMOTHY MCCARTHY

5  
6 I have read and discussed this statement with the defendant and believe that the defendant is  
7 competent and fully understands the statement.

8   
9 WILLIAM H. DUNN, WSBA#01649

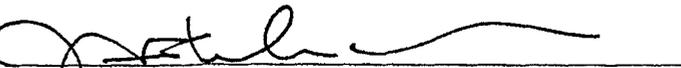
10   
11 Deputy Prosecuting Attorney  
12 KATHLEEN A. HART, WSBA#24207

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

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

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

25 Dated: Thursday, July 25<sup>th</sup>, 2002

26   
Judge  
John F. Nichols

1 Case Name: State of Washington v Donald Timothy McCarthy Cause No: 02-1-01018-1

2 ATTACHMENT A:

3 (If required, attach to Statement of Defendant on Plea of Guilty.)

4 Because this crime involves a sex offense, or a kidnaping offense involving a minor, I will be  
5 required to register with the sheriff of the county of the state of Washington where I reside. If I  
6 am not a resident of Washington but I am a student in Washington or I am employed in  
7 Washington or I carry on a vocation in Washington. I must register with the sheriff of the county  
8 of my school, place of employment, or vocation. I must register immediately upon being  
9 sentenced unless I am in custody, in which case I must register at the time of my release with the  
10 person designated by the agency that has me in custody and I must also register within 24 hours  
11 of my release with the sheriff of the county of the state of Washington where I will be residing, or  
12 if not residing in the state of Washington, where I am a student, where I am employed or where I  
13 carry on a vocation.

14 If I leave this state following my sentencing or release from custody but later move back to  
15 Washington, I must register within 30 days after moving to this state or within 24 hours after  
16 doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this  
17 state following my sentencing or release from custody, but later while not a resident of  
18 Washington I become employed in Washington, carry out a vocation in Washington, or attend  
19 school in Washington, I must register within 30 days after attending school in this state or  
20 becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I  
21 am under the jurisdiction of this state's Department of Corrections.

22 If I change my residence within a county, I must send written notice of my change of residence to  
23 the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I  
24 must send written notice of the change of address at least 14 days before moving to the county  
25 sheriff in the new county of residence, I must register with the sheriff of the new county within 24  
26 hours of moving, and I must also give written notice of my change of address to the sheriff of the  
27 county where last registered within 10 days of moving. If I move out of Washington State, I must  
28 send written notice within 10 days of moving to the new state or foreign country to the county  
29 sheriff with whom I last registered in Washington State.

30 If I move to another state, or if I work, carry on a vocation, or attend school in another state I  
31 must register a new address, fingerprints, and photograph with the new state within 10 days after  
32 establishing residence, or after beginning to work, carry on a vocation, or attend school in the  
33 new state. I must also send written notice within 10 days of moving to the new state or to a  
34 foreign country to the county sheriff with whom I last registered in Washington State.

35 If I am a resident of Washington and I am admitted to a public or private institution of higher  
36 education, I shall, within 10 days of enrolling or by the first business day after arriving at the  
37 institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to  
38 attend the institution.

1 If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of  
2 release in the county where I am being supervised if I do not have a residence at the time of my  
3 release from custody or within 14 days after ceasing to have a fixed residence. If I enter a  
4 different county and stay there for more than 24 hours, I will be required to register in the new  
5 county. I must also report in person to the sheriff of the county where I am registered on a weekly  
6 basis if I have been classified as a risk level II or III, or on a monthly basis if I have been classified  
7 as a risk level 1. The lack of a fixed residence is a factor that may be considered in determining a  
8 sex offender's risk level.

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Dated: Thursday, July 25<sup>th</sup>, 2002

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DONALD TIMOTHY MCCARTHY

APPENDIX "A"

STATE v. Donald T. McCarthy  
 CAUSE NUMBER: 02-1-01018-1  
 DATE: July 9, 2002  
 PROSECUTOR: Katie Hart

Should the defendant wish to accept the following offer,  
 this form shall be attached to the Statement of The  
 Defendant of Plea of Guilty and Judgment and Sentence:

THE FOLLOWING IS THE STIPULATION OF PROSECUTION AND DEFENSE ATTORNEY:

(1) Should the Defendant plead guilty to:

Assault 3° with Sexual Motivation  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

	OFFENDER SCORE	SERIOUSNESS LEVEL	PRESUMPTIVE STANDARD RANGE *(minimum)
Count I:	<u>3</u>	<u>3</u>	<u>9-12</u> Months
Count II:	_____	_____	_____ Months
Count III:	_____	_____	_____ Months

Count IV: \_\_\_\_\_ Months  
 (2) ~~maximum is 60 months, under 9.94A.712~~  
 then the State and the defense stipulate that the sentence shall be:

- sentencing within the standard range
- remain free to recommend any sentence
- that sentence shall be 12 mo. + 1 day (stipulate to exceptional sent.)
- (2) Cont.

— The State shall remain free to recommend any sentence, but the Defense may argue for SSOSA with the following stipulated preconditions:

N/A

- A) The Court finds the defendant amenable to treatment and safe to be at large after a state licensed sexual offender treatment evaluation, which shall include in addition to the requirements of RCW 9.94A.120(7)(a)(i), a polygraph (on the issue of full disclosure and other child victims). A plethysmograph may be included if requested by the evaluator. Failure to provide a free disclosure polygraph will result in the State exercising its right pursuant to RCW 9.94A.120(8)(e) to demand a second evaluation.
- B) Defense shall provide to the Prosecutor's Office, no later 7 days prior to sentencing:
  - a complete SSOSA evaluation
  - full polygraph report
  - pre- and post-test polygraph interview
  - the sexual history questionnaire and responses
  - any and all other documents as requested by the State.
- C) The defendant shall sign the attached Waiver of Confidentiality Regarding Sex Offender Evaluation at the time of plea of guilty.
- D) If the SSOSA option is used, the parties stipulate to \_\_\_\_\_ months of the above-listed standard range in prison suspended upon successful entry and completion of all phases of a state licensed sex

PRETRIAL OFFER - 2

Revised: October 3, 2000

offender treatment program to be entered into by the sentencing date if out of custody or within 30 days of release from custody.

E) The State further recommends \_\_\_ days of local jail to be served:

- \_\_\_ straight time
- \_\_\_ work release (if qualified and accepted)

F) The State reserves the right pursuant to RCW 9.94A.120(8)(e) to request a second SSOSA evaluation. If the State makes such a request, the defense stipulates such evaluation shall include a full disclosure polygraph.

G) Court Costs:	\$ 110.00
Victim's Comp. Fee:	\$ 500.00
Court Appointed Attorney Fee:	\$ TO BE SET
Court Appointed Investigator Fee:	\$ TO BE SET
Restitution for Victim:	\$ TO BE SET
Rape Exam (if applicable)	\$ TO BE SET
SSOSA Evaluation Fee:	\$ TO BE SET
Fine	\$ 500.00
Sheriff's Office Service Fee:	\$ TO BE SET

Other: \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

H) The Defendant shall follow all conditions as set by the Pre-Sentence Investigator and the SSOSA evaluator.

I) Δ shall be placed on community custody for the statutory maximum sentence (i.e. 60 months), less any time spent in custody. (RCW 9.94A.712)

(3) Should the defendant be placed on any release conditions prior to sentencing and violate any of those conditions then the State's above offer is null and void, and the State shall be free to make any recommendation.

PRETRIAL OFFER - 3

Revised: October 3, 2000

(4) Defense stipulates to a waiver of RCW 9.94A.142(1) for the setting of restitution and waives the defendant's presence at a restitution hearing. The hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

(5) By accepting this offer, the defendant stipulates to the conditions as set forth herein.

**PRETRIAL OFFER - 4**

Revised: October 3, 2000

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY PLACEMENT AND/OR SUPERVISION

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 18 years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

7. You shall not loiter, enter, or remain in parks, arcades, malls, schools, or any area routinely used by minors or where they are known to congregate.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.

## PRETRIAL OFFER - 5

Revised. October 3, 2000

10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
11. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
12. You shall not possess, use, or own any firearms, ammunition, or deadly weapon. Your community corrections officer shall determine what those deadly weapons are.
13. You shall not possess or consume alcohol.
14. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
15. You shall not possess any paraphernalia for the use of controlled substances.
16. You shall not be in any place where alcoholic beverages are the primary sale item.
17. You shall take antabuse per community corrections officer's direction.
18. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
19. You shall participate in Sexual Offender Treatment with a state certified sex offender therapist as directed by your community corrections officer and you shall not terminate nor transfer your treatment provider without prior approval of the therapist, your community corrections officer, the Prosecuting Attorney, and the court after an appropriate hearing.
20. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.

**PRETRIAL OFFER - 6**

Revised October 3, 2000

21. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
22. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030, *for 10 yrs.*
23. You shall not use/possess pornographic material or equipment of any kind.
24. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney.
25. You shall have no association with persons known to be on probation, parole or community placement.
26. *N/A* If you are in the ~~SSOSA~~ program you shall enter into ~~sex offender~~ treatment with a State certified provider within thirty (30) days ~~of sentencing or release from custody, whichever comes first.~~
27. If you are in the ~~SSOSA~~ program, your ~~treatment~~ plan shall include polygraph exams as set forth in condition number 19. Your treatment provider ~~and/or the~~ defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

PRETRIAL OFFER - 7

Revised: October 3, 2000

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

STATE OF WASHINGTON,  
Plaintiff,  
v.

No. 02-1-01018-1

Donald T. McCarthy  
Defendant

DECLARATION OF  
CRIMINAL HISTORY

COME NOW the parties, and do hereby declare, pursuant to RCW 9.94A.100 that to the best of the knowledge of the defendant and his/her attorney, and the Prosecuting Attorney's Office, the defendant has the following undisputed prior criminal convictions:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	PTS.
Sex Abuse 1 <sup>st</sup>	ORIGON	1992		3

\* still verifying crim. hx - offender score may change  
 The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360.

DATED this 5<sup>th</sup> day of June, 2002.

\_\_\_\_\_  
Defendant  
  
\_\_\_\_\_  
Attorney for Defendant  
WSBA # \_\_\_\_\_

William Hart  
Deputy Prosecuting Attorney  
WSBA # 24517



STATE OF WASHINGTON

INDETERMINATE SENTENCE REVIEW BOARD

4317 Sixth Ave., S.E. \* P.O. Box 40907 \* Olympia, Washington 98504-0907 \* (360) 493-9266  
(TDD Relay 1-800-833-6388)

DECISION AND REASONS

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NAME: McCARTHY, Donald T.  
NUMBER: 707212  
INSTITUTION: Twin Rivers Corrections Center  
TYPE OF MEETING: .420 Hearing  
DATE: September 8, 2004  
PANEL MEMBERS: JA & JG  
FINAL DECISION DATE: October 6, 2004

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BOARD DECISION:

This was a Deferred Decision. The full Board finds by a preponderance of the evidence that Mr. McCarthy presently constitutes a significant risk and is more likely than not to reoffend sexually if he is released to the community, and finds him not releasable and adds the remaining 23 months and 26 days to his minimum term.

NEXT ACTION:

Schedule .420 release hearing upon completion of the SOTP (Sexual Offender Treatment Program), or 120 days prior to ERD.

HISTORY/COMMENTS:

Mr. McCarthy is under the Board's jurisdiction for Assault in the Third Degree with Sexual Motivation in Clark County Cause #02-1-01018-1, with a time start of December 6, 2002, and a maximum expiration date of December 1, 2007. The Judge set a minimum term of 12 months and one day.

McCARTHY, Donald T.

DOC #707212

HISTORY/COMMENTS CONTINUED - PAGE 2

File materials indicate that about a quarter to five on May 18<sup>th</sup>, 2002, at a bookstore in the Vancouver area the defendant approached a 28 year old woman with Down's Syndrome from behind and began frottage, which was massaging his pelvic area against her buttocks. Mr. McCarthy since has admitted to this activity at least two to three times per year. He also admits some bestiality in his sexual history. Mr. McCarthy was receiving SSI benefits for his mental health, he has short term memory loss and some other apparently undiagnosed conditions, and was living in a mobile home in the area with his mother. She was under severe stress and was apparently terminal at the time, and Mr. McCarthy suggests that the behavior became too stressful for him and he became very anxious. He continues to exhibit a highly anxious state, even with medications, as he did at this morning's hearing. He has the ability to intellectualize, but may lose focus and go off on a tangent relatively easily. His speech, however, is clear and his reasoning process and his focus on what was being said and the need to correct it periodically was all clear. He is currently in the SOTP and is making satisfactory progress with, first of all, being able to acknowledge his behavior. The Board has some questions about uncharged offenses with his girlfriend's daughter. He does acknowledge that there was some contact, but minimizes it at this stage, and the Board is not going to make a finding of guilt or not on it, it is simply a matter of concern for the Board. It is estimated that Mr. McCarthy's present treatment in the SOTP would be completed in the early spring of 2005 and the Board naturally intends to see him again after that completion. He has some social supports in the community, but again those would have to be checked out very carefully. At age 63, Mr. McCarthy has a significant history of this particular type of behavior, including frottage with an under 12 year old male in the 1990s in Multnomah, Oregon, just across the river from Vancouver.

(continued on next page)

McCARTHY, Donald T.

DOC #707212

CONTINUED - PAGE 3

REASONS:

As indicated, Mr. McCarthy has a significant history of frottage with vulnerable victims, either young, very old women, or with developmental difficulties. He maintains a highly anxious appearance, needs medications, and this suggests that he reacts to stress by participating in this sort of behavior. He is making satisfactory progress in the SOTP and he is behaving himself well in the institution. There is an underlying concern about his chemical abuse in the past and he may require intensive outpatient treatment, but Mr. McCarthy has at least some minor mental health problems and focusing on one program at a time seems to be the appropriate steps. As indicated, the Board would expect to see Mr. McCarthy following completion of the SOTP and detailed community supports for him.

FACTS RELIED UPON:

The facts relied upon are the interview with Mr. McCarthy today and a full review of the DOC and ISRB files and previous Board dictations.

JA:jas

September 29, 2004

CC: INSTITUTION  
RESIDENT  
FILE

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

IN THE MATTER OF THE PERSONAL )  
RESTRAINT OF: )

DONALD T. MCCARTHY, )  
 )  
Petitioner. )  
\_\_\_\_\_ )

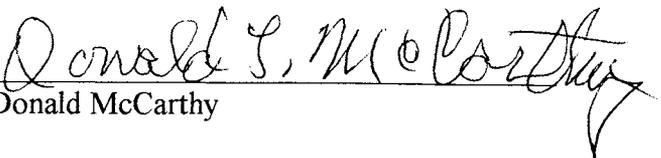
DECLARATION OF  
DONALD MCCARTHY

DONALD MCCARTHY, hereby declares as follows:

1. I am over the age of 18 and competent to be a witness.
2. I am an inmate at the Twin Rivers Corrections Center.
3. On September 8, 2004 I attended my second .420 hearing. Present at the hearing were Julia Garret and John Austin.
4. I asked the Board if I could have an attorney represent me at the hearing.
5. The Board denied my request for an attorney.
6. The Board claimed that the state of Washington could not afford to provide me with an attorney, and also stated that even if I could afford an attorney, I am not entitled to an attorney at a .420 hearing.

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

Dated this 24<sup>th</sup> day of November, 2004 at Monroe, WA.

  
Donald McCarthy