

1 B. STATUS OF PETITIONER:

2 Petitioner, DANIEL CHARLES MULHOLLAND, is restrained pursuant to a
3 Judgment and Sentence entered in Pierce County Cause No. 01-1-06114-5. Respondent's
4 Appendix A. Petitioner was sentenced to a total of 927 months after a jury found him
5 guilty of six counts of assault in the first degree and one count of drive by shooting. Id.
6 Of this period of total confinement, 300 months was the result of six firearm enhancements
7 (one on each count of assault). Id. An appeal followed. Petitioner's convictions were
8 affirmed in an unpublished opinion filed on June 11, 2004. Appendix B to the petition.
9 The mandate issued March 8, 2005. Appendix D to the petition.
10

11 By March 8, 2006, petitioner filed a timely personal restraint petition alleging that
12 his sentence should be reversed because his trial counsel was ineffective for not asking the
13 court to impose an exceptional sentence. Petitioner does not claim to be indigent.
14

15 C. ARGUMENT:

- 16 1. THE PETITION SHOULD BE DISMISSED AS
17 PETITIONER REITERATES A CLAIM THAT WAS
18 REJECTED ON DIRECT APPEAL AND MAKES NO
19 SHOWING WHY THE INTERESTS OF JUSTICE
20 REQUIRE ITS RE-EXAMINATION.

21 Petitioner may not raise in a personal restraint petition an issue which "was raised
22 and rejected on direct appeal unless the interests of justice require relitigation of that
23 issue." In re Personal Restraint of Lord, 123 Wn.2d 296, 303, 868 P.2d 835 (1994).
24 "Simply 'revising' a previously rejected legal argument . . . neither creates a 'new' claim nor
25 constitutes good cause to reconsider the original claim". In re Jeffries, 114 Wn.2d 485,
488, 789 P.2d 731 (1990).

1 [I]dentical grounds may often be proved by different factual allegations. So
2 also, identical grounds may be supported by different legal arguments, . . .
3 or be couched in different language, . . . or vary in immaterial respects.
4 Thus, for example, “a claim of involuntary confession predicated on alleged
5 psychological coercion does not raise a different 'ground' than does one
6 predicated on physical coercion.”

7 Jeffries, 114 Wn.2d at 488 (citations omitted). A petitioner may not create a different
8 ground for relief merely by alleging different facts, asserting different legal theories, or
9 couching his argument in different language. Lord, 123 Wn.2d at 329.

10 Petitioner’s sole issue in his personal restraint petition is that he received
11 ineffective assistance of counsel. The opinion from his direct appeal clearly shows that he
12 raised a claim of ineffective assistance of counsel on direct review. Appendix B to the
13 petition. The court considered the merits of this claim and rejected it. Id. While it does not
14 appear that petitioner raised the same factual allegation in his direct appeal – failure to
15 request an exceptional sentence- as a basis for finding deficient performance, the “ground”
16 for relief is identical. Appendix B to the petition. Consequently, petitioner had to
17 demonstrate that the interests of justice require relitigation of this issue before the issue is
18 properly before the court. RAP 16.4(d); Lord, 123 Wn.2d at 303. As petitioner makes no
19 argument regarding the “interest of justice” standard, this petition should be summarily
20 dismissed. The following is provided if this court rejects this procedural argument.

21 2. THE PETITION SHOULD BE DISMISSED BECAUSE
22 PETITIONER HAS NOT SHOWN EITHER PREJUDICIAL
23 CONSTITUTIONAL ERROR OR A FUNDAMENTAL
24 DEFECT RESULTING IN A COMPLETE MISCARRIAGE
25 OF JUSTICE NECESSARY TO OBTAIN RELIEF BY
COLLATERAL ATTACK.

Personal restraint procedure has its origins in the State's habeas corpus remedy,
guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of
habeas corpus relief is the principle that the writ will not serve as a substitute for appeal. A

1 personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for
2 an appeal. In re Hagler, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). Collateral relief
3 undermines the principles of finality of litigation, degrades the prominence of the trial, and
4 sometimes costs society the right to punish admitted offenders. These are significant costs,
5 and they require that collateral relief be limited in state as well as federal courts. Hagler,
6 Id.

7
8 In this collateral action, the petitioner has the duty of showing constitutional error
9 and that such error was actually prejudicial. The rule that constitutional errors must be
10 shown to be harmless beyond a reasonable doubt has no application in the context of
11 personal restraint petitions. In re Mercer, 108 Wn.2d 714, 718-21, 741 P.2d 559 (1987);
12 Hagler, 97 Wn.2d at 825. Mere assertions are insufficient in a collateral action to
13 demonstrate actual prejudice. Inferences, if any, must be drawn in favor of the validity of
14 the judgment and sentence and not against it. In re Hagler, 97 Wn.2d at 825-26. To obtain
15 collateral relief from an alleged nonconstitutional error, a petitioner must show "a
16 fundamental defect which inherently results in a complete miscarriage of justice." In re
17 Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). This is a higher standard than the
18 constitutional standard of actual prejudice. Id. at 810.

19 Reviewing courts have three options in evaluating personal restraint petitions:

- 20 1. If a petitioner fails to meet the threshold burden of showing actual prejudice
21 arising from constitutional error or a fundamental defect resulting in a
22 miscarriage of justice, the petition must be dismissed;
- 23 2. If a petitioner makes at least a prima facie showing of actual prejudice, but
24 the merits of the contentions cannot be determined solely on the record, the
25 court should remand the petition for a full hearing on the merits or for a
reference hearing pursuant to RAP 16.11(a) and RAP 16.12;

1 3. If the court is convinced a petitioner has proven actual prejudicial error, the
2 court should grant the personal restraint petition without remanding the
 cause for further hearing.

3 In re Hews, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

4 In a personal restraint petition, “naked castings into the constitutional sea are not
5 sufficient to command judicial consideration and discussion.” In re Williams, 111 Wn.2d
6 353, 365, 759 P.2d 436 (1988) (citing In re Rozier, 105 Wn.2d 606, 616, 717 P.2d 1353
7 (1986), which quoted United States v. Phillips, 433 F.2d 1364, 1366 (8th Cir. 1970)). That
8 phrase means “more is required than that the petitioner merely claim in broad general
9 terms that the prior convictions were unconstitutional.” Williams, 111 Wn.2d at 364. The
10 petition must also include the facts and “the evidence reasonably available to support the
11 factual allegations.” Id.

12 The evidence that is presented to an appellate court to support a claim in a personal
13 restraint petition must also be in proper form. On this subject, the Washington Supreme
14 Court has stated:

15 It is beyond question that all parties appearing before the courts of this State
16 are required to follow the statutes and rules relating to authentication of
17 documents. This court will in future cases accept no less.

18 In re Connick, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). That rule applies to pro se
19 defendants as well:

20 Although functioning pro se through most of these proceedings, Petitioner –
21 not a member of the bar – is nevertheless held to the same responsibility as a
22 lawyer and is required to follow applicable statutes and rules.

23 Connick, 144 Wn.2d at 455. The petition must include a statement of the facts upon which
24 the claim of unlawful restraint is based and the evidence available to support the factual
25 allegations. RAP 16.7(a)(2); Petition of Williams, 111 Wn.2d 353, 365, 759 P.2d 436
(1988). Personal restraint petition claims must be supported by affidavits stating particular

1 facts, certified documents, certified transcripts, and the like. Williams, 111 Wn.2d at 364.

2 If the petitioner fails to provide sufficient evidence to support his challenge, the petition
3 must be dismissed. Williams at 364.

4 The State cannot tell from the copy served on it whether all of petitioner's
5 appendices were properly certified. The court should disregard any documentation that
6 does not comply with the standards set forth above.

7
8 3. PETITIONER HAS FAILED TO SHOW EITHER PRONG OF
9 THE TEST SET FORTH IN STRICKLAND WHEN BOTH
10 MUST BE SHOWN TO SUCCEED ON HIS CLAIM OF
11 INEFFECTIVE ASSISTANCE OF COUNSEL.

11 The right to effective assistance of counsel is the right "to require the prosecution's
12 case to survive the crucible of meaningful adversarial testing." United States v. Cronin,
13 466 U.S. 648, 656, 104 S.Ct. 2045, 80 L. Ed. 2d 657 (1984). When such a true adversarial
14 proceeding has been conducted, even if defense counsel made demonstrable errors in
15 judgment or tactics, the testing envisioned by the Sixth Amendment has occurred. Id.
16 "The essence of an ineffective-assistance claim is that counsel's unprofessional errors so
17 upset the adversarial balance between defense and prosecution that the trial was rendered
18 unfair and the verdict rendered suspect." Kimmelman v. Morrison, 477 U.S. 365, 374, 106
19 S. Ct. 2574, 2582, 91 L. Ed. 2d 305 (1986).

20 To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-
21 prong test laid out in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.
22 Ed. 2d 674 (1984); see also State v. Thomas, 109 Wn.2d 222, 743 P.2d 816 (1987). First,
23 a defendant must demonstrate that his attorney's representation fell below an objective
24 standard of reasonableness. Second, a defendant must show that he or she was prejudiced
25 by the deficient representation. Prejudice exists if "there is a reasonable probability that,
except for counsel's unprofessional errors, the result of the proceeding would have been

1 different." State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); see also
2 Strickland, 466 U.S. at 695. There is a strong presumption that a defendant received
3 effective representation. State v. Brett, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), cert.
4 denied, 516 U.S. 1121, 116 S.Ct. 931, 133 L. Ed. 2d 858 (1996); Thomas, 109 Wn.2d at
5 226. A defendant carries the burden of demonstrating that there was no legitimate strategic
6 or tactical rationale for the challenged attorney conduct. McFarland, 127 Wn.2d at 336.

7 Judicial scrutiny of a defense attorney's performance must be "highly deferential in
8 order to eliminate the distorting effects of hindsight." Strickland, 466 U.S. at 689. The
9 reviewing court must judge the reasonableness of counsel's actions "on the facts of the
10 particular case, viewed as of the time of counsel's conduct." Id. at 690; State v. Benn, 120
11 Wn.2d 631, 633, 845 P.2d 289 (1993).

12 What decision [defense counsel] may have made if he had more information
13 at the time is exactly the sort of Monday-morning quarterbacking the
14 contemporary assessment rule forbids. It is meaningless...for [defense
15 counsel] now to claim that he would have done things differently if only he
16 had more information. With more information, Benjamin Franklin might
17 have invented television.

18 Hendricks v. Calderon, 70 F.3d 1032, 1040 (C.A. 9, 1995).

19 In addition to proving his attorney's deficient performance, the defendant must
20 affirmatively demonstrate prejudice, i.e. "that but for counsel's unprofessional errors, the
21 result would have been different." Strickland, 466 U.S. at 694.

22 The reviewing court will defer to counsel's strategic decision to present, or to
23 forego, a particular defense theory when the decision falls within the wide range of
24 professionally competent assistance. Strickland, 466 U.S. at 489; United States v. Layton,
25 855 F.2d 1388, 1419-20 (9th Cir. 1988), cert. denied, 489 U.S. 1046 (1989); Campbell v.
Knicheloe, 829 F.2d 1453, 1462 (9th Cir. 1987), cert. denied, 488 U.S. 948 (1988). When
the ineffectiveness allegation is premised upon counsel's failure to litigate a motion or
objection, defendant must demonstrate not only that the legal grounds for such a motion or

1 objection were meritorious, but also that the verdict or outcome would have been different
2 if the motion or objections had been granted. Kimmelman, 477 U.S. at 375; United States
3 v. Molina, 934 F.2d 1440, 1447-48 (9th Cir. 1991). An attorney is not required to argue a
4 meritless claim. Cuffle v. Goldsmith, 906 F.2d 385, 388 (9th Cir. 1990).

5 Petitioner argues that his attorney was ineffective for not asking the court to impose
6 an exceptional sentence downward. Initially, this court must address the validity of the
7 legal theory suggested by petitioner as being a proper basis upon which trial counsel could
8 have requested an exceptional sentence. Petitioner was convicted of six counts of assault
9 in the first degree upon separate victims, each with a firearm enhancement. Petitioner
10 recognizes that the court had no authority to reduce the time imposed on the firearm
11 enhancements. State v. Brown, 139 Wn.2d 20, 983 P.2d 608 (1999). Thus, petitioner
12 acknowledges that 300 months of the 947 months of total confinement imposed by the
13 court was beyond the reach of a downward exceptional sentence. Petition at p. 9.
14 Petitioner also recognizes that under the SRA, the sentences for the assault in the first
15 degree convictions would run consecutive to one another as each is a serious violent
16 offense. RCW 9.94A.589(1)(b). However, petitioner contends that it is legally
17 permissible for the court to impose concurrent sentences on these offenses by imposing an
18 exceptional sentence under RCW 9.94A.535(1)(g). The State disagrees.

19 While sentencing courts enjoy some discretion in determining the length of
20 sentences, that discretion does not extend to deciding whether to run sentences on current
21 offenses concurrently or consecutively. State v. Jacobs, 154 Wn.2d 596, 115 P.3d 281
22 (2005). Where a person is sentenced for two or more current offenses that are not serious
23 violent offenses or certain firearm offenses, the legislature has specified that the sentences
24 for those offenses shall be served concurrently. RCW 9.94A.589(1)(a). The statute
25 expressly provides that consecutive sentences may be imposed only as an exceptional

1 sentence under RCW 9.94A.535. RCW 9.94A.589(1)(a). In contrast, the legislature
2 specified that sentences for "two or more serious violent offenses arising from separate and
3 distinct criminal conduct" must be served consecutively to each other. RCW
4 9.94A.589(1)(b). The legislature did not allow for concurrent sentences to be imposed as
5 an exceptional sentence. RCW 9.94A.589(1)(b). The court did not have any legal
6 authority to run the base sentences on the assault convictions concurrently as part of an
7 exceptional sentence. Petitioner's attorney was not deficient for failing to suggest to the
8 court that it impose an improper exceptional sentence by running the sentences on the
9 assault convictions concurrently.
10

11 Additionally, as set forth in State v. Brown, 139 Wn.2d 20, 25, 983 P.2d 608
12 (1999), and State v. Flett, 98 Wn. App. 799, 806, 992 P.2d 1028 (2000), the crime of
13 assault in the first degree is subject to a mandatory minimum term of five years under
14 RCW 9.94A.540(1)(b) that is "excluded from exceptional sentence eligibility." Under
15 these cases, the trial court could not impose a minimum base sentence of less than 300
16 months for the assault convictions. Adding this mandatory minimum amount to the
17 mandatory enhancement time means that, even assuming that there was some legal basis¹
18 for imposing an exceptional sentence in petitioner's case, the trial court had no authority to
19 impose a sentence of less than 600 months. Petitioner was fifty-five years old at the time
20 of sentencing. Appendix H to the petition, at p. 584. His trial attorney was not deficient
21 for failing to request an exceptional sentence of 600 months when that length of sentence
22

23
24
25 ¹ The State sees no legal basis for an exceptional sentence when: 1) petitioner was convicted of assaulting
six different people with a firearm; 2) petitioner defense was that he did not commit these acts; and 3)
petitioner claimed that he was falsely convicted at sentencing.

1 would offer no realistic hope of benefiting the petitioner. Petitioner has failed to
2 demonstrate deficient performance.

3 Petitioner has also failed to demonstrate that he was actually prejudiced by the
4 failure to request an exceptional sentence as he has not shown a reasonable possibility that
5 the court would have imposed one. Petitioner has not articulated a legally justifiable basis
6 for an exceptional sentence in his petition. While he claims that the multiple offense policy
7 was a grounds for an exceptional sentence, that provision states that “the operation of the
8 multiple offense policy in RCW 9.94A.589 results in a presumptive sentence that is clearly
9 excessive *in light of the purpose of this chapter, as expressed in RCW 9.94A.010.*” RCW
10 9.94A.535(1)(g) (emphasis added). It is important to note that the case law in this area has
11 been developed and applied almost exclusively in situations involving multiple charges
12 stemming from multiple controlled buy drug transactions. See e.g., State v. McGill, 112
13 Wn. App. 95, 47 P.3d 173 (2002); State v. Hernandez-Hernandez, 104 Wn. App. 263, 15
14 P.3d 719, review denied, 143 Wn.2d 1024, 25 P.3d 1020 (2001); State v. Bridges, 104 Wn.
15 App. 98, 15 P.3d 1047, review denied, 144 Wn.2d 1005, 29 P.3d 717 (2001); State v.
16 Fitch, 78 Wn. App. 546, 897 P.2d 424 (1995); State v. Powers, 78 Wn. App. 264, 896 P.2d
17 754 (1995); State v. Hortman, 76 Wn. App. 454, 463-64, 886 P.2d 234 (1994); State v.
18 Sanchez, 69 Wn. App. 255, 848 P.2d 208, review denied, 122 Wn. 2d 1007, 859 P.2d 604
19 (1993); State v. Calvert, 79 Wn. App. 569, 903 P.2d 1003 (1995) (applying multiple
20 offense policy analysis developed in Sanchez in context of multiple forgery case), review
21 denied, 129 Wn.2d 1005, 914 P.2d 65 (1996).

22 No case has applied this mitigating factor when the multiple offenses are violent
23 crimes against different victims.
24
25

1 "[A] presumptive sentence calculated in accord with the multiple offense policy is
2 clearly excessive if the difference between the effects of the first criminal act and the
3 cumulative effects of the subsequent criminal acts is nonexistent, trivial or trifling." State
4 v. Hortman, 76 Wn. App. 454, 463-64, 886 P.2d 234 (1994). Petitioner cannot argue that
5 the effects of his crime on any of his six victims was nonexistent, trivial or trifling. The
6 court expressly commented that it knew "this incident has impacted the victims
7 tremendously." Appendix H to the petition, at p. 587. The record of the sentencing
8 hearing provides no indication that the court saw any basis for the imposition of an
9 exceptional sentence. Petitioner does not articulate how the standard range sentence he
10 received is excessive in view of the purposes of the Sentencing Reform Act. Thus,
11 petitioner cannot show a reasonable likelihood that the court would have imposed an
12 exceptional sentence if it had been asked for.
13

14 As noted above, even if the court imposed the lowest exceptional sentence possible,
15 it would have resulted in fifty years of mandatory incarceration; petitioner would not be
16 eligible to leave prison until he was 105 years old. While a sentence of 600 months is
17 shorter than 947 months, it is unrealistic to say that such a sentence provides any relief to
18 petitioner. As characterized by the trial court, both sentences are effectively "a life
19 sentence." Appendix H to the petition at p. 588. Petitioner has failed to show any actual
20 prejudice stemming from his attorney's failure to ask the court to impose an exceptional
21 sentence. He has failed to meet his burden in showing ineffective assistance of counsel.
22
23
24
25

1 D. CONCLUSION:

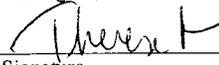
2 The State respectfully requests that this court dismiss the defendant's personal
3 restraint petition.

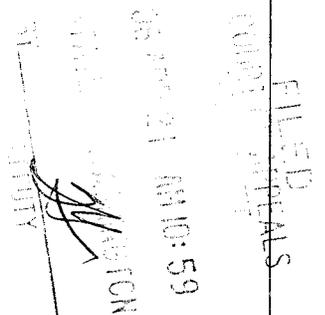
4 DATED: April 20, 2006.

5 GERALD A. HORNE
6 Pierce County Prosecuting Attorney

7 
8 KATHLEEN PROCTOR
9 Deputy Prosecuting Attorney
10 WSB # 14811

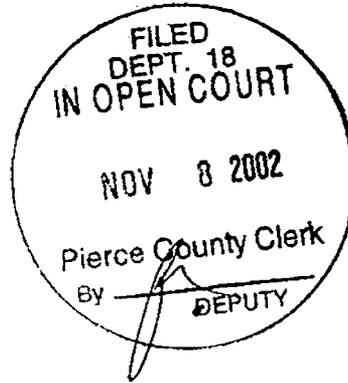
10 Certificate of Service:
11 The undersigned certifies that on this day she delivered by U.S. mail
12 to the petitioner a true and correct copy of the document to which this
13 certificate is attached. This statement is certified to be true and correct
14 under penalty of perjury of the laws of the State of Washington. Signed
15 at Tacoma, Washington, on the date below.

16 4/20/06 
17 Date Signature

18
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APPENDIX "A"

Judgment and Sentence



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

NOV 12 2002

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO.01-1-06114-5

JUDGMENT AND SENTENCE (JS)

vs.

DANIEL CHARLES MULHOLLAND,

Defendant.

- Prison
- Jail One year or less
- First Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Breaking The Cycle (BTC)

DOB: 02/19/1948
SID NO.: Unknown

I. HEARING

1.1 A sentencing hearing in this case was held on 11-8-02 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 09/25/2002 by plea jury-verdict bench trial of:

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

1 of _____

02-9-13087-0

01-1-06114-5

1
2
3 Count No.: I
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
4 RCW: 9A.36.011(1)(a)
Date of Crime: 11/26/2001
5 Incident No.: 01-330-0910

6 Count No.: II
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
7 RCW: 9A.36.011(1)(a)
Date of Crime: 11/26/2001
8 Incident No.: 01-330-0910

9 Count No.: III
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
10 RCW: 9A.36.011.(1)(a)
Date of Crime: 11/26/2001
11 Incident No.: 01-330-0910

12 Count No.: IV
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
13 RCW: 9A.36.011(1)(a)
Date of Crime: 11/26/2001
14 Incident No.: 01-330-0910

15 Count No.: V
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
16 RCW: 9A/36/011(1)(a)
Date of Crime: 11/26/2001
17 Incident No.: 01-330-0910

18 Count No.: VI
Crime: ASSAULT IN THE FIRST DEGREE W/FASE, Charge Code: (E23)
19 RCW: 9A.36.011(1)(a)
Date of Crime: 11/26/2001
20 Incident No.: 01-330-0910

21 Count No.: VII
Crime: DRIVE-BY SHOOTING, Charge Code: (E14A)
22 RCW: 9A.36.045(1)
Date of Crime: 11/26/2001
23 Incident No.: 01-330-0910

24 as charged in the Second Amended Information.

25 [X] A special verdict/finding for use of a firearm was returned on
Counts I, II, III, IV, V, and VI. RCW 9.94A.125, .310.

26 [] A special verdict/finding for use of deadly weapon other than a
firearm was returned on Count(s) _____. RCW 9.94A.125, .310.

27
28 JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

2 of _____

01-1-06114-5

- 1
- 2
- 3 [] A special verdict/finding of **sexual motivation** was returned on Count(s)_____. RCW 9.94A.127.
- 4 [] 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, or 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 government authority as a drug-free zone.
- 5
- 6
- 7
- 8
- 9 [] 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.
- 10
- 11 [] 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.
- 12
- 13 [] 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.
- 14
- 15 [] The court finds that the offender has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.129.
- 16 [] The crime charged in Count(s)_____ involve(s) **domestic violence**.
- 17 [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):
- 18
- 19
- 20
- 21 [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
- 22

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

<u>Crime</u>	<u>Date of Sentence</u>	<u>Sentencing Court (County & State)</u>	<u>Date of Crime</u>	<u>Adult or Juv</u>	<u>Crime Type</u>
Assault 1	Current	Pierce Co., WA	11/26/01	Adult	SV
Assault 1	Current	Pierce Co., WA	11/26/01	Adult	SV
Assault 1	Current	Pierce Co., WA	11/26/01	Adult	SV
Assault 1	Current	Pierce Co., WA	11/26/01	Adult	SV

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

3 of _____

01-1-06114-5

3 Assault 1 Current Pierce Co., WA 11/26/01 Adult SV
 4 Assault 1 Current Pierce Co., WA 11/26/01 Adult SV
 4 Drive-By Current Pierce Co., WA 11/26/01 Adult V

5 [] The defendant committed a current offense while on community
 placement (adds one point to score). RCW 9.94A.360
 6 [] the court finds that the following prior convictions are one
 offense for purposes of determining the offender score (RCW
 7 9.94A.360):

8 [] The following prior convictions are not counted as points but as
 enhancements pursuant to RCW 46.61.520:

9 2.3 SENTENCING DATA:

Count	Offender Score	Serious Level	Standard Range (w/o enhancement)	Plus Enhancement*	Total Standard Range	Maximum Term
I	<u>1</u>	XII	<u>102-136</u>	FIREARM	<u>162-196</u>	LIFE
13 II	<u>0</u>	XII	<u>93-123</u>	FIREARM	<u>153-183</u>	LIFE
III	<u>0</u>	XII	<u>93-123</u>	FIREARM	<u>153-183</u>	LIFE
14 IV	<u>0</u>	XII	<u>93-123</u>	FIREARM	<u>153-183</u>	LIFE
V	<u>0</u>	XII	<u>93-123</u>	FIREARM	<u>153-183</u>	LIFE
15 VI	<u>0</u>	XII	<u>93-123</u>	FIREARM	<u>153-183</u>	LIFE
VII	<u>12</u>	VII	<u>87-116</u>	FIREARM	<u>87-116</u>	10 Years

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

18 2.4 [] EXCEPTIONAL SENTENCE: Substantial and compelling reasons
 exist which justify an exceptional sentence [] above [] below
 19 the standard range for Count(s) _____. Findings of fact and
 conclusions of law are attached in Appendix 2.4. The Prosecuting
 20 Attorney [] did [] did not recommend a similar sentence.

21 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has
 considered the total amount owing, the defendant's past, present
 22 and future ability to pay legal financial obligations, including
 the defendant's financial resources and the likelihood that the
 23 defendant's status will change. The court finds that the defendant
 has the ability or likely future ability to pay the legal financial
 24 obligations imposed herein. RCW 9.94A.142.

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

27
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2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [] attached [] as follows:

III. JUDGMENT

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

3.2 []The Court DISMISSES Count(s)_____. [] The defendant is found NOT GUILTY of Count(s)_____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma, WA 98402):

\$ _____ Restitution to: _____

\$ _____ Restitution to: _____

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

\$ 500 Victim assessment RCW 7.68.035

\$ 110 Court costs, including RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal filing fee \$ _____

Witness costs \$ _____

Sheriff service fees \$ _____

Jury demand fee \$ _____

Other \$ _____

\$ _____ Fees for court appointed attorney RCW 9.94A.030

\$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

\$ _____ Fine RCW 9A.20.021 [] VUCSA additional fine waived due to indigency RCW 69.50.430

\$ _____ Drug enforcement fund of _____ RCW 9.94A.030

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3 \$ _____ Crime Lab fee [] deferred due to indigency
RCW 43.43.690

4 \$ _____ Extradition costs RCW 9.94A.120

5 \$ _____ Emergency response costs (Vehicular Assault, Vehicular
6 Homicide only, \$1000 maximum) RCW 38.52.430

7 \$ _____ Other costs for: _____

8 \$ 610 TOTAL RCW 9.94A.145

9 [] The above total does not include all restitution or other legal
10 financial obligations, which may be set by later order of the
11 court. An agreed order may be entered. RCW 9.94A.142. A
12 restitution hearing:
[] shall be set by the prosecutor
[] is scheduled for _____

12 [] RESTITUTION. See attached order.

13 [] Restitution ordered above shall be paid jointly and severally with:
14 _____

NAME OF OTHER DEFENDANT	CAUSE NUMBER	VICTIM NAME	AMOUNT-\$
15 _____	_____	_____	_____
16 _____	_____	_____	_____
17 _____	_____	_____	_____

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

20 [X] All payments shall be made in accordance with the policies of the
21 clerk and on a schedule established by DOC, commencing immediately,
22 unless the court specifically sets forth the rate here: Not less
23 than \$ _____ per month commencing _____.
24 RCW 9.94A.145.

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

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

[X] 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

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of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.

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

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

4.3 The defendant shall not have contact with Tullar or their residence (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

[] Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

4.4(a) Bond is hereby exonerated.

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

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

<u>162</u> months on Count No. I	<u>153</u> months on Count No. II
<u>153</u> months on Count No. III	<u>153</u> months on Count No. IV
<u>153</u> months on Count No. V	<u>153</u> months on Count No. VI
<u>87</u> months on Count No. VII	

(a)(i) CONFINEMENT (Sentence Enhancement): A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

<u>60</u> months on Count No. I	<u>60</u> months on Count No. II
<u>60</u> months on Count No. III	<u>60</u> months on Count No. IV
<u>60</u> months on Count No. V	<u>60</u> months on Count No. VI

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Sentence enhancements in Counts I, II, III, IV, V, and VI shall run

[] concurrent [X] consecutive to each other.

Sentence enhancements in Counts I, II, III, IV, V, and VI shall be served

[X] flat time [] subject to earned good time credit.

Actual number of months of total confinement ordered is 927.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3 above).

(b) **CONSECUTIVE/CONCURRENT SENTENCES.** RCW 9.94A.400. 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:

Counts I, II, III, IV, V, and VI shall run consecutively

The sentence herein shall run consecutively to all felony sentences in other cause numbers that were imposed prior to the commission of the crime(s) being sentenced.

The sentence herein shall run concurrently with felony sentences in other cause numbers that were imposed subsequent to the commission of the crime(s) being sentenced unless otherwise set forth here. [] The sentence herein shall run consecutively to the felony sentence in cause number(s) _____

The sentence herein shall run consecutively to all previously imposed misdemeanor sentences unless otherwise set forth here: _____

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

47 days

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4.6 [X] COMMUNITY CUSTODY (post 6/30/00 offenses) is ordered as follows:

- Count I for a range from 24 to 48 months;
- Count II for a range from 24 to 48 months;
- Count III for a range from 24 to 48 months;
- Count IV for a range from 24 to 48 months;
- Count V for a range from 24 to 48 months;
- Count VI for a range from 24 to 48 months;
- Count VII for a range from 18 to 36 months.

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

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

[] The defendant shall not consume any alcohol.

[] Defendant shall have no contact with: _____

[] Defendant shall remain [] within [] outside of a specified

geographical boundary, to-wit: _____

[] The defendant shall participate in the following crime-related treatment or counseling services: _____

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

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(Felony)(6/2000)

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1
2
3 [] The defendant shall comply with the following crime-related
4 prohibitions: _____

5 Other conditions may be imposed by the court or DOC during community
6 custody, or are set forth here: _____

7
8 4.7 [] WORK ETHIC CAMP. RCW 9.94A.137, RCW 72.09.410. The court
9 finds that the defendant is eligible and is likely to qualify for work
10 ethic camp and the court recommends that the defendant serve the
11 sentence at a work ethic camp. Upon completion of work ethic camp, the
12 defendant shall be released on community custody for any remaining time
13 of total confinement, subject to the conditions below. Violation of the
14 conditions of community custody may result in a return to total
15 confinement for the balance of the defendant's remaining time of total
16 confinement. The conditions of community custody are stated in Section
17 4.6.

18 4.8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020. The
19 following areas are off limits to the defendant while under the
20 supervision of the County Jail or Department of Corrections:
21 _____

22 V. NOTICES AND SIGNATURES

23 5.1. COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for
24 collateral attack on this judgment and sentence, including but not
25 limited to any personal restraint petition, state habeas corpus
26 petition, motion to vacate judgment, motion to withdraw guilty plea,
27 motion for new trial or motion to arrest judgment, must be filed within
28 one year of the final judgment in this matter, except as provided for
in RCW 10.73.100. RCW 10.73.090.

29 5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1,
30 2000, the defendant shall remain under the court's jurisdiction and the
31 supervision of the Department of Corrections for a period up to 10
32 years from the date of sentence or release from confinement, whichever
33 is longer, to assure payment of all legal financial obligations unless
34 the court extends the criminal judgment an additional 10 years. For an
35 offense committed on or after July 1, 2000, the court shall retain
36 jurisdiction over the offender, for the purposes of the offender's
37 compliance with payment of the legal financial obligations, until the
38 obligation is completely satisfied, regardless of the statutory maximum
for the crime. RCW 9.94A.145 and RCW 9.94A.120(13).

JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

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5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030.

5.4. RESTITUTION HEARING.

[] Defendant waives any right to be present at any restitution hearing (defendant's initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200.

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's 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 OTHER: _____

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

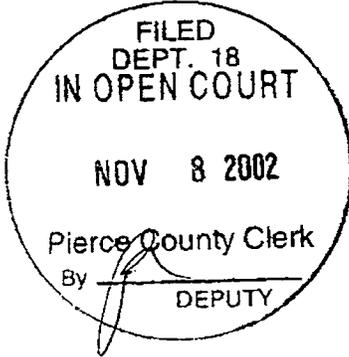
11-8-2002

Karen Strombom
JUDGE Print Name: Karen Strombom

Fred C. Wist
Deputy Prosecuting Attorney
Print Name: Fred C. Wist
WSB# 23057

Ann Stenberg
Attorney for Defendant
Print name: Ann Stenberg
WSB# 22596

Charles Daniel Mulholland
Defendant
Print name: Charles Daniel Mulholland



JUDGMENT AND SENTENCE (JS)
(Felony)(6/2000)

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CERTIFICATE OF INTERPRETER

Interpreter signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 01-1-06114-5

I, Bob San Soucie, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the judgment and sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed on this date: _____

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No.: Unknown Date of Birth: 02/19/1948
(If no SID take fingerprint card for WSP)
FBI No. Unknown Local ID No. _____
PCN No. _____ Other _____
Alias name, SSN, DOB: _____

Race: Ethnicity: Sex:
[] Asian/Pacific Islander [] Hispanic [x] Male
[] Black/African-American [x] Non-Hispanic [] Female
[x] Caucasian
[] Native American
[] Other: _____

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FINGERPRINTS

Right four fingers taken simultaneously

Right thumb



Left four fingers taken simultaneously

Left thumb



I attest that I saw the same defendant who appeared in Court on this Document affix his or her fingerprints and signature thereto. Clerk of the Court, BOB SAN SOUCIE:

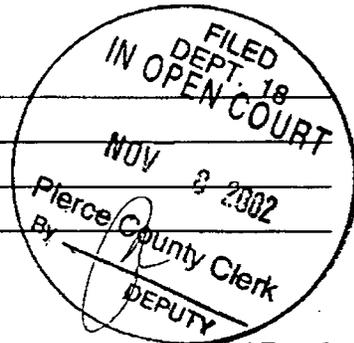
[Signature], Deputy Clerk.

Dated: 11.8.02

DEFENDANT'S SIGNATURE: [Signature]

DEFENDANT'S ADDRESS: _____

DEFENDANT'S PHONE#: _____



FINGERPRINTS

13 of _____



01-1-06114-5 17575160 JDSWCD 11-12-02

FILED
DEPT. 18
IN OPEN COURT

NOV 8 2002

Pierce County Clerk
By [Signature]
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

NOV 12 2002

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL CHARLES MULHOLLAND,

Defendant.

CAUSE NO. 01-1-06114-5

WARRANT OF COMMITMENT

- 1) [] County Jail
- 2) [X] Dept. of Corrections
- 3) [] Other - Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

WARRANT OF COMMITMENT - 1

01-1-06114-5

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

By direction of the Honorable

Kevin R. Atkinson
J U D G E

Dated: 11-8-02

BOB SAN SOUCIE
I N T E R I M C L E R K

By: Debra Ladensug
D E P U T Y C L E R K

CERTIFIED COPY DELIVERED TO SHERIFF

Date ~~NOV 11 2002~~ NOV 8 2002 Debra Ladensug Deputy

STATE OF WASHINGTON,)
County of Pierce) ss:

I, Bob San Soucie, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court.
DATED: _____.

BOB SAN SOUCIE, Clerk
By: _____ Deputy

