

NO. 81102-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL W. McKIERNAN,

Petitioner.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
08 MAR 27 AM 7:00
J. RONALD R. CAMPT
CLERK

ANSWER TO MOTION FOR
DISCRETIONARY REVIEW

JANICE E. ELLIS
Prosecuting Attorney

SETH A. FINE
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
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Everett, Washington 98201
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OTHER AUTHORITIES

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

On March 14, 1987, the petitioner, Michael W. McKiernan, was hitchhiking on Highway 99 in Snohomish County. He was picked up by 70-year-old Elliott Wright. Mr. Wright drove the petitioner to a location in Everett. The petitioner grabbed his shirt and demanded money. He said that he had a knife and was going to kill Mr. Wright. Mr. Wright gave the petitioner all of his money, which amounted to \$5.05. The petitioner then told Mr. Wright to get out of the car. When Mr. Wright started to open the door, the petitioner punched him in the nose. He shoved Mr. Wright onto the road and drove off in his car. Mr. Wright suffered a laceration on his nose and a probable fracture of the right maxilla. App. B.

The petitioner was charged with first degree robbery. App. C. He entered a plea of guilty. The plea statement stated that the maximum sentence was "twenty (20) years to life imprisonment. The standard sentence range was "confinement for at least 36 months and not more than 48 months." App. C at 1 ¶ 5. The defendant was also advised that "the court must impose a sentence

within the standard sentence range unless the court finds substantial and compelling reasons not to do so.” Id. at 2 ¶ 15. On May 20, 1987, the court sentenced the petitioner to 36 months’ confinement, the bottom of the standard range. Under “sentencing data,” the judgment and sentence listed the maximum term as “20 Yrs. to Life.” App. D.

III. ARGUMENT

THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE PETITIONER WAS ADEQUATELY ADVISED OF THE CONSEQUENCES OF HIS PLEA.

The defendant claims that listing the statutory maximum as “20 years to life” constituted misinformation concerning the direct consequences of the plea. He argues that such information justifies withdrawal of his plea. The Court of Appeals correctly rejected this argument. Although the language of the plea form was not ideal, it correctly informed the petitioner of the sentencing consequences that resulted from his guilty plea.

The defendant was told that the standard sentencing range was 36-48 months. App. C at 1 ¶ 5. He was told that the court was required to impose a sentence within that range absent a finding of substantial and compelling circumstances. Id. at 2 ¶15. If such circumstances had been found, there was no limitation on the

court's discretion other than the statutory maximum, which was stated as twenty years to life. Id. at 1 ¶ 5. Thus, the defendant was correctly warned that the sentence could be as much as life imprisonment, if the court found substantial and compelling circumstances that would justify such a sentence.

In ordinary language, a "maximum" is "the greatest quantity, number, or degree possible or permissible." Webster's New Twentieth Century Dictionary at 1113 (2nd ed. unabridged 1978). By stating the maximum as "20 years to life," the plea statement warned the petitioner that a life sentence was permissible. Since life is a greater quantity than 20 years, the true maximum was life. Expressing the "maximum" as "20 years to life" was awkward but not misleading.

The petitioner claims that "[b]ecause the maximum could not be set at 20 years, the information was incorrect." Mot. for Disc. Rev at 7. This is untrue. If there had been a finding of substantial and compelling circumstances, the court *could* have set the petitioner's maximum term at 20 years. It could likewise have set it at 30 years, or 10 years, or 1 year. With an appropriate finding, the sentence imposed would have been entirely within the court's discretion. See State v. Oxborrow, 106 Wn.2d 525, 529-32, 723

P.2d 1123 (1986). The petitioner was warned of this. He also knew that a standard-range sentence was more likely – and he received one

This court has refused to inquire into the materiality of specific sentencing factors in a defendant's plea decision. "A reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the decision." In re Isadore, 151 Wn.2d 294, 302, 88 P.3d 390 (2004). This is true whether the actual sentencing range is lower or higher than the defendant anticipated. State v. Mendoza, 157 Wn.2d 582, 591 ¶¶ 18, 141 P.3d 49 (2006).

The reasoning of these cases is, however, irrelevant to the present case. Their analysis assumes that the defendant has received some misinformation that could affect a rational person's decision – that the defendant feared or hoped for some outcome different than what was really available. Here, there was no such misinformation. Absent a finding of substantial and compelling circumstances, the petitioner could have hoped for a sentence of as little as 36 months (which he received). He could have feared a sentence of as much as 48 months. With a finding of substantial

and compelling circumstances, he could have hoped for a sentence of no confinement. He could have feared a sentence of 20 years or any greater amount up to life. All of those hopes and fears were well founded.

The petitioner in this case received accurate advice concerning the consequences of his plea. He knew what he could hope for and what he could fear. Because this advice was phrased in awkward language, he now wants to withdraw his guilty plea to a robbery committed 21 years ago. The victim of that crime is now 91 years old – if he is alive at all. Under the circumstances, it would be unconscionable to require a trial of this crime after this length of time. There is no basis for allowing the petitioner to withdraw his guilty plea.

IV. CONCLUSION

The motion for discretionary review should be denied.

Respectfully submitted on March 25, 2008.

JANICE E. ELLIS
Snohomish County Prosecuting Attorney

By: 

SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Respondent

APPENDICES

Appendix A – Information (4/1/87)

Appendix B – Affidavit of Probable Cause (4/1/87)

Appendix C – Statement of Defendant on Plea of Guilty (5/14/87)

Appendix D – Judgment and Sentence (5/20/87)

FILED

'87 APR 1 PM 2 22

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

KAY ANKERSON

IN AND FOR THE COUNTY OF SNOHOMISH

SNOHOMISH SH.

THE STATE OF WASHINGTON)

Plaintiff)

vs.)

MICHAEL W. MCKEHEARNAN,)

Defendant(s))

No. 87 1 00313 7

INFORMATION

**CERTIFIED
COPY**

Comes now Seth R. Dawson, Prosecuting Attorney for the County of Snohomish, State of Washington, and by this, his information, charges and accuses the above-named defendant(s) with the following crime(s) committed in Snohomish County, Washington:

COUNT 1. FIRST DEGREE ROBBERY, committed as follows: That the defendant, on or about the 14th day of March, 1987, did unlawfully take personal property, to-wit: money, a wallet and its contents, and a white 1978 Toyota Celica, from the person or in the presence of Elliott Wright, against such person's will, by use or threatened use of immediate force, violence or fear of injury to Elliott Wright, and in the commission of or immediate flight therefrom, the defendant inflicted bodily injury upon Elliott Wright; proscribed by RCW 9A.56.200(1) (c), a felony.

SETH R. DAWSON
PROSECUTING ATTORNEY


DAVID A. KURTZ
Deputy Prosecuting Attorney

STATES WITNESSES:

Elliott Wright
18412 52nd Ave. W., #12
Lynnwood, WA

Karen DeFolo
7003-70th Dr. SE
Snohomish, WA

Larry Dautel
6613-69th Ave. SE
Snohomish, WA

Dr. Hecht
Nurse Belhler
Providence Hospital

Trooper DeFolo
Washington State Patrol

Det. Swank
Deputy Scharf
Deputy R. Arnett
Deputy J. Castillo
SNOHOMISH COUNTY SHERIFF'S OFFICE

Officer K. Thiessen
Officer W. Lange
EVERETT POLICE DEPARTMENT

White Copy: Court File
Canary Copy: Defendant's Copy
Pink Copy: Prosecutor's Copy - RETAIN IN FILE
Goldenrod Copy: Defense Attorney's Copy

PA-14

Jan

APPENDIX A

IN SUPERIOR COURT
SNOHOMISH COUNTY, WASHINGTON
87 APR 1 PM 2 23

THE STATE OF WASHINGTON, KAY CLAYTON)
Plaintiff)
SNOHOMISH COUNTY)
vs.)
MICHAEL W. MCKIEARNAN,)
Defendant(s))

No. 87 1 00313 7

AFFIDAVIT OF PROBABLE CAUSE
**CERTIFIED
COPY**

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

The reports of the Snohomish County Sheriff's Office and Everett Police Department and the witness statements included in them indicate that witnesses will testify to the following:

Elliott Wright, who is 70 years old, says that on March 14, 1987, he was north-bound on Highway 99 when he stopped to pick up a hitchhiker. The hitchhiker said that his car had broken down and that he needed a ride. Eventually, they drove to the 100 block of Barbara Lane in Everett, Snohomish County, Washington, where Wright stopped his car, a white 1978 Toyota Celica.

The hitchhiker then grabbed the front of Wright's coat with both his hands and said, "Give me your wallet, I want your money." Although Wright did not see a weapon, the hitchhiker said, "I have a knife, I'm going to kill you." Wright gave him the \$5.00 that was in Wright's wallet, and then the hitchhiker grabbed the wallet and threw it in the back seat. The hitchhiker also ordered Wright to empty his pockets. Wright did so, but only produced a nickel.

The hitchhiker then told Wright to get out of the car. Wright asked, "What do you mean?" Wright started to open the door, and the hitchhiker punched Wright in the nose with his fist. The hitchhiker then shoved Wright out of the car onto the road, and drove off in Wright's car.

Detective Swank of the Snohomish County Sheriff's Office says that he showed a photo montage to Mr. Wright on March 19, 1987. Wright identified the defendant's photo without hesitation as being that of the hitchhiker/robber.

Officer Lange says that he talked with Mr. Wright on the night of the robbery. Wright had a 3/8" long laceration on the front of his nose. The area across the bridge of Wright's nose was swollen. Wright was transported to Providence Hospital.

~~I certify that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:~~

~~XXXXXXXXXXXX~~
~~Deputy Prosecuting Attorney~~

~~DATED this _____ day of _____, 1987, at the Snohomish County Prosecutor's Office.~~

PA-31

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Pink Copy: Prosecutor's File

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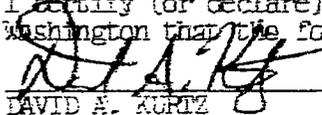
APPENDIX B

State v. Michael W. McKlearnan PA# 87-00862

The medical reports from Providence Hospital indicate that Wright was observed to have a bloody nose. Dr. Hecht took some x-rays of the nasal bones. Those x-rays were inconclusive and Dr. Hecht recommended a more complete series be done; but Dr. Hecht's impression was "probable fracture of the right maxilla."

The defendant is charged with Burglary Second Degree in Snohomish County, cause number 86-1-01190-5. His trial is scheduled for May 11, 1987. On February 24, 1987, he was PR'ed, but ordered to have no arrests and to maintain residence at 11706 163rd SE, Snohomish, WA. Detective Thiessen reports that that is the address of the defendant's mother. Thiessen called the defendant's mother on March 23, 1987. She said that the defendant is not staying with her, that she doesn't know where he is, and that the defendant "blows in and out with the wind." The defendant was recently arrested for Possession of Stolen Property and had his first appearance in District Court on March 16, 1987. Apparently at that time he gave an address of 1320 Chestnut, #D, Everett, WA.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


DAVID A. KURTZ

Deputy Prosecuting Attorney

DATED this 31 day of MARCH, 1987, at the Snohomish County Prosecutor's Office.

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

5-14 87
CM
Clerk

THE STATE OF WASHINGTON,

Plaintiff

vs.

MICHAEL W. MCKIEARNAN,

Defendant

No. 87-1-00313-7

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY

CERTIFIED
COPY

1. My true name is Michael W. McKiearnan
2. My age is 18
3. I went through the 11th grade in school *Have rec'd H.S. GED **
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's name is: Mickey Krom
5. I have been informed and fully understand that I am charged with the crime(s) of:
First Degree Robbery, RCW 9A.56.200(1)(c)

that the elements of the crime(s) are: (1) On or about March 14, 1987; (2) in Snohomish County; (3) the defendant unlawfully took personal property from the person of Elliott Wright; (4) intending to permanently deprive Elliott Wright of the property; (5) that the taking was against the will of Mr. Wright and the defendant used force against Mr. Wright to take and retain possession of the property; *and that defendant inflicted bodily injury on Mr. Wright at the time he took Mr. Wright's property.*

the maximum sentence(s) for which is (are): twenty (20) years to life imprisonment ~~XXXXXX~~ and \$ 50,000 fine

The standard sentence range for the crime is confinement for at least 36 months and not more than 48 months, based upon the prosecuting attorney's understanding of my criminal history, as stated on the attached plea agreement. If there is any dispute concerning my criminal history, I understand that the court will resolve the dispute at the sentencing hearing.

I have been given a copy of the information.

6. I have been informed and fully understand that, in addition to confinement for the standard range, the court will order me to pay \$50 as a victim's compensation fund assessment, and the court may order me to pay a fine, restitution, court costs, and attorney fees. I understand that the court may also place me on community supervision, impose restrictions on my conduct, and order me to perform community service.
7. I have been informed and fully understand that if I fit the definition of RCW 9.94A.030(12) the court may sentence me as a first time offender instead of giving me a sentence within the standard range. That sentence could include as much as 90 days confinement, two years community supervision, community service, a fine, restitution, court costs, attorney fees, and a \$50 victim compensation fund assessment. Additionally, I understand that the court could place restrictions on my conduct and require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or vocational training. (If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.)

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 1

FA-100/PAGE 1

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Pink Copy: Prosecutor

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8. I have been informed and fully understand that:
- (a) I have the right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed.
 - (b) I have the right to remain silent before and during trial, and I need not testify against myself.
 - (c) I have the right at trial to hear and question witnesses who testify against me.
 - (d) I have the right at trial to testify on my own behalf and to have other witnesses testify for me. These witnesses can be made to appear at no expense to me.
 - (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty.
 - (f) I have the right to appeal a determination of guilty after a trial.
 - (g) If I plead guilty, I give up the rights in statements 8(a) through 8(f).

9. I plead guilty to the crime(s) of First Degree Robbery as charged in the information.

10. I make this plea freely and voluntarily.
11. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
12. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
13. I have been informed and fully understand that the prosecuting attorney will make the recommendations to the court stated on the attached plea agreement form.
14. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed this present offense. I fully understand that if criminal history in addition to that listed in the plea agreement is discovered, both the standard sentence range and the prosecuting attorney's recommendations may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and prosecuting attorney's recommendation increases.
15. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. I also understand that in some cases the court must sentence me to a mandatory minimum term as provided in paragraph 16.

16. I have been informed and fully understand that the crime(s) of First Degree Robbery

with which I am charged carries with it a term of total confinement of not less than _____ years. I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of this mandatory minimum term (if not applicable any or all of this paragraph shall be stricken and initialed by the defendant and the judge.)

17. I have been informed and fully understand that the sentence imposed in case # 86-1-0190-5 will run ~~consecutively~~ concurrently unless the court finds substantial and compelling reasons to do otherwise.
18. I have been informed and fully understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole.
19. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under State law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

20. The court has asked to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement:

On or about March 10, 1987 in Stanislaus County
I unlawfully took personal property from
Elliott Wright Against his will and with

The use of Force to take and retain his property.

I have no independent recollection of striking the Victim but I have reviewed his statement with my attorney and understand that he would testify that I did strike him and that he sustained bodily injuries as a result. Based on that testimony I believe a jury could convict me of the charge and wish to plead guilty to take Advantage of the plea bargain offered.

- 21. I am aware that an affidavit of probable cause has been filed in this case. The court may consider this affidavit in deciding whether there is a factual basis for my plea.
- 22. I have read or have had read to me and fully understand all of the numbered sections above (1 through 21) and have received a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask of the court.

Mike McKiernan
Defendant

MICHAEL W. MCKIERNAN

Michael W. McKiernan
Defendant's Lawyer

Gerard McCamy
Deputy Prosecuting Attorney

GERARD MacCAMY
The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his or her attorney and the undersigned Judge in open court. The court finds the defendant's plea of guilty to be knowingly, intelligently and voluntarily made, that the court has informed the defendant of the nature of the charge and the consequences of the plea, that there is a factual basis for the plea, and that the defendant is guilty as charged.

MICKEL FROM

Dated this 14 day of May, 1987

[Signature]
Judge

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

Dated this _____ day of _____, 19 _____

Interpreter

APPENDIX C TO PLEA AGREEMENT
SENTENCING MEMORANDUM (REAL FACTS/RESTITUTION)
(SENTENCING REFORM ACT)

Defendant: MICHAEL McKEARNAN Date: 3/14/97
Cause No. 86-1-0190-5

A. REAL FACTS (RCW 9.94A.370)
Real and material facts establishing elements of a higher crime/more serious crime or additional crimes to be considered at sentencing are:

B. RESTITUTION—CHARGED COUNTS (Indicate count, police department, police number and victim's name) is as follows:

COUNT I - Snohomish Police Dept. # 86-1692 -- Tamilee Brown

C. RESTITUTION—UNCHARGED CRIMES, RCW 9.94A.140(2) (indicated police department, police number and victim's name) is as follows:

COUNT II - Snohomish Police Dept. # 86-1692 -- Karl Enyeart

As conditions of any plea agreement, the defendant must agree to allow the court to consider the above-stated REAL FACTS at sentencing and/or agree to make the above-stated RESTITUTION on uncharged crimes.

Patricia Cole
Deputy Prosecuting Attorney

PLEA AGREEMENT
(SENTENCING REFORM ACT)

Date: 5-7-87
Defendant: Michael W. McKEARNAN Cause No. 87-1-00313-7
On Plea To: As charged 1st DEGREE

Special Finding/Verdict of possession of deadly weapon on Count(s) RCW 9.94A.125

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is indicated above and as follows:

1. DISMISS: Upon disposition of Count(s) _____, the State moves to dismiss Count(s) _____.
2. REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES. In accordance with RCW 9.94A.370, the parties have stipulated that the court, in sentencing, may consider as real and material facts information as follows:
 as set forth in the affidavit(s) of probable cause filed herein
 as set forth in the attached Appendix C.
3. RESTITUTION: Pursuant to statute, the defendant agrees to pay restitution as follows:
 in full to victim(s) on charged counts
 as set forth in attached Appendix C.
4. OTHER: _____

The defendant agrees to undergo an evaluation by Treatment Alternatives to Street Crime and allow the results of that evaluation to be submitted to the court and the Prosecuting Attorney, prior to sentencing.

5. SENTENCE RECOMMENDATION:

- a. The defendant agrees to the foregoing Plea Agreement and that the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix A), and the attached Sentencing Guidelines scoring form(s) (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in State's Sentence Recommendation.
- b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regards to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

Mandatory Minimum Term (RCW 9.94A.120(4) only): _____

Mandatory license revocation RCW 46.20.285.

Ten years jurisdiction and supervision for monetary payments. RCW 9.94A.120(9).

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new crimes, fails to appear for sentencing or violates the conditions of release.

X Mike McKie

Defendant

[Signature]

Deputy Prosecuting Attorney

Wiley J. Korn

Attorney for Defendant

[Signature]

Judge, Snohomish County Superior Court

SNOHOMISH COUNTY PROSECUTING ATTORNEY

White Copy: Court
Green Copy: Defense
Pink Copy: Prosecutor

3/31/87 (da)

MCKIEARNAN, Michael W.

WA13379895

ROBBERY, FIRST DEGREE
(RCW 9A.56.200)
VIOLENT

I. OFFENDER SCORING (RCW 9.94A.360 (2))

ADULT HISTORY: (If the prior offense was committed BEFORE 7/1/86, count prior adult offenses served concurrently as ONE offense; those served consecutively are counted separately. If both current and prior offenses were committed AFTER 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.403(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of Serious Violent and Violent felony convictions $\frac{0}{0} \times 2 = \frac{0}{0}$

Enter number of Nonviolent felony convictions $\frac{0}{0} \times 1 = \frac{0}{0}$

JUVENILE HISTORY: (All adjudications entered on the same date count as ONE offense)

Enter number of Serious Violent and Violent felony adjudications $\frac{0}{0} \times 2 = \frac{0}{0}$

Enter number of Nonviolent felony adjudications $\frac{0}{0} \times 1/2 = \frac{0}{0}$

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

Enter number of other Serious Violent and Violent felony convictions $\frac{0}{0} \times 2 = \frac{0}{0}$

Enter number of other Nonviolent felony convictions $\frac{0}{0} \times 1 = \frac{0}{0}$

Total the last column to get the TOTAL OFFENDER SCORE
(round down to the nearest whole number)

1

II. SENTENCE RANGE

A. OFFENDER SCORE:	0	1	2	3	4	5	6	7	8	9 or more
STANDARD RANGE:	31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
(Seriousness Level IX)	months	months	months	months						

B. The range for attempt, solicitation, and conspiracy is 75% of the standard sentence range for the completed crime (RCW 9.94A.410)

C. Add 24 months to the entire standard sentence range with a special verdict/finding that the offender or an accomplice was armed with a deadly weapon (RCW 9.94A.310, 9.94A.125)

III. SENTENCING OPTIONS FOR FIRST DEGREE ROBBERY

A. Exceptional sentence (RCW 9.94A.120 (2))

WASHINGTON STATE IDENTIFICATION SECTION

P.O. BOX 2527

EMPIA, WASHINGTON 98504-6502

PAGE

1 OF 4

..041487

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY

STATE IDENTIFICATION NO.	NAME	ORIGINATING AGENCY NUMBER	F.B.I. NUMBER	DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT
WA13379895	MCKIEARNAN, MICHAEL W	WA03100001		09-26-68	M	W	6-00	165

RECEIVED
APR 20 1977

COLOR EYES	COLOR HAIR	BIRTH PLACE	FINGER PRINT CODE NCIC
BLU	BRO	WA	P051A40416PI08091920

PROSECUTING ATTORNEY
FOR SNOHOMISH COUNTY

COMMENT	BY
CUSTODY	STATUS
NO CODE:	NO CODE:
NO CODE:	NO CODE:

NON-VERIFIED CUSTODY STATUS INFORMATION PROVIDED BY DEPARTMENT OF CORRECTIONS

ALI AS D E T A I L S

NAME	BIRTHDATE	SOC SEC	MISC. NO	SEX RACE
	09-28-68			

SCARS, MARKS AND TATTOOS

***** NO KNOWN SCARS, MARKS AND TATTOOS DETAILS *****

A P P L I C A N T D E T A I L S

***** NO KNOWN APPLICANT DETAILS *****

D E T A I L S O F A R R E S T - 0 1 DATE 09-15-86

AGENCY: SNOHOMISH CO SHERIFF'S OFFICE EVERETT WA
CASE NO: 062864
ARREST NAME: MCKIEARNAN, MICHAEL W
--- (WA03100001)

C H A R G E - 0 1

UNIQUE NUMBER	OFFENSE DATE	CHARGE FILED	JUVNL OFFENSE	DISP RESP
07869013801	09-15-86		N	WA031053J

CHARGE CODE	DESCRIPTION
ARRESTED: 07699	MISD TRAFFIC VIOLATION

***** NO CRIMINAL HISTORY USED *****

WASHINGTON STATE IDENTIFICATION SECTION

PAGE

..041487

P.O. BOX 2527
OLYMPIA, WASHINGTON 98504-6502

2 OF 4

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY

STATE IDENTIFICATION NO.	NAME	ORIGINATING AGENCY NUMBER	F.B.I. NUMBER	DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT
4A13379895	MCKIEARNAN, MICHAEL W	WA031013A		08-26-68	M	W	600	165

COLOR EYES	COLOR HAIR	BIRTH PLACE	FINGER PRINT CODE/NCIC
BLU	BRD	WA	P051AA0416PI08091920

COMMENT

CUSTODY

STATUS	LOCATION	TYPE
NO CODE:	NO CODE:	NO CODE:

NON-VERIFIED CUSTODY STATUS INFORMATION PROVIDED BY DEPARTMENT OF CORRECTIONS

CHARGE - 02

UNIQUE NUMBER OFFENSE DATE CHARGE FILED JUVNL OFFENSE DISP RESP
 07869013202 09-15-86 N WA031053J

CHARGE CODE DESCRIPTION
 ARRESTED 07669 NO VALID LICENSE

***** NO CRIMINAL HISTORY USED *****

CHARGE - 03

UNIQUE NUMBER OFFENSE DATE CHARGE FILED JUVNL OFFENSE DISP RESP
 50869139201 09-15-86 N WA031013J

CHARGE CODE DESCRIPTION
 ARRESTED 07669 NO VALID LICENSE

***** NO CRIMINAL HISTORY USED *****

DETAILS OF ARREST - 02 DATE 02-23-87

AGENCY CASE NO ARREST NAME
 SNOHOMISH CO 62864 MCKIEARNAN, MICHAEL W
 SHERIFF'S OFFICE
 EVERETT WA --- (WA0310001)

CHARGE - 01

UNIQUE NUMBER OFFENSE DATE CHARGE FILED JUVNL OFFENSE DISP RESP
 00786109201 02-23-87 N WA031013A

CHARGE CODE DESCRIPTION
 ARRESTED 02312 BURGLARY 2

***** NO CRIMINAL HISTORY USED *****

WASHINGTON STATE IDENTIFICATION SECTION

PAGE

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..041487

P.O. BOX 2527

OMPIA, WASHINGTON 98504-6502

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY

STATE IDENTIFICATION NO.	NAME	ORIGINATING AGENCY NUMBER	F.B.I. NUMBER	DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT
WA13379895	MCKIEARNAN, MICHAEL W	WA031013A		08-26-68	M	W	600	165

COLOR EYES	COLOR HAIR	BIRTH PLACE	FINGER PRINT CODE NCIC
BLU	BRN	WA	P051A00416PI08091920

COMMENT	STATUS	LOCATION	TYPE
	NO CODES	NO CODES	NO CODES

NON-VERIFIED CUSTODY STATUS INFORMATION PROVIDED BY DEPARTMENT OF CORRECTIONS

DETAILS OF ARREST - 03 DATE 03-15-87

AGENCY: SNOHOMISH CO SHERIFF'S OFFICE EVERETT WA
CASE NO: 52864
ARREST NAME: MCKIEARNAN, MICHAEL W
--- (WA0310000)

CHARGE - 01

UNIQUE NUMBER	OFFENSE DATE	CHARGE FILED	JUVNL OFFENSE	DISP RESP
00871757701	03-15-87		N	WA031013J

CHARGE	CODE	DESCRIPTION
ARRESTED	02802	POSS STOLEN PROP 1

***** NO CRIMINAL HISTORY USED *****

CHARGE - 02

UNIQUE NUMBER	OFFENSE DATE	CHARGE FILED	JUVNL OFFENSE	DISP RESP
00871757702	03-15-87		N	WA031013J

CHARGE	CODE	DESCRIPTION
ARRESTED	02812	POSS STOLEN PROP 2

***** NO CRIMINAL HISTORY USED *****

WASHINGTON STATE IDENTIFICATION SECTION

P.O. BOX 2527

OLYMPIA, WASHINGTON 98504-6502

..041437

PAGE

4 OF 4

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY

STATE IDENTIFICATION NO.	NAME	ORIGINATING AGENCY NUMBER	F.B.I. NUMBER	DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT
WA13379895	MCKIEARNAN, MICHAEL W	WA031D13A		08-26-68	M	W	600	165

COLOR EYES	COLOR HAIR	BIRTH PLACE	FINGER PRINT CODE NCR
BLU	BRN	WA	P351440416PI08091920

COMMENT

CUSTODY

STATUS

LOCATION

TYPE

NO CODE:

NO CODE:

NO CODE:

NON-VERIFIED CUSTODY STATUS INFORMATION PROVIDED BY DEPARTMENT OF CORRECTIONS

DETAILS OF ARREST - 04 DATE 04-03-87

AGENCY: SNOHOMISH CO SHERIFF'S OFFICE EVERETT WA
CASE NO: 62864
ARREST NAME: MCKIEARNAN, MICHAEL W
--- (WA031000)

CHARGE - 01

UNIQUE NUMBER: 03671567801
OFFENSE DATE: 04-03-87
CHARGE FILED: [blank]
JUVNL OFFENSE: N
DISP RESP: WA031013A

CHARGE CODE: 02904
ARRESTED: ROBBERY 1
DESCRIPTION: [blank]

***** NO CRIMINAL HISTORY USED *****

DOC ACTIVITY

***** NO KNOWN DOC ACTIVITY *****

OUT OF STATE CONVICTIONS

***** NO KNOWN OUT OF STATE CONVICTIONS *****

***** NOTICE *****
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION RESPONSE IS PROHIBITED UNLESS IN COMPLIANCE WITH RCW 10.97.050.

POSITIVE IDENTIFICATION CAN BE BASED ONLY UPON FINGERPRINT COMPARISON.

PS 8-862

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
 IDENTIFICATION DIVISION
 WASHINGTON, D.C. 20537

PAGE 1

04/13/87

Use of the following FBI record, NUMBER 865 793 FA7 is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints. 06

Contributor: Identifier (ORI) Name Case Number (OCA)	Subject Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
<p>THE FOLLOWING FBI IDENTIFICATION RECORD IS BEING FURNISHED BASED UPON THE DESCRIPTIVE INFORMATION IN YOUR REQUEST AND NOT AS THE RESULT OF A FINGERPRINT COMPARISON. CONSEQUENTLY, THE FBI CANNOT GUARANTEE THAT THIS RECORD CONCERNS THE PERSON IN WHOM YOU ARE INTERESTED.</p>			
<p>DESCRIPTORS ON FILE ARE LISTED BELOW:</p>			
TYPE OF DESCRIPTOR	ON FILE	TYPE OF DESCRIPTOR	ON FILE
RACE	WHITE	BIRTH DATE	08/28/68
SEX	MALE	BIRTH CITY	08/26/68
HEIGHT	600	BIRTH PLACE	WASHINGTON
WEIGHT	165	SOC SEC NO.	
HAIR	BROWN	MISC ID NO.	
EYES	BLUE		
SCARS ETC.			
NATIONAL CRIME INFORMATION CENTER FGPT		CLASS:	PO 51 AA 03 14 DI 08 07 17 20
WA0310000 SHERIFF'S OFFICE EVERETT, WA 62864	MCKIERNAN, MICHAEL WAYNE WA13379895	02/23/87	C-BURG 2 FOR
WA0310000 SHERIFF'S OFFICE EVERETT, WA 62864	MCKIERNAN, MICHAEL WAYNE WA13379895	03/15/87	C-STOLEN PROP 1/ET 2 CTS
REQUESTING AGENCY COPY WA031013A COUNTY PROSECUTOR EVERETT, WA			

**APPENDIX A TO PLEA AGREEMENT
 PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY
 (SENTENCING REFORM ACT)**

3/31/87 (da)

MCKIEARNAN, Michael W.

CRIME	DATE OF CONVICTION	PLACE OF CONVICTION	DISPOSITION (Probation and/or Incarceration and length) SRA - Counts as Prior
-------	--------------------	---------------------	--

ADULT FELONIES:

2° Burglary	5/87	Snohomish County 80-1-01190-5	(TO READ Bill) (At same time as a the interview)

ADULT MISDEMEANORS:

None known.

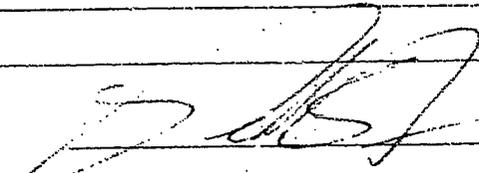
JUVENILE FELONIES:

None known.

JUVENILE SERIOUS TRAFFIC:

None known.

See attached RAP sheets.


 Deputy Prosecuting Attorney

Date: 5/7/87

**STATE'S SENTENCE RECOMMENDATION (CONFINEMENT OF OVER ONE YEAR)
(SENTENCING REFORM ACT)**

Deferidant: Michael McVierzani Date: 5-7-87
Cause No. 87-1-00313-7

State recommends that the sentence of this defendant be as follows:

TOTAL CONFINEMENT: State recommends that the defendant be sentenced to a term of total confinement in the custody of the Department of Corrections as follows:

Count I 36 months/years. Count IV _____ months/years.
Count II _____ months/years. Count V _____ months/years.
Count III _____ months/years. Count VI _____ months/years.

Sentence to run concurrent w/ 85-2225 imposed
upper 86-1-01190-5

Terms on each count to run concurrently/consecutively.

PROBATION REVOCATION/MODIFICATION:

a. Revocation: State recommends revocation of probation or community supervision on Snohomish County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

b. Modification: State recommends modification of probation or community supervision on Snohomish County Cause Number(s) _____ and recommends that terms be run concurrently/consecutively.

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Secretary of the Department (RCW 99A.120(1)) within 10 years.

Restitution as set forth on attached Appendix C.

Pay costs, mandatory ~~\$50~~^{\$75} Victim Penalty Assessment, recoupment of defense attorney fees, if appointed

Pay a fine of \$ _____

OTHER

Prosecutor will dismiss "Failure to Acquire Washington Driver's License" charge in Everett District Court, Citation # 4877290. Prosecutor will also dismiss second misd charge of same kind in same court as well. Case # withdrawn. -> PA # 86-02259, which state agrees not to file or otherwise pursue.
AM

EXCEPTIONAL SENTENCE: This is an exceptional sentence, and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

[Signature]
Deputy Prosecuting Attorney

3 SUPERIOR COURT OF THE STATE OF WASHINGTON - COUNTY OF SNOHOMISH
THE STATE OF WASHINGTON, Sheriff Snohomish County
Plaintiff

MICHAEL W. MCKIEARNAN,
Defendant

SID NO.: WA13379895

NO. 87-1-00313-7 EXTENSION 87-9-02039-1
WIL. STAT.

JUDGMENT AND SENTENCE
(Felony)

CERTIFIED
COPY

I. FINDINGS

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

1. CURRENT OFFENSE(S): The defendant was found guilty on May 14, 1987 by (plea) (~~jury verdict~~) (~~finding of the court~~) of: (date)

Count No.: I Crime: First Degree Robbery

RCW 9A.56.200(1)(c) Crime Code _____

Date of Crime 3/14/87 Incident No. FPP 15678

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

With a special verdict/finding for use of deadly weapon on Count(s):

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

Additional current offenses are attached in Appendix A.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

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

Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
Burglary 2nd	5/87	A	8-21-01140-5	F
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Additional criminal history is attached in Appendix B.

3. SENTENCING DATA:

Count No.	Offender Score	Seriousness Level	Range	Maximum Term
<u>I</u>	<u>1</u>	<u>UX</u>	<u>36-48 Mos.</u>	<u>20 Yrs. to Life</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

12/18

Additional current offenses sentencing information is attached in Appendix C.

Following a hearing, the court found real and material facts as set forth in Appendix C.

4. EXCEPTIONAL SENTENCE;

Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____. The reasons are set forth in Appendix D.

5. CATEGORY OF OFFENDER: The defendant is:

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

II. ORDER

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

1. Defendant shall pay to the Clerk of this Court:

- (a) \$ _____, Court costs; plus any costs determined after this date.
- (b) \$ 70.00, Victim assessment; Any such costs will be established by separate order of this court.
- (c) _____, Restitution (with credit for amounts paid by co-defendants);
- The amount and the recipient(s) of the restitution are as established by separate order of this Court;
- (d) \$ _____, Recoupment for attorney's fees;
- (e) \$ _____, Fine;
- (f) \$ _____, Drug enforcement fund;
- (g) \$ _____, Other costs.

- (h) Payments shall be made in the manner established by Local Rule 2.65 within a period of three from the date of ~~this~~ order. Release from confinement.
- (i) This Court shall retain jurisdiction over the defendant for a period of ten years to assure payment of the above monetary obligations.

2. The Court, upon motion of the State, DISMISSES Count(s) _____

3. CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows: commencing no later than the 19 day of May, 1987 at 1:30 P.M.

36 months for Count No. I
_____ months for Count No. _____
_____ months for Count No. _____

- The terms in Counts No. _____ are concurrent for a total term of _____ months.
 The terms in Counts No. _____ are consecutive for a total term of _____ months.
 The sentence herein shall run (concurrently) (~~consecutively~~) with the sentence in Subsequent Police Case No. 86-1-01190-5 (Count(s) or cause number(s))

Credit is given for (time) (_____ ~~days~~) served.

To be detained by the Inmate County Jail
The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- Appendix A, Additional Current Offenses:
 Appendix B, Additional Criminal History:
 Appendix C, Current Offense(s) Sentencing Information; and
 Appendix D, Reasons for an Exceptional Sentence.

DONE IN OPEN COURT this 19 day of May, 1987.

[Signature]
JUDGE

Presented by:

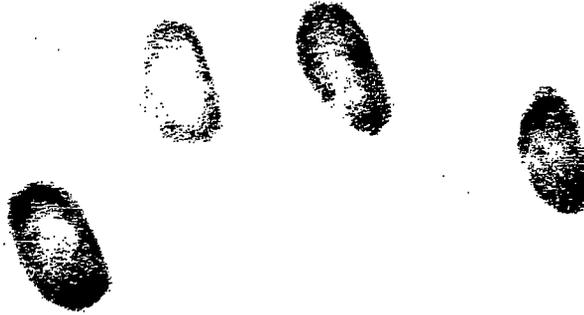
[Signature]
Deputy Prosecuting Attorney

Approved as to form:

[Signature]
MICKEY KROM
Attorney for Defendant

[Signature]
MICHAEL W. MCKIEARNAN
Defendant

FINGERPRINTS



Right Hand
Fingerprints of:

MICHAEL W. MCKLEARNAN
[Signature]
(Defendant's Signature)

Attested by:

Kay D. Anderson, Snohomish County Clerk
By: *[Signature]*
(Deputy Clerk)

Dated: _____

CERTIFICATE

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

Dated: _____
Kay D. Anderson, Snohomish County Clerk
By: _____
(Deputy Clerk)

JUDGMENT AND SENTENCE (Felony)
FINGERPRINTS
Page ____ of ____

1895

OFFENDER IDENTIFICATION

S.I.D. No. WA13379895
Date of Birth 8/26/68
Sex M
Race W
ORI WA 0310000
OCA 62864
OIN 008717577-01/02
DOA 3/15/87

