CERTIFICATE OF SERVICE
I certify that I mailed copies of PRP to Pierce Pros Atty & 5/11/07 CA
Date Signed

FILED
COURT OF APPEALS
DIVISION II

07 APR -5 PM 12:42

STATE OF WASHINGTON
BY CA
DEPUTY

IN THE COURT OF APPEALS OF WASHINGTON

IN AND FOR DIVISION II

IN THE PERSONAL RESTRAINT PETITION OF: DOUGLAS JOHN MARTIN TOBIN, Petitioner.	:	NO: 36202-3 SCNO: 02-1-01499-4 PERSONAL RESTRAINT PETITION.

81105

A. STATUS OF PETITIONER.

Comes now the Petitioner Douglas John Martin Tobin, by and through Pro Se, and Counsel Kenneth Kessler, and Apply for Relief from Confinement.

Petitioner is Serving a Sentence and is In Custody upon the Conviction of First Degree Possession of a Firearm, And the Judgment and Sentence from the Pierce County Superior Court.

1) The Court in which I was Sentenced was the Pierce County Superior Court.

2) I Plead Guilty to the Crime of First Degree Possession of a Firearm. A Class B Felony.

3). The Sentence imposed was an Exceptional Sentence of 168 Months.

4). The Judge who imposed the Sentence was; Honorable Judge John A. McCarthy.

5). My Lawyer at Plea Hearings was; Allen Ressler.

6). I was Sentenced on December 15th 2003.

7). I did not Appeal the Decision of the Court.

8). There is an Appeal in the Companion/Attached Case to this Cause of 02-1-05810-0. Where Petitioner Directly Appealed the Restitution, and other potions of the case.

B. BRIEF STATEMENT OF FACTS.

Petitioner Plead Guilty to the Crime of Possession of a Firearm in the First Degree, that was found in his Office space.

The Prosecution made Deals and Promised to Seek an Exceptional Sentence of 168, and other Charges if Petitioner did not plead guilty and take the deal offered.

Petitioner not knowing any better excepted the Plea Deal and plead guilty and received and exceptional sentence of 168 Months Incarceration for the Crime.

It was not until recently that Petitioner learned that his Crime was a Class B. With a Statutory Maximum of only 120 Months.

Further, Petitioner learned that his Exceptional Sentence violated both Blakely v. Washington State, 542 U.S. 296, 124 S.Ct. 2531 (2004) and State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005) Both of which were Decided after Petitioner Plead Guilty.

Petitioner with the help of Counsel and the Law Library found that his Sentence was Illegal in several

ways. First his Sentence Offender Score should have been 3 Points, and a sentence of 43 to 57 Months not 168. Second. the Sentence Exceeded the Statutory Maximum of the Law. And Third it violated Washington's State's Laws concerning Exceptional Sentences.

Petitioner now brings forth this Petition based upon the facts that his Sentence in is Error and must be corrected.

C. GROUNDS FOR RELIEF.

I claim that I have Three Grounds for Relief from the Judgment and Sentence from the Pierce County Superior Courts Judgment Because;

GROUND ONE.

THE TRIAL COURT AND PROSECUTION ERRED IN CALCULATION OF THE OFFENDER SCORE.

Petitioner contends that the trial Court erred in Calculating his Offender Score. Which should have been set 3 Points.

The Trial Court, calculated Petitioner's Offender Score at 38. The Calculation was;

1) BURGLARY 1st. 1976. (1 count)

2) MANSLAUGHTER 1st. 1976 (1 count)

3) THEFT FIRST DEGREE. (1 count) and

4) 35 COUNTS: FISH & WILDLIFE TICKETS.

The Trial Courts used in its Scoring the 35 Fish & Wildlife Tickets, which were "Unranked Crimes". And should not have counted in the Offender Score.

This court can find the Alleged Count of the Offender Score in the attached Judgment and Sentence.

RCW 9.94A.505 (2)(b) holds "Unranked Crimes without an established seriousness level, are not counted in the offender score." See In Re Goodwin, 141 Wn.2d 861, 866-67, 50 P.3d 618 (2002).

For this reason the Court must Correct the Illegal Sentence that was imposed.

GROUND TWO.

THE TRIAL COURT ABUSED ITS DISCRETION IN SETTING AN EXCEPTIONAL SENTENCE BEYOND ITS AUTHORITY

Petitioner Contends that the trial Court Violated his Constitution Rights when it imposed an Exceptional Sentence.

Here in this Case, Petitioner

Under Recent Blakely v. Washington State, 542 U.S. 296, 124 S.Ct. 2531 (2004) and State v. Hughes, 154 Wn.2d 118, 110 P.3d 192 (2005). Each of which held that a trial Court acts without any Authority to impose a Sentence other than those authorized by the Sentencing Reform Act.

Here the Sentence was and Exceptional Sentence in which Petitioner Agreed to before the Blakely, and Hughes decision, and he can not be held to that Plea Agreement where the Court Abused its Discretion. See State v. Van Buren, __ Wn.2d __, 150 P.3d 597-98 (2007).

This does not address the fact that the Court Imposed

a Consecutive and Concurrent Sentences under RCW 9.94A.589. Here the Trial Court Violated RCW 9.94A.589 (a) when it set the Consecutive Sentence at 168 Months. Van Buren, supra. And this Exceptional Sentence must be corrected.

GROUND THREE

STATUTORY MAXIMUM SENTENCE.

Here the Simple truth of the Matter is that Petitioner Plead Guilty to a Class B Felony which Carried a Maximum Sentence of 10 years. or 120 Months Incarceration. RCW 9.94A.525.

Here the Sentence impose exceeded the Statutory Sentencing Laws by 68 Months and must be reversed.

GROUND FOUR.

THE TRIAL COURTS ABUSE CAN BE CORRECTED AT ANY TIME WHEN THERE HAS BEEN A MISCALCULATION AND ERROR IN THE SENTENCING PROCESS.

It is Petitioners claim that his Sentence is in Error of the Law, and that the Sentence is not valid on its face.

Under Current Law Petitioner is not Barred from bringing this Petition to Correct his Sentence under In Re Johnson, 131 Wn.2d 558,, 933 P.2d 1019 (1997); In Re Carle, 93 Wn.2d 31, 604 P.2d 1293 (1980); In Re Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002).

Here Petitioner is entitled to bring his Petition even after the time Limitation of RCW 10.73.090 has Run

and he is Entitled to a Correct Sentence within the Sentencing Reform Act.

D. CONCLUSION

Petitioner can show and has shown that his Sentence is in Error of the Law,. and that he is entitled to a correction of his Sentence, and it to be placed at a score of 3, with a sentence of 43 to 57 Months and Released from his Illegal Incarceration.

Respectfully Submitted

Dated this 3 day of April, 2007

Douglas Tobin #253648
Washington Correction Center
P.O. BOX 900 Cedar A-12
Shelton, WA 98584

FILED
DEPT. 11
IN OPEN COURT
DEC 15 2003
Pierce County Clerk
By ____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff,	CAUSE NO. 02-1-01499-4
vs.	JUDGMENT AND SENTENCE (JS)
DOUGLAS JOHN MARTIN TOBIN, Defendant.	[X] Prison [ ] Jail One Year or Less [ ] First-Time Offender [ ] SOSA [ ] DOSA [ ] Breaking The Cycle (BTC)
SID: UNKNOWN DOB: 4/27/52	

I. HEARING

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 [X] plea [ ] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME	INCIDENT NO.
I	UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST DEGREE (GGG66)	9.41.040(1)(a)	3/18/2002	00011

as charged in the Original Information

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

[X] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 02-1-05810-0
02-1-01276-3

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

02-9-15010-1

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	ASLT 2	11/19/76		2/3/76	ADULT	NV
2	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]
3	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]
4	[illegible]	CURRENT		6/9/01	ADULT	NV
5	35 FISH AND WILDLIFE VIOLATIONS	CURRENT		6/9/01	ADULT	NV

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	38	VII	87-116 MOS	NONE	87-116 MOS	10 YRS

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

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence [X] above [ ] below the standard range for Count(s) 01-1-05 Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [X] 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.753.

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

_____

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

III. JUDGMENT

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

3.2 [ ] The court DISMISSES Counts _____ [ ] The defendant is found NOT GUILTY of Counts

_____

IV. SENTENCE AND ORDER

IT IS ORDERED:

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Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

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

JASS CODE

RTN/RJN $ _____ Restitution to: _____

$ _____ Restitution to: _____

BLD $ 100.00 Biological Sample Fee

CRC $ _____ Court costs, including RCW 9.94A.030, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee $ 110.00 FRC

Witness costs $ _____ WFR

Sheriff service fees $ _____ SFR/SFS/SFW/WRF

Jury demand fee $ _____ JFR

Other _____ $ _____

PUB $ _____ Fees for court appointed Attorney RCW 9.94A.030

$ _____ Other costs for: _____

$ 610.00 TOTAL RCW 9.94A.760

[X] The above total does 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.753. A restitution hearing:

[ ] shall be set by the prosecutor.

[X] is scheduled for 1/23/04 @ 1:30

[ ] RESTITUTION. Order Attached

[X] Restitution ordered above shall be paid jointly and severally with:

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-$)
RJN				

[X] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction.

RCW 9.94A.200010.

[X] All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, 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. RCW 9.94A.760.

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

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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.

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] [illegible] The defendant shall have a [illegible] drawn for [illegible] identification [illegible] the defendant [illegible] The appropriate [illegible], the county or DOC, shall be responsible for [illegible] the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.3 The defendant shall not have contact with _____ (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.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

116	months on Count	I	_____	months on Count	_____
_____	months on Count	_____	_____	months on Count	_____
_____	months on Count	_____	_____	months on Count	_____

Actual number of months of total confinement ordered is: 168

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. 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: CONSECUTIVE TO 02-1-05810-0

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

_____

Confinement shall commence immediately unless otherwise set forth here: _____

(a) The defendant is hereby given credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. 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: ~~[illegible]~~ 621 days

4.6 [ ] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[ ] COMMUNITY CUSTODY is ordered as follows:

Count _____ for a range from: _____ to _____ Months;

Count _____ for a range from: _____ to _____ Months;

Count _____ for a range from: _____ to _____ 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 for community placemet 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 -- RCW 9.94A. 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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[ ] The defendant shall comply with the following crime-related prohibitions: _____

_____

_____

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

[ ] WORK ETHIC CAMP. RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **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 County Jail or Department of Corrections: _____

_____

_____

_____

_____

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 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose 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 9.94A.505.

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.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.

5.4 RESTITUTION HEARING.

[ ] Defendant waives any right to be present at any restitution hearing (defendents 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.

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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.

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 12-15-03

JUDGE John A McCarthy
Print name JOHN A. McCARTHY

Deputy Prosecuting Attorney
Print name: Tracy Hoover
WSB # 17842

Attorney for Defendant
Print name: Allen Ressler
WSB # 5330

Defendant
Print name: Douglas John Tobin

FILED
DEPT. 11
IN OPEN COURT
DEC 15 2003
Pierce County Clerk
By ..... DEPUTY

STATE OF WASHINGTON, County of Pierce ss: I, Kevin Stock, 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 this ____ day of SEP 28 2006, 20__
Kevin Stock, Clerk
By MR Deputy

Office of Prosecuting Attorney
946 County City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 02-1-05810-0

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and [illegible] in this [illegible]

WITNESS my hand and seal of the [illegible] Superior Court affixed this date: _____.

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

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FILED
DEPT. 11
IN OPEN COURT
DEC 15 2003
By: DEPUTY

IDENTIFICATION OF DEFENDANT

SID No. UNKNOWN
(If no SID take fingerprint card for State Patrol)

Date of Birth 4/27/52

Local ID No. UNKNOWN

FCN No. UNKNOWN

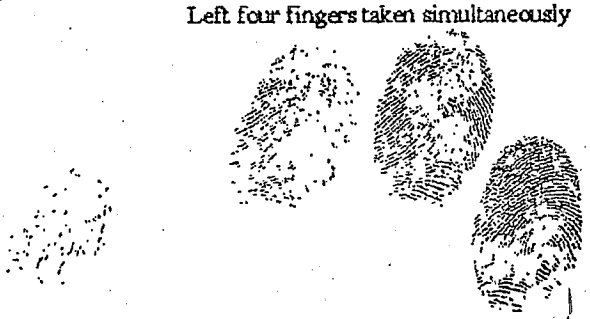
Other

Alias name, SSN, DOB: _____

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

FINGERPRINTS

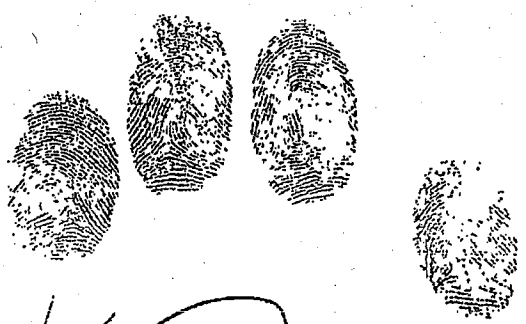
Left four fingers taken simultaneously



Left Thumb

Right Thumb

Right four fingers taken simultaneously



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, Deputy Clerk, Patty L Denich Dated: 12-15-03

DEFENDANT'S SIGNATURE: _____
DOUGLAS JOHN MARTIN TOBIN

DEFENDANT'S ADDRESS: _____

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

NOTE TO THE COURT.

FILED
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07 APR -5 AM 10: 34

STATE OF WASHINGTON
BY _____
DEPUTY

DOUGLAS JOHN MARTIN TOBIN #253648
WASHINGTON CORRECTION CENTER
P.O. BOX 900 Cedar A-12
SHELTON, WA 98584

Dear Court Clerk.

Mr. David Ponzoha, I am Asking that you Please, File and except my Attached Personal Restraint Petition, that is being Filed by my Designee, and Paying the $250.00 Dollar filing Fee.

I have enclosed a copy for the Respondent, And ask the Court to serve whoever is Designated Respondent.

The Prosecutor in the original case was Tom Moore of Pierce County.

Respectfully