

NO. 81522-4  
(COA NO. 59970-4-1)

SUPREME COURT OF THE STATE OF WASHINGTON

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In re Personal Restraint Petition of

STEVEN CLARK,

Petitioner.

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**MOTION FOR DISCRETIONARY REVIEW**

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FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
DIV. #1  
2000 APR 29 PM 3:13

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**A. IDENTITY OF PETITIONER**

The State of Washington asks this Court to accept review of the decision designated in Part B of this motion pursuant to RAP 13.5A(a)(1).

**B. DECISION**

By unpublished decision filed March 31, 2008, Division I of the Court of Appeals granted Steven Clark's personal restraint petition and remanded the matter to allow Clark to withdraw his 1998 guilty plea to two counts of robbery in the second degree. A copy of the decision is attached as Appendix A.

**C. ISSUES PRESENTED FOR REVIEW**

1. Whether review should be granted where the Court of Appeals decision conflicts with this Court's decisions in In re Personal Restraint of Hemenway, 147 Wn.2d 529, 55 P.3d 615 (2002), and State v. Ammons, 105 Wn.2d 175, 713 P.2d 719 (1986), by concluding that a judgment and sentence is facially invalid based on an alleged due process violation that cannot be established on the face of the documents.

2. Whether review should be granted where the Court of Appeals decision misapplied this Court's decision in State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006), where petitioner did not bring a timely motion to withdraw his plea upon discovering that he had been misadvised as to community placement.

3. Whether review should be granted where the Court of Appeals decision misapplied this Court's decision in In re Personal Restraint of Isadore, 151 Wn.2d 294, 88 P.3d 390 (2004), where petitioner was advised of all the punishment he would receive by pleading guilty.

**D. STATEMENT OF THE CASE**

In 1998, Steven Clark pled guilty to two counts of robbery in the second degree. Appendix C. In exchange for his plea, the State agreed to dismiss a third charge of robbery in the second degree. Appendix C. The plea form advised Clark that "[i]n addition to confinement, the judge will sentence me to community placement for at least one year." Appendix C, at 5. The State's recommendation did not include a period of community placement. Appendix C, at 4.

Clark was sentenced on February 27, 1998, to a sentence of 25 months of total confinement. Appendix B. The court imposed a term of community placement. Appendix B. Two weeks later, on March 12, 1998, the court entered an Order Modifying Judgment and Sentence, vacating the term of community placement. Appendix D. Clark did not appeal his convictions or sentence.

Department of Corrections records indicate that Clark was confined in prison from March 3, 1998, to March 23, 1999. Appendix E. On March 23, 1999, he was transferred to the King County Jail because he was charged with a drug crime. Appendix E and F. He pled guilty to delivery of a controlled substance, and was sentenced to 12 months plus one day of confinement to be served concurrently with his robbery convictions. Appendix F. He was released from jail on May 1, 1999. Appendix E.

On October 5, 1999, Clark robbed the Wells Fargo Bank in Kirkland, Washington. Appendix G. On October 26, 1999, Clark robbed the Key Bank in Woodinville, Washington. Appendix G. Subsequently, Clark was found guilty by jury trial of two counts of robbery in the second degree and sentenced to life imprisonment without possibility of parole. Appendix G. These convictions and sentence were affirmed by the Court of Appeals in 2003. Appendix

G. Clark did not challenge the validity of his 1998 robbery convictions on appeal. Appendix G.

Clark filed this personal restraint petition on May 8, 2007, alleging for the first time that his 1998 robbery convictions were invalid because his plea was not voluntary.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

- 1. THE COURT OF APPEALS DISREGARDED THIS COURT'S HOLDINGS IN IN RE PERSONAL RESTRAINT OF HEMENWAY AND STATE v. AMMONS IN CONCLUDING THAT THIS PETITION IS NOT TIME-BARRED.**

The Court of Appeals concluded that this petition is not time-barred, even though it was filed more than nine years after Clark's judgment and sentence became final, because the judgment and sentence was facially invalid. The Court of Appeals reached this conclusion by assuming facts that are not established on the face of the documents. The Court of Appeals decision conflicts with this Court's decisions in In re Personal Restraint of Hemenway, 147 Wn.2d 529, 55 P.3d 615 (2002), and State v. Ammons, 105 Wn.2d 175, 713 P.2d 719 (1986), that restrict the facial validity inquiry to infirmities that can be established on the face of judgment and sentence and the plea documents.

No petition collaterally attacking a judgment and sentence may be filed more than one year after the judgment becomes final, if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. RCW 10.73.090(1). A judgment becomes final on the date that it is filed with the clerk of the trial court if no appeal is filed. RCW 10.73.090(3). In the present case, the judgment and sentence became final in 1998. This petition was filed nine years after the judgment and sentence became final.

A judgment is valid on its face unless the judgment evidences an error without further elaboration. In re Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000). Facial invalidity has been interpreted to include those documents signed as part of a plea agreement as well as the judgment and sentence itself. Ammons, 105 Wn.2d at 189. The documents of the plea can inform the inquiry as to whether the judgment and sentence is invalid on its face. Hemenway, 147 Wn.2d at 532. However, misinformation about the consequences of a plea is not a facial defect exempt from the one-year time limit on collateral attack. Id. at 533.

Clark argues that his 1998 judgment and sentence is invalid on its face because he was misinformed about whether community

placement would be imposed. Hemenway is directly on point. When Hemenway pled guilty, the plea form did not advise him of the mandatory two-year period of community placement, but rather stated that "the judge may place me on community supervision." Id. at 530. At sentencing, the court properly imposed a two-year term of community placement. Id. at 531. Hemenway filed a personal restraint petition five years later contending that his guilty plea was involuntary because he was misadvised as to the mandatory period of community placement. Id. This Court held that the petition was time-barred because the judgment and sentence was not invalid on its face where it imposed the correct period of community placement. Id. at 532-33. This Court stated, "[t]he question is not, however, whether the plea documents are facially invalid, but rather whether the judgment and sentence is invalid on its face. The plea documents are relevant only where they may disclose invalidity in the judgment and sentence. Here they do not." Id. at 533.

This Court reaffirmed this holding in In re Turay, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003), stating that in Hemenway "we noted that the relevant question in a criminal case is whether the

judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face."

In the present case, the fact that the plea form erroneously advised Clark that he would be placed on community placement does not render Clark's judgment and sentence invalid on its face. The judgment and sentence, as modified by the March 12, 1998 order, properly imposed no term of community placement. The judgment and sentence as modified is valid on its face, and thus Clark's collateral attack on the judgment and sentence is time-barred pursuant to RCW 10.73.090 and Hemenway.

The Court of Appeals concluded that the March 12, 1998 order modifying the sentence was itself invalid on its face because it "was entered without due process." Appendix A, at 2, n. 2. The court asserts that "neither Clark nor his counsel was notified of the motion" to modify. Appendix A, at 2. The Court of Appeals does not explain how it made this determination.

While the modification order was not signed by defense counsel, it is impossible to determine from the face of the order whether defense counsel or Clark were notified of the motion. There is no reason to think they would have objected to an order that reduced Clark's punishment. It would appear that the Court of

Appeals relied on a declaration provided by Clark on August 22, 2007, that states that he was not notified of the hearing. By relying on this declaration, the Court of Appeals erred and disregarded this Court's clear holdings as to the facial validity inquiry. For example, in Ammons, one defendant argued that his plea form was constitutionally invalid because it failed to show that he was advised of his right to remain silent. Ammons, 105 Wn.2d at 189. This Court held that such a determination could not be made on the face of the guilty plea form because there was no affirmative showing that the defendant was told he did *not* have a right to remain silent. Id. In other words, the plea form's silence as to that right did not result in facial invalidity.

Likewise, in the present case, it is impossible to determine from the face of the March 12, 1998 order what notice defense counsel and Clark received. It cannot be affirmatively established on the face of the document that no notice was given, just as it could not be established on the face of the plea form in Ammons that the defendant was not advised of his right to remain silent. The Court of Appeals went beyond the face of the order in concluding that the order violated due process and was thus facially

invalid. The Court of Appeals decision conflicts with Hemenway and Ammons.

## 2. THE COURT OF APPEALS DECISION MISAPPLIED STATE V. MENDOZA.

The Court of Appeals held that it was constrained by this Court's decision in State v. Mendoza, 157 Wn.2d 582, 141 P.3d 49 (2006), to allow Clark to withdraw his plea. The Court of Appeals is mistaken. The court failed to appreciate the crucial distinction between this case and Mendoza.

Unlike the present case, State v. Mendoza was a direct appeal. In that case, the defendant learned at sentencing that his standard range was lower than he had been advised. Id. at 585. He immediately appealed and sought withdrawal of his guilty plea. Id. at 585-86.<sup>1</sup> This Court held that under the circumstances it would not inquire into the materiality of the misadvisement in the defendant's subjective decision to plead guilty. Id. at 590.

However, this Court clarified that:

[I]f the defendant was clearly informed before sentencing that the correctly calculated offender score

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<sup>1</sup> Likewise, in In re Personal Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004), Isadore filed a personal restraint petition challenging the voluntariness of his plea within *one month* of learning that he had been misadvised as to community placement.

rendered the actual standard range lower than had been anticipated at the time of the guilty plea, and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea.

Id. at 592. In other words, if the defendant does not timely seek withdrawal upon learning that he was misadvised of a consequence, the appellate court concludes that the misadvisement was not material and the plea was voluntary.

In this case, Clark waited eight years after he was released from prison on this conviction to challenge the voluntariness of his plea. His case is directly analogous to a defendant who learns prior to sentencing that community placement is not required and does not seek to withdraw his plea. In both instances, the defendant's lack of action demonstrates that community placement was not material to his decision to plead guilty. If it had been, he would have moved to withdraw his plea in 1999 when he was released from prison and discovered that he would not be on community placement. The Court of Appeals erroneously applied the holding on Mendoza.

3. **THE COURT OF APPEALS DECISION  
MISAPPLIED IN RE PERSONAL RESTRAINT OF  
ISADORE.**

Finally, the Court of Appeals erred in holding that Clark's plea was involuntary where he was advised of all the punishment that was authorized. The Court of Appeals erred in relying on In re Isadore, 151 Wn.2d 294, 88 P.3d 390 (2004). In Isadore, the plea documents failed to advise Isadore that a one-year period of community placement would be imposed as part of his sentence. Id. at 297. This Court held that failure to advise Isadore of the mandatory period of community placement constituted a failure to inform the defendant of all the direct consequences of the plea, and rendered the plea invalid. Id. at 298. The reasoning is simple: Isadore had not been advised of all the punishment that he would receive. This did not happen in Clark's case. He was properly advised of all the punishment that was statutorily authorized, and received no punishment of which he was not aware at the time of the plea. Indeed, he received slightly less punishment. Unlike Isadore, Clark was advised of all the direct consequences of his plea. The Court of Appeals misapplied Isadore as well.

F. CONCLUSION

This Court should accept review for the reasons indicated in Part E and dismiss Clark's personal restraint petition as time-barred.

DATED this 27 day of April, 2008.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

for By: Deborah A. O'Connell #18887  
ANN SUMMERS, WSBA #24509  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

## APPENDIX A



One month after Clark's judgment and sentence was filed, the State moved to modify it. Neither Clark nor his counsel was notified of the motion. The court granted the ex parte motion and vacated the community placement provisions of Clark's sentence. The State's motion is not part of the record before this court, but the order indicated it was entered "to correct a clerical error or failure on the written judgment and to correspond with the actual sentence imposed by the court."

### ANALYSIS

In this petition, Clark argues that he should be allowed to withdraw his guilty plea related to the 1998 convictions because he was misinformed about mandatory community placement, which is a direct consequence of a guilty plea and, therefore, his plea was not knowing or voluntary. He contends that he is entitled to withdraw his guilty plea, regardless of whether he would have made a different choice if he had been advised correctly.

#### Clark Is Entitled To Relief<sup>2</sup>

This court will grant relief if a petitioner is under "restraint" as defined in RAP 16.4(b),<sup>3</sup> and if the restraint is unlawful for one or more of the reasons set

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<sup>2</sup>The State contends that Clark's personal restraint petition is time-barred because the judgment and sentence as modified in March 1998 is valid on its face and was rendered by a court of competent jurisdiction. See RCW 10.73.090(1). But under State v. Mendoza, 157 Wn.2d 582, 151 P.3d 159 (2006), Clark had a right to withdraw his guilty plea and, therefore, the order modifying his judgment and sentence is void because it was entered without due process. See Amunrud v. Board of Appeals, 158 Wn.2d 208, 216, 143 P.3d 571 (2006) (to accord due process, state must give notice and an opportunity to be heard before depriving a person of a protected interest); see also In re Marriage of Ebbighausen, 42 Wn. App. 99, 102, 708 P.2d 1220 (1985) (judgments entered without due process are void).

forth in RAP 16.4(c).<sup>4</sup> Generally, to be entitled to relief, the petitioner must prove actual prejudice from a constitutional error, or a nonconstitutional error that inherently results in a complete miscarriage of justice.<sup>5</sup> If, however, the petitioner has not had a prior opportunity for judicial review, he need only show that he is restrained under RAP 16.4(b) and that the restraint is unlawful under RAP 16.4(c).<sup>6</sup> A petitioner's restraint is unlawful if he is restrained as a result of an invalid guilty plea.<sup>7</sup>

Due process requires a defendant's guilty plea to be knowing, voluntary, and intelligent.<sup>8</sup> A guilty plea is not made knowingly if it is based on misinformation regarding a direct sentencing consequence.<sup>9</sup> Mandatory community placement is a direct consequence of a guilty plea.<sup>10</sup> If a defendant's guilty plea is invalid, he may elect to specifically enforce the plea or withdraw it.<sup>11</sup>

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<sup>3</sup> "A petitioner is under a 'restraint' if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case." RAP 16.4(b).

<sup>4</sup> Restraint is unlawful under RAP 16.4(c) if, among other reasons, the sentence entered "was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington." Although Clark no longer is serving the sentence for the convictions at issue in this case, the convictions served as a necessary predicate for his current life sentence following a subsequent robbery conviction and a persistent offender finding. In re Pers. Restraint of Davis, 152 Wn.2d 647, 670, 101 P.3d 1 (2004).

<sup>5</sup> In re Pers. Restraint of Gronquist, 138 Wn.2d 388, 396, 978 P.2d 1083 (1999).

<sup>6</sup> In re Pers. Restraint of Isadore, 151 Wn.2d 294, 299, 88 P.3d 390 (2004).

<sup>7</sup> See Isadore, 151 Wn.2d at 302.

<sup>8</sup> Isadore, 151 Wn.2d at 297.

<sup>9</sup> Isadore, 151 Wn.2d at 298.

<sup>10</sup> Isadore, 151 Wn.2d at 298.

<sup>11</sup> Isadore, 151 Wn.2d at 303.

The State argues that Clark is not entitled to relief because the facts conclusively demonstrate that misinformation about community placement was not material to his decision to plead guilty. But the Mendoza court specifically rejected “an analysis that focuses on the materiality of the sentencing consequence to the defendant’s subjective decision to plead guilty.”<sup>12</sup> Mendoza pleaded guilty to one count of child molestation in the third degree. His plea statement indicated his offender score was 7, which meant a standard range of 51 to 60 months, and the State agreed to recommend a 60-month sentence. After Mendoza’s guilty plea was entered, he was told that his offender score was 6, and his standard range was 41 to 54 months.

Mendoza argued on appeal that his plea was involuntary because he was not informed of the correct standard range before pleading guilty. The Supreme Court accepted review to resolve the split of authority among the divisions of the Court of Appeals whether a plea based on a mutual mistake about the standard sentence range may be challenged as involuntary, regardless of whether the correct sentencing range is less onerous. The court adhered to the precedent set in Isadore “that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea,” regardless of whether the actual punishment was less or greater than anticipated.<sup>13</sup> We, therefore, are constrained by Mendoza and hold that Clark is entitled to withdraw his guilty plea if he chooses to do so.

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<sup>12</sup> Mendoza, 157 Wn.2d at 590.

<sup>13</sup> Mendoza, 157 Wn.2d at 591.

We remand to the trial court to permit Clark to choose his remedy as required by State v. Miller.<sup>14</sup>

FOR THE COURT:

Grosse, J.

Appelwick, C.J.

Cox, J.

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<sup>14</sup> 110 Wn.2d at 536 (Where a “defendant was not informed of the sentencing consequences of the plea, the defendant must be given the initial choice of a remedy to specifically enforce the agreement or withdraw the plea. The prosecutor bears the burden of demonstrating that the defendant’s choice of remedy is unjust.”).

## APPENDIX B

3  
3  
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STEVEN J CLARK )  
 )  
 Defendant. )

No. 97-1-09348-8 SEA  
JUDGMENT AND SENTENCE

FILED  
90 MAR -2 AM 7:58  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

MAR 2 1998  
COMMITMENT ISSUED

COPY TO SENTENCING GUIDELINES COMMISSION - MAR 2 1998  
PRESENTING STATEMENT & INFORMATION ATTACHED

I. HEARING

1.1 The defendant, the defendant's lawyer, ALICE M ZALESKI, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 01-20-98 by plea of:

Count No.: I Crime: ROBBERY IN THE 2ND DEGREE  
RCW 9A.56.210 Crime Code 02924  
Date of Crime 10-29-97 Incident No. \_\_\_\_\_

Count No.: II Crime: ROBBERY IN THE SECOND DEGREE  
RCW 9A.56.210 Crime Code 02924  
Date of Crime 11-03-97 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

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

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

98 9 03121 8  
JUDGMENT NUMBER

OFFER
CUST(c)
CASH(d)
JUDO
DISP(f)
CFM
EAR

20  
POSTED

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

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) BURG 2	04-09-87	ADULT	861046701	KING
(b) ASLT 2	08-18-89	ADULT	891014366	KING
(c)				
(d)				

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

2.4 **SENTENCING DATA:**

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	7	IV			22 TO 29 MONTHS	10 YRS AND/OR \$20,000
Count II	5	IV			22 TO 29 MONTHS	10 YRS AND/OR \$20,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 **EXCEPTIONAL SENTENCE:**

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

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

The Court DISMISSES Count(s) III Robbery in the 2nd Degree

**IV. ORDER**

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

**1. RESTITUTION AND VICTIM ASSESSMENT:**

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

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

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

4.3 **PAYMENT SCHEDULE:** Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 3,173<sup>00</sup>. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer.  : \_\_\_\_\_ The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

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

25 months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

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

The terms in Count(s) I + II are concurrent consecutive.

The sentence herein shall run concurrently/consecutively with the sentence in cause number(s) \_\_\_\_\_ but consecutive to any other cause not referred to in this Judgment.

Credit is given for  109 days served  days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15).

4.5  NO CONTACT: For the maximum term of 10 years, defendant shall have no contact with Estella Kim, Christian Scheller, Alice Thai as named in cert for P/c. Violation of this no contact order is a criminal offense under chapter 10.99 RCW and will subject a violator to arrest; any assault or reckless endangerment that is a violation of this order is a felony.

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

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

Appendix H (for additional nonmandatory conditions) is attached and incorporated herein.

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

Appendix K for additional special conditions, RCW 9.94A.120(9)(c), is attached and incorporated herein.

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

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

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

Date: FEB. 27, 1998

Judge Anthony P. Wartnik  
Print Name: ANTHONY P. WARTNIK

Presented by: [Signature]  
Deputy Prosecuting Attorney, Office WSBA ID #91002  
Print Name: Shannon Anderson

Approved as to form: [Signature]  
Attorney for Defendant, WSBA # 15053  
Print Name: Alice M Zaleski

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

STEVEN JOSEPH CLARK

DATED: 2/27/98  
Anthony P. Wartrick  
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE: [Signature]  
DEFENDANT'S ADDRESS: X 3253V NE 5th DOC  
Carnation WA, 98014

ATTESTED BY:  
M. JANICE MICHELS, SUPERIOR COURT CLERK  
BY: Patricia A. Kuehn  
DEPUTY CLERK

CERTIFICATE

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

CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

OFFENDER IDENTIFICATION

S.I.D. NO. WA14406779  
DATE OF BIRTH: DECEMBER 7, 1967  
SEX: M  
RACE: WHITE

1 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

2 STATE OF WASHINGTON, )

3 Plaintiff, )

No. 97-1-09348-8 SEA

4 vs. )

ORDER SETTING RESTITUTION

5 STEVEN JOSEPH CLARK, )

6 Defendant, )

# 3273.00

7 The court ordered payment of restitution as a condition of sentencing. The Court has  
8 determined that the following persons are entitled to restitution in the following amounts;

IT IS ORDERED that defendant make payments through the registry of the clerk of the  
9 court as follows:

10 Christina Schaller  
11 c/o Wells Fargo Bank  
12 1620 Fourth Ave.  
13 Seattle, WA 98101

AMOUNT: \$56.00

14 Estela Kim  
15 c/o Washington Federal Savings and Loan  
16 425 Pike St.  
17 Seattle, WA 98101

AMOUNT: \$30.00

18 Wells Fargo Bank  
19 1620 Fourth Ave.  
20 Seattle, WA 98101  
21 RE: 10/29/97 robbery

AMOUNT: \$1,797.00

22 Washington Federal Savings and Loan  
425 Pike St.  
Seattle, WA 98101  
RE: 11/3/97 robbery

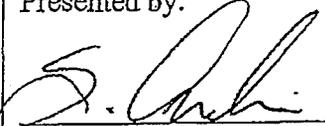
AMOUNT: \$1,390.00

DONE IN OPEN COURT this 25<sup>th</sup> day of February, 1998.

*Anthony P. Wartnik*  
JUDGE ANTHONY P WARTNIK

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Presented by:



Shanna Anderson  
Deputy Prosecuting Attorney

Copy received; Notice  
Presentation waived:



Alice Zaleski/PDA  
Attorney for Defendant

Order Setting Restitution  
CCN# 1239567                      REF# 97111118  
MA

DNA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

STEVEN J CLARK

Defendant.

No. 97-1-09348-8 SEA

APPENDIX G  
ORDER FOR BLOOD TESTING  
AND COUNSELING

(1)  HIV TESTING AND COUNSELING:

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense committed after March 23, 1988. RCW 70.24.340):

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 296-4848 to make arrangements for the test to be conducted within 30 days.

(2)  DNA IDENTIFICATION:

(Required for defendant convicted of sexual offense or violent offense. RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention and/or the State Department of Corrections in providing a blood sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangement for the test to be conducted within 15 days.

If both (1) and (2) are checked, two independent blood samples shall be taken.

Date: FEB. 27, 1998

Anthony B. Wartick  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

STEVEN J CLARK

Defendant.

No. 97-1-09348-8 SEA

APPENDIX H  
COMMUNITY PLACEMENT

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

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

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

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

- (1) Report to and be available for contact with the assigned community corrections officer as directed;
- (2) Work at Department of Corrections-approved education, employment, and/or community service;
- (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
- (4) While in community custody not unlawfully possess controlled substances;
- (5) Pay community placement fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location; and
- (7) Defendant shall not own, use, or possess a firearm or ammunition when sentenced to community service, community supervision or both. (RCW 9.94A.120(13))

**WAIVER:** The following above-listed mandatory conditions are waived by the court: \_\_\_\_\_

(b)  **OFF-LIMITS ORDER (SODA):** The Court finds that the defendant is a known drug trafficker as defined in RCW 10.66.010(3) who has been associated with drug trafficking in an area described in Attachment A. Attachment A is incorporated by reference into the Judgment and Sentence and the Court also finds that the area described in Attachment A is a Protected Against Drug Trafficking area (PADT). As a condition of community placement, the defendant shall neither enter nor remain in the PADT area described in Attachment A. \_\_\_\_\_

(c) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement: \_\_\_\_\_

Date: FEB 27, 1997

*Anthony P. Warrick*  
JUDGE, King County Superior Court

## APPENDIX C

FILED

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

93 JAN 25 AM 11  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

\_\_\_ Accelerated  
\_\_\_ Non Accelerated  
\_\_\_ DPA \_\_\_ Defense

STATE OF WASHINGTON )

Plaintiff, )

v. )

Steven Clark, )

Defendant. )

No. 97-1-09348-8 SEA

STATEMENT OF DEFENDANT  
ON PLEA OF GUILTY  
(Felony)

1. My true name is Steven J. Clark

2. My age is 30. Date of birth 12-7-67

3. I went through the 12~~th~~ grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Aliw M. Zalucki

(b) I am charged with the crime(s) of Robbery in the Second Degree (2 counts)

The elements of this crime(s) are see ~~attached~~ information, attached  
and incorporated by reference herein

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

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY 1 OF 9

SC FORM REV 10/97



22

- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

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

(a) The crime(s) with which I am charged carries a maximum sentence(s) of 10 years imprisonment and a \$ 20,000 <sup>per count</sup> fine.

RCW 9.94A.030(23),(27), provide that for a third conviction for a "most serious offense" as defined in that statute or for a second conviction for a "most serious offense" which is also a "sex offense" as defined in that statute I may be found a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4). The law does not allow any reduction of this sentence.

(b) The standard sentence range is from 22 (days) months to 29 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history. The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. If my current offense was prior to 7/1/97: criminal history always includes juvenile convictions for sex offenses and also for Class A felonies that were committed when I was 15 years of age or older; may include convictions in Juvenile Court for felonies or serious traffic offenses that were committed when I was 15 years of age or older; and juvenile convictions, except those for sex offenses and Class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty. If my current

offense was after 6/30/97: criminal history includes all prior adult and juvenile convictions or adjudications.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

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

If the current offense to which I am pleading guilty is a most serious offense as defined by RCW 9.94A.030,(23),(27), and additional criminal history is discovered, not only do the conditions of the prior paragraph apply, but also if my discovered criminal history contains additional prior convictions, whether in this state, in federal court, or elsewhere, of most serious offense crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.120(4).

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

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$500.00, or \$100.00 if my crime date is prior to 6/7/96, as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, incarceration, lab and attorney fees. Furthermore, the judge may place me on community supervision,

impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: \_\_\_\_\_

*per court to be served concurrently*  
29 months, Victim Penalty Assessment, court costs,  
recoupment of attorney fees, no contact order  
with victims Estella Kim, Christina Schaller, and Alice Thai,  
S.C. restitution. State will dismiss Court III at sentencing.

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

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

The crime of Robbery 2<sup>o</sup> is a most serious offense as defined by RCW 9.94A.030(23), and if the judge determines that I have at least two prior convictions on separate occasions whether in this state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence of life imprisonment without the possibility of early release of any kind, such as parole or community custody.

RCW 9.94A.120(4). [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

The crime of \_\_\_\_\_ is also a "most serious offense" and a "sex offense" as defined in RCW 9.94A.030(23) and (27), and if the judge determines that I have one prior conviction whether in this state, in federal court or elsewhere of a most serious sex offense as defined in that statute, I may also be found to be a persistent offender in which case the judge must impose a mandatory sentence of life without the

possibility of parole. RCW 9.94A.120(4). [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

~~SC~~ (i) The crime charged in Count \_\_\_\_\_ includes a ~~firearm/deadly weapon sentence enhancement~~ of \_\_\_\_\_ months. ~~RC.~~

~~This additional confinement time is mandatory and must be served consecutively to any other sentence I have already received or will receive in this or any other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge SC RC.]~~

(j) The sentences imposed on counts I and II, except for any weapons enhancement, will run concurrently unless the judge finds substantial and compelling reason to do otherwise or unless there is a special weapons finding. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

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

~~(l) If this offense is a sex offense committed after 6/5/96 and I am either sentenced to the custody of the Department of Corrections or if I am sentenced under the special sexual offender sentence alternative, the court will, in addition to the confinement, impose not less than 3 years of community custody which will commence upon my release from jail or prison. Failure to comply with community custody may result in my return to confinement. In addition the court may extend the period of community custody in the interest of public safety for a period up to the maximum term which is \_\_\_\_\_.~~

~~[If not applicable this paragraph should be stricken and initialed by the defendant and judge SC RC.]~~

(m) The judge may sentence me as a first time offender instead of giving a sentence within the standard range

if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge S.C.H.]

(n) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge S.C.H.]

(o) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge S.C.H.]

(p) 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.

(q) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

(r) Because this crime involves a sex offense, I will be required to register with the sheriff of the county of the state of Washington where I reside. I must register immediately upon being sentenced unless I am in custody, in which case I must register within 24 hours of my release.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff

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

[If not applicable, these three paragraphs should be stricken and initialed by the defendant and the judge SC  
K.]

(s) This plea of guilty will result in the revocation of my right to possess any firearm. Possession of any firearm after this plea is prohibited by law until my right to possess a firearm is restored by a court of record.

7. I plead guilty to the crime(s) of Robbery in the Second Degree - Counts I  
and II

as charged in the original ~~Amended~~ Information. I have received a copy of that information.

- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this pleas.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
- 11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s).

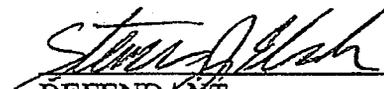
This is my statement:

Cf. I On October 29, 1997 in King County WA., I unlawfully and  
with intent to commit theft / take personal property of another  
to wit: U.S. currency from the person and in the presence of  
Estella Kim, against her will, by the use or threatened use of  
immediate force, violence, or fear of injury, to such person;

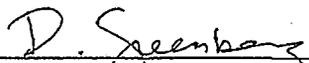
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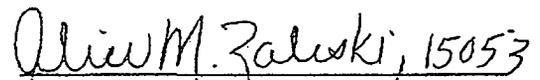
On November 3, 1997, I did unlawfully and with intent to commit theft / take personal property in King Co. WA of another, to wit: U.S. currency from the person and in the presence of Christina Schaller against her will, by the use or threatened use of immediate ~~force~~ <sup>force</sup> violence, or fear of injury to such person.

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

  
DEFENDANT

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

  
PROSECUTING ATTORNEY

  
DEFENDANT'S LAWYER

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

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

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

DATED this 20<sup>th</sup> day of January, 1998.

Renneth Comstock  
JUDGE

Pro Tem.

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\_\_.

\_\_\_\_\_  
TRANSLATOR

\_\_\_\_\_  
INTERPRETER

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
 )  
 Plaintiff, ) No. 97-1-09348-8 SEA  
 )  
 v. )  
 STEVEN JOSEPH CLARK ) INFORMATION  
 )  
 )  
 )  
 Defendant. )

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second Degree, committed as follows:

That the defendant STEVEN JOSEPH CLARK in King County, Washington on or about October 29, 1997, did unlawfully and with intent to commit theft take personal property of another, to-wit: U.S. currency, from the person and in the presence of Estela Kim, against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property and the person or property of another;

Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

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

1 That the defendant STEVEN JOSEPH CLARK in King County,  
2 Washington on or about November 3, 1997, did unlawfully and with  
3 intent to commit theft take personal property of another, to-wit:  
4 U.S. currency, from the person and in the presence of Christina  
5 Schaller, against her will, by the use or threatened use of  
6 immediate force, violence and fear of injury to such person or her  
7 property and the person or property of another;

8 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
9 and dignity of the State of Washington.

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COUNT III

26 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
27 accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second  
28 Degree, a crime of the same or similar character as another crime  
29 charged herein, which crimes were part of a common scheme or plan  
30 and which crimes were so closely connected in respect to time, place  
31 and occasion that it would be difficult to separate proof of one  
32 charge from proof of the other, committed as follows:

33 That the defendant STEVEN JOSEPH CLARK in King County,  
34 Washington on or about November 10, 1997, did unlawfully and with  
35 intent to commit theft take personal property of another, to-wit:  
36 U.S. currency, from the person and in the presence of Alice Thai,  
37 against her will, by the use or threatened use of immediate force,  
38 violence and fear of injury to such person or her property and the  
39 person or property of another;

40 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
41 and dignity of the State of Washington.

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By: \_\_\_\_\_  
Angela Y. Griffin, WSBA #91002  
Deputy Prosecuting Attorney

2 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Angela Y. Griffin is a Deputy Prosecuting Attorney for  
4 King County and is familiar with the police report and investigation  
5 conducted in Puget Sound Violent Crimes Task Force case No.  
6 97-478565;

7 That this case contains the following upon which this motion  
8 for the determination of probable cause is made;

9 On October 29, 1997, a man, later identified as the defendant,  
10 Steven Joseph Clark, entered the Wells Fargo Bank located at 1620  
11 Fourth Avenue, Seattle, King County, Washington. The defendant  
12 stood in a waiting line until the teller, Estela Kim, was alone.  
13 The defendant approached Kim and handed her a note. Kim quickly  
14 looked at the note and saw that it said something about stacking  
15 money. The defendant said "Hurry up!" Kim grabbed the money in one  
16 hand and handed it to the defendant. The defendant put the money in  
17 his jacket pocket and walked out of the bank. Bank employees called  
18 911. Sergeant Gary Nelson of the Puget Sound Violent Crimes Task  
19 Force obtained the surveillance tape and printed still photos of the  
20 suspect from the tape.

21 On ~~November 3, 1997~~, the defendant entered the Pacific  
22 Northwest Bank located at 425 Pike Street, Seattle, King County,  
23 Washington. He approached the teller, Christina Schaller, and held  
24 up a note for her to read. Schaller was unable to read the note  
25 because it was poorly written, however, she realized he was  
demanding money and she handed him money from her till. The  
defendant said, "I want your hundreds. Open your side drawer."  
Schaller gave the defendant the money from the side drawer. The  
defendant then left the bank.

26 On November 5, 1997, Sergeant Nelson and Detective Corrigan  
27 contacted a confidential informant and showed the informant a copy  
28 of the bank surveillance photo. The informant immediately  
29 identified the person in the photo as "Steve" and said that he was  
30 staying at the Seafair Motel. After calling the Seafair Motel,  
31 Sergeant Nelson learned the identity of the defendant and compiled  
32 a photographic montage.

33 On November 6, 1997, Kim was shown a photographic montage. She  
34 tentatively identified the defendant as the person who robbed her on  
35 October 29, 1997. On the same date, Sergeant Nelson showed Schaller  
a photographic montage. Immediately and confidently Schaller

Certification for Determination  
of Probable Cause - 1

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

1 ~~identified the defendant as the person who robbed her on November 3,~~  
1997.

2  
3 On ~~November 10, 1997,~~ the defendant entered U.S. Bank located  
4 at 1301 Fifth Avenue, Seattle, King County, Washington. The  
5 defendant approached the teller, Alice Thai, with a note that said  
"Hurry 20, 50, 100." Thai handed the defendant money. The  
6 ~~defendant took the money and left the bank.~~

7 On November 19, 1997, Sergeant Nelson learned the whereabouts  
8 of the defendant. The defendant was arrested and advised of his  
9 Miranda rights. ~~He gave a written confession admitting to the three~~  
10 ~~bank robberies: the robbery of Wells Fargo on October 29, 1997, the~~  
11 robbery of Pacific Northwest Bank on November 3, 1997 and the  
12 robbery of U.S. Bank on November 10, 1997.

13 The State requests bail in the amount of \$75,000. The  
14 defendant's criminal history includes convictions for Burglary  
15 Second Degree (1987), Assault Second Degree (1989), Attempted Theft  
16 Second Degree (1995) and Escape third Degree (1997). The defendant  
17 has 69 prior failures to appear. The State requests the defendant  
18 be ordered to have no contact with Alice Thai, Christina Schaller  
19 and Estella Kim.

20 Under penalty of perjury under the laws of the State of Washington,  
21 I certify that the foregoing is true and correct. Signed and dated  
22 by me this \_\_\_\_ day of November, 1997, at Seattle, Washington.

23  
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\_\_\_\_\_  
Angela Y. Griffin, WSBA #91002

Certification for Determination  
of Probable Cause - 2

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

PLEA AGREEMENT /  TRIAL

Date: 12-9-97

Defendant: Clark, Steven J.

Cause No: 97-1-09348-8 SEA

On Plea To:  As Charged

Special Finding/Verdict;  Deadly Weapon (RCW 9.94.125);  School Zone-VUCSA (RCW 69.50) on Count(s) \_\_\_\_\_

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) I & II, the State moves to dismiss Count(s): III

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 certification(s) of probable cause filed herein.  
 as set forth in the attached Appendix C.

3.  RESTITUTION: Pursuant to RCW 9.94A.140(2), the defendant agrees to pay restitution as follows:  
 in full to the victim(s) on charged counts.  
 as set forth in attached Appendix C.

4.  OTHER: No contact w/ Estella Kim, Christina Schaller, Alice Thai

5.  SENTENCE RECOMMENDATION:  
a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (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 the 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.

Maximum on Count I is not more than 10 years and/or \$ 20,000 fine.  
Maximum on Count II is not more than 10 years and/or \$ 20,000 fine.  
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.120d(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 his release.

[Signature]  
Defendant

[Signature]  
Deputy Prosecuting Attorney

[Signature] 15053  
Attorney for Defendant

[Signature]  
Judge, King County Superior Court

**GENERAL SCORING FORM**  
**Violent Offenses**

CT I

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <b>CLARK, STEVEN JOSEPH</b>	OFFENDER'S DOB <b>12/7/67</b>	STATE ID# <b>WA</b> <b>14406779</b>
JUDGE	CAUSE# <b>97-1-09348-8</b>	FBI ID# <b>374445 KA9</b>

DOC # 927696

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.400(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 .....  $\frac{1}{1} \times 2 = \frac{2}{1}$   
 Enter number of other nonviolent felony convictions .....  $\frac{1}{1} \times 1 = \frac{1}{1}$

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications .....  $\times 2 =$  \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications .....  $\times \frac{1}{2} =$  \_\_\_\_\_

OTHER CURRENT OFFENSES: (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions **CT5 II, III** .....  $\frac{2}{2} \times 2 = \frac{4}{1}$   
 Enter number of other nonviolent felony convictions .....  $\times 1 =$  \_\_\_\_\_

STATUS AT TIME OF CURRENT OFFENSES:

If on community placement at time of current offense, add 1 point .....  $+ 1 =$  \_\_\_\_\_

Total the last column to get the Offender Score  
(Round down to the nearest whole number)

7

**STANDARD RANGE CALCULATION\***

<b>ROBBERY 2° CT, I</b>	<b>IV</b>	<b>5</b>	<b>22</b>	TO	<b>29</b>
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE		HIGH STANDARD SENTENCE RANGE

\* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.

\* If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 97-1-09348-8 SEA
	)	
v.	)	
STEVEN JOSEPH CLARK	)	INFORMATION
	)	
	)	
Defendant.	)	
_____)		

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second Degree, committed as follows:

That the defendant STEVEN JOSEPH CLARK in King County, Washington on or about October 29, 1997, did unlawfully and with intent to commit theft take personal property of another, to-wit: U.S. currency, from the person and in the presence of Estela Kim, against her will, by the use or threatened use of immediate force, violence and fear of injury to such person or her property and the person or property of another;

Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace and dignity of the State of Washington.

COUNT II

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

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

1 That the defendant STEVEN JOSEPH CLARK in King County,  
2 Washington on or about November 3, 1997, did unlawfully and with  
3 intent to commit theft take personal property of another, to-wit:  
4 U.S. currency, from the person and in the presence of Christina  
5 Schaller, against her will, by the use or threatened use of  
6 immediate force, violence and fear of injury to such person or her  
7 property and the person or property of another;

8 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
9 and dignity of the State of Washington.

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COUNT III

26 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
27 accuse STEVEN JOSEPH CLARK of the crime of Robbery in the Second  
28 Degree, a crime of the same or similar character as another crime  
29 charged herein, which crimes were part of a common scheme or plan  
30 and which crimes were so closely connected in respect to time, place  
31 and occasion that it would be difficult to separate proof of one  
32 charge from proof of the other, committed as follows:

33 That the defendant STEVEN JOSEPH CLARK in King County,  
34 Washington on or about November 10, 1997, did unlawfully and with  
35 intent to commit theft take personal property of another, to-wit:  
36 U.S. currency, from the person and in the presence of Alice Thai,  
37 against her will, by the use or threatened use of immediate force,  
38 violence and fear of injury to such person or her property and the  
39 person or property of another;

40 Contrary to RCW 9A.56.210 and 9A.56.190, and against the peace  
41 and dignity of the State of Washington.

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NORM MALENG  
Prosecuting Attorney

By: \_\_\_\_\_  
Angela Y. Griffin, WSBA #91002  
Deputy Prosecuting Attorney

**CENTRAL SCORING FORM**

CT I

**Violent Offenses**

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <b>CLARK, STEVEN JOSEPH</b>	OFFENDER'S DOB <b>12/7/67</b>	STATE ID# <b>WA</b> <b>14406779</b>
JUDGE	CAUSE# <b>97-1-09348-8</b>	FBI ID# <b>374445KA9</b>

DOC # 927696

**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.400(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 ..... 1 x 2 = 2  
 Enter number of other nonviolent felony convictions ..... 1 x 1 = 1

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions CT. II ..... 1 x 2 = 2  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point ..... + 1 = \_\_\_\_\_

Total the last column to get the **Offender Score**  
 (Round down to the nearest whole number)

5

**STANDARD RANGE CALCULATION\***

<b>ROBBERY 2° CT. II</b>	<b>W</b>	<b>5</b>	TO	<b>22</b>	<b>29</b>
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE		LOW STANDARD SENTENCE RANGE	HIGH STANDARD SENTENCE RANGE

- \* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- \* If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

# GENERAL SCORING FORM

CT II

## Violent Offenses

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <i>CLARK, STEVEN JOSEPH</i>	OFFENDER'S DOB <i>12/7/67</i>	STATE ID# <i>WA</i> <i>14406779</i>
JUDGE	CAUSE# <i>97-1-09348-8</i>	FBI ID# <i>374445KA9</i>

*DOC # 927696*

**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.400(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 ..... 1 x 2 = 2  
 Enter number of other nonviolent felony convictions ..... 1 x 1 = 1

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x ½ = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions ..... CT I x 2 = 2  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point ..... + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

5

### STANDARD RANGE CALCULATION\*

<i>ROBBERY 2° CT. II</i>		<i>W</i>	<i>5</i>	TO	<i>22</i>		<i>29</i>
CURRENT OFFENSE BEING SCORED		SERIOUSNESS LEVEL	OFFENDER SCORE		LOW STANDARD SENTENCE RANGE		HIGH STANDARD SENTENCE RANGE

- Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

STATE'S SENTENCE RECOMMENDATION  
(USE FOR NON-SEX OFFENSE SENTENCES OF OVER ONE YEAR ONLY)

Date: 12-9-97

Defendant: Steven Clark Cause No: 97-1-09348-8 (SEA/KNT)

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

Count I 29 43 months Count IV \_\_\_\_\_ months  
Count II 29 months Count V \_\_\_\_\_ months  
Count III to be DM at sent. months Count VI \_\_\_\_\_ months

Terms on each count to run concurrently/~~consecutively~~ with each other.  
Terms to be served concurrently/consecutively with: \_\_\_\_\_  
Terms to be consecutive to any other terms(s) not specifically referred to in this form.

WEAPONS ENHANCEMENT - RCW 9.94A.310: The above recommended term(s) of confinement include the following weapons enhancement time: \_\_\_\_\_ months for Ct. \_\_\_\_\_, \_\_\_\_\_ months for Ct. \_\_\_\_\_; which is/are mandatory, served without good time and served consecutive to any other term of confinement. The total of all recommended terms of confinement in this cause is: \_\_\_\_\_ months.

WORK ETHIC CAMP - RCW 9.94A.137: Defendant is legally eligible (Range is not less than 16 months, not more than 36 months, no current or prior sex or violent offense). Work ethic camp is/is not recommended. If not, why not: \_\_\_\_\_

DRUG OFFENDER SENTENCE ALTERNATIVE - RCW 9.94a.120(6)(a): Defendant is legally eligible (no prior felony; no deadly weapon finding; current offense is delivery, possession with intent, or manufacturing of schedule I/II narcotic or attempt/solicitation of same; small quantity). D.O.S.A. sentence is/is not recommended. If not, why not: \_\_\_\_\_

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.

NO CONTACT: For the maximum term, defendant have no contact with Estella Kim, Christina Schaller, Alice Thai

MONETARY PAYMENTS: Defendant make the following monetary payments under the supervision of the Department of Corrections for up to 10 years pursuant to RCW 9.94A.120(12) and RCW 9.94A.145.

- Restitution as set forth in the "Plea Agreement" page and  Appendix C.
- Court costs; mandatory \$500 Victim Penalty Assessment, recoupment of cost for appointed counsel.
- King County Local Drug Fund \$ \_\_\_\_\_;  \$100 lab fee RCW 43.43.690.
- Fine of \$ \_\_\_\_\_;  \$1000, fine for VUCSA;  \$2000, fine for subsequent VUCSA.
- Costs of incarceration in K.C. Jail at \$50 per day. RCW 9.94A.145(2).
- Emergency response costs, \$ \_\_\_\_\_ RCW 38.52.430
- Extradition costs of \$ \_\_\_\_\_.
- Other \_\_\_\_\_

COMMUNITY PLACEMENT - RCW 9.94A.120(9): is mandatory for any offender sentenced to the Department of Corrections for the following offenses: any "serious violent" offense, vehicular homicide, or vehicular assault for a period of two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1), whichever is longer; any assault in the second degree or assault of a child second degree, any felony violation of RCW 69.50/52, or any crime against a person with a special deadly weapon finding for a period of one year. Community placement incorporates community custody, in lieu of earned early release, and post release supervision subject to statutory mandatory conditions listed in RCW 9.94A.120(9)(B) and other discretionary conditions set by the court listed in RCW 9.94A.120(9)(C). Discretionary conditions recommended by the state:

BLOOD TESTING: HIV blood testing is mandatory under RCW 70.24.340 for any sex offense, prostitution related offense, or drug offense associated with needle use. DNA testing is mandatory under 43.43.754 for any sex offense or violent offense as defined in RCW 9.94A.030.

Approved by: [Signature]  
Deputy Prosecuting Attorney

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

Defendant: CLARK, STEVEN JOSEPH Date: 12/25/97

CRIME	DATE OF CONVICTION	PLACE OF CONVICTION	DISPOSITION (Probation and/or incarceration and length) SRA — Counts as Prior
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**ADULT FELONIES:**  
 4-9-87 - BURGLARY 2° - KC 86-1-04670-1 - 30 days jail - 12 mos. SUPPLY Doc  
 8-18-89 - ASSAULT 2° - KC 89-1-01436-6 - 6 mos jail - 12 mos SUPPLY Doc

**ADULT MISDEMEANORS:**  
 8/28/88 - RESISTING ARREST - KC NED - 2733  
 8/28/88 - Assault 4° - KC NED - 2741  
 11/1/88 - Disturbing Peace - KC NED - 3426  
 10/25/90 - Reckless Driving - KC NED - 4624  
 12/7/90 - Theft 3° - KC NED 3398

**JUVENILE FELONIES:**  
 1/25/92 - Poss. Marijuana - KC SDC - 5200  
 3/21/92 - Public Indecency - Snoho Co. EVD - 156204  
 2/31/95 - Theft 3° - KC - NED - CR 0011304  
 9/11/95 - Theft 2° MISO - KC - 95-1-07556-4  
 7/5/96 - Theft - KC BEL BE 0104837

**JUVENILE MISDEMEANORS:**  
 7/10/96 - ASSAULT 4° / Theft 3° - KC ISQ C00000004  
 4/8/97 - Theft 3° - KC ISQ C000002977  
 5/16/97 - Escape 3° - KC SDC - 103501  
 6/21/97 - Theft / Obstructing Public Officer - KC BEL - BC0112474

ZG hoo  
Deputy Prosecuting Attorney

## APPENDIX D

FILED

98 MAR 13 AM 10:03

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

STATE OF WASHINGTON,

Plaintiff,

NO. 97-1-09348-8 SEA

vs.

ORDER MODIFYING JUDGMENT  
AND SENTENCE

STEVEN J. CLARK,

Defendant.

D.O.C. # 927646

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion pursuant to CrR 7.8(a) of the State of Washington, plaintiff, for an order modifying judgment and sentence to correct a clerical error or failure on the written judgment and to correspond with the actual sentence imposed by the court in the above-entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Judgment and Sentence filed herein is modified as follows:

( ) Community Supervision is ordered for a period of 12 months as written in section 4.4(b) of the Judgment and Sentence

( ) Other Community Placement, at page 3 § 4.7 and appendix H, is vacated.

All other terms of the Judgment remain in full force and effect.

DONE IN OPEN COURT this 12th day of March, 1998.

Anthony P. Wartuk  
Superior Court Judge

Presented by:

Michael J. Jones  
Deputy Prosecuting Attorney

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

ORDER MODIFYING JUDGMENT AND SENTENCE

BERTIFIED COPY TO COUNTY JAIL

MAR 13 1998

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## APPENDIX E

NAME: STEVEN CLARK DOC#: 927696 SID#: 14406779  
CCO: CCO TELEPHONE:  
CCO OFFICE: LATEST PROJECTED RELEASE DATE: 11/07/2142  
LAST RELEASED FROM: WA COR CTR RC

CURRENT LOC: MCC-WA. STATE REFORMATORY CURRENT STATUS: PRISON

\*\*\*\*\* MOVEMENT HISTORY \*\*\*\*\*

KEY: D=DECEASED E=ESCAPED F=FURLOUGH J=JAIL N=NOT UNDER WA DOC JURISDICTION  
P=IMPRISONED S=SUPERVISION U=UNAVAILABLE FOR IN-PERSON REPORTING W=WORK RELEASE  
P: 06/20/00 TO PRESENT S: 04/18/97 TO 05/14/97 J: 08/02/96 TO 08/04/96  
S: 05/18/99 TO 06/20/00 J: 04/18/97 TO 04/18/97 U: 07/16/96 TO 08/02/96  
P: 05/18/99 TO 05/18/99 U: 03/03/97 TO 04/18/97 S: 12/15/95 TO 07/16/96  
S: 05/01/99 TO 05/18/99 S: 12/23/96 TO 03/03/97 J: 11/14/95 TO 12/15/95  
J: 03/23/99 TO 05/01/99 J: 11/15/96 TO 12/23/96 S: 06/30/95 TO 11/14/95  
P: 03/03/98 TO 03/23/99 U: 10/23/96 TO 11/15/96 J: 06/22/95 TO 06/30/95  
U: 05/14/97 TO 03/03/98 S: 08/04/96 TO 10/23/96 U: 06/22/95 TO 06/22/95

MORE INFORMATION ON NEXT PAGE....

F1=MENU, F3=EXIT, F7=PAGE BACKWARD, F8=PAGE FORWARD, ENTER=CONTINUE

## APPENDIX F

OVER 21

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

STEVEN J CLARK

Defendant.

No. 99-C-02058-4 SEA

JUDGMENT AND SENTENCE

FILED

MAY 17 AM 10:00  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

MAY 17 1999

COMMITMENT ISSUED

COPY TO SENTENCING GUIDELINES COMMISSION MAY 17 1999  
PRESENTING STATEMENT

I. HEARING

1.1 The defendant, the defendant's lawyer, CARY VIRTUE (ACA), and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

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

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 05-10-99 by plea of: See Pleadings

Count No.: I Crime: VUCSA- DELIVERY OF CLONAZEPAM  
RCW 69.50.401 A 1 I Crime Code 27319  
Date of Crime 02-05-97 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code \_\_\_\_\_  
Date of Crime \_\_\_\_\_ Incident No. \_\_\_\_\_

Additional current offenses are attached in Appendix A.

SPECIAL VERDICT/FINDING(S):

(a)  A special verdict/finding for being armed with a Firearm was rendered on Count(s): \_\_\_\_\_

(b)  A special verdict/finding for being armed with a Deadly Weapon other than a Firearm was rendered on Count(s): \_\_\_\_\_

(c)  A special verdict/finding was rendered that the defendant committed the crimes(s) with a sexual motivation in Count(s): \_\_\_\_\_

(d)  A special verdict/finding was rendered for Violation of the Uniform Controlled Substances Act offense taking place in a school zone  in a school  on a school bus  in a school bus route stop zone  in a public park  in public transit vehicle  in a public transit stop shelter in Count(s): \_\_\_\_\_

(e)  Vehicular Homicide  Violent Offense (D.W.I. and/or reckless) or  Nonviolent (disregard safety of others)

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

PROC
CRIM
ACCTG
EXH

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

Handwritten signature/initials

JUDGMENT NUMBER 99 9 07079 3

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

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) BURG 2	04-09-87	ADULT	861046701	KING CO
(b) ASLT 2	08-18-89	ADULT	891014366	KING CO
(c) 2CTS ROBB 2	02-27-98	ADULT	971093488	KING CO
(d)				

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

2.4 SENTENCING DATA:

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	4	IV	15 TO 20 MO	*.75	11.25 TO 15 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_ Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similiar sentence.

III. JUDGMENT

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

- The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

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

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

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

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

- Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer: Trust fees and interest waived. The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.

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

12 + 1 day months on Count I \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_  
\_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_ months on Count \_\_\_\_\_

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

The terms in Count(s) \_\_\_\_\_ are concurrent/consecutive.  
The sentence herein shall run concurrently consecutively with the sentence in cause number(s) 97-1-09348-2 SEA  
but consecutive to any other cause not referred to in this Judgment.

5 Balans Credit is given for  12 months + 1 day days served  days as determined by the King County Jail solely for conviction under this cause number pursuant to RCW 9.94A.120(15). (For concurrent time)

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

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

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

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

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

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

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

Date: 5-14-97

Judge [Signature]

Print Name: Carol Schapira

Presented by: [Signature]

Approved as to form: [Signature]

Deputy Prosecuting Attorney, Office WSBA ID #91002  
Print Name: Peter G. Meyers

Attorney for Defendant, WSBA # 17100  
Print Name: CARY UNIVEL

MS

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

STEVEN JOSEPH CLARK

DEFENDANT'S SIGNATURE: *Steven J. Clark*

DEFENDANT'S ADDRESS: 3251 NE 8<sup>th</sup> St Campton WA 98014

DATED: MAY 14 1999

*Carol A. Schapira*  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY:

PAUL L. SHERFEY, SUPERIOR COURT CLERK

BY: *Joseph M. Mason*  
DEPUTY CLERK

CAROL A. SCHAPIRA

CERTIFICATE

OFFENDER IDENTIFICATION

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

S.I.D. NO. WA14406779

DATE OF BIRTH: DECEMBER 7, 1967

SEX: M

RACE: W

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

## APPENDIX G

Westlaw

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**H**

State v. Clark  
Wash.App. Div. 1,2003.

NOTE: UNPUBLISHED OPINION, SEE RCWA  
2.06.040

Court of Appeals of Washington, Division 1.  
STATE of Washington, Respondent,  
v.

Steven Joseph CLARK, Appellant.  
No. 48038-3-I.

Nov. 29, 2003.

Appeal from Superior Court of King County.

Washington Appellate Project, Attorney at Law,  
Thomas Michael Kummerow, WA Appellate  
Project, Seattle, WA, for appellant.  
Prosecuting Atty King County, King County  
Prosecutor/appellate Unit, David M. Seaver,  
Seattle, WA, for respondent.

#### UNPUBLISHED OPINION

PER CURIAM.

\*1 Even where a defendant is neither armed nor displays a weapon, evidence is sufficient to show he committed second degree robbery where he entered two different banks on two different days, presented notes indicating he was engaging in a robbery, engaged in other threatening behavior or made implicit threats in the notes, and received bank money from the fearful tellers. Affirmed.

#### FACTS

On October 5, 1999, Clark entered a Wells Fargo branch in Kirkland, held out a piece of paper, and said to the teller, 'I was wondering if you can cash this.' The teller, working alone, looked at the paper and saw the words 'robbery' and 'large bills.' The teller initially replied, 'I don't believe I can cash

that.' He then suddenly realized that it was a robbery note and reached for the alarm. He testified that Clark said to him, 'Don't do that.' in what the teller believed was a forceful manner. The teller testified that he saw Clark make a motion into his jacket 'like he had some kind of weapon in there' and decided to give Clark money. Clark continued to stand, leaning over the counter and the seated bank teller as the teller placed large bills on the countertop. After the teller placed money on the counter, Clark said, 'More, and I want large bills. Give me large bills.' The bank employee complied, giving Clark about \$820 in mostly \$50 and \$20 bills. After Clark left the bank, the bank employee tripped the alarm. The bank employee testified he was shocked about being robbed and scared during the incident although he never saw a weapon. The bank teller identified Clark in a police photo montage two weeks later, and identified him in court, as the person who had robbed the bank.

On October 26, 1999, Clark entered a Key Bank in Woodinville wearing sunglasses and a hat, and set a note in front of one of the bank tellers. The bank was not crowded and the teller was separated from the other two tellers by two or three empty teller spaces. The teller saw written on the note the words 'this is a' and the word 'ROBBERY' written in big letters. The note also indicated she was to give Clark all the loose cash and not to draw attention to herself or make a scene. The teller testified that she looked at Clark to see if he was making a joke, but Clark's body language made her realize it was not a joke.

The bank teller asserted she was 'terribly afraid' of what was going to happen, and that she handed Clark about \$1,600. She testified that as soon as Clark started to turn, she pulled the alarm. She said that she did not see a weapon, but that as Clark was walking away she was afraid to say anything fearing that he would react violently or shoot someone. Clark's photograph was taken by video cameras in the bank. The Key Bank teller also identified Clark

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in court as the person who had robbed the bank. Clark was identified, arrested, and charged with two counts of second degree robbery. He admitted his culpability to the investigating detective. However, Clark testified at trial that he was not armed during either of the robberies, never threatened either teller, and that he would have turned and left the bank had either teller refused to give him money. After presentation of the evidence at trial, Clark requested a lesser included instruction on first degree theft. After examining existing case law, the court refused the instruction, finding that first degree theft was not a lesser included crime of robbery in the second degree because theft in the first degree required taking of property in excess of \$1,500, while robbery did not require any amount.

\*2 The jury found Clark guilty as charged on both counts. At sentencing, the State presented evidence of Clark's prior conviction for second degree assault, two prior convictions for second degree robbery, and two prior convictions for second degree burglary. The court found that the prior convictions for second degree assault and second degree robbery were most serious offenses as defined by the Sentencing Reform Act of 1981(SRA).<sup>FN1</sup> After finding the existence of the prior convictions by a preponderance of the evidence, and after Clark spoke during the proceedings, the court sentenced Clark to a mandatory term of life imprisonment without possibility of parole under the Persistent Offender Accountability Act (POAA).<sup>FN2</sup> Clark appealed.

FN1. Former RCW 9.94A.030(25)(a) (1999), recodified as RCW 9.94A.030(28)(a).

FN2. Former RCW 9.94A.120(4) (1999); former RCW 9.94A.030(25)(a).

## DISCUSSION

### 1. Sufficiency of the Evidence.

In order to establish robbery in the second degree, the State was required to prove the Clark took the

property 'by the use or threatened use of immediate force, violence, or fear of injury....' <sup>FN3</sup> Clark asserts there was insufficient evidence for the State to prove he took money from the bank tellers by the use or threatened use of immediate force, violence, or fear of injury, because he carried no weapon and made no verbal threats. By challenging the sufficiency of the evidence, Clark admits the truth of the State's evidence and all reasonable inferences therefrom.<sup>FN4</sup> This court must determine, after viewing the evidence in a light most favorable to the State, whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.<sup>FN5</sup>

FN3. *State v. Collinsworth*, 90 Wn.App. 546, 551, 966 P.2d 905 (1997) (quoting RCW 9A.56.190).

FN4. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Trepanier*, 71 Wn.App. 372, 376, 858 P.2d 511 (1993).

FN5. *State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)).

Washington cases have previously held that the specific types of actions that Clark engaged in constitute 'threatened use of immediate force, violence, or fear of injury' sufficient for robbery, even in the absence of a weapon. For instance, in *State v. Collinsworth*, the defendant claimed that because he did not carry a weapon during several robberies and merely demanded money in a calm voice, no evidence of threatened use of force existed. This court disagreed, asserting: 'No matter how calmly expressed, an unequivocal demand for the immediate surrender of the bank's money, unsupported by even the pretext of any lawful entitlement to the funds, is fraught with the implicit threat to use force.' <sup>FN6</sup>

FN6. *Collinsworth*, 90 Wn.App. at 553 (citing *United States v. Henson*, 945 F.2d

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430, 439-40 (1st Cir.1991)).

The Collinsworth court concluded that the defendant's demands for money communicated directly to the teller, and the teller's subsequent fear, were sufficient to support the trial court's findings that the defendant obtained property through use of or threatened use of immediate force, violence, or fear of injury.<sup>FN7</sup>

FN7. *Collinsworth*, 90 Wn.App. at 554.

In *State v. Parra*, the defendant similarly claimed the evidence was insufficient to support his conviction for second degree robbery because he was not armed when he approached two bank tellers and demanded money.<sup>FN8</sup> This court held that the defendant's demands for money, coupled with the tellers' fear, illustrated that the taking of property was accompanied by " 'such threatening by menace, word, or gesture as in common experience is likely to create an apprehension of danger,' " and thus was sufficient to prove an implicit threat of force and sufficient to support the defendant's conviction.<sup>FN9</sup>

FN8. *State v. Parra*, 96 Wn.App. 95, 977 P.2d 1272 (1999).

FN9. *Parra*, 96 Wn.App. at 101-02 (citations omitted).

\*3 Clark's actions were sufficient to prove that he obtained property in each situation through use of or threatened use of immediate force, violence, or fear of injury. In both situations Clark approached the bank tellers and gave them a note communicating that he intended a robbery. The Wells Fargo teller was alone in the branch and Clark leaned over him, prevented him from pressing the alarm, motioned into his jacket, and asked for more money. The bank employee stated that he was fearful. With respect to the Key Bank incident, the note also informed the teller not to engage in any action that would draw attention to her and not to make a scene. The teller testified that she feared he would hurt someone.

Clark cites *United States v. Wagstaff* to support his contention that his actions were not threatening because, like the defendant in *Wagstaff*, he carried no weapon and did not talk to the tellers.<sup>FN10</sup> Clark's assertions are untrue, because he did speak to the Wells Fargo teller when he demanded more money than he was initially given. This case is also inapplicable because it is premised upon a federal robbery statute, not the specific Washington statute here. Further, unlike the defendant in *Wagstaff*, Clark did communicate his demands directly to the tellers by both note and voice. These were situations that *Wagstaff* recognized would constitute 'intimidating' acts under the federal statute.<sup>FN11</sup>

FN10. *United States v. Wagstaff*, 865 F.2d 626 (4th Cir.1989).

FN11. While *Wagstaff* concluded that the defendant's actions did not constitute 'intimidation' as required by the federal statute, previous cases held that such 'intimidation' could be shown by specific threatening acts even in the absence of a weapon, such as the defendant telling a teller not to sound alarm and to hand over money, defendant putting hands inside a jacket after presenting a note indicating a robbery, or defendant handing the teller a note stating, 'Give me all your hundreds, fifties and twenties. This is a robbery.' *Wagstaff*, 865 F.2d at 628(citing *United States v. Amos*, 566 F.2d 899, 901 (4th Cir.1977); *United States v. Harris*, 530 F.2d 576, 579 (4th Cir.1976); *United States v. Hopkins*, 703 F.2d 1102, 1103 (9th Cir.1983)).

Viewing the evidence in a light most favorable to the State, we hold that the evidence was sufficient to determine that Clark took the property through threatened use of force, violence, or fear of injury, and was thus sufficient to support Clark's two convictions for second degree robbery.

2. Lesser Included Instruction.

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Washington law provides that a defendant may be found guilty of a lesser offense which is necessarily included within the offense for which he is charged in the information.<sup>FN12</sup> Clark argues that the trial court erred in refusing to give an instruction on first degree theft<sup>FN13</sup> as a lesser included offense of second degree robbery.

FN12. RCW 10.61.010.

FN13. RCW 9A.56.030(1).

*State v. Workman* firmly established that a defendant in Washington is entitled to an instruction on a lesser included offense where (1) each of the elements of the lesser offense is a necessary element of the offense charged, and (2) the evidence in the case supports an inference that only the lesser crime was committed to the exclusion of the charged offense.<sup>FN14</sup> The first requirement is called the legal prong of the Workman test and the second requirement is the factual prong.

FN14. *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). See also, *State v. Fernandez-Medina*, 141 Wn.2d 448, 454-55, 6 P.3d 1150 (2000); *State v. Berlin*, 133 Wn.2d 541, 548, 947 P.2d 700 (1997).

Here, the trial court mistakenly asserted that theft in the first degree required taking property in excess of \$1,500, while robbery did not require any amount. Thus, the theft instruction did not meet the legal prong of Workman. Although the trial court's reasoning was based on a flawed perception of the two offenses, its judgment will not be reversed if it can be sustained on any legal theory, even if different from that indicated by the trial judge.<sup>FN15</sup>

FN15. *State v. Norlin*, 134 Wn.2d 570, 582, 951 P.2d 1131 (1998) (citing *Sprague v. Sumitomo Forestry Co.*, 104 Wn.2d 751, 758, 709 P.2d 1200 (1985)).

\*4 The elements of first degree theft which are relevant here are: (1) the taking of property of any value (2) from the person of another.<sup>FN16</sup> These elements are clearly necessary elements of second degree robbery where the robbery is committed by taking property from the person of another.<sup>FN17</sup> Although the State argues that second degree robbery can also be committed by taking property in the presence of another, rather than from another, this does not negate the fact that the elements of first degree theft are necessary elements of second degree robbery as charged here. In fact, the State's argument was explicitly rejected in *State v. Berlin*.<sup>FN18</sup> Thus, the legal prong of Workman is met in this case.

FN16. RCW 9A.56.030(1)(b).

FN17. RCW 9A.56.190.

FN18. *Berlin*, 133 Wn.2d at 548 ('A lesser offense will seldom satisfy every statutory alternative means of committing the greater offense.').

However, under the factual prong, the evidence must affirmatively establish the defendant's theory of the case and show that the lesser crime was committed to the exclusion of the greater crime.<sup>FN19</sup> The evidence here does not affirmatively establish Clark's theory of the case that he did not threaten either teller and was thus merely guilty of first degree theft.

FN19. *Fernandez-Medina*, 141 Wn.2d at 454-56.

### 3. POAA.

Clark raises a number of issues in challenge of his sentence under the POAA. None of these challenges have any merit.

#### A. Right to Meaningful Allocution.

Clark argues that he was denied his constitutional

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right to meaningful allocution because there was nothing he could say at sentencing that would in any way alter the outcome of his mandatory life sentence under the POAA. The defendant in every case must be afforded the opportunity to speak immediately prior to imposition of sentence.<sup>FN20</sup> However, contrary to Clark's assertion, the right to allocution is statutory, not constitutional, in nature.<sup>FN21</sup> This court has also held that a defendant's sentence as a persistent offender does not deprive him of his right to meaningful allocution.<sup>FN22</sup> Further, none of the cases he cites support his position. In *State v. Green*, the right to present mitigating evidence stemmed from the Federal Rule of Criminal Procedure 32(a) and has no application here.<sup>FN23</sup>

FN20. *State v. Happy*, 94 Wn.2d 791, 792, 620 P.2d 97 (1980) (citing former CrR 7.1(a)(1)); former RCW 9.94A.110 (1999), recodified as RCW 9.94A.500.

FN21. *State v. Crider*, 78 Wn.App. 849, 865, 899 P.2d 24 (1995).

FN22. *State v. Snow*, 110 Wn.App. 667, 669, 41 P.3d 1233, review denied, 147 Wn.2d 1017 (2002).

FN23. *Green v. United States*, 365 U.S. 301, 304, 81 S.Ct. 653, 5 L.Ed.2d 670 (1961).

In *State v. Happy*, the defendant's right 'to present any information in mitigation of punishment' came explicitly from former CrR 7.1(a)(1), replaced in 1984 with CrR 7.2 which is now silent on the issue of allocution.<sup>FN24</sup> The allocution provision is now found in the SRA and states only that before imposing a sentence, the court shall allow argument from the offender.<sup>FN25</sup> *State v. Crider* only requires resentencing if allocution does not occur before sentencing.<sup>FN26</sup>

FN24. *Happy*, 94 Wn.2d 791.

FN25. Former RCW 9.94A.110, recodified

as RCW 9.94A.500.

FN26. *Crider*, 78 Wn.App. at 856.

Clark was given an opportunity to speak to the court before it imposed his sentence. However, because the sentencing court determined that Clark was a persistent offender, it was required to sentence him to life in prison for his third most violent offense.

<sup>FN27</sup> Because prior convictions were proven by a preponderance of the evidence, and Clark addressed the court before it imposed the sentence, we find no error. Reversal is not required.

FN27. Former RCW 9.94A.030(25), (29).

#### B. Constitutionality of the POAA.

\*5 Notwithstanding the Washington Supreme Court's previous decisions that the POAA violates neither state nor federal constitutional due process,<sup>FN28</sup> Clark asserts that the POAA violates his due process rights under *McMillan v. Pennsylvania*<sup>FN29</sup> and *Apprendi v. New Jersey*.<sup>FN30</sup>

FN28. *State v. Wheeler*, 145 Wn.2d 116, 124, 34 P.3d 799 (2001) (POAA does not violate federal due process principles); *State v. Manussier*, 129 Wn.2d 652, 685, 921 P.2d 473 (1996) (POAA does not violate state or federal constitutional due process).

FN29. *McMillan v. Pennsylvania*, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986).

FN30. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).

McMillan addressed Pennsylvania's Mandatory Minimum Sentencing Act which required a sentencing judge to impose a minimum five year penalty if the judge found by a preponderance of the evidence that the defendant 'visibly possessed a firearm' in certain enumerated felonies.<sup>FN31</sup> The

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McMillan court rejected the claim that whenever a state links the severity of punishment to the presence or absence of an identified fact, the state must prove that fact beyond a reasonable doubt.<sup>FN32</sup> McMillan also found that since the Mandatory Minimum Sentencing Act did not increase the maximum penalty of the original charge, but just increased the mandatory minimum penalty, it did not constitute an element of the offense charged and punished.<sup>FN33</sup> Apprendi focused on New Jersey's sentencing scheme for hate crimes. Under that scheme, a court could enhance a defendant's sentence beyond the statutory maximum that would otherwise apply if the sentencing judge found by a preponderance of the evidence that the defendant's crime was motivated by racial bias. The defendant in question was charged with various offenses, but none of the counts referred to the hate crime statute or alleged that the defendant acted with a racially biased purpose.

FN31. *McMillan*, 477 U.S. at 81.

FN32. *McMillan*, 477 U.S. at 84(citing *Patterson v. New York*, 432 U.S. 197, 214, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977)).

FN33. *McMillan*, 477 U.S. at 88.

The Supreme Court stated that 'other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'<sup>FN34</sup> Apprendi then held that the statutory scheme in question was unconstitutional because it enhanced the statutory maximum sentence based on a fact not presented to the jury to determine beyond a reasonable doubt.<sup>FN35</sup>

FN34. *Apprendi*, 530 U.S. at 490.

FN35. *Apprendi*, 530 U.S. at 490.

The due process concerns of *McMillan* and *Apprendi* are not present here. Clark's prior convictions are just that, prior convictions. Under

*Apprendi* they need not be proven beyond a reasonable doubt to the jury. As our own Supreme Court has recognized, no court has extended the clear rule of *Apprendi* to hold that sentence enhancements based on the fact of a prior conviction are unconstitutional.<sup>FN36</sup> We follow our Supreme Court precedent and similarly hold that POAA sentence enhancements do not pose a due process problem under the United States Constitution.

FN36. *Wheeler*, 145 Wn.2d at 123-24 (citing *United States v. Mack*, 229 F.3d 226 (3d Cir.2000) (upholding enhanced sentence for recidivism)).

#### C. Eighth Amendment.

Clark filed a motion to raise an additional assignment of error that his sentence violated his Eighth Amendment right to freedom from cruel and unusual punishment. The motion was granted, but the argument was contained solely in the appellant's original motion and was placed in the correspondence file. Clark's motion relied primarily upon the Ninth Circuit Court's decision in *Andrade v. Attorney General of State of California*.<sup>FN37</sup> This appeal was stayed, pending a United States Supreme Court decision on *Andrade*.

FN37. *Andrade v. Attorney General of State of California*, 270 F.3d 743 (9th Cir.2001).

\*6 *Andrade* was reversed by the United States Supreme Court in *Lockyer v. Andrade*,<sup>FN38</sup> and the court's stay was lifted. Because it is unclear whether Clark continues to pursue this argument, we briefly discuss the implications of *Andrade* and *Lockyer* on Clark's Eighth Amendment claim.

FN38. *Lockyer v. Andrade*, 538 U.S. 63, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003).

In *Andrade*, the California Court of Appeals examined *Rummel v. Estelle*<sup>FN39</sup> and determined

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that the defendant's life sentence without possibility of parole for 50 years for a 'third strike' based on petty theft of a video tape was not grossly disproportionate to the felonies that formed the predicate for the underlying sentence, although they were all nonviolent convictions.<sup>FN40</sup> Unlike Washington's POAA, prior strikes in California need not be violent offenses as long as they qualify as 'serious.'<sup>FN41</sup> The Ninth Circuit Court held that California had not addressed the factors set forth in the later case of *Solem v. Helm* and had thus failed to consider clearly established Supreme Court precedent and imposed a sentence grossly disproportionate to the defendant's crimes.<sup>FN42</sup>

FN39. *Rummel v. Estelle*, 445 U.S. 263, 265, 271, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980) (holding although the Eighth Amendment prohibits imposition of a sentence that is 'grossly disproportionate to the severity of the crime,' no Eight amendment violation existed where defendant sentenced to life in prison for felony theft, which would otherwise have had a maximum sentence of 10 years, based on two prior felonies for fraudulent use of a credit card and check forgery).

FN40. *Andrade*, 270 F.3d 743.

FN41. *Andrade*, 270 F.3d at 748.

FN42. *Andrade*, 270 F.3d at 754-58, 765-67(citing *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991); *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983); *Rummel*, 445 U.S. 263).

The United States Supreme Court reversed the Ninth Circuit Court in *Lockyer*, holding that the California court did not err in relying on *Rummel* in deciding whether *Andrade's* sentence was grossly disproportionate. *Lockyer* also held that the California court's decision was neither contrary to, nor involved an unreasonable application of, the clearly established gross disproportionate principle of Eighth Amendment analysis, noting that a

decision is contrary to clearly established precedent only if the state court 'applied a rule that contradicts the governing law set forth in this Court's cases or confronts facts that are materially indistinguishable from a Court decision and nevertheless arrives at a different result.'<sup>FN43</sup> We note that Clark committed previous crimes even more serious than either defendant in *Rummel* or *Lockyer*. At least one of Clark's previous crimes included an assault, while the defendant in *Rummel* had only been convicted of forgery and theft. The defendant in *Lockyer* had been previously convicted of nonviolent crimes. *Rummel* also noted that Washington's statutory scheme, which required mandatory life sentences upon commission of a third serious offense, was nearly indistinguishable from Texas statutory scheme.<sup>FN44</sup> Yet, both *Rummel* and *Lockyer* determined that the sentence of life imprisonment was not 'grossly disproportionate' to the defendant's crimes.

FN43. *Lockyer*, 123 S.Ct. at 1168.

FN44. *Rummel*, 445 U.S. at 279.

Further, our own Supreme Court cited *Rummel* with approval when it held that a defendant's sentence of life imprisonment without possibility of parole was not grossly disproportionate to the final offense committed, second degree robbery.<sup>FN45</sup> Additionally, Washington courts have held that the POAA does not violate Washington's more protective prohibition against cruel punishment.<sup>FN46</sup> We hold that Clark's mandatory life sentence under the POAA does not, under any United States or Washington Supreme Court case, violate his Eighth Amendment right against cruel and unusual punishment.

FN45. *State v. Rivers*, 129 Wn.2d 697, 712-15, 921 P.2d 495 (1996).

FN46. *Rivers*, 129 Wn.2d at 712-13(citing *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980); *State v. Thorne*, 129 Wn.2d 736, 921 P.2d 514 (1996)).

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\*7 Affirmed.

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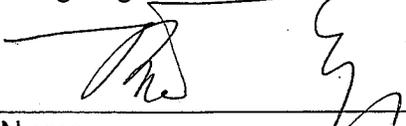
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CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Jeffrey Ellis, at the following address: Ellis, Holmes & Witchley, 705 Second Avenue, Suite 401, Seattle, WA 98104, the petitioner, containing a copy of the State's Motion for Discretionary Review in In re Steven Clark, Court of Appeals No. 59970-4, in the Supreme Court of the State of Washington.

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

  
Name  
Done in Seattle, Washington

04-29-08  
Date

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