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SUPREME COURT
STATE OF WASHINGTON

2008 SEP 26 P 4:04

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CLERK *Rh*

No. 82029-5

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

RICHARD HENRY MUTCH,

Appellant.

RESPONDENT'S ANSWER
TO STATEMENT OF
GROUNDS FOR DIRECT
REVIEW

A. IDENTITY OF RESPONDENT.

Respondent, State of Washington, by Hilary A. Thomas, Appellate Deputy Prosecutor for Whatcom County, submits this answer to Appellant Richard Mutch's Statement of Grounds for Direct Review.

B. NATURE OF CASE AND DECISION.

On September 28th, 1994, Petitioner Mutch was found guilty of five counts of Rape in the Second Degree and one count of Kidnapping in the Second Degree. At sentencing the court found Mutch to be a persistent offender and sentenced Mutch to life without the possibility of release. Mutch appealed his conviction and sentence. His conviction and sentence were upheld in the partially published decision of State v. Mutch, 87 Wn. App. 433, 942 P.2d 1018 (1997), *rev. den.*,

134 Wn.2d 1016 (1998).¹ The mandate for Mutch's direct appeal was issued on April 9, 1998.

After having filed numerous collateral attacks against his conviction and sentence, Mutch filed a personal restraint petition with the Supreme Court under Sup. Ct. No. 80958-5. In its response to this petition the State conceded that Mutch was entitled to be resentenced pursuant to In re Lavery, 154 Wn.2d 249, 111 P.3d 857 (2005). On April 30, 2008 the Supreme Court issued an order granting the personal restraint petition and remanding for resentencing. The certificate of finality was entered on May 28th, 2008.

On July 31st, 2008 the trial court resentenced Mutch to an exceptional sentence of 400 months based on his high offender score resulting in some of his current offenses going unpunished. (See Appendix A, Judgment and Sentence). Mutch, pro se, filed a notice of appeal directly with the Supreme Court.² Counsel was appointed and filed a Statement of Grounds for Direct Review.

C. ISSUES PRESENTED FOR REVIEW.

Mutch raises a number of grounds in his Statement of Grounds for Direct Review ("Statement"), some pertain to the calculation of his offender score and

¹ COA No. 35810-3-I.

² His trial counsel also filed a notice of appeal that was filed with the Court of Appeals, under COA No. 62123-8-I Mutch also has pending a personal restraint petition under Sup. Ct. No. 81736-7 as well as 82028-7.

others pertain to the authority of the trial court to impose an exceptional sentence. With respect to the offender score, Mutch alleges that the federal bank robbery should not have been included in his offender score without the court having conducted a comparability analysis, that his prior California first degree robberies from 1966 should have counted as one offense; and that the kidnapping conviction should not have been classified and counted as a violent felony offense.

With respect to the trial court's authority, Mutch asserts that the trial court did not have the authority to impose an exceptional sentence under the Blakely³-fix legislation and the 2007 amendment to that legislation, where his trial occurred in 1994 and he did not previously receive an exceptional sentence. Mutch further asserts that he was deprived of his right to fair notice that the State intended to seek an exceptional sentence, under RCW 9.94A.537 as well as the federal and state constitutions, where he was not given notice of the State's intent prior to trial. Mutch also challenges the trial court's authority to impose an exceptional sentence under the aggravating factor of "high offender score resulting in some current offenses going unpunished," apparently asserting that the trial court applied the wrong aggravating factor and that the applicable

³ Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

aggravating factor under prior RCW 9.94A.535(2)(c), the “clearly too lenient” factor,” requires factual determinations that must be made by a jury.

D. ARGUMENT IN OPPOSITION TO DIRECT REVIEW.

Mutch asserts that this Court should accept direct review because of the broad public import regarding the trial court’s authority to impose an exceptional sentence under the circumstances of this case. However, a number of issues Mutch has raised relate to the calculation of his offender score, which is not an issue of broad public import. A review of the judgment and sentence reveals the offender scores were miscalculated, thus remand for resentencing to address sentencing calculation errors, not direct review, is appropriate at this time.

The other issues Mutch raises are legal issues regarding the court’s authority to impose an exceptional sentence under the facts of this case. Mutch alleges, although originally sentenced as a persistent offender, that the trial court did not have authority to impose an exceptional sentence in his case because he was convicted in 1994 and originally did not receive an exceptional sentence. He further alleges that the State failed to provide him with proper notice before trial of its intent to seek an exceptional sentence and that such failure violated his rights under the State and federal constitutions, as well as the statutory requirement under RCW 9.94A.537. However, in addition to finding that the notice the State gave was sufficient, the trial court, independent of the State’s request for an exceptional sentence, reached its own determination that Mutch

should receive an exceptional sentence. (See Appendix B, Findings of Fact/Conclusions of Law).

Mutch also challenges the trial court's imposition of an exceptional sentence in one other respect. The trial court imposed an exceptional sentence based on the aggravating factor under RCW 9.94A.535(2)(c) (2005), that "the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished." Mutch appears to assert that the trial court applied the wrong aggravating factor and should have applied the "clearly too lenient" aggravating factor that existed under prior law. The trial court did not rely on the prior "clearly too lenient" aggravating factor, but rather on the aggravating factor of "current offenses going unpunished," and this Court just recently decided in State v. Alvarado, __ Wn.2d __, 2008 WL 4260565 that a judge's determination that some current offenses would go unpunished does not violate the Sixth Amendment right to jury trial.

Regardless of the exceptional sentence issues, the erroneous offender scores must be addressed and should be addressed first. The State requests that this Court not accept direct review at this time, but rather remand to the trial court for resentencing to address and resolve offender score calculation issues. Remand to the trial would be appropriate, so the issue of the trial court's authority to impose an exceptional sentence based on a defendant's high offender score is properly, and not prematurely, presented to the appellate court for review. In

order to expedite matters, the State is in the process of seeking an order of transport for Mutch. Once he is transported, the State will note this matter up before the trial court for resentencing in order to address offender score calculation issues.

E. CONCLUSION.

The State requests this Court to deny direct review and remand this matter for resentencing, or in the alternative, stay the Court's decision as to whether to accept direct review pending the trial court's resolution of the offender score issues.

DATED this 26th day of, September 2008.

Respectfully submitted,

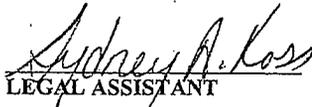


HILARY A. THOMAS, WSBA #22007
Attorney for Respondent
Appellate Deputy Prosecutor

CERTIFICATE

I certify that on this date I placed in the mail a properly stamped and addressed envelope, or caused to be delivered, a copy of the document to which this Certificate is attached to this Court and Petitioner's counsel, Nancy Collins, addressed as follows:

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101


LEGAL ASSISTANT

9/26/2008
DATE

APPENDIX A

FILED IN OPEN COURT
7/31/2008
WHATCOM COUNTY CLERK
By [Signature]
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,
vs.
RICHARD HENRY MUTCH, Defendant.
DOB: 5/8/41

No. 94-1-00117-8
94-9-02718-4
JUDGMENT AND SENTENCE (FJS)
PRISON
[XX] CLERK'S ACTION REQUIRED-para 4.1

JDSWC

I. HEARING

1.1 The court conducted a sentencing hearing July 31, 2008 and the defendant, Richard Henry Mutch, the defendant's lawyer, Jon Komorowski, and PRO SE and the Prosecuting Attorney, David S. McEachran, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced in accordance with the proceedings in this case, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant is guilty of the following offenses based upon a JURY VERDICT:

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[Handwritten mark]

COUNT	CRIME	TYPE OF DRUG	RCW	DATE OF CRIME
I	RAPE IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)(C)	February 2-3, 1994
II	RAPE IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)(C)	February 2-3, 1994
III	RAPE IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)(C)	February 2-3, 1994
IV	RAPE IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)(C)	February 2-3, 1994
V	RAPE IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)(C)	February 2-3, 1994
VI	KIDNAPPING IN THE SECOND DEGREE	NOT APPLICABLE ON THIS COUNT	9A.40.030(1)	February 3, 1994

as charged in the Information.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME
BANK ROBBERY	01/16/81		A	Class A felony
ROBBERY IN THE FIRST DEGREE	07/14/66		A	Class A felony
ROBBERY IN THE FIRST DEGREE	07/14/66		A	Class A felony

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- The following prior offense require that the defendant be sentenced as a **Persistent Offender** (RCW 9.94A.570):
- The following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL STANDARD RANGE (standard range including enhancements)	MAXIMUM TERM
I	6	XV	98 to 130 Months		98 to 130 Months	20 yrs/life/\$50,000
II	9	XV	149 to 198 Months		149 to 198 Months	20 yrs/life/\$50,000
III	12	XV	149 to 198 Months		149 to 198 Months	20 yrs/life/\$50,000
IV	15	XV	149 to 198 Months		149 to 198 Months	20 yrs/life/\$50,000
V	18	XV	149 to 198 Months		149 to 198 Months	20 yrs/life/\$50,000
VI	20	V	149 to 198 Months		149 to 198 Months	10 yrs/\$20,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

[] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [XX] EXCEPTIONAL SENTENCE. The court finds substantial and compelling reasons that justify an exceptional sentence: ABOVE the standard range for Count(s) I, II, III, IV, V, VI.

*** SEE ATTACHED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING EXCEPTIONAL SENTENCE

[] The defendant and state stipulate that justice is best served by imposition of the exceptional sentence ABOVE the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

[] Aggravating factors were: stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. [] Jury's special interrogatory is attached. The Prosecuting Attorney [] did [] did not recommend a similar sentence.

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

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

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

III. JUDGMENT

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

3.2 [] The Court DISMISSES Count(s)

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$	Restitution to:
----	-----------------

RTN/RJN
Office).

(Name and Address--address may be withheld and provided confidentially to Clerk's

PCV \$100.00
CRC \$110.00

Victim Assessment
Court costs, including:

RCW 7.68.035
RCW 9.94A.760, 9.94A.505,

		Criminal filing fee	<u>\$200.00</u>	FRC
		Witness costs	\$	WFR
		Sheriff service fees	\$	SFR/SFS/SFW/WRF
		Jury demand fee	<u>\$250</u>	JFR
PUB	<u>\$225.00</u>	Fees for court appointed attorney		RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense costs		RCW 9.94A.760
FCM	\$	Fine		RCW 9A.20.021
LDI	\$	VUCSA Fine	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
MTH	\$	Meth Lab Cleanup	<input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.401	RCW 69.50
CDF/LDI/ FCD/NIF/ SAD/SDI	\$	Drug enforcement fund		RCW 9.94A.760
CLF	<u>\$100.00</u>	Crime lab fee	<input type="checkbox"/> Suspended due to indigency	RCW 43.43.690
DNA		Felony DNA Collection Fee	<input type="checkbox"/> Not imposed due to hardship	RCW 43.43.(Ch. 289 L 2002 § 4)
RTN/RJN	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)		RCW 38.52.430
	<u>\$535.00</u>	TOTAL		RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____.

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

PAYMENT IN FULL: Defendant agrees and is hereby ordered to make payment in full within _____ days after the imposition of sentence to the Whatcom County Clerk for the amount due and owing for legal financial obligations and restitution.

[XX] MONTHLY PAYMENT PLAN: The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at \$100.00, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collections Deputy. The first payment of \$100.00 is due immediately after imposition of sentence or release from confinement, whichever occurs last.

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant

will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.

The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ (JLR) RCW 9.94A.760

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

**4.3 NO CONTACT ORDER/ORDER PROHIBITING CONTACT
SEE APPENDIX F**

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence. SEE ATTACHED APPENDIX F.

NO POST-CONVICTION ORDER PROHIBITING CONTACT IS BEING ENTERED OR EXTENDED. ANY PRIOR ORDER ENTERED, HAVING THIS CAUSE NUMBER, TERMINATES ON THE DATE THIS JUDGMENT IS SIGNED

4.4 OTHER:

Defendant is to be released immediately to set up jail alternatives.

DEPORTATION. If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

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

Judgment and Sentence (JS) (Felony)
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)
RICHARD HENRY MUTCH

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

400 MONTH for Count I, 400 MONTHS for Count II, 400 MONTH for Count III, 400 MONTH for Count IV, 400 MONTHS for Count V, 400 MONTH for Count VI, 400 MONTHS TOTAL

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

SENTENCES ON
ALL COUNTS USED
ABOVE

OTHER:

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA, in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

The sentence herein shall run consecutively with the sentence in _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence IMMEDIATELY unless otherwise set forth here: _____
(should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

- (c) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 SUPERVISION: [XX]Community PLACEMENT/Community CUSTODY/Community SUPERVISION, as determined by DOC, for for Count I, for Count II, for Count III, for Count IV, for Count V, for Count VI, ; or the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. [Use paragraph 4.7 to impose community custody following work ethic camp.]

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or a felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(11)(a).

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent Offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Defendant shall report to Department of Corrections, 1522 Cornwall Avenue, Bellingham, WA 98225, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence. The defendant shall:

The defendant shall not consume any alcohol.

Defendant shall comply with the No Contact provisions stated above.

Defendant shall remain of a specified geographical boundary, to wit

The defendant shall undergo an evaluation for treatment for the concern noted below AND FULLY COMPLY with all recommended treatment.

The defendant shall participate in the following crime related treatment or counseling services:

The defendant shall comply with the following crime-related prohibitions:

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

For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

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

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

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606
- 5.4 **RESTITUTION HEARING.**
[] Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 **COMMUNITY CUSTODY VIOLATION.**
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).
- 5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200**

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Correction.
3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you

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

4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.
5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of High Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.
6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours, excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.
7. **Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.
8. **Application for a name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 The court finds that Count(s) is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, if any in a manner authorized by the department. The court clerk is directed to immediately forward an Abstract of

Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 OTHER:

DONE in Open Court and in the presence of the defendant this date: July 31, 2008.

I object to this travesty

DEFENDANT- PRO SE

Print name: RICHARD HENRY MUTCH

JUDGE

David S. Mceachran
Prosecuting Attorney

WSBA # 2496

Print name: DAVID S. MCEACHRAN

Jon Komorowski
Attorney for Defendant

WSBA #

Print name: JON KOMOROWSKI

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature: *Richard Mutch*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,)	No. 94-1-00117-8
)	
Plaintiff,)	SEXUAL ASSAULT PROTECTION ORDER
)	(Criminal/Felony)
vs.)	(ORSXP)
)	(JIS order code: SXP)
RICHARD HENRY MUTCH, DOB: 5/8/41)	
)	[XX] Post Conviction
Defendant.)	[XX] Clerk's Action required

1. The court find that the defendant has been convicted of a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030. Additional findings on page two.

2. This Sexual Assault Protection Order is entered pursuant to Laws of 2006, ch. 138 § 16. This order protects:

JESSE LIGHT DOB 4/28/64

IT IS ORDERED:

This Post Conviction Sexual Assault Protection Order DOES NOT EXPIRE. This is a lifetime protection order.

(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation or parole.)

Defendant is RESTRAINED from:

- A. [XX] Having any contact with the protected person(s) directly, indirectly or through third parties regardless of whether those third parties know of the order.
- B. [XX] Knowingly coming within or knowingly remaining with 500 feet of the protected person(s) [X] residence, [X] school, [X] place of employment, [] other: _____
- C. [XX] Obtaining, owning, possessing or controlling a firearm.

WARNINGS TO THE DEFENDANT: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to: Bellingham Police Department, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

This order is issued in accordance with Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265. The court determines that the defendant's relationship to a person protected by this order is: . Therefore, 18 U.S.C. §§ 2261 (federal violation penalties) may apply to this order.

Done in Open court in the presence of the defendant this date: July 31, 2008

Richard Mutch
Defendant
Print name: RICHARD HENRY MUTCH

[Signature]
Judge
Print name:

David S. Mceachran
Prosecuting Attorney
WSBA# 2496
Print name DAVID S. MCEACHRAN

Attorney for Defendant
WSBA #
Print name: JON KOMOROWSKI

A Law Enforcement Information Sheet (LEIS) must be completed.

Presented by:

Approved by:

David S. Mceachran
Prosecuting Attorney
WSBA # 2496

JON KOMOROWSKI
Attorney for Defendant
WSBA #

RICHARD MUTCH -PRO SE

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,
vs.
RICHARD HENRY MUTCH, Defendant.
DOB:

No. 94-1-00117-8

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

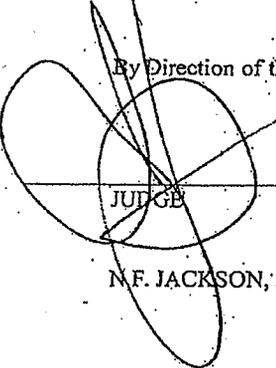
The defendant, RICHARD HENRY MUTCH, has been convicted in the Superior Court of the State of Washington of the crime or crimes of RAPE IN THE SECOND DEGREE, RAPE IN THE SECOND DEGREE and KIDNAPPING IN THE SECOND DEGREE and the Court has ordered that the defendant be punished by serving the determined sentence of 400 MONTHS for Count I, 400 MONTHS for Count II, 400 MONTHS for Count III, 400 MONTHS for Count IV, 400 MONTHS for Count V, 400 MONTHS for Count VI. **A TOTAL OF 400 MONTHS FOR ALL COUNTS**

The defendant shall receive credit for time served prior to sentencing, as long as the time served was solely on that cause number, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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

DATED: July 31, 2008

By Direction of the HONORABLE

JUDGE
N.F. JACKSON, JR., Clerk

By: _____
Deputy Clerk

RICHARD HENRY MUTCH
CAUSE NUMBER of this case: 94-1-00117-8

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: July 31, 2008.

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

IDENTIFICATION OF DEFENDANT

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

Date of Birth: _____

FBI No. _____

Local ID No. _____

PCN No. _____

Other _____

Alias name, SSN, DOB:

Race:

Sex:

Defendant's Last Known Address:

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix fingerprints and signature thereto.

Clerk of the Court: _____, Deputy Clerk. Dated: July 31, 2008

DEFENDANT'S SIGNATURE: *Richard Mutch*

Left Thumb



Right Thumb



APPENDIX B

FILED IN OPEN COURT
7/31/2008
WHATCOM COUNTY CLERK
By [Signature]
Deputy

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON FOR
WHATCOM COUNTY

STATE OF WASHINGTON,
Plaintiff,
vs.
RICHARD HENRY MUTCH,
Defendant

Case No. 94-1-00117-8
FINDINGS OF FACT AND CONCLUSIONS
OF LAW SUPPORTING EXCEPTIONAL
SENTENCE

THIS MATTER having come on regularly before the above-entitled court, and the State of Washington being represented by David S. McEachran, the Prosecuting Attorney in and for Whatcom County, Washington, and the defendant, RICHARD HENRY MUTCH, being personally resent and representing himself and also being represented by counsel, Jon Komorowski, and the Court being fully advised in the premises and having received memorandums from the parties and heard argument of counsel, now therefore,

The Court makes the following FINDINGS OF FACT:

- 1) That the defendant, Richard Henry Mutch was convicted of Rape in the Second Degree, Counts, I-V and Kidnapping in the Second Degree, Count VI, by jury verdict on the 28th day of September, 1994.

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2) The defendant, Richard Henry Mutch, was sentenced in the Whatcom County Superior Court as a "Persistent Offender" to a term of life without parole on the 16th day of December, 1994.

3) The defendant subsequently filed a Personal Restraint Petition with the Washington State Supreme Court challenging the comparability of one of the "strike" offenses underlying his sentence. This Personal Restraint Petition was granted by order of the Supreme Court on the 30th day of April, 2008, and this matter was returned to this Court for resentencing.

4) The defendant did not challenge the criminal history presented at his 1994 sentencing in the Personal Restraint Petition that brought him back to this Court. The trial court took testimony and admitted exhibits identifying defendant as the person who was convicted of the below listed offenses at the original sentencing hearing held in Whatcom County Superior Court on the 16th day of December, 1994. Findings of Fact and conclusions of law relating to the criminal history were also entered by the trial court. This court has taken judicial notice of the hearing, exhibits admitted, Findings of Fact and Conclusions of Law, and finds the defendant's criminal history consists of the following:

- a. Robbery in the First Degree 7/14/1966
- b. Robbery in the First Degree 7/14/1966
- c. Bank Robbery 1/16/1981

Based upon the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW:

1. The defendant's Offender Score under the Sentencing Reform Act is 20. The Sentencing Grid only goes to a score of 9.

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2. The Defendant's presumptive sentence under the Sentencing Reform Act is identical to that which would be imposed if he had committed only two counts of Rape in the Second Degree, instead of five counts of Rape in the Second Degree and one count of Kidnapping in the Second Degree.
3. The defendant has committed multiple current offenses and his high offender score will result in three counts of Rape in the Second Degree and one count of Kidnapping in the Second Degree going unpunished.
4. The State of Washington has given adequate notice to defendant Mutch that a sentence exceeding the presumptive standard range was being sought by the State, through the imposition of the "Persistent Offender" sentencing in 1994.
5. Pursuant to the argument of the State, the defendant should receive an exceptional sentence over the standard range based on RCW 9.94A.535(2)(c).
6. Independent of any argument by the State relating to notice given of an exceptional sentence, or reasons supporting an exceptional sentence, the Court has reached its own determination that the defendant should receive an exceptional sentence over the presumptive standard range based on RCW 9.94A.535(2)(c).

DONE IN OPEN COURT this 31 day of July, 2008.

JUDGE / COMMISSIONER

Presented by:

David S. McEachran
David S. McEachran
Prosecuting Attorney
WSB # 2496

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Copy Received and Approved for Entry:

Jon Komorowski
Attorney for Defendant
WSB # _____

Copy Received and Approved for Entry:

Richard Henry Mutch
Pro. Se

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 SEP 26 P 4: 04

CERTIFICATE

I declare that on this date I deposited in the United States mails, with proper postage thereon, or otherwise caused to be delivered, a copy of the document to _____ which this certificate is attached, directed to this court and Appellant's attorney(s), Nancy Collins, addressed as follows:

BY RONALD R. CARPENTER
CLERK

Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101

Audrey A. Koss
Legal Assistant

9/26/2008
Date

FILED AS
ATTACHMENT TO EMAIL