

83923-9

NO. 61835-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

IN RE: PERSONAL RESTRAINT OF SALVADOR RIVERA

STATE OF WASHINGTON,

Respondent,

v.

SALVADOR RIVERA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

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A. SUMMARY OF ARGUMENT.

Salvador Rivera received a 60-month sentence for possessing a “deadly weapon” even though the statute allowed for only a 24-month sentence for possession of a deadly weapon. Because Rivera was charged with possessing a “deadly weapon,” and the jury’s special verdict found he possessed a “deadly weapon,” the court’s imposition of a 60-month sentence for a “deadly weapon” is invalid on its face and he is entitled to relief.

B. ASSIGNMENT OF ERROR.

The 60-month sentence imposed for possession of a deadly weapon is invalid on its face, unauthorized by law, and in violation of Rivera’s right to due process and a fair jury trial as guaranteed by the state and federal constitutions.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

By virtue of statutory and constitutional limits on a sentencing courts authority, a court may not impose a sentence exceeding the term allowed by law. Additionally, the requirement of fair notice in a charging document, and the finality of a jury’s verdict, bar a sentencing court from imposing a sentence based on an element that was neither charged nor found by the jury. Here, the court imposed a 60-month sentence for a deadly weapon when

the Judgment and Sentence, charging document, and special verdict form uniformly alleged and found Rivera possessed a “deadly weapon,” which is statutorily limited to 24 months of additional confinement. Is the 60-month sentence invalid on its face?

D. STATEMENT OF THE CASE.

The Judgment and Sentence entered in Salvador Rivera’s case states that Rivera was found guilty of first degree murder “while armed with a deadly weapon.” Judgment and Sentence, p. 1 (copy attached as Appendix A). It lists the available sentence for the “deadly weapon clause” as 60 months. Id. at 2. It orders 60 months of confinement “for deadly weapon.” Id. at 4. The warrant of commitment states that the court has ordered Rivera to be punished, including “60 months for deadly weapon.” Id. at 8.

The charging document alleged Rivera was “armed with a deadly weapon,” while committing a murder. First Amended Information (attached as App. B). Although the amended information said, “to wit: a .22 caliber handgun,” it further explained, “for purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a).” Id. In a special verdict form, the

jury found Rivera was “armed with a deadly weapon.” Special Verdict Form (attached as App. C).

At sentencing, the court ordered Rivera to serve an additional 60 months of confinement based on the “deadly weapon clause.” Yet the statute permitting enhanced penalties for a deadly weapon allows only 24 months, not 60 months.

Rivera filed a *pro se* personal restraint petition arguing that this portion of his sentence was unlawful, and this Court appointed counsel to represent him, finding the issue not frivolous. Rivera remains in custody on the instant matter.

E. ARGUMENT.

1. RIVERA IS SUFFERING UNLAWFUL RESTRAINT AND IS ENTITLED TO RELIEF BY WAY OF A PERSONAL RESTRAINT PETITION

a. Rivera is unlawfully restrained. A person is entitled to relief by way of a Personal Restraint Petition (PRP) where the person is unlawfully restrained as defined in RAP 16.4. A person is restrained where he “is confined.” RAP 16.4(b). Rivera is currently confined at the Stafford Creek Correction Center. He is serving a sentence of 393 months, imposed on December 15, 1998, for an offense that occurred on March 20,

1998. Motion to Vacate, Ex. A (Amended Information); Ex. D (Judgment and Sentence). Because he is presently incarcerated based on the challenged sentence, Rivera is restrained pursuant to RAP 16.4.

RAP 16.4(c)(6) provides restraint is unlawful where:

The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.

The Supreme Court has said confinement beyond that authorized by the Sentencing Reform Act results in a sentence that violates the laws of the State of Washington and may be remedied by way of a PRP. In re the Personal Restraint of Greening, 141 Wn.2d 687, 692-93, 9 P.3d 206 (2000); In re the Personal Restraint of Johnson, 131 Wn.2d 558, 568-69, 933 P.2d 1019 (1997).

As set forth in Part 2 below, Rivera's current confinement is contrary to the provisions of the SRA and his restraint is, therefore, unlawful pursuant to RAP 16.4(c)(2).

b. Rivera is entitled to relief by way of a personal restraint petition. RAP 16.4(d) limits relief via a PRP to those situations where there are inadequate alternative remedies available to the petitioner. In the context of issues raised for the

first time in a PRP, the Supreme Court has explained this rule as: (1) a petitioner raising a constitutional error must demonstrate actual prejudice; and (2) a petitioner raising a nonconstitutional issue must demonstrate the “error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” In re the Personal Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990). “Confinement beyond that authorized by statute is exactly the kind of fundamental defect which the rule announced in [Cook] was aimed at remedying.” Greening, 141 Wn.2d at 692-93 (citing In re the Personal Restraint of Moore, 116 Wn.2d 30, 33, 803 P.2d 300 (1991)). The claim must be raised within one year unless the sentence is challenged as invalid on its face, or another exception applies. In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002); RCW 10.73.090.

Rivera’s confinement is contrary to the United States Constitution and laws of the State of Washington, and he has no alternative available for presenting his claim. Specifically, the court unlawfully imposed a 60-month term of confinement for a deadly weapon enhancement, which is limited to 24 months. Thus, Rivera is entitled to relief by way of a PRP. RAP 16.4(d); see also Greening, 141 Wn.2d at 692-93.

2. THE COURT LACKED AUTHORITY TO IMPOSE A FIVE YEAR SENTENCE FOR A DEADLY WEAPON WHEN THE STATUTE ONLY ALLOWS TWO YEARS OF PUNISHMENT

a. The court imposed an incorrect term of

confinement for a deadly weapon enhancement. The authority to impose a sentence upon a criminal conviction derives strictly from statute, subject to the constitutional rights to due process, a jury trial, and prohibition against cruel and unusual punishment. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Ammons, 105 Wn.2d 175, 180-81, 713 P.2d 719 (1986); U.S. Const. amends. 6¹, 8², 14³; Wash. Const. art. I, § 22.⁴

¹ The Sixth Amendment provides, in relevant part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

² The Eighth Amendment provides, "Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted." Washington Constitution, Article I, § 14 likewise states, "excessive bail shall not be required, . . . nor cruel punishment inflicted."

³ The Fourteenth Amendment to the United States Constitution provides, in relevant part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

⁴ Article I, § 22 provides:

Sentencing is a critical stage in a criminal proceeding and must be based on reliable facts and information. State v. Ford, 137 Wn.2d 474, 484, 973 P.2d 452 (1999); see United States v. Cronin, 466 U.S. 648, 653-54, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984) (right to effective assistance of counsel at sentencing).

A sentence is invalid on its face when it is invalid “without further elaboration.” Goodwin, 146 Wn.2d at 866. A petitioner properly asserts a claim of facial invalidity when the error appears by looking “within the four corners of his judgment and sentence.” State v. Ross, 152 Wn.2d 220, 231, 95 P.3d 1225 (2004).

The Goodwin Court reversed a sentence where the offender score included offenses that had “washed out,” which were apparent by looking at the dates of the prior offenses, the defendant’s age, and the date of the current offense. 146 Wn.2d at 866. On the other hand, in Ross the court found an error was not apparent on its face when it involved the comparability of a prior conviction and the available record did not discuss the

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in

comparability of offenses or give any reason to find the convictions not comparable. 152 Wn.2d at 231-32.

In the case at bar, the Judgment and Sentence ordered Rivera to serve a “60 month” term of confinement for a “deadly weapon.” App. A. The Judgment and Sentence repeats at least three times that the 60-month added to Rivera’s sentence is based on a “deadly weapon.” Id. However, the statute authorizes only a 24-month enhancement for possession of a “deadly weapon.” RCW 9.94A.533.

Because there is no statutory authority to impose this length of sentence for a deadly weapon finding, the court’s sentence is invalid on its face. Goodwin, 146 Wn.2d at 866. The 60-month sentence was not authorized by statute and must be reversed.

b. The court’s sentence was unauthorized by the jury’s verdict and charging document, thus rendering the sentence invalid on its face. A sentence that is not authorized by law is invalid on its face. In re Pers. Restraint of Tobin, 165 Wn.2d 172, 176, 196 P.3d 670 (2008) (citing Goodwin, 146 Wn.2d at 866-67; In

which the offense is charged to have been committed and the right to appeal in all cases.

re Pers. Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980)).

Determining the facial validity of a sentence may encompass documents beyond the order imposing sentence but may not rest on a far-ranging inquiry. Only documents such as such as the information, verdict form, or plea form, may be considered in a facial validity determination. In Goodwin, the court used sentencing documents that showed Goodwin's age and the date of prior convictions and calculated that those convictions would have "washed out" under governing law. 146 Wn.2d at 866-67. In In re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000), the court similarly found a sentence invalid on its face where the date of the offense as shown by the plea agreement meant the statute of limitations had expired before the offenses were charged. In In re Pers. Restraint of Hinton, 152 Wn.2d 853, 858, 100 P.3d 801 (2004), the court found a judgment and sentence invalid on its face where the offense of conviction had been declared invalid.

Here, the charging document accused Rivera of being armed with "**a deadly weapon, to wit: a handgun**" and cited the statute setting out the requirements for a "deadly weapon special

verdict,” former RCW 9.94A.125.⁵ App. B. The special verdict form asked only whether Rivera was armed with “**a deadly weapon**” and the jury answered “yes.” App. C.

The charging document did not cite the definition of a firearm required for a firearm sentencing enhancement, RCW 9.41.010. A firearm has a specific statutory definition, necessary for the firearm enhancement, that the jury’s verdict did not find Rivera possessed a firearm. See RCW 9.94A.510(3).

Accordingly, the 60-month sentence imposed for a firearm enhancement is invalid on its face. It is not supported by the “deadly weapon” cited in the Judgment and Sentence, charged in the First Amended Information, or found in the jury’s special verdict form. The sentence imposed is unauthorized and must be altered to reflect the actual basis of the sentence charged by the prosecution and imposed by the jury.

c. Recuenco III does not create a new rule that requires resort to retroactivity analysis. The prosecution’s brief filed in response to Rivera’s *pro se* personal restraint petition claims Rivera may not obtain relief based on Blakely v. Washington, 542

⁵ Former RCW 9.94A.125 was recodified as RCW 9.94A.602.

U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 2d 403 (2004), because Blakely was decided after Rivera's conviction became final. But the illegality at issue here neither requires resort to any new rule nor any consideration of Blakely. The initial Recuenco opinion may have interpreted and applied Blakely, but after the United States Supreme Court reversed that decision, "on remand, our Supreme Court took a markedly different legal approach than it did in Recuenco II."⁶ In re: Pers. Restraint of Delgado, __Wn.App. __, Slip op. at 8 (3/10/09).

Recuenco III⁷ rested on well-established law setting forth the requirement that the prosecution charge all elements of the offense. Recuenco III, 163 Wn.2d at 431, 442. It primarily relied cases such as State v. Theroff, 95 Wn.2d 385, 392, 622 P.2d 1240 (1980), for the principle that a charging document must contain notice of the prosecution's "intent to seek an enhanced penalty" for deadly weapon or firearm enhancements, and once the prosecution elects the charges it will pursue, it is bound by that

⁶ State v. Recuenco, 154 Wn.2d 156, 160, 162-63, 110 P.3d 188 (2005), rev'd on other grounds, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).

⁷ State v. Recuenco, 163 Wn.2d 428, 180 P.3d 1276 (2008) (Recuenco III).

decision. Id. In Theroff, the prosecution filed an amended information that did not mention an intent to seek enhanced punishment for a firearm or deadly weapon, although the original information had provided such notice. The court ruled that the prosecution is free to change its mind as to what penalties it seeks and by forgoing the required charging language in the amended information, the prosecution opted not to seek the enhancements. Under Theroff, the charging decisions set forth in the charging document bind the prosecution and court to the penalties they may seek. Recuenco III, 163 Wn.2d at 435.

The decision in Recuenco III is an application of long-standing legal principles, not an announcement of a new rule that raises questions of retroactivity. Even without the analysis in Recuenco III, Rivera would be entitled to relief because the 60-month sentence he received for a firearm enhancement is not authorized by the Judgment and Sentence, the charging document, or the special verdict form. Accordingly, the case must be remanded for a new sentence.

d. Rivera is entitled to relief in a personal restraint petition. When a sentence is invalid on its face, it is not time barred under RCW 10.73.090(1). Tobin, 165 Wn.2d at 176 n.2.

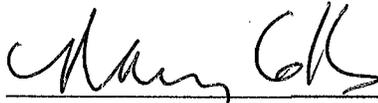
Rivera's sentence is invalid on its face and he is entitled to be resentenced to a valid and authorized term of imprisonment.

F. CONCLUSION.

For the foregoing reasons, Salvador Rivera respectfully requests this Court reverse the improperly ordered 60-month firearm sentencing enhancement and correct the sentence to properly reflect the facts established by the jury's verdict.

DATED this 16th day of March 2009.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A

ORIGINAL

FILED IN OPEN COURT
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WHATCOM COUNTY CLERK

By _____ Deputy

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

THE STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 98-1-00289-4
)	
vs.)	
)	
SALVADOR HERNANDEZ RIVERA)	JUDGMENT AND SENTENCE
)	(FELONY)
Defendant.)	

790179
12-21-98

I. HEARING

- 1.1 A sentencing hearing in this case was held: December 15, 1998.
- 1.2 Present were:
 Defendant: SALVADOR HERNANDEZ RIVERA
 Defendant's Lawyer: JON C. KOMOROWSKI
 Prosecuting Attorney: DAVID S. MCEACHRAN
 Judge: MICHAEL F. MOYNIHAN
- 1.3 The State has moved for dismissal of Count(s) N/A.
- 1.4 Defendant was asked if there was any legal cause why judgment should not be pronounced, and none was shown.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found GUILTY on ~~October 13~~ December 15, 1998, by JURY VERDICT of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon):

Count No. I
Crime: MURDER IN THE FIRST DEGREE
RCW: 9A.32.030(1)(a), 9.94A.125, and 9.94A.310(3)(a)a
Crime Code: Class "A" Felony
Date of Crime: 3/20/98
Incident, No. 98A-5437

JUDGMENT AND SENTENCE (FELONY)
CONFINEMENT OVER ONE YEAR - 1

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

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

() Additional current offenses are attached in Appendix A.

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

Crime: POSSESSION OF MARIJUANA (for sale)
Sentencing Date: 1/13/95
Adult or Juvenile Crime: Adult

2.3 SENTENCING DATA:

	Offender Score	Seriousness Level	Range	Maximum Term
COUNT NO. I:	1	XIV	250-333 mos.	LIFE
(deadly weapon clause)			60 mos.	
TOTAL:			310-393 mos.	

() Additional current offenses sentencing information is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) _____ . Finding of Fact and Conclusions of Law are attached in Appendix D.

2.5 CATEGORY OF OFFENDER: The defendant is:

(a) (XX) An offender who shall be sentenced to confinement over one year.

(b) () An offender who shall be sentenced to confinement one year or less.

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

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the crime(s) of: MURDER IN THE FIRST DEGREE (while armed with a deadly weapon).

IV. ORDER

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

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$110.00 court costs;
- (b) \$500.00 victim fund assessment;
- (c) \$ TBD (for burial expenses) - restitution
 - _____ Joint & several with co-defendant;
 - _____ On all counts charged;
 - _____ Other:

() Schedule of Restitution is attached as Appendix E.

- (d) \$ 1,425.00 recoupment for court-appointed attorney's fees;
- (e) \$ _____ fine;
- (f) \$ _____ drug enforcement fund;
- (g) OTHER COSTS FOR:

(XX) \$100.00 = CRIME LABORATORY ANALYSIS

(h) \$ 2,135.00 + RESTITUTION = TOTAL MONETARY OBLIGATIONS

(i) Payments shall be made in the following manner:

(XX) That the defendant shall set up a payment schedule with his/her community corrections officer. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

() That defendant shall pay the amount of \$_____ per month toward his/her legal financial obligations. That the defendant shall report IMMEDIATELY to his/her Community Corrections Officer to set up a schedule for the payment of his/her court-ordered legal financial obligations and the Community Corrections Officer shall monitor these payments.

(j) This Court shall retain jurisdiction over the defendant for a period of TEN (10) years to assure payment of the above monetary obligations.

4.2 The Court DISMISSES Count(s) N/A.

4.3 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the DEPARTMENT OF CORRECTIONS as follows commencing IMMEDIATELY:

25 yr Mandatory
333 + 60 months MONTHS for Count No. I.

For Deadly Weapon 393

(XX) Credit is given for TIME SERVED OF *275 days JT* 48 days DAYS as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

() The terms in COUNTS No. are CONCURRENT for a total term of .

() The sentence/s herein shall run CONCURRENTLY / CONSECUTIVELY with the sentence/s imposed in Cause No. .

(XX) CUSTODIAL RECOMMENDATION FOR COMMUNITY PLACEMENT FOR TWENTY-FOUR (24) MONTHS OR UP TO THE PERIOD OF EARNED EARLY RELEASE AWARDED, WHICHEVER IS LONGER conditioned upon full compliance with the following terms, all of which are imposed pursuant to RCW 9.94A.120(8)(b):

(XX) Defendant shall not sell, use or under any circumstances have in her possession any illicit drug; that is, any drug such as marijuana, cocaine, LSD or any others which are not compounded, manufactured or refined by a licensed commercial pharmaceutical company. That the defendant shall not knowingly be anywhere where illegal or unprescribed drugs are being sold or used. In addition, the defendant shall not sell, use or have in her possession any prescription drugs except those which have been prescribed specifically for her personally by a duly licensed physician and then these prescribed drugs shall be used only in accordance with the instructions of such physician.

(XX) Defendant shall not possess or own weapons of any kind at any time.

() Defendant shall submit to random urine analysis as requested by her supervising community corrections officer at the defendant's own expense.

() Defendant shall undergo evaluation for poly drug abuse with strict and full compliance with all treatment recommendations.

(XX) Defendant shall not consume alcohol of any kind at any time.

() Defendant shall abstain from using alcohol in excess. Due to the fact that the Court does not know whether the defendant has the ability to totally abstain from alcohol at the present time, defendant will be allowed to MODERATELY consume alcohol. However, if there any evidence of criminal activity resulting from alcoholic consumption in regard to driving, disorderly conduct, or any other type of non - socially accepted behavior, such activity will be

considered by the Court to be grounds for further sanctions to be imposed upon the defendant.

() Defendant shall undergo counseling as approved by his/her community corrections officer.

(XX) NO CONTACT PROVISION: Defendant shall not approach or communicate with, directly or indirectly, or through any third person or by any means, with:

[REDACTED]

() Violation of this NO CONTACT PROVISION is a criminal offense under Chapter 10.99 RCW, and will subject the violator to arrest; any assault or reckless endangerment that is a violation of this Order is a felony.

The NO CONTACT ORDER previously entered in this cause number is hereby:

(XX) Extended for the statutory maximum sentence, to wit:

- (XX) Permanent: Class A Felony
- () Ten Years: Class B Felony
- () Five Years: Class C Felony
- () One Year: Gross Misdemeanor

() Rescinded as of the date affixed to this order.

(XX) That the defendant shall follow all of the rules of his Community Corrections Officer.

(XX) HIV TESTING: The Health Department or designee shall test the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing.

(XX) DNA TESTING: That the defendant shall submit a blood sample of FIVE (5) m.l. to be acquired under medically safe conditions under the supervision of a Whatcom County Corrections Officer. This sample shall be safely transported to the Washington State Crime Laboratory in Seattle, DNA Section, pursuant to RCW 43.43.754.

Violations of the conditions or requirements of this sentence are punishable by up to SIXTY (60) days of confinement for each violation (RCW 9.94A.200(2)).

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- () Appendix A Additional Current Offenses
- () Appendix B Additional Criminal History
- () Appendix C Current Offense(s) Sentencing Information
- () Appendix D Findings of Fact and Conclusions of Law for an Exceptional Sentence
- () Appendix E Schedule of Restitution
- () Appendix F Additional Conditions

SIGNED IN THE PRESENCE OF THE DEFENDANT.

Date: DECEMBER 15, 1998

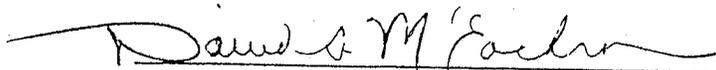
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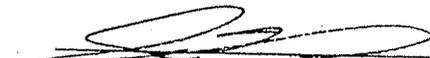


JUDGE MICHAEL F. MOYNIHAN

Approved as to form:



DAVID S. MCEACHRAN,
Prosecuting Attorney
WSBA #2496



JON C. KOMOROWSKI
Attorney for Defendant
WSBA#91001

*** Defendant's Name: SALVADOR HERNANDEZ RIVERA
Date of Birth: 6/30/65; Sex: MALE; Race: HISPANIC

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

THE STATE OF WASHINGTON,

Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, SALVADOR HERNANDEZ RIVERA, has been convicted in the Superior Court of the State of Washington of the crime or crimes of MURDER IN THE FIRST DEGREE, and the Court has ordered that the defendant be punished by serving the determined sentence of 333 1/2 months on Count No. I.

60 months for deadly weapon = 393 months

Defendant shall receive credit for time served of _____ as of MARCH 21, 1998, and credit for any additional time served beyond that date until defendant is transported to the Department of Corrections.

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:

DECEMBER 15, 1998

By Direction of the HONORABLE

[Signature]
JUDGE MICHAEL F. MOYNIHAN

N.F. JACKSON, Jr., Clerk

By: [Signature]
Deputy Clerk

CAUSE NUMBER: 98-1-00 289-4

Thumb prints of: Salvador Hernandez Rivera

Salvador Hernandez Rivera
(Defendant's Signature)

Attested by:

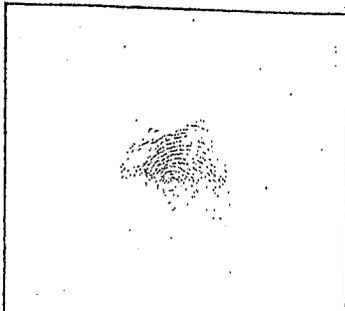
(Seal)

Aileen DeYoung
(Deputy County Clerk)

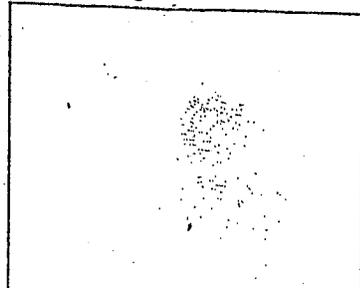
WA0370000

12-15-98 (date)

Left Thumb



Right Thumb



APPENDIX B

FILED
COUNTY CLERK

98 MAR 31 PM 3:12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
WHATCOM COUNTY

THE STATE OF WASHINGTON
Plaintiff,

vs.

SALVADOR HERNANDEZ RIVERA,
JOSE MANUEL RIVERA-HERNANDEZ,
ARTURO H. RIVERA,
and each of them,
Defendants.

No. 98-1-00289-4
98-1-00290-8
98-1-00287-8

FIRST AMENDED
INFORMATION FOR:

MURDER IN THE FIRST DEGREE,
COUNT I (AS TO SALVADOR RIVERA
AND JOSE RIVERA-HERNANDEZ ONLY)

ATTEMPTED RENDERING CRIMINAL
ASSISTANCE IN THE FIRST DEGREE,
COUNT II (AS TO ARTURO RIVERA
ONLY)

I, DAVID S. MCEACHRAN, Prosecuting Attorney in and for the County of Whatcom, State of Washington, come now in the name and by the authority of the State of Washington, and by this first amended information do accuse SALVADOR HERNANDEZ RIVERA, JOSE MANUEL RIVERA-HERNANDEZ, AND ARTURO H. RIVERA, and each of them with the crimes of MURDER IN THE FIRST DEGREE, COUNT I (AS TO SALVADOR RIVERA AND JOSE RIVERA-HERNANDEZ ONLY), and ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II (AS TO ARTURO RIVERA ONLY) committed as follows:

then and there being in Whatcom County, Washington,

MURDER IN THE FIRST DEGREE, COUNT I: That the defendants, SALVADOR HERNANDEZ RIVERA AND JOSE MANUEL RIVERA-HERNANDEZ, and each of them, then and there being in said county and state, on or about the 20th day of March, 1998, with premeditated intent to cause the death of another person, did shoot Matthew Garza, thereby causing the death of Mr. Garza, a human being, in

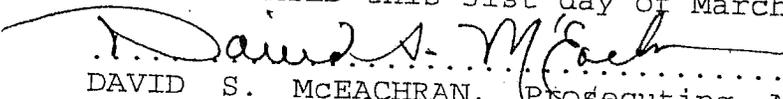
CA

violation of RCW 9A.32.030(1)(a), which violation is a Class "A" Felony, and during the course or commission of said crime, the defendants or one of them was armed with a deadly weapon, to-wit: a .22 caliber handgun, for the purposes of the deadly weapon enhancement of RCW 9.94A.125 and 9.94A.310(3)(a);

ATTEMPTED RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, COUNT II: That the defendant, ARTURO H. RIVERA, then and there being in said county and state, on or about the 20th day of March, 1998, with intent to prevent or hinder the apprehension and prosecution of SALVADOR HERNANDEZ RIVERA, a person whom the accused knew had committed the crime of Murder in the First Degree and/or was being sought by law enforcement officials for the commission of this crime; did attempt to provide such person with clothing and other assistance as means of avoiding his apprehension and did take a substantial step toward the commission of that offense, in violation of RCW 9A.76.070(2)(a), RCW 9A.76.050(3), and 9A.28.020, which violation is a Misdemeanor;

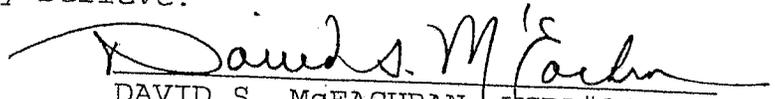
contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Washington.

DATED this 31st day of March, 1998.

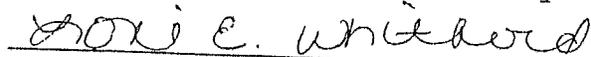

.....
DAVID S. MCEACHRAN, Prosecuting Attorney in and for Whatcom County, State of Washington.

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

I, DAVID S. MCEACHRAN, being first duly sworn on oath, depose and say: that I am a duly elected and acting Prosecuting Attorney in and for Whatcom County, State of Washington, I have read the foregoing information, know the contents thereof and the same is true as I verily believe.


DAVID S. MCEACHRAN, WSBA#2496
Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 31st day of March, 1998.


NOTARY PUBLIC in and for the State of Washington. MCE: 5/9/01

APPENDIX C

FILED IN OPEN COURT

11-13 19 98

WHATCOM COUNTY CLERK

By *[Signature]*
Deputy

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

STATE OF WASHINGTON,

Plaintiff,

v.

SALVADOR HERNANDEZ RIVERA,

Defendant.

No. 98-1-00289-4

SPECIAL VERDICT FORM

We, the jury in the above-entitled cause, return a special verdict by answering as follows:

Was the defendant, SALVADOR HERNANDEZ RIVERA, armed with a deadly weapon at the time of the commission of the crime?

ANSWER: Yes

[Signature]
PRESIDING JUROR

