

SC No. 82149-6/CA No. 39089-9-II

83284-6

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

IN RE PERSONAL RESTRAINT OF  
TEDDY GLEN TALLEY

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MOTION FOR DISCRETIONARY REVIEW

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Teddy G. Talley, #304090 D220-2  
On Pro se  
McNeil Island Corrections Center  
P.O. BOX 88-1000  
Steilacoom, WA 98388-1000

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17

### A. Identity of Petitioner

COMES HERE NOW, Teddy G. Talley, the Petitioner on Pro se, asks this court to accept review of the decision in Part B of this motion.

### B. Decision

On June 17, 2009 became the decision of the Appellate Court Division Two, to issue an order granting petition in part and denying petition in part. First, the Appeals Court agreed that Skamania County Jail miscalculated Mr. Talley's Jail time by two days.

Secondly, the Appeals Court rejected petitioner's claim that Skamania County Jail's refusal to grant him earned early release credit during his presentence confinement by 58-days violated equal protection by the deferential treatment accorded to him as an indigent resulting in his inability to post bail before trial. A copy of the decision is provided as **Attachment:-1**.

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### C. Issues Presented for Review

"Does The State Violate Defendant's Rights Under Art. I, § 12, Of The Washington State Constitution, And The Equal Protection Clause Of The Fourteenth Amendment Of The United States Denying Defendant His Earned Early Release Credits Due To Poverty During His Presentence Confinement In Skamania County Jail By 58-Days?"

(i) "Does The Decision Of The Court Of Appeals Conflict With A Decision Of The Supreme Court?" RAP 13.4(b)(1).

(ii) "Does The Petitioner Present An issue That Involves A Significant Question Of Law Under The Constitution Of The State Of Washington Or Of The United States?" RAP 13.4(b)(3).

(iii) "Does The Petitioner Present An Issue That involves Substantial Public Interest That Should Be Determined By The Supreme Court. RAP 13.4(b)(4).

### D. Statement of the Case

Mr. Talley was sentenced to 123-months following a plea of guilty to second degree murder. [J & S, Attachment:-2]. Mr. Talley's date of arrest was October 28, 2005. After sentencing, Mr. Talley was transferred on March 29, 2007 to the Department of Corrections. [Attachment:-3]. The total length in Mr. Talley's actual confinement in

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the Skamania County Jail from October 28, 2005 on through until March 29, 2007 is 518-days. The Court of Appeals found that Skamania County Jail miscalculated the days Mr. Talley spent by 2-days. Mr. Talley actually spent 518-days in the Skamania County Jail, not 516. **Attachment:-1.**

If Mr. Talley were to serve out his entire sentence without any "Earned Early Release" credit he would have served 3,743-days, his release date would be January 29, 2016. If Mr. Talley were credited the full benefit of the "Early Release" credit at 10%, he would have served 3,369-days, his release date would be January 17, 2015, not March 12, 2015 as the Department claims erring by 58-days. **Attachment:-4.**

#### **E. Argument Why Review Should Be Accepted**

##### **Ground**

**"The State Violated Defendant's Rights Under Art. I, § 12, Of The Washington State Constitution, And The Equal Protection Clause Of The Fourteenth Amendment Of The United States Denying Mr. Talley His Earned Early Release Credit Due To Poverty During His Presentence Confinement In Skamania County Jail By 58-Days?"**

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This is a case that involves equal protection concerns. While Mr. Talley was determined by county jail official to have exhibited good behavior while he was detained in jail pending trial and sentencing, the manner in which credit for good behavior applied by Department of Corrections and Skamania County Jail, both of which are Departmental Division within the Executive Branch of Government of the State of Washington have implicated the equal protection clause of the federal constitution because there was no legitimate reason, such as lack of good-conduct on the part of the inmate to award less 'Earned Early Release' credit had he served out his entire sentence in the Department of Corrections.

**RCW 72.09.130(2)** states in its relevant part: "[E]arned early release days shall be recommended by the department as a reward for accomplishment." The only time "an inmate is not eligible to receive earned early release days [is] during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under." (emphases added).

Id.

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RCW 9.94A.728 "requires that all inmates sentenced for crimes committed after July 1, 1989, receive good-time credit for time served in presentence detention." In re Mota, 114 Wn. 2d 465, 471, 788 P.2d 538 (1990).

The equal protection clause of the United States Constitution requires the government to treat persons who are similarly situated in a like manner. See U.S. const. Amend. XIV, § I: The central issue in this case concerns the denial of a liberty interest based on wealth, a semisuspect classification, the appropriate standard of review of the policies of the counties is intermediate scrutiny. The test under this level of scrutiny is whether the disparate treatment "may fairly be viewed as furthering a substantial interest of the State." Plyer v. Doe, 457 U.S. 202, 217-18, 102 S.Ct. 2382, 72 L.Ed. 2d 786, reh'g denied, 458 U.S. 1131 (1992) (footnote omitted).

The class of persons subjected to disparate treatment in this case is persons who are sentenced to state correctional facilities for noncapital felonies. While all members of this class who are not released from jail on their personal

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recognizance pending trial have the right to obtain their release by posting bail, some members of that class have sufficient funds to post bail and others do not. The portion of the class that is unable to post bail is subject to the earned release credit policies of the county, those members of the class that obtain release on bail, but who later convicted and sentenced to prison, are subject to the more generous policies of DOC regarding 'Earned Early Release' credit, and thus become eligible to accumulate more earned early release credit. Ultimately, the latter groups of individual serve less of their sentences than those who were not able to post bail. The result is that the less wealth members of the class fare worse than their more well-heeled classmates.

Because Skamania County Jail's refusal to grant Mr. Talley 'Earned Early Release' credit during his presentence confinement by 58-days violated equal protection by the deferential treatment accorded to him as an indigent resulting in his inability to post bail before trial.

**Petitioner's Brief, pp. 1, 6-8, 23, 25-26, 28-30, 32.**

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### Issues Presented for Review

(i) This petition should be accepted for review by the Supreme Court because the decision of the Court of Appeals is in conflict with those decisions of the Supreme Court. **RAP 13.4(b)(1).**

"As the Washington State Supreme Court recognized in the Mota case, significant equal protections concerns are raised by the differential treatment that be accorded the indigent as a result of his inability to post bail before trial. Mota, 114 Wn. 2d at 469-70. See also State v. Phelan, 100 Wn. 2d 508, 513-14, 671 P.2d 1212 (1983). (The potential problems posed by good-time credit for presentence incarceration have been generally recognized. See e.g., Schornhorst, Presentence Confinement and the Constitution: The Burial of Dead Time, 23 Hastings L.J. 1041, 1065 (1972) ("a prisoner held in presentence custody for want of bail suffers further disadvantage unless, after sentence, he is credited with the appropriate good time earned in connection with the presentence custody." Personal Restraint of Williams, 121 Wn. 2d 655, 665, 853 P.2d 444 (1993)). See **Petitioner's Brief, pp. 6, 11-13, 16-17, 21.**

The Supreme Court of the State of Washington

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held "[t]he equal protection clause of the fourteenth amendment to the United States Constitution requires that indigent prisoners who cannot make bail prior to trial and sentencing are entitled to receive good-time credit for the period spent in county jail awaiting sentencing." Mota, 114 Wn. 2d at 467. See Petitioner's Brief, pp. 1, 5, 20, 23.

Because the Court of Appeals Division Two rejected petitioner's claim that Skamania County Jail's refusal to grant him 'Earned Early Release' credit during his presentence confinement by 58-days violated equal protection by the deferential treatment accorded to him as an indigent resulting in his inability to post bail before trial, the Court of Appeals conflicts with the earlier decisions brought by the Supreme Court of the State of Washington.

(ii) This petition should be accepted for review by the Supreme Court because there is a significant question of law under the Constitution of the State of Washington and of the United States involved here. **RAP 13.4(b)(3)**.

It was recognized by this court, that **Article 1, § 12** of the Washington State Constitution and

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the equal protection clause of the **Fourteenth Amendment** to be substantially identical and thus considered one issue. State v. Manussier, 129 Wn. 2d 652, 672, 921 P.2d 473 (1996).

"Equal protection requires that persons similarly situated receive like treatment. In re Mota, 114 Wn. 2d 465, 473, 788 P.2d 538 (1990) (citing Harmon v. McNutt, 91 Wn. 2d 126, 130, 587 P.2d 537 (1978)). Equal protection and due process considerations require that the DOC give indigent prisoners who cannot make bail good-time credit for time served in county jail awaiting sentencing. Mota, 114 Wn. 2d at 467. Equal protection requires an effort to minimize the disparate treatment between those detained pretrial and those not detained when possible. Williams, 121 Wn. 2d at 665.

Because the Court of Appeals Division Two rejected petitioner's claim that Skamania County Jail's refusal to grant him 'Earned Early Release' credit during his presentence confinement by 58-days creates questions under the Constitution of the State of Washington, and of the United States.

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(iii) This petition should be accepted for review by the Supreme Court because the petition involves an issue of substantial public interest that should be determined by the Supreme Court. **RAP 13.4(b)(4).**

In the case of Reifschneider, in that case his sentence had expired and he had been released unconditionally from DOC custody, which mooted his PRP on claims of a DOC decision that wrongfully denied his good-time credits resulting in an unlawful restraint. See Pers. Restraint of Reifschneider, 130 Wn. App. 498, 123 P.3d 496 (2005). That case was reviewed on the merits despite its mootness, "because there [was a] continuing public interest in the proper administration of earned early release credits awarded to inmates. The application of good-time credit to an extended confinement is likely to be a recurring issue and likely to evade review because the extension periods are relatively brief. See In re Pers. Restraint of Libtop, 127 Wn. App. 463, 470, 111 P.3d 1227 (2005); In re Pers. Restraint of Mines, 146 Wn. 2d 279, 285, 45 P.3d 535 (2002). Reifschneider, 130 Wn. App. at 501 (emphasis added).

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Mr. Talley remains in custody by DOC, and his PRP has not been determined as being moot. The claim Mr. Talley presents are from a decision from the Department wrongfully denying his "Earned Early Release" credits similar to Reifsaehneider. Also, similar Reifsaehneider, the petition involves an issue of substantial public interest in the proper administration of 'Earned Early Release' credits awarded to inmates in which calls for review by the Supreme Court of the State of Washington.

#### F. Conclusion

This court should accept review for the reasons indicated in Part E and modify Mr. Talley's "Earned Early Release" credit accordingly.

Respectfully submitted on this 1<sup>st</sup> day of July, 2009.

  
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**Attachment:   /**

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

In re the  
Personal Restraint Petition of  
  
TEDDY GLEN TALLEY,  
  
Petitioner.

No. 39080-9-II

ORDER GRANTING PETITION  
IN PART AND DENYING  
PETITION IN PART

09 JUN 17 PM 2:23  
STATE OF WASHINGTON  
BY [Signature]  
DIVISION II

FILED  
COURT OF APPEALS

Teddy Talley seeks relief from personal restraint imposed following his 2007 plea of guilty to second degree murder.<sup>1</sup> The trial court sentenced him to 123 months of confinement. The Skamania County Jail certified 516 days of jail time served but zero days of earned early release credits. Upon being received by the Department of Corrections on March 20, 2007, the Department calculated Talley's possible early release date as follows: 3,743 days (123 months) of confinement, less 516 days of jail time served, less 323 days (ten percent of the remaining time for DOC earned release credits).

Talley argues that his possible early release date has been miscalculated in two ways. First, he argues that the Skamania County Jail denied him equal protection by not certifying earned early release credits at the same ten percent rate that he would have earned release credits if he had been serving his time in the custody of the Department. Under its policy, the Skamania County Jail only grants earned early release credits to those inmates who have been sentenced and who are low or medium risk inmates. Talley

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<sup>1</sup> Talley filed his petition in the Washington State Supreme Court, which transferred the petition to this court.

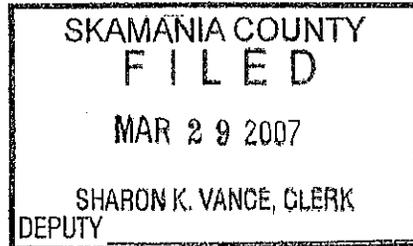
ORDERED that Talley's petition is granted as to the remand to the Skamania County Jail addressed above. The remainder of Talley's petition is denied.

DATED this 17<sup>th</sup> day of June, 2009.

Bryant, J.  
Quintanilla, J.  
Hurt, J.

cc: Teddy G. Talley  
Ronda D. Larson  
Department of Corrections  
Skamania County Jail

**Attachment: 2**



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

STATE OF WASHINGTON,

Plaintiff,

vs.

TEDDY GLENN TALLEY,

SID:

If no SID, use DOB: 5-29-51

Defendant.

No. 05-1-00111-7

Felony Judgment and Sentence (FJS)

- Prison
- RCW 9.94A.712 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Clerk's Action Required, para 4.5 (SDOSA), 4.15.2, 5.3, 5.6 and 5.8

I. Hearing

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (~~deputy~~) prosecuting attorney were present.

II. Findings

There being no reason why judgment should not be pronounced, the court **Finds:**

2.1 **Current Offense(s):** The defendant was found guilty on 3-7-07 by  plea  jury-verdict  bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
I	MURDER IN THE SECOND DEGREE	RCW 9A.32.050(1)(a)	10-27-05

(If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Third Amended Information.

- Additional current offenses are attached in Appendix 2.1.
- The court finds that the defendant is subject to sentencing under RCW 9.94A.712.
- A special verdict/finding that the offense was predatory was returned on Count(s) \_\_\_\_\_. RCW 9.94A.\_\_\_\_\_.
- A special verdict/finding that the victim was under 15 years of age at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_\_.

- A special verdict/finding that the victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense was returned on Count(s) \_\_\_\_\_ RCW 9.94A.\_\_\_\_, 9A.44.010.
- A special verdict/finding of sexual motivation was returned on Count(s) \_\_\_\_\_ RCW 9.94A.835.
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- A special verdict/finding for use of firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s) \_\_\_\_\_ RCW 9.94A.602, 9.94A.533.
- A special verdict/finding for Violation of the Uniform Controlled Substances Act (VUCSA) was returned on Count(s) \_\_\_\_\_, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) \_\_\_\_\_ RCW 9.94A.605; RCW 69.50.401, RCW 69.50.440.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030.
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crime charged in Count(s) \_\_\_\_\_ involve(s) domestic violence.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

**2.2 Criminal History (RCW 9.94A.525):**

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv	TYPE OF CRIME
NO KNOWN HISTORY					

- 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 court finds that 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	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENT (F) FIREARM (D) DEADLY WEAPON (V) VUCSA in a protected zone	TOTAL STANDARD RANGE	MAXIMUM TERM
I	0	XIV	123-220 MONTHS	N/A	123-220	LIFE \$50,000

\* (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).

- Additional current offense sentencing data is attached in Appendix 2.3.

2.4  Exceptional Sentence. Substantial and compelling reasons exist which justify an exceptional sentence:

within  below the standard range for Count(s) \_\_\_\_\_

above the standard range for Count(s) \_\_\_\_\_

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 [ ] attached [ ] 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 Counts \_\_\_\_\_ [ ] The defendant is found Not Guilty of Counts \_\_\_\_\_

IV. Sentence and Order

It is Ordered:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE \$ TBD Restitution to: Birkenfeld Family

RTN/RJN \$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

\$ \_\_\_\_\_ Restitution to: \_\_\_\_\_

Name & Address-Address may be withheld and provided confidentially to Clerk's Office

PCV \$ 500.00 Victim Assessment RCW 7.68.035

\$ \_\_\_\_\_ Domestic Violence assessment RCW10.99.080

CRC \$ 200.00 Court costs including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190.

Criminal Filing Fee \$ 200.00 FRC

Witness costs \$ \_\_\_\_\_ WFR

Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/WRF

Jury demand fee \$ \_\_\_\_\_ JFR

Extradition Cost \$ \_\_\_\_\_ EXT

Other \$ \_\_\_\_\_

PUB \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.760

WFR \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ \_\_\_\_\_ Fine RCW 9A.20.021; [ ] VUCSA chapter 69.50 RCW [ ] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/FCDS \$ \_\_\_\_\_ Drug enforcement fund of: RCW 9.94A.760

NTF/SAD/SDI \_\_\_\_\_

CLF \$ 100.00 Crime lab fee [ ] suspended due to indigency RCW 43.43.690

\$ 100.00 Felony DNA collection fee [ ] not imposed due to

hardship

RCW 43.43.7541

RTN/RJN \$ \_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430

\$ 500.00 Other costs for: Skamania County Sheriff's Office Investigation Fund

\$ 1400.00 **TOTAL** RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[ ] is scheduled for .

[ ] Restitution Schedule attached.

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

Name of other defendant    Cause Number    (Victim's name)    (Amount-\$)

RJN

[ ] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

[X] All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 25 per month commencing MAY 1, 2007. RCW 9.94A.760.

The defendant shall report as directed by the clerk of the court and provide financial information as requested. RCW 9.94A.760(7)(b).

[ ] 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.

4.2 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release

from confinement. RCW 43.43.754.

[ ] HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.3 The defendant shall not have contact with \_\_\_\_\_

(name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (not to exceed the maximum statutory sentence).

[ ] Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

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

4.4 Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.5 Confinement Over One Year. The defendant is sentenced as follows:

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

<u>123</u> months on Count <u>I</u>	_____ months on Count _____
-------------------------------------	-----------------------------

Actual number of months of total confinement ordered is: \_\_\_\_\_.

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

[ ] The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

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 at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_.

The sentence herein shall run consecutively with the sentence in cause number(s) \_\_\_\_\_

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(b) Confinement. RCW 9.94A.712 (Sex Offenses only): The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count \_\_\_\_\_ minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

Count \_\_\_\_\_ minimum term \_\_\_\_\_ maximum term \_\_\_\_\_

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

4.6 [ ] Community Placement is ordered as follows:

Count \_\_\_\_\_ for \_\_\_\_\_ months; Count \_\_\_\_\_ for \_\_\_\_\_ months;

Count \_\_\_\_\_ for \_\_\_\_\_ months; Count \_\_\_\_\_ for \_\_\_\_\_ months.

[ ] Community Custody for count(s) \_\_\_\_\_, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

[X] Community Custody is ordered as follows:

Count I for a range from 24 to 48 months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

Count \_\_\_\_\_ for a range from \_\_\_\_\_ to \_\_\_\_\_ months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.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, 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 including its salts, isomers, and salts of isomers,

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.

[X] The defendant shall not consume any alcohol.

[X] Defendant shall have no contact with:

NICOLE BIRKENFELD and her children, LARRY BIRKENFELD, IDAUNE BIRKENFELD

[ ] Defendant shall remain [ ] within [ ] outside of a specified geographical boundary, to wit: \_\_\_\_\_.

[ ] Defendant shall not reside in a community protection zone (within 880 feet of the facilities or grounds of a public or private school). (RCW 9.94A.030(8)).

[ ] The defendant shall participate in the following crime-related treatment or counseling services: \_\_\_\_\_.

[ ] The defendant shall undergo an evaluation for treatment for [ ] domestic violence [ ] substance abuse

[ ] mental health [ ] anger management and fully comply with all recommended treatment.

[ ] The defendant shall comply with the following crime-related prohibitions: \_\_\_\_\_.

[X] Other conditions: See 'Appendix A'.

[ ] 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 the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of

work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

- 4.8 **Off Limits Order.** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_.

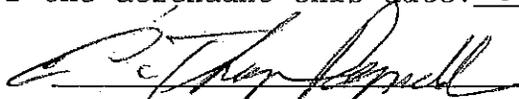
#### V. Notices and Signatures

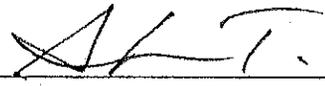
- 5.1 **Collateral Attack on Judgment.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **Length of Supervision.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 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 or the clerk of the court 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 Any violation of this Judgment and Sentence is punishable by up

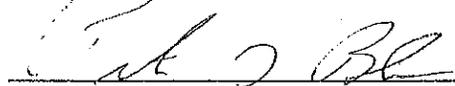
to 60 days of confinement per violation. RCW 9.94A.634.

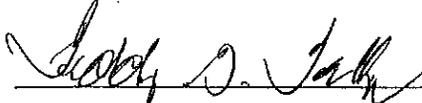
- 5.6 Firearms. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.8 [ ] The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. The clerk of the court 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 in the presence of the defendant this date: 3-29-07

  
\_\_\_\_\_  
JUDGE E. THOMPSON REYNOLDS

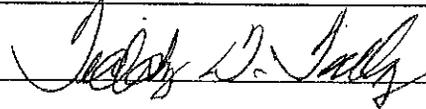
  
\_\_\_\_\_  
Attorney for Defendant  
WSBA # 7449  
Print Name: STEVEN W. THAYER

  
\_\_\_\_\_  
Prosecuting Attorney  
WSBA # 7174  
Print Name: PETER S. BANKS

  
\_\_\_\_\_  
TEDDY GLENN TALLEY  
Defendant

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: \_\_\_\_\_



CAUSE NUMBER of this case: 05-1-00111-7

I, SHARON K. VANCE, 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:

\_\_\_\_\_

Clerk of the Court of said county and state, by: \_\_\_\_\_ Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. \_\_\_\_\_ Date of Birth 5-29-51  
(If no SID take fingerprint card for State Patrol)

FBI No. \_\_\_\_\_ Local ID No. \_\_\_\_\_

PCN No. \_\_\_\_\_ Other \_\_\_\_\_

Alias name, SSN, DOB: \_\_\_\_\_

Race: Ethnicity: \_\_\_\_\_ Sex: \_\_\_\_\_

Asian/Pacific Islander  Black/African American  Caucasian  Hispanic  Male

Native American  Other: \_\_\_\_\_  Non-hispanic  Female

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

Clerk of the Court: *Patricia W. Seane*, Deputy Clerk.

Dated: *March 29, 2007*

DEFENDANT'S SIGNATURE: *[Signature]*

Left 4 fingers taken simultaneously      Left Thumb      Right Thumb      Right 4 fingers taken simultaneously



APPENDIX "A"

- to devote time specific employment or occupation
- to pursue a prescribed course of secular study
- to notify the court or community corrections officer in advance of any change in defendant's address or employment
- to remain within prescribed geographical boundaries
- prohibited from the ownership, possession and/or control of any firearm or any deadly weapon as defined by statute.
- prohibited from the possession, control and/or consumption of alcohol.
- prohibited from the possession, control and/or consumption of any controlled substance.
- subject to random BAC, blood draw and/or urinalysis upon request of the Department of Corrections.
- required to obtain a substance abuse evaluation and fully comply with any recommended treatment.
- required to obtain an anger management evaluation and fully comply with any recommended treatment.
- restricted to travel within Skamania County, except as permitted by the Department of Corrections.
- subject to curfew as established by the Department of Corrections.
- prohibited from operating a motor vehicle without a valid operator's license and insurance as required by statute.
- required to be on his good behavior and have no further law violations.
- required to make regular monthly payments towards his legal financial obligations.

*W. T. Spradell, judge*  
*3/29/07*

1  
2  
3  
4  
5  
6 IN THE SUPERIOR COURT OF THE  
7 STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF SKAMANIA

9 STATE OF WASHINGTON,  
10 Plaintiff,

11 vs.

12 TEDDY GLENN TALLEY,  
13 DOB: 5-29-51  
14 WMA: 5'08" 160 LBS  
15 EYES: GRN

16 Defendant.

SKAMANIA COUNTY  
FILED  
MAR 29 2007  
SHARON K. VANCE, CLERK  
DEPUTY

NO. 05-1-00111-7

WARRANT OF COMMITMENT

17 STATE OF WASHINGTON )  
18 : SS  
19 COUNTY OF SKAMANIA )

20 TO: THE SHERIFF OF SKAMANIA COUNTY

21 The defendant: TEDDY GLENN TALLEY has been convicted in the Superior Court  
22 of the State of Washington of the crime of: MURDER IN THE SECOND DEGREE and  
23 the Court has ordered that the defendant be punished by serving the  
24 determined sentence of:

25  123 months on Count I

26  \_\_\_\_\_ (days) (months) of partial confinement in the  
County Jail

\_\_\_\_\_ (days) (months) of total confinement in the  
County Jail

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for  
classification, confinement and placement as ordered in the  
Judgment and Sentence.

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

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

3 [ ] The defendant is committed for up to thirty (30) days evaluation  
4 at Western State Hospital or Eastern State Hospital to determine  
amenability to sexual offender treatment.

5 YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the  
6 proper officers of the Department of Corrections pending delivery to the  
7 proper officers of the Secretary of the Department of Social and Health  
Services.

8 YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND  
9 HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as  
ordered in the Judgment and Sentence.

10 DATED: MARCH 19, 2007 By Direction of the Honorable:

11 E. THOMPSON REYNOLDS

JUDGE

12 Shaun K Vance

Clerk

13 By: Paula V Seene Deputy  
14  
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**Attachment: 3**

COPY

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

JAIL TIME CERTIFICATION

The following information is requested for the purpose of crediting time spent in confinement prior to the transfer of the below listed subject:

NAME Talley, Teddy G. DOC 304090 DATE OF BIRTH: 05/29/51

COUNTY: SKAMANIA CAUSE 05-1-0011-7

Please list all dates of arrest and release plus earned early release credits concerning the above subject up to the Date of Transfer, then return to the address below. Thank you.

START DATE	END DATE	TOTAL DAYS SERVED	EARNED EARLY RELEASE CREDITS
10/28/05	03/29/07	516	0
/	/	/	/
/	/	/	/
/	/	/	/
/	/	/	/
/	/	/	/
/	/	/	/
/	/	/	/
/	/	516	0

*Dale Malone*  
SIGNATURE OF JAIL RECORDS OFFICIAL  
03/29/07  
DATE

\_\_\_\_\_  
RECORDS OFFICER, DEPARTMENT OF CORRECTIONS  
\_\_\_\_\_  
DATE

Washington Corrections Center-Records  
P. O. Box 900  
Shelton, WA 98584

Attachment: 4

P//1 0 304090

07/18/07 14.23.46

IISO005

RELEASE DATE CALCULATION

PAGE 001

DOC NO: 304090 NME: TALLEY, TEDDY G. STA MAX: LIFE

STATUS: ACTIVE

COMMITMENT: "AA" COMM.STATUS: ACTIVE

	"AA"	"AA-AA"
TIME START DATE-----*	03/30/2007	
+ MAX ( 10Y 3M 0D)	3743	
- CREDIT TIME SERVED	516	
+ OUT-TIME + WICKERT	0	
+ CCI OUT/PAR ABSC TIME	0	
MAXIMUM EXPIRATION DATE--*	01/29/2016	
+ MIN ( 10Y 3M 0D)	3743	
- CREDIT TIME SERVED(SRA)	516	
- GOOD TIME (JAIL)	0	
+ OUT-TIME + WICKERT	0	10%
MINIMUM EXPIRATION DATE--*	01/29/2016	
+ MAND ( 0Y 0M 0D)	0000000	
- CREDIT TIME SERVED	0	
+ OUT-TIME + WICKERT	0	
- EARNED RELEASE	0	
MANDATORY EXPIR. DATE-----*	00/00/0000	
TIME SERVED TO-DATE	626	
MINIMUM EXPIR. DATE-----*	01/29/2016	
GCT CERT. & ADDR.	0	0
GCT CERT. ONLY	0	0
+ GCT DENIED & ADDR.	0	0
+ GCT NOT CERTIFIED	0	0
FUTURE/UNCERT.GCT	215	215
ET I & II	6.30	6.30
+ ET NOT EARNED	0.00	0.00
FUTURE ET	101.27	101.27
EARNED RELEASE DATE-----*	03/12/2015	
ADJ. EARNED RELEASE-----*	03/12/2015	
EARLY POSS. REL. DATE-----*	03/12/2015	
ADJ. EARLY POSS. REL-----*	03/12/2015	
TIME REMAINING TO SERVE	2794	
SANCTION ADMIT DATE-----*		
SANCTION RELEASE DATE-----*		

DATE: 03 18 08 NAME: TALLEY, TEDDY G. DOC NO: 304090  
LOCATION: MCNEIL IS CORR CTR COUNSELOR: HG56

GOOD CONDUCT TIME

ON THIS SENTENCE FROM SKAMANIA COUNTY, 051001117 WITH A MINIMUM TERM OF 10 YEARS, 3 MONTHS, 0 DAYS, YOU HAD THE POTENTIAL TO EARN 215 DAYS OF GOOD CONDUCT TIME (GCT). FROM THE TIME START ON THIS CAUSE, 03/30/07 TO THE START OF THIS REPORTING PERIOD YOU HAVE LOST 0.00 DAYS OF GCT.

IN THIS PERIOD, 10/01/07 TO 03/01/08, YOU HAVE LOST OR WILL BE RECOMMENDED TO LOSE 0.00 DAYS OF GCT AS A RESULT OF INFRACTIONS.

THE AMOUNT OF GCT LOST MAY EXCEED THE AVAILABLE GCT FOR THIS PERIOD AND WILL BE SUBTRACTED FROM FUTURE TIME PERIODS. IF GCT DENIED AS A RESULT OF AN INFRACTION EXCEEDS AVAILABLE GCT ON THIS CAUSE, ONLY THE PORTION OF THE INFRACTION THAT CAN BE ADDRESSED ON THIS CAUSE WILL BE SHOWN ON THIS REPORT; HOWEVER, THE TOTAL AMOUNT OF THE SANCTION MAY BE REFLECTED ON OTHER CONCURRENT OR CONSECUTIVE CAUSES. IN NO EVENT WILL THE TOTAL AMOUNT OF THE INFRACTION SANCTION BE EXCEEDED.

INFRACTION CODE	DESCRIPTION	DATE	DAYS DENIED	THIS CAUSE
	NONE			

YOU HAVE THE ABILITY TO EARN THE REMAINING 215.00 DAYS OF GOOD CONDUCT TIME ON THIS SENTENCE PROVIDED YOU RECEIVE NO INFRACTIONS RESULTING IN LOSS OF GOOD CONDUCT TIME CONSISTENT WITH PRESUMPTIVE SANCTION POLICY, AND WASHINGTON ADMINISTRATIVE CODE.

EARNED TIME

YOU HAVE A POTENTIAL TO EARN 107 DAYS EARNED TIME WHILE SERVING ON THIS SENTENCE. UP TO THE START DATE OF THIS REPORT, 10/01/07 YOU HAD EARNED 18.50 DAYS EARNED TIME AND NOT EARNED 0.00 DAYS OF EARNED TIME. IN THIS PERIOD 10/01/07 TO 03/01/08, YOU HAVE EARNED 15.20 DAYS EARNED TIME AND NOT EARNED 0.00 DAYS EARNED TIME.

YOU HAVE THE ABILITY TO EARN THE REMAINING 73.87 DAYS EARNED TIME CREDITS CONSISTENT WITH EARNED RELEASE POLICY AND MANDATORY SENTENCE REQUIREMENTS.

IF YOU ARE CURRENTLY SERVING ON MORE THAN ONE SENTENCE, THE AMOUNT OF EARNED TIME CREDITS WILL BE APPLIED PROPORTIONATELY DEPENDENT UPON THE AMOUNT OF TIME SERVED ON EACH INDIVIDUAL CAUSE DURING THIS PERIOD.

IF YOU ARE SERVING AN INDETERMINATE SENTENCE (OFFENSE OCCURRED PRIOR TO JULY 1, 1984) THE INDETERMINATE SENTENCE REVIEW BOARD MAY, AT THEIR OWN DISCRETION, THROUGH A DISCIPLINARY HEARING, DENY EARNED TIME CREDITS CERTIFIED BY THE DEPARTMENT OF CORRECTIONS.

I HAVE RECEIVED A COPY OF THE ABOVE INFORMATION AND UNDERSTAND ITS CONTENT.

  
INMATE SIGNATURE      3-18-08      DATE

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

In re Pers. Restraint of )  
 TEDDY GLEN TALLEY, )  
 Petitioner. )  
 ) Declaration of Mailing  
 )  
 County of Skamania )  
 No. 05-1-00111-7 )

---

I, TEDDY G. TALLEY, hereby declare:

1. That I am a resident of the State of Washington, over the age of eighteen years, a party in this action, and I am competent to be a witness herein.

2. That in this 1st day of July 2009, I caused to be placed in the U.S. Mail, postage prepaid, one (1) Envelope, addressed to:

\* Hon. David Ponzoha  
 Washington Court of Appeals  
 Division II  
 950 Broadway #300 MS/TB-06  
 Tacoma, WA 98402-4454

\* Attorney General of Washington  
 Criminal Justice Division  
 Attn: Timothy N. Lang/AAG  
 P.O. BOX 40116  
 Olympia, WA 98504-1116

Declaration of Mailing:-

Teddy Glen Talley, #304090 D220-2  
 McNeil Island Corrections Center  
 P.O. BOX 88-1000  
 Steilacoom, WA 98388-1000

\* Washington State Supreme Court  
P.O. BOX 40929  
415 12th Ave. S.W.  
Olympia, WA 98504-0929

3. That I am a prisoner incarcerated at the State of Washington Department of Corrections ("DOC"), residing at the McNeil Island Corrections Center ("MICC"), P.O. BOX 88-1000, Steilacoom, WA 98388-1000, where I mailed the said envelope in accordance with DOC POLICY 590.500, 450.100, GR 3.1(a). The mailing was witnessed by one or more DOC official[s] pursuant to DOC Policy.

4. The above-said envelope contained: (1) one set of the below-listed pleadings and papers:

- \* Cover Letter;
- \* Motion For Discretionary Review;
- \* Attachments, and
- \* Declaration of Mailing.

I, TEDDY G. TALLEY, hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Submitted on this 1<sup>st</sup> day of July, 2009

  
Teddy Glen Talley, #304090 D220  
McNeil Island Corrections Center  
P.O. BOX 88-1000  
Steilacoom, WA 98388-1000

Declaration of Mailing:-

Teddy Glen Talley, #304090 D220-2  
McNeil Island Corrections Center  
P.O. BOX 88-1000  
Steilacoom, WA 98388-1000