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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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NO. 37989-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

DANNY JOE BARBER, JR.,

Appellant.

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APPELLANT'S BRIEF

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## A. Assignments of Error

### Assignments of Error

1. The trial court erred when it entered an order modifying the judgment and sentence and imposed community custody of 9-18 months after the defendant was initially sentenced without that statutory requirement.
2. The defendant's rights to due process were violated when the trial court imposed a community custody condition of 9 to 18 months at re-sentencing instead of specifically enforcing the plea bargain as requested by the defendant.

### Issues Pertaining to Assignments of Error

1. On November 16, 2007 Mr. Barber plead guilty to two crimes, one of which does not require community custody and the other, Felony Driving Under the Influence does. He was, nonetheless, sentenced without the requirement of community custody pursuant to the plea agreement and based upon a collective mistake by the parties and by the trial court.

Whether the trial court may, thereafter-at re-sentencing six months later- on May 23, 2008, enter an order modifying the judgment and sentence and impose 9 to 18 months of community custody where the defendant elected specific performance and the prosecutor again

recommended no community custody based on the original plea bargain agreement? (Assignment of Error 1).

2. Community custody of 9-18 months was imposed six months after sentencing where the prosecutor was informed by the Department of Corrections of the mistaken sentence. The trial court's original sentence was based on the plea agreement of the parties and was accepted by the trial court without any requirement of community custody as required by RCW 9.94A.715.

Whether the defendant's due process rights guaranteed by the Fourteenth Amendment prohibited the trial court from imposing 9 to 18 months of community custody following his release from a 51 month sentence for Felony Driving Under the Influence under the circumstances set forth above? (Assignment of Error 2).

#### B. Statement of the Case

On November 16, 2007 Danny Joe Barber, Jr., then age 43, plead guilty to Felony Driving Under the Influence alleged to have occurred on October 1, 2007. 11/16/07 RP 3; CP 15; RCW 46.61.502(1) and (6).

During the plea colloquy the following occurred:

THE COURT: There is no community custody for this offense?  
MR. MURPHY: I don't believe so Your honor. That is surprising

to me as well.” ...

THE COURT: “...I will advise you that this is an agreement between you and the state. It’s not binding upon the judge at time of sentencing. You could be sentenced anywhere within the standard range, which is 51 to 68 months.

Any questions about anything I just told you?

THE DEFENDANT: No, ma’am.

THE COURT: Then, to the charge of felony driving under the influence, do you plead guilty or not guilty?

THE DEFENDANT: Guilty. RP 4-5.

The trial court followed the plea agreement and sentenced Mr. Barber to 51 months in prison. 11/16/07 RP 9; CP 32. His standard range was 51 to 68 months. CP 32.

In conjunction with the driving offense Barber also plead guilty to Unlawful Possession of a Firearm in the second degree, alleged to have occurred on April 29, 2007. RP 9-11; CP 33. Mr. Barber’s standard range was 12 to 16 months. The court followed the plea agreement and sentenced him to 12 months and one day. RP 12. The court stated: “And there is no community custody for this cause number [07-1-00683-2].

I will run the time concurrent with your other cause number....” [07-1-01380-4]. Id.

Thereafter, on April 25, 2008 the trial court heard argument on a motion to amend the Judgment and Sentence. 4/25/08 RP 1. The prosecutor received a letter from the Department of Corrections indicating

that the felony charge of driving under the influence "...was an offense for which community custody is statutorily required."<sup>1</sup> RP 2. The court was advised that a felony DUI is an offense for which community custody is required for a period of 9 to 18 months.<sup>2</sup> RP 3.

Pursuant to the parties understanding- and given that the prosecutor would recommend not imposing community custody- Mr. Barber elected specific performance instead of moving to withdraw his guilty pleas. RP 4.

On May 23, 2008 the trial court heard additional argument from the parties. The prosecutor argued: "State is asking the court to follow the recommendation that the state made in the plea agreement. We did not

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<sup>1</sup> RCW 9.94A.030(5) states: "Community custody" means that a portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715 or 9.94A.545, served in the community subject to controls placed of the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

<sup>2</sup> RCW 9.94A.715 is entitled "Community Custody for specified offenders." (1) refers to RCW 9.94A.411(2) which lists crimes against persons including Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug ( RCW 46.61.502(6)). See also RCW 9.94A.850 (community custody range). See appendix; including CP 34 (Judgment and Sentence) "9 to 18 months for Crimes Against Persons".

request community custody, and we are asking that you follow that recommendation. 5/23/08 RP 2. The court stated that it was not bound by the plea agreement and instead imposed community custody of 9 to 18 months. RP 6; CP 56. The court left it up to the Department of Corrections to determine the actual amount of time the defendant would spend on community custody. RP 7. A written order was entered that stated “The judgment and sentence is hereby modified to include a period of community custody of 9-18 months.” CP 59.

On June 17, 2008 the defendant filed a notice of appeal. CP 60.

#### C. Argument

- I. THE TRIAL COURT ERRED WHEN IT IMPOSED COMMUNITY CUSTODY OF 9-18 MONTHS WHERE THE PLEA AGREEMENT AND THE ORIGINAL JUDGMENT AND SENTENCE DID NOT INCLUDE THIS STATUTORY REQUIREMENT.

The factual situation in *In re Pers. Restraint of Isadore*, 151 Wn2d 294, 83 P.3d 390 (2004) is strikingly similar to the case at bench. There, the Kitsap County Court asked the prosecutor if community placement<sup>3</sup>

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<sup>3</sup> Former RCW 9.94A.120(9)(a)(i) (2000). See now RCW 9.94A.030(7) “Community placement” means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community

was part of the sentence. The reply was that it did not apply to convictions for the crimes of second degree burglary and third degree assault. Also, community placement was not indicated on the plea form. Isadore was sentenced to 54 months. One and a half years later the Department of Corrections notified the prosecutor that this sentence should have included the mandatory a one-year community placement.

After hearing, the trial court amended the sentence and added one-year of community placement to the sentence. Isadore filed a personal restraint petition (PRP). The Court of Appeals dismissed the PRP because Isadore had not shown “that the defective information about community placement materially affected his decision to plead guilty.” *id.* at 297. The Supreme Court reversed and held:

“The defendant has the initial choice of specific performance or withdrawal of the plea. *Turley*, 149 Wn.2d at 399 (citing *Miller*, 110 Wn.2d at 536.) “The defendant is entitled to the benefit of his original bargain.” *State v. Tourtellotte*, 88 Wn.2d 579, 585, 564 P.2d 799 (1977). Once the defendant has made his or her choice, the State bears the burden of showing that the remedy chosen is unjust and there are compelling reasons not to allow that remedy.

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placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.”

According to *State v. Crandall*, 117 Wn.App.448, 451, 71 P.3d 701 (2003) community custody is a subset of community placement.

*Turley*, 149 Wn.2d at 401. Where fundamental principles of due process are at stake, the terms of the plea agreement may be enforced, notwithstanding statutory language. *Miller*, 110 Wn.2d at 523.

Defendant Isadore requests specific performance of his plea agreement. The State has not objected to the defendant's chosen remedy and in oral argument could not assert any reasons why specific performance would be unjust in this case."

*In re Pers. Restraint of Isadore*, 151 Wn.2d at 303 (citing *State v. Turley*, 149 Wn.2d 395, 69 P.3d 338 (2003)<sup>4</sup> and *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988)).

The holding in *Isadore* applied to the trial court as well as to the prosecutor when the Supreme Court concluded: "We order that the amended sentence be stricken and the original sentence enforced." *id.* at 303.

In the case at bench, the facts of Mr. Barber's case are essentially the same as in *Isadore*. The trial court inquired about the applicability of community custody: "THE COURT: There is no community custody for

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<sup>4</sup> See *State v. Turley*, 149 Wn.2d at 399:( the trial court was reversed and Turley was allowed to withdraw guilty pleas to two counts, including one [escape] which did not require mandatory community custody) "...failure to inform a defendant that he will be subject to mandatory community placement if he pleads guilty will render the plea invalid." (citing *State v. Ross*, 129 Wn.2d at 280). " If the defendant was not informed that the charge was subject to a mandatory community placement condition, the defendant is entitled to a remedy. *Id.* At 288."

this offense?" 11/16/2007 RP 4. The defense responded: "I don't believe so, Your Honor." id. The prosecutor remained silent. As in *Isadore*, community placement/custody was not indicated on the plea form in Mr. Barber's case. id. at 297; CP 19.

Since both Isadore and Barber were not informed of the direct consequences of their pleas, under *State v. Ross*, 129 Wn.2d 279, 916 P.2d 405 (1996) and *State v. Walsh*, 143 Wn.2d 1, 820 P.2d 505 (1991) their pleas were not intelligently made nor were they voluntary. Both were entitled to a remedy. *State v. Turley*, 149 Wn.2d at 399. Just as Isadore was entitled to the remedy of enforcement of his original sentence, without the requirement of community placement, so too is Mr. Barber entitled to the same remedy he chose under similar circumstances.

The Supreme Court cited both *Ross* and *Walsh* for the holding that Isadore was entitled to a remedy. It is no remedy for Mr. Barber to elect to choose specific performance over withdrawal of his guilty pleas and then have the trial court impose community custody in the same proceeding and thereby nullify his momentary choice.

*State Precedent Supports Mr. Barber's Position*

In *State v. Ross*, supra, the Supreme Court reversed both the trial

court and the Court of Appeals and held that mandatory community placement is a direct consequence of a guilty plea. The failure of the trial court to inform the defendant that his sentence would include a 12 month community placement sanction constituted a manifest injustice and Ross' plea was, therefore, invalid.

The *Ross* court noted: "Community placement imposes a punishment as well." *id.* at 285. Here, Barber's total amended sentence was increased from 60 to 69 months instead of the original 51 month sentence he elected to have enforced. (See *Ross* at 287).

This Appellate Court should also enforce specific performance based on *State v. Schaupp*, 111 Wn.2d 34, 757 P.2d 970 (1988) and *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988).

Schaupp argued, and the Supreme Court agreed, that he was entitled to specific enforcement of the plea agreement based on the charge of second degree manslaughter instead of a first degree manslaughter charge a jury convicted him of. The plea agreement had been vacated and the original charge of second degree murder reinstated when it was found, after hearing, that the prosecutor's misrepresentation regarding the reason for the plea agreement violated RCW 9.94A.090(1) and was not consistent

with the interests of justice or with prosecuting standards.

The Supreme Court stated with regard to the role of the trial court:

“If a defendant cannot rely upon an agreement made and accepted in open court, the fairness of the entire justice system would be thrown into question. No attorney in the state could in good conscience advise his client to plead guilty and strike a bargain if that attorney cannot be assured that the prosecution must keep the bargain and not subvert the judicial process through external pressure whenever the occasion arises.

A plea bargain is a binding agreement between the defendant and the State which is subject to the approval of the court. When the prosecutor breaks the plea bargain, he undercuts the basis for the waiver of constitutional rights implicit in the plea.

*Tourtellotte*, at 584. Those principles operate to bind the court as well, once a plea agreement has been validly accepted. [Emphasis mine].

See *State v. Miller*, 110 Wn.2d 528, 756 P. 2d 122 (1988); *United States v. Blackwell*, 694 F.2d 1325, 1337-39 (D.C. Cir. 1982); *United States v. Holman*, 728 F.2d 809, 813 (6<sup>th</sup> Cir.), cert. denied, 469 U.S. 983 (1984); *Banks v. State*, 56 Md.App. 38, 466 A.2d 69 (1983).

*State v. Schaupp*, 111 Wn.2d at 38 (citing *State v. Tourtellotte*, 88 Wn.2d 579, 564 P.2d 799 (1977) (Because of the victims’ objections, the prosecutor sought to withdraw Tourtellotte’s guilty plea at sentencing.

The Supreme Court reversed the trial court’s granting of the motion based on integrity and fairness of the plea bargaining process).

In *Banks v. State*, cited in *Schaupp supra*, the Maryland trial court committed itself to the plea bargain recommendation of not more than 10 years in prison at the time of sentencing for the reduced charge of murder in second degree. The court accepted the defendant's guilty plea. Prior to sentencing it was discovered that Banks had criminal history that the trial judge was not aware of at the time he accepted the defendant's guilty plea and when he obligated himself to the maximum sentence of no more than 10 years imprisonment.

Upon learning of Bank's undisclosed criminal record at sentencing, the trial court gave him the choice of withdrawing his plea or continuing with a guilty plea with the proviso that the court was not bound to a 10 year limit. Banks chose to withdraw his plea. He was subsequently found guilty and sentenced to 30 years.

The Court of Special Appeals of Maryland reversed Banks' conviction and remanded for imposition of a sentence consistent with the original plea agreement of not more than 10 years. The reasons stated by the Maryland Appellate Court apply to the case at bench as well. The Court began:

“As a general rule, once a judge has accepted a guilty plea and bound the defendant to it, the judge cannot

refuse to carry through the bargain that induced the plea. *United States v. Blackwell*, 694 F.2d 1325 (D.C. Cir. 1982).<sup>5</sup>

The Maryland Appellate court was also concerned about the notions of certainty in the plea bargaining process and the notion of fair play when it stated:

“Some jurisdictions, to be sure, have held that a judge who accepts a guilty plea and who agrees to a sentencing provision in a plea agreement may subsequently change his mind and repudiate the agreement if he allows the defendant to withdraw the plea. See e.g. *State v. Wenzel*, 306 N.W.2d 769 (Iowa, 1981) and *Barker v. State*, 259 So.2d 209 (Fla.App. 1972). But this approach undermines the plea bargaining process since it cannot assure either side of the benefits for which it has bargained. It also seem inconsistent with the standard of fair play and equity espoused by the Court of Appeals in *Brockman*, 277 Md. At 697, 357 A.2d 736 and with the notion of preservation of reasonable expectations we explained in *Rojas v. State*, *supra*.

*Banks v. State*, 466 A.2d at 76 (citing *Rojas v. State*, 52 Md. App. 440, 450 A.2d 490 (1982)).

*Federal Precedent Supports Mr. Barber's Position*

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<sup>5</sup> According to Md. Rule 733 c. 3: “If the judge accepts the plea agreement, he shall accept the defendant’s plea in open court and embody in his judgment the agreed sentence, disposition or other judicial action encompassed in the agreement, or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.”

Federal courts have reached the same conclusion as Washington Appellate Courts regarding this issue. Another case cited in *State v. Schaupp*, supra at 38, was *United States v. Holman*, 728 F.2d 809 (6<sup>th</sup> Cir. 1984). The defendant entered a guilty plea to assaulting a federal officer. The agreement was that he would be sentenced to no longer than one year and one day. At sentencing, the court learned of Holman's history of criminal activity and mental health problems. The court informed Holman that it was rejecting the plea agreement and offered him the choice of withdrawing his guilty plea.

The *Holman* court stated in part:

“When a promise by a prosecutor induces a defendant to plead guilty that promise must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 498, 30 L.Ed.2d 427 (1971). Once the court unqualifiedly accepts the agreement it too is bound by the bargain. *United States v. Blackwell*, 694 F.2d 1325, 1337-1340 (D.C. Cir. 1982)....”

*United States v. Holman*, at 813. (“If Holman had elected to go to trial, and received a sentence greater than one year and one day, the only appropriate remedy would be specific performance of the agreement.”) *Id.*<sup>6</sup>

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<sup>6</sup> Holman's request for specific performance was denied by the federal district court and affirmed on appeal. Holman did not go to trial. Instead he plead guilty to a new plea agreement and was sentenced to 30 months for using an iron pipe to strike a mailman.

*The Trial Court is Bound by the Plea Bargain*

When Mr. Barber entered his guilty plea, the trial court obligated itself to the plea bargain process and to the plea bargain agreement. The court stated with regard to the Felony DUI charge:

“THE COURT: “ Given you are coming forward so early and acknowledging your guilt here, what you have worked out for a plea agreement, I will follow the plea agreement and impose 51 months to be served in the Department of Corrections, credit for time served.” 11/16/07 RP 9.

Additionally, the notions of “fair play”, “equity” and “reasonable expectations” referred to by the courts may still be preserved when a defendant chooses specific performance. This is so, because the defendant’s choice is always subject to the State’s right to present evidence of compelling reasons not to allow a defendant’s choice of remedy.<sup>7</sup> *Miller*, 110 Wn.2d at 535. This factor should weigh heavily regarding the limits of judicial discretion.

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<sup>7</sup> There are no compelling reasons not to allow the remedy of specific performance. *In re James*, 96 Wn.2d 847, 849, 640 P.2d 18 (1982). The court stated at re-sentencing to justify imposing the condition: “This is a felony DUI case, and by virtue of that, Mr. Barber has a long history of driving under the influence offenses, and it’s in the interests of the public safety and Mr. Barber, also, that there be community custody once he is out of the Department of Corrections.” 5/23/08 RP6-7.

II. THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO  
FUNDAMENTAL FAIRNESS WERE VIOLATED WHEN  
THE TRIAL COURT IMPOSED COMMUNITY CUSTODY.

Fundamental principles of due process embodied in the Fourteenth Amendment apply to plea agreements based on mistakes regarding sentencing consequences. *State v. Cosner*, 85 Wn.2d 45, 530 P.2d 317 (1975). See also, *Santobello v. New York*, supra: (breach of plea agreement by prosecutor).<sup>8</sup>

*State v. Miller*

In *State v. Miller*, supra, the Supreme Court announced the rule in reference to the Sentencing Reform Act of 1981: "Defendants' constitutional rights under plea agreements take priority over statutory provisions." id. at 533. In *Miller*, the parties to the plea agreement were mistaken as to the relevant mandatory sentence for first degree murder. Under the plea agreement Miller was authorized to seek a sentence of less

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<sup>8</sup> Justice William O. Douglas stated in his concurring opinion:

"In choosing a remedy, however, [specific performance vs. withdrawal of guilty plea] a court ought to accord a defendant's preference considerable, if not controlling, weight inasmuch as the fundamental rights flouted by a prosecutor's breach of a plea bargain are those of the defendant, not of the State." 92 S. Ct. at 501.

than 20 years whereas the mandatory minimum was not less than 20 years. Miller requested withdrawal of his guilty plea instead of specific performance as the trial court ordered.

The Court of Appeals affirmed and stated that the trial court should have “full discretion” to choose the type of relief justified by the circumstances, citing *State v. Pope*, 17 Wn.App. 609, 614-15, 564 P.2d 1179, review denied, 89 Wn.2d 1009 (1977).<sup>9</sup> Instead, the Supreme Court reversed and abolished a trial court’s “full discretion” to choose the remedy in spite of the defendant’s choice. The *Miller* court held: “To the extent that *Pope* holds the court, rather than the defendant, is entitled to the choice of remedy, it is incorrect.” *Miller* at 534.

The Supreme Court allowed Miller to withdraw his plea in spite of the trial court’s election for specific performance. The court held “...the defendant’s choice of remedy controls, unless there are compelling reasons not to allow that remedy.” *Miller*, at 535.

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<sup>9</sup> In *State v. Pope*, supra, the defendant was misinformed that the mandatory minimum sentence was 5 years instead of 20. After the Board of Prison Terms and Paroles set the minimum at 20 years, the trial court denied Pope’s request for specific performance but allowed him to withdraw his plea.

The *Miller* Court stated:

“...the integrity of the plea bargain process requires that defendants be entitled to rely on plea bargains as soon as the court has accepted the plea. *State v. Tourtellotte, supra* at 585. The trial court is required to determine the validity of the plea agreement before accepting the plea. RCW 9.94A.090. It is at this point that the defendant is entitled to rely on the benefit of the bargain, not the time of sentencing.”

*State v. Miller*, at 536. (See also, *United States v. Thomas*, 580 F.2d 1036 (10<sup>th</sup> Cir. 1978) *cert. denied*, 439 U.S. 1130, (1979) (treating a promise “on behalf of the judiciary” the same as a promise by the government).

Here, It was as incumbent upon the trial court to determine whether community custody applied to Felony DUI as it was upon the parties. The trial court could have conditioned acceptance of the plea upon verification of whether community custody applied. This could be done by further inquiry of the parties on the record, to include the input of the prosecutor. Or the trial court or it’s staff could have looked into the matter and conducted its own legal research before Mr. Barber was sentenced. This was done at re-sentencing.<sup>10</sup> Or a pre-sentence report could have

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<sup>10</sup> The trial court stated on April 25, 2008 prior to issuing its Memorandum Opinion on April 29, 2008 ( CP 56): “And then, Mr. Barber, you cited a case, you said State v. Ross. I don’t know what case

been considered. *Banks v. State*, 466 A.2d at 76-77.

Everyone involved was mistaken. Everyone involved- including the trial court- should be bound to specific performance of the plea bargain, if that is the defendant's choice and it is a realistic choice. Just as everyone involved- including the trial court- would not be committed to any previous plea agreement if Mr. Barber would have chosen withdrawal of his guilty pleas.

The *Miller* court also held:

“We have held that where fundamental principles of due process so dictate, the specific terms of a plea agreement based on mistake as to sentencing consequences may be enforced despite the explicit terms of a statute. *State v. Cosner*, 85 Wn.2d 45, 530 P.2d 317 (1975).<sup>11</sup>

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that is, but what I am going to do is take this matter under advisement and issue a written decision next week so I can make sure I thoroughly analyze the case law and look at the statutes.” 4/25/08 RP 8-9.

<sup>11</sup> Petitioners Cramer and Christian were mistakenly advised that the mandatory minimum sentence was 5 years. However, because of their prior felony convictions, the mandatory minimum was 7 ½ and 8 ½ years respectively. The Supreme Court enforced the plea bargain to the lower sentence in spite of the statute. The Court ordered the Board of Prison Terms and Paroles to reduce their mandatory minimum sentences “in accordance with their understanding of the length thereof at the time of their pleas.”

#### D. Conclusion

Under the circumstances of this case, allowing Mr. Barber to choose between specific performance and withdrawal of his guilty pleas as a remedy was a hollow choice that was short lived. The trial court should be bound by the plea agreement- just as the parties are- in order to insure fundamental fairness, the integrity of the plea bargaining system and due process of law embodied in the Fourteenth Amendment.

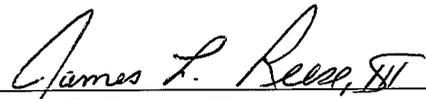
Contract principles are oftentimes used to describe the plea bargaining process. Contract terminology is used “metaphorically” and is not applied rigidly. *Banks*, 466 A.2d at 75. The trial court should be estopped to add community custody at a later date based on mutual misunderstanding of the law at the time the defendant entered his guilty plea. Equity, fundamental fairness and the plea bargaining process all require that Mr. Barber’s election of specific performance be meaningful.

This court should reverse and vacate the Order Modifying the Judgment and Sentence and remand the case with instructions to reinstate the original judgment and sentence without the requirement of

community custody as originally contemplated and bargained for by the parties.

Dated this 24th day of November 2008.

Respectfully Submitted,

A handwritten signature in cursive script that reads "James L. Reese, III". The signature is written in black ink and is positioned above a horizontal line.

James L. Reese, III

WSBA #7806

Court Appointed Attorney

For Appellant

RECEIVED AND FILED  
IN OPEN COURT

NOV 16 2007

DAVID W. PETERSON  
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

DANNY JOE BARBER, JR.,  
Age: 42; DOB: 11/10/1964,

Defendant.

079-03179-8

No. 07-1-01380-4

JUDGMENT AND SENTENCE

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.

The Defendant was found guilty, by  plea  jury verdict  bench trial  trial upon stipulated facts, of the following—

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>	RCW	Date(s) of Crime from to		Special Allegations*
I Felony Driving Under the Influence	46.61.502.6	10/01/2007	10/01/2007	

2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
DUI	8/28/06	9/28/06	Kitsap District	
DUI	8/3/05	9/26/05	Chelan Superior	
Eluding a Police Vehicle	8/3/05	9/26/05	Chelan Superior	
DUI	5/31/04	3/16/06	Kitsap District	
Sexual Battery	1/5/01	8/24/01	Santa Clara, CA	
Burglary in the First Degree	1/5/01	8/24/01	Santa Clara, CA	
DUI	1/25/98	8/3/98	Santa Clara, CA	

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2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>	Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
DUI	1/1/94	11/4/94	Santa Clara CA	
Burglary	4/17/87	9/29/87	Kitsap Superior	

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	7	V	51 to 68	-	X				5 years

Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

\*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or 9.94A.533); VH=Vehicular Homicide Prior DUI (46.61.520,5055); CF=drug crime at Corrections Facility (9.94A.533); JP=Juvenile Present at manufacture (9.94A.533,605); P=Predatory (Laws of 2006, ch. 122, §1); <15=Victim Under 15 (Laws of 2006, ch. 122§2); DD=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (Laws of 2006 ch 122 §3).

**CONFINEMENT/STATUS**

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY-The Court finds the Defendant has a chemical dependency that contributed to the offense(s). RCW 9.94A.030(9).
- 4.5-DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 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 Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.
- 2.4-EXCEPTIONAL SENTENCE-Substantial and compelling reasons exist justifying a sentence  above  below the standard range, or  warranting exceptional conditions of supervision for count(s) \_\_\_\_\_. The Prosecutor  did  did not recommend a similar sentence.  The exceptional sentence was stipulated by the Prosecutor and the Defendant. Findings of Fact and Conclusions of Law entered in support of the exceptional sentence are incorporated by reference.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender as defined by RCW 9.94A.030(32) and 9.94A.570 and is sentenced to life without the possibility of early release.

<b>COURT'S SENTENCE:</b>		
COUNT <u>1</u> <u>51</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.
COUNT _____ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT _____ Days with _____ Days Suspended for _____ Years	COUNT _____ Days with _____ Days Suspended for _____ Years
COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day	COUNT _____ 12 months + 1 day
DOSA SENTENCE- COUNT _____ Months Actual Time to be served- _____ Months		



1 DOSA SENTENCE- COUNT \_\_\_\_\_ Months Actual Time to be served- \_\_\_\_\_ Months

2 DOSA SENTENCE- COUNT \_\_\_\_\_ Months Actual Time to be served- \_\_\_\_\_ Months

3 IF MULTIPLE COUNTS-Total confinement ordered: \_\_\_\_\_  Days  Months. ( per DOSA sentence)  
4 COUNTS SERVED- Concurrent  Consecutive  Firearm and Deadly Weapon enhancements served consecutive;  
5 the remainder concurrent.  Sexual Motivation enhancements served consecutive; the remainder concurrent.  
 VUCSA enhancements served  consecutive  concurrent; the remainder consecutive.

6 4.4-CONFINEMENT ONE YEAR OR LESS-Defendant shall serve a term of confinement as follows:

7  JAIL ALTERNATIVES/PARTIAL CONFINEMENT. RCW 9.94A.030(31). If the defendant is found  
8 eligible, the confinement ordered may be converted to-Work Release, RCW 9.94A.731 (*Note: the  
9 Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail  
10 or Peninsula Work Release*), Home Detention, RCW 9.94A.731,190, or Supervised Community  
11 Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.

12  STRAIGHT TIME. The confinement ordered shall be served in the Kitsap County Jail, or if  
13 applicable under RCW 9.94A.190(3) in the Department of Corrections.

14 4.5-CONFINEMENT OVER ONE YEAR-Defendant is sentenced to the above term of total confinement in the  
15 custody of the Department of Corrections.

16  OTHER SENTENCES-This sentence shall be served  consecutive  concurrent to sentence(s) ordered  
17 in cause number(s) 07-1-00683-2

18  CREDIT FOR TIME SERVED. RCW 9.94A.505. Defendant shall receive credit for time served prior to  
19 sentencing solely for this cause number as computed by the jail unless specifically set forth- \_\_\_\_\_ days.

20  4.3-NO CONTACT ORDER-Defendant shall abide by the terms of any no contact order issued as part of  
21 this Judgment and Sentence.

22 SUPERVISION

23  4.6-COMMUNITY CUSTODY - SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP.  
24 RCW 9.94A.505, .545 and WAC 437-20-010. Defendant shall be supervised for the longest time  
25 period checked in the table below. Defendant shall report to DOC in person no later than 72 hours after  
26 release from custody and shall comply with all conditions stated in this Judgment and Sentence,  
27 including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or  
28 DOC during community custody (and supervised probation if ordered). *First Offenders-RCW  
29 9.94A.650. If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 12  
30 months; and if treatment is ordered, community supervision may include up to the period of treatment  
31 but not exceed 2 years.*

Community Custody Is Ordered for the Following Terms or Ranges (non-RCW 9.94A.712):

- COUNT(S) \_\_\_\_\_  12 months  24 months  \_\_\_\_\_ months  
 COUNT(S) \_\_\_\_\_ 24 to 48 months for Serious Violent Offense  
 COUNT(S) \_\_\_\_\_ 18 to 36 months for Violent Offense  
 COUNT(S) \_\_\_\_\_ 9 to 18 months for Crimes Against Persons  
 COUNT(S) \_\_\_\_\_ 9 to 12 months for Drug Offense (non-DOSA)

Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in  
this Judgment and Sentence, to be administered by the DOC, for:

- COUNT(S) \_\_\_\_\_  12 months  24 months  \_\_\_\_\_ months

• If community custody is ordered for a sentence of more than one year, the Defendant shall be on



1 community custody for the above range or for the period of earned release awarded pursuant to RCW  
2 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered.

3  4.6-**WORK ETHIC CAMP-COMMUNITY CUSTODY.** RCW 9.94A.690, 72.09.410. Upon completion of  
4 the work ethic camp, the Defendant shall be on community custody for any remaining time of total  
5 confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence,  
6 including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or  
7 DOC during community custody. Violation of the conditions may result in a return to total  
8 confinement for the balance of the Defendant's remaining time of confinement.

9  4.6-**DOSA-COMMUNITY CUSTODY.** RCW 9.94A.660. Defendant shall serve the remainder of the  
10 midpoint of the standard range in community custody. Defendant shall undergo and successfully  
11 complete a substance abuse treatment program approved by the division of alcohol and substance  
12 abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later  
13 than 72 hours after release from custody and shall comply with all conditions stated in this Judgment  
14 and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by  
15 the court or DOC during community custody.

16 4.7-**ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS-**If the  
17 Defendant violates any of the sentence conditions under this alternative or is found by the United  
18 States attorney general to be subject to a deportation order, a violation hearing shall be held by the  
19 DOC, unless waived by the Defendant. If the DOC finds that the conditions have been willfully  
20 violated, the Defendant may be reclassified to serve the remaining balance of the original sentence. If  
21 the DOC finds that the Defendant is subject to a valid deportation order, the DOC may  
22 administratively terminate the Defendant from the program and reclassify the Defendant to serve the  
23 remaining balance of the original sentence. A Defendant who fails to complete the special drug  
24 offender sentencing alternative program or who is administratively terminated from the program shall  
25 be reclassified to serve the unexpired term of the sentence as ordered by the sentencing judge and shall  
26 be subject to all rules relating to community custody and earned release time. A Defendant who  
27 violates any conditions of supervision as defined by the DOC shall be sanctioned. Sanctions may  
28 include, but are not limited to, reclassifying the Defendant to serve the unexpired term of sentence as  
29 ordered by the sentencing judge. RCW 9.94A.660.

30 4.7-**ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION**  
31 **FROM THE DOSA PROGRAM-**For persons convicted of a drug offense or of a crime against a person,  
the following term of community custody is ordered and shall be imposed upon the Defendant's failure  
to complete or the Defendant's administrative termination from the special drug offender sentencing  
alternative program: Upon release from custody, Defendant shall serve a range of \_\_\_\_\_ to \_\_\_\_\_  
months-in community custody, and shall comply with all conditions stated in this Judgment and  
Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed  
by the court or DOC.



**SUPERVISION SCHEDULE: The Defendant Shall-**

- STANDARD**
  - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
  - Report to and be available for contact with assigned CCO as directed.
  - Obey all no-contact orders including any in this judgment.
  - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
  - Notify CCO within 48 hours of any new arrests or criminal convictions.
  - Pay DOC monthly supervision assessment.
  - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)**
  - Work only at DOC-approved education, employment and/or community service.
  - Possess or consume no controlled substances without legal prescription.
  - Reside only at DOC-approved location and arrangement.
  - Consume no alcohol, if so directed by the CCO.
- FIRST OFFENDER**
  - Obey all laws.
  - Devote time to specific employment or occupation.
  - Pursue a prescribed secular course of study or vocational training.
  - Participate in DOC programs and classes, as directed.
- Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed standard sentence range.
- FINANCIAL GAIN**
  - Commit no thefts.
  - Possess no stolen property.
  - Have no checking account or possess any blank or partially blank checks.
  - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
  - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
  - Possess no identification in any other name other than Defendant's true name.
  - Possess no credit cards or access devices belonging to others or with false names.
  - Cause no articles to be refunded except with the written permission of CCO.
  - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
  - ALCOHOL/DRUGS**
    - Possess or consume no alcohol.
    - Enter no bar or place where alcohol is the chief item of sale.
    - Possess and use no illegal drugs and drug paraphernalia.
    - Submit to UA and breath tests at own expense at CCO request.
    - Submit to searches of person, residence or vehicles at CCO request.
    - Have no contact with any persons who use, possess, manufacture, sell or buy illegal controlled substances or drugs.
    - Install ignition interlock device as directed by CCO. RCW 46:20.710-.750.
  - EVALUATIONS**- Complete an evaluation for:
    - substance abuse
    - anger management
    - mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
  - DOSA**
    - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
    - Devote time to a specific employment or training.
    - Perform community service work.
  - a.s. OFF-LIMITS ORDER (known drug trafficker) RCW 10.66.020.** The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:
- 
- PROGRAMS / ASSAULT**
    - Have no assaultive behavior.
    - Successfully complete a certified DV perpetrators program.
    - Successfully complete an anger management class.
    - Successfully complete a victim's awareness program.
  - TRAFFIC**
    - Commit no traffic offenses
    - Do not drive until your privilege to do so is restored by DOL.
  - HAVE NO CONTACT WITH:**
- OTHER:**



**FINANCIAL OBLIGATIONS**

4.1-**LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760.** The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> X	\$500 Victim Assessment, RCW 7.68.035 [PCV]	\$ _____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<input checked="" type="checkbox"/> X	\$1069 Court-appointed attorney fees [PUB]	\$ _____ Witness Costs [WFR]
<input checked="" type="checkbox"/> X	\$200 Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$ _____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> X	\$100 DNA / Biological Sample Fee, RCW 43.43.7541	\$ _____ Court-appointed defense fees/ other costs
	<input type="checkbox"/> \$1,000 <input type="checkbox"/> \$2,000 Contribution to SIU-	<input checked="" type="checkbox"/> X \$100 Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139.1991]
	\$100 Crime Lab fee, RCW 43.43.690(1)	\$500 Contribution-Kitsap Co. Special Assault Unit
	\$3,000 Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	\$100 Contribution-Anti-Profitereing Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82 .110
	Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	\$100 Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.

RESTITUTION-To be determined at a future date by separate order(s).

REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

PAYMENT SCHEDULE - All payments shall commence  immediately  within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay  \$100  \$50  \$25  \_\_\_\_\_ per month, unless otherwise noted-\_\_\_\_\_ RCW 9.94A.760.

12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. *INTEREST WAIVED FOR TIMELY PAYMENTS*-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

**OTHER**

- 4.2-HIV TESTING-The Defendant shall submit to HIV testing. RCW 70.24.340.
- 4.2-DNA TESTING-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.
- FORFEITURE-Forfeit all seized property referenced in the discovery to the originating law enforcement agency unless otherwise stated.
- 4.10-COMPLIANCE WITH SENTENCE-Defendant shall perform all affirmative acts necessary for DOC to monitor compliance with all of the terms of this Judgment and Sentence.
- JOINT AGREEMENTS IN THE PLEA AGREEMENT-Are in full force and effect unless otherwise stated in this judgment and sentence.
- EXONERATION-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.



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--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, you are notified that the DOC may issue a notice of a 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.

5.5--ANY VIOLATION OF JUDGMENT AND SENTENCE--Is punishable by up to 60 days of confinement per violation. RCW 9.94A.634. The court may also impose any of the penalties or conditions outlined in 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.

Clerk's Action Required--The court clerk shall forward a copy of the Defendant's driver's license, identicaid, or comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

Cross off if not applicable--

~~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 Corrections.~~

~~3. Change of Residence Within State and Leaving 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 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 also 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.~~



1 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):**

2 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you  
3 are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of  
4 enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a  
5 public or private institution of higher education, you are required to notify the sheriff for the county of your residence  
6 of your employment by the institution within 10 days of accepting employment or by the first business day after  
7 beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private  
8 institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of  
9 your termination of enrollment or employment within 10 days of such termination. (Effective September 1, 2006) If  
10 you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are  
11 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the  
12 sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If  
13 you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the  
14 principal of the school.

15 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

16 Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of  
17 release in the county where you are being supervised if you do not have a residence at the time of your release from  
18 custody. Within 48 hours excluding weekends and holidays after losing your fixed residence, you must send signed  
19 written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for  
20 more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the  
21 sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's  
22 office, and shall occur during normal business hours. You may be required to provide a list of the locations where you  
23 have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining  
24 an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant  
25 to RCW 4.24.550.

26 **7. Reporting Requirements for Persons Who Are Risk Level II or III:**

27 If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, every 90  
28 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's  
29 office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no  
30 violations for at least five years in the community, you may petition the superior court to be relieved of the duty to  
31 report every 90 days.

32 **8. Application for a Name Change:**

33 If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of  
34 your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If  
35 you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of  
36 your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

37 **5.8 PERSISTENT OFFENDER**

38 **"Three Strike" Warning** You have been convicted of an offense that is classified as a "most serious offense"  
39 under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the  
40 first two convictions occurred in a federal or non-Washington state court, will render you a "persistent offender."

41 **"Two Strike" Warning** In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,  
42 rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child  
43 molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the  
44 first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second  
45 degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in  
46 the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW  
47 9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,  
48 federal court, or elsewhere, this will render you a "persistent offender." RCW 9.94A.030(32).

49 **Persistent Offender Sentence** A persistent offender shall be sentenced to a term of total confinement for life  
50 without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in  
51 the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.

52  **5.8-DEPARTMENT OF LICENSING NOTICE**-The Court finds that Count \_\_\_\_\_ is a felony in the  
53 commission of which a motor vehicle was used. **Clerk's Action**-The clerk shall forward an Abstract  
54 of Court Record to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285.



1 5.9-TREATMENT RECORDS-If the Defendant is or becomes subject to court-ordered mental health or  
2 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment  
3 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

4 **Voting Rights Statement:**

5 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter  
6 registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the  
7 sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066;  
8 c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of  
9 restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW  
10 92A.84.660.

11 Defendant's Signature: *Danny Barber Jr.*

12 **SO ORDERED IN OPEN COURT.**

13 DATED- 11/16/07

14 JUDGE *[Signature]*

15 *[Signature]*, WSBA NO. 98338  
16 Deputy Prosecuting Attorney

17 *[Signature]*, WSBA NO. 29818  
18 Attorney for Defendant

19 *[Signature]*  
20 DANNY JOE BARBER, JR.  
21 Defendant

22 If I have not previously done so, I hereby agree to waive my  
23 right to be present at any restitution proceedings:  
24 \_\_\_\_\_ (initials)



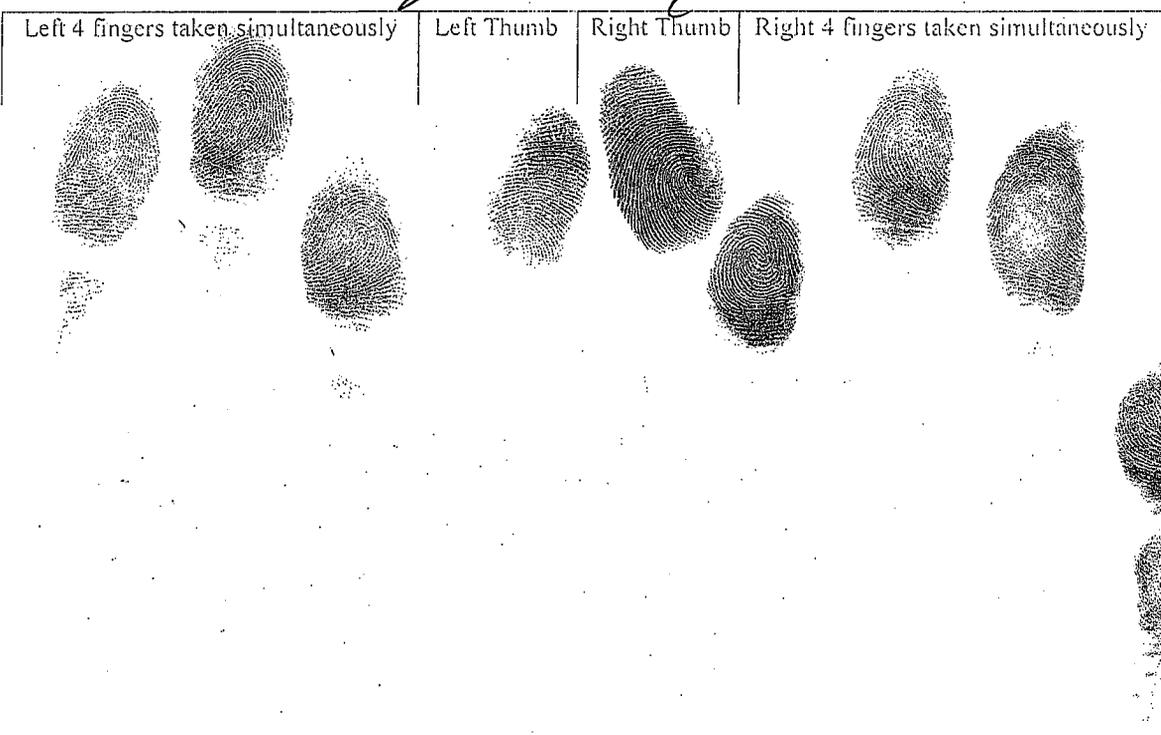
1. Translator signature/Print name—  
2. I am a certified interpreter of, or the court has found me other wise qualified to interpret, the  
3. \_\_\_\_\_ language, which the Defendant understands. I translated this Judgment  
and Sentence for the Defendant into that language.

4. **IDENTIFICATION OF DEFENDANT**

5. Race: White                      Sex: Male                      DOB: 11/10/1964                      Age: 42  
6. D/L: BARBEDJ367QS                      D/L State: Washington                      SID: WA12606383                      Height: 510  
7. Weight: 165                      JUVIS: Unknown                      Eyes: Hazel                      Hair: Brown  
8. DOC: Unknown                      SSN: 533-84-3179                      FBI: 31184DA4

9. FINGERPRINTS—I attest that I saw the same Defendant who appeared in Court on this document affix his or  
10. her fingerprints and signature thereto.  
11. Clerk of the Court— *C. Jung*, Deputy Clerk. Dated— *11-16-07*

12. DEFENDANT'S SIGNATURE— *Dang Baderys*



27. Prosecutor's File Number—07-166150-8

28. **Prosecutor Distribution—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (DOC), 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)**



**Russell D. Hauge, Prosecuting Attorney**  
Adult Criminal and Administrative Divisions  
614 Division Street, MS-35  
Port Orchard, WA 98366-4681  
(360) 337-7174; Fax (360) 337-4949

FILED  
KITSAP COUNTY CLERK

2008 APR 29 PM 2: 22

DAVID W. PETERSON

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

STATE OF WASHINGTON;

Plaintiff,

NO. 07-1-01380-4

v.

MEMORANDUM OPINION

DANNY JOE BARBER, JR.,

Defendant.

THIS MATTER came before the Court on April 25, 2008, on a Motion to Amend Judgment and Sentence. The first issue to be decided at that hearing was whether Danny Barber, the Defendant, would elect specific performance of the plea agreement or elect to withdraw his guilty plea. It was his decision to elect specific performance of the plea agreement.

The next issue was whether the Court has the discretion to impose community custody time when such time was not contemplated in the plea agreement. The State concedes they must honor the plea agreement at resentencing and not request the community custody time required by law. Case law was cited to the Court by the State and the defense, both through Jacob Murphy and Danny Barber. Upon review of the case law cited, including *State v. Ross*, 129 Wn.2d 279, 916 P.2d 495 (1996), the Court

MEMORANDUM OPINION . . . 1

HONORABLE M. KARLYNN HABERLY  
KITSAP COUNTY SUPERIOR COURT  
614 Division Street  
Port Orchard, WA 98366  
(360) 337-7140

B

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1 has concluded that is not required to sentence according to the recommendation in the  
2 plea agreement. *See State v. Henderson*, 99 Wn.App. 369, 993 P.2d 928 (2000).

3  
4 Mr. Barber has the right of allocution at the new sentencing hearing and  
5 arrangement should be made for him to appear telephonically or in person. Mr. Murphy  
6 should talk with his client and make arrangements for a date for a new sentencing  
7 hearing.  
8

9 DATED this 29<sup>th</sup> day of April, 2008.

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12 \_\_\_\_\_  
13 HONORABLE M. KARLYNN HABERLY  
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CERTIFICATE OF SERVICE

I, Shelley L. Solie, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action, and competent to be a witness herein.

On April 29, 2008, I caused a copy of the foregoing document to be served in the manner noted on the following:

Bonnie Martin [X] Via Kitsap County  
Kitsap County Prosecutor's Office Interdepartmental Mail  
614 Division Street, MS-35A [ ] Via Fax:  
Port Orchard WA 98366 [ ] Via Hand Delivery  
[ ] Via E-mail

Jacob Murphy [X] Via U.S. Mail  
Attorney at Law [ ] Via Fax:  
623 Dwight Street [ ] Via Hand Delivery  
Port Orchard WA 98366 [ ] Via E-mail

Danny Barber [X] Via U.S. Mail  
DOC #934431 [ ] Via Fax:  
Monroe Correctional Complex [ ] Via Hand Delivery  
PO Box 777 [ ] Via E-mail  
Monroe WA 98272-0777

DATED this 29<sup>th</sup> day of April, 2008, at Port Orchard, Washington.

  
SHELLEY L. SOLIE

## **AMENDMENT (XIV)**

### **ss.1. Citizenship rights not be abridged by states**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**RCW 9.94A.030**  
**Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(9) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(11) "Confinement" means total or partial confinement.

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(14) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060,

**RCW 9.94A.411**  
**Evidentiary sufficiency.**

(1) Decision not to prosecute.

**STANDARD:** A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

**GUIDELINE/COMMENTARY:**

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimis Violation** - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

- (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
- (ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and
- (iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) **Pending Conviction on Another Charge** - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

- (i) Conviction of the new offense would not merit any additional direct or collateral punishment;
- (ii) Conviction in the pending prosecution is imminent;
- (iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and
- (iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) **High Disproportionate Cost of Prosecution** - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) **Improper Motives of Complainant** - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) **Immunity** - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

- (i) Assault cases where the victim has suffered little or no injury;
- (ii) Crimes against property, not involving violence, where no major loss was suffered;
- (iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

#### Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

### CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

#### CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Manslaughter

2nd Degree Manslaughter

1st Degree Kidnapping

2nd Degree Kidnapping

1st Degree Assault

2nd Degree Assault

3rd Degree Assault

1st Degree Assault of a Child

2nd Degree Assault of a Child  
3rd Degree Assault of a Child  
1st Degree Rape  
2nd Degree Rape  
3rd Degree Rape  
1st Degree Rape of a Child  
2nd Degree Rape of a Child  
3rd Degree Rape of a Child  
1st Degree Robbery  
2nd Degree Robbery  
1st Degree Arson  
1st Degree Burglary  
1st Degree Identity Theft  
2nd Degree Identity Theft  
1st Degree Extortion  
2nd Degree Extortion  
Indecent Liberties  
Incest  
Vehicular Homicide  
Vehicular Assault  
1st Degree Child Molestation  
2nd Degree Child Molestation  
3rd Degree Child Molestation  
1st Degree Promoting Prostitution  
Intimidating a Juror  
Communication with a Minor  
Intimidating a Witness  
Intimidating a Public Servant  
Bomb Threat (if against person)  
Unlawful Imprisonment  
Promoting a Suicide Attempt  
Riot (if against person)

Stalking

Custodial Assault

Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)

Counterfeiting (if a violation of RCW 9.16.035(4))

Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502(6))

Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

#### CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson

1st Degree Escape

2nd Degree Escape

2nd Degree Burglary

1st Degree Theft

2nd Degree Theft

1st Degree Perjury

2nd Degree Perjury

1st Degree Introducing Contraband

2nd Degree Introducing Contraband

1st Degree Possession of Stolen Property

2nd Degree Possession of Stolen Property

Bribery

Bribing a Witness

Bribe received by a Witness

Bomb Threat (if against property)

1st Degree Malicious Mischief

2nd Degree Malicious Mischief

1st Degree Reckless Burning

Taking a Motor Vehicle without Authorization

Forgery

2nd Degree Promoting Prostitution

Tampering with a Witness

Trading in Public Office

Trading in Special Influence

Receiving/Granting Unlawful Compensation

Bigamy

Eluding a Pursuing Police Vehicle

Willful Failure to Return from Furlough

Escape from Community Custody

Riot (if against property)

1st Degree Theft of Livestock

2nd Degree Theft of Livestock

#### ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (A) Will significantly enhance the strength of the state's case at trial; or
- (B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (A) Charging a higher degree;
- (B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

#### (b) GUIDELINES/COMMENTARY:

##### (i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (B) The completion of necessary laboratory tests; and
- (C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

##### (ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

[2006 c 271 § 1; 2006 c 73 § 13. Prior: 2000 c 119 § 28; 2000 c 28 § 17; prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

**Notes:**

**Reviser's note:** This section was amended by 2006 c 73 § 13 and by 2006 c 271 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date -- 2006 c 73:** See note following RCW 46.61.502.

**Application -- 2000 c 119:** See note following RCW 26.50.021.

**Technical correction bill--2000 c 28:** See note following RCW 9.94A.015.

**Construction -- Short title -- 1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability -- 1999 c 196:** See note following RCW 9.94A.010.

**Effective date -- Savings -- Application -- 1988 c 145:** See notes following RCW 9A.44.010.

**Severability -- 1986 c 257:** See note following RCW 9A.56.010.

**Effective date -- 1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

**RCW 9.94A.715**

**Community custody for specified offenders — Conditions (as amended by 2008 c 276).**

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under \*RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), an offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate, or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, or when a court sentences a person to a term of confinement of one year or less for a violation of RCW 9A.44.130(~~(40)~~) (11)(a) committed on or after June 7, 2006, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of

conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

[2008 c 276 § 305. Prior: 2006 c 130 § 2; 2006 c 128 § 5; 2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.]

**Notes:**

**Reviser's note:** \*(1) RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

(2) RCW 9.94A.715 was amended by 2008 c 276 § 305 without cognizance of its repeal by 2008 c 231 § 57, effective August 1, 2009. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**Severability -- Part headings, subheadings not law -- 2008 c 276:** See notes following RCW 36.28A.200.

**Severability -- Effective dates -- 2003 c 379:** See notes following RCW 9.94A.728.

**Intent -- Severability -- Effective dates -- 2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application -- 2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent -- Effective date -- 2001 c 10:** See notes following RCW 9.94A.505.

**Technical correction bill -- 2000 c 28:** See note following RCW 9.94A.015.

**RCW 9.94A.715**

**Community custody for specified offenders — Conditions.**

[2006 c 130 § 2; 2006 c 128 § 5; 2003 c 379 § 6; 2001 2nd sp.s. c 12 § 302; 2001 c 10 § 5; 2000 c 28 § 25.] Repealed by 2008 c 231 § 57, effective August 1, 2009.

**Notes:**

**Reviser's note:** RCW 9.94A.715 was amended by 2008 c 276 § 305 without cognizance of its repeal by 2008 c 231 § 57, effective August 1, 2009. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**RCW 9.94A.850**

**Sentencing guidelines commission — Established — Powers and duties.**

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under \*RCW 9.94A.715 for crimes committed on or after July 1, 2000. Not later than December 31 of each year, the commission may propose modifications to the ranges. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

[2005 c 282 § 19. Prior: 2002 c 290 § 22; 2002 c 237 § 16; 2002 c 175 § 16; 2000 c 28 § 41; prior: 1999 c 352 § 1; 1999 c 196 § 3; prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4. Formerly RCW 9.94A.040.]

**Notes:**

**\*Reviser's note:** RCW 9.94A.715 was repealed by 2008 c 231 § 57, effective August 1, 2009.

**Effective date -- 2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent -- 2002 c 290:** See note following RCW 9.94A.517.

**Effective date -- 2002 c 175:** See note following RCW 7.80.130.

**Technical correction bill -- 2000 c 28:** See note following RCW 9.94A.015.

**Construction -- Short title -- 1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability -- 1999 c 196:** See note following RCW 9.94A.010.

**Finding -- Evaluation -- Report -- 1997 c 338:** See note following RCW 13.40.0357.

**Severability -- Effective dates -- 1997 c 338:** See notes following RCW 5.60.060.

**Effective dates -- 1996 c 232:** "(1) Sections 1 through 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 28, 1996].

(2) Section 9 of this act takes effect July 1, 1996." [1996 c 232 § 12.]

**Effective date -- 1995 c 269:** "Sections 101, 201, 302, 303, 401, 402, 501 through 505, 601, 701, 801, 901, 1001,

1101, 1201 through 1203, 1301, 1302, 1401 through 1407, 1501, 1601, 1701, 1801, 1901, 1902, 2001, 2101, 2102, 2201 through 2204, 2301, 2302, 2401, 2501, 2601 through 2608, 2701, 2801 through 2804, 2901 through 2909, 3001, 3101, 3201, 3301, 3401, and 3501 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 269 § 3604.]

**Part headings not law -- Severability -- 1995 c 269:** See notes following RCW 13.40.005.

**Severability -- 1986 c 257:** See note following RCW 9A.56.010.

**Effective date -- 1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

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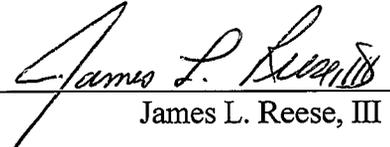
PROOF OF SERVICE

STATE OF WASHINGTON )  
COUNTY OF KITSAP )

James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington over the age of eighteen years, not a party to the above-entitled action and competent to be a witness herein.

That on the 24th day of November, 2008, he deposited in the mails of the United States of America, postage prepaid, the original and one (1) copy of Appellant's Brief in State of Washington v. Danny Joe Barber, Jr., Court of Appeals Cause No. 37989-9-II to the office of David C. Ponzoha, Clerk, Court of Appeals at 950 Broadway, Ste. 300, Tacoma, WA 98402-4454; hand delivered one (1) copy of the same to the office of Kitsap County Prosecuting Attorney, 614 Division Street, Port Orchard, Washington 98366 and deposited in the mails of the United States of America, postage prepaid, one (1) copy of the same to Appellant at his last known address: Danny Joe Barber, Jr., DOC #934431-B-418, Washington State Reformatory, P.O. Box 777, Monroe, WA 98272-0777.

  
James L. Reese, III

Signed and Attested to before me this 24th day of November, 2008  
by James L. Reese, III.

  
Notary Public in and for the State of  
Washington, residing at Port Orchard.  
My Appointment Expires: 4/04/09