

FILED  
APPEALS DIV. #1  
COURT OF APPEALS  
STATE OF WASHINGTON  
2008 APR 11 PM 3:11

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

In re Personal Restraint )  
Petition of )  
)  
)  
)  
)  
)  
)  
GLEN NICHOLS, )  
Petitioner. )  
\_\_\_\_\_ )

837422

No. 59750-7-1

STATE'S RESPONSE TO  
PERSONAL RESTRAINT  
PETITION

A. AUTHORITY FOR RESTRAINT OF PETITIONER.

Glen Nichols is restrained pursuant to judgment and sentence in King County Superior Court No. 04-1-01099-0 SEA.

Appendix A.

B. ISSUES PRESENTED.

Whether this petition should be granted where petitioner has established that the warrantless search of the motel registry violated his right to privacy under the state constitution.

C. STATEMENT OF THE CASE.

Nichols was found guilty by bench trial of the crimes of possession with intent to deliver cocaine and possession of

marijuana. Appendix A and B. He received a sentence of 60 months of total confinement. Appendix A and B. He appealed. This Court affirmed his conviction and mandate issued on January 11, 2008. Appendix C.

The facts of the trial are recounted in this Court order's affirming his convictions:

On February 26, 2004, the Seattle Police Department was conducting buy narcotics operation using pre-recorded bills. During the course of the investigation, the officers acquired information suggesting that a drug supplier was staying at a local motel. The officers indentified Glenn Nichols as the registered occupant of the room suspected of being involved, determined that Nichols had a record of drug violations, and determined that his license was suspended. When Nichols drove into the motel parking lot, the officers arrested and searched him, recovering approximately 15 grams of crack cocaine, 2 grams of marijuana, and \$470 in cash, including one of the marked bills used earlier that day in a controlled buy.

Appendix C, at 2.

D. ARGUMENT.

PETITIONER HAS ESTABLISHED THAT HIS CONSTITUTIONAL RIGHT TO PRIVACY WAS VIOLATED WHEN HIS NAME WAS OBTAINED FROM A MOTEL REGISTRY WITHOUT A WARRANT.

Nichols contends that his constitutional right to privacy was violated when the police obtained his name from a motel registry without a warrant. Based on the state supreme court's recent decision in State v. Jorden, 160 Wn.2d 121, 130, 156 P.3d 893 (2007), the State believes he is correct.

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error which constitutes a fundamental defect that inherently resulted in a complete miscarriage of justice. In re Cook, 114 Wn. 2d 802, 813, 792 P.2d 506 (1990). In a personal restraint petition, petitioner bears the burden of showing prejudicial error. State v. Brune, 45 Wn. App. 354, 363, 725 P.2d 454 (1986).

In State v. Jorden, 160 Wn.2d at 130, the Washington Supreme Court held that random searches of motel registries without particularized suspicion violated the right to privacy under

article I, section 7 of the state constitution. The Court summarized its holding as follows, "[a]bsent a valid exception to the prohibition against warrantless searches, random viewing of a motel registry violates article I, section 7 of the Washington State Constitution." Id. at 131.

Although the action taken by the police in Nichols' case was not a random search of a motel registry, it was a warrantless search of a private affair. As stated by the trial court in its factual findings pursuant to both CrR 3.6, the officers had reasonable, articulable suspicion to believe that the occupant of room 56 had engaged narcotics activity. Appendix D. However, the holding of Jorden requires that the police either obtain a warrant to search a motel registry, or identify an exception to the warrant requirement. No warrant was obtained in this case, and no exception to the warrant requirement applies. See State v. Ozuna, 80 Wn. App. 684, 911 P.2d 395 (1996) (warrant is required to search unoccupied car even if probable cause to believe car was involved in a crime existed, absent exigent circumstances). Because Nichols' detention flowed directly from the warrantless search of the motel registry, the evidence obtained from his detention and arrest should have been suppressed.

E. CONCLUSION.

This petition should be granted.

DATED this 10th day of April, 2008.

Respectfully Submitted,

DAN SATTERBERG  
King County Prosecuting  
Attorney

by 

ANN SUMMERS, #21509  
Senior Deputy Prosecuting  
Attorney  
Attorneys for Respondent  
Office ID #91002

W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
(206) 296-9650

## APPENDIX A

FILED

2005 MAR 23 AM 10:18

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

VUCSA OVER 21

MAR 23 2005

PRESENTENCING STATMENT & INFORMATION ATTACHED CERTIFIED COPY TO COUNTY JAIL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

GLENN GARY NICHOLS

Defendant,

No. 04-1-01099-0 SEA

JUDGMENT AND SENTENCE  
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, <sup>Kevin Black</sup> ~~BYRON WARD~~, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1/6/2005 by bench trial of:

Count No.: I Crime: VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT/POSSESS WITH INTENT/COCAINE

RCW 69.50.401 (A)(1)(I)

Date of Crime: 2/26/2004

Crime Code: 07319

Incident No. 04-57162

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime: \_\_\_\_\_

Crime Code: \_\_\_\_\_

Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime: \_\_\_\_\_

Crime Code: \_\_\_\_\_

Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_

RCW \_\_\_\_\_

Date of Crime: \_\_\_\_\_

Crime Code: \_\_\_\_\_

Incident No. \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.510(4).
- (c)  With a sexual motivation in count(s) \_\_\_\_\_ RCW 9.94A.835.
- (d)  A V.U.C.S.A. offense committed in a protected zone in count(s) \_\_\_\_\_ RCW 69.50.435.
- (e)  Vehicular homicide  Violent traffic offense  DUI  Reckless  Disregard.
- (f)  Vehicular homicide by DUI with \_\_\_\_\_ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g)  Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h)  Domestic violence offense as defined in RCW 10.99.020 for count(s) \_\_\_\_\_.
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).

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

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

Criminal history is attached in Appendix B.

One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	7	II	60 to 120 MONTHS		60 TO 120 MONTHS	10 YRS AND/OR \$20,000
Count						
Count						
Count						

Additional current offense sentencing data is attached in Appendix C.

**2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):**

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

**III. JUDGMENT**

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

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

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
  - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
  - Restitution to be determined at future restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_ m.
    - Date to be set.
    - Defendant waives presence at future restitution hearing(s).
  - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

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

- (a)  \$ \_\_\_\_\_, Court costs;  Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b)  \$100 DNA collection fee;  DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;  Recoupment is waived (RCW 9.94A.030);
- (d)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.430);
- (e)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived; (RCW 9.94A.030)
- (f)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (g)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (RCW 9.94A.760(2));
- (h)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500.00. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: [ ] immediately;  (Date): 3/30/05 by 12 P.m.

60 months/days on count I; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_  
\_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

The above terms for counts I <sup>is</sup> consecutive concurrent w/ count II

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to cause No.(s) \_\_\_\_\_

The above terms shall run [ ] CONSECUTIVE [ ] CONCURRENT to any previously imposed sentence not referred to in this order.

[ ] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: \_\_\_\_\_

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[ ] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 60 months.

Credit is given for [ ] \_\_\_\_\_ days served  days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of no <sup>through community custody</sup> years, defendant shall have no contact with Travel Lodge Motel 3512 SW Alaska St. Seattle, WA - & Toreka Ativalu

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[ ] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [ ] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for \_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [ ] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

- (c)  **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
  - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
  - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
  - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
  - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer.  
 Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H** for Community Custody conditions is attached and incorporated herein.  
 **APPENDIX J** for sex offender registration is attached and incorporated herein.

4.8  **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. **Appendix H** for Community Custody Conditions is attached and incorporated herein.

4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475,480.** The State's plea/sentencing agreement is  attached  as follows:

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

Date: 3-22-05

*Sharon A. Armstrong*  
 JUDGE  
 Print Name: \_\_\_\_\_

Presented by:  
*[Signature]*  
 Deputy Prosecuting Attorney, WSBA# 31915  
 Print Name: Alexandra Voorhees

Approved as to form:  
*[Signature]*  
 Attorney for Defendant, WSBA # 72251  
 Print Name: Kevin Black

FINGERPRINTS



BEST AVAILABLE IMAGE POSSIBLE

RIGHT HAND  
FINGERPRINTS OF:

GLENN GARY NICHOLS

DATED: 2/22/05

Sharon A. Armstrong  
JUDGE, KING COUNTY SUPERIOR COURT

DEFENDANT'S SIGNATURE:

DEFENDANT'S ADDRESS:

Glenn Nichols  
10003 S.E. 192nd St  
Renton WA 98053

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK

BY: Barbara Miner  
DEPUTY CLERK

CERTIFICATE

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

\_\_\_\_\_  
CLERK

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

OFFENDER IDENTIFICATION

S.I.D. NO. WA12637713

DOB: OCTOBER 30, 1960

SEX: M

RACE: B

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

GLENN GARY NICHOLS

Defendant,

No. 04-1-01099-0 SEA

JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
VUCSA-POSSESS COCAINE	11/13/1998	ADULT	981051023	KING CO
VUCSA-PWI TO DELIVER COCAINE	3/31/1995	ADULT	941035181	KING CO
UNLAWFUL POSSESSION OF FIREARM	3/31/1995	ADULT	941035181	KING CO
VUCSA-POSSESS COCAINE	11/25/1991	ADULT	911039549	KING CO
BURGLARY 2 <sup>ND</sup> DEGREE	2/4/1988	ADULT	871044838	KING CO
BURGLARY 2 <sup>ND</sup> DEGREE	8/14/1987	ADULT	871027119	KING CO
BURGLARY 2 <sup>ND</sup> DEGREE	8/14/1987	ADULT	871026864	KING CO

[ ] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date:

3-22-05

*Andrew A. Armstrong*  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

GLENN GARY NICHOLS

Defendant,

No. 04-1-01099-0 SEA

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

DNA IDENTIFICATION (RCW 43.43.754):

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

HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date: 3-22-05

Arthur A. Armstrong  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 04-1-01099-0 SEA

vs.

JUDGMENT AND SENTENCE

APPENDIX H

GLENN GARY NICHOLS

COMMUNITY PLACEMENT OR

COMMUNITY CUSTODY

Defendant,

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 1) Report to and be available for contact with the assigned community corrections officer as directed;
- 2) Work at Department of Corrections-approved education, employment, and/or community service;
- 3) Not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

[ ] The defendant shall not consume any alcohol.

[  ] Defendant shall have no contact with: all JES

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

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

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

[ ]

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: 3-22-05

[Signature]  
JUDGE

## APPENDIX B

FILED  
2005 MAR 23 AM 10:21  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

MAR 23 2005

COMMITMENT ISSUED \_\_\_\_\_

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

v.

GLENN GARY NICHOLS

Defendant.

No. 04-1-01099-0 SEA

JUDGMENT AND SENTENCE,  
NON-FELONY - Count(s) II  
(Jail Commitment Only)

The Prosecuting Attorney, the above-named defendant and counsel BYRON WARD being present in Court, the defendant having been found guilty of the crime(s) charged in the amended information on 1/6/2005 by bench trial and there being no reason why judgment should not be pronounced;

IT IS ADJUDGED that the defendant is guilty of the crime(s) of: VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT/ POSSESS <40 GRAMS OF MARIJUANA/RCW 69.50.401 (E)

and that the Defendant be sentenced to a term of confinement of 30 days  in the King County Jail, Department of Adult Detention, [ ] in King County Work/Education Release subject to conditions of conduct ordered this date, [ ] in King County Electronic Home Detention subject to conditions of conduct ordered this date, said terms to be served

concurrently [ ] consecutively with each other;

and to be served  concurrently [ ] consecutively with Count I

The term(s) imposed herein shall be served consecutively with any term not referenced herein.

CREDIT is given for [ ] \_\_\_\_\_ days served  days determined by the King County Jail solely on this cause.

Sentence will commence [ ] immediately [ ] Date: \_\_\_\_\_ no later than \_\_\_\_\_ a.m./p.m.;

Defendant shall pay to the clerk of this Court:

- (1)  Restitution is not ordered; None Requested  
 Order of Restitution is attached;  
 Restitution to be determined at a restitution hearing on (Date) \_\_\_\_\_ at \_\_\_\_\_, m.;  
 Date to be set;  
 The defendant waives presence at future restitution hearing(s);

(2) \$ \_\_\_\_\_, Court costs;

(3) \$ on felony form, Victim assessment, \$500 for gross misdemeanors and \$100 for misdemeanors;

(4) \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;

(5)  \$100 DNA collection fee;

(6) \$ \_\_\_\_\_, Fine;

(7) TOTAL financial obligation: on felony Ct. I JCS \_\_\_\_\_;

The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  to be paid in full by (Date) \_\_\_\_\_.

- The defendant shall have a biological sample collected for purposed of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in Appendix G (for stalking, harassment, or communicating with a minor for immoral purposes).

Date: 22  
3-11-05

Sumon A. Armstrong  
Judge, King County Superior Court  
Print Name: \_\_\_\_\_

Presented by:

Alexandra E. Voorhees  
Deputy Prosecuting Attorney, WSBA # 31915

Print Name: Alexandra E. Voorhees

Form Approved for Entry:

Kevin Black  
Attorney for Defendant, WSBA # 21291

Print Name: Kevin Black

## APPENDIX C

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I**

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 GLENN GARY NICHOLS, )  
 )  
 Appellant. )

No. 55976-1-1

MANDATE  
King  
County

Superior Court No. 04-1-01099-0 SEA

**FILED**  
KING COUNTY, WASHINGTON  
JAN 24 2008  
SUPERIOR COURT CLERK

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for County.

This is to certify that the ruling entered on August 7, 2007 became the decision terminating review of this court in the above on . . . An order denying a motion to modify was entered on November 6, 2007. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the ruling.

Pursuant to a Commissioner's ruling entered on August 27, 2007, costs of \$3,397.34 are awarded in favor of judgment creditor WASHINGTON OFFICE OF PUBLIC DEFENSE against judgment debtor GLENN GARY NICHOLS and costs in the amount of \$78.55 are awarded against judgment debtor GLENN GARY NICHOLS in favor of judgment creditor KING COUNTY PROSECUTOR'S OFFICE.

c: Carla B. Carlstrom (KCPA)  
Jennifer Winkler (NBK)  
Hon Sharon Armstrong  
Indeterminate Sentencing Review Board

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 11th day of January, 2008.

*[Signature]*  
**RICHARD D. JOHNSON**  
Court Administrator/Clerk of the Court of Appeals, State of Washington, Division I.



**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	No. 55976-1-1
Respondent,	)	
	)	
v.	)	COMMISSIONER'S RULING
	)	GRANTING MOTION ON
GLENN GARY NICHOLS,	)	THE MERITS TO AFFIRM
	)	
Appellant.	)	

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Glenn Nichols appeals from his convictions for possession of cocaine with intent to deliver and possession of marijuana. He contends his state and federal rights to be free from unreasonable searches were violated when the court ordered him to provide a biological sample for DNA identification following his conviction. He alleges additional errors in a statement of additional grounds for review. This court set a motion on the merits to affirm pursuant to RAP 18.14. The motion is granted.

**FACTS**

On February 26, 2004, the Seattle Police Department was conducting a controlled buy narcotics operation using pre-recorded bills. During the course of the investigation, the officers acquired information suggesting that a drug supplier was staying at a local motel. The officers identified Glenn Nichols as the registered occupant of the room suspected of being involved, determined that Nichols had a record of drug violations, and determined that his license was suspended. When Nichols drove into the motel parking lot, the officers arrested

and searched him, recovering approximately 15 grams of crack cocaine, 2 grams of marijuana, and \$470 in cash, including one of the marked bills used earlier that day in a controlled drug buy.

The State charged Nichols with possession of cocaine with intent to distribute and possession of less than forty grams of marijuana. Nichols waived his right to a jury trial. The court found Nichols guilty of both counts, sentenced him to the low end of the standard range, and directed that a biological sample be taken for DNA identification. This appeal followed.

### **MOTION ON THE MERITS CRITERIA**

RAP 18.14(e)(1) provides:

A motion on the merits to affirm will be granted in whole or in part if the appeal or any part thereof is determined to be clearly without merit. In making these determinations, the . . . commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly within the discretion of the trial court or administrative agency.

These criteria are applied in light of State v. Rolax, 104 Wn.2d 129, 702 P.2d 1185 (1985).

### **DECISION**

Nichols first contends that RCW 43.43.754, which requires that convicted felons provide a biological sample for a DNA database, violates Article 1, section 7 of the Washington Constitution. Because the Washington Supreme Court has recently rejected the same argument in State v. Surge, 160 Wn.2d 65, 156 P.3d 208 (2007), it need not be further addressed.<sup>1</sup>

---

<sup>1</sup> This case was stayed pending a decision in Surge.

Nichols has also filed a Statement of Additional Grounds for Review. He first alleges that the evidence is not sufficient to support his conviction. Nichols testified that he did not have any drugs when he was arrested, suggesting that the officers planted the drugs. In reviewing a challenge to the sufficiency of the evidence, the appellate court determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the State. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). Credibility determinations cannot be reviewed on appeal. Brockob, 159 Wn.2d at 336.

Nichols takes issue with the fact that a photocopy of the buy money found in his possession was used at trial. But there was no objection to the use of a copy and no issue as to whether the copy was accurate. Nichols complains that the amount of the drugs listed by the officers and the amount tested by the crime lab were different. The officers estimated that the cocaine weighed 15.1 grams and that the marijuana weighed 2 grams, based on field testing. The laboratory reported that the suspected cocaine weighed 12 grams and that the marijuana weighed 1.2 grams. There was no objection at trial to this discrepancy and the laboratory report was admitted by stipulation. The differences between the weights obtained in field testing and those reported by the laboratory are immaterial in the context of this case. The only real issue at trial was whether Nichols had the drugs in his pocket when he was arrested. The officers testified that he did. The court specifically stated that it did not find Nichols' testimony credible. The officers' testimony alone is sufficient to sustain the conviction.

Nichols also seems to contend that there was some error in failing to disclose the criminal history of one of the State's witnesses. But the record does not show whether there was a request for this information or whether or not it was provided. And while one of the State's witnesses was an informant, whose credibility defense counsel attacked in cross examination, the testimony of this witness was collateral to the main issues at trial. Nichols has not shown error, but even assuming he could, he has not shown prejudice, and this claim is accordingly rejected.

Nichols alleges his attorney signed false documents and the prosecution presented a false statement in order to obtain a continuance. Nichols has included some documents from December 3, 2004 that he apparently believes support his argument. But none of these documents, even assuming there is some falsity, are critical. One is a pre-trial release order (in the name of a different defendant), one is an omnibus order, and one is an omnibus checklist. There is no record of any false statement by the prosecutor and no apparent prejudice from any of these alleged falsities. This claim is accordingly rejected.

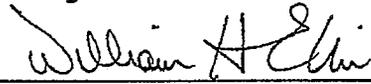
Nichols finally faults the prosecutor for making argumentative statements not supported by the record. It appears that the complained of statements, attacking the credibility of Nichols' witnesses and suggesting that Nichols was seen making a drug delivery, were made at sentencing, not at the trial. Moreover, as the court sentenced Nichols to the low end of the standard range, it appears the statements had no prejudicial effect, even if false. This claim is accordingly also rejected.

No. 55976-1-1/5

Now, therefore, it is hereby

ORDERED that the motion on the merits is granted and the judgment and sentence is affirmed.

Done this 7<sup>th</sup> day of August, 2007.



\_\_\_\_\_  
Court Commissioner

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STATE OF WASHINGTON

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## APPENDIX D

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2005 JAN 27 AM 11:24

KING COUNTY  
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SEATTLE, WA

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 04-1-01099-0 SEA

vs.

GLENN GARY NICHOLS,

Defendant,

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.6  
MOTION TO SUPPRESS PHYSICAL,  
ORAL OR IDENTIFICATION  
EVIDENCE

A hearing on the admissibility of physical, oral, or identification evidence was held on January 4, 2005 before the Honorable Judge Armstrong. After considering the evidence submitted by the parties and hearing argument, to wit: The testimony of Seattle Police Department Officers Sergeant Caylor, Detective Gonzalez and Officer Nelson, the court makes the following findings of fact and conclusions of law as required by CrR 3.6:

1. THE FINDINGS OF FACT:

- a. On February 26, 2004, Seattle Police Detective Rudy Gonzales used a cooperating witness to make a controlled buy of cocaine from Toreka "Tika" Ativalu. This controlled buy was the fourth made by the same cooperating witness from Ms. Ativalu since February 13, 2004. The first three were used to obtain a search warrant (attached as Appendix A) for Ms. Ativalu's house.

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1

Norm Maleng, Prosecuting Attorney  
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Seattle, Washington 98104  
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- 1 b. At approximately 1:50 p.m. on February 26, Detective Gonzales dropped the cooperating  
2 witness off at Ms. Ativalu's house, located at 4814 25<sup>th</sup> Ave. S.W. in Seattle, with  
3 instructions to purchase \$50 worth of crack cocaine.
- 4 c. The cooperating witness, Charles Ream, had been searched by Detective Gonzales prior  
5 to arriving at that location and was found to be free of contraband and money. After  
6 searching him, Detective Gonzales issued Ream \$50 in pre-recorded Seattle Police  
7 Department buy money. While Detective Gonzales remained in his vehicle, the Ream  
8 went to the door of Ms. Ativalu's house and was permitted to enter.
- 9 d. Mr. Ream informed her that he wanted a "fifty" of crack cocaine. Ms. Ativalu told him  
10 that she was out of drugs at that time and that she was going to meet her supplier in a few  
11 minutes. Ream then handed Ms. Ativalu the \$50 in pre-recorded buy money and was  
12 directed out the back door to Ms. Ativalu's van. Ms. Ativalu, Ream, and another male  
13 Ream knew only as "Robert" then drove to the Travel Lodge Motel at 35<sup>th</sup> Ave. S.W. and  
14 S.W. Alaska Street in Seattle Washington. The drive took five minutes or less.
- 15 e. When they arrived at the Travel Lodge, Ream and "Robert" remained in the van while  
16 Ms. Ativalu exited. It appeared to Mr. Ream that she was unsure of which room she  
17 needed to contact. Ms. Ativalu then called down to "Robert" and told him to call "OG"  
18 to find out what room he was in. Robert used a cell phone and asked the person who  
19 answered if "OG" was there. Robert then spoke with "OG" and asked what room he was  
20 in. Robert then hung up and yelled to Ms. Ativalu that "OG" was in room number 56.  
21 Mr. Ream then saw Ms. Ativalu go into room 56.
- 22 f. Approximately five minutes later, Ms. Ativalu exited room 56 and returned to the van.  
23 Once inside, she handed Mr. Ream several small pieces of suspected crack cocaine. The

1 three then drove back to Ms. Ativalu's house. Mr. Ream returned to Detective  
2 Gonzales's vehicle, gave him the cocaine Ms. Ativalu had handed to him, and told Det.  
3 Gonzales what had happened. Detective Gonzales again searched Mr. Ream and found  
4 him to be free of any drugs or money.

5 g. The Seattle Police Department served the search warrant that had been obtained on  
6 February 25 at approximately 2:25 p.m. on the 26<sup>th</sup>. Detective Gonzales relayed the  
7 information he received from Ream about Ms. Ativalu's apparent purchase of cocaine in  
8 room 56 at the Travel Lodge to Sergeant G. Caylor and Officer R. Nelson.

9 h. At approximately 4:25 p.m., Sgt. Caylor and Officer Nelson went to the Travel Lodge  
10 and contacted the desk clerk. They learned that the registered guest in room 56 was the  
11 defendant, Glenn Nichols. Sgt. Caylor and Officer Nelson viewed a photocopy of the  
12 defendant's identification, which was either a Washington Driver's License or  
13 Identification Card. After obtaining the license information, Officer Nelson ran the  
14 defendant's name through the computer in his unmarked patrol car and learned that his  
15 license to drive was suspended in the third degree.

16 i. Shortly after learning the defendant's license was suspended, Sgt. Caylor and Officer  
17 Nelson saw the defendant, who they recognized from having seen the photocopy of his  
18 identification, drive into the Travel Lodge parking lot. Caylor and Nelson pulled in  
19 behind the defendant, but did not activate any emergency equipment on their vehicle.

20 j. As the defendant exited his car, Sgt. Caylor asked him if he was Glenn Nichols. The  
21 defendant said "yes." Officer Nelson then asked him to step away from his car. The  
22 defendant asked why and Officer Nelson told him his license was suspended and he  
23 wanted to speak with him.

- 1 k. The defendant immediately became uncooperative and started to try to re-enter his car.  
2 Officer Nelson and Sgt. Caylor, fearing he might be trying to obtain a weapon or trying to  
3 flee, grabbed him, told him to stop resisting, and informed him he was under arrest.
- 4 l. After gaining control of the defendant and placing him in handcuffs, Officer Nelson  
5 searched him incident to arrest and found a plastic baggie containing approximately 15  
6 small rocks of suspected crack cocaine and another baggie containing suspected  
7 marijuana. Both items were found in the defendant's right front jacket pocket.
- 8 m. Sgt. Caylor also participated in the search of the defendant and found one small and one  
9 large baggie of cocaine in the defendant's inside coat pocket, and also found \$460 in  
10 cash, \$10 of which was later found to be pre-recorded buy money that had been given to  
11 Charles Ream for the controlled buy from Ms. Ativalu earlier that day.
- 12 n. The court finds the testimony of Sergeant Caylor, Detective Gonzalez and Officer Nelson  
13 to be credible.

14 **2. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE SOUGHT**  
15 **TO BE SUPPRESSED:**

- 16 a. Sergeant Caylor and Officer Nelson had a reasonable articulable suspicion to contact the  
17 defendant for both investigation of narcotics activity and for Driving While License  
18 Suspended in the Third Degree.
- 19 b. Sergeant Caylor and Officer Nelson had probable cause to arrest the defendant for  
20 Driving Wile License Suspended in the Third Degree. At the time of his arrest the  
21 Driving While License Suspended in the Third Degree statute R.C.W. 46.20.289 had not  
22 yet been overturned by the Supreme Court decision in City of Redmond v. Moore, 151  
23 Wn.2d 664, 91 P.3d 875 (1994). As such it was a presumptively valid law that was not

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 4

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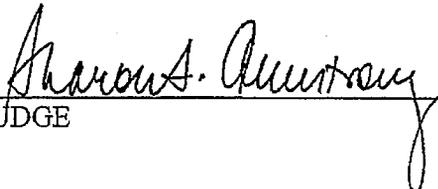
1 so obviously and flagrantly unconstitutional that it could not serve as a valid basis for  
2 arrest. Based on the information the officers had at the time of the defendant's arrest they  
3 had probable cause to believe that he was driving in violation of R.C.W. 46.20.289

4 c. The defendant's restive behavior and attempts to get back into his vehicle when contacted  
5 by the officers as part of a legitimate criminal investigation also gave the officers  
6 probable cause to arrest the defendant for Obstructing a Law Enforcement Office and  
7 Resisting Arrest in addition to the Driving While License Suspended violation.

8 d. The defendant's motion to suppress evidence, to wit: the rock cocaine and money  
9 recovered from his person is denied.

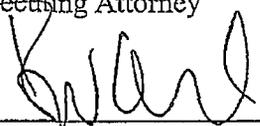
10  
11 In addition to the above written findings and conclusions, the court incorporates by  
12 reference its oral findings and conclusions.

13 Signed this 23<sup>rd</sup> day of January, 2005.

14  
15   
16 JUDGE

17 Presented by:

18   
19 Alexandra E. Voorhees  
20 WSBA # 31915  
21 Deputy Prosecuting Attorney

22   
23 Byron Ward  
24 WSBA # 2339  
25 Attorney for Defendant

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 5

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## APPENDIX E

FILED

2005 JAN 27 AM 11:24

ORIGINAL KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

GLENN GARY NICHOLS,

Defendant,

No. 04-1-01099-0 SEA

FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CrR 6.1(d)

THE ABOVE-ENTITLED CAUSE having come on for trial from January 4, 2005- January 6, 2005 before the undersigned judge in the above-entitled court; the State of Washington having been represented by Deputy Prosecuting Attorney Alexandra E. Voorhees; the defendant appearing in person and having been represented by his attorney, Byron Ward; the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

I.

The following events took place within King County, Washington:

- a. On February 26, 2004, Seattle Police Detective Rudy Gonzales used a cooperating witness to make a controlled buy of cocaine from Toreka "Tika" Ativalu. This controlled buy was the fourth made by the same cooperating witness from Ms. Ativalu since

FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CrR 6.1(d) - 1

Norm Maleng, Prosecuting Attorney W554 King County Courthouse 516 Third Avenue Seattle, Washington 98104 (206) 296-9000 FAX (206) 296-0955

1 February 13, 2004. The first three were used to obtain a search warrant (attached as  
2 Appendix A) for Ms. Ativalu's house.

3 b. At approximately 1:50 p.m. on February 26, Detective Gonzales dropped the cooperating  
4 witness off at Ms. Ativalu's house, located at 4814 25<sup>th</sup> Ave. S.W. in Seattle, with  
5 instructions to purchase \$50 worth of crack cocaine.

6 c. The cooperating witness, Charles Ream, had been searched by Detective Gonzales prior  
7 to arriving at that location and was found to be free of contraband and money. After  
8 searching him, Detective Gonzales issued Ream \$50 in pre-recorded Seattle Police  
9 Department buy money. While Detective Gonzales remained in his vehicle, the Ream  
10 went to the door of Ms. Ativalu's house and was permitted to enter.

11 d. Mr. Ream informed her that he wanted a "fifty" of crack cocaine. Ms. Ativalu told him  
12 that she was out of drugs at that time and that she was going to meet her supplier in a few  
13 minutes. Ream then handed Ms. Ativalu the \$50 in pre-recorded buy money and was  
14 directed out the back door to Ms. Ativalu's van. Ms. Ativalu, Ream, and another male  
15 Ream knew only as "Robert" then drove to the Travel Lodge Motel at 35<sup>th</sup> Ave. S.W. and  
16 S.W. Alaska Street in Seattle Washington. The drive took five minutes or less.

17 e. When they arrived at the Travel Lodge, Ream and "Robert" remained in the van while  
18 Ms. Ativalu exited. It appeared to Mr. Ream that she was unsure of which room she  
19 needed to contact. Ms. Ativalu then called down to "Robert" and told him to call "OG"  
20 to find out what room he was in. Robert used a cell phone and asked the person who  
21 answered if "OG" was there. Robert then spoke with "OG" and asked what room he was  
22 in. Robert then hung up and yelled to Ms. Ativalu that "OG" was in room number 56.  
23 Mr. Ream then saw Ms. Ativalu go into room 56.

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6.1(d) - 2

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- 1 f. Approximately five minutes later, Ms. Ativalu exited room 56 and returned to the van.  
2 Once inside, she handed Mr. Ream several small pieces of suspected crack cocaine. The  
3 three then drove back to Ms. Ativalu's house. Mr. Ream returned to Detective  
4 Gonzales's vehicle, gave him the cocaine Ms. Ativalu had handed to him, and told Det.  
5 Gonzales what had happened. Detective Gonzales again searched Mr. Ream and found  
6 him to be free of any drugs or money.
- 7 g. The Seattle Police Department served the search warrant that had been obtained on  
8 February 25 at approximately 2:25 p.m. on the 26<sup>th</sup>. Detective Gonzales relayed the  
9 information he received from Ream about Ms. Ativalu's apparent purchase of cocaine in  
10 room 56 at the Travel Lodge to Sergeant G. Caylor and Officer R. Nelson.
- 11 h. At approximately 4:25 p.m., Sgt. Caylor and Officer Nelson went to the Travel Lodge  
12 and contacted the desk clerk. They learned that the registered guest in room 56 was the  
13 defendant, Glenn Nichols. Sgt. Caylor and Officer Nelson viewed a photocopy of the  
14 defendant's identification, which was either a Washington Driver's License or  
15 Identification Card. After obtaining the license information, Officer Nelson ran the  
16 defendant's name through the computer in his unmarked patrol car and learned that his  
17 license to drive was suspended in the third degree.
- 18 i. Shortly after learning the defendant's license was suspended, Sgt. Caylor and Officer  
19 Nelson saw the defendant, who they recognized from having seen the photocopy of his  
20 identification, drive into the Travel Lodge parking lot. Caylor and Nelson pulled in  
21 behind the defendant, but did not activate any emergency equipment on their vehicle.
- 22 j. As the defendant exited his car, Sgt. Caylor asked him if he was Glenn Nichols. The  
23 defendant said "yes." Officer Nelson then asked him to step away from his car. The

1 defendant asked why and Officer Nelson told him his license was suspended and he  
2 wanted to speak with him.

- 3 k. The defendant immediately became uncooperative and started to try to re-enter his car.  
4 Officer Nelson and Sgt. Caylor, fearing he might be trying to obtain a weapon or trying to  
5 flee, grabbed him, told him to stop resisting, and informed him he was under arrest.
- 6 l. After gaining control of the defendant and placing him in handcuffs, Officer Nelson  
7 searched him incident to arrest and found a plastic baggie containing approximately 15  
8 small rocks of suspected crack cocaine and another baggie containing suspected  
9 marijuana. Both items were found in the defendant's right front jacket pocket.
- 10 m. Sgt. Caylor also participated in the search of the defendant and found one small and one  
11 large baggie of cocaine in the defendant's inside coat pocket, and also found \$460 in  
12 cash, \$10 of which was later found to be pre-recorded buy money that had been given to  
13 Charles Ream for the controlled buy from Ms. Ativalu earlier that day.
- 14 n. The court finds that Ms. Ativalu purchased narcotics from the defendant in room 56 of  
15 the Travel Lodge Motel at approximately 2:00 p.m. The travel time between the motel  
16 and the Mental Health Clinic that the defendant put forward as a partial alibi for the time  
17 of the sale of the drugs does not preclude his involvement in the transaction.
- 18 o. The amount of narcotics and money found together on the defendant and absent any  
19 paraphernalia is consistent with Possession With Intent to Deliver a Controlled  
20 Substance.
- 21 p. The testimony of the defendant and his girlfriend that at the end of the month they had  
22 \$460.00 of their combined \$875.00 in welfare money that was received on the first of the  
23 month is not credible.

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6.1(d) - 4

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- 1 q. The defendant's contention that Sergeant Caylor and Officer Nelson planted the drugs  
2 and controlled buy money on him is likewise not credible.
- 3 r. The court finds the testimony of Sergeant Caylor, Detective Gonzalez and Officer Nelson  
4 to be credible.

5  
6 II.

7 And having made those Findings of Fact, the Court also now enters the following:

8 CONCLUSIONS OF LAW

9 I.

10 The above-entitled court has jurisdiction of the subject matter and of the defendant Glenn  
11 Gary Nichols in the above-entitled cause.

12 II.

13 The following elements of the crime(s) charged have been proven by the State beyond a  
14 reasonable doubt:

15 Count I. Violation of the Uniform Controlled Substances Act, Possession of Cocaine with Intent  
16 to Deliver:

- 17 1. That on or about February 26, 2004 the defendant possessed cocaine, a controlled substance;  
18 2. That the defendant possessed the cocaine with the intent to deliver a controlled substance;  
19 and  
20 3. That these acts occurred in Washington State.

21 Count II Violation of the Uniform Controlled Substances Act Possession of Less than 40 Grams  
22 of Marijuana.

- 23 1. On or about February 26, 2004 the defendant possessed less than 40 grams of Marijuana; and  
24 2. That those acts occurred in Washington State.

25 III.

26 The defendant is guilty of the crimes of Count I Violation of the Uniform Controlled  
27 Substances Act Possession of Cocaine a Controlled Substance with the Intent to Deliver, and  
28 Count II Violation of the Uniform Controlled Substances Act Possession of Less than 40 Grams  
29 of Marijuana as charged in the Amended Information.

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW  
31 PURSUANT TO CrR 6.1(d) - 5

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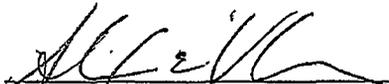
IV.

Judgment should be entered in accordance with Conclusion of Law III.

DONE IN OPEN COURT this 23<sup>rd</sup> day of January, 2005.

  
\_\_\_\_\_  
JUDGE

Presented by:

  
\_\_\_\_\_  
Alexandra E. Voorhees  
WSBA # 31915  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Defendant

  
\_\_\_\_\_  
Byron Ward  
WSBA # 2339  
Attorney for Defendant

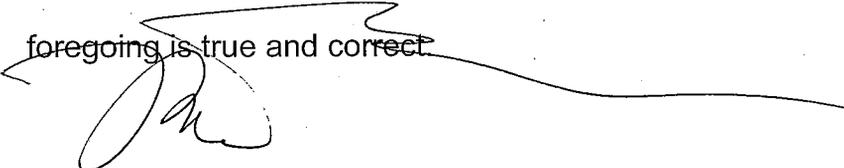
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 6.1(d) - 6

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CERTIFICATION OF SERVICE

Today I deposited in the mails of the United States of America, a properly stamped and addressed envelope directed to Glenn Nichols, at the following address: DOC# 931744, Monroe Corrections Center, P.O. Box 888, Monroe, WA 98272 , the petitioner, containing a copy of the State's Response to Personal Restraint Petition in In re Nichols, No. 59750-7-I, in the Court of Appeals of the State of Washington.

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

  
\_\_\_\_\_  
Name  
Done in Seattle, Washington

*04-11-2008*  
\_\_\_\_\_  
Date

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STATE OF WASHINGTON  
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