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A. ISSUES PRESENTED

1. The sentencing court imposed several conditions of community custody on petitioner William J. Smith. The condition prohibiting “any paraphernalia that can be used for the ingestion of controlled substances” was the same, word-for-word, as the condition this Court struck as unconstitutionally vague in State v. Sanchez Valencia, 169 Wn.2d 782, 791, 785, 239 P.3d 1059 (2010). Must the condition be stricken as unconstitutionally vague?

2. Another condition prohibiting the possession of “pornographic material” was the same in all relevant respects as the condition this Court struck as unconstitutionally vague in State v. Bahl, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). Must the condition be stricken as unconstitutionally vague?

3. Under RCW 10.73.090, a personal restraint petition is timely regardless of its filing date if it challenges a facially invalid judgment and sentence. The two sentencing conditions at issue here are facially invalid under Sanchez Valencia and Bahl. Is Mr. Smith’s PRP timely?

4. A petition purporting to be timely pursuant to the exceptions listed in RCW 10.73.100 should be dismissed as “mixed” if one or more grounds falls within that statute but one or more grounds does not. However, claims that fall within the “facially invalidity” rule of RCW

10.73.090 may not be dismissed under the “mixed” doctrine of RCW 10.73.100. Did the acting chief judge of Division Two err in dismissing Mr. Smith’s petition as “mixed,” where the two claims at issue here are timely under RCW 10.73.090 and are not governed by RCW 10.73.100?

5. Where a petitioner raises a new ground for relief in a successive personal restraint petition filed in the Court of Appeals, the court may not dismiss the petition but must instead transfer it to this Court. Where Mr. Smith raised new grounds for relief in his fifth PRP, did the acting chief judge err in dismissing the PRP as successive, rather than transferring it to this Court?

6. In Bahl and Sanchez Valencia this Court held that a defendant need not wait until conditions of community custody are enforced against him to challenge them as unconstitutionally vague. The same conditions this Court rejected as unconstitutionally vague in those cases were imposed upon Mr. Smith. Are his claims that the conditions are unconstitutionally vague ripe for review, even though at this writing he is still incarcerated?¹

7. Retroactivity principles prohibit the application of a new rule of criminal procedure to cases that were final before the new rule was announced. But retroactivity principles do not bar the application of a

¹ It is possible Mr. Smith will be released to community custody shortly after this brief is filed.

holding that does not announce a new rule. Although Bahl and Sanchez Valencia were decided after Mr. Smith's judgment became final, those cases did not create new rules of criminal procedure, but rather applied settled principles of constitutional law to the specific conditions at issue. Must Bahl and Sanchez Valencia be applied to Mr. Smith's case?

8. A plea bargaining agreement cannot exceed the authority given to the courts and a defendant who pleads guilty does not thereby waive a challenge to an illegal sentence. Rather, when a sentence has been imposed for which there is no authority in law, the court has the power and duty to correct the erroneous sentence when the error is discovered. Does the court have the power and duty to strike the unconstitutionally vague conditions from Mr. Smith's judgment and sentence even though he pled guilty?

B. STATEMENT OF THE CASE

In 2002, petitioner William J. Smith pled guilty to one count of rape of a child in the second degree and one count of child molestation in the second degree. Exhibit A (Judgment and Sentence) at 1. The sentencing court imposed an indeterminate prison term of 136 months to life. Ex. A at 5. If the Indeterminate Sentencing Review Board releases

Mr. Smith sometime after he has served his minimum term, Mr. Smith will be on community custody for the remainder of his life. Ex. A at 6.²

The sentencing court imposed several conditions of community custody. Ex. A at 6-9. One condition stated:

Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.

Ex. A at 7. Another provided:

Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.

Ex. A at 9.

Mr. Smith did not appeal his conviction or sentence, but he has filed five personal restraint petitions (“PRPs”). Exhibit B (Orders dismissing previous PRPs). In the instant petition, filed May 4, 2010, Mr. Smith argued that several conditions of community custody imposed upon him were improper. He challenged the above two conditions and three others. PRP at 2-3. The acting chief judge of Division Two dismissed the petition as mixed and successive. Mr. Smith moved for discretionary

² Mr. Smith is scheduled to appear before the ISRB on July 26, 2011. The ISRB may either order his release or impose a new minimum term and a subsequent release hearing date. See RCW 9.95.011; RCW 9.94A.712; In re the Personal Restraint of Cashaw, 123 Wn.2d 138, 866 P.2d 8 (1994).

review, and the Commissioner of this Court ruled the acting chief judge's order was "debatable." This Court subsequently granted review limited to the paraphernalia and pornography prohibitions set forth above.

C. ARGUMENT

This Court will grant relief to an individual who has filed a personal restraint petition if the petitioner is under "restraint" and the restraint is unlawful. RAP 16.4(a). A petitioner is under restraint if he "has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case." RAP 16.4(b). The restraint is unlawful if, inter alia:

The conviction was obtained or the sentence or other order entered in a criminal proceeding or civil proceeding instituted by the state or local government was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.

RAP 16.4(c)(2). "A constitutional violation resulting in actual prejudice will fall within RAP 16.4(c)(2)." In re the Personal Restraint of Nichols, ___ Wn.2d ___, ___ P.3d ___, 2011 WL 1598634 at *2 (2011).

Mr. Smith is currently incarcerated. Once released, he will still be "restrained" within the meaning of RAP 16.4(b) by community custody conditions imposed by the sentencing court. As explained below, these

conditions are unconstitutionally vague under recent controlling decisions of this Court. Mr. Smith is actually prejudiced because he does not know what conduct is prohibited and what conduct is permitted, and he will be subject to arbitrary enforcement. Accordingly, this Court should grant relief by striking the unconstitutional conditions and remanding for resentencing.

1. The conditions of community custody prohibiting possession of “pornographic material” and “any paraphernalia that can be used for the ingestion of controlled substances” are unconstitutionally vague.

a. A sentence condition is unconstitutionally vague if it does not provide adequate notice of what conduct is proscribed or allows for arbitrary enforcement. Due process requires that individuals (1) receive adequate notice of what conduct is prohibited and (2) are protected from arbitrary enforcement. U.S. Const. amend. XIV; State v. Bahl, 164 Wn.2d 739, 752-53, 193 P.3d 678 (2008). Ordinary people must be able to “understand what is and is not allowed.” State v. Sanchez Valencia, 169 Wn.2d 782, 791, 785, 239 P.3d 1059 (2010). A sentencing condition that does not comport with these requirements is unconstitutionally vague. Bahl, 164 Wn.2d at 753.

This Court does not presume a challenged sentencing condition is constitutional. Sanchez Valencia, 169 Wn.2d at 793. A condition must be

stricken if it is vague, because a trial court has necessarily abused its discretion in imposing it. Id. at 793, 795.

b. The condition prohibiting possession of “pornographic material” is unconstitutional under this Court’s decision in *Bahl*. One of the conditions of community custody the sentencing court imposed upon Mr. Smith was the following:

Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.

Ex. A at 9.

This Court in *Bahl* held a substantially similar condition was unconstitutionally vague. In that case, the sentencing court ordered:

Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer. Do not frequent establishments whose primary business pertains to sexually explicit or erotic material.

Bahl, 164 Wn.2d at 743. This Court noted that the term “pornography” has “never been given a precise legal definition.” Id. at 754. The Court described a federal case addressing the same issue:

In *Loy*, the Third Circuit discussed a number of materials that might or might not be considered pornography, such as the book *Lolita*, Calvin Klein advertisements, and Yeats’ poem “Leda and the Swan,” and concluded that although the propriety of calling any of these materials pornographic would generate debate, the debate would not be resolved. The court said, “with regard to ‘pornography’ rather than ‘obscenity,’ we do not ‘know it when we see it.’”

Id. at 754-55 (citing United States v. Loy, 237 F.3d 251, 264 (3d Cir. 2001)). This Court further recognized that conditions implicating First Amendment rights must be clear and reasonably necessary to accomplish essential state needs. Id. at 758. The condition prohibiting the possession of pornographic materials failed this test, and was unconstitutionally vague. Id.

Bahl controls this case. The State in its response does not argue that the slightly different wording in Mr. Smith’s judgment and sentence renders the condition here constitutional. Indeed, the relevant language – “pornographic material” – is the same, and there is no additional language in Mr. Smith’s judgment that would elucidate the meaning of this phrase. Accordingly, this Court should strike the condition as unconstitutionally vague, and remand for resentencing. Bahl, 164 Wn.2d at 762.³

³ In Bahl, this Court held the second part of the condition imposed there was not vague because it used the terms “sexually explicit” and “erotic,” which are clearly defined. Bahl, 164 Wn.2d at 758-60. But the second part of the condition in Mr. Smith’s judgment and sentence refers to the same “pornographic materials” prohibited in the first clause. Thus, the entire condition is unconstitutionally vague. Id. at 758 (the phrase “pornographic material” is unconstitutionally vague).

c. The condition prohibiting possession of “any paraphernalia that can be used for the ingestion or processing of controlled substances” is unconstitutional under this Court’s decision in *Sanchez Valencia*. The other condition at issue here is the following:

Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.

Ex. A at 7.

This condition is the same, word-for-word, as the condition this Court held was unconstitutionally vague in *Sanchez Valencia*, 169 Wn.2d at 785. In that case this Court determined that “the vague scope of proscribed conduct fails to provide the petitioners with fair notice of what they can and cannot do.” *Id.* at 794. “Moreover, the breadth of potential violations under this condition offends the second prong of the vagueness test, rendering the condition unconstitutionally vague.” *Id.* Thus, the condition must be stricken and the case remanded for resentencing. *Id.* at 795.

The State does not argue the condition is constitutional. Instead, it claims that the condition was not imposed at all, because “the checkbox is extremely faint.” Response at 6. But although it is hard to see the box on

the copy of the judgment and sentence, it certainly appears to have been checked. Ex. A at 7. Thus, Mr. Smith's community corrections officer is likely to think the condition applies. In order to be sure this vague condition is not enforced against Mr. Smith, this Court should order that it be clearly stricken.

The State then argues that even though Mr. Smith is not subject to the paraphernalia prohibition set forth in the judgment and sentence, he is subject to the conditions set forth in the "pre-trial offer," including the condition reading, "You shall not possess any paraphernalia for the use of controlled substances." Response at 6; see Exhibit C (Pre-trial Offer) at 6.

The State posits:

The defendant had agreed as part of a plea bargain contract between himself and the State to not possess or use paraphernalia for the ingestion of controlled substances. This contract was ratified by the trial court at the time that the Judgment and Sentence was entered and the pre-trial offer was attached to the sentencing paperwork.

Response at 7.

There are two problems with this claim. First, the sentencing court did not incorporate the pre-trial offer in the judgment and sentence.

Rather, the court, consistent with its authority to impose a sentence, explicitly set forth many conditions of community custody. Ex. A at 6-9.

Nowhere on the judgment and sentence does the court say Mr. Smith must

also comply with the conditions listed in the pre-trial offer. Indeed, several conditions would be redundant if both documents applied. This Court should clarify that Mr. Smith is subject only to the conditions set forth by the Court in the judgment and sentence.

Second, even if Mr. Smith could somehow be subject to the conditions set forth on the pretrial offer that were not imposed by the sentencing court, the condition prohibiting possession of “any paraphernalia for the use of controlled substances” would still be unconstitutionally vague under Sanchez Valencia. This Court explained that the phrase “any paraphernalia” is a “much broader category” than “drug paraphernalia,” which is defined by statute.⁴ Sanchez Valencia, 169 Wn.2d at 794. “Because the condition might potentially encompass a wide range of everyday items, it does not provide ascertainable standards of guilt to protect against arbitrary enforcement.” Id. (citing Bahl, 164 Wn.2d at 753). Thus, even the State’s proposed condition is unconstitutional, and may not be enforced against Mr. Smith.

2. Mr. Smith properly raised these issues in his *pro se* personal restraint petition and is entitled to relief.

Because Bahl and Sanchez Valencia are squarely on point, this Court should grant relief. Mr. Smith has complied with the required

⁴ Thus, the State’s argument that “drug paraphernalia” is defined is of no moment. Response at 8.

procedures for personal restraint petitions. Unless Bahl and Sanchez Valencia are applied to his case, he will be subject to unconstitutionally vague conditions, will not know what conduct is permissible and what conduct is prohibited, and will be at the mercy of arbitrary enforcement.

a. The petition is timely under RCW 10.73.090 because the judgment is facially invalid. Mr. Smith timely filed his pro se PRP. The one-year statute of limitations does not apply where the judgment and sentence is not “valid on its face.” RCW 10.73.090(1). “Invalid on its face” means “the judgment and sentence evidences the invalidity without further elaboration.” In re the Personal Restraint of Goodwin, 146 Wn.2d 861, 866, 50 P.3d 618 (2002). Documents signed as part of a plea agreement may be considered in determining whether the judgment and sentence is invalid on its face. Id. at 866 n.2. Here, one need look no further than the face of the judgment itself to see that the pornography prohibition is unconstitutional under Bahl and the paraphernalia prohibition is unconstitutional under Sanchez Valencia. See Section (D)(1), supra. Thus, the petition is timely.

The acting chief judge of Division Two erroneously dismissed Mr. Smith’s petition as “mixed.” A petition purporting to be timely pursuant to the exceptions listed in RCW 10.73.100 should be dismissed as “mixed” if one or more grounds falls within that statute but one or more

grounds does not. In re the Personal Restraint of Stoudmire, 141 Wn.2d 342, 349-50, 5 P.3d 1240 (2000). However, this rule does not apply to petitions challenging facially invalid judgments. Such petitions are timely under RCW 10.73.090 and the “mixed” analysis of RCW 10.73.100 does not apply. Id. at 349, 351; accord In re the Personal Restraint of Hankerson, 149 Wn.2d 695, 700, 72 P.3d 703 (2003) (explaining and reaffirming Stoudmire).

In Stoudmire, for example, the petitioner raised seven claims in his PRP. Stoudmire, 141 Wn.2d at 347. Two claims were timely under the “facial invalidity” provision of RCW 10.73.090, one claim was arguably timely under the “significant change in the law” exception of RCW 10.73.100, and at least three of the other four claims were time-barred. Id. at 349-50. This Court dismissed all of the claims purporting to fall within RCW 10.73.100 – even the one that arguably fell within an exception – because the petitioner submitted a mixed petition. Id. at 350. But this Court did not dismiss the claims that fell within RCW 10.73.090’s “facial invalidity” exception to the time bar. Rather, the Court reached the merits and granted relief. Id. at 356-57. The same should occur here.

The State suggests that the judgment and sentence is not invalid on its face because more factual development is necessary to determine the constitutionality of the community custody conditions. Response at

11. This argument is foreclosed by Bahl and Sanchez Valencia. Although those cases were direct appeals not implicating RCW 10.73.090, this Court addressed the same argument in determining whether the issues were ripe. E.g. Sanchez Valencia, 169 Wn.2d at 788-89. This Court concluded that the issues were purely legal and did not depend on the particulars of the petitioners' conduct:

[T]he question of whether the condition is unconstitutionally vague does not require further factual development. The condition at issue places an immediate restriction on the petitioners' conduct, without the necessity that the State take any action. ... [T]he question is not fact-dependant; either the condition as written provides constitutional notice and protection against arbitrary enforcement or it does not.

Id. The same is true here: either the conditions as written provide constitutional notice and protection against arbitrary enforcement or they do not. No further factual development is necessary. The conditions are facially invalid under Bahl and Sanchez Valencia, rendering the petition timely under RCW 10.73.090.

b. The acting chief judge erred in dismissing the petition as "successive" rather than transferring it to this Court. In addition to erroneously dismissing Mr. Smith's PRP as "mixed," the acting chief judge of Division Two dismissed the petition on the alternative basis that

it was “successive”.⁵ As the Commissioner of this Court recognized, this, too, was in error. Where a petitioner raises a new ground for relief in a successive personal restraint petition filed in the Court of Appeals, the proper procedure is to transfer the petition to this Court, not dismiss the petition. In re the Personal Restraint of Perkins, 143 Wn.2d 261, 265-66, 19 P.3d 1027 (2001). Indeed, transfer is mandatory. Id. at 266 (citing RCW 2.06.030).⁶

Although in some circumstances this Court may dismiss a successive PRP under the “abuse of the writ” doctrine, this doctrine does not apply unless “petitioner was represented by counsel throughout postconviction proceedings.” Id. at 265 n.5 (quoting Stoudmire, 141 Wn.2d at 352). Mr. Smith filed all of his PRPs pro se.⁷ Accordingly, he has not abused the writ, and dismissal would be inappropriate. Perkins, 143 Wn.2d at 264-66 (second PRP not procedurally barred because petitioner filed both pro se; Court reached merits and granted relief); Stoudmire, 141 Wn.2d at 351 (second PRP not procedurally barred even though petitioner had counsel for first PRP, where he filed second PRP

⁵ The State does not defend this basis for dismissal in its response.

⁶ The Court of Appeals may dismiss a successive PRP only if it raises the same issues as a prior PRP and those issues were “heard and determined on the merits.” RAP 16.4(d); Perkins, 143 Wn.2d at 264, 267. Here, it Mr. Smith raises new issues not raised or addressed by the court in his previous PRPs, so dismissal was improper. Ex. B (orders dismissing previous PRPs); see also Motion for Discretionary Review at 6.

⁷ See Acords entries for case numbers 307952, 336855, 343762, 382725, and 406691.

pro se; Court reached merits and granted relief). As in Perkins and Stoudmire, this Court should address the merits of Mr. Smith's PRP and grant relief.

c. Under *Bahl* and *Sanchez Valencia*, there is neither a ripeness problem nor a retroactivity issue. Previous pleadings and rulings in this case raised the possibility of either a ripeness issue or, conversely, a retroactivity issue. Neither doctrine precludes relief here.

Bahl and Sanchez Valencia already held that an individual need not wait until a vague condition is enforced against him to challenge its constitutionality. Sanchez Valencia, 169 Wn.2d at 790; Bahl, 164 Wn.2d at 752. This Court so held because the issues raised were primarily legal, they did not require further factual development, the challenged actions were final, and the court's refusal to address the issue would create a hardship for the parties affected. Sanchez Valencia, 169 Wn.2d at 786 (citing Bahl, 164 Wn.2d at 751). A hardship would be created if the court refused to reach the issue because the individual would have to "discover the meaning of his supervised release condition only under continual threat of reimprisonment, in sequential hearings before the court. Such an exercise is not necessary, nor will it clarify the issues." Bahl, 164 Wn.2d at 748 (citing Loy, 237 F.3d at 258). Mr. Smith raises the same issues

here that were raised in Bahl and Sanchez Valencia. The arguments are ripe; Mr. Smith did not raise these issues too early.

For the same reason, it would make no sense to say Mr. Smith raised these issues too late. Unless this Court reaches the merits of Mr. Smith's petition, he will be subject to conditions this Court has held are unconstitutionally vague. He will not know what conduct is prohibited. He will be subject to arbitrary enforcement. This Court should prevent this outcome by striking the unconstitutional conditions.

Retroactivity principles do not come into play here because this case does not involve a new rule of criminal procedure. See Yates v. Aiken, 484 U.S. 211, 216-18, 108 S.Ct. 534, 98 L.Ed.2d 546 (1988).

Although Justice Harlan believed that most collateral attacks on final judgments should be resolved by reference to the state of the law at the time of the petitioner's conviction, he emphasized the proposition that many "new" holdings are merely applications of principles that were well settled at the time of conviction.

Id. at 216 (granting habeas relief despite government's argument that relevant case should not apply retroactively, because relevant case "did not announce a new rule"); see also Teague v. Lane, 489 U.S. 288, 307, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) (explaining Yates). Vague sentencing conditions were prohibited under the Due Process Clause long before this Court decided Bahl and Sanchez Valencia. Those cases merely

applied the rule against vagueness to the specific conditions at issue.

Thus, retroactivity principles do not bar relief for Mr. Smith. Yates, 484 U.S. at 216-17.⁸

d. The court has a duty to correct an unlawful sentence regardless of a plea agreement. The State's primary argument in this case appears to be that Mr. Smith must be held to these vague conditions because he agreed to them as part of his plea bargain. Response at 2, 7. But Mr. Smith never explicitly waived a vagueness challenge. In any event, a plea bargaining agreement cannot exceed the authority given to the courts. Goodwin, 146 Wn.2d at 870 (citing In re the Personal Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980)). A defendant who pleads guilty does not thereby waive a challenge to an illegal sentence, even if he agreed to the illegal terms. Id. at 872, 874. "[W]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered." Id. at 869 (quoting In re the Personal Restraint of Carle, 93 Wn.2d 31, 33, 604 P.2d 1293 (1980)).⁹

⁸ The holding as to ripeness also was not a "new rule." As this Court noted, "courts routinely reach[ed] the merits of preenforcement vagueness challenges to sentencing conditions" prior to Bahl. Bahl, 164 Wn.2d at 745.

⁹ Furthermore, a constitutional violation resulting in actual prejudice may be raised for the first time in a PRP. Nichols, 2011 WL 1598634 at *2 (citing In re the Personal Restraint of Hews, 99 Wn.2d 80, 660 P.2d 263 (1983)).

Additionally, it would make no sense to say a person must be held to vague conditions because he agreed to them. Because the conditions are vague, Mr. Smith's understanding of what he agreed to and a community corrections officer's understanding of the condition may be entirely different. A hearings officer may have yet a third interpretation of the condition. The judge who imposed the condition may have had a different understanding altogether. With whose interpretation would a defendant who pled guilty be forced to comply? Theoretically, the defendant only agreed to his own understanding of the condition, but it is doubtful that is how it would be enforced. These problems show that the rule from Goodwin must be applied in the context of vague sentencing conditions just as it is applied in the context of an erroneous term of incarceration. In other words, the court has the authority and duty to strike the vague conditions regardless of the guilty plea.

In sum, this Court's decisions in Bahl and Sanchez Valencia mandate that the conditions prohibiting pornography and paraphernalia be stricken from Mr. Smith's judgment and sentence because they are unconstitutionally vague. Mr. Smith therefore respectfully requests that this Court grant his petition on these grounds.

D. CONCLUSION

For the reasons set forth above and in his previous briefing, petitioner William Smith asks this Court to grant his personal restraint petition, strike the conditions prohibiting possession of “pornographic material” and “any paraphernalia that can be used for the ingestion or processing of controlled substances,” and remand for resentencing.

DATED this 31st day of August, 2011.

Respectfully submitted,

/s/ Lila J. Silverstein
Lila J. Silverstein – WSBA 38394
Washington Appellate Project
Attorney for Petitioner

Exhibits Attached to Supplemental Brief of Petitioner
No. 84861-1
In re the Personal Restraint of William J. Smith

Exhibit A	Judgment and Sentence
Exhibit B	Orders dismissing previous PRPs
Exhibit C	Pre-trial Offer

EXHIBIT A

C-21

HARP

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FILED

AUG 05 2002

JoAnne McBride, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK

02 9 04081 0

STATE OF WASHINGTON, Plaintiff,
v
WILLIAM JOSEPH SMITH
aka
Defendant
SID: WA16013984
DOB: 03/21/1961

No 02-1-00234-0
JUDGMENT AND SENTENCE (JS)
PRISON - COMMUNITY
PLACEMENT/COMMUNITY CUSTODY
NON PERSISTENT OFFENDER -
RCW 9.94A.712
 Clerk's action required Paragraph 5.7

I. HEARING

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

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS.

2.1 CURRENT OFFENSE(S): The defendant was found guilty on MAY 9, 2002
(Date)

by plea jury-verdict bench trial of.

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A 44 076	10/29/2001
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	04/23/2001 to 10/29/2001

as charged in the Information.

The court finds that the Defendant is subject to sentencing under RCW 9 94A.712.

- A special verdict/finding for use of firearm was returned on Count(s) _____
RCW 9 94A 602, 510
- A special verdict/finding for use of deadly weapon other than a firearm was returned on
Count(s) _____, RCW 9 94A.602

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- A special verdict/finding of sexual motivation was returned on Count(s) _____, RCW 9 94A.836
- A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count(s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district, or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of, a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030,
- This case involves kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent RCW 9A 44.130
- The court finds that the offender has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.
- The crimes charged in Count(s) _____ is/are Domestic Violence offense(s) as that term is defined in RCW 10 99.020:
- A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____, RCW 9.94A, RCW 69.50.401(a), RCW 69.50.440.
- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are Count(s) _____, RCW 9.94A.589
- Additional misdemeanor crime(s) pertaining to this cause number are contained in a separate Judgment and Sentence.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number) _____

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

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

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- The court finds that the following prior convictions are one offense for purposes of determining the offender score RCW 9.94A.525: _____
- The following prior convictions are not counted as points but as enhancements pursuant to RCW 4B.01 520: _____
- The State has moved to dismiss count(s) 02 (RAPE OF A CHILD IN THE SECOND DEGREE), 03 (CHILD MOLESTATION IN THE SECOND DEGREE)

2.3 SENTENCING DATA.

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS*	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
01.	3	XI	102 MONTHS to 136 MONTHS			LIFE \$50000
04.	3	V.	15 MONTHS to 20 MONTHS			5 YEARS \$10000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520

- Additional current offense sentencing data is attached in Appendix 2.3.
- 2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence above within below the standard range for Count(s) _____ Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney did did not recommend a similar sentence
- 2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.750/753
- 2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows:

_____, If no formal written plea agreement exists, the agreement is as set forth in the Defendant's Statement on Plea of Guilty.

III. JUDGMENT

- 3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.
- 3.2 The Court DISMISSES Counts 02 (RAPE OF A CHILD IN THE SECOND DEGREE), 03 (CHILD MOLESTATION IN THE SECOND DEGREE).
- The defendant is found NOT GUILTY of Counts .
- 3.3 There do do not exist substantial and compelling reasons justifying an exceptional sentence outside the presumptive sentencing range

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

\$To Be Set	Restitution to be paid to <input type="checkbox"/> Victim(s) and amounts to be set by separate court order	RCW 9.94A.750/753
\$110.00	Criminal filing fee	RCW 9.94A.505
\$500.00	Victim assessment	RCW 7.68.035
\$100.00	Collection of biological sample (for crimes committed on or after July 1, 2002)	Chapter 289, Laws of 2002

\$595.00	Fees for court appointed attorney	RCW 9.94A.505/760/030
\$500.00	Fine	RCW 9A 20.021
\$ _____	Drug fund contribution to be paid within two (2) years Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A 760
\$ _____	Crime lab fee	RCW 43.43.690
\$ _____	Witness costs	RCW 10.01.160 and RCW 2.40.010
Court costs, including:		RCW 9.94A.030, 9.94A 505, 9.94A.760, 10.01.160, 10 46.190
\$ <u>5.05</u>	Sheriff service fees	RCW 10.01 160 and RCW 36.18.040
\$ _____	Jury demand fee	RCW 10.01.160 and RCW 10.46.190
\$ _____	Court appointed defense expert and other defense costs	RCW 9.94A.505, 760, RCW 9.94A.030
\$ _____	Extradition costs	RCW 9.94A 505
\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) To _____ (List Law Enforcement Agency)	RCW 38.52.430
\$ _____	Other Costs for: _____	RCW 9 94A.760

- The above financial obligations do not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered.
RCW 9 94A.750/753. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____
- The Department of Corrections may immediately issue a Notice of Payroll Deduction.
RCW 9.94A.7602
- All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here. Not less than \$ _____ per month commencing _____, RCW 9 94A.760
- In addition to the other costs imposed herein, the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate of \$ _____, RCW 9.94A 760
- The defendant shall pay the costs of services to collect unpaid legal financial obligations.

RCW 36.18 190

- The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments, RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160
- 4.2 DNA TESTING The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement RCW 43.43.754
- HIV TESTING. The defendant shall be tested and counseled for HIV as soon as possible and the defendant shall fully cooperate in the testing and counseling, RCW 70.24.340
- 4.3 The defendant shall not have contact with E.J.W. (female, DOB: 10/20/88) and A.N.W. (female, DOB: 4/23/87) including, but not limited to, personal, verbal, telephonic, electronic, written or contact through a third party for LIFE years (not to exceed the maximum statutory sentence).
- Supplemental Domestic Violence Protection Order or Antiharassment Order attached as Form 4.3.
- 4.4 OTHER: _____

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

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

136 days/months on Count 01

20 days/months on Count 04

Actual number of months of total confinement ordered is: 136 mo.
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

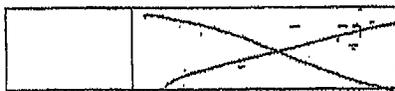
All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

Confinement shall commence immediately unless otherwise set forth here: _____

(b) CONFINEMENT 9.94A.712. The Defendant is sentenced to the following term of confinement in the custody of the Department of Corrections:

COUNT	SENTENCE RANGE
01	<u>136 mo.</u> ← (minimum) to <u>life</u> ← (maximum)



(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.506,

Credit for 131 days time served prior to this date is given, said confinement being solely related to the crimes for which the defendant is being sentenced.

4.6 **COMMUNITY PLACEMENT** is ordered on Counts _____ for _____ months

COMMUNITY CUSTODY for Count I, sentenced under RCW 9.94A.712 is ordered for any period of time the Defendant is released from total confinement before the expiration of the maximum sentence.

COMMUNITY CUSTODY is ordered on Count IV for a range from 36 to 48 months or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700/705(9) for community placement offenses which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Community custody follows a term for a sex offense -RCW 9.94A.506 Use paragraph 4.7 to impose community custody following work ethic camp. Community placement/custody shall be for 12 months or for the period of earned early release, whichever is longer, for sex offenses or serious violent offenses committed between 7/1/88 and 7/1/90, Assault 2, Assault of a Child 2, deadly weapon enhancements and drug offenses under RCW 69.50 or 69.52; 24 months or for the period of early earned release, whichever is longer, for sex offenses occurring between 7/1/90 and 6/6/96, serious violent offenses, and vehicular homicides or vehicular assaults; 36 months or for the period of earned early release, whichever is longer, for sex offenses committed after 6/6/96.]

The defendant shall be on community supervision/community custody under the charge of the Department of Corrections, and shall follow and comply with the instructions, rules and regulations promulgated by said Department for the conduct of the defendant during the period of community supervision/community custody and any other conditions stated in this Judgment and Sentence.

While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at Department of Corrections-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody, (5) pay supervision fees as determined by the Department of Corrections, (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections. The residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement. The defendant's conditions of Community Placement/Community Custody include the following:

- The defendant shall not consume any alcohol
- Defendant shall have no contact with E J.W. (female, DOB: 10/20/86) and A N.W. (female, DOB: 4/23/87)
- Defendant shall remain within outside of a specified geographical boundary, to wit:

- For Sentences imposed under RCW 9A 712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by the Department of Corrections. Emergency conditions shall not remain in effect longer than seven working days unless approved by the Indeterminate Sentence Review Board pursuant to law. RCW 9.94A.713
- Other conditions may be imposed by the court or Department during community custody, or are set forth here
-
- The conditions of community supervision/community custody shall begin immediately or upon the defendant's release from confinement unless otherwise set forth here:
-
- Defendant shall not violate any federal, state or local criminal laws, and shall not be in the company of any person known by him/her to be violating such laws.
- Defendant shall not commit any like offenses.
- Defendant shall notify his/her community corrections officer within forty-eight (48) hours of any arrest or citation
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be convicted felons, or presently on probation, community supervision/community custody or parole for any offense, juvenile or adult, except immediate family. Additionally, the defendant shall not initiate or permit communication or contact with the following persons:
-
- Defendant shall not have any contact with other participants in the crime, either directly or indirectly
- Defendant shall not initiate or permit communication or contact with persons known to him/her to be substance abusers
- Defendant shall not possess, use or deliver drugs prohibited by the Uniform Controlled Substances Act, or any legend drugs, except by lawful prescription. The defendant shall notify his/her community corrections officer on the next working day when a controlled substance or legend drug has been medically prescribed
- Defendant shall not possess or use any paraphernalia that can be used for the ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances including scales, pagers, cellular phones, police scanners, and hand held electronic scheduling and data storage devices.
- Defendant shall not frequent known drug activity areas or residences.
- Defendant shall not use or possess alcoholic beverages at all to excess.
The defendant will will not be required to take monitored antabuse per his/her community corrections officer's direction, at his/her own expense, as prescribed by a physician.
- Defendant shall not be in any place where alcoholic beverages are sold by the drink for consumption or are the primary sale item.
- Defendant shall undergo an evaluation for treatment for substance abuse mental health anger management treatment and fully comply with all recommended treatment

- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a substance abuse mental health anger management treatment program as established by the community corrections officer and/or the treatment facility.
- Based upon the Pre-Sentence Report, the court finds reasonable grounds to exist to believe the defendant is a mentally ill person, and this condition was likely to have influenced the offense. Accordingly, the court orders the defendant to undergo a mental status evaluation and participate in outpatient mental health treatment. Further, the court may order additional evaluations at a later date, if deemed appropriate.
- Treatment shall be at the defendant's expense and he/she shall keep his/her account current if it is determined that the defendant is financially able to afford it.
- Defendant shall submit to urine, breath or other screening whenever requested to do so by the treatment program staff and/or the community corrections officer.
- Defendant shall not associate with any persons known by him/her to be gang members or associated with gangs.
- Defendant shall not wear or display any clothing, apparel, insignia or emblems that he/she knows are associated with or represent gang affiliation or membership as determined by the community corrections officer.
- Defendant shall not possess any gang paraphernalia as determined by the community corrections officer.
- Defendant shall not use or display any names, nicknames or monikers that are associated with gangs.
- Defendant shall comply with a curfew, the hours of which are established by the community corrections officer.
- Defendant shall attend and successfully complete a shoplifting awareness educational program as directed by the community corrections officer.
- Defendant shall attend and successfully complete the Victim Awareness Educational Program as directed by the community corrections officer.
- Defendant shall not accept employment in the following field(s):

- Defendant shall not possess burglary tools.
- Defendant's privilege to operate a motor vehicle is suspended/revoked for a period of one year; two years if the defendant is being sentenced for a vehicular homicide.
- Defendant shall not operate a motor vehicle without a valid driver's license and proof of liability insurance in his/her possession.
- Defendant shall not possess a checkbook or checking account.
- Defendant shall not possess any type of access device or P.I.N. used to withdraw funds from an automated teller machine.
- Defendant shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the Department of Corrections.
- Defendant shall not be eligible for a Certificate of Discharge until all financial obligations are paid in full and all conditions/requirements of sentence have been completed including no contact provisions.
- Defendant shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but

are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.

- Defendant shall not have any contact with minors. Minors mean persons under the age of 18 years.
- Defendant shall enter into, cooperate with, fully attend and successfully complete all in-patient and outpatient phases of a sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. "Cooperate with" means the offender shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity
- Defendant shall submit to periodic polygraph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody.
- Defendant shall submit to periodic plethysmograph examinations at the direction of his/her community corrections officer to ensure compliance with the conditions of community placement/custody
- Defendant shall not possess or use any pornographic material or equipment of any kind and shall not frequent establishments that provide such materials for view or sale.
- Defendant shall sign necessary release of information documents as required by the Department of Corrections.
- Defendant shall adhere to the following additional crime-related prohibitions or conditions of community placement/community custody:

4.7 The Bail or release conditions previously imposed are hereby exonerated and the clerk shall disburse it to the appropriate person(s).

4.8 This case shall not be placed on inactive or mail-in status until all financial obligations are paid in full.

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

4.10 Other

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten (10) years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of

the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7606

5.4 **RESTITUTION HEARING.**

Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.7 The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, who must revoke the defendant's driver's licenses. RCW 46.20.285.

Cross off if not applicable:

5.8 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense or kidnapping offense (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in Chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), 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.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 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 out a vocation in Washington, or attend school in Washington, you must register within 30 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

If you change your residence within a county, you must send 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 written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give 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.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the

time of your release from custody or within 48 hours excluding weekends and holidays after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require you to list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4 24 550

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 a 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

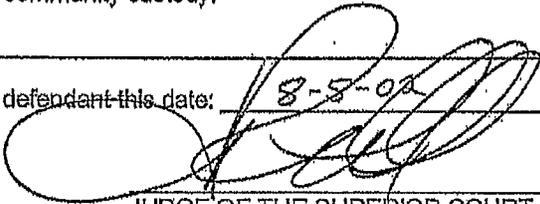
If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within 5 days of the entry of the order. RCW 9A.44.130(7).

5.9 Persistent Offense

- The crime(s) in Count I is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030 (28 & 32(a)), 9.94A.505
- The crime(s) in Count I is/are one of the listed offenses in RCW 9.94A.030 (32)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

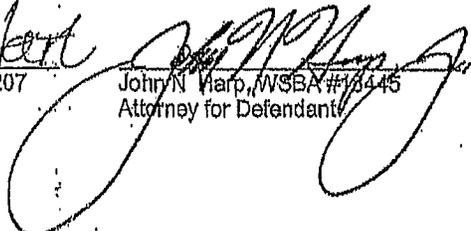
5.10 OTHER: _____

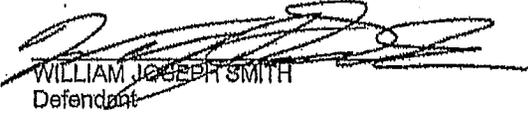
DONE in Open Court and in the presence of the defendant this date: 8-5-02


JUDGE OF THE SUPERIOR COURT

Print Name: JOHN P. WULLE


Kathleen A. Hart, WSBA #24207
Deputy Prosecuting Attorney


John N. Harp, WSBA #13445
Attorney for Defendant


WILLIAM JOSEPH SMITH
Defendant

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff

NO. 02-1-00234-0

WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS

v

WILLIAM JOSEPH SMITH,

aka

Defendant.

SID: WA16013984

DOB: 03/21/1961

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	RAPE OF A CHILD IN THE SECOND DEGREE	9A 44.076	10/29/2001
04	CHILD MOLESTATION IN THE THIRD DEGREE	9A 44.089	04/23/2001

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of .

COUNT	CRIME	SENTENCE RANGE TERM
01	RAPE OF A CHILD IN THE SECOND DEGREE	156 mo.
04	CHILD MOLESTATION IN THE THIRD DEGREE	20 mo.

These terms shall be served concurrently to each other unless specified herein.

The defendant has credit for 131 days served.

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable



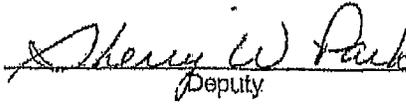
John P. Wulle

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE

8/5/02

JOANNE McBRIDE, Clerk of the
Clark County Superior Court

By:



Deputy



CAUSE NUMBER of this case: 02-1-00234-0

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

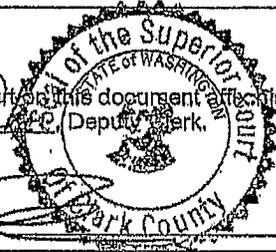
WITNESS my hand and seal of the said Superior Court affixed this date: _____

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

IDENTIFICATION OF DEFENDANT WILLIAM JOSEPH SMITH		
SID No. WA16013984 (If no SID take fingerprint card for State Patrol)	Date of Birth 03/21/1961	
Driver License No SM1THWJ390D1	Driver License State: WA	
FBI No. 850364V9	Local ID No. (CFN): 129052	
SSN	Corrections No.	
PCN No. _____	Other _____	
Alias name, SSN, DOB:		
Race: W	Ethnicity	Sex: M

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Sherry W. Park, Deputy Clerk.

Dated: 8/5/02



DEFENDANT'S SIGNATURE [Signature]

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



EXHIBIT B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

WILLIAM JOSEPH SMITH,

Petitioner.

No. 30795-2-II

ORDER DISMISSING PETITION

FILED
COURT OF APPEALS
DIVISION II
04 JAN 22 PM 2:24
STATE OF WASHINGTON
BY [Signature] DEPUTY

William Joseph Smith seeks relief from personal restraint imposed after he pleaded guilty to second degree rape of a child and third degree child molestation. Smith contends that he received an unlawful exceptional sentence, that he received ineffective assistance of counsel, and that his offender score is incorrect.

Contrary to Smith's assertions, he did not receive an exceptional sentence. Rather, pursuant to RCW 9.94A.712(3), he was sentenced to a minimum term in custody within the standard range and to a maximum term for the crime's statutory maximum.¹ The standard range for Smith's rape conviction was 102-136 months and the statutory maximum was life. See RCW 9A.20.021(1)(a); RCW 9A.44.076(2) (second degree rape of a child is a Class A offense punishable by life in prison). Accordingly, the trial court sentenced Smith within the standard range when it imposed a minimum term of 136 months and a maximum term of life.

¹A sentence under this statute is required for nonpersistent offenders convicted of second degree rape of a child. RCW 9.94A.712(1)(a)(i). The trial court could have sentenced Smith to a minimum term outside the standard range--an exceptional sentence--if it found substantial and compelling reasons to do so. RCW 9.94A.712(3); RCW 9.94A.535. The court did not impose such a sentence.

Smith contends that he received ineffective assistance of counsel because his attorney led him to believe that he would receive a SSOSA² sentence and did not file an appeal. To prove ineffective assistance of counsel in the guilty plea context, a defendant must show that his counsel failed to actually and substantially assist him in deciding whether to plead guilty, and that, but for counsel's failure to offer adequate advice, he would not have pleaded guilty. *State v. Osborne*, 102 Wn.2d 87, 99 (1984); *In re Peters*, 50 Wn. App. 702, 708 (1988). Even if Smith's attorney was deficient in explaining the plea's sentencing consequences, Smith does not state that he would not have pleaded guilty had that explanation been more straightforward. Indeed, the relief he now requests is not withdrawal of his plea but resentencing. Given the mandatory nature of RCW 9.94A.712 and the discretionary nature of SSOSA sentencing, this relief is not available. *See State v. Frazier*, 84 Wn. App. 752, 753 (1997).

Smith does not otherwise challenge his plea, and he does not show that the trial court abused its discretion in declining to give him a SSOSA sentence. He thus does not show that he was prejudiced by his attorney's failure to file an appeal, and this claim of ineffective assistance of counsel fails as well. *See State v. Bowerman*, 115 Wn.2d 794, 808 (1990) (counsel was ineffective if his performance was deficient and if that deficiency was prejudicial).

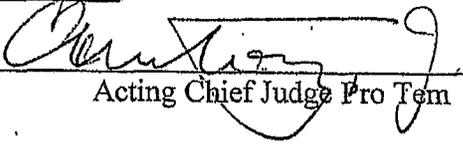
Finally, Smith argues that his offender score should be zero instead of three. Where a defendant is sentenced for two or more current offenses, the other current offenses are treated as prior offenses for offender score purposes. RCW 9.94A.589(1)(a). Because both of Smith's offenses were sex offenses, each counted for three points in

² Special sex offender sentencing alternative. RCW 9.94A.670. A SSOSA sentence may be imposed in

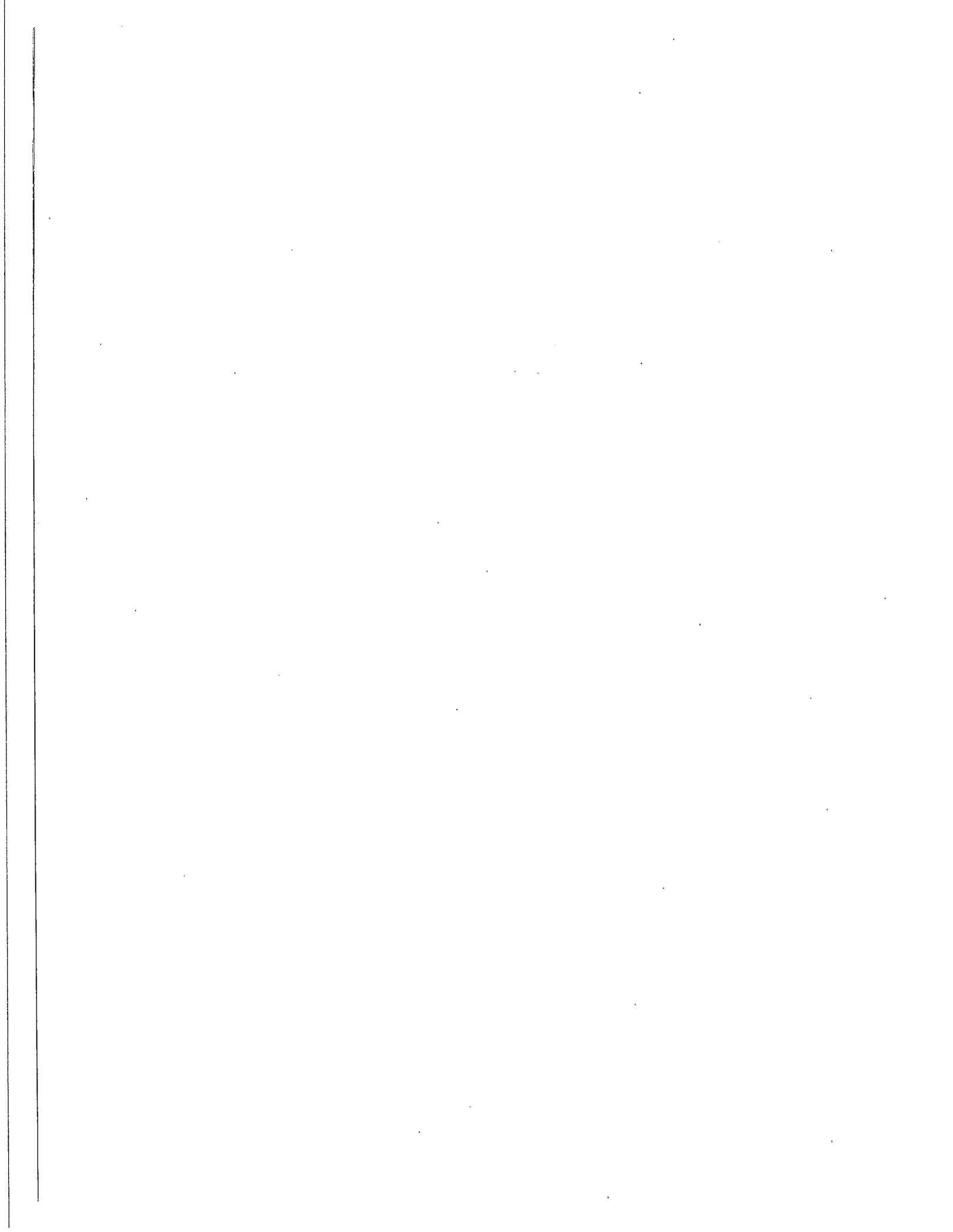
three points in calculating the offender score for the other current offense. RCW 9.94A.525(16). The trial court properly calculated the offender score for each offense as three.

Smith does not demonstrate that he is entitled to relief. Accordingly, it is hereby ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 22nd day of January, 2004.


Acting Chief Judge Pro Tem

cc: William Joseph Smith
Clark County Clerk
County Cause No. 02-1-00234-0
Kathleen A. Hart



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON
BY DEPO: [Signature]

In re the
Personal Restraint Petition of

WILLIAM JOSEPH SMITH,

Petitioner.

No. 33685-5-II

ORDER DISMISSING PETITION

William Joseph Smith seeks relief from personal restraint imposed following his 2002 guilty plea convictions of second degree rape of a child and third degree child molestation. He argues that (1) his sentence and community custody imposed under RCW 9.94A.712 violate *Blakely v. Washington*, 542 U.S. 296 (2004); (2) his community custody violates the prohibition against double jeopardy; (3) his guilty plea was invalid and his due process rights were violated because he did not understand the sentencing consequences when he entered his plea; and (4) the restraint imposed under RCW 9.94A.712 violates equal protection and the prohibition against cruel and unusual punishment. This petition is dismissed.¹

RCW 10.73.090(1) provides:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

¹ This is petitioner's second personal restraint petition. See Order Dismissing Petition (No. 30795-2-II; filed 1/22/2004). Because this petition is dismissed as a time-barred mixed petition, this court does not consider whether it is also a successive petition under RCW 10.73.140. *In re Turay*, 150 Wn.2d 71, 86-87 (2003) (court of appeals must dismiss a successive petition if it is time barred).

A personal restraint petition is a collateral attack on a judgment. RCW 10.73.090(2).

Petitioner's judgment and sentence became final in August 2002. *See* RCW 10.73.090(3)(a). When petitioner filed the present petition on July 6, 2005, more than one year had elapsed. Accordingly, this petition is time barred unless petition can show that (1) his judgment and sentence is facially invalid or not rendered by a court of competent jurisdiction; or (2) *each* of his potentially time barred issues falls under one or more of the six exceptions to the time bar stated in RCW 10.73.100.² *See also In re Stoudmire*, 141 Wn.2d 342, 350 (2000).

Petitioner first appears to argue that his sentence under RCW 9.94A.712 violates *Blakely*. The Washington State Supreme Court has recently held that *Blakely* does not apply retroactively to cases that were final before the United State Supreme Court issue *Blakely* in 2004. *State v. Evans*, 154 Wn.2d 438, 448-49 (2005). Petitioner's convictions were final in 2002; accordingly, even assuming petitioner received an exceptional sentence, he cannot show that his judgment and sentence was facially invalid on this

² RCW 10.73.100 provides:

The time limit specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) Newly discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion;

(2) The statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;

(3) The conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution;

(4) The defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;

(5) The sentence imposed was in excess of the court's jurisdiction; or

(6) There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

basis or that the trial court lacked competent jurisdiction. Additionally, because *Blakely* does not operate retroactively, he cannot show that any of the exceptions to the time bar apply to this argument. Accordingly, unless petitioner can show that his remaining arguments implicate the facial validity of his judgment and sentence or the competent jurisdiction of the court, this petition must be dismissed as a mixed petition. *Stoudmire*, 141 Wn.2d at 350.

Petitioner's second, third, and fourth arguments do not implicate the facial validity of the judgment and sentence or the competent jurisdiction of the trial court. Thus, this petition must be dismissed in its entirety.³ *Stoudmire*, 141 Wn.2d at 350.

Accordingly, it is hereby

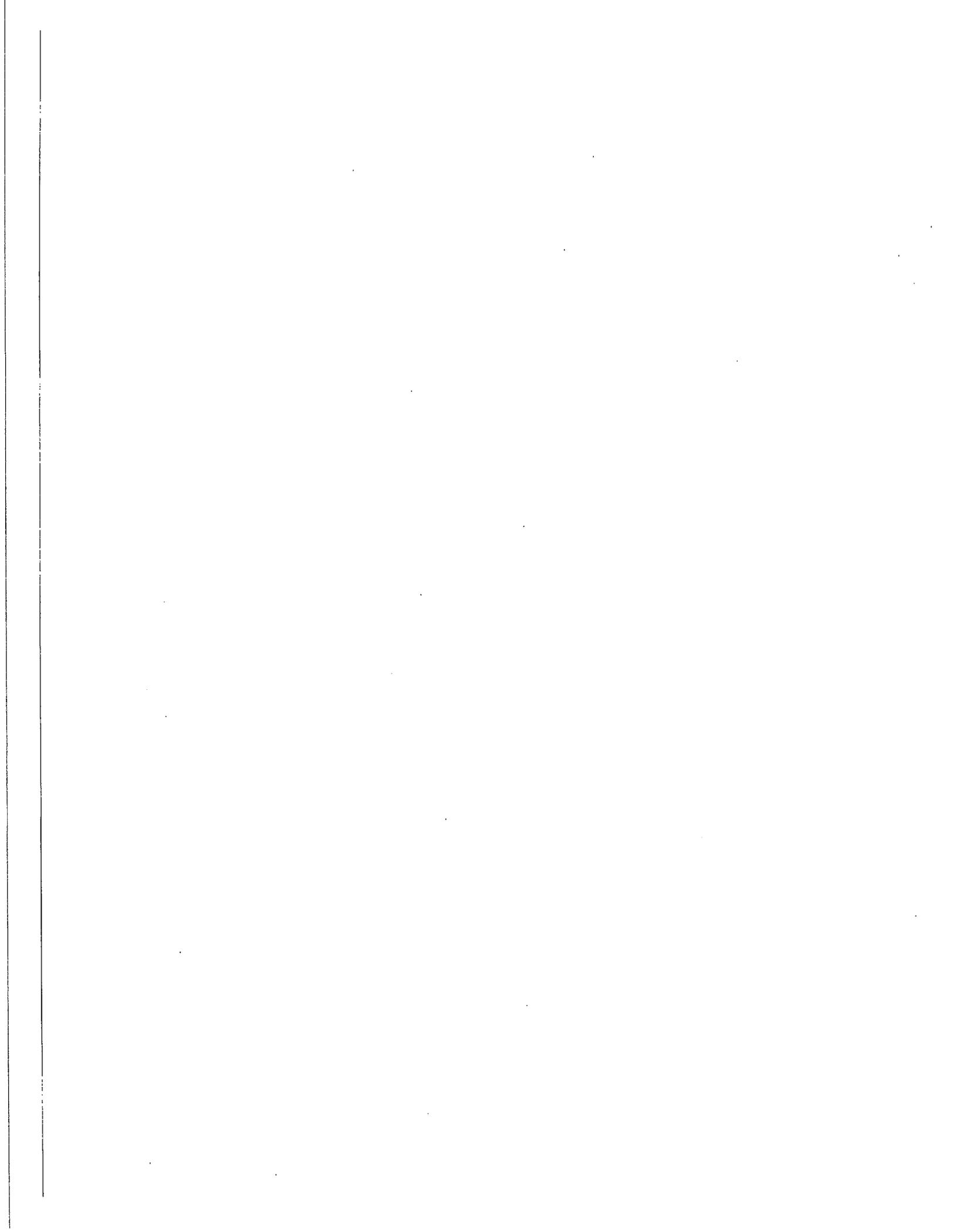
ORDERED that this petition is dismissed under RAP 16.11(b).

DATED this 20 day of November, 2005.


Chief Judge

cc: William Joseph Smith
Clark County Clerk
County Cause No(s). 02-1-00234-0
Arthur D. Curtis

³ To the extent any of these remaining arguments fall under an exception to the time bar listed in RCW 10.73.100, petitioner is not precluded from filing those claims in a subsequent petition. See *In re Stenson*, 150 Wn.2d 207, 221 (2003).



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the
Personal Restraint Petition of

WILLIAM J. SMITH,

Petitioner.

No. 34376-2-II

ORDER DISMISSING PETITION

FILED
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STATE OF WASHINGTON
BY DEPUTY

In his third petition, William J. Smith seeks relief from personal restraint imposed following his guilty plea conviction of second degree rape of a child and third degree child molestation. He contends he pleaded guilty involuntarily because his plea form did not tell him he would receive an indeterminate life sentence under RCW 9.94A.712. He also contends his sentence violates double jeopardy. We dismiss his untimely mixed petition.¹

ONE YEAR TIME-BAR

A personal restraint petition is a form of collateral attack. RCW 10.73.090(2). Restrained persons are barred from filing petitions or other collateral attacks more than a year after the judgment becomes final. RCW 10.73.090(1), RAP 16.4(d). But if a petitioner proves the judgment is facially invalid or the issuing court lacked jurisdiction, the petitioner may collaterally attack the judgment at any time. RCW 10.73.090(1).

In addition, even when the one year time-bar applies, an untimely petition is not time-barred if it "is based solely on one or more of the" six statutory exceptions listed in

¹ Thus, we do not consider whether it is also impermissibly successive under RCW 10.73.140. See *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 86-87, 74 P.3d 1194 (2003).

RCW 10.73.100. All of a petition's claims must fall within one or more of the enumerated exceptions to avoid the time-bar. RCW 10.73.100; *In re Pers. Restraint of Turay*, 150 Wn.2d 71, 85-86, 74 P.3d 1194 (2003); *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 349-51, 5 P.3d 1240 (2000).

If we determine that any one claim does not fall within an exception, then we must dismiss the entire petition as a time-barred "mixed petition." *Turay*, 150 Wn.2d at 86; *In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 700, 702-03, 72 P.3d 703 (2003). We do not analyze the remaining issues to determine whether they are also time-barred; nor do we analyze any issues that are not time-barred.² *Turay*, 150 Wn.2d at 86; *In re Pers. Restraint of Hankerson*, 149 Wn.2d 695, 700, 702-03, 72 P.3d 703 (2003).

ANALYSIS

Petitioner's judgment became final on August 5, 2002, when the trial court filed it. *See* RCW 10.73.090(3)(a). Petitioner filed the current petition on January 6, 2006, more than one year after his judgment became final. His petition is time-barred unless it falls within an exception or unless his judgment is facially invalid.

Petitioner urges his guilty plea was involuntary because he was not informed of a direct consequence, his indeterminate life sentence. He argues this violates his right to due process. In addition, he argues his sentence violates double jeopardy. We did not reach identical claims in his second petition because we dismissed it as mixed and untimely.

Petitioner urges his judgment is facially invalid because his guilty plea form incorrectly told him he would receive a determinate sentence of 102 to 136 months with

36 to 48 months of community custody. But the apparent defect in his plea form does not render his judgment facially invalid. A defect in a plea form is only relevant when it "disclose[s] invalidity in the judgment and sentence." *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 533, 55 P.3d 615 (2002). As in *Hemenway*, Petitioner's apparently incorrect plea form does not reveal that the sentence on the face of the judgment is incorrect or illegal. *See Hemenway*, 147 Wn.2d at 532-33. Instead, his judgment reflects the correct indeterminate life sentence for second degree rape of a child committed after September 1, 2001. *See RCW 9.94A.712*. His judgment is facially valid.³

Nor does Petitioner's involuntary guilty plea claim fall within any of the six time-bar exceptions in RCW 10.73.100. Petitioner's two grounds based on his claim he involuntarily pleaded guilty are time-barred. We thus do not further evaluate his double jeopardy claim. His petition is mixed and untimely. Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b) and Petitioner's request for counsel is denied.

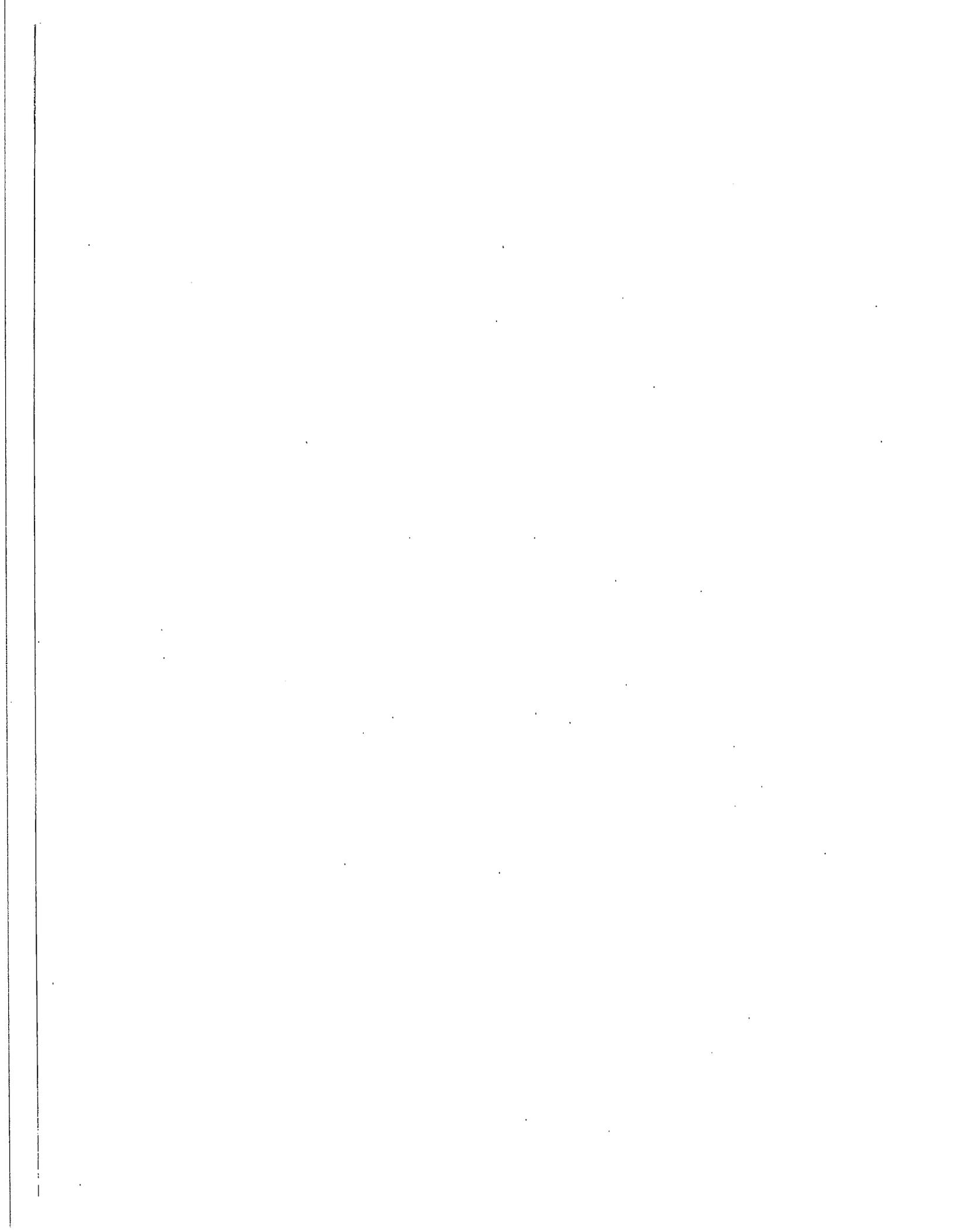
DATED this 11th day of October, 2006.

Van Deren, A.C.J.
Acting Chief Judge

cc: William J. Smith
Clark County Clerk
County Cause No(s). 02-1-00234-0
Michael C. Kinnie

² If an otherwise untimely mixed petition also raises grounds based on the judgment's facial invalidity or the issuing court's lack of jurisdiction, we will consider those. *Stoudmire*, 141 Wn.2d at 349, 351.

³ We also note we do not know what the superior court or anyone else told Petitioner about his potential sentence during his guilty plea hearing.



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON
BY [Signature] DEPUTY

In re the
Personal Restraint Petition of

WILLIAM JOSEPH SMITH,

Petitioner.

No. 38272-5-II

ORDER DISMISSING PETITION

In this, his fourth petition,¹ William Smith again seeks relief from personal restraint imposed following his 2002 pleas of guilty to second degree rape of a child and third degree child molestation. He argues that his guilty plea to second degree rape of a child is facially invalid because he did not know, when he pleaded guilty, that he would be sentenced to a minimum term of 136 months of confinement and a maximum term of life imprisonment. He contends that he agreed to plead guilty and receive a determinate sentence of 102 to 136 months of confinement, to be followed by 36 to 48 months of community custody. He seeks specific performance of that agreement.

RCW 10.73.090(1) requires that a petition be filed within one year of the date that the petitioner's judgment and sentence becomes final. Smith's judgment and sentence became final on August 5, 2002, when he entered his plea of guilty. RCW 10.73.090(3)(a). Smith did not file this petition until July 24, 2008, more than one year

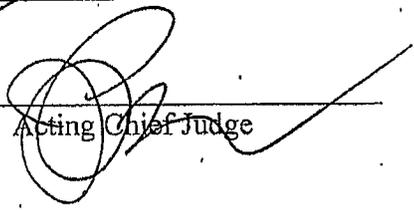
¹ This court denied Smith's first petition, No. 30795-2-II, as frivolous. This court denied his second and third petitions, Nos. 33685-5-II and 34376-2-II, as mixed and time-barred petitions under *In re Pers. Restraint of Stoudamire*, 141 Wn.2d 342, 349-51, 5 P.3d 1240 (2000).

later. None of the exceptions to the one-year time limit, contained in RCW 10.73.100, applies to Smith's petition. Nor does Smith show that his judgment and sentence is facially invalid. While his statement on plea of guilty incorrectly stated that he would receive a determinate sentence, rather than an indeterminate sentence under RCW 9.94A.712, his judgment and sentence correctly states his sentence. The maximum term of life imprisonment is mandatory under RCW 9.94A.712 for a conviction for second degree rape of a child. A defect in the plea form is only relevant when it "disclose[s] invalidity in the judgment and sentence." *In re Pers. Restraint of Hemenway*, 147 Wn.2d 529, 533, 55 P.3d 615 (2002). The defect in Smith's plea form does not disclose invalidity in his judgment and sentence. His judgment and sentence is facially valid. Therefore, this petition is time-barred by RCW 10.73.090(1).

It is hereby

ORDERED that Smith's petition is dismissed as time-barred under RAP 16.11(b).

DATED this 10th day of February, 2009.



Acting Chief Judge

cc: William J. Smith
Clark County Clerk
County Cause No. 02-1-00234-0
Michael C. Kinnie

EXHIBIT C

APPENDIX "A"

STATE v. William Joseph Smith
CAUSE NUMBER: 02-1-00234-0
DATE: 4/11/02
PROSECUTOR: Kathleen Hart

Should the defendant wish to accept the following offer,
this form shall be attached to the Statement of The
Defendant of Plea of Guilty and Judgment and Sentence:

THE FOLLOWING IS THE STIPULATION OF PROSECUTION AND DEFENSE ATTORNEY:

(1) Should the Defendant plead guilty to:

CT. I: Rape of child 2°

CT. IV: Child Molest 3°

(dismiss CTs II, III)

PRETRIAL OFFER - 1

Revised October 3, 2000

	OFFENDER SCORE	SERIOUSNESS LEVEL	PRESUMPTIVE STANDARD RANGE
Count I	<u>3</u>	<u>XI</u>	<u>102-136mo</u> Months
Count II	<u>3</u>	<u>V</u>	<u>15-20</u> Months
Count III	_____	_____	_____ Months
Count IV	_____	_____	_____ Months

(2) then the State and the defense stipulate that the sentence shall be:

- sentencing within the standard range
 remain free to recommend any sentence
that sentence shall be _____

(2) Cont.

- The State shall remain free to recommend any sentence, but the Defense may argue for SSOSA with the following stipulated preconditions:

- A) The Court finds the defendant amenable to treatment and safe to be at large after a state licensed sexual offender treatment evaluation, which shall include in addition to the requirements of RCW 9.94A.120(7)(a)(i), a polygraph (on the issue of full disclosure and other child victims). A plethysmograph may be included if requested by the evaluator. Failure to provide a free disclosure polygraph will result in the State exercising its right pursuant to RCW 9.94A.120(8)(e) to demand a second evaluation.
- B) Defense shall provide to the Prosecutor's Office, no later 7 days prior to sentencing:
- a complete SSOSA evaluation
 - full polygraph report
 - pre- and post-test polygraph interview
 - the sexual history questionnaire and responses
 - any and all other documents as requested by the State.
- C) The defendant shall sign the attached Waiver of Confidentiality Regarding Sex Offender Evaluation at the time of plea of guilty.
- D) If the SSOSA option is used, the parties stipulate to 131 mo. months of the above-listed standard range in prison suspended upon successful entry and completion of all phases of a state licensed sex

PRETRIAL OFFER - 2

Revised October 3, 2000

offender treatment program to be entered into by the sentencing date if out of custody or within 30 days of release from custody.

E) The State further recommends 150 days of local jail to be served:

straight time

work release (if qualified and accepted)

F) The State reserves the right pursuant to RCW 9.94A.120(8)(e) to request a second SSOSA evaluation. If the State makes such a request, the defense stipulates such evaluation shall include a full disclosure polygraph.

G) Court Costs: \$ 110.00
Victim's Comp. Fee: \$ 500.00
Court Appointed Attorney Fee: \$ TO BE SET
Court Appointed Investigator Fee: \$ TO BE SET
Restitution for Victim: \$ TO BE SET
Rape Exam (if applicable) \$ TO BE SET
SSOSA Evaluation Fee: \$ TO BE SET
Fine \$ 500.00
Sheriff's Office Service Fee: \$ TO BE SET

Other: _____ \$ _____

_____ \$ _____

H) The Defendant shall follow all conditions as set by the Pre-Sentence Investigator and the SSOSA evaluator.

I) _____

(3) Should the defendant be placed on any release conditions prior to sentencing and violate any of those conditions then the State's above offer is null and void, and the State shall be free to make any recommendation.

PRETRIAL OFFER - 3

Revised October 3, 2000

(4) Defense stipulates to a waiver of RCW 9.94A.142(1) for the setting of restitution and waives the defendant's presence at a restitution hearing. The hearing shall consist of documents, affidavits, and argument only, pursuant to ER 1101.

(5) By accepting this offer, the defendant stipulates to the conditions as set forth herein

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY PLACEMENT AND/OR SUPERVISION

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall not possess, consume, or deliver controlled substances, except pursuant to a lawfully issued prescription.
5. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
6. You shall not have any direct or indirect contact with the victims, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 48c years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

7. You shall not loiter, enter, or remain in parks, arcades, malls, schools, or any area routinely used by minors or where they are known to congregate.
8. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
9. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.

PRETRIAL OFFER - 5

Revised October 3, 2000

10. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
11. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
12. You shall not possess, use, or own any firearms, ammunition, or deadly weapon. Your community corrections officer shall determine what those deadly weapons are.
13. You shall not possess or consume alcohol.
14. You shall submit to urine, breath, or other screening whenever requested to do so by the program staff or your community corrections officer.
15. You shall not possess any paraphernalia for the use of controlled substances.
16. You shall not be in any place where alcoholic beverages are the primary sale item.
17. You shall take antabuse per community corrections officer's direction.
18. You shall attend an evaluation for abuse of drugs, alcohol, mental health, anger management, or parenting and shall attend and successfully complete all phases of any recommended treatment as established by the community corrections officers and/or treatment facility.
19. You shall participate in Sexual Offender Treatment with a state certified sex offender therapist as directed by your community corrections officer and you shall not terminate nor transfer your treatment provider without prior approval of the therapist, your community corrections officer, the Prosecuting Attorney, and the court after an appropriate hearing.
20. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.

PRETRIAL OFFER - 6

Revised October 3, 2000

21. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
22. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
23. You shall not use/possess pornographic material or equipment of any kind.
24. You shall sign necessary release information documents as required by Department of Corrections or the Prosecuting Attorney.
25. You shall have no association with persons known to be on probation, parole or community placement.
26. If you are in the SSOSA program you shall enter into sex offender treatment with a State certified provider within thirty (30) days of sentencing or release from custody, whichever comes first.
27. If you are in the SSOSA program, your treatment plan shall include polygraph exams as set forth in condition number 19. Your treatment provider and/or the defendant will be required to provide quarterly reports on March 1, June 1, September 1, and December 1 (including the polygraph results) of your compliance with the conditions of treatment. These reports shall go to the community corrections officer and the prosecuting attorney's office. Failure to comply with this provision shall be grounds for the court to mandate transfer of the patient to a different treatment provider.

PRETRIAL OFFER - 7

Revised October 3, 2000

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
) NO. 84861-1
 v.)
)
 WILLIAM SMITH,)
)
 Appellant.)

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2ND DAY OF SEPTEMBER, 2011, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

ANNE MOWRY CRUSER, DPA (X) U.S. MAIL
CLARK COUNTY PROSECUTOR'S OFFICE () HAND DELIVERY
PO BOX 5000 () _____
VANCOUVER, WA 98666-5000

SIGNED IN SEATTLE, WASHINGTON THIS 2ND DAY OF SEPTEMBER, 2011.



X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
Phone (206) 587-2711
Fax (206) 587-2710

OFFICE RECEPTIONIST, CLERK

To: Maria Riley
Cc: Anne.cruser@Clark.wa.gov
Subject: RE: 84861-1.SMITH.SUPPBRF

Rec. 9-2--11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Maria Riley [<mailto:maria@washapp.org>]
Sent: Friday, September 02, 2011 9:52 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Anne.cruser@Clark.wa.gov
Subject: 84861-1.SMITH.SUPPBRF

State v. William Smith
No. 84861-1

Please accept the attached documents for filing in the above-subject case:

SUPPLEMENTAL BRIEF OF PETITIONER

Lila J. Silverstein - WSBA 38394
Attorney for Petitioner
Phone: (206) 587-2711
E-mail: lila@washapp.org

By

Maria Arranza Riley
Staff Paralegal
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Phone: (206) 587-2711
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www.washapp.org