

No. 85377-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE PERSONAL RESTRAINT PETITION OF:

JOSE TOLEDO-SOTELO,

PETITIONER.

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ON COLLATERAL ATTACK FROM THE  
KING COUNTY SUPERIOR COURT / NO. 00-1-05743-8 KNT  
THE HONORABLE GEORGE T. MATTSO, JUDGE  
ORDER DISMISSING PERSONAL RESTRAINT PETITION  
CAO NO. 65460-8-1 / NOVEMBER 8, 2010

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CLERK OF SUPERIOR COURT  
KING COUNTY  
STATE OF WASHINGTON

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MOTION FOR DISCRETIONARY REVIEW / RAP 13.5A

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JOSE TOLEDO-SOTELO DOC#311886  
CLALLAM BAY CORRECTIONS CENTER  
1830 EAGLE CREST WAY  
CLALLAM BAY, WA 98326-9723

TABLE OF CONTENTS

|   | <u>PAGE</u> |
|---|-------------|
| A. IDENTIFY OF PETITIONER . . . . .   | 1           |
| B. COURT OF APPEALS DECISION . . . . .  | 1           |
| C. ISSUES PRESENTED FOR REVIEW:   |             |
| 1. DID THE TRIAL COURT USE THE CORRECT LAWS WHEN SENTENCING<br>TOLEDO-SOTELO?<br>. . . . .  | 2           |
| 2. DOES THE LAW RELATING TO MULTIPLE CURRENT OFFENSES, RCW<br>9.94A.400(1)(a), REQUIRE THE TRIAL COURT CONDUCT A "SAME<br>CRIMINAL CONDUCT" ANALYSIS AS PART OF CALCULATING A<br>DEFENDANT'S OFFENDER SCORE?<br>. . . . . | 2           |
| 3. WAS TOLEDO-SOTELO'S PLEA OF GUILT ENTERED KNOWINGLY,<br>INTELLIGENTLY AND VOLUNTARILY WHEN HE WAS MISINFORMED<br>ABOUT THE CRIME SERIOUSNESS LEVEL, OFFENDER SCORE AND<br>STANDARD RANGE SENTENCE?<br>. . . . .        | 2           |
| 4. IS TOLEDO-SOTELO'S JUDGMENT & SENTENCE INVALID ON ITS<br>FACE WHEN IT CLEARLY REFLECTS THE WRONG CRIME SERIOUSNESS<br>LEVEL, OFFENDER SCORE AND STANDARD RANGE SENTENCE?<br>. . . . .                                  | 2           |
| D. STATEMENT OF THE CASE . . . . .  | 3           |
| E. ARGUMENT WHY REVIEW SHOULD BE GRANTED . . . . .  | 7           |
| F. CONCLUSION . . . . .   | 18          |
| CERTIFICATE/PROOF OF SERVICE/MAILING . . . . .  | 19          |

TABLE OF AUTHORITIES

|   | <u>PAGE</u> |
|---|-------------|
| <b><u>STATE CASES:</u></b>  |             |
| In re the PRP of Breedlove,<br>138 Wn.2d 298 (1999) . . . . .                 | 17          |
| In re the PRP of Cadwallader,<br>155 Wn.2d 867, 123 P.3d 609 (2005) . . . . . | 8           |
| In re the PRP of Goodwin,<br>146 Wn.2d 861 (2002) . . . . .                   | 18          |
| In re the PRP of Hews,<br>99 Wn.2d 80, 660 P.2d 263 (1983) . . . . .          | 15          |
| In re the PRP of James,<br>96 Wn.2d 847, 640 P.2d 18 (1982) . . . . .         | 15          |
| In re the PRP of Johnson,<br>131 Wn.2d 558 (1997) . . . . .                   | 17          |
| In re the PRP of Lachapelle,<br>153 Wn.2d 1, 100 P.3d 805 (2004) . . . . .    | 7           |
| In re the PRP of Runyan,<br>121 Wn.2d 432, 853 P.2d 424 (1993) . . . . .      | 17          |
| In re the PRP of Thompson,<br>141 Wn.2d 712, 10 P.3d 380 (2000) . . . . .     | 18          |
| State v. Boze,<br>47 Wn.App. 477, 735 P.2d 696 (1987) . . . . .               | 12          |
| State v. Freeman,<br>118 Wn.App. 365, 76 P.3d 732 (2003) . . . . .            | 12          |
| State v. Haddock,<br>141 Wn.2d 103 (2003) . . . . .                           | 9           |
| State v. Malone,<br>138 Wn.App. 587 (5/10/2007) . . . . .                     | 8           |
| State v. McDermond,<br>112 Wn.App. 373 (2002) . . . . .                       | 16          |

TABLE OF AUTHORITIES

| <u>STATE CASES:</u> (continued)                                      | <u>PAGE</u> |
|--|-------------|
| State v. McDougall,<br>132 Wn.2d 609 (2006) . . . . .                | 10          |
| State v. McFarland,<br>127 Wn.2d 322, 899 P.2d 1251 (1995) . . . . . | 17          |
| State v. Mendoza,<br>157 Wn.2d 582 (2006) . . . . .                  | 16          |
| State v. Miller,<br>110 Wn.2d 528, 756 P.2d 122 (1998) . . . . .     | 17          |
| State v. Moon,<br>108 Wn.App. 59 (2001) . . . . .                    | 15          |
| State v. Rodriguez,<br>61 Wn.App. 812, 812 P.2d 868 (1991) . . . . . | 12          |
| State v. Rowland,<br>97 Wn.App. 301 (1999) . . . . .                 | 9           |
| State v. Saas,<br>118 Wn.2d 37, 820 P.2d 505 (1991) . . . . .        | 15          |
| State v. Schmidt,<br>143 Wn.2d 658, 23 P.2d 462 (2001) . . . . .     | 7           |
| State v. Taylor,<br>83 Wn.2d 594, 521 P.2d 699 (1974) . . . . .      | 17          |
| State v. Tili,<br>139 Wn.2d 107 (1999) . . . . .                     | 12          |
| State v. Tili,<br>148 Wn.2d 350, 60 P.3d 1192 (2003) . . . . .       | 8           |
| State v. Vike,<br>125 Wn.2d 407, 855 P.2d 824 (1994) . . . . .       | 9           |
| State v. Wakefield,<br>130 Wn.2d 464, 925 P.2d 183 (1996) . . . . .  | 15          |

TABLE OF AUTHORITIES

|  | <u>PAGE</u>    |
|--|----------------|
| <u>STATE CASES: (continued)</u>  |                |
| State v. Walsh,<br>143 Wn.2d 1, 17 P.3d 591 (2001) . . . . .   | 15             |
| <br><u>STATUTES:</u>   |                |
| RCW 9A.44.083-Child Molestation, First Degree . . . . .  | 5, 13          |
| RCW 9.94A (SRA) . . . . .  | 8              |
| RCW 9.94A.525(17) (former 9.94A.260(17)) . . . . .   | 9              |
| RCW 9.94A.589(1)(a) (former 9.94A.400(1)(a)) . . . . .   | 2, 9           |
| RCW 10.73.090 (time bar statute) . . . . .   | 1, 17          |
| <br><u>COURT RULES:</u>  |                |
| RAP 2.5(a)(3) . . . . .  | 15             |
| RAP 13.5(b)(1) (obvious error) . . . . .   | 8              |
| RAP 16.4(c)(2) (restraint unlawful) . . . . .  | 1              |
| <br><u>OTHER AUTHORITY:</u>  |                |
| 1996 Offender Scoring Form (RCW 9.94A.360(17)(current 9.94A.525(17))<br>Child Molestation, First Degree RCW 9A.44.083<br>Sentencing Guidelines Commission Manual, pg. III-70 . . . . . | Appendix G & H |
| <br><u>LIST OF APPENDICES:</u>   |                |
| Appendix A - Order of Dismissal 11/8/2010 . . . . .  | 1              |
| Appendix B - J&S/Child Molestation, First Degree . . . . .   | 3              |
| Appendix C - J&S/Bail Jumping . . . . .  | 3              |
| Appendix D - Second Amended Information . . . . .  | 3              |
| Appendix E - Felony Plea Agreement/Child Molestation . . . . .   | 4              |
| Appendix F - Statement of Defendant on Plea of Guilty . . . . .  | 4              |
| Appendix G - SGC 1996 Scoring Form/Offender Score 3 . . . . .  | 6              |
| Appendix H - SGC 1996 Scoring Form/Offender Score 0 . . . . .  | 6              |
| Appendix I - RCW 9.94A.589(1)(a) (Language) . . . . .  | 11             |

**A. IDENTITY OF PETITIONER**

Petitioner, Jose Toledo-Sotelo, respectfully asks this Honorable Court to accept review of the Court of Appeals decision designated in Part B of this motion.

**B. COURT OF APPEALS DECISION**

The decision ordered the dismissal of Toledo-Sotelo's personal restraint petition. See APPENDIX A - ORDER OF DISMISSAL, dated and filed 11/8/2010. The decision erroneously concludes that "Toledo-Sotelo's offender score properly included three points for each count based on the other current sex offense." ORDER OF DISMISSAL, pg. 3. This error stems from the trial court's failure to follow the laws in effect at the time of Toledo-Sotelo's crime and to conduct a "same criminal conduct" analysis.

As a result, Toledo-Sotelo's crime seriousness level, offender score and standard range sentence were miscalculated, and he was misinformed about the consequences of his plea of guilt. Therefore, he was sentenced in violation of the laws of the State of Washington and the face of his judgment clearly demonstrates the error. As such, Toledo-Sotelo's "restraint" is unlawful within the meaning of RAP 16.4(c)(2). Additionally, because Toledo-Sotelo's judgment and sentence is facially invalid (showing a defective crime seriousness level, offender score and standard range) his petition is not time barred. RCW 10.73.090 (1-year time bar applies only to a judgment and sentence which is "valid on its face").

**C. ISSUES PRESENTED FOR REVIEW**

- 1. DID THE TRIAL COURT USE THE CORRECT LAWS WHEN SENTENCING TOLEDO-SOTELO?**

The trial court failed to use the laws in effect at the time of Toledo-Sotelo's crime. As a result, the Statement of Defendant on Plea of Guilty and Judgment & Sentence reflect an incorrect crime seriousness level, offender score and standard range sentence.

- 2. DOES THE LAW RELATING TO MULTIPLE CURRENT OFFENSES, RCW 9.94A.400(1)(a), REQUIRE THE TRIAL COURT TO CONDUCT A "SAME CRIMINAL CONDUCT" ANALYSIS AS PART OF CALCULATING A DEFENDANT'S OFFENDER SCORE?**

At Toledo-Sotelo's sentencing hearing the court failed to make a determination under the law as to whether his multiple current offenses, committed against the same victim, at the same time and place, encompassed the same criminal conduct for purposes of calculating his offender score. As a result, his offender score was miscalculated as three (3) instead of zero (0).

- 3. WAS TOLEDO-SOTELO'S PLEA OF GUILT ENTERED KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY WHEN HE WAS MISINFORMED ABOUT THE CRIME SERIOUSNESS LEVEL, OFFENDER SCORE AND STANDARD RANGE SENTENCE?**

In the process of considering the consequences of his plea, the trial court, the State and Toledo-Sotelo's defense attorney misinformed him about the crime seriousness level, offender score and standard range sentence. As a result, his plea was not voluntarily entered and he should be allowed to withdraw it.

- 4. IS TOLEDO-SOTELO'S JUDGMENT & SENTENCE INVALID ON ITS FACE WHEN IT CLEARLY REFLECTS THE WRONG CRIME SERIOUSNESS LEVEL, OFFENDER SCORE AND STANDARD RANGE SENTENCE?**

When the wrong laws, crime seriousness level, offender score and standard range sentence were used in the process of accepting Toledo-Sotelo's plea of guilt and imposing his judgment & sentence, the judgment & sentence is invalid on its face. As a result, and contrary to the Court of Appeals conclusion, Toledo-Sotelo's petition is not time barred.

**D. STATEMENT OF THE CASE**

**1. Procedural Background:**

Toledo-Sotelo plead guilty to two counts of child molestation in the first degree, and was found guilty by jury trial of bail jumping. Appendix B and C. He was sentenced for both cases on the same day and received a standard range sentence of 84 months as to the child molestation convictions and 13 months as to bail jumping, to be served concurrently. Appendix B and C. The judgment and sentences were filed with the clerk of the trial court on May 16, 2008. Appendix B and C. Toledo-Sotelo did not appeal.

**2. Factual Background / Relevant to Petition:**

On October 16, 2007, by a Second Amended Information, the State charged Toledo-Sotelo with two counts of Rape of a Child in the First Degree (Counts I & II), and two counts of Child Molestation in the First Degree (Counts III & IV). Appendix D. The date listed for each crime is "a period of time intervening between April 24, 1995 through August 31, 1996". Appendix D.

Toledo-Sotelo was represented by defense counsel Barry J. Wallis, WSBA#37425. The State of Washington was represented by the King County Prosecutors Office, DPA Jennifer Miller, WSBA#31600.

On October 16, 2007, the State and Toledo-Sotelo entered into a felony plea agreement and sentencing recommendation. Appendix E. In exchange for Toledo-Sotelo's plea of guilt to Counts III & IV as charged in the Second Amended Information, the State agreed to dismiss

Counts I & II, and to recommend 84 month sentences for each count to run concurrently with each other and the bail jumping offense. Appendix E. The plea agreement and State's sentencing recommendation list the date of crime as "4/25/95 - 8/31/96". Appendix E. Included as part of the plea agreement, the "General Scoring Form" for Child Molestation 1 lists the crime seriousness level as XII (12), offender score as three (3) and standard sentence range as 120 to 160 months. Appendix E.

On October 16, 2007, all parties appeared before the Honorable George T. Mattson for Toledo-Sotelo's change of plea. In considering the consequences of pleading guilty, Toledo-Sotelo understood that the crimes charged in Counts III & IV carried a standard sentence range of 72 - 96 months, and that the prosecutor would make the recommendation stated in the Plea Agreement and State's Sentence Recommendation. Appendix F - STATEMENT OF DEFENDANT ON PLEA OF GUILTY, Section 6(a), pg. 2, and Section 6(g), pg. 7.

Toledo-Sotelo pleaded guilty to the crime of "CHILD MOLESTATION IN THE FIRST DEGREE, TWO COUNTS" as charged in the amended information. Id. Appendix F, Section 7, pg. 12. The judge asked Toledo-Sotelo to state briefly in his own words what made him guilty. Toledo-Sotelo made the following written statement:

"I, Jose Toledo-Sotelo, in King County Washington, on August 6th, 1996, did kiss on the mouth and fondle the breasts of M.C.G. (dob 04/24/1986) twice for the purpose of sexual gratification. M.C.G. was less than 12 years old at the time and not my wife."

Id. Appendix F, Section 11, pg. 12.

Judge George T. Mattson accepted Toledo-Sotelo's plea of guilt and made the following finding:

"I find the defendant's plea of guilty to be knowing, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged."

Id. Appendix F, pg. 13.

On May 13, 2008, all parties appeared before the Honorable George T. Mattson for Toledo-Sotelo's sentencing hearing. The court made the following finding:

**CURRENT OFFENSE(S):** The defendant was found guilty on 10/16/2007 of:

Count III, Child Molestation in the First Degree.  
RCW 9A.44.083 / Date of Crime: 04/25/1995 - 08/31/1996.

Count IV, Child Molestation in the First Degree.  
RCW 9A.44.083 / Date of Crime: 04/25/1995 - 08/31/1996.

Id. Appendix B - Judgment & Sentence (J&S), II Findings, Section 2.1 Current Offense, pg. 1. The court did not make a determination as to whether the "current offenses" encompassed the same criminal conduct. Id. Appendix B - J&S, Section 2.1(i) Special Verdict or Findings, pg. 2.

The court also found the Crime Seriousness Level to be XII (12), the Offender Score to be three (3), and the Standard Sentence Range to be 72 - 96 months. Id. Appendix B - J&S, Section 2.4 Sentencing Data, pg. 2. Based on the following findings and judgment, the court sentenced Toledo-Sotelo to 84 months of total confinement. Id.

Appendix B - J&S, Sections 4.4(a) & 4.5, pgs. 4-5.

The 1996 Offender Scoring Sheet for Child Molestation in the First Degree shows a Crime Seriousness Level of X (10) and standard sentence range of "67 - 89" months for an offender score of three (3) -- providing the current offenses do not encompass the same criminal conduct. Appendix G. This scoring sheet shows a lower crime seriousness level and sentence range, than that which was provided to Toledo-Sotelo when considering the consequences of his plea. His plea agreement and the trial courts judgment and sentence reflect a crime seriousness level of XII (12) and standard sentence range of "72 - 96" months for an offender score of three (3) -- providing the current offenses do not encompass the same criminal conduct. See Appendix B, E & F.

Finally, under the 1996 scoring sheet, if Toledo-Sotelo's two current offenses encompass the same criminal conduct, his offender score would be zero (0) with a standard range sentence of "51 - 68" months. Appendix H.

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**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

- 1. THE TRIAL COURT ERRED WHEN IT SENTENCED TOLEDO-SOTELO AND FAILED TO USE THE SENTENCING LAWS IN EFFECT AT THE TIME HIS CRIME WAS COMMITTED (1995/1996).**

It is well settled that the law in effect at the time a criminal offense is committed controls the disposition of the case. State v. Schmidt, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001); In re PRP of Lachapelle, 153 Wn.2d 1, 100 P.3d 805 (2004)(A convicted offender is sentenced under the sentencing laws in effect on the date the offense was committed).

Here, the face of Toledo-Sotelo's judgment and sentence shows that Judge Mattson found the date of each child molestation count to be "4/25/1995 through 8/31/1996." Appendix B - J&S, pg. 1. Additionally, Judge Mattson found the crime seriousness level was XII (12), which yielded a standard sentence range of "72 - 96" months for each offense based on an offender score of three (3) points. Appendix B - J&S, pg. 2.

The crime seriousness level (XII) and standard range (72 - 96 months) found by Judge Mattson based on an offender score of three (3) is not consistent with the laws in effect between 4/25/1995 and 8/31/1996. The 1996 scoring sheet for first degree child molestation shows the crime seriousness level to be X (10), not XII (12). Further, based on an offender score of three (3), it shows a standard sentence range of "67 - 89" months, not "72 - 96" months. Appendix G. Clearly the 1995/1996 sentencing laws reflect a lower seriousness level and

standard range than that calculated by Judge Mattson. Toledo-Sotelo's offender score was clearly miscalculated by the sentencing court.

Accordingly, this Court should conclude that the Court of Appeals made an obvious error, RAP 13.5(b)(1), grant the petition, reverse Toledo-Sotelo's sentence and remand for resentencing with instructions to use the laws in effect between 1995 and 1996.

2. RCW 9.94A.589(1)(a) (former RCW 9.94A.400(1)(a)) REQUIRES THE TRIAL COURT TO CONDUCT A SAME CRIMINAL CONDUCT AS AS PART OF CORRECTLY CALCULATING A CRIMINAL DEFENDANT'S OFFENDER SCORE AND SENTENCE RANGE.

A convicted criminal defendant has a right to have his criminal history, offender score and sentence correctly calculated under the Sentencing Reform Act (SRA) (Chapter RCW 9.94A). State v. Malone, 138 Wn.App. 587 (5/10/2007); In re the PRP of Cadwallader, 155 Wn.2d 867, 123 P.3d 609 (2005). The SRA utilizes objective criteria to establish sentencing ranges. The sentencing judge must calculate, in a mathematical fashion, an offender score for each offense. This score determines the sentencing range applicable to the offender.

The difference of a single point may add or subtract years or months to an offender's sentence. Therefore, the accurate interpretation and application of the SRA is of great importance to both the State and the offender. This Court reviews a sentencing court's calculation of an offender score de novo. State v. Tili, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003). Generally, the trial court calculates an offender score by adding together the current offense

and the prior convictions. RCW 9.94A.589(1)(a); State v. Vike, 125 Wn.2d 407, 410, 855 P.2d 824 (1994). This process also includes using "other current offenses" as prior criminal history for the purpose of calculating a defendant's offender score and sentence. RCW 9.94A.589(1)(a). But if the trial court finds that some of the prior offenses encompass the same criminal conduct, then those offenses count as only one crime, instead of two. RCW 9.94A.525. The result is a lower offender score and sentence range.

Toledo-Sotelo asserts that a determination as to whether two offenses encompass the same criminal conduct is a "legal" issue controlled by the SRA, and that an inaccurate or incomplete application of the law to multiple current offense which "legally" encompass the same criminal conduct is "unlawful" and violates the SRA and due process. For example, the trial court abuses its discretion if fails to conduct a same criminal conduct analysis. State v. Haddock, 141 Wn.2d 103 (2003). If a same criminal conduct analysis is decided wrongly it constitutes a miscalculated offender score and sentence. State v. Rowland, 97 Wn.App. 301 (1999).

Under the SRA, multiple current offenses either "legally" encompass the same criminal conduct or they do not, and a defendant cannot, under the law legally, agree to an unlawful sentence. Even in a plea agreement setting, where the defendant acknowledges an offender score calculation that treats two offenses as separate criminal conduct, if the offenses "legally" encompass the same criminal

conduct the law controls and the offenses must be calculated correctly (legally). But see State v. McDougall, 132 Wn.2d 609 (2006)(robbery and assault convictions not the same criminal conduct when plea agreement included offender score calculation that treated the two offenses as separate criminal conduct).

Haddock and Rowland conflict with McDougall. Haddock and Rowland indicate the law mandates a same criminal conduct analysis in that an error in the determination constitutes a miscalculated sentence; i.e. its a "legal" issue which the law dictates must be correct. McDougall, on the other hand, appears to indicate that a convicted defendant can agree to or acknowledge an unlawful/illegal sentence. This Court should grant review and decide whether a same criminal conduct analysis is required under the SRA to accurately and legally calculate a convicted defendant's offender score and sentence range.

Toledo-Sotelo contends that the trial court's failure to follow the law and determine if his two current offenses encompassed the same criminal conduct resulted in his offender score and sentence being miscalculated. The court's failure to conduct a same criminal conduct analysis violated the law and resulted in a miscalculated offender score and sentence. If the two current offenses are treated as separate criminal conduct, then his offender score would be three (3) because the offenses are counted against each other. But, if the two current offenses are treated as the same criminal conduct, then Toledo-Sotelo's offender score would be zero (0) because the

offenses are counted as one. A legal and accurate offender score calculation is required because months of Toledo-Sotelo's liberty is at stake; therefore, he is entitled to have the law applied to his current offenses correctly.

In the instant case, the error here is that the trial court did not rule one way or the other -- no determination under the law was made. The statute uses the word "shall" three times and "provided that if" once. Appendix I - 9.94A.589(1)(a). Each time the word "shall" is used it relates directly to 'computing' the defendant's offender score. Appendix I. The language "Provided that if the court enters a finding" is not discretionary under the statute. Instead, based on the preceding words "shall", it assumes in the computation process a finding will be conducted one way or the other. That is, a finding as to whether the current offenses either legally "do" or "do not" encompass the same criminal conduct. If they do encompass the same criminal conduct, based on the court's finding, "then those current offenses shall count as one crime." The language is clear and mandatory, requiring the court to make a determination when the offender score is being computed, as part of the computing process. If a same criminal conduct determination is decided wrongly it constitutes a miscalculated offender score. State v. Rowland, 97 Wn.App. at 301.

Offenses amount to the "same criminal conduct" if they "require the same criminal intent, are committed at the same time and place,

and involve the same victim." RCW 9.94A.589(1)(a). Toledo-Sotelo asserts that his two current offenses legally constitute the same criminal conduct; therefore, they must be counted together as the law requires. As mentioned earlier, its purely a "legal" issue, a computing process mandated by statute under the SRA.

In order to determine whether two crimes share the same criminal intent, courts look at whether the defendant's intent, viewed objectively, changed from one crime to the next and whether commission of one crime furthered the other. State v. Freeman, 118 Wn.App. 365, 377, 76 P.3d 732 (2003) (citing Vike, 125 Wn.2d at 411). In State v. Tili, 139 Wn.2d 107 (1999), the court held that repeated rapes charged under the same statute constituted the same criminal conduct. Courts also look for concurrence of intent, time and place, and victim by examining whether each offense was part of a recognizable scheme or plan and whether the defendant substantially changed the nature of his criminal objective from one offense to another. State v. Boze, 47 Wn.App. 477, 480, 735 P.2d 696 (1987).

To determine criminal intent, courts first objectively view each underlying statute and determine if the required intents are the same for each count. State v. Rodriguez, 61 Wn.App. 812, 816, 812 P.2d 868 (1991). Where the statutory intents are the same, the court next objectively views the facts to determine whether a defendant's intent was the same with respect to each count. Rodriguez, 61 Wn.App. at 816. Here, Toledo-Sotelo was convicted of two counts of first degree

child molestation under the exact same statute, RCW 9A.44.083. The Second Amended Information for Counts III & IV, charged Toledo-Sotelo under the exact same statute, RCW 9A.44.083. Each charge for Counts III & IV is identical with regard to time, place and victim. Appendix D. In relevant part, each count reads:

I, Daniel T. Satterberg, ... do accuse JOSE TOLEDO-SOTELO of the crime of Child Molestation in the First Degree, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant ... during a period of time intervening between April 25, 1995 through August 31, 1996, ... had sexual contact for the purpose of sexual gratification, with M.G. ... who was less than 12 years .... Contrary to RCW 9A.44.083 ....

Appendix D (Counts III & IV - charged exactly the same).

Each count was charged under the same statute and states the crime was "of the same or similar character and based on the same conduct." Also, the charge states the offenses were part of a common scheme or plan so closely connected in time, place and occasion that it would be difficult to separate proof on one from proof of the other. Moreover, in relevant part, Toledo-Sotelo admitted to the following conduct when pleading guilty:

I, Jose Toledo-Sotelo, ... on August 6th, 1996, did kiss on the mouth and fondle the breast of M.C.G. ... twice for the purpose of sexual gratification ....

Appendix F - Statement of Defendant on Plea of Guilty, Section 11, pg. 12.

Viewed objectively, these facts establish the offenses where charged under the same statute - RCW 9A.44.083, involved the same criminal intent (sexual contact for sexual gratification), were committed at the same time and place, and involved the same victim (M.C.G.). Toledo-Sotelo's criminal objective did not change from one crime to the next. In fact, based on the conduct Toledo-Sotelo admitted to when pleading, his objective remained the same. Therefore, under the law, his two offenses legally constitute the "same criminal conduct." State v. Tili, 139 Wn.2d 107 (1999)(repeated rapes constitute the same criminal conduct).

This Court should grant review and determine if the language of RCW 9.94A.589 creates an obligation to conduct a same criminal conduct analysis as part of correctly calculating a convicted defendant's offender score. Further, this Court should grant the petition, hold that Toledo-Sotelos two child molestation offenses "legally" constitute the same criminal conduct, reverse and remand for resentencing with an offender score of zero (0) instead of three (3).

3. TOLEDO-SOTELO'S PLEA OF GUILT WAS NOT ENTERED KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY BECAUSE HE WAS MISINFORMED ABOUT THE CRIME SERIOUSNESS LEVEL, OFFENDER SCORE AND STANDARD RANGE SENTENCE. AS A CONSEQUENCE, HIS PLEA WAS NOT VOLUNTARY AND HE SHOULD BE ALLOWED TO WITHDRAW IT?

A defendant may withdraw his plea of guilty whenever it appears that withdrawal is necessary to correct a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure.

State v. Saas, 118 Wn.2d 37, 42, 820 P.2d 505 (1991)(quoting State v. Taylor, 83 Wn.2d 594, 596-98, 521 P.2d 699 (1974); State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996).

In In re the PRP of Hews, 99 Wn.2d 80, 660 P.2d 263 (1983), this Court determined that the voluntariness of a plea can be raised for the first time by way of a personal restraint petition. State v. Walsh, 143 Wn.2d 1, 6-7, 17 P.3d 591 (2001)(citing Hews, In re the PRP of James, 96 Wn.2d 847, 849, 640 P.2d 18 (1982), and RAP 2.5(a)(3)("manifest error affecting a constitutional right" may be raised for the first time on appeal). Moreover, a claim that a guilty plea was involuntary due to a misunderstanding about the standard range sentence is the kind of constitutional error that RAP 2.5(a)(3) encompasses. Walsh, 143 Wn.2d at 8; State v. Moon, 108 Wn.App. 59 (2001)(guilty plea is involuntary if made without knowing direct consequences; sentence range is a direct consequence).

Here, Toledo-Sotelo contends that his plea was not voluntary because a mistake was made concerning the crime seriousness level and standard range sentence. See Argument #1, of this motion, pgs. 7-8. Toledo-Sotelo's plea agreement, statement of defendant on plea of guilty and his J&S all refer to an incorrect crime seriousness level and standard range sentence (based on an offender score of 3). See Appendices B, E & F (Crime Seriousness Level XII (12) / Standard Range Sentence 72-96 Months).

The 1996 scoring form for first degree child molestation shows

a lower crime seriousness level (10) and standard range sentence (67-89 months)(based on an offender score of 3) than that set forth in Toledo-Sotelo's guilty plea and J&S. Appendix G. If a defendant is misinformed of standard range, whether too low or too high, plea may be withdrawn. State v. McDermond, 112 Wn.App. 373 (2002). Where a guilty plea is based on misinformation regarding a direct consequence of the plea, including a miscalculated offender score resulting in a lower standard range than that anticipated by the parties when negotiating the plea, the defendant may withdraw the plea based on involuntariness. State v. Mendoza, 157 Wn.2d 582 (2006).

Here, Toledo-Sotelo's plea was clearly involuntary where he was misinformed about the crime seriousness level and standard range sentence. Compare Toledo-Sotelo's guilty plea and J&S (Appendix B & F) with the 1996 scoring sheet (Appendix G). The guilty plea and J&S advised him the seriousness level was XII (12) and the standard range was "72-96" months. The laws in effect in 1995/1996 show the serious level is X (10) and the standard range is "67-89" months. The correct seriousness level and standard range, as shown by the 1995/1996 laws, is actually lower than what he was advised of when pleading guilty. "A defendant must understand the sentencing consequences for a guilty plea to be valid." Walsh, 143 Wn.2d at 8. Because Toledo-Sotelo was misinformed of a direct consequence of his plea, his plea was involuntarily made and he should be allowed to withdraw it. "Manifest" in RAP 2.5(a)(3) means that a showing

of actual prejudice is made. State v. McFarland, 127 Wn.2d 322, 333-34, 899 P.2d 1251 (1995). A sentence not authorized by law is prejudicial. Because Toledo-Sotelo was misinformed about a direct consequence of his plea, actual prejudice exists. In re the PRP of Breedlove, 138 Wn.2d 298 (1999); In re the PRP Johnson, 131 Wn.2d 558 (1997)(incorrect sentence calculation is unlawful restraint and miscarriage of justice).

Based on the foregoing argument, this Court should declare Toledo-Sotelo's plea to be involuntarily made, grant the petition and remand with instructions allowing him to withdraw his plea. State v. Miller, 110 Wn.2d 528, 756 P.2d 122 (1988)(defendant gets to choose).

4. TOLEDO-SOTELO'S JUDGMENT AND SENTENCE IS INVALID ON ITS FACE. THEREFORE, HIS PERSONAL RESTRAINT IS NOT TIME BARRED.

Toledo-Sotelo concedes this case became final on May 16, 2008, when it was filed with the clerk of the trial court, and no appeal was filed. RCW 10.73.090(3). Additionally, he concedes that his personal restraint petition was filed on May 14, 2010, more than one year after the date of finality.

Nevertheless, Toledo-Sotelo contends this PRP is properly before the court because his J&S is invalid on its face. The one-year time limit only applies if the judgment and sentence is "valid on its face." In re the PRP of Runyan, 121 Wn.2d 432, 444, 449, 853 P.2d 424 (1993); RCW 10.73.090(1). A judgment is valid on its face unless the judgment evidences an error without further elaboration. In re the PRP of

Thompson, 141 Wn.2d 712, 10 P.3d 380 (2000); In re the PRP of Goodwin, 146 Wn.2d 861 (2002).

Here, the face of Toledo-Sotelo's judgment and sentence evidences an error without further elaboration. See Argument #1, of this motion, pgs. 7-8. The J&S shows a crime seriousness level of XII (12) with a standard range sentence of 72-96 months (based on an offender score of 3). Appendix B - J&S, pg. 2. This seriousness level and standard range is incorrect. The laws in effect in 1995/1996 and the 1996 offense scoring sheet for first degree child molestation shows the correct seriousness level is X (10) with a standard range sentence of 67-89 months (based on an offender score of 3). Appendix G.

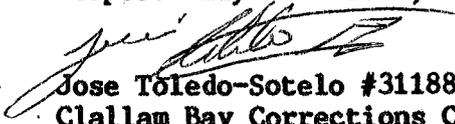
This error renders Toledo-Sotelo's judgment and sentence facially invalid. As such, his petition is not time barred. Thompson, 141 Wn.2d 712.

#### F. CONCLUSION

Based on the foregoing reasons, this Court should grant review, grant the petition and allow Toledo-Sotelo to withdraw his guilty plea. Alternatively, this Court should grant the petition and remand for resentencing based on the correct crime seriousness level, offender score and sentence range. Additionally, this Court should declare whether the language of RCW 9.94A.589 requires the trial court to conduct a same criminal conduct analysis as part of "legally" and "correctly" computing a convicted defendant's offender score and sentence.

DATED this 23rd day of January, 2011.

Respectfully Submitted,

  
Jose Toledo-Sotelo #311886  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

CERTIFICATE/PROOF OF SERVICE/MAILING

I, Jose Toledo-Sotelo, hereby certify and declare, that I served a true and correct copy of the following document(s): MOTION FOR DISCRETIONARY REVIEW, on counsel for the Respondent, as follows:

- U.S. Mail First Class Postage Prepaid  
Deposited in the CBCC/Prison Mailbox
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- Inter-Institution Mail/CBCC
- Hand Delivered By:

TO: Ann Summers, WSBA #21509  
Senior Deputy Prosecuting Attorney  
King County Prosecutor's Office  
W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

I certify and declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

EXECUTED this 23rd day of January, 2011.

X   
Jose Toledo-Sotelo #311886  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

# APPENDIX

A

Appendix A

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

|                        |   |                    |
|------------------------|---|--------------------|
| IN THE MATTER OF THE   | ) | No. 65460-8-1      |
| PERSONAL RESTRAINT OF: | ) |                    |
|                        | ) |                    |
| JOSE TOLEDO-SOTELO,    | ) |                    |
|                        | ) |                    |
| Petitioner.            | ) | ORDER OF DISMISSAL |

---

Jose Toledo-Sotelo pleaded guilty to two counts of first-degree child molestation in King County No. 00-1-05743-8 KNT and was convicted by a jury of bail jumping in King County No. 07-1-10361-5 KNT. Toledo-Sotelo was sentenced to 84 months of total confinement based on an offender score of three in the child molestation case, and 13 months of confinement based on an offender score of two in the bail jumping case, each to be served concurrently. Toledo-Sotelo now files this personal restraint petition challenging the validity of his plea in the child molestation case and the length of the sentence imposed on his bail jumping conviction. The King County prosecutor opposes this portion of Toledo-Sotelo's petition. Toledo-Sotelo also argues that the King County jail failed to properly certify to the Department of Corrections (DOC) all of the time he served in jail before his sentencing. The Department of Corrections has responded to that portion of his claim, and opposes that portion of the petition.

Neither of Toledo-Sotelo's arguments state a prima facie basis for relief, and the petition will accordingly be dismissed.

1. Offender Score.

The State alternatively argues that Toledo-Sotelo's contentions regarding his plea and sentence are time-barred under RCW 10.73.090, and further, that they fail on the merits in any event. Both arguments are well-taken.

Personal restraint petitions must generally be filed within one year after the judgment and sentence becomes final. RCW 10.73.090; see also In re Pers. Restraint of Runyan, 121 Wn.2d 432, 450, 853 P.2d 424 (1993). In this case, Toledo-Sotelo's sentence became final on May 16, 2008, when the trial court filed the judgment and sentence from which he did not appeal. Toledo-Sotelo's petition was not filed until May 2010.

The time-bar applies if the judgment and sentence is valid on its face. A judgment is facially valid unless the judgment evidences an error without further elaboration. In re Pers. Restraint of Thompson, 141 Wn. 2d 712, 10 P.3d 380 (2000). Misinformation about the consequences of a guilty plea is not a facial defect exempt from the one-year time limit on a collateral attack. In re Pers. Restraint of Hemenway, 147 Wn.2d 529, 533, 55 P.3d 615 (2002).

Toledo-Sotelo does not address RCW 10.73.090 in his petition, but in his reply he argues that the judgment and sentence in each case exhibits a facial invalidity because it shows he was misadvised regarding the offender score, which should, he argues, have been calculated as zero in each case.

The premise underlying this argument is flawed.

Toledo-Sotelo's argument assumes that the two child molestation offenses would not be counted against one another for sentencing purposes. He is mistaken. "[W]henver a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score." RCW 9.94A.589(1)(a); State v. Jones, 110 Wn.2d 74, 81–82, 750 P.2d 620 (1988); State v. Redd, 51 Wn. App. 597, 610–11, 754 P.2d 1041 (1988). Under the Sentencing Reform Act of 1981 (SRA), multiple current offenses are counted as one offense in determining the offender score only if they encompass the same criminal conduct. RCW 9.94A.589(1)(a). Toledo-Sotelo fails to argue, much less demonstrate from the face of the judgment and sentence, that his two child molestation convictions fit within the SRA's definition of "same criminal conduct." Rather, it is clear from the judgment and sentence that the court did not find the offenses to be the same criminal conduct. Accordingly, Toledo-Sotelo's offender score properly included three points for each count based on the other current sex offense. See RCW 9.94A.525(1).

Toledo-Sotelo's related claim, expressed for the first time in his reply, going to the proper offender score for his bail jumping conviction likewise fails. He simply fails to recognize that the two counts of child molestation properly resulted in a score of two for that offense.

Accordingly, as the State argues, Toledo-Sotelo's claims regarding his plea and sentencing are both time-barred and clearly fail on the merits.

2. Jail Credit

In his second claim, Toledo-Sotelo appears to argue that his anticipated release date is inaccurate because the King County Jail failed to certify to the DOC all of the presentencing confinement time he served as ordered by the sentencing judge. This claim also fails.

Toledo-Sotelo fails to consider that even if the King County Jail erred, the DOC has credited him with the time ordered by the judge, and declined to use the amount certified by the Jail. The DOC's determination in this regard was proper because the jail's determination is not legally binding on the DOC. In re Pers. Restraint of Costello, 131 Wn. App. 828, 834-35, 129 P.3d 827 (2006).

Because the record is clear that the DOC has properly granted Toledo-Sotelo the larger amount of credits stated by the trial judge on the judgment and sentence rather than the lesser amount recited in the jail certification, Toledo-Sotelo's claim necessarily fails.

Now, therefore, it is hereby

ORDERED that this personal restraint petition is dismissed pursuant to RAP 16.11(b).

Done this 8<sup>th</sup> day of November, 2010.

Leach, A. C. J.  
Acting Chief Judge

2010 NOV -8 PM 3:13

CLERK OF COURT  
KING COUNTY

# APPENDIX

B

Appendix B

FILED

08 MAY 16 AM 9:48

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

PRESENTENCING STATEMENT & INFORMATION ATTACHED

COMMITMENT ISSUED MAY 16 2008

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

JOSE TOLEDO-SOTELO,

Defendant,

No. ~~00~~-1-05743-8 KNT

JUDGMENT AND SENTENCE  
FELONY

CLERK'S ACTION REQUIRED (p3 #6)

I. HEARING

I.1 The defendant, the defendant's lawyer, BARRY J. WALLIS, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: victim's family,

defendant's significant other

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 10/16/2007 by plea of:

Count No.: III Crime: CHILD MOLESTATION IN THE FIRST DEGREE  
RCW 9A.44.083 Crime Code: 01064  
Date of Crime: 04/25/1995 THROUGH 08/31/1996 Incident No. \_\_\_\_\_

Count No.: IV Crime: CHILD MOLESTATION IN THE FIRST DEGREE  
RCW 9A.44.083 Crime Code: 01064  
Date of Crime: 04/25/1995 THROUGH 08/31/1996 Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_  
Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

Count No.: \_\_\_\_\_ Crime: \_\_\_\_\_  
RCW \_\_\_\_\_ Crime Code: \_\_\_\_\_  
Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

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

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

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

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

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

| Sentencing Data | Offender Score | Seriousness Level | Standard Range | Enhancement | Total Standard Range                     | Maximum Term               |
|-----------------|----------------|-------------------|----------------|-------------|--|----------------------------|
| Count III       | 3              | XII               |                |             | <del>12-18-18</del><br>MONTHS<br>72-96mo | LIFE<br>AND/OR<br>\$50,000 |
| Count IV        | 3              | XII               |                |             | <del>12-18-18</del><br>MONTHS<br>72-96mo | LIFE<br>AND/OR<br>\$50,000 |
| Count           |                |                   |                |             |  |                            |
| Count           |                |                   |                |             |  |                            |

Additional current offense sentencing data is attached in Appendix C.

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

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

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) I & II

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

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

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

- (a)  \$ \_\_\_\_\_, Court costs;  Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b)  \$100 DNA collection fee;  DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs;  Recoupment is waived (RCW 9.94A.030);
- (d)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA;  \$2,000, Fine for subsequent VUCSA;  VUCSA fine waived (RCW 69.50.450);
- (e)  \$ \_\_\_\_\_, King County Interlocal Drug Fund;  Drug Fund payment is waived; (RCW 9.94A.030)
- (f)  \$ \_\_\_\_\_, State Crime Laboratory Fee;  Laboratory fee waived (RCW 43.43.690);
- (g)  \$ \_\_\_\_\_, Incarceration costs;  Incarceration costs waived (RCW 9.94A.760(2));
- (h)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

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

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

4.4 The defendant, having been convicted of a FELONY SEX OFFENSE, is sentenced to the following:

(a) **DETERMINATE SENTENCE** : Defendant is sentenced to a term of confinement in the custody of the  
 King County Jail  King County Work/Education Release (subject to conditions of conduct ordered  
this date)  Department of Corrections, as follows, commencing:  immediately;  
 Date: \_\_\_\_\_ by \_\_\_\_\_ a.m. / p.m.

84 months/days on count III; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_;  
84 months/days on count IV; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_;  
\_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_.

**ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):**

\_\_\_\_\_ days of total confinement are hereby converted to:

\_\_\_\_\_ days of partial confinement to be served subject to the requirements of the King County Jail.

\_\_\_\_\_ days/hours community restitution under the supervision of the Department of Corrections to  
be completed as follows:

on a schedule established by the defendant's Community Corrections Officer;

\_\_\_\_\_

Alternative conversion was not used because:  Defendant's criminal history,  Defendant's  
failure to appear,  Other: \_\_\_\_\_

**COMMUNITY CUSTODY for FAILURE TO REGISTER AS A SEX OFFENDER** under RCW  
9A.44.130(11)(a) committed on or after 6-7-2006 as to Counts \_\_\_\_\_ (regardless of length of  
confinement) is ordered pursuant to RCW 9.94A.545(2) and RCW 9.94A.715 for the range of 36 to 48  
months.

**FOR CONFINEMENT LESS THAN ONE YEAR** (except for Failure to Register as a Sex  
Offender under RCW 9A.44.130(11)(a) committed on or after 6-7-06) as to Counts \_\_\_\_\_;  
**COMMUNITY**  **SUPERVISION**, for crimes committed before 7-1-2000,  **CUSTODY**, for  
crimes committed on or after 7-1-2000, is ordered pursuant to RCW 9.94A.545 for a period of 12 months.  
The defendant shall report to the Department of Corrections within 72 hours of this date or of his/her  
release if now in custody; shall comply with all the rules, regulations and conditions of the Department for  
supervision of offenders (RCW 9.94A.720); shall comply with all affirmative acts required to monitor  
compliance; and shall otherwise comply with terms set forth in this sentence.

**APPENDIX \_\_\_\_\_**: Additional Conditions are attached and incorporated herein.

**COMMUNITY PLACEMENT (CONFINEMENT OVER ONE YEAR) as to Counts \_\_\_\_\_**:  
pursuant to RCW 9.94A.700, for **qualifying crimes committed before 6-6-1996**, is ordered for  
\_\_\_\_\_ months or for the period of earned early release awarded pursuant to RCW 9.94A.728,  
whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or  
sex offense prior to 7-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW  
69.50/52, any crime against person defined in RCW 9.94A.440 not otherwise described above.]

**APPENDIX H, Community Placement conditions**, is attached and incorporated herein.

**COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts \_\_\_\_\_**:  
pursuant to RCW 9.94A.710 for any **SEX OFFENSE committed on or after 6-6-1996 but before 7-1-**  
**2000**, is ordered for a period of 36 months or for the period of earned early release awarded under RCW  
9.94A.728 whichever is longer.

**APPENDIX H, Community Custody conditions**, is attached and incorporated herein.

**COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR)** as to Counts III, V; pursuant to RCW 9.94A.715 for qualifying crimes (non RCW 9.94A.712 offenses) committed after 6-30-2000 is ordered for the following established range:

- Sex Offense, RCW 9.94A.030(38): 36 to 48 months
- Serious Violent Offense, RCW 9.94A.030(37): 24 to 48 months
- Violent Offense, RCW 9.94A.030(45): 18 to 36 months
- Crime Against Person, RCW 9.94A.411: 9 to 18 months
- Felony Violation of RCW 69.50/52: 9 to 12 months

or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.

**APPENDIX H**, Community Custody conditions, is attached and incorporated herein.

(b) **INDETERMINATE SENTENCE - QUALIFYING SEX OFFENSES** occurring after 9-1-2001:

The Court having found that the defendant is subject to sentencing under RCW 9.94A.712, the defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing:  immediately;  (Date): \_\_\_\_\_ by \_\_\_\_\_, m.

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life.

**COMMUNITY CUSTODY**: pursuant to RCW 9.94A.712 for qualifying **SEX OFFENSES** committed on or after September 1, 2001, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence as set forth above. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.713, 9.94A.737.

**APPENDIX H**: Community Custody conditions are attached and incorporated herein.

4.5 **ADDITIONAL CONDITIONS OF SENTENCE**

The above terms for counts 071103615 KNT are consecutive / concurrent.

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

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

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

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (For crimes committed after 6-10-1998.)

The enhancement term(s) for any special **WEAPON** findings in section 2.1 is/are included within the term(s) imposed above. (For crimes before 6-11-1998 only, per In Re Charles)

The **TOTAL** of all terms imposed in this cause is 84 months.

*Yusuf* defendant may by motion address the court for consideration of time spent in Canada, in custody

Credit is given for ~~107~~ 607 days served ~~100~~ days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6). [ ] Jail term is satisfied and defendant shall be released under this cause.

4.6 NO CONTACT: For the maximum term of 99 years, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties with: me. Garcia  
(malicita)  
[ ] Any minors without supervision of a responsible adult who has knowledge of this conviction.

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

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

4.8 SEX OFFENDER REGISTRATION:  
The defendant shall register as a sex offender as ordered in APPENDIX J.

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

The defendant shall report to an assigned Community Corrections Officer within 72 hours of release from confinement for monitoring of the remaining terms of this sentence.

Date: ~~2/1/08~~ May 13 08

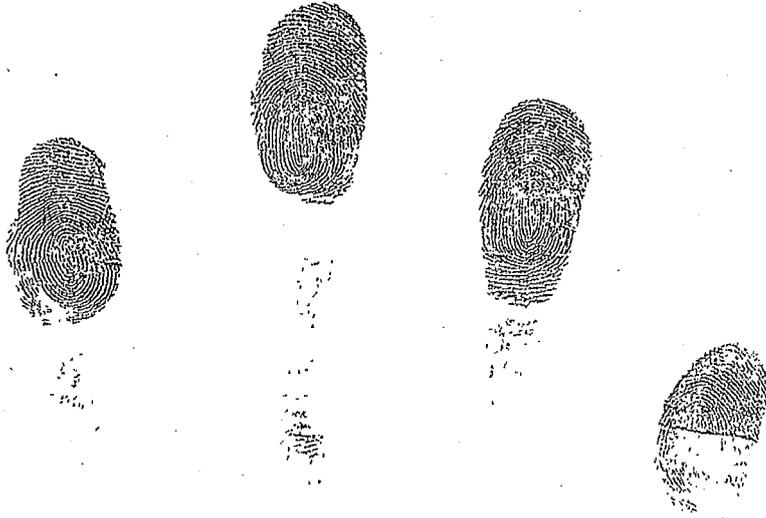
[Signature]  
JUDGE  
Print Name:

Presented by:  
[Signature]  
Deputy Prosecuting Attorney, WSBA# 31600  
Print Name: Jean Miller

Approved as to form:  
[Signature]  
Attorney for Defendant, WSBA# 37475  
Print Name: BARRY WALLIS

FINGERPRINTS

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DEFENDANT'S SIGNATURE: \_\_\_\_\_  
DEFENDANT'S ADDRESS: \_\_\_\_\_

JOSE TOLEDO-SOTELO

DATED: 4-5-13-08

*[Signature]*  
\_\_\_\_\_  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER  
SUPERIOR COURT CLERK  
BY: *[Signature]*  
DEPUTY CLERK

CERTIFICATE

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

OFFENDER IDENTIFICATION

S.I.D. NO. WA19665588  
DOB: JANUARY 27, 1966  
SEX: M  
RACE: W

\_\_\_\_\_  
CLERK

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

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSE TOLEDO-SOTELO,

Defendant,

*bu*  
No. 000-1-05743-8 KNT

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

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

(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):

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

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

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

Date:

~~2/1/08~~ May 13 '08

  
\_\_\_\_\_  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TOLEDO-SOTELO, Jose

Defendant,

)
)
) No. 00-1-05743-8 KNT
)
) APPENDIX H
) COMMUNITY CUSTODY
)
)

The Court having found the defendant guilty of offense(s) qualifying for community custody, it is further ordered as set forth below.

4.5 Community Custody: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community custody.

Community Custody is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

(a) Defendant shall comply with the following conditions during the term of community custody:

- (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) While in community custody not unlawfully possess controlled substances;
(5) Pay community custody fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

The following conditions listed under 4.5(a) are hereby waived by the court:

(b) Defendant shall comply with the following other conditions during the term of community custody:

- (8) Have no direct or indirect contact with Marycruz Garcia.
(9) Within 30 days of being placed on supervision, complete a sexual deviancy evaluation with a therapist approved by your Community Corrections Officer and follow all treatment recommendations.
(10) Do not initiate or prolong physical contact with children for any reason.
(11) Avoid places where minors are known to congregate without the specific permission of the Community Corrections Officer.
(12) Inform the Community Corrections Officer of any romantic relationships to verify there are no victim-age children involved, and that the adult is aware of your conviction history and conditions of supervision.
(13) Have no contact with the victim or any minor-age children without the prior approval of your Community Corrections Officer.
(14) Hold no position of authority or trust involving children.

- (15) Do not possess or peruse sexually explicit materials unless given prior approval by your sexual deviancy treatment specialist and/or Community Corrections Officer.
- (16) Do not attend X-rated movies, peep shows or adult bookstores without the prior approval of your sexual deviancy treatment specialist or Community Corrections Officer.
- (17) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, obtain a mental health evaluation from a qualified provider and complete all treatment recommendations.
- (18) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, undergo an evaluation regarding substance abuse at your expense and follow any recommended treatment as a result of the evaluation.
- (19) Do not use or possess illegal or controlled substances without the written prescription of a licensed physician and to verify compliance, submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
- (20) Do not purchase, possess, or use alcohol (beverage or medicinal), and submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
- (21) Do not change residence without the prior approval of your Community Corrections Officer.
- (22) Obey all laws.
- (23) Maintain Community Corrections Officer approved employment and notify your employer regarding your history of sexual deviancy and rules and regulations regarding children and legal status.
- (24) Pay for counseling costs for victims and their families.
- (25) Within 30 days of sentencing, submit to DNA and HIV testing as required by law.
- (26) Do not change therapist without prior approval of your Community Corrections Officer and treatment therapist.
- (27) Do not access the Internet without the prior approval of your supervising Community Corrections Officer and sex offender treatment provider.
- (28) Abide by any additional conditions imposed by the Washington State Department of Corrections.

Date: 5-13-08

  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
Plaintiff, )  
)  
vs. )  
Jose Toledo-Sotelo )  
Defendant, )

No. 001057438 KNT

APPENDIX J  
JUDGMENT AND SENTENCE  
SEX/ KIDNAPPING OFFENDER NOTICE OF  
REGISTRATION REQUIREMENTS

**SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. You are required to register your complete residential address with the sheriff of the county where you reside, because you have been convicted of one of the following sex or kidnapping offenses: *Rape 1, 2, or 3; Rape of a Child 1, 2, or 3; Child Molestation 1, 2 or 3; Sexual Misconduct With A Minor 1 or 2; Indecent Liberties; Incest 1 or 2; Voyeurism; Kidnapping 1 or 2 (if victim is a minor and offender is not the minor's parent); Unlawful Imprisonment (if victim is a minor and offender is not the minor's parent); Sexual Exploitation of a Minor; Custodial Sexual Misconduct 1; Criminal Trespass against Children; Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct; Sending, Bringing Into State Depictions of a Minor Engaged in Sexually Explicit Conduct; Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct; Communication with a Minor for Immoral Purposes; Patronizing a Juvenile Prostitute; Failure to Register as a Sex Offender; any gross misdemeanor that is under RCW 9A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or RCW 9A.44.130 or a kidnapping offense under 9A.44.130; or any felony with a finding of sexual motivation (RCW 9.94A.835 or RCW 13.40.135).*

If you are out of custody, you must register immediately upon being sentenced.

If you are in custody, you must register within 24 hours of your release.

If you change your residence within a county, you must send signed written notice of your change of residence to the county sheriff within 72 hours of moving.

If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of the county of your new residence at least 14 days before moving and register with the county sheriff of your new residence within 24 hours of moving. In addition, you must give signed written notice of your change of address to the sheriff of the county where you last registered within 10 days of moving.

If you plan to attend a public or private school or institution of higher education in Washington, you are required to notify the county sheriff for the county of your residence within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you are currently attending a public or private school or institution of higher education in Washington, you must notify the county sheriff, for the county where the school is located, immediately.

If you lack a fixed residence, you are required to register as homeless. You must also report in person to the sheriff of the county where you registered on a weekly basis. If you are under DOC supervision and lack a fixed residence, you must register in the county where you are being supervised. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within 24 hours.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 business days after returning to this state or within 24 hours if you are under the jurisdiction of the state department of corrections, the indeterminate sentence review board or the department of social and health services.

If you move to a new state, you must register with the new state within 10 days after establishing residence. You must also send written notice, within 10 days of moving to the new state, to the county sheriff with whom you last registered in Washington State.

If you are not a resident of Washington, but attend school, are employed, or carry on a vocation in the State of Washington, you must register with the county sheriff for the county where your school, place of employment, or vocation is located.

If you are ranked as a Level II or Level III offender (even if you have a fixed residence), you must report, in person, every ninety days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.

The King County Sheriff's Office sex offender registration desk is located on the first floor of the King County Courthouse- 516 3<sup>rd</sup> Avenue, Seattle, WA. Failure to comply with registration requirements is a criminal offense.

Copy Received:

Defendant

Date

JUDGE

APPENDIX J Rev 8/06  
Distribution:  
Original/White - Clerk  
Yellow - Defendant  
Pink - King County Jail

Translated by Roxana S. Galan

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FILED  
KING COUNTY, WASHINGTON

AUG 08 2008

SUPERIOR COURT CLERK  
BY: NANCY L. SILVE  
DEPUTY

CERTIFIED COPY TO COUNTY JAIL AUG 08 2008

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 00-1-05743-8 KNT

vs.

Order Correcting Judgment and  
Sentence

Jose Toledo Sotelo,

Defendant.

The Court modifies the original judgment and sentence by deleting the community custody range and providing an order for 36 months community custody following release from confinement on these convictions.

Signed this 8 of July 2008

~~Jennifer Miller DPA WSEA #31600~~

~~Harry Wallace defense attorney~~

  
The Honorable George T. Mattison

Daniel T. Satterberg, Prosecuting Attorney  
Norm Malen Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429



Order Correcting Judgment and Sentence - 1

ORIGINAL

# APPENDIX

C

Appendix C

FILED

FAX HIV ✓

08 MAY 16 AM 9:50

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

PRESENTENCING STATEMENT & INFORMATION ATTACHED

CERTIFIED COPY TO COUNTY JAIL MAY 16 2008

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 07-1-103615-KNT

Vs.

JUDGMENT AND SENTENCE  
FELONY

JOSE TOLEDO-SOTELO

Defendant,

\* CLERK'S ACTION REQUIRED (p3)

I. HEARING

I.1 The defendant, the defendant's lawyer, BARRY WALLIS, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: NICHOL'S family,

defendant's significant other - WIFE

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 9/10/2007 by jury verdict of:

Count No.: 1 Crime: BAIL JUMPING

RCW 9A.76.170 Crime Code: 05156

Date of Crime: 9/21/2000 Incident No. \_\_\_\_\_

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

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

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

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

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

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

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

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

Date of Crime: \_\_\_\_\_ Incident No. \_\_\_\_\_

[ ] Additional current offenses are attached in Appendix A

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

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

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): 00-1-05743-8KNT ~~888~~-1(2 COUNTS)  
CM

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):  
 Criminal history is attached in Appendix B.  
 One point added for offense(s) committed while under community placement for count(s) \_\_\_\_\_

**2.4 SENTENCING DATA:**

| Sentencing Data | Offender Score | Seriousness Level | Standard Range | Enhancement | Total Standard Range               | Maximum Term                |
|-----------------|----------------|-------------------|----------------|-------------|------------------------------------|-----------------------------|
| Count I         | * 2            | V                 |                |             | <del>6-18</del><br>MONTHS<br>13-17 | 5 YRS<br>AND/OR<br>\$10,000 |
| Count           |                |                   |                |             |                                    |                             |
| Count           |                |                   |                |             |                                    |                             |
| Count           |                |                   |                |             |                                    |                             |

Additional current offense sentencing data is attached in Appendix C.

2.5 **EXCEPTIONAL SENTENCE (RCW 9.94A.535):**  
 Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) \_\_\_\_\_. Findings of Fact and Conclusions of Law are attached in Appendix D. The State  did  did not recommend a similar sentence.

**III. JUDGMENT**

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.  
 The Court DISMISSES Count(s) \_\_\_\_\_

IV. ORDER

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

4.1 RESTITUTION AND VICTIM ASSESSMENT:

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

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

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

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500<sup>00</sup> The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:  Not less than \$ \_\_\_\_\_ per month;  On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

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



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

n/a

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

n/a

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

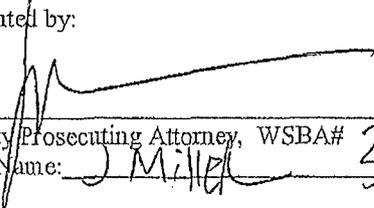
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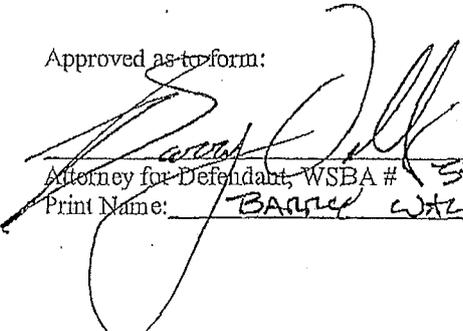
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: May 13 08

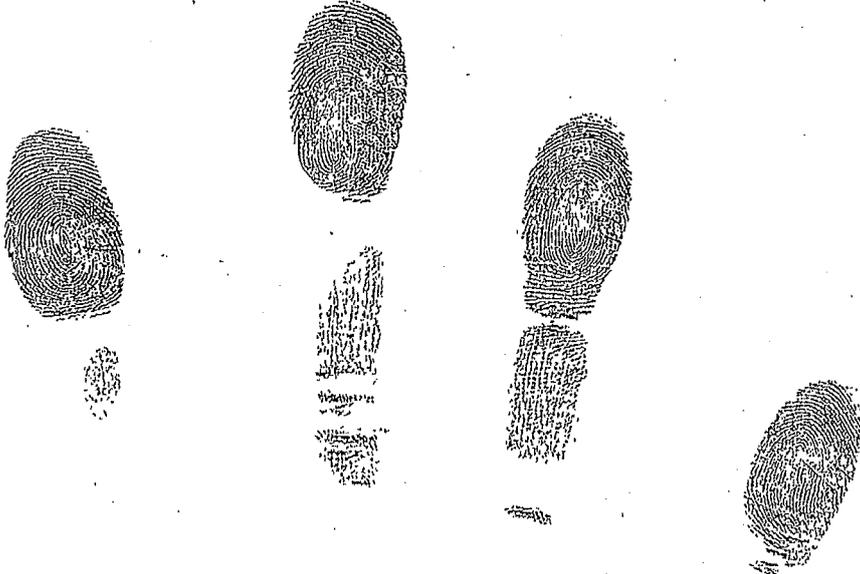
  
 JUDGE  
 Print Name: \_\_\_\_\_

Presented by:  
  
 Deputy Prosecuting Attorney, WSBA# 31600  
 Print Name: J Miller

Approved as to form:  
  
 Attorney for Defendant, WSBA # 57475  
 Print Name: Barry Walter

FINGERPRINTS

BEST IMAGE POSSIBLE



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: [Signature]  
DEFENDANT'S ADDRESS: \_\_\_\_\_

JOSE TOLEDO-SOTELO

DATED: 05/16/08  
[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINEY  
SUPERIOR COURT CLERK  
BY: [Signature]  
DEPUTY CLERK

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

OFFENDER IDENTIFICATION  
S.I.D. NO. WA19665588  
DOB: JANUARY 27, 1966  
SEX: M  
RACE: W

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



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSE TOLEDO-SOTELO

Defendant,

No. 07-1-103615-KNT

APPENDIX G  
ORDER FOR BIOLOGICAL TESTING  
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

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

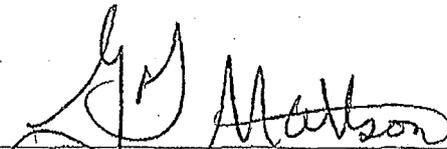
(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):

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

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

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

Date: May 13 '08

  
\_\_\_\_\_  
JUDGE, King County Superior Court

# APPENDIX

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Appendix D

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
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 ) Plaintiff, )  
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 ) v. )  
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 ) JOSE TOLEDO-SOTELO, )  
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 ) )  
 ) )  
 ) Defendant. )

No. 00-1-05743-8 KNT  
SECOND AMENDED INFORMATION

COUNT I

I, Daniel T. Satterberg, Interim Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JOSE TOLEDO-SOTELO of the crime of **Rape of a Child in the First Degree**, committed as follows:

That the defendant JOSE TOLEDO-SOTELO in King County, Washington, during a period of time intervening between April 25, 1995 through August 31, 1996, being at least 24 months older than M.G. (dob 04/24/86), had sexual intercourse with M.G. (dob 04/24/86), who was less than 12 years old and was not married to the defendant;

Contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

COUNT II

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JOSE TOLEDO-SOTELO of the crime of **Rape of a Child in the First Degree**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

Norm Maleng, Prosecuting Attorney  
Daniel T. Satterberg, Interim Prosecuting Attorney  
Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

1 That the defendant JOSE TOLEDO-SOTELO in King County, Washington, during a period  
2 of time intervening between April 24, 1995 through August 31, 1996, being at least 24 months older  
3 than M.G.(dob 04/24/86), had sexual intercourse with M.G. (dob 04/24/86), who was less than 12  
4 years old and was not married to the defendant;

5 Contrary to RCW 9A.44.073, and against the peace and dignity of the State of Washington.

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COUNT III

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JOSE TOLEDO-SOTELO of the crime of **Child Molestation in the First Degree**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JOSE TOLEDO-SOTELO in King County, Washington, during a period of time intervening between April 25, 1995 through August 31, 1996, being at least 36 months older than M.G. (dob 04/24/86), had sexual contact for the purpose of sexual gratification, with M.G. (dob 04/24/86), who was less than 12 years old and was not married to the defendant;

Contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

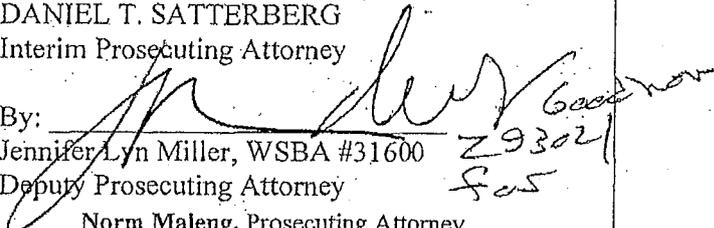
COUNT IV

And I, Daniel T. Satterberg, Interim Prosecuting Attorney aforesaid further do accuse JOSE TOLEDO-SOTELO of the crime of **Child Molestation in the First Degree**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant JOSE TOLEDO-SOTELO in King County, Washington, during a period of time intervening between April 25, 1995 through August 31, 1996, being at least 36 months older than M.G. (dob 04/24/86), had sexual contact for the purpose of sexual gratification, with M.G. (dob 04/24/86), who was less than 12 years old and was not married to the defendant;

Contrary to RCW 9A.44.083, and against the peace and dignity of the State of Washington.

NORM MALENG  
Prosecuting Attorney  
DANIEL T. SATTERBERG  
Interim Prosecuting Attorney

By:   
Jennifer Lyn Miller, WSBA #31600  
Deputy Prosecuting Attorney

Norm Maleng, Prosecuting Attorney  
Daniel T. Satterberg, Interim Prosecuting Attorney  
Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

# APPENDIX

E

Appendix E

FELONY PLEA AGREEMENT

Date of Crime: 4/25/95 - 8/31/96

Date: 10/16/07

Defendant: Jose Toledo - Sotelo Cause No: 00-1-05743-8 SEA/KNT

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) III + IV, ~~V, VI~~ of the  original  2<sup>nd</sup> amended information.

With Special Finding(s):  deadly weapon - firearm, RCW 9.94A.510(3);  deadly weapon other than firearm, RCW 9.94A.510(4);  sexual motivation, RCW 9.94A.835;  protected zone, RCW 69.50.435;  domestic violence, RCW 10.99.020;  other \_\_\_\_\_; for count(s): \_\_\_\_\_

DISMISS: Upon disposition of Count(s) III, IV, ~~V, VI~~, the State moves to dismiss Count(s): I, II

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in  Appendix C;  \_\_\_\_\_

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and

- agrees to pay restitution in the specific amount of \$ \_\_\_\_\_
- agrees to pay restitution as set forth in  Appendix C;  \_\_\_\_\_

OTHER: \_\_\_\_\_

CRIMINAL HISTORY AND OFFENDER SCORE:

a.  The defendant agrees to the foregoing Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A) and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation.

b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

(1) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

(2) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

c. The State's recommendation may change if the score used by the court at sentencing differs from that set out in Appendix A.

Maximum on Count(s) III, IV is not more than life years each and \$ 50,000 fine each.

Maximum on Count(s) \_\_\_\_\_ is not more than \_\_\_\_\_ years each and \$ \_\_\_\_\_ fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: \_\_\_\_\_

Mandatory weapon sentence enhancement for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each; for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release. #25115

[Signature]  
Defendant

[Signature]  
Deputy Prosecuting Attorney

[Signature]  
Attorney for Defendant #37425

[Signature]  
Judge, King County Superior Court

# GENERAL SCORING FORM

## Violent Sex Offenses

Use this form only for the following offenses: Child Molestation 1, Indecent Liberties (with forcible compulsion), Rape of a Child 1 and 2, Rape 2.

|   |                                   |           |
|---|-----------------------------------|-----------|
| OFFENDER'S NAME<br><i>Toledo-Sotelo, Jose</i> | OFFENDER'S DOB<br><i>1-27-66</i>  | STATE ID# |
| JUDGE   | CAUSE#<br><i>00-1-05743-8 KUT</i> | FBI ID#   |

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions.....            x 3 =             
 Enter number of other serious violent and violent felony convictions.....            x 2 =             
 Enter number of other felony convictions.....   1   x 1 =   1  

**JUVENILE HISTORY:**

Enter number of sex offense adjudications.....            x 3 =             
 Enter number of other serious violent and violent felony adjudications.....            x 2 =             
 Enter number of other felony adjudications.....            x 1/2 =           

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other sex offense convictions *other Ct - this cause*.....   1   x 3 =   3    
 Enter number of other serious violent and violent felony convictions.....            x 2 =             
 Enter number of other felony convictions.....   1   x 1 =   1  

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point..... + 1 =           

Total the last column to get the Offender Score.  
 (Round down to the nearest whole number.)

|                                      |                      |                   |                                |    |            |
|--------------------------------------|----------------------|-------------------|--------------------------------|----|------------|
| STANDARD RANGE CALCULATION* <i>2</i> |                      |                   |                                |    |            |
| <i>ROC 1<sup>o</sup> - 2 CTS</i>     | <i>XII</i>           | <i>3</i>          | <i>120</i>                     | TO | <i>160</i> |
| CURRENT OFFENSE<br>BEING SCORED      | SERIOUSNESS<br>LEVEL | OFFENDER<br>SCORE | LOW<br>STANDARD SENTENCE RANGE |    | HIGH       |

- \* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.
- \* If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.
- \* If no prior sex offense conviction and sentence is less than eleven years, the Special Sex Offender Sentencing Alternative is an option.

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

This criminal history compiled on: 18-Sep-00

| Date of<br>O = Offense<br>C = Conviction<br>S = Sentence | Crime | Place of Conviction | Case Number | Disposition | Score<br>or<br>No<br>Score | Point<br>Given |
|--|-------|---------------------|-------------|-------------|----------------------------|----------------|
|--|-------|---------------------|-------------|-------------|----------------------------|----------------|

Defendant: Toledo-Sotelo, Jose Cause Number: 00-1-05743-8KNT Current Offense Incident Date: 4/24/95 thru 8/31/96

| ADULT FELONIES:                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | NONE KNOWN; RECOMMENDATION AND STANDARD RANGE ASSUMES NO PRIOR FELONY CONVICTIONS. |
| <input type="checkbox"/>            | CRIMINAL HISTORY NOT KNOWN AND NOT RECEIVED AT THIS TIME.                          |

| ADULT MISDEMEANORS: |  |  |  |  |  |  |  |
|---------------------|--|--|--|--|--|--|--|
|                     |  |  |  |  |  |  |  |

WASIS/NCIC: 10/25/99

Prepared by:

\_\_\_\_\_  
King County Prosecutor's Office

STATE'S SENTENCING RECOMMENDATION  
FELONY SEX OFFENSES (NON-SSQSA)

Date of Crime: 4/25/05 - 8/31/06  
Defendant: Jos. Toledo-Sotelo

Date: 10/16/07  
Cause: 00-1-05743-0 SEA/KNT

The State recommends that the defendant be sentenced to a term of confinement in the  King County Jail,  King County Work/Education Release,  Department of Corrections as follows:

DETERMINATE SENTENCE:

84 months/days on Count III; \_\_\_\_\_ months/days on Count \_\_\_\_\_; \_\_\_\_\_ months/days on Count \_\_\_\_\_;  
84 months/days on Count IV; \_\_\_\_\_ months/days on Count \_\_\_\_\_; \_\_\_\_\_ months/days on Count \_\_\_\_\_.

ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):

\_\_\_\_\_ days of total confinement are hereby converted to:  
 \_\_\_\_\_ days of partial confinement to be served subject to the requirements of the King County Jail.  
 \_\_\_\_\_ days / hours community restitution under the supervision of the Department of Corrections to be completed as follows:  on a schedule established by the defendant's Community Corrections Officer;  
 \_\_\_\_\_  
 Alternative conversion was not used because:  Defendant's criminal history,  Defendant's failure to appear,  
 Other: \_\_\_\_\_

FOR CONFINEMENT LESS THAN ONE YEAR: COMMUNITY  SUPERVISION, for crimes committed before 7-1-2000,  CUSTODY, for crimes committed on or after 7-1-2000, is recommended pursuant to RCW 9.94A.545 for a period of 12 months.

COMMUNITY PLACEMENT (CONFINEMENT OVER ONE YEAR) is mandatory for any sex offense committed before 6-6-1996 for 24 months, or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. RCW 9.94A.700.

COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) is mandatory for any sex offense committed after 6-6-1996 but before 7-1-2000 for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. RCW 9.94A.710.

COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) is mandatory for any sex offense (non-RCW 9.94A.712 offenses) committed after 6-30-2000 for a period of 36-48 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. RCW 9.94A.715.

INDETERMINATE SENTENCE - FOR QUALIFYING OFFENSES occurring on or after 9-1-2001 (RCW 9.94A.712):

Count \_\_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life  
Count \_\_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life  
Count \_\_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life  
Count \_\_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life

COMMUNITY CUSTODY is mandatory for any period of time the defendant is released from confinement before the expiration of the maximum sentence. Unless a condition is waived by the court, the defendant is required to comply with any conditions imposed by the court and by the Department of Corrections pursuant to RCW 9.94A.712 / .713. The defendant is required to comply with any conditions imposed by the Indeterminate Sentence Review Board pursuant to RCW 9.94A.713 and 9.95.420 - .435.

Terms on each count to run ~~consecutively~~ concurrently with:  each other, and Count V (bail jumping).  
Terms on each count to run consecutively / concurrently with:  Cause No(s). \_\_\_\_\_

EXCEPTIONAL SENTENCE: This is an exceptional sentence and the substantial and compelling reasons for departing from the presumptive sentence range are set forth on the attached form.

ADDITIONAL RECOMMENDED CONDITIONS OF COMMUNITY | SUPERVISION,  CUSTODY:

within 45 days of release, defendant shall obtain a sexual deviancy evaluation from St. certified treatment provider and follow all recommendations

NO CONTACT: For the maximum term, the defendant shall have no contact, direct or indirect, in person, in writing, by telephone or through third parties with: M.G. (d.o.b. 4/24/86)

any minors without the supervision of a responsible adult who has knowledge of this conviction and order.

MONETARY PAYMENTS: The defendant shall make the following monetary payments under the supervision of the Department of Corrections pursuant to RCW 9.94A.670, .750, and .753:

- restitution as set forth on "Plea Agreement" and reimburse the victim for the cost of any counseling required as a result of the offender's crime;
- Court costs, \$500 Victims Penalty Assessment, recoupment of costs for appointed counsel; \$100 DNA collection fee;
- Other \_\_\_\_\_

BLOOD TESTING: HIV blood testing is mandatory under RCW 70.24.340 for any sex offense, prostitution related offense, or drug offense under RCW 69.50 associated with needle use.

DNA TESTING: DNA testing is mandatory under RCW 43.43.754 for any felony offense.

SEX OFFENDER REGISTRATION: Every person convicted of a sex offense is required to register as a sex offender pursuant to RCW 9A.44.130.

FIREARM REVOCATION: Revocation of the right to possess a firearm is mandatory for any felony conviction. RCW 9.41.040.

The State will consider recommending the Special Sex Offender Sentencing Alternative RCW 9.94A.670 following receipt of a sexual deviancy evaluation from a qualified State-certified treatment provider. In the event the State agrees to recommend a SSOSA sentence, the State's recommendation will be 96 months as to Court(s) 11A, 12A

*This is not stricken, and should be considered a possibility if the defendant obtains an evaluation.*

*RLA  
10/16/07*

Approved by:



Deputy Prosecuting Attorney, WSBA #

# APPENDIX

F

Appendix F

FILED

07 NOV 26 AM 8:59

KING COUNTY  
SUPERIOR COURT CLERK  
KENT, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSE TOLEDO-SOTELO,

Defendant.

No. 00-1-05743-8 KNT

STATEMENT OF DEFENDANT ON  
PLEA OF GUILTY TO FELONY  
SEX OFFENSE (STDFG)

1. My true name is JOSE TOLEDO-SOTELO

2. My date of birth is JAN 27<sup>TH</sup> 1966

3. I went through the 9<sup>TH</sup> grade.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is BARRY WALLIS.

(b) I am charged with the crime(s) of CHILD MOLESTATION 1<sup>ST</sup> DEGREE 2 COUNTS

The elements of this crime(s) are set forth in the ~~information~~ amended information, which is incorporated by reference and which I have reviewed with my lawyer.

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5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to testify and to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

| Count No. | Standard Range | Enhancement That Will Be Added to Standard Range | Maximum Term And Fine   |
|-----------|----------------|--|-------------------------|
| III       | 72 to 96 mos.  | N/A  | life years<br>\$ 50,000 |
| IV        | 72 to 96 mos.  | N/A  | life years<br>\$ 50,000 |
|           |                |  | _____ years<br>\$ _____ |

1 (b) The standard sentence range is based on the crime charged and my criminal history.  
2 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in  
3 this state, in federal court, or elsewhere.

4 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.  
5 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is  
6 correct and complete. If I have attached my own statement, I assert that it is correct and complete.  
7 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated  
8 to tell the sentencing judge about those convictions.

9 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal  
10 history is discovered, both the standard sentence range and the prosecuting attorney's  
11 recommendations may increase or a mandatory sentence of life imprisonment without possibility of  
12 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this  
13 charge is binding on me.

14 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a  
15 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to  
16 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances  
17 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,  
18 attorney fees, and other costs and fees. Furthermore, the judge may place me on community  
19 supervision, community placement or community custody and I will have restrictions and  
20 requirements placed upon me.

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(f)

(i) For sex offenses committed before July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If the period of confinement is more than one year, the judge will order me to serve three years of community custody (or two years of community placement if offense committed before 6/6/1996) or up to the period of earned early release, whichever is longer. During the period of community custody or community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

~~(ii) For sex offenses committed on or after July 1, 2000 but before September 1, 2001: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

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(iii) For sex offenses committed on or after September 1, 2001:

(a) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (1) or (2), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence for the offense, and a minimum term of confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is imposed. The minimum term of confinement that is imposed may be increased by the Indeterminate Sentence Review Board if the Board determines by a preponderance of the evidence that it is more likely than not that I will commit sex offenses if released from custody. In addition to the period of confinement, I will be sentenced to community custody for any period of time I am released from total confinement before the expiration of the maximum sentence. During the period of community custody I will be under the supervision of the Department of Corrections and I will have restrictions and requirements placed upon me and I may be required to participate in rehabilitative programs.

Δ T

(1) If the current offense is any of these offenses or attempt to commit any of these offenses:

|   |  |
|---|--|
| Rape in the first degree  | Rape in the second degree  |
| Rape of a child in the first degree committed when I was at least 18 years old.   | Rape of a child in the second degree committed when I was at least 18 years old. |
| Child molestation in the first degree committed when I was at least 18 years old. | Indecent liberties by forcible compulsion  |

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|---|---|
| <del>Any of the following offenses with a finding of sexual motivation:</del> |   |
| <del>Murder in the first degree</del>   | <del>Murder in the second degree</del>            |
| <del>Homicide by abuse</del>  | <del>Kidnapping in the first degree</del>         |
| <del>Kidnapping in the second degree</del>                                    | <del>Assault in the first degree</del>            |
| <del>Assault in the second degree</del>                                       | <del>Assault of a child in the first degree</del> |
| <del>Burglary in the first degree</del>                                       |   |

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(2) If the current offense is any sex offense and I have a prior conviction for any of these offenses or attempt to commit any of these offenses or a comparable offense in this state, in federal court, or elsewhere:

|   |  |
|---|--|
| <del>Rape in the first degree</del>   | <del>Rape in the second degree</del>                 |
| <del>Rape of a child in the first degree</del>                                | <del>Rape of a child in the second degree</del>      |
| <del>Child molestation in the first degree</del>                              | <del>Indecent liberties by forcible compulsion</del> |
| <del>Any of the following offenses with a finding of sexual motivation:</del> |  |
| <del>Murder in the first degree</del>   | <del>Murder in the second degree</del>               |
| <del>Homicide by abuse</del>  | <del>Kidnapping in the first degree</del>            |
| <del>Kidnapping in the second degree</del>                                    | <del>Assault in the first degree</del>               |
| <del>Assault in the second degree</del>                                       | <del>Assault of a child in the first degree</del>    |
| <del>Burglary in the first degree</del>                                       |  |

(b) If this offense is for a sex offense that is not listed in paragraph 6(f)(iii)(a), in addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the period of confinement is over one year, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned early release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the

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supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.

~~(iv) If this offense is Failure to Register as a Sex Offender and the crime was committed on or after June 7, 2006, regardless of the term of confinement ordered, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned early release, whichever is longer. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

(g) The prosecuting attorney will make the following recommendation to the judge: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The prosecutor will make the recommendation stated in the plea Agreement and State's Sentence Recommendation, which are incorporated by reference.

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

~~(i) The crime of child Molestation 1 has a mandatory minimum sentence of at least N/A years of total confinement. The law does not allow any reduction of this sentence. For crimes committed on or after July 24, 2005, this does not apply to juveniles tried as~~

1 adults pursuant to a transfer of jurisdiction under RCW 13.40.110 (see RCW 9.94A.540(3)). [If not  
2 applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

3 The crime of Child Molestation I' is a most serious offense as defined by  
4 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this  
5 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent  
6 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence  
7 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not  
8 applicable, this paragraph should be stricken and initialed by the defendant and the judge \_\_\_\_\_.]

9 The crime of \_\_\_\_\_ with a finding that [circle  
10 applicable finding] (1) the crime was predatory as defined by RCW 9.94A.030; (2) the victim was  
11 under 15 at the time of the offense; (3) the victim was developmentally disabled, mentally  
12 disordered, a frail elder, or a vulnerable adult; if committed on or after July 1, 2006, has a  
13 mandatory minimum sentence of 25 years of confinement or the maximum of the standard range  
14 sentence, whichever is greater. The law does not allow any reduction of this sentence. RCW  
15 9.94A.712. This minimum sentence does not apply to juveniles tried as adults pursuant to RCW  
16 13.040.030(1)(e). [If not applicable, this paragraph should be stricken and initialed by the  
17 defendant and the judge Δ τ.]

18 (j) If this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the  
19 second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child  
20 molestation in the first degree, or (2) any of the following with a finding of sexual motivation: murder  
21 in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree,  
22 kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a

1 child in the first degree, or burglary in the first degree, or (3) any attempt to commit any of the offenses  
2 listed in this sentence and I have at least one prior conviction for one of these listed offenses (or if the  
3 current offense was committed after July 21, 2001, a comparable offense in this state, in federal court,  
4 or elsewhere), the offense for which I am charged carries a mandatory sentence of life imprisonment  
5 without the possibility of parole.

6 (k) ~~The crime charged in Count \_\_\_\_\_ includes a firearm / deadly weapon  
7 sentence enhancement of \_\_\_\_\_ months.~~

8 ~~This additional confinement time is mandatory and must be served consecutively to any  
9 other sentence and any other enhancement I have already received or will receive in this or any other  
10 cause for any felony offense. [If not applicable, this paragraph should be stricken and initialed by  
11 the defendant and the judge S T]~~

12 (l) ~~The crime charged in Count \_\_\_\_\_, committed on or after July 1, 2006,  
13 includes a sexual motivation sentence enhancement of \_\_\_\_\_ months.~~

14 ~~This additional confinement time is mandatory and must be served consecutively to any  
15 other sentence and any other enhancement I have already received or will receive in this or any other  
16 cause for any felony offense. [If not applicable, this paragraph should be stricken and initialed by  
17 the defendant and the judge Δ T]~~

18 (m) The sentences imposed on counts III + IV, except for any weapons enhancement,  
19 will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.

20 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge  
21 \_\_\_\_\_.]

1 (n) Counts \_\_\_\_\_ are serious violent offenses arising from separate and distinct  
2 criminal conduct and the sentences on these counts will run consecutively unless the judge finds  
3 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be  
4 stricken and initialed by the defendant and the judge        .]

5 (o) Special sex offender sentencing alternative:

6 For offenses committed before September 1, 2001: The judge may suspend execution  
7 of the standard range term of confinement under the special sex offender sentencing alternative  
8 (SSOSA) if I qualify under former RCW 9.94A.120(8) (for offenses committed before July 1, 2001) or  
9 RCW 9.94A.670 (for offenses committed on or after July 1, 2001). If the judge suspends execution of  
10 the standard range term of confinement, I will be placed on community custody for the length of the  
11 suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of  
12 total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and  
13 requirements placed upon me; and I will be subject to all of the conditions described in paragraph 6(e).  
14 Additionally, the judge could require me to devote time to a specific occupation and to pursue a  
15 prescribed course of study or occupational training. If a violation of the sentence occurs during  
16 community custody, the judge may revoke the suspended sentence.

17 For offenses committed on or after September 1, 2001: The judge may suspend  
18 execution of the standard range term of confinement or the minimum term of confinement, under the  
19 special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge  
20 suspends execution of the standard range term of confinement for a sex offense that is not listed in  
21 paragraph 6(f)(iii)(a), I will be placed on community custody for the length of the suspended sentence  
22 or three years, whichever is greater. If the judge suspends execution of minimum term of confinement

1 for a sex offense listed in paragraph 6(f)(iii)(a), I will be placed on community custody for the length  
2 of the statutory maximum sentence of the offense. In addition to the term of community custody, I will  
3 be ordered to serve up to 180 days of total confinement or, for a crime committed after July 1, 2005, up  
4 to 12 months of total confinement with no early release; I will be ordered to participate in sex offender  
5 treatment; I will have restrictions and requirements placed upon me; and I will be subject to all of the  
6 conditions described in paragraph 6(e). Additionally, the judge could require me to devote time to a  
7 specific occupation and to pursue a prescribed course of study or occupational training. If a violation  
8 of the sentence occurs during community custody, the judge may revoke the suspended sentence.

9 ~~(p) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the  
10 judge finds I used a motor vehicle in the commission of this felony.~~

11 (q) I will be required to undergo testing for the human immunodeficiency virus (HIV).

12 (r) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a  
13 crime under state law is grounds for deportation, exclusion from admission to the United States, or  
14 denial of naturalization pursuant to the laws of the United States.

15 (s) I will be required to provide a biological sample for purposes of DNA identification  
16 analysis.

17 (t) I will be required to register with the sheriff of the county of the state of Washington  
18 where I reside, study, or work. The specific registration requirements are described in Appendix J,  
19 Notice of Registration Requirements, which is attached to this form.

20 (u) This plea of guilty will result in the revocation of my right to possess, own, or have in  
21 my control any firearm unless and until my right to do so is restored by a court of record.

1 (v) Because this is a crime of domestic violence, I may be ordered to pay a domestic  
2 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court  
3 may order me to participate in a domestic violence perpetrator program approved under RCW  
4 26:50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and  
5 the judge \_\_\_\_\_.]

6 7. I plead guilty to the crime(s) of CHILD MOLESTATION IN THE  
7 FIRST DEGREE, TWO COUNTS  
8 \_\_\_\_\_

9 as charged in the information/ \_\_\_\_\_ amended information. I have received a copy of  
10 that information.

11 8. I make this plea freely and voluntarily.

12 9. No one has threatened harm of any kind to me or to any other person to cause me to make  
13 this plea.

14 10. No person has made promises of any kind to cause me to enter this plea except as set  
15 forth in this statement.

16 11. The judge has asked me to state briefly in my own words what I did that makes me  
17 guilty of this (these) crime(s). This is my statement:

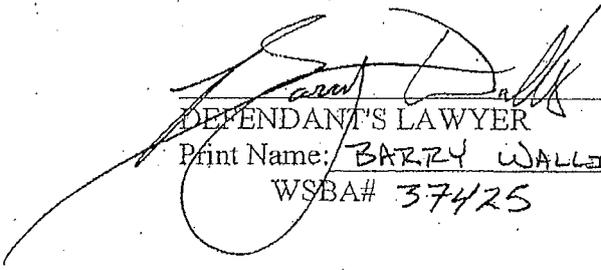
18 ~~XXXXXXXXXX~~ I, JOSE TOLEDO-SOPELO, IN KING COUNTY  
19 WASHINGTON ON AUGUST 6<sup>TH</sup> ~~2000~~ 1996, DID KISS ON  
20 THE MOUTH AND FONDLE THE BREASTS OF  
21 M.C.G. (DOB 04/24/86) <sup>TWICE</sup> FOR THE PURPOSE OF SEXUAL  
22 GRATIFICATION. MCG WAS LESS THAN 12 YEARS  
OLD AT THE TIME AND NOT MY WIFE.

1  
2  
3 12. My lawyer has explained to me, and we have fully discussed, all of the above  
4 paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on  
5 Plea of Guilty." I have no further questions to ask the judge.

6  
7 ~~X~~ ~~\_\_\_\_\_~~  
DEFENDANT

8 I have read and discussed this statement  
9 with the defendant and believe that the  
10 defendant is competent and fully  
11 understands the statement.

11   
12 PROSECUTING ATTORNEY  
Print Name: Goodman  
13 WSBA# 29304

11   
12 DEFENDANT'S LAWYER  
Print Name: BARRY WALLER  
13 WSBA# 37425

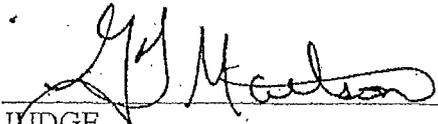
14 The foregoing statement was signed by the defendant in open court in the presence of the  
15 defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- 16  (a) The defendant had previously read; or  
17  (b) The defendant's lawyer had previously read to him or her; or  
18  (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

19 I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The  
20 defendant understands the charges and the consequences of the plea. There is a factual basis for the  
21 plea. The defendant is guilty as charged.

22 Dated this 16 day of October, 2007.

  
JUDGE

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I am a certified interpreter or have been found otherwise qualified by the court to interpret in the Spanish language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 16 day of October, 2007

\_\_\_\_\_  
TRANSLATOR  
Print Name: \_\_\_\_\_

(Alicia Beatty)  
\_\_\_\_\_  
INTERPRETER  
Print Name: Alicia Beatty

# APPENDIX

G

Appendix G

CHILD MOLESTATION, FIRST DEGREE

(RCW 9A.44.083)

CLASS A FELONY

VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.360 (17))

ADULT HISTORY: (If the prior offense was committed *before* 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed *after* 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of sex offense adjudications ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony adjudications ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions ..... 1 x 3 = 3  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), + 1 = \_\_\_\_\_

Total the last column to get the Offender Score (Round down to the nearest whole number) 3

II. SENTENCE RANGE

A. OFFENDER SCORE:

| 0              | 1              | 2              | 3              | 4              | 5               | 6               | 7                | 8                | 9 or more        |
|----------------|----------------|----------------|----------------|----------------|-----------------|-----------------|------------------|------------------|------------------|
| 51 - 68 months | 57 - 75 months | 62 - 82 months | 67 - 89 months | 72 - 96 months | 77 - 102 months | 98 - 130 months | 108 - 144 months | 129 - 171 months | 149 - 198 months |

STANDARD RANGE (LEVEL X)

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. Following release from state prison, the offender must serve community custody of 36 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-15 or III-16 to calculate the enhanced sentence.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eight years: Special Sex Offender Sentencing Alternative (RCW 9A.20.120).

CHILD MOLESTATION, FIRST DEGREE

(RCW 9A.44.083)

CLASS A FELONY

VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.360 (16))

ADULT HISTORY: (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

JUVENILE HISTORY:

Enter number of sex offense adjudications ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony adjudications ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other sex offense convictions ..... 1 x 3 = 3  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes), ..... + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

3

II. SENTENCE RANGE

A. OFFENDER SCORE:  
 STANDARD RANGE  
 (LEVEL X)

| 0              | 1              | 2              | 3              | 4              | 5               | 6               | 7                | 8                | 9 or more        |
|----------------|----------------|----------------|----------------|----------------|-----------------|-----------------|------------------|------------------|------------------|
| 51 - 68 months | 57 - 75 months | 62 - 82 months | 67 - 89 months | 72 - 96 months | 77 - 102 months | 98 - 130 months | 108 - 144 months | 129 - 171 months | 149 - 198 months |

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. Following release from state prison, the offender must serve community custody of 36 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eleven years: Special Sex Offender Sentencing Alternative (RCW 9A.20.120).

# APPENDIX

H

Appendix H

CHILD MOLESTATION, FIRST DEGREE

(RCW 9A.44.083)

CLASS A FELONY

VIOLENT SEX

I. OFFENDER SCORING (RCW 9.94A.360 (17))

ADULT HISTORY: (If the prior offense was committed *before* 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed *after* 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of sex offense convictions ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

JUVENILE HISTORY: (Adjudications entered on the same date count as one offense except for violent offenses with separate victims)

Enter number of sex offense adjudications ..... x 3 = \_\_\_\_\_  
 Enter number of other serious violent and violent felony adjudications ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score) *(If they do encompass the same criminal conduct)*

Enter number of other sex offense convictions ..... 0 x 3 = 0  
 Enter number of other serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

STATUS: Was the offender on community placement on the date the current offense was committed? (If yes), + 1 = \_\_\_\_\_

Total the last column to get the Offender Score (Round down to the nearest whole number) 0

II. SENTENCE RANGE

| A. OFFENDER SCORE:       | 0              | 1              | 2              | 3              | 4              | 5               | 6               | 7                | 8                | 9 or more        |
|--------------------------|----------------|----------------|----------------|----------------|----------------|-----------------|-----------------|------------------|------------------|------------------|
| STANDARD RANGE (LEVEL X) | 51 - 68 months | 57 - 75 months | 62 - 82 months | 67 - 89 months | 72 - 96 months | 77 - 102 months | 98 - 130 months | 108 - 144 months | 129 - 171 months | 149 - 198 months |

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
- C. Following release from state prison, the offender must serve community custody of 36 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).
- D. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-15 or III-16 to calculate the enhanced sentence.

III. SENTENCING OPTIONS

- A. If no prior sex offense conviction and sentence is less than eight years: Special Sex Offender Sentencing Alternative (RCW 9A.20.120).

# APPENDIX

## I

Appendix I

(b) RCW 9.94A.390(1)(h), if \*effective when the defendant committed the crime, would have provided a basis for the defendant to seek a mitigated sentence; and

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the defendant for the murder, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the defendant in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the defendant committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [1993 c 144 § 5.]

#### Comment

In 1993, the Legislature enacted RCW 9.94A.395 to establish a procedure for reducing the sentences of certain offenders convicted of murder prior to the effective date of RCW 9.94A.390(1)(h) (July 23, 1989). *current 9.94A.589(1)(A)*

**RCW 9.94A.400 Consecutive or concurrent sentences.** (1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and \*9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All

(c) Upon review of the sentence, the indeterminate sentence review board believes that the sentencing court, when originally sentencing the defendant for the murder, did not consider evidence that the victim subjected the defendant or the defendant's children to a continuing pattern of sexual or physical abuse and the murder was in response to that abuse.

(2) The court may resentence the defendant in light of RCW 9.94A.390(1)(h) and impose an exceptional mitigating sentence pursuant to that provision. Prior to resentencing, the court shall consider any other recommendation and evidence concerning the issue of whether the defendant committed the crime in response to abuse.

(3) The court shall render its decision regarding reducing the inmate's sentence no later than six months after receipt of the indeterminate sentence review board's recommendation to reduce the sentence imposed. [1993 c 144 § 5.]

\*Reviser's note: RCW 9.94A.390(1)(h) became effective July 23, 1989.

#### Comment

*In 1993, the Legislature enacted RCW 9.94A.395 to establish a procedure for reducing the sentences of certain offenders convicted of murder prior to the effective date of RCW 9.94A.390(1)(h) (July 23, 1989).*

*current 9.94A.589(1)(g)*

**RCW 9.94A.400 Consecutive or concurrent sentences.** (1)(a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and \*9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses, as defined in RCW 9.94A.030, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence of felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.