

No. ~~64265-1~~
64265-1

87501-4

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

IN RE THE PERSONAL RESTRAINT PETITION OF:

DEVON ADAMS,

PETITIONER.

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2009 OCT 12 PM 3:54

PERSONAL RESTRAINT PETITION

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10-14-09
PETITIONER MAY FILE PETITION
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COURT ADMINISTRATOR/CLERK

A. STATUS OF PETITIONER

Devon Adams (hereinafter “Adams”) challenges his King County convictions for Murder in the First Degree and Unlawful Possession of a Firearm (Case No. 99-1-07761-6). Although Mr. Adams was found guilty of the above-listed crimes on April 6, 2000, he challenges the *Judgment* entered on June 1, 2009, which is attached as Appendix A. That judgment was the result of the trial court resentencing Mr. Adams because his prior *Judgment and Sentence* was facially invalid.

Mr. Adams (DOC #783625) is currently incarcerated at the reformatory in Monroe, Washington.

This is Mr. Adams’ first collateral attack on this judgment.

B. FACTS

Mr. Adams caused the death of Franklin Brown. On September 8, 1999, Mr. Adams and Mr. Brown argued and eventually Mr. Adams shot and killed Mr. Brown. The *Certificate for Determination of Probable Cause* is attached as Appendix B.

As a result, Mr. Adams was charged with one count of First Degree Murder with a Deadly Weapon. Prior to trial, the State (through Deputy Prosecuting Attorney James Jude Konat) told Mr. Adams’ attorney (Michael Danko) that the State was willing to reduce the charge to Second Degree Murder in return for a guilty plea. See Appendix C (Seattle Times article date April 7, 200) and D (Declaration of Devon Adams).

However, that plea offer was never communicated to Mr. Adams. See Appendix D and E (Declaration of Ann DeKoster). This failure by trial counsel to communicate with Mr. Adams was only one example of an attorney/client relationship that was marked by numerous failures to communicate and resulting complaints.

Post-conviction counsel has made attempts to contact Mr. Danko, but has received no response. According to the Washington State Bar, which has repeatedly admonished and reprimanded Mr. Danko, his professional address is private.

Because Mr. Adams did not know of the plea offer, he proceeded to trial. At trial, defense counsel called no witnesses, but instead argued that Mr. Adams' apparent intoxication resulted in his inability to premeditate or form the intent to kill. The defense, if it can be called a "defense," failed. A jury convicted Mr. Adams in less than three hours.

After sentencing, an article appeared in the *Seattle Times* (noting that the defense at trial presented no witnesses), which quoted Sr. DPA Konat as having "expected a plea of second-degree murder."

This was how Mr. Adams first learned of the earlier plea offer.

When Mr. Adams's mother, Ann DeKoster, learned of the plea offer she wrote to Mr. Danko incensed that the second-degree murder offer had never been communicated to her son.

There is more than a reasonable likelihood that Mr. Adams would have accepted the plea offer. Mr. Adams is not stupid. His decision to proceed to trial was not the result of a glaring misperception of his actions, a delusional belief system, or simple obstinacy. Instead, Adams went to trial because he was told that the only offer was to plead guilty as charged.

Although no affirmative defense was presented at trial, one was available—a defense discovered by trial counsel *after trial*.

For the first time after trial, trial counsel directed that a psychologist evaluate Mr. Adams. *See* Appendix F. Although the evaluation was aimed at sentencing criteria, Dr. John P. Berberich concluded that Mr. Adams was unable to premeditate at the time of the crime. Dr. Berberich found that Mr. Adams suffers from Post Traumatic Stress Disorder (PTSD), characterizing the resulting symptoms as “severe.” In addition, he diagnosed Adams with depression and substance abuse. Indeed, Dr. Berberich found the extent and degree of violence that Adams had been exposed to was virtually unparalleled. (“I have seen many defendants who have been charged with murder. Mr. Adams’ history is unique in my experience.”).

As a result, Dr. Berberich opined that, at the time of the homicide, Mr. Adams’ ability to appreciate the wrongfulness of his conduct was “substantially impaired.” “Because of his history, it is reasonable to assume that Mr. Adams would be likely to experience great fear at times

when he was involved in an argument with a man. His intoxication at the time of the homicide, in combination with this Personality Disorder and Post Traumatic Stress Disorder would indeed have impaired his ability to fully appreciate the wrongfulness of his behavior.” As a result, Dr. Berberich concluded that Adams ability to premeditate was substantially impaired at the time of the crime.

Rather than use this information as support for a new trial (or more appropriately, seeking to withdraw so that new counsel could act to protect Mr. Adams’ rights), counsel presented Dr. Berberich’s evaluation at sentencing. The persuasiveness of Dr. Berberich’s evaluation resulted in the imposition of an exceptional sentence below the standard range.

C. ARGUMENT

1. MR. ADAMS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO COMMUNICATE THE STATE’S “MURDER 2° OFFER. MR. ADAMS WAS PREJUDICED BECAUSE THERE IS A REASONABLE LIKELIHOOD THAT HE WOULD HAVE ACCEPTED THE OFFER, IF COUNSEL HAD COMMUNICATED IT TO HIM.

The period from the arraignment extending to the beginning of trial is “perhaps the most critical period of the proceedings.” *Nunes v. Mueller*, 350 F.3d 1045, 1052 (9th Cir.2003) (citing *Powell v. Alabama*, 287 U.S. 45, 57 (1932)).

The Sixth Amendment requires that a defendant have effective assistance of counsel at all “critical stages” of the criminal process, including the plea stage. *United States v. Leonti*, 326 F.3d 1111, 1116-17 (9th Cir. 2003). The *Strickland* two-part test is applicable to a case in which a defendant contends that his counsel was constitutionally inadequate during the guilty plea process. *Hill v. Lockhart*, 474 U.S. 54, 58 (1985). This well-established two-prong test for evaluating ineffective assistance of counsel claims is deficient performance and resulting prejudice. More specifically, to prevail on an ineffective assistance of counsel claim, a defendant must show that counsel's performance “fell below an objective standard of reasonableness” and that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 688, 697. *See also Bell v. Cone*, 535 U.S. 685, 695 (2002).

An ineffective assistance of counsel claim can arise from failure to inform a defendant of a plea bargain.

It is beyond well-established that defense lawyers must communicate all plea offers to their clients. *State v. Osborne*, 102 Wn.2d 87, 99, 684 P.2d 683 (1984); *State v. James*, 48 Wn. App. 353, 362, 739 P.2d 1161 (1987) (citing numerous cases in accord). *See also United States v. Day*, 285 F.3d 1167, 1172 (9th Cir. 2002) (incorrect advice from counsel

regarding plea deprives defendant of opportunity to make an informed decision); *United States v. Rivera-Sanchez*, 222 F.3d, 1057, 1060-61 (9th Cir. 2000) (counsel is required to communicate the terms of a plea offer and ensure that the defendant understands its terms and significance); *United States v. Blaylock*, 20 F.3d 1458, 1465-66 (9th Cir. 1994) (failure to communicate plea offer constitutes ineffective assistance of counsel).

Here, Adams has clearly established a *prima facie* claim of deficient performance justifying an evidentiary hearing (if the State disputes the facts) or relief (if it does not). The State made Mr. Adams an offer of second-degree murder, a significant reduction in the charge which has a lower standard sentence range and no mandatory minimum. That offer was not communicated to Mr. Adams until after trial—when Adams could no longer accept the offer. Thus, Adams has established that trial counsel was deficient. He moves now to the second prong—prejudice.

In order to establish prejudice, Adams must show that he would have made a different choice (entered a guilty plea), but for counsel's deficient performance (failure to inform him of the plea offer). Even if a defendant has insisted upon going to trial and received a fair trial, he can still establish prejudice if he can show that there is a reasonable probability that the result would have been different. *Blaylock*, 20 F.3d at 1466 (defendant entitled to show that had he known of a plea offer, he would have accepted it).

The fact that Mr. Adams went to trial is certainly not proof that he

would not have pled guilty, if he had been informed of the plea offer. Mr. Adams went to trial on the crime charged. His defense was not one of innocence—denying any connection to the crime. Instead, he defended with a claim of diminished responsibility. Thus, pleading guilty is not contrary to, but is consistent with his (uninformed) decision to go to trial.

Just as importantly, Adams relies on extra-record evidence—his own declaration and the declarations of those who were aware of his state of mind at the time of this prosecution.

For example, his mother notes that she communicated with both her son and his counsel throughout the trial proceedings. She stated that Mr. Adams went to trial because he believed the State's only offer was to plead guilty as charged. Mr. Adams also told her that he would take a deal, but none had been offered. When Mr. Adams learned he had not been told of the State's offer, Mr. Adams told her he absolutely would have taken the offer, if he had been told about it. This was not a change in Mr. Adams' posture, it was completely consistent with everything he had stated about the case prior to trial.

Thus, Mr. Adams had established prejudice—or at least a *prima face* claim of prejudice.

If the State contests these facts, this Court should remand for an evidentiary hearing. If the State does not contest the facts, then this Court should grant Adams' petition.

2. MR. ADAMS WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN, PRIOR TO TRIAL, COUNSEL FAILED TO INVESTIGATE ADAMS' MENTAL STATE AT THE TIME OF THE CRIME AND WHERE, AFTER TRIAL, COUNSEL DID SO RESULTING IN AN OPINION OF DIMINISHED CAPACITY, BUT WHERE TRIAL COUNSEL DID NOT SEEK A NEW TRIAL.

To maintain a diminished capacity defense, a defendant must produce expert testimony demonstrating that a mental disorder, not amounting to insanity, impaired the defendant's ability to form the culpable mental state to commit the crime charged. *State v. Atsbeha*, 142 Wn.2d 904, 16 P.3d 626 (2001); *State v. Ellis*, 136 Wn.2d 498, 504, 963 P.2d 843 (1998). In *Ellis*, the defendant was charged with two counts of aggravated first degree murder. Thus, like this case, the culpable mental state for that crime was “premeditated intent to cause the death of another person.” In that case, an expert opined that Ellis’ mental disorders compromised defendant's perceptual process, his decision-making capacity and his ability to properly regulate his behavior:

[Defendant Ellis] is in a situation where certain stressors arise. And given the weaknesses in his psychological makeup, the mind is overpowered basically by—there is a breakdown in the deliberation process, in forming judgments and decisions, and the person ends up acting from disarray and from confusion and emotional forces, rather than from a deliberate forming of intent....

Id. at 520-21.

Given these facts, the Supreme Court found that it was an abuse of discretion to exclude such testimony. As that Court explained in *Atsbeha*,

“it is not enough that a defendant may be diagnosed as suffering from a particular mental disorder. The diagnosis must, under the facts of the case, be capable of forensic application in order to help the trier of fact assess the defendant's mental state at the time of the crime. The opinion concerning a defendant's mental disorder must reasonably relate to impairment of the ability to form the culpable mental state to commit the crime charged.” 142 Wn.2d at 921.

In this case, trial counsel did not investigate and therefore did not discover Mr. Adams' diminished capacity defense until after trial.

Dr. Berberich's evaluation notes that he first met with Mr. Adams on June 29, 2000. Mr. Adams was convicted months earlier—on April 6, 2000. Thus, Adams can easily establish deficient performance. *See In re Pers. Restraint of Brett*, 142 Wn.2d 868, 16 P.3d 601 (2001). Over the last decade, counsel's duty to thoroughly investigate before making tactical decisions has been clearly defined. *See, e.g., Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Williams v. Taylor*, 529 U.S. 362, 395-96 (2000). In this case, no investigation was undertaken prior to trial. Thus, counsel's failure constitutes deficient performance.

“Prejudice” is the second prong of the test. That prong is also satisfied because, although Dr. Berberich wrote a report addressing sentencing factors, his opinion supports a diminished capacity defense. Dr. Berberich opined that Mr. Adams shot the victim while experiencing

several severe psychiatric symptoms. “Because of his history, it is reasonable to assume that Mr. Adams would be likely to experience great fear at times when he was involved in an argument with a man.” In this case, Mr. Adams’ homicidal act was in response to that fear, diminishing his ability to premeditate.

The fact that the sentencing court found Dr. Berberich’s report persuasive enough to impose an exceptional sentence is further compelling proof of prejudice. *See* Findings of Fact attached as Appendix G. Indeed, the sentencing court’s *Findings* specifically state:

2. The court finds that the issue of diminished capacity raised in this case constitutes a ‘failed defense.’

4. The court finds that the defendant’s mental state at the time of the offense substantially affected and diminished his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law....

Although the *Findings* also confusingly reference Mr. Adams’ failed “intoxication” defense at trial, they support the conclusion that—if the evidence had been developed at the time of trial—Adams had a viable defense of diminished capacity. Thus, there is a reasonable likelihood of a different outcome if trial counsel had investigated and presented this evidence.

Once trial counsel had Dr. Berberich’s evaluation in hand, his failure to move for a new trial (or to withdraw so that non-conflicted counsel could

bring such a motion) constituted a third and separate instance of ineffectiveness. Although Mr. Adams does not raise the claim here, it illustrates the repeated failures of trial counsel throughout this case.

Once again, this Court should either grant Adams' petition or remand for an evidentiary hearing.

3. THIS PETITION IS TIMELY BECAUSE THE TRIAL COURT RECENTLY ENTERED A NEW JUDGMENT AND SENTENCE BECAUSE THE PREVIOUS JUDGMENT WAS FACIALLY INVALID.

Criminal defendants can bring collateral attacks against their judgment and sentence but must do so within one year of their judgment being final. Specifically, RCW 10.73.090 provides:

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

Thus, where a judgment is invalid on its face, the one year limitation does not commence.

In criminal cases, “[t]he sentence is the judgment.” *Berman v. United States*, 302 U.S. 211, 212 (1937) (stating a judgment cannot be final if the sentence has been vacated); *see also State v. Harrison*, 148 Wn.2d 550, 561-62, 61 P.3d 1104 (2003) (stating after defendant's “sentence was reversed, ... the finality of the judgment is destroyed” and defendant's “prior sentence ceased to be a final judgment on the merits.”). *See also Teague v. Lane*, 489 U.S. 288, 314 n. 2 (1989) (“[A] criminal judgment necessarily

includes the sentence imposed upon the defendant.”).

In this case, the trial court recently concluded that Mr. Adams’ original judgment was invalid on its face. Thus, the one year limitation runs from the new, valid on its face, judgment.

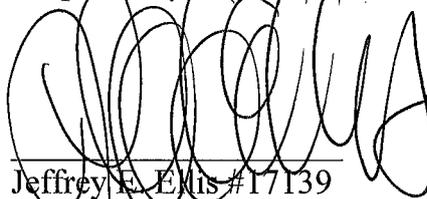
As a result, this petition is timely.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should either remand this case for an evidentiary hearing or, if the State does not contest Adams’ facts, grant this petition and remand for a new trial.

DATED this 12th day of October, 2009.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Jeffrey E. Ellis", written over a horizontal line.

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APPENDIX A

The Hon. Carol Schapira

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
FOR KING COUNTY

STATE OF WASHINGTON,
Plaintiff,
v.
DEVON P. ADAMS,
Defendant.

NO. 99-1-07761- 6 SEA

ORDER VACATING JUDGMENT
AND SCHEDULING A NEW
SENTENCING HEARING

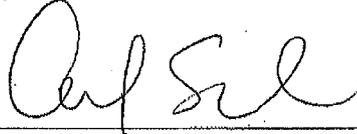
ORDER

Devon Adams was sentenced by this Court based on an offender score that incorrectly included several juvenile convictions committed before he was 15 years old. Because those convictions should not have been counted, Adams' judgment is facially invalid. Mr. Adams is entitled to be resentenced with a correct offender score/standard range.

Therefore, this Court vacates Mr. Adams' current judgment and sentence. The State will transport Mr. Adams to King County Superior Court for sentencing on June 1, 2009. The parties should submit their respective presentence reports no later than May

27, 2009. Hearing is set for 1:30 in W-813, KCCH. *CRS*

1 DATED this 7 day of May, 2009.

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The Hon. Carol Schapira

5 Presented by:

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8 Jeffrey E. Ellis #17139
9 Attorney for Mr. Adams

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11
12 Objections noted:

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14
15 James Konat #
16 Sr. Deputy Prosecuting Attorney

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
Plaintiff,)	No. 99-1-07761-6 SEA
)	
Vs.)	JUDGMENT AND SENTENCE
)	FELONY (FJS)
DEVON P. ADAMS)	ON RESENTENCING
)	
Defendant,)	

I. HEARING

I.1 The defendant, the defendant's lawyer, JEFF ELLIS, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

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

2.1 **CURRENT OFFENSE(S)**: The defendant was found guilty on 04/06/2000 by jury verdict of:

Count No.: <u>I</u>	Crime: <u>MURDER IN THE FIRST DEGREE</u>
RCW <u>9A.32.030 (1) (a)</u>	Crime Code: <u>00124</u>
Date of Crime: <u>09/08/1999</u>	Incident No. _____
Count No.: <u>II</u>	Crime: <u>UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE</u>
RCW <u>9.41.040</u>	Crime Code: <u>00524</u>
Date of Crime: <u>09/09/1999</u>	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) I RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) I RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** Violent traffic offense DUI Reckless Disregard.
- (f) **Vehicular homicide** by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses **encompassing the same criminal conduct** in this cause are count(s) _____ RCW 9.94A.589(1)(a).

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

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

Criminal history is attached in **Appendix B**.

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

2.4 **SENTENCING DATA:**

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	6	XV	312 TO 416	+60 MONTHS 24	372 TO 476 336 to 440 MONTHS	LIFE AND/OR \$50,000
Count II	5	III	17 TO 22		17 TO 22 MONTHS	5 YRS AND/OR \$10,000
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) _____.

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

ON DECEMBER 26, 2000 THE COURT SIGNED AN ORDER OF RESTITUTION IN THE AMOUNT OF \$2,850.00 IN ADDITION TO THE

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: *\$500 D.P.A.*

- (a) \$_____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee (RCW 43.43.754)(mandatory for 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: _____

AS

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 3,350. 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.

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

280 months/days on count I; _____ months/days on count _____; _____ months/day on count _____

17 months/days on count II; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts _____ are consecutive / concurrent.

The above terms shall run [] CONSECUTIVE [X] CONCURRENT to cause No.(s) 02-1-00637-6 SEA

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

[X] 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: 24 MONTHS

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

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

The **TOTAL** of all terms imposed in this cause is 304 months.

Credit is given for [X] ALL days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A505(6).

4.5 **NO CONTACT:** For the maximum term of Life years, defendant shall have no contact with any member of the victim's family.

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

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

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

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

- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030 - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030 - 24 to 48 months
 - Violent Offense, RCW 9.94A.030 - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months

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

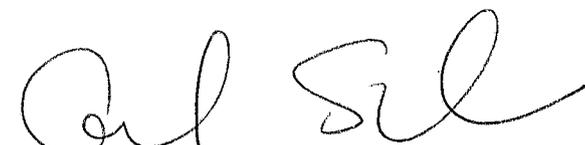
- APPENDIX H** for Community Custody conditions is attached and incorporated herein.
 APPENDIX J for sex offender registration is attached and incorporated herein.

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

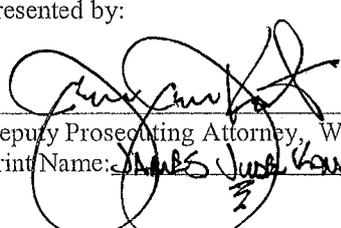
4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

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

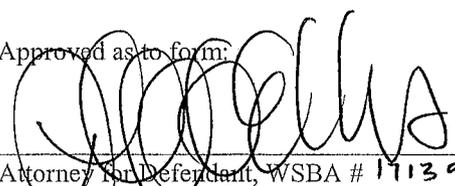
Date: June 1, 2009



 JUDGE
 Print Name: Carol Schapira Schapira

Presented by:


 Deputy Prosecuting Attorney, WSBA# 16,082
 Print Name: JAMES J. KOUR

Approved as to form:


 Attorney for Defendant, WSBA # 17139
 Print Name: JEFF ELLIS

F I N G E R P R I N T S



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: _____
DEFENDANT'S ADDRESS: _____

Devon Paul Adams
DOC

DEVON PAUL ADAMS

DATED: _____

DP *5/1/09*
[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. WA16751604

DOB: APRIL 18, 1979

SEX: M

RACE: W

CLERK

BY: _____

DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

No. 99-1-07761-6 SEA

vs.)

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

DEVON P. ADAMS)

Defendant,)

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

Adult Felonies:

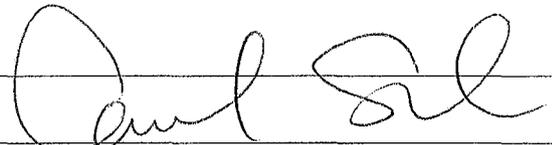
Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
TMVWOP 6.13.98	7.17.98	A	98-1-05301.8	KING Co
Felony Veh. N.C.D. 12.13.98	6.25.99	A	98-1-10272.8	KING Co.

Juvenile Court:

RES. BURR 8.5.94	12.28.94	J	94.8.04571.8	KING.
Robbery 1 ^o 9.5.94	11.9.94	J	94.8.05746.6	KING
ESCAPE 1 ^o 11.22.95	2.28.96	J	94.8.01039.3	KING
VUFA 2 ^o 12.20.96	5.5.97	J	96.8.08537.7	KING

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

Date: 6.1.9



 JUDGE, KING COUNTY SUPERIOR COURT
 CAROL SUPRA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DEVON P. ADAMS

Defendant,

No. 99-1-07761-6 SEA

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.

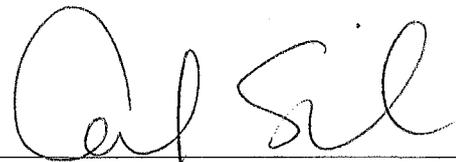
(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(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: June 1, 2009



JUDGE, King County Superior Court

CAROL SHAPIRA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PAGE 1 of 2

STATE OF WASHINGTON

Plaintiff)

No. 99-1-07761-6 SEA
(Count I)

v.

June 1, 2009

ADAMS, Devon Paul

Defendant)

**JUDGMENT AND SENTENCE
(FELONY) – APPENDIX H
COMMUNITY PLACEMENT/CUSTODY**

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

COMMUNITY PLACEMENT/CUSTODY: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after June 6, 1996, to community placement/custody for three years or up to the period of earned early 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 on or after July 1, 1990, but before June 6, 1996, to community placement for two 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 placement.

Community placement/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) **MANDATORY CONDITIONS:** Defendant shall comply with the following conditions during the term of community placement/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 supervision fees as determined by the Department of Corrections;
- (6) Receive prior approval for living arrangements and residence location;
- (7) Defendant shall not own, use or possess a firearm or ammunition when sentenced to community service, community supervision or both (RCW 9.94A.120(13));
- (8) Notify Community Corrections Officer of any change in address or employment; and
- (9) Remain within geographic boundary, as set forth in writing by the Community Corrections Officer.

WAIVER: The following above-listed mandatory conditions are waived by the court: _____

(b) **OTHER CONDITIONS:** Defendant shall comply with the following other conditions during the term of community placement/custody:

- 10. Do not purchase, possess or use any illegal drug or drug paraphernalia and submit to urinalysis testing and searches based upon reasonable suspicion of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
- 11. Do not associate with known users or sellers of illegal drugs.
- 12. Do not frequent areas known for drug activity, as defined in writing by the Community Corrections Officer.
- 13. Do not purchase, possess or use alcohol (beverage or medicinal) and submit to testing and searches based upon reasonable suspicion of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff)

v.)

ADAMS, Devon Paul

Defendant)

No. 99-1-07761-6 SEA
(Count I)

**JUDGMENT AND SENTENCE
(FELONY) – APPENDIX H
COMMUNITY PLACEMENT/CUSTODY**

- 14. Do not enter any business where alcohol is the primary commodity for sale.
- 15. Do not purchase, possess, control or use any deadly weapon and submit to searches based upon reasonable suspicion of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
- 16. Obtain a written substance abuse evaluation from a qualified provider and complete all treatment recommendations, as approved and directed by the Community Corrections Officer.
- 17. Engage in and make reasonable progress in the Department of Corrections Moral Reconciliation Therapy (MRT) program. *Continue therapy OMS*
- 18. Report to the Department of Corrections and successfully complete the Victim Awareness Education Program (VAEP); as directed by the Community Corrections Officer.

Date: _____

[Handwritten signature]
June 1, 2009 *OMS*

JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX H – COMMUNITY PLACEMENT/CUSTODY

[Handwritten signature]
JUDGE CAROL SHAPIRA

APPENDIX B



SEATTLE
POLICE
DEPARTMENT

**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	99-379803
UNIT FILE NUMBER	H99-294

That Cloyd Steiger is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 99-379803;

There is probable cause to believe that Devon Paul Adams committed the crime(s) of Murder.

This belief is predicated on the following facts and circumstances:

On 9/8/99 at about 9:00PM, Franklin Brown had just left a house located at 5321 46th Ave. S. in Seattle Washington. Brown was a local handyman, and had lived at that location with several other adult males up until a couple months before. As Brown left the residence, he stood on the sidewalk in front of the house. It was a clear and warm out, and had just gotten dark.

As Brown stood on that sidewalk, he was approached by a group of black males and a female. As the group passed Brown he greeted some of them, who he knew from the neighborhood. One of the subjects stopped where Brown stood and started talking to Brown. That subject, (described as a Hispanic looking male in his early 20's, around 6' tall, 160 lbs. with long black hair in a pony tail, a moustache and a small tuft of hair on his chin), asked Brown if he was a "Cluck", (which is street vernacular for a person who smokes crack cocaine). Brown said that he wasn't, then the subject started patting down Brown's pockets, stating "What have you got?". When Brown objected, he and the subject got into a verbal argument. The subject called Brown, (who is white) a "nigger" several times, stating something to the effect of, "You don't know who I am!". The subject then pulled a small semi-automatic pistol from a back pocket and held it to Brown's neck, pushing his head back. More words were exchanged, then the subject started shooting. Brown immediately fell to the ground, and the suspect stood over him, firing several more rounds into his back as he lay on the ground. Everyone fled from the area. Fire Department Medics transported Brown to Harborview Medical Center, where he was pronounced dead.

Scooter Van Lieu lives in the house directly north of the shooting scene. At the time of the incident, he was in the kitchen area of that house. He heard loud voices and looked out his window. He saw Brown, (whom he knew) arguing with a subject he didn't know. He exited his house on the north side, then crawled around the driveway. He crouched there and watched what happened. Prior to the suspect shooting Brown, Van Lieu saw a black male that he recognized from the neighborhood. This black male was imploring the suspect to "come on" and leave the area. Van Lieu didn't know this second subjects name, but knew he lived nearby.

The early afternoon of 9/9/99, detectives were reinterviewing Van Lieu. A room mate of his was standing nearby and upon hearing Van Lieu speaking to us about this second subject realized she knew who it was. She said that his name was Ronnie and that he lived around the corner. Detectives contacted Ronald Banks Jr. and brought him to the Homicide office. Banks admitted being with the shooter at the time of this incident. He said that he and the shooter, whom he has known for about a year, but only knows as "D" or Devon, were walking to a nearby store when this incident occurred. He described Devon going through Brown's pockets, and said that he



**CERTIFICATION FOR DETERMINATION
OF PROBABLE CAUSE**

INCIDENT NUMBER	99-379803
UNIT FILE NUMBER	H99-294

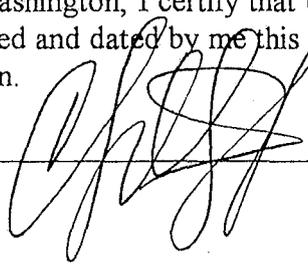
believed Devon was trying to "jack" Brown. Banks said that he knew Brown and tried to tell Devon to leave him alone, but Devon pulled out the gun and shot Brown. Banks also told us about two other subjects, Jason Whiten and Nicole Harris, who were with he and Devon at the time of the shooting.

We then had these two brought in. They both gave stories consistent with Banks. They said that Devon is a "wet smoker", (smokes formaldehyde laced cigarettes) and acts crazy all the time. They also did not know Devon's last name. They had known him for about six months and knew that he had recently been in jail for a DV charge.

Detectives then received information from a source that wished to remain anonymous, (although he did provide us with his name, address, etc) He told us he did not witness the homicide, but he is a friend of Banks, Whiten and Harris. He said that he knows Devon. He said that Devon's last name is Adams, and that he was living in Magnolia with his mother. From this subject's description of his relationship with Devon, detectives believed that his information was reliable.

We ran the name Devon Adams in the computer systems. We found that the suspect's full name is Devon Paul Adams. He is listed as a white male, but appears Hispanic. His DOB is 4/18/79. He was booked on July 29, 1999 for Domestic Violence. At that time he gave a home address of 3411 33rd Ave. W., (which is in Magnolia). Detectives obtained a booking photo of Adams and showed it to Jason Whiten, who verified that Adams was the person who he saw shoot Brown.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 10th day of SEPTEMBER, 1999, at Seattle, Washington.

 SPD #4313

APPENDIX C

The Seattle Times

Friday, April 7, 2000 - Page updated at 12:00 AM

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Jury convicts 20-year-old of murder charge

Alex Fryer
Seattle Times staff reporter

Franklin Brown died with a dollar in his wallet and a weed trimmer at his feet, shot to death last September on a South Seattle sidewalk.

It took a King County Superior Court jury fewer than three hours yesterday to convict Devon Adams, 20, of first-degree murder for Brown's death.

Detectives, neighbors and firearms experts testified about what happened the day of the crime, but no one could explain why Adams shot a perfect stranger.

Brown spent the final day of his life walking around trying to sell a weed trimmer. In the early evening he was approached by Adams and three others in the 5300 block of 46th Avenue South. As the group passed, Brown greeted some of them he knew from the neighborhood.

Adams asked Brown if he smoked crack cocaine and patted Brown's pockets. The two men argued. Adams pulled out a gun and fired nine shots.

"There was a lot of bullets. I was waiting for them to stop, and they just didn't stop," testified neighbor Anthony Heath, who witnessed the attack.

Detectives quickly identified Adams as the prime suspect. He turned himself in to police three days after the shooting.

Defense attorney Michael Danko did not present any witnesses. Instead, he argued that Adams had been intoxicated and should be found guilty of manslaughter.

King County Prosecutor James Konat said he expected a plea of second-degree murder.

Danko said a plea of second-degree murder was never seriously discussed, and that his client was willing to risk a conviction of first-degree murder because jurors were given the opportunity to consider manslaughter.

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APPENDIX D

DECLARATION OF DEVON ADAMS

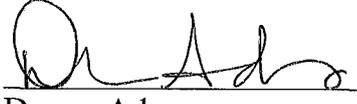
I, Devon Adams, declare:

1. I am over 18 years old and am competent to make this declaration.
2. I am the Petitioner in this case.
3. I was convicted after a jury trial of Murder in the First Degree.
4. I was represented at trial by attorney, Mike Danko.
5. After trial, I learned for the first time that the State apparently had made a plea bargain offering to reduce the charge to second-degree murder.
6. I learned about this plea bargain as the result of reading a newspaper article that followed my sentencing hearing. In that article Prosecutor Konat stated that he had made such an offer to my attorney and did not know why the offer was rejected.
7. I did not reject that offer. I never knew about it. Mr. Danko did not tell me prior to trial that the State had made this plea offer.
8. If I had been told of the plea offer, I would have accepted it.
9. After I learned of the plea offer, I told several people that I was upset Mr. Danko did not communicate this offer to me because I would have taken it had I know of the offer.
10. After trial, but before sentencing, I was evaluated by a psychologist.
11. I do not know why Mr. Danko waited until after trial to have this evaluation conducted. I was always willing to participate in such an evaluation. In fact, I found it helpful to understand more about those factors that influenced my behavior on the day of the murder.
12. At no point after receiving the evaluation did Mr. Danko suggest that the evaluation could be used as a basis for a new trial.
13. To the contrary, Mr. Danko told me the evaluation could only be used for sentencing.

1 14. I was recently resentenced. This is my first PRP attacking my judgment.

2 I declare under the penalty of perjury of the laws of the State of Washington that
3 the above is true and correct.

4
5 7.24.09 Steilacoom, WA
6 Date and Place M.I.C.C.


Devon Adams

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APPENDIX E

DECLARATION OF ANN DEKOSTER

I, Ann DeKoster declare:

1. I am Devon Adams' mother.
2. After my son was arrested for murder, I had numerous conversations with him about those charges.
3. I also wrote numerous letters to Mr. Danko, my son's lawyer about the case. Further, on numerous occasions I tried to talk to Mr. Danko. However, he was rarely available to talk to me and almost never returned my calls. This was a constant source of frustration for me.
4. After trial, I read a newspaper article about my son's conviction for first-degree murder. In that article, the prosecutor expressed surprise that my son had not pled guilty to second-degree murder. I was shocked because I had never heard of this plea offer and neither had Devon.
5. Indeed, several times prior to trial, Devon and I discussed why he was going to trial—because he understood that the State's only offer was to plead guilty as charged, Devon believed and I agreed that he had nothing to lose at trial.
6. However, on numerous occasions prior to trial Devon told me that he would take a deal, but that none had been offered.
7. After reading the article I was outraged. When I finally communicated with Mr. Danko, he told me he did not think the Murder 2^o offer was "serious," so he did not tell Devon about it.
8. Needless to say, I told Mr. Danko that I strongly disagreed.
9. When I spoke to Devon about the article, Devon told me that he absolutely would have taken the plea offer—if he had been told about it. This statement was completely consistent with numerous statements that Devon made about the case prior to learning of Mr. Danko's failure to tell Devon about the plea bargain.

10. Although I felt that Mr. Danko's failure to tell Devon about the plea bargain was a major error, I did not know that there was anything that could be done about it. Instead, I felt that my son had been cheated by his attorney in a way that could not be fixed.

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

10/12/2009 Seattle, WA
Date and Place


Signature

APPENDIX F

JOHN P. BERBERICH, Ph.D., P.S.
1007 Spring Street
Seattle, WA. 98104
(206) 624-6129 FAX
(206) 682-3979

August 24, 2000

Mike Danko
Attorney At Law
600 First Ave., Suite 205
Seattle, WA. 98104

Re: Devon Paul Adams

Dear Mr. Danko:

Thank you for referring your client, Devon Paul Adams, for psychological evaluation. I met with him at the King County Jail on 6/29/00 and 7/26/00. My impressions of Mr. Adams are based on data from interview, psychological testing, a telephone interview with his mother, Mrs. DeKoster, and perusal of the extensive file materials with which you supplied me.

REASON FOR REFERRAL

You referred Mr. Adams for psychological evaluation in relation to the First Degree Murder charges he faces. You asked that I give you my impressions of his current psychological functioning as well as his functioning at the time of the shooting in which he was involved and to which he was found guilty. You also asked that I provide recommendations. My report would be part of what you would present to the court at the time of his sentencing.

MENTAL STATUS

Mr. Adams is a single, 21 year-old man of taller than average height and average build. He appeared to be well nourished. He was oriented in all spheres and was aware of the charges brought against him and the sentencing range that applies to those charges.

I found Mr. Adams open and cooperative. His interpersonal presentation was that of an anxious and depressed individual on both occasions we met. When I met him in July for our second interview Mr. Adams seemed more subdued and

depressed. He told me that the situation in which he found himself was, "... sinking in." At that time, he told me that despite the fact that he was getting eight hours of sleep it was not enough. Mr. Adams said he was having frequent and disturbing dreams. He had a hopeless quality about him but remained open and cooperative. His responses to my questions were direct and to the point. Often, he spontaneously offered additional information.

Mr. Adams memory was very spotty, particularly for remote events. He said that he frequently experienced blackouts after drinking alcohol and/or snorted sherm. He said that after he had overdosed on sherm in 1997 and was hospitalized, he had only vague recall about what had occurred. After an auto accident in 1999, Mr. Adams suffered both retrograde and anterograde amnesia. He told me that he had only vague recall for the period 1996 to 1999, the time when he was heavily involved in both alcohol and drug (sherm) abuse.

In his dreams, he would see the same people over and over again including his daughter and would see himself getting into fights with these people but there were no dreams that were directly related to the shooting.

I found no obvious evidence of psychosis. Mr. Adams was in contact with reality. He had no delusions or hallucinations.

Mr. Adams told me that he had been in solitary confinement at the jail for thirteen days after becoming angry at a guard who he said threw some of his family pictures on the floor while doing a cell search. Mr. Adams said he asked the guard why he had done that and the guard, "... told me to shut up and go to my room." Mr. Adams went on to say that the guard was already angry before he started dealing with Mr. Adams because he had hurt his hand while closing a cell door with great emphasis. Mr. Adams said he grieved the discipline and was told that he was disciplined because he had flooded his cell and, "... everybody knew I didn't do that."

At the time I met with him Mr. Adams was taking asthma medication. He was not taking any psychiatric medication.

As I have noted above, Mr. Adams was aware of the charges brought against him and understood the sentencing range. He told me that he likes you and felt that he could take your advice and assist you in whatever ways you needed in his own defense. Therefore, it is my impression that he is competent for sentencing.

PERTINENT HISTORY

Mr. Adams is the only child born to the union of his parents. He has both a half-sister and half-brother who live in Minneapolis. They are children of his father.

Mr. Adams said that his father was an abusive alcoholic. He was both physically and verbally abusive at home. His mother told me the same. His parents divorced when Mr. Adams was about three years old because his father was seeing other women and frequently coming home intoxicated and beating his mother. Mr. Adams recalls that when he was three his father held a knife to his mother's throat and that memory haunts him. After the divorce, Mr. Adams said that his father never paid child support. He terrorized the family. He would break his mother's car windows and throw rocks through the house windows.

When Mr. Adams was about eight years old his father would call, while intoxicated, and threaten to kill him and his mother. Mr. Adams found this terrifying and it occurred several times. Mr. Adams' father is currently hospitalized at a Veterans Administration Hospital in Minnesota (Tomah). Apparently, his war experiences in Vietnam resulted in severe symptoms of Post Traumatic Stress Disorder.

Mr. Adams mother, Mrs. DeKoster, told me that Devon's problems started when he was in the fifth grade. He felt abandoned by his father after the divorce. Even though his father had promised to come to see Devon, he would often not do so. Devon, left without a father, sought fathering from coaches and teachers at school. However, by the time he was in the fifth grade Mrs. DeKoster said, Devon was uncontrollable. Mrs. DeKoster attempted to get a Big Brother relationship going for Devon when he was about thirteen. Though Devon did well in school until the fifth grade, he began getting into serious trouble at that time. He was arrested at approximately thirteen years of age for "obstruction of justice" when trying to protect a friend from a police officer in a situation where Mr. Adams did not know that the friend had stolen something. He was sent to a counseling group and placed on probation. He could not recall exactly but thought he met with the counseling group about once a month. He did not find it helpful.

Mr. Adams told me that around the age of "thirteen or fourteen, I started stealing cars. I would be released the same day about six hours after being taken to the Youth Center. I thought it was a joke. I didn't take it seriously. I would get the court papers six months later and I thought there weren't any consequences for stealing cars." He said he received two days at the Youth Center for

one "joy riding" arrest. Mr. Adams told me that he received no time at the Youth Center for the other two car thefts in which he had been involved.

By the age of fourteen Mr. Adams was doing burglaries with his friends. He was not always caught but when he was he would get only minimal time in the Youth Center (perhaps three days). Later, Mr. Adams was arrested again and admitted to having stolen three cars and a burglary. He was sentenced to twenty-two days at the Youth Center and said that, "... before I served the time I got drunk with a friend and we robbed a 7-11 and then I got two years at Maple Lane". While there, he received his first drug treatment but did not finish that because there were some paperwork problems due to the fact that his counselor had sent his papers to the wrong county. He was sent back to Maple Lane and then again sent back to the drug treatment program. Again, Mr. Adams did not complete the program. He said that he had gotten into an argument with the director because he felt that they were treating him poorly due to his race. Mr. Adams told me that, "The director kicks people out all the time for the dumbest things." While I expect that there is a great deal more to why the director removes people from the program, Mr. Adams obviously believed that he was being removed due to racial reasons and again felt abandoned and angry.

As you know, your client has an extensive drug history. He told me he began using drugs at about twelve. At that time he began drinking. By thirteen he was smoking marijuana and tried cocaine when he was about fifteen. He only used that drug a few times then but when he was released from Maple Lane, Mr. Adams began using cocaine more frequently. He said, "It would wake me up." By then, Mr. Adams was using alcohol to intoxication on a daily basis.

While at Maple Lane as a fifteen year-old, Mr. Adams had a twenty year-old roommate. That individual introduced him to two "sherm" (embalming fluid). When one soaks a cigarette or marijuana with sherm and smokes it, the effect is to cause a pleasant kind of intoxication for many people who try it. Mr. Adams liked the effect. From that point on, in addition to alcohol, which he continued to drink copiously, Mr. Adams became "hooked on" sherm. Eventually, when he was smoking sherm, whether alone or with alcohol, Mr. Adams became well known for being belligerent and very difficult to deal with.

Mrs. DeKoster told me that Mr. Adams went to three alcohol/drug treatment programs and was awarded certificates of completion. One summary report indicates expectation from the alcohol counselors that Mr. Adams would have

difficulty maintaining his sobriety. Indeed, he returned to drinking and drug use after two of those programs immediately and for the third one, after only two weeks. Attempts were made to get Mr. Adams involved in school. These were unsuccessful for a variety of reasons involved in his drug and alcohol use and the hopelessness of his life situation. Thus, he was well known within the juvenile system for his alcohol and drug problems. The system was unable, for whatever reasons, to provide treatment and care that would be long lasting.

Another important factor in Mr. Adams' history has been his anger problems. By the fifth grade Mr. Adams was sent to anger management programs. He was also seen briefly by a private psychiatrist. Unfortunately, those programs did not work and, despite his good intelligence, Devon had severe school problems. By the age of fourteen he had moved away from home because his mother could not tolerate his use of alcohol and drugs. Mrs. DeKoster has been a strong positive advocate for her son. When I spoke with her on the telephone she admitted that she was not a "perfect mom" and that she drank alcohol also and may not have been available for Devon as much as he needed her to be, but did the best she could. She told me about one incident in which she found Devon with some friends in an alley when Devon was approximately fourteen years old. They were all smoking marijuana. She told Devon she wanted him to come home and one of the boys threatened her with a deadly weapon. She said she did not back away but demanded that Devon come home with her and he did. However, by the time he was nearly fifteen, Mrs. DeKoster realized he was out of her control.

Mr. Adams overdosed on sherm in 1997. He was at Harborview for seven days. He nearly died. He has been hospitalized for a variety of other things. When under the influence of alcohol and drugs he has injured himself a few times.

Mr. Adams told me his version of the homicide incident in which he was involved. He said that the victim of the shooting accosted him, an argument ensued in which the victim called Mr. Adams a "nigger" and Mr. Adams admitted that he called the victim a "nigger" also. However, the victim kept repeating, "I'm not the nigger, you are!" Mr. Adams said his father had told him never to allow anyone to call him a "nigger" and, as he was walking away from the man before the shooting, the man said the same thing to him again. This enraged Mr. Adams and he shot him. From my reading of the autopsy report and the witness statements, it appears that the first shot was to the left back of the victim's neck and the remaining eight shots were all in the back. Mr. Adams said that he had lost control of himself and was enraged because the man called him that word again

and again. He told me that he knew that was not an excuse for what he had done but told me about all of this because I asked him and told him I needed to know about the facts from his point of view.

On the day of the homicide, Mr. Adams had gone to a notoriously drug infested area of Seattle to visit a friend who's brother had let it be known that he intended to kill Mr. Adams. It is not clear to me why Mr. Adams would have gone there. However, he said he drank quite a bit of alcohol and smoked sherm. He was intoxicated and, I expect, his "belligerence" (which had been noted many times before under the effects of sherm) came to the fore. Indeed, Mr. Adams was acting in a belligerent manner just as his father modeled for him for many years. Of course, a combination of what your client experienced and the reasonable assumption that his alcohol problems come as a result of life experience and a predisposition toward alcoholism are key to understanding what has been happening to Mr. Adams over the years. This man's life experience has been so traumatic that it seems to me that his use of alcohol and drugs, from an early age, took him away from his terrifying dreams, thoughts about his violent father, constant anxiety, and depression.

PSYCHOLOGICAL TESTING DATA

Mr. Adams' psychological testing data show compelling evidence that he has a severe psychological disorder. The combination of his history and the testing data indicate that he suffers from Post Traumatic Stress Disorder. Mr. Adams shows the classical hallmarks of Post Traumatic Stress Disorder including exposure to a life threatening event (knife being held at his mother's throat by his father and the death threats and beatings he experienced at the hands of his father) helplessness (that is, he could do nothing about it), heightened arousal (anxiety, hypervigilance, etc.), attempts to keep the distressing events out of his mind (the use of alcohol and drugs applies to this hallmark characteristic. Indeed, Mr. Adams was very obviously self-medicating with those drugs), intrusive thoughts and dreams about these incidents (Mr. Adams told me he cannot ever get out of his mind the time he saw his father holding a knife to his mother's neck nor can he get out of his mind the death threats his father visited on him and his mother while he spoke to his drunken father on the telephone) and symptom duration of more than six months. His symptoms of anxiety and depression as well as his history of acting out aggressively as a student in elementary school, are classical responses to the kinds of abuse and abandonment he suffered. His drug and alcohol abuse/addiction is also a

classical response to the terrifying intrapersonal effects of the horrible abuse he suffered.

SUMMARY AND DIAGNOSIS

Mr. Adams is a 21 year-old man awaiting sentencing for First Degree Murder in a homicide for which he was found guilty. Interview and psychological testing data strongly indicate that Mr. Adams suffers from Post Traumatic Stress Disorder (a DSM-IV AXIS I diagnosis) as well as Alcohol Abuse and Drug Abuse. Mr. Adams has demonstrated the characteristics of both Depressive and Antisocial Personality Disorder.

His history is compelling with regard to his having been exposed to the most vicious kind of abuse. He demonstrated problems in managing his own anger from the time he was in elementary school. He received anger management training when he was in the fifth grade. He has been placed in youth detention facilities for crimes in which he has been involved. He has completed alcohol treatment programs but has always gone back quickly to alcohol and drugs. It is my strongest impression that Mr. Adams exposure to violence at such an early age traumatized him to the degree that he was constantly anxious, fearful, and filled with the same kind of rage that he had seen his father display toward his mother and himself. His constant psychological distress which occurred even when he slept led him to become easily addicted to alcohol so that he would not have to deal with the painful and extremely frightening images that were in his mind. His problems in school dating back to elementary school including his anger management issues obviously flow from his experiences of violence in his own home.

Mr. Adams' use of alcohol and drugs, beginning at so early an age was the only way Mr. Adams found to reduce the significant psychological distress he experienced. In the strongest sense, Mr. Adams was predisposed from that history toward a compelling vulnerability to use any substance that would make life bearable for him. Alcohol was easily available and its relaxing effects were striking to him because they provided relief. From the time he first drank alcohol at age twelve Mr. Adams was easily brought into an addictive relationship with that substance and any other substance that would quiet his anxiety and global psychological distress. Of course, the end result of an alcohol addiction is seen in its effects on judgment and, for some people who are genetically predisposed, toward violent acting out.

I have seen many defendants who have been charged with murder. Mr. Adams' history is unique in my experience. While many people who have committed homicide have had

abusive early lives, I have not seen anyone who was exposed to one parent holding a knife at the throat of the other when he was only three years old. Further, I have not seen many cases in which a parent threatened to murder the other parent and the child. Nor have I seen any parental situation in which the violent parent continued for years to harass, destroy property, and threaten his former wife and child in the way that Mr. Adams' father did. Mr. Adams' psychiatric condition was very severe and because it was marked by his alcohol and drug abuse, the juvenile system could not deal with him effectively. Mr. Adams' treatment within the system was well intentioned and focused itself on the alcohol and drug problems. However, it is very clear that without treating the psychological effects of the horrors your client experienced early in his life, the chance of his giving up alcohol and drugs, the only medication he knew, could never be effective. In that sense, the options available within the juvenile system failed Mr. Adams.

At this point in his life, your client is in desperate need of psychotherapy. He will also need treatment and post treatment support in giving up the alcohol and drugs that he uses which, under their effects, predispose him toward violent acting out. Without the psychiatric treatment for his Post Traumatic Stress Disorder Mr. Adams will continue to use alcohol and drugs and, therefore would represent a significant risk toward violent acting out within the community again. Frankly, I see his situation over the past seven years or so as having become compounded and moving towards hopelessness. As a young boy who was having anger problems in school, without treatment relating to the family horrors, Mr. Adams had no chance of getting better. Now, as an adult and in a situation where he has been involved in several crimes and has been so psychologically crippled from the addictive relationship he developed with alcohol and drugs so as to keep himself from having to think about the horrors of his early life, Mr. Adams condition is now very complicated. Indeed, in thinking about him, I am concerned that many people in the criminal justice system will not recognize that the course that Mr. Adams' life has taken was predictable as based upon his early experiences and his father's alcoholism. I am hopeful that a structured treatment approach in an inpatient setting will be one of the responses of the court to him at this time. If not, this already terribly alienated and anxiety ridden angry young man will only get worse and more dangerous.

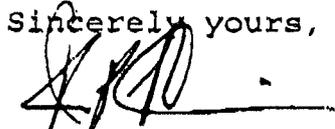
Further, in my opinion the combination of his Depressive Personality Disorder and his alcohol and drug abuse significantly impaired his ability, at the time of the homicide, to appreciate the wrongfulness of his behavior.

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Because of his history, it is reasonable to assume that Mr. Adams would be likely to experience great fear at times when he was involved in an argument with a man. His intoxication at the time of the homicide, in combination with his Personality Disorder and Post Traumatic Stress Disorder symptoms would indeed have impaired his ability to fully appreciate the wrongfulness of his behavior.

I trust this gives you the information you require. If not please contact me.

Sincerely yours,



John P. Berberich, Ph.D.
Clinical Psychologist

APPENDIX G

OCT 05 2000
SUPERIOR COURT CLERK
BY JOSEPH MASON
DEPUTY

CC Sent Wide JAN 2001

JAN
DATE RECD CRIMINAL DESK

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	NO. 99-1-07761-6 SEA
)	
Plaintiff.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW RE:
v.)	EXCEPTIONAL SENTENCE
)	
DEVON ADAMS,)	
)	
Defendant.)	

The court having presided over this cause at trial, and having held a sentencing hearing on September 1, 2000, James J. Konat, Sr. DPA, representing the State, Michael Danko representing the defendant, and having reviewed the parties' pre-sentence statements, taking testimony from John Berberich, Ph.D., and hearing argument from counsel, hereby enters the following findings of fact and conclusions of law regarding the exceptional sentence entered by the court on September 1, 2000.

FINDINGS OF FACT

1. The court, based on the evidence adduced at ^{sentencing} ~~trial~~, finds that a substantial question regarding the defendant's intent and mental state ^{at the time of the offense} was presented ~~at trial~~ considering the facts and circumstances of the offense, ^{as presented at trial.}
2. The court finds that the issue of diminished capacity raised in this case constitutes a "failed defense."
3. The court, based on the evidence presented by John Berberich,

F/F & Concl. Law - Except. Sent. - 1

ORIGINAL

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1 Ph.D., who testified on behalf of the defense, credibly
2 established that the defendant suffers from a psychological
3 disorder, Post Traumatic Stress Disorder, (as well as other
4 disorders) which ^{more likely than not} substantially affected his conduct at the time
5 of the homicide.

6 3. The court finds that the psychological disorders affecting the
7 defendant at the time of the offense are distinguishable from
8 ^{the effects of} any drugs or alcohol which may have been consumed by the
9 defendant.

10 4. The court finds that the defendant's mental state at the time of
11 the offense substantially affected and diminished his capacity
12 to appreciate the wrongfulness of his conduct or to conform his
13 conduct to the requirements of law. Albeit a "failed defense"
14 at trial, the court may consider this factor and the evidence in
15 determining an appropriate sentence.

16 5. The court finds that the defendant's conduct at the time of the
17 offense can ^{reasonably} ~~only~~ be explained by his diminished capacity which
18 does not ~~rise~~ to a complete defense but definitely affected the
19 course of his conduct, and plays a significant role in
20 determining an appropriate sentence.

21 CONCLUSIONS OF LAW

22 1. The court concludes from the evidence before it that there are
23 compelling and substantial reasons for imposing an exceptional
24 sentence downward, ^{namely,} the psychological disorders affecting the
25 defendant at the time of the offense justifying a mitigated

26 F/F & Concl. Law - Except. Sent. - 2

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1 sentence pursuant to RCW 9.94A.390(1)(e).

- 2 2. The court concludes that the compelling and substantial reasons
- 3 found by the court warrant this court to deviate from the
- 4 presumptive sentence in this case because the defendant's mental
- 5 state and capacity make him less blameworthy than one who
- 6 committed a similar offense without being affected by
- 7 substantive psychological disorders like the ones affecting the
- 8 defendant.
- 9 3. The court, concluding that a mitigated sentence is warranted and
- 10 justified, enters an exceptional sentence downward, and
- 11 incorporates its Judgment and Sentence into these conclusions.

12 Dated

13 10/4/00

14 Carl Schapira

Hon. C. Schapira

15 Presented by:

Approved as to form:

16 Michael Danko

17 Michael Danko #14312

18 State's objections

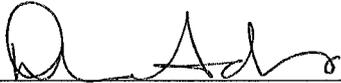
James Konat #16082

19 noted and attached
20 *CH*

VERIFICATION BY PETITIONER

I, Devon Adams, verify under penalty of perjury that the attached PRP is true and correct and is filed on my behalf.

7.24.09 Stellacoom, WA
Date and Place M.I.C.C.



Devon Adams

2009 OCT 12 PM 3:54

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

In re Personal Restraint Petition of
DEVON ADAMS,

Petitioner.

NO. 64265-1
64265-1

PETITIONER'S MOTION TO
PROCEED IN FORMA PAUPERIS

I. IDENTITY OF MOVING PARTY

Devon Adams, Petitioner, seeks the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Waive the filing fee and other costs associated with Petitioner's *Personal Restraint Petition*. A copy of Petitioner's *Statement of Finances* is attached.

III. FACTS

Petitioner is an indigent defendant who seeks to file the attached PRP. Due to his indigence, Petitioner seeks to have the filing fee and other costs waived.

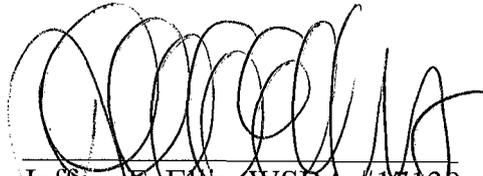
III. ARGUMENT

Pursuant to RAP 16.8, Petitioner respectfully requests that this Court waive the filing fee and other costs associated with his *Personal Restraint Petition*.

1 IV. CONCLUSION

2 This Court should waive the filing fee and other costs in this case.

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4 DATED this 12th day of October, 2009.

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Jeffrey E. Ellis, WSBA #17139
Attorney for Mr. Adams

Law Offices of Ellis, Holmes
& Witchley, PLLC
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(206) 262-0335 (fax)
ellis_jeff@hotmail.com

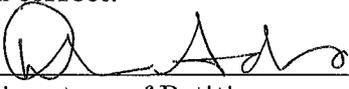
CERTIFICATE SUPPORTING MOTION TO PROCEED IN FORMA PAUPERIS

I, Devon Adams, certify as follows:

1. That I am the Petitioner and I wish to file the enclosed PRP.
2. That I own:
 - a. No real property
 - b. Real property valued at \$_____.
3. That I own:
 - a. No personal property other than my personal effects
 - b. Personal property (automobile, money, inmate account, motors, tools, etc.) valued at \$ 100.
4. That I have the following income:
 - a. No income from any source.
 - b. Income from employment, disability payments, SSI, insurance, annuities, stocks, bonds, interests, etc., in the amount of \$ 50 on an average monthly basis. I received \$_____ after taxes over the past year.
5. That I have:
 - a. Undischarged debts in the amount of \$ 3,177.00.
 - b. No debts.
6. That I am without other means to prosecute said appeal and desire that public funds be expended for that purpose.
7. That I can contribute the following amount toward the expense of review:
\$_____.
8. The following is a brief statement of the nature of the case and the issues sought to be reviewed: **See attached brief.**
9. I ask the court to provide the following at public expense, the following: all filing fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers. I do not seek appointed counsel. Instead, Jeffrey Ellis has agreed to represent me in this matter.
10. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.
11. I certify that I will immediately report any change in my financial status to the court.
12. I certify that this appeal is being filed in good faith.

I, Devon Adams, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

7.24.09 Steilacoom, WA
Date and Place M.I.C.C.



Signature of Petitioner