

~~Appendices~~
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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE PERSONAL RESTRAINT
PETITION OF:

JERRY LEE SWAGERTY,

Petitioner.

NO. 45862-4

STATE'S RESPONSE TO PETITIONER'S
PERSONAL RESTRAINT PETITION

A. ISSUES PERTAINING TO DEFENDANT'S PERSONAL RESTRAINT
PETITION:

1. Should this Court dismiss this petition when petitioner has failed to show either prejudicial constitutional error or a fundamental defect resulting in a complete miscarriage of justice?

B. STATUS OF PETITIONER:

Petitioner, Jerry Lee Swagerty, is restraint pursuant to a Judgment and Sentence entered in Pierce County Cause No. 12-1-01877-6. Appendix A. Petitioner was initially charged with one count of rape of a child in the first degree and one count of child molestation in the first degree. Appendix B. On January 4, 2013, petitioner entered a guilty plea by way of an amended information to one count of rape of a child in the third

1 degree, one count of luring, one count of burglary in the second degree, and one count of
2 intimidating a witness, all crimes aggravated by the victim being particularly vulnerable
3 and incapable of resistance. Appendix C. Petitioner stipulated to an exceptional sentence
4 of 30 years in custody. Appendix C. Defendant's plea stated that he acknowledged there
5 were facts sufficient to support a finding of guilty of the original charge, and that he was
6 entering the guilty plea to the amended charges in order to take advantage of the State's
7 offer to reduce the charges and allow him a sentence less than life without the possibility
8 of parole. Appendix C. Petitioner also acknowledged that he had reviewed the evidence
9 and believed there was a substantial likelihood that he would be convicted as charged at
10 trial. Appendix C. Finally, petitioner attached an addendum to his plea which indicated
11 he was entering an Alford plea as to Count II and In re Barr plea as to Counts I, III, and
12 IV. Appendix C.

14 On February 8, 2013, the court sentenced petitioner to an exceptional¹ sentence of
15 360 months in custody. Appendix A.

16 Petitioner did not file a direct appeal. This personal restraint petition is timely.
17 Petitioner does not seek withdrawal of his plea, instead asks this court to vacate his
18 sentence or reverse his conviction. Personal Restraint Petition at 17. Petitioner
19 challenges his exceptional sentence and his offender score calculation, and he claims he
20 received ineffective assistance of counsel, the prosecutor engaged in misconduct, and that
21 he suffered from "judicial prejudice." The State has no information regarding petitioner's
22 claim of indigence.

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25 ¹ Petitioner had an offender score of 9+, giving him a standard range of 60 months on Count I, 0-12 months
on Count II, 51-68 months on Count III, and 77-102 months on Count IV. Appendix A. The court imposed
60 months on Count I, 60 months on Count II, 120 months on Count III, and 120 months on Count IV, and
ran all sentences consecutively to arrive at the stipulated sentence of 30 years. Appendix A.

1 C. ARGUMENT:

- 2 1. THE PETITION SHOULD BE DISMISSED BECAUSE
3 PETITIONER HAS NOT SHOWN PREJUDICIAL
4 CONSTITUTIONAL ERROR OR A FUNDAMENTAL DEFECT
5 RESULTING IN A COMPLETE MISCARRIAGE OF JUSTICE
6 NECESSARY TO OBTAIN RELIEF BY PERSONAL
7 RESTRAINT PETITION.

8 Personal restraint procedure has its origins in the State's habeas corpus remedy,
9 guaranteed by article 4, section 4, of the State Constitution. Fundamental to the nature of
10 habeas corpus relief is the principle that the writ will not serve as a substitute for appeal.
11 A personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute
12 for an appeal. *In re Personal Restraint of Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103
13 (1982). Collateral relief undermines the principles of finality of litigation, degrades the
14 prominence of the trial, and sometimes costs society the right to punish admitted
15 offenders. These are significant costs, and they require that collateral relief be limited in
16 state as well as federal courts. *Id.*

17 In this collateral action, the petitioner has the duty of showing constitutional error,
18 and that such error was actually prejudicial. The rule that constitutional errors must be
19 shown to be harmless beyond a reasonable doubt has no application in the context of
20 personal restraint petitions. *In re Personal Restraint of Mercer*, 108 Wn.2d 714, 718-21,
21 741 P.2d 559 (1987); *Hagler*, 97 Wn.2d at 825. Mere assertions are insufficient in a
22 collateral action to demonstrate actual prejudice. Inferences, if any, must be drawn in
23 favor of the validity of the judgment and sentence and not against it. *Hagler*, 97 Wn.2d at
24 825-26. To obtain collateral relief from an alleged nonconstitutional error, a petitioner
25 must show "a fundamental defect which inherently results in a complete miscarriage of

1 justice.” *In re Personal Restraint of Cook*, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

2 This is a higher standard than the constitutional standard of actual prejudice. *Id.* at 810.

3 Reviewing courts have three options in evaluating personal restraint petitions:

- 4 1. If a petitioner fails to meet the threshold burden of showing actual
5 prejudice arising from constitutional error or a fundamental defect
6 resulting in a miscarriage of justice, the petition must be
7 dismissed;
- 8 2. If a petitioner makes at least a prima facie showing of actual
9 prejudice, but the merits of the contentions cannot be determined
10 solely on the record, the court should remand the petition for a full
11 hearing on the merits or for a reference hearing pursuant to RAP
12 16.11(a) and RAP 16.12;
- 13 3. If the court is convinced a petitioner has proven actual prejudicial
14 error, the court should grant the personal restraint petition without
15 remanding the cause for further hearing.

16 *In re Personal Restraint of Hews*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983).

17 In a personal restraint petition, “naked castings into the constitutional sea are not
18 sufficient to command judicial consideration and discussion.” *In re Personal Restraint*
19 *of Williams*, 111 Wn.2d 353, 365, 759 P.2d 436 (1988) (citing *In re Personal Restraint*
20 *of Rozier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986), which quoted *United States v.*
21 *Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). That phrase means “more is required than
22 that the petitioner merely claiming in broad general terms that the prior convictions were
23 unconstitutional.” *Williams*, 111 Wn.2d at 364. The petition must also include the facts
24 and “the evidence reasonably available to support the factual allegations.” *Id.*

25 The evidence that is presented to an appellate court to support a claim in a
personal restraint petition must also be in proper form. On this subject, the Washington
Supreme Court has stated:

1 It is beyond question that all parties appearing before the courts of this
2 State are required to follow the statutes and rules relating to authentication
of documents. This court will, in future cases, accept no less.

3 *In re Personal Restraint of Connick*, 144 Wn.2d 442, 458, 28 P.3d 729 (2001). The
4 petition must include a statement of the facts upon which the claim of unlawful restraint is
5 based and the evidence available to support the factual allegations. RAP 16.7(a)(2);
6 *Williams*, 111 Wn.2d at 365. Personal restraint petition claims must be supported by
7 affidavits stating particular facts, certified documents, certified transcripts, and the like.
8 *Id.* at 364. If the petitioner fails to provide sufficient evidence to support his challenge,
9 the petition must be dismissed. *Id.* The purpose of a reference hearing “is to resolve
10 genuine factual disputes, not to determine whether the petitioner actually has evidence to
11 support his allegations.” *In re Personal Restraint of Rice*, 118 Wn.2d 876, 886, 828 P.2d
12 1086 (1992).

- 13
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15 a. The superior court properly imposed a sentence outside the
16 standard range where petitioner stipulated to an exceptional
sentence.

17 In *Apprendi v. New Jersey*, the United States Supreme Court held that “[o]ther
18 than the fact of a prior conviction, any fact that increases the penalty for a crime beyond
19 the prescribed statutory maximum must be submitted to a jury, and proved beyond a
20 reasonable doubt.” 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). The
21 decision is based on the Sixth Amendment right to trial by jury. U.S. Const. amend. VI.

22 The Supreme Court clarified the *Apprendi* decision, concluding that the “statutory
23 maximum for *Apprendi* purposes is the maximum sentence a judge may impose *solely on*
24 *the basis of the facts reflected in the jury verdict or admitted by the defendant.*” *Blakely*
25 *v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004). The

1 “statutory maximum is not the maximum sentence a judge may impose after finding
2 additional facts, but the maximum he may impose *without* any additional findings.”
3 *Blakely*, 542 U.S. at 303-04. A Washington court may impose an exceptional sentence
4 outside of the standard range if it concludes “there are substantial and compelling reasons
5 justifying an exceptional sentence.” RCW 9.94A.535. In order to impose an exceptional
6 sentence, the court must set forth reasons for its decision in written findings of fact and
7 conclusions of law. RCW 9.94A.535. RCW 9.94A.535(2) and (3) provide a
8 nonexclusive list of factors justifying an upward departure from a standard range
9 sentence.
10

11 The Washington State Supreme Court has held that a stipulation to an exceptional
12 sentence is enough to constitute a substantial and compelling reason to justify an
13 exceptional sentence, provided the sentence is authorized by statute and the findings of
14 fact show the sentence imposed is consistent with the goals of the Sentencing Reform Act
15 of 1981. *State v. Ermels*, 156 Wn.2d 528, 536, 131 P.3d 299 (2006) (citing *In re*
16 *Personal Restraint of Breedlove*, 138 Wn.2d 298, 300, 979 P.2d 417 (1999)).

17 The *Blakely* court acknowledged that when a defendant pleads guilty and
18 stipulates to an exceptional sentence, a jury need not find facts supporting
19 the exceptional sentence:

20 But nothing prevents a defendant from waiving his Apprendi rights. When
21 a defendant pleads guilty, the State is free to seek judicial sentence
22 enhancements so long as the defendant either stipulates to the relevant
23 facts or consents to judicial factfinding. If appropriate waivers are
24 procured, States may continue to offer judicial factfinding as a matter of
25 course to all defendants who plead guilty.

23 *Ermels*, 156 Wn.2d at 537 (citations omitted).

24 In *Ermels*, the state supreme court held that Ermels could not challenge his
25 stipulation to facts supporting his exceptional sentence in a plea agreement without

1 challenging the entire agreement. 156 Wn.2d at 541. In that case, Ermels stomped on the
2 head of an unconscious man, who later died. The initial charge was first degree assault,
3 which would have had a standard range sentence of 93–123 months upon his conviction.
4 In order to avoid the risk of conviction on that charge, he pleaded guilty to second degree
5 manslaughter, which had a shorter standard range than the assault charge. As part of his
6 plea agreement, he stipulated to facts supporting an exceptional sentence based on victim
7 vulnerability. *Ermels*, 156 Wn.2d at 533. He also stipulated that there was a legal basis
8 for an exceptional sentence. The prosecutor recommended a 10 year exceptional
9 sentence. The court imposed an exceptional sentence of 7.5 years (90 months). *Ermels*,
10 156 Wn.2d at 534. The Supreme Court held that “when a defendant has stipulated to an
11 exceptional sentence, he waives his right to appellate review of the sentence.” *Ermels*,
12 156 Wn.2d at 539.

14 Here, the Statement of Defendant on Plea of Guilty provides in relevant part as
15 follows:

16 ...

17 6 (g) The prosecuting attorney will make the following recommendation to
18 the judge:

19 Stipulated exceptional sentence 30 years. Ct I - 5 years, Ct II - 5 years, Ct
20 III - 10 years, Ct IV - 10 years, each count consecutive, parties stipulate to
21 exceptional based upon particularly vulnerable victim, registration, 36
22 mos. community custody, NCO/victim, no contact w/ minors, abide by
23 conditions App. ‘H’ [and] CCO, \$500 CVPA, \$200 costs, \$400 DAC,
24 \$100 DNA, restitution.

25 Appendix C. Petitioner, his counsel, and the prosecutor signed the written findings and
conclusions of the trial court in which petitioner that “Pursuant to RCW 9.94A.535(2)(a),
the defendant and the state both stipulate that justice is best served by the imposition of an
exceptional sentence outside the standard range, and the court finds the exceptional

1 sentence to be consistent with and in furtherance of the interests of justice and the
2 purposes of the Sentencing Reform Act.” Appendix D.

3 More importantly, petitioner also expressly agreed that he should serve 360
4 months for his crimes. Appendix C. There is no other reasonable way to read the
5 provisions of his Statement of Defendant on Plea of Guilty. This reading is reinforced by
6 the fact that petitioner does not challenge his plea agreement.

7
8 Because petitioner stipulated to an exceptional sentence, he has waived the right to
9 challenge the sentence on appeal.

10 b. Petitioner has failed to show that his offender score was
11 improperly calculated where he stipulated to his offender
12 score below.

13 Although a defendant cannot waive his right to challenge a sentence that is in
14 excess of statutory authority, he may waive his right to challenge alleged errors involving
15 an agreement to facts or matters of trial court discretion. *In re Personal Restraint of*
16 *Goodwin*, 146 Wn.2d 861, 873–75, 50 P.3d 618 (2002). An offender’s stipulation to
17 criminal history relieves the State of its burden of proof. *See State v. Ford*, 137 Wn.2d
18 472, 483 n. 5, 973 P.2d 452 (1999).

19 Here petitioner claims that he was not subject to sentencing as a persistent
20 offender because two of his prior strike offenses constituted same criminal conduct.
21 Personal Restraint Petition at 9. First, petitioner provides no support for his claim that
22 these crimes represented the same criminal conduct. He does provide a criminal history
23 compilation, which shows the crimes listed separately, but for petitioner’s hand written
24 entry indicating same criminal conduct. The mere fact that two separate crimes are
25 sentenced at the same time does not suggest that they are the same criminal conduct, only

1 that they were other current offenses at the time of sentencing. In fact, petitioner
2 stipulated to the two crimes counting separately in his offender score. Appendix E. It is
3 petitioner's responsibility to provide evidence to support his factual allegations.

4 *Williams*, 111 Wn.2d at 364. Petitioner provides this court with no evidence that the two
5 convictions for robbery in the second degree were same criminal conduct and his claim
6 must fail.

7
8 Moreover, even if petitioner's second degree robbery convictions were same
9 criminal conduct, his claim as to his persistent offender status would still fail as he was
10 also convicted of first degree burglary in Yamhill, Oregon, and he stipulated to its
11 equivalency to the Washington felony. Appendix E. First degree burglary is a most
12 serious offense. RCW 9.94A.030(32)(a). Between his burglary and robbery convictions,
13 petitioner has two prior strike offenses, which made the original charge of first degree
14 rape of a child his third strike offense. *See* RCW 9.94A.030(32)(a); (37)(a).

15 Finally, any potential error in including the two robbery crimes separately has no
16 effect on petitioner's sentences because petitioner was sentenced under an offender score
17 of 9+. By removing the second robbery conviction from the calculation petitioner's
18 offender score became 16 for the second degree burglary charge and 13 for the remaining
19 charges. In other words, petitioner's standard range was still based on a 9+ offender
20 score.

21
22 While petitioner claims that the incorrect offender score proves that his plea was
23 made under duress, petitioner is not seeking withdrawal of his plea. Petitioner avoided a
24 life sentence by entering the plea and he stipulated to an exceptional sentence. He has
25 failed to prove that his offender score was incorrectly calculated.

1 c. Petitioner has not provided this court with any evidence to
2 support his claims of ineffective assistance of counsel.

3 The right to effective assistance of counsel is the right “to require the
4 prosecution’s case to survive the crucible of meaningful adversarial testing.” *United*
5 *States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984). When
6 such a true adversarial proceeding has been conducted, even if defense counsel made
7 demonstrable errors in judgment or tactics, the testing envisioned by the Sixth
8 Amendment of the United States Constitution has occurred. *Cronin*, 466 U.S. at 656.
9 “The essence of an ineffective-assistance claim is that counsel’s unprofessional errors so
10 upset the adversarial balance between defense and prosecution that the trial was rendered
11 unfair and the verdict rendered suspect.” *Kimmelman v. Morrison*, 477 U.S. 365, 374,
12 106 S. Ct. 2574, 2582, 91 L. Ed. 2d 305 (1986).

13 To demonstrate ineffective assistance of counsel, a defendant must satisfy the
14 two-prong test laid out in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052,
15 80 L. Ed. 2d 674 (1984); *see also State v. Thomas*, 109 Wn.2d 222, 743 P.2d 816 (1987).
16 First, a defendant must demonstrate that his attorney’s representation fell below an
17 objective standard of reasonableness. Second, a defendant must show that he or she was
18 prejudiced by the deficient representation. Prejudice exists if “there is a reasonable
19 probability that, except for counsel’s unprofessional errors, the result of the proceeding
20 would have been different.” *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251
21 (1995); *see also Strickland*, 466 U.S. at 695 (“When a defendant challenges a conviction,
22 the question is whether there is a reasonable probability that, absent the errors, the fact
23 finder would have had a reasonable doubt respecting guilt.”). Defects in assistance that
24
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1 have no probable effect upon the trial's outcome do not establish a constitutional
2 violation. *Mickens v. Taylor*, 535 U.S. 162, 122 S. Ct. 1237, 152 L. Ed. 2d 29 (2002).

3 There is a strong presumption that a defendant received effective representation.
4 *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121, 116
5 S. Ct. 931, 133 L. Ed. 2d 858 (1996); *Thomas*, 109 Wn.2d at 226. A defendant carries
6 the burden of demonstrating that there was no legitimate strategic or tactical rationale for
7 the challenged attorney conduct. *McFarland*, 127 Wn.2d at 336.

8 The standard of review for effective assistance of counsel is whether, after
9 examining the whole record, the court can conclude that defendant received effective
10 representation and a fair trial. *State v. Ciskie*, 110 Wn.2d 263, 751 P.2d 1165 (1988). An
11 appellate court is unlikely to find ineffective assistance on the basis of one alleged
12 mistake. *State v. Carpenter*, 52 Wn. App. 680, 684-685, 763 P.2d 455 (1988).

13 Judicial scrutiny of a defense attorney's performance must be "highly deferential
14 in order to eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689.
15 The reviewing court must judge the reasonableness of counsel's actions "on the facts of
16 the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at
17 690; *State v. Benn*, 120 Wn.2d 631, 633, 845 P.2d 289 (1993).

19 What decision [defense counsel] may have made if he had more
20 information at the time is exactly the sort of Monday-morning
21 quarterbacking the contemporary assessment rule forbids. It is
22 meaningless...for [defense counsel] now to
claim that he would have done things differently if only he had more
information. With more information, Benjamin Franklin might have
invented television.

23 *Hendricks v. Calderon*, 70 F.3d 1032, 1040 (9th Cir. 1995). As the Supreme Court has
24 stated "The Sixth Amendment guarantees reasonable competence, not perfect advocacy
25

1 judged with the benefit of hindsight.” *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1,
2 157 L. Ed. 2d 1 (2003).

3 “If trial counsel's conduct can be characterized as legitimate trial strategy or
4 tactics, it cannot serve as a basis for a claim that the defendant received ineffective
5 assistance of counsel.” *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002) (citing
6 *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)). Courts can presume counsel
7 did not request limiting instructions to avoid reemphasizing damaging evidence. *State v.*
8 *Yarbrough*, 151 Wn. App. 66, 90, 210 P.3d 1029 (2009); *State v. Price*, 126 Wn. App.
9 617, 649, 109 P.3d 27, *review denied*, 155 Wn.2d 1018, 124 P.3d 659 (2005); *State v.*
10 *Barragan*, 102 Wn. App. 754, 762, 9 P.3d 942 (2000); *State v. Donald*, 68 Wn. App.
11 543, 551, 844 P.2d 447, *review denied*, 121 Wn.2d 1024, 854 P.2d 1084 (1993).

13 A defendant must demonstrate both prongs of the *Strickland* test, but a reviewing
14 court is not required to address both prongs of the test if the defendant makes an
15 insufficient showing on either prong. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d
16 816 (1987).

17 Here, petitioner claims that he received “ineffective assistance of malevolent
18 counsel.” Personal Restraint Petition at 11. However, again petitioner provides no
19 evidence to support his claim. Rather, petitioner lists a series of grievances without any
20 showing of deficient performance or prejudice.

21 Petitioner claims that his attorneys tried to have him deemed incompetent to stand
22 trial, presumably when the court ordered a competency evaluation. However, a review of
23 the forensic evaluation indicates that the jail staff had concerns for petitioner’s mental
24 state due to “rapid pressured speech, complains of racing thoughts, poor sleep and
25 decreased concentration.” Appendix F at page 5. The evaluation also shows petitioner’s

1 delusions regarding his impact on his surroundings. *See* Appendix F at pages 3-5.
2 Counsel's performance was not deficient for seeking an evaluation to ensure that
3 petitioner was competent to stand trial.

4 Petitioner also claims, without any evidence, that his attorneys ignored facts which
5 would have proven he was not guilty of the crimes. Yet petitioner entered a guilty plea.
6 A guilty plea waives or renders irrelevant all constitutional violations that occurred before
7 the guilty plea, except those related to the circumstances of the plea or to the
8 government's legal power to prosecute regardless of factual guilt. *In re Personal*
9 *Restraint of Reise*, 146 Wn. App. 772, 782, 192 P.3d 949 (2008). By pleading guilty, a
10 defendant admits factual and legal guilt for the charged crime. *See e.g., United States v.*
11 *Broce*, 488 U.S. 563, 570, 109 S. Ct. 757, 102 L. Ed. 2d 927 (1989); *see also State v.*
12 *Davis*, 29 Wn. App. 691, 696, 630 P.2d 938 (1981). Petitioner has failed to show how
13 counsel's performance was deficient for discarding his "real facts" when DNA evidence
14 positively identified him as the suspect. Petitioner waived any challenge to the
15 sufficiency of the evidence by entering a guilty plea.
16

17 Petitioner claims that his counsel was ineffective for failing to research his
18 criminal history or request an evidentiary hearing for sentencing over his protests that it
19 was calculated incorrectly. However, petitioner signed an offender score stipulation and
20 agreed to his offender score and exceptional sentence as part of his plea agreement.
21 Nothing in the record indicates that petitioner disagreed with his offender score
22 calculation and he provides no evidence to support his claim.
23

24 Petitioner states that counsel was ineffective for not honoring waivers of his right
25 to postpone sentencing until after his criminal history washed. Petitioner's contention

1 that he could manipulate his sentencing hearing to avoid having prior convictions counted
2 against his offender score is entirely without merit. Under RCW 9.94A.525, prior
3 offenses “wash” for purposes of offender score calculations at different times based on
4 seriousness level. The requirement for all of these “washout” provisions is that the
5 defendant spend a certain number of years in the community without committing any
6 crime that subsequently results in a conviction. RCW 9.94A.525(2)(b), (c), (d).

7 Petitioner committed his current crimes prior to the “washout period.” Merely changing
8 his sentencing date would not alter his offender score calculation. Petitioner has not
9 shown deficient performance.
10

11 Finally, petitioner has failed to provide any support for his claims that counsel was
12 only concerned with his receiving a harsh sentence, or engaged in dishonesty, fraud,
13 deceit, or misrepresentation.

14 The evidence that is in the record shows that counsel ensured that petitioner was
15 competent to stand trial and successfully negotiated a plea agreement by which petitioner
16 avoided spending the rest of his life in prison. As petitioner has failed to show that
17 counsels’ performance was deficient or that he was prejudiced, his claim of ineffective
18 assistance of counsel is entirely without merit.
19

20 d. Petitioner has failed to show that the prosecutor engaged in
21 misconduct or that he was the victim of “judicial
prejudice.”

22 To prove that a prosecutor’s actions constitute misconduct, the defendant must
23 show that the prosecutor did not act in good faith and the prosecutor’s actions were
24 improper. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985) (citing *State v.*
25 *Weekly*, 41 Wn.2d 727, 252 P.2d 246 (1952)). Before an appellate court should review a

1 claim based on prosecutorial misconduct, it should require “that [the] burden of showing
2 essential unfairness be sustained by him who claims such injustice.” *Beck v.*
3 *Washington*, 369 U.S. 541, 557, 82 S. Ct. 955, 8 L. Ed. 2d 834 (1962).

4 Here, petitioner claims that the prosecutor committed misconduct by manipulating
5 charges to avoid tolling of the statute of limitations, used erroneous criminal history to
6 coerce him into entering a plea agreement, stating that he was an incorrigible threat to
7 society, ignored “real facts,” and did not honor his attempts to manipulate his sentencing
8 date so his convictions would wash.

9
10 Petitioner’s claims are entirely without merit. Petitioner has not provided any
11 evidence that the prosecutor overcharged the initial crime to avoid the statute of
12 limitations. *See* Appendix B. As argued above, petitioner’s offender score was correctly
13 calculated and, even if it were not, any error had no effect on petitioner’s standard ranges
14 as his offender score was still greater than nine. Petitioner’s DNA was found on the
15 victim’s underwear which undermines his “real facts,” but more importantly, petitioner’s
16 guilty plea waives all challenges to the sufficiency of the evidence. Given petitioner’s
17 criminal history and offender score, describing him as an incorrigible threat to society is
18 not improper. Finally, as argued above, petitioner’s plan to delay sentencing until after
19 the “washout” period was improper. Petitioner has not shown that the prosecutor acted
20 improperly.

21
22 Petitioner also has not shown that the sentencing judge acted improperly. While
23 the sentencing judge may not have been the same judge as took his plea, petitioner has not
24 shown prejudice. The sentencing judge sentenced petitioner in accordance with the plea
25 agreement. Appendix A, Appendix C. She entered findings of fact which noted

1 petitioner's stipulation and found that those facts supported an exceptional sentence.
2 Appendix D. Nothing in the record shows that petitioner was prejudiced when different
3 judges presided at his plea hearing and sentencing.
4

5 D. CONCLUSION:

6 The State respectfully requests that this Court dismiss this personal restraint
7 petition as petitioner has failed to show prejudicial constitutional error or a fundamental
8 defect resulting in a complete miscarriage of justice where he has not provided any
9 evidence to support any of his claims.

10 DATED: May 30, 2014.

11 MARK LINDQUIST
12 Pierce County Prosecuting Attorney



13
14 KIMBERLEY DEMARCO
15 Deputy Prosecuting Attorney
WSB # 39218

16 Certificate of Service:

17 The undersigned certifies that on this day she delivered by U.S. mail
18 to the petitioner a true and correct copy of the document to which this
19 certificate is attached. This statement is certified to be true and correct
20 under penalty of perjury of the laws of the State of Washington. Signed
21 at Tacoma, Washington, on the date below.

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PIERCE COUNTY PROSECUTOR

May 30, 2014 - 9:54 AM

Transmittal Letter

Document Uploaded: prp2-458624-Response.pdf

Case Name: IN RE THE PRP OF: JERRY SWAGERTY

Court of Appeals Case Number: 45862-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

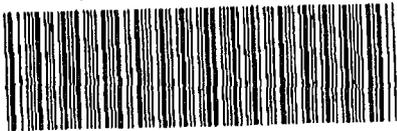
Comments:

No Comments were entered.

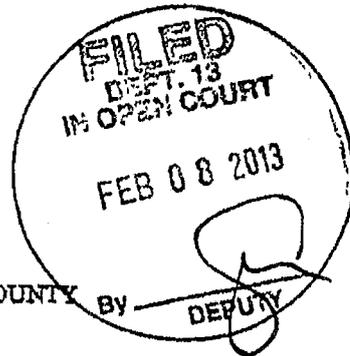
Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

APPENDIX “A”

Judgment and Sentence



FEB 11 2013



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs

JERRY LEE SWAGERTY,

Defendant.

WARRANT OF COMMITMENT

FEB 11 2012

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

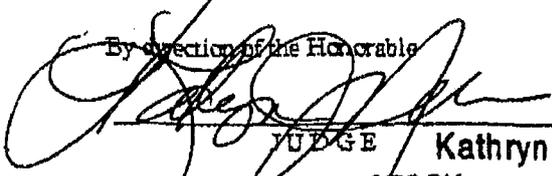
[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement in Pierce County Jail)

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

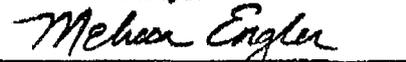
YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody)

[] 3 YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement or placement not covered by Sections 1 and 2 above).

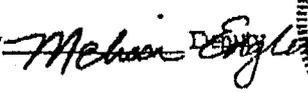
Dated: 2/8/13

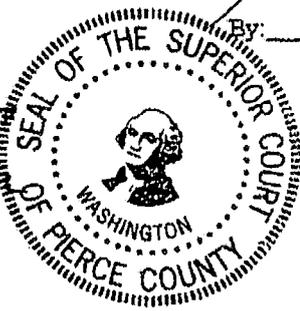
By direction of the Honorable


JUDGE Kathryn J. Nelson
KEVIN STOCK
CLERK

By: 
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

FEB 11 2013
By:  Deputy



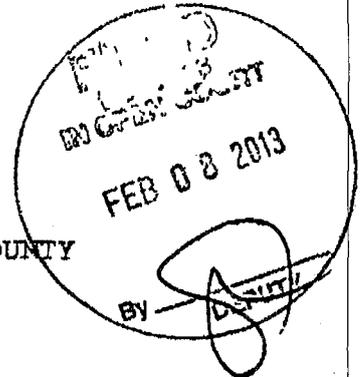
STATE OF WASHINGTON

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this _____ day of _____, _____

KEVIN STOCK, Clerk
By: _____ Deputy

PCU



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO 12-1-01877-6

vs.

JUDGMENT AND SENTENCE (FJS)

FEB 11 2012

JERRY LEE SWAGERTY

Defendant.

SID 12428205
DOB. 06/05/1965

- Prison
- RCW 9.94A.712&9 94A.507 Prison Confinement
- Jail One Year or Less
- First-Time Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

I HEARING

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

II FINDINGS

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

2.1 CURRENT OFFENSE(S) The defendant was found guilty on
by plea jury-verdict bench trial of

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO |
|-------|-----------------------------------|--|-------------------|---------------|---------------|
| I | RAPE OF CHILD THIRD DEGREE, (138) | 9A.44.079 9.94A.535(3)(b) 9.94A.535(2)(a) | NONE | 02/14/04 | TPD 040450682 |
| II | LURING, (155) | 9A.40.90 9.94A.535(3)(b) 9.94A.535(2)(a) | NONE | 02/14/04 | TPD 040450682 |
| III | BURGLARY SECOND, (G4) | 9A.52.030(1) 9.94A.535(2)(a) 9.94A.535(3)(b) | NONE | 02/14/04 | TPD 040450682 |

JUDGMENT AND SENTENCE (JS)
(Felony) (7/2007) Page 1 of 11

139 016495

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO |
|-------|----------------------------|--|-------------------|---------------|---------------|
| IV | INTIMIDATE WITNESS, (KK46) | 9A.72.110(2) 9.94A.535(2)(a) 9.94A.535(3)(b) | NONE | 02/14/04 | TPD 040450682 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8) (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589)

Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number)

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

| | CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J ADULT JUV | TYPE OF CRIME |
|----|------------------|------------------|-----------------------------------|---------------|------------------|---------------|
| 1 | CHARGE UNKNOWN | | CLALLAM CO., WA | 02/28/81 | JUV | |
| 2 | THEFT 2 | 11/18/81 | CLALLAM CO., WA | 04/12/81 | JUV | NV |
| 3 | BURG 2 | 11/18/81 | CLALLAM CO., WA | 04/26/81 | JUV | NV |
| 4 | THEFT 3 | | CLALLAM CO., WA | 04/03/81 | JUV | MISD |
| 5 | BURG 1 | 02/24/86 | YAMHILL CO | 11/03/83 | ADULT | NV |
| 6 | BURG 2 | 12/03/86 | KING CO., WA | 02/09/84 | ADULT | NV |
| 7 | BURG 2 | 10/29/86 | CLALLAM CO., WA | 03/08/84 | ADULT | NV |
| 8 | ROB 2 | 10/19/89 | KING CO., WA | 07/12/89 | ADULT | V |
| 9 | ROB 2 | 10/19/89 | KING CO., WA | 07/12/89 | ADULT | V |
| 10 | ATT RES BURG | 02/19/93 | KING CO., WA | 12/20/92 | ADULT | NV |
| 11 | THEFT 1 (X2) | 01/29/97 | SPOKANE CO, WA | 02/22/96 | ADULT | NV |
| 12 | UPCS METH | 02/15/02 | CLARK CO., WA | 12/04/00 | ADULT | NV |
| 13 | THEFT 1 | 02/15/02 | CLARK CO., WA | 12/21/00 | ADULT | NV |
| 14 | PSP 2 | 02/15/02 | CLARK CO., WA | 12/21/00 | ADULT | NV |
| 15 | UPFGLM | 11/14/83 | PORT ANGELES | 10/05/83 | ADULT | MISD |
| 16 | NEG DRIVING | | CLALLAM DIST CT | 12/23/90 | ADULT | MISD |
| 17 | MISD TRAFFIC VIO | 03/05/91 | PORT ANGELES | 10/20/91 | ADULT | MISD |

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525)

2.3 SENTENCING DATA

| COUNT NO | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|----------|----------------|-------------------|---|-------------------|---|--------------|
| I | 9+ | VI | 60 MOS | NONE | 60 MOS | 60M/10K |
| II | 9+ | UNRANKED | 0-12 MOS | NONE | 0-12 MOS | 60M/10K |
| III | 9+ | III | 51-68 MOS | NONE | 51-68 MOS | 10Y/20K |
| IV | 9+ | VI | 77-102 MOS | NONE | 77-102 MOS | 10Y/20K |

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 2 of 11

2.4 EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____

above the standard range for Count(s) I, II, III, IV

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix Z.4 Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9 94A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9 94A.753).

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTNRJN \$ 20.00 Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 11

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for exoneration costs TBD

\$ _____ Other Costs for _____

\$ 1200.00 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753 A restitution hearing.

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8)

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ Per CCO per month commencing. Per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

COSTS OF INCARCERATION In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate RCW 10.01.160

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.1b ELECTRONIC MONITORING REIMBURSEMENT. The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____

4.2 DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

4.3 NO CONTACT

The defendant shall not have contact with S.M.S. (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

JUDGMENT AND SENTENCE (JS)

4.4 OTHER Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

| |
|--|
| Psychosocial evaluation & follow-up treatment |
| Pay attorney, behavior |
| Abide by formal no contact order |
| Sever financial obligations - including restitution to be determined |
| Abide by all conditions of CCO & Appendix H |
| No contact with minors |
| Restitution costs to be determined |

4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

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

** all counts to be served consecutively*

| | | | |
|----------------------------|------------|-----------------------|-------|
| <u>60</u> months on Count | <u>I</u> | _____ months on Count | _____ |
| <u>60</u> months on Count | <u>II</u> | _____ months on Count | _____ |
| <u>120</u> months on Count | <u>III</u> | _____ months on Count | _____ |
| <u>120</u> months on Count | <u>IV</u> | _____ months on Count | _____ |

Actual number of months of total confinement ordered is 360 month

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: ** All counts to be served consecutively*

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589 _____

Confinement shall commence immediately unless otherwise set forth here _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number RCW 9.94A.505 The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 249 days credit

4 6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows

Count _____ for _____ months,

[X] COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of.

(1) the period of early release RCW 9.94A.728(1)(2), or

(2) the period imposed by the court, as follows:

Count(s) I 36 months for ~~Serious Violent Offenses~~ Sex Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

*Combination of incarceration and community custody shall not exceed the statutory maximum

(B) While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions, (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court, (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

[] consume no alcohol.

[X] have no contact with see formal order & minors

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

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 6 of 11

[] participate in the following crime-related treatment or counseling services: _____

[] undergo an evaluation for treatment for [] domestic violence [] substance abuse

[] mental health [] anger management and fully comply with all recommended treatment.

[] comply with the following crime-related prohibitions _____

Other conditions

Res CCJ

[] For sentences imposed under RCW 9 94A.702, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment. If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9 94A.562

PROVIDED That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4 7 [] WORK ETHIC CAMP RCW 9.94A.690, RCW 72.09.410 The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4 8 OFF LIMITS ORDER (known drug trafficker) RCW 10.66.020 The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5 1 COLLATERAL ATTACK ON JUDGMENT Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10 73.100 RCW 10 73.090.

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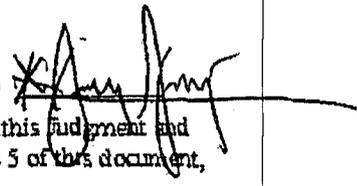
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5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505 The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

5.4 **RESTITUTION HEARING**

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



5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634

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

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

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

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 8 of 11

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5 10 OTHER _____

5 DONE in Open Court and in the presence of the defendant this date: 2/8/13

7 JUDGE
Print name

Kathryn J. Nelson
Kathryn J. Nelson

8 *[Signature]*
Deputy Prosecuting Attorney

9 Print name Angelica Williams
WSB # 36673

8 Attorney for Defendant

9 *[Signature]*
Print name Mark Quigley
WSB # 14496

11 *[Signature]*
Defendant
12 Print name JERRY SWABERTY

14 VOTING RIGHTS STATEMENT: RCW 10 64.140 I acknowledge that my right to vote has been lost due to
15 felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be
16 restored by: a) A certificate of discharge issued by the sentencing court, RCW 9 94A.637, b) A court order issued
17 by the sentencing court restoring the right, RCW 9 92.066, c) A final order of discharge issued by the indeterminate
18 sentence review board, RCW 9 96 050, or d) A certificate of restoration issued by the governor, RCW 9 96 020
19 Voting before the right is restored is a class C felony, RCW 92A.84 660

18 Defendant's signature *[Signature]*



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CERTIFICATE OF CLERK

CAUSE NUMBER of this case. 12-1-01877-6

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

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

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

IDENTIFICATION OF COURT REPORTER

Dana Eby
Court Reporter

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a

- sex offense *Rape Child 3*
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69 50 and 69 52

The offender shall report to and be available for contact with the assigned community corrections officer as directed

The offender shall work at Department of Corrections approved education, employment, and/or community service,

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions

An offender in community custody shall not unlawfully possess controlled substances,

The offender shall pay community placement fees as determined by DOC.

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- (I) The offender shall remain within, or outside of, a specified geographical boundary _____
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals *Minors*
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol, _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other *Per cco*

IDENTIFICATION OF DEFENDANT

SID No. 12428205 Date of Birth 06/05/1965
 (If no SID take fingerprint card for State Patrol)

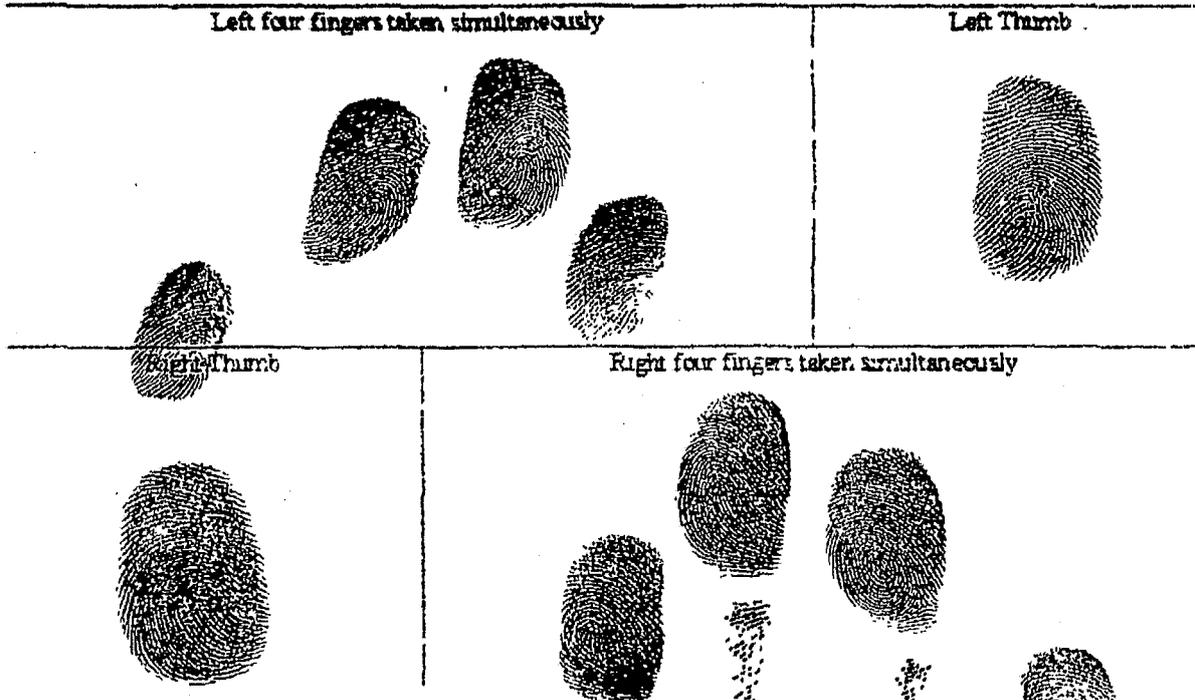
FBI No. 251345CA2 Local ID No. UNKNOWN

PCN No. UNKNOWN Other

Alias name, SSN, DOB

| | | | | | | | | |
|--------------------------|---------------------------|--------------------------|----------------------------|-------------------------------------|------------------|--------------------------|----------|--|
| Race | | | | | Ethnicity | | Sex | |
| <input type="checkbox"/> | Asian/Pacific Islander | <input type="checkbox"/> | Black/African- American | <input checked="" type="checkbox"/> | Caucasian | <input type="checkbox"/> | Hispanic | <input checked="" type="checkbox"/> Male |
| <input type="checkbox"/> | Native American | <input type="checkbox"/> | Other | <input type="checkbox"/> | Non- Hispanic | <input type="checkbox"/> | Female | |

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto Clerk of the Court, Deputy Clerk Debra Eider Date 2/8/13

DEFENDANT'S SIGNATURE [Signature]

DEFENDANT'S ADDRESS _____

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014.



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 3FEA8531-F20F-6452-D585D656A7BB5F74.

This document contains 14 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “B”

Information

FILED
PIERCE COUNTY CLERK'S OFFICE
A.M. MAY 22 2012 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

INFORMATION

Defendant.

66A 72432

DOB: 6/5/1965

SEX : MALE

RACE: WHITE

PCN#:

SID#: 12428205

DOL#: FL S263-432-65-205-0

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of February, 2004, did unlawfully and feloniously being at least 24 months older than S.B., engage in sexual intercourse with S.B., who is less than 12 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or 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 others, committed as follows:

INFORMATION- 1

1 That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of
2 February, 2004, did unlawfully and feloniously, being at least 36 months older than S.B., have sexual
3 contact with S.B., who is less than 12 years old and not married to the defendant and not in a state
4 registered domestic partnership with the defendant, contrary to RCW 9A.44.083, and the crime was
5 aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(b), the defendant knew or
6 should have known that the victim of the current offense was particularly vulnerable or incapable of
7 resistance, and against the peace and dignity of the State of Washington.

8 DATED this 22nd day of May, 2012.

9 TACOMA POLICE DEPARTMENT
10 WA02703

11 MARK LINDQUIST
12 Pierce County Prosecuting Attorney

13 geb

14 By:

15 
16 GRANT BLINN
17 Deputy Prosecuting Attorney
18 WSB#: 25570

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

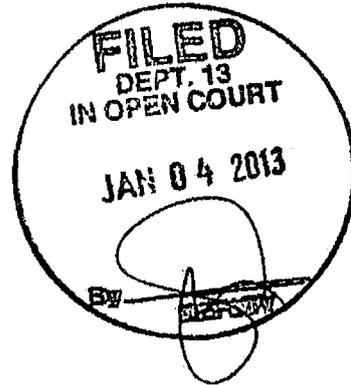
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: **3FEA73CB-F20F-6452-DE9DC51C3491034E**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "C"

Statement of Defendant on Plea of Guilty



**Superior Court of Washington
For Pierce County**

State of Washington
Plaintiff

vs.
Jerry Swagerty
Defendant

No. 12-1-01877-6
Statement of Defendant on Plea of
Guilty to Sex Offense
(STTDFG)

1. My true name is: Jerry Lee Swagerty
2. My age is: 47
3. The last level of education I completed was 14.5

4. **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is:
David Shaw/Mark Quigley

(b) I am charged with the crime(s) of:
Count I: Rape of a Child Third Degree
The elements are: In Pierce County Washington, engage in sexual intercourse with a person at least 14 years old but less than 16 years old, being at least 48 months older than the victim, and not married to the victim aggravated by

and pursuant to RCW 9A.535(2)(a) Count II: Victim being particularly vulnerable or incapable of resistance
Luring

The elements are: In Pierce County, Washington, order, lure

or attempt to lure a minor child into an area or structure that is obscured from or inaccessible to the public and the defendant did not have consent from the minor's parent or guardian to do so and the defendant was unknown to the child, aggravated pursuant to

(c) Additional counts are addressed in Attachment "B"

RCW 9.94A.535(2)(a) victim being particularly vulnerable or incapable of resistance

5. **I Understand 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 hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pre-trial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

| COUNT NO. | OFFENDER SCORE | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancements* | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).) | MAXIMUM TERM AND FINE |
|-----------|----------------|--|--------------------|--|--|-----------------------|
| 1 | 9+ | 60 mos | - | 60 mos | 36-48 mos | 5 yrs \$10,000 |
| 2 | 9+ | 0-12 mos | - | 0-12 mos | 12 mos | 5 yrs \$10,000 |

* (F) Firearm, (D) other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.

Case Number: 12-1-01877-6 Date: May 27, 2014
 Serial ID: 3FEB472B-110A-8BE2-ADCA-01877-6
 Case Name: State v. Terrance Pierce Cause No. 12-1-01877-6
 Captured By: Kevin Stok Pierce County Clerk, Washington

ATTACHMENT "B"

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count III: Burglary Second Degree

Elements: In Pierce County, Washington, with intent to commit a crime against a person or property therein, enter or remain unlawfully in a building other than a vehicle or dwelling, appropriated pursuant to RCW 9A.04.030(2)(a) victim being particularly vulnerable or incapable of resistance

This crime carries a maximum sentence of _____ years imprisonment and a \$ _____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent [] Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

Count IV: Intimidating a witness

Elements: In Pierce County, Washington, direct a threat to a ^{former} witness because of the witness's role in any official proceeding, appropriated pursuant to RCW 9A.04.030(2)(a) victim being particularly vulnerable or incapable of resistance.

This crime carries a maximum sentence of 10 years imprisonment and a \$ 20,000 fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [] Serious Violent [] Violent [] Non-Violent Sex [] Drug [] Traffic [] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

| COUNT NO. | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f)) | MAXIMUM PENALTY |
|------------|--|--|--|--|-------------------|
| <u>III</u> | 51-68 mos | — | 51-68 mos | — | 10 yrs / \$20,000 |
| <u>IV</u> | 77-102 mos | — | 77-102 mos | 9-18 mos | 10 yrs / \$20,000 |

ATTACHMENT "B"

Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) ~~**For sex offenses committed prior to 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 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. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005 (6) (h).~~

~~**For sex offenses committed on or after July 1, 2000 but prior to 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 release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

~~**For sex offenses committed on or after September 1, 2001:**~~

- ~~(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of~~

Case Number: 12-1-01877-6 Date: May 27, 2014
 SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
 Certified By: Kevin Stock Pierce County Clerk, Washington

confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.

(aa) 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 |
| Any of the following offenses with a finding of sexual motivation: | |
| Murder in the first degree | Murder in the second degree |
| Homicide by abuse | Kidnapping in the first degree |
| Kidnapping in the second degree | Assault in the first degree |
| Assault in the second degree | Assault of a child in the first degree |
| Assault of a child in the second degree | Burglary in the first degree |

(bb) 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:

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

(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me,

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington

which may include electronic monitoring.

For sex offenses committed on or after March 20, 2006:

For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation:

If I am subject to a first or second violation hearing and the Department of Corrections finds that I committed the violation, I may receive as a sanction up to 60 days of confinement per violation. If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge:
*Stipulated Exceptional Sentence 30 years.
 Ct I - 5 years, Ct II - 5 yrs, Ct III - 10 years,
 Ct IV - 10 years, Each Count consecutive, Parties
 stipulate to exceptional based upon particularly vulnerable
 victim, Registration, 36 mos. community custody,
 NCO/victim, NO contact w/ minors, Abide by conditions
 App H' & CCO, 500 CVPA, 200 Costs, 500 DAC, 500 DNA,
 Restitution*
 * The prosecutor will recommend as stated in the plea agreement, which is 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. I understand the following regarding exceptional sentences:
 - (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more

than nine.

- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.**
- (j) I understand that **I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9A.1.040.**
- (k) I understand that I will be **ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.**
- (l) **Public assistance will be suspended during any period of imprisonment.**
- (m) I will be **required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in the registration requirements and for complying with the new requirements.**
- (n) I will be required to have a **biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.**
- (o) I will be required to undergo **testing for the human immunodeficiency (HIV/AIDS) virus.**

Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.

- (p) ~~This offense is a **most serious offense or strike** as defined by RCW 9.94A.030, and if I have at least two prior **convictions** for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the~~

first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

(q) **Special sex offender sentencing alternative:**

In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.

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

For offenses committed on or after September 1, 2001: The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement, or for offenses committed on or after 7/1/05, I will be ordered to serve up to 12 months of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions

Case Number: 12-1-01877-6 Date: May 27, 2014
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Clarified By: Kevin Stock Pierce County Clerk, Washington

described in paragraph 6(i). ~~Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.~~

- (r) ~~If this is a crime of domestic violence, the court may order me to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~
- (s) ~~If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.~~
- (t) ~~If this offense involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.~~
- (u) ~~The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(p).~~
- (v) ~~I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~
- (w) ~~I understand that the offense(s) I am pleading guilty to include a deadly weapon, firearm or sexual motivation enhancement. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.~~
- (x) ~~For crimes committed on or after July 22, 2007: I understand that if I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.~~

- 7. I plead guilty to count(s) I, II, III, IV in the Amended Information. I have received a copy of that Information.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement:

I acknowledge there are facts sufficient in the original declaration of probable cause to constitute a factual basis for the original count I, Rape of Child First Degree, I therefore plead guilty to counts I, II, III, and IV to take advantage of the State's offer to reduce the charge and allow me to be sentenced to an amount of time other than life in prison without possibility of parole.

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

**I further acknowledge that I have reviewed the evidence and believe there is a substantial likelihood I would be convicted at trial as charged.*

Defendant

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

Prosecuting Attorney

Defendant's Lawyer

Anglica Williams
Print Name *36673*
WSBA No.

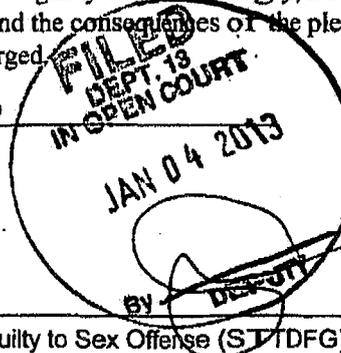
Mark Quigley / David Shaw
Print Name *14496* WSBA No. *13994*

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

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

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

Dated: *1/4/13*



Kathryn J. Nelson
Judge

Kathryn J. Nelson

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington

Interpreter's Declaration

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the _____ for the defendant from English into that language. (Identify document being translated)

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Print Name

Location: _____

Case Name Jerry Swagerty Cause No. 12-1-01877-6

"Offender Registration" Attachment: sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.130. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements: Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

2. Offenders Who Leave the State and Return: If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If I change my residence within a county, I must send signed written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send signed written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence and I must register with the sheriff of the new county within 24 hours of moving. I must also give signed written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution. If I become employed at a public or private institution of higher education, I am required to notify the sheriff for the county of my residence of my employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If my enrollment or employment at a public or private institution of higher education is terminated, I am required to notify the sheriff for the county of my residence of my

termination of enrollment or employment within 10 days of such termination. If I attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, I am required to notify the sheriff of the county of my residence of my intent to attend the school. I must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if I do not have a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody. Within 48 hours, excluding weekends and holidays, after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may be required to provide a list of the locations where I have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

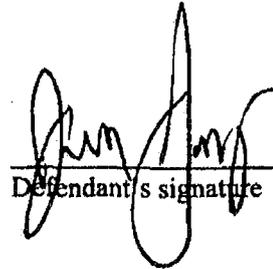
7. Reporting Requirements for Persons Who Are Risk Level II or III: If I have a fixed residence and I am designated as a risk level II or III, I must report, in person, every 90 days to the sheriff of the county where I am registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If I comply with the 90-day reporting requirement with no violations for at least five years in the community, I may petition the superior court to be relieved of the duty to report every 90 days.

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

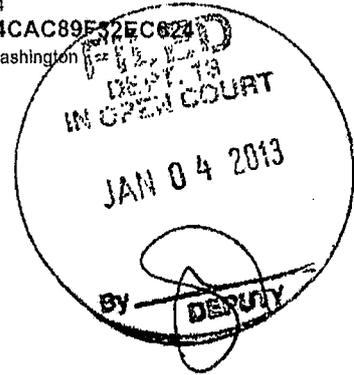
Date:

1/3/13


Defendant's signature



Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEB73B-110A-9BE2-A94CAC89F52EC621D
Certified By: Kevin Stock Pierce County Clerk, Washington



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY.

ADDENDUM TO PLEA FORM FOR
 ALFORD PLEA AS TO COUNT II
 IN RE BARR PLEA AS TO COUNTS I,
III, AND IV

Defendant.

DOB : 06/05/1965
PCN# :

SEX : MALE
SID# : 12428205

RACE : WHITE
DOL# : fl s263-65-205-0

North Carolina v. Alford, 400 U.S. 25, 36-37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976): I do not admit that I am guilty of the crime charged in Count II, but I have reviewed the evidence with my attorney and believe that there is a substantial likelihood I would be convicted or more serious charges if I proceeded to trial. I am pleading guilty in order to take advantage of the State's offer. I understand that the court must find a factual basis for my plea of guilty. I acknowledge there is a factual basis for the charge contained in Count II in the Original Information that is set forth in the Declaration for Determination of Probable Cause, and I agree the court may consider that declaration, as well as any other information presented by the prosecutor at the time of this plea, to support the court's finding of a factual basis for my plea.

In re Barr, 102 Wn.2d 265 (1984): In addition to what is set out in the statement of defendant on plea of guilty, and in addition to my factual admissions in the plea form, I recognize that I am entering a plea of guilty to crimes that I in fact did not commit contained in Counts I, III and IV. My attorney has discussed with me all of the elements of the original charges and the elements of the amended charges, and I understand them all. There is a factual basis for the original charges. I understand that the prosecution would be

Case Number: 12-1-01877-6 Date: May 27, 2014

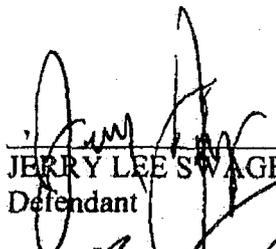
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unable to prove some of the amended charges at trial, but I see pleading guilty to the amended charges as being beneficial to me because it will allow me to avoid the risk of conviction on the charges I would face at trial. Based upon a review of the alternatives before me, I have decided to plead guilty to a crime I did not commit in order to take advantage of the State's offer. I understand the consequences of this plea agreement and I am making a voluntary and informed choice to enter into it.

I understand that the court must find a factual basis for the original charges and I agree that the court may consider the declaration for determination of probable cause and any other information presented by the prosecutor at the time of this plea to support the factual basis for the original charges.

DATED this 3 day of Jan, 2012


JERRY LEE SWAGERTY.
Defendant


MARK QUIGLEY
Attorney for Defendant
WSB # 14496

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



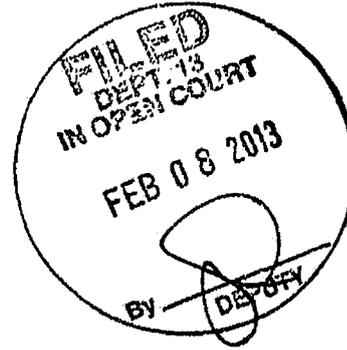
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<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624.

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APPENDIX “D”

Findings of Fact and Conclusions of Law



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE

Defendant.

THIS MATTER having come on before the Honorable Kathryn J. Nelson, Judge of the above entitled court, for sentencing on the following four counts: Rape of a Child in the Third Degree, Luring, Burglary in the Second Degree, and Intimidating a Witness, the defendant, JERRY LEE SWAGERTY, having been present and represented by his attorneys, Mark Quigley and Dave Shaw, and the State being represented by Deputy Prosecuting Attorney Angelica Williams, and the court having considered all argument from both parties and having considered all written reports presented, and deeming itself fully advised in the premises, does hereby make the following Findings of Fact and Conclusions of Law by a preponderance of the evidence.

FINDINGS OF FACT

1 1. The defendant pled guilty on January 4, 2013 to Rape of a Child in the Third
2 Degree, Luring, Burglary in the Second Degree, and Intimidating a Witness. That the standard
3 range sentence for the defendant with an offender score of 9+ on Rape of a Child in the Third
4 Degree is 60 months.

5 2. That the standard range sentence for the defendant with an offender score of 9+
6 on Luring is 0-12 months.

7 3. That the standard range sentence for the defendant with an offender score of 9+
8 on Burglary in the Second Degree is 51-68 months.

9 4. That the standard range sentence for the defendant with an offender score of 9+
10 on Intimidating a Witness is 77-102 months.

11 5. That the factors set forth by the Prosecuting Attorney in the State's sentencing
12 recommendation are applicable and are aggravating factors in the instant offense for the reasons
13 set forth by the Prosecuting Attorney, to wit:

14 6. Pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known
15 that the victim in was particularly vulnerable or incapable of resistance; and
16

17 7. Pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate that
18 justice is best served by the imposition of an exceptional sentence outside the standard range, and
19 the court finds the exceptional sentence to be consistent with and in furtherance of the interests
20 of justice and the purposes of the Sentencing Reform Act.

21 8. The victim in this case, S.M.B., was ten-years old at the time of the incident on
22 February 14, 2004. S.M.B. is developmentally disabled.
23
24
25

1 9. The Prosecuting Attorney and Defense stipulate to an exceptional sentence above
2 the standard range as part of a plea bargain as allowed by *State v. Hilyard*, 63 Wn. App. 413, 819
3 P.2d 809 (1991).

4 10. That JERRY LEE SWAGERTY understands and acknowledges that he has the
5 right to a jury determination of mitigating or aggravating circumstances and waives any right to
6 appeal this exceptional sentence under *Blakely v Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159
7 L. Ed. 2d 403, (2004).

8
9 CONCLUSIONS OF LAW

10 1. That an exceptional sentence above the standard range is warranted pursuant to
11 RCW 9.94A.535(3)(b) because the defendant knew or should have known that S.M.B. was
12 particularly vulnerable or incapable of resistance based on her developmental disability.

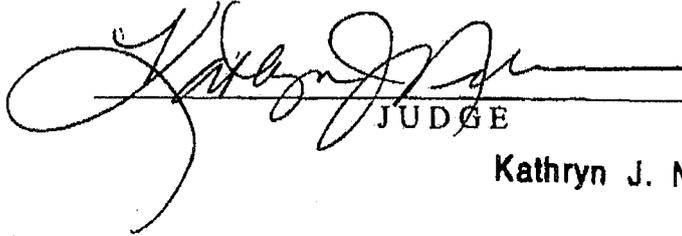
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14 2. That an exceptional sentence above the standard range is permitted as part of a
15 plea bargain under *State v. Hilyard*, 63 Wn. App. 413, 819 P.2d 809 (1991). Such an agreement
16 constitutes a substantial and compelling reason justifying an exceptional sentence outside the
17 standard range.

18
19
20 3. Defendant JERRY LEE SWAGERTY, should be sentenced to the statutory
21 maximum sentence of 5 years for Rape of a Child in the Third Degree. Defendant JERRY LEE
22 SWAGERTY, should be sentenced to the statutory maximum sentence of 5 years for Luring.
23 Defendant JERRY LEE SWAGERTY, should be sentenced to the statutory maximum sentence
24 of 10 years for Burglary in the Second Degree. Defendant JERRY LEE SWAGERTY, should be
25

1 sentenced to the statutory maximum sentence of 10 years for Intimidating a Witness.

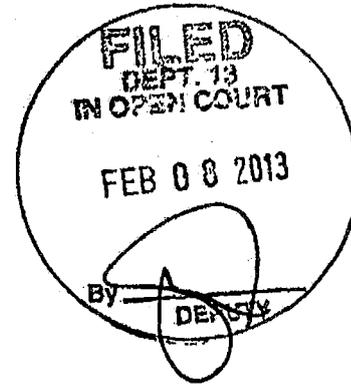
2 Furthermore, each count shall run consecutive for a total period of incarceration of 30 years (360
3 months).

4 DONE IN OPEN COURT this 6 day of February 2013.

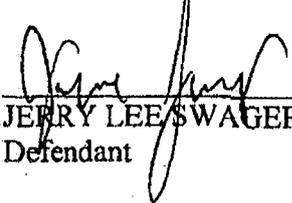
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7 JUDGE
8 Kathryn J. Nelson

9 Presented by:

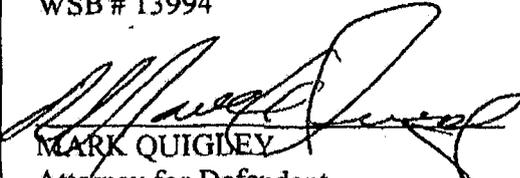
10 
11 ANGELICA WILLIAMS
12 Deputy Prosecuting Attorney
13 WSBA #36673



14 Approved as to Form and Content:

15 
16 JERRY LEE SWAGERTY.
17 Defendant

18 DAVE SHAW
19 Attorney for Defendant
20 WSB # 13994

21 
22 MARK QUIGLEY
23 Attorney for Defendant
24 WSBA # 14496
25

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



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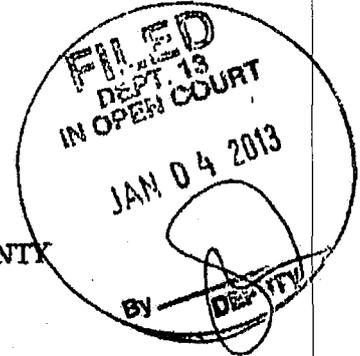
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APPENDIX "E"

Stipulation on Prior Record and Offender Score



12-1-01877-6 39778901 STPPR 01-07-13



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

Defendant.

STIPULATION ON PRIOR RECORD AND
 OFFENDER SCORE
 (Plea of Guilty)

Upon the entry of a plea of guilty in the above cause number, charge RAPE OF A CHILD IN THE THIRD DEGREE; LURING; BURGLARY IN THE SECOND DEGREE; INTIMIDATING A WITNESS, the defendant JERRY LEE SWAGERTY, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---------------------------------|------------------|--------------|---------------|----------------|------------|-------|-------|-----------------------|
| CHARGE UNKNOWN | UNKNOWN | CLALLAM, WA | 02/28/81 | J | | | | FELONY |
| THEFT 2 ND | 11/18/81 | CLALLAM, WA | 04/12/81 | J | | | | FELONY |
| BURGLARY 2 ND DEGREE | 11/18/81 | CLALLAM, WA | 04/26/81 | J | | | | FELONY |
| BURGLARY 2 ND DEGREE | 12/03/86 | KING, WA | 02/09/84 | A | | | | FELONY |
| BURGLARY 2 ND DEGREE | 10/29/86 | CLALLAM, WA | 03/08/84 | A | | | | FELONY |
| ROBBERY 2 ND DEGREE | 10/19/89 | KING, WA | 07/12/89 | A | | | | FELONY |
| ROBBERY 2 ND DEGREE | 10/19/89 | KING, WA | 07/12/89 | A | | | | FELONY |

| | | | | | | | | |
|--|---------------|------------------|----------|---|------|--|--|--------|
| ATTEMPTED RESIDENTIAL BURGLARY | 02/19/93 | KING, WA | 12/20/92 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 01/29/97 | SPOKANE, WA | 02/22/96 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 01/29/97 | SPOKANE, WA | 02/22/96 | A | | | | FELONY |
| UPCS - METH | 02/15/02 | CLARK, WA | 12/04/00 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 02/15/02 | CLARK, WA | 12/21/00 | A | | | | FELONY |
| PSP 2 ND DEG | 02/15/02 | CLARK, WA | 12/21/00 | A | | | | FELONY |
| 12-1-01877-6 LURING | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| 12-1-01877-6 BURGLARY 1 ST DEGREE | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| 12-1-01877-6 INTIMIDATING A WITNESS | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| UPFGLM | 11/14/83 | PORT ANGELES, WA | 10/05/83 | A | MISD | | | MISD |
| NEG DRIVING | UNKNOWN | CLALLAM, WA | 12/23/90 | A | MISD | | | MISD |
| MISD TRAFF VIGLATION | 03/05/91 | PORT ANGELES, WA | 10/20/91 | A | MISD | | | MISD |

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---------------------------------|------------------|--------------|---------------|----------------|------------|-------|-------|-----------------------|
| BURGLARY 1 ST DEGREE | 02/24/86 | YAMHILL, OR | 11/03/83 | A | | | | FELONY |

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-------------------|---|-------------------|---|---------------------|
| I | 9+ | VI | 60 MONTHS | | 60 MONTHS | 5 YRS/ \$10,000 |
| II | 9+ | UR | 0 - 12 MONTHS | | 0 - 12 MONTHS | 5 YRS/ \$10,000 |
| III | 9 | III | 51 - 68 MONTHS | | 51 - 68 MONTHS | 10 YRS/ \$20,000 |
| IV | 9+ | VI | 77 - 102 MONTHS | | 77 - 102 MONTHS | 10 YRS/ \$20,000 |

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

The defendant further stipulates:

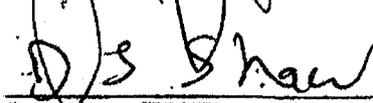
- 1) Pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty,
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution;
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 4 day of January, 2012.


 ANGELICA WILLIAMS
 Deputy Prosecuting Attorney
 WSB # 36673


 JERRY LEE SWAGERTY


 DAVID S. SHAW
 WSB # 13994

mld

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:00 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 3FEB8C02-110A-9BE2-A94CA8815EBCD016.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "F"

Forensic Psychological Report

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3F5A3943-F20F-6452-D6EEF8CF60236E67
Certified By: [Signature] Pierce County Clerk, Washington



FILED
IN COUNTY CLERK'S OFFICE



12-1-01877-6 39181127 FPE 09-13-12

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
SEP 13 2012 P.M.

WESTERN STATE HOSPITAL
PIERCE COUNTY WASHINGTON
W27-19 * 9601 Steilacoom Blvd. S.W. * Tacoma Wa 98498-7213
PIERCE COUNTY CLERK
BY: [Signature] DEPUTY

September 10, 2012

Community Forensic Evaluation Services

Forensic Psychological Report

RE: STATE OF WASHINGTON
v.
JERRY L. SWAGERTY

CAUSE NO: 12-1-01877-6
WSH NO: 90 33 95
DOB: 6/5/65

The forensic mental health evaluation, as reflected in this report, was conducted pursuant to court order under the authority of RCW 10.77.060. This document has been released only to the Court and other persons legally authorized to receive it and is intended for their use only. Any other use of this report is not authorized by the undersigned.

REFERRAL INFORMATION

On 7/20/12, the Pierce County Superior Court ordered Mr. Jerry L. Swagerty to undergo evaluation of his mental condition, his capacity to understand the nature of the proceedings and to assist in his defense as a result of mental disease or defect, and his danger to others and likelihood of committing future criminal acts. By statute, I am obliged to supply an opinion regarding the defendant's need of an evaluation for civil commitment under RCW 71.05. The Court's order did not indicate what factors led to the request for a mental health evaluation.

Mr. Swagerty was charged with one count of Rape of Child in the First Degree and one count of Child Molestation in the First Degree, following incidents on or about 2/14/04. According to the Declaration for Determination of Probable Cause and Tacoma Police Department reports, the allegations were as follows:

A man reported that he and his 11-year-old daughter were grocery-shopping and he sent his daughter to the front of the store to get a cart. The girl stated that while she was getting the cart a man had asked her to help him find his girlfriend and gave her \$10 to do so. She left the store with the man and they walked to an alley south of the store. The girl told a police officer that the man had touched her "down there" and she pointed to her genital area. She also indicated that he had pushed her down. A review of the store video showed a man approaching the girl in the store and then the girl was seen following him to the store exit. Approximately 10 minutes later the girl was seen moving through the parking lot to meet her father and the police. The girl's father stated that when his daughter had not returned with the grocery cart he had gone looking for her. He contacted a police

officer who had just pulled up to the store. The girl ran to her father and when asked, explained that she had been with a man who was looking for his girlfriend. The police officer stated that she could tell that the girl was mentally handicapped and the girl's father confirmed this during the conversation.

Tacoma Police investigated the case and had a person of interest who passed a polygraph indicating that he was not the assailant. On 4/11/12, almost nine years later, the Washington State Patrol crime lab submitted a report regarding results of testing on a pair of underpants from the girl that she had been wearing at the time of the assault. Two samples were extracted for DNA content. The DNA profile recovered from the underpants was consistent with at least two contributors. "Assuming that part of the DNA profile originated from" the alleged victim, "a male profile was deduced from the mixture." The male DNA was determined to be a match to the defendant, Jerry Lee Swagerty.

NATURE OF THE EVALUATION

Dr. Marilyn Ronnei, Western State Hospital Staff Psychologist, evaluated Mr. Swagerty in an interview room in the Pierce County Detention and Corrections Center on 7/17/12. He was interviewed for approximately two hours and 20 minutes.

Mr. Swagerty was informed of the purpose and authority for the evaluation, who would receive a copy of the report, and the limits of confidentiality. He was informed he had the right to have his attorney present, and that he could decline to answer questions. He was also told that recommendations concerning further assessment or treatment could be made to the Court, and that the undersigned were not there to supply therapeutic services, but was solely in an evaluative role for the court. Mr. Swagerty appeared to have an adequate understanding, as he was able to answer questions about the information given to him, and agreed to continue the interview. Mr. Swagerty's attorney, Mr. David Shaw, was present for the interview.

Sources of Information

The following information was reviewed and considered during the completion of this evaluation:

1. Discovery materials.
2. Criminal history reports (NCIC).
3. State of Washington Division of Mental Health online databases.
4. Pierce County Detention and Corrections Center records.
5. Eastern Oregon Corrections records.
6. State of Washington Department of Corrections records.
7. Personal interview of Mr. Swagerty.

RELEVANT HISTORY

Personal Interview: The following information was supplied solely by the defendant's self-report and is thus limited by the credibility of the defendant. Mr. Swagerty was born in

California and lived there until the age of four, when his family moved to Pennsylvania. He reported that he was hit by a car in Pennsylvania at the age of five and following that his parents split up. His mother met and married his stepfather when he was seven. His stepfather adopted him, and he grew up considering his stepfather his father. He did not meet his biological father again until he was 20 years old and in prison when his biological father came to see him. He considered his relationship with his parents as having been "great." He has three sisters and a half-brother he has never met and he has little to no contact with anyone but his older sister. He denied that he had ever been abused. Mr. Swagerty had never married. He had been engaged years ago but his fiancée was killed in a car accident in 1989 or 1990. Mr. Swagerty said that he had "no children" that he knows of, but "I've had lots of sex."

Regarding educational and employment history, Mr. Swagerty reported he was suspended or expelled from high school for getting "stoned on the track." He said "I was a 'stoner jock.' I was awesome at football." His knee was ruined in a motorcycle accident and in fights, so he left school. At another point in the interview he stated he had dropped out of high school because he was bored although he was receiving "straight A's." Mr. Swagerty had completed 14 and ½ years of school, stating he had received both a high school diploma and a GED while in prison. He had studied psychology, welding, drafting, art and math. His first job was at the age of 14 when he worked for city government weatherizing homes. He had always worked construction when he wasn't in prison, working as a journeyman carpenter, roofing, siding and doing concrete work. He had owned a company called Excellent Exteriors in Gresham, Oregon and had served as general manager. Mr. Swagerty claimed he had never been fired but that he had quit lots of jobs because he had received better offers and moved on. "I get bored." His last job was working for Ace Construction in Virginia while living in Washington D.C. "I'm a political watchdog." He then went on to discuss a website that he had which was called The 57th Delegate. Mr. Swagerty claimed that while living in Washington "I saved the President's butt three times. I helped boost the economy." He also reported that he had numerous ideas such as temporary work visas and other things. "Congress listens to me." Since that job with Ace Construction he had done some under the table jobs. Mr. Swagerty stated he had never been in the military because he had a felony. "I was supposed to go to the Navy Seals." He stated that he had received an honorary Seal Team Four coin for his "work", but he refused to discuss it more saying that that information was classified. "The Seal Team originated when I was born."

Regarding medical history, Mr. Swagerty stated that his health was currently excellent. At age five when on his bike he was hit by a drunk driver and he spent six weeks in the hospital. He had surgical repair of a broken leg at the age of five following the accident, of his knee as a teenager, and a shoulder rotator cuff surgery in 1992 due to an injury while on the job. He also stated that he crushed his heel when he fell 30 feet while doing a siding job. He experienced loss of consciousness several times, twice for a couple minutes at most when he was in a couple of car wrecks. Mr. Swagerty reported that he had had some concussions due to accidents. He had also suffered a seizure when he was riding a

motorcycle, crashed into a house hitting his head. He was treated at an emergency room and then released.

Currently Mr. Swagerty was being prescribed Lithium and "another one" to "help me relax and sleep" in the jail. He reported that he had received a diagnosis of bipolar disorder years ago and had been on Klonopin and Tegretol "all my life." When asked what his symptoms were, Mr. Swagerty reported that his symptoms consisted of being moody, feeling anxious all the time and having a difficult time concentrating when reading. He stated he was diagnosed by doctors after his father said that he was bipolar. He was again diagnosed at the Eastern Oregon Penitentiary in Pendleton, Oregon. Mr. Swagerty reported that he had been hospitalized for psychiatric reasons in Christmas of 2009 in Florida for one week. He said that his mother had him hospitalized because he was "screaming, yelling, and not sleeping." He was prescribed "a bunch of meds" for anxiety and a bipolar disorder. Following discharge from the hospital he discontinued his medications because he never got around to seeing a provider. In general, Mr. Swagerty said that his problem has been "I quit taking medications."

In 1994 Mr. Swagerty attempted to kill himself in Portland by throwing himself in front of a bus. He was then hospitalized for four or five days. He stated that he had been despondent because he had committed a robbery in Spokane and had split up with his girlfriend. Mr. Swagerty had attempted to kill himself while in jail in the Clark County in 2000. "I lost my business, I lost everything. They sucked me back into the criminal world because I was good at being criminal." He attempted to hang himself but was discovered.

Regarding substance abuse, Mr. Swagerty felt that his substance abuse problems dated to his hospitalization at the age of five following the accident. He said "they had me on Demerol and morphine for three weeks. They turned me into a junkie at the age five." He began drinking alcohol to the point of passing out and smoking pot while in high school, as well as using "a little cocaine" at that time. He "shot up" once at the age of 17, and was using MDA "with the hookers at the age of 16 or 17." He had done hallucinogens only in high school and denied any use ever of inhalants. By the age of 18 his drug use escalated and he was using MDA, heroin, and cocaine intravenously every day. He began committing crimes to support his habit. He was caught and placed in juvenile detention. When he got out of juvenile detention he went to work. However, after his fiancée was killed "I didn't care." He said "I went to prison three times in a row. I had tracks up and down my arms." However Mr. Swagerty stated that after his second time in prison, in the 1990's, he began using methamphetamines. It became a problem. I was up for weeks." He stated that he had done ecstasy or MDA for years at raves. He had been through chemical dependency treatment five or six times. His last chemical dependency treatment program was at Sequim in 2004 when he went through an outpatient treatment program. Following completion of that program he remained abstinent for a year.

Mr. Swagerty reported his last use of cocaine, methamphetamines and heroin was about a year ago. He did feel he had been "a practicing alcoholic for the last 18 months." On the

day of his most recent arrest, he stated that he had drunk an entire fifth. When he was taken to jail "it took me a week to sleep it off."

Mr. Swagerty reported that he had been living in Los Angeles prior to being returned to Washington to face his current charge. He said that in Los Angeles he was "trying to put together a show." He had been living in Los Angeles for about 18 months (after leaving Spokane County) and had been homeless off and on. He would live in a motel for a month when he got some money together and then would stay with friends after that. He stated that he had not been working but was receiving general relief funds which consisted of some cash and food assistance. As he had been living on the streets, he had not been taking his medications but was using marijuana and drinking alcohol.

With regard to criminal history, Mr. Swagerty reported that he had been placed in Echo Glen as a juvenile for burglary. "I was fascinated with other people's stuff." Mr. Swagerty denied that he had committed a felony in the last 13 years. He stated that he had been just about to get his record completely cleared when he was returned to Washington to face this charge. However he admitted that he had some open warrants out for him specifically in Tacoma Municipal Court. He had a warrant for not paying and in Clallam District Court he had a Failure to appear on a Trespassing charge, in Vancouver he had a warrant for Failure to pay a fine and in Spokane County he had a warrant for failure to pay a fine. Mr. Swagerty reported that he did not own any weapons and did not carry any weapons when he was living on the streets. He denied any violent fantasies.

Pierce County Detention and Corrections Center records indicated that Mr. Swagerty was booked on 6/27/12. He was seen by mental health staff in response to a referral by Corrections Officers. He stated that he was aware why he was being seen by mental health staff, specifically "I went off on the detectives." Mental health staff reported that Mr. Swagerty was organized and coherent, "however has rapid pressured speech, complains of racing thoughts, poor sleep and decreased concentration." Mr. Swagerty reported that he had a diagnosis of Bipolar Disorder and that he had previously been on medications. He stated that he had 25 days of not using alcohol. He reported two psychiatric hospitalizations, one in Florida in 2009 and the other in Oregon about 20 years ago. He also reported that he had attempted to hang himself 10 years ago while in the Clark County Jail after a breakup with a girl. He also stated that he also wanted attention. Corrections officers found him before "much damage was caused." He denied current suicidal or assaultive ideation and agreed to notify anyone if that changed. He was referred to a prescriber. On 7/02/12 Mr. Swagerty kited requesting "mental health personnel to 'rightly dose and administer' medication" "I need for my manic depression with anxiety disorder." It was noted that he had already been referred to an ARNP and the clinic had started him on Risperdal. On 7/12/12 Mr. Swagerty reported that he was "here on trumped up charges...I was just in LA County in detox there from alcohol." He stated that prior to that he had been using alcohol every day for 18 months. He presented as "alert, irritable and evasive answering questions, oriented." His hygiene was adequate and he did not demonstrate psychomotor agitation. "Speech is pressured, loud, hyperverbosity and he

frequently talks over writer. Mood is irritable, elevated, entitled." Thoughts are logical but his responses are overelaborate and only intermittently relevant to the question asked. He is easily distracted and easily agitates." It was noted that the conversation quickly diverted to him defending himself "even after he is informed to not discuss his case with the writer or make any comments regarding his case." There were several behavior entries regarding lack of behavioral control specifically "kicking chairs, out of control behavior, screaming at officers when he was to meet with detectives." Diagnostic impressions included Cluster B traits and Bipolar Disorder. Records reflected that he was being prescribed Risperdal, lithium and trazadone."

By 8/02/12 Mr. Swagerty noted that he was "eating well and my sleep and energy are good too." He believed that he was still having "some irritability and some anger although things are improved." He agreed to an increase in lithium. He presented as alert, much more cooperative, and oriented. His hygiene was good and he demonstrated no psychomotor agitation. His speech was not pressured and he was able to participate in a reciprocal conversation. He denied suicidal and homicidal ideation. His thoughts were logical but his responses were still elaborate. However they were more relevant to the conversation with just a few loose associations. There was no evidence of psychosis. He was more focused and evidenced no delusional themes. His lithium was increased and he was compliant with his medication regimen.

The State of Washington Mental Health Division online databases showed Mr. Swagerty had been seen by crisis intervention mental health staff at the Emergency Room of a hospital in December 2004. He was regarded as acutely mentally ill and was given a diagnosis of Bipolar I Disorder Most Recent Episode Manic. There were no indications that he had been hospitalized or that he had been detained by DMHP's. He was not enrolled in any mental health services through the Regional Support Networks.

Medical records (6/24/87- 7/88) from the Eastern Oregon Department of Corrections in Pendleton, Oregon, showed that early in 1987 Mr. Swagerty had been seeing a consular in the prison. The first available record indicated that he explained a "dirty" urinalysis by saying he had been celebrating his birthday. He agreed to consider the possibility that he had a mood disorder and requested an appointment with a psychiatrist to be evaluated. On 7/24/87, a psychiatric consultation by Charles Johnston, M.D. indicated that Mr. demonstrated "some slight increase pressure of speech and prolonged duration of utterance and whose mood may be slightly hypomanic." "His psychomotor behavior may be slightly increased." The diagnostic impression was "possible bipolar disorder, manic type." "His I.Q. is estimated as above average." Lithium was prescribed and he was compliant with the prescription. By 12/24/87, Mr. Swagerty reported to Dr. Johnston the lithium "has made a marked improvement in his labile mood."

During a later incarceration, on 7/16/03, it was noted that Mr. Swagerty had "declared a medical emergency." He was "very tense," and "claimed that he was bipolar manic depressive." He complained "they stopped my pills and I can't go on like this." He was

"extremely restless," had tremors and talked "loudly and fast." He was diagnosed with drug withdrawal and was referred to a provider. In 1989 he reported to medical staff in DOC that he had been diagnosed with Bipolar Disorder and was prescribed Lithium by a psychiatrist at Eastern Oregon Corrections. He said that he had been taking Lithium sporadically but "says he goes crazy if he stops taking it for three or four weeks."

State of Washington Department of Corrections records covered parts of the period from November 1989 through July 2003. Mr. Swagerty was administered educational achievement and intelligence testing in 1989, and was found to have reading and math levels above grade 12, and superior intellectual functioning. At various times he was noted to be hypomanic or manic, with pressured speech, grandiosity, and disturbed sleep. On 12/14/02 it was also noted the course of his illness was "marked by recurrent depressions and suicide attempts, interspersed with euphoric mood lasting up to two days at a time." In early incarcerations he was prescribed lithium. In 1997, he was prescribed lithium and Risperdal (antipsychotic). In 2003 he was prescribed Tegretol (anticonvulsant used to stabilize mood) and benzodiazepines (sedative and anxiolytic).

NCIC criminal history reports revealed Mr. Swagerty had been convicted in Washington of nine felonies including VUCSA-Possession (2/15/02), Theft in the First Degree (2/15/02, 1/29/97 x 2), Residential Burglary Attempt (2/19/93), Robbery in the Second Degree (10/19/89 x 2), and Burglary in the Second Degree (12/03/86). He had also been convicted of a misdemeanor traffic violation (3/05/91) and VUCSA-Possession of Marijuana Unknown Amount (11/14/83). In Oregon, Mr. Swagerty had been convicted of Burglary in the First Degree (2/86 and 4/86) and a probation violation (4/86). He also had arrests for Theft in the Second, Possession of a Controlled Substance but the disposition of those charges was not listed.

In Florida, Mr. Swagerty had been arrested for Cocaine-Possession with Intent to Sell Manufacture or Deliver Schedule 2 Drugs and Possession of Methamphetamine with Intent to Sell/Manufacture/Deliver. The disposition of that charge was not listed. He was found of guilty of a charge of Cocaine Possession on 6/12/11. In 2010 he was arrested for a misdemeanor probation violation (Disorderly Conduct). The disposition was unknown but he was "turned over to another agency."

In California in 1982 Mr. Swagerty was arrested for Burglary and was sent to juvenile hall. Mr. Swagerty was arrested for Battery in 1985, but no disposition was listed. In 2011 Mr. Swagerty was arrested for Possession of Marijuana 28.5 grams, with no disposition listed. Also in February 2011 Mr. Swagerty was arrested for Possession of a Hypodermic Needle/Syringe but the case was dismissed in the furtherance of justice. He was also convicted of a charge of Disorderly Conduct: Intoxication Drug/Alcohol (a misdemeanor). The sentence was to serve 12 months' probation and spend 38 days in jail. A warrant was issued on 5/20/12 for Failure to Appear, and on 6/4/12 Mr. Swagerty was arrested as a fugitive from Justice.

OBSERVATIONS AND MENTAL STATUS

On 8/17/12, Mr. Swagerty presented as an adequately groomed Caucasian male who appeared his chronological age. He was dressed in clean jail-issued clothing. His gait and posture were unremarkable. His eye contact was direct. Mr. Swagerty was cooperative with evaluation. His speech was average in pace, volume and prosody, but mildly pressured. He offered over-inclusive responses, and at times his attorney directed to him to just answer the question and not go into related topics. Mr. Swagerty was able to comply. He did not interrupt or speak over this examiner. He denied hallucinations in current, reporting that he had experienced hallucinations only when using methamphetamines. He was able to follow our conversation, and at no time during the interview did he appear to be responding to internal stimuli. Mr. Swagerty denied paranoid ideation and other delusions. However, he was grandiose. For example, he took credit for steering Congress in the right direction, claimed to have been awarded a Seals Team coin for reasons that were "classified," was writing screenplays and wanted to "Make movies, do production design" in Hollywood, and was a political analyst posting on his own website. His mood was not expansive or euphoric, but was appropriate to the topic under discussion. He characterized his mood in recent days as "stressed because of this," referring to his legal peril. His sleep and appetite were within normal limits. He denied suicidal and assaultive ideation.

This defendant had no apparent significant deficits in cognitive functioning. He was alert and oriented in all spheres. His concentration was adequate as he was able to subtract serial sevens and follow our conversation. His immediate and short-term memory was intact, as he was able to register three of three items and recall three of three after a period of delay and distraction. His long-term memory was adequate as he was able to present a coherent personal history. Mr. Swagerty's expressive and receptive language skills were good as he was able to identify common objects, repeat a brief phrase, follow oral directions, read and follow written directions, and responded relevantly to questions. Intellectual functioning was consistent with above-average intelligence. Mr. Swagerty's insight and judgment were fair with regard to his current circumstances.

DIAGNOSTIC FORMULATION

This 48-year-old man presented with a documented history of treatment for bipolar disorder, according to DOC and Oregon prison records. His usual symptoms were lack of need for sleep, persistent euphoria or irritable mood, grandiosity, pressured and abundant speech, when manic or hypomanic, and suicidal ideation and attempts when deeply depressed. At the time of this evaluation, Mr. Swagerty was compliant with his prescribed regimen of lithium, a mood-stabilizer, and was mildly hypomanic. That is, his speech was loquacious and slightly pressured, but he was redirectable. He continued to be grandiose with regard to his importance in the political sphere, but was overall reality-oriented. There were no indications that he was hallucinating or had delusions other than an inflated sense of his achievements. He was alert and oriented, with organized thought processes. A diagnosis of Bipolar II Disorder, Most Recent Episode Hypomanic, is merited.

FORENSIC PSYCHOLOGICAL REPORT

Serial ID: 3FEA3BD3-F20F-6452-D6EEF8CF60236E67

Certified By: Kevin Stock Pierce County Clerk, Washington

9/10/12

Page 9

Jerry L. Swagerty

In addition, Mr. Swagerty reported a history of chronic and severe substance abuse, beginning in early adolescence and continuing since that time, including while imprisoned, according to Oregon DOC records. Mr. Swagerty claimed to have ceased using cocaine, methamphetamines, heroin and cannabis almost two years ago, but admitted drinking alcohol in large quantities during the 18 months prior to his arrest. He noted he had experienced some symptoms of withdrawal during the early days of his detention. Diagnoses of *Polysubstance Dependence* and *Alcohol Dependence* are merited.

In addition, Mr. Swagerty presented as an individual who had significant personality pathology. All records and his own report reveal significant involvement with the criminal justice system, and he evidenced an ego-syntonic criminal attitude. He expressed no remorse for his actions or any need to change his behavior. He demonstrated behavioral problems in high school (fighting, criminal offenses, drug abuse), and had a history of criminal offenses in at least four states since that time. He evidenced a personality pattern suggestive of limited coping skills, failure to conform to social norms with respect to lawful behavior, impulsivity, failure to plan ahead, irritability, reckless disregard for safety of self and others and consistent irresponsibility. There seems little doubt that Mr. Swagerty is suffering from a character pathology. However, I do not have sufficient records regarding his early history to diagnose *Antisocial Personality Disorder*, and therefore a diagnosis of *Personality Disorder with Antisocial Traits* is offered.

While this defendant reported that he had been hit by a car at age five and had been knocked unconscious in car accidents and fights, he did not appear to have suffered profound effects. He showed no signs of cognitive impairment such as mental retardation or dementia. Intelligence testing done at DOC facilities had consistently shown his intellectual functioning to be in the high average to superior range, and his current presentation was consistent with those test results.

Overall, Mr. Swagerty's presentation at the time of this interview was reflective of his appropriate concern regarding his current legal peril.

My diagnostic impressions were:

- Axis I: Bipolar II Disorder, Most Recent Episode Hypomanic
- Alcohol Dependence in a controlled environment (by self-report, in sustained full remission)
- Polysubstance Dependence (cannabis, heroin, cocaine, hallucinogens methamphetamines) in a controlled environment
- Axis II: Personality Disorder with Antisocial Traits
- Axis III: Deferred

COMPETENCY TO STAND TRIAL

Mr. Swagerty was interviewed about his understanding of court process and proceedings and his ability to assist in his defense. He cited his offense as "Child Rape, Child

FORENSIC PSYCHOLOGICAL REPORT
Jerry L. Swagerty

Case Number: 12-1-01877-6 Date: May 27, 2014

Serial ID: 3FEA3BD3-F20F-6452-D6EEF8CF60236E67

Certified By: Kevin Stock Pierce County Clerk, Washington

9/10/12

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Molestation." When asked if those charges were in the first degree, he said, "Oh, whatever." He believed them to be serious charges, specifically felonies. He also believed that should he be found guilty of those charges, the penalty would be "a lot time, because of my criminal record." Under "the sentencing guidelines, I'd go to prison."

This defendant had extensive experience with the criminal justice system, and there was no reason to believe he would be unable to apply the information previously acquired to his current situation. Mr. Swagerty knew the basic pleas available to a defendant and the possible outcomes of each. He knew how a plea bargain worked. He understood the process of a trial and knew the rights of a defendant. He knew the roles of the courtroom participants and clearly understood the adversarial nature of the proceedings. For example, the prosecutor "puts on the case to prove the defendant is guilty." He would not speak to the prosecutor without his attorney's presence, because "he looking to get anything to railroad you." When asked whether a defendant was considered guilty until he proved himself innocent, or if he was considered innocent until the prosecutor proved he was guilty, Mr. Swagerty chose the latter. When asked if he believed the proceedings against him would be fair, Mr. Swagerty responded, "I hope so." He did not voice any notions that the proceedings would not be fair.

Mr. Swagerty was responsive to his attorney's direction during the interview, in that when his response to a question was long with excessive detail, he complied with direction to "just answer the question." He expected to ask his attorney to explain anything he didn't understand, rely on his attorney for advice concerning his legal defense, and to allow his attorney to speak for him in the courtroom. He felt comfortable telling his attorney all that he could remember about the time around the alleged offense. If he disagreed with something his attorney was doing with regard to his case, he could "bring it up to the judge." But first, he would "talk to the attorney, try to iron it out."

Mr. Swagerty was aware of the behavior required of a defendant in the courtroom. When asked what he would do if a witness told a lie about him, he stated he would "write something done" to show his attorney. "I wouldn't scream out." His behavior throughout this interview was controlled and calm.

During the course of this evaluation Mr. Swagerty was able to express himself in a rational manner, and communicated his interests effectively. It is likely that he would be able to do so with defense counsel. His grandiosity did not extend to his beliefs regarding his charges, his defense, or the proceedings against him. At the time of this evaluation he did not appear to be experiencing symptoms of a mental disorder that would impair his perception, reasoning, motivation to defend himself, or ability to communicate. **Consequently, it is my opinion that Mr. Swagerty had the capacity to understand the nature of the proceedings against him, and had the capacity to assist in his defense.**

FORENSIC PSYCHOLOGICAL REPORT
Jerry L. Swagerty

Case Number: 12-1-01877-6 Date: May 27, 2014
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DMHP RECOMMENDATION

An opinion is required as to whether or not the defendant should receive an RCW 71.05 civil commitment evaluation by a DMHP. This opinion is based solely upon the above evaluation under RCW 10.77.060. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

At the time of this evaluation, there were no significant indicators of a need for evaluation by a DMHP for civil commitment under RCW 71.05. Should he discontinue his medications, however, he may decompensate and the Court may then wish to order such an evaluation.

As my evaluation is completed with the submission of this report, I respectfully request that Mr. Swagerty be returned to court for further proceedings. If I can be of further assistance to the Court, please contact me.

Marilyn A. Ronnei, Ph.D.

Marilyn A. Ronnei, Ph.D.
Licensed Psychologist
(253) 756-2665
marilyn.ronnei@dshs.wa.gov
Community Forensic Evaluation Service
Center for Forensic Services
Western State Hospital

cc: Pierce County Superior Court
Angelica Williams, Deputy Prosecuting Attorney
David Shaw and Mark Quigley, Defense Counsel
Nate Hinrichs, Pierce County DMHP
Judy Snow, Pierce County Jail

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:00 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

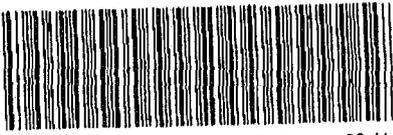
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: 3FEA3BD3-F20F-6452-D6EEF8CF60236E67.

This document contains 11 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

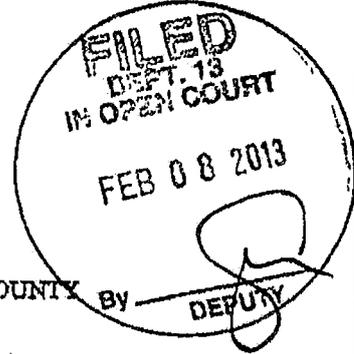
APPENDIX “A”

Judgment and Sentence



12-1-01877-6 39987770 JDSWCD 02-11-13

FEB 11 2013



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

By DEPUTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

Defendant.

WARRANT OF COMMITMENT

FEB 11 2012

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

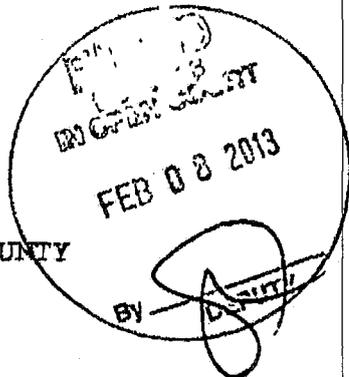
THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence (Sentence of confinement in Pierce County Jail)

[X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody)



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff, CAUSE NO 12-1-01877-6

vs.

JUDGMENT AND SENTENCE (JS) FEB 11 2012

JERRY LEE SWAGERTY

Defendant.

SID 12428205
DOB. 06/05/1965

- Prison
- RCW 9.94A.712A 94A.507 Prison Confinement
- Jail One Year or Less
- First-Times Offender
- Special Sexual Offender Sentencing Alternative
- Special Drug Offender Sentencing Alternative
- Alternative to Confinement (ATC)
- Clerk's Action Required, para 4.5 (SDOSA), 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8
- Juvenile Decline Mandatory Discretionary

I HEARING

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

II FINDINGS

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

2.1 CURRENT OFFENSE(S) The defendant was found guilty on by plea jury-verdict bench trial of

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO |
|-------|-----------------------------------|--|-------------------|---------------|---------------|
| I | RAPE OF CHILD THIRD DEGREE, (138) | 9A.44.079 9.94A.535(3)(b) 9.94A.535(2)(a) | NONE | 02/14/04 | TPD 040450682 |
| II | LURING, (155) | 9A.40.90 9.94A.535(3)(b) 9.94A.535(2)(a) | NONE | 02/14/04 | TPD 040450682 |
| III | BURGLARY SECOND, (54) | 9A.52.030(1) 9.94A.535(2)(a) 9.94A.535(3)(b) | NONE | 02/14/04 | TPD 040450682 |

139 016495

| COUNT | CRIME | RCW | ENHANCEMENT TYPE* | DATE OF CRIME | INCIDENT NO |
|-------|----------------------------|--|-------------------|---------------|---------------|
| IV | INTIMIDATE WITNESS, (KK46) | 9A.72.110(2) 9.94A.535(2)(a) 9.94A.535(3)(b) | NONE | 02/14/04 | TPD 040450682 |

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8) (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Amended Information

- Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589)
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number)

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

| | CRIME | DATE OF SENTENCE | SENTENCING COURT (County & State) | DATE OF CRIME | A or J ADULT JUV | TYPE OF CRIME |
|----|------------------|------------------|-----------------------------------|---------------|------------------|---------------|
| 1 | CHARGE UNKNOWN | | CLALLAM CO, WA | 02/28/81 | JUV | |
| 2 | THEFT 2 | 11/18/81 | CLALLAM CO, WA | 04/12/81 | JUV | NV |
| 3 | BURG 2 | 11/18/81 | CLALLAM CO, WA | 04/26/81 | JUV | NV |
| 4 | THEFT 3 | | CLALLAM CO, WA | 04/03/81 | JUV | MISD |
| 5 | BURG 1 | 02/24/86 | YAMHILL CO | 11/03/83 | ADULT | NV |
| 6 | BURG 2 | 12/03/86 | KING CO, WA | 02/09/84 | ADULT | NV |
| 7 | BURG 2 | 10/29/86 | CLALLAM CO, WA | 03/08/84 | ADULT | NV |
| 8 | ROB 2 | 10/19/89 | KING CO, WA | 07/12/89 | ADULT | V |
| 9 | ROB 2 | 10/19/89 | KING CO, WA | 07/12/89 | ADULT | V |
| 10 | ATT RES BURG | 02/19/93 | KING CO, WA | 12/20/92 | ADULT | NV |
| 11 | THEFT 1 (X2) | 01/29/97 | SPOKANE CO, WA | 02/22/96 | ADULT | NV |
| 12 | UPCS METH | 02/15/02 | CLARK CO, WA | 12/04/00 | ADULT | NV |
| 13 | THEFT 1 | 02/15/02 | CLARK CO, WA | 12/21/00 | ADULT | NV |
| 14 | BSP 2 | 02/15/02 | CLARK CO, WA | 12/21/00 | ADULT | NV |
| 15 | UPFGLM | 11/14/83 | PORT ANGELES | 10/05/83 | ADULT | MISD |
| 16 | NEG DRIVING | | CLALLAM DIST CT | 12/23/90 | ADULT | MISD |
| 17 | MISD TRAFFIC VIO | 03/05/91 | PORT ANGELES | 10/20/91 | ADULT | MISD |

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525)

2.3 SENTENCING DATA

| COUNT NO | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancement) | MAXIMUM TERM |
|----------|----------------|-------------------|---|-------------------|--|--------------|
| I | 9+ | VI | 60 MOS | NONE | 60 MOS | 60M/10K |
| II | 9+ | UNRANKED | 0 - 12 MOS | NONE | 0 - 12 MOS | 60M/10K |
| III | 9+ | III | 51 - 68 MOS | NONE | 51 - 68 MOS | 10Y/20K |
| IV | 9+ | VI | 77 - 102 MOS | NONE | 77 - 102 MOS | 10Y/20K |

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 2 of 11

2.4 EXCEPTIONAL SENTENCE Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) _____

above the standard range for Count(s) I, II, III, IV

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial. found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix L.4 Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9A.753.

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9A.753).

The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are attached as follows

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 The court DISMISSES Counts _____ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED

4.1 Defendant shall pay to the Clerk of this Court (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

LASS CODE

RTNRJN \$ 20.00 Restitution to: _____

\$ _____ Restitution to: _____
(Name and Address--address may be withheld and provided confidentially to Clerk's Office)

PCV \$ 500.00 Crime Victim assessment

DNA \$ 100.00 DNA Database Fee

PUB \$ 400.00 Court-Appointed Attorney Fees and Defense Costs

FRC \$ 200.00 Criminal Filing Fee

FCM \$ _____ Fine ~~20~~

JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 3 of 11

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for extradition costs TBD

\$ _____ Other Costs for _____

\$ 1200.00 TOTAL

The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753 A restitution hearing.

shall be set by the prosecutor.

is scheduled for _____

RESTITUTION. Order Attached

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8)

All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein. Not less than \$ Per CCO per month commencing. Per CCO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

COSTS OF INCARCERATION In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate RCW 10.01.160

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute RCW 36.18.190, 9.94A.780 and 19.16.500.

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 DNA TESTING. The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

4.3 NO CONTACT

The defendant shall not have contact with S.M.S. (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence)

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence.

JUDGMENT AND SENTENCE (JS)

4.4 OTHER Property may have been taken into custody in conjunction with this case Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law

| |
|--|
| Psychosocial evaluation & follow-up treatment |
| Separating belongings |
| Abide by formal no contact order |
| Legal financial obligations - including restitution to be determined |
| Abide by all conditions of CCO & Appendix H |
| No contact with minors |
| Restitution costs to be determined |

4.4a All property is hereby forfeited

Property may have been taken into custody in conjunction with this case Property may be returned to the rightful owner Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4b BOND IS HEREBY EXONERATED

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

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

* all counts to be served consecutively

| | | | | | |
|-----|-----------------|-----|-------|-----------------|-------|
| 60 | months on Count | I | _____ | months on Count | _____ |
| 60 | months on Count | II | _____ | months on Count | _____ |
| 120 | months on Count | III | _____ | months on Count | _____ |
| 120 | months on Count | IV | _____ | months on Count | _____ |

Actual number of months of total confinement ordered is 360 months

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

[] The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: * All counts to be served consecutively

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for the following cause numbers. RCW 9.94A.589 _____

Confinement shall commence immediately unless otherwise set forth here _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 249 days credit

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows

Count _____ for _____ months,

COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of.

(1) the period of early release RCW 9.94A.728(1)(2), or

(2) the period imposed by the court, as follows.

Count(s) I 36 months for ~~Serious Violent Offenses~~ Sex Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

**Combination of incarceration and community custody shall not exceed the statutory maximum.*

(B) While on community placement or community custody, the defendant shall (1) report to and be available for contact with the assigned community corrections officer as directed, (2) work at DOC-approved education, employment and/or community restitution (service), (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions, (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court, (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

[] consume no alcohol.

have no contact with see formal order & minors

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

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

1 [] participate in the following crime-related treatment or counseling services: _____
2 _____

3 [] undergo an evaluation for treatment for [] domestic violence [] substance abuse
4 [] mental health [] anger management and fully comply with all recommended treatment.

5 [] comply with the following crime-related prohibitions _____
6 _____

6 **M** Other conditions
7 Per CCO
8 _____

9 [] For sentences imposed under RCW 9 94A.702, other conditions, including electronic monitoring, may
10 be imposed during community custody by the Indeterminate Sentence Review Board, or in an
11 emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than
12 seven working days.

13 Court Ordered Treatment. If any court orders mental health or chemical dependency treatment, the
14 defendant must notify DOC and the defendant must release treatment information to DOC for the duration
15 of incarceration and supervision. RCW 9 94A.562

16 **PROVIDED** That under no circumstances shall the total term of confinement plus the term of community
17 custody actually served exceed the statutory maximum for each offense

18 4 7 [] **WORK ETHIC CAMP** RCW 9.94A.690, RCW 72 09.410 The court finds that the defendant is
19 eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the
20 sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on
21 community custody for any remaining time of total confinement, subject to the conditions below. Violation
22 of the conditions of community custody may result in a return to total confinement for the balance of the
23 defendant's remaining time of total confinement. The conditions of community custody are stated above in
24 Section 4.6.

25 4 8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66 020 The following areas are off limits to the
26 defendant while under the supervision of the County Jail or Department of Corrections: _____
27 _____
28 _____

V. NOTICES AND SIGNATURES

29 5 1 **COLLATERAL ATTACK ON JUDGMENT** Any petition or motion for collateral attack on this
30 Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus
31 petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to
32 arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in
33 RCW 10 73 100 RCW 10 73 090.

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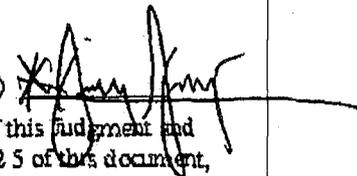
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5.2 **LENGTH OF SUPERVISION** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505 The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations RCW 9.94A.760(4) and RCW 9.94A.753(4)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

5.4 **RESTITUTION HEARING**

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

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634

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

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

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

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562

JUDGMENT AND SENTENCE (JS)

510 OTHER _____

DONE in Open Court and in the presence of the defendant this date: 2/8/13

JUDGE

Print name

[Signature]
Kathryn J. Nelson

[Signature]

Deputy Prosecuting Attorney

Print name Angelica Williams

WSB # 36673

Attorney for Defendant

Print name Mark Quigley

WSB # 14496

[Signature]

Defendant

Print name JERRY SWABERTY

VOTING RIGHTS STATEMENT: RCW 10 64.140 I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9 94A.637, b) A court order issued by the sentencing court restoring the right, RCW 9 92.066, c) A final order of discharge issued by the indeterminate sentence review board, RCW 9 96 050, or d) A certificate of restoration issued by the governor, RCW 9 96 020. Voting before the right is restored is a class C felony, RCW 92A.84 660

Defendant's signature

[Signature]



JUDGMENT AND SENTENCE (JS)

(Felony) (7/2007) Page 9 of 11

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CERTIFICATE OF CLERK

CAUSE NUMBER of this case. 12-1-01877-6

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

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

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

IDENTIFICATION OF COURT REPORTER

Dana Eby
Court Reporter

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APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a

- sex offense *Rape Child 3*
- serious violent offense
- assault in the second degree
- any crime where the defendant or an accomplice was armed with a deadly weapon
- any felony under 69 50 and 69 52

The offender shall report to and be available for contact with the assigned community corrections officer as directed

The offender shall work at Department of Corrections approved education, employment, and/or community service,

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions

An offender in community custody shall not unlawfully possess controlled substances,

The offender shall pay community placement fees as determined by DOC.

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

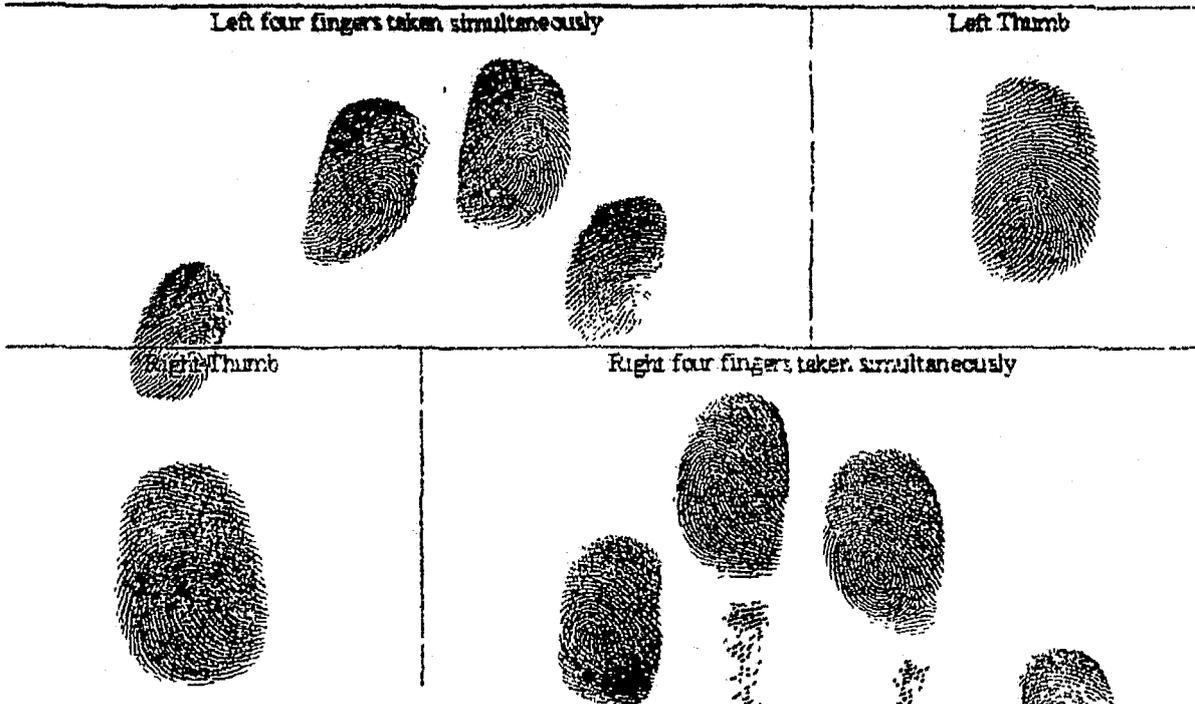
- (I) The offender shall remain within, or outside of, a specified geographical boundary _____
- (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals *Mums*
- (III) The offender shall participate in crime-related treatment or counseling services;
- (IV) The offender shall not consume alcohol, _____
- (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- (VI) The offender shall comply with any crime-related prohibitions.
- (VII) Other: *Per cco*

IDENTIFICATION OF DEFENDANT

SID No. 12428205 Date of Birth 06/05/1965
 (If no SID take fingerprint card for State Patrol)
 FBI No. 251345CA2 Local ID No. UNKNOWN
 PCN No. UNKNOWN Other
 Alias name, SSN, DOB

| | | | | | | | | | |
|--------------------------|---------------------------|--------------------------|----------------------------|-------------------------------------|------------------|--------------------------|----------|-------------------------------------|--------|
| Race | | | | | Ethnicity | Sex | | | |
| <input type="checkbox"/> | Aster/Pacific Islander | <input type="checkbox"/> | Black/African- American | <input checked="" type="checkbox"/> | Caucasian | <input type="checkbox"/> | Hispanic | <input checked="" type="checkbox"/> | Male |
| <input type="checkbox"/> | Native American | <input type="checkbox"/> | Other | <input type="checkbox"/> | Non- Hispanic | <input type="checkbox"/> | | <input type="checkbox"/> | Female |

FINGERPRINTS



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and
 signature thereto Clerk of the Court, Deputy Clerk Debra Elett Date 2/8/13

DEFENDANT'S SIGNATURE x [Signature]

DEFENDANT'S ADDRESS _____

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 11 of 11

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 3FEA8531-F20F-6452-D585D656A7BB5F74.

This document contains 14 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "B"

Information

A.M. MAY 22 2012 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

INFORMATION

Defendant.

66A 72432

DOB: 6/5/1965

SEX : MALE

RACE: WHITE

PCN#:

SID#: 12428205

DOL#: FL S263-432-65-205-0

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of RAPE OF A CHILD IN THE FIRST DEGREE, committed as follows:

That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of February, 2004, did unlawfully and feloniously being at least 24 months older than S.B., engage in sexual intercourse with S.B., who is less than 12 years old and not married to the defendant and not in a state registered domestic partnership with the defendant, contrary to RCW 9A.44.073, and the crime was aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse JERRY LEE SWAGERTY of the crime of CHILD MOLESTATION IN THE FIRST DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or 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 others, committed as follows:

INFORMATION- 1

1 That JERRY LEE SWAGERTY, in the State of Washington, on or about the 14th day of
2 February, 2004, did unlawfully and feloniously, being at least 36 months older than S.B., have sexual
3 contact with S.B., who is less than 12 years old and not married to the defendant and not in a state
4 registered domestic partnership with the defendant, contrary to RCW 9A.44.083, and the crime was
5 aggravated by the following circumstance: pursuant to RCW 9.94A.535(3)(b), the defendant knew or
6 should have known that the victim of the current offense was particularly vulnerable or incapable of
7 resistance, and against the peace and dignity of the State of Washington.

8 DATED this 22nd day of May, 2012.

9 TACOMA POLICE DEPARTMENT
10 WA02703

11 MARK LINDQUIST
12 Pierce County Prosecuting Attorney

13 geb

14 By:

15 
16 GRANT BLINN
17 Deputy Prosecuting Attorney
18 WSB#: 25570

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter SerialID: **3FEA73CB-F20F-6452-DE9DC51C3491034E**.

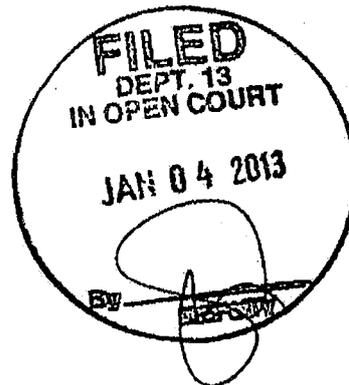
This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "C"

Statement of Defendant on Plea of Guilty



12-1-01877-6 39778900 STDFG 01-07-13



**Superior Court of Washington
For Pierce County**

No. 12-1-01877-6

State of Washington

Plaintiff

vs.

Jerry Swagerty
Defendant

**Statement of Defendant on Plea of
Guilty to Sex Offense
(STDFG)**

1. My true name is: Jerry Lee Swagerty
2. My age is: 47
3. The last level of education I completed was 14.5

4. I Have Been Informed and Fully Understand That:

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

David Shaw/Mark Quigley

(b) I am charged with the crime(s) of:

Count I: Rape of a Child Third Degree

The elements are: In Pierce County Washington,

engage in sexual intercourse with a person at least 14 years old but less than 16 years old, being at least 48 months older than the victim, and not married to the victim, aggravated by

Count II: Victim being particularly vulnerable or incapable of resistance

Lurinary

The elements are: In Pierce County, Washington, order, Lure

and pursuant to RCW 9A.535(2)(a)

or attempt to lure a minor child into an area or structure that is obscured from or inaccessible to the public and the defendant did not have consent from the minor's parent or guardian to do so and the defendant was unknown to the child, aggravated pursuant to

(c) Additional counts are addressed in Attachment "B"

RCW 9.94A.535(2)(a) *victim being particularly vulnerable or incapable of resistance*

5. **I Understand 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 hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pre-trial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

| COUNT NO. | OFFENDER SCORE | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancements* | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).) | MAXIMUM TERM AND FINE |
|-----------|----------------|--|--------------------|--|--|-----------------------|
| 1 | 9+ | 60 mos | - | 60 mos | 36-48 mos | 5 yrs \$10,000 |
| 2 | 9+ | 0-12 mos | - | 0-12 mos | 12 mos | 5 yrs \$10,000 |

*(F) Firearm, (D) other deadly weapon, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9).

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.

Case Name: State v. Terry Sperry Cause No. 12-1-01877-6
 Case Number: 12-1-01877-6 Date: May 27, 2014
 Serial: 3FEB73E110A9BE2A91CA089F2E8624
 Certified By: Kevin Stok Pierce County Clerk, Washington

ATTACHMENT "B"

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count III: Burglary Second Degree

Elements: In Pierce County, Washington, with intent to
commit a crime against a person or property therein, enter or remain
unlawfully in a building other than a vehicle or dwelling, aggravated
pursuant to RCW 9A.53.030(2)(a) victim being particularly vulnerable or
incapable of resistance

This crime carries a maximum sentence of _____ years imprisonment and a \$ _____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

Count IV: Intimidating a witness

Elements: In Pierce County, Washington,
direct a threat to a ^{former} witness because of the witness's role
in any official proceeding, aggravated pursuant to RCW 9A.53.030
victim being particularly vulnerable or incapable of resistance. (2)(a)

This crime carries a maximum sentence of 10 years imprisonment and a \$ 20,000 fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

| COUNT NO. | STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements) | PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present | TOTAL ACTUAL CONFINEMENT (standard range including enhancements) | STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f)) | MAXIMUM PENALTY |
|----------------|--|--|--|--|-------------------|
| III | 51-68 mos | — | 51-68 mos | — | 10 yrs / \$20,000 |
| IV | 77-102 mos | — | 77-102 mos | 9-18 mos | 10 yrs / \$20,000 |

ATTACHMENT "B"

Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) ~~**For sex offenses committed prior to 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 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. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005 (6) (h).~~

~~**For sex offenses committed on or after July 1, 2000 but prior to 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 release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.~~

~~**For sex offenses committed on or after September 1, 2001:**~~

- ~~(i) Sentencing under RCW 9.94A.712: If this offense is for any of the offenses listed in subsections (aa) or (bb), below, the judge will impose a maximum term of confinement consisting of the statutory maximum sentence of the offense and a minimum term of~~

Case Number: 12-1-01877-6 Date: May 27, 2014
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 Certified By: Kevin Stock Pierce County Clerk, Washington

~~confinement either within the standard range for the offense or outside the standard range if an exceptional sentence is appropriate. 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, which may include electronic monitoring, and I may be required to participate in rehabilitative programs.~~

~~(aa) 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 |
| Any of the following offenses with a finding of sexual motivation: | |
| Murder in the first degree | Murder in the second degree |
| Homicide by abuse | Kidnapping in the first degree |
| Kidnapping in the second degree | Assault in the first degree |
| Assault in the second degree | Assault of a child in the first degree |
| Assault of a child in the second degree | Burglary in the first degree |

~~(bb) 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:~~

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

~~(ii) If this offense is for a sex offense that is not listed in paragraph 6(f)(i), then in addition to sentencing me to a term of 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, or if my crime is failure to register as a sex offender, the judge will sentence me to community custody for a period of 36 to 48 months or up to the period of earned release, whichever is longer. During the period of community custody to which I am sentenced, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me,~~

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington

which may include ~~electronic monitoring.~~

For sex offenses committed on or after March 20, 2006:

For the following offenses and special allegations, the minimum term shall be either the maximum of the standard sentence range for the offense or 25 years, whichever is greater:

- 1) If the offense is rape of a child in the first degree, rape of a child in the second degree or child molestation in the first degree and the offense includes a special allegation that the offense was predatory.
- 2) If the offense is rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation and the offense includes special allegation that the victim of the offense was under 15 years of age at the time of the offense.
- 3) If the offense is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation and this offense includes a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

Community Custody Violation:

If I am subject to a first or second violation hearing and the Department of Corrections finds that I committed the violation, I may receive as a sanction up to 60 days of confinement per violation. If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge:
*Stipulated Exceptional Sentence 30 years.
 Ct I - 5 years, Ct II - 5 yrs, Ct III - 10 years,
 Ct IV - 10 years, Each Count consecutive, Parties
 stipulate to exceptional based upon particularly vulnerable
 victim, Registration, 36 mos. community custody,
 NCO/victim, No contact w/ minors, Abide by conditions
 App 'H' & CCO, \$500 CVPA, \$200 Costs, \$400 DAC, \$100 DNA,
 Restitution*
 The prosecutor will recommend as stated in the plea agreement, which is 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. I understand the following regarding exceptional sentences:
 - (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more

than nine.

- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.**
- (j) **I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.**
- (k) **I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.**
- (l) **Public assistance will be suspended during any period of imprisonment.**
- (m) **I will be required to register where I reside, study or work. The specific registration requirements are described in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in the registration requirements and for complying with the new requirements.**
- (n) **I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.**
- (o) **I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.**

Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.

- (p) ~~This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole. In addition, if this offense is (i) rape in the~~

~~first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (ii) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree, with a finding of sexual motivation, or (iii) any attempt to commit any of the offenses listed in this sentence and I have at least one prior conviction for one of these listed offenses in this state, in federal court, or elsewhere, the offense for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.~~

(q) **Special sex offender sentencing alternative:**

~~In addition to other eligibility requirements under RCW 9.94A.670, to be eligible for the special sex offender sentencing alternative, I understand that I must voluntarily and affirmatively admit that I committed all of the elements of the crime(s) to which I am pleading guilty. I make my voluntary and affirmative admission in my statement in paragraph 11.~~

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

~~**For offenses committed on or after September 1, 2001:** The judge may suspend execution of the standard range term of confinement or the minimum term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.670. If the judge suspends execution of the standard range term of confinement for a sex offense that is not listed in paragraph 6(f)(i), I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater. If the judge suspends execution of minimum term of confinement for a sex offense listed in paragraph 6(f)(i), I will be placed on community custody for the length of the statutory maximum sentence of the offense. In addition to the term of community custody, I will be ordered to serve up to 180 days of total confinement, or for offenses committed on or after 7/1/05, I will be ordered to serve up to 12 months of total confinement; I will be ordered to participate in sex offender treatment; I will have restrictions and requirements placed upon me, which may include electronic monitoring; and I will be subject to all of the conditions~~

Case Number: 12-1-01877-6 Date: May 27, 2014
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Filed By: Kevin Stook Pierce County Clerk, Washington

described in paragraph 6(f). ~~Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.~~

- (r) ~~If this is a crime of domestic violence, the court may order me to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~
- (s) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (t) ~~If this offense involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked.~~
- (u) ~~The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(p).~~
- (v) ~~I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.~~
- (w) ~~I understand that the offense(s) I am pleading guilty to include a **deadly weapon, firearm or sexual motivation enhancement**. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.~~
- (x) ~~**For crimes committed on or after July 22, 2007:** I understand that if I am pleading guilty to rape of a child in the first, second, or third degree or child molestation in the first, second or third degree, and I engaged, agreed or offered to engage the victim in sexual intercourse or sexual contact for a fee, or if I attempted, solicited another, or conspired to engage, agree or offer to engage the victim in sexual intercourse or sexual contact for a fee, then a one-year enhancement shall be added to the standard sentence range. If I am pleading guilty to more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement.~~

- 7. I plead guilty to count(s) I, II, III, IV in the Amended Information. I have received a copy of that Information.
- 8. I make this plea freely and voluntarily.
- 9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
- 10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement:

*I acknowledge there are facts sufficient in the original declaration of probable cause to constitute a factual basis for the original Count I, Rape of Child First Degree, I therefore plead guilty to Counts I, II, III, and IV to take advantage of the State's offer to reduce the charge and allow me to be sentenced to an amount of time other than life in prison without possibility of parole.**

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[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

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

**I further acknowledge that I have reviewed the evidence and believe there is a substantial likelihood I would be convicted at trial as charged.*

Please see the addendum to the plea for which is incorporated by reference

Prosecuting Attorney

Anglica Williams
Print Name

36673
WSBA No.

Defendant

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

Defendant's Lawyer

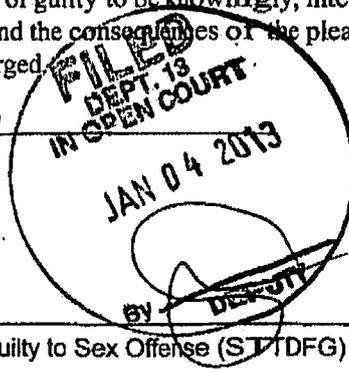
Mark Quigley / David Shaw
Print Name *14496* WSBA No. *13994*

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

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is attached.

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

Dated: *1/4/13*



Kathryn J. Nelson
Judge

Kathryn J. Nelson

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington

Interpreter's Declaration

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated the _____ for the defendant from English into that language. (Identify document being translated)

The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated: _____

Interpreter

Print Name

Location: _____

Case Name Jerry Swagarty Cause No. 12-1-01877-6

"Offender Registration" Attachment: sex offense, or kidnapping offense involving a minor as defined in RCW 9A.44.130. (If required, attach to Statement of Defendant on Plea of Guilty.)

1. General Applicability and Requirements: Because this crime involves a sex offense, or a kidnapping offense involving a minor as defined in RCW 9A.44.130, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours of my release with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed, or where I carry on a vocation.

2. Offenders Who Leave the State and Return: If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within three business days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody, but later while not a resident of Washington I become employed in Washington, carry on a vocation in Washington, or attend school in Washington, I must register within three business days after attending school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections.

3. Change of Residence Within State and Leaving the State: If I change my residence within a county, I must send signed written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send signed written notice of the change of address at least 14 days before moving to the county sheriff in the new county of residence and I must register with the sheriff of the new county within 24 hours of moving. I must also give signed written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

4. Additional Requirements Upon Moving to Another State: If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

5. Notification Requirement When Enrolling In or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution. If I become employed at a public or private institution of higher education, I am required to notify the sheriff for the county of my residence of my employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If my enrollment or employment at a public or private institution of higher education is terminated, I am required to notify the sheriff for the county of my residence of my

termination of enrollment or employment within 10 days of such termination. If I attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, I am required to notify the sheriff of the county of my residence of my intent to attend the school. I must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. The sheriff shall promptly notify the principal of the school.

6. Registration by a Person Who Does Not Have a Fixed Residence: Even if I do not have a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody. Within 48 hours, excluding weekends and holidays, after losing my fixed residence, I must send signed written notice to the sheriff of the county where I last registered. If I enter a different county and stay there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis. The weekly report will be on a day specified by the county sheriff's office, and shall occur during normal business hours. I may be required to provide a list of the locations where I have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level and shall make me subject to disclosure to the public at large pursuant to RCW 4.24.550.

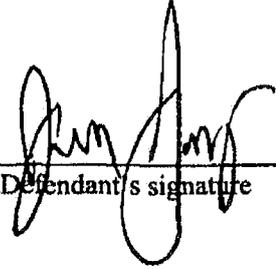
7. Reporting Requirements for Persons Who Are Risk Level II or III: If I have a fixed residence and I am designated as a risk level II or III, I must report, in person, every 90 days to the sheriff of the county where I am registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If I comply with the 90-day reporting requirement with no violations for at least five years in the community, I may petition the superior court to be relieved of the duty to report every 90 days.

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

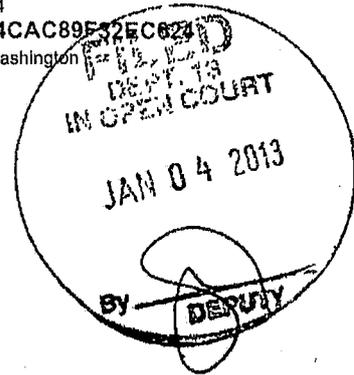
Date: _____

1/3/13


Defendant's signature



Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3FEBA73B-110A-9BE2-A94CAC89E32EC624
Certified By: Kevin Stock Pierce County Clerk, Washington



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY.

ADDENDUM TO PLEA FORM FOR
[XX] ALFORD PLEA AS TO COUNT II
[XX] IN RE BARR PLEA AS TO COUNTS I,
III, AND IV

Defendant.

DOB : 06/05/1965
PCN# :

SEX : MALE
SID# : 12428205

RACE : WHITE
DOL# : fl s263-65-205-0

[XX] *North Carolina v. Alford*, 400 U.S. 25, 36-37, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970); *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976): I do not admit that I am guilty of the crime charged in Count II, but I have reviewed the evidence with my attorney and believe that there is a substantial likelihood I would be convicted or more serious charges if I proceeded to trial. I am pleading guilty in order to take advantage of the State's offer. I understand that the court must find a factual basis for my plea of guilty. I acknowledge there is a factual basis for the charge contained in Count II in the Original Information that is set forth in the Declaration for Determination of Probable Cause, and I agree the court may consider that declaration, as well as any other information presented by the prosecutor at the time of this plea, to support the court's finding of a factual basis for my plea.

[XX] *In re Barr*, 102 Wn.2d 265 (1984): In addition to what is set out in the statement of defendant on plea of guilty, and in addition to my factual admissions in the plea form, I recognize that I am entering a plea of guilty to crimes that I in fact did not commit contained in Counts I, III and IV. My attorney has discussed with me all of the elements of the original charges and the elements of the amended charges, and I understand them all. There is a factual basis for the original charges. I understand that the prosecution would be

Case Number: 12-1-01877-6 Date: May 27, 2014

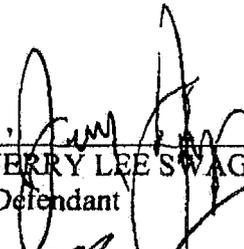
SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624

Certified By: Edwin Stock Pierce County Clerk, Washington

unable to prove some of the amended charges at trial, but I see pleading guilty to the amended charges as being beneficial to me because it will allow me to avoid the risk of conviction on the charges I would face at trial. Based upon a review of the alternatives before me, I have decided to plead guilty to a crime I did not commit in order to take advantage of the State's offer. I understand the consequences of this plea agreement and I am making a voluntary and informed choice to enter into it.

I understand that the court must find a factual basis for the original charges and I agree that the court may consider the declaration for determination of probable cause and any other information presented by the prosecutor at the time of this plea to support the factual basis for the original charges.

DATED this 3 day of Jan, 2012


JERRY LEE SWAGERTY,
Defendant


MARK QUIGLEY
Attorney for Defendant
WSB # 14496

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State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



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enter SerialID: 3FEBA73B-110A-9BE2-A94CAC89F32EC624.

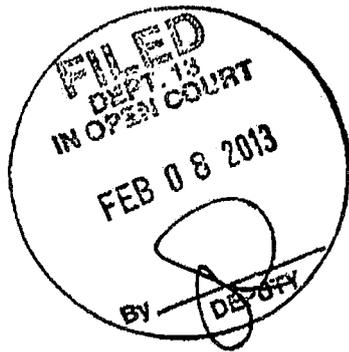
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APPENDIX “D”

Findings of Fact and Conclusions of Law



12-1-01877-6 38987783 FNFCL 02-11-13



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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE

Defendant.

THIS MATTER having come on before the Honorable Kathryn J. Nelson, Judge of the above entitled court, for sentencing on the following four counts: Rape of a Child in the Third Degree, Luring, Burglary in the Second Degree, and Intimidating a Witness, the defendant, JERRY LEE SWAGERTY, having been present and represented by his attorneys, Mark Quigley and Dave Shaw, and the State being represented by Deputy Prosecuting Attorney Angelica Williams, and the court having considered all argument from both parties and having considered all written reports presented, and deeming itself fully advised in the premises, does hereby make the following Findings of Fact and Conclusions of Law by a preponderance of the evidence.

FINDINGS OF FACT

1 1. The defendant pled guilty on January 4, 2013 to Rape of a Child in the Third
2 Degree, Luring, Burglary in the Second Degree, and Intimidating a Witness. That the standard
3 range sentence for the defendant with an offender score of 9+ on Rape of a Child in the Third
4 Degree is 60 months.

5 2. That the standard range sentence for the defendant with an offender score of 9+
6 on Luring is 0-12 months.

7 3. That the standard range sentence for the defendant with an offender score of 9+
8 on Burglary in the Second Degree is 51-68 months.

9 4. That the standard range sentence for the defendant with an offender score of 9+
10 on Intimidating a Witness is 77-102 months.

11 5. That the factors set forth by the Prosecuting Attorney in the State's sentencing
12 recommendation are applicable and are aggravating factors in the instant offense for the reasons
13 set forth by the Prosecuting Attorney, to wit:

14 6. Pursuant to RCW 9.94A.535(3)(b), the defendant knew or should have known
15 that the victim in was particularly vulnerable or incapable of resistance; and

16 7. Pursuant to RCW 9.94A.535(2)(a), the defendant and the state both stipulate that
17 justice is best served by the imposition of an exceptional sentence outside the standard range, and
18 the court finds the exceptional sentence to be consistent with and in furtherance of the interests
19 of justice and the purposes of the Sentencing Reform Act.

20 8. The victim in this case, S.M.B., was ten-years old at the time of the incident on
21 February 14, 2004. S.M.B. is developmentally disabled.
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1 9. The Prosecuting Attorney and Defense stipulate to an exceptional sentence above
2 the standard range as part of a plea bargain as allowed by *State v. Hilyard*, 63 Wn. App. 413, 819
3 P.2d 809 (1991).

4 10. That JERRY LEE SWAGERTY understands and acknowledges that he has the
5 right to a jury determination of mitigating or aggravating circumstances and waives any right to
6 appeal this exceptional sentence under *Blakely v Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159
7 L. Ed. 2d 403, (2004).

8
9 CONCLUSIONS OF LAW

10 1. That an exceptional sentence above the standard range is warranted pursuant to
11 RCW 9.94A.535(3)(b) because the defendant knew or should have known that S.M.B. was
12 particularly vulnerable or incapable of resistance based on her developmental disability.

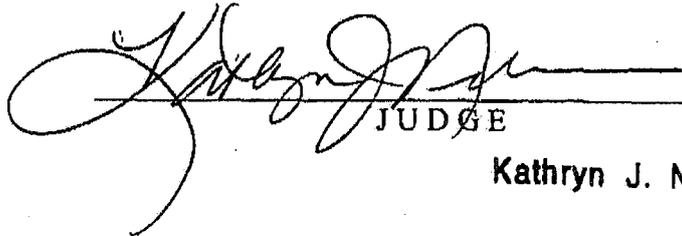
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14 2. That an exceptional sentence above the standard range is permitted as part of a
15 plea bargain under *State v. Hilyard*, 63 Wn. App. 413, 819 P.2d 809 (1991). Such an agreement
16 constitutes a substantial and compelling reason justifying an exceptional sentence outside the
17 standard range.

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20 3. Defendant JERRY LEE SWAGERTY, should be sentenced to the statutory
21 maximum sentence of 5 years for Rape of a Child in the Third Degree. Defendant JERRY LEE
22 SWAGERTY, should be sentenced to the statutory maximum sentence of 5 years for Luring.
23 Defendant JERRY LEE SWAGERTY, should be sentenced to the statutory maximum sentence
24 of 10 years for Burglary in the Second Degree. Defendant JERRY LEE SWAGERTY, should be
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sentenced to the statutory maximum sentence of 10 years for Intimidating a Witness.

Furthermore, each count shall run consecutive for a total period of incarceration of 30 years (360 months).

DONE IN OPEN COURT this 6 day of February 2013.



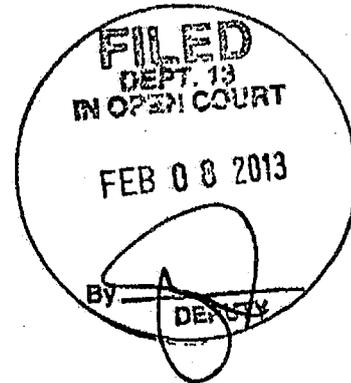
JUDGE

Kathryn J. Nelson

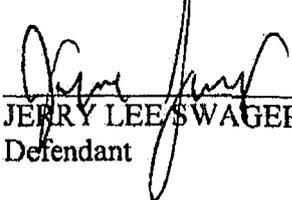
Presented by:



ANGELICA WILLIAMS
Deputy Prosecuting Attorney
WSBA #36673

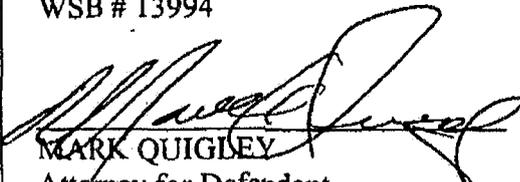


Approved as to Form and Content:



JERRY LEE SWAGERTY.
Defendant

DAVE SHAW
Attorney for Defendant
WSB # 13994



MARK QUIGLEY
Attorney for Defendant
WSBA # 14496

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:01 PM



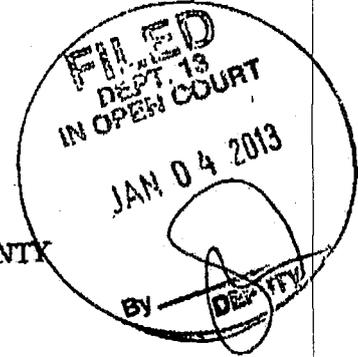
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APPENDIX "E"

Stipulation on Prior Record and Offender Score



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 12-1-01877-6

vs.

JERRY LEE SWAGERTY,

STIPULATION ON PRIOR RECORD AND
 OFFENDER SCORE
 (Plea of Guilty)

Defendant.

Upon the entry of a plea of guilty in the above cause number, charge RAPE OF A CHILD IN THE THIRD DEGREE; LURING; BURGLARY IN THE SECOND DEGREE; INTIMIDATING A WITNESS, the defendant JERRY LEE SWAGERTY, hereby stipulates that the following prior convictions are his complete criminal history, are correct and that he is the person named in the convictions:

WASHINGTON STATE CONVICTIONS

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---------------------------------|------------------|--------------|---------------|----------------|------------|-------|-------|-----------------------|
| CHARGE UNKNOWN | UNKNOWN | CLALLAM, WA | 02/28/81 | J | | | | FELONY |
| THEFT 2 ND | 11/18/81 | CLALLAM, WA | 04/12/81 | J | | | | FELONY |
| BURGLARY 2 ND DEGREE | 11/18/81 | CLALLAM, WA | 04/26/81 | J | | | | FELONY |
| BURGLARY 2 ND DEGREE | 12/03/86 | KING, WA | 02/09/84 | A | | | | FELONY |
| BURGLARY 2 ND DEGREE | 10/29/86 | CLALLAM, WA | 03/08/84 | A | | | | FELONY |
| ROBBERY 2 ND DEGREE | 10/19/89 | KING, WA | 07/12/89 | A | | | | FELONY |
| ROBBERY 2 ND DEGREE | 10/19/89 | KING, WA | 07/12/89 | A | | | | FELONY |

| | | | | | | | | |
|--|---------------|------------------|----------|---|------|--|--|--------|
| ATTEMPTED RESIDENTIAL BURGLARY | 02/19/93 | KING, WA | 12/20/92 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 01/29/97 | SPOKANE, WA | 02/22/96 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 01/29/97 | SPOKANE, WA | 02/22/96 | A | | | | FELONY |
| UPCS - METH | 02/15/02 | CLARK, WA | 12/04/00 | A | | | | FELONY |
| THEFT 1 ST DEGREE | 02/15/02 | CLARK, WA | 12/21/00 | A | | | | FELONY |
| PSP 2 ND DEG | 02/15/02 | CLARK, WA | 12/21/00 | A | | | | FELONY |
| 12-1-01877-6 LURING | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| 12-1-01877-6 BURGLARY 1 ST DEGREE | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| 12-1-01877-6 INTIMIDATING A WITNESS | OTHER CURRENT | PIERCE, WA | 02/14/04 | A | | | | FELONY |
| UPFGLM | 11/14/83 | PORT ANGELES, WA | 10/05/83 | A | MISD | | | MISD |
| NEG DRIVING | UNKNOWN | CLALLAM, WA | 12/23/90 | A | MISD | | | MISD |
| MISD TRAFF VIOLEATION | 03/05/91 | PORT ANGELES, WA | 10/20/91 | A | MISD | | | MISD |

Concurrent conviction scoring:

CONVICTIONS FROM OTHER JURISDICTIONS

The defendant also stipulates that the following convictions are equivalent to Washington State felony convictions of the class indicated, per RCW 9.94A.360(3)/9.94A.525 (Classifications of felony/misdemeanor, Class, and Type made under Washington Law):

| Crime | Date of Sentence | Jurisdiction | Date of Crime | Adult/Juvenile | Crime Type | Class | Score | Felony or Misdemeanor |
|---------------------------------|------------------|--------------|---------------|----------------|------------|-------|-------|-----------------------|
| BURGLARY 1 ST DEGREE | 02/24/86 | YAMHILL, OR | 11/03/83 | A | | | | FELONY |

Concurrent conviction scoring:

The defendant stipulates that the above criminal history and scoring are correct, producing an offender score as follows, including current offenses, and stipulates that the offender score is correct:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE (including enhancements) | MAXIMUM TERM |
|-----------|----------------|-------------------|--|-------------------|--|---------------------|
| I | 9+ | VI | 60 MONTHS | | 60 MONTHS | 5 YRS/ \$10,000 |
| II | 9+ | UR | 0 - 12 MONTHS | | 0 - 12 MONTHS | 5 YRS/ \$10,000 |
| III | 9 | III | 51 - 68 MONTHS | | 51 - 68 MONTHS | 10 YRS/ \$20,000 |
| IV | 9+ | VI | 77 - 102 MONTHS | | 77 - 102 MONTHS | 10 YRS/ \$20,000 |

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

The defendant further stipulates:

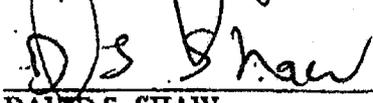
- 1) Pursuant to Blakely v. Washington, 542 U.S. 296, 124 S. Ct 2531, 159 L. Ed. 2d 403 (2004), defendant may have a right to have factors that affect the determination of criminal history and offender score be determined by a jury beyond a reasonable doubt. Defendant waives any such right to a jury determination of these factors and asks this court to sentence according to the stipulated offender score set forth above.
- 2) That if any additional criminal history is discovered, the State of Washington may resentence the defendant using the corrected offender score without affecting the validity of the plea of guilty,
- 3) That if the defendant pled guilty to an information which was amended as a result of plea negotiation, and if the plea of guilty is set aside due to the motion of the defendant, the State of Washington is permitted to refile and prosecute any charge(s) dismissed, reduced or withheld from filing by that negotiation, and speedy trial rules shall not be a bar to such later prosecution,
- 4) That none of the above criminal history convictions have "washed out" under RCW 9.94A.360(3)/9.94A.525 unless specifically so indicated.

If sentenced within the standard range, the defendant further waives any right to appeal or seek redress via any collateral attack based upon the above stated criminal history and/or offender score calculation.

Stipulated to this on the 4 day of January, 2012.


 ANGELICA WILLIAMS
 Deputy Prosecuting Attorney
 WSB # 36673


 JERRY TEE SWAGERTY


 DAVID S. SHAW
 WSB # 13994

mld

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:00 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 3FEB8C02-110A-9BE2-A94CA8815EBCD016.

This document contains 3 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “F”

Forensic Psychological Report

Case Number: 12-1-01877-6 Date: May 27, 2014
SerialID: 3F5A2B02-F20F-6452-D6EEF8CF60236E67
Certified By: [Signature] Pierce County Clerk, Washington



12-1-01877-6 39181127 FPE 09-13-12

FILED
IN COUNTY CLERK'S OFFICE

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

SEP 13 2012 P.M.

WESTERN STATE HOSPITAL
W27-19 * 9601 Steilacoom Blvd. S.W. * Tacoma Wa 98498-7213
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY: [Signature] DEPUTY

September 10, 2012

Community Forensic Evaluation Services
Forensic Psychological Report

RE: STATE OF WASHINGTON
v.
JERRY L. SWAGERTY

CAUSE NO: 12-1-01877-6
WSH NO: 90 33 95
DOB: 6/5/65

The forensic mental health evaluation, as reflected in this report, was conducted pursuant to court order under the authority of RCW 10.77.060. This document has been released only to the Court and other persons legally authorized to receive it and is intended for their use only. Any other use of this report is not authorized by the undersigned.

REFERRAL INFORMATION

On 7/20/12, the Pierce County Superior Court ordered Mr. Jerry L. Swagerty to undergo evaluation of his mental condition, his capacity to understand the nature of the proceedings and to assist in his defense as a result of mental disease or defect, and his danger to others and likelihood of committing future criminal acts. By statute, I am obliged to supply an opinion regarding the defendant's need of an evaluation for civil commitment under RCW 71.05. The Court's order did not indicate what factors led to the request for a mental health evaluation.

Mr. Swagerty was charged with one count of Rape of Child in the First Degree and one count of Child Molestation in the First Degree, following incidents on or about 2/14/04. According to the Declaration for Determination of Probable Cause and Tacoma Police Department reports, the allegations were as follows:

A man reported that he and his 11-year-old daughter were grocery-shopping and he sent his daughter to the front of the store to get a cart. The girl stated that while she was getting the cart a man had asked her to help him find his girlfriend and gave her \$10 to do so. She left the store with the man and they walked to an alley south of the store. The girl told a police officer that the man had touched her "down there" and she pointed to her genital area. She also indicated that he had pushed her down. A review of the store video showed a man approaching the girl in the store and then the girl was seen following him to the store exit. Approximately 10 minutes later the girl was seen moving through the parking lot to meet her father and the police. The girl's father stated that when his daughter had not returned with the grocery cart he had gone looking for her. He contacted a police



officer who had just pulled up to the store. The girl ran to her father and when asked, explained that she had been with a man who was looking for his girlfriend. The police officer stated that she could tell that the girl was mentally handicapped and the girl's father confirmed this during the conversation.

Tacoma Police investigated the case and had a person of interest who passed a polygraph indicating that he was not the assailant. On 4/11/12, almost nine years later, the Washington State Patrol crime lab submitted a report regarding results of testing on a pair of underpants from the girl that she had been wearing at the time of the assault. Two samples were extracted for DNA content. The DNA profile recovered from the underpants was consistent with at least two contributors. "Assuming that part of the DNA profile originated from" the alleged victim, "a male profile was deduced from the mixture." The male DNA was determined to be a match to the defendant, Jerry Lee Swagerty.

NATURE OF THE EVALUATION

Dr. Marilyn Ronnei, Western State Hospital Staff Psychologist, evaluated Mr. Swagerty in an interview room in the Pierce County Detention and Corrections Center on 7/17/12. He was interviewed for approximately two hours and 20 minutes.

Mr. Swagerty was informed of the purpose and authority for the evaluation, who would receive a copy of the report, and the limits of confidentiality. He was informed he had the right to have his attorney present, and that he could decline to answer questions. He was also told that recommendations concerning further assessment or treatment could be made to the Court, and that the undersigned were not there to supply therapeutic services, but was solely in an evaluative role for the court. Mr. Swagerty appeared to have an adequate understanding, as he was able to answer questions about the information given to him, and agreed to continue the interview. Mr. Swagerty's attorney, Mr. David Shaw, was present for the interview.

Sources of Information

The following information was reviewed and considered during the completion of this evaluation:

1. Discovery materials.
2. Criminal history reports (NCIC).
3. State of Washington Division of Mental Health online databases.
4. Pierce County Detention and Corrections Center records.
5. Eastern Oregon Corrections records.
6. State of Washington Department of Corrections records.
7. Personal interview of Mr. Swagerty.

RELEVANT HISTORY

Personal Interview: The following information was supplied solely by the defendant's self-report and is thus limited by the credibility of the defendant. Mr. Swagerty was born in

FORENSIC PSYCHOLOGICAL REPORT
Jerry L. SwagertySerial ID: 3FEA3BD3-F20F-6452-D6EEF8CF60236E67
Certified By: Kevin Stock Pierce County Clerk, Washington9/10/12
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California and lived there until the age of four, when his family moved to Pennsylvania. He reported that he was hit by a car in Pennsylvania at the age of five and following that his parents split up. His mother met and married his stepfather when he was seven. His stepfather adopted him, and he grew up considering his stepfather his father. He did not meet his biological father again until he was 20 years old and in prison when his biological father came to see him. He considered his relationship with his parents as having been "great." He has three sisters and a half-brother he has never met and he has little to no contact with anyone but his older sister. He denied that he had ever been abused. Mr. Swagerty had never married. He had been engaged years ago but his fiancée was killed in a car accident in 1989 or 1990. Mr. Swagerty said that he had "no children" that he knows of, but "I've had lots of sex."

Regarding educational and employment history, Mr. Swagerty reported he was suspended or expelled from high school for getting "stoned on the track." He said "I was a 'stoner jock.' I was awesome at football." His knee was ruined in a motorcycle accident and in fights, so he left school. At another point in the interview he stated he had dropped out of high school because he was bored although he was receiving "straight A's." Mr. Swagerty had completed 14 and ½ years of school, stating he had received both a high school diploma and a GED while in prison. He had studied psychology, welding, drafting, art and math. His first job was at the age of 14 when he worked for city government weatherizing homes. He had always worked construction when he wasn't in prison, working as a journeyman carpenter, roofing, siding and doing concrete work. He had owned a company called Excellent Exteriors in Gresham, Oregon and had served as general manager. Mr. Swagerty claimed he had never been fired but that he had quit lots of jobs because he had received better offers and moved on. "I get bored." His last job was working for Ace Construction in Virginia while living in Washington D.C. "I'm a political watchdog." He then went on to discuss a website that he had which was called The 57th Delegate. Mr. Swagerty claimed that while living in Washington "I saved the President's butt three times. I helped boost the economy." He also reported that he had numerous ideas such as temporary work visas and other things. "Congress listens to me." Since that job with Ace Construction he had done some under the table jobs. Mr. Swagerty stated he had never been in the military because he had a felony. "I was supposed to go to the Navy Seals." He stated that he had received an honorary Seal Team Four coin for his "work", but he refused to discuss it more saying that that information was classified. "The Seal Team originated when I was born."

Regarding medical history, Mr. Swagerty stated that his health was currently excellent. At age five when on his bike he was hit by a drunk driver and he spent six weeks in the hospital. He had surgical repair of a broken leg at the age of five following the accident, of his knee as a teenager, and a shoulder rotator cuff surgery in 1992 due to an injury while on the job. He also stated that he crushed his heel when he fell 30 feet while doing a siding job. He experienced loss of consciousness several times, twice for a couple minutes at most when he was in a couple of car wrecks. Mr. Swagerty reported that he had had some concussions due to accidents. He had also suffered a seizure when he was riding a

motorcycle, crashed into a house hitting his head. He was treated at an emergency room and then released.

Currently Mr. Swagerty was being prescribed Lithium and "another one" to "help me relax and sleep" in the jail. He reported that he had received a diagnosis of bipolar disorder years ago and had been on Klonopin and Tegretol "all my life." When asked what his symptoms were, Mr. Swagerty reported that his symptoms consisted of being moody, feeling anxious all the time and having a difficult time concentrating when reading. He stated he was diagnosed by doctors after his father said that he was bipolar. He was again diagnosed at the Eastern Oregon Penitentiary in Pendleton, Oregon. Mr. Swagerty reported that he had been hospitalized for psychiatric reasons in Christmas of 2009 in Florida for one week. He said that his mother had him hospitalized because he was "screaming, yelling, and not sleeping." He was prescribed "a bunch of meds" for anxiety and a bipolar disorder. Following discharge from the hospital he discontinued his medications because he never got around to seeing a provider. In general, Mr. Swagerty said that his problem has been "I quit taking medications."

In 1994 Mr. Swagerty attempted to kill himself in Portland by throwing himself in front of a bus. He was then hospitalized for four or five days. He stated that he had been despondent because he had committed a robbery in Spokane and had split up with his girlfriend. Mr. Swagerty had attempted to kill himself while in jail in the Clark County in 2000. "I lost my business, I lost everything. They sucked me back into the criminal world because I was good at being criminal." He attempted to hang himself but was discovered.

Regarding substance abuse, Mr. Swagerty felt that his substance abuse problems dated to his hospitalization at the age of five following the accident. He said "they had me on Demerol and morphine for three weeks. They turned me into a junkie at the age five." He began drinking alcohol to the point of passing out and smoking pot while in high school, as well as using "a little cocaine" at that time. He "shot up" once at the age of 17, and was using MDA "with the hookers at the age of 16 or 17." He had done hallucinogens only in high school and denied any use ever of inhalants. By the age of 18 his drug use escalated and he was using MDA, heroin, and cocaine intravenously every day. He began committing crimes to support his habit. He was caught and placed in juvenile detention. When he got out of juvenile detention he went to work. However, after his fiancée was killed "I didn't care." He said "I went to prison three times in a row. I had tracks up and down my arms." However Mr. Swagerty stated that after his second time in prison, in the 1990's, he began using methamphetamines. It became a problem. I was up for weeks." He stated that he had done ecstasy or MDA for years at raves. He had been through chemical dependency treatment five or six times. His last chemical dependency treatment program was at Sequim in 2004 when he went through an outpatient treatment program. Following completion of that program he remained abstinent for a year.

Mr. Swagerty reported his last use of cocaine, methamphetamines and heroin was about a year ago. He did feel he had been "a practicing alcoholic for the last 18 months." On the

day of his most recent arrest, he stated that he had drunk an entire fifth. When he was taken to jail "it took me a week to sleep it off."

Mr. Swagerty reported that he had been living in Los Angeles prior to being returned to Washington to face his current charge. He said that in Los Angeles he was "trying to put together a show." He had been living in Los Angeles for about 18 months (after leaving Spokane County) and had been homeless off and on. He would live in a motel for a month when he got some money together and then would stay with friends after that. He stated that he had not been working but was receiving general relief funds which consisted of some cash and food assistance. As he had been living on the streets, he had not been taking his medications but was using marijuana and drinking alcohol.

With regard to criminal history, Mr. Swagerty reported that he had been placed in Echo Glen as a juvenile for burglary. "I was fascinated with other people's stuff." Mr. Swagerty denied that he had committed a felony in the last 13 years. He stated that he had been just about to get his record completely cleared when he was returned to Washington to face this charge. However he admitted that he had some open warrants out for him specifically in Tacoma Municipal Court. He had a warrant for not paying and in Clallam District Court he had a Failure to appear on a Trespassing charge, in Vancouver he had a warrant for Failure to pay a fine and in Spokane County he had a warrant for failure to pay a fine. Mr. Swagerty reported that he did not own any weapons and did not carry any weapons when he was living on the streets. He denied any violent fantasies.

Pierce County Detention and Corrections Center records indicated that Mr. Swagerty was booked on 6/27/12. He was seen by mental health staff in response to a referral by Corrections Officers. He stated that he was aware why he was being seen by mental health staff, specifically "I went off on the detectives." Mental health staff reported that Mr. Swagerty was organized and coherent, "however has rapid pressured speech, complains of racing thoughts, poor sleep and decreased concentration." Mr. Swagerty reported that he had a diagnosis of Bipolar Disorder and that he had previously been on medications. He stated that he had 25 days of not using alcohol. He reported two psychiatric hospitalizations, one in Florida in 2009 and the other in Oregon about 20 years ago. He also reported that he had attempted to hang himself 10 years ago while in the Clark County Jail after a breakup with a girl. He also stated that he also wanted attention. Corrections officers found him before "much damage was caused." He denied current suicidal or assaultive ideation and agreed to notify anyone if that changed. He was referred to a prescriber. On 7/02/12 Mr. Swagerty kited requesting "mental health personnel to 'rightly dose and administer' medication" "I need for my manic depression with anxiety disorder." It was noted that he had already been referred to an ARNP and the clinic had started him on Risperdal. On 7/12/12 Mr. Swagerty reported that he was "here on trumped up charges...I was just in LA County in detox there from alcohol." He stated that prior to that he had been using alcohol every day for 18 months. He presented as "alert, irritable and evasive answering questions, oriented." His hygiene was adequate and he did not demonstrate psychomotor agitation. "Speech is pressured, loud, hyperverbosity and he

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frequently talks over writer. Mood is irritable, elevated, entitled." Thoughts are logical but his responses are overelaborate and only intermittently relevant to the question asked. He is easily distracted and easily agitates." It was noted that the conversation quickly diverted to him defending himself "even after he is informed to not discuss his case with the writer or make any comments regarding his case." There were several behavior entries regarding lack of behavioral control specifically "kicking chairs, out of control behavior, screaming at officers when he was to meet with detectives." Diagnostic impressions included Cluster B traits and Bipolar Disorder. Records reflected that he was being prescribed Risperdal, lithium and trazadone."

By 8/02/12 Mr. Swagerty noted that he was "eating well and my sleep and energy are good too." He believed that he was still having "some irritability and some anger although things are improved." He agreed to an increase in lithium. He presented as alert, much more cooperative, and oriented. His hygiene was good and he demonstrated no psychomotor agitation. His speech was not pressured and he was able to participate in a reciprocal conversation. He denied suicidal and homicidal ideation. His thoughts were logical but his responses were still elaborate. However they were more relevant to the conversation with just a few loose associations. There was no evidence of psychosis. He was more focused and evidenced no delusional themes. His lithium was increased and he was compliant with his medication regimen.

The State of Washington Mental Health Division online databases showed Mr. Swagerty had been seen by crisis intervention mental health staff at the Emergency Room of a hospital in December 2004. He was regarded as acutely mentally ill and was given a diagnosis of Bipolar I Disorder Most Recent Episode Manic. There were no indications that he had been hospitalized or that he had been detained by DMHP's. He was not enrolled in any mental health services through the Regional Support Networks.

Medical records (6/24/87- 7/88) from the Eastern Oregon Department of Corrections in Pendleton, Oregon, showed that early in 1987 Mr. Swagerty had been seeing a consular in the prison. The first available record indicated that he explained a "dirty" urinalysis by saying he had been celebrating his birthday. He agreed to consider the possibility that he had a mood disorder and requested an appointment with a psychiatrist to be evaluated. On 7/24/87, a psychiatric consultation by Charles Johnston, M.D. indicated that Mr. demonstrated "some slight increase pressure of speech and prolonged duration of utterance and whose mood may be slightly hypomanic." "His psychomotor behavior may be slightly increased." The diagnostic impression was "possible bipolar disorder, manic type." "His I.Q. is estimated as above average." Lithium was prescribed and he was compliant with the prescription. By 12/24/87, Mr. Swagerty reported to Dr. Johnston the lithium "has made a marked improvement in his labile mood."

During a later incarceration, on 7/16/03, it was noted that Mr. Swagerty had "declared a medical emergency." He was "very tense," and "claimed that he was bipolar manic depressive." He complained "they stopped my pills and I can't go on like this." He was

"extremely restless," had tremors and talked "loudly and fast." He was diagnosed with drug withdrawal and was referred to a provider. In 1989 he reported to medical staff in DOC that he had been diagnosed with Bipolar Disorder and was prescribed Lithium by a psychiatrist at Eastern Oregon Corrections. He said that he had been taking Lithium sporadically but "says he goes crazy if he stops taking it for three or four weeks."

State of Washington Department of Corrections records covered parts of the period from November 1989 through July 2003. Mr. Swagerty was administered educational achievement and intelligence testing in 1989, and was found to have reading and math levels above grade 12, and superior intellectual functioning. At various times he was noted to be hypomanic or manic, with pressured speech, grandiosity, and disturbed sleep. On 12/14/02 it was also noted the course of his illness was "marked by recurrent depressions and suicide attempts, interspersed with euphoric mood lasting up to two days at a time." In early incarcerations he was prescribed lithium. In 1997, he was prescribed lithium and Risperdal (antipsychotic). In 2003 he was prescribed Tegretol (anticonvulsant used to stabilize mood) and benzodiazepines (sedative and anxiolytic).

NCIC criminal history reports revealed Mr. Swagerty had been convicted in Washington of nine felonies including VUCSA-Possession (2/15/02), Theft in the First Degree (2/15/02, 1/29/97 x 2), Residential Burglary Attempt (2/19/93), Robbery in the Second Degree (10/19/89 x 2), and Burglary in the Second Degree (12/03/86). He had also been convicted of a misdemeanor traffic violation (3/05/91) and VUCSA-Possession of Marijuana Unknown Amount (11/14/83). In Oregon, Mr. Swagerty had been convicted of Burglary in the First Degree (2/86 and 4/86) and a probation violation (4/86). He also had arrests for Theft in the Second, Possession of a Controlled Substance but the disposition of those charges was not listed.

In Florida, Mr. Swagerty had been arrested for Cocaine-Possession with Intent to Sell Manufacture or Deliver Schedule 2 Drugs and Possession of Methamphetamine with Intent to Sell/Manufacture/Deliver. The disposition of that charge was not listed. He was found of guilty of a charge of Cocaine Possession on 6/12/11. In 2010 he was arrested for a misdemeanor probation violation (Disorderly Conduct). The disposition was unknown but he was "turned over to another agency."

In California in 1982 Mr. Swagerty was arrested for Burglary and was sent to juvenile hall. Mr. Swagerty was arrested for Battery in 1985, but no disposition was listed. In 2011 Mr. Swagerty was arrested for Possession of Marijuana 28.5 grams, with no disposition listed. Also in February 2011 Mr. Swagerty was arrested for Possession of a Hypodermic Needle/Syringe but the case was dismissed in the furtherance of justice. He was also convicted of a charge of Disorderly Conduct: Intoxication Drug/Alcohol (a misdemeanor). The sentence was to serve 12 months' probation and spend 38 days in jail. A warrant was issued on 5/20/12 for Failure to Appear, and on 6/4/12 Mr. Swagerty was arrested as a fugitive from Justice.

OBSERVATIONS AND MENTAL STATUS

On 8/17/12, Mr. Swagerty presented as an adequately groomed Caucasian male who appeared his chronological age. He was dressed in clean jail-issued clothing. His gait and posture were unremarkable. His eye contact was direct. Mr. Swagerty was cooperative with evaluation. His speech was average in pace, volume and prosody, but mildly pressured. He offered over-inclusive responses, and at times his attorney directed to him to just answer the question and not go into related topics. Mr. Swagerty was able to comply. He did not interrupt or speak over this examiner. He denied hallucinations in current, reporting that he had experienced hallucinations only when using methamphetamines. He was able to follow our conversation, and at no time during the interview did he appear to be responding to internal stimuli. Mr. Swagerty denied paranoid ideation and other delusions. However, he was grandiose. For example, he took credit for steering Congress in the right direction, claimed to have been awarded a Seals Team coin for reasons that were "classified," was writing screenplays and wanted to "Make movies, do production design" in Hollywood, and was a political analyst posting on his own website. His mood was not expansive or euphoric, but was appropriate to the topic under discussion. He characterized his mood in recent days as "stressed because of this," referring to his legal peril. His sleep and appetite were within normal limits. He denied suicidal and assaultive ideation.

This defendant had no apparent significant deficits in cognitive functioning. He was alert and oriented in all spheres. His concentration was adequate as he was able to subtract serial sevens and follow our conversation. His immediate and short-term memory was intact, as he was able to register three of three items and recall three of three after a period of delay and distraction. His long-term memory was adequate as he was able to present a coherent personal history. Mr. Swagerty's expressive and receptive language skills were good as he was able to identify common objects, repeat a brief phrase, follow oral directions, read and follow written directions, and responded relevantly to questions. Intellectual functioning was consistent with above-average intelligence. Mr. Swagerty's insight and judgment were fair with regard to his current circumstances.

DIAGNOSTIC FORMULATION

This 48-year-old man presented with a documented history of treatment for bipolar disorder, according to DOC and Oregon prison records. His usual symptoms were lack of need for sleep, persistent euphoria or irritable mood, grandiosity, pressured and abundant speech, when manic or hypomanic, and suicidal ideation and attempts when deeply depressed. At the time of this evaluation, Mr. Swagerty was compliant with his prescribed regimen of lithium, a mood-stabilizer, and was mildly hypomanic. That is, his speech was loquacious and slightly pressured, but he was redirectable. He continued to be grandiose with regard to his importance in the political sphere, but was overall reality-oriented. There were no indications that he was hallucinating or had delusions other than an inflated sense of his achievements. He was alert and oriented, with organized thought processes. A diagnosis of Bipolar II Disorder, Most Recent Episode Hypomanic, is merited.

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In addition, Mr. Swagerty reported a history of chronic and severe substance abuse, beginning in early adolescence and continuing since that time, including while imprisoned, according to Oregon DOC records. Mr. Swagerty claimed to have ceased using cocaine, methamphetamines, heroin and cannabis almost two years ago, but admitted drinking alcohol in large quantities during the 18 months prior to his arrest. He noted he had experienced some symptoms of withdrawal during the early days of his detention. Diagnoses of Polysubstance Dependence and Alcohol Dependence are merited.

In addition, Mr. Swagerty presented as an individual who had significant personality pathology. All records and his own report reveal significant involvement with the criminal justice system, and he evidenced an ego-syntonic criminal attitude. He expressed no remorse for his actions or any need to change his behavior. He demonstrated behavioral problems in high school (fighting, criminal offenses, drug abuse), and had a history of criminal offenses in at least four states since that time. He evidenced a personality pattern suggestive of limited coping skills, failure to conform to social norms with respect to lawful behavior, impulsivity, failure to plan ahead, irritability, reckless disregard for safety of self and others and consistent irresponsibility. There seems little doubt that Mr. Swagerty is suffering from a character pathology. However, I do not have sufficient records regarding his early history to diagnose Antisocial Personality Disorder, and therefore a diagnosis of Personality Disorder with Antisocial Traits is offered.

While this defendant reported that he had been hit by a car at age five and had been knocked unconscious in car accidents and fights, he did not appear to have suffered profound effects. He showed no signs of cognitive impairment such as mental retardation or dementia. Intelligence testing done at DOC facilities had consistently shown his intellectual functioning to be in the high average to superior range, and his current presentation was consistent with those test results.

Overall, Mr. Swagerty's presentation at the time of this interview was reflective of his appropriate concern regarding his current legal peril.

My diagnostic impressions were:

- Axis I: Bipolar II Disorder, Most Recent Episode Hypomanic
 Alcohol Dependence in a controlled environment (by self-report, in sustained full remission)
 Polysubstance Dependence (cannabis, heroin, cocaine, hallucinogens methamphetamines) in a controlled environment
- Axis II: Personality Disorder with Antisocial Traits
 Axis III: Deferred

COMPETENCY TO STAND TRIAL

Mr. Swagerty was interviewed about his understanding of court process and proceedings and his ability to assist in his defense. He cited his offense as "Child Rape, Child

Molestation." When asked if those charges were in the first degree, he said, "Oh, whatever." He believed them to be serious charges, specifically felonies. He also believed that should he be found guilty of those charges, the penalty would be "a lot time, because of my criminal record." Under "the sentencing guidelines, I'd go to prison."

This defendant had extensive experience with the criminal justice system, and there was no reason to believe he would be unable to apply the information previously acquired to his current situation. Mr. Swagerty knew the basic pleas available to a defendant and the possible outcomes of each. He knew how a plea bargain worked. He understood the process of a trial and knew the rights of a defendant. He knew the roles of the courtroom participants and clearly understood the adversarial nature of the proceedings. For example, the prosecutor "puts on the case to prove the defendant is guilty." He would not speak to the prosecutor without his attorney's presence, because "he looking to get anything to railroad you." When asked whether a defendant was considered guilty until he proved himself innocent, or if he was considered innocent until the prosecutor proved he was guilty, Mr. Swagerty chose the latter. When asked if he believed the proceedings against him would be fair, Mr. Swagerty responded, "I hope so." He did not voice any notions that the proceedings would not be fair.

Mr. Swagerty was responsive to his attorney's direction during the interview, in that when his response to a question was long with excessive detail, he complied with direction to "just answer the question." He expected to ask his attorney to explain anything he didn't understand, rely on his attorney for advice concerning his legal defense, and to allow his attorney to speak for him in the courtroom. He felt comfortable telling his attorney all that he could remember about the time around the alleged offense. If he disagreed with something his attorney was doing with regard to his case, he could "bring it up to the judge." But first, he would "talk to the attorney, try to iron it out."

Mr. Swagerty was aware of the behavior required of a defendant in the courtroom. When asked what he would do if a witness told a lie about him, he stated he would "write something done" to show his attorney. "I wouldn't scream out." His behavior throughout this interview was controlled and calm.

During the course of this evaluation Mr. Swagerty was able to express himself in a rational manner, and communicated his interests effectively. It is likely that he would be able to do so with defense counsel. His grandiosity did not extend to his beliefs regarding his charges, his defense, or the proceedings against him. At the time of this evaluation he did not appear to be experiencing symptoms of a mental disorder that would impair his perception, reasoning, motivation to defend himself, or ability to communicate. **Consequently, it is my opinion that Mr. Swagerty had the capacity to understand the nature of the proceedings against him, and had the capacity to assist in his defense.**

DMHP RECOMMENDATION

An opinion is required as to whether or not the defendant should receive an RCW 71.05 civil commitment evaluation by a DMHP. This opinion is based solely upon the above evaluation under RCW 10.77.060. Other reasons may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.

At the time of this evaluation, there were no significant indicators of a need for evaluation by a DMHP for civil commitment under RCW 71.05. Should he discontinue his medications, however, he may decompensate and the Court may then wish to order such an evaluation.

As my evaluation is completed with the submission of this report, I respectfully request that Mr. Swagerty be returned to court for further proceedings. If I can be of further assistance to the Court, please contact me.

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cc: Pierce County Superior Court
Angelica Williams, Deputy Prosecuting Attorney
David Shaw and Mark Quigley, Defense Counsel
Nate Hinrichs, Pierce County DMHP
Judy Snow, Pierce County Jail

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 27 day of May, 2014



Kevin Stock, Pierce County Clerk

By /S/Tyler Wherry, Deputy.

Dated: May 27, 2014 4:00 PM



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