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

IN RE THE PERSONAL RESTRAINT  
PETITION OF:

EDUARDO SANDOVAL,  
  
Petitioner.

NO. 47471-9

STATE'S RESPONSE TO PERSONAL  
RESTRAINT PETITION

A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

1. Must the petition be dismissed where the petitioner cannot show actual prejudice to a constitutional right?
2. Does the crime of conspiracy to commit murder in the first degree by extreme indifference to human life legally exist?
3. Was the prosecuting attorney's rebuttal argument supported by evidence?
4. Does the petitioner show that the improper argument deprived him of a fair trial?
5. May the petitioner raise instructional error regarding the lesser included offense of manslaughter for the first time in his second Personal Restraint Petition (PRP)?

- 1           6.     Was a cautionary instruction regarding accomplice testimony necessary  
2                     where the State's case did not rely solely on such evidence?  
3           7.     May the petitioner raise the issue for the first time in his second PRP?  
4           8.     Does the petitioner demonstrate deficiency of appellate counsel and  
5                     prejudice thereby?  
6           9.     Is the petitioner's standard range sentence erroneous?

7    B.     STATUS OF PETITIONER:

8           Petitioner, Eduardo Sandoval, is restrained pursuant to a Judgment and Sentence  
9    entered in Pierce County Cause No. 10-1-04055-4. Appendix A.

10           After a trial, the petitioner was found guilty of murder in the first degree, assault in  
11    the first degree, and conspiracy to commit murder in the first degree. Appendix A. The  
12    petitioner filed a direct appeal and a Personal Restraint Petition (PRP). These were  
13    consolidated by the Court of Appeals. The Court affirmed his conviction and denied the  
14    PRP. *See State v. Sandoval*, #43039-8-II and 44780-1-II, noted at 180 Wn. App. 1005  
15    (2014)( 2014 WL 1092844). The Mandate issued on August 19, 2014. Appendix B. The  
16    petitioner filed a Petition for Writ of Habeas Corpus on April 3, 2015. This was transferred  
17    to the Court of Appeals two weeks later. Under RCW 10.73.140 and RAP 16.4, it was then  
18    transferred to the Supreme Court, because the Court of Appeals would treat it as a  
19    successive petition<sup>1</sup>.

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25    <sup>1</sup> The State does not discuss the issue of this being a successive petition because the Supreme Court may review successive petitions. *See e.g. In re Personal Restraint of Turay*, 153 Wn. 2d 44, 101 P. 3d 854 (2004).

1 C. ARGUMENT:

2 1. THE CRIME OF CONSPIRACY TO COMMIT MURDER BY EXTREME  
3 INDIFFERENCE LEGALLY EXISTS.

4 Under RCW 9A.28.040, a person commits criminal conspiracy when, “with intent  
5 that conduct constituting a crime be performed, he or she agrees with one or more persons  
6 to engage in or cause the performance of such conduct, and any one of them takes a  
7 substantial step in pursuance of such agreement”. The punishable conduct of the  
8 conspiracy is the plan, the conspiratorial agreement, not the specific criminal object or  
9 objects. *State v. Bobic*, 140 Wn. 2d 250, 265, 996 P. 2d 610 (2000); *State v. Williams*, 131  
10 Wn. App. 488, 496, 128 P. 3d 98 (2006).

11 First degree murder by extreme indifference under RCW 9A.32.030(1)(b) punishes  
12 “conduct which creates a grave risk of death to any person.” The provision covers a wide  
13 range of such “conduct”: extreme vehicular homicide (*State v. Barstad*, 93 Wn. App. 553,  
14 970 P. 3d 324 (1999)); extreme “road rage” (*State v. Pestrana*, 94 Wn. App. 463, 972 P.  
15 2d 557 (1999)); short-changed drug dealers shooting at a customer’s car (*State v. Pettus*,  
16 89 Wn. App. 688, 951 P. 2d 284 (1998); and gangs asserting their turf in a crowded street  
17 (*State v. Yarbrough*, 151 Wn. App. 66, 210 P. 3d 1029 (2009)).

18 *State v. Henderson*, 182 Wn. 2d 734, 344 P. 3d 1207 (2015) is a recent example of  
19 gang members shooting indiscriminately, resulting in a person’s death. There, the  
20 defendant fired into a group or crowd of people outside a house party in the Hilltop  
21 neighborhood of Tacoma. In holding that the defendant had been entitled to a jury  
22 instruction on a lesser charge of manslaughter, the Supreme Court clarified the level of risk  
23 required for murder, compared with manslaughter. *Id.*, at 743. Murder by extreme  
24 indifference requires a “grave risk of death”, while manslaughter requires a “substantial  
25 risk” of a homicide. *Id.*

1           There is no question that persons may conspire to commit such conduct. Sadly, we  
2 see regular examples of this in the news. A group conspires to set off a car bomb in a  
3 crowded city; during the Boston marathon, outside a restaurant, or in front of an office  
4 building. The group needs no intent to kill anyone in particular, or anyone at all. The  
5 explosion may kill one or more people; it may only injure; it may only blow up the car. But  
6 the act, the conduct, certainly creates a “grave risk of death” and displays “circumstances  
7 manifesting an extreme indifference to human life.” The conspiracy punished is the  
8 agreement to act.

9           Similarly, where, as in *Pestrana* and *Pettus*, a person opens fire on a car driving  
10 down the street; or as in *Henderson*, at a group of people standing in front of a house, the  
11 perpetrator needs no intent to kill anyone in particular, or anyone at all. But the act, the  
12 conduct, certainly creates a “grave risk of death” and displays “circumstances manifesting  
13 an extreme indifference to human life.” Here, a group of ELS gang members engaged in a  
14 hunting party. To avenge an assault on one of their own, their agreed purpose was to  
15 locate, and shoot at, suspected rival gang members. The conduct committed is legally the  
16 same as in *Henderson*, *Pestrana*, and *Pettus*. The only difference is that here the  
17 perpetrators, including the petitioner, agreed in advance to commit the conduct, and then  
18 acted to carry it out.

19           Similarly, a person can be an accomplice to murder in the first degree by extreme  
20 indifference to human life. Legally, there is no difference in the culpability of crime  
21 participants. *See*, RCW 9A.08.020(1), (2)(c). An accomplice is no less guilty than another  
22 participant. *See State v. Carter*, 154 Wn.2d 71, 78, 109 P.3d 823 (2005).

23           An accomplice must have actual knowledge that other participants were engaging  
24 in the crime eventually charged. *See State v. Allen*, 182 Wn. 2d 364, 341 P. 3d 268 (2015);  
25 *State v. Shipp*, 93 Wn.2d 510, 517, 610 P.2d 1322 (1980).

1            *Allen*, cited by the petitioner, does discuss accomplice liability, but has different  
2 facts than the present case. Allen was charged and convicted as an accomplice to  
3 premeditated murder. The factual issue for the jury in that case was whether Allen knew  
4 that Maurice Clemmons planned to kill the police officers in the coffee shop where Allen  
5 dropped him off. While the case was reversed by the Supreme Court for improper legal  
6 argument regarding knowledge, his challenge to the sufficiency of the evidence on this  
7 issue was rejected in the Court of Appeals. 178 Wn. App. 893, 903-904, 317 P. 3d 494  
8 (2014).

9            As argued above, one can agree to engage in the extreme conduct punished by the  
10 statute. One can help plan such conduct and participate in it, knowing what the  
11 consequences may be. As illustrated above, one may help plan and participate in a  
12 bombing or a drive-by shooting. The participants know what they are doing; they know  
13 that it creates a grave risk of death. That is the whole point of their conduct. Obviously,  
14 they are also “extremely indifferent” as to the consequences for human life.

15            Borrowing from the facts in *Henderson*, if the petitioner had helped plan and then  
16 participate in conduct where he drove and another person (Mr. Zuniga, perhaps) fired a gun  
17 into a crowd, there would be no legal question whether the petitioner was an accomplice to  
18 a resulting murder. Here, the factual issue at trial was whether the petitioner knew that the  
19 other participants were going to shoot at suspected rival gang members. The jury and the  
20 Court of Appeals rejected his challenge to the sufficiency of the evidence of his  
21 participation.

22            2. THE PROSECUTOR DID NOT COMMIT MISCONDUCT IN REBUTTAL  
23            CLOSING.

24            A defendant claiming that a prosecuting attorney committed misconduct during  
25 closing argument must prove that the prosecuting attorney’s remarks were both improper

1 and prejudicial. *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011). A  
2 defendant can establish prejudice only if there is a substantial likelihood that the  
3 misconduct affected the jury's verdict. *State v. Carver*, 122 Wn. 2d 300, 306, 93 P. 3d 947  
4 (2004). If a curative instruction could have cured the error and the defense failed to request  
5 one, then reversal is not required. *State v. Binkin*, 79 Wn. App. 284, 293-294, 902 P.2d  
6 673 (1995), *overruled on other grounds* by *State v. Kilgore*, 147 Wn.2d 288, 53 P.3d 974  
7 (2002); *see, State v. Warren*, 165 Wn. 2d 17, 195 P. 3d 940 (2008).

8         When reviewing an argument that has been challenged as improper, the court  
9 should review the context of the whole argument, the issues in the case, the evidence  
10 addressed in the argument and the instructions given to the jury. *State v. Russell*, 125  
11 Wn.2d 24, 85-6, 882 P.2d 747 (1994). Where defense counsel objected to a prosecutor's  
12 remarks at trial, the trial court's rulings are reviewed for abuse of discretion. *State v.*  
13 *Gregory*, 158 Wn.2d 759, 809, 147 P.3d 1201 (2006).

14         The appellate court should review the argument in the context of the entire closing  
15 and the court's instructions. The Court's focus is less on what the prosecutor said; but  
16 rather on the effect which was likely to flow from the remarks. *See, State v. Emery*, 174  
17 Wn.2d 741, 762, 278 P. 3d 653 (2012). "The criterion always is, has such a feeling of  
18 prejudice been engendered or located in the minds of the jury as to prevent a [defendant]  
19 from having a fair trial?" *Id.*, quoting *Slattery v. City of Seattle*, 169 Wash. 144, 148, 13  
20 P.2d 464 (1932).

21         Here, the remarks at issue occurred in rebuttal argument. In its closing, the general  
22 theme of the defense was that he was not guilty because he was not a participant in the  
23 crimes charged. 32 RP 3714. In closing, defense counsel tried to minimize the petitioner's  
24 connection to and status in the ELS gang. 32 RP 3732. He argued that the petitioner was a  
25 reluctant gang member and a minimal participant in activities. 32 RP 3733.

1 In response to this, the prosecutor pointed out that the petitioner was a senior and  
2 trusted member of the gang. This argument was supported by testimony that the petitioner  
3 was an ELS member with the tattoos to proclaim it. 9 RP 821, 822-823, 10 RP 873, 16 RP  
4 1900. He attended meetings where the violent crimes were discussed and planned (10 RP  
5 938-939, 16 RP 1916), even when it was to plan the murder of Juan Zuniga, the head of  
6 their own gang. 16 RP 1909-1910. The defendant was armed with a firearm at one of the  
7 meetings. 10 RP 929. He was a high-ranking member of the ELS gang. 10 RP 855.

8 The prosecutor argued that the petitioner was an "OG". 32 RP 3736. This was a  
9 conclusion or inference from the evidence. Alfredo Villagomez testified that the petitioner  
10 was a senior member of the ELS gang. 10 RP 855. Antonio Gonzalez testified that the  
11 petitioner had been in the gang for 5-6 years. 16 RP 1902. Gonzalez explained that "OG's"  
12 are older or original gang members. 17 RP 2123. Carlos Basilio testified that "OG" gang  
13 members were more important than other members. 20 RP 2650.

14 Closing arguments that appeal to the passion and prejudice of jurors, based on race  
15 or ethnicity, deny a defendant a fair trial. *See State v. Monday*, 171 Wn.2d 667, 257 P. 3d  
16 551 (2011)(arguing credibility of witnesses); *State v. Belgarde*, 110 Wn.2d 504, 755 P. 2d  
17 174 (1988)(arguing that the defendants were like terrorists). But in the present case, no  
18 such thing happened.

19 The prosecutor argued that Asian or Pacific Islanders were not ELS gang members.  
20 32 RP 3737. This was supported by testimony that Time Time, Dean Salavea, and Taleafoa  
21 were Samoans. 12 RP 1196. Although these men participated in the violent activities of the  
22 gang, they were not members. 16 RP 1907, 20 RP 2525, 2530. Only gang members,  
23 Hispanics, were allowed at the planning meetings. 16 RP 1914. The prosecutor was free to  
24 argue that as a Hispanic, the petitioner was an insider, with greater status than others; even  
25 though the non-members participated fully in the violent activities.

1                   3. THE FACTS DID NOT SUPPORT AN INSTRUCTION ON THE LESSER  
2                   INCLUDED OFFENSE OF MANSLAUGHTER.

3                   The appellate court reviews an alleged instructional error regarding a trial court's  
4                   decision whether to instruct on a lesser-included offense for both legal and factual prongs.  
5                   See *State v. Workman*, 90 Wn.2d 443, 447–448, 584 P.2d 382 (1978). If based on the  
6                   factual prong, the trial court's refusal to instruct jury on lesser included offense is reviewed  
7                   for abuse of discretion. See *State v. Henderson*, 182 Wn. 2d 734, 743, 344 P.3d 1207  
8                   (2015), citing *State v. Walker*, 136 Wn.2d 767, 771–772, 966 P.2d 883 (1998).

9                   A defendant is entitled to an instruction on a lesser included offense when (1) each  
10                  of the elements of the lesser offense is a necessary element of the charged offense, and (2)  
11                  the evidence in the case supports an inference that the lesser crime was committed.

12                  *Workman*, 90 Wn.2d at 447–448. The petitioner is correct that, as to the legal prong of the  
13                  *Workman* test, manslaughter is a lesser included offense of murder by extreme  
14                  indifference. *Henderson*, at 737. Although the trial court referred to *Pettus* and *Pestrana*,  
15                  which had been cited by the defense, the facts discussed by the State and the decision by  
16                  the court concerned “grave risk of death”, not just “wrongful act”. 32 RP 3674-3675. In  
17                  *Henderson*, the Supreme Court rejected the “risk of wrongful act” definition of  
18                  recklessness in favor of the “risk of homicide”. *Id.*, at 147-148, citing *State v. Gamble*, 154  
19                  Wn.2d 457, 114 P.3d 646 (2005). The trial court’s review of the evidence and its  
20                  conclusion was correct.

21                  When determining if the evidence is sufficient to support giving an instruction, the  
22                  reviewing court views the evidence in the light most favorable to the party that requested  
23                  the instruction. *State v. Fernandez–Medina*, 141 Wn.2d 448, 455–456, 6 P.3d 1150  
24                  (2000). But the party requesting the instruction must point to evidence that *affirmatively*  
25                  *supports* the instruction, and may not rely on the *possibility* that the jury would disbelieve  
                    the opposing party's evidence. *Id.*, at 456; *State v. Ieremia*, 78 Wn. App. 746, 755, 899

1 P.2d 16 (1995). An inference that only the lesser offense was committed is justified “[i]f  
2 the evidence would permit a jury to rationally find a defendant guilty of the lesser offense  
3 and acquit him of the greater.” *Fernandez–Medina*, 141 Wn.2d at 456 (quoting *State v.*  
4 *Warden*, 133 Wn.2d 559, 563, 947 P.2d 708 (1997)).

5 In the present case, the evidence showed that the petitioner was an ELS gang  
6 member. Because another gang had recently shot at ELS members and associates, the ELS  
7 planned to seek out rival gang members driving or walking in the area and shoot at them.  
8 10 RP 939. The petitioner was present during the meeting where this was planned,  
9 discussed, and members were assigned various roles and tasks to carry it out. 10 RP 938.  
10 The petitioner’s role was to act as a scout; looking for targets and alerting the others to the  
11 presence of police. 16 RP 1917. The petitioner knew what was going to happen when rival  
12 gang members were found: someone from the ELS group was going to shoot them. 16 RP  
13 1924, 1929, 20 RP 2551. That is exactly what happened when the other ELS members,  
14 riding in the stolen van, saw the victims’ car.

15 Even viewing the evidence in the light most favorable to the petitioner, he knew  
16 that the ELS was going to shoot at the rival gang members. There was no evidence that the  
17 ELS or the petitioner was going to act, or did act, with mere recklessness or even  
18 negligence. The whole purpose was to shoot at people. The evidence showed that the van  
19 containing the ELS members pulled up next to the victims’ car. 8 RP 594, 595. The ELS  
20 members knew that the car was occupied; they could see the victims; they had exchanged  
21 “looks” or “stares” at an intersection shortly before the shooting. 8 RP 592. The gang  
22 members fired 12-15 times into the occupied car.

23 Here, the State took the position that the crime charged, and the State had proven,  
24 an intentional act. 32 RP 3674-3675. The State pointed out that the evidence in this case  
25 was that the defendants fired approximately 15 rounds at close range into a car that the

1 shooters knew was occupied. 32 RP 3674-3675. There was no evidence to support the  
2 argument or a jury conclusion that the act was merely reckless, and thus support an  
3 instruction on manslaughter. The court agreed and found that the evidence did not support  
4 the instruction. 32 RP 3675. The trial court did not abuse its discretion in declining to  
5 instruct on manslaughter.

6 The right to a lesser included offense instruction is a statutory right, not a  
7 constitutional right. *See* RCW 10.61.006; *see also State v. Tamalini*, 134 Wn.2d 725, 728,  
8 953 P.2d 450 (1998). Such an alleged error does not constitute a manifest error affecting a  
9 constitutional right under RAP 2.5(a)(3). *State v. Lord*, 117 Wn.2d 829, 880, 822 P.2d 177  
10 (1991) (failure to instruct on lesser included is not an error of constitutional magnitude).

11 A personal restraint petition, like a petition for a writ of habeas corpus, is not a  
12 substitute for an appeal. *In re Hagler*, 97 Wn.2d 818, 823-24, 650 P.2d 1103 (1982). A  
13 petitioner asserting a constitutional violation must show actual and substantial prejudice.  
14 *In re Personal Restraint of Davis*, 152 Wn.2d 647, 670, 101 P.3d 1 (2004); *In re Personal*  
15 *Restraint of Haverty*, 101 Wn.2d 498, 681 P.2d 835 (1984). The State need not show  
16 harmless error. *See Hagler*, at 823. Inferences, if any, must be drawn in favor of the  
17 validity of the judgment and sentence and not against it. *Id.*, at 825-26. A petitioner  
18 relying on non-constitutional arguments must demonstrate a fundamental defect, which  
19 inherently results in a complete miscarriage of justice. *In re Personal Restraint of Cook*,  
20 114 Wn.2d 802, 810-811, 792 P.2d 506 (1990).

21 To obtain relief, however, the petitioner must demonstrate that he was prejudiced.  
22 If a thorough review of the record, including the arguments of counsel and the weight of  
23 evidence of guilt discloses that the instruction could not have contributed to the verdict,  
24 then the defendant has not been prejudiced. *In re Personal Restraint of Music*, 104 Wn.2d  
25 189, 191, 704 P.2d 144 (1985). To succeed on his collateral attack, the petitioner has to

1 prove by a preponderance of the evidence that he was actually and substantially prejudiced  
2 by the instructional error. See *In re Personal Restraint of Delgado*, 160 Wn. App. 898,  
3 911, 251 P.3d 899 (2011). See also *In re Personal Restraint of Brockie*, 178 Wn. 2d 532,  
4 539, 309 P. 3d 498 (2013).

5 Here, even if the petitioner shows the alleged error, he fails to show actual and  
6 substantial prejudice, the second requirement for a PRP. To demonstrate actual prejudice,  
7 the petitioner must show by a preponderance of the evidence that had the jury received an  
8 instruction regarding the lesser included offense of manslaughter, it would have reached a  
9 different decision. *Borrero*, 161 Wn.2d at 536. But the petitioner does not present any  
10 reason why such an instruction would have made any difference when, as shown above,  
11 the jury had evidence from three of the participants that the petitioner participated in a  
12 hunting party where his co-participants fired at least 12 shots into an occupied vehicle,  
13 killing one person and injuring another. 13 RP 1403, 1407. The petitioners own statement  
14 confirmed his presence, participation, and knowledge of the plans for violence. Thus, the  
15 petitioner does not show that the verdicts would have been different.

16 4. A CAUTIONARY INSTRUCTION REGARDING ACCOMPLICE  
17 TESTIMONY WAS UNNECESSARY WHERE THE STATE DID NOT  
18 RELY SOLELY ON THAT EVIDENCE.

19 WPIC 6.05 is mandatory only when the State's case-in-chief rests solely upon  
20 uncorroborated accomplice testimony. WPIC 6.05, cmt. at 184, citing *State v. Willoughby*,  
21 29 Wn. App. 828, 630 P.2d 1387 (1981). "Whether failure to give this instruction  
22 constitutes reversible error when the accomplice testimony is corroborated by independent  
23 evidence depends upon the extent of corroboration." *State v. Harris*, 102 Wn.2d 148, 155,  
24 685 P.2d 584 (1984), *overruled on other grounds by State v. McKinsey*, 116 Wn.2d 911,  
25 914, 810 P.2d 907 (1991). "When substantial corroborating evidence exists, the instruction  
need not be given." WPIC 6.05, cmt. at 184, citing *Harris*, 102 Wn.2d at 155.

1  
2 “(1) [I]t is always the better practice for a trial court to give the cautionary  
3 instruction whenever accomplice testimony is introduced; (2) failure to  
4 give this instruction is always reversible error when the prosecution relies  
5 solely on accomplice testimony; and (3) whether failure to give this  
6 instruction constitutes reversible error when the accomplice testimony is  
7 corroborated by independent evidence depends upon the extent of  
8 corroboration. If the accomplice testimony was substantially corroborated  
9 by testimonial, documentary or circumstantial evidence, the trial court did  
10 not commit reversible error by failing to give the instruction.”

11 *Harris*, 102 Wn.2d at 155, *overruled on other grounds by State v. Brown*, 111 Wn.2d 124,  
12 761 P.2d 588 (1988).

13 Here, the State presented over 20 other witnesses, including the surviving victim,  
14 Joshua Love (8 RP 587 ff, 595-599, -612), and the petitioner’s own statements to Det.  
15 Davis and Det. Reopelle (25 RP 3159, 26 RP 3213) which admitted his participation in the  
16 events. The trial court went through an extensive review of the evidence and witnesses  
17 which corroborated the testimony of the accomplices. 32 RP 3666-3674. The court did not  
18 abuse its discretion.

19  
20 5. THE PETITION FAILS TO SHOW DEFICIENCY OF PREVIOUS TWO  
21 APPELLATE COUNSEL AND PREJUDICE THEREBY.

22 In order to prevail on an appellate ineffective assistance of counsel claim, the  
23 petitioner must show that the legal issue which appellate counsel failed to raise had merit  
24 and that they were actually prejudiced by the failure to raise or adequately raise the issue.  
25 *In re Personal Restraint of Lord*, 123 Wn.2d 296, 314, 868 P.2d 835 (1994). Failure to  
raise all possible nonfrivolous issues on appeal is not ineffective assistance, and the  
exercise of independent judgment in deciding what issues may lead to success is the heart  
of the appellate attorney's role. *Id.* Yet if a petitioner can show that his appellate counsel  
failed to raise an issue with underlying merit, then the first prong of the ineffective

1 assistance test is satisfied. See *In re Personal Restraint of Maxfield*, 133 Wn.2d 332, 344,  
2 945 P.2d 196 (1997).

3 Under the second prong of the ineffective assistance of appellate counsel test, the  
4 Supreme Court has required that the petitioner show that he was “actually prejudiced by  
5 the failure to raise or adequately raise the issue.” *Id.*; see also *Lord*, 123 Wn.2d at 314. In  
6 *Smith v. Robbins*, 528 U.S. 259, 285, 120 S. Ct. 746, 145 L. Ed. 2d 756 (2000), the United  
7 States Supreme Court reiterated that the proper standard for evaluating claims of  
8 ineffective assistance of appellate counsel derives from the standard set forth in *Strickland*  
9 *v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Court held  
10 that Robbins was required to demonstrate prejudice, “[t]hat is, he must show a reasonable  
11 probability that, but for his counsel's unreasonable failure to file a merits brief, he would  
12 have prevailed on his appeal.” *Smith*, 528 U.S. at 285–286.

13 Here, the petitioner had two successive appellate counsel. Appellate counsel must  
14 decide which issues to pursue; which are most viable on appeal. Appellate counsel does  
15 not render ineffective assistance merely because he or she chooses not to raise all possible  
16 issues on appeal. *Lord*, 123 Wn.2d at 314. The evidence showed that the petitioner was not  
17 present during the fatal shooting; but was several blocks away, hoping to stay out of it.  
18 Therefore, sufficiency of the evidence was probably the strongest issue for him.

19 The petitioner now argues that the crimes of conspiracy and accomplice liability to  
20 commit murder in the first degree by extreme indifference are non-existent crimes. While  
21 he makes a legal argument, there are no cases that so hold. It is an arguable point.  
22 Counsel's failure to anticipate changes in the law does not constitute deficient performance.  
23 See *State v. Brown*, 159 Wn. App. 366, 372, 245 P.3d 776 (2011). None of his three prior  
24 attorneys; one at trial and two on appeal, raised this issue. They are not necessarily all  
25

1 deficient just because they did not come up with the same legal theory as his current  
2 lawyer.

3 At trial, his attorney did propose manslaughter as a lesser included offense. CP  
4 254-258. The court's definition of "reckless" was the one his attorney proposed. CP 259,  
5 331. Also, his attorney agreed to the State's proposed instructions #12 (definition of  
6 murder/extreme indifference) and #14 (elements of murder/extreme indifference). CP 248.  
7 The court used these instructions. CP 333, 335.

8 Where the defense proposes or accepts an instruction that is later given by the  
9 court, he may not complain of it on appeal. The alleged error in the instructions would be  
10 invited, even if of constitutional magnitude. *See State v. Henderson*, 114 Wn.2d 867, 870-  
11 71, 792 P.2d 514 (1990); *State v. Phelps*, 113 Wn. App. 347, 353, 57 P.3d 624 (2002). The  
12 appellate court is precluded from reviewing jury instructions when the defendant has  
13 proposed an instruction or agreed to its wording." *State v. Winings*, 126 Wn. App. 75, 89,  
14 107 P.3d 141 (2005).

15 Therefore, where the defendant did not propose a "revised" definition of  
16 recklessness per *State v. Gamble*, 154 Wn. 2d 457, 467, 114 P. 3d 646 (2005), nor request  
17 additional or different instructions regarding the definition or elements, neither appellate  
18 counsel was deficient for failing to raise such an invited error on appeal. Because any error  
19 in the instructions was invited, the petitioner cannot show the prejudice prong; that he  
20 would have prevailed on appeal.

#### 21 6. THE STANDARD RANGE SENTENCE WAS PROPER.

22 Generally, a standard range sentence may not be appealed. *See RCW 9.94A.585(1);*  
23 *State v. Ammons*, 105 Wn. 2d 175, 183, 713 P. 2d 719 (1986). When a defendant is  
24 convicted of two or more serious violent offenses, the standard sentence range for the  
25 offense with the highest seriousness level is calculated using history that is not "serious

1 violent”; and the standard sentence range for other current serious violent offenses is  
2 determined by using an offender score of zero. RCW 9.94A.589(1)(b). All sentences  
3 imposed under this subsection are served consecutively to each other. *Id.* Firearm  
4 enhancements are mandatory and served consecutively to each other and to all other  
5 sentencing provisions, including the underlying sentences. RCW 9.94A.533(e).

6 Here, the petitioner was sentenced for three “serious violent” offenses: murder in  
7 the first degree, assault in the first degree, and conspiracy to commit murder in the first  
8 degree. *See* RCW 9.94A.030(45)(a)(i) and (v). His score, based on his prior history, was  
9 correctly calculated as three. Appendix A. His standard range for murder in the first degree  
10 was 271-361 months. *Id.* The court sentenced the petitioner to 361 months on Count I, 240  
11 months on Count II, and 123 months on Count III. *Id.* The assault, conspiracy, and three  
12 60-month firearm enhancements were all consecutive to the murder sentence. The total  
13 was 904 months in prison. The jury did return special verdicts finding that the crimes were  
14 aggravated under RCW 9.94A.535(3)(aa)(gang activity). CP xx-yy. The court noted this on  
15 the judgment. Appendix A. However, the court sentenced within the standard range, not an  
16 aggravated exceptional sentence. *Id.*

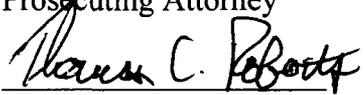
17 The Legislature has plenary power to set punishments and sentences, within  
18 constitutional limits. *See, State v. Thorne*, 129 Wn. 2d 736, 767, 921 P. 2d 514 (1996);  
19 *see also State v. Manussier*, 129 Wn. 2d 652, 675, 921 P. 2d 473 (1996). Therefore, the  
20 petitioner can only challenge the length of the sentence as violating the Eighth Amendment  
21 of the United States Constitution, or Article 1, §14 of the State Constitution. He asserts that  
22 his sentence is disproportionate. Pet. at 49. In a proportionality review, the Court  
23 considers: (1) the nature of the offense; (2) the punishment the defendant would have  
24 received in other jurisdictions for the same offense; and (3) the punishment imposed for  
25 other offenses in the same jurisdiction. *Manussier*, at 677. All three of the petitioner’s

1 convictions have maximum sentences of life in prison. He fails to compare his sentence to  
2 other jurisdictions, such as the federal system or other states. Because his is a standard  
3 range sentence under RCW 9.94A, the sentence would be the same for anyone in  
4 Washington convicted of the same offenses and with the same offender score. He fails to  
5 demonstrate constitutional error.

6 D. CONCLUSION:

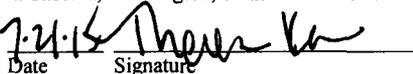
7 The petitioner had a fair trial where the court properly instructed the jury. His  
8 previous appellate attorneys identified and argued the issues they judged to have the best  
9 chance for success. The petitioner does not demonstrate deficiency of counsel or prejudice.  
10 The State respectfully requests that the petition be denied.

11 DATED: July 21, 2015.

12 MARK LINDQUIST  
13 Pierce County  
14 Prosecuting Attorney  
15   
16 Thomas C. Roberts  
17 Deputy Prosecuting Attorney  
18 WSB # 17442

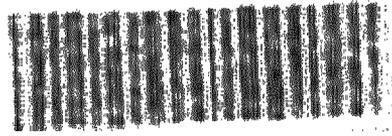
17 Certificate of Service:

18 The undersigned certifies that on this day she delivered by air mail or  
19 ABC-LMI delivery to the petitioner true and correct copies of the document to  
20 which this certificate is attached. This statement is certified to be true and  
21 correct under penalty of perjury of the laws of the State of Washington. Signed  
22 at Tacoma, Washington, on the date below.

23 7-21-15   
24 Date Signature

# **APPENDIX “A”**

*Judgment and Sentence*



10 1 04055 4 37944954 JDSWCD 02 06 12



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 10-1-04055-4

FEB - 6 2012

vs.

EDUARDO SANDOVAL,

Defendant.

WARRANT OF COMMITMENT

- 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)

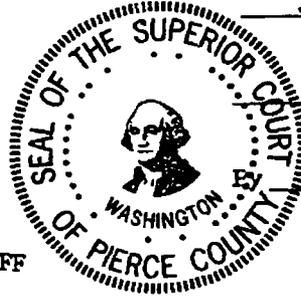
X 2 YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

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)

By direction of the Honorable

Dated 2 3 / 12



JUDGE  
KEVIN STOCK LINDA CJ LEE

CLERK  
Chris Hutton  
DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

~~FEB - 6 2012~~ Chris Hutton Deputy

STATE OF WASHINGTON

ss

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.

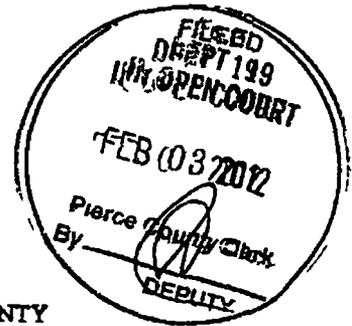
IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

KEVIN STOCK, Clerk

By \_\_\_\_\_ Deputy

mms





SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

FEB - 6 2012

Plaintiff,

CAUSE NO 10-1-04055-4

vs.

JUDGMENT AND SENTENCE (FJS)

EDUARDO SANDOVAL

Defendant.

- Prison  RCW 9 94A.712 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

SID 23074686  
DOB 02/14/1989

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 JANUARY 12, 2012 by  plea  jury-verdict  bench trial of

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
I	MURDER IN THE FIRST DEGREE (D2)	9A.32.030(1)(b) 9 41 010 9 94A. 530 9 94A. 533 9 94A. 535(3)(aa) 9 94A. 030	F	02/07/10	TPD 100381104
II	ASSAULT IN THE FIRST DEGREE (E23)	9A.36.011(1)(a) 9 41 010 9 94A. 530 9 94A. 533 9 94A. 535(3)(aa) 9 94A. 030	F	02/07/10	TPD 100381104

12-9-01229-7

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
III	CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE (D1-C)	9A.32.030(1)(a) 9 41 010 9 94A. 530 9 94A. 533 9 94A. 535(3)(aa) 9 94A. 030	F	02/07/10	TPD 100381104

\* (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 SECOND AMENDED Information

- A special verdict/finding for use of firearm was returned on Count(s) I, II, III RCW 9 94A.602, 9 94A. 533
- 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 (1st 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	UPOF 2 <sup>ND</sup>	03/20/07	PIERCE CO	02/27/07	J	NV
2	UPOF 2 <sup>ND</sup>	08/12/08	PIERCE CO	07/18/08	J	NV
3	PSP 3 <sup>RD</sup>	01/26/06	PIERCE CO	11/13/05	J	MISD
4	UPCS	07/14/09	PIERCE CO	05/08/09	A	NV
5	DWLS 2 <sup>ND</sup>		LAKWOOD MUNI	11/27/08	A	MISD

The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9 94A.525)

The defendant committed a current offense while on community placement (adds one point to 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	3	XV	271 - 361 MOS	60 MOS	331 - 421 MOS	LIFE
II	0	XV	180 - 240 MOS	60 MOS	240 - 300 MOS	LIFE
III	0	XII	93 - 123 MOS	60 MOS	153 - 183 MOS	LIFE

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) \_\_\_\_\_

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 2 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 defend'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 Courts 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

RTN/RIN	\$ <u>LOC</u>	Restitution to _____
	\$ _____	Restitution to _____
	(Name and Address--address may be withheld and provided confidentially to Clerk's Office)	
PCV	\$ <u>500.00</u>	Crime Victim assessment
DNA	\$ <u>100.00</u>	DNA Database Fee
PUB	\$ <u>1500<sup>00</sup></u>	Court-Appointed Attorney Fees and Defense Costs
FRC	\$ <u>200.00</u>	Criminal Filing Fee
FCM	\$ _____	Fine
CLF	\$ _____	Crime Lab Fee <input type="checkbox"/> deferred due to indigency

WFR \$ \_\_\_\_\_ Witness Costs

JFR \$ \_\_\_\_\_ Jury Fee

FPS/SFR/SFS

SFW/SFM/WRF \$ \_\_\_\_\_ Service of Process

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ \_\_\_\_\_ Other Costs for \_\_\_\_\_

\$ \_\_\_\_\_ Other Costs for \_\_\_\_\_

\$ 2200 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

Restitution ordered above shall be paid jointly and severally with

	NAME of other defendant	CAUSE NUMBER	(Victim name)	(Amount-\$)
RJN	JARROD MESSER	10-1-04054-6		
	TIME TIME	10-1-04729-0		
	SAUL MEX	10-1-04730-3		
	DEAN SALAVEA	10-1-04731-1		

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 100 per month commencing Per 100 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 Josh Love (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for Life 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.

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


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)

361 months on Court I 123 months on Court I I  
240 months on Court III \_\_\_\_\_ months on Court \_\_\_\_\_  
~~180~~

A special finding/verdict having been entered as indicated in Section 2.1 the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections

60 months on Count No I 60 months on Count No II  
60 months on Count No III \_\_\_\_\_ months on Count No \_\_\_\_\_

Sentence enhancements in Counts I, II, III shall run  
 concurrent  consecutive to each other and underlying counts  
Sentence enhancements in Counts \_\_\_\_\_ shall be served  
 flat time  subject to earned good time credit

Actual number of months of total confinement ordered is 904 ~~600~~ 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 served consecutively per RCW 9.94A.589(1)(a) & RCW 9.94A.585(3)(aa)  
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 499 ~~499~~ days  
credit for time served

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

- Count \_\_\_\_\_ for \_\_\_\_\_ months;
- Count \_\_\_\_\_ for \_\_\_\_\_ months;
- 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, II, III 36 months for Serious Violent 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)

(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 JUGL Love

remain  within [ ] outside of a specified geographical boundary, to wit Per CCW.

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

participate in the following crime-related treatment or counseling services Per CCW.

[ ] 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 See Appendix F.

[ ] Other conditions

[ ] For sentences imposed under RCW 9 94A 712, 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

47 [ ] 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.

48 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

51 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

52 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)

53 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

54 RESTITUTION HEARING  
[ ] Defendant waives any right to be present at any restitution hearing (sign initials) \_\_\_\_\_

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55 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

56 FIREARMS You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicaid, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9 41 040, 9 41 047

57 SEX AND KIDNAPPING OFFENDER REGISTRATION RCW 9A.44 130, 10 01 200

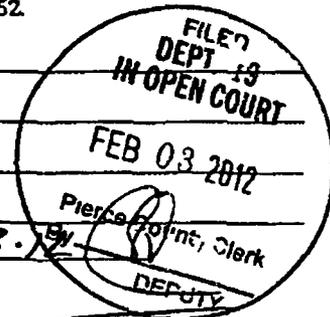
N/A

58 [ ] 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

59 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.

5 10 OTHER \_\_\_\_\_

DONE in Open Court and in the presence of the defendant this date 2.3.12



JUDGE

Print name Linda Lee

[Signature]

Deputy Prosecuting Attorney

Print name Jared Ausarier

WSB # 32719

Attorney for Defendant

Print name Steve Johnson

WSB # 29214

Refuses to Sign

Defendant

Print name Edgardo Sandoval

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 \_\_\_\_\_

JUDGMENT AND SENTENCE (JS)

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

**CERTIFICATE OF CLERK**

CAUSE NUMBER of this case 10-1-04055-4

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**

~~Court Reporter~~ Kellie Smith

APPENDIX "F"

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

- sex offense
- 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 \_\_\_\_\_  
*Per CCU.*

(II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals \_\_\_\_\_  
*Josh Love*

(III) The offender shall participate in crime-related treatment or counseling services; *Per CCU.*

(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 \_\_\_\_\_

IDENTIFICATION OF DEFENDANT



SID No. 23074686  
(If no SID take fingerprint card for State Patrol)

Date of Birth 02/14/1989

FBI No. 594540KC1

Local ID No. UNKNOWN

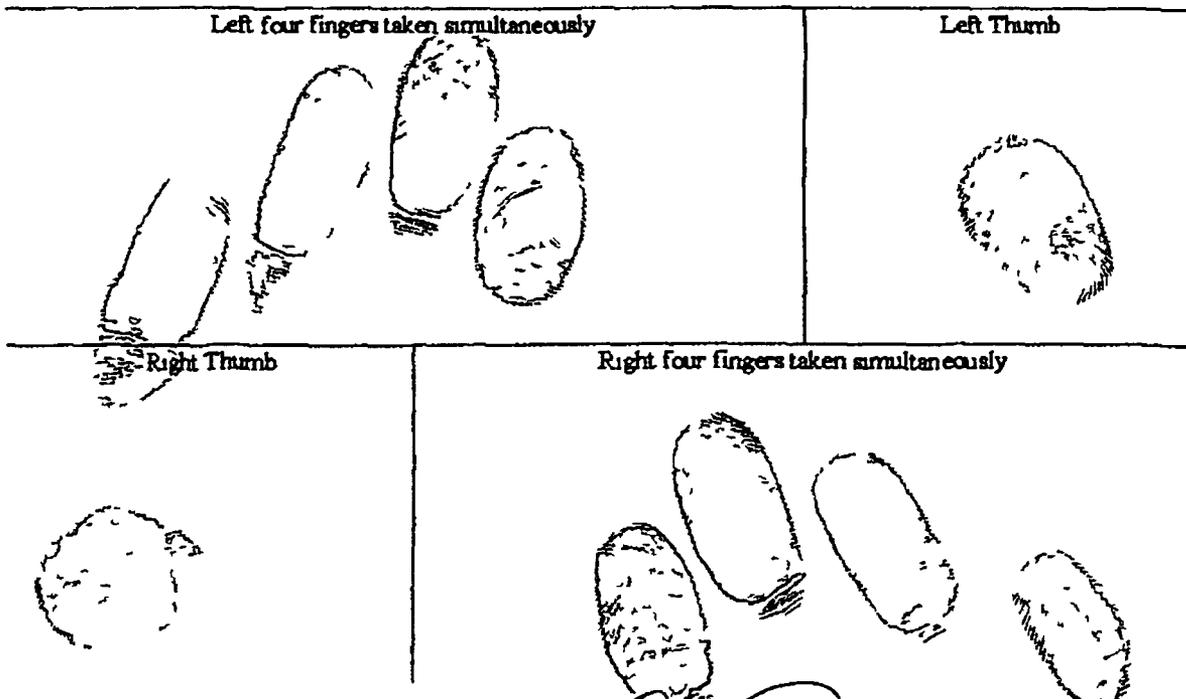
PCN No. 540233446

Other

Alias name, SSN, DOB EDAURDRO S SANDOVAL, DOB 02/14/1991, EDUARDO SANDOVAL, DOB 02/14/1991

<b>Race</b>	<input type="checkbox"/> Asian/Pacific Islander	<input type="checkbox"/> Black/African-American	<input checked="" type="checkbox"/> Caucasian	<b>Ethnicity</b>	<input checked="" type="checkbox"/> Hispanic	<b>Sex</b>	<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, [Signature] Dated 2-3-12

DEFENDANT'S SIGNATURE x Refusing to sign

DEFENDANT'S ADDRESS D.C.

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 21 day of July, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Jul 21, 2015 2:33 PM



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# **APPENDIX “B”**

*Mandate and Opinion*

August 19 2014 2:31 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 10-1-04055-4

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

EDUARDO SANDOVAL,

Appellant.

---

In the Matter of the Personal Restraint  
Petition of:

EDUARDO SANDOVAL

Petitioner.

No. 43039-8-II

Consolidate with

No. 44780-1-II

MANDATE

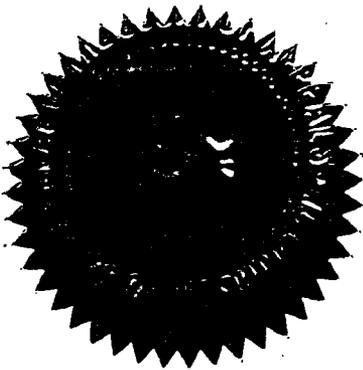
Pierce County Cause No.  
10-1-04055-4

The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

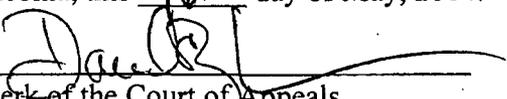
This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on March 19, 2014 became the decision terminating review of this court of the above entitled case on April 21, 2014. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

Judgment Creditor; State of Washington, Pierce Co.;\$5.38  
Judgment Creditor; Appellate Indigent Defense Fund;\$13,167.62  
Judgment Debtor; Eduardo Sandoval; \$13,173.00

Page 2  
Mandate 43039-8-II



IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court at  
Tacoma, this 10th day of May, 2014.

  
Clerk of the Court of Appeals,  
State of Washington, Div. II

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Hon. Linda Lee  
Pierce Co Superior Court Judge  
930 Tacoma Ave South  
Tacoma, WA 98402

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 21 day of July, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Jul 21, 2015 2:33 PM



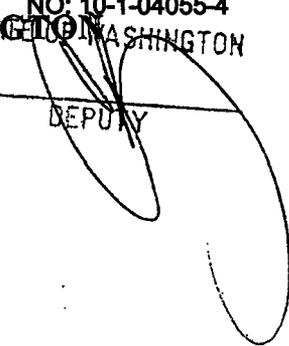
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NO: 10-1-04055-4  
PIERCE COUNTY WASHINGTON

BY   
DEPUTY

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

**DIVISION II**

STATE OF WASHINGTON,  
Respondent,

No. 43039-8-II

v.

EDUARDO SANDOVAL,  
Appellant.

Consolidated with

In the Matter of the Personal Restraint  
Petition of:

No. 44780-1-II

EDUARDO SANDOVAL,  
Petitioner.

UNPUBLISHED OPINION

WORSWICK, C.J. — After a jury trial, Eduardo Sandoval was convicted of first degree murder, first degree assault, and conspiracy to commit first degree murder. Sandoval appeals, arguing that the evidence is insufficient to support any of his convictions. We disagree and affirm. In a pro se personal restraint petition, Sandoval further challenges (1) the legality of his arrest, (2) the admissibility of his custodial statements, and (3) the State's authority to prosecute him. We dismiss the petition.

**FACTS**

Sandoval was a member of a gang known as the Eastside Lokotes Sureños (ELS). Riding in a stolen van, other ELS members shot the passengers of a car, wounding Joshuah Love and killing his sister, Camille Love.

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Cons. with No. 44780-1-II

Two days before the Loves' shooting, an unknown person shot an ELS member named Naitaalii Toleafoa outside a bar in Tacoma. The ELS leader, Juan Zuniga, believed that Toleafoa had been shot by a member of the Pirus, a rival gang affiliated with the Bloods gang.

The day after Toleafoa's shooting, Sandoval and Antonio Gonzalez attended an ELS meeting. At the meeting, Zuniga announced that ELS would "retaliate on the people that shot [Toleafoa]." 16 Verbatim Report of Proceedings (VRP) at 1924. Zuniga had a stolen van ready for this purpose.

The ELS members met for a second meeting the following day. Zuniga assigned Gonzalez and Sandoval to look out for police and Bloods on Tacoma's "Eastside," while three other ELS members would shoot from the stolen van.

At the ELS meetings Zuniga did most of the talking, with little input from others. Gonzalez explained that he was obliged to participate in Zuniga's plan because "by being part of the gang, you have to be involved in stuff." 16 VRP at 1925. Likewise, Sandoval stated that he did not challenge Zuniga because "it's not in my authority to even go against his word." Ex. 5F at 7.

After the second meeting Gonzalez and Sandoval left in Gonzalez's sport utility vehicle, with Gonzalez's children in the back seat. They drove around and stopped at McKinley Park, where Gonzalez and Sandoval smoked marijuana and where they briefly encountered the three ELS members in the stolen van. Gonzalez and Sandoval then traveled around the Eastside "just seeing if there was any cops around and stuff." 16 VRP at 1937. They saw police parked at a KeyBank near 72nd Street and Portland Avenue, and Sandoval called Zuniga to relay this

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information. After “just driving back and forth” for a time, Gonzalez parked at Boze Elementary School, where they smoked more marijuana. 16 VRP at 1939-40. Later, they went to a McDonald’s drive-thru where they saw police cars with lights and sirens activated on 72nd Street.

After receiving a phone call telling them to leave the area, Gonzalez drove Sandoval home. The next day, one of the ELS members who had been in the stolen van told Gonzalez that they had shot the occupants of a red car near 56th Street and Portland Avenue because one of the occupants threw gang signs. Joshua Love survived his gunshot wounds, but Camille Love died.

The investigation of the Loves’ February 2010 shooting stalled until May 2010, when ELS members, with Gonzalez’s assistance, killed Zuniga. Gonzalez pleaded guilty to first degree murder of Zuniga and promised to testify in both the Zuniga case and the Love case.

In September 2010, Sandoval’s probation officer arrested him without a warrant at the Puyallup Fair. After being transferred to the custody of Tacoma police, Sandoval was advised of his *Miranda*<sup>1</sup> rights. Sandoval then gave a recorded statement that was later published at trial.

In the recorded statement, Sandoval said that, unlike Zuniga, he believed there was no basis to conclude that Bloods were responsible for Toleafoa’s shooting. He stated “I would have never went along” with the plan to retaliate and that on the day of the Loves’ shooting the ELS members drove around just because they were mad. Ex. 5F at 8. Sandoval further denied telling Zuniga about the presence of police and said he accompanied Gonzalez because he was sure Gonzalez would not have endangered his children.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

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By second amended information, the State charged Sandoval with first degree murder of Camille Love, first degree assault of Joshua Love, and conspiracy to commit first degree murder. The State sought both firearm and gang sentencing enhancements for each count. The jury found Sandoval guilty on all three counts and further found in special verdicts that the State had proved facts supporting the sentence enhancements.

Sandoval appeals. He also filed a petition for a writ of habeas corpus, which the trial court transferred to us for consideration as a personal restraint petition. *See* CrR 7.8.

#### ANALYSIS

Sandoval argues that the evidence was insufficient to support his convictions (1) under an accomplice liability theory for first degree murder and first degree assault and (2) for conspiracy to commit first degree murder. We disagree.

When a defendant challenges the sufficiency of the evidence supporting his conviction, we examine the record to decide whether any rational fact finder could have found that the State proved each element of the offense beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). In a sufficiency of the evidence challenge, the defendant admits the truth of all the State's evidence; therefore we consider the evidence and all reasonable inferences from it in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Further, direct evidence and circumstantial evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

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A. *Complicity*

Sandoval argues that the evidence is insufficient to show that he was an accomplice to first degree murder or first degree assault. We disagree.

A defendant is liable as an accomplice for another person's crime if the defendant (1) "[a]ids or agrees to aid such other person in planning or committing it" and (2) has "knowledge that it will promote or facilitate the commission of the crime." RCW 9A.08.020(3)(a)(ii).

Sandoval appears to claim that the evidence fails to show *both* (1) that he aided or agreed to aid the planning or commission of the shooting *and* (2) that he knew his conduct would promote or facilitate the shooting. We disagree.

1. *Aiding or Agreeing To Aid the Shooting*

First, Sandoval claims that the evidence fails to show that he "participated in the shooting in any way." Br. of Appellant at 15. But this framing distorts the issue. The actus reus of complicity is not *participation* but instead *aiding or agreeing to aid in the planning or commission of the crime*. RCW 9A.08.020(3)(a)(ii); see *State v. Roberts*, 142 Wn.2d 471, 502, 14 P.3d 713 (2000).

Here, the evidence is sufficient to prove that Sandoval aided *and* agreed to aid the planning or commission of the shooting. Given testimony that ELS members unquestioningly executed Zuniga's directives, the jury could reasonably infer that Sandoval agreed to aid the planning of the shooting during the meeting at which Zuniga directed him to look out for police and Bloods. Further, the jury could find that Sandoval actually aided the commission of the shooting by accompanying Gonzalez to the Eastside and advising Zuniga that police were

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present. A rational trier of fact could have found, beyond a reasonable doubt, that Sandoval aided or agreed to aid the planning or commission of the shooting. *See* RCW 9A.08.020(3)(a)(ii).

Arguing to the contrary, Sandoval claims that the evidence supports his version of events: that (1) he “did not assent to and had no intent to assist in the shootings” and (2) he and Gonzalez disobeyed Zuniga by smoking marijuana in a parking lot when they were supposed to be acting as lookouts. Br. of Appellant at 15. But in a sufficiency of the evidence challenge, we consider the evidence in the light most favorable to the State. *Salinas*, 119 Wn.2d at 201.<sup>2</sup>

2. *Knowledge That His Conduct Would Promote or Facilitate the Crime*

Second, Sandoval appears to assert that the evidence also fails to establish the mens rea—i.e., that he knew his conduct would promote or facilitate the shooting. This assertion lacks merit.

The State elicited testimony that (1) Sandoval attended a gang meeting at which Zuniga announced a plan to retaliate for Toleafoa’s shooting, and (2) the plan called for Sandoval to act as a lookout while other gang members would shoot from a stolen van. Because it is reasonable to infer that Sandoval knew the plan that Zuniga announced in his presence, a rational fact finder could find that the State proved beyond a reasonable doubt that Sandoval knew his actions as lookout would promote or facilitate the planned shooting. *See* RCW 9A.08.020(3)(a); *Roberts*, 142 Wn.2d at 513 (complicity requires merely general knowledge of the principal’s crime, not

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<sup>2</sup> Sandoval further asserts that no evidence showed (1) he was present at the scene of the shooting or (2) he was ready to assist in the shooting. But because Sandoval’s complicity is shown through other evidence, we do not address these assertions.

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specific knowledge of each element). With respect to his convictions for first degree murder and first degree assault, Sandoval's argument fails.

B. *Conspiracy*

Sandoval next argues that the evidence is insufficient to support his conviction for conspiracy to commit first degree murder. We disagree.

A defendant is liable for criminal conspiracy "when, with intent that conduct constituting a crime be performed, he or she agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement." RCW 9A.28.040(1). The requisite agreement must be a genuine confederation or combination of minds. *State v. Pacheco*, 125 Wn.2d 150, 155, 882 P.2d 183 (1994).

To prove a conspiracy, the State need not show a formal agreement. *State v. Wappenstein*, 67 Wash. 502, 509-10, 121 P. 989 (1912); *State v. Barnes*, 85 Wn. App. 638, 664, 932 P.2d 669 (1997). Instead, the existence of an agreement may be proven by evidence of a concert of action in which the parties work together understandingly to accomplish a common purpose. *State v. Casarez-Gastelum*, 48 Wn. App. 112, 116, 738 P.2d 303 (1987) (quoting *Marino v. United States*, 91 F.2d 691, 694 (9th Cir. 1937)). Because an agreement may be inferred from the parties' declarations and actions, circumstantial evidence may provide proof of a conspiracy. *Barnes*, 85 Wn. App. at 664.

Here, the evidence is sufficient for a rational trier of fact to conclude that Sandoval agreed to be a lookout. The State elicited testimony that (1) Sandoval was an ELS member, (2)

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ELS members unquestioningly executed Zuniga's orders, and (3) Sandoval and Gonzalez patrolled the Eastside as lookouts, as Zuniga had ordered them to do.

However, Sandoval claims the evidence is insufficient to prove that he agreed to a plan, *intending to commit murder*. We disagree.

When a defendant is charged with conspiracy to commit first degree murder, the State must prove that the defendant was a party to an agreement to commit first degree murder. *State v. Smith*, 131 Wn.2d 258, 263, 930 P.2d 917 (1997). A person commits first degree murder if he kills another (a) with premeditated intent, (b) by engaging in conduct creating a grave risk of death under circumstances manifesting an extreme indifference to human life, or (c) during certain forms of felony murder. RCW 9A.32.030(1).

Sufficient evidence supports Sandoval's conviction for conspiracy to commit first degree murder under circumstances manifesting an extreme indifference to human life. Zuniga's plan called for Gonzalez and Sandoval to act as lookouts while three other ELS members would shoot at Bloods from a stolen van. Although Sandoval claimed he intended to avoid involvement in the shooting, the jury was free to disbelieve his claim. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Thus a rational trier of fact could find that Sandoval agreed to a plan that (1) manifested an extreme indifference to human life, (2) created a grave risk of death, and (3) resulted in Camille Love's death. See RCW 9A.28.040(1); 9A.32.030(1)(b).

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Therefore the evidence is sufficient to support Sandoval's conviction for conspiracy to commit first degree murder by extreme indifference.<sup>3</sup> Sandoval's sufficiency of the evidence arguments fail.

#### PERSONAL RESTRAINT PETITION

In his personal restraint petition, Sandoval appears to argue that his restraint is unlawful because (1) his arrest violated the Fourth Amendment,<sup>4</sup> (2) his interrogation violated the Fifth Amendment, and (3) the State lacked authority to prosecute him. We disagree.

We consider the arguments raised in a personal restraint petition under one of two different standards, depending on whether the argument is based on constitutional or nonconstitutional grounds. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). A petitioner raising constitutional error must show that the error caused actual and substantial prejudice. *In re Pers. Restraint of Elmore*, 162 Wn.2d 236, 251, 172 P.3d 335 (2007). In contrast, a petitioner raising nonconstitutional error must show a fundamental defect resulting in a complete miscarriage of justice. *Elmore*, 162 Wn.2d at 251.

Further, a personal restraint petition must state with particularity the factual allegations underlying the petitioner's claim of unlawful restraint. *In re Pers. Restraint of Rice*, 118 Wn.2d

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<sup>3</sup> Sandoval further argues that the evidence fails to show an agreement to commit *premeditated murder* because there was "no agreement as to what, if any, degree of injury would be inflicted by the shooting." Br. of Appellant at 21. But because the evidence is sufficient to prove conspiracy to commit first degree murder by extreme indifference, we do not address this argument.

<sup>4</sup> At the CrR 3.5 hearing, Sandoval argued that his custodial statements were involuntary because his arrest was unlawful.

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Cons. with No. 44780-1-II

876, 885-86, 828 P.2d 1086 (1992). Bald assertions and conclusory allegations are not sufficient. *Rice*, 118 Wn.2d at 886.

First, Sandoval argues that his probation officer violated the Fourth Amendment by arresting him at the Puyallup Fair without having a warrant or affidavit of probable cause. But at arraignment, the superior court's commissioner determined that, based on the prosecutor's declaration, probable cause existed at the time of Sandoval's arrest. This argument fails.

Second, Sandoval argues that Tacoma police violated his Fifth Amendment rights by (1) "using intimidation, coercion, duress, and deception" during his interrogation and (2) interrogating him without advising him of his *Miranda* rights. Pet. at 3. But Sandoval's claim of a coercive interrogation is nothing more than a bald assertion, which is insufficient. *See Rice*, 118 Wn.2d at 886. Further, the trial court determined that Tacoma police advised Sandoval of his *Miranda* rights at the start of the interrogation and again at the beginning of the recorded statement. This argument fails.

Third, Sandoval challenges the State's authority to prosecute him on three meritless grounds. Specifically, Sandoval contends that (1) "the STATE OF WASHINGTON, Corporation is just a name and does not Exist," (2) the State "is Bankrupt" and violated the payment of debts clause in article I, section 10 of the United States Constitution,<sup>5</sup> and (3) the State cannot bring a criminal action or appear in court. Pet. at 3. But, as a matter of law, each

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<sup>5</sup> Sandoval misrepresents article I, section 10 as declaring, "All States Shall Pay their debt in gold and silver coin." Pet. at 3. In fact, article I, section 10, clause 1 provides, "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts."

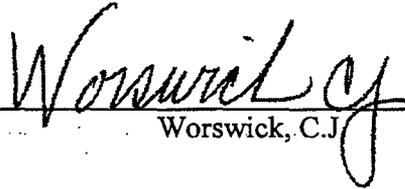
No. 43039-8-II  
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claim fails: (1) the State of Washington has existed since its admission to the Union, ch. 180, 25 Stat. 676, (1889), and Proclamation No. 8, 26 Stat. 1552-53 (Nov. 11, 1889); (2) the payment of debts clause secures private contractual rights and has no apparent relevance to a criminal prosecution, *see Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L. Ed. 648 (1798) (opinion of Chase, J.); and (3) the Washington Constitution *requires* all criminal prosecutions to be conducted in the State's name and by its authority, WASH. CONST. art. IV, § 27.

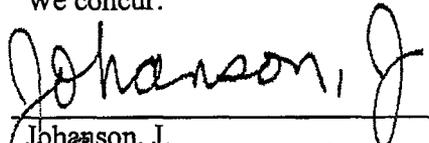
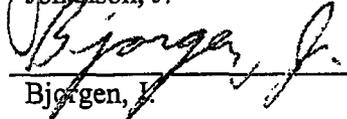
Sandoval fails to make the required showing of a constitutional error or a fundamental defect.<sup>6</sup> Therefore we dismiss his petition.

We affirm the convictions and dismiss the petition.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
Worswick, C.J.

We concur:

  
Johanson, J.  
  
Bjorgen, J.

<sup>6</sup> Sandoval also asserts that his arrest and interrogation each violated the Eighth Amendment's prohibition against cruel and unusual punishment. But because Sandoval fails to state any factual allegations of cruel and unusual punishment with particularity, we do not consider this argument. *See Rice*, 118 Wn.2d at 885-86.

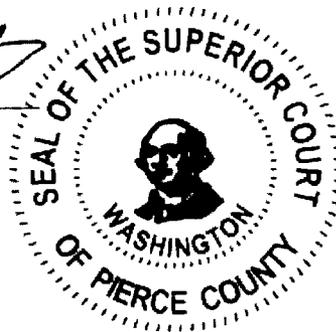
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a true and correct copy of the original now on file in my office.  
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said  
Court this 21 day of July, 2015



Kevin Stock, Pierce County Clerk

By /S/Melissa Jaso, Deputy.

Dated: Jul 21, 2015 2:44 PM



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Court of Appeals Case Number: 47471-9

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