



FILED

OCT 05, 2015
Court of Appeals
Division III
State of Washington

No. 33619-1-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

IN THE PERSONAL RESTRAINT OF
EARL OWEN FLIPPO,
Petitioner.

SECOND PERSONAL RESTRAINT PETITION

RESPONDENT'S BRIEF

Respectfully submitted:

by: Teresa Chen, WSBA 31762
Deputy Prosecuting Attorney

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the sentencing of the Petitioner.

III. ISSUE

Is a challenge to imposition of LFO's time barred, as well as being successive, not preserved for review, and without merit?

IV. STATEMENT OF THE CASE

In Walla Walla Superior Court No. 07-1-00419-7, the Defendant Earl Flippo has been convicted by jury of four counts of child molestation in the first degree. Appendix A. The mandate issued on March 16, 2010. Appendix B. The Defendant has filed this, his second personal restraint petition, to challenge the imposition of legal financial obligations (LFO's) under this cause number.

The judgment and sentence requires the Defendant to pay

\$2619.20 in LFO's at a rate of \$50 a month beginning 60 days after release. App. A at 5-6.

V. ARGUMENT

A. LEGAL STANDARDS.

A pro se petitioner is held to the same responsibility as a lawyer and required to follow applicable statutes and rules. *In re Connick*, 144 Wn.2d 442, 455, 28 P.3d 729 (2001).

In a personal restraint petition the burden of proof shifts to the petitioner. *In re Cook*, 114 Wn.2d 802, 814, 792 P.2d 506 (1990); *Hews v. Evans*, 99 Wn.2d 80, 88, 660 P.2d 263 (1983). The ultimate burden of proof requires that the petitioner establish both error and prejudice by a preponderance of the evidence. *In re Powell*, 117 Wn.2d 175, 184, 814 P.2d 635 (1991); *In re Cook*, 114 Wn.2d at 814.

Bald assertions and conclusory allegations will not support a personal restraint petition. *In re Rice*, 118 Wn.2d 876, 886, 828 P.2d 1086, *cert. denied* 506 U.S. 958, 113 S. Ct. 421, 121 L. Ed. 2d 344 (1992). If the petitioner's allegations are based on matters outside the existing record, the petitioner must demonstrate competent, admissible evidence to establish the facts that entitle him to relief. *Id.*

Only certain claims are permitted: those that claim a constitutional violation or those that demonstrate “a fundamental defect which inherently results in a complete miscarriage of justice.” RCW 7.36.130; *In re Cook*, 114 Wn.2d at 811.

Although a constitutional error is never considered harmless on direct appeal, such an alleged error is not presumed prejudicial for purposes of a personal restraint petition. *In re St. Pierre*, 118 Wn.2d 321, 328, 823 P.2d 492 (1992). A petitioner must demonstrate actual and substantial prejudice for a claim of a constitutional nature; the mere possibility of prejudice is insufficient. *In re Mercer*, 108 Wn.2d 714, 718, 741 P.2d 559 (1987). *See also In re Powell*, 117 Wn.2d at 184 (actual prejudice must be established by a preponderance of the evidence). If the petitioner fails to make a prima facie showing of prejudice, the petition will be dismissed. *In re Grigsby*, 121 Wn.2d 419, 423, 853 P.2d 901 (1993).

B. THE PETITION IS TIME BARRED AND SUCCESSIVE.

A collateral attack, such as a personal restraint petition, must be filed no later than a year after the judgment becomes final. RCW 10.73.090(1). In this case, the Defendant’s judgment was final on the date

of mandate. RCW 10.73.090(3)(b). Because this petition was filed in 2015, more than five years after the 2010 date of finality, it is time barred.

The Defendant proffers no argument that his petition meets some exception under RCW 10.73.100. It does not.

The Court must also refuse review successive petitions. “[T]he court of appeals will not consider” subsequent petitions without a showing of good cause for failing to raise the challenge in a previous petition. RCW 10.73.140. No good cause showing has been made.

C. THE CHALLENGE IS NOT PRESERVED FOR REVIEW.

The Defendant makes this challenge under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). That case discusses a challenge to LFO’s that is brought on direct appeal. This is not a direct appeal.

There the Washington Supreme Court acknowledged that the defendant had no right to be heard on direct appeal where he had failed to preserve error below. The opinion held that “it is well settled” that a defendant who fails to object at the time of sentencing, “is not automatically entitled to review.” *State v. Blazina*, 182 Wn.2d at 832. None of the exceptions in RAP 2.5(a) apply to a late challenge to the imposition of LFO’s. *State v. Blazina*, 182 Wn.2d at 833. The *Blazina*

court held that the court of appeals “properly declined discretionary review” of the challenge. *State v. Blazina*, 182 Wn.2d at 834. The *Blazina* court only opted to review the challenge in an exercise of its discretion. *State v. Blazina*, 182 Wn.2d at 835.

The *Blazina* decision does not require review and most assuredly did not overrule *State v. Duncan*, 180 Wn. App. 246, 327 P.3d 699 (2014) (refusing to review unpreserved challenges to the imposition of LFO’s).

The Defendant admits that he “failed to object.” PRP at 4. Therefore, he did not preserve the error for review. He requests the court overlook this failure in the interests of justice. However, unlike *Blazina*, he did not bring this challenge on direct appeal. Nor did he raise the challenge in his first personal restraint petition. Nor does he provide the sentencing record for this Court’s review. This petition offends the RAP 2.5 principle many times over.

The Defendant is currently incarcerated. Therefore, he is not subject to collections. *State v. Crook*, 146 Wn. App. 24, 27–28, 189 P.3d 811 (2008) (“Mandatory Department of Corrections deductions from inmate wages for repayment of legal financial obligations are not collection actions by the State requiring inquiry into a defendant’s financial status.”). When he is released and collections begin, there will

be other avenues to readdress the LFO's if appropriate. RCW 10.01.160(4). There is no justice principle, which supports this petition. The Court should deny review under RAP 2.5.

D. THE CHALLENGE FAILS ON THE MERITS.

As the *Duncan* opinion explains, at imposition, the State's burden of proof is so low that it can be met by a single reference in a presentence report in which the defendant described himself as employable. *State v. Duncan*, 180 Wn. App. at 250, (citing *State v. Lundy*, 176 Wn. App. 96, 106, 308 P.3d 755 (2013)). But in a personal restraint petition, the burden shifts to the petitioner. *In re Cook*, 114 Wn.2d at 814; *Hews v. Evans*, 99 Wn.2d at 88. The Defendant now bears the burden of proving both error and prejudice. He has offered nothing in support of his petition. He has only checked boxes on a boilerplate petition. He checked a box alleging that "no fact was entered into the record which would support the conclusion that the defendant has had, or will ever have, the ability to pay the LFO imposed under this cause number(s)." PRP at 3. The Defendant has made no effort to prove this allegation, because he has not provided any portion of the sentencing record. His bald assertions will not sustain a collateral attack. *In re Rice*, 118 Wn.2d at 886.

His allegations are also patently false. One document before the court at his sentencing was the Pre-Sentence Investigation (PSI). Appendix D. There we see that the Defendant told the Community Corrections Officer that prior to his arrest he owned his own lawn care business for approximately ten years. App. D at 11.

As a long time business owner, the Defendant has every ability to work and earn an income so as to make payments of \$50 a month toward the \$2600 in LFO's imposed. He is an English speaker. He reported that he had completed his GED at Walla Walla Community College in 2004. *Id.* There is no apparent barrier to the Defendant's ability to earn money, other than the criminal conviction, which is a prerequisite to any LFO imposed as part of a criminal sentence.

The record is more than sufficient to justify the lower court's finding that he will be able to pay \$50/month upon his release. However, this Court should not reach the merits, especially in a case such as this where:

- The petitioner offers no record for the court to review,
- The petition is time barred;
- The petition is successive;

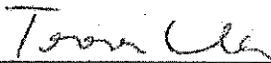
A practice which reaches the merits not only may encourage further boilerplate challenges of unpreserved errors, but also requires a lengthier response for the State and, therefore, results in a larger cost bill upon the defendant.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court dismiss the petition.

DATED: October 5, 2015.

Respectfully submitted:



Teresa Chen, WSBA#31762
Deputy Prosecuting Attorney

Earl O. Flippo (#958101) - legal mail - Airway Heights Corrections Center P.O. Box 2049 Airway Heights, WA 99001-2049	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED October 5, 2015, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201
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**In re the Personal Restraint of Earl Owen Flippo
Court of Appeals No. 33619-1-III**

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- A. Amended Judgment and Sentence, August 25, 2008
- B. Mandate, March 16, 2010
- C. Presentence Investigation, April 11, 2008

APPENDIX A

Amended Judgment and Sentence

August 25, 2008

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WALLA COUNTY
WASHINGTON
BY *M. J.*

SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,)	
	)	NO. 07 1 00419 7
Plaintiff,)	
	)	AMENDED
-vs-	)	JUDGMENT AND SENTENCE
	)	(FELONY)
EARL OWEN FLIPPO,)	
SID NO. WA 14169783	)	PCN NO. 948191296
Defendant.	)	AND 94819920

I. HEARING

1.1 A sentencing hearing in this case was held: APRIL 21, 2008
(Date)

1.2 The defendant, the defendant's lawyer, JAMES E. BARRETT, and the Deputy Prosecuting Attorney, MICHELLE M. MULHERN, were present.

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): Defendant was found guilty on 03/06/08 by verdict of:

Count No.: 1 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code

Date of Crime 12/01/05-03/31/06 Incident No.

Count No.: 2 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code

Date of Crime 12/01/05-03/31/06 Incident No.

AMENDED JUDGMENT AND SENTENCE (8/05)
(RCW 9.94A.505)
P. - 1

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Count No.: 3 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code _____

Date of Crime 12/01/05-03/31/06 Incident No. _____

Count No.: 4 Crime: CHILD MOLESTATION IN THE FIRST DEGREE

RCW 9A.44.083 Crime Code _____

Date of Crime 06/01/06-12/31/06 Incident No. _____

as charged in the (X Amended) Information.

- () Additional current offenses are attached in Appendix 2.1.
- () A special verdict/finding for use of a firearm was returned on Count(s) _____. RCW 9.94A.510.
- () A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.510.
- () A special verdict/finding of sexual motivation was returned on Count(s) _____. RCW 9.94A.535.
- () A special verdict/finding of a RCW 69.50.401(a) and RCW 69.50.435 violation was returned on Count(s) _____ in a school, school bus, within 1000 feet of a designated school bus route or the perimeter of a school grounds; a public transit vehicle, public park, public transit stop shelter; or in or within 1000 feet of the perimeter of a civic center designated as a drug free zone by a local government authority.
- () A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, when a juvenile was present in or upon the premises of manufacture was returned on Count(s) _____. RCW 9.94A.605, 69.50.401, 69.50.440.
- () The defendant was convicted of Vehicular Homicide wherein the defendant was driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner and therefore is a violent offense. RCW 9.94A.030.
- () This case involves Kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.

AMENDED JUDGMENT AND SENTENCE (8/05)
(RCW 9.94A.505)
P. - 2

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- () The court finds that the defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A._____.
- () The offense in Count(s) _____ was committed in a county jail or state correctional facility. RCW 9.94A.510(5).
- () Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589(1)):
- () 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	Sentencing Date	Court County/State	Date of Crime	Adult or Juv.	Crime Type
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NONE COUNTABLE

- () Additional criminal history is attached in Appendix 2.2
- () The defendant committed a current offense while on community placement, which adds one point to the score. RCW 9.94A.525(17).
- () Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.525):

2.3 SENTENCING DATA:

Count No.	Offender Score	Seriousness Level	Standard Range	Enhancement*	Total Standard Range	Maximum Term
1	9+	X	149-198 MOS		149-198 MOS	LIFE
2	9+	X	149-198 MOS		149-198 MOS	LIFE
3	9+	X	149-198 MOS		149-198 MOS	LIFE
4	9+	X	149-198 MOS		149-198 MOS	LIFE

* (F) Firearm, (D) Deadly Weapon, (V) VUCSA in a protected zone, (VH) Vehicular Hom. RCW 46.61.520, (P) Jail/Prison RCW 9.94A.510(4).

- () Additional current offenses sentencing data is attached in Appendix 2.3.

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2.4 EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) 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 that 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. The Prosecuting Attorney () did () did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. (RCW 9.94A.760) The court has considered 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 specifically finds that the defendant has the ability or likely future ability to pay the legal financial obligations ordered herein.

() Extraordinary circumstances exist that make restitution 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 count(s) _____.

3.3 The defendant is found NOT GUILTY of counts _____.

IV. SENTENCE AND ORDER

IT IS ORDERED:

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4.1 LEGAL FINANCIAL OBLIGATIONS. Defendant shall pay to the Clerk of Court:

- \$ TBD, Restitution to: \$ TBD
- \$ 200.00, Court costs (9.94A.030 & .760, 10.01.160, 10.46.190);
- \$ 286.05, Witness fees;
- \$ 250.00, Jury Demand fees;
- \$ 508.15, Sheriff fees; (X) including booking fee (RCW 70.48.390);
- \$ 500.00, Victim assessment (RCW 7.68.035);
- \$ _____, Fine (RCW 9A.20.021); () VUCSA additional fine waived due to indigency (RCW 69.50.430);
- \$ 775.00, Fees for court appointed attorney;
- \$ _____, Court appointed defense expert and other defense costs (RCW 9.94A.030);
- \$ _____, Drug Enforcement fund of _____
- \$ _____, Crime laboratory fee (RCW 43.43.680/690) () waived due to indigency;
- \$ 100.00, \$100.00 Biological Sample fee for felony committed after July 1, 2002 (RCW 43.43.7541)
- \$ _____, Emergency Response Costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum - RCW 38.52.430)
- \$ _____, Extradition costs (RCW 9.94A.760)
- \$ _____, Domestic Violence Penalty Assessment (RCW 10.99.____, \$100 maximum, effective 06/10/04)
- \$ 2,619.20, TOTAL legal financial obligations *

* VICTIM(S) REQUIRE CONTINUING MEDICAL/COUNSELING CARE FOR INJURIES SUSTAINED DURING THE CRIME. THE COURT RESERVES THE RIGHT TO MODIFY THE RESTITUTION AMOUNT FOR FUTURE MEDICAL COSTS.

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(X) The above amount does not include all restitution. Restitution shall be ordered at a later hearing scheduled for TBD.

Payments shall be made on a schedule established by the Department of Corrections or the Clerk of the Court, commencing immediately, unless the Court sets forth the rate as follows: not be less than \$ 50.00 per month commencing 60 DAYS AFTER RELEASE. RCW 9A.9.94A.760.

(X) The Department of Corrections shall have authority to disburse money from the defendant's personal account while he/she is in custody, pursuant to RCW 72.11.020, for court-ordered legal financial obligations.

Payments shall be made to the Clerk of the Court by certified check, money order or cash. Personal checks will not be accepted. Per RCW 10.82.090, Financial Obligations imposed shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. The defendant shall immediately notify the Clerk of any change of address. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160. The defendant shall remain under the court's jurisdiction, for purposes of payment of the legal financial obligations, until the legal financial obligation is completely satisfied. (RCW 9.94A.753(4) and .760(4)).

(X) The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7603.

(X) The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190.

() In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay said costs at the rate of \$50.00 per day, unless another rate is specified here _____. RCW 9.94A.760(2).

() Restitution ordered above shall be jointly and severally with:

<u>Name</u>	<u>Cause Number</u>	<u>Victim</u>	<u>Amount</u>

(X) Bond is hereby exonerated.

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4.2 CONFINEMENT OVER ONE YEAR: The court imposes the following sentence:

(a) CONFINEMENT: Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections commencing _____: (Date)

_____ months on Count No. _____ () concurrent () consecutive
_____ months on Count No. _____ () concurrent () consecutive
_____ months on Count No. _____ () concurrent () consecutive

() Actual number of months of total confinement ordered is:
() This sentence shall be () concurrent with () consecutively to the sentence in _____
Count(s) or cause number(s)

(b) SEXUAL OFFENDER SENTENCING (for specified sex offenses committed after September 1, 2001):

The court imposes the following term of confinement in the custody of the Department of Corrections pursuant to RCW 9.94A.712:

Count <u>1</u>	Minimum Term <u>174</u>	Maximum Term <u>LIFE</u>
Count <u>2</u>	Minimum Term <u>174</u>	Maximum Term <u>LIFE</u>
Count <u>3</u>	Minimum Term <u>174</u>	Maximum Term <u>LIFE</u>
Count <u>4</u>	Minimum Term <u>174</u>	Maximum Term <u>LIFE</u>

(X) Credit is given for 107 (109JT/10GT) days served.

(c) COMMUNITY PLACEMENT/CUSTODY (RCW 9.94A.700-.720). The defendant is sentenced to (X) community custody () community placement for LIFE or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer and statutory mandatory conditions are ordered. Community custody or placement for sex offenders may be extended for up to the statutory maximum term of the sentence. For specified sex offenses committed after September 1, 2001, the Defendant is placed on community custody under the Department of Corrections and the authority of the Indeterminate Sentencing Review Board for any period of time the defendant is released from total confinement before the expiration of the maximum sentence. The terms of community custody or placement shall include the following conditions and affirmative acts necessary to monitor compliance:

(i) The defendant shall report to and be available for contact with the assigned community corrections officer as directed.

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- (ii) The defendant shall work at Department of Corrections-approved education, employment and/or community service.
- (iii) The defendant shall not consume controlled substances except pursuant to lawfully issued prescriptions.
- (iv) The defendant shall not unlawfully possess controlled substances while in community custody.
- (v) The defendant shall pay supervision fees as determined by the Department of Corrections.
- (vi) Defendant shall obey all laws.
- (vii) Defendant shall not directly or indirectly contact the victims of this case or a specified class of individuals:
- (viii) The defendant shall remain within, or outside, of a specified geographical boundary:
- (ix) The defendant shall participate in crime related treatment or counseling services as follows:
 - () inpatient or outpatient alcohol/drug program at his/her expense, at the discretion of his/her probation/community corrections officer. That the duration of treatment is to be at the discretion of his/her probation/community corrections officer.
 - () state certified domestic violence perpetrator treatment or anger management counseling through a state licensed counselor, at the discretion of his/her probation/community corrections officer, at his/her own expense.
 - () Other:
- (x) The defendant shall not consume alcohol.
- (xi) The defendant's residence location and living arrangements, if a sex offender, shall be subject to the prior approval of the Department of Corrections.
- (xii) The defendant shall not reside in a community protection zone (within 880 feet of the facilities and grounds of a public or private school). RCW 9.94A.030(8)

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(xiii) The defendant shall comply with any crime related prohibitions as follows: NO CONTACT WITH CHILDREN UNDER AGE 18

4.4 (X) The defendant shall not have contact, directly or indirectly, with JANIE HOMAN, TAMARA HOMAN, BRANDON L. MANGINI, AND ALYSSA M. CRUZ, for a period of LIFE years (not to exceed the maximum statutory sentence). Violation of a no-contact provision of this order is a criminal offense under RCW 10.99 and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

() A domestic violence protection or antiharassment order is attached as Appendix 4.3.

() Defendant shall enroll in, participate and successfully complete a state certified anger management counseling program at his own expense.

4.5 () WORK ETHIC CAMP PROGRAM. The court finds that the defendant is eligible for the Work Ethic Camp Program pursuant to RCW 9.94A.690 and is likely to qualify for said program. If the defendant successfully completes the Program, the Department of Corrections shall convert the period of Work Ethic Camp confinement at the rate of one day of camp confinement to three days of total standard confinement, and the defendant shall be released on community custody for any remaining time of total confinement. The conditions of community custody are attached hereto in paragraph 4.3 above.

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

4.7 (X) DNA TESTING. The defendant shall have a biological sample taken for the purposes of DNA identification analysis. RCW 43.43.754.

4.8 () OFF LIMITS ORDER (RCW 10.66.020). The following areas are off limits to the defendant while under the supervision of the Department of Corrections: _____

V. NOTICES

5.1 COLLATERAL ATTACK. You are hereby notified that 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 in RCW 10.73.100. RCW 10.73.090.

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5.2 INCOME WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7603. Other income-withholding action under RCW 9.94A. may be taken without further notice. RCW 9.94A.7609.

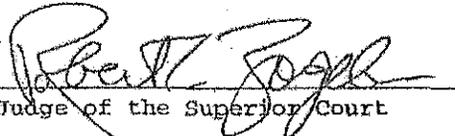
5.3 EACH VIOLATION OF THIS JUDGMENT AND SENTENCE IS PUNISHABLE BY UP TO 60 DAYS OF CONFINEMENT. (RCW 9.94A.634(3)).

5.4 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 clerk shall forward the defendant's driver's license, identicard, or comparable identification to the Department of licensing with the date of conviction. RCW 9.41.040,.04.

5.5 (X) SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130. If applicable, requirements are attached in Appendix 5.5.

ROBERT L. ZAGELOW

Date: Aug 25-08



Judge of the Superior Court

Presented by:


MICHELLE M. MULHERN WSB# 23185
Deputy Prosecuting Attorney

Approved as to form:

JAMES E. BARRETT WSB# 4927
Lawyer for Defendant

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SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,)	
)	
Plaintiff,	)	NO. 07 1 00419 7
)	
-vs-	)	AMENDED APPENDIX 5.5 -
	)	SEX AND KIDNAPPING
EARL OWEN FLIPPO,	)	OFFENDER REGISTRATION
SID NO. WA 14169783)	
Defendant.)	

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. 9.94A.130, 10.01.200. Because this crime involves a sex offense or kidnapping in the first or second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent, you are required to register with the sheriff of the county of the State of Washington where you reside. If you are not a resident of Washington but you are a student, are employed, carry on a vocation in Washington, you must register with the sheriff of the county of your school, employment or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or your release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed, carry out a vocation, or attend school in Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

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

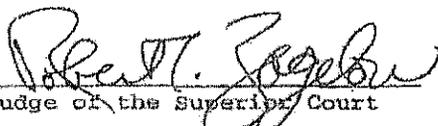
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5 this state, you must send written notice of your change of residence
6 to the sheriff of your new county of residence at least 14 days
7 before moving, register with that sheriff within 24 hours of moving
8 and you must give written notice of your change of address to the
9 sheriff of the county where last registered within 10 days of moving.
If you move out of Washington, you must also send written notice
within 10 days of moving to the county sheriff with whom you last
registered in Washington.

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

15 Even if you lack a fixed residence, you are required to
16 register. Registration must occur within 24 hours of release in the
17 county where you are being supervised if you do not have a residence
18 at the time of your release from custody or within 14 days after
19 ceasing to have a fixed residence. If you enter a different county
20 and stay there for more than 24 hours, you will be required to
21 register in the new county. You must also report in person to the
22 sheriff of the county where you are registered on a weekly basis if
23 you have been classified as a risk level II or III, or on a monthly
24 basis if you have been classified as a risk level I. The lack of a
25 fixed residence is a factor that may be considered in determining a
26 sex offender's risk level.

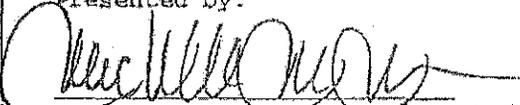
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ROBERT L. ZAGELOW

Date: Aug 25-08


Judge of the Superior Court

Presented by:

Approved as to form:


MICHELLE M. MUBHERN WSBA# 23185
Deputy Prosecuting Attorney


JAMES E. BARRETT WSBA# 4927
Lawyer for Defendant

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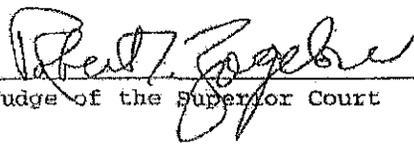
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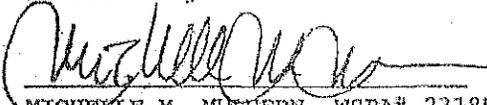
5.5 (X) SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130. If applicable, requirements are attached in Appendix 5.5.

ROBERT L. ZAGELOW

Date: Aug 25-08



Judge of the Superior Court

Presented by:


MICHELLE M. MULHERN WSBA# 23185
Deputy Prosecuting Attorney

Approved as to form:

JAMES E. BARRETT WSBA# 4927
Lawyer for Defendant

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SUPERIOR COURT OF WASHINGTON - COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,)	
)	
Plaintiff,	)	No. 07 1 00419 7
)	
-vs-	)	AMENDED
	)	WARRANT OF COMMITMENT
EARL OWEN FLIPPO,)	
)	
Defendant.)	

THE STATE OF WASHINGTON
TO: The Sheriff of Walla Walla County.

The defendant: EARL OWEN FLIPPO has been convicted in the Superior Court of the State of Washington of the crime(s) of:

- Count 1: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 2: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 3: CHILD MOLESTATION IN THE FIRST DEGREE
- Count 4: CHILD MOLESTATION IN THE FIRST DEGREE

and the court has ordered that the defendant be punished by serving the determined sentence of:

Minimums

(x) 174 (day(s)/month(s)) on Count No. 1,
~~174~~ (day(s)/month(s)) on Count No. 2,
~~174~~ (day(s)/month(s)) on Count No. 3, and
~~174~~ (day(s)/month(s)) on Count No. 4.

() _____ (day(s)/month(s)) of partial confinement in the County Jail.

() _____ (day(s)/month(s)) of total confinement in the County Jail.

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Defendant shall receive credit for 107 days served prior to this date.

() YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

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

X 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.

() The defendant is committed for up to thirty (30) days evaluation at Eastern State Hospital to determine amenability to sexual offender treatment.

() YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Social and Health Services.

() YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

By Direction of the Honorable
ROBERT L. ZAGELOW

ROBERT L. ZAGELOW

Date: 8/25/08

Judge of the Superior Court

KATHY MARTIN

Clerk

Kathy Martin

Deputy Clerk

cc: Prosecuting Attorney
Attorney for Defendant
Defendant
Jail
Institutions (3)

AMENDED WARRANT OF COMMITMENT
(RCW 9.94A.120)
P. - 75

OFFICE OF THE PROSECUTING ATTORNEY
240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 624-5445

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FINGERPRINTS



Right Hand
Fingerprints of:

EARL OWEN FLIPPO

Dated: August 25, 2008

CERTIFICATE

Attested by:

By: [Signature]

OFFENDER IDENTIFICATION

I, _____,
Clerk of this Court, certify
that the above is a true copy
of the Judgment and Sentence
in this action on record in
my office.

Dated: _____

Clerk
By: _____
Deputy Clerk

S.I.D. No. WA14169783

Date of Birth: 03/25/69

Sex: M Race: W

PCN: 948191296/948191920

ORI _____

OCA _____

OIN _____

DOA _____

AMENDED JUDGEMENT AND SENTENCE (FELONY)
FINGERPRINTS (CrR7.3; RCW 9.94A.110,
.120(7), 10.64.110) p-14

OFFICE OF THE PROSECUTING ATTORNEY
240 WEST ALDER, SUITE 201
WALLA WALLA, WA 99362-2807
PHONE (509) 524-5445

APPENDIX B

Mandate

March 16, 2010

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KATHY MARTIN
COUNTY CLERK

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WALLA COUNTY
WASHINGTON
BY *[Signature]*

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,	)	<u>MANDATE</u>
)	
v.	)	No. 27079-3-III
)	
EARL OWEN FLIPPO,	)	Walla Walla County No. 07-1-00419-7
Appellant.)	

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

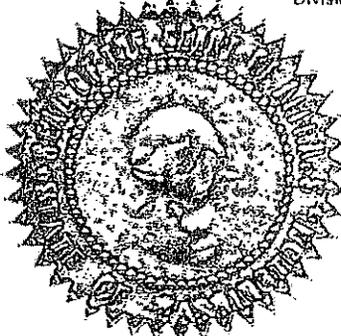
This is to certify that the Opinion of the Court of Appeals of the State of Washington, Division III, filed on September 29, 2009 became the decision terminating review of this court in the above-entitled case on March 12, 2010. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the Opinion.

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There being no objection, costs in the amount of \$48.64 are awarded to the Walla Walla County Prosecuting Attorney office and \$4,242.09 awarded to the Office of Public Defense to be paid by Earl Owen Flippo. RAP 14.3

In testimony whereof, I have hereto set my hand and affixed the seal of said Court at Spokane, this 16th day of March, 2010.

[Signature]
Clerk of the Court of Appeals, State of Washington
Division III



cc: Earl Owen Flippo
Dennis W. Morgan
Michelle M. Mulhern
Teresa J. Chen
Hon. John W. Lohrmann
(Hon. Robert L. Zagelow's case)
Indeterminate Sentence Review Board
Department of Corrections

APPENDIX C

Presentence Investigation

April 11, 2008

FILE
KATHY
COUNTS

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COURT CLERK

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APR 3 2006

[Handwritten Signature]



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRE-SENTENCE INVESTIGATION

TO: The Honorable Judge Zagelow
Walla Walla County Superior Court
NAME: Flippo, Earl O.
ALIAS(ES):
CRIME(S): Child Molestation 1st Degree Counts I, II, III
DATE OF OFFENSE: Count 1: On or about March 1 and
30, 2006.
Count 2: On or about March 1 and
30, 2006
Count 3: On or about March 1 and
30, 2006.
Count 4: On or about March 1 and
30, 2006.

DATE OF REPORT: 4/3/08
DOC NUMBER: 958101
COUNTY: Walla Walla
CAUSE #: 07-1-00419-7
SENTENCING DATE: TBD

CHOOSE ONE ADDRESS: 300 West Alder, Walla
Walla, WA 99362

DEFENSE ATTORNEY: James Barrett

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I. OFFICIAL VERSION OF OFFENSE:

On 1-22-07, College Place Police Department (CPPD) received documents from the Department of Social and Health Services (DSHS) concerning an alleged child molestation that occurred in College Place possibly two years ago. The first DSHS document, incident #1783092, reported that while at school JH (victim) had disclosed to another student that she had been molested by Earl Flippo. Later the student disclosed this information to Brenda Colbert, who then contacted DSHS.

The second document, sent the same date, was generated when the mother of JH, Kandy Homan contacted DSHS and advised that Earl Flippo had molested her two daughters during the month of March, 2006. She did not disclose this information due to the fact she was afraid of Mr. Flippo.

On 2-14-07, DSHS contacted Brenda Colbert. She told them that one of her foster children had come home from school and reported that JH had disclosed to her that Mr. Flippo had molested her. According to CPPD Detective Roger Maidment, he found out that the child had convinced JH to talk about the incident with a teacher at her school.

On 5-1-07 Detective Maidment contacted Kandy Homan at home and advised her that he needed to talk with her two children concerning the incident that happened in 2006. Kandy advised him that the girls had talked very little about the incident. Kandy said she was very afraid of Flippo and that he had a firearm that he kept in his truck. On 5-2-07 Kandy called Detective Maidment back and left a message that her two children were scared and she needed to be with them when they were being interviewed.

On 5-22-07, Detective Maidment's took a statement from Kandy which entailed that the children did not want to be spoken to at school. She believed that this action would be mentally hard on them so she recommended that they be interviewed when school was out on June 14th.

On 6/15/07, Detective Maidment was advised by Kandy Homan that her two children were out of school and at that time she also had a 13 year-old son, QH. He asked Kandy what JH had told her. She told him that JH talked about Mr. Flippo touching and rubbing her crotch area. Detective Maidment asked Kandy if JH talked about penile penetration and she said "no," but Kandy was very vague and told him that JH did not like talking about the incident. He asked about TH (Kandy's other daughter). Kandy told Detective Maidment that TH stated to her mother that Flippo "got his head in." He asked Kandy what TH meant by this. She assumed Mr. Flippo penetrated TH with his penis. He then asked Kandy if TH had given her any additional details about this incident and she said "no." Kandy also told Detective Maidment that she stayed with Mr. Flippo for about three months, from December 2005 through March 2006. Kandy believed this molestation was occurring while she and Mr. Flippo's wife, Heather Flippo, were out of the house. Detective Maidment asked her if her son may have seen any of the assaults and she stated that she did not know. Detective Maidment reported that Kandy told him that she had accidentally had come in contact with Mr. Flippo approximately two months ago. She said that Mr. Flippo told her that he had split with Heather and she had moved to Yakima. Detective Maidment again asked Kandy about a black semi-automatic firearm. Kandy noted that he carried it on his person and/or would stow it in the seat pocket or behind the seat of his vehicle.

In Detective Maidment's report, he had stated he had set up an appointment with Kandy and her two children for Tuesday the 19th at 10:00 a.m. Detective Maidment also reported on this same date, he made a phone call to the Child Protective Services (CPS) office to talk to Brooke Sandoval. On this same date, Kandy called Detective Maidment back and told him that she talked with her son, QH, and asked him if he knew anything about the assaults. QH told her he did not witness any of the assaults; however, he did tell her Mr. Flippo did try to get him to come into the bedroom "and be like a man." He told Kandy that Heather's son, who was living with them, went into the bedroom with Mr. Flippo. QH told Kandy that he would not go into the bedroom with him.

Detective Maidment also made contact with Barbara Thatcher, who is a teacher at Green Park School, and stated that JH disclosed this information to her. Thatcher said JH told her while the other adults were away, Mr. Flippo confronted her in the kitchen. JH said Flippo took her into the bedroom and touched her privates. Thatcher said that JH did not go into much detail and did not want to talk about the incident.

Detective Maidment also stated he called DSHS and found that Heather Flippo had moved to Yakima. He made contact with Lydia (Heather's sister) and discovered that Mr. Flippo was living in the Yakima area. Detective Maidment advised her Mr. Flippo was being investigated by the CCPD. Heather had mentioned to him that she was wondering when she was going to hear back from CCPD regarding the investigation. She told Detective Maidment after Kandy and her children moved out, Mr. Flippo told Heather that Kandy had accused him of molesting her children, and it was not true. Detective Maidment advised Heather her son may have been molested by Mr. Flippo and she should also watch for signs. Heather mentioned to Detective Maidment her son did not like Mr. Flippo. Detective Maidment also was advised by Heather the two are filing for divorce and the papers were to be filed some time this week. He had also found none of the three children of Heather's are related to Mr. Flippo. Heather Flippo told Detective Maidment that Flippo had been accused of molesting her children and she had never heard the final outcome. He told Heather he would be contacting and talking with Walla Walla Police Department concerning her children's cases.

On the same date, Detective Maidment spoke with Detective Sandvig of the WWPd. Detective Sandvig told Detective Maidment that he believed there was no physical evidence to implicate Mr. Flippo with Heather's children. Detective Sandvig said one of Heather's oldest girls had flip-flopped on her statement. Heather had earlier told Detective Maidment her oldest daughter had filed a false police report against Flippo for Child Molestation.

On 6/19/07, Detective Maidment met with Kandy and her three children at the DSHS Office in Walla Walla. Sandoval interviewed JH and TH while Detective Maidment interviewed QII. Sandoval used a digital recorder while interviewing both of the girls. After the interviews, Sandoval informed Detective Maidment that both girls disclosed to her details of Mr. Flippo molesting them. Detective Maidment stated that he spoke with QH in a private room while at the CPS Office. QII told Detective Maidment that Mr. Flippo never touched him, but he did talk to him about one incident where he tried to get him into the bedroom to "mess with him." QH said that Mr. Flippo was asking him if he wanted to be a man. He believed that he wanted to do something sexual to him. QII said that he would not go into Mr. Flippo's room. QH disclosed that one time Mr. Flippo was angry at his mother and placed a gun into her mouth. QH said that when he saw him watching, he asked QII "what was he looking at". Detective Maidment asked QH about the gun the Flippo had, QII described it as a semi-automatic pistol.

Detective Maidment stated later he listened to the recording between Sandoval and TH. When TH was asked why she was there, she told Sandoval "for child abuse." Sandoval asked TH what child abuse meant to her. TH said that it means that a man named Earl

raped her. She then identified Earl as Earl Flippo. She stated Mr. Flippo lived with the family for about a year. Sandoval asked TH what "rape" meant and what did Flippo do to her. She stated that when her mother and Flippo's wife were gone, Flippo took "them" into the bedroom and raped her. She said she did not feel comfortable about it and told him to stop. TH said he did not stop and did it with her sister. TH said that she did not call the police because she was afraid. She added that Mr. Flippo told them that if they told, he would hurt them. Sandoval asked TH where this happened at and she said in College Place. She identified the house as being blue in color. TH described the location of Mr. Flippo's bedroom in the residence and said there were guns. When asked if they were rifles or handguns, TH said handguns. TH added that Flippo also had a knife. TH then disclosed that one time Mr. Flippo and her mother were having an argument and he placed a gun in her mouth. She said she was watching through a vent and added this happened a few times. She said that after this happened, her mother called her grandmother, who came and picked them up.

According to CPS's report, Sandoval asked TH what "raping" is. TH described "raping" as like having sex. She asked TH if she had her clothing off when this happened, and she said "off." TH was asked if she had her underwear off and she said they were around her ankles. Sandoval asked TH if Mr. Flippo touched her with any parts of his body and was told "yes" and called his lower part a "dick." This touching occurred "on her private part". Sandoval asked "front or back" and TH said "front." She asked TH what he did with her and she said that she could not remember. She noted he had his shirt on and his pants were around his ankles. She described his lower part as a "thick stick." Sandoval asked if he put his "dick" anywhere on her. TH stated he put "it" in her lower part. She asked TH if Mr. Flippo said anything when this was happening. She stated he told her if she said anything he was going to hurt her. Sandoval asked TH how many times he touched her with his lower part, TH stated "two or three times." She asked TH if her sister was in the room when this happened and she said "no." Sandoval asked TH if it ever hurt when Flippo touched her in her lower part, and she said "yes." She asked TH if he ever tried to put his "dick" inside of her and she said "yes." Sandoval asked if it went inside of her and TH said "his head." She was asked if she bled, and she said "no". She was asked if anything came out of his penis and she said "no." TH was asked if this happened in the same house, and she said "yes." Sandoval asked her when this happens how long did it last and TH stated "about 15 minutes". She was asked if Flippo took any pictures and she said "no."

Detective Maidment also reported he listened to the recordings between Sandoval and JH. JH stated she is 10 years old. She asked JH if she knew why she was there that day. JH said "yes, because Earl raped her". JH was asked what Earl's last name was and she said "Flippo." Sandoval asked JH what she meant by "rape". JH said "he touched my private parts." She was asked where her private parts were and she said, between her legs and on her chest. Sandoval asked her what he had touched her with and she said with his hands. Sandoval asked JH what did Flippo touch her lower part with, and she said that she did not know and did not remember. She was asked what he touched her upper body with and she said he just rubbed them. JH was asked if he rubbed her with any other part of his body and she said "no." Sandoval asked JH if she had her clothes off or on and she

said "on." Sandoval asked if she or Flippo took off her clothes and JH said "she did." JH was asked and confirmed that Flippo had asked her to take her clothing off. She was asked if her clothes were on when he touched her between the legs and she said "off." Sandoval asked her if her underwear was on or off and JH said "on". JH was asked how many times this happened and she said "about 10 times." She was asked if her mom was home when this happened and she said "no." JH said her sister and brother were home when the incidents happened. Sandoval asked if anyone saw what happened to her and she said "no." She was asked if she told anyone and was told she was afraid because "he" (being Flippo) told her if she told anyone about this, he would "kill her." She was asked where the contact took place and responded by stating "in his bedroom" and "on his bed" She was asked if Flippo made her touch anywhere on his body and she said "no." She talked about the gun incident but did not witness it. Sandoval asked if she ever saw any of Flippo's privates and she said "no."

On 7/09/07, Heather Flippo called Detective Maidment and advised him that Mr. Flippo may be leaving the Walla Walla area on the 13th or 16th of this month to an undisclosed location. She did mention that she had filed a Threats complaint against him with the Union Gap Police Department. Furthermore, Mr. Flippo was upset with her and threatened to kill her and her children. On 7/09/07, Detective Maidment contacted the Yakima County Department of Corrections and found that Mr. Flippo had been arrested on that date for telephone harassment. On 7/12/07, he made contact with the Yakima County Sheriff's Office requesting an interview along with a copy of the report. On 8/06/07, Detective Maidment received a phone message from Detective Levesque, Union Gap Police Department, and Detective Klem, Walla Walla Police Department. On this same date, Detective Maidment contacted Detective Levesque and found that Heather Flippo's son, BM, had disclosed that Mr. Flippo had molested him and that BM was now living with his biological father, Mathew Simms in the Union Gap area. Detective Levesque advised Detective Maidment that he had interviewed BM and he disclosed that Flippo had anally raped him when he lived in College Place.

On 8/06/07, Detective Maidment made contact with Detective Klem and found that he had received new information from Detective Levesque concerning a possible secondary victim that lived in Walla Walla. On 8/08/07,

Also on 8/15/07, Detective Maidment called and spoke with WWPB Detective Klem. The Detective was given information that there may have been other alleged molestations between QH and Flippo at 315 N Roosevelt sometime between October 2005 and March 2006. BM had stated, in his interview with the Union Gap Police Department, when he was at the address in Walla Walla, an incident between QH and Flippo occurred. Detective Klem told Detective Maidment he interviewed QH concerning the alleged incident and QH reported that he had been at the address a few times but nothing happened (Walla Walla Police Case #2007-12643).

On 8/15/07, Debbie Franklin, with CPS in Yakima, called and left a message concerning BM. Franklin advised Detective Maidment that she went to Simms' address for a CPS follow-up. Franklin stated "Simms is living with his mother and the home appeared to

have a much better environment than Heather had at her address". Franklin was going to establish a safety plan for Simms in case Heather attempted to take BM and may again establish a relationship with Flipppo.

These are final findings found by Detective Maidment with the College Place Police Department:

QH, when interviewed, did not disclose having sexual contact with Mr. Flippo; however, he did have an incident where Mr. Flippo attempted to lure him into a bedroom to "become a man." TH disclosed to CPS worker Sandoval that Mr. Flippo did penetrate her vagina using his penis. JH did disclose to CPS worker Sandoval that Mr. Flippo touched her private parts with his hands more than once. BF did disclose to Detective Levesque, Union Gap Police Department, that Mr. Flippo had penetrated his anus with his penis. All of these incidents occurred when Kandy moved in with Mr. Flippo and Heather when they lived on SE 12th in College Place."

I had attempted to contact Mr. Flippo's fourth victim; however, I was unsuccessful in my attempts to reach her.

II. VICTIM CONCERNS:

On 4/4/08, TH and JH were interviewed. JH is now 11 and TH is nine. Also present was the children's mother, Kandy Homan, and QH (14). When asked about the incidences with Earl Flippo, both girls stated they were young and thought of Earl as a father figure and did not think what he did to them was wrong. I asked Kandy if the children have experienced any behavioral problems. She indicated that all three children's attitudes have gotten worse, i.e. not listening and counseling is in the works in the near future. The girls have experienced problems at school that consist of behavior reports from their teachers and fights/arguments amongst their peers. Kandy also noted her kids have experienced the loss of friendships and lack of making new friends.

TH and JH reported they are experiencing post trauma symptoms such as nightmares that include Earl Flippo chasing them and attempting to "rape and kill" them. Kandy also reported her children are experiencing sever temper tantrums and bed-wetting on a regular basis. JH and TH stated they are afraid that Earl Flippo will eventually get out of jail and will come after their mother and "kill them and their brother" for telling on him. All three children witnessed domestic abuse by Mr. Flippo with their mother. I asked what they witnessed, and was told that he would yell at her. They also remembered one occasion where he got out his gun and put it in her mouth. The children reported they witnessed this through vent and this happened a few times. There was also lots of yelling and verbal abuse on a daily basis. JH (the oldest daughter) disclosed she remembers him smoking marijuana in front of them and recalled incidences where he asked her if she wanted some. She stated "no," but remembers him opening her mouth and blowing marijuana smoke into it on numerous occasions.

The family stated that Earl Flippo had an old truck and motorcycle. They frequently see other vehicles, that resemble the old vehicle that he used to drive, and it brings back haunting memories as well as worrying about him escaping from jail/prison.

The girls did not give much detail about the abuse; however, they but did state they were both never together when the abuse took place. This abuse always happened in separate rooms. The girls also remembered Mr. Flippo telling them that it was ok to be scared, and he would hurt them. They trusted him; however they eventually disclosed what he had happened to them.

I asked the family if they were the Judge what kind of sentence would you impose. They immediately responded, "life with out the possibility of parole and throw away the key." They also noted he will never be forgiven for what he has done, but will always be forgotten. The family also stated that treatment will never ever help him. The only thing that will help is a "needle in the arm, and having him never, ever waking up."

III. DEFENDANT'S STATEMENT REGARDING OFFENSE:

On 4/4/08, I interviewed Earl Flippo at the Walla Walla County Jail. I explained the Pre-Sentence Investigation process and told him I wanted to hear his version of the charges that had been brought against him. Mr. Flippo started by saying that he was "fucking rail roaded" into this whole mess by his ex-wives because they wanted to seek revenge against him due to his troubled past they claim to have had with him.

He reported that he has been married three times and every one of his marriages have been a "flop" and "fucked up" his life. I then asked him why he thought these allegations were being brought forth. He replied that it was a "revenge" thing because his exe's hated him. Furthermore, he stated, "I am a good person, I cannot believe the corruptive Courts of Walla Walla are sending an innocent man to prison." Mr. Flippo denied having any sexual contact with any minors and quickly stated I am not a "predator".

Mr. Flippo was asked about Kandy Iloman and her children. He stated he was a father figure to her children and again denied any sexual contact with victims JH, TH, and QH. He reported the kids would call him "daddy" and stated he would correct them and inform them that he was not there "daddy." He stated the only reason Kandy would say these awful things were because she was pissed off at him for walking out on her and the kids. He self reported the kids were devastated and heart broken that he left Kandy. He then proceeded to inform me that these allegations were only "alleged" and all victims were tainted and coaxed into telling blaintant lies to the police and Court.

During the interview, he continued to deny any sexual contact with the children including his ex-wife Heather Flippo's son, BM. He stated they (Kandy and Heather) placed a target on his back and again were seeking "revenge." He noted he gave the world to those two old ladies and there children and now they have gotten what they wanted. Mr. Flippo stated that they are sending an innocent man to prison for a crime that he did not commit.

Mr. Flippo again claimed he was an innocent man and the "crooked town" of Walla Walla is only out to get him and send him away to prison. He wanted the Court to know that he was getting "fucked in the ass" by a bunch of "fucking pricks." Furthermore, he has taken several criminal justice classes and knows how the system works and what the Court has done is absolutely wrong. Again he stated that sending him to prison is a waste

of the tax payers money as he has chronic cancer and health problems and "I guess I am going to 'die' in prison.

In conclusion, Mr. Flippo stated that Judge Zagelow does not give a "shit" about anyone especially "me" and "that man" (Judge Zagelow) has "fried and fucked" me over. Mr. Flippo then stated, "have mercy on Judge Zagelow's soul as he is sending an innocent man to prison for alleged crimes that an innocent man did not commit".

IV. CRIMINAL HISTORY:

SOURCES:

1. NCIC/WACIC, WATCH, DISCIS and SCOMIS

Juvenile	
Misdemeanor:	
Date of Offense:	10/15/87
Crime:	Minor Possession and/or Consumption
County / Cause No.:	Benton County / J04945372
Date of Sentence:	Unknown
Disposition:	Guilty
	Score / Wash

Adult Felony:	
Date of Offense:	7/3/89
Crime:	Assault 3 rd Degree
County / Cause No.:	Benton County / 891992900
Date of Sentence:	10/27/89
Disposition:	60 Days Jail
	Score / Wash

Misdemeanor(s):	
Date of Offense:	10/8/88
Crime:	Driving While Under the Influence of Alcohol
County / Cause No.:	Benton County /
Date of Sentence:	Unknown
Disposition:	Guilty
	Score / Wash

Misdemeanor(s):	
Date of Offense:	4/26/91
Crime:	Driving While License Suspended (DWLS)
County / Cause No.:	Yakima County / C0020225
Date of Sentence:	Unknown
Disposition:	Guilty
	Score / Wash

Misdemeanor(s):	
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Date of Offense: 12/08/91
Crime: DWLS 3rd Degree
County / Cause No.: Benton County / R0065016
Date of Sentence: Unknown
Disposition: Guilty Score / Wash

Misdemeanor(s):
Date of Offense: 3/11/96
Crime: DWLS 3rd Degree
County / Cause No.: Yakima County / 81116
Date of Sentence: Unknown
Disposition: Guilty Score / Wash

Misdemeanor(s):
Date of Offense: 4/19/96
Crime: No Valid Operators License
County / Cause No.: Yakima County / D00082855
Date of Sentence: Unknown
Disposition: Guilty Score / Wash

Misdemeanor(s):
Date of Offense: 12/22/07
Crime: Possession of a Dangerous Weapon
County / Cause No.: Yakima County / 34846
Date of Sentence: Pending
Disposition: Pending Score / Wash

V. SCORING:

	SERIOUSNESS LEVEL	OFFENDER SCORE	STANDARD RANGE	
Count I	X	10	From 149	to 198 Months
Count II	X	10	From 149	to 198 Months
Count III	X	10	From 149	to 198 Months
Count IV	X	10	From 149	to 198 Months

VII. COMMUNITY CUSTODY BOARD(If applicable):

	SERIOUSNESS LEVEL	OFFENDER SCORE	SENTENCE RANGE	
Count I	X	10	Min 149	to LIFE Max
Count II	X	10	Min 149	to LIFE Max
Count III	X	10	Min 149	to LIFE Max
Count IV	X	10	Min 149	to LIFE Max

VIII. RISK / NEEDS ASSESSMENT:

A risk/needs assessment interview was completed with the offender. The following risk/needs area (s) and strengths have implications for potential risk, supervision, and interventions. Unless otherwise noted, following information was provided by the offender and has not yet been verified.

Earl Flippo, on 4/4/08, participated in providing information for the risk assessment interview. The Department of Corrections utilizes the Level of Service Inventory – Revised to assess risk. Flippo, according to the risk assessment tool, poses a High level of risk to re-offend with an LSI score of 44 (76.0%).

Criminal History (Including RM Level Information):

Earl Flippo is an adult male being sentence for Count 1: Child Molestation in the First Degree, Count 2: Child Molestation in the First Degree. Count 3: Child Molestation in the First Degree, Count 4: Child Molestation in the First Degree. He was found guilty by jury trial and is now awaiting sentencing. He is in denial as to having sexual contact with any minors.

He has an extensive criminal past that includes a broad range of Misdemeanors and one felony conviction, on 7/3/98, for Assault in the 3rd degree. This charge had been plead down from Assault in the 2nd degree. His criminal history includes failing to obey law by operating a Motor Vehicle Without a Valid License and he currently has a pending Misdemeanor charge for Possession of a Deadly Weapon out of Union Gap, WA.

Education / Employment:

Mr. Flippo is currently unemployed as he confined at the Walla Walla County Jail. Prior to his legal issues, he claims to have owned his own lawn care business in the Walla Walla area for approximately ten years.

He also stated he attended Walla Walla High School up until the 11th grade before dropping out. He reported he dropped out of school because he sought no interest in school work. He later completed his GED while attending Walla Walla Community College in 2004.

Financial:

Mr. Flippo self reported, prior to his legal issues that he relied upon social assistance in the form of food stamps and medical coupons. He also noted he had financial debt that lead to hardship with credit collection agencies. He stated while in jail, it had been a financial burden on his family as he had no means of support.

Family / Marital:

Mr. Flippo self reported he has been married three times, first wife Candy Fall; second wife Donelle Quantrelle; and his third wife was Heather Mangini. After each marriage, he claims it lead to financial hardship. he has one biological child (BM - age 13) with his third wife, Heather Mangini who resides in Yakima, WA. He pays \$25.00 a month in child support.

He stated he did not know his father as he passed away when he was young. He claims to have a good relationship with his mother, Vicki Bore, who resides in Milton Freewater, OR. He has two brother's and one sister: Jim Flippo (49), George Flippo (41) and Tracy Lansden (45). He noted that neither of his family members have criminal backgrounds.

Accommodation:

Mr. Flippo reported that prior to his legal issues, he was living at 1901 Lilac Lane in Union Gap, WA., and plans on returning to this address upon release from confinement. He denied living in towns or neighborhoods that are high crime areas but was never in one place for a long period of time. Mr. Flippo stated his moves created hardships on his family.

Leisure / Recreation:

Mr. Flippo reported that in his leisure time he likes to camp, fish and work on automobiles and motorcycles. He attended church on the weekends

Companions:

Mr. Flippo self reported he hangs out with a number of different people including some with criminal backgrounds, past drug users and people of good faith. He noted that he is trying to turn his life around but there are so many people out there trying to "rail road him and fucking up" his way of life. Flippo reported, at times, he felt that he has had the absence of pro-social friends due to all of the "bullshit" that has been going on in his life lately. Many of his friends look at him differently now that he is locked up in jail pending some "bullshit crime".

Alcohol / Drug Use:

Mr. Flippo disclosed that he has used marijuana since an early age to help with pain and suffering due to his reported cancer tumors. He reported he has been diagnosed with terminal cancer and due to this, he reported daily use of marijuana. At the age of 17 he was an avid user of cocaine for two years and trying hallucinogens at 18. At the age of 19 he reported experimenting with LSD a couple of times; however, he "tripped out" and stopped using it. He claims he has never been addicted to drugs, but I beg to differ with him when he reported using marijuana, daily, for pain and suffering due to reportedly having cancer. He has never attended treatment or counseling. He stated that in the last 12 months his drug use has not caused any problems with law violations, family and/or work.

During an interview, conducted on 4/4/08, two of Mr. Flippo's victims reported that on numerous occasions he would roll, light, smoke and blow marijuana smoke into there faces. They also reported that he would say to them, "It is OK, no one will find out about this."

Emotional / Personal:

Mr. Flippo reported that these whole Court proceedings and conviction have turned his life upside down. He stated his stress level has gone through roof and does not know if he

will ever see the light of day again. Furthermore, Judge Zagelow is sending an innocent man to prison for a crime that he did not commit, and he does not know how this man can sleep at night.

Attitude / Orientation:

During this interview, his attitude towards the Court and the Department of Corrections was very poor. Additionally, the Court is trying to place an innocent man in prison for crimes that he did not commit. The children, who claim to be molested, are being coerced by their mother's to hang and rail road him into something he did not do. He then stated, "I am not a predator; I am a good fucking person and a law adding citizen who is just getting fucked by the system. Have mercy on Judge Zagelow's soul when he is placed into the ground. Zagelow is nothing but a "crooked mother fucker."

IX. CONCLUSIONS:

Mr. Flippo is before the Court for serious offenses that involve multiple minor aged victims occurring over a long period of time. He does not appear to fully comprehend the consequences his behavior/actions have had on others, and in fact, Mr. Flippo views himself as a "victim" and being wrongfully accused. He refers to his victims as "friends" and to himself as a "father figure." In his own words he stated, "I am a good guy and never in my wildest dreams did I think of myself as a predator." Mr. Flippo is down playing the allegations of child molestation and stresses that his ex-wife's are only seeking revenge.

X. SENTENCE OPTIONS:

- Confinement within the Standard Range Sentence
- Work Ethic Program
- Exceptional Sentence
- First-time Offender Waiver (FTOW)
- Drug Offender Sentencing Alternative (DOSA)
- Special Sex Offender Sentencing Alternative (SSOSA)
- Mentally Ill Offender Sentencing Option (MIOSO)
- Community Custody Board (CCB) RCW 9.94A.712

XI. RECOMMENDATIONS:

According to the Department of Corrections risk assessment tool(s), Mr. Flippo presents a high risk to re-offend. Considering the available information from police reports, victim interviews, and the Level of Service Inventory - Revised Risk Assessment Tool, it is recommended that he be sentenced to the high end of the Standard Range of Confinement. Mr. Flippo views himself as a victim and does not grasp the impact and severity his actions have created for his victims. Furthermore, he takes no responsibility for his actions and has shown no remorse or empathy for the victims.

Sentence Type / Option: Confinement within the Standard Range Sentence

Confinement: 198 months

Community Custody Board: Period of time the person is released from total confinement before the expiration of the maximum sentence.

Supervision Type & Duration: Community Custody Board

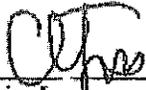
Conditions of Supervision: (See attached Appendix F Community Supervision (DOC 09-130))

XII. MONETARY OBLIGATIONS:

Restitution:	TBD	Court Costs:	TBD	Other:	TBD
Victim Penalty:	\$500	Attorney Fees:	\$750		
Drug Fund:	TBD	Fine:	TBD		

Submitted By:

Approved By:



4/11/08



4/11/08

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Date

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