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No. 62395-8

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

IN RE PERSONAL RESTRAINT PETITION OF:

ARMONDO RAY SEPULVEDA,

PETITIONER.

PERSONAL RESTRAINT PETITION

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 SEP 22 PM 4:20

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A. STATUS OF PETITIONER

Armondo Sepulveda (hereinafter “Sepulveda”) challenges his 1989 King County convictions for Rape in the First Degree and Robbery in the Second Degree (89-1-04558-0). Mr. Sepulveda is no longer incarcerated on this offense. However, he remains under several disabilities as a result including the fact that these convictions served as a necessary predicate “strike” to Sepulveda’s current persistent offender status and life sentence.

This is Sepulveda’s first collateral attack on this judgment.

B. FACTS

On September 14, 1989, Sepulveda pled guilty to Rape in the First Degree and Robbery in the Second Degree for crimes that occurred several months earlier, on August 11, 1989. *See Judgment and Sentence* attached as Appendix A.

Sepulveda’s *Statement of Defendant on Plea of Guilty* (Appendix B), which is signed by Sepulveda, his attorney, the prosecutor, and the Judge, states that the maximum sentence for the rape is “twenty (20) years to life imprisonment.” In fact, the maximum penalty was life. Sepulveda’s plea to rape was part of a “package deal” or singular plea to both the rape and robbery counts.

Sepulveda was sentenced on November 3, 1989. The *Judgment* repeats the error from the plea form, stating in Section 2.3 that the maximum term is “20 yrs. to LIFE.”

C. ARGUMENT

1. INTRODUCTION

Sepulveda’s *Judgment* is facially invalid because it reveals, on its face, a mistaken maximum term of imprisonment. The maximum penalty was not “twenty years to life.” It was life. Sepulveda’s maximum penalty was not a discretionary range which bottomed out at 20 years. Unlike pre-SRA cases where the sentencing court had the discretion to cap the maximum at 20 years (or set it at life), in Sepulveda’s case neither the sentencing court nor any other authority had the power to set the maximum term at twenty years. As a result, it is clear that Sepulveda’s *Judgment* is invalid on its face.

Sepulveda’s facially invalid judgment reveals an involuntary guilty plea. Because Sepulveda’s plea was based on misinformation about a direct consequence (the maximum possible punishment), it was unconstitutional because it was neither knowing nor voluntary. Sepulveda does not need to show that he would have made a different choice if he had been correctly advised that the maximum could not have been set at 20 years, but only at life. Instead, Sepulveda is entitled to withdraw his plea.

Finally, because both pleas were part of a “package deal,” Sepulveda is entitled to withdraw his guilty pleas to both counts.

2. SEPULVEDA’S JUDGMENT IS INVALID ON ITS FACE

Since Sepulveda’s conviction has been final for more than one year, he must address the time bar issue—arguing first that his *Judgment* is facially invalid and then moving to his guilty plea to show that it was based on a “manifest error.”

RCW 10.73.090 establishes a one-year time limit for collateral attack on a judgment. More than one year has elapsed since this conviction was final. However, the one-year time limit does not apply to a judgment invalid on its face. RCW 10.73.090; *In re Restraint of Goodwin*, 146 Wn.2d 861, 866, 50 P.3d 618 (2002).

A judgment and sentence is invalid on its face if it evinces the invalidity “without further elaboration.” *Goodwin*, 146 Wn.2d at 866. The phrase “on its face” includes the documents signed as part of a plea agreement. *Id.* at 866 n. 2 (citing *In re Restraint of Stoudmire*, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000); *In re Restraint of Thompson*, 141 Wn.2d 712, 719, 10 P.3d 380 (2000)).

As our Supreme Court has explained: “[T]he relevant question in a criminal case is whether the judgment and sentence is valid on its face, not whether related documents, such as plea agreements, are valid on their face.

Such documents may be relevant to the question whether a judgment is valid on its face, but only if they disclose facial invalidity in the judgment and sentence itself.” *In re Restraint of Turay*, 150 Wn.2d 71, 82, 74 P.3d 1194 (2003).

In the case at bar, the maximum penalty on the *Judgment* is clearly erroneous. Prior to the adoption of the SRA, judges imposing sentences set the maximum term. For individuals sent to prison, the parole board then set the minimum term. For many Class A offenses, the maximum penalty was 20 years to life. *See* RCW 9.95.010; RCW 9A.20.020. Rape in the First Degree was such an offense. In those cases, a sentencing judge acted entirely within her statutory authority if she imposed a sentence less than life, as long as it did not drop below twenty years. In other words, “20 to life” represented the maximum sentence’s discretionary range. By 1989, things had changed. RCW 9A.20.021 (4). By that time, the maximum for first-degree rape had been set at life. RCW 9A.20.021.

Sepulveda’s *Judgment* lists the date (“9-14-89”) and name (Rape in the First Degree) of Sepulveda’s crime of conviction on Count I and then states that the “Maximum Term” is “20 Yrs. to LIFE.” From this information alone, it is obvious that the maximum sentence is erroneous. Thus, the face of Sepulveda’s *Judgment* reveals the error without further elaboration.

Thus, the question then becomes whether this error in the *Judgment* identifies a defect in the guilty plea that merits relief. Here, it does.

4. SEPULVEDA'S JUDGMENT REVEALS AN INVOLUNTARY PLEA

When a defendant pleads guilty, he must do so knowingly, voluntarily, and intelligently. *Henderson v. Morgan*, 426 U.S. 637, 644-45, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976); *McCarthy v. United States*, 394 U.S. 459, 466, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969); *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); *In re Barr*, 102 Wn.2d 265, 269, 684 P.2d 712 (1984); *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976). Whether a plea satisfies this standard depends primarily on whether the defendant correctly understood its consequences. *State v. Walsh*, 143 Wn.2d 1, 8, 17 P.3d 591 (2001); *State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988). *See also* CrR 4.2(d); *In re Fonseca*, 132 Wn. App. 464, 132 P.3d 154 (2006) (plea withdrawn where defendant did not know he was ineligible for DOSA at time he pled guilty).

It is now well-settled that the constitutional validity of a guilty plea turns, in part, on whether the defendant was informed of “all” the “direct” consequences of his plea. *State v. Ross*, 129 Wn.2d 279, 284, 916 P.2d 405 (1996). A sentencing consequence is direct when “the result represents a definite, immediate and largely automatic effect on the range of the

defendant's punishment.” *Id.* at 284, quoting *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980).

The maximum possible sentence is a “direct” consequence of a guilty plea. *State v. Vensel*, 88 Wn.2d 552, 555, 564 P.2d 326 (1977) (“We believe it is important at the time a plea of guilty is entered, whether in justice or superior court, that the record show on its face the plea was entered voluntarily and intelligently, and affirmatively show the defendant understands the maximum term which may be imposed.”).

Thus, the next question is whether Petitioner was misinformed of the maximum punishment when he pled guilty.

5. MISINFORMATION AND MATERIALITY

When a defendant is misinformed about a direct consequence of a guilty plea he does not need to demonstrate that the misinformation materially affected his decision to plead guilty. *In re Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004); *State v. Mendoza*, 157 Wn.2d 582, 590-91, 141 P.3d 49 (2006) (“In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant's risk calculation and the reasons underlying his or her decision to accept the plea bargain. Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of

whether the actual sentencing range is lower or higher than anticipated.”). According to *Isadore*, a defendant “need not make a special showing of materiality” in order for misinformation to render a guilty plea invalid, but instead must show only that the misinformation concerned “a *direct* consequence of [the] guilty plea.” 151 Wn.2d at 296 (emphasis added).

For example, in *State v. Miller*, 110 Wn.2d 528, 756 P.2d 122 (1988), the Washington Supreme Court held the defendant was entitled to withdraw his guilty plea because both parties were unaware of a mandatory minimum sentence requirement. When Miller entered his guilty plea to first degree murder, he had been misinformed by his attorney, who in turn had been misinformed by the prosecutor, that he could receive an exceptional sentence of less than 20 years. Prior to sentencing, Miller was informed that a first degree murder conviction carried a mandatory 20-year sentence. On review, the Supreme Court held that because Miller entered his plea without knowing the true sentencing consequences of that decision, his plea was involuntary and he was entitled, if he so desired, to withdraw the plea. *Id.* at 536-37.

In *Mendoza*, the defendant was misinformed about the standard range. The true range was actually lower than stated on the plea form. Nevertheless, the Supreme Court held that “a guilty plea may be deemed involuntary when based on misinformation regarding a direct consequence on the plea, regardless of whether the actual sentencing range is lower or

higher than anticipated. Absent a showing that the defendant was correctly informed of all of the direct consequences of his guilty plea, the defendant may move to withdraw the plea.” 157 Wn.2d at 591.

Here, Sepulveda was misinformed about the maximum penalty—a direct consequence of his guilty plea. He was not informed of this mistake prior to sentencing. To the contrary, the mistake was repeated on his *Judgment*. Thus, Sepulveda’s plea was involuntary.

6. WITHDRAWAL OF PLEA

A defendant may withdraw his guilty plea if it was invalidly entered or if its enforcement would result in a manifest injustice. *Isadore, supra*; CrR 4.2(f). “An involuntary plea produces a manifest injustice.” *Isadore*, 151 Wn.2d at 298.

Where a plea agreement is based on misinformation, the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea.” *Walsh*, 143 Wn.2d at 8-9. *See also In re Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (2000). The defendant's choice of remedy controls, unless there are compelling reasons not to allow that remedy. *Miller*, 110 Wn.2d at 535.

Sepulveda chooses withdrawal of his plea. If the State objects, then this Court should require the State to make a *prima facie* showing of any compelling reason not to allow this remedy. If the State cannot do so, then this Court should vacate the judgment and remand to King County Superior

Court to allow Sepulveda to withdraw his plea. If the State makes a *prima facie* showing, then the Court should remand for a hearing on Sepulveda's choice of remedy.

Further, Sepulveda should be permitted to withdraw his pleas to both counts. A plea agreement is essentially a contract made between a defendant and the State. *State v. Hardesty*, 129 Wash.2d 303, 318, 915 P.2d 1080 (1996). Under normal contract principles, whether a contract is considered separable or indivisible is dependent upon the intent of the parties. *Saletic v. Stamnes*, 51 Wash.2d 696, 699, 321 P.2d 547 (1958). When determining intent, we do not concern ourselves with unexpressed subjective intent, only objective manifestations of intent. *See, e.g., Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wash.2d 692, 699, 952 P.2d 590 (1998).

Applying these principles, in *State v. Turley*, 149 Wn.2d 395, 400, 69 P.3d 338 (2003), the Supreme Court held: "a trial court must treat a plea agreement as indivisible when pleas to multiple counts or charges were made at the same time, described in one document, and accepted in a single proceeding. Absent objective indications to the contrary in the agreement itself, we will not look behind the agreement to attempt to determine divisibility. Such a determination, after the fact, would not serve the plea negotiation process. When the defendant can show manifest injustice as to one count or charge in an indivisible agreement, the defendant may move

to withdraw the plea agreement or have specific performance of the agreement.” Here, Sepulveda pled guilty to two counts using one plea form during one hearing. Thus, his pleas are indivisible.

D. CONCLUSION AND PRAYER FOR RELIEF

Unless the State can make a preliminary showing why withdrawal of Sepulveda’s guilty pleas should not be allowed, this Court should vacate Sepulveda’s *Judgment* and remand this case to King County Superior Court to permit him to withdraw his guilty pleas.

However, this Court should stay this petition pending the Supreme Court’s decision on a case with virtually identical facts: *State v. McKiernan*, No. 81102-4 (Whether a defendant may collaterally challenge a guilty plea as involuntary beyond the one-year time limit on collateral attack when both the judgment and sentence and the written plea statement misstate the maximum sentence). Alternatively, this Court could transfer this case to the Supreme Court, given that the *McKiernan* decision will likely control the outcome of this case.

DATED this 22nd day of September, 2008.

Respectfully Submitted

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(206) 262-0300 (ph)

**Appendix A ~
Judgment and Sentence**

3
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

)
)
Plaintiff.)

NO. 89-1-04558-0

vs.)

JUDGEMENT AND SENTENCE

ARMONDO RAY SEPULVEDA,)

)
)
Defendant.)
)

I. HEARING

1.1 Pursuant to RCW 9.94A.110, sentencing hearing in this case was held on November 3, 1989

1.2 Present were:

Defendant: ARMONDO RAY SEPULVEDA Defendant's Lawyer: THERESA OLSON

Deputy Prosecuting Attorney: Kerry J. Keefe

Other: _____

1.3 The state has moved for dismissal of Count(s) _____

1.4 Defendant was asked if there was any legal cause why judgement should not be pronounced, and none was shown.

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 9-14-89 by plea / jury verdict / bench trial of:

Count No.: I Crime: RAPE IN THE FIRST DEGREE

RCW 9A.44.040 Crime Code 00716

Date of Crime August 11, 1989 Incident No. _____

Count No.: II Crime: ROBBERY IN THE SECOND DEGREE

RCW 9A.56.190, 9A.56.210 Crime Code 02924

Date of Crime August 11, 1989 Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code _____

Date of Crime _____ Incident No. _____

Additional current offenses are attached in Appendix A.

(a) With a special verdict / finding for being armed with a deadly weapon on Count(s): _____

(b) With a special verdict / finding for Violation of the Uniform Controlled Substance Act offense taking place
 in a school zone in a school on a school bus _____

(c) Vehicular Homicide Violent Offense (D.W.I. and/or reckless) or Nonviolent (disregard safety of others)

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

COMMITMENT ISSUE 7-1989
PRESENTENCE STATEMENT & INFORMATION ATTACHED

7-1989
CAL
BOOK
CASE
DATE
BY
OFFICER

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

	Crime	Sentencing Date	Adult or Juv. Crime	Date of Crime	Crime Type
(a)	Theft 2	4-29-87	Juvenile	86-8-05528-4	(King County)
(b)					
(c)					
(d)					

- Additional criminal history is attached in Appendix B.
 Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

Count	OFFENDER SCORE	SERIOUSNESS LEVEL	RANGE	MAXIMUM TERM
I	2	X	62--82 months	20 years to L.I.
II	2	IV	12+--14 months	10 years

- Additional current offense sentencing data is attached in Appendix C.

2.4 EXCEPTIONAL SENTENCE:

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____
 Findings of fact and conclusion are attached in Appendix D.

III. JUDGEMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in section 2.1 above and Appendix A.

- The Court DISMISSES Count(s) _____

IV. ORDER

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

4.1 Defendant shall pay to the Clerk of this Court:

- (a) \$ _____ Total amount restitution (with credit for amounts paid by co-defendant) to:
- | Name | Address | Amount |
|------------------------------|-------------------------|----------|
| See attached | any additional | \$ _____ |
| Order of Partial Restitution | amount to be determined | \$ _____ |

- Schedule of Restitution is attached as Appendix E.
 Restitution to be determined at future restitution hearing.

- (b) \$ 25.50 Court costs;
 (c) \$ 100; Victim assessment; \$ 100
 (d) \$ waived Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104.
 (e) \$ _____, Fine;
 (f) \$ _____, King County Interlocal Drug Fund;
 (g) \$ _____, Other costs for: _____;
 (h) TOTAL monetary obligations.
 (i) The above payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk which are attached and incorporated into this order and the following terms: Not less than \$ 10 per month On a schedule established by the defendant's Community Corrections officer. : _____

4.2 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows commencing (date): immediately, defendant in Ce
72 months on Count No. I
14 months on Count No. II
_____ months on Count No. _____

The terms in Count(s) No. I & II are concurrent / consecutive.

The sentence herein shall run concurrently / consecutively with the sentence in cause number(s) _____
_____ but consecutive to any other cause not referred to in this order.

Total number of months of confinement ordered is 72 months.

The defendant shall receive credit for time served of 81 days solely for conviction under this cause number pursuant to RCW 9.94A.120(13). The Earned Early Release time provisions of RCW 9.94A.150 shall be applied by the Department of Corrections to this time served.

The defendant shall report to an assigned community corrections officer upon release from confinement for monitoring of the remaining terms of this sentence.

4.3 NO-CONTACT: For the maximum term of LIFE years, defendant shall have no contact with JANIE WISEMAN

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- | | |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Appendix A, Additional Current Offenses (2.1) | <input type="checkbox"/> Appendix E, Schedule of Restitution (4.1(c)) |
| <input type="checkbox"/> Appendix B, Additional Criminal History (2.2) | <input type="checkbox"/> Appendix G, HIV Testing and Counseling (4.4) for drug offense, sex offense, prostitution related offense. |
| <input type="checkbox"/> Appendix C, Additional Current Offense(s) Sentencing Data (2.3) | <input type="checkbox"/> Appendix H, Community Placement (4.5) for sex offense, serious violent offense, second degree assault, deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. |
| <input type="checkbox"/> Appendix D, Findings of Fact and Conclusions of Law for an Exceptional Sentence (2.4) | |

Date: November 3, 1989

Auson P. Azid
Judge, King County Superior Court

Presented By:

Approved as to form:

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)

Plaintiff,)

NO. 89-1-04578-0

v.)

APPENDIX H
COMMUNITY PLACEMENT

Armando Ray Sepulveda
Defendant.)

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

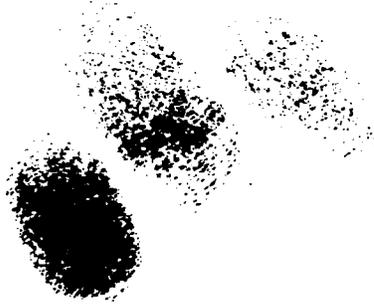
4.5 COMMUNITY PLACEMENT: Defendant additionally is sentenced to a one-year term of community placement on count(s) I beginning either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

- (a) Defendant shall comply with the following conditions during the term of community placement:
- (1) Report to and be available for contact with the assigned community corrections officer as directed;
 - (2) Work at Department of Corrections-approved education, employment, and/or community service;
 - (3) Not consume controlled substances except pursuant to lawfully issued prescriptions;
 - (4) While in community custody not unlawfully possess controlled substances; and
 - (5) Pay community placement fees as determined by the Department of Corrections.

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

- (b) Defendant shall comply with the following other conditions during the term of community placement:
- Enter into & successfully complete Alcohol Evaluation
 - Complete Sexual deviancy evaluation - treat
 - Shall not frequent Tavernas if recom

FINGERPRINTS



Defendant's Signature: Armondo Sepulveda

Right Hand
Fingerprints of:
Armondo Sepulveda

Dated: 11/3/89
SPASid
Judge, King County Superior Court

Attested by:

M. Janice Michels, Superior Court Clerk
By: Shidi B. Long
Deputy Clerk

CERTIFICATE

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

OFFENDER IDENTIFICATION

S.I.D. No. 13584996
Date of Birth 6-17-69
Sex M
Race W

**Appendix B ~
Statement of Defendant on Plea of Guilty**

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

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 Armindo Sepulveda,)
)
 Defendant.)

NO. 89-1-04358-0

STATEMENT OF DEFENDANT ON PLEA
OF GUILTY
(Felony)

1. My true name is Armindo R. Sepulveda.

2. My date of birth is 6/17/69.

3. I went through the 9th grade in school.

4. I have been informed and fully understand that I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Theresa Olson.

5. I have been informed and fully understand that I am charged with the crime(s) of Rape 1^o and Robbery 2^o

that the elements of the crime(s) are: _____

see attached information

and that the maximum sentence(s) for which is (are): _____

20 years to life on count I and 50,000

10 years and 150,000 on count II

finco
[Handwritten signature]

In addition, I understand that I may have to pay restitution for crime(s) to which I enter a guilty plea and for any other uncharged crime(s) for which I have agreed to pay restitution. The standard sentence range for the crime is at least _____ and no more than

10R to 32 months on count I

12M to 14 months on count II

based upon my criminal history which I understand the Prosecutor says to be: _____

Draft 10 - juvie conviction

Criminal history attached as Appendix B and incorporated by reference.

I have been given a copy of the information.

And I further understand that as a First Time Offender, the court may decide not to impose the standard sentence range, and then the court may sentence me to up to 90 days of total confinement and two years of community supervision. (If First Offender provision is not applicable, this statement shall be stricken and initialed by the defendant and the judge).

6. I have been informed and fully understand that:

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

- (b) I have the right to remain silent before and during trial, and I need not testify against myself.
- (c) I have the right to hear and question any witness who testifies against me.
- (d) I have the right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.
- (e) I am presumed innocent until the charge(s) is (are) proven beyond a reasonable doubt, or I enter a plea of guilty.
- (f) I have the right to appeal a determination of guilt after a trial.
- (g) If I plead guilty, I give up the rights in statements (a) through (f) of this paragraph 6.

7. I plead guilty to the crime(s) of Rape 1^o and Robbery 2^o, as charged in the _____ information.

8. I MAKE THIS PLEA FREELY AND VOLUNTARILY.

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

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

11. I have been informed and fully understand that the Prosecuting Attorney will make the following recommendations to the court:

82 months on Count I, 14 months on Count II - concurrent
No contact with victim
restoration costs, UFA, recoupment
Testify truthfully against co-defendant Joseph C. [unclear]
living situation subject to CCO approval

12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was fifteen years of age or older. Juvenile convictions count only if I was less than twenty-three years of age at the time I committed the present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard sentence range and the Prosecuting Attorney's recommendation increases. _____

13. I have been informed and fully understand that the court does not have to follow anyone's recommendation as to sentence. I have been fully informed and fully understand that the court must impose a sentence within the standard sentence range unless the court finds substantial and compelling reasons not to do so. If the court goes outside the standard sentence range, either I or the state can appeal that sentence. If the sentence is within the standard sentence range, no one can appeal the sentence. ~~I also understand that the court must sentence to a mandatory minimum term, if any, as provided in paragraph 14 and that the court may not vary or modify that mandatory minimum term for any reason.~~

14. I have been further advised that the crime(s) of _____

with which I am charged carries with it a term of total confinement of not less than _____ years.

I have been advised that the law requires that a term of total confinement be imposed and does not permit any modification of the mandatory minimum term. (If not applicable, any or all of this paragraph shall be stricken and initialed by the defendant and the judge.)

15. I have been advised that the sentences imposed in Counts _____ will run consecutively/

concurrently unless the court finds substantial and compelling reasons to run the sentences concurrently/consecutively.

16. I understand that if I am on probation, parole, or community supervision, a plea of guilty to the present charge(s) will be sufficient grounds for a Judge to revoke my probation or community supervision or for the Parole Board to revoke my parole. _____

17. I understand that if I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

18. The court has asked me to state briefly in my own words what I did that resulted in my being charged with the crime(s) in the information. This is my statement: _____

Count I in King County in the State of Washington on August 11, 1978
I engaged in sexual intercourse with Janeé Wiseman.
When I did that I used forcible compulsion. I was with another person who ⁺acted with me. When we raped her we drove her off into the bushes and

Court II - The King County Superior Court at Washington
on August 11, 1989 I took personal property,
clothing and money from June Wickman. I
took it from her after I had raped her (see
Court I) I was sitting with another person
at the time.

19. I have read or have had read to me and fully understand all of
the numbered sections above (1 through 19) and have received a copy
of this "Statement of Defendant on Plea of Guilty" form. I have
no further questions to ask of the court.

Armando Sepulveda
DEFENDANT

Kerry G. Keefe
Deputy Prosecuting Attorney

[Signature]
Defendant's Attorney
D. Nevada DSC

The foregoing statement was read by me or to the defendant
and signed by the defendant in the presence of his or her attorney
and the undersigned Judge, in open court. The court finds the
defendant's plea of guilty to be knowingly, intelligently and volun-
tarily made, that the court has informed the defendant of the nature
of the charge and the consequences of the plea, that there is a factual
basis for the plea, and that the defendant is guilty as
charged.

Dated this 14 day of Sept., 1989

Terence A. Carol
JUDGE

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this _____ day of _____, 19__.

Interpreter

VERIFICATION BY PETITIONER

I, Armondo Sepulveda, declare that I have received a copy of the petition prepared by my attorney and that I consent to the petition being filed on my behalf.

Washington State Reformatory

9-18-08
Date and Place

Armondo Sepulveda
Armondo Sepulveda