

63345-7

63345-7

No. 63345-7

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

IN RE THE PERSONAL RESTRAINT PETITION OF:

CURTIS GENE THORNTON,

PETITIONER.

RECEIVED
COURT OF APPEALS
DIVISION ONE

APR 20 2008

PERSONAL RESTRAINT PETITION

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A. STATUS OF PETITIONER

Curtis Gene Thornton (Thornton) challenges his 1992 King County convictions for Attempted Robbery in the Second Degree and one count of Robbery in the Second Degree (92-1-07847-0). Thornton remains under several disabilities as a result of this conviction. In addition, this conviction served as a necessary predicate for Thornton's current life sentence as a result of a subsequent robbery conviction and persistent offender finding (Spokane County Case No. 96-1-00785-5).

Mr. Thornton previously filed a *pro se* motion in the trial court attacking this conviction. That motion was transferred to this Court for consideration as a PRP. (No. 59087-1). However, since Thornton was not warned about the successor rule and given an opportunity to withdraw his motion, Thornton asks this Court to treat this petition as his first. Alternatively, if this Court disagrees, Thornton seeks transfer to the Supreme Court.

B. FACTS

On February 18, 1993, Curtis Thornton pleaded guilty to one count of Attempted Robbery in the Second Degree and one count of (completed) Robbery in the Second Degree. *See Appendix A, Statement of Defendant on Plea of Guilty.* Neither crime included a deadly weapon allegation.

In his plea statement, Thornton was told that in addition to confinement, "the judge will sentence me to community placement for at

least one year.” See Appendix A, *Statement of Defendant on Plea of Guilty*. The plea form further stated: “During the period of community placement, I will be under the supervision of the Department of Corrections, and will have restrictions placed on my activities.” *Id.* Finally, the paragraph indicated, “(i)f not applicable, this paragraph should be stricken and initialed by the defendant and the judge.” It was neither stricken, nor initialed.

Neither charge, robbery or attempted robbery, was a community placement offense at the time.

When Thornton was sentenced on April 23, 1993, the *Judgment* was invalid in at least two respects. First, the sentencing court set the “maximum tem” for the *attempted* robbery at “10 years and/or \$20,000 fine.” In addition, it ordered no contact for “maximum term of 10 years” with the victim of that count “Bree Hansen,” the victim of that count. Instead, 5 years was the maximum term permitted under the law for attempted second-degree robbery. The maximum fine for attempted second-degree robbery was 5 years and \$10,000.

C. ARGUMENT

1. INTRODUCTION

Community placement was not a statutorily authorized consequence of attempted or completed second-degree robbery conviction when

Thornton was convicted and sentenced. *See* Former RCW 9.94A.120 (9)(a). Nevertheless, Thornton was told when he pled guilty (in the written plea statement) that a one-year term of community placement was a mandatory sentence condition. Thus, Thornton's guilty plea was invalid.

The first question posed by this PPR is whether Thornton is time barred.

Because Thornton's *Judgment* is facially invalid, his challenge to his plea is timely. Facial invalidity constitutes an exception to the time bar. None of the caselaw requires the facial invalidity to perfectly align with the underlying defect in a guilty plea. Indeed, the concept of facial invalidity provides only a "gateway" permitting the court to examine the underlying error. In short, facial invalidity is concerned only with whether there is an error on the judgment, not whether there is an error in the conviction. *See In re McKieranan*, __ Wn.2d __, __ P.3d __ (March 19, 2009) ("In order to consider whether the plea agreement was invalid we must first find that the judgment and sentence itself is facially invalid. Otherwise, review of the plea agreement is barred by RCW 10.73.090.

2. FACIAL INVALIDITY

RCW 10.73.090 establishes a one-year time limit for collateral attack on a judgment. More than one has elapsed since this conviction was

final. However, the one-year time limit does not apply if a judgment is invalid on its face. RCW 10.73.090.

A judgment is “invalid on its face” if that document alone reveals an infirmity. *In re Pers. Restraint of LaChapelle*, 153 Wash.2d 1, 100 P.2d 805 (2004) (an improperly calculated sentence is invalid on its face). A judgment and sentence is invalid on its face if it exceeds the sentencing authority authorized by statute and the alleged defect is evident on the face of the document without further elaboration. *See In re Pers. Restraint of Hemenway*, 147 Wash.2d 529, 532, 55 P.3d 615 (2002); *In re Pers. Restraint of Goodwin*, 146 Wash.2d 861, 866, 50 P.3d 618 (2002); *In re Pers. Restraint of Thompson*, 141 Wash.2d 712, 718-19, 10 P.3d 380 (2000).

The *Judgment* in this case is invalid on its face because it sets the maximum term and the length of the “no contact” provision at 10 years. In fact, the sentencing court’s jurisdiction was 5 years on this count. In addition, the Judgment inaccurately expresses the maximum—failing to include the prospect of a fine, in addition to the maximum period of incarceration. Thus, Thornton’s petition is not time barred.

3. INVOLUNTARY PLEA

Because Thornton’s *Judgment* is facially invalid, he can challenge his underlying conviction—in the same manner as any timely petitioner.

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); *State v. Aaron*, 95 Wn.App. 298, 302, 974 P.2d 1284, *review denied*, 139 Wn.2d 1002, 989 P.2d 1138 (1999). 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).

A defendant must be properly informed of all direct consequences of his guilty plea. *See State v. Ross*, 129 Wn.2d 279, 285, 916 P.2d 405 (1996); *State v. Barton*, 93 Wn.2d 301, 305, 609 P.2d 1353(1980) (“Defendant must be informed of all the direct consequences of his plea prior to acceptance of a guilty plea.”). In *In re Pers. Restraint of Hoisington*, 99 Wn. App. 423, 993 P.2d 296 (1999), the Court stated that “a guilty plea entered on a plea bargain that is based upon misinformation

about sentencing consequences is not knowingly made.” 99 Wn. App. at 428.

Mandatory community placement is a direct consequence of a guilty plea. *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003). Thornton was told in his guilty plea that a period of mandatory community placement would follow his period of confinement. Thus, he was clearly misinformed about a direct consequence of his guilty plea.

Where 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 Pers. Restraint of Isadore*, 151 Wn.2d 294, 88 P.3d 390 (2004). 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 that the misinformation concerned “a *direct* consequence of [the] guilty plea.” 151 Wn.2d at 296 (emphasis added).

Isadore is the mirror image of this case. Isadore pled guilty to second degree burglary and third degree assault, but neither the State nor the defense was aware that Isadore's convictions required community placement after incarceration. After Isadore was sentenced, the Department of Corrections notified the prosecutor's office that Isadore's sentence should have included a mandatory one-year term of community placement. On the State's motion, the trial court amended Isadore's sentence to include the

community placement condition. Later, the Washington Supreme Court granted Isadore's personal restraint petition, determined his plea was involuntary, and granted his requested remedy of specific performance of the plea agreement holding that Isadore was deprived of his constitutional right to due process because his guilty plea was not knowing, voluntary and intelligent.

Withdrawal of a guilty plea is appropriate even where correction of the mistake works to a defendant's benefit. For example, in *State v. Mendoza*, 157 Wn.2d 582, 141 P.3d 149 (2006), the Washington Supreme Court held that a guilty plea is involuntary when it is based on a miscalculated sentence range, even where the correct sentence range results in a lower sentence. 157 Wn.2d at 584. "Accordingly, we adhere to our precedent establishing that a guilty plea may be deemed involuntary when based on a direct consequence of the plea, regardless of whether the actual sentence 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." *Id.* at 591.

Because the *Mendoza* decision is central to this case, a brief exposition is warranted. The *Mendoza* opinion begins its reasoning with the settled law that when a defendant pleads guilty, due process requires that he must do so knowingly, voluntarily, and intelligently. *Id.* at 587; *In re Isadore, supra* (citing *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct.

1709, 23 L.Ed.2d 274 (1969) (“Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.”). This standard is reflected in CrR 4.2(d), which mandates that the trial court “shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.”

The *Mendoza* court then relies on the “clarification” in *Isadore* that a defendant who is misinformed of a direct consequence of pleading guilty is not required to show the information was material to his decision to plead guilty in order to seek withdrawal of the plea. (“In determining whether the plea is constitutionally valid, we decline to engage in a subjective inquiry into the defendant’s subjective risk calculation and the reasons underlying his or her decision to accept the plea bargain.”) *Mendoza*, 157 Wn.2d at 590-91. A guilty plea based on incorrect information regarding a direct consequence of the plea is deemed involuntary without a case specific showing of materiality because a “reviewing court cannot determine with certainty how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to the

decision." *Isadore*, 151 Wn.2d at 302. Instead, a knowing, voluntary, and intelligent guilty plea requires a meeting of the minds. *See State v. Miller*, 110 Wn.2d 528, 531, 756 P.2d 122 (1988).

Mendoza created one exception to the rule above. When a defendant is "clearly informed before sentencing" of the correct direct consequences of the plea, "and the defendant does not object or move to withdraw the plea on that basis before he is sentenced, the defendant waives the right to challenge the voluntariness of the plea." 157 Wn.2d at 592.

That exception does not apply in this case. Here, there was an obvious and uncorrected (at the time of sentencing) mutual mistake about community placement which renders Thornton's plea involuntary..

4. WITHDRAWAL OF PLEA

Thornton is entitled exercise his choice. He chooses to withdraw his guilty 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 Pers. 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.

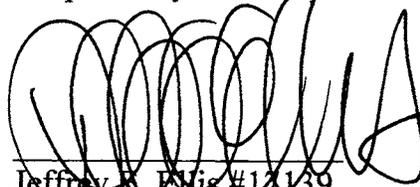
As noted above, Thornton chooses withdrawal of his plea. Thornton has not been given a choice of remedies previously. Instead, the State sought and was granted an *ex parte* order modifying the *Judgment* without giving notice to Thornton and without giving him the option to withdraw his plea. Thornton does not seek to now alter a previous choice. Instead, he seeks to make a choice for the first time.

D. CONCLUSION AND PRAYER FOR RELIEF

Based on the above, this Court should vacate Thornton's robbery convictions and remand this case to King County Superior Court to permit him to withdraw his guilty pleas.

DATED this 20th day of April, 2009.

Respectfully Submitted:

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

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Attorney for Mr. Thornton

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APPENDIX A ~
JUDGMENT AND SENTENCE

DWA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CURTIS GENE THORNTON,
Defendant.

NO. 92-1-07847-0

JUDGMENT AND SENTENCE

124308
4-20-93

I. HEARING

1.1 Pursuant to RCW 9.94A.110, sentencing hearing in this case was held on 4-23-93

1.2 Present were:
Defendant: CURTIS G. THORNTON Defendant's Lawyer: Greg Girard
Deputy Prosecuting Attorney: CAROL SPOCK
Other: _____

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

1.4 Defendant was asked if there was any legal cause why judgment 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): 2-18-93 by plea of: Guilty

Count No.: I Crime: Attempted Robbery Second Degree
RCW 9A.56.210 Crime Code 12924
Date of Crime 11-27-92 Incident No. _____

Count No.: II Crime: Robbery Second Degree
RCW 9A.56.210 Crime Code 02924
Date of Crime 11-25-92 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 that the defendant committed the crime(s) with a sexual motivation on Count(s): _____

(c) With a special verdict/finding for Violation of the Uniform Controlled Substances Act offense taking place
 in a school zone in a school on a school bus in a public park in public transit vehicle
 in a public transit stop shelter on Count(s): _____

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

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

(f) Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

(Current offenses not listed here are not encompassed)

APR 27 1993
COMMITMENT ISSUED

APR 27 1993

WASH. STATE PROBATION & PAROLE COMMISSION

PRESENTENCE STATEMENT & INFORMATION ATTACHED

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 | Cause Number | Location |
|---------------------------|-----------------|---------------------|--------------|------------------|
| (a) Robbery 1. | 4-6-78. | Adult. | 83583. | King County |
| (b) Escape. | 3-12-75. | Adult. | 6983. | Snohomish County |
| (c) Assault 2. | 10-24-72. | Adult. | | King County |
| (d) Taking Motor Vehicle. | 9-8-66. | Adult. | 44595. | King County |

Additional criminal history is attached in Appendix B.
 Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)):

2.3 SENTENCING OFFENDER SERIOUSNESS MAXIMUM DATA SCORE LEVEL RANGE TERM

| | | | | |
|----------|-----|----|-------------------|--------------------------------|
| Count I | : 8 | IV | 39.75-52.5 months | 10 years and/or \$20,000 fine. |
| Count II | : 8 | IV | 53-70 months | 10 years and/or \$20,000 fine. |
| Count | : | | | |

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(s) are attached in Appendix D.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.
 The Court DISMISSES Count(s)

IV. ORDER

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

4.1 MONETARY OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. Defendant shall pay to the Clerk of this Court:

(a) \$ 437.00 Total amount restitution (with credit for amounts paid by co-defendant) to:

| Name | Address | Amount |
|-------|---------|----------|
| _____ | _____ | \$ _____ |
| _____ | _____ | \$ _____ |

- Schedule of Restitution is attached as Appendix E.
- Restitution to be determined at future restitution hearing on (Date) _____ date to be set.
- (b) \$ waived Court costs;
- (c) \$100, Victim assessment;
- (d) \$ waived Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104.
- (e) \$ _____ Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived because court finds defendant is indigent.
- (f) \$ _____ King County Interlocal Drug Fund;
- (g) \$ _____ Other cost for: _____
- (h) TOTAL monetary obligations: \$ 437.00
- (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 \$ _____ per month
 - On a schedule established by the defendant's Community Corrections Officer. : _____

and the clerk of the court shall credit monetary payments to the above obligations in the above-listed order.
 (j) The defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4.2 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of to confinement in the custody of the Department of Corrections as follows, commencing (date): IN WASHINGTON

29.75 months/days on Count No. I

53 months/days on Count No. II

months/days on Count No. _____

The terms in Count(s) No. I and II are concurrent ~~consecutive~~

and 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 Judgment.

The defendant shall receive credit for time served of 80 days solely for conviction under this cause number pursuant to RCW 9.94A.120(13).
37 days JT
10 10 days ET

4.3 NO CONTACT: For the maximum term of _____ years, defendant shall have no contact

with Paul Hansen (Stock Market) + Kim Harrison (Kentucky Fried Chicken)

4.4 BLOOD TESTING (sex, violent or prostitution offense or drug offense associated with the use of hypodermic needles): Appendix G, covering blood testing and counseling, is attached and incorporated by reference into this Judgment and Sentence.

4.5 COMMUNITY PLACEMENT: Community Placement is ordered for sex offense, serious violent offense, second degree assault, deadly weapon finding, Chapter 69.50 or 69.52 RCW offense, and standard mandatory conditions are ordered. Community placement is ordered for the maximum period of time provided by law. Appendix H (for additional conditions) is attached and incorporated by reference in this Judgment and Sentence.

4.6 OFF-LIMITS ORDER: The defendant, having been found to be a known drug trafficker, shall neither enter nor remain in the protected against drug trafficking area(s) as described in Appendix I during the term of community placement.

4.7 SEX OFFENDER REGISTRATION (sex offender crime conviction): Appendix J is attached and incorporated by reference into this Judgment and Sentence.

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

Date: April 23, 1993

Bobbe J. Bridge
Judge, King County Superior Court
JUDGE BOBBE J. BRIDGE

Presented by:

Approved as to form:

[Signature]
Deputy Prosecuting Attorney

[Signature] 41029
Attorney for Defendant

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

PLAINTIFF

VS.

CURTIS THORNTON,

DEFENDANT.

)
)
) NO. 92-1-07847-0
)
) NOTICE OF RIGHTS ON APPEAL AND
) CERTIFICATE OF COMPLIANCE WITH
) CrR 7.2 (b); SUPERIOR COURT RULES
)

The undersigned hereby certifies that at the time of sentencing the above-named defendant was orally advised by the court of the following:

1. You have a right to appeal your conviction.
2. You have the right to appeal a sentence outside the standard sentence range. The sentence that has been imposed (is) (is not) outside the standard sentence range.
3. You are advised that unless a written notice of appeal is filed within 30 days after the entry of the judgment herein (which is today), the right of appeal is irrevocably waived. The original and one (1) copy of the notice of appeal must be filed with, and the filing fee paid to, the Clerk of the Superior Court within 30 days after the entry of the judgment herein. If you are authorized to proceed in forma pauperis, that order must be filed with the notice of appeal in lieu of the filing fee.
4. The Superior Court Clerk will, if requested by you if you do not have an attorney, supply you with a notice of appeal form and file it upon completion by you.
5. You have the right, if you are unable to pay the cost thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal.
6. You are advised that pursuant to RCW 10.73.090 you have one (1) year from this date to file a petition or motion for collateral attack on the judgment herein. However, you are also advised that pursuant to RCW 10.73.100 that the one (1) year time limit does not apply to certain grounds as are more particularly set forth therein. (Said statutes are set forth on the backside hereof.)

A copy of this certificate was delivered to the defendant on this date.

Dated: APRIL 23, 1993.

Bobbe J. Bridge
J U D G E

JUDGE BOBBE J. BRIDGE

Copy Received:

C. Thornton
Defendant

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 _____, 199 .

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3-18308

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

1,4
NIOCA

STATE OF WASHINGTON,
Plaintiff,

NO. 92-1-07847-0

v.

FELONY WARRANT OF COMMITMENT

CURTIS GENE THORNTON

- 1. () COUNTY JAIL
- 2. (XX) DEPARTMENT OF CORRECTIONS
- 3. () OTHER - CUSTODY
- 4. () WESTERN STATE HOSPITAL
Sexual Offender)

624-308
4-30-93

Defendant.

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

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of King, that the defendant be punished as specified in the Judgment and Sentence, ~~Order of Commitment/ Sexual Offender/~~ ~~Criminal Sex Offender~~ a full true and correct copy of which is attached hereto.

() 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in King County Jail; or pursuant to RCW 9.94A.190(3), if the defendant is committed or returned for incarceration in a state facility or another felony, take and deliver the defendant to the proper officers of the Department of Corrections.)

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

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

() 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above and 4 below.)

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

YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the State pending delivery 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

Dated: April 27, 1993

BOBBE J. BRIDGE
Judge

M. JANICE MICHELS
Clerk

By: [Signature]
Deputy Clerk

APPENDIX B ~
GUILTY PLEA STATEMENT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff

No. 92-1-07847-0

v.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY
(Felony)

CURTIS G. THORNTON

Defendant

1. My true name is CURTIS G. THORNTON.
2. My age is 44. Date of Birth 4-7-48.
3. I went through the 6th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

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

(b) I am charged with the crime(s) of CT I ATT. Robbery
2^o CT II Robbery 2^o
The elements of this crime(s) are SEE ATTACHED ANSWER
INFORMATION

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

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

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 1 of 9

SC FORM CLD 100 Rev. 9/86/9

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[Handwritten signature]

(c) The right at trial to hear and question the witnesses who testify against me;

(d) 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 is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime with which I am charged carries a maximum sentence of ^{CF 1, 5} 10 years imprisonment and a \$ ^{75,000} 2,000 ^{CF 12} fine.

The standard sentence range is from ^{CF 1, 39.75} 39.75 (days) months to ^{CF 1, 52.50} 52.50 (days) months confinement, based on the prosecuting attorney's understanding of my criminal history.

(b) The standard sentence 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 in juvenile court for felonies or serious traffic offenses that were committed when I was 15 years of age or older. Juvenile convictions, except those for class A felonies, count only if I was less than 23 years old when I committed the crime to which I am now pleading guilty.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase.

(e) In addition to sentencing me to confinement for the standard range, the judge will order me to pay \$ 100 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damages to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs, and attorney fees. Furthermore, the judge may place me on community supervision, impose restrictions on my activities, and order me to perform community service.

(f) The prosecuting attorney will make the following recommendation to the judge: 53 months confinement, 1 year
cont. care, V.A. recognition, resolution, NCO with victims

(g) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(h) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(i) The sentence imposed on counts I + II will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(j) In addition to confinement, the judge will sentence me to community placement for at least 1 year. During the period of community placement, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(k) The judge may sentence me as a first time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030(20). This sentence could include as much as 90 days' confinement plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(l) This plea of guilty will result in revocation of my privilege to drive. If I have a driver's license, I must now surrender it to the judge. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(m) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(n) 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.

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purposes of DNA identification analysis. [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

(p) If this crime involves a sex offense, I will be required to register with the sheriff of the county in this state where I reside. I must register immediately upon completion of being sentenced if I am not sentenced to begin serving a term of confinement immediately upon completion of being sentenced. Otherwise, I must register within 24 hours of the time of my release if I am sentenced to the custody of the Department of Corrections, Department of Social and Health Services, a local division of youth services, a local jail, or a juvenile detention facility.

If I do not now reside in Washington, but I subsequently move to this state, I must register within 24 hours of the time I begin to reside in this state, if at the time of my move I am under the jurisdiction of the Department of Corrections, the Indeterminate Sentence Review Board, or the Department of Social and Health Services. If at the time I move to this state I am not under the jurisdiction of one of those agencies, then I must register within 30 days of the time I begin to reside in this state.

If I subsequently change residences within a county in this state, I must notify the county sheriff of that change of

residence in writing within 10 days of my change of residence. If I subsequently move to a new county within this state, I must register all over again with the sheriff of my new county, and I must notify my former county sheriff (i.e. the county sheriff of my former residence) of that change of residence in writing, and I must complete both acts within 10 days of my change of residence. [If none of the above three paragraphs is applicable, they should all be stricken and initialed by the defendant and the judge.]

7. I plead GUILTY to the crime of CT I ATT. ROBBERY 2° as charged in the Amended information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

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

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

11. The judge has asked me to state briefly in my own words what I did that makes me guilty of this (these) crime(s). This is my statement:

CT I - ON 11-27-92 in Kim County I unlawfully + with the intent to commit theft attempted to take money from the presence of Brec Hanson against his will by the threatened use of force

CT II: ON 11-25-92 in Kim I unlawfully + with the intent to commit theft took money from the presence of Brec Hanson against his will through the threatened use of force.

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

C. L.
DEFENDANT

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

John J. Bolath 91602
PROSECUTING ATTORNEY

[Signature]
DEFENDANT'S LAWYER

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

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

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

Dated this 17 day of March, 1993.

[Signature]
JUDGE