

64297-9

64297-9

NO. 64297-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SCOTT FREEBURG,

Appellant.

2016 APR 27 PM 2:42
COURT OF APPEALS
STATE OF WASHINGTON
CLERK OF COURT

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD D. EADIE

BRIEF OF RESPONDENT

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A. ISSUE

A trial court's discretion to act on remand is limited by the scope of the appellate court's order. In its most recent decision in this case, this Court remanded "solely" to correct a "scrivener's error" in the judgment and sentence regarding the length of community custody. Did the trial court, on remand, properly restrict itself to correcting the scrivener's error identified by this Court?

B. STATEMENT OF THE CASE

Defendant Scott Freeburg was convicted in 1998 of first degree felony murder, second degree assault, and first degree burglary, based on crimes he committed in 1994. CP 123.¹ Freeburg was sentenced as a persistent offender. CP 124. The convictions were overturned on appeal.² CP 124.

Following a second trial at which he was again convicted of these same offenses, Freeburg was again sentenced as a

¹ Because the procedural history of this case is not in dispute, the State will refer to this Court's summary of the procedural facts in the Court's most recent opinion (No. 60999-8-I, filed 11-24-08) (attached hereto as Appendix A), rather than to documents in the record that have been renumbered as clerk's papers so many times that confusion is inevitable.

² State v. Freeburg, 105 Wn. App. 492, 20 P.3d 984 (2001).

persistent offender. CP 124. This Court affirmed the convictions, but reversed the persistent offender sentence, and remanded for resentencing.³ CP 124.

Freeburg was sentenced for the third time, this time within the standard range, to 471 months of confinement. CP 124. He again appealed. CP 124. This Court rejected Freeburg's challenge to comparability, but remanded for resentencing on the deadly weapon enhancements.⁴ CP 124-25.

Freeburg was sentenced for the fourth time in December 2007, to a total of 411 months. CP 102-110.⁵ Again, he appealed. CP 125. Noting that the judgment and sentence contained a "scrivener's error regarding the length of community custody," this Court remanded "solely to correct that error."⁶ CP 123 (Appendix A at 1).

³ State v. Freeburg, 120 Wn. App. 192, 84 P.3d 292, rev. denied, 152 Wn.2d 1022 (2004).

⁴ State v. Freeburg, 134 Wn. App. 1037, 2006 WL 2338175 (Wash. App. Div. 1, August 14, 2006), rev. denied, 161 Wn.2d 1009 (2007).

⁵ This is the most recent Judgment and Sentence; for the convenience of the Court, this document is attached hereto as Appendix B.

⁶ The error was that the Judgment and Sentence imposed both a 24-month term of community placement (¶ 4.7(a)) and a 24-48 month term of community custody (¶ 4.7(c)). CP 105, 106.

When the parties next appeared before the trial court, Freeburg's attorney asked for a continuance of the hearing. RP⁷ 3. Counsel recognized that "it's a pretty narrow reason why we are here, according to the mandate," but argued that Freeburg "has things he would like me to look into and put on the record" that counsel had not yet had time to discuss with his client. RP 3. Counsel acknowledged, however, that Freeburg had no issue as to the community placement term. RP 4.

When the court pointed out that "the Court of Appeals sent this down for a very narrow issue," Freeburg himself responded, "Right. But, I am saying they are wrong." RP 7. Reiterating that the remand was for "the sole purpose of striking the community custody found in paragraph 4.7(c) in the Judgment and Sentence, and that's all," the trial court concluded that its task was "limited to striking the incorrect community custody." RP 10-11. The court signed an order correcting the error in the community placement term. CP 129-30 (Appendix C).

⁷ "RP" refers to the verbatim report of proceedings held in the trial court on September 23, 2009.

C. ARGUMENT

THE TRIAL COURT PROPERLY LIMITED ITS ACTIONS TO THE SCOPE OF THIS COURT'S REMAND ORDER.

Freeburg complains that the trial court, in the most recent remand, refused to grant him a continuance of the hearing so that his attorney could confer with Freeburg and develop additional arguments challenging his sentence. He contends that the trial court abused its discretion in refusing to hear these additional arguments. This claim fails in light of this Court's order remanding the case solely to correct a scrivener's error in the length of community custody. The trial court correctly recognized that its discretion to act was limited by this unequivocal language, and properly refused to entertain additional challenges to the judgment and sentence.⁸

Disposition of a case following review is governed by the Rules of Appellate Procedure ("RAP"). When an appellate court has issued its mandate, the court's decision is "effective and

⁸ Because this issue is determinative of the outcome, the State will not separately address Freeburg's claims that his rights to due process of law and the meaningful assistance of counsel were violated.

binding on the parties to the review and governs all subsequent proceedings in the action in any court" RAP 12.2. "After the mandate has issued, the trial court may, however, hear and decide postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court." Id. If the trial court exercises its discretion under this rule, its decision may, of course, be the subject of appeal. State v. Kilgore, 167 Wn.2d 28, 38-39, 216 P.3d 393 (2009).

Freeburg relies on the rule restricting the "law of the case" doctrine on appeal:

If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case.

RAP 2.5(c)(1). The Washington Supreme Court has interpreted this rule to allow trial courts the discretion to revisit an issue on remand that was not the subject of the appeal. Kilgore, 167 Wn.2d at 38 (citing State v. Barberio, 121 Wn.2d 48, 51, 846 P.2d 519 (1993)).

In Kilgore, the Court of Appeals had reversed two of the defendant's convictions, affirmed the other five, and remanded the case "for further proceedings." Id. at 31, 33-34, 41; State v. Kilgore, 107 Wn. App. 160, 190, 26 P.3d 308 (2001) ("We reverse Counts I and II, affirm Counts III-VII, and remand for further proceedings."), aff'd, 147 Wn.2d 288, 53 P.3d 974 (2002). When the State declined to retry the reversed counts, the trial court signed a motion and order correcting the judgment and sentence, striking counts one and two, and correcting the offender score.⁹ Kilgore, 167 Wn.2d at 34.

Noting that the Court of Appeals' remand had been "open-ended," the Supreme Court found that the trial court had the discretion, under RAP 2.5(c)(1), to revisit Kilgore's exceptional sentence on the five convictions that had been affirmed on appeal. Id. at 41-42. However, "if the trial court simply corrects the original judgment and sentence, it is the original judgment and sentence entered by the original trial court that controls the defendant's

⁹ Because the reduction in the offender score was from 18 to 12, Kilgore's standard range remained the same. Kilgore, 167 Wn.2d at 42.

conviction and term of incarceration." Id. at 40-41. Concluding that the trial court on remand had done nothing more than correct the judgment and sentence to reflect the counts reversed by the appellate court, no appealable issues remained. Id. at 41-43.

Unlike in Kilgore, the trial court here did *not* have discretion to revisit Freeburg's sentence by considering his objections to his offender score and standard range. "The trial court's discretion to resentence on remand is limited by the scope of the appellate court's mandate." Id. at 42. While the remand for retrial in Kilgore was "open-ended," this Court's directive in Freeburg's most recent appeal was specifically limited: "In conclusion, we remand for resentencing for the *sole purpose* of striking the incorrect community custody term found in paragraph 4.7(c) of Freeburg's judgment and sentence." Freeburg, No. 60999-8-I (filed 11-24-08), slip op. at 6 (emphasis added).

In addition, this Court explicitly referred to the error in the community custody term as a "scrivener's error" ("Because the sentence imposed here contains a scrivener's error regarding the length of community custody, we remand solely to correct that error, but otherwise affirm the judgment and sentence imposed.").

Id. at 1. This Court gave the trial court neither directive nor authority to revisit any other part of Freeburg's sentence. Moreover, there was no need to *resentence* Freeburg, since his judgment and sentence already included the correct 24-month term of community custody. CP 105.

Washington law has long supported the principle that the appellate court may limit the actions of the trial court on remand. In Godefroy v. Reilly, 140 Wash. 650, 657, 250 P. 59 (1926), the Washington Supreme Court stated the "usual and general" rule that, upon reversal for a new trial, the parties are at liberty to retry the cause on all of the issues. The court recognized, however, that "[a]n appellate court may, no doubt, where the error in the trial relates to a particular issue only, which does not depend for its proper understanding or trial on other issues presented, reverse and remand the cause for trial on the particular issue erroneously tried, and on that issue alone." The court added a caution: "When the court intends that a specific issue shall alone be tried, *it will give instructions to that effect, in unmistakable language.*" Id. (emphasis added).

That is exactly what happened here. This Court identified a scrivener's error that related only to the term of community custody. That error did not depend for its understanding or resolution on any other part of Freeburg's sentence. This Court directed, using "unmistakable language," that the trial court should fix that error alone upon remand.

More recently, where a jury had found negligence on the part of a public utility, the Court of Appeals found error only in the trial court's refusal to allow a party's proposed expert witness on damages to testify. Keegan v. Grant County Publ. Util. Dist. No. 2, 34 Wn. App. 274, 282-84, 661 P.2d 146 (1983). Concluding that the liability issue need not be relitigated, the court observed that "[c]ourts have the authority to limit issues on a new trial in those cases where it clearly appears that the original issues were distinct and separate from each other and that justice does not require the resubmission of the whole case to the jury." Id. at 285.

The trial court here properly limited itself to the scope of this Court's remand. The trial court corrected the scrivener's error by striking the incorrect term of community custody, leaving the correct term in place. There was no need to enter a new judgment and

sentence, and the court did not do so. The court properly declined to entertain new challenges to the existing judgment and sentence.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm the judgment and sentence in this case.

DATED this 27th day of April, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
DEBORAH A. DWYER, WSBA #18887
Senior Deputy Prosecuting Attorney
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Office WSBA #91002

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 60999-8-1
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
SCOTT ALAN FREEBURG,)	
)	
Appellant.)	
)	
and)	
)	
LAWRENCE ROBERT KUHN,)	
and each of them,)	FILED: November 24, 2008
)	
Defendant.)	

PER CURIAM. A trial court is not required to review and reconsider its prior determinations regarding an offender score when correcting an improper sentence for a deadly weapons enhancement on remand from this court. This is particularly true, here, where this court specifically remanded for resentencing only to correct the defendant's sentence with regard to the deadly weapon enhancement. Because the sentence imposed here contains a scrivener's error regarding the length of community custody, we remand solely to correct that error, but otherwise affirm the judgment and sentence imposed.

FACTS

In 1998, Scott Freeburg was convicted of first degree felony murder, second degree assault, and first degree burglary, all with a firearm stemming from an incident that occurred in 1994. At Freeburg's sentencing hearing, the State presented proof of his prior convictions, including a 1976 robbery in King

County, a 1980 federal bank robbery conviction, two federal escape convictions, and a federal assault with intent to commit murder. Freeburg was sentenced as a persistent offender. His convictions, however, were overturned on appeal and the matter remanded for a new trial.

After a new trial, Freeburg was convicted of the same offenses and again sentenced as a persistent offender. Freeburg appealed and this court affirmed those convictions in 2004, but remanded for resentencing, holding that Freeburg's federal bank robbery conviction was not comparable to a Washington conviction for second degree robbery and thus could not support his sentence as a persistent offender.¹

In February 2005, the trial court sentenced Freeburg for a third time without the persistent offender finding. Based on an offender score of nine, the court sentenced Freeburg to the low end of the standard range for a term of 471 months. Freeburg appealed his sentence arguing that the sentencing court erred when it included two federal convictions in calculating his offender score without proving their comparability. In an unpublished opinion, this court held that Freeburg had relieved the State of its obligation to prove comparability of federal convictions when defense counsel agreed that the court's calculation of Freeburg's standard range was correct.² At the 2005 sentencing, the trial court imposed deadly weapon enhancements based on a version of the statute that did not apply to the 1994 offenses. Accordingly, we remanded for resentencing only

¹ State v. Freeburg, 120 Wn. App. 192, 84 P.3d 292 (2004).

² State v. Freeburg, noted at 134 Wn. App. 1037 (2006).

to correct the term of the deadly weapon enhancement, reducing it from 60 to 18 months.

Freeburg was sentenced for a fourth time in December 2007. Freeburg appeals, alleging the trial court erred in not considering his objections to his offender score and also by imposing conflicting terms of community custody.

ANALYSIS

Offender Score

Freeburg now contends that his pro se objection to the sentence imposed required the trial court to consider anew his entire offender score. After the trial court imposed a sentence with the correct enhancement, Freeburg stated:

MR. FREEBURG: Two things with that. I agree with you 100 percent on what you just said.

THE COURT: Yeah.

MR. FREEBURG: But the good time part, not being able to earn good time, I don't know how to address that or fix that, uhm, because that's not the RCW that I should have been convicted of that allowed for any good time.

And then the second thing is, and I asked your clerk, Mr. Levin, especially, could you please when you sentence me mark that I paid my fine? Because I had all kinds of --

After this exchange, there was a long discussion between the court and Freeburg regarding his involvement in his activities while he has been in prison. After an off-the-record discussion with his attorney, the following exchange occurred:

MR. FREEBURG: No, that's not my signature. One last objection I got for the points still just to reserve for appeal. I want to object to the points calculation because we had a thing where you ruled on --

THE COURT: Oh, was that that federal --

MR. FREEBURG: Federal crime. You ruled once beforehand that it wasn't calculated, but then --

THE COURT: Yeah --

MR. FREEBURG: -- then these --

THE COURT: -- the federal burglary, I think it was.

MR. FREEBURG: Federal, bank robbery.

THE COURT: Bank robbery, yeah. Objection noted.

MR. FREEBURG: All right.

THE COURT: Yeah, we've been through that a few times.

MR. FREEBURG: I'm learning a lot. That's where I help people out, too, is try to go to the law library and help people understand what happened.

Counsel then prepared an order for in forma pauperis to permit Freeburg to seek review should he desire to do so. Freeburg then stated that he wished "to appeal for objections noted and the good time stuff."

On appeal, Freeburg's counsel argues that the trial court erred in refusing to consider Freeburg's pro se objection to his offender score calculation. Much of this argument relies upon a 2008 amendment to the Sentencing Reform Act of 1981, which provides in pertinent part:

On remand for resentencing following appeal or collateral attack, the parties shall have the opportunity to present and the court to consider all relevant evidence regarding criminal history, including criminal history not previously presented.^[3]

But that amendment did not become effective until August 1, 2008. And furthermore, Freeburg does not argue that it is retroactive. Thus, it does not apply to this case.

The trial court did consider Freeburg's request but ultimately declined to revisit the matter. In so doing, the court noted that it had already addressed those concerns a few times. Further, the scope of the remand to the trial court was limited to resentencing only on the portion that dealt with the deadly

³ Former RCW 9.94A.530(2) (2005) (amended by Laws of 2008, ch. 231 § 4).

weapons enhancements. This court's opinion was unambiguous and made clear by its own wording, including using the word "only" twice in our remand to the trial court. We stated, "[W]e reverse and remand for re-sentencing on the deadly weapons enhancements only. In all other respects, we affirm."⁴

Moreover, it is clear that Freeburg's prior appeal from the 2005 resentencing dealt with the offender score and as such the law of the case doctrine would make the offender score binding in subsequent appeals.⁵ While the doctrine is discretionary when controlling law changes between the appellate decision and proceedings on remand, those are not the circumstances here.⁶ The trial court did not abuse its discretion in not reviewing the offender score.

Community Custody

In 1994, the trial court was authorized to impose community placement terms of two years, or up to the period of early release, for qualifying offenses such as a serious violent offense.⁷ The current judgment and sentence imposes conflicting terms of community placement. The State concedes that for serious violent offenses committed prior to July 1, 2000, the trial court can only impose the 24 months' of community placement as set forth in paragraph 4.7(a). The conflicting checked box in paragraph 4.7(c) imposing "24 to 48 months" of community custody is merely a scrivener's error as that length of community custody applies only to crimes "committed after June 30, 2000." Accordingly, we

⁴ And in an earlier paragraph, "We therefore, reverse the deadly weapons enhancements and remand for re-sentencing on the enhancements only."

⁵ State v. Worl, 129 Wn.2d 416, 425, 918 P.2d 905 (1996).

⁶ Coffel v. Clallam County, 58 Wn. App. 517, 520-21, 794 P.2d 513 (1990).

⁷ Former RCW 9.9A.120(8)(b); State v. Barnett, 139 Wn.2d 462, 464, 465, 987 P.2d 626 (1999).

accept the State's concession and remand for resentencing only to strike the erroneous term contained in paragraph 4.7(c).

Statement of Additional Grounds

In addition to the issues raised by Freeburg's counsel on appeal, Freeburg alleges ineffective assistance of counsel, jury instruction error, and due process violations. These arguments are unsupported by adequate argument and citation to authority or are too conclusory to merit discussion. RAP 10.3(a)(5); State v. Elliott,⁸ (appellate court need not consider claims that are insufficiently argued); State v. Marintorres,⁹ (appellate court need not consider pro se arguments that are conclusory; State v. Thomas,¹⁰ (court will not review issues that have received only passing treatment).

In conclusion, we remand for resentencing for the sole purpose of striking the incorrect community custody term found in paragraph 4.7(c) of Freeburg's judgment and sentence. In all other respects, we affirm.

FOR THE COURT:

Grosse, J.

Cox, J.

Leach, J.

⁸ 114 Wn.2d 6, 15, 785 P.2d 440 (1990).

⁹ 93 Wn. App. 442, 452, 969 P.2d 501 (1999).

¹⁰ 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) (citing State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)).

APPENDIX B

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 KING COUNTY
 SUPERIOR COURT CLERK
 SEATTLE, WA

JUDGMENT NUMBER 99-9-02824-0

COMMITMENT ISSUED ^{DOC} DEC 06 2007

COPY TO SENTENCING GUIDELINES COMMISSION DEC - 6 2007

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 94-C-08085-3 SEA

Vs.

JUDGMENT AND SENTENCE
 FELONY
 ON RESENTENCING

SCOTT A. FREBBURG

Defendant,

I. HEARING

I.1 The defendant, the defendant's lawyer, RANDALL HALL, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

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

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 04/11/2002 by jury verdict of:

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

RCW 9A.52.020

Crime Code: 02304A

Date of Crime: 11/17/1994

Incident No. _____

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

RCW 9A.36.021 (1)(c)

Crime Code: 01020

Date of Crime: 11/17/1994

Incident No. _____

Count No.: III Crime: MURDER IN THE FIRST DEGREE

RCW 9A.32.030 (1)(c)

Crime Code: 00128

Date of Crime: 11/17/1994

Incident No. _____

Count No.: _____ Crime: _____

RCW _____

Crime Code: _____

Date of Crime: _____

Incident No. _____

	C/PROC
	CUST
	CASH
<input checked="" type="checkbox"/>	JUDG
	DISB
<input checked="" type="checkbox"/>	CRM
<input checked="" type="checkbox"/>	ACCTG
<input checked="" type="checkbox"/>	EXH
<input checked="" type="checkbox"/>	TR AND A

[] Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.810(3). ³¹⁰
- (b) While armed with a deadly weapon other than a firearm in count(s) I + II RCW 9.94A.510(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A. offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) Domestic violence offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 OTHER CURRENT CONVICTION(S): Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

Criminal history is attached in Appendix B.

One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	9	VII	87 TO 116	18	87 TO 116 MONTHS + 18 105-134	LIFE AND/OR \$50,000
Count II	9	IV	63 TO 84	12	63 TO 84 MONTHS + 12 75-96	10 YRS AND/OR \$20,000
Count III	9	XIV	411 TO 548		411 TO 548 MONTHS	LIFE AND/OR \$50,000
Count						

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE (RCW 9.94A.535):

Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State did did not recommend a similar sentence.

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 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL 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. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs;
 Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA;
 VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived;
(RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

- 4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ _____. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.
- Court Clerk's trust fees are waived.
 - Interest is waived except with respect to restitution.

ALL Financial obligations have been satisfied

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: [] immediately; [] (Date): _____ by _____.

87 months/days on count I; 63 months/days on count _____; 411 months/day on count III
_____ months/days on count _____; _____ months/days on count _____; _____ months/day on count _____

The above terms for counts I, II, III are consecutive/concurrent

The above terms shall run [] CONSECUTIVE [] CONCURRENT to cause No.(s) _____

The above terms shall run [] CONSECUTIVE [] CONCURRENT to any previously imposed sentence not referred to in this order.

[] In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: 18 mos on count one
17 mos on count two

which term(s) shall run concurrent with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98)

[] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 411 months.

Credit is given for [] _____ days served [] days as determined by the King County Jail, solely for confinement under this cause number pursuant to RCW 9.94A.505(6).

4.5 NO CONTACT: For the maximum term of life years, defendant shall have no contact with Darlene Mochter + Jenette Stulen

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

4.7 (a) [] COMMUNITY PLACEMENT pursuant to RCW 9.94A.700, for qualifying crimes committed before 7-1-2000, is ordered for 24 months or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer. [24 months for any serious violent offense, vehicular homicide, vehicular assault, or sex offense prior to 6-6-96; 12 months for any assault 2°, assault of a child 2°, felony violation of RCW 69.50/52, any crime against person defined in RCW 9.94A.411 not otherwise described above.] APPENDIX H for Community Placement conditions is attached and incorporated herein.

(b) [] COMMUNITY CUSTODY pursuant to RCW 9.94.710 for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months or for the period of earned early release awarded under RCW 9.94A.728, whichever is longer. APPENDIX H for Community Custody Conditions and APPENDIX J for sex offender registration is attached and incorporated herein.

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- (c) **COMMUNITY CUSTODY** - pursuant to RCW 9.94A.715 for qualifying crimes committed after 6-30-2000 is ordered for the following established range:
- Sex Offense, RCW 9.94A.030(38) - 36 to 48 months—when not sentenced under RCW 9.94A.712
 - Serious Violent Offense, RCW 9.94A.030(37) - 24 to 48 months
 - Violent Offense, RCW 9.94A.030(45) - 18 to 36 months
 - Crime Against Person, RCW 9.94A.411 - 9 to 18 months
 - Felony Violation of RCW 69.50/52 - 9 to 12 months
- or for the entire period of earned early release awarded under RCW 9.94A.728, whichever is longer. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections pursuant to RCW 9.94A.737.
- APPENDIX H for Community Custody conditions is attached and incorporated herein.
- APPENDIX J for sex offender registration is attached and incorporated herein.

4.8 **WORK ETHIC CAMP:** The court finds that the defendant is eligible for work ethic camp, is likely to qualify under RCW 9.94A.690 and recommends that the defendant serve the sentence at a work ethic camp. Upon successful completion of this program, the defendant shall be released to community custody for any remaining time of total confinement. The defendant shall comply with all mandatory statutory requirements of community custody set forth in RCW 9.94A.700. Appendix H for Community Custody Conditions is attached and incorporated herein.

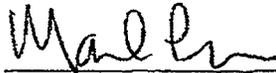
4.9 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

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

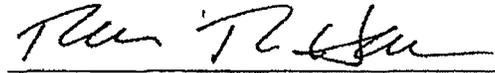
Date: 12-6-07


 JUDGE CHARLES W. MERTEL
 Print Name: CHARLES W. MERTEL

Presented by:


 Deputy Prosecuting Attorney, WSBA#
 Print Name: _____

Approved as to form:


 Attorney for Defendant, WSBA # 6161
 Print Name: Danell Hall

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

X DEFENDANT'S SIGNATURE: Scott Freeburg
DEFENDANT'S ADDRESS: 910 DDC

SCOTT ALLAN FREEBURG

DATED: December 6, 2007
Charles W. Mertel
JUDGE, KINGS COUNTY SUPERIOR COURT
CHARLES W. MERTEL

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: Barbara Miner
DEPUTY CLERK

CERTIFICATE
I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

OFFENDER IDENTIFICATION
S.I.D. NO. WA10874148
DOB: JANUARY 16, 1958
SEX: M
RACE: W

CLERK
BY: _____
DEPUTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

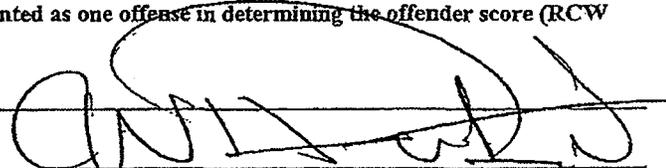
STATE OF WASHINGTON,)	
)	
) Plaintiff,	No. 94-C-08085-3 SEA
)	
vs.)	JUDGMENT AND SENTENCE,
)	(FELONY) - APPENDIX B,
SCOTT A. FREEBURG)	CRIMINAL HISTORY
)	
) Defendant,	
)	

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
ARMED ROBBERY	06/07/1976	ADULT	75601	KING CO
ESCAPE	05/16/1980	ADULT	CR80-0084	N. DST. CALIFORNIA
ASSAULT WITH INTENT TO MURDER	08/12/1985	ADULT	CR85-141	C. DST. CALIFORNIA

The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: DEC 6, 2007



 JUDGE, KING COUNTY SUPERIOR COURT

CHARLES W. MERTEL

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SCOTT A. FREEBURG

Defendant,

No. 94-C-08085-3 SEA

APPENDIX G
ORDER FOR BIOLOGICAL TESTING
AND COUNSELING

(1) DNA IDENTIFICATION (RCW 43.43.754):

The Court orders the defendant to cooperate with the King County Department of Adult Detention, King County Sheriff's Office, and/or the State Department of Corrections in providing a biological sample for DNA identification analysis. The defendant, if out of custody, shall promptly call the King County Jail at 296-1226 between 8:00 a.m. and 1:00 p.m., to make arrangements for the test to be conducted within 15 days.

(2) HIV TESTING AND COUNSELING (RCW 70.24.340):

(Required for defendant convicted of sexual offense, drug offense associated with the use of hypodermic needles, or prostitution related offense.)

The Court orders the defendant contact the Seattle-King County Health Department and participate in human immunodeficiency virus (HIV) testing and counseling in accordance with Chapter 70.24 RCW. The defendant, if out of custody, shall promptly call Seattle-King County Health Department at 205-7837 to make arrangements for the test to be conducted within 30 days.

If (2) is checked, two independent biological samples shall be taken.

Date:

DEC 6, 2007



JUDGE, King County Superior Court

JAMES W. MERTEL

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SCOTT A. FREEBURG

Defendant,

No. 94-C-08085-3 SEA

JUDGMENT AND SENTENCE

APPENDIX H

COMMUNITY PLACEMENT OR

COMMUNITY CUSTODY

The Defendant shall comply with the following conditions of community placement or community custody pursuant to RCW 9.94A.700(4), (5):

- 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 possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- 4) Pay supervision fees as determined by the Department of Corrections;
- 5) Receive prior approval for living arrangements and residence location;
- 6) Not own, use, or possess a firearm or ammunition. (RCW 9.94A.720(2));
- 7) Notify community corrections officer of any change in address or employment; and
- 8) Remain within geographic boundary, as set forth in writing by the Department of Corrections Officer or as set forth with SODA order.

OTHER SPECIAL CONDITIONS:

The defendant shall not consume any alcohol.

Defendant shall have no contact with: _____

Defendant shall remain within outside of a specified geographical boundary, to wit: _____

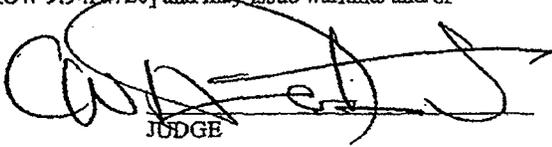
The defendant shall participate in the following crime-related treatment or counseling services: _____

The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or Department during community custody.

Community Placement or Community Custody shall begin upon completion of the term(s) of confinement imposed herein or when the defendant is transferred to Community Custody in lieu of earned early release. The defendant shall remain under the supervision of the Department of Corrections and follow explicitly the instructions and conditions established by that agency. The Department may require the defendant to perform affirmative acts deemed appropriate to monitor compliance with the conditions [RCW 9.94A.720] and may issue warrants and/or detain defendants who violate a condition [RCW 9.94A.740].

Date: Dec 6, 2007


JUDGE

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APPENDIX C

FILED
2009 SEP 23 PM 3:06
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

COPY TO COUNTY JAIL SEP 23 2009

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

SCOTT FREEBURG,

Defendant.

)
)
) 94-1-08085-3 SCA
) No. ~~94-1-0808945-3 SEA~~

)
)
) ORDER AMENDING THE
) JUDGEMENT AND SENTENCE TO
) SET THE CORRECT TERM OF
) COMMUNITY PLACEMENT
)
)
)

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon the motion of the State of Washington, plaintiff, for an order striking the term of community placement in the judgment and sentence and resetting the correct term of community placement in the above entitled cause, and the court being fully advised in the premises; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that paragraph 4.7 (c) of the judgment and sentence setting a term of community placement at 24-48 months is stricken. The correct term of community placement is 24 months is hereby imposed.

DONE IN OPEN COURT this 23rd day of September, 2009.

Richard D Erdie

JUDGE

Presented by:

ORDER CORRECTING AND RESETTNG
COMMUNITY PLACEMENT - 1

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

1 Mark Bar

2 Deputy Prosecuting Attorney

3 Approved for entry:

4 D. J. Goad 35794
Attorney for Defendant

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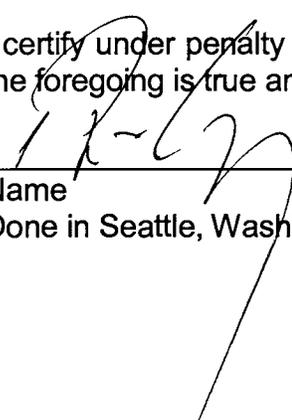
ORDER CORRECTING AND RESETTING
COMMUNITY PLACEMENT - 2

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Nancy P. Collins**, the attorney for the appellant, at **Washington Appellate Project**, 1511 Third Avenue, Suite 701, Seattle, WA 98101-3635, containing a copy of the **Brief of Respondent**, in **STATE V. SCOTT FREEBURG**, Cause No. **64297-9-I**, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name

Done in Seattle, Washington

04-27-10

Date