

65405-5

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OCT 19 2010

King County Prosecutor  
Appellate Unit

65405-5

NO. 65405-5-I

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

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STATE OF WASHINGTON,

Respondent,

v.

DARRELL ROWDEN,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Barbara Mack, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erroneously sentenced appellant to submit to a mental health evaluation and treatment as a condition of community custody. CP 58-59.<sup>1</sup>

2. The trial court erroneously sentenced appellant to submit to a substance abuse evaluation and treatment as a condition of community custody. CP 58-59.

3. The trial court erroneously prohibited appellant from purchasing or possessing alcohol without approval from his treatment provider as a condition of community custody. CP 58-59.

4. The trial court erroneously prohibited appellant from accessing the Internet without approval from his treatment provider as a condition of community custody. CP 58-59.

Issues Pertaining to Assignments of Error

Appellant was convicted of one count of indecent liberties. The sentencing court imposed community custody conditions prohibiting appellant from purchasing or possessing alcohol and from accessing the Internet without approval from his sex offender treatment provider. The court also ordered appellant to submit to substance abuse and mental health evaluations, and treatment, as conditions of community custody.

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<sup>1</sup> The Judgment and Sentence is attached as Appendix A.

Where the state did not show appellant's conviction had any relation to substance abuse, mental health issues, or the Internet, did the sentencing court exceed its statutory sentencing authority in imposing conditions related thereto?

B. STATEMENT OF THE CASE

1. Procedural History

On March 28, 2008, The King County prosecutor charged Darrell Rowden with one count of indecent liberties, occurring on or about March 1, 2008. CP 1-3.

On April 5, 2010, the Honorable Barbara Mack conducted a pre-trial hearing on the State's motion to admit Rowden's custodial statements. 2RP.<sup>2</sup> The court found the statements admissible and entered written findings of fact and conclusions of law on May 10, 2010. 2RP 52-53; CP 61-65. Trial commenced on April 6, 2010. See 3RP.

A jury found Rowden guilty. CP 14. Rowden was sentenced to 21 months in prison, with 36 to 48 months of community custody. CP 49-60; 5RP 15-16. Rowden timely appeals. CP 37-48.

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<sup>2</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – April 1, 2010; 2RP – April 5, 2010; 3RP – April 6, 2010; 4RP – April 7, 2010; 5RP – May 7, 2010.

2. Charged Offense

In March 2008, Rowden was living at the North Auburn Rehabilitation Center (Center). Rowden lived at the Center for approximately four months while recovering from shoulder surgery. 3RP 98. Rowden is a paraplegic and confined to a wheelchair. 3RP 80; 4RP 20.

Approximately 75 other people resided at the Center, many of whom were elderly or disabled. 3RP 41-43, 70-71; 4RP 18. Resident Dorothy Preston was described by her daughter, Carol Wolfe, as suffering from Alzheimer's Disease. 4RP 6. Nurse Assistant Maria Chavez-Martinez said that while some residents "probably" suffered from dementia, none had Alzheimer's. 3RP 6-7. Chavez-Martinez said Preston was able to participate in simple communication. 3RP 9-10, 53. No expert witness testified to Preston's condition or diagnosis.

On March 1, 2008, Chavez-Martinez, went to the Center dining room to get Preston ready for bed. 3RP 11. Chavez-Martinez said that as she entered the front door of the dining room, she saw Preston standing next to Rowden, who was seated in his wheelchair. According to Chavez-Martinez, Rowden had his right hand underneath Preston's blouse, touching her breast. Rowden's left hand was in his lap. When Chavez-Martinez asked, "what's happening," Rowden repeatedly replied "nothing,

nothing,” lowered his hand and left the dining room. Chavez-Martinez then took Preston to bed. 3RP 12, 16-17, 19-20, 28-30, 57, 59-61-63, 71-73, 160.

Chavez-Martinez recognized Rowden from the Center, but had never seen him with Preston before the alleged incident. 3RP 21, 54-55, 57-58, 68-69. Nor did Chavez-Martinez observe Rowden and Preston interact before asking, “what’s happening,” and she was uncertain whether they were talking to each other before she entered the dining room. Chavez-Martinez said Preston did not appear to react to the alleged touching and did not behave differently after. 3RP 20-21, 60.

Chavez-Martinez did not confront Rowden afterward and was not sure what happened to him. 3RP 20-21, 63. Chavez-Martinez testified she told her daughter and colleague, Ana Martinez, about the alleged incident “right away.” Chavez-Martinez also testified she reported it to her supervisor, Kristen Sherman, the same day. 3RP 22, 63-64, 72-73, 77-78, 87. In a statement given to officer Brian O’Neill however, Chavez-Martinez said she did not tell Martinez about the alleged incident until the following day, and did not report it to her supervisor until two days later. 3RP 67-68. Chavez-Martinez never called police or the patient abuse hotline. 3RP 64, 72-73, 82. Sherman reported the allegation several days later. 2RP 16; 3RP 87.

On March 7, 2008, O'Neill went to the Center to investigate the allegation. After speaking with Chavez-Martinez, O'Neill interviewed Wolfe. 2RP 18-19; 3RP 87-91; 4RP 22. Wolfe said that approximately two weeks prior to the alleged incident, while visiting Preston at the Center, Rowden told her he and Preston had a "special relationship." Wolfe could not recall the context of Rowden's statement and believed Rowden was just making conversation. Wolfe did not report the statement to anyone. 4RP 16-19, 25

After speaking with Wolfe, O'Neill confronted Rowden with Chavez-Martinez's allegations. Rowden denied any wrongdoing. O'Neill said he did not observe any range of motion limitations with Rowden's arms. O'Neill admitted however, he did not ask Rowden to do any physical tests to demonstrate his range of motion. 3RP 100.

According to O'Neill, Rowden was agitated, anxious, and under a great deal of stress when they talked. O'Neill asked Rowden "if his actions could be explained in any other way." O'Neill said Rowden replied, "If I did, then it was by accident. Maybe I was pulling her shirt down." 3RP 94-96. O'Neill wrote Rowden's statement down, and said Rowden offered to sign it if it would keep him out of jail, and if O'Neill wanted him to sign it. O'Neill refused to allow Rowden to sign, believing it would be involuntary. 2RP 10-11, 23-26; 3RP 99. Following the

conversation, O'Neill arrested Rowden and removed him from the Center.  
3RP 96-97.

C. ARGUMENT

THE SENTENCING COURT ACTED OUTSIDE ITS  
AUTHORITY BY IMPOSING COMMUNITY CUSTODY  
CONDITIONS NOT REASONABLY RELATED TO THE  
CIRCUMSTANCES OF THE OFFENSE

A trial court may only impose a sentence authorized by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007); State v. Barnett, 139 Wn.2d 462, 464, 987 P.2d 626 (1999). An illegal or erroneous sentence may therefore be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); State v. Julian, 102 Wn. App. 296, 304, 9 P.3d 851 (2000), rev. denied, 143 Wn.2d 1003, 20 P.3d 944 (2001). An accused has standing to challenge conditions even though he has not been charged with violating them. State v. Riles, 86 Wn. App. 10, 14-15, 936 P.2d 11 (1997), aff'd, 135 Wn.2d 326, 957 P.2d 655 (1998); see also Bahl, 164 Wn.2d at 750-52 (accused may bring pre-enforcement challenge to vague sentencing condition).

The jury convicted Rowden for indecent liberties, which the Sentencing Reform Act (SRA) categorizes as a sex offense. RCW 9.94A.030(45)(a)(i). At the time of Rowden's alleged offense, sex

offenders were sentenced according to Former RCW 9.94A.715.<sup>3</sup> That statute authorized a trial court to impose a term of community custody. RCW 9.94A.715(1). Here the court imposed a community custody term for 36 to 48 months. CP 49-60; 5RP 15-16.

Under Former RCW 9.94A.715 (2)(a), the following conditions, unless waived by the court, were required under Former RCW 9.94A.700(4):<sup>4</sup>

- (a) The offender shall report to and be available for contact with the assigned community corrections officer as directed;
- (b) The offender shall work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;
- (d) The offender shall pay supervision fees as directed by the department; and
- (e) The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

Former RCW 9.94A.700(5) permitted a sentencing court to impose any or all of the following conditions of community custody:

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<sup>3</sup> The provision was repealed by Laws 2008, ch. 231, § 57 and Laws 2009, ch. 28, § 42, effective August 1, 2009. It applies to Rowden, who committed the alleged offense March 1, 2008, by operation of the saving statute, RCW 10.01.040. See also RCW 9.94A.345 (Any sentence imposed under the authority of the Sentencing Reform Act must be in accordance with the law in effect at the time the offense was committed).

<sup>4</sup> Former RCW 9.94A.700 was re-codified as RCW 9.94B.050 by Laws 2008, ch. 231, § 56, effective August 1, 2009.

- (a) The offender shall remain within, or outside of, a specified geographical boundary;
- (b) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) The offender shall participate in crime-related treatment or counseling services;
- (d) The offender shall not consume alcohol; or
- (e) The offender shall comply with any crime-related prohibitions.

In addition, a trial court may order participation in rehabilitative programs or to otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community. Former RCW 9.94A.715(2)(a).

1. The Court Erred in Ordering Substance Abuse Treatment and Prohibiting Rowden from Purchasing or Possessing Alcohol as Conditions of Community Custody

Although Former RCW 9.94A.700(5)(d) authorized the trial court to prohibit alcohol consumption, the sentencing court also prohibited Rowden from purchasing or possessing alcohol. CP 59 (condition 16). In addition, the court ordered Rowden to undergo a substance abuse evaluation at his own expense and follow any treatment recommendations. CP 58 (condition 13). Because these conditions are not included in Former RCW 9.94A.700(5), the trial court had no authority to impose them unless they reasonably related to the circumstances of the offense.

Former RCW 9.94A.715(2)(a). Under State v. Jones,<sup>5</sup> these conditions are not reasonably related to Rowden's alleged offense.

Jones pled guilty to first-degree burglary and other crimes. During the plea hearing, Jones' attorney said Jones was bipolar, off of his medication, and using methamphetamine during his crimes. Counsel contended this combination caused Jones to offend. Jones, 118 Wn. App. at 202. There was no evidence alcohol played a role in Jones' crimes.

The court sentenced Jones after accepting his pleas. The sentence included community custody, a condition of which was abstinence from alcohol and participation in alcohol counseling. The court made no finding alcohol contributed to Jones' crimes. Jones, 118 Wn. App. at 202-03. The Court of Appeals held the trial court could not require Jones to participate in alcohol counseling given the lack of evidence alcohol contributed to his crimes. Jones, 118 Wn. App. at 207-08.

In reaching its conclusion, the court first observed Former RCW 9.94A.700(5)(c) authorizes a trial court to order an offender to "participate in crime-related treatment or counseling services." Jones, 118 Wn. App. at 207. The court held that because the evidence failed to show alcohol contributed to Jones' offenses or the trial court's alcohol counseling

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<sup>5</sup> 118 Wn. App. 199, 76 P.3d 258 (2003).

condition was “crime-related,” the trial court erred by ordering Jones to participate in alcohol counseling. Jones, 118 Wn. App. at 207-08.

The Court also acknowledged, however, Former RCW 9.94A.715(2)(b) permitted a trial court to order an offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender’s risk of reoffending, or the safety of the community[.] Jones, 118 Wn. App. at 208. The Court held:

If reasonably possible, [RCW 9.94A.715(2)(a)] must be harmonized with RCW 9.94A.700(5)(c), so that no part of either statute is rendered superfluous. . . . If we were to characterize alcohol counseling as “affirmative conduct reasonably related to the offender’s risk of reoffending, or the safety of the community,” with or without evidence that alcohol had contributed to the offense, we would negate and render superfluous RCW 9.94A.700(5)(c)’s requirement that such counseling be “crime-related.” Accordingly, we hold that alcohol counseling “reasonably relates” to the offender’s risk of reoffending, and to the safety of the community, only if the evidence shows that alcohol contributed to the offense.

Jones, 118 Wn. App. at 208 (footnote omitted).

The same language analyzed in Jones applies to Rowden’s case. Just as there was no evidence alcohol contributed to Jones’ offenses, there was likewise no evidence substance abuse contributed to Rowden’s alleged offense. The portion of the community custody condition requiring Rowden to obtain a substance abuse evaluation and follow

recommended treatment is too broad and not reasonably related to the circumstances of Rowden's alleged offense. See State v. Parramore, 53 Wn. App. 527, 531, 768 P.2d 530 (1989) (trial court erred by imposing condition requiring submission to breathalyzer because there was no evidence of any connection between alcohol use and Parramore's conviction for delivering marijuana).

Moreover, as discussed above, while Former RCW 9.94A.700(5)(d) specifically permits the court to order the accused to not consume alcohol, the sentencing court went further in this case and required that Rowden not purchase [or] possess alcohol and submit to monitoring of that prohibition. Because there was no evidence alcohol played a role in Rowden's commission of the crime, the trial court had no authority to prohibit purchase and possession of alcohol.

For these reasons, the "substance abuse" condition, as well as the "purchase and possess alcohol" community custody conditions should be stricken from Rowden's judgment and sentence. Jones, 118 Wn. App. at 207-08, 212.

2. The Court Erred in Ordering Mental Health Treatment as a Condition of Community Custody

The court also erred when it ordered Rowden, as a condition of community custody, to "obtain a mental health evaluation and follow all

treatment recommendations.” CP 58 (condition 13). Because there was no evidence Rowden suffered any mental health problems that may have contributed to his commission of the offense, the trial court’s condition is therefore not statutorily authorized.

Former RCW 9.94A.505(9)<sup>6</sup> authorized a trial court to order a mental health evaluation and treatment as a condition of community custody only when the court follows specific procedures. State v. Brooks, 142 Wn. App. 842, 851, 176 P.3d 549 (2008). A court may not order an offender to participate in mental health treatment as a condition of community custody “unless the court finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime.” Jones, 118 Wn. App. at 202; accord State v. Lopez, 142 Wn. App. 341, 353, 174 P.3d 1216 (2007), rev. denied, 164 Wn.2d 1012, 195 P.3d 87 (2008).

In sentencing Rowden, the court did not make the statutorily mandated finding that Rowden was a “mentally ill person” as defined by RCW 71.24.025 and that this mental illness influenced the crime for which he was convicted. The trial court thus erred in imposing the mental health treatment condition. Jones, 118 Wn. App. at 202; Lopez, 142 Wn. App. at 353-54.

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<sup>6</sup> Laws of 2006, ch. 73 § 6.

At one point during the sentencing hearing, the court stated, “I am concerned about a couple of things that were in the DOC presentence report. I’m concerned about Mr. Rowden’s mental health...so I am going to order that he have a mental health evaluation.” 5RP 15-16. The court, however, imposed the treatment condition without discussion as to whether Rowden’s mental condition influenced the crime. Indeed, defense counsel objected to imposition of the mental health evaluation, stating, “[F]rom the information that was presented at trial, I don’t think that the evidence establishes a nexus between a mental health issue and the crime that Mr. Rowden has been convicted of.” 5RP 16.

As discussed in argument one, infra, in Jones, defense counsel stated in open court that Jones was bipolar, off his medications at the time of his crimes, and that this combination “obviously resulted” in the crimes. The trial court nevertheless lacked authority to order Jones to participate in mental health treatment, in part, because it did not make the statutorily required finding that Jones was a person whose mental illness contributed to his crimes. Jones, 118 Wn. App. at 209.

As in Jones, regardless of whether the presentence report provided a potential ground for a factual finding Rowden was a mentally ill person as defined by statute, the condition remains improper because the court did not find Rowden was a mentally ill person whose condition influenced the

offense as required under Former RCW 9.94A.505(9). Brooks, 142 Wn. App. at 850-52. Accordingly, this Court should order the trial court to strike the conditions pertaining to mental health treatment. Lopez, 142 Wn. App. at 354.

3. The Court Erred in Prohibiting Internet Access as a Condition of Community Custody

Finally, there is no evidence the Internet contributed to Rowden's offense. Nonetheless, the trial court prohibited Rowden from accessing the Internet without prior approval of his treatment provider. CP 59 (condition 17). Absent a connection between Internet use and Rowden's offense, the trial court lacked authority to prohibit him from accessing the Internet.

To prohibit access to published information, the condition must be crime-related. State v. O'Cain, 144 Wn. App. 772, 184 P.3d 1262 (2008). A crime-related prohibition is an order prohibiting conduct that directly relates to the circumstances of the crime. State v. Zimmer, 146 Wn. App. 405, 413, 190 P.3d 121 (2008), rev. denied, 165 Wn.2d 1035, 203 P.3d 381 (2009) (quoting State v. Autrey, 136 Wn. App. 460, 466, 150 P.3d 580 (2006)).

As this Court held in O'Cain, an access prohibition cannot be upheld where no evidence shows Internet use contributed to the crime.

O'Cain, 144 Wn. App. at 775; see also, Zimmer, 146 Wn. App. at 413-14 (prohibition on possession of cell phones and electronic storage devices was unlawful where no evidence and no findings showed Zimmer used such items in committing her crime); State v. Riley, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993) (restriction on Riley's computer use and communication with other hackers was crime-related where he was convicted of computer trespass).

No evidence or finding in this record shows Rowden's indecent liberties offense in any way involved Internet websites, domains, or other Internet publications. Because the prohibition is not crime-related, it should also be stricken from the judgment and sentence.

D. CONCLUSION

The trial court exceeded its statutory sentencing authority by imposing community custody conditions that were not crime-related. This Court should remand the judgment and sentence for vacation of the unlawful conditions.

DATED this 18<sup>th</sup> day of October, 2010.

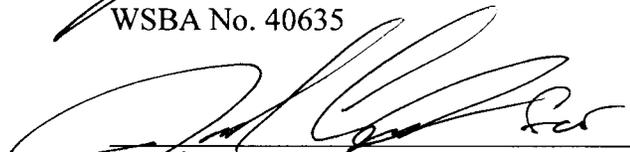
Respectfully submitted,

NIELSEN, BROMAN & KOCH



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## **Appendix A**

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No. 08-1-03014-4 KNT
	)	
Vs.	)	JUDGMENT AND SENTENCE
	)	FELONY (FJS)
DARRELL LYN ROWDEN,	)	
	)	
	)	Defendant,

**I. HEARING**

I.1 The defendant, the defendant's lawyer, SCOTT SCHMIDT, 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 04/07/2010 by jury verdict of:

Count No.: <u>I</u>	Crime: <u>INDECENT LIBERTIES</u>
RCW <u>9A.44.100(1)(B)</u>	Crime Code: <u>00866</u>
Date of Crime: <u>03/01/2008</u>	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____
Count No.: _____	Crime: _____
RCW _____	Crime Code: _____
Date of Crime: _____	Incident No. _____

[ ] 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.510(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ 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	1	VII	2-27mo	—	21 TO 27 MONTHS	10 YRS AND/OR \$20,000
Count						
Count						
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. *none requested*  
 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 (RCW 43.43.754)(mandatory for 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: \$ 600. 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.

4.4 The defendant, having been convicted of a **FELONY SEX OFFENSE**, is sentenced to the following:

(a) **DETERMINATE SENTENCE** : Defendant is sentenced to a term of confinement in the custody of the  
 King County Jail  King County Work/Education Release (subject to conditions of conduct ordered  
this date)  Department of Corrections, as follows, commencing:  immediately;  
 Date: \_\_\_\_\_ by \_\_\_\_\_ a.m. / p.m.

21 months/days on count 1 ; \_\_\_\_\_ months/days on count \_\_\_\_\_ ; \_\_\_\_\_ months/days on count \_\_\_\_\_ ;  
\_\_\_\_\_ months/days on count \_\_\_\_\_ ; \_\_\_\_\_ months/days on count \_\_\_\_\_ ; \_\_\_\_\_ months/days on count \_\_\_\_\_ ;  
\_\_\_\_\_ months/days on count \_\_\_\_\_ ; \_\_\_\_\_ months/days on count \_\_\_\_\_ ; \_\_\_\_\_ months/days on count \_\_\_\_\_ .

**ALTERNATIVE CONVERSION - RCW 9.94A.680 (LESS THAN ONE YEAR ONLY):**

\_\_\_\_\_ days of total confinement are hereby converted to:  
 \_\_\_\_\_ days/ hours community restitution (for nonviolent offense) under the supervision of the  
Department of Corrections to be completed:  on a schedule established by the defendant's Community  
Corrections Officer; or  as follows: \_\_\_\_\_ . If the defendant is not  
supervised by the Department of Corrections, this will be monitored by the Helping Hands Program.  
 Alternative conversion was not used because:  Defendant's criminal history,  Defendant's  
failure to appear,  Other: \_\_\_\_\_ .

**COMMUNITY CUSTODY for FAILURE TO REGISTER AS A SEX OFFENDER under RCW  
9A.44.130(11)(a) committed on or after 6-7-2006 as to Counts \_\_\_\_\_ is ordered  
pursuant to RCW 9.94A.545(2) and RCW 9.94A.715 for the range of 36 months.**

**APPENDIX H, Community Custody conditions, is attached and incorporated herein.**

**COMMUNITY CUSTODY (CONFINEMENT LESS THAN ONE YEAR except for Failure to  
Register as a Sex Offender under RCW 9A.44.130(11)(a) committed on or after 6-7-06) as to Counts \_\_\_\_\_,  
for crimes committed on or after 7-1-2000, is ordered for a period of 12 months. The  
defendant shall report to the Department of Corrections within 72 hours of this date or of his/her release if  
now in custody; shall comply with all the rules, regulations and conditions of the Department for  
supervision of offenders; shall comply with all affirmative acts required to monitor compliance; and shall  
otherwise comply with terms set forth in this sentence. Sanctions and punishments for non-compliance will  
be imposed by the Department of Corrections or the court.**

**APPENDIX \_\_\_\_\_ : Additional Conditions are attached and incorporated herein.**

**COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts \_\_\_\_\_ :  
pursuant to RCW 9.94A.700, for qualifying crimes committed before 6-6-1996 , is ordered for 24 months  
or for the period of earned early release awarded pursuant to RCW 9.94A.728, whichever is longer, up to  
36 months. Sanctions and punishments for non-compliance will be imposed by the Department of  
Corrections or the court.**

**APPENDIX H, Community Custody conditions, is attached and incorporated herein.**

**COMMUNITY CUSTODY (CONFINEMENT OVER ONE YEAR) as to Counts 1 :  
pursuant to RCW 9.94A.715 for qualifying crimes (non RCW 9.94A.507 offenses) is ordered for 36  
months. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections  
or the court.**

**APPENDIX H, Community Custody conditions, is attached and incorporated herein.**

(b) INDETERMINATE SENTENCE – QUALIFYING SEX OFFENSES occurring after 9-1-2001:

The Court having found that the defendant is subject to sentencing under RCW 9.94A.507, the defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: [ ] immediately; [ ] (Date): \_\_\_\_\_ by \_\_\_\_\_ .m.

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life;

Count \_\_\_\_: Minimum Term: \_\_\_\_\_ months/days; Maximum Term: \_\_\_\_\_ years/life.

[ ] COMMUNITY CUSTODY: pursuant to RCW 9.94A.507 for qualifying SEX OFFENSES committed on or after September 1, 2001, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence as set forth above. Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or by the court.

APPENDIX H: Community Custody conditions, is attached and incorporated herein.

4.5 ADDITIONAL CONDITIONS OF SENTENCE

The above terms for counts \_\_\_\_\_ 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: \_\_\_\_\_

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (For crimes committed after 6-10-1998.)

[ ] The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (For crimes before 6-11-1998 only, per In Re Charles)

The TOTAL of all terms imposed in this cause is 21 months.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): [] 31 day(s) or [ ] days determined by the King County Jail.

[ ] Jail term is satisfied and defendant shall be released under this cause.

4.6 NO CONTACT: For the maximum term of 10 years, defendant shall have no contact, direct or indirect, in person, in writing, by telephone, or through third parties with: DP, Carol Wolfe and Martin's, Maria Chavez-Martinez

[ ] Any minors without supervision of a responsible adult who has knowledge of this conviction.

4.7 **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 sexual offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in **APPENDIX G.**

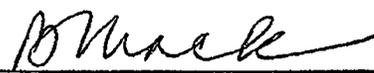
4.8 **SEX OFFENDER REGISTRATION:**

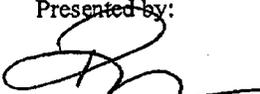
The defendant shall register as a sex offender as ordered in **APPENDIX J.**

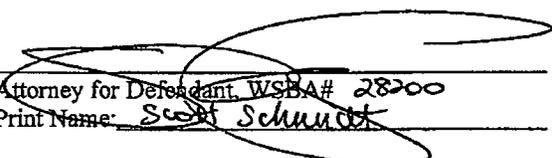
4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is  attached  as follows:

The defendant shall report to an assigned Community Corrections Officer within 72 hours of release from confinement for monitoring of the remaining terms of this sentence.

Date: 5/7/10

  
JUDGE  
Print Name:

Presented by:  
 55411  
Deputy Prosecuting Attorney, WSBA#  
Print Name: \_\_\_\_\_

Approved as to form:  
  
Attorney for Defendant, WSBA# 28200  
Print Name: Scott Schmidt

FINGERPRINTS

BEST IMAGE POSSIBLE



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: x Darrell Rowden  
DEFENDANT'S ADDRESS: P.O.C.

DARRELL LYNN ROWDEN

DATED: 5/7/10  
B. Mack  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: Karla Babielson  
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

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: \_\_\_\_\_

S.I.D. NO. WA12884698  
DOB: OCTOBER 13, 1956  
SEX: M  
RACE: W

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DARRELL LYN ROWDEN,

Defendant,

)  
)  
) No. 08-1-03014-4 KNT  
)  
) JUDGMENT AND SENTENCE,  
) (FELONY) - APPENDIX B,  
) CRIMINAL HISTORY  
)  
)  
)

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
CONT SUBST VIO A: MFG/DLVR/P	04/30/1999	ADULT	981033271	KING CO

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

Date: 5/7/10

*B. Mack*  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 08-1-03014-4 KNT
Plaintiff,	)	
	)	
vs.	)	APPENDIX G
	)	ORDER FOR BIOLOGICAL TESTING
DARRELL LYN ROWDEN,	)	AND COUNSELING
	)	
Defendant,	)	

(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: 5/7/10

*R. Mack*  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,

v.

ROWDEN, Darrell Lynn Defendant,

) No. 08-1-03014-4 KNT
) APPENDIX H
) COMMUNITY CUSTODY

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

4.5 Community Custody: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after 1 July 1990 to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.150(1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community custody.

Community Custody is to begin 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 custody:

- (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;
(5) Pay community custody fees as determined by the Department of Corrections;
(6) Receive prior approval for living arrangements and residence location; and
(7) Do not own, use or possess firearms or ammunitions.

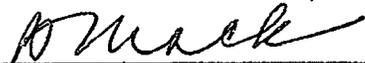
The following conditions listed under 4.5(a) are hereby waived by the court:

(b) Defendant shall comply with the following other conditions during the term of community custody:

- (8) Have no direct or indirect contact with Dorothy Preston (Victim - SCS 470)
(9) Within 30 days of being placed on supervision, complete a sexual deviancy evaluation with a therapist approved by your Community Corrections Officer and follow all treatment recommendations.
(10) Do not change therapist without the prior approval of your Community Corrections Officer and treatment therapist.
(11) Do not possess or peruse sexually explicit materials unless given prior approval by your sexual deviancy treatment specialist and/or Community Corrections Officer.
(12) Do not attend X-rated movies, peep shows or adult bookstores without the prior approval of your sexual deviancy treatment specialist or Community Corrections Officer. If directed by sexual deviancy specialist
(13) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, obtain a mental health evaluation from a qualified provider and complete all treatment recommendations.
(14) If directed by your sexual deviancy treatment specialist or Community Corrections Officer, undergo an evaluation regarding substance abuse at your expense and follow any recommended treatment as a result of that evaluation.
(15) Do not use or possess illegal or controlled substances without the written prescription of a licensed physician and to verify compliance, submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.

- (16) Do not purchase, possess, or use alcohol (beverage or medicinal), and submit to testing and reasonable searches of your person, residence, property and vehicle by the Community Corrections Officer to monitor compliance.
- (17) Do not access the Internet without the prior approval of your supervising ~~Community Corrections Officer~~ and sex offender treatment provider.
- (18) Do not change residence without the prior approval of your Community Corrections Officer.
- (19) Pay for counseling costs for victims ~~and their families~~.
- (20) Within 30 days of sentencing, submit to DNA and HIV testing as required by law.
- (21) Obey all laws.
- (22) Abide by any additional conditions imposed by the Washington State Department of Corrections.

Date: 5/7/10

  
 \_\_\_\_\_  
 JUDGE, KING COUNTY SUPERIOR COURT

APPENDIX H- COMMUNITY CUSTODY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
Plaintiff, )  
 )  
vs. )  
Darrell Ponder )  
Defendant, )

No. 08-1-03014-LKNT  
APPENDIX J  
JUDGMENT AND SENTENCE  
SEX/ KIDNAPPING OFFENDER NOTICE OF  
REGISTRATION REQUIREMENTS

**SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200 You are required to register your complete residential address with the sheriff of the county where you reside, because you have been convicted of one of the following sex or kidnapping offenses: *Rape 1, 2, or 3; Rape of a Child 1, 2, or 3; Child Molestation 1, 2 or 3; Sexual Misconduct With A Minor 1 or 2; Indecent Liberties; Incest 1 or 2; Voyeurism; Kidnapping 1 or 2 (if victim is a minor and offender is not the minor's parent); Unlawful Imprisonment (if victim is a minor and offender is not the minor's parent); Sexual Exploitation of a Minor; Custodial Sexual Misconduct 1; Criminal Trespass against Children; Dealing in Depictions of a Minor Engaged in Sexually Explicit Conduct; Sending, Bringing Into State Depictions of a Minor Engaged in Sexually Explicit Conduct; Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct; Communication with a Minor for Immoral Purposes; Patronizing a Juvenile Prostitute; Failure to Register as a Sex Offender; any gross misdemeanor that is under RCW 9A.28, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or RCW 9A.44.130 or a kidnapping offense under 9A.44.130; or any felony with a finding of sexual motivation (RCW 9.94A.835 or RCW 13.40.135).*

If you are out of custody, you must register immediately upon being sentenced.

If you are in custody, you must register within 24 hours of your release.

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

If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of the county of your new residence at least 14 days before moving and register with the county sheriff of your new residence within 24 hours of moving. In addition, you must give signed written notice of your change of address to the sheriff of the county where you last registered within 10 days of moving.

If you plan to attend a public or private school or institution of higher education in Washington, you are required to notify the county sheriff for the county of your residence within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you are currently attending a public or private school or institution of higher education in Washington, you must notify the county sheriff, for the county where the school is located, immediately.

If you lack a fixed residence, you are required to register as homeless. You must also report in person to the sheriff of the county where you registered on a weekly basis. If you are under DOC supervision and lack a fixed residence, you must register in the county where you are being supervised. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county within 24 hours.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 3 business days after returning to this state or within 24 hours if you are under the jurisdiction of the state department of corrections, the indeterminate sentence review board or the department of social and health services.

If you move to a new state, you must register with the new state within 10 days after establishing residence. You must also send written notice, within 10 days of moving to the new state, to the county sheriff with whom you last registered in Washington State.

If you are not a resident of Washington, but attend school, are employed, or carry on a vocation in the State of Washington, you must register with the county sheriff for the county where your school, place of employment, or vocation is located.

If you are ranked as a Level II or Level III offender (even if you have a fixed residence), you must report, in person, every ninety days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours.

The King County Sheriff's Office sex offender registration desk is located on the first floor of the King County Courthouse- 516 3<sup>rd</sup> Avenue, Seattle, WA. Failure to comply with registration requirements is a criminal offense.

Copy Received:

Darrell Ponder 5/7/10  
Defendant Date

[Signature]  
JUDGE

APPENDIX J Rev. 8/06  
Distribution:  
Original/White - Clerk  
Yellow - Defendant  
Pink - King County Jail

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 65405-5-I
	)	
DARRELL ROWDEN,	)	
	)	
Appellant.	)	

---

**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 19<sup>TH</sup> DAY OF OCTOBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DARRELL ROWDEN  
DOC NO. 787925  
AIRWAY HEIGHTS CORRECTIONS CENTER  
P.O. BOX 2049  
AIRWAY HEIGHTS, WA 99001

**SIGNED** IN SEATTLE WASHINGTON, THIS 19<sup>TH</sup> DAY OF OCTOBER, 2010.

x *Patrick Mayovsky*

2010 OCT 19 PM 4: 19  
COURT OF APPEALS  
STATE OF WASHINGTON  
FILED