

FILED  
Jun 25, 2014  
Court of Appeals  
Division I  
State of Washington

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STATEMENT OF ADDITIONAL  
GROUNDS

STATE OF WASHINGTON  
Respondant

NO: 71029-0-1

vs.

STATEMENT OF  
ADDITIONAL GROUNDS

Vichai Saly  
Appellant

I, Vichai Saly, have received and reviewed the opening brief prepared by my Appellate Attorney, summarized below are the additional grounds for review that are not addressed in that brief. The Appellant request this Court accept this appeal and hold a factual hearing on the merits.

ADDITIONAL GROUNDS

MR. SALLY'S JUDGEMENT AND SENTENCE IS "INVALID ON ITS FACE". IF THE SENTENCING JUDGE HAD ALLOWED ME TO BRING IT UP AT SENTENCING WOULD MR. SALLY HAVE PREVAILED

1 On Mr. Saly's J35, criminal history. It  
2 states; The defendant has the following criminal  
3 history used in calculating the offender score  
4 R.C.W. 9A.04A.525. ~~(2)~~:

5 It 1st Assault 2, sentencing date  
6 01/13/1995 in adult crime, # 941049218 Pierce  
7 County.

8 Mr. Saly's birthday is 02/01/78, in 01/13/95  
9 Mr. Saly is still 16 yrs old and that violates  
10 R.C.W. 13.04.010 (2);

11 Mandatory decline hearing - unless waived by  
12 Court, the parties, and their counsel, a decline  
13 hearing shall be held when:

14 (a) The respondent is sixteen or seventeen  
15 years of age and the information alleges  
16 a class a felony or an attempt, solicitation,  
17 or conspiracy to commit a class a felony;

18 At that time Mr. Saly was still sixteen  
19 year old and crime was a class b felony  
20 therefore, causing an erroneous decline  
21 hearing. In turn making the class b  
22 second degree assault invalid. (App A)

23 - Mr. Saly request that he be released  
24 and to be resentenced with the  
25 offender score of (0) zero and

1 pending a hearing on the merits.  
2 Mr. Saly request that a factual/evidence  
3 hearing be held to further litigate  
4 these meritorious issues.

5 

6  
7 Victor Saly  
8 SCCC # T32454  
9 191 Winstanfine Way  
10 Aberdeen WA 98520  
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15 Dated this 18th day of June 2014  
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  - \* Congress - the Other Washington
  - \* TVW
  - \* Washington Courts
  - \* OFM Fiscal Note Website



Handwritten signature: A.P. A

RCWs > Title 13 > Chapter 13.40 > Section 13.40.110

13.40.100 << 13.40.110 >> 13.40.120

### RCW 13.40.110 Hearing on question of declining jurisdiction — Held, when — Findings.

(1) Discretionary decline hearing - The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction.

(2) Mandatory decline hearing - Unless waived by the court, the parties, and their counsel, a decline hearing shall be held when:

(a) The respondent is sixteen or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or

(c) The information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one.

(3) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(4) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing.

[2009 c 454 § 3; 1997 c 338 § 20; 1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

#### Notes:

**Finding -- Evaluation -- Report -- 1997 c 338:** See note following RCW 13.40.0357.

**Severability -- Effective dates -- 1997 c 338:** See notes following RCW 5.60.060.

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Effective date -- Savings -- Application -- 1988 c 145:** See notes following RCW 9A.44.010.

**Effective date -- Severability -- 1979 c 155:** See notes following RCW 13.04.011.

**FILED**  
KING COUNTY, WASHINGTON  
JUL 5 2005  
SUPERIOR COURT CLERK

PRESENTENCING STATEMENT & INFORMATION ATTACHED

CERTIFIED COPY TO COUNTY JAIL JUL - 5 2005

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 Vs. )  
 )  
 VICHAI SALY )  
 )  
 Defendant, )

No. 03-C-00863-6 *Knt*  
JUDGMENT AND SENTENCE  
FELONY

**I. HEARING**

I.1 The defendant, the defendant's lawyer, *Lisa Mulligan* ~~MARVIN MCCOY~~, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: *Det. Ron Corrigan*

**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 05/26/2005 by jury verdict of:

Count No.: I Crime: MURDER IN THE FIRST DEGREE  
RCW 9A.32.030 (1)(a)(c) Crime Code: 00128  
Date of Crime: 05/31/2003 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) I 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	8	XV	370 TO 493	+60 MONTHS	430 TO 553 MONTHS	LIFE AND/OR \$50,000
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.

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: \$ 500 + Restitution. 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 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 \_\_\_\_\_ m.

10c  
388

~~388~~ months/days on count 1; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_  
\_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/day on count \_\_\_\_\_

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: 60 months on CTI

which term(s) shall run consecutive 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 448 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 9.94A505(6).

4.5 NO CONTACT: For the maximum term of Life years, defendant shall have no contact with Shane Oresy ; John Goote ; Vahana Sika (Gina)

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 \_\_\_\_\_ 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.

- (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.

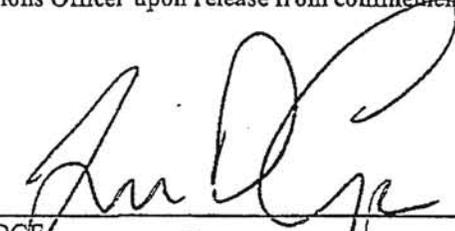
4.9  **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is  attached  as follows:

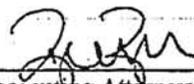
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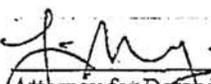
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

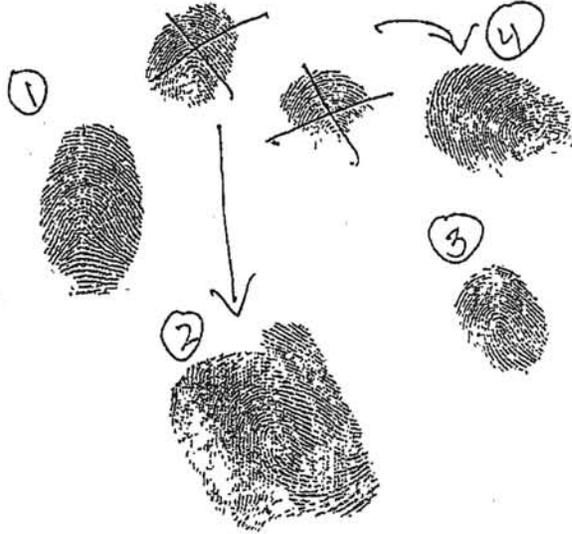
Date: 6-29-05

  
 \_\_\_\_\_  
 JUDGE  
 Print Name: CAYCE

Presented by:  
  
 \_\_\_\_\_  
 Deputy Prosecuting Attorney, WSBA# 23362  
 Print Name: R. ROYCE

Approved as to form:  
  
 \_\_\_\_\_  
 Attorney for Defendant, WSBA # 29429  
 Print Name: Lisa Mulligan

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: Vichai Saly  
DEFENDANT'S ADDRESS: Doc

VICHAJ SALY

DATED: 6-29-05  
[Signature]  
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK  
BY: [Signature]  
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. WA15863558

DOB: FEBRUARY 1, 1978

SEX: M

RACE: A

\_\_\_\_\_  
CLERK

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

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

VICHAJ SALY

Defendant,

No. 03-C-00863-6 *KNY*

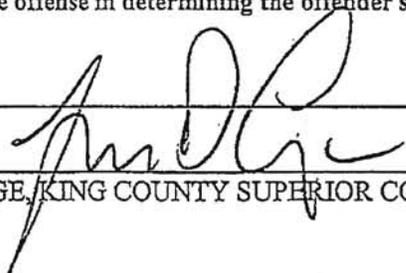
JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

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
ASSAULT 2	01/13/1995	ADULT	941042918	PIERCE CO
ASSAULT 2	01/13/1995	ADULT	941042918	PIERCE CO
ASSAULT 2	01/13/1995	ADULT	941049218	PIERCE CO
TAKING MOTOR VEHICLE WITHOUT PERMISSION	01/13/1995	ADULT	941049218	PIERCE CO
TAKING MOTOR VEHICLE VUCSA	08/06/1992	JUVENILE	308340	PIERCE CO
	12/28/1993	JUVENILE	308340 R060	PIERCE CO
UNLAWFUL POSSESSION OF A FIREARM 2	10/07/1994	JUVENILE	308340 R060	PIERCE CO

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

Date: 6-29-05

  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VICHAI SALY

Defendant,

No. 03-C-00863-6 Knt

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.

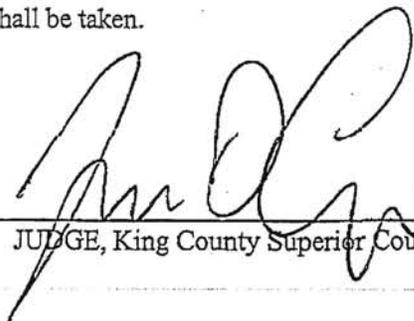
(2)  HIV TESTING AND COUNSELING (RCW 70.24.340):

(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: 6-29-05

  
\_\_\_\_\_  
JUDGE, King County Superior Court

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VICHAI SALY

Defendant,

No. 03-C-00863-6.Knt

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: 6-29-05

JUDGE (with signature)

### DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 71029-0-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent King County Prosecuting Attorney-Appellate Unit  
[PAOAppellateUnitMail@kingcounty.gov]
- appellant
- Attorney for other party

  
MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: June 25, 2014