

8-28-14  
 PETITIONER MAY FILE PETITION  
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 COURT OF APPEALS DIV. 1  
 STATE OF WASHINGTON  
 2014 AUG 27 PM 10:45

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
 DIVISION 1

In re Personal Restraint Petition of:

VINH Q TRAN  
 Petitioner.

Case No. 72582-3

PERSONAL RESTRAINT PETITION

If there is not enough room on this form, use other pages and write "See Attached." Fill out this entire form before you sign this form in front of a notary public (free in the law library).

A. STATUS OF PETITIONER

1. VINH Q. TRAN, 773774, SECC, H3B113;  
 (Full name and current address)  
191 Constantine Way; Aberdeen, WA 98520

apply for relief from confinement. I am now in custody serving a sentence on conviction of a crime. I am now in custody because of a Judgment and Sentence.

- The court in which I was sentenced is: King County Superior Court
- I was convicted of the crime(s) of: See attached brief
- I was sentenced after (check one) Trial  Plea of Guilty  on August 1, 2008  
(Date of sentence)
- The Judge who imposed sentence was Jeffrey Ramsdell
- My lawyer at trial court was Francisco Rodriguez  
P.O. Box 4191 Seattle WA 98194  
(Name and address if known)

ORIGINAL

6. I did \_\_\_ did not  appeal from the decision of the trial court. If I did appeal, I appealed to: \_\_\_\_\_

\_\_\_\_\_  
(Name of court or courts to which appeal took place)

7. My lawyer for my appeal was: N/A  
(Name and address if known or write "none")

The decision of the appellate court was \_\_\_ was not \_\_\_ published. (If the answer is that it *was* published, and I have this information) the decision is published in \_\_\_\_\_  
N/A

8. Since my conviction I have \_\_\_ have not  asked a court for some relief from my sentence other than I have already written above. (If the answer is "I have asked a court", the court I asked was \_\_\_\_\_). Relief was denied on \_\_\_\_\_  
(Name of court)  
N/A  
(Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was N/A  
(Name and address if known)

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: \_\_\_\_\_  
N/A  
\_\_\_\_\_  
\_\_\_\_\_

**B. GROUNDS FOR RELIEF:**

(If I claim more than one reason for relief from confinement, I will attach sheets for each separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc.). I claim that I have 1 reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

First Ground  
(First, Second, etc.)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): \_\_\_\_\_

See attached brief

2. The following facts are important when considering my case. (After each fact statement put the name of the person or person who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) \_\_\_\_\_

See attached brief

3. The following reported court decisions (indicate citations) in cases similar to mine show the error I believed happened in my case: \_\_\_\_\_

See attached brief

4. The following statutes and constitutional provisions should be considered by the court: \_\_\_\_\_

See attached brief

5. This petition is the best way I know to get the relief I want, and no other way will work as well because: \_\_\_\_\_

See attached brief

**C. STATEMENT OF FINANCES:**

I cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help me fill out this form. I have attached a certified copy of my prison finance statement (trust account).

- 1. I do  do not  ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.
- 2. I have \$ \_\_\_\_\_ in my prison or institution account. (Attach *certified* six month statement of inmate trust account, available from inmate accounting.) *See attached PLRA*
- 3. I do  do not  ask the court to appoint a lawyer for me.
- 4. I am  am not  employed. My salary or wages amount to \$ 60.<sup>00</sup> a (take home) month. My employer is:

DUC  
(Name and address of employer)

5. During the past 12 months I did  did not  get any money from a business, profession or other form of self-employment. (If I did, I got a total of \$ \_\_\_\_\_.)

6. During the past 12 months I:

Did  did not  receive any rent payments. If so, the total I received was \$ \_\_\_\_\_.

Did  did not  receive any interest. If so, the total I received was \$ \_\_\_\_\_.

Did  did not  receive any dividends. If so, the total I received was \$ \_\_\_\_\_.

Did  did not  receive any other money. If so, the total I received was \$ \_\_\_\_\_.

Did  did not  have any cash except as noted in (C)(2) above. If I do, the total cash I have is: \$ \_\_\_\_\_.

Did  did not  have savings or checking account. If so, total in all accounts is \$ \_\_\_\_\_.

Did  did not  own stocks, bonds, or notes. If so, their total value is \$ \_\_\_\_\_.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family own.

Items	Value
<u>N/A</u>	

8. I am  am not  married. If I am, my wife or husband's name and address is:

\_\_\_\_\_

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
N/A		

10. All the bills I owe are listed here:

Name & Address of creditor	Amount
STATE OF WASHINGTON	35K

**D. REQUEST FOR RELIEF:**

I want this court to:

Vacate my conviction and give me a new trial.

Vacate my conviction and dismiss the criminal charges against me without a new trial.

V&T

Order a RAP 16.12 Superior Court evidentiary hearing to determine the merits of each one of my claims to include any evidence not presented in the criminal trial.

V&T

Other: Remand to trial court for resentencing  
 (Please specify)

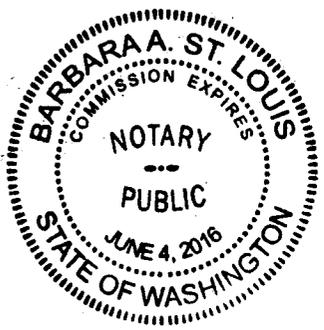
**E. OATH OF PETITIONER**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF GRAY'S HARBOR )

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents and I affirm the contents of this petition are true and correct under penalty of perjury of the laws of the State of Washington.

(Sign before a Notary) *Vinh Tran*  
(Print Name) VINH Q TRAN  
DOC # 773774, UNIT H3B113  
STAFFORD CREEK CORRECTION CENTER  
191 CONSTANTINE WY  
ABERDEEN WA 98520

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of August, 2014.



*Barbara St Louis* **Barbara St Louis**  
Notary Public in and for the State of Washington  
Residing at Gray's Harbor 6-4-16 exp

08/15/2014  
KMRENINGER

Department of Corrections  
STAFFORD CREEK CORRECTIONS CENTER

PAGE: 01 OF 01  
OIRPLRAR  
10.2.1.18

**PLRA IN FORMA PAUPERIS STATUS REPORT  
FOR DEFINED PERIOD : 01/31/2014 TO 07/31/2014**

DOC# :	0000773774	NAME :	TRAN VINH	ADMIT DATE :	08/15/2008
DOB :	12/25/1977			ADMIT TIME :	10:01
	<b>AVERAGE MONTHLY RECEIPTS</b>	<b>20% OF RECEIPTS</b>	<b>AVERAGE SPENDABLE BALANCE</b>	<b>20% OF SPENDABLE</b>	
	147.89	29.58	46.77	9.35	

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
OFFICE OF CORRECTIONAL OPERATIONS  
STAFFORD CREEK CORRECTION CENTER  
CERTIFIED BY: KMRENINGER

2014 AUG 27 AM 10:45  
COURT OF APPEALS DIVISION I  
STATE OF WASHINGTON

Washington State Court of Appeals  
Division I

In re the Personal Restraint of VINH Q TRAN, Petitioner	No. PERSONAL RESTRAINT PETITION (PRP)
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I. STATUS OF PETITIONER

Comes now VINH Q TRAN (hereinafter "Petitioner"), pro se, whom is currently confined at the Stafford Creek Corrections Center (SCCC), 191 Constantine Way, Aberdeen, WA 98520. Petitioner is currently confined and in custody serving a SRA sentence of 318 months. The SRA term was imposed after convictions of Burglary in the First Degree (Burg 1)(Count I), Robbery in the First Degree (Rob 1)(Count II), Burg 1 (Count IV), Rob 1 (Count V), Assault in the First Degree (Assault 1)(Count VI), and Assault in the Second Degree (Assault 2)(Count VII)(with firearm sentence enhancements on counts I, II, IV and V) by way of guilty plea under Cause No. 98-C-05129-5SEA. Judgment and Sentence (J&S) was entered in King County on August 1, 2008 by Judge

ORIGINAL

Jeffrey Ramsdell.

II. STATEMENT OF RELIEF SOUGHT

Petitioner seeks resentencing with an offender score calculated at "4" points.

III. FACTS PERTAINING TO GROUNDS FOR RELIEF

On May 27, 1998, Petitioner and co-defendants unlawfully entered into the residence of Lien Giang with the intent of taking valuables by force and/or intimidation. During the commission of this home-invasion style robbery, Petitioner used force against Ms. Giang in order to gain compliance with said robbery. For this series of events, Petitioner was ultimately charged with Burg 1 (Count IV), Rob 1 (Count V), and Assault 2 (Count VII).

On June 2, 1998, Petitioner and co-defendants unlawfully entered into Bo Li's residence with the intent to take valuables by force and/or intimidation. During the course of this robbery, Mr. Li was able to gain control over one of the robbers' guns, shot that robber, and then ran outside. Once outside, Petitioner shot Mr. Li. For this series of events, Petitioner was ultimately charged with Burg 1 (Count I), Rob 1 (Count II), and Assault 1 (Count VI).

On April 18, 2005, Petitioner entered a guilty plea to Counts I-VII, inclusive, as listed in Part I hereinabove. In calculating the offender score, the

Court tallied a score of "12" for Counts I, II, IV, and V, and tallied a score of "9+" for Counts VI and VII. The court entered sentence as follows: Count I=176 months; Count II=231 months; Count IV=176 months; Count V=231 months; Count VI=318 months; and Count VII=84 months. All counts are to run concurrent.

#### IV. GROUND S FOR RELIEF AND ARGUMENT

1. PETITIONER IS UNDER UNLAWFUL RESTRAINT BY WAY OF A SENTENCE BASED UPON AN ERRONEOUSLY CALCULATED OFFENDER SCORE, THUS BEING UNAUTHORIZED AND CONSTITUTING A FUNDAMENTAL DEFECT WHICH RESULTS IN A COMPLETE MISCARRIAGE OF JUSTICE.

(a) This PRP Is Brought As A Challenge To The J&S Being Invalid On Its Face And As Such Is Exempt From Procedural Time Bar.

Under RCW 10.73.090(1), a collateral attack on a J&S that is not valid on its face may be brought at any time. PRP of Johnson, 141 Wn. 2d 712, 715, 10 P. 3d 380 (2000); State v. Ammons, 105 Wn. 2d 175, 188, 718 P. 2d 796 (1986). Invalid on its face means--without further elaboration--evincing infirmity. Id; PRP of Hemenway, 147 Wn. 2d 530-33, 55 P.3d 615 (2002). Charging documents, statements of defendant on plea of guilty, documents signed as part of a plea agreement, and certified court documents of unquestionable authenticity are relevant to the facial validity of a J&S and will be considered to the extent that they bear on validity. PRP of Coats, 173 Wn. 2d 123, 140, 267 P. 3d 324 (2011); PRP of Carrier, 173 Wn. 2d 791, 799-

800, 272 P. 3d 209 (2012).

As set forth hereinbelow, Petitioner's J&S evinces its invalidity on its face, and consequently this PRP is exempt from the one year procedural time-bar of RCW 10.73.090(1).

Further, and in addition, double jeopardy is itself a ground for relief statutorily exempt from the one year procedural time-bar of RCW 10.73.090(1). See RCW 10.73.100(3); PRP of Strendy, Jr., 171 Wn. 2d 817 fn. 2, 256 P.3d 1159 (2011). To the extent that Petitioner claims double jeopardy violations, this PRP is severally exempt from the one year procedural time-bar of RCW 10.73.090(1).

(b) Petitioner's Sentence Was Imposed Based Upon A Miscalculated Offender Score And As Such Exceeds The Trial Count's Statutory Authority.

Petitioner asserts that his offender score is miscalculated to such extent that it should ultimately be tallied as a "4". In order to reach such a calculation, Petitioner sets forth a trifurcated argument, to wit: (i) improper use of juvenile conviction; (ii) merger; and (iii) same criminal conduct. Each of these arguments will be set forth hereinbelow, respectively.

(i) Petitioner's J&S Incorrectly Includes Washed Out Juvenile Convictions Used To Calculate His Offender Score.

The Washington Supreme Court has stated, in keeping with long-established precedent, that "we adhere to the principle that a sentence in excess of statutory authority is subject to collateral attack, [and] that a sentence is excessive if based upon a miscalculated offender score[.]" PRP of Goodwin, 146 Wn. 2d 861, 873-74, 50 P. 3d 618 (2002). Juvenile convictions committed before the offender turned 15 may not be included in offender scores for offenses committed before the 2002 SRA Amendments. PRP of LaChapelle, 153 Wn. 2d 1, 6-14, 100 P. 3d 805 (2004);

Here, all underlying offenses occurred either on June 3, 1998 or on May 27, 1998. Exhibit (Ex.) A, ¶ 2. Thus, the said offenses were committed prior to the 2002 SRA Amendments.

In calculating the offender score for the matter at bar, the Court included one juvenile adjudication for Robbery in the First Degree committed on 11/18/1992. Ex. A, ¶ 3. Petitioner's date of birth is listed on his J&S as December 25, 1977. Ex. A, ¶ 4. This establishes that Petitioner was only 14 years old at the time he committed the aforesaid Rob 1 as a juvenile.

Because Petitioner was under the age of 15 when he committed the juvenile Rob 1 offense, and because the current convictions were committed prior to the 2002

SRA Amendments, LaChappelle controls the matter and Petitioner's J&S is invalid on its face. LaChappelle, supra at 6-14.

(ii) Petitioner's Restraint Is Unlawful As His Conviction Under Count VII Violates Double Jeopardy Under The "Same Offense" Analysis And Must Be Vacated.

State and Federal Constitutions each guarantee protection against multiple convictions arising out of the same offense. U.S. Const. Amend. V; Wa. Const. Art. 1, §9. When analyzing double jeopardy claims, there are two types of double jeopardy violations which may arise where the State charges the defendant with multiple crimes based upon the same action. A "Unit of Prosecution" violation occurs where a defendant is twice convicted for the same offense, e.g., two counts of robbery for the same action. A "Same Offense" violation occurs where a defendant is convicted of two offenses that require merger upon conviction, e.g., a count of felony murder and a count on the underlying robbery. PRP of Francie, 170 Wn. 2d 517, 522 n. 2, 242 P. 3d 866 (2010).

The merger doctrine is a rule of statutory construction which our Supreme Court has ruled only applies where the legislature has clearly indicated that in order to prove a particular degree of crime the state must prove not only that the defendant committed

that crime but that the crime was accompanied by an act which is defined as a crime elsewhere in the statutes. State v. Vladovic, 99 Wn. 2d 413, 421, 662 P. 2d 853 (1983). The Supreme Court has found that the legislature intended to punish Rob 1 and Assault 2 as a "single offense" because the greater offense typically carries a penalty that incorporates punishment for the lesser included offense. State v. Freeman, 153 Wn. 2d 765, 775, 108 P. 3d 753 (2005). An additional conviction for the "included" offense cannot be allowed to stand. State v. Johnson, 92 Wn. 2d 671, 679-80, 600 P.2d 1249 (1979). Where an Assault 2 merges into a greater crime, the Assault 2 must be vacated. Francis, supra at 524-25.

Here Petitioner committed a home-invasion style robbery on Lien Giang (Burg 1, Rob 1, Counts IV and V, respectively). Petitioner and co-defendants gained entry into Ms. Giang's residence by breaking a window in the basement. Ex. A, ¶ 5. Petitioner and another co-defendant was armed with a firearm. Id. After making their way up the stairs, they encountered Ms. Giang. Id. While ransacking Ms. Giang's residence, Petitioner struck Ms. Giang on the head with his firearm in order to force her compliance in revealing hiding places of money (Assault 2, Count VII). Id.

It was the actus reus of assaulting Ms. Giang with

a firearm which substantiates the Assault 2 (Count VII). Ex. A, ¶ 6. It was also the taking of--inter alia--U.S. currency and jewelry from the person of Ms. Giang by the use of force and violence which substantiates the Rob 1 to the greater offense. That is to say, the use of force and violence against Ms. Giang to take her money and jewelry is already factored into the elements of the Rob 1. Id.

Because the State had to prove that Petitioner took Ms. Giang's money and jewelry by force and violence to sustain the Rob 1 conviction (Count V), and the force and violence referenced consisted of Petitioner pistol whipping Ms. Giang to force her to reveal the hiding places for cash (Assault 2, Count VII), Petitioner's Assault 2 merges into the Rob 1 and are not separately punishable. Vladovic, supra at 419; Johnson, supra at 680. This is so because when the degree of one offense is raised by conduct separately criminalized by the legislature, the two crimes are intended to be punished as a "single offense" through the greater crime. Freeman, supra at 772-73, Vladovic, supra at 421.

Consequently because Petitioner's Assault 2 (Count VII) merges with the greater crime of Rob 1 (Count V), the underlying Assault 2 must be vacated. Francis, supra at 504-25; see also State v. Womac, 160 Wn. 2d

643, 647, 160 P. 3d 40 (2007)(the proper remedy for when two offenses merge is to vacate the lesser included offense).

(iii) Petitioner's Sentence Was Imposed Based Upon A Miscalculated Offender Score As Counts IV and V, And Counts I and II, Are The Same Criminal Conduct.

A trial court is bound by statutory authority in handing down a sentence. State v. Manussier, 129 Wn. 2d 652, 667-68, 921 P. 2d 473 (1996)(citing Ammons, supra at 181). When a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence when the error is discovered. In re Carle, 93 Wn. 2d 31, 33, 604 P. 2d 1293 (1980) (quoting McNutt v. Delmore, 47 Wn. 2d 563, 565, 288 P. 2d 848 (1955)). PRP's are always available to correct illegal or unauthorized sentences. In re Moore, 116 Wn. 2d 30, 33, 803 P. 2d 300 (1991).

A trial Court is given deference in determining a defendant's offender score for sentencing purposes. State v. Collicott, 112 Wn. 2d 399, 404, 771 P. 2d 1137 (1989). A determination of what constitutes the same criminal conduct is necessary in assessing the offender score. Id at 404; State v. Elliot, 114 Wn. 2d 6, 17, 785 P. 2d 440 (1990). The standard range for a criminal conviction is determined by a defendant's offender

score and seriousness level of the current offense. State v. Haddock, 141 Wn. 2d 103, 108, 3 P. 3d 733 (2000). The offense of conviction determines the offense seriousness level. The offense seriousness level is measured on the vertical axis of the sentencing guidelines grid. RCW 9.94A.515 lists the crimes included within each seriousness level. Burg 1 is listed as a seriousness level VII, whereas Rob 1 is a level IX. The defendant's offender score is measured on the horizontal axis of the sentencing guidelines grid. An offender may receive from 0 to 9+ points on that axis. See RCW 9.94A.510.

After the offense seriousness level has been determined and the offender score has been calculated, the preliminary standard sentence range can be established. The standard sentence range can be determined by referring to the sentencing grid at RCW 9.94A.510. For each current offense, the intersection of the row defined by the offender score and the column defined by the offense seriousness level determines the standard sentence range.

When two or more offenses are being sentenced at the same time, the court is instructed to count the other offenses as "other current offenses" in calculating the offender score for each offense individually. RCW 9.94A.525(1). However, when one or

more other current offense constitutes the "same criminal conduct", then those crimes count as one offense in the calculation of the offender score. RCW 9.94A.589(1)(a); State v. Vike, 125 Wn. 2d 407, 410, 885 P.2d 824 (1994). Failing to raise the issue of "same criminal conduct" at the trial court does not preclude appellate review of that issue. State v. Anderson, 92 Wn. App. 544, 562, 690 P.2d 975 (1998).

In determining whether two crimes encompass the same criminal conduct and are to be counted as a single offense for sentencing purposes, a court will consider (1) whether a defendant's objective intent changed from one crime to the other; (2) whether one crime furthered the other; and (3) whether the crimes occurred at the same time and place. State v. Dunbar, 59 Wn. App. 447, 451, 798 P.2d 306 (1990)(citing State v. Dunaway, 109 Wn. 2d 207, 743 P.2d 1237, 749 P.2d 160 (1987)); RCW 9.94A.589(1)(a). If any one of these elements is missing, the multiple offenses do not encompass the same criminal conduct, and the trial court must count each offense separately in calculating the offender score. State v. Lessley, 118 Wn. 2d 773, 778, 827 P.2d 966 (1992).

When examining the intent of multiple offenses, the proper focus is "the extent to which the criminal intent, as objectively viewed, changed from one crime

to the next." Dunaway, supra at 215. This often includes an examination of "whether one crime furthered the other and if the time and place of the two crimes remained the same." Id. "This analysis may include, but is not limited to, the extent to which one crime furthered the other, whether they were part of the same scheme or plan and whether the criminal objectives changed." State v. Calvert, 79 Wn. App. 569, 578, 903 P.2d 1003 (1995).

When a burglary and another crime encompass the same criminal conduct, the trial court is permitted to find the offenses constitute the same criminal conduct for sentencing purposes. Dumbar, supra at 456-57. The SRA Burglary anti-merger Statute does not preclude such a finding. Id. at 457. Such a holding is consistent with the result reached in Collicott, and State v. Collins, 110 Wn. 2d 253, 751 P.2d 837 (1998).

Here, all factors and evidence before the trial court evince that Petitioner's Burg 1 and Rob 1 (Counts IV and V; Counts I and II) constitute the same criminal conduct. Regarding Counts IV and V, Petitioner broke into Ms. Giang's residence for the purpose of taking cash and other items of value by force and violence. Petitioner and two co-defendants made their way upstairs, whereby they encountered Ms. Giang. Ex. A, ¶ 5. Petitioner then proceeded to ransack the residence

and take valuables and cash. Id. Petitioner was armed with a firearm, intended to overcome any resistance during the robbery. Ex. A, ¶ 6. Petitioner used force and violence to commit the unlawful taking at the Giang residence. Ex. A, ¶ 5.

Regarding Counts I and II, Petitioner unlawfully entered into Bo Li's residence with the intent to take valuables by force and violence. Ex. A, ¶ 7. Petitioner and one co-defendant ransacked Mr. Li's residence while holding him at gunpoint. Id. While in commission of the robbery, Mr. Li accosted one of the assailant's firearms and made his escape. Id.

Accordingly, in both instances referenced, the burglaries furthered the robberies in that Petitioner entered into the respective residences while armed (burglary) for the sole purpose of taking the respective occupants' valuables by force and violence (robbery). The respective schemes or plans didn't change from a mere burglary to that of a robbery upon completion of the burglary; rather, Petitioner and various co-defendants armed themselves with firearms and entered each residence to further the criminal objective of taking valuables by force and violence.

As such, the Burg 1 and the Rob 1 in each of the aforementioned instances constitute the same criminal conduct and should have counted as one offense for the

purpose of calculating Petitioner's offender score. This is because--in each instance--the two offenses involve (1) the same criminal intent (to take the respective residents' valuables by force and violence); (2) the same time and place (Giang residence, May 27, 1998 [Counts IV and V]; Li residence, June 2, 1998 [Counts I and II]); and (3) the same victims (Lien Giang [Counts IV and V]; Bo Li [Counts I and II]). RCW 9.94A.589(1)(a); Ex. A, ¶¶ 5, 6, 7.

Because--in each instance--the two offenses constitute the "same criminal conduct", they are in each instance counted as one crime. RCW 9.94A.589(1)(a). RCW 9.94A.589(1)(a) instructs to count all other crimes which do not count as the same criminal conduct in calculating the offender score.

#### OFFENDER SCORE CALCULATION

As petitioner's Assault 1 (Count VI) has the highest seriousness level out of all of Petitioner's convictions, for purposes of this analysis Petitioner will use this offense as the base crime. As set forth in Part IV (1)(b)(i) hereinabove, Petitioner's juvenile adjudication for Rob 1 was committed prior to his 15<sup>th</sup> birthday; as such, LaChapelle requires the removal of this from the calculation of the offender score: Accord LaChapelle, supra at 6-14. This remedy accords the following adjusted offender scores:

<u>Count</u>	<u>Offender Scores (as adjusted)</u>
I	10
II	10
IV	10
V	10
VI	10
VII	

Next, as set forth in Part IV (1)(b)(ii) hereinabove, Petitioner's Assault 2 (Count VII) merges with the Rob 1 (Count V). Francis, supra at 524-25. Because these charges merge, the proper remedy is vacation of the lesser included offense. Womac, supra at 647. Such a remedy on this merger would further adjust Petitioner's offender scores thus:

<u>Count</u>	<u>Offender Scores (as adjusted)</u>
I	8
II	8
IV	8
V	8
VI	8
VII	(Vacated because of merger)

Finally, as set forth in Part IV (1)(b)(iii) hereinabove, Counts I and II constitute the same criminal conduct; Counts IV and V also constitute the same criminal conduct. As such, Counts I and II count as one offense in the calculation of the offender score; the same applies to Counts IV and V. Vike, supra at 410; RCW 9.94A.589(1)(a). As the respective Rob 1's and Burg 1's are considered as one crime for purposes of the offender score calculation, Petitioner's offender score is further adjusted thus:

<u>Count</u>	<u>Offender Scores (as adjusted)</u>
I and II	4
IV and V	4
VI	4

Thus, overall, Petitioner's offender scores as properly calculated should be a "4", as set forth in the preceding paragraph. The standard sentencing ranges applicable to the preceding paragraph is as follows:

<u>Count</u>	<u>Standard sentencing Range</u>
I and II	51-68 months
IV and V	51-68 months
VI	51-171 months

RCW 9.94A.510. Yet in sentencing Petitioner herein, the court calculated Petitioner's standard ranges for the Rob 1's as 129-171 months, and for the Assault 1 as 240-318 months. Ex. A, ¶ 2. The court then imposed a purported standard range sentence of 231 months (171 months plus 60 month enhancement) for the Rob 1's and a purported 318 months for the Assault 1. Id. The Rob 1 sentences run concurrent to the Assault 1 sentence. Id.

Because Petitioner's offender score should have been correctly calculated as a "4", the court was bound to impose a sentence within the parameters of 51-68 months (110-128 months with enhancements included) for the Rob 1's, and 129-171 months for the Assault 1. Manussier, supra at 667-68. By imposing a sentence of 231 months (171 months plus 60 month enhancement) for the Rob 1's, and a sentence of 318 months for the

Assault 1, the trial court exceeded its authority by 147 months, and Petitioner's sentence is invalid on its face. State v. Roche, 75 Wash. App. 500, 513, 878 P. 2d 497 (1997)("It is axiomatic that a sentencing court acts without statutory authority when it imposes a sentence based upon a miscalculated offender score."); In re Johnson, 131 Wn. 2d 558, 568, 933 P. 2d 1019 (1997)(same); State v. Smissaert, 103 Wn. 2d 636, 639, 694 P. 2d 654 (1985)(a J&S outside of the authority of the trial court is invalid).

#### V. COURT REVIEW

In order to obtain review via PRP a Petitioner must show that they are under restraint which is unlawful as a result of a sentence imposed in violation of the U.S. Constitution or the Constitution or laws of the State of Washington. RAP 16.4(a-c(2)). When claiming error of a non-constitutional error, Petitioner must show the error constitutes a fundamental defect which inherently results in a complete miscarriage of justice. In re Cook, 114 Wn. 2d 802, 813, 792 P. 2d 506 (1990).

(a) Petitioner Is Currently Restrained Under Cause No. 98-C-05129-5SEA

Petitioner is currently confined, imprisoned, and under unlawful restraint as a result of the J&S under King County Superior Court Cause No. 98-C-05129-5SEA.

Ex. A, ¶ 2.

(b) Petitioner's Sentence Under Cause No. 98-C-05129-5SEA Exceeds The Trial Court's Statutory Authority

A J&S is invalid when it is plain that the trial court has miscalculated the Petitioner's offender score. Coats, supra at 136 (citing LaChapelle, supra at 6). A Petitioner is restrained unlawfully to the extent they were sentenced on the basis of an incorrect calculation of their offender score. PRP of Johnson, 131 Wn. 2d 558, 568, 933 P. 2d 1019 (1997). This is because a sentencing court acts without statutory authority when it imposes a sentence based upon a miscalculated offender score, and a sentence based upon an incorrect offender score is a fundamental defect that inherently results in a complete miscarriage of justice. Id at 568-69. The remedy for a miscalculated offender score is resentencing using the correct offender score. State v. Ross, 152 Wn. 2d 220, 228, 95 P. 3d 1225 (2004)).

As set forth in Part IV hereinabove, the trial court was without statutory authority to impose a 318 month sentence on the Assault 1 when the high end of a correctly designated standard sentence range was 171 months. By sentencing Petitioner to a term of 318 months, his sentence is invalid on its face. This is so because when a sentencing court exercises its

discretion in sentencing, it must do so within the bounds of the sentencing laws. Manussier, supra at 667-68; Ammons, supra at 171. The trial court here should have imposed a sentence of not more than 171 months on the Assault 1; by imposing said 318 month sentence, the trial court exceeded its statutory authority by 147 months.

Because Petitioner's confinement goes beyond that authorized by statute, the sentence is subject to collateral attack (Goodwin, supra at 873-74), Petitioner meets the fundamental defect rule announced in Cook, and is entitled to the remedy he seeks. Moore, supra at 33. Moreover, because Petitioner's sentence was based upon a miscalculated offender score, the sentence is a fundamental defect which inherently results in a complete miscarriage of justice. Johnson, supra at 568-69.

## II. CONCLUSION

Petitioner asserts that his offender score should be properly calculated as a "4" as opposed to that as currently calculated as it pertains to the Assault 1 conviction. Such a calculation would designate the standard sentence range at 129-171 months for the Assault 1, the offense which yields the highest seriousness level (under which all other sentences are subsumed).

Because Petitioner is sentenced beyond that authorized by statute, this Petition is excepted from the one year procedural time-bar of RCW 10.73.090(1) as this sentence is invalid on its face. Because the juvenile history does not calculate; Count VII and Count V merges; and the Burg 1's and the Rob 1's constitute the same criminal conduct, this court should grant this PRP and remand the matter back to the trial court for resentencing under a correct offender score of "4", as set forth herein. Petitioner respectfully requests so.

Respectfully submitted this 21 day of August in the year 2014.

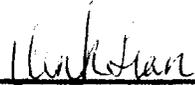
  
\_\_\_\_\_  
VINH Q TRAN

EXHIBIT A

Washington State Court of Appeals  
Division I

In re the Personal Restraint of  
VINH Q TRAN,  
Petitioner

No.  
AFFIDAVIT IN  
SUPPORT

COMES NOW VINH Q TRAN, being first duly sworn on  
oath, deposes and states:

1) That I am the affiant herein; am over the age  
of majority, am mentally competent to state the facts  
stated herein, and make such testimony based upon  
personal knowledge unless otherwise set forth.

2) That on August 11, 2008, I was sentenced in  
King County Superior Court Cause No. 98-C-05129-5SEA to  
a concurrent 318 month sentence for convictions entered  
upon the following crimes: Burglary in the First Degree  
(Burg 1)(Count I), Robbery in the First Degree (Rob  
1)(Count II), Burg 1 (Count IV), Rob 1 (Count V),  
Assault in the First Degree (Assault 1)(Count VI), and  
Assault in the Second Degree (Assault 2)(Count VII).  
See attached Exhibit (Ex.) 1, true and accurate copy of  
Judgment and Sentence (J&S) entered under King County  
Superior Court Cause No. 98-C-05129-5SEA, dated August  
11, 2000.

3) That in calculating my offender score in the  
aforementioned J&S, the court calculated a Rob 1  
juvenile offense which was committed when I was under  
the age of 15. See Ex. 1, Appendix B; see attached Ex.  
2, true and accurate copy of Appendix B to Plea  
Agreement--Prosecutor's Understanding Of Defendant's  
Criminal History pertaining to VINH Q TRAN, dated  
November 22, 2004.

4) That my birthday is December 25, 1977. See Ex. 1, p. 6.

5) That on May 27, 1998, I engaged in a home-invasion style robbery on the residence of Lien Giang. I entered Ms. Giang's residence to commit the robbery. See attached Ex. 3, true and accurate copy of Renton Police Department Affidavit of Probable Cause pertaining to Renton Police Case No. 98-5247, dated July 1, 1998.

6) That attached hereto as Ex. 4 is a true and accurate copy of the Amended Information under King County Superior Court Cause No. 98-C-05129-5SEA.

7) That on June 2, 1998, I engaged in a home-invasion style robbery on the residence of Bo Li. I entered Mr. Li's residence to commit the robbery. See attached Ex. 5, true and accurate copy of a Certification for Determination of Probable Cause for Seattle Police Department Incident No. 98-225058, dated June 10, 1998.

8) Farther your affiant sayeth naught!

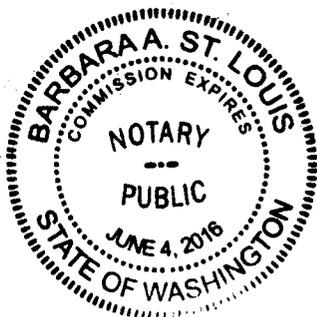
I declare and certify that the foregoing is true and correct to the best of my belief.

*Vinh Q Tran*

VINH Q TRAN

In witness whereof, VINH Q TRAN did appear before me with a valid Washington identification, and being first duly sworn on oath, certified that the statements and matters as set forth herein are true and correct to the best of his knowledge.

Dated this 19<sup>th</sup> day of August, 2014, at Aberdeen, Grays Harbor County, Washington State.



*Barbara A. St. Louis*  
NOTARY PUBLIC in and for the  
STATE OF WASHINGTON residing in  
Grays Harbor county. My commission  
expires: 6-4-16.

EXHIBIT 1

FILED

2008 AUG 11 AM 11:44

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

JUDGMENT NUMBER 08-9-09931-3

DOC  
COMMITMENT ISSUED AUG 11 2008

PRESENTENCING STATEMENT & INFORMATION ATTACHED

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 Vs. )  
 )  
 VINH Q. TRAN )  
 )  
 Defendant, )

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, Kevin Donnelly and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: Hien Giang, Hao Lee, (in 8/08), Ms Emily (in 8/08)

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 4/18/2005 by plea of:

Count No.: I Crime: BURGLARY IN THE FIRST DEGREE  
RCW 9A.52.020 Crime Code: 02304  
Date of Crime: 06/03/1998 Incident No. 98-5247, 98-22508

Count No.: II Crime: ROBBERY IN THE FIRST DEGREE  
RCW 9A.56.200(1)(A)(I) & 9A.56.190 Crime Code: 02904  
Date of Crime: 06/03/1998 Incident No. \_\_\_\_\_

Count No.: IV Crime: BURGLARY IN THE FIRST DEGREE  
RCW 9A.52.020 Crime Code: 02304  
Date of Crime: 05/27/1998 Incident No. \_\_\_\_\_

Count No.: V Crime: ROBBERY IN THE FIRST DEGREE  
RCW 9A.56.200(1)(A)(I)(II) & 9A.56.190 Crime Code: 02904  
Date of Crime: 05/27/1998 Incident No. \_\_\_\_\_

[X] Additional current offenses are attached in Appendix A

	C/PROX
	CUST
	CASH
✓	JUDG
	DISB
✓	CRM
✓	ACCTG
	EXH

52

**SPECIAL VERDICT or FINDING(S):**

- (a)  While armed with a firearm in count(s) I, II, IV, V 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	12	VII	87 TO 116 MONTHS	PLUS 60 MONTHS	147 TO 176 MONTHS	LIFE AND/OR \$50,000
Count II	12	IX	129 TO 171 MONTHS	PLUS 60 MONTHS	189 TO 231 MONTHS	LIFE AND/OR \$50,000
Count IV	12	VII	87 TO 116 MONTHS	PLUS 60 MONTHS	147 TO 176 MONTHS	LIFE AND/OR \$50,000
Count V	12	IX	129 TO 171 MONTHS	PLUS 60 MONTHS	189 TO 231 MONTHS	LIFE AND/OR \$50,000

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. *Signed today*
  - 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.

~~170~~ ~~170~~ months/days on count I: 231 months/days on count II: 176 months/day on count IV  
231 months/days on count V: 318 months/days on count VI: 84 months/day on count VII

The above terms for counts I, II, IV, V, VI & VII 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. (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 \_\_\_\_\_ months.

Credit is given for  508 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 Bati, Lim Giang, Han Lee, Nguyen Luong

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.

(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: Jul 22 2006 Aug. 1, 2008

[Signature]  
JUDGE  
Print Name: Felby M. Ransdell

Presented by:

[Signature]  
Deputy Prosecuting Attorney, WSBA# 31563  
Print Name: Karisa Taylor

Approved as to form:

[Signature]  
Attorney for Defendant, WSBA # 10301  
Print Name: Kevin P. Donnelly

FINGERPRINTS



RIGHT HAND  
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE:  
DEFENDANT'S ADDRESS:

*[Handwritten signature]*

*King County Jail/DC*

VINH QUOC TRAN

DATED: 8/1/08

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK

*[Handwritten signature]*  
JUDGE, KING COUNTY SUPERIOR COURT  
JEFFREY RAMSDALL

BY: *[Handwritten signature]*  
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.

DOB: DECEMBER 25, 1977

SEX: M

RACE: A

CLERK

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

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 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: Bo Li, Lien Giang, Han Lee, Nguyen Luong

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: 8/1/08

[Signature]  
JUDGE

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 VINH Q. TRAN )  
 )  
 Defendant, )

No. 98-C-05129-5 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:

  
 8/11/08

  
 JUDGE, King County Superior Court

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

No. 98-C-05129-5 SEA

vs.

VINH Q. TRAN

Defendant,

JUDGMENT AND SENTENCE  
(FELONY) - APPENDIX C,  
ADDITIONAL CURRENT OFFENSE(S)  
SENTENCING DATA

2.3 SENTENCING DATA: Additional current offense(s) sentencing information is as follows:

Count	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
VI	9+	XII	240 TO 318 MONTHS		240 TO 318 MONTHS	<del>5 YRS AND/OR \$5,000</del> <u>1 YR</u>
VII	9+	IV	63 TO 84 MONTHS		63 TO 84 MONTHS	<del>10 YRS AND/OR \$20,000</del> <u>\$50,000</u>

[ ] The following real and material facts were considered by the court pursuant to RCW 9.94A.530(2):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

8/1/08

Judge, King County Superior Court

*[Signature]*

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

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
ROBBERY 1 <sup>ST</sup> DEGREE	2/1/1993	JUVENILE	928075115	KING CO

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

Date:

*[Handwritten signature]*  
8/1/08

*[Handwritten signature]*  
JUDGE, KING COUNTY SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

VINH Q. TRAN

Defendant,

No. 98-C-05129-5 SEA

JUDGMENT AND SENTENCE  
(FELONY) - APPENDIX A  
ADDITIONAL CURRENT OFFENSES

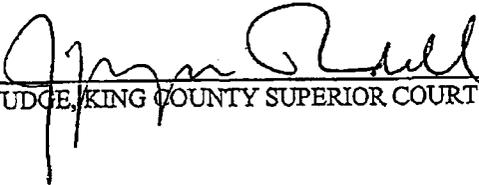
2.1 The defendant is also convicted of these additional current offenses:

Count No.: VI Crime: ASSAULT IN THE FIRST DEGREE  
RCW 9A.36.011(1)(A)(C) Crime Code 01016  
Date Of Crime 06/03/1998 Incident No.

Count No.: VII Crime: ASSAULT IN THE SECOND DEGREE  
RCW 9A.36.021(1)(C) Crime Code 01020  
Date Of Crime 05/27/1998 Incident No.

Date:

~~06/03/1998~~ 8/1/08

  
JUDGE, KING COUNTY SUPERIOR COURT

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: VINH Q TRAN

FBI No.: 62372AB5

State ID No.: WA18696135

DOC No.: 773774

This criminal history compiled on: November 22, 2004

- |   |
|---|
| <input type="checkbox"/> None known. Recommendations and standard range assumes no prior felony convictions.              |
| <input type="checkbox"/> Criminal history not known and not received at this time. WASIS/NCIC last received on 11/22/2004 |

**Adult Felonies - None Known****Adult Misdemeanors**

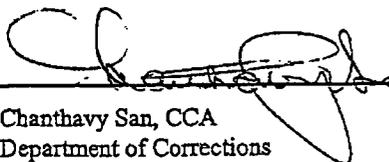
Offense	Score	Disposition
97-1-00505-6 vehicle operators license vio	08/17/1997	WA Lewis Superior Court - Guilty 11/25/1997 90 da mail w/cts-bal susp 2 yrs/lfo
97-1-00505-6 carrying concealed pistol	08/17/1997	WA Lewis Superior Court - Guilty 11/25/1997 90 da mail w/cts-bal susp 2 yrs/lfo
burglary of vehicle	06/16/1995	TX Harris County Criminal Court #10 - Guilty 01/26/1996 1 year probation

**Juvenile Felonies**

Offense	Score	Disposition
robbery 1st	11/18/1992	92-8-07511-5 WA King Superior Court - Guilty 02/01/1993 45 weeks prison

**Juvenile Misdemeanors - None Known****Comments**

Prepared by:

  
Chanthavy San, CCA  
Department of Corrections

ASSAULT, SECOND DEGREE

(RCW 9A.36.021)

CLASS B FELONY

VIOLENT

(If sexual motivation finding/verdict, use form III-35)

L OFFENDER SCORING (RCW 9.94A.360 (8))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent and violent felony convictions.....            x 2 =             
 Enter number of nonviolent felony convictions.....            x 1 =           

JUVENILE HISTORY:

Enter number of serious violent and violent felony adjudications .....   1   x 2 =   2    
 Enter number of nonviolent felony adjudications.....            x 1/2 =           

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other serious violent and violent felony convictions .....   5   x 2 =  10    
 Enter number of nonviolent felony convictions.....            x 1 =           

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes),            + 1 =           

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

12

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE  
 (LEVEL IV)

0	1	2	3	4	5	6	7	8	9 or more
3 - 9 months	6 - 12 months	12+ - 14 months	13 - 17 months	15 - 20 months	22 - 29 months	33 - 43 months	43 - 57 months	53 - 70 months	63 - 84 months

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410)
- C. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.
- D. One year of community placement must be served following release from state prison (RCW 9.94A.120).

III. SENTENCING OPTIONS

- A. If sentence is one year or less: part or all of the sentence may be converted to partial confinement (RCW 9.94A.380).
- B. If sentence is one year or less: community supervision may be ordered for up to one year (RCW 9.94A.383).

ASSAULT, FIRST DEGREE

(RCW 9A.36.011)

CLASS A FELONY

SERIOUS VIOLENT

(If sexual motivation finding/verdict, use form on page III-33)

I. OFFENDER SCORING (RCW 9.94A.360 (9))

In the case of multiple prior convictions for offenses committed before July 1, 1986, for purposes of computing the offender score, count all adult convictions served concurrently as one offense and all juvenile convictions entered on the same date as one offense (RCW 9.94A.360).

ADULT HISTORY:

Enter number of serious violent\* felony convictions..... x3 = \_\_\_\_\_
Enter number of violent felony convictions..... x2 = \_\_\_\_\_
Enter number of nonviolent felony convictions..... x1 = \_\_\_\_\_

JUVENILE HISTORY:

Enter number of serious violent\* felony adjudications..... 1 x3 = 3
Enter number of violent felony adjudications..... x2 = \_\_\_\_\_
Enter number of nonviolent felony adjudications..... x1/2 = \_\_\_\_\_

OTHER CURRENT OFFENSES: (Other current offenses which do not encompass the same conduct count in offender score)

Enter number of other violent felony convictions..... 5 x2 = 10
Enter number of nonviolent felony convictions..... x1 = \_\_\_\_\_
+1 = \_\_\_\_\_

STATUS: Was the offender on community placement on the date the current offense was committed? (if yes),

Total the last column to get the Offender Score (Round down to the nearest whole number)

13

II. SENTENCE RANGE

A. OFFENDER SCORE:

STANDARD RANGE (LEVEL XII)

Table with 10 columns representing offender scores from 0 to 9 or more, and corresponding standard ranges in months.

- B. The range for attempt, solicitation, and conspiracy is 75% of the range for the completed crime (RCW 9.94A.410).
C. Following release from state prison, the offender must serve community placement of 24 months, or up to the period of earned early release awarded, whichever is longer (RCW 9.94A.120).
D. Statutory minimum sentence is 60 months if the offender used force or means likely to result in death or intended to kill the victim (RCW 9.94A.120).
E. If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-16 or III-17 to calculate the enhanced sentence.

\*The serious violent offenses that triple-score are Murder 1°, Murder 2°, Assault 1°, Assault of a Child 1°, Kidnapping 1°, Homicide by Abuse or Rape 1°.

# GENERAL DEADLY WEAPON ENHANCEMENT FORM A

Firearm or Other Deadly Weapon Enhancements\*<sup>1</sup>

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

## CLASS A FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	5 years	Firearm	10 years
Other Deadly Weapon	2 years	Other Deadly Weapon	4 years

## CLASS B FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	3 years	Firearm	6 years
Other Deadly Weapon	1 year	Other Deadly Weapon	2 years

## CLASS C FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:		Subsequent*** Deadly Weapon Offense:	
Firearm	18 months	Firearm	3 years
Other Deadly Weapon	6 months	Other Deadly Weapon	1 year

- \* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Reckless Endangerment 1, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.
- \*\* This enhancement is limited to offenses committed after July 23, 1995.
- \*\*\* To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

### STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
ROBBERY 1 <sup>st</sup> UNLAWFUL	IX	12	129	171
			LOW	HIGH
			60	60
DEADLY WEAPON ENHANCEMENT				
NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.			189	231
			LOW	HIGH
STANDARD RANGE				

<sup>1</sup>For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

## GENERAL SCORING FORM

### Violent Offenses

Use this form only for the following offenses: Arson 1; Arson 2; Assault 2; Assault of a Child 2; Bail Jumping with Murder 1; Damaging Building, etc., by Explosion with Threat to Human Being; Endangering Life and Property by Explosives with Threat to Human Being; Explosive Devices Prohibited; Extortion 1; Kidnapping 2; Leading Organized Crime; Manslaughter 1; Manslaughter 2; Robbery 1 and 2.

OFFENDER'S NAME <i>TRAN, VINH G.</i>	OFFENDER'S DOB <i>12-25-77</i>	STATE ID# <i>WA</i> <i>18696135</i>
JUDGE	CAUSE# <i>98-C-05129-5 SEA</i>	FBI ID# <i>62372AB5</i>

*COC # 773774*

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of serious violent and violent felony adjudications ..... 1 x 2 = 2  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions ..... 5 x 2 = 10  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point ..... + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

**12**

<i>GET + V</i>	STANDARD RANGE CALCULATION*		<i>*</i>			
<i>ROBBERY 1<sup>st</sup> WARDEN</i>	<i>IX</i>	<i>12</i>	<i>129</i>	TO	<i>171</i>	
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE		HIGH	

\* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.

*\** If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III- 15 or III-16 to calculate the enhanced sentence.

*ARMED WITH A HANDGUN*

## GENERAL DEADLY WEAPON ENHANCEMENT FORM A

Firearm or Other Deadly Weapon Enhancements\*<sup>1</sup>

For offenses committed after July 23, 1995

Use of this form: Only for offenses committed after July 23, 1995 that have a firearm or other deadly weapon finding.

### CLASS A FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:	Subsequent*** Deadly Weapon Offense:
Firearm <span style="margin-left: 150px;">5 years</span>	Firearm <span style="margin-left: 150px;">10 years</span>
Other Deadly Weapon <span style="margin-left: 150px;">2 years</span>	Other Deadly Weapon <span style="margin-left: 150px;">4 years</span>

### CLASS B FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:	Subsequent*** Deadly Weapon Offense:
Firearm <span style="margin-left: 150px;">3 years</span>	Firearm <span style="margin-left: 150px;">6 years</span>
Other Deadly Weapon <span style="margin-left: 150px;">1 year</span>	Other Deadly Weapon <span style="margin-left: 150px;">2 years</span>

### CLASS C FELONY DEADLY WEAPON ENHANCEMENTS

First Deadly Weapon/Firearm Offense**:	Subsequent*** Deadly Weapon Offense:
Firearm <span style="margin-left: 150px;">18 months</span>	Firearm <span style="margin-left: 150px;">3 years</span>
Other Deadly Weapon <span style="margin-left: 150px;">6 months</span>	Other Deadly Weapon <span style="margin-left: 150px;">1 year</span>

\* Excluded offenses: Possession of a Machine Gun, Possessing a Stolen Firearm, Reckless Endangerment 1, Theft of a Firearm, Unlawful Possession of a Firearm 1 and 2, Use of a Machine Gun in a felony, or any offense committed on or before July 23, 1995 with a deadly weapon finding.

\*\* This enhancement is limited to offenses committed after July 23, 1995.

\*\*\* To be sentenced as a subsequent deadly weapon finding, the offense in history with a deadly weapon finding must also have been committed after July 23, 1995.

### STANDARD RANGE CALCULATION

CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	BASE STANDARD SENTENCE RANGE	
BURG 1 <sup>c</sup> w/ w & o	VII	12	87	TO 116
			LOW	HIGH
			60	60
<b>DEADLY WEAPON ENHANCEMENT</b>				
NOTE: The "base standard sentence range" is the appropriate standard sentence without the deadly weapon enhancement.				
			147	TO 176
			LOW	HIGH

<sup>1</sup>For anticipatory offenses with a deadly weapon finding, add the enhancement after reducing the standard sentence range by 25%.

### GENERAL SCORING FORM

#### Burglary 1 Offenses

Use this form only for Burglary 1 offenses.

OFFENDER'S NAME <i>TRAN, VINH QUANG</i>	OFFENDER'S DOB <i>12-25-77</i>	STATE ID# <i>WA</i> <i>18696135</i>
JUDGE	CAUSE# <i>48-C-05129-5 SEA</i>	FBI ID# <i>62372 AB5</i>

*Doc. # 773774*

**ADULT HISTORY:** (If the prior offense was committed before 7/1/86, count prior adult offenses served concurrently as one offense; those served consecutively are counted separately. If both current and prior offenses were committed after 7/1/86, count all convictions separately, except (a) priors found to encompass the same criminal conduct under RCW 9.94A.400(1)(a), and (b) priors sentenced concurrently that the current court determines to count as one offense.)

Enter number of serious violent and violent felony convictions ..... x 2 = \_\_\_\_\_  
 Enter number of Residential Burglary and Burglary 2 convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**JUVENILE HISTORY:** (Adjudications entered on the same date count as one offense, except for violent offenses with separate victims)

Enter number of other serious violent and violent felony adjudications ..... 1 x 2 = 2  
 Enter number of Residential Burglary and Burglary 2 adjudications ..... x 1 = \_\_\_\_\_  
 Enter number of other nonviolent felony adjudications ..... x 1/2 = \_\_\_\_\_

**OTHER CURRENT OFFENSES:** (Those offenses not encompassing the same criminal conduct)

Enter number of other serious violent and violent felony convictions ..... 5 x 2 = 10 !  
 Enter number of Residential Burglary and Burglary 2 convictions ..... x 2 = \_\_\_\_\_  
 Enter number of other nonviolent felony convictions ..... x 1 = \_\_\_\_\_

**STATUS AT TIME OF CURRENT OFFENSES:**

If on community placement at time of current offense, add 1 point + 1 = \_\_\_\_\_

Total the last column to get the Offender Score  
 (Round down to the nearest whole number)

**12**

<i>G + I + IV</i>	STANDARD RANGE CALCULATION*		★	
<i>BURGL 10 WAADic</i>	<i>VII</i>	<i>12</i>	<i>87</i>	TO <i>116</i>
CURRENT OFFENSE BEING SCORED	SERIOUSNESS LEVEL	OFFENDER SCORE	LOW STANDARD SENTENCE RANGE	HIGH

\* Multiply the range by .75 if the current offense is an attempt, conspiracy, or solicitation.

★ If the court orders a deadly weapon enhancement, use the applicable enhancement sheets on pages III-15 or III-16 to calculate the enhanced sentence.  
*ARMED WITH A HANDGUN*

EXHIBIT 2

**APPENDIX B TO PLEA AGREEMENT  
PROSECUTOR'S UNDERSTANDING OF DEFENDANT'S CRIMINAL HISTORY  
(SENTENCING REFORM ACT)**

Defendant: VINH Q TRAN

FBI No.: 62372AB5

State ID No.: WA18696135

DOC No.: 773774

This criminal history compiled on: November 22, 2004

- |                          |  |
|--------------------------|--|
| <input type="checkbox"/> | None known. Recommendations and standard range assumes no prior felony convictions.              |
| <input type="checkbox"/> | Criminal history not known and not received at this time. WASIS/NCIC last received on 11/22/2004 |

**Adult Felonies - None Known**

**Adult Misdemeanors**

Offense	Score	Disposition
97-1-00505-6 vehicle operators license vio	08/17/1997	WA Lewis Superior Court - Guilty 11/25/1997 90 da mail w/cts-bal susp 2 yrs/lfo
97-1-00505-6 carrying concealed pistol	08/17/1997	WA Lewis Superior Court - Guilty 11/25/1997 90 da mail w/cts-bal susp 2 yrs/lfo
burglary of vehicle	06/16/1995	TX Harris County Criminal Court #10 - Guilty 01/26/1996 1 year probation

**Juvenile Felonies**

Offense	Score	Disposition
robbery 1st	11/18/1992	92-8-07511-5 WA King Superior Court - Guilty 02/01/1993 45 weeks prison

**Juvenile Misdemeanors - None Known**

**Comments**

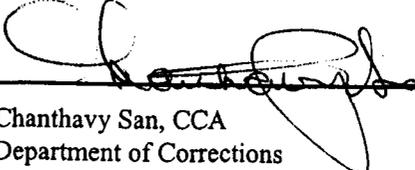
Prepared by:   
 Chanthavy San, CCA  
 Department of Corrections

EXHIBIT 3

## RENTON POLICE DEPARTMENT AFFIDAVIT OF PROBABLE CAUSE

That Donald Gustine is a Detective with the Renton Police Department and has reviewed the investigation conducted in Renton Police Case Number 98-5247.

There is probable cause to believe that Viet Q. Nguyen and Vinh Q. Tran committed the crimes of Burglary 1, Robbery 1 and Assault 1. This belief is predicated on the following facts and circumstances:

On 05-27-98 at about 1500, Ms. Lien Giang, a 70 year-old female was alone in the upstairs portion of her house at 330 Maple Ave. NW, Renton, King County, Washington. Three male intruders broke a window in the basement and entered the house. They made their way upstairs, surprised her and threw her to the floor. Suspect #1, the leader, demanded money, specifically \$12,000, and ordered the other two about. Suspects #1 and #2 were Vietnamese and #3 of other Asian descent. Suspects #1 and #2 were armed with handguns, and all three gloved. The last suspect was seen little, wore hat and sunglasses, and remained near the front door. During the next few hours suspects ransacked the house dumping drawers, cabinets, flower pots, cutting furniture, etc. while searching for money and jewelry. Periodically, Giang was struck about the head with a pistol, thrown about, and clothing cut in an effort to make her reveal hiding places of money, despite the fact suspects had already located about \$3,000 cash, plus assorted jewelry. The principal assaults were committed by suspect #1, with the others following orders. Suspect #1 also set up a picture of the family and fired the handgun through a pillow into the picture. He threatened to shoot her in the same way if she didn't tell him about the money. She was also bound using masking and shipping tape. Suspects boiled water in a kitchen pan, then, one foot at a time, Suspect #1 placed Giang's feet into boiling water.

At about 1700 Giang's cousin, 26 year-old Nguyen Luong arrived home. Immediately he was seized by the armed suspects, bound and subjected to similar treatment. One suspect was armed with Luong's Tec 9 semi-auto pistol, previously located in a locked box in the basement. Luong was assaulted in a similar fashion as his clothes were cut, struck about the head, kicked, and hot water poured on his back. Additionally, a lighter was used to singe his head hair and cheek. The suspects demanded money. They took his wallet and ATM card and forced him to reveal his PIN. Suspect #1 took Luong's Toyota truck and left to use the card in a US Bank ATM machine. He returned within about 10 minutes.

At about 1730 Giang's niece, 34 year-old Hao Lee arrived home. Likewise, she was seized at gunpoint and forced to lie on the floor. She too was struck with the handgun, kicked, clothing cut. Her wallet was stolen, along with credit cards, and forced to reveal PINs. Suspect #1 struck Giang in an effort to extract information from Lee. They threw water on her face and #1 hit her on the head with the phone when he thought she lied to him. Suspect #1 cut her hair with a knife while holding her head to the floor with his foot. #1 tied her to a chair with electric cord around her neck and used tape to bind her ankles to the chair. Her hands were taped behind her back and tape placed over her mouth. Suspects #1 and #3 took Luong to the Fred Meyer to use his

**RENTON POLICE DEPARTMENT  
AFFIDAVIT OF PROBABLE CAUSE**

ATM card, while #2 stayed behind to guard the others. Luong was told the others would be killed if he didn't cooperate.

When suspects returned, #1 instructed #2 to boil water. #1 placed a cover over Lee's head and made comments about their reporting to police. #1 checked with #2 to see if the water was hot. He cut her pants and underwear, exposing her thighs. Lee could see slightly through and under the head covering. #1 set the boiling pan on Lee's thigh. It was very hot and burning and held there for a few seconds. He told her she didn't recognize him, that he had connections with the police and gangs and he would kill she and her family; that the people in their family picture would be dead. Then he put the pot on her left thigh and she pulled her leg splashing some of the water. Luong pleaded with them to stop, but they wouldn't. The suspects took various items including cash, jewelry, handgun, and other miscellaneous, and fled in Lee's Honda Accord. Luong freed himself, then the others and police were called.

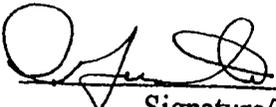
Police confirmed the above ATM card usage, plus other usage within about five hours of the crime.

The three victims sustained bruising and burning of varying degrees. Giang suffered second and third degree burns on her feet and ankles, while Lee suffered second degree burns on both thighs. Luong had lesser, though obvious burning, plus various bruising and singed hair and skin.

On 06-02-98 Seattle Police investigated a home invasion case with very similar methods and suspect descriptions. Composites in the Renton case resembled Seattle's suspects. Participants in that case included Vinh Tran, Viet Nguyen, and David Singer. Singer told Seattle Police that Tran and Nguyen were involved in the Renton case, though he wasn't clear how he knew this. Viet Nguyen told Seattle Police that he, Tran, and Singer committed the Renton incident, with the proceeds going to Tran. Individual montages of these suspects were shown independently to Giang, Lee, and Luong. Giang and Lee positively identified Viet Nguyen as suspect #2 in the case. Giang positively identified Vinh Tran as the leader, or "mean one". Likewise, Lee recognized, but could not positively identify, Tran as the leader, suspect #1. Seattle Police have arrested Singer and Nguyen. It is believed Tran fled to Texas.

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

07-01-98, Renton In King County  
Date and Place

 #1740  
Signature/ID#

D. Gustine

Renton Police

EXHIBIT 4

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	No. 98-C-05099-0 SEA
	)	98-C-05129-5 SEA
v.	)	98-C-05130-9 SEA
	)	
DAVID RICHARD SINGER,	)	
VINH Q. TRAN, and	)	AMENDED INFORMATION AS TO
VIET QUOC NGUYEN,	)	DEFENDANT VINH Q. TRAN ONLY
and each of them,	)	
Defendants.	)	

COUNT I

I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse DAVID RICHARD SINGER and VINH Q. TRAN, and each of them, of the crime of Burglary in the First Degree, committed as follows:

That the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and each of them, together with another, in King County, Washington, on or about June 3, 1998, did enter and remain unlawfully in a building located at 5737 South Prentice Street, Seattle, in said county and state, with intent to commit a crime against a person or property therein, and in entering, and while in such building and in immediate flight therefrom, the defendant and another participant in the crime were armed with a deadly weapon, to wit: a handgun, and did assault a person therein, to-wit: Bo Li;

Contrary to RCW 9A.52.020, and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

1 accuse the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
2 each of them, at said time of being armed with a handgun, a firearm  
as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

3 COUNT II

4 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
5 accuse DAVID RICHARD SINGER and VINH Q. TRAN, and each of them, of  
6 the crime of Robbery in the First Degree, based on the same conduct  
as another crime charged herein, committed as follows:

7 That the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
8 each of them, together with another, in King County, Washington, on  
9 or about June 3, 1998, did unlawfully and with intent to commit  
10 theft take personal property of another, to-wit: jewelry, from the  
11 person and in the presence of Bo Li, against his will, by the use or  
12 threatened use of immediate force, violence and fear of injury to  
such person or his property and in the commission of and in  
13 immediate flight therefrom the defendant was armed with a deadly  
14 weapon, to-wit: a handgun;

15 Contrary to RCW 9A.56.200(1)(a)(i) and 9A.56.190, and against  
16 the peace and dignity of the State of Washington.

17 And I, Norm Maleng, Prosecuting Attorney for King County in the  
18 name and by the authority of the State of Washington further do  
19 accuse the defendants DAVID RICHARD SINGER and VINH Q. TRAN, and  
20 each of them, at said time of being armed with a handgun, a firearm  
21 as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

22 COUNT III

23 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
24 accuse VIET QUOC NGUYEN of the crime of Rendering Criminal  
25 Assistance in the First Degree, based on a series of acts connected  
together with another crime charged herein, committed as follows:

That the defendant VIET QUOC NGUYEN in King County, Washington,  
on or about June 3, 1998, with intent to prevent, hinder or delay  
the apprehension or prosecution of David Singer and Viet Tran, did  
render criminal assistance to David Singer and Viet Tran, a person  
who he knew, committed a Class A felony by concealing physical  
evidence, to-wit: a set of keys, that might aid in the discovery or  
apprehension of such person;

Contrary to RCW 9A.76.070(1)(2)(b) and 9A.76.050, and against  
the peace and dignity of the State of Washington.

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COUNT IV

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, of the crime of Burglary in the First Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, in King County, Washington on or about May 27, 1998, did enter and remain unlawfully in a building located at 330 Maple Avenue Northwest, Renton, in said county and state, with intent to commit a crime against a person or property therein, and in entering, and while in such building and in immediate flight therefrom, the defendants and another participant in the crime were armed with deadly weapons and did assault persons, to-wit: Lien Giang, Nguyen Luong, and Hao Lee;

Contrary to RCW 9A.52.020, and against the peace and dignity of the State of Washington.

And I, Norm Maleng, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, at said time of being armed with a Tec-9 and a pistol, firearms as defined in RCW 9.41.010, under the authority of RCW 9.94A.310(3).

## COUNT V

And I, Norm Maleng, Prosecuting Attorney aforesaid further do accuse VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, of the crime of Robbery in the First Degree, a crime of the same or similar character as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of them, together with others, in King County, Washington on or about May 27, 1998, did unlawfully and with intent to commit theft take personal property of another, to-wit: U.S. currency, a firearm, jewelry, and ATM and credit cards, from the person and in the presence of Lien Giang, Nguyen Luong, and Hao Lee, against their will, by the use or threatened use of immediate force, violence and

1 fear of injury to such persons or their property and to the person  
2 or property of another, and in the commission of and in immediate  
3 flight therefrom the defendants displayed what appeared to be  
4 firearms, to-wit: a Tec-9 and a pistol;

5 Contrary to RCW 9A.56.200(1)(a)(i)(ii) and 9A.56.190, and  
6 against the peace and dignity of the State of Washington.

7 And I, Norm Maleng, Prosecuting Attorney for King County in the  
8 name and by the authority of the State of Washington further do  
9 accuse the defendants VINH Q. TRAN and VIET QUOC NGUYEN, and each of  
10 them, together with others, at said time of being armed with a Tec-9  
11 and a pistol, firearms as defined in RCW 9.41.010, under the  
12 authority of RCW 9.94A.310(3).

#### 13 COUNT VI

14 And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
15 accuse VINH Q. TRAN of the crime of Assault in the First Degree, a  
16 crime of the same or similar character as another crime charged  
17 herein, which crimes were part of a common scheme or plan and which  
18 crimes were so closely connected in respect to time, place and  
19 occasion that it would be difficult to separate proof of one charge  
20 from proof of the other, committed as follows:

21 That the defendant VINH Q. TRAN in King County, Washington on  
22 or about June 3, 1998, with intent to inflict great bodily harm, did  
23 assault Bo Li, with a firearm, and a deadly weapon and force and  
24 means likely to produce great bodily harm or death, to-wit: a  
25 firearm, and did inflict great bodily harm upon Bo Li;

Contrary to RCW 9A.36.011(1)(a)(c), and against the peace and  
dignity of the State of Washington.

#### COUNT VII

And I, Norm Maleng, Prosecuting Attorney aforesaid further do  
accuse VINH Q. TRAN of the crime of Assault in the Second Degree, a  
crime of the same or similar character as another crime charged  
herein, which crimes were part of a common scheme or plan and which  
crimes were so closely connected in respect to time, place and  
occasion that it would be difficult to separate proof of one charge  
from proof of the other, committed as follows:

1           That the defendant VINH Q. TRAN in King County, Washington on  
2 or about May 27, 1998, did intentionally assault Lien Giang, with a  
deadly weapon, to-wit: a firearm;

3           Contrary to RCW 9A.36.021(1)(c), and against the peace and  
4 dignity of the State of Washington.

5  
6                                   NORM MALENG  
Prosecuting Attorney

7  
8                                   By: \_\_\_\_\_  
Karissa L. Taylor, WSBA #31563  
9 Deputy Prosecuting Attorney

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EXHIBIT 5

CASE NO. \_\_\_\_\_

SEATTLE  
POLICE  
DEPARTMENT

**CERTIFICATION FOR DETERMINATION  
OF PROBABLE CAUSE**

INCIDENT NUMBER	98-225058
UNIT FILE NUMBER	R98-113

That Dennis L Hossfeld is a Detective with the Seattle Police Department and has reviewed the investigation conducted in Seattle Police Department Case Number 98-225058;

There is probable cause to believe that David R Singer committed the crime(s) of Assault/Robbery/ Burglary.

This belief is predicated on the following facts and circumstances:

On June 2, 1998 at about 1429 hrs. Bo Li returned home to his house at 10239 59 Av S, City of Seattle, King County when two suspects, one later identified as David Singer and the other as VINH Q TRAN came up behind Mr. Li and put a gun into his side. The suspects walked Mr. Li into his residence where he was tied up and David Singer, with a 38 Caliber Revolver stood over him while the other suspect VINH TRAN ransacked the residence. VINH TRAN was collecting items to be taken at a later time. Mr. Li was able to untie himself and grabbed the 38 and shot David Singer. Mr. Li ran outside and was shot once in the side by a 25 Auto that VINH TRAN found inside the house. David Singer and VINH TRAN got into Mr. Li 95 Nissan Pathfinder Wa. 261HTB, vehicle and drove away in it. A 98 VW Jetta Wa. 936JAM belonging to David Singer mother was found parked in the 5700 blk of S Prentice, City of Seattle, King County. This is the vehicle the David Singer and VINH TRAN came to the residence in. That vehicle was impounded. At 1513 hrs. David Singer walked into Valley Medical center with gun shot wounds.

On June 3, 1998 at about 1300 hrs. I interview David Singer at Harborview hospital. He was advised of his Miranda Rights from a SPD form and he said that he wanted to talk to me. He said that he was at Mr. Li's house and that he was watching over him while VINH TRAN ransacked the house, that he got shot by Mr. Li, and VINH TRAN did shot Mr. Li. He said that they took the 95 Nissan Pathfinder from Mr. Li's driveway.

VINH TRANH drove DAVID Singer to Tien's house where HIEP and VIET NGUYEN were staying. VINH drove DAVID in the victim's vehicle to Valley Medical Center followed by HIEP in his black Jeep. VIET NGUYEN got the keys to DAVID SINGER's vehicle and drove with Phi Nguyen to the area looking for the vehicle. VIET NGUYEN knew they had a gun before the left the residence to do the robbery. VIET NGUYEN also admitted to doing a robbery in Renton with DAVID and VINH.

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct to best of my knowledge and belief. Signed and dated by me this 10 day of JUNE, 1998, at Seattle, Washington.

*Dennis L Hossfeld*  
\_\_\_\_\_  
*Dennis L Hossfeld*