

NO. 72753-2

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

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COURT OF APPEALS  
STATE OF WASHINGTON  
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STATE OF WASHINGTON

Respondent,

v.

MOHAMED IBRAHIM

Appellant.

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

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PRO SE BRIEF OF APPELLANT  
RAISING ISSUES NOT RAISED IN THE OPENING BRIEF

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DECLARATION OF COUNSEL:

The Appellant, Mohamed Ibrahim, has asked counsel to file this pro se brief for him raising additional issues that were not raised in counsel's initial brief, pursuant to RAP 10.10.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Zulauf', with a stylized flourish at the end.

Jon Zulauf #6936

Attorney for Mr. Ibrahim

Mohamed Ibrahim files this brief to raise additional arguments for a new trial and / or a new sentencing that were not raised in his lawyer's initial brief, pursuant to RAP 10.10.

## **1. FACTUAL BACKGROUND**

Mr. Ibrahim was charged with three counts of Assault 1 and Unlawful Possession of a Firearm. (CP 123, Information) He was sentenced to 486 months in prison. (CP 133, Judgment and Sentence) His co-defendant, Yusuf Shire, received a dramatically lower sentence of 180 months. (Attachment 2, Shire's Judgment and Sentence)

The testimony of victim, Mr. Williams, was that Yusuf Shire began firing shots toward victims Kabede, Barnes and himself. (RP September 11, 2014, page 36) Mr. Shire said "I do this" and then aimed at them, and then started firing shots. (RP September 11, 2014, page 33 - 37) He fired five rounds. (RP September 11, 2014, page 37) Mr. Williams noted that as soon as the shooting started he saw blood. (RP September 11, 2014, page 42) It was Mardello Barnes' blood. (RP September 11, 2014, page 45) Mr. Barnes had been hit in the hand by a bullet from Mr. Shire's gun. Mr. Williams was asked by the prosecutor: Do you remember telling Marty's mom that it was Louie (Shire) who shot him?" Williams answered: "I don't, I don't remember telling her that, but, yeah, I believe she got that information I believe from Deandre Berket." Prosecutor: "But at this point you knew it was Louie?" Williams: "Yeah". Mr. Williams was the only eye-witness to the shooting to testify about which defendant

shot Mr. Barnes.

Mr. Shire fired the bullet that hit Mardillo Barnes in the hand. Mr. Barnes was the only person physically injured.

Mr. Williams was asked: “And after the point that Mr. Shire shot, Mardillo . . . and the additional shots that happened at that point were not aimed at you?” Williams “Uh-uh . . . No, no, they weren’t”. (RP September 11, 2014, page 111)

Mr. Ibrahim fired his gun after Mr. Shire fired his. (RP September 11, 2014 page 41)

Mr. Williams testified that whoever the second shooter was he fired three or four shots, but they were not shot at him. Williams testified: “. . . after the first couple of shots or after Mr. Shire (was) shot, I didn’t feel anything that was like by me, you know what I mean so” (RP September 11, 2014, page 110)

## **2. LEGAL ISSUES**

### **Issue Number 1.**

**Did the trial court abuse its discretion in denying defense counsel’s motion for an exceptional sentence below the standard range by failing to consider each of the policy goals listed in RCW 9.94A.010?**

The defendant, Mr. Ibrahim, was sentenced to 486 months in prison.

The sentence of more than 40 years in prison was more than 20 years longer than the low end standard range sentence for first degree murder. Nearly every objective observer would agree that the sentence, when contrasted with the sentence ranges for first and second degree murder, was irrationally long. Most citizens would agree that it was clearly excessive.

Defense counsel argued at sentencing that the defendant's sentencing ranges were clearly excessive and the court should impose a more lenient sentence. Counsel told the court: "There are multiple grounds for an exceptional sentence below the standard range: the weakness of the evidence connecting Ibrahim to the shooting of any of the victims; the weakness of the evidence as to his intent to inflict great bodily harm on any of the victims; and the multiple offense policy." (Defense Presentence Report, page 7, attachment 1) She also raised the issue of disparity between Mr. Ibrahim's sentence and that of his co-defendant, Yusuf Shire, who received a sentence of just 180 months. RP November 21, 2014, page 11.

The multiple offense policy of RCW 9.94A.535(1)(g) resulted in consecutive sentences for each of the three counts of Assault 1 which, when stacked on top of each other, resulted in the 486 month sentence.

The sentencing judge failed to fairly consider any of the defendant's arguments for an exceptional sentence below the

guidelines. The State Supreme Court said in State v. Grayson that the sentencing court must consider each of the grounds offered by the defense for an exceptional sentence. State v. Grayson, 154 Wn.2d 333, 111 P.3d 1183 (2005) It said: “While no defendant is entitled to an exceptional sentence . . . every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative actually considered.” State v. Grayson, supra, at 342. It is error for the trial court to fail to consider mitigating factors that would justify a downward departure. State v. Sean O’dell, 183 Wash 2d 680, 358 P. 3d 359 (2015)

Regarding the multiple offense policy of RCW 9.94A.535(1)(G), defense counsel argued that the policy resulted in a sentence that was clearly excessive. Counsel argued that the decision of State v. Graham, 181 Wn2d 878, 337 P.3d 319 (2014) required the court to consider each of the policy reasons for sentencing expressed in RCW 9.94A.010 in determining whether the sentence was excessive. At the sentencing hearing, defense counsel, talking about the Graham decision said: “It directs a judge to consider if the presumptive sentence is clearly excessive in light of the purpose of this chapter as expressed in 9.94A.010 and it lists seven policy goals that a court should consider . . . in imposing a sentence . . .” (RP November 21, 2014, Page 12.)

RCW 9.94A.010 lists the seven policy goals of the Sentencing Reform Act:

1. Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
2. Promote respect for the law by providing punishment which is just;
3. Be commensurate with the punishment imposed on others committing similar offenses;
4. Protect the public;
5. Offer the offender an opportunity to improve himself or herself;
6. Make frugal use of the state's and local governments' resources; and
7. Reduce the risk of reoffending by offenders in the community.

The Supreme Court in *Graham*, *supra*, specifically directed: "Sentencing judges should examine each of these policies when imposing an exceptional sentence under .535(1)(g)".

Yet the sentencing judge in this case did not consider each of these policies when deciding whether or not to impose an exceptional sentence. Nothing in the record demonstrates that he considered each policy as it applied to Mr. Ibrahim's sentence. For example, there was no effort to measure whether the punishment was really proportionate to the seriousness of the offense. The court did not analyze whether the sentence was

commensurate with the punishment imposed on others committing similar offenses. The court did not compare the sentence of Mr. Ibrahim with that of Mr. Yusuf Shire to determine whether it was commensurate with the punishment imposed on others. The court did not consider whether the sentence offered the offender an opportunity to improve himself. Regarding that last factor, there is nothing in the record that shows that the court considered social factors in determining whether the sentence would help Mr. Ibrahim improve himself. Mr. Ibrahim was an immigrant from Somalia. His first language was Somali, not English. He had gone through the trauma and difficulty of moving to a new culture. (RP November 21, 2014 page 9) The sentencing judge showed no signs that he had carefully examined each of the policy considerations before imposing the 40 year sentence on Mr. Ibrahim.

Defense counsel argued that the sentencing range for Mr. Ibrahim was clearly excessive because of the multiple offense policy. (RP November 21, 2014, pages 12, 13, 14) She told the judge that a 40 year sentence for Mr. Ibrahim's actions was dramatically more severe than that given to other individuals who committed far worse crimes. She argued that it was unfair to sentence Mr. Ibrahim to 40 years when the co-defendant received so much less. She argued that this was not a frugal use of resources. (RP November 21, 2014, page 13)

The sentencing courts analysis of the "multiple offense policy"

argument was limited to two sentences. (RP November 21, 2014, page 18) First: “It may be that there is some disproportionality between the two in some cosmic sense, but in terms of the evidence before the court, the court cannot find nor can the court find that the legislature is out of bounds in setting the standard range that they did for this particular crime, where multiple counts were committed at the same time or in close proximity.” Second: “There really is no basis on which the court could find, although the court does consider consistent with *Graham*, the court does consider as an option, but the court could not find with a way that would be legally or intellectually justifiable that the standard range set by the legislature would be clearly excessive in light of the purposes of the sentencing laws” (RP November 21, 2014, page 18)

With regard to the defendant’s first ground for an exceptional sentence, the “multiple offense policy” argument, the sentencing court abused its discretion by failing to fully consider the policies for sentencing set forth in RCW 9.94A.010 as required by the decision in *State v. Graham*, *supra*.

With regard to the other bases for an exceptional sentence offered by defense counsel, the court didn’t consider them at all. Defense counsel argued that circumstances of this case distinguished it from other crimes of the same statutory category,

citing D. Boerner, Sentencing in Washington. CP Defense Presentence Report, page 6. Specifically, defense counsel argued that the evidence of specific intent to inflict great bodily harm was very weak. (CP Defense Presentence Report, pages 7,8, and 9, attachment 1)

In her presentence report, defense counsel noted: “In this case, three victims were identified – Barnes, Williams, and Kebede. Barnes was the only one who suffered an injury – he was shot in the hand. He had no idea who did it or how. He had no evidence to offer on the issue of intent. Mr. Kabede was not called as a witness. The State made little or no effort to secure his presence. The State was aware that Mr. Kabede would offer exculpatory evidence regarding identity. The State never questioned Mr. Kabede regarding the facts of the shooting and this witness had no information to offer on the issue of intent. Mr. Williams was the only witness to give testimony on what actually happened. His testimony established that Shire was the one who first pulled his gun out, pointed in the air, and announced “I do this”, fired in the air and then pointed his gun directly at the group and began to fire. Williams testified that Shire fired 4 or 5 times.”

Ms. St. Clair, the defense lawyer, continued in her presentence report: “He testified that Ibrahim pulled a gun and began firing after Shire had finished and the two were retreating; he said that while shots from Ibrahim could have been in his general direction, he didn’t believe they were directed towards him; Ibrahim had turned to his right and most likely was firing towards the middle in

between the streets towards his right. He was definite that Shire began shooting when he was close to them and that Ibrahim's shots fired from further away while he was backing up and retreating." (CP Defense Presentence Report, page 8, 9, attachment 1)

Defense counsel argued as a basis for an exceptional sentence that "the relative weakness of evidence of Ibrahim's specific intent to inflict great bodily harm on any of the victims differentiates this case from other first degree assault cases where the evidence of such intent is clear, unquestionable, and beyond a reasonable doubt." (CP Defendant's Presentence Report, page 10, attachment 1)

Defense counsel also argued that "the weakness of the evidence as to whether Ibrahim actually fired at any of the victims – rather than in a different direction – also differentiates this case from other first degree assault cases . . . and justifies an exceptional sentence." (CP Defendant's Presentence Report, page 10, attachment 1)

Finally, defense counsel argued that the disparity between sentences for Mr. Ibrahim when contrasted with Mr. Shire's sentence of 180 months was unreasonable and made Mr. Ibrahim's sentence clearly excessive. The court failed to address that issue as well. (Judgment and Sentence of Mr. Shire, attachment 2)

The sentencing court's failure to consider or rule on the defendant's other arguments for an exceptional sentence was an abuse of discretion.

Because the court failed to fairly consider the arguments for a downward departure the case should be remanded for a new sentencing hearing. State v. Grayson, 154 Wn2d 333, 111 P.3d 1183 (2005)

## **Issue #2**

**Did the sentencing court abuse its discretion in finding that counts 1, 2, and 3, the first degree assault counts, were separate and distinct conduct and that the "consecutive sentence" provisions of RCW 9.94A.589 (1)(b) applied.**

The sentencing court applied RCW 9.94A.589(1)(b) to sentence Mr. Ibrahim to consecutive sentences in Counts 1, 2, and 3. The effect of that statutory application was to sentence Mr. Ibrahim to 120 months on Count 1, 93 months on Count 2 and 93 months on Count 3 to run consecutively. (CP Ibrahim's Judgment and Sentence, page 292 to 301) This was before the addition of mandatory terms for the special weapons findings. By running the sentences consecutively, the court added 186 months to Mr. Ibrahim's sentence.

In order to run the sentences for Counts 1, 2, and 3 consecutively the court had to find that the offenses were separate and distinct criminal conduct. RCW 9.94A.589(1)(b) provides in part:

“Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct . . . All sentences imposed under (b) of this subsection shall be served consecutively to each other . . .”

The statute does not define the term “separate and distinct criminal conduct”, but logically it is conduct that occurs at a different time or place and has a different group of victims. Here, counts 1, 2, and 3 happened at the same time, at the same place, and with the same set of victims. None of the victims were singled out be Mr. Ibrahim. Nothing in the trial testimony showing that Mr. Ibrahim aimed at any specific victim. The trial testimony did not establish that Mr. Ibrahim’s bullet struck anyone. Nor did it establish that each bullet was aimed at a separate victim. If anything, each bullet affected each victim similarly. With each bullet fired, the whole set of victims was assaulted. The acts of firing a gun in the general direction of a group of individuals were not separate and distinct criminal conduct. The sentencing judge abused his discretion in determining that Mr. Ibrahim was involved in separate and distinct criminal conduct in counts 1, 2, and 3. Consequently, Mr. Ibrahim was improperly sentenced to serve consecutive sentences in counts 1, 2, and 3. The sentencing

court's findings at sentencing are reviewed for an abuse of discretion. State v. Walden, 69 WnApp 183, 847 P2d 956 (1993)

The manner in which the prosecutor charges the case should not determine whether the counts were separate and distinct conduct. The trial judge should independently make that determination. Here, the prosecutor could have charged three counts of Assault 1 with all three victims listed in each count. Had the prosecutor made that decision, clearly the acts of defendant Ibrahim would not have been considered "separate and distinct criminal conduct".

For the above stated reasons, the case should be remanded for a new sentencing hearing.

### **Issue #3**

**Did the sentencing court's failure to submit the issue of "separate and distinct criminal conduct" to the jury for its determination violate Mr. Ibrahim's Sixth Amendment right to a jury trial?**

In Blakely v. Washington 542 U.S. 296, 124 S.Ct 2531 (2004) the U.S. Supreme Court ruled the Sixth Amendment right to trial by jury required judges to use only facts proved to a jury to increase a sentence beyond a standard range. In U.S. v. Booker, 543 U.S. 220, 125 S.Ct 738 (2005) the court held that the

sentencing guidelines where they allow judges to enhance sentences using facts not reviewed by juries violated the Sixth Amendment right to trial by jury.

In Washington State, the presumption is that sentences for two or more current offenses will run concurrently. RCW 9.94A.589(1)(a) provides in part: “Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses . . . Sentences imposed under this subsection shall be served concurrently.”

A sentence for two or more current offenses runs consecutively only when there is a finding that the offenses are serious violent offenses and when they are “arising from separate and distinct criminal conduct”. That finding substantially enhances the penalties for the offender. The Sixth Amendment right to trial by jury requires that those findings must be made by a jury.

It was a violation of Mr. Ibrahim’s right to trial by jury when the judge made the findings and enhanced the sentence by running the sentences consecutively. The case should be remanded to have the jury determine whether there was “separate and distinct criminal conduct” for each count.

#### **Issue #4**

#### **Did Mr. Ibrahim’s sentence violate the Constitution’s**

## **prohibition on cruel and unusual sentences?**

In State v. Rivers, 129 Wash2d 697, 921 P.2d 495 the court ruled that the Persistent Offender Accountability Act did not violate the defendant's constitutional rights. It held that the Act did not violate the 8<sup>th</sup> Amendment to the United States Constitution which prohibits cruel and unusual punishment, nor Article I, Section 14 of the Washington State Constitution which bars cruel punishment.

The Rivers court relied on the factors set forth in State v. Fain, 94 Wn2d 387, 617 P2d 720 (1980) to determine if there was a constitutional violation. In determining whether a sentence is cruel or unusual, the Fain court, said the factors to be considered are:

1. The nature of the offense;
2. The legislative purpose behind the statute;
3. The punishment the defendant would have received in other jurisdictions; and
4. The punishment meted out for other offenses in the same jurisdiction.

Nature of the Offense. In Mr. Ibrahim's case the jury found that he fired a gun in the general direction of three men. There was no finding that the bullets he fired actually struck anyone or that they caused physical damage. The normal guideline range for an Assault 1 with no prior record is 93 to 123 months in prison. When the sentencing guidelines were drafted it necessarily contemplated the use of a firearm in determining how severe the punishment should

be. The statute defines assault 1 as an assault where the person intends great bodily harm and uses a weapon.

He was sentenced to 486 months or 40.5 years in prison.

The Punishment meted out for other Offenses. If Mr. Ibrahim had been charged with intentionally killing someone his sentence would have almost certainly been less than the 40 + years he received in this case.

A fast survey of recent killings and sentences demonstrates that most individuals convicted of murder, even first degree murder, receive sentences that are 15 to 20 years shorter than what Mr. Ibrahim received. Alan Smith, a Snohomish County defendant, was convicted of First Degree Murder for beating, stabbing, and drowning his wife. He received a sentence of 28 years. Brad George, also from Snohomish County, beat his guardian to death with a dumbbell. He received a sentence of 24 years for first degree murder. Toby Saucedo stabbed his friend to death over a bottle of prescription pills. He received a sentence of 20 years for Murder 2. Heather Opel was convicted of Murder 1 for beating a man to death with a baseball bat and received a sentence of 22 years.

In the instant case, Yusuf Shire fired his gun at Mardillo Barnes striking him in the hand. According to the testimony of Mr. Williams, Mr. Ibrahim also fired a gun, but his shots did not strike anyone. Mr. Ibrahim was not firing at Mr. Williams and Mr. Ibrahim did not

physically harm anyone. Yet Mr. Shire was sentenced to 180 months while Mr. Ibrahim was sentenced to 486 months.

It is both cruel and unusual to sentence a person on an assault charge to a term of 40 years when the same jurisdiction sentences people who commit brutal murders to far less time. It is cruel and unusual punishment to sentence Mr. Ibrahim to 40 year in prison, while Mr. Shire was sentenced to just 15 years.

This case should be remanded for a new sentencing hearing.

Respectfully submitted

*M I Ibrah*

Mohamed Ibrahim

Defendant, Pro Se

DOC # 358800

Wa. State Penitentiary

1313 N. 13<sup>th</sup>

Walla Walla, Wa 99362

# **ATTACHMENT**

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**COPY RECEIVED**

Honorable William Downing  
Department  
October 24, 2014 at 1:30

OCT 21 2014

**CRIMINAL DIVISION  
KING COUNTY PROSECUTOR'S OFFICE**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

STATE OF WASHINGTON	)	
Plaintiff	)	No. 13-C-09790-3 SEA
	)	
v	)	
	)	
Mohamed Ibrahim	)	DEFENSE PRESENTENCE REPORT AND REQUEST FOR IMPOSITION OF EXCEPTIONAL SENTENCE BELOW THE STANDARD RANGE
Defendant	)	
	)	

Mohamed Ibrahim was charged, along with co-defendant Yusuf Shire, with 3 counts of Assault First Degree (all with firearm enhancements). Mr. Ibrahim was also charged with 1 count of Unlawful Possession of a Firearm First Degree based on a prior conviction of Burglary second degree in 2010. Mr. Ibrahim has an Assault 3<sup>rd</sup> Degree conviction from 2011.

The jury convicted Mr. Ibrahim of all counts as charged; the jury convicted Shire of the lesser included offenses of 3 counts of Assault 2<sup>nd</sup> degree with firearm enhancements and Unlawful Possession of a Firearm First Degree based on a prior conviction for Robbery 2.

Mr. Ibrahim's sentence ranges are as follows:

- Ct. 1: Assault First Degree (Offender Score: 3)  
120 months-160 months (10-13.3 years)  
(Based on prior convictions of Assault 3 and Burglary 2 and current charge of Unlawful Possession of firearm).
- Ct. 2: Assault First Degree (Offender Score 0)

93-123 months consecutive to count 1 (7.75-10.25 years)  
Ct 3: Assault First Degree (Offender Score 0)  
93-123 months consecutive to count 1 and 2 (7.5-10.25 years)  
Ct. 5: Unlawful Possession of Firearm

31-41 months **concurrent** with count 1 (2.58-3.4 years)

The 3 firearm enhancements for counts 1, 2, and 3 are 60 months each and run consecutive to each other and consecutive to the standard ranges on each count. (15 years total)

The total of the three assault standard ranges plus firearm enhancements would result in a presumptive sentence of 40.5 years-48.8 years.

Defense is requesting an exceptional sentence below the standard range of 25 years (10 years on assault charges, all counts concurrent) followed by 15 years for the firearm enhancements.

**For sentencing purposes, is Ibrahim eligible for an exceptional sentence below the standard range based on the RCW 9.94A.535 and .589?**

Answer: **YES, under In re Mulholland, 161 Wn.2d 322, 166 P.3d 677(2007).**

RCW 9.94A.535 provides that a court may impose a sentence outside the standard sentence range for an offense if it finds considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.535(1) provides a nonexclusive list of mitigating factors for a court may consider in imposing an exceptional sentence. One such factor is a finding by the trial court that “the operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.”

The relevant portions of RCW 9.94A.589 state:

(1)(a) Except as provided in (b)... of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. “Same criminal conduct”, as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This

definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

In re Mulholland, 161 Wn.2d 322, 166 P.3d 677(2007), held that **a sentencing court may order that multiple sentences for serious violent offenses run concurrently as an exceptional sentence if it finds there are mitigating factors justifying such a sentence.**

In the Court's judgment, "because RCW 9.94A.535 provides that exceptional sentences may be imposed when sentencing takes place under RCW 9.94A.589(1), and does **not** differentiate between subsections (1)(a) and (1)(b), it can be said that a plain reading of the statute leads inescapably to a conclusion that exceptional sentences may be imposed under **either** subsection of RCW 9.94A.589(1)." Id. at 330.

\*\*\*It should be noted that the Court also affirmed that firearm enhancements must be served consecutively because former RCW 9.94A.310(3)(e) explicitly required it to order firearm enhancements to run consecutive to each other.

The Mulholland court reversed because there was some evidence from the judge's remarks-which indicated some openness toward an exceptional sentence, expressing sympathy towards the defendant because of his former military service-that indicated the court might have imposed a mitigated sentence had it realized it could do so. "As we said in Grayson, 'while no defendant is entitled to an exceptional sentence..., every defendant is entitled to ask the trial court

to consider such a sentence and to have the alternative actually considered.’ State v Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183(2005).

Multiple Offense Policy:

While Mulholland did not directly address the questions of whether the trial court could grant an exceptional sentence based on the multiple offense policy alone, a plain reading of the decision leads to the conclusion that any grounds for an exceptional sentence will suffice under RCW 9.94A.589 (1).

A contrary decision was reached in State v Graham, 178 Wn.App. 580, 314 P.3d 1148(2013) (Division 3). In that case, defendant was convicted of 2 counts of attempted first degree murder, 4 counts of first degree assault and other crimes. The jury found 7 deadly weapon enhancements, but Graham was sentenced on firearm enhancements. The case was reversed because of the enhancement error (the Supreme court holding that when a jury has only found deadly weapon enhancements, defendant cannot be sentenced of firearm enhancements-only on deadly weapon enhancements).

At resentencing, Graham asked the trial court to impose an exceptional sentence downward of 25 years. He argued that an exceptional sentence was legally authorized by the “multiple offense policy” mitigating factor in RCW 9.94A.525(1)(g); that since all the convictions arose from a single incident and that “given the lack of incremental harm engendered by each additional shot, application of the multiple offense policy on the specific facts of this case results in a sentence which is clearly excessive in light of the stated purposes of the SRA.”

The trial judge was sympathetic, especially given evidence of Graham’s rehabilitation during his more than 10 years in prison. However, he concluded that he did not have a legal basis to impose a mitigated exceptional sentence:

Your lawyer has argued one, basically one mitigating factor to me, and that is the application of the multiple offense policy. I spent some time with this...RCW 9.94A.589(1)(a) talks about when you're scoring an offense and you have other current offenses. If there are too many other current offenses, it might be appropriate to impose an exceptional sentence. But if you look at subpart B, the multiple offense policy doesn't really apply to subpart B, because with serious violent offenses you aren't scoring, you aren't taking into consideration the other current offenses.

The judge imposed standard range sentences for the serious violent offenses and ran them consecutively. Defendant appealed. Division 3 of the Court of Appeals concluded the trial judge was correct in his analysis of the statute and affirmed the sentence:

We have found no published Washington cases applying the mitigating factor of RCW 9.94A.535(1)(g) to serious violent offenses. Professor David Boerner sheds some light on why, "in particular, the addition by the Legislature of special provisions governing multiple 'serious violent' crimes is clear evidence of its belief that just punishment for such offenders required significant terms of confinement." David Boerner, *Sentencing in Washington*, 9-32 (1985).

...As clarified in State v Batista, 116 Wn.2d 777, 808 P.2d 1141(1991), "It is important to remember what is meant by the 'multiple offense policy'...The statute sets out a precise, detailed scheme to follow where multiple offenses are involved. Where multiple current offenses are concerned, except in specified instances involving multiple violent felonies, presumptive sentences for multiple current offenses consist of concurrent sentences, each computed with the others treated as criminal history utilized in calculating the offender score." *Id.* At 786. In other words, the multiple offense policy refers to sentencing proceedings under RCW 9.94A.589(1)(a); it does not apply to sentencing under subsection (1)(b) that involves multiple violent felonies. As Mr. Graham correctly points out, it is possible for a mitigated exceptional sentence involving concurrent terms under RCW 9.94A.589(1)(b). See In re Pers. Restraint of Mulholland, 161 Wn.2d 322, 166 P.3d 677 (2007)(holding a trial court's discretion to impose an exceptional sentence includes discretion to impose concurrent sentences where consecutive sentences are presumptively called for). But the multiple offense policy of subsection (1)(a) is not itself a basis for an exceptional sentence under subsection (1)(b) of RCW 9.94A.589. The trial court properly concluded likewise.

Graham at 589-90. Additionally, the court held that even if (1)(a) did apply, the trial court considered this basis for a mitigated sentence and rejected it:

If a trial court considers the facts and rejects that basis for an exceptional sentence, then a defendant may not appeal that ruling. State v Garcia-Martinez, 88 Wn.App. 322, 330, 944

P.2d 1104(1997)[“where a defendant has requested an exceptional sentence below the standard range, review is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.”]

Here, the trial court similarly considered the basis for a mitigated sentence suggested by Mr. Graham and rejected it. The court determined, “It’s the very rare occasion when you should be utilizing the multiple offense policy” and that there is “an analysis of whether they are—the additional current charges are nonexistent, trivial, or trifling.” The court reasoned, “Certainly in a situation where we have someone firing a weapon at an officer, firing on another officer who’s driving a motor vehicle, firing on a patrol vehicle contained three other officers, I hate to even use the words “nonexistent, trivial, or trifling.” Thus, the trial court considered the factual circumstances and determined the case was not one warranting a lower sentence. Therefore the court exercised its discretion and decided a standard range sentence was appropriate. Accordingly, Mr. Graham cannot prevail on this challenge to his standard range sentence.

In sum, the court did not wrongly refuse to exercise discretion; nor did the court rely on an impermissible basis in denying Mr. Graham’s request.

Id. at 591.

The Graham court seemed to distinguish between a trial court allowing an exceptional sentence based on any other ground, but that the court was prohibited from imposing an exceptional sentence under the multiple offense policy alone. **It should be noted that the Graham decision was appealed and was accepted for review by the Washington Supreme Court in June of 2014.**

The conclusion that Mulholland allows a trial court to impose concurrent sentences for serious violent crimes was further affirmed by a different Division 3 panel in the unpublished 2013 case of State v Ramos, 174Wn.App. 1042(2013).

The trial court may impose an exceptional sentence if it finds, “considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.” RCW 9.94A.120(2). If such a sentence is imposed, “the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard range shall be a determinate sentence.” RCW 9.94A.120(3).

An exceptional sentence is appropriate when the circumstances of the crime distinguish it from other crimes of the same statutory category. D. Boerner, *Sentencing in Washington* § 9.6, at

9–13 (1985); State v Nordby, 106 Wash.2d 514, 517–18, 723 P.2d 1117 (1986).

The court must also consider the purpose of the SRA to determine whether a reason is substantial and compelling. “first and overriding principle shaping the Act is retribution, or just deserts.” D. Boerner, *Sentencing in Washington* § 2.5, at 2–31 (1985). This court has also assessed the paramount purpose of the SRA to be punishment. State v. Rice, 98 Wash.2d 384, 393, 655 P.2d 1145 (1982). The first three stated purposes of the SRA are articulations of principles of punishment:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses

State v. Pennington, 112 Wash. 2d 606, 610-11, 772 P.2d 1009, 1012 (1989).

In considering these principles, the circumstances of the offenses Mr. Ibrahim was convicted of compared to other crimes of the same statutory category, defense contends that circumstances of the crime distinguish it from other crimes of the same statutory category. There are multiple grounds for an exceptional sentence below the standard range: the weakness of the evidence connecting Ibrahim to the shooting of any of the victims; the weakness of the evidence as to his intent to inflict great bodily harm on any of the victims; and the multiple offense policy.

The mens rea for first degree assault is the specific intent to inflict great bodily harm. Specific intent is defined as intent to produce a specific result, as opposed to intent to do the physical act that produces the result. State v Elmi, 166 Wn.2d 209, 215, 207 P.3d 439 (2009); State v Wilson, 125 Wn.2d 212, 883 P.2d 320(1994).

“Great Bodily Harm” means “bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ”. RCW 9A.04.110 (4) (c).

Without actual injury, evidence of the defendant’s specific intent to “inflict great bodily harm” is difficult to prove. Elmi at 222(Madsen, J., dissenting).

“Evidence of intent...is to be gathered from all of the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats.” Wilson at 217(quoting State v Ferreira, 69 Wn. App. 465, 468, 850 P.2d 541(1993)).

“Specific intent cannot be presumed, but it can be inferred as a logical **probability** from all the facts and circumstances. A solid evidentiary basis for a defendant’s intent is necessary because the law requires that a defendant be held just as liable as he is culpable-no more, no less”. “Upholding a first degree assault conviction without proof of intent to inflict great bodily harm violates a defendant’s right to have every element of the crime prove beyond a reasonable doubt. Elmi, at 223-24 (Madsen, J., dissenting).

In this case, 3 victims were identified- Barnes, Williams, and Kebede. Barnes was the only one who suffered an injury-he was shot in the hand. He had no idea who did it or how. He had no evidence to offer on the issue of intent. Mr. Kabede was not called as a witness. The State made little or no effort to secure his presence. The State was aware that Mr. Kabede would offer exculpatory evidence regarding identity. The State never questioned Mr. Kabede regarding the facts of the shooting and this witness had no information to offer on the issue of intent. Mr. Williams was the only witness to give testimony on what actually happened. His testimony

established that Shire was the one who first pulled his gun out, pointed it in the air, announced “I do this”, fired in the air and then pointed his gun directly at the group and began to fire. Williams testified that Shire fired 4 or 5 times.

He testified that Ibrahim pulled a gun and began firing after Shire had finished and the two were retreating; he said that while shots from Ibrahim **could** have been in his general direction, he didn’t believe they were directed towards him; Ibrahim had turned to his right and most likely was firing towards the middle in between the streets towards his right. He was definite that Shire began shooting when he was close to them and that Ibrahim’s shots fired from further away while he was backing up and retreating.

There was no argument between Ibrahim and any of the victims prior to the shooting, and testimony showed that there had never been previous altercations between Ibrahim and any of the victims. It appeared that none of the victims had ever had any previous interactions with Ibrahim or any knowledge of who he was.

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The bullet that hit Barnes was never sent to forensics to determine whether it came from Ibrahim or Shire’s gun; likewise, Williams had no idea whether Barnes was hit by a direct shot or ricochet before Ibrahim began firing (though he believed Barnes was hit while next to him as that is where the blood was, and when Mr. Ibrahim fired he did not believe any bullets were fired towards him).

Another bullet and several fragments were also recovered, but no forensic analysis was done. In short, from the physical evidence in this case, there is no way to determine if any of the fragments or bullets recovered at the scene came from Ibrahim’s weapon as opposed to Shire’s weapon, and no evidence recovered definitely indicates that any of Ibrahim’s shots came near

any of the three victims in this case. The physical evidence showed that a number of the shots were fired into the ground some distance from any of the victims.

Given the paucity of physical evidence that Ibrahim actually fired at any of the victims, and the testimony of Williams that Shire was the one who fired at the victims and that while Ibrahim could have fired in his general direction, he was most likely firing down the street towards his right and coupled with a complete lack of any previous altercation or argument involving the victims and Ibrahim, the evidence presented by the State to show that Ibrahim had the specific intent to inflict great bodily harm on any of the victims is weak. Certainly, his actions would sustain convictions for assault second degree, but proof of the specific intent necessary to elevate these crimes to assault first degree is lacking.

Given the above, the relative weakness of evidence of Ibrahim's specific intent to inflict great bodily harm on any of the victims differentiates this case from other first degree assault cases where the evidence of such intent is clear, unquestionable, and beyond a reasonable doubt. In Wilson, for example, the court relied on the actual injuries suffered by the victims to prove the defendant's specific intent to inflict great bodily harm: "we concluded that Wilson Assaulted Hurles and Hensley in the first degree 'when...Wilson discharged bullets from a firearm **into the neck of Hurles and into the side of Hensley.**'" Wilson at 217.

Further, the weakness of the evidence as to whether Ibrahim actually fired at any of the victims-rather than in a different direction-also differentiates this case from other first degree assault cases where evidence is clear beyond a reasonable doubt that the defendant actually was shooting at the victims, and justifies an exceptional sentence.

Finally, Defense contends that based on Mulholland and given the fact that Graham has been accepted for review, the trial court does in fact have the discretion to impose an exceptional

sentence below the standard range based on the multiple offense policy, in addition to the other grounds advanced by defense for an exceptional sentence.

Based on the above factors, defense respectfully requests that the court impose an exceptional sentence of 120 months for counts 1, 2, and 3 concurrent, followed by 15 years of firearm enhancements, and that the sentence in count 5 run concurrent with all other counts.

Respectfully submitted,

\_\_\_\_\_  
Coleen St. Clair WSBA#17562  
Attorney for Mohamed Ibrahim

# **ATTACHMENT**

**2**

**FILED**  
KING COUNTY, WASHINGTON

OCT 24 2014

SUPERIOR COURT CLERK

WARRANT OF TRANSFER ISSUED OCT 27 2014

PRESENTENCING STATEMENT AND INFORMATION ATTACHED

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No. 13-C-09789-0 SEA
vs.	)	
	)	<b>JUDGMENT AND SENTENCE</b>
	)	<b>FELONY (FJS)</b>
YUSUF HAISE SHIRE,	)	
	)	
	)	Defendant.
	)	

**I. HEARING**

I.1 The defendant, the defendant's lawyer, Edward P. Jursek, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: \_\_\_\_\_

**II. FINDINGS**

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

2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 10/08/2014 by Jury Verdict of:

Count No.: I Crime: Assault In The Second Degree  
RCW: 9A.36.011(1)(a) Crime Code: 01010  
Date of Crime: 05/18/2013

Count No.: II Crime: Assault In The Second Degree  
RCW: 9A.36.011(1)(a) Crime Code: 01010  
Date of Crime: 05/18/2013

Count No.: III Crime: Assault In The Second Degree  
RCW: 9A.36.011(1)(a) Crime Code: 01010  
Date of Crime: 05/18/2013

Count No.: IV Crime: Unlawful Possession of a Firearm in the First Degree  
RCW: 9.41.040(1) Crime Code: 00524L  
Date of Crime: 05/18/2013

Additional current offenses are attached in Appendix A

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

- (a)  While armed with a firearm in count(s) I-III RCW 9.94A.533(3).
- (b)  While armed with a deadly weapon other than a firearm in count(s) \_\_\_\_\_ RCW 9.94A.533(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 46.61.5055, RCW 9.94A.533(7).
- (g)  Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h)  Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) \_\_\_\_\_.
- (i)  Current offenses encompassing the same criminal conduct in this cause are count(s) \_\_\_\_\_ RCW 9.94A.589(1)(a).
- (j)  Aggravating circumstances as to count(s) \_\_\_\_\_: \_\_\_\_\_

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
I-III	10	IV	63-84 months	36 months each	99-120 months	10 YRS and/or \$20,000
IV	6	VII	57-75 months		57-75 months	10 YRS and/or \$20,000

Additional current offense sentencing data is attached in Appendix C.

**2.5 EXCEPTIONAL SENTENCE**

Findings of Fact and Conclusions of Law as to sentence above the standard range:  
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) \_\_\_\_\_

Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) \_\_\_\_\_.  The court would impose the same sentence on the basis of any one of the aggravating circumstances.

An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.

An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State  did  did not recommend a similar sentence (RCW 9.94A.480(4)).

**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.

- [ ] This offense is a felony firearm offense (defined in RCW 9.41.010). Having considered relevant factors, including criminal history, propensity for violence endangering persons, and any prior NGI findings, the Court requires that the defendant register as a firearm offender, in compliance with 2013 Laws, Chapter 183, section 4. The details of the registration requirements are included in the attached Appendix L.

## 4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

- 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(5), 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 right to be present at future restitution hearing(s).  
 Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment in the amount of \$500 (RCW 7.68.035 - mandatory).  
 Defendant shall pay DNA collection fee in the amount of \$100 (RCW 43.43.7541 - mandatory).

## 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 (RCW 9.94A.030, RCW 10.01.160);  Court costs are waived;  
 (b)  \$ \_\_\_\_\_, Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030);  Recoupment is waived;  
 (c)  \$ \_\_\_\_\_, Fine;  \$1,000, Fine for VUCSA  \$2,000, Fine for subsequent VUCSA (RCW 69.50.430);  VUCSA fine waived;  
 (d)  \$ \_\_\_\_\_, King County Interlocal Drug Fund (RCW 9.94A.030);  Drug Fund payment is waived;  
 (e)  \$ \_\_\_\_\_, \$100 State Crime Laboratory Fee (RCW 43.43.690);  Laboratory fee waived;  
 (f)  \$ \_\_\_\_\_, Incarceration costs (RCW 9.94A.760(2));  Incarceration costs waived;  
 (g)  \$ \_\_\_\_\_, Other costs for: \_\_\_\_\_

- 4.3 PAYMENT SCHEDULE: The TOTAL FINANCIAL OBLIGATION set in this order is \$ 600<sup>00</sup>. Restitution may be added in the future. 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.

72 months/days on count I; 72 months/days on count II; 72 months/days on count III;  
75 months/days on count IV; \_\_\_\_\_ months/days on count \_\_\_\_\_; \_\_\_\_\_ months/days on count \_\_\_\_\_;

The above terms for counts \_\_\_\_\_ are  consecutive  concurrent.

The above terms shall run  consecutive  concurrent to cause No.(s) 13-1-10240-1 SEA

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: 36 months on count I, II, III  
total of 108 months for enhancements  
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.)

[ ] On the conviction for aggravated murder in the first degree, the defendant was under 18 at the time of that offense. Having considered the factors listed in RCW 10.95.030, a minimum term of \_\_\_\_\_ years of total confinement and a maximum term of life imprisonment is imposed. (If under 16 at the time of the offense, minimum term must be 25 years; if 16 or 17, minimum term must be 25 years to life without parole.)

The TOTAL of all terms imposed in this cause is 180 months.

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

4.5 NO CONTACT: For the maximum term of 10 years, defendant shall have no contact with Barber Kenede, Marcella Barnes, Vincent Williams

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: The defendant shall submit to HIV testing as ordered in APPENDIX G. RCW 70.24.340.

4.7 (a)  COMMUNITY CUSTODY for qualifying crimes committed before 7-1-2000, is ordered for  one year (for a drug offense, assault 2, assault of a child 2, or any crime against a person where there is a finding that defendant or an accomplice was armed with a deadly weapon);  18 months (for any vehicular homicide or for a vehicular assault by being under the influence or by operation of a vehicle in a reckless manner);  two years (for a serious violent offense).

(b)  COMMUNITY CUSTODY for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months.

- (c)  **COMMUNITY CUSTODY - for qualifying crimes committed after 6-30-2000** is ordered for the following established range or term:
- Sex Offense, RCW 9.94A.030 - 36 months—when not sentenced under RCW 9.94A.507
  - Serious Violent Offense, RCW 9.94A.030 - 36 months
    - If crime committed prior to 8-1-09, a range of 24 to 36 months.
  - Violent Offense, RCW 9.94A.030 - 18 months
  - Crime Against Person, RCW 9.94A.411 or Felony Violation of RCW 69.50/52 - 12 months
    - If crime committed prior to 8-1-09, a range of 9 to 12 months.
- \_\_\_\_\_ months (applicable mandatory term reduced so that the total amount of incarceration and community custody does not exceed the maximum term of sentence).

Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or the court.

- APPENDIX H** for Community Custody conditions is attached and incorporated herein.
- APPENDIX J** for sex offender registration is attached and incorporated herein.

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

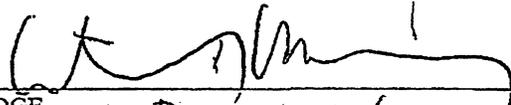
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The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 10/24/14

  
 JUDGE  
 Print Name: Dennis C

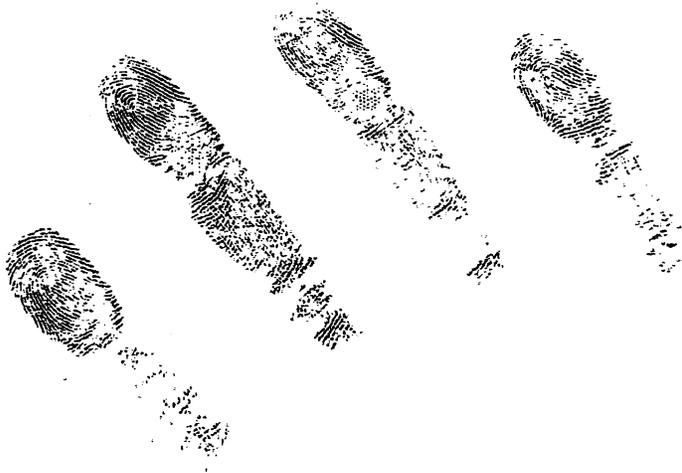
Presented by:

Deputy Prosecuting Attorney, WSBA# 43000  
 Print Name: Paul Sewell

Approved as to form:

  
 Attorney for Defendant, WSBA # 28021  
 Print Name: Edward Justice

FINGER PRINTS



RIGHT HAND  
FINGERPRINTS OF:  
YUSUF HAISE SHIRE

DEFENDANT'S SIGNATURE:  
DEFENDANT'S ADDRESS:

*[Handwritten Signature]*  
\_\_\_\_\_  
\_\_\_\_\_

Dated: 09/24/14

ATTESTED BY: BARBARA MINER,  
SUPERIOR COURT CLERK

*[Handwritten Signature]*  
\_\_\_\_\_  
JUDGE

By: \_\_\_\_\_  
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

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

S.I.D. NO. WA25099347

DOB: 01/31/1993

SEX: Male

RACE: Black/African American

\_\_\_\_\_  
CLERK  
By: \_\_\_\_\_  
DEPUTY CLERK

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

STATE OF WASHINGTON,

Plaintiff,

vs.

YUSUF HAISE SHIRE,

Defendant.

No. 13-C-09789-0 SEA

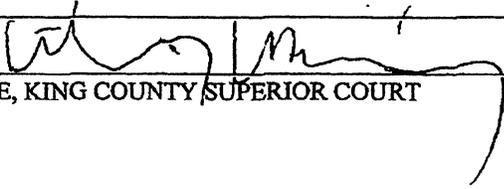
JUDGMENT AND SENTENCE,  
(FELONY) - APPENDIX B,  
CRIMINAL HISTORY

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.	Cause Number	Location
Robbery 2nd	08-28-2009	JF	09-8-01721-4	King Superior Court WA
Residential Burglary	02-08-2010	JF	09-8-04392-4	King Superior Court WA
Attempt Robbery 2nd	08-12-2011	AF	11-1-01891-8	King Superior Court WA
Unlawful Possession of a Firearm in the First Degree	10-02-2014	AF	13-1-10240-1	King Superior Court WA

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

Date: 12/24/14

  
JUDGE, KING COUNTY SUPERIOR COURT

**# 71532-1-I**

**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 Appellant's (Mohamed Ibrahim's) Pro Se brief, was filed in the Court of Appeals, Division 1, under cause number 72753-2-1, and a true copy was delivered to the Respondent King County Prosecuting Attorney and mailed with first class postage prepaid to the Appellant, Mohamed Ibrahim.

Dated January 25, 2016

A handwritten signature in black ink, appearing to read 'Jon Zulauf', written over a horizontal line.

Jon Zulauf #6936  
Attorney for Appellant