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Washington State
Supreme Court

In The Supreme Court
of the State of Washington

State of Washington,
Respondent,

v.

Nathan Chavez,
Petitioner.

Petitioner for
Discretionary Review

COA NO. 55702-9-11

A. Identity of Petitioner

Petitioner, Nathan Chavez, pro se, ask this Court to review the decision of the Court of Appeals Perred to in Section B.

B. Court of Appeals Decision

The Petitioner seeks Review of the Court of Appeals' unpublished decision in State v. Nathan Chavez, filed October 4, 2022 which is attached to this petition.

C. Issues Presented for Review.

1. Did the combined terms of confinement and terms of community custody for five of the offenses exceed the statutory maximum for those offenses, resulting in the exceptional consecutive

sentences being clearly excessive?

D. Facts

Nathan Chavez, appeals from the exceptional consecutive sentences imposed following his resentencing on five sex offenses and one witness tampering. At resentencing the State requested the trial Court to reimpose the previous sentence under the free crimes aggravator, RCW 9A.535 (2)(c), over Chavez objection. The trial court imposed the maximum 60 months plus 36 months community custody on counts 1, 2, 3, 4, 6. All the counts were to be run concurrent with the exception of counts I, VI and VIII which were ordered to run consecutive to the other counts. This resulted in a total sentence of 137 months in prison and 36 months of community custody. (see Judgment and Sentence) pages 7, 8. This exceeded the statutory maximum sentence for a class C felony, which is 5 years.

D. Reason's Review Should be Accepted:

This Court should accept review under RAP 13.4(b) (1) and (2) the court of appeals opinion conflicts with established case law from this court, the COA's and U.S. Supreme Court.

1. Sentences Exceeding Statutory maximum is clearly excessive

Petitioner Chavez argues that the sentence on counts I, VI, the two 3rd° Rape convictions combined with the terms of community custody for each of these offenses result in sentences that exceed the statutory maximum. A trial court errs when it imposes a total term of confinement and community custody that exceeds the statutory maximum for an offense. *State v. Boyd*, 174 Wn.2d 470, 472-73, 275 P.3d 321 (2012). Under RCW 9A.701(9), the trial court ~~shall~~ shall reduce the community custody term "whenever on offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum." 3rd degree Rape of a Child is a class C felony with a statutory maximum sentence of 60 months. RCW 9A.20.021(1)(c); RCW 9A.44.079(2).

The trial court imposed 60 months of confinement and 36 months of community custody for each of the 3rd° Rape convictions. The resulting 137 month sentence exceeded the statutory maximum sentence for these offenses by 36 months. Because the total sentences for each of the 3rd degree Rape exceed the statutory maximums for these offences, the trial

court erred. Accordingly, this court should remand the trial court to decide whether to reduce the defendant's term of incarceration or his terms of community custody by a total of 36 months on the applicable counts in accordance with RCW 9A.701(a), to prevent exceeding the statutory maximum of 60 months. (see Boyd, 124 Wn.2d at 473) (Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004) (U.S. Const. amend. 6 and 8) (Wash. const. art. 1ss14)

Respectfully Submitted this day of Jan. 28th
2023

Nathan Chavez

Nathan Chavez, pro se
191 Constantine Way
Aberdeen, WA. 98520

FILED
CLALLAM COUNTY

MAR 22 2021 10:21 AM

NIKKI BOTNEN CLERK

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON, Plaintiff,
vs.
NATHAN A. CHAVEZ 02/21/1986
Defendant DOB
PCN: 966160641
SID: WA22930166
CCSO No. 17-00915

NO. 17-1-00046-8

FELONY JUDGMENT AND SENTENCE - PRISON
(Sex Offense and Kidnapping of a Minor)
(FJS)

- Clerk's Action Required, para 2.1, 4.1, 4.3a, 4.3b, 4.8, 5.2, 5.3, 5.5, 5.7, and 5.8
- Defendant Used Motor Vehicle
- Juvenile Decline Mandatory Discretionary

I. HEARING

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. FINDINGS

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon ¹⁸
 guilty plea jury-verdict bench trial (date) JUNE 7, 2018.

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	RAPE OF A CHILD IN THE THIRD DEGREE with SPECIAL ALLEGATION POSITION OF TRUST	RCW 9A.44.079 RCW 9.94A.535(3)(n)	C	Between and including the 31st day of December, 2014 and the 1st day of January, 2015
II	RAPE OF A CHILD IN THE THIRD DEGREE with SPECIAL ALLEGATION POSITION OF TRUST	RCW 9A.44.079 9.94A.535(3)(n)	C	Between and including the 31st day of December, 2014 and the 31st day of May, 2015
III	RAPE OF A CHILD IN THE THIRD DEGREE with SPECIAL ALLEGATION POSITION OF TRUST	RCW 9A.44.079 9.94A.535(3)(n)	C	Between and including the 31st day of December, 2014 and the 31st day of May, 2015

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))

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IV	CHILD MOLESTATION IN THE THIRD DEGREE	RCW 9A.44.089	C	Between and including the 1st day of January, 2016 and the 31st day of August, 2016
V	NOT GUILTY			
VI	RAPE OF A CHILD IN THE THIRD DEGREE	RCW 9A.44.079	C	Between and including the 28th day of September, 2016 and the 25th day of November, 2016
VII	TAMPERING WITH A WITNESS	RCW 9A.72.120(1)(a)	C	On or about the 26th day of September, 2017

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

Additional current offenses are attached in Appendix 2.1a.

The defendant is a sex offender subject to indeterminate sentencing under RCW 9.94A.507.

The jury returned a special verdict or the court made a special finding with regard to the following:

GV For the crime(s) charged in Count _____, **domestic violence - intimate partner** as defined in RCW 9A.36.041(4) was pled and proved.

GV For the crime(s) charged in Count _____, **domestic violence (other)** was pled and proved.
RCW 10.99.020.

The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.825, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____ RCW 9.94A.825, 9.94A.533.

Count _____, is aggravated murder in the first degree committed while the defendant was under 16 years of age 16 or 17 years of age when the offense was committed.

Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.

The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.

In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.

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(Sex Offense and Kidnapping of a Minor Offense)
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- The offense was predatory as to Count _____. RCW 9.94A.836.
- The victim was under 15 years of age at the time of the offense in Count _____ RCW 9.94A.837.
- The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.____.
- Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY** In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.

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(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>	<i>DV* Yes</i>
1.				
2.				

* DV: Domestic Violence was pled and proved.

- Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or I Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1	Q SRA Countables						
2							
3							
4							
5							

* DV: Domestic Violence was pled and proved.

- Additional criminal history is attached in Appendix 2.2.

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	13	VII	60-60 months	N/A	60-60 months	5 years \$10k
II	13	VII	60-60 months	N/A	60-60 months	5 years \$10k
III	13	VII	60-60 months	N/A	60-60 months	5 years \$10k
IV	13	V	60-60 months	N/A	60-60 months	5 years \$10k
V	13	VII	60-60 months	N/A	60-60 months	5 years \$10k
VI	5	III	17-22 months	N/A	17-22 months	5 years \$10k

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 9.94A.533(7), (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude, (ALF) Assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

- Additional current offense sentencing data is attached in Appendix 2.3.

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017)*

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For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are attached as follows:

2.4 **Exceptional Sentence.** The court finds substantial and compelling reasons that justify an exceptional sentence:

below the standard range for Count(s) _____.

above the standard range for Count(s) _____.

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury, by special interrogatory.

within the standard range for Count(s) _____, but served consecutively to Count(s) _____.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 **Legal Financial Obligations/Restitution.** The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

(Name of agency) _____ 's costs for its emergency response are reasonable. RCW 38.52.430 (effective August 1, 2012).

2.6 **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010, and:

The defendant should register as a felony firearm offender. The court considered the following factors in making this determination:

the defendant's criminal history.

whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

evidence of the defendant's propensity for violence that would likely endanger persons.

other: _____.

The defendant must register as a felony firearm offender because the offense was committed in conjunction with an offense committed against a person under the age of 18,

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017)*

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or a serious violent offense or offense involving sexual motivation as defined in RCW 9.94A.030.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order

It is ordered:

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

60 months on Count I 60 months on Count IV
60 months on Count II 60 months on Count VI
60 months on Count III 17 months on Count VII

The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon sexual motivation VUCSA in a protected zone
 manufacture of methamphetamine with juvenile present sexual conduct with a child for a fee
 impaired driving.

Actual number of months of total confinement ordered is: 137 months.

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Count I, Count VI, & Count VII

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count _____ minimum term: _____ maximum term: Statutory Maximum

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017)*

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Count _____ minimum term: _____ maximum term: Statutory Maximum

(c) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count _____ minimum term: _____ maximum term: Life

Count _____ minimum term: _____ maximum term: Life

(d) **Credit for Time Served.** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(e) **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701, RCW 10.95.030(3))

(A) The defendant shall be on community custody for:

Count(s) I, II, III, IV, VI 36 months Sex Offenses *not to exceed statutory maximum*
Count(s) _____ 36 months for Serious Violent Offenses
Count(s) _____ 18 months for Violent Offenses
Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(Sex offenses, only) For count(s) _____, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition;

(7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

- not possess or consume alcohol.
- not possess or consume controlled substances, including marijuana, without a valid prescription.
- have no contact with: H.M.W. (11/23/00) & M.C. (11/26/01)
- remain within outside of a specified geographical boundary, to wit: _____
- not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030.
- participate in an education program about the negative costs of prostitution.
- participate in the following crime-related treatment or counseling services: SOTP
- undergo an evaluation for treatment for domestic violence substance use disorder mental health anger management, and fully comply with all recommended treatment.
- comply with the following crime-related prohibitions: _____
- Other conditions: Conph w/ Appendix F, Additional Conditions of sentence.

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or substance use disorder treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of a crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.

- (iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE PCV	\$ 500.00	Victim assessment (\$500.00 for felony and gross misdemeanor; \$250.00 for misdemeanor)	RCW 7.68.035
PDV	\$	Domestic Violence assessment	RCW 10.99.080
	\$	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
CRC	\$ 200.00	Court costs, including:	RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee	\$ 200.00 FRC
		Witness costs	\$ WFR
		Sheriff's service fees	\$ SFR/SFS/SFW/WRF
		Jury demand fee	\$ JFR
		Extradition costs	\$ EXT
		Other	\$
PUB	\$	Fees for court appointed attorney	RCW 9.94A.760
WFR	\$	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM/ MTH	\$	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency	RCW 69.50.430
CDF/LDI/ FCD NTF /SAD/SDI	\$	Drug enforcement fund of _____	RCW 9.94A.760
CLF	\$	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
	\$ 100.00	DNA collection fee	RCW 43.43.7541
FPV	\$	Specialized forest products	RCW 76.48.1401
PPI	\$	Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.)	RCW 9A.40.100, 9A.88.120, 9.68A.105
EXM	\$	Fee for Possession of Depictions of a Minor Engaged	RCW 9.68A:070

*Felony Judgment and Sentence (FJS) (Prison)
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		in Sexually Explicit Conduct (\$1,000 fee for each separate conviction)
	\$	Other fine or costs for: _____ i.e., Interpreter costs (CIS) Evaluations--court ordered (EVA) Lab/blood test (BBS) Investigator services (INS) Drug Court Program (DCT) Meth lab clean-up (MTH)
DEF	\$	Emergency response costs (\$1,000 maximum, RCW 38.52.430 \$2,500 max. effective Aug. 1, 2012.) Agency: _____ (address) _____
RTN/RJN	\$	Restitution to: _____ RCW 38.52.430 (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

(Name and address - address may be withheld and provided confidentially to Clerk of the Court's

	Office)	
RTN solely /	\$ TBD	Restitution to:
RJN joint & several	\$	Restitution to:
	\$	Restitution to:
	\$	Restitution to:
	\$	Costs of:
	\$ 600	TOTAL

H.M.W. and M.C.	
Clallam County Jail for medical treatment rendered while incarcerated in County Jail:	
\$	pre- + post-conviction medical costs (RCW 70.48.130)
\$	Other costs:
\$	
\$	

RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

shall be set by the prosecutor is scheduled for _____, 20____.

The defendant waives any right to be present at any restitution hearing (sign initials): _____

Restitution Schedule attached.

Restitution ordered above shall be paid jointly and severally with:

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(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017)*

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RJN	NAME of other defendant(s)	Cause Number	(Victim's name)	(Amount - \$)
				\$
				\$
				\$

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 40 per month commencing 120 days after release. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 **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. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

HIV Testing. The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 **No Contact:**

The defendant shall not have contact with H.M.W. (11/23/00); M.C. (11/26/01) (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party until 3/22/31 (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within 500 ft (distance) of: H.M.W. (11/23/00) & M.C. (11/26/01) (name of protected person(s))'s home/

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(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017)*

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residence work place school (other location(s))

_____, or

other location: _____
until _____ (which does not exceed the maximum statutory sentence).

A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, Stalking No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 Other: _____

4.7 Off-Limits Order: (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 Exoneration: The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

V. Notices and Signatures

5.1 Collateral Attack on Judgment. If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100.
RCW 10.73.090.

5.2 Length of Supervision. If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 Notice of Income-Withholding Action. If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 Community Custody Violation.

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

5.5a Firearms. You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

5.5b Felony Firearm Offender Registration. The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Sex and Kidnapping Offender Registration. RCW 9A.44.128, 9A.44.130, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where you reside.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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vocation.

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Travel Outside the United States: If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

i) before arriving at a school or institution of higher education to attend classes;

*Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))*

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- ii) before starting work at an institution of higher education; or
- iii) after any termination of enrollment or employment at a school or institution of higher education.

7. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

- 5.7 **Department of Licensing Notice:** The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** -The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**
- Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of ____.
 - No BAC test result.
 - BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
 - Drug Related. The defendant was under the influence of or affected by any drug.
 - THC level was ____ within two hours after driving.
 - Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.
- Vehicle Info.: Commercial Veh.; 16 Passenger Veh.; Hazmat Veh.

- 5.8 **Department of Licensing Notice - Defendant under age 21 only.**
 Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the

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 (Sex Offense and Kidnapping of a Minor Offense)
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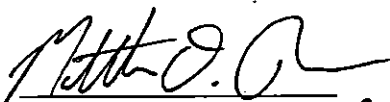
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offense, AND the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

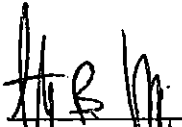
Clerk's Action -The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

5.9 Other: _____

Done in Open Court and in the presence of the defendant this date: 3/22/21




~~MICHELE DEVLIN~~ *Natt Robinson*
Deputy Prosecuting Attorney
WSBA No. 46147 *50952*



STAN MYERS
Attorney for Defendant
WSBA No. 37512

Judge Print Name: B.P. Coughenour



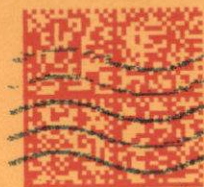
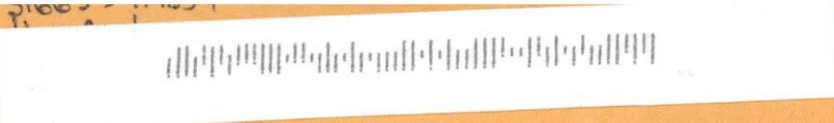
NATHAN A. CHAVEZ

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T. FRANK

1-30-2003

October 4, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

NATHAN A. CHAVEZ,

Appellant.

No. 55702-9-II

UNPUBLISHED OPINION

PRICE, J. — Nathan A. Chavez appeals the exceptional sentence the superior court imposed following remand for resentencing. Specifically, Chavez argues that the exceptional sentence is clearly excessive. We affirm.

FACTS

In June 2018, a jury found Chavez guilty of three counts of third degree rape of a child (counts I-III) and third degree child molestation (count IV) involving one victim, third degree rape of a child against another victim (count VI), and tampering with a witness (count VII). The jury found the aggravating circumstance of abuse of a position of trust by special verdict on the first three counts of third degree rape. Although Chavez had no prior criminal history, his offender score on the sex offenses was more than nine because his sex offenses were scored at three points each. Former RCW 9.94A.525(17) (2017).

The trial court found that the jury's special verdict justified an exceptional sentence upward. The trial court also found that concurrent sentences would result in some of Chavez's

crimes going unpunished. The trial court imposed an exceptional sentence, ordering that the sentences for counts I, VI, and VII be served consecutively. The trial court sentenced Chavez to 137 months of total confinement.

Chavez appealed, and this court reversed the jury’s special verdict finding that Chavez abused a position of trust. *State v. Chavez*, No. 52358-2-II, slip op. at 27 (Wash. Ct. App. July 21, 2020) (unpublished).¹ However, this court affirmed the trial court’s use of the “free crimes” aggravator. *Id.* at 32. This court remanded for resentencing because it was unclear whether the trial court would have imposed the same sentence based only on the free crimes aggravator. *Id.* at 33. This court explicitly stated that the superior court “may impose the same or a different sentence” at resentencing. *Id.*

At resentencing, the superior court found that “[a]s a consequence of his high offender score and commission of multiple current offenses, his fifth sex offense and his witness tampering convictions would go unpunished under a standard range sentence where all terms of imprisonment are served concurrently.” Clerk’s Papers at 32. Therefore, the superior court found that some of Chavez’s offenses would go unpunished without imposition of an exceptional sentence. The superior court imposed the same sentence that it had originally imposed—selectively ordering the sentences for counts I, VI, and VII to be served consecutively, resulting in 137 months of total confinement.

Chavez appeals.

¹ <https://www.courts.wa.gov/opinions/pdf/D2%2052358-2-II%20Unpublished%20Opinion.pdf>

ANALYSIS

Chavez argues that the superior court’s exceptional sentence is clearly excessive. Specifically, Chavez argues that his multiple offenses were already accounted for in calculating his offender score and “[a] sentence that is more than twice the standard range, not based on aggravating factors, and imposed because the trial court believes the sentencing scheme the legislature created is inadequate, is shocking.” Appellant’s Opening Br. at 6. Because the sentence imposed is not clearly excessive, we affirm.

We may review an exceptional sentence to determine whether the reasons for the exceptional sentence are supported by the record or whether the sentence is clearly excessive. RCW 9.94A.585(4). We review whether a sentence is clearly excessive for an abuse of discretion. *State v. Ritchie*, 126 Wn.2d 388, 393, 894 P.2d 1308 (1995). The superior court abuses its discretion when a sentence is based on untenable grounds or reasons or it is a decision no reasonable person would make. *Id.* If based on proper reasons, “we will find a sentence excessive only if its length, in light of the record, ‘shocks the conscience.’ ” *State v. Kolesnik*, 146 Wn. App. 790, 805, 192 P.3d 937 (2008) (internal quotation marks omitted) (quoting *State v. Vaughn*, 83 Wn. App. 669, 681, 924 P.2d 27 (1996)), *review denied*, 165 Wn.2d 1050 (2009).

Here, Chavez’s argument incorrectly conflates whether the free crimes aggravator was appropriately applied in this case with whether the imposed sentence is clearly excessive. This court already affirmed the application of the free crimes aggravator to Chavez’s case, rejecting the exact argument Chavez is attempting to make here—that he was already punished for his other crimes because they resulted in triple points in his offender score. *Chavez*, slip op. at 30-31. And, with an explicit sanction from this court, the superior court appropriately utilized the free crimes

aggravator when it ran the sentences for some counts consecutively to account for all of Chavez's criminal conduct during resentencing.


Having concluded that the superior court based its decision on proper reasons, we are left with determining whether the length of the sentence shocks the conscience. It does not. Given the disturbing nature of Chavez's offenses against children, that these offenses were committed against multiple young victims, and the superior court's selective and deliberate imposition of consecutive sentences, the sentence imposed does not shock the conscience. Therefore, the sentence imposed by the superior court is not clearly excessive.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


PRICE, J.

We concur:


CRUSER, A.C.J.


WORSWICK, J.