

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION II
2013 DEC 19 PM 1:35
STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON
Respondent,

No. 44842-4-11

v.

RYAN DEE WHITAKER
Appellant.

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, RYAN DEE WHITAKER, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

The court erred in entering Findings of Fact numbers 1, 2, and 3, for the reason that Appellant received ineffective assistance of counsel on Counts 3 and 4, child molestation in the First Degree, in violation of his constitutional right to counsel, because his trial attorney failed

to interview and subpoena additional crucial potential defense witnesses.

In order to make the adversarial process meaningful, defense counsel has a duty to investigate all reasonable lines of defense. U.S.C.A. Const. Amend. 6. In re Davis, 152 Wn.2d 647, 743, 101 P.3d 1 (En Banc 2004). [The] presumption of counsel's competence can be overcome, however, by showing counsel failed to conduct appropriate investigations to determine what defenses were available, adequately prepare for trial, or subpoena necessary witnesses. Davis at 742.

The church class Whitaker taught had an adult co-teacher assigned to it, making two adult teachers in the class. RP 694, Steve Gonsalves co-taught with Whitaker from mid-July to the end of August 2011. Eric Brown and Brian Taylor also co-taught with Whitaker from the beginning of January, 2011 to mid-July. RP 694. The defense attorney could and should have also interviewed and called these other two adults to testify for the defense. With their testimony, the entire span of Whitaker's presence in the class would have been covered and accounted for.

Besides the co-teachers as crucial potential defense witnesses, there were substitute teachers who filled in occasionally when a co-teacher was to be absent. RP 842. The trial attorney could and should have interviewed and called Mata Brown and Paul Gerke, who were substitute teachers, to testify for the defense.

There were four other students, besides the three identified in Appellant's brief, who were also crucial potential defense witnesses that defense counsel could and should have interviewed and called to testify for the defense. RP 843. Because there was no assigned seating in the Sharing Time room (RP 848, 859, 873, 891-2) each of the students ended up sitting by Whitaker and/or M-S at some time or another during the eight months Whitaker taught. No student sat by Whitaker all the time. RP 848. Whitaker sat in either of the two rows assigned for his class. RP 891.

The detective interviewed each of the eight students in the class and recorded the interviews on video or audio tape. RP 230-1. Each of the other seven students denied there

were any incidents such as those M-S- claimed occurred every single week. The combined testimonies of all seven other students would have helped to exonerate Whitaker by covering every single Sunday throughout the entire period he taught, plus covering every possible vantage point and from the closest proximity possible each class.

There is an additional reason one of the students named in Appellant's brief was a crucial potential witness for the defense. J-K- was present in the small classroom during the alleged incident that formed the basis for the charge in Count 4. She would have given exculpatory testimony completely refuting the story given by the State's sole witness, M-B-.

There was no viable trial tactic or strategy that can account for why defense counsel failed to interview or call four other adult witnesses or seven student witnesses. Not calling them left many weeks unaccounted for in the defense theory of the case. The prosecution charged multiple crimes during an eight month period. The prosecution stressed that Steve Gonsalves only co-taught the class from mid-

July through August, 2011. RP 916. This left nearly seven months open for speculation and undefended. The prosecution also stressed how some witnesses in the Sharing Time room were far away from Whitaker or had their lines of sight obstructed. RP ^{705, 907,} 931-941. Calling these other eleven potential witnesses would have provided exculpatory testimony from persons who were immediately next to Whitaker and/or M-S-, or were in close proximity and in direct line of sight of both of them, for each and every Sunday during the entire charging period. Their testimony would not have been duplicative or cumulative, since the charging period was a span of eight months, the seating arrangements changed every week, and each witness would have provided a unique perspective to testify about. Calling these other crucial potential witnesses would have greatly increased Whitaker's chances of defeating even the two remaining Counts for which he was found guilty, in addition to the many he successfully defeated. These potential witnesses were readily available and amenable to subpoena.

ADDITIONAL GROUND 2

The court erred and abused its discretion in refusing to conduct a view of the scenes of the alleged crimes. In addition to the reasons given in Issue 6 of Appellant's brief, viewing the scenes of the alleged crimes would have served additional purposes in aiding the court to understand true and correct facts of the case. The judge could have seen the actual size and layout of the room. There was much conflicting testimony about what witnesses could or could not see from the front of the room to the back row, or across from one row to an adjacent row. The judge could have seen the various levels of activities by the students and the amount of movement by both students and adults during Sharing Time. There was conflicting testimony about whether the students remained in their seats the entire time, and how much the leaders moved about the room. These issues were critical for the judge's decision because they had to do directly with how exposed Whitaker's alleged actions were or were not, and with the likelihood of the crimes occurring or not while students were milling about and adult leaders coming to within a few feet of Whitaker.

The judge could have also benefitted from viewing the small classroom where one crime was alleged to have occurred. He could have seen the view of the interior of the classroom through the open door from the hall, the number of people present in the hall when classes are released, and the frequency of passers-by moving in front of the open door.

The judge's reasons for not viewing the scenes do not overcome the compelling reasons for why he should have. He said the circumstances change so it would not be possible to recreate the scenes as they existed at the time of the alleged crimes. RP 1125 .

In this case, there was not a specific given date for the alleged crimes. An uncertain number of alleged crimes were claimed to have occurred on any number of uncertainly claimed weeks during an eight month period. The variableness of the scenes from week to week, and even from minute to minute, in a changing, dynamic environment, were factors going to help the defense' case; i.e., students sat in different seats each week, and each meeting was filled with various kinds of activities and movement by the students and the adults.

Despite the variable factors, some aspects of the scenes do not change. The varieties of activities are similar week to week. The placement of rows and of chairs is consistent week to week. The ease of viewing between chairs and across row to row is the same. Personally viewing these variable as well as static aspects of the scenes would have been more useful in sorting through conflicting testimony than reliance upon imagined scenarios. The judge claimed he had a clear understanding of the scenes by the testimonies given, but he could not have been certain beyond a reasonable doubt where he did not specify which versions of conflicting testimonies he relied upon as being accurate and correct rather than opposing descriptions.

ADDITIONAL GROUND 3

The court erred and abused its discretion by issuing a Judgment and Sentence that contained provisions made without authority of law, because they were based upon the functions of a lapsed Indeterminate Sentence Review Board.

Collateral attacks against criminal judgments and sentences are prohibited if not brought within one year of becoming final, RCW 10,73.090 (1). The judgment and

sentence in this case became final April 5, 2011. This issue is brought in a timely manner. Construction of a statute is a question of law the [court] reviews de novo. State v. Williams, 171 Wn.2d 474, 476, 251 P.3d 877, (En Banc 2011).

Washington State Constitution article II, section 19 provides: "[no] bill shall embrace more than one subject, and that subject shall be expressed in the title." This section "serves to protect serious constitutional interests."

Patrice v. Murphy, 136 Wash.2d 845, 851, 966 P.2d 1271 (1998). The purposes of this constitutional mandate are three-fold:

(1) to protect and enlighten the members of the legislature against provisions in bills of which the titles give no intimation; (2) to apprise the people, through such publication of legislative proceedings as is usually made, concerning subjects of legislation that are being considered; and (3) to prevent hodge-podge or log rolling legislation.

Patrice, 136 Wash.2d 845, 852. Our Supreme Court has interpreted art. II, §19 as two

separate prohibitions: "(1) No bill shall embrace more than one subject; and (2) the subject of every bill shall be expressed in the title." Patrice, 136 Wash.2d 845, 852. Violation of either the subject or the title requirement alone is sufficient to render the relevant bill provisions unconstitutional." Patrice, 136 Wash.2d 845, 852.

The larger body of case law finds this court requiring proposed legislation carry a title that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law. Patrice, 136 Wash.2d 845, 853.

Titles can be general or restrictive. General titles are given liberal construction. Restrictive titles are more likely to violate the constitutional rule of single-subject titles and bills. State v. Lanphar, 124 Wn. App. 669, 674; 102 P.3d 864 (Div. 2 2004). A restrictive title is one where a particular part or branch of a subject is carved out and selected as the subject of legislation. State v. Thomas, 103 Wn. App. 800, 806-7, 14 P.3d 854 (Div. 2 2000). The title relevant to the art II, § 19 inquiry is the word, phrase, or phrases following "AN ACT Relating to . . ." and preceding the first semi-colon. Thomas, 103 Wn. App. 800, 806-7.

On July 1, 1986 the legislature enacted RCW

9.95.009(1) which stated that the board of prison terms and paroles was redesignated as the indeterminate sentence review board (ISRB). The ISRB had power to review sentences and grant or deny releases from sentences for a variety of crimes, including among other other types, certain classes of sex crimes. Also in 1986, the legislature passed RCW 9.95.0011 relating to the ISRB. It specified a termination date of June 28, 2008 for the ISRB, after which it would cease to exist.

In 2001 a bill, SB 6151, was passed that purported to repeal the termination clause found in RCW 9.95.0011, 2nd Spec. Sess., ch. 12, § 501. This bill was given the title: "AN ACT Relating to the management of sex offenders in the civil commitment and criminal justice systems." The title of SB 6151 was restrictive in nature. It carved out and selected "management of sex offenders" as the narrow focus of its legislation. This narrowly defined title violated art. II, § 19 of the Washington State constitution because the results and scope of the body of the act affected the management of more than just sex offenders; there were also certain non sex offenders subject to and affected by the act.

The title of SB 6151 failed to express the subject of the bill accurately, the second prohibition of art. II, § 19. Since violation of either the subject or the title requirement alone is sufficient to render the relevant bill provision unconstitutional, SB 6151 fails the constitutionality test given in art II, § 19. Here, the relevant bill provision affected by the unconstitutionality of the title is the repeal of the termination clause that would have kept the ISRB existant and functional. The title failed to indicate to an inquiring mind the true scope and effect of the proposed act. Any person reading the title would reasonably expect the bill to affect only sex offenders, and would predictably overlook the fact that it also had application to other, non sex offenders.

The narrow title of SB 6151 failed each of the three protections guaranteed by art II, § 19. It failed to protect and enlighten the members of the legislature against provisions in the bill of which the title gave no intimation; it failed to apprise the people concerning the subjects of legislation that were being considered; and it failed to protect against the possibility of hodge-podge or log rolling legislation.

SB 6151 was ambiguous because it created

two possible constructions. One, that the ISRB would cease to exist for only non sex offenders (assuming the repeal of the termination clause preserved the ISRB just for sex offenders); or, two, that the ISRB was preserved for both sex and non-sex offenders. The provisions in the body of the bill do nothing to clarify or distinguish between these two possibilities. However, a restrictive title such as this will not be liberally regarded and provisions not within its subject are not given force. Thomas, - 103 Wn.App, 800, 807. The existence of this ambiguity invites the application of the rule of lenity. State v. Slattum, 295 P.3d 788, 798, which is: "The rule of lenity requires the court to construe a statute strictly against the State in favor of the defendant where two possible constructions are permissible. (Citing State v. Parent, 164 Wash. App, at 213-14, 267 P.3d 358, quoting State v. Brown, 139 Wash.2d 757, 769, 991 P.2d 615 (2000).) Applying the rule of lenity here strictly against the State, and in favor of Whitaker, the proper result is that SB 6151 was unconstitutional, making it void, and the repeal it contained fails to prevent the

ISRB from ceasing to exist on June 28, 2008; thus Whitaker's sentence in May, 2012 that had reference to and depended on the ISRB to fulfill its requirements was entered in error. The court in *Thomas* arrived at a similar conclusion in that case. It held that a bill which purported to prevent the repeal of a prior act violated the constitutional single subject and subject in title requirements. *Thomas*, 103 Wn.App. 800, ⁸¹⁴ 14 P.3d 854 (Div. 2 2000).

If SB 6151 was void and caused the ISRB to lapse on June 28, 2008, then Whitaker's sentence, which relied up his case being reviewed by a non-existent ISRB, was invalid for impossibility. He is entitled to a new sentence that adheres to the requirements of laws as they validly existed prior to passage of unconstitutional bill SB 6151.

An opponent to this Additional Ground 3 might draw attention to §504 of SB 6151, a severance provision, which provides: "if any part of this act, or its application to any person or circumstance, is deemed unconstitutional, the remainder of the act or its application to other persons or

circumstances shall not be affected." This clause does not prevent the repeal of the termination clause in RCW 9.95.0011, nor does it prevent the lapse of the ISRB with regards to sex offenders. RCW 9.95.0011 was worded so narrowly as to render it impossible to be bifurcated to preserve its intent for sex offenders only. Such a construction runs head on into the prohibitions of art. II, §19 of the constitution, and would render the constitutional language impotent, to the harm of the people. It would shatter the predictability and stability in legislation that the law is intended to provide. Whitaker is entitled to a legally valid sentence.

ADDITIONAL GROUND 4

The court erred by including impermissible language in the Judgment and Sentence of Appellant. A sentence may not make a defendant "to submit to plethysmograph testing at the discretion of a community corrections officer [without violating] his constitutional right to be free from bodily intrusions." State v. Land, 172 Wn.App. 593, 605, 295 P.3d 782. (Div. I 2013). Plethysmograph testing is extremely

intrusive. The testing can properly be ordered incident to crime related treatment by a qualified provider. (Citing State v. Castro, 141 Wash.App. 485, 494, 170 P.3d 78 (2007).) But it may not be viewed as a routine monitoring tool subject only to the discretion of a community corrections officer. On remand, the reference to plethysmograph examinations [...] must be stricken. Land, at 605-6.

Here, Appellant's Felony Judgment and Sentence had a number of conditions and requirements contained in Appendix A. Item 16 requires, "You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request." This requirement is a violation of Appellant's right under the constitution to be free from bodily intrusions. It is not required as part of a qualified crime related treatment program. The community corrections officer is highly unlikely to be a qualified treatment provider. This clause appears to be nothing other than a routine monitoring tool subject only to the discretion of a community corrections officer, is excessively intrusive, and should be stricken for unconstitutionality.

ADDITIONAL GROUND 5

The court erred and abused its discretion by denying defendant's motion for a directed verdict following presentation of the State's evidence, in a trial for the charges of Child Molestation in the First Degree, where the prosecution failed to allege/charge or prove all of the essential elements of the crimes charged, in violation of the defendant's constitutional rights of notice and due process.

At trial, after the State rested following the State's presentation of its case in chief, defendant moved for a directed verdict in favor of defendant. RP 830-3. His motion was denied.

The court of appeals reviews a claim of manifest constitutional error de novo. State v. Edwards, 171 Wa.App. 379, 294 P.3d 708 (Div.2 2012). The defendant must demonstrate the error is 1) manifest and 2) is of constitutional dimension, RAP 2.5(a).

The U.S. Constitution, Amendment VI, incorporated into State prosecutions by the Fourteenth Amendment Due Process clause, and adopted by the Washington State constitution in Article I,

section 22, give an accused a constitutional right to be informed of the charge he will face at trial. State v. Brewczynski, 173 Wn. App. 541, 548, 294 P.3d 825 (Div. 3 2013). The state must charge all of the essential elements of a crime in its charging document. State v. Kjorsvik, 117 Wash.2d 93, 101-2, 812 P.2d 86 (1991). If the state fails to do so, the defendant's constitutional rights of notice and due process are violated and a new trial is required. Kjorsvik at 97, 107-8.

A charging document is adequate only if it included all essential elements of a crime — statutory and non-statutory — so as to inform the defendant of the charges and to allow the defendant to prepare a defense. Brewczynski at 548. The information must also allege the particular facts supporting every element of the offense. State v. Witherspoon, 171 Wn. App. 271, 295, 286 P.3d 996 (Div. 2 2012). When a defendant challenges the charging document for the first time on appeal, the court liberally construes the document in favor of validity. Witherspoon at 295. But where a defendant moves to dismiss an allegedly insufficient charging document before or during

trial, the court construes the information strictly to determine whether all the elements of the crime charged are included. State v. Mason, 170 Wn. App. 375, 379, 285 P.3d 154 (Div. 2 2012).

Before trial, early in the case, defendant Whitaker brought a motion challenging the charging document for vagueness and insufficiency of pleading. RP ___? (verbatim proceedings not provided to Appellant.) The motion addressed the form of the charging document and challenged how it listed two separate crimes in each count, where one crime was not a lesser included crime of the other. The defendant raised the issue of confusion created by the way the charging document was worded and how it did not adequately inform the defendant of the charges for which he would have to defend at trial. The trial court permitted the charging document to stand as written. The state later amended the information twice; first to increase the number of charges, and then to reduce the number. However, the subsequent and final informations continued to omit essential language stating all essential elements of the crimes charged of Child Molestation in the First Degree, perpetuating the same type of confusion

created originally and complained against early on.

The Second Amended Information, which was filed mid-trial, was required by the federal and state constitutions to allege or charge all of the essential elements of each crime alleged by it. One essential element of the crime of Child Molestation in the First Degree is sexual contact, including the required claim supported by the particular facts that show Defendant had a purpose or intent to gratify sexual desires of either party. State v. Edwards, 294 P.3d 708, 171 Wn. App. 379 (Div. 2 2012).

Because the adequacy of the charging document was raised for the first time before and during trial, this court should examine the charging document strictly to determine whether all the elements of the crimes charged - statutory and non-statutory - are included. Mason at 379. A strict examination shows manifestly that the charging document in Whitaker's case failed to allege and failed to give particular facts supporting the essential element of "purpose or intent to gratify sexual desires of either party." See "Second Amended Information" attached as Exhibit 2.

This failure to charge all the essential elements

of each crime charged, statutory and non-statutory, renders the charging document inadequate to pass the strict constitutional test required, therefore violating Whitaker's constitutional rights of notice and due process, and requiring a new trial.

Besides committing the constitutional error of permitting a trial to proceed on an inadequate information, the court erred and abused its discretion by denying the defense motion for a directed verdict following presentation of state's evidence in a trial for the charges of Child Molestation in the First Degree, where the prosecution failed to prove beyond a reasonable doubt every essential element of the charges.

The state has the burden of proving beyond a reasonable doubt all elements of the crimes charged. State v. Deer, 175 Wn. App. 725, 287 P.3d 539 (En Banc 2012). "Due process requires the State to prove every element of a crime beyond a reasonable doubt." In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

Under the Fourteenth Amendment and the Sixth Amendment of the U.S. Constitution, and Article I, section 21 of the Washington State Constitution, a

criminal defendant is entitled to a determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt. State v. Borreo, 147 Wash.2d 353, 364, 58 P.3d 245 (2002). The Fourteenth Amendment due process clause protects the accused in a criminal case against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

An essential element of the crime of Child Molestation in the First Degree is sexual contact, for which the state must prove beyond a reasonable doubt that the defendant had a purpose or intent to gratify sexual desires of either party. See State v. Edwards, supra.

Here, it appears the state was just as confused by the misleading information, because the state focussed on trying to prove the elements of rape of a child, which does not involve any showing of intent to gratify sexual desires, and seemed to treat the alternate charges of child Molestation in the First Degree as an after thought. The State overlooked its burden by failing to prove beyond a reasonable doubt the essential element of purpose or intent.

Perhaps the state was so confident it had proved the unlikely and unbelievable claim that defendant had committed rape of a child every week for eight months in a room filled with 40-50 other students and 12-15 adults, many in close proximity to the alleged victim each week, that it assumed it had met its burden of proving purpose or intent to gratify sexual desire beyond a reasonable doubt. But throughout its entire case, the state failed to elicit specific allegations supported by facts that defendant had formed such a purpose or intent.

Among the allegations claimed by the state was that defendant touched M-S on the outside of her clothing. In those child molestation cases in which touching was through clothing... the courts have required some additional evidence of sexual gratification. State v. Price, 127 Wash. App. 193, 110 P.3d 1171 (2005, emphasis added). The state failed to present or prove any "additional evidence of sexual gratification" at Whitaker's trial, and thus failed to prove guilt beyond a reasonable doubt.

Defendant's motion for a directed verdict after the state had finished presenting its evidence attacked the sufficiency of its proof of necessary

facts required to prove beyond a reasonable doubt every element of every crime charged. The prosecution was clearly confused about the constitutional burden required of the State in a criminal trial. The prosecutor claimed that "[t]he standard is not whether at this point (after the state had rested) it has been proved beyond a reasonable doubt in the eyes of the trier of fact." RP 831 The defendant was correct to seek a directed verdict at that stage of the trial. The State had rested. It had no more evidence to present. If it had not yet proved every element of every crime charged by that point, then no reasonable trier of fact could have found the defendant guilty of the crimes beyond a reasonable doubt. The Fifth Amendment to the U.S. Constitution requires the prosecution to prove its case beyond a reasonable doubt without requiring the defendant to assist by incriminating himself. The defendant could have declined to present any testimony in his defense, and the success of the prosecution's case would have rested entirely on the evidence presented before the State rested.

Here, the State failed to allege and to prove an essential element of the crimes for which the

defendant was found guilty. It was manifest error of constitutional import for the trier of fact to find the defendant guilty beyond a reasonable doubt when essential elements of the crimes were omitted in the charging document and in the State's proof of those missing elements without evidence to support them.

For both of these constitutional errors, failure to allege and failure to prove missing essential elements, the defendant was denied notice, due process, and a fair trial. The appropriate remedy here is dismissal of all charges against Whitaker, with prejudice.

Dated this 11th day of October, 2013.

Respectfully submitted,

Ryan D. Whitaker
Ryan Dee Whitaker

EXHIBIT 1

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FILED

JAN 30 2013

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Scott G. Weber, Clerk, Clark Co.

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

STATE OF WASHINGTON,

Plaintiff,

v.

RYAN DEE WHITAKER

Defendant.

SECOND AMENDED INFORMATION

No. 11-1-01948-9

(CCSO 11-11951)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - RAPE OF A CHILD IN THE FIRST DEGREE - 9A.44.073

That he, RYAN DEE WHITAKER, in the County of Clark, State of Washington, between January 1, 2011 and August 31, 2011 did have sexual intercourse with M.L.S., who was less than twelve years old and not married to the defendant and not in a state registered domestic partnership with the defendant, and the defendant was at least twenty-four months older than the victim; contrary to Revised Code of Washington 9A.44.073.

This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time RCW 9.94A.535(3)(g).

The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense. RCW 9.94A.535(3)(n).

COUNT 02 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083

That he, RYAN DEE WHITAKER, in the County of Clark, State of Washington, between January 1, 2011 and August 31, 2011, on an occasion separate and distinct from that charged in Counts 3 and 4, did have sexual contact with M.L.S., who was less than twelve years old, not married to the defendant and not in a state registered domestic partnership with the defendant, and the defendant was at least thirty-six months older than the victim; contrary to Revised Code of Washington 9A.44.083.

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1 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
2 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

3 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
4 standard sentencing range based upon the following aggravating circumstance(s):

5 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
6 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

7 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
8 the commission of the current offense. RCW 9.94A.535(3)(n).

9 **COUNT 03 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083**

10 That he, RYAN DEE WHITAKER, in the County of Clark, State of Washington, between January
11 1, 2011 and August 31, 2011, on an occasion separate and distinct from that charged in Counts
12 2 and 4, did have sexual contact with M.L.S., who was less than twelve years old, not married to
the defendant and not in a state registered domestic partnership with the defendant, and the
defendant was at least thirty-six months older than the victim; contrary to Revised Code of
Washington 9A.44.083.

13 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
14 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

15 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
16 standard sentencing range based upon the following aggravating circumstance(s):

17 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
18 eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

19 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
20 the commission of the current offense. RCW 9.94A.535(3)(n).

21 **COUNT 04 - CHILD MOLESTATION IN THE FIRST DEGREE - 9A.44.083**

22 That he, RYAN DEE WHITAKER, in the County of Clark, State of Washington, between January
23 1, 2011 and August 31, 2011, on an occasion separate and distinct from that charged in Counts
24 2 and 3, did have sexual contact with M.L.S., who was less than twelve years old, not married to
the defendant and not in a state registered domestic partnership with the defendant, and the
defendant was at least thirty-six months older than the victim; contrary to Revised Code of
Washington 9A.44.083.

25 This crime is a 'most serious offense' pursuant to the Persistent Offender Accountability Act
26 (RCW 9.94A.030(32), RCW 9.94A.030(37), RCW 9.94A.505(2)(a)(iii) and RCW 9.94A.570).

27 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
28 standard sentencing range based upon the following aggravating circumstance(s):

29 The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of
eighteen years manifested by multiple incidents over a prolonged period of time RCW
9.94A.535(3)(g).

1
2 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
3 the commission of the current offense. RCW 9.94A.535(3)(n).

4 ANTHONY F. GOLIK
5 Prosecuting Attorney in and for
6 Clark County, Washington

Date: January 30, 2013

7 BY:



Jessica E. Smith, WSBA #38001

Deputy Prosecuting Attorney

Dustin Richardson, WSBA #34094

DEFENDANT: RYAN DEE WHITAKER			
RACE: W	SEX: M	DOB: 11/07/1953	
DOL: WHITARD472QG WA		SID:	
HGT: 600	WGT: 170	EYES: BRO	HAIR: GRY
WA DOC:		FBI:	
LAST KNOWN ADDRESS(ES):			
HOME - 5306 NE 102ND ST, VANCOUVER WA 98686			

EXHIBIT 2

17 C-Townsend
C-jail

S9
11-1-01948-9

FILED

APR 05 2013
4:30
Scott G. Weber, Clerk, Clark Co

Superior Court of Washington
County of Clark

State of Washington, Plaintiff,

vs.

RYAN DEE WHITAKER,
Defendant.

SID: _____
If no SID, use DOB: 11/7/1953

No. 11-1-01948-9

Felony Judgment and Sentence --
Prison

RCW 9.94A.507 Prison Confinement
(Sex Offense and Kidnapping of a Minor)

(FJS) 13-9-01534-9

Clerk's Action Required, para 2,1, 4.1, 4.3a,
4.3b, 5.2, 5.3, 5.5 and 5.7

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

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court *Finds:*

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon
 guilty plea jury-verdict bench trial 1/31/2013:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	1/1/2011 to 8/31/2011
04	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	1/1/2011 to 8/31/2011

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:

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))
Page 1 of 12

130
AS

- 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.
- 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.
- 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 _____, **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._____.
- 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.
- 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.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- 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):

	Crime	Cause Number	Court (county & state)
1.			

- 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):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	DV?*	Type
1 See attached criminal history						

*DV: Domestic Violence was pled and proved

- Additional criminal history is attached in Appendix 2.2
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- The prior convictions for _____ are one offense for purposes of determining the offender score (RCW 9.94A.525).
- The prior convictions for _____ 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	Maximum Fine
03	3	X	67 MONTHS to 89 MONTHS		67 MONTHS to 89 MONTHS	LIFE	\$50,000.00
04	3	X	67 MONTHS to 89 MONTHS		67 MONTHS to 89 MONTHS	LIFE	\$50,000.00

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (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.

Additional current offense sentencing data is attached in Appendix 2.3.

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) _____.
- Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, 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. The court finds:

- That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

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.

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 1, 2 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):

_____ months on Count 03

_____ months on Count 04

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.

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

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: _____.

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein: _____.

Confinement shall commence immediately unless otherwise set forth here: _____.

The total time of incarceration and community supervision shall not exceed the statutory maximum for the crime.

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

Count	03	minimum term	89 months	maximum term	Statutory Maximum
Count	04	minimum term	89 months	maximum term	Statutory Maximum

(c) **Credit for Time Served:** The defendant shall receive 70 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.

(d) **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 placement or community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) _____ 36 months Sex Offenses
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) 03, 04, 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.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(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. 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:

- consume no alcohol.
- have no contact with: _____
- remain within outside of a specified geographical boundary, to wit: _____
as directed by DOC officer _____
- not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).
- participate in the following crime-related treatment or counseling services: _____
- undergo an evaluation for treatment for domestic violence substance abuse mental health
 anger management, and fully comply with all recommended treatment. _____
- comply with the following crime-related prohibitions: _____
- Additional conditions are imposed in Appendix ~~B~~ A if attached or are as follows:

(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 chemical dependency 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.

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

JASS CODE

RTN/RJN	\$211.73	Restitution to: <u>CVCP (\$211.73)</u> (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ 500.00	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ _____	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 service fees \$ _____	SFR/SFS/SFW/WRF
		Jury demand fee \$ _____	JFR
		Extradition costs \$ _____	EXT
		Other \$ _____	
PUB	\$ 200. ⁰⁰	Fees for court appointed attorney and trial per diem, if applicable	RCW 9.94A.760
WFR	\$ 7,442.00	Court appointed defense expert and other defense costs	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
FCM/MTH	\$ 500.00	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 # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
	\$ 100.00	DNA collection fee	RCW 43.43.7541
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690
FPV	\$ _____	Specialized forest products	RCW 76.48.140
RTN/RJN	\$ _____	Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) Agency: _____	RCW 38.52.430
	\$ _____	Other fines or costs for: _____	
	\$ 8,953. ⁷⁵	Total	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 _____ (date).

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:

RJN	Name of other defendant	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 \$ _____ per month commencing _____. 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.

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. 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 MLS (female, 8/13/2002) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 100 years (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within:

500 feet 880 feet 1000 feet of:

MLS (female, 8/13/2002) (name of protected person(s))'s

home/ residence work place school

(other location(s)) _____ person _____

other location _____
for 100 years (which does not exceed the maximum statutory sentence).

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

4.6 Other: see attached "Appendix A"

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 For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

4.9 If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

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 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 first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third 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.714.

5.5 Firearms. You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, 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.

5.6 Sex and Kidnapping Offender Registration. Laws of 2010, ch. 367 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves unlawful imprisonment involving a minor as defined in Laws of 2010, ch. 367 § 1, 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.

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 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 vocation.

2. Offenders Who are New Residents or Returning Washington Residents: If you move to Washington or if you leave the 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.

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 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. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private

institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

6. 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.

7. 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).

8. Length of Registration:

Class A felony – Life; Class B Felony – 15 years; Class C felony – 10 years

5.7 Motor Vehicle: If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

5.8 Other: _____

5.9 Persistent Offense Notice

The crime(s) in count(s) 03, 04 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570

The crime(s) in count(s) 03, 04 is/are one of the listed offenses in RCW 9.94A.030.(31)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

Done in Open Court and in the presence of the defendant this date: April 5, 2013

[Signature]
Judge/Print Name Lewis

[Signature]
Deputy Prosecuting Attorney
WSBA No. 38001
Print Name: Jessica E. Smith

[Signature]
Attorney for Defendant
WSBA No. 31965
Print Name: Josephine Townsend

[Signature]
Defendant
Print Name:
RYAN DEE WHITAKER

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

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

Signed at Vancouver, Washington on (date): _____

Interpreter

Print Name

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Identification of the Defendant

RYAN DEE WHITAKER

11-1-01948-9

SID No: _____
(If no SID take fingerprint card for State Patrol)

Date of Birth: 11/7/1953

FBI No.

Local ID No. 208814

PCN No. _____

Other _____

Alias name, DOB:

Race: W

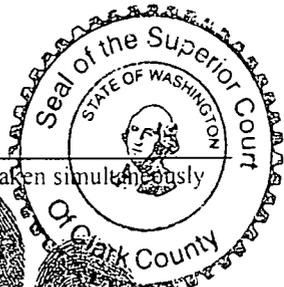
Ethnicity:

Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, *Jessie Li* Dated: 4-5-2013

The defendant's signature: *Ryan De Whitaker*

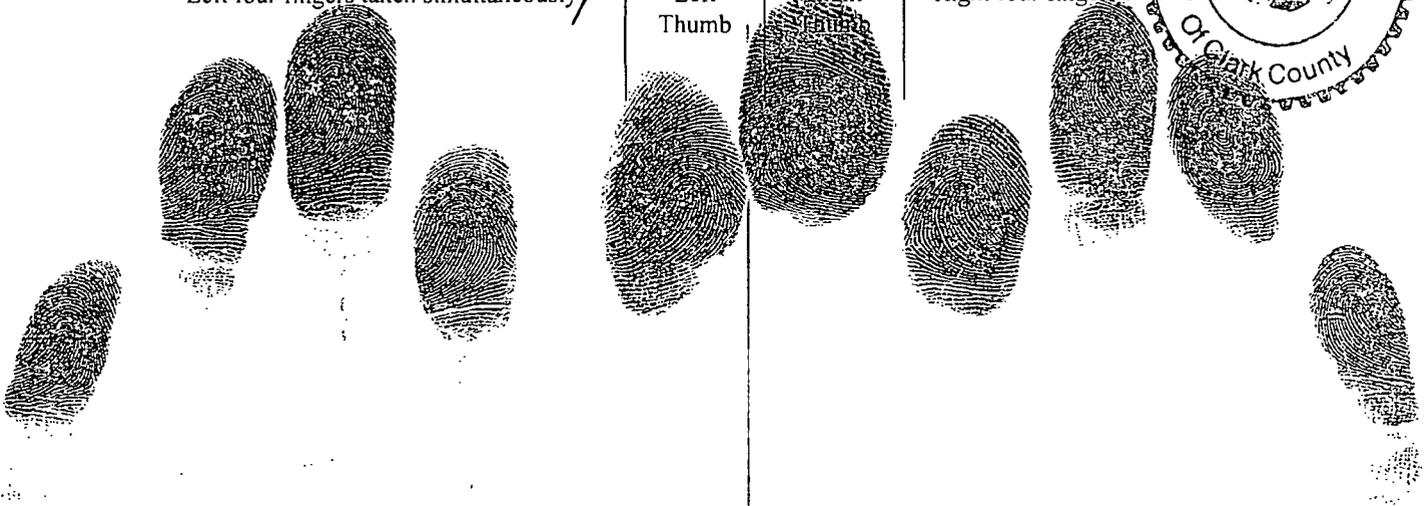


Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

RYAN DEE WHITAKER,

Defendant.

SID: _____

DOB: 11/7/1953

NO. 11-1-01948-9

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	1/1/2011 to 8/31/2011
04	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	1/1/2011 to 8/31/2011

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.13, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

COUNT	CRIME	TERM
03	CHILD MOLESTATION IN THE FIRST DEGREE	89 Days/Months
04	CHILD MOLESTATION IN THE FIRST DEGREE	89 Days/Months

These terms shall be served concurrently to each other unless specified herein:

The defendant has credit for 70 days served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

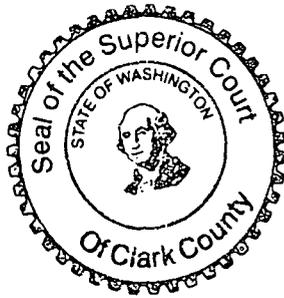
HEREIN FAIL NOT.

WITNESS, Honorable



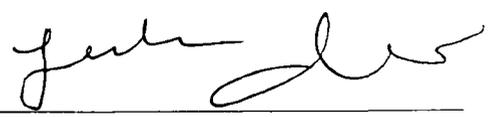
JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE:

4/5/13



SCOTT G. WEBER, Clerk of the
Clark County Superior Court

By:



Deputy

"APPENDIX A"
9.94A.507

STIPULATED CONDITIONS OF SENTENCE/COMMUNITY CUSTODY

1. You shall commit no law violations.
2. You shall report to and be available for contact with the assigned community corrections officer as directed.
3. You shall work at a Department of Corrections approved education program, employment program, and/or community service program as directed.
4. You shall pay a community placement/supervision fee as determined by the Department of Corrections.
5. You shall not have any direct or indirect contact with the victim, including but not limited to personal, verbal, telephonic, written, or through a third person without prior written permission from his community corrections officer, his therapist, the prosecuting attorney, and the court only after an appropriate hearing. This condition is for the statutory maximum sentence of 100 years, and shall also apply during any incarceration.

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 10.99 RCW AND WILL SUBJECT THE VIOLATOR TO ARREST; ANY ASSAULT OR RECKLESS ENDANGERMENT THAT IS A VIOLATION OF THIS ORDER IS A FELONY.

6. You shall not enter into or frequent business establishments or areas that cater to minor children without being accompanied by a responsible adult. Such establishments may include but are not limited to video game parlors, parks, pools, skating rinks, school grounds, malls or any areas routinely used by minors as areas of play/recreation.
7. You shall not have any contact with minors. This provision begins at time of sentencing. This provision shall not be changed without prior written approval by the community corrections officer, the therapist, the prosecuting attorney, and the court after an appropriate hearing.
8. You shall remain within, or outside of, a specified geographical boundary as ordered by your community corrections officer.
9. Your residence location and living arrangements shall be subject to the prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
10. You must consent to allow home visits by Department of Corrections to monitor compliance with supervision. This includes search of the defendant's person, residence,

automobile, or other personal property, and home visits include access for the purposes of inspection of all areas the defendant lives or has exclusive/joint control or access. RCW 9.94A.631

11. Your employment locations and arrangements shall be subject to prior approval of your community corrections officer and shall not be changed without the prior knowledge and permission of the officer.
12. You shall not possess, use, or own any firearms or ammunition.
13. You shall enter into, cooperate with, fully attend and successfully complete all inpatient and outpatient phases of a Washington State certified sexual deviancy treatment program as established by the community corrections officer and/or the treatment facility. You shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, community corrections officer and shall not change providers without court approval after a hearing if the prosecutor and/or community corrections officer object to the change. "Cooperate with" means you shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity.
14. The sex offender therapist shall submit quarterly reports on your progress in treatment to the court, Department of Corrections, and prosecutor and you shall execute a release of information to the community corrections officer, prosecutor and the court so that the treatment provider can discuss the case with them. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, your compliance with requirements, treatment activities, and your relative progress in treatment.
15. During the time you are under order of the court, you shall, at your own expense, submit to polygraph examinations at the request of the Community Corrections Order and/or the Prosecuting Attorney's office (but in no event less than twice yearly). Copies shall be provided to the Prosecuting Attorney's office upon request. Such exams will be used to ensure compliance with the conditions of community supervision/placement, and the results of the polygraph examination can be used by the State in revocation hearings.
16. You shall submit to plethysmography exams, at your own expense, at the direction of the community corrections officer and copies shall be provided to the Prosecutor's Office upon request.
17. You shall register as a sex offender with the County Sheriff's Office in the county of residence as defined by RCW 9.94A.030.
18. You shall not use/possess sexually explicit material as defined in RCW 9.68.130(2).
19. If the offense was committed on or after July 24, 2005, you may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030

The undersigned defendant agrees that he has read this Appendix A, or it has been read and explained to him; that he understands it, and has no questions about it.

Dated: 4/5/13

Signed: X Ryan D. [Signature]

Print name: <<DEFENDANT>>

Defendant