

FEB 17 2015

Ronald R. Carpenter
Clerk

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

No. 90718-8

v.

RONALD HODGE HOLTZ,
Appellant/Petitioner

MOTION/MEMORANDUM
TO SUPPLEMENT
THE RECORD ON
REVIEW

COMES NOW RONALD HODGE HOLTZ (PETITIONER) PRO SE
in a MOTION/MEMORANDUM TO SUPPLEMENT THE RECORD ON REVIEW
"under RULES OF APPELLATE PROCEDURE 13.

- MEMORANDUM -

Petitioner filed his motion for discretionary
review 12/22/14, without having access to Pierce County
Superior Court "Statement of Defendant on Plea of
Guilty to Non-Sex Offense" Cause No. #10-1-02212-2
on May 18, 2011 before Judge Beverly Grant. Attorney on
Record Matthew Wareham WSBA No. 38826.

The Respondents allege that Mr. Holtz pled guilty

to Rioting with a weapon which is stated to be a Felony by them. Raising Petitioner's offender's score to a 19 points. On the contrary, Mr. Holtz pled guilty to an unranked Felony and a gross misdemeanor, placing his score at an 8 points not 9. See Attachment statement of Defendant on Plea of guilty to Non-Sex Offense. On page one of nine section 4(b) "Violation of a no contact order", and RIOT DV-Courts II and I. On page 8 of 9, section 11 in his statement of guilt it does not say "Rioting with a weapon". As a matter of fact in all documents the rioting is cited as a gross misdemeanor. No where in any reports is Mr. Holtz purported to be armed in a group of 3 or more other persons nor with a deadly weapon which is a requirement of the charge. STATE V. MONTEJANO, 147 Wash. App. 696, 699, 196 P.3d 1083 (2008); STATE V. HAYES, 164 Wn. App. 262 P.3d 538 (Wash. App. Div. 1, 2011). No where in accordance with the "Essential Elements Rule" is RCW 9A.84.010(2)(b) cited.

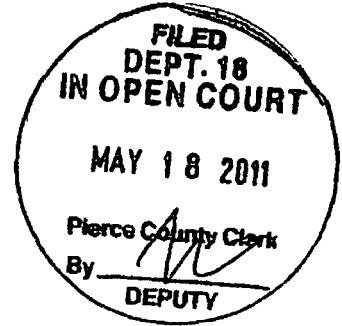
Petitioner must be resentenced under an offender score of 7-8 points. The Rules of Appellate Procedure will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. RAP 1.2(c). The Appellate Court may waive its rules to serve the ends of justice, including enlarging the time within which an act must be done. RAP 18.8(a) May the Court accept this Memorandum/Attach.

THIS 16th DAY OF FEBRUARY, 2015.


RONALD HOLTZ



10-1-02212-2 36466385 STTDFG 05-26-11



**Superior Court of Washington
For Pierce County**

MAY 26 2011

State of Washington
Plaintiff
vs.
RONALD HOLTZ KEAL
Defendant

No. 10-1-02212-2

**Statement of Defendant on Plea of
Guilty to Non-Sex Offense
(Felony)
(STTDFG)**

1 My true name is: RONALD HOLTZ KEAL
2 My age is. 44
3 The last level of education I completed was MED + 5-6 year college

4 **I Have Been Informed and Fully Understand That:**

(a) I have the right to representation by a lawyer and if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: Matthew Wareham

(b) I am charged with the crime(s) of: Violation of a no Contact order, and Riot DV Count I
Third as set out in the Ammended Information, dated, 5/18/2011, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. [Signature]

The elements of this crime these crimes (Defendant's initials)

are as set out in the _____ Information, dated _____ a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer _____

(Defendant's initials)

5 **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

(a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed,

(b) The right to remain silent before and during trial, and the right to refuse to testify against

ORIGINAL

myself;

- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State prove the charge beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of my Guilty Plea, I Understand That.**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows.

COUNT NO	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY	MAXIMUM TERM AND FINE
P II	7	0-365	0	24 months	1year 5k
P I	7	0-12months	0	12 months	5 years 10k
3					

*Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are (F) Firearm, RCW 9 94A 533, (D) Other deadly weapon, RCW 9 94A 533, (V) VUCSA in protected zone, RCW 69 50 435, RCW 9 94A 533, (SM) Sexual Motivation, RCW 9 94A 533 (SCF) Sexual conduct with a child for a fee, RCW 9 94A 533(9), (CSG) Criminal street gang involving minor, RCW 9 94A 533, (AE) Endangerment while attempting to elude, RCW 9 94A 533

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the Prosecutor and I disagree about the computation of the offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a

ORIGINAL

mandatory sentence of life imprisonment without the possibility of parole is required by law

- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody, community placement, or community supervision, may be longer than my earned early release period. During the period of community custody, community placement, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance RCW 74.04.005 (6) (h).

For offenses committed after July 1, 2000 but prior to July 26, 2009: The court may impose a community custody range as follows: for serious violent offenses, 24 to 36 months; for crimes against persons, 9 to 12 months, for offenses under 69.50 and 69.52, 9 to 12 months.

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me to 36 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9.94A.030(45)	36 months

ORIGINAL

Violent Offenses as defined by RCW 9 94A 030(54)	18 months
Crimes Against Persons as defined by RCW 9.94A 411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9 94A 660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate See RCW 9 94A.701(3)(b), 9 41 040	12 months

Certain sentencing alternatives may also include community custody

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04 005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) *89 days* The prosecuting attorney will make the following recommendation to the judge: CTS to run concurrent on both, on count 2 the remainder of time will be suspended *305/276 suspended*
on the following conditions that the defendant obtain a DV evaluation and comply with all follow up recommendations, that he complete a DV VIP and have law abiding behavior with no similar incidents 500 CVPA 200 CC 500 DAC 100 DNA NO contact Deborah Keal follow all conditions per cco
 The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) **The judge does not have to follow anyone's recommendation as to sentence.** The Court must impose a sentence within the standard range unless it finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
 - (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
 - (iv) The judge may also impose an exceptional sentence above the standard range if

ORIGINAL

the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) **If I am not a citizen of the United States**, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) **Government assistance may be suspended** during any period of confinement.
- (m) I understand that I will be required to have a **biological sample** collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee. RCW 43.43.7541

Notification Relating to Specific Crimes *If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.*

- (n) This offense is a **most serious offense** or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a **first-time offender** instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to two years community custody plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.
- (p) If this crime involves **kidnapping involving a minor**, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration"

ORIGINAL

~~Attachment~~ These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements

(q) If this is a crime of **domestic violence**, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26 50 150

(r) If this crime involves **prostitution, or a drug offense associated with hypodermic needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.

(s) The judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9 94A.660. If I qualify, and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.

If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range

If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of **three to six months**, as set by the court.

As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A 701

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the

ORIGINAL

standard range.

- (t) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (u) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed RCW 69.50 401(2)(b)
- (v) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- (w) I understand that RCW 46.20.285 requires that my **driver's license be revoked** if the judge finds I used a motor vehicle in the commission of this felony.
- (x) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- (y) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.
- (z) The crime of _____ has a **mandatory minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n]
- (aa) I am being sentenced for **two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.
- (bb) I understand that the offense(s) I am pleading guilty to include(s) a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.

ORIGINAL

- (cc) I understand that the offense(s) I am pleading guilty to include(s) a **deadly weapon, firearm, or sexual motivation enhancement**. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- (dd) If I am pleading guilty to (1) **unlawful possession of a firearm(s) in the first or second degree** and (2) **felony theft of a firearm or possession of a stolen firearm**, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to unlawful possession of more than one firearm, I must serve each of the sentences for unlawful possession consecutively to each other.
- (ee) I understand that if I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290
- (ff) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A 690

7. I plead guilty to count(s) I and II as charged in the Third Amended Information, dated 5/18/2011. I have received a copy of that Information and reviewed it with my lawyer.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement While I believe myself to be factually innocent of the crimes charged after reviewing the evidence with my attorney, I believe that there would be a substantial likelihood of being found guilty of this or a more serious charge, so to take advantage of the state's offer I am pleading guilty As to both counts - there would be a factual basis to support the original charge, and I am pleading guilty to the lesser charge in order to take advantage of the state's offer - In re Barr 102 Wash 2d 265, North Carolina v Alford 400 us 91 s ct 160

Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy

ORIGINAL

of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge

[Signature]
Defendant **Ronald Keal**

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

Prosecuting Attorney		Defendant's Lawyer	
Kara Sanchez	35502	Matthew Wareham	38826
Print Name	WSBA No.	Print Name	WSBA No.

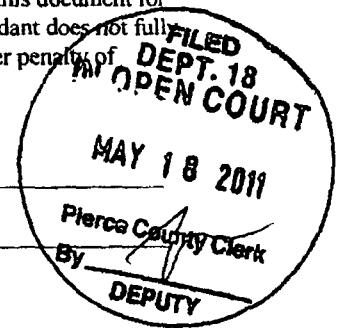
The defendant signed the foregoing statement was signed by the defendant in the presence of the defendant's lawyer and acknowledged in open court before the undersigned judge. The defendant asserted that [check appropriate box]

- (a) The defendant had previously read the entire statement above and that the defendant understood it in full.
- (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full, or
- (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below

Interpreter's Declaration. I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language I have interpreted this document for the defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____

Interpreter _____ Print Name _____



I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated 5/18/11 *[Signature]*
Judge **BEVERLY G. GRANT**

ORIGINAL