

FILED

SEP 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 90735-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

FILED
SEP 11 2014

VS

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
JOSE L. MONCADA
JLM

Appellant

PETITION FOR REVIEW

*OF the Decision of the Court of Appeals
Division Three - COA No. 30229*

*On Appeal from the Superior Court of
Washington in and for the County of Yakima
Cause No. 10-1-005434*

Jose L. Moncada
Jose L. Moncada #349000
Appellant Pro-se
Coyote Ridge Correction Center
P.O. Box 769
Connell WA 99326

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Dated July 31, 2014 Attached

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(Unpublished Opinion in State v Moncada, COA
No. 302229
Dated June 17, 2014 Attached

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I. IDENTITY OF APPELLANT

Jose L. Moncada, the Appellant herein, and pro-se in this action, due to Appellate Counsel's withdrawal from this case at the Court of Appeals level upon entry of the decision, seeks review in this Court pursuant to Rules of Appellate Procedure (RAP) 13.4 (b).

II. COURT OF APPEALS DECISION

The Court of Appeals' Unpublished Opinion is attached as Appendix B, and is incorporated herein by reference. The challenged portion of the opinion is the Court of Appeals' holding "that CrR 3.3 (b) (5)'s 30-day extension applies to both CrR 3.3 (e) and by reference CrR 3.3 (f)." Appendix B (Opinion at 5). This issue was raised in Mr. Moncada's pro-se Statement of Additional Grounds (SAG) which was rejected by the Court of Appeals. As such,

it is unclear whether this issue was "heard and determined on the merits" because the court never asked for briefing by Appellate Counsel.

III. ISSUES PRESENT FOR REVIEW

1. Does the Criminal Rules for Superior Court (CrR) 3.3 (b) (5) add 30 additional days upon expiration of each trial continuance request made by either the State or the Defense in a criminal case?
 - a. If so, this would result in 30 more days in addition to the days requested by either party (e.g., a 5 day extension would result in a 35-day extension). or
 - b. The language contained in CrR 3.3 (b) (5) stating that "the allowable time for trial shall not expire earlier than 30 days after the end of that excluded period" is ambiguous.
2. Mr. Moncada's right of speedy trial under the Sixth Amendment to the United States Constitution and Washington Constitution, article I, 22, and the State's Criminal Rules under CrR 3.3, was violated. See SAB at 3-20, incorporated herein by reference as

State v. Moncada

PETITION FOR REVIEW - 2

though fully set forth.

3. Mr. Moncada received the ineffective assistance of appellate Counsel in violation of the Sixth Amendment to the United States Constitution and Washington Constitution, article I, 22, when appellate Counsel failed to raise viable and meritorious issues on appeal. See SAB at 2-21, incorporated herein by reference as though fully set forth.

IV. STATEMENT OF THE CASE

The Statement of the case are set forth more fully in Mr Moncada's SAB and are incorporated herein by reference as though fully set forth. The facts relevant to Mr. Moncada's speedy trial violations are presented thoroughly in his SAB at pages 9-21, and also the facts relevant to the issues appellate counsel failed to raise.

V. ARGUMENT

The argument pertaining to the issues raised in this petition

are set forth more fully in Mr. Moncada's SAB and are incorporated herein by reference as though fully set forth. CrR 3.3 (b) (1) through (4) provides the time for trial and (b) (5) provides a 30-day extension after excluded periods. CrR 3.3 (e) (1) through (9) provides the excluded periods, and CrR 3.3 (f) (1) and (2) provides the continuances or delays which may be granted. However, CrR 3.3 (b) (5) does not allow the trial court to add 30 additional days upon the expiration of every request for trial continuance made by the State or defence counsel. Because both the trial court and Court of Appeals interpreted the Rule as such, but not yet determined by this Court, review should be accepted to settle law.

Once this Court determines that CrR 3.3 (b) (5)'s 30 day extension does not add 30-days to each continuance that is requested, then the Court would conclude that Mr. Moncada's right to a speedy trial was violated by improper application of the Rule.

Appellate counsel had a duty to raise the speedy trial issue, and the issue where the Prosecutor circumvented the Rule by going to a different Judge than the assigned Judge, to get the continuance the assigned Judge would have denied. see SAC at 1-21.

VI. CONCLUSION

For the foregoing reasons, this Court should accept review for resolution of the issues presented.

DATED this 29 day of ~~July~~^{Aug.}, 2014

Jose L. Moncada

Jose L. Moncada #34900
Appellant Pro-se
Coyote Ridge Correction Center
P.O. Box 769 H
Connell Wa 99326

State v. Jose L. Moncada
COA No. 302229

APPENDIX A

Order of the Court of Appeals
denying Motion for reconsideration
DATED July 31, 2014

APPENDIX A

FILED
JULY 31, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 30222-9-III
)	
Respondent,)	
)	
v.)	ORDER DENYING MOTION
)	FOR RECONSIDERATION AND
JOSE LEONEL MONCADA,)	DENYING MOTION FOR
)	CLARIFICATION
Appellant.)	

THE COURT has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. THE COURT has also considered respondent's motion for clarification and the answer thereto, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of June 17, 2014 is hereby denied.

IT IS ALSO ORDERED, the motion for clarification of this court's decision of June 17, 2014 is hereby denied.

DATED: July 31, 2014

PANEL: Judges Korsmo, Siddoway, Fearing

FOR THE COURT:



LAUREL H. SIDDOWAY
CHIEF JUDGE

State v. Jose L. Moncada
COA No. 30229

APPENDIX B

Copy of the Court of Appeals
decision (Unpublished Opinion)
DATED June 17, 2014

APPENDIX B

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

STATE OF WASHINGTON,)	
)	No. 30222-9-III
Respondent,)	
)	
v.)	
)	
JOSE LEONEL MONCADA,)	UNPUBLISHED OPINION
)	
Appellant.)	

FEARING, J. — A jury convicted Jose Moncada of first degree rape of a child and attempted first degree child molestation. The trial court sentenced Mendez Moncada to a concurrent sentence of life in prison with a minimum of 175 months. On appeal, Moncada contends the trial court committed error, during sentencing, by imposing on him legal financial obligations; by prohibiting him from purchasing, possessing, or looking at pornographic material as a condition of community custody; and by ordering him to undergo plethysmograph examinations at the discretion of his community corrections officer. The State concedes the errors. We agree and remand for resentencing.

In his statement of additional grounds (SAG), Jose Moncada claims a violation of his right to a timely trial under CrR 3.3 and, on that ground, additionally claims ineffective assistance of counsel and prosecutorial misconduct. We reject these

additional assignments of error.

FACTS

Jose Leonel Mendez Moncada lived in Yakima with his girl friend, Ramona Quinonez, and Quinonez's 11-year-old daughter, A.C. In 2009, Moncada pressed his erect penis against A.C.'s thigh while he penetrated her vagina with his fingers. In February 2010, at A.C.'s request, Moncada massaged her back to alleviate pain from a prior injury. Moncada slid his hands under her panties and massaged her butt. In March 2010, Moncada repeatedly sent A.C.'s brother out of her room; in his absence, Moncada kissed A.C. on her neck and lips, and patted her butt.

A.C. began to cut herself. An aunt noticed the cuts and asked A.C. about them. A.C. responded that "she was sick of her life." Report of Proceedings (RP) (Apr. 22, 2011) at 181. A few weeks later, A.C. phoned her aunt and told her about the abuse from Jose Moncada.

PROCEDURE

The State charged Jose Moncada with first rape of a child. The information notified Moncada that, if found to be a "persistent offender," the mandatory penalty may be life imprisonment without the possibility of release. Clerk's Papers (CP) at 3. The trial court arraigned Moncada on April 23, 2010. On February 7, 2011, the State amended the charges against Moncada to three counts (1) the original charge of first degree rape of a child on, about, during, or between July 1, 2009, and August 31, 2009;

(2) attempted first degree child molestation on, about, during, or between February 1, 2010, and February 28, 2010; and (3) attempted first degree child molestation on, about, during, or between March 1, 2010, and April 1, 2010.

On February 15, 2011, a trial date, Jose Moncada's defense counsel moved to continue the trial to February 22 in order to transcribe another witness interview. Moncada agreed to continue his case one week, but expressly objected to any longer continuance for purposes of his rights under CrR 3.3. The trial court continued the case one week, to February 22, so that counsel could transcribe the interview and complete a different trial. The court termed the postponement an "administrative continuance" and indicated that the new deadline, for purposes of CrR 3.3, would be extended one week. RP (Feb. 15, 2011) at 18. The prosecutor objected and argued that any continuance would result in a 30-day buffer under the rule. The court's February 15 order of continuance listed Moncada's trial date as February 22.

On the afternoon of February 15, the prosecution e-mailed Jose Moncada's counsel reiterating its position. Defense counsel replied he agreed that CrR 3.3 allowed a 30-day extension, and that the new trial deadline was March 24.

On February 18, Jose Moncada's defense counsel and the prosecution e-mailed back and forth to schedule Moncada's new trial date. The earliest both would be available for trial was early April 2011, due to other trials scheduled in late February and throughout March. The prosecution delivered an amended trial status order to Superior

Court Judge Ruth E. Reukauf, which she signed on February 18. The order described defense counsel's and the prosecution's schedule conflicts and noted Moncada's new CrR 3.3 deadline as March 24.

On February 28, 2011, Jose Moncada's defense counsel claimed that Moncada's trial deadline, under CrR 3.3, expired that day or had already expired on February 22. Counsel stated, "We believe that without a motion by the State the speedy trial expires today." RP (Feb. 28, 2011) at 22. Superior Court Judge Michael McCarthy noted the existence of "dueling orders," referring to the February 15 order to continue and the February 18 trial status order, which respectively noted Moncada's timely trial date as February 22 and March 24. On February 28, the prosecution moved to continue the trial date to March 7. The court granted this motion and, relying on the February 18, 2011 trial status order's trial deadline date of March 24, pushed Moncada's trial deadline to April 7.

On April 4, the prosecution moved to continue Jose Moncada's trial because of its trial counsel's illness. The trial court granted the motion, commenting, "I find there is good cause for a continuance. [The prosecutor] has been in my court all morning. I can tell she's having difficulty talking." RP (Apr. 4, 2011) at 2. The court observed that the case was complex and another prosecuting attorney should not be expected to try the case. The April 4 order of continuance set trial for April 11, resulting in a new CrR 3.3 trial deadline of May 11.

On April 19, Jose Moncada moved to dismiss his prosecution with prejudice claiming a violation of his right to a timely trial under CrR 3.3. Moncada argued:

I would have to say that implicit in his calculation here was that he was ruling that he was continuing this under the (f) section of Criminal Rule 3.3. The (f) section, unlike the (e) section, does not add 30 days to any continuance. It's merely an excluded period of time.

RP (Apr. 19, 2011) at 9. The trial court ruled that CrR 3.3(b)(5)'s 30-day extension applies to both CrR 3.3(e) and by reference CrR 3.3(f).

Trial commenced on April 22, within the May 11 trial deadline. On April 26, a jury found Moncada guilty on counts one and three of first degree rape of a child and attempted first degree child molestation. The jury found Moncada not guilty on count two, attempted first degree child molestation in February 2010. For both counts one and three, the jury found by special verdict that Moncada used his position of trust or confidence to facilitate the commission of the crime.

The trial court imposed concurrent sentences of: life with a minimum term of 175 months for count one, and life with a minimum term of 75 months for count three. The court imposed legal financial obligations (LFOs) in the amount of \$1,050. As part of the judgment and sentence, the court made the following findings:

2.7 Financial Ability: 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 present ability or likely future ability to pay the financial obligations imposed herein. RCW 9.94A.753.

....

4.D.4 Costs of Incarceration: In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50.00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100.00 per day of incarceration (the rate in 2011 is \$79.75 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9.94A.760(2).

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70.48.130.

CP at 97, 100. The court imposed the following conditions of sentence:

Within 30 days of release from confinement, enter into and make reasonable progress in sexual deviancy therapy with a therapist approved by the community corrections officer for a period of not less than 60 months and/or during the set term of community custody supervision.

Do not purchase, possess, or view any pornographic material in any form as defined by the treatment provider or the supervising Community Corrections Officer.

Submit to regular polygraph and plethysmograph examinations about deviant sexual behavior upon the request of the supervising Community Corrections Officer.

CP at 99.

LAW AND ANALYSIS

Assignment of Error 1: Present or Future Ability to Pay LFOs

Courts may impose LFOs, such as court costs, deoxyribonucleic acid (DNA) collection fees, and victim restitution, if a defendant has or will have the financial ability

to pay them. RCW 10.01.160(3); RCW 9.94A.760(2); *State v. Curry*, 118 Wn.2d 911, 914-16, 829 P.2d 166 (1992). The trial court need not make a formal finding that the defendant has or will have the ability to pay. *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991). But where the court does make such a finding, the record must support it. *State v. Bertrand*, 165 Wn. App. 393, 403-05, 267 P.3d 511 (2011). This court reviews a trial court's determination of an offender's financial resources and ability to pay for clear error. *Bertrand*, 165 Wn. App. at 404 n.13 (citing *Baldwin*, 63 Wn. App. at 312).

Here, the trial court did not consider Jose Moncada's ability to pay LFOs before imposing them. The trial court heard some testimony pertinent to Moncada's financial condition. At sentencing, Moncada's defense counsel stated:

In addition, Your Honor, my client is a long-time member of this community, who has been actively contributing to the community. Even after he was injured back in 1998 with a back injury and was on Labor & Industries Disability, he took his Labor & Industries settlement when that was resolved and turned it around into a viable restaurant business, which unfortunately has had to close—since the charges were brought against him.

RP (Aug. 30, 2011) at 94-95. Moncada told the court that he previously provided financial support to his mother, wife, and children. But these statements concern Moncada's *past* ability to pay and tend to show that he has since lost the ability to provide such support. There is nothing in the record showing that Moncada has the present or future ability to pay LFOs. *Bertrand*, 165 Wn. App. at 404.

As conceded by the State, the trial court's finding that Jose Moncada has the present or future ability to pay LFOs lacks any support in the record. Upon resentencing, the trial court should reassess whether to impose LFOs.

Assignment of Error 2: No Pornography

Jose Moncada assigns error to the community custody condition that he not purchase, possess, or view pornography as defined by his community corrections officer. Moncada specifically argues the condition is unconstitutionally vague. Moncada cites *State v. Bahl*, 164 Wn.2d 739, 193 P.3d 678 (2008) to support his argument. Acknowledging the applicability of *Bahl*, the State correctly concedes error.

“[T]he due process vagueness doctrine under the Fourteenth Amendment and article I, section 3 of the state constitution requires that citizens have fair warning of proscribed conduct.” *Bahl*, 164 Wn.2d at 752. “[W]hen a statute or other legal standard, such as a condition of community placement, concerns material protected under the First Amendment, a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms.” *Bahl*, 164 Wn.2d at 753 (citing *Grayned v. City of Rockford*, 408 U.S. 104, 109, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)). “[C]onditions may be imposed that restrict free speech rights if reasonably necessary, but they must be sensitively imposed.” *Bahl*, 164 Wn.2d at 757.

“In deciding whether a term is unconstitutionally vague, the terms are not considered in a ‘vacuum,’ rather, they are considered in the context in which they are

used.” *Bahl*, 164 Wn.2d at 754; *City of Spokane v. Douglass*, 115 Wn.2d 171, 180, 795 P.2d 693 (1990). “If persons of ordinary intelligence can understand what the [condition] proscribes, notwithstanding some possible areas of disagreement, the [condition] is sufficiently definite.” *Douglass*, 115 Wn.2d at 179.

Here, the trial court imposed the condition, “Do not purchase, possess, or view any pornographic material in any form as defined by the treatment provider or the supervising Community Corrections Officer.” CP at 99. Moncada argues that the condition impermissibly relies on a community corrections officer to define pornography. Moncada aptly relies on our Supreme Court’s holding in *Bahl*.

In *Bahl*, a jury found the defendant guilty of second degree rape and first degree burglary. 164 Wn.2d at 743. The trial court imposed the community custody condition, “Do not possess or access pornographic materials, as directed by the supervising Community Corrections Officer.” *Bahl*, 164 Wn.2d at 743. Noting that “pornography” lacks a precise legal definition, the *Bahl* court concluded:

[T]he restriction on accessing or possessing pornographic materials is unconstitutionally vague. The fact that the condition provides that Bahl’s community corrections officer can direct what falls within the condition only makes the vagueness problem more apparent, since it virtually acknowledges that on its face it does not provide ascertainable standards for enforcement.

Bahl, 164 Wn.2d at 758. The community custody condition at issue here suffers the same fatal flaws.

Assignment of Error 3: Plethysmograph Examinations

Jose Moncada assigns error to the trial court's order that he undergo penile plethysmograph testing at his community corrections officer's discretion. Again, the State concedes that the trial court erred. On remand, the State requests this court instruct the trial court to modify the condition to allow Moncada's sexual deviance therapist to order plethysmograph testing, in place of a community custody officer.

Plethysmograph testing is used to diagnose and treat sexual deviancy. "The procedure involves placing a pressure sensitive device around a man's penis, presenting him with an array of sexually stimulating images, and determining his level of sexual attraction by measuring minute changes in his erectile responses." Jason R. Odesloo, *Of Penology and Perversity: The Use of Penile Plethysmography on Convicted Child Sex Offenders*, 14 TEMP. POL. & CIV. RTS. L. REV. 1, 2 (2004). Here, the trial court required Moncada, "Submit to regular polygraph and plethysmograph examination about deviant sexual behavior upon the request of the supervising Community Corrections Officer." CP at 99.

When a court imposes a community custody condition without a statutory basis, this court reviews the condition for an abuse of discretion, without presuming its constitutionality. *State v. Valencia*, 169 Wn.2d 782, 791-93, 239 P.3d 1059 (2010). "Plethysmograph testing is regarded as an effective method for diagnosing and treating sex offenders." *State v. Riles*, 135 Wn.2d 326, 343-44, 957 P.2d 655 (1998), *abrogated*

on another ground by *Valencia*, 169 Wn.2d at 792. “The use of physiological assessment measures, such as penile plethysmography, may yield useful information regarding the sexual arousal patterns of sex offenders. This data can be useful in assessing baseline arousal patterns and therapeutic progress.” WAC 246-930-310(7)(c). But “[u]nlike polygraph testing, plethysmograph testing does not serve a monitoring purpose.” *Riles*, 135 Wn.2d at 345.

Riles disposes of this issue. In *Riles*, the trial court imposed a similar condition, “submit to polygraph & plethysmograph testing upon request of therapist and/or [Community Corrections Officer], at own expense.” 135 Wn.2d at 333. But *Riles* “was not required to enter into treatment or therapy.” The *Riles* court held, “It is not permissible for a court to order plethysmograph testing without also imposing crime-related treatment which reasonably would rely upon plethysmograph testing as a physiological assessment measure.” *Riles*, 135 Wn.2d at 345. The *Riles* court thus approved of the use of penile plethysmography for the limited purposes of diagnosing and treating sexual deviancy.

The condition at issue in this case entrusts discretion with a community corrections officer, instead of *Moncada*’s sexual deviancy therapist. But “[p]lethysmograph testing serves no purpose in monitoring compliance with ordinary community placement conditions.” *Riles*, 135 Wn.2d at 345. Because a community

custody officer cannot diagnose or treat Moncada's sexual deviancy, neither can he or she order plethysmograph testing.

The trial court also ordered Moncada to enroll in sexual deviancy therapy. Therefore, on remand, instead of striking the order to undergo plethysmograph testing, the trial court may modify the order to entrust discretion with Moncada's sexual deviancy therapist to direct the testing. In amending the order, the trial court should expressly limit the scope of penile plethysmograph testing to diagnosis and treatment, in order to comply with *Riles*.

SAG

We agree with trial court rulings that Jose Moncada's rights under CrR 3.3 were not violated. The State is correct that, upon the granting of the motion to continue the trial date of February 22, 2011, the new deadline for trial, under CrR 3.3, was extended 30 days or until March 24. Before March 24, the trial court granted postponements for good cause and the trial commenced before the new deadline of May 11.

Jose Moncada's counsel filed a motion to dismiss arguing that CrR 3.3(f), unlike CrR 3.3(e), does not add 30 days to any continuance. The rule reads to the contrary.

When arguing ineffective assistance of counsel and prosecutorial misconduct, Jose Moncada relies on the court's alleged error in failing to dismiss the charges because of a violation of CrR 3.3. Because there was no violation, these additional arguments fail.

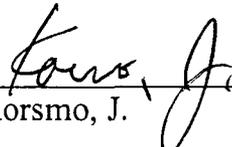
On March 20, 2013, Jose Moncada moved this court to allow him to file a pro se reply brief regarding his timely trial argument. Under RAP 10.1(h), we may authorize or direct the filing of such a brief. But because further briefing is not necessary to dispose of the issue, we deny the motion.

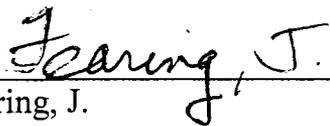
CONCLUSION

We affirm the convictions of Jose Moncada. We remand for resentencing with instructions to the trial court to (1) strike the finding that Moncada has the present or future ability to pay and review again the suitability of imposing LFOs; (2) strike the community custody condition that Moncada may not purchase, possess, or view pornography as defined by his community corrections officer; and (3) amend the community custody condition regarding plethysmograph testing to be at the discretion of Moncada's sexual deviancy therapist and only for diagnosing or treating that deviancy.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR:


Korsmo, J.


Fearing, J.


Siddoway, C.J.

State v. Jose L. Moncada
COA No. 302229

APPENDIX C

Copy of the trial court's Case Docket
sheet in State v. Moncada Yakima
County Cause No. 10-1-00543-4

APPENDIX C



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Superior Court Case Summary

About Dockets

Court: Yakima Superior
Case Number: 10-1-00543-4

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

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What is this

Sub	Docket Date	Docket Code	Docket Description	Misc Info
	04-09-2010	COURT HEARING MINUTES	Court Hearing Minutes (roy-sa) Prob Caus Fnd, Dac Aptd, Arr 4-23-10, Bail \$100,000. Nco Grntd & Seald, Crt G/s Ords (arb) (j Lemos-interp) Ad/plm Ftys1	
1	04-09-2010	REQUEST	Request/ord For Atty	
2	04-09-2010	PRELIM APPEARANCE, FINDINGS, & ORDER	Prelim Appearance, findings, & Order	
	04-09-2010	ORDER APPOINTING ATTORNEY	Order Appointing Attorney	
	04-09-2010	ORDER SETTING BAIL	Order Setting Bail	
	04-09-2010	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule	
3	04-09-2010	PRE-TRIAL REPORT	Pre-trial Report	
4	04-09-2010	ORDER SEALING DOCUMENT	Order Sealing Document	
5	04-09-2010	ORDER FOR SEXUAL ASSAULT PROTECTION	Order For Sexual Assault Protection (sealed)	
6	04-13-2010	AFFIDAVIT/DECLARATION PROB CAUSE	Affidavit/declaration Prob Cause	
7	04-13-2010	INFORMATION	Information	
8	04-16-2010	DESIGNATION ATD0001	Designation Of Appnted Atty Swan, Jeffery B.	
	04-23-2010	COURT HEARING MINUTES	Court Hearing Minutes (fitch/la) Argnd Orig Info, Om 05-20-10, Td 06-01-10, Intrp Ornelas, G/s Nco (arb) Ad/plm Ftys1	
9	04-23-2010	ORDER ON ARRAIGNMENT	Order On Arraignment	
	04-23-2010	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule	
10	04-23-2010	PRE-TRIAL REPORT	Pre-trial Report	
11	04-23-2010	ORDER SEALING DOCUMENT	Order Sealing Document	
12	04-23-2010	ORDER FOR SEXUAL ASSAULT PROTECTION	Order For Sexual Assault Protection	

13	05-04-2010	NOTICE WITHDRAW & SUBSTITUT COUNSEL WTD0001	(sealed) Notice Withdraw & Substitut Counsel Swan, Jeffery B.	<p>website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.</p>
		ATD0002	Krom, Mickey L.	
14	05-20-2010	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date	<p>How can I obtain the complete court record? You can contact the court in which the case was filed to view the court record or to order copies of court records.</p>
	07-15-2010	COURT HEARING MINUTES	Court Hearing Minutes (gibson/mb) Crt Sgnd Ord For Sub	
			Ftrys2 Of Cnsl. Mr Crowley Rtnd For Def.	
			Crt G/s Ord Cont Omn 10/14/10, Td 11/1/10 (hanlon/crowley) Ad/am	
15	07-15-2010	MOTION ATD0003	Motion For W/drawl And Subs Of	<p>How can I contact the court? Click here for a court directory with information on how to contact every court in the state.</p>
		WTD0002	Crowley, John Rodney Krom, Mickey L.	
16	07-15-2010	ORD AUTHORIZ SUBSTITUTION OF COUNSL	Ord Authoriz Substitution Of Counsl	<p>Can I find the outcome of a case on this website? No. You must consult the local or appeals court record.</p>
17	07-15-2010	NOT OF APPEAR AND REQ FOR DISCOVERY ATD0003	Not Of Appear And Req For Discovery Crowley, John Rodney	
18	07-15-2010	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date	
19	07-15-2010	ORDER	Order For W/drawl And Substutn Of Cnls	
	09-27-2010	COURT HEARING MINUTES	Court Hearing Minutes \$25,000. (gilliland/crowley) Ad/am Ftrys1 (elofson-sa) Def's Mt For Bail Reduc Grntd, Crt G/s Ord Reduc Bail	<p>How do I verify the information contained in the index? You must consult the court record to verify all information.</p>
20	09-27-2010	ORDER SETTING BAIL	Order Setting Bail (amnded)	<p>Can I use the index to find out someone's criminal record? No. The Washington State Patrol (WSP) maintains state criminal history record information. Click here to order criminal history information.</p>
21	10-14-2010	WAIVER OF SPEEDY TRIAL	Waiver Of Speedy Trial	
	10-14-2010	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date	
22	10-15-2010	STATE'S LIST OF WITNESSES	State's List Of Witnesses	
	10-26-2010	COURT HEARING MINUTES	Court Hearing Minutes (schwab-sa) Crt G/s Ord On Omn & Ord Set Triage 12-3-10 (clements Crowley) Ad/am Ftrys1	<p>Where does the information in the index come from? Clerks at the municipal, district, superior, and appellate courts</p>
23	10-26-2010	OMNIBUS ORDER	Omnibus Order	
24	10-26-2010	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule	
25	11-08-2010	SHERIFF'S RETURN OF	Sheriff's Return Of Service	

		SERVICE	
	11-08-2010	NON FEE	Non Fee
	12-03-2010	COURT HEARING MINUTES	Court Hearing Minutes 12-13-10 (hanlon) Ad/am Fttrys1 (reukauf-sa) Crt G/s Ord Set Td
26	12-03-2010	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	12-10-2010	COURT HEARING MINUTES	Court Hearing Minutes Sgnd (hanlon/crowley-tlphnc) Ad/am 12/16/10 @1:30, Td 12/20/10, Ord (reukauf/ll) Motn To Cont Set Fttrys1
27	12-10-2010	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	12-17-2010	COURT HEARING MINUTES	Court Hearing Minutes 12-21-10 (hanlon/crowley) Ad- am (mccarthy/la) G/s Ord Cont To Om 01-06-11, Td 01-17-11, Bail Hrng Fttrys2
28	12-17-2010	AFFIDAVIT OF PREJUDICE	Affidavit Of Prejudice - Gibson
29	12-17-2010	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date
	12-27-2010	COURT HEARING MINUTES	Court Hearing Minutes (gavin-sa) Def's Mt For Bail Reduc Denied, No Ord Sgnd (ritchie/ Fttrys1 Crowley) (j Lemos-interp) Ad/plm
30	01-06-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
31	01-20-2011	OMNIBUS ORDER	Omnibus Order
32	01-20-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	01-21-2011	COURT HEARING MINUTES	Court Hearing Minutes Triage 1-24-11 (hanlon) (d Ornelas Interp) Ad/am Fttrys1 (reukauf-sa) Crt G/s Ord Set
33	01-21-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	01-24-2011	COURT HEARING MINUTES	Court Hearing Minutes (reukauf-sa) Crt G/s Trial Status Ord (soukup) Ad/am Fttrys1
34	01-24-2011	TRIAL STATUS ORDER	Trial Status Order
	01-28-2011	COURT HEARING MINUTES	Court Hearing Minutes Sgnd Ad/am Nryrs1 (reukauf-sa) On Trl'g, No Ord
35	01-31-2011	STATE'S LIST OF WITNESSES	Amnded State's List Of Witnesses

across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.

Do the government agencies that provide the information for this site and maintain this site:

- **Guarantee that the information is accurate or complete?**
NO
- **Guarantee that the information is in its most current form?**
NO
- **Guarantee the identity of any person whose name appears on these pages?**
NO
- **Assume any liability resulting from the release or use of the information?**
NO

	02-04-2011	COURT HEARING MINUTES	Court Hearing Minutes Signd Ad/am Nrys1 (reukauf-sa) On Trl'g, No Ord
	02-07-2011	COURT HEARING MINUTES	Court Hearing Minutes Ornelas-interp) Ad/am Ftys1 Info Grntd, Def Wvd Read, Crt G/s Ord On Arr (hintze/crowley) (d (reukauf-sa) State's Mt To Amend
<u>36</u>	02-07-2011	AMENDED INFORMATION	Amended Information
37	02-07-2011	ORDER ON ARRAIGNMENT	Order On Arraignment
	02-11-2011	COURT HEARING MINUTES	Court Hearing Minutes (reukauf-sa) On Trl'g, No Ord Signd Ad/am Nrys1
	02-15-2011	COURT HEARING MINUTES	Court Hearing Minutes (mccarthy-sa) Def's Mt For Cont Grntd, Crt G/s Ord Of Cont Td Crowley) (e Castro-interp) Ad/am Ftys1 2-22-11, Triage 2-18-11 (hanlon/
38	02-15-2011	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date
	02-18-2011	COURT HEARING MINUTES	Court Hearing Minutes Ord (hanlon) Ad/am Ftys1 (reukauf-sa) Crt G/s Trial Status
39	02-18-2011	TRIAL STATUS ORDER	Amnded Trial Status Order
	02-28-2011	COURT HEARING MINUTES	Court Hearing Minutes Grntd, Crt G/s Ord Set Td 3-7-11 (clements/crowley)(f Rojas-interp) Ad/am Ftys1 (mccarthy-sa) State's Mt For Cont
40	02-28-2011	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date
	03-04-2011	COURT HEARING MINUTES	Court Hearing Minutes Signd Ad/am Ftys1 (reukauf-sa) On Trl'g, No Ord
	04-04-2011	COURT HEARING MINUTES	Court Hearing Minutes (gibson/mb) Crt G/s Ord Cont Triage 04/08/11, Trl 04/11/11. (hanlon/crowley) D4 J. Anderson (interp-ornelas)
41	04-04-2011	ORDER OF CONTINUANCE	Order Of Continuance
	04-08-2011	COURT HEARING MINUTES	Court Hearing Minutes (reukauf-sa) On Trl'g, No Ord Signd (hanlon) Ad/am Ftys1
	04-19-2011	TRIAL MINUTES	Trial Minutes(clrk Written

			Minute)
	04-19-2011	TRIAL MINUTES	Trial Minutes Hrd-s/t Det Janis & Det Andrews) Crt Denied Defense's Mt To Suppress Cont Of T/d For 3 Dys But Will (elofson/rp) Deft's Mt For Cont Deft's Statements.(state's Exhs T/d Hrd, Crt Denied Deft's Mt For Cont Until 4-20-11/1:30. (3.5 Hrg
	04-19-2011	COMMENT ENTRY	A-g Mrkd & Admtd)crt Grntd Witness Confidential Juror Questionnaires Excluded:: Use Jury Questionnaire: (hanlon/crowley) D5 (j.anderson)
	04-20-2011	TRIAL MINUTES	Trial Minutes (elofson/rp)5 Dy Trial, 4-20 Thru Yes::sgd Ord Set Sent 6-8- 11/9:00, 04-22,04-25/4-26- 11::verdict/glty Ct1-special Verdict-yes::not Glty Ct 2::glty Ct 3-special Verdict- Sgd Ord Revkng Bail & Ord For Psi. (hanlon/crowley) D5 (j.anderson)
	04-20-2011	COMMENT ENTRY	(int/castro/vera/yedidia/ornelas/ Chambers/chavez)
	04-20-2011	COMMENT ENTRY	Confidential Jury Questionnaires
42	04-26-2011	STIP TO RETURN OR DESTROY EXHIBIT	Stip To Return Or Destroy Exhibit
43	04-26-2011	EXHIBIT LIST	Exhibit List
44	04-26-2011	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury
45	04-26-2011	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions
46	04-26-2011	PEREMPTORY CHALLENGE SHEET	Peremptory Challenge Sheet
47	04-26-2011	JURY NOTE	Jury Qustns & Crt's Rspnse
48	04-26-2011	VERDICT	Verdict Form 1 (guilty)
49	04-26-2011	SPECIAL VERDICT	Special Verdict Form 1 (yes)
50	04-26-2011	VERDICT	Verdict Form 2 (not Guilty)
51	04-26-2011	SPECIAL VERDICT	Special Verdict Form 2 (blank)
52	04-26-2011	VERDICT	Verdict Form 3 (guilty)
53	04-26-2011	SPECIAL VERDICT	Special Verdict Form 3 (yes)
54	04-26-2011	PRESENTENCE	Presentence Investigation Order

		INVESTIGATION ORDER	
55	04-26-2011	ORDER REVOKING BAIL	Order Revoking Bail
56	04-26-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
57	05-27-2011	MOTION	Motion For Docket
58	05-27-2011	MOTION	Motion To Request Mistrial
59	05-27-2011	PRE-SENTENCING INVESTIGATION REPORT	Pre-sentencing Investigation Report (sealed)
60	05-27-2011	REPORT	Report Court Special
61	05-31-2011	MOTION	Motion To Request A Mistrial
62	05-31-2011	MOTION	Motion For Docket
	06-08-2011	COURT HEARING MINUTES	Court Hearing Minutes (elofson/hs) Crt Grntd Def Mt To Wthdrwl, Cr G/s Sentencing Ord And Ord Rqust For Att At Public Expense (hanlon/crowley)d5 Ftrys2
63	06-08-2011	NOTICE	Notice Of Return Of Service
64	06-08-2011	ORDER GRANTING MOTION/PETITION	Order Granting Motion Re: Atty
65	06-08-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
66	06-08-2011	REQUEST	Request Ord For Atty
67	06-08-2011	LETTER	Letter From Def
68	06-08-2011	LETTER	Letter From Court
69	06-17-2011	DESIGNATION ATD0004	Designation Of Def Atty Bruns, Scott A.
	07-06-2011	COURT HEARING MINUTES	Court Hearing Minutes 07/26/11 @ 9 A.m. (hanlon/bruns) (elofson/mb) Crt G/s Ord Cont Sent (inter-ornelas) Ad/am Ftrys2
70	07-06-2011	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	07-12-2011	COURT HEARING MINUTES	Court Hearing Minutes Aty For Deft.(hanlon/bruns) (int/ Lemos) D5 Ftryc2 (elofson/rp) Bruns To Remain As
71	07-13-2011	WITNESS RECORD	Witness Record (sealed)
	07-26-2011	COURT HEARING MINUTES	Court Hearing Minutes Granted 30 Day Cont Over State's Continue-def Will Attmpt To Retain Cnsl For Post-trial Mtns; Crt Obj, Ord Signed (hanlon/bruns) D5 Ftrys2 (elofson/sg) Dfns Mtn To
72	07-26-2011	ORDER SETTING CASE	Order Setting Case Schedule

SCHEDULE			
73	08-18-2011	MOTION	Motion To Withdraw And Substitute
74	08-18-2011	MOTION TO CONTINUE	Motion To Continue Sentencing
75	08-18-2011	DECLARATION	Declaration Of Counsel Re: Withdraw
76	08-18-2011	NOTE FOR MOTION DOCKET	Note For Motion Docket
	08-23-2011	COURT HEARING MINUTES	Court Hearing Minutes Denied (hanlon/black Via Phone) Ad-plm Ftrys1 (elofson/la) Motion To Continue Is
77	08-23-2011	OBJECTION / OPPOSITION	Objection State Re: Mt To Continue Sentencing
78	08-25-2011	MOTION	Motion To Set New Trial
79	08-25-2011	MOTION TO DISMISS	Motion To Dismiss Counsel
80	08-25-2011	MOTION	Motion For Docket
81	08-25-2011	AFFIDAVIT OF MAILING	Affidavit Of Mailing
	08-30-2011	COURT HEARING MINUTES	Court Hearing Minutes Ltrs From Childrn; Crt Read Victim Defndnts Mt Re New Trial Denied; Defndnts Mt For Mistrial Denied; (elofson/cc) Crt Hrd From Parties Re: Defndnts Mt To Dismiss Atty; Court Denied Mt To Dismiss Atty; Kim Fowley Victim Advocate Read
	08-30-2011	COMMENT ENTRY	Impact Stmtnt Of Ramona Quinonez; Pi For Defndnt; Crt Sentncd Def To 140 Mo + 35 Mos For Ct 1; 60 Mo + Wife Of Defndnt, Socorro Mendez, Mother Of Defndnt; Ricardo Moncada Crt Hrd Stmtns From Maria Salgada, Son Of Defndnt; Jose Moncada Jr Son Of Defndnt; Stepanie Barnes
	08-30-2011	COMMENT ENTRY	15 Mo For Ct 3 On Aggravative Defndts Oral Mt To Have 2 Wks Crt Identified/marked/admitted Circumstances; Fprints; Crt Denied

			Se-1 Thru Se-3 Which Are Victim Impact Stmtnts; Crt G/s Ord W/family Before Being Sent Away; Sealing Documnts; Crt G/s Nco, J&s And Judgmnt & Sent Appendix H Ord For Indigency (hanlon/ Re: Community Custody; Crt G/s Bruns/castro-inter) Ftrys2 (d5)
	08-30-2011	COMMENT ENTRY	
82	08-30-2011	EXHIBIT LIST	Exhibit List
83	08-30-2011	FELONY JUDGMENT AND SENTENCE	Felony Judgment And Sentence
84	08-30-2011	ORDER SEALING DOCUMENT	Order Sealing Document
85	08-30-2011	ORDER FOR SEXUAL ASSAULT PROTECTION	Order For Sexual Assault Protection (sealed)
86	08-30-2011	MOTION FOR INDIGENCY	Motion For Indigency
87	08-30-2011	ORDER OF INDIGENCY	Order Of Indigency
88	08-31-2011	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal
89	08-31-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
90	09-12-2011	LETTER	Letter To Coa/sent #89
91	09-27-2011	LETTER	Letter From Coa
92	10-26-2011	PRAECIPE	Praecipe For Clerks's Papers
93	10-27-2011	ORDER OF INDIGENCY	Order Of Indigency Amended
94	10-31-2011	LETTER	Letter To Coa/sent #93
95	11-02-2011	INDEX	Index /applt Cp 1-131 Re #92
96	11-02-2011	LETTER	Letter To Coa/sent #95
	12-30-2011	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings 04/04/11-04/19/11-04/22/11- 04/25/11 5vol -04/26/11
	01-11-2012	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings 1vol10/26/10-12/03/10- 12/10/10 12/17/10-02/15/11- 02/18/11 -02/28/1106/08/11-07/06/11- 07/12/11 07/26/11-08/23/11-08/30/11
	01-11-2012	INVOICE VOUCHER	Invoice Voucher Sent For Louie Allred
97	01-12-2012	LETTER	Letter To Coa/sent 5 Vols Vrps
98	01-23-2012	LETTER	Letter To Coa/sent 1 Vol Vrp
99	02-28-2012	NOTICE	Notice For Spcl Sttng By Ca
100	02-28-2012	COST BILL	Cost Bill -adult (sealed)
	03-01-2012	COURT HEARING MINUTES	Court Hearing Minutes Had A Right To Be Present, G/s Ord Aptg Dac & Set Hrg 3-21-12

			For Prsntn Of Fncl (hanlon/bruns) D5 Ftryc5 (elofson/cg) Crt Ruled Moncada
101	03-01-2012	ORDER	Order Appnting Atty's Setting Hrng
102	03-06-2012	MOTION AND AFFIDAVIT/DECLARATION	Mt & Dclr For Ord'r Drctn Rtrn Of Prsnr
103	03-06-2012	ORDER	Order Drctng Rtrn Of Prsnr
	03-08-2012	NON FEE	Non Fee (ftr Request)
104	03-09-2012	DESIGNATION ATD0005	Designation Of Def Atty Raber, Kenneth Wesley
105	03-12-2012	NOTICE OF HEARING	Notice Of Hearing
	03-15-2012	COURT HEARING MINUTES	Court Hearing Minutes (federspiel/ll) Wes Raber Appt, No Set 3/19/12 @3:30 (arb/raber) Bail Hold, Hrg For Entry Of Fndngs Ad/plm Ftrys1 (interp-ornelas)
106	03-15-2012	ORDER APPOINTING ATTORNEY	Order Appointing Attorney
	03-15-2012	ORDER SETTING BAIL	Order Setting Bail (no Bail)
	03-15-2012	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	03-19-2012	COURT HEARING MINUTES	Court Hearing Minutes Am (hanlon/raber) D5 Ftrys2 (elofson/hs) Mr. Raber Mt To Withdraw As Cnsl, Crt Denied Mt, Crt Re Set Hrg To 3/22/12 @ 9:00
107	03-19-2012	ORDER SETTING CASE SCHEDULE	Order Setting Case Schedule
	03-22-2012	COURT HEARING MINUTES	Court Hearing Minutes (elofson/cc) Crt Hrd From Counsel & Defendant; Crt G/s Fndngs For Hearing On 4/19/11; (hanlon/raber/ Dora Ornelas-inter) Ftrys2 D5
108	03-22-2012	FINDINGS OF FACT&CONCLUSIONS OF LAW	Findings Of Fact&conclusions Of Law
109	04-06-2012	DESIGNATION OF CLERK'S PAPERS	First Supplmntl Designation Of Clerk's Papers
	04-18-2012	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings 1 Vol/ 3-1/ 3-15/ 3-19/ & 3-22
	04-18-2012	INVOICE VOUCHER	Invoice Voucher Sent For Allred
110	04-26-2012	INDEX	Index /sptl Re #109 Cp 132-134
111	04-26-2012	LETTER	Letter To Coa/sent #110
112	05-03-2012	LETTER	Letter To Coa/sent 1 Vol Vrp
113	06-13-2012	LETTER	Letter

FILED

SEP 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent

VS.

JOSE L. MONCADA

Appellant

No. _____

COA No. 302229

DECLARATION OF SERVICE

BY MAIL

(GR 3.1 (a) (c))

I, Jose L. Moncada, declare that, on July , 2014, I deposited
the foregoing:

1. This Declaration of Service by Mail;
2. Petition For Review;
3. Appendices A-C

And a copy thereof, in the internal mail system of Coyote
Ridge Corrections Center, and made arrangements for postage,
addressed to:

Original to:

Washington State Supreme Court
Clerk of Court
P.O. Box 40929
Olympia, WA 98504-0929

Copy to:

Court of Appeals
Division III
500 N Cedar st
Spokane, WA 99201-1905

(GR 3.1) DECLARATION OF SERVICE BY MAIL - 1

Copy to:

James Patrick Hagarty
Tamara Ann Hanlon
Yakima County Prosecuting Attorney's Off
128 N 2nd St. Rm 329
Yakima, WA 98901-2621

I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct,

DATED this day of July, 2014, at Connell

in Franklin County Washington.

Jose L. Moncada

Jose L. Moncada
Appellant Pro-se
Coyote Ridge Correction Center
P.O. Box 769 H-