

No. 43167-0-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

CHARLES FARNSWORTH,

Appellant.

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

APPELLANT'S REPLY BRIEF

NANCY P. COLLINS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT..... 1

 1. Mr. Farnsworth was denied a fair trial by the cumulative effect of multiple errors..... 1

 2. Mr. Farnsworth’s sentence of life without the possibility of parole is based on inadequate proof of comparable prior convictions 3

 a. The State’s burden of proof at sentencing, when substantially increasing a person’s punishment based on a factual allegation, must not be diluted..... 4

 b. Factual ambiguity renders basis of prior conviction noncomparable or too illusory to satisfy due process..... 5

 c. The prior conviction was not proved to be legally comparable to an eligible predicate offense 7

 d. The sentence of life without the possibility of parole based on slim claims of qualifying prior convictions denied Mr. Farnsworth his rights to due process and equal protection 11

B. CONCLUSION..... 13

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

In re Cook, 114 Wn.2d 802, 792 P.2d 506 (1990) 1

In re Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002) 1

Matter of Hagler, 97 Wn.2d 818, 650 P.2d 1103 (1982) 2

State v. Case, 49 Wn.2d 66, 298 P.2d 500 (1956)..... 2

State v. Engstrom, 79 Wn.2d 469, 487 P.2d 205 (1971) 8

State v. Hunley, 175 Wn.2d 901, 287 P.3d 584 (2012) 11

State v. MacMaster, 113 Wn.2d 226778 P.2d 1037 (1989) 8, 9

Washington Court of Appeals Decisions

State v. Fateley, 18 Wn.App. 99, 566 P.2d 959 (1977)..... 8

State v. Gantt, 38 Wn.App. 357, 684 P.2d 1385 (1984)..... 8

State v. Giedd, 43 Wn.App. 787, 719 P.2d 946 (1986) 8

State v. Mearns, 7 Wn.App. 818, 502 P.2d 1228 (1972), *rev. denied*, 81
Wn.2d 1011 (1973). 8

State v. Orsborn, 28 Wn.App. 111, 626 P.2d 980 (1980), *rev. denied*,
97 Wn.2d 1012 (1982) 8

State v. Witherspoon, 171 Wn.App. 271, 286 P.3d 996 (2012), *rev.*
granted, 177 Wn.2d 1007 (2013)..... 11

United States Supreme Court Decisions

Alleyne v. United States, __U.S. __, 133 S. Ct. 2151, 186 L. Ed. 2d 314
(2013)..... 12

Chapman v. California, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705
(1967)..... 2

Descamps v. United States,__ U.S. __, 133 S.Ct. 2276, 186 L.Ed.2d 438
(2013)..... 4, 9, 10

Shepard v. United States, 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d
205 (2005)..... 5

Statutes

Penal Code § 192..... 6, 7, 8, 9, 10

RCW 46.61.520 8

Vehicular Code § 23153 6, 7, 8, 9, 10

A. ARGUMENT.

1. **Mr. Farnsworth was denied a fair trial by the cumulative effect of multiple errors**

Mr. Farnsworth's opening and supplemental briefs address numerous trial errors in detail. The State responds by claiming that the trial was fair enough, but it offers little case law in support, unreasonably minimizes the nature of the errors, and it also misunderstands the controlling law.

Initially, the prosecution misrepresents the harmless error standard that applies. It imports the "fundamental defect that inherently results in a miscarriage of justice" standard that governs personal restraint petitions. Response Brief at 14-15.¹ Unlike PRPs, where considerations of finality require a rigorous standard of prejudice for the court to reverse a collateral attack, Mr. Farnsworth's case is before the Court on direct appeal. On direct appeal, the burden is on the State to establish beyond reasonable doubt that any error of constitutional dimensions is harmless. *Chapman v. California*, 386 U.S. 18, 22, 87

¹ Citing *In re Cook*, 114 Wn.2d 802, 811, 792 P.2d 506 (1990) and *In re Goodwin*, 146 Wn.2d 861, 50 P.3d 618 (2002).

S.Ct. 824, 17 L.Ed.2d 705 (1967); *Matter of Hagler*, 97 Wn.2d 818, 825, 650 P.2d 1103 (1982).

The “cumulative effect of repetitive prejudicial error” may deprive a person of a fair trial. *State v. Case*, 49 Wn.2d 66, 73, 298 P.2d 500 (1956). Both constitutional and nonconstitutional evidentiary errors occurred in the case at bar, which the State largely tries to deflect rather than justify.

Most significantly, Mr. Farnsworth was denied his fundamental right to cross-examine the central prosecution witness about the true nature of the guilty plea that he entered so that the jury did not learn he remained at the mercy of the prosecution in order to receive a sentence that was not life imprisonment without the possibility of parole. *See* Supplemental Brief at 7-10. Because of restrictions on his cross-examination, the jury was left with the incorrect impression that Mr. McFarland no longer faced the prospect of life in prison, when in fact, by pleading guilty to robbery and theft, while hoping the prosecution would remove the robbery after his testimony, Mr. McFarland had a monumental incentive to please the prosecution in his testimony. *Id.* Yet the court barred Mr. Farnsworth from exploring this issue on cross-examination.

Other incorrect rulings limiting Mr. Farnsworth's ability to impeach Mr. McFarland, some of which the State concedes, further contribute to the prejudicial effect on Mr. Farnsworth's right to a fair trial. The court admitted evidence and allowed symbols in the courtroom such as a hard chair that made Mr. Farnsworth look like a dangerous or undeserving person for improper reasons.

The prosecution is correct that there is no question that Donald McFarland robbed the bank, *see* Response Brief at 25-26, but Mr. Farnsworth did not enter the bank and his knowing participation rested heavily on Mr. McFarland's accusations. The erroneous restrictions on Mr. Farnsworth's ability to impeach Mr. McFarland, as well as the character aspersions cast against Mr. Farnsworth, denied him a fair trial and have not been proven harmless beyond a reasonable doubt.

2. Mr. Farnsworth's sentence of life without the possibility of parole is based on inadequate proof of comparable prior convictions.

The prosecution presents a distracting argument about what was intended by California law rather than what it proved to be the legal and factual basis of Mr. Farnsworth's prior 1984 conviction from California. The State's argument is divorced from the reality of the charging document, guilty plea statement, and sentencing judgment.

- a. *The State's burden of proof at sentencing, when substantially increasing a person's punishment based on a factual allegation, must not be diluted.*

The United States Supreme Court recently reaffirmed a sentencing judge's limited authority to increase a person sentence based on a prior conviction when the legal and factual basis of that conviction do not unambiguously fall within the requirements for heightened punishment. *Descamps v. United States*, __ U.S. __, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013). In *Descamps*, the Supreme Court criticized a Ninth Circuit opinion that permitted a judge to look to factual materials "like an indictment or plea colloquy" to "discover what the defendant actually did." *Id.* at 2287. The judge's role is not to resolve ambiguity surrounding a prior conviction to determine the nature of the prior conduct, but only to decide the essential legal elements of the prior convictions. *Id.*

The court's authority to delve into the nature of a prior conviction is limited because it doing so would "raise serious Sixth Amendment concerns." *Id.* at 2288. A court may not "'make a disputed' determination 'about what the defendant and state judge must have understood as the factual basis of the prior plea,' or what the jury in a prior trial must have accepted as the theory of the crime." *Id.* (quoting

Shepard v. United States, 544 U.S. 13, 25, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005); and citing *Id.* at 28 (THOMAS, J., concurring) (stating that such a finding would “giv[e] rise to constitutional error, not doubt”).

Mr. Farnsworth’s prior California conviction entered in 1984 was not proved to be a comparable predicate offense as required for a sentence of life without the possibility of parole.

b. *Factual ambiguity renders basis of prior conviction noncomparable or too illusory to satisfy due process.*

The prosecution relied on a judgment on conviction, a complaint that served as the charging document, and a cursory plea statement labeled “felony disposition statement.” Sent. Exs. 5, 6, 7.² The judgment on conviction shows Mr. Farnsworth pled guilty in 1984 to “Count 2.” Sent. Ex. 7. The judgment states:

I. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	CODE	SECTION NUMBER	CRIME
2	PC	192(3)(c)	vehic mansl

Sent. Ex. 7.

The nature of the conviction is ambiguous for several reasons. First, there is no penal code section PC “192(3)(c).” Count 1 of the

charging document repeats the same incorrect statutory citation, “section 192 (3)(c) of the Penal Code.” Sent. Ex. 5. Penal Code § 192 (c)(3) does exist, and it defines various alternatives of committing manslaughter, but on its face, the judgment of commitment and charging document do not refer to a valid statute, which the State concedes. Response Brief at 32.

Second, the factual basis of the conviction must rest on Count 2, the count to which Mr. Farnsworth pled guilty. The charging document lists two separate counts, not alternatives means of a single crime. Counts 1 and 2 involve separate victims. Sent. Ex. 5.

Counts 1 and 2 also involve different legal elements. Sent. Ex. 5. The two counts involve separate allegations and are based on different statutory language.

While Count 1 tracks the language of Penal Code § 192 (c)(3), Count 2 tracks the language Vehicular Code § 23153, which are not identical statutes. Therefore, the judgment of commitment’s citation to “PC 192(3)(c)” as the offense underlying the conviction is not only referring to a non-existent statute, it is also referring to elements of a

² These three documents are attached as Appendices A, B, and C,

different offense for which Mr. Farnsworth was not charged in the complaint.

The ambiguity of the judgment of commitment and charging document do not establish the precise offense of conviction and the court cannot simply guess about this basic fact. More significantly, the legal basis of both California vehicular manslaughter statutes (Penal Code § 192 and Vehicular Code § 23153) are different from the law in effect in Washington at the time of the offense and therefore, cannot serve as predicate offenses under the persistent offender accountability act. *See In re Pers. Restraint of Lavery*, 154 Wn.2d 249, 255, 111 P.3d 837 (2005).

c. The prior conviction was not proved to be legally comparable to an eligible predicate offense.

As the prosecution correctly concedes, the law must be viewed and compared under the controlling construction of the law at the time of the out-of-state offense, 1984. Response Brief at 30.

Under the version of Washington's statute in effect in 1984, vehicular homicide was not a strict liability offense. As the Supreme

respectively.

Court held when construing RCW 46.61.520 in *State v. MacMaster*, 113 Wn.2d 226, 231, 778 P.2d 1037 (1989).

to avoid a ‘strict liability’ result, this court and the Court of Appeals have engrafted on the statute, and have consistently held, that impairment due to alcohol must be a proximate cause of the fatal accident.”³

See also Supplemental Brief, at 33-35.

Unlike Washington law, in California the proximate cause of the death or injury must be a violation of the traffic law that occurs at a time when the driver was under the influence of alcohol or drugs. The operative California statutes require that *while* driving under the influence, the driver commits *another* act forbidden by law or neglects a duty imposed by law, such as a traffic violation, and this *additional* “act or neglect proximately causes” death or bodily injury. Veh. Code § 23153(a); Penal Code § 192(c)(3).

³ As support for statutory requirement that alcohol-impaired driving must cause the resulting death, the *MacMaster* Court cited:

State v. Engstrom, 79 Wn.2d 469, 475, 487 P.2d 205 (1971); *State v. Giedd*, 43 Wn.App. 787, 719 P.2d 946 (1986); *State v. Gantt*, 38 Wn.App. 357, 684 P.2d 1385 (1984); *State v. Orsborn*, 28 Wn.App. 111, 626 P.2d 980 (1980), *rev. denied*, 97 Wn.2d 1012 (1982); *State v. Fateley*, 18 Wn.App. 99, 566 P.2d 959 (1977); *State v. Mearns*, 7 Wn.App. 818, 502 P.2d 1228 (1972), *rev. denied*, 81 Wn.2d 1011 (1973).

The prosecution's brief does not respond to this difference in causation between the statutes of the two states. Because the operative California law did not require that driving under the influence proximately caused the resulting death, but Washington did require that the drunk driving proximately caused the death, therefore Washington law was narrower on a critical component and the California offense is not legally comparable. *See MacMaster*, 113 Wn.2d at 231; *see also Lavery*, 154 Wn.2d at 258; *Descamps*, 133 S.Ct. 2282 (“the inquiry is over” once a legal comparison shows the elements are different).

The prosecution also misrepresents the essential elements of the California offense for which Mr. Farnsworth was convicted. The State recites the elements of PC 192(c)(3), but it does not acknowledge the fact that Farnsworth was convicted of Count 2, and was not convicted Count 1. *See* Supplemental Brief at 33-34 (n.6 & n.7) (listing elements of statutes).

Count 2 recites the statutory elements of Vehicular Code § 23153; only Count 1 tracks the elements of Penal Code § 192(c)(3); and these two statutes are not identical. For example,

-- Count 2 includes the alternatives of having caused death or bodily injury while Count 1 only alleges causing the death of another.

This alternative of death or bodily injury is not available under PC 192(c)(3) but is an option under Vehicular Code § 23153.

-- Count 2 contains no allegation of driving with gross negligence while Count 1 alleges gross negligence. Such negligence is an element of PC 192(c)(3) and not Vehicular Code § 23153.

The count to which Mr. Farnsworth pled guilty rested on Vehicular Code § 23153(a), based on allegations he either caused death or bodily injury by his failure to obey a traffic law and while under the influence of alcohol or drugs. The conviction was not limited to causing death. The State did not establish that Mr. Farnsworth was convicted of causing another person's death under Count 2, as opposed to bodily injury, contrary to the court's finding, 2/24/12RP 70. When there are unresolved alternative means, the sentencing court make not look behind the legal elements absent unambiguous evidence of the nature of the conviction and try to decide what was intended by the plea. *Descamps*, 133 S.Ct. at 2288. The plea statement contained no explanation of the incident whatsoever. Sent. Ex. 6.

The discrepancy between the charging document, elements of the offense, and judgment of conviction are not matters that can be wished away or even resolved by the sentencing court in Washington. The guilty plea statement does not clarify the alternative statute or factual predicate of the conviction because it contains no factual details

whatsoever. The judgment of commitment only lists the count and a penal code section, which is both a non-existent section of the penal code section and even if the numbers are transposed, it does not track the legal elements recited in the charging document. Finally, both California statutes that embrace broader conduct than would be sufficient for a conviction in Washington at the time of the prior offense.

d. *The sentence of life without the possibility of parole based on slim claims of qualifying prior convictions denied Mr. Farnsworth his rights to due process and equal protection*

As explained in Mr. Farnsworth's supplemental brief, article I, section 3 strongly supports the requirement that prior convictions must be proved beyond a reasonable doubt. The Supreme Court is presently considering a constitutional challenge to the three-strikes law, in *State v. Witherspoon*, 171 Wn.App. 271, 286 P.3d 996 (2012), *rev. granted*, 177 Wn.2d 1007 (2013), including due process and equal protection issues. The Supreme Court has also emphasized the essential requirement of due process at a sentencing hearing when punishment will be increased based on prior convictions. *State v. Hunley*, 175 Wn.2d 901, 910, 287 P.3d 584 (2012).

When the sentencing court lacks discretion to impose a sentence of anything less than life without the possibility of parole, the due process that attaches to the essential findings mandating this extreme sentence should be at its highest. The jury trial right and standard of proof beyond a reasonable doubt apply to any facts increasing punishment, and these facts should include facts related to the nature of prior convictions. *See Alleyne v. United States*, __U.S. __, 133 S. Ct. 2151, 2160 & n.1, 186 L. Ed. 2d 314 (2013) (although *Alleyne* did not revisit whether “the fact of a prior conviction” must be proved to a jury, its analysis is consistent with denying the court authority to increase in punishment based on factual questions, including facts related to prior convictions).

Mr. Farnsworth should receive a new trial and fair sentencing procedure.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening and Supplemental Briefs, Charles Farnsworth respectfully requests this Court remand his case for further proceedings, order a new trial and vacate his sentence.

DATED this 18th day of October 2013.

Respectfully submitted,



NANCY P. COLLINS (28806)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A
(Sentencing Ex. 5)

FILED
Ventura County Municipal Court

VENTURA COUNTY MUNICIPAL COURT
STATE OF CALIFORNIA
HALL OF JUSTICE

FEB 26 1984

JAMES G. FOX, CLERK

Department By _____ Deputy Clerk

FEB 28 1984

CR18917

THE PEOPLE OF THE STATE OF CALIFORNIA,
RICHARD D. DEAN, County Clerk

By _____
Deputy County Clerk

No. FY 15838

Vs.

CHARLES E. NICKERSON, JR.,

aka Charles Anderson,

CHP 1-84-135

Charles Farnsworth
DEFENDANT

COMPLAINT

- FELONY
- MISDEMEANOR
(Sect. 17b P.C.)

COUNT 1

Donald M. Grant

, being first duly sworn, says that

CHARLES E. NICKERSON, JR., aka Charles Anderson

committed the crime of violation of section 192(3)(c) of the Penal Code,

a (felony), (misdemeanor), in that on or about January 18, 1984,

in Ventura County, California, he did willfully and unlawfully while under the influence of an alcoholic beverage and a drug and under their combined influence drive a vehicle with gross negligence and in the commission of an unlawful act not amounting to a felony, to wit, passing without sufficient clearance, a violation of Vehicle Code section 21751, proximately caused the death of Digna Marie Henket.

COUNT 2

Said complainant further accuses CHARLES E. NICKERSON, JR., aka Charles Anderson of committing the crime of violation of section 23153(a) of the Vehicle Code, a felony, in that on or about January 18, 1984, in Ventura County, California, he did willfully and unlawfully, while under the influence of an alcoholic beverage and a drug and under their combined influence, drive a vehicle and in so driving did commit an act forbidden by law, to wit, passing without sufficient clearance, a violation of Vehicle Code section 21751, in the driving of said vehicle which proximately caused death and bodily injury to Teresa Ramirez.

Bail recommended by

District Attorney

\$ _____
DMG:me Ctrm. 11 1/27/84 9 a.m.

Dept. CHP
Officer _____
Vacation from _____ 197
to _____ 197

Donald M. Grant

Subscribed and sworn to before me this 26th day of January, 1984

Hebert Curtis III
Deputy District Attorney, Ventura County

APPENDIX B
(Sentencing Ex. 6)

DA J. CR
PO OTHER
SO

FILED

DATE: MAY - 1 1984

RICHARD D. DEAN, County Clerk

By *Richard D. Dean*
Deputy County Clerk

MICHAEL D. BRADBURY
District Attorney
800 South Victoria Avenue
Ventura, CA 93009

Telephone (805) 654-2501

Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) Plaintiff,)
)
) vs.)
)
) CHARLES VERDEL FARNSWORTH)
)
) Defendant.)

COURT NO. CR 18917

FELONY DISPOSITION
STATEMENT

I.
PLEA

A. CHANGE OF PLEA

The defendant will plead GUILTY () NOLO CONTENDERE () to:

§192(3)(c)

_____ and admit _____.

The remaining counts will be dismissed after the defendant is sentenced.

OTHER CASE DISPOSITIONS: _____

B. SUMMARY OF DISTRICT ATTORNEY'S REASON FOR DISMISSAL OR AMENDMENT
(Deputy District Attorney to initial)

J.D. The defendant is entering (a plea to the most serious charge) (pleas to sufficient counts) to give the court adequate discretion to impose an appropriate sentence.

— The defendant cannot be (convicted) (sentenced) on the count because it arises from the same facts as the count(s) to which the defendant has pleaded.

C. NOLO CONTENDERE PLEA (Defendant to initial, if applicable)

— I understand that for all purposes, my plea of nolo contendere (no contest) has the same effect as a guilty plea, constitutes a conviction, and empowers the Court to sentence me as though I had pleaded guilty. It also may be used against me as an admission in a civil proceeding.

D. VOLUNTARINESS OF PLEA (Defendant to initial)

CE I have discussed the facts of the case and all possible defenses which I might have with my attorney.

CE I am entering this plea freely and voluntarily and not as the result of any force, pressure, threats or coercion brought against me or any member of my family; further, no commitments have been made to me or my attorney other than those appearing on this form.

E. FACTUAL BASIS FOR PLEA (Defendant to initial)

— I agree that the Court may consider the following as proof of the factual basis for my plea:

- Preliminary hearing transcript
- Police reports
- Probation report
- Welfare investigator's declaration
- _____

F. CONSEQUENCES OF PLEA (Defendant to initial)

CE My attorney has explained to me the direct and indirect consequences of this plea including the maximum possible sentence. I understand that the following consequences could result from my plea:

CF I could be sentenced to the state prison for a maximum possible term of 8 year(s).

CF I could be sentenced to the California Youth Authority for a maximum possible term of 10 year(s).

___ I will be required to register as a sexual offender pursuant to Penal Code § 290.

___ I could be deported, excluded from or denied naturalization if I am not a citizen. (Penal Code § 1016.5.)

___ My driver's license will be suspended or revoked for a period of _____ (SS 13350, 13351, 13352 of the Vehicle Code).

___ I will not be granted probation, and execution or imposition of sentence will not be suspended (1203.055(c), 1203.06, 1203.65, 1203.066, 1203.07, 1203.075, 1203.08, 1203.085, 1203.09 PC).

___ I will not be granted probation unless the court finds that this is an unusual case where the interests of justice would best be served by granting probation (462, 462.5, 1203(e), 1203.04 PC).

CF After I have served my prison term, I may be subject to a maximum parole period of 3 years (In re Carabes, 144 Cal. App. 3d 927).

___ I will be required to register as a narcotics offender.

___ I will be ordered to pay a fine of not less than \$100 nor more than \$10,000 (Gov't. Code § 13967, § 1191.2 PC).

G. WAIVER OF CONSTITUTIONAL RIGHTS (Defendant to initial)

My attorney has explained to me, and I understand, that this plea will result in my conviction and that I am therefore waiving (giving up) each of the following constitutional rights:

CF 1. The right to have every charge and allegation against me determined by a jury of 12 persons;

CF 1(a) *If I waive jury, I have the right to a trial by the court.*

CF 2. The right to confront and, through my attorney, cross-examine each witness called by the prosecution to prove my guilt;

CF 3. The right to be represented at all times during a trial by a competent attorney and to have the Court appoint one to represent me at no charge, if I cannot afford one;

CF 4. The right against self-incrimination which means I would not have to testify at my trial and if I did not, the jury could not consider this as evidence of guilt.

II.

A. DISTRICT ATTORNEY

THE DISTRICT ATTORNEY'S POSITION ON SENTENCE
(Deputy District Attorney to initial)

CE Any authorized sentence may be sought.

___ The defendant should be placed on probation and not now be sentenced to state prison. The defendant may, however, at a later time be sentenced to state prison if a court finds he has violated a term or condition of his/her probation.

___ The defendant will receive credit for time served.

SUMMARY OF DISTRICT ATTORNEY'S REASON FOR SENTENCE:
(Deputy District Attorney to initial)

___ The defendant has no prior criminal record.

___ The severity and frequency of the defendant's prior criminal record is not serious.

___ The underlying facts of the case are not sufficiently serious to require a state prison sentence at this time.

B. THE COURT

The Court, in this non-Proposition 8 case, without the consent or concurrence of the District Attorney, makes the following statements concerning sentencing: (Judge to initial)

___ The defendant will be placed on probation and not now be sentenced to state prison. If, however, he later violates his probation, he may be sent to prison at that time.

CE Court agrees to no more than 4 yrs
unless after reading probation report it
feels that a higher sentence should be
sought. If this occurs defendant may withdraw
plea

C. HARVEY WAIVER (Defendant to Initial)

CF The defendant agrees that all facts and information relating to any and all counts, allegations of prior convictions, and other sentencing enhancement allegations which are dismissed by the Court as part of this disposition may be included in the probation report and considered by the Court in determining sentence.

III.

DEFENDANT'S AND DEFENSE ATTORNEY'S POSITION

I have read, discussed with my attorney, and understand the consequences of this plea and waive (give up) the above-mentioned constitutional rights. I request that the Court accept my new plea.

DATED: 5-1-84

Charles V. Hammond
(Defendant's signature)

I have explained to the defendant all of his constitutional rights. I am satisfied he understands them and also understands that by entering this plea he is giving up each of them. I have discussed the facts of the case and all possible defenses to the charges with the defendant. I have explained the direct and indirect consequences of this plea to the defendant and am satisfied he understands them. I am satisfied the defendant is voluntarily and of his own free will seeking to enter this plea. I request the Court to accept this plea.

DATED: 5-1-84

William A. M. Giffey
(Defendant's Attorney's Signature)

IV.

DISTRICT ATTORNEY'S STATEMENT

With the exception of any commitments made to the defendant by the Court, the District Attorney agrees to the terms of this disposition and requests that the Court accept it and order this statement filed.

MICHAEL D. BRADBURY, District Attorney
County of Ventura, State of California

DATED: 5/1/84

By James S. [Signature]

Deputy District Attorney

APPENDIX C
(Sentencing Ex. 7)

**ABSTRACT OF JUDGMENT - COMMITMENT
SINGLE OR CONCURRENT COUNT FORM**
(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
COURT ID: 5, 6 BRANCH

Exh 7

PEOPLE OF THE STATE OF CALIFORNIA VERSUS
DEFENDANT: CHARLES VERDEL FARNSWORTH
AKA: ANDERSON AKA NICKERSON

PRESENT NOT PRESENT

COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENT

AMENDED
 ABSTRACT

CASE NUMBER
CR 18917

DATE OF HEARING (MO) (DAY) (YR)
05 25 84

JUDGE
WILLIAM L. PECK

CLERK
LOUISE CHARLES

REPORTER
SHARON SCRUGGS

COUNSEL FOR PEOPLE
HERB CURTIS

COUNSEL FOR DEFENDANT
WILLIAM MC GUFFY

PROBATION NO. OR PROBATION OFFICER
ELLEN LOVE

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTION BY	TERM (L-W-U)	TIME IMPOSED	
					MO.	DAY	YEAR			YEARS	MONTHS
<u>2</u>	<u>PC</u>	<u>192(3)(c)</u>	<u>vehic mansl</u>	<u>84</u>	<u>05</u>	<u>01</u>	<u>84</u>	<u>X M</u>	<u>6</u>		

2. ENHANCEMENTS (CHARGED AND FOUND, STRIKEN, TIME IMPOSED)

COUNT	12022(a)			12022(b)			12022.5(a)			12022.5(b)			12022.5			12022.8(a)			12022.8(b)			12022.9			12022.9			
	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	C/P	S	I	

3. OTHER ORDERS.

4. A. NUMBER OF PRIOR PRISON TERMS:

S	C/P	S	I	I
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

B. NUMBER OF PRIOR FELONY CONVICTIONS:

S	C/P	S	I
<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

5. TIME STAYED § 1116.1(i) [DOUBLE BASK LIMIT]

6. TOTAL TERM IMPOSED. 6

7. THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S)

8. EXECUTION OF SENTENCE IMPOSED

A. AT INITIAL SENTENCING HEARING B. AT RESSENTENCING PURSUANT TO DECISION ON APPEAL C. AFTER REVOCATION OF PROBATION D. AT RESSENTENCING PURSUANT TO RECALL OF COMMITMENT [PC § 1176(4)]

9. DATE SENTENCE PRONOUNCED: DAY 05 YEAR 84 CREDIT FOR TIME SPENT IN CUSTODY: 180 INCLUDING ACTUAL LOCAL TIME: 120 LOCAL AND STATE INSTITUTIONS: 60 DMH CDC

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

FORTHWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-ORIENTATION CENTER LOCATED AT CALIF. INSTITUTION FOR WOMEN FORTYSEVEN OTHER (SPECIFY) CALIF. MEDICAL FACILITY PARAVILLE CALIF. INSTITUTION FOR MEN THREE

CLERK OF SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action

DEPUTY SIGNATURE

Charles Verdel Farnsworth

DATE

5/25/84

This form is prescribed pursuant to Penal Code § 1213.5 to satisfy the requirements of Penal Code § 1213 (Abstract of Judgment and Commitment) for determinate sentences under Penal Code § 1170. A copy of probation report shall accompany the Department of Corrections' copy of this form pursuant to Penal Code § 1203C. A copy of the sentence and proceedings and any supplementary probation report shall be transmitted to the Department of Corrections pursuant to Penal Code § 1203.01. Attachments may be used but must be incorporated by reference.

**ABSTRACT OF JUDGMENT - COMMITMENT
SINGLE OR CONCURRENT COUNT FORM**

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)
FORM DSL 290.1

Pen. C. 1213.5

DISTRIBUTION

FIVE COPIES

FOUR COPIES

YELLOW COPY DEPARTMENT OF CORRECTIONS

BLUE COPY

WHITE COPY

DA S.C.
PO OTHER
SO *Chief*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: WILLIAM L. PECK DATE: MAY 25, 1984 TIME: 9:30 CASE NO: CR 18917
CLERK: LOUISE CHARLES BAILIFF: ART MILLER CRT. RPTR: S. SCRUGGS
DDA: HERB CURTIS DEF. CNSL: W. MC GUFFY DPO: ELLEN LOVE

TITLE OF CASE: PEOPLE OF THE STATE OF CALIFORNIA NATURE OF PROCEEDINGS: JUDGMENT ON CONVICTION
vs. Plaintiff

CHARLES VERDEL FARNSWORTH
Defendant

Interpreter Stipulated as qualified Sworn Previously sworn
 Public defender appointed Waives arraignment Indicates no legal cause
 Convicted by plea of guilty of violation of Section 192(3)(c) of the Penal Code, Vehicular manslaughter Declared misdemeanor
 Sentenced State Prison for the median term of 6 years

Term set of _____ years in state prison if defendant subsequently violates probation
 Total fixed term 6 years 1202(b) PC 1170 (d) PC
 Imposition of sentence suspended Execution of sentence suspended
 Probation granted _____ months Formal Conditional Attached terms
 Sentenced County Jail _____ Concurrent Consecutive
 Condition Probation Execution stayed
 Review set _____ 9 AM, Courtroom 35 Ordered to return
 Ordered to voluntarily surrender to Sheriff Defendant accepts

Remaining Count(s)/Allegation(s) dismissed/stricken Court waives Work Furlough criteria
 Committed California Youth Authority _____ 1737 WIC
 Credit actual 120 4019(b) 60 State Institution Total 180 days
 Defendant does not have the financial ability to reimburse County of Ventura/pay for:
 court appointed counsel Probation costs Pre-sentence Investigation
 Defendant does have financial ability to pay for: Counsel \$ _____ at \$ _____ mo.
 Probation costs _____ /mo. Investigation Report \$ _____ at \$ _____ mo.
 12% Collection Surcharge Through Collections Services beginning _____

Financial ability hearing waived set _____, 9 AM, Courtroom 35
 Advised re appeal Advised re parole Time waived
 Probation/Sentencing continued _____ at _____, Courtroom 35 Ordered present
 Bench Warrant, bail set \$ _____, issued Ordered held No action bail
 Bench Warrant recalled/withdrawn Bail Forfeited Reinstated Exonerated
Company _____ # _____ Amount \$ _____
 Released Probation/Bail/Own Recognizance Remanded without bail
 Committed Diagnostic Facility, 90 days, 1203.03 PC, to be automatically returned by Sheriff upon notice by Director of Corrections
 Criminal proceedings suspended, civil proceedings instituted, Dr(s) _____

_____ appointed
 1288.1 PC 3050/3051 WIC Hearing set _____, 9 AM, Courtroom 35
 Ordered report to/make/keep appointment(s) Doctor(s) Probation Department
 Original/one copy of plea transcript ordered: Reporter David O'Grady Date 5-1-84
 Sheriff ordered to transport defendant to Department of Corrections, Chino, California

Defendant's request for commitment to the California Rehabilitation Center is denied

RICHARD D. DEAN, County Clerk
(Rev. 4-84) By: Ravi Ohri
Deputy County Clerk

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

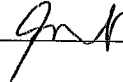
STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 43167-0-II
)	
CHARLES FARNSWORTH,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF OCTOBER, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KAWYNE LUND, DPA	()	U.S. MAIL
[PCpatcecf@co.pierce.wa.us]	()	HAND DELIVERY
PIERCE COUNTY PROSECUTOR'S OFFICE	(X)	E-MAIL VIA COA PORTAL
930 TACOMA AVENUE S, ROOM 946		
TACOMA, WA 98402-2171		
[X] CHARLES FARNSWORTH	(X)	U.S. MAIL
875475	()	HAND DELIVERY
WASHINGTON STATE PENITENTIARY	()	_____
1313 N 13 TH AVE		
WALLA WALLA, WA 99362		

SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF OCTOBER, 2013.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

October 18, 2013 - 3:39 PM

Transmittal Letter

Document Uploaded: 431670-Reply Brief.pdf

Case Name: STATE V. CHARLES FARNSWORTH

Court of Appeals Case Number: 43167-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

PCpatcecf@co.pierce.wa.us