

No. 45569-2-II

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

Erin Rieman,

Appellant.

BRIEF OF RESPONDENT

DAVID BURKE, WSBA#16163
PACIFIC COUNTY PROSECUTOR'S OFFICE

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A.

STATE'S RESPONSE TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Mr. Rieman's guilty plea to first degree manslaughter with an aggravating factor was voluntary. No manifest injustice occurred. Mr. Rieman has not demonstrated that his guilty plea was entered under duress or coercion.
2. The trial court did not err in ruling that Mr. Rieman did not meet the threshold requirements for withdrawing a guilty plea under CrR 7.8(b).
3. The trial court did not err in denying Mr. Rieman's motion for a hearing on the merits of his motion; in addition, Mr. Rieman cannot prevail if his request to withdraw his guilty pleas is treated as a personal restraint petition.
4. The trial court did not err in ruling that Mr. Rieman's motion to withdraw his guilty pleas was not timely.
5. The trial court did not err in denying Mr. Rieman's motion for reconsideration.
6. Mr. Rieman did not experience ineffective assistance of counsel in attempting to withdraw his plea and vacate his conviction.

B.

**STATE'S RESPONSE TO APPELLANT'S
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Mr. Rieman's pleadings did not delineate a sufficient factual and legal basis for withdrawing his guilty plea; therefore, the trial court did not err in denying Mr. Rieman an evidentiary hearing.
2. Mr. Rieman did not sufficiently establish that his guilty plea was coerced; therefore, the trial court acted properly in denying him relief.
3. The trial court did not abuse its discretion in denying Mr. Rieman's motion to withdraw his guilty plea and his motion for reconsideration.
4. Mr. Rieman did not experience ineffective assistance of counsel in attempting to withdraw his guilty plea.

C.

STATEMENT OF THE CASE

The State accepts the Appellant's Statement of the Case.

D.

ARGUMENT

1. Standard of review.

The denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion. State v. Marshall, 144 Wn.2d 266, 280, 27 P.3d 192 (2001); State v. S.M., 100 Wn.App. 401, 409, 996 P.2d 1111 (2000). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wash.2d. 12, 26, 482 P.2d 775, (1971). Therefore, in order for Mr. Rieman to be allowed to withdraw his guilty plea, the Court of Appeals must believe that “no reasonable judge would have made the same ruling” as the trial judge. State v. Woods, 143 Wash.2d. 561, 596, 23 P.3d 1046 (2001).

2. Mr. Rieman should not be allowed to withdraw his guilty plea; the trial court did not err in denying Mr. Rieman an evidentiary hearing.

An involuntary plea constitutes a manifest injustice. In Re Pers. Restraint of Mathews, 128 Wash.App. 267, 270, 115 P.3d 1043 (2005). However, the Appellant must jump a high hurdle to show that his plea was involuntary due to coercion. In this instance, Mr. Rieman asserts that his plea was coerced because his partner, Mr. Bremmer, threatened Mr.

Rieman and his family; from Mr. Rieman's perspective these threats never abated until Mr. Bremmer was "arrested and convicted of murder in Hawaii." CP 49; Appellant's Brief at 7-8. Although Mr. Bremmer's arrest in Hawaii occurred several years after Mr. Rieman pled guilty to manslaughter in the first degree with aggravating circumstances, Mr. Rieman insists that he was forced to plead guilty, because he believed he would be killed by Mr. Bremmer if he did not plead guilty.

The problem with Mr. Rieman's contention is that a bare allegation of coercion is insufficient to overcome a defendant's statement at a plea hearing that supports a finding of voluntariness. An appellant's self-serving allegations standing alone do not demonstrate the involuntariness of a plea. State v. Osborne, 102 Wash.2d. 87, 97, 684 P.2d 683 (1984). Mr. Rieman asserts that Mr. Bremmer's subsequent murder conviction in Hawaii constitutes new evidence that his plea was coerced and therefore involuntary. Appellant's Brief at 8-9. Unfortunately for Mr. Rieman, this assertion is a house of cards; an event that occurred after a plea of guilty was entered logically could not have affected a defendant's state of mind at the time of the plea. In essence, Mr. Rieman is asking the Court of Appeals to suspend the laws of physics and hold that a future event can affect the past. To put it bluntly, Mr. Rieman's subsequent knowledge about Mr. Bremmer's criminal activities in no way could have affected

Mr. Rieman's state of mind when he entered his guilty plea. Hence, Mr. Rieman's purported new evidence is not material to the question of whether Mr. Rieman entered a voluntary guilty plea. Because the only evidence of coercion is Mr. Rieman's self-serving statements, Mr. Rieman's argument is without merit.

In addition, the State would point out that when a defendant submits a written statement on a guilty plea and acknowledges that he has read it, understands it, and that its contents are true, "the written statement provides prima facie verification of the plea's voluntariness." State v. Perez, 33 Wash.App. 258, 261, 654 P.2d 208 (1982). Further, when a trial judge orally engages a defendant in a colloquy and assures himself on the record that the plea is voluntary, "the presumption of voluntariness is well nigh irrefutable." Id. at 262. In this case, the plea colloquy on May 11, 2010, takes up 54 pages in the Report of Proceedings. The most relevant part of this colloquy reads as follows:

THE COURT: Okay, thank you.

Now, you're pleading – you've already pled guilty to Manslaughter First Degree. Actually it's Manslaughter First Degree with Aggravating Factor pursuant to *In Re Barr* in the Amended Information.

Now, there's a paragraph on (sic) 11. Did your attorney write that paragraph for you? And it's okay if he did.

THE DEFENDANT: Yes.

THE COURT: Thank you. Did he review that paragraph, each and every word, carefully with you?

THE DEFENDANT: He did and I was there when he wrote it.

THE COURT: Thank you. Did you understand it?

THE DEFENADNT: Yes, I did.

THE COURT: Did you have an opportunity to ask as many questions as you wanted about that paragraph?

THE DEFENDANT: I've asked a lot of questions of my attorney. He's answered them all.

THE COURT: Thank you. Do you want any more time to discuss anything about this paragraph with your attorney.

THE DEFENDANT: No, sir.

THE COURT: Thank you. Then are you at this time adopting each and every word of that paragraph as if you wrote it yourself?

THE DEFENDANT: Exactly.

THE COURT: Thank you. And again, out to the left paragraph it says this statement is pursuant to an *Alford* plea, correct?

THE DEFENDANT: Correct.

THE COURT: There's a place for you to sign below paragraph 12. Is that your signature?

THE DEFENDANT: Yes, it is.

THE COURT: I'm asking you a lot of the same questions.

THE DEFENDANT: That's all right.

THE COURT: Did you sign your name of your own free will?

THE DEFENDANT: I did.

THE COURT: Did anyone threaten you to make you sign?

THE DEFENDANT: No.

THE COURT: Did you have enough time to review this document carefully with your attorney before you signed it?

THE DEFENDANT: I did.

THE COURT: One last time, do you have any questions whatsoever up to this point regarding this plea form?

THE DEFENDANT: No, sir, Your Honor.

THE COURT: Everything that you've done up to this point have you done of your own free will?

THE DEFENDANT: Yes.

THE COURT: Have you done it knowingly, intelligently, and voluntarily to the best of your knowledge?

THE DEFENANT: Yes, I have.

THE COURT: At this time are you under the influence of any alcohol, drugs, or any prescription drugs that affect, in your opinion, your ability to think clearly and rationally today?

THE DEFENDANT: No, I have not.

THE COURT: I find that too. You've been paying very close attention, looking at me the whole time and answering questions in my opinion very knowingly and intelligently and voluntarily.

There are two boxes on the last page – I'm now on the last page. There's two boxes on the last page and I'm just asking you –

you already answered this but I'm asking you again. The first one says, "*The defendant had previously read the entire statement above and that the defendant understood it in full.*"

THE DEFENDANT: Yes, it's accurate.

THE COURT: Thank you. And then the second one says, "*The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full.*" Is that also accurate?

THE DEFENDANT: That also is accurate.

THE COURT: Okay, thank you. I'm going to check those two boxes then.

Now, Mr. Burke, --

DR. BURKE: Yes.

THE COURT: -- any comments or questions or items you wish the State -- the State -- the Court to cover?

DR. BURKE: No.

THE COURT: Very well.

DR. BURKE: I think you've covered everything we need to.

THE COURT: Same question to you Mr. -- well, not the same question, but Mr. Keehan, do you wish to make any comments regarding the plea before I accept Mr. Rieman's plea?

MR. KEEHAN: I have nothing to add, Your Honor.

THE COURT: And Mr. Rieman, last time to you, do you have any questions whatsoever or any requests for any additional time to speak with Mr. Keehan?

THE DEFENDANT: No, I have no requests or need for additional time.

THE COURT: Very well. Thank you. Then at this time the Court is accepting your plea under the *Alford* system, your guilty plea under the *Alford* plea system finding you guilty of Count One of the Amended Information, Manslaughter in the First Degree with Aggravating Factor pursuant to *In Re Barr*. The Court finds that the aggravating factor is agreed, that it's an abuse of your trust, position of trust.

The RCW cited in the Amended Information were agreed that they were accurate and fully set forth, you know, a factual basis to support the plea.

In addition, I'm finding that the paragraph on page eight of nine, paragraph 11, also anchors in your plea of guilty under the *Alford* system and – under the *Alford* – excuse me, that anchors in your – excuse me, that anchors in the *Alford* plea.

Also, I'm making a finding that the *In Re Barr* that this plea is pursuant to an *In Re Barr* and that it is – has been clearly and accurately explained and that both counsel agree to this. And I – as far as I can tell, Mr. Rieman, from your answers to me, that you understood the *Alford* plea as well as this *In Re Barr* doc- -- Is it considered a doctrine or is it just a –

DR. BURKE: It's a case.

THE COURT: So it's not a doctrine really.

DR. BURKE: Right.

THE COURT: Okay. -- this form of a plea.

I find that you had enough time to review this Plea Agreement with your attorney as well as the *Apprendi* waiver and as well as the Plea Agreement and especially the Statement of Defendant on Plea of Guilty; that you understand it; that you entered into this Plea Agreement knowingly, intelligently, voluntarily; that no one threatened you, coerced you; that you had enough time to speak with your attorney, and I can only take you at your word that you said you would tell me if you wanted any more time or needed any more time that you would have spoken up and told me that. Based upon your answers to me earlier, I have no doubt in my mind whatsoever that you were well-- that Mr. Keehan covered each and every item of your plea today carefully with you and that you paid attention. Your answers to me are lucid

and, as far as I can tell, they're intelligent answers in response to my questions and that you're paying attention. And I don't find you're under influence of any -- anything at this time; that you're doing this, everything of your own free will knowingly, intelligently and voluntarily. RP (5/11/10) at 43-49.

The upshot of the long passage quoted above is that Mr. Rieman told the Court that his plea was made freely and voluntarily and that no one had made any threats or promises to cause him to plead guilty. Mr. Rieman filled out a written plea statement and acknowledged that he understood the statement. Mr. Rieman indicated that he wanted to take advantage of the plea offer because he could be convicted of a more serious charge. See Statement on Defendant on Plea of Guilty to a Non-Sex Offense; Appendix A. Mr. Rieman's attorney also acknowledged that the State had a strong circumstantial case and that the plea bargain negotiated with was a reasonable way to proceed. RP (5/11/10) at 11. The trial court found that Mr. Rieman was paying close attention to the plea proceedings, that his demeanor indicated that he was intelligently and voluntarily answering questions, and that he voluntarily entered the plea agreement. RP (5/11/10) at 45-46, 48.

Given this set of facts, the trial court did not abuse its discretion by denying Mr. Rieman an evidentiary hearing. Mr. Rieman's motion on its face did not provide sufficient information to justify the withdrawal of his

guilty plea. Additionally, the ends of justice would not be served by treating Mr. Rieman's motion as a personal restraint petition. See In Re Pers. Restraint of Carlsted, 114 Wash.App. 447, 455-456, 58 P.3d 302 (2002). Because Mr. Rieman's motion rests on a self-serving allegation, Mr. Rieman's request for relief should be denied.

3. Mr. Rieman did not timely file his motion to withdraw his guilty plea.

Under CrR 7.8(b) the court may relieve a party from a final judgment, order, or proceeding for the following reasons: “. . . (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 7.5; . . .”

Mr. Rieman asserts that Mr. Bremmer's subsequent murder conviction constitutes newly discovered evidence. Mr. Rieman believes that this purported new evidence brings him within the ambit of CrR 7.8. However, any motion subject to CrR 7.8(b) must be made within a reasonable time and for reason (2) not more than one year after the judgment was entered. In this case, the defendant's motion is not timely. The defendant pled guilty on May 11, 2010. Since Mr. Bremmer was arrested several years after Mr. Rieman's guilty plea, too much time has elapsed for this motion to be heard.

Additionally, CrR 7.8(b) is further subject to RCW 10.73.090, .100, .130 and .140. In particular, for any motion filed more than one year after the judgment was entered, the defendant must satisfy at least one of the criteria listed in RCW 10.73.100. This statute reads as follows:

10.73.100 collateral attack – When one year limit is not applicable. The time limited specified in RCW 10.73.090 does not apply to a petition or motion that is based solely on one or more of the following grounds:

(1) New discovered evidence, if the defendant acted with reasonable diligence in discovering the evidence and filing the petition or motion; . . .

Mr. Rieman asserts that he is not subject to the one-year time limitation under RCW 10.73.090 because Mr. Bremmer's conviction for murder constitutes newly discovered evidence. Appellant's Brief at 11-12. Once again, the State would point out that the purported newly discovered evidence articulated by Mr. Rieman is not relevant because the new "facts" occurred after the defendant entered his plea of guilty. Thus, there is no valid basis to allow Mr. Rieman to proceed under RCW 10.77.090 and RCW 10.73.100.

In short, the purported evidence upon which Mr. Rieman relies is not really "new." Mr. Rieman was aware of Mr. Bremmer's purported threats at the time of the defendant's guilty plea. Subsequent events do not change the information that the defendant possessed at the time of his guilty plea. Actions taken by Mr. Bremmer after the defendant's guilty

plea was entered could not have affected Mr. Rieman's state of mind at the time of the guilty plea. Because the purported new evidence pertains to events after the defendant entered his guilty plea, (viz., Mr. Bremmer was convicted several years after the defendant entered his guilty plea), this purported new evidence could not have altered the defendant's perceptions at the time of his guilty plea. Hence, the defendant has not presented new evidence that would allow him to withdraw his guilty plea under CrR 7.8 and RCW 10.73.090 et seq.

Finally, the plea colloquy discusses in some detail the additional evidence that points to Mr. Rieman's involvement in criminal activity. RP (5/11/10) at 10-11. Thus, Mr. Rieman's assertion that he was coerced by Mr. Bremmer, should be taken for what it is -- a self-serving declaration that is not supported in any way by the plea colloquy.

Because Mr. Rieman has not produced extrinsic new evidence pertaining to his state of mind at the time he entered his guilty plea, his motion to withdraw his plea is time barred under CrR 7.8(b) and RCW 10.73.090 et seq.

4. **Mr. Rieman's claim of ineffective assistance of counsel lacks merit.**
 - a. **Standard of review for claims involving ineffective assistance of counsel.**

To prevail on an ineffective assistance of counsel claim, the Appellant must show both that (1) defense counsel's representation was deficient and (2) the deficient representation prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Grier, 171 Wash.2d 17, 32-33, 246 P.3d 1260 (2011). The failure to show either element ends the inquiry. State v. Hendrickson, 129 Wash.2d 61, 78, 917 P.2d 563 (1996), overruled on other grounds by Carey v. Musladin, 549 U.S. 70, 127 S.Ct. 649, 166 L.Ed.2d 482 (2006). Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. Grier, 171 Wash.2d at 33. Prejudice exists if there is a reasonable probability that except for counsel's errors, the result of the proceeding would have been different. Id. at 34. Courts give great deference to counsel's performance and begin their analysis with a strong presumption that counsel's performance was reasonable. Id. at 33.

b. Mr. Rieman cannot meet either prong of the Strickland test.

Mr. Rieman asserts that his counsel was deficient because no extensive investigation was conducted. Appellant's Brief at 13-14. The Appellant claims that counsel should have presented objective evidence of

Mr. Bremmer's murder conviction. Appellant's Brief at 14. This argument is not persuasive because Mr. Bremmer's legal troubles in Hawaii occurred after Mr. Rieman pled guilty; therefore, this purported new evidence does not relate to Mr. Rieman's state of mind at the time of his guilty pleas. Thus, it cannot be said that counsel's performance was deficient. Furthermore, under the second prong of the Strickland test, Mr. Rieman must show that he was prejudiced, i.e., there must be a reasonable probability that except for counsel's error, the result of the proceeding would have been different. More information about the criminal proceedings in Hawaii against Mr. Bremmer would not have caused the trial court to change its ruling given the colloquy that occurred at the plea hearing. Hence, Mr. Rieman cannot meet either prong of the Strickland test. Mr. Rieman's ineffective assistance of counsel claim should be rejected.

E.

CONCLUSION

Based on the foregoing analysis, Mr. Rieman is not entitled to relief. Mr. Rieman should not be allowed to withdraw his guilty plea. In addition, this matter should not be remanded to the Superior Court for a hearing on the merits. Mr. Rieman has not met his initial burden to justify

a reference hearing. Also, the ends of justice would not be served by treating this matter as a personal restraint petition. Simply put, the decision of the trial court should be upheld.

Respectfully submitted this 18th day of November 2014.

DAVID J. BURKE
PACIFIC COUNTY PROSECUTOR

By. David J. Burke
DAVID J. BURKE, WSBA#16163
Prosecuting Attorney
Pacific County, Washington

FILED

2010 MAY 21 PM 12:07

CLERK OF SUPERIOR COURT
 COUNTY OF PACIFIC

all

Superior Court of Washington
 County of PACIFIC

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State of Washington, Plaintiff,

No. 09-1-00157-8

vs.

Felony Judgment and Sentence --
 Prison
 (FJS)

ERIN D. RIEMAN X

Defendant.

Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2,
 5.3, 5.5 and 5.7

SID: WA 24377677

DOB: 03/23/1962

Defendant Used Motor Vehicle

I. Hearing

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

II. Findings

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

guilty plea (date) 5/11/10 jury-verdict (date) _____ bench trial (date) _____:

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	MANSLAUGHTER IN THE FIRST DEGREE WITH AGGRAVATING FACTOR	9A.32.060 AND 9.94A.535(3)(n)	A	7/6/09

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

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

Additional current offenses are attached in Appendix 2.1a.

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

The defendant used a **firearm** in the commission of the offense in Count RCW 9.94A.602, 9.94A.533.

The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____
RCW 9.94A.602, 9.94A.533.

Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center

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designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.

- The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____, RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- Count _____ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.____.
- The defendant committed **vehicular homicide** **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- The crime(s) charged in Count _____ involve(s) **domestic violence**. RCW 10.99.020.
- Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):**

	Crime	Cause Number	Court (county & state)
1.			
2.			

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

2.2 Criminal History (RCW 9.94A.525):

	Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv	Type of Crime
1	NONE					
2						
3						
4						
5						

- Additional criminal history is attached in Appendix 2.2.
- The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)

The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	0	XI	78-102 MONTHS			LIFE/\$50,000

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.
 Additional current offense sentencing data is attached in Appendix 2.3.

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

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

below the standard range for Count(s) _____.

above the standard range for Count(s) I _____.

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

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

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

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

2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

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

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

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

III. Judgment

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

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

IV. Sentence and Order

It is ordered:

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

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

132 months on Count I _____ months on Count _____
_____ months on Count _____ months on Count _____
_____ months on Count _____ months on Count _____

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

The confinement time on Count _____ includes _____ months as enhancement for firearm deadly weapon VUCSA in a protected zone manufacture of methamphetamine with juvenile present.

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

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

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

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

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

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

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

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

Count(s) I 36 months for Serious Violent Offenses
Count(s) _____ 18 months for Violent Offenses
Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

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

consume no alcohol.

have no contact with: _____

remain within outside of a specified geographical boundary, to wit: _____

not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.

participate in the following crime-related treatment or counseling services: _____

undergo an evaluation for treatment for domestic violence substance abuse

mental health anger management, and fully comply with all recommended treatment. _____

comply with the following crime-related prohibitions: _____

Other conditions: **SEE ATTACHED APPENDIX H**

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

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

JASS CODE

PCV	\$ 500	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ 200		Court

costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee	\$200	FRC
Witness costs	\$ _____	WFR
Sheriff service fees	\$ _____	SFR/SFS/SFW/WRF
Jury demand fee	\$ _____	JFR
Extradition costs	\$ _____	EXT
Other	\$ _____	

PUB \$ 250 Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760
FCM/MTH \$ _____ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430
CDF/LDI/FCD \$ _____ Drug enforcement fund of _____ RCW 9.94A.760
NTF/SAD/SDI \$ _____ DUI fines, fees and assessments
CLF \$ _____ Crime lab fee [] suspended due to indigency RCW 43.43.690
\$ 100 DNA collection fee RCW 43.43.7541
FPV \$ _____ Specialized forest products RCW 76.48.140
\$ _____ Other fines or costs for: _____
RTN/RJN \$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI only, \$1000 maximum) RCW 38.52.430

RTN/RJN \$ _____ Restitution to: _____
\$ _____ Restitution to: _____
\$ _____ Restitution to: _____

\$ 1050.00 *TV* (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)
\$ ~~950.00~~ **Total** RCW 9.94A.760

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

[] shall be set by the prosecutor.
[X] is scheduled for August 20, 2010 1:30 p.m. (date).

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

[] **Restitution** Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant **Cause Number** (Victim's name) (Amount-\$)

RJN

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

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

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

[] The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (*JLR*) RCW 9.94A.760.

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

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

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

4.5 No Contact:

The defendant shall not have contact with ANY FAMILY MEMBER OF JOHN ADKINS (name) including, but not limited to, personal, verbal, telephonic, written or contact through a third party ~~and~~ for life, (which does not exceed the maximum statutory sentence).

The defendant is excluded or prohibited from coming within 300 feet (distance) of:
 _____ (name of protected person(s))'s home/
residence work place school (other location(s)) _____, or

other location: for life (which does not exceed the maximum statutory sentence).

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

4.6 Other: _____

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

V. Notices and Signatures

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

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

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

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

5.4 Community Custody Violation.

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

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


5.6 Reserved

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

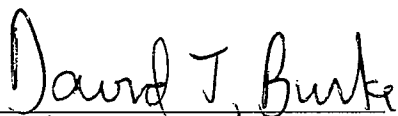
5.8 [X] This offense is a most serious offense or "strike" as defined by RCW 9.94A.030 .

5.9 Other: _____

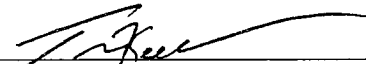
Done in Open Court and in the presence of the defendant this date: 5/21/2010



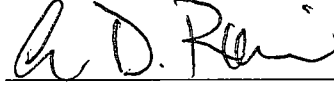
Judge/MICHAEL SULLIVAN



Prosecuting Attorney
DAVID J. BURKE, WSBA#16163



Attorney for Defendant
THOMAS KEEHAN,
WSBA#35567



Defendant
ERIN D. RIEMAN

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

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

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

Defendant's signature: 

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

Interpreter signature/Print name: _____

VI. Identification of the Defendant

SID No. WA 24377677 Date of Birth 03/23/1962
(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

FBI No. 189991NA3 Local ID No. _____

PCN No. _____ Other _____

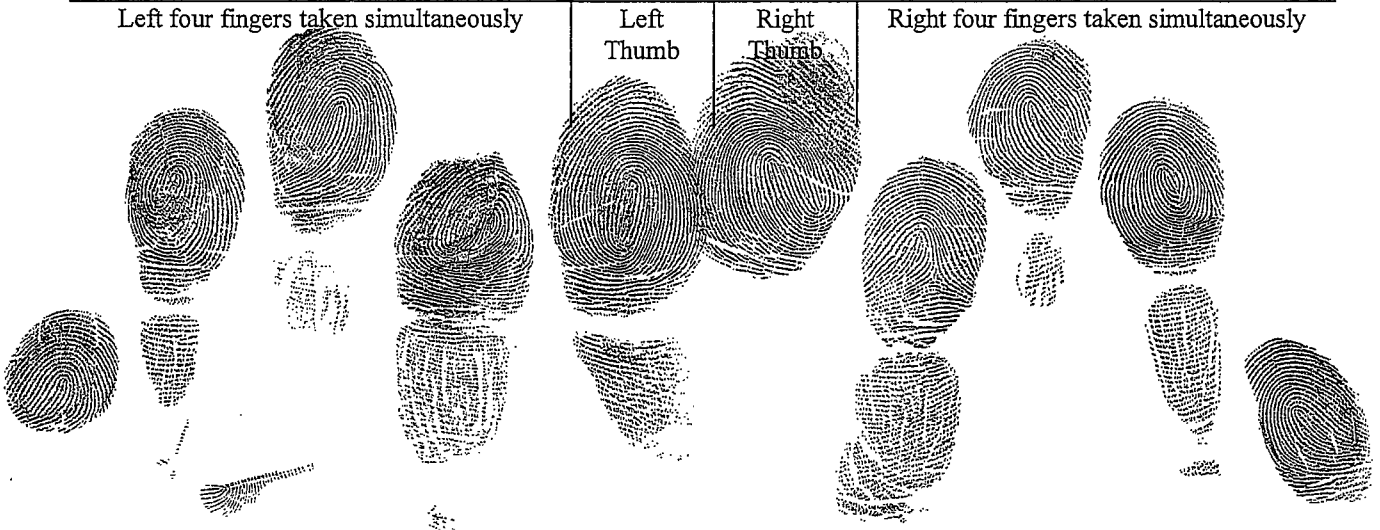
Alias name, DOB: _____

Race: Asian/Pacific Islander Black/African-American Caucasian Native American Other: _____
Ethnicity: Hispanic Non-Hispanic
Sex: Male Female

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

Clerk of the Court, ~~Deputy Clerk,~~ _____ Dated: 5-21-2010

The defendant's signature: Eric D. Davis



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON) NO. 09-1-00157-8
Plaintiff)
vs.) JUDGMENT AND SENTENCE
ERIN D. RIEMAN,) (FELONY) APPENDIX 2.4,
Defendant) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW FOR
) EXCEPTIONAL SENTENCE
)

2.4 An exceptional sentence above the standard range should be imposed based upon the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

The Court hereby finds beyond a reasonable doubt that the following facts exist to justify an exceptional sentence:

1. The defendant is willing to stipulate to an exceptional sentence consisting of 11 YEARS (132) MONTHS.
2. The basis for the exceptional sentence is that it is part of the settlement of this case.
3. The defendant acknowledges that a stipulated sentence is allowed under RCW 9.94A.535(2)(a). Also, the defendant acknowledges that under Personal Restraint Petition of Breedlove, 138 Wash 2d 298, 979 p.2d 417 (1999), he may settle his case under certain terms and conditions, including a stipulated exceptional sentence, provided this is acceptable to the Court, even if the facts and standard sentence associated with the amended charge would not ordinarily be the same as what is being agreed to in his case.
4. The defendant agreed to the plea agreement intelligently, voluntarily and with an understanding of the consequences of the plea.
5. The defendant agrees pursuant to RCW 9.94A.535(3) ⁽ⁿ⁾ the defendant used his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

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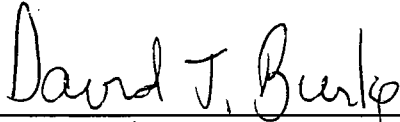
6. Pursuant to Apprendi v. New Jersey, 530 U.S., 466, 488 (2000) and Blakely v. Washington, 542 U.S. 296 (2004), the defendant has waived his right to a jury determination of whether facts exist to support a sentence above the standard range, provided that the total period of confinement does not exceed **11 YEARS (132 MONTHS)**.

Based upon the aforementioned Findings of Fact the Court makes the following Conclusions of Law.


II. CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and subject matter of this action.
2. The plea agreement is consistent with the interest of justice and is in conformance with the State's prosecuting standards:
3. There are substantial and compelling reasons to impose a sentence outside the standard range. In particular, the plea agreement itself is a substantial and compelling reason which justifies an exceptional sentence beyond a reasonable doubt.
4. A sentence above the standard range is in the interest of justice and is consistent with the purposes of the Sentencing Reform Act.
5. A sentence of **11 YEARS (132 MONTHS)** is appropriate to ensure that punishment is proportionate to the seriousness of the offense.


Dated this 21st day of May, 2010.



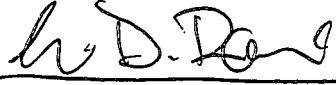
DAVID J. BURKE, WSBA#16163
Prosecuting Attorney



JUDGE



THOMAS KEEHAN, WSBA#35567
Attorney for Defendant.



Defendant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON)
Plaintiff,)
vs.)
ERIN D. RIEMAN,)
Defendant.)

NO. **09-1-00157-8**
JUDGMENT AND SENTENCE
(FELONY) APPENDIX H
ADDITIONAL CONDITIONS
OF SENTENCE

4.3 Continued: Additional conditions of sentence are:

Defendant shall serve **36 MONTHS** Defendant shall report to the Department of Corrections, by phone at (360)533-9758 or (360)942-4817, within **72 hours** of the commencement of community custody and the defendant shall comply with all rules, regulations and requirements of the Department of Corrections, and any other conditions of community custody stated in this Judgment and Sentence;

Defendant shall obey all local, county, state, and federal laws;

Must consent to DOC home visits to monitor compliance with supervision. Home visits include access for the purposes of visual inspection of all areas of residence, in which the offender lives or has exclusive/joint control/access;

Defendant shall not consume, possess, or have under his control any alcoholic beverages.

Defendant shall not consume, possess, or have under his control any controlled substances unless otherwise prescribed by a certified physician.

Defendant shall submit to urinalysis/breathalyzer at the request of his CCO.

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[X] Defendant shall obtain drug/alcohol evaluation and follow recommended treatment within 45 days of release.

[X] Defendant shall pay supervision fees as determined by the department.

[X] Defendant shall not initiate or permit contact with known drug users or drug sellers.

[X] The residence location and living arrangements shall be subject to the prior approval of the department during the period of community placement.

[X] Defendant shall not initiate or permit contact with known felons or persons on probation or supervision.

[X] Defendant shall no direct or indirect contact with any family member of John Adkins.

Date:

5/21/2010



JUDGE

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON,)
)
)
Plaintiff,)
)
)
vs.)
)
ERIN D. RIEMAN,)
Defendant.)
_____)

NO. 09-1-000157-8

WARRANT OF COMMITMENT

STATE OF WASHINGTON

TO: The Sheriff of Pacific County.

The defendant: ERIN D. RIEMAN was convicted in the Superior Court of the State of Washington of the crime of MANSLAUGHTER IN THE FIRST DEGREE WITH AGGRAVATING FACTOR and the Court has ordered that the defendant be punished by serving the determined sentence of:

132 (month(s)) on **Count NO. I**; _____ months on **Count No.II**,
_____ months on **Count No. III**; _____ months on **Count No. V**; _____ months
on **Count VI**; _____ months on **Count VII**; _____ months on **Count VIII**;
_____ months on **Count VIII**; _____ months on **Count IX**

_____ (day(s) (month(s)) of partial confinement in the County jail.

_____ (month(s)) of total confinement in the Pacific County jail.

Defendant shall receive credit for time served to this date.

YOU, THE SHERIFF, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence in the Pacific

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County Jail.

[X] YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

[] The defendant is committed for up to thirty (30) days evaluation at Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

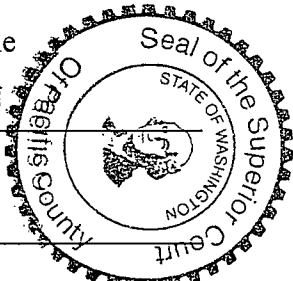
YOU THE SHERIFF ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections pending delivery of the proper officers of the Secretary of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED, to receive the defendant for evaluation as ordered in the Judgment and Sentence.

DATED this 21st day of May, 2010.

By Direction of the Honorable
MICHAEL SULLIVAN

JUDGE
[Signature]
CLERK



BY: *[Signature]*
DEPUTY CLERK

cc: Prosecuting Attorney
Defendant's Lawyer
Defendant
Jail
Institutions (3) (2)

sa-

FILED

2010 MAY 11 PM 12:04

PROBATION DEPARTMENT
JULIUS ROSENWA

BY dl

**Superior Court of Washington
For PACIFIC**

State of Washington

Plaintiff

vs.

ERIN D. RIEMAN

Defendant

No. 09-1-00157-8

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

ALFORD PLEA

1. My true name is: ERIN D. RIEMAN

2. My age is: 48

3. The last level of education I completed was 12⁺

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.

(b) I am charged with: ONE COUNT OF MANSLAUGHTER IN THE FIRST DEGREE with AGGRAVATING FACTOR, pursuant to In Re Barr

The elements are:

COUNT I

The Defendant, ERIN D. RIEMAN, in Pacific County, Washington, on or about July 5, 2009 to July 6, 2009, did recklessly cause the death of another person, to-wit: John Adkins; in violation of RCW 9A.32.060(1)(a).

Furthermore, the crime was aggravated by the following circumstances under RCW 9.94A.535(3): (n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

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 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 proves 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.

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
1	0	78-102 MONTHS		36 MONTHS	LIFE/\$50,000
2					
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, (D) Other deadly weapon, (V) VUCSA in protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) Criminal street gang involving minor, (AE) Endangerment while attempting to elude.

- (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 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 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 may be longer than my earned early release period. 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.
- [] 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	36 months
Violent Offenses	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	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) The prosecuting attorney will make the following recommendation to the judge: **AGREED EXCEPTIONAL SENTENCE OF 11 YEARS – based on an agreement of the parties and the fact that the defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense. Both parties agree that the Court cannot sentence the defendant to more than 11 years. \$200 COURT COSTS; \$500 CVC; \$250 PUBLIC DEFENDER; \$100 DNA FEE, RESTITUTION TO BE DETERMINED AND 36 MONTHS COMMUNITY CUSTODY.**

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 judge 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 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.

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 may not possess, own, or have under my control any firearm unless my right to do so is restored by a superior court in Washington State, and by a federal court if required. I must immediately surrender any concealed pistol license. RCW 9.41.040.
- (k) 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 will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee.

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.*

- el (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" Attachment.~~
- _____ (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 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(4) 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) 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.~~
- _____ (cc) 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) 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.~~

7. I plead guilty to:

count I – MANSLAUGHTER IN THE FIRST DEGREE

count _____

count _____

in the AMENDED Information. I have received a copy of that Information.

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: I am entering a plea of guilty to Manslaughter

ALFORD
PLEA

in the First Degree because I wish to take advantage of the State's Plea Agreement and because I believe that a reasonable jury after hearing all of the state's evidence would convict me. I have reviewed the State's discovery, reports, photographs and lab results with my attorney, B.P.

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

B. D. Remin

Defendant

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

competent and fully understands the statement.

David J. Burke

DAVID J. BURKE, WSBA#16163
Prosecuting Attorney

Thomas Keehan

THOMAS KEEHAN, WSBA#35567
Attorney for Defendant

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and 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 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: _____

15/11/2010

Michael Bullis

Judge

1.6 REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES:
1 In accordance with RCW 9.94A.370, the parties agree that the court, in sentencing, may
2 consider as real and material facts, the information set forth in Paragraph 1.6 of
3 Appendix B is attached.

4 1.7 OTHER: _____

5 1.8 SENTENCE RECOMMENDATION:
6 (a) The State makes the following recommendation:
7 Court costs \$ 200.00
8 Confinement:

9 **COUNT I – AGREED EXCEPTIONAL SENTENCE OF 11 YEARS – based on an**
10 **agreement of the parties and the fact that the defendant used his or her**
11 **position of trust, confidence, or fiduciary responsibility to facilitate the**
12 **commission of the current offense. Both parties agree that the Court**
13 **cannot sentence the defendant to more than 11 years.**

14 **COUNT II –**
15 **days** of jail time converted to
16 hours of community service work.

17 Collection Fee \$
18 Community custody: **36 MONTHS**
19 Victim/Witness Assessment: \$ 500.00
20 Dismiss Count(s):
21 Public Defender Fee : **\$250.00**

22 ~~Mandatory Drug Fine \$~~
23 First time offender waiver.
24 Special sexual offenders sentencing.
25 Exceptional Sentence

26 DNA Mandatory **\$100.00**
27 Lab Fee RCW 43.43.690 \$
28 Prohibition from possession, ownership or control of firearms pursuant to
29 RCW9.41.040.
30 Predicate offense under RCW 9.94A.030 and RCW 9.94A.570 - Persistent
31 Offender Accountability Act.
32 Restitution to be determined.

33 (b) The defendant disputes the Prosecutor's Statement of Defendant's Criminal
History, and the State makes no agreement with regard to a sentencing recommendation
and may make a sentencing recommendation for the full penalty allowed by law.

1.9 The State's recommendation will increase in severity if additional criminal
convictions are found or if the defendant commits any new crime(s), fails to appear
for sentencing or violates the conditions of his or her release.

11. COURT APPROVAL (RCW 9.94A.090)

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The Court, having reviewed the above Plea Agreement and having heard the statements of counsel regarding the reasons for the above Plea Agreement, finds:

(a) [X] The Plea Agreement is consistent with the interest of justice and the prosecutorial standards.

(b) [] The Plea Agreement is not consistent with the interest of justice and prosecutorial standards. Neither party is bound by the Plea Agreement, and the defendant may withdraw the plea of guilty.

Date: 5/11/2010 [Signature] JUDGE

2.1 PROSECUTOR'S STATEMENT OF DEFENDANT'S CRIMINAL HISTORY (RCW 9.94A.525):

Table with columns: Crime, Sentencing Date, Adult or Juv Crime, Date of Crime, Crim Type. Content: NONE

[] Prior Convictions counted as one offense in determining the offender score (RCW 9.94A.360(11)):

2.2 SENTENCING DATA: Table with columns: Offender Score, Seriousness Level, Range, Maximum Term. Content: Count 1- 0, XI, 78-102 MONTHS, LIFE/\$50,000

2.3 [X] Real and material facts establishing elements of a higher crime/more serious crime or additional crimes to be considered at sentencing are contained in the statements of probable cause.

1 3.1 (a) [X] RESTITUTION (includes Charged Counts and Uncharged
2 Counts)

3
4
5 TO BE DETERMINED ON ALL COUNTS CHARGED.

6
7
8 Name Address Amount

9
10
11 Date: 5/11/10 *G. D. Reimer*
12 Defendant's Signature

13
14
15 Date: 5/11/10 *Thomas Keehan*
16 THOMAS KEEHAN, WSBA#35567
17 Attorney for Defendant

18
19 Date: 5/11/10 *David J. Burke*
20 DAVID J. BURKE, WSBA#16163
21 Prosecuting Attorney

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FILED

2010 MAY 11 PM 12:05

VIRGINIA LEACH CL
PACIFIC CO. WA

all

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

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STATE OF WASHINGTON)
Plaintiff,)
vs.)
ERIN D. RIEMAN,)
Defendant.)
_____)

NO. **09-1-00157-8**
WAIVER OF
APPRENDI RIGHT

I, the undersigned Defendant, am aware of the following matters concerning waiver of my *Apprendi* right to a jury determination of any sentence enhancements or aggravating circumstances:


1. Under the Constitution of the United States and the State of Washington, the statutes of the State of Washington, and the Criminal Rules for Superior Court, I am entitled to a trial by a jury of my fellow citizens who would determine whether the facts exist that would support a sentence above or below the standard sentencing range.
2. The jury would not decide what sentence I should receive. The jury would only decide whether the facts exist that would support a sentence above the standard sentencing range. The Judge would decide whether, based upon the jury's findings, a sentence above or below the standard sentencing range should be imposed.
3. In the jury trial, the State must convince all of the twelve citizens of the existence of such facts beyond a reasonable doubt. In a trial by judge, the State must convince only the judge of existence of such facts beyond a reasonable doubt.


Pacific County Prosecuting Attorney
P.O. Box 45
Courthouse
South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

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On the advice of my attorney, and based on the plea agreement into which I have entered, I hereby knowingly, intelligently and voluntarily waive the right I have to a jury determination of whether facts exist beyond a reasonable doubt to support a sentence above or below the standard sentencing range. I hereby consent to having a judge determine beyond a reasonable doubt whether the facts exist to justify a sentence **above** the standard sentencing range but not more than **11 years.**

Dated this 10th day of May, 2010.


ERIN D. RIEMAN, Defendant


THOMAS KEEHAN, WSBA#35567
Attorney for Defendant

PACIFIC COUNTY PROSECUTOR

November 18, 2014 - 12:39 PM

Transmittal Letter

Document Uploaded: 455692-Respondent's Brief.pdf

Case Name: State vs. Erin Rieman

Court of Appeals Case Number: 45569-2

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: Respondent's

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: Brandi Huber - Email: bhuber@co.pacific.wa.us

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

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ptiller@tillerlaw.com